

Kempsey LEP Amendment 9 - Additional Permitted Development with consent: 'information and education facilities', 'restaurants or cafes' and 'tourist and visitor accommodation'.

Proposal Title : **Kempsey LEP Amendment 9 - Additional Permitted Development with consent: 'information and education facilities', 'restaurants or cafes' and 'tourist and visitor accommodation'.**

Proposal Summary : **The intent of the planning proposal is to amend the land use provisions prescribed within Kempsey LEP 2013 to allow 'information and education facilities' and 'restaurants or cafes' as uses that are permitted with consent in the RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots zones, as well as permit 'tourist and visitor accommodation' with consent in the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and R5 Large Lot Residential zones.**

PP Number : **PP_2015_KEMPS_006_00** Dop File No : **15/17843**

Proposal Details

Date Planning Proposal Received : **08-Dec-2015** 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 :
Suburb : City : Postcode :
Land Parcel : **The proposal will apply to all land in the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and R5 Large Lot Residential Zones**

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Kempsey LEP Amendment 9 - Additional Permitted Development with consent: 'information and education facilities', 'restaurants or cafes' and 'tourist and visitor accommodation'.

Land Release Data

Growth Centre :	Release Area Name :
Regional / Sub Regional Strategy :	Consistent with Strategy :
MDP Number :	Date of Release :
Area of Release (Ha) :	Type of Release (eg Residential / Employment land) :
No. of Lots : 0	No. of Dwellings 0 (where relevant) :
Gross Floor Area : 0	No of Jobs Created : 0
The NSW Government Yes Lobbyists Code of Conduct has been complied with :	
If No, comment :	

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

If Yes, comment :

Supporting notes

Internal Supporting
Notes :

External Supporting **The planning proposal intends to:**
Notes : - allow 'information and education facilities' and 'restaurants or cafes' as uses that are permitted with development consent in the RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots zones;
- allow 'tourist and visitor accommodation' with consent in the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and R5 Large Lot Residential zones while prohibiting 'backpackers accommodation', 'hotel or motel accommodation' and 'serviced apartments' in these zones.

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 planning proposal aims to amend the Kempsey LEP 2013 to allow 'information and education facilities' and 'restaurant or cafes' as uses that are permitted with consent in the RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots, as well as 'tourist and visitor accommodation' in RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and R5 large lot residential zones.**

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

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

Comment : **The explanation of provisions provided by Council details how the objectives of the proposal will be achieved. The objectives of the proposal will be achieved by:**

Kempsey LEP Amendment 9 - Additional Permitted Development with consent: 'information and education facilities', 'restaurants or cafes' and 'tourist and visitor accommodation'.

- including 'information and education facilities' as a land use permitted with consent in the RU1 Primary Production RU2 Rural Landscape and RU4 Primary Production Small Lot Zones;
- including 'restaurants and cafes' as a land use permitted with consent in the RU1 Primary Production RU2 Rural Landscape and RU4 Primary Production Small Lot Zones;
- including tourist and visitor accommodation as a group term land use permitted with consent in the RU1 Primary Production RU2 Rural Landscape, RU4 Primary Production Small Lot Zones and R5 Large Lot Residential zones;
- including 'backpackers accommodation', 'hotel or motel accommodation' and 'serviced apartments' as land uses that are prohibited in the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and R5 Large Lot residential zones;
- removing 'bed and breakfast accommodation' as a land use permitted with consent in the RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots;
- removing 'farm stay accommodation' as a land use permitted with consent in the RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots and R5 Large Lot Residential zones;
- removing 'information and education facilities' as a land use that is prohibited in the RU1 Primary Production, RU2 Rural Landscape, and RU4 Primary Production Small Lots;
- removing 'restaurants and cafes' as a land use that is prohibited in the RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots; and
- Remove 'tourist and visitor accommodation' as a group term land use that is prohibited in the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and R5 Large Lot residential Zones.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.3 Mining, Petroleum Production and Extractive Industries

1.5 Rural Lands

2.1 Environment Protection Zones

2.2 Coastal Protection

2.3 Heritage Conservation

3.5 Development Near Licensed Aerodromes

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

5.4 Commercial and Retail Development along the Pacific Highway, North Coast

6.1 Approval and Referral Requirements

3.6 Shooting Ranges

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 10—Retention of Low-Cost Rental Accommodation

SEPP No 14—Coastal Wetlands

SEPP No 21—Caravan Parks

SEPP No 26—Littoral Rainforests

SEPP No 33—Hazardous and Offensive Development

SEPP No 36—Manufactured Home Estates

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP No 62—Sustainable Aquaculture

SEPP No 64—Advertising and Signage

SEPP No 65—Design Quality of Residential Flat Development

SEPP No 70—Affordable Housing (Revised Schemes)

SEPP No 71—Coastal Protection

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Exempt and Complying Development Codes) 2008

Kempsey LEP Amendment 9 - Additional Permitted Development with consent: 'information and education facilities', 'restaurants or cafes' and 'tourist and visitor accommodation'.

SEPP (Housing for Seniors or People with a Disability) 2004
SEPP (Infrastructure) 2007
SEPP (Major Projects) 2005
SEPP (Mining, Petroleum Production and Extractive Industries) 2007
SEPP (Rural Lands) 2008
SEPP (Affordable Rental Housing) 2009

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

An assessment of the applicable directions and SEPPs is provided within the 'Assessment' section of this planning team report.

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

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : Mapping is not required as part of the proposal.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : The RPA has advised that community consultation will be undertaken in accordance with conditions of any Gateway determination as well as the Kempsey Shire Council Public Notification Policy to include:

- public exhibition;
- notification on the Kempsey Shire Council website;
- notification on the Department of Planning and Environment website; and
- notice in the newspapers that circulate in the Local Government Area.

The planning proposal is considered to be 'low impact', therefore a public exhibition period of 14 days is recommended.

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 generally satisfies the adequacy criteria by:

1. Providing appropriate objectives and intended outcomes;
2. Providing a suitable explanation of the provisions proposed by the Planning Proposal to achieve the outcomes;
3. Providing an adequate justification for the proposal;
4. Outlining a community consultation program including public exhibition period as determined by the Gateway conditions; and
5. Providing a project timeframe which suggests completion within 10 months.
6. Outlining that council is requesting delegation in this instance.

Timeline

- The Planning Proposal includes a project timeline which estimates completion by October 2016 (10 months). It is considered that a 12 month time frame would be appropriate. This does not restrict Council from finalising the LEP amendment sooner.

Delegation.

- Council has requested delegation for plan making functions. It is recommended that an

Kempsey LEP Amendment 9 - Additional Permitted Development with consent: 'information and education facilities', 'restaurants or cafes' and 'tourist and visitor accommodation'.

Authorisation for the execution of delegation be issued to Council in this instance.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **The Kempsey Local Environment Plan 2013 is in force. This planning proposal seeks amendment to the Kempsey LEP 2013.**

Assessment Criteria

Need for planning proposal :

The proposal is not a result of a strategic study or report. Council identified the need for the proposed amendments allowing 'information and education facilities' and 'restaurant or cafes' on rural allotments within the LGA as a result of an increasing desire from landowners to undertake such development. This will allow rural landowners to take advantage of rural amenity and character to develop museums, galleries, cafes etc. which will provide an additional source of income to agricultural activities.

Council has identified that narrow 'child terms' of the 'group term' 'tourist and visitor accommodation' are currently in place for RU1, RU2, RU4, and R5 zones, and seeks to rectify that through the application of the 'group term' to provide for a wider range of tourism related development. This will enable greater flexibility to permit types of tourist accommodation that is compatible with rural areas.

The planning proposal identifies a net community benefit arising from the proposed LEP amendment. The proposal will allow landholders to receive financial, social and physical benefits by giving more certainty to those wishing to undertake such developments.

The provisions and actions of the planning proposal are considered the most appropriate means of achieving its intent.

Kempsey LEP Amendment 9 - Additional Permitted Development with consent: 'information and education facilities', 'restaurants or cafes' and 'tourist and visitor accommodation'.

Consistency with strategic planning framework :

Mid North Coast Regional Strategy (MNCRS)

The proposal is considered to be generally consistent with the actions and outcomes outlined in the MNCRS.

SEPPs

The planning proposal is consistent with the provisions of all applicable SEPPs. SEPP (Rural Lands) 2008 is considered to be of particular relevance as the provisions will primarily affect rural zoned land.

The proposal is not inconsistent with the Rural Subdivision Principles or the Rural Planning Principles of the SEPP as the provisions recognise the importance of rural lands and the changing nature of agriculture. They also provide opportunities for balancing social, economic and environmental interests of the community.

Council considers that the additional land-uses to be made permissible with consent are compatible with rural areas and that merit considerations of any development application will ensure that future development does not compromise the potential of good quality agricultural land or increase the potential for land-use conflict.

S117 Directions

The planning proposal is considered to be consistent with the following applicable S117; 1.2 Rural Zones, 1.3 Mining, Petroleum and Extractive Industries, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.2 Coastal Protection, 2.3 Heritage Conservation, 3.5 Development Near Licensed Aerodromes, 5.1 Implementation of Regional Strategies and 6.1 Approval and Referral Requirements.

Inconsistencies with the following S117 Directions have been identified and further addressed:

- 3.6 Shooting Ranges

This Direction is relevant as there is the potential land-use conflict involving new development opportunities on adjoining land affected by noise emissions from the existing Kempsey Clay Target Club shooting range. However, any such development of the adjoining land would be subject to assessment as part of the development assessment process. As such, the inconsistency with this Direction is considered to be of minor significance.

- 4.1 Acid Sulfate Soils

This Direction is relevant as there are areas of land within the RU1, RU2, RU4 and R5 zones in the Kempsey LGA that are affected by acid sulfate soils. Whilst the proposed new development opportunities could potentially result in the intensification of land use on land containing acid sulfate soils, it is considered that a limited number of development opportunities would be taken up and that they would have minimal impact on lands with these soils. Any future proposed development resulting from the planning proposal would also be subject to the development assessment process including considerations of acid sulfate soils in accordance with Clause 7.1 of the Kempsey LEP 2013. As such, the inconsistency with this Direction is considered to be of minor significance.

- 4.3 Flood Prone Land

This Direction is relevant as the planning proposal affects land within the Kempsey LGA identified as 'flood prone land'. The proposed permissible land use opportunities resulting from this planning proposal are commercial in nature and not for permanent residential purposes and as such unlikely to be frequented in times of flooding. Any future development opportunity resulting from the planning proposal would require consideration of flood risk and hazard in accordance with Clause 7.3 of the Kempsey LEP. As such, the inconsistency with this Direction is considered to be of minor significance.

Kempsey LEP Amendment 9 - Additional Permitted Development with consent: 'information and education facilities', 'restaurants or cafes' and 'tourist and visitor accommodation'.

- 4.4 Planning for Bushfire Protection

This Direction applies as the proposal will apply across the LGA. It can be assumed therefore that some of the land within the RU1, RU2, RU4 and R5 zones of the Kempsey LGA is bush fire prone.

The Direction requires Council to consult with the Commissioner of the NSW Rural Fire Service after a Gateway determination has been issued. Until this consultation occurs the consistency of the proposal with this Direction remains unresolved.

- 5.4 Commercial and Retail Development along the Pacific Highway, North Coast

This Direction is relevant as the proposal affects land in the vicinity of the existing and/or proposed alignment of the Pacific Highway with commercial/retail land uses. It is considered to be unlikely that a significant number of proposed new development opportunities would be taken up within the RU1, RU2, RU4 and R5 zones, however any application within the alignment corridor would be subject to the development assessment process at which time the impacts on safety and efficiency of the highway would be considered and a referral made to the RMS for comment. As such, the inconsistency with this Direction is considered to be of minor significance.

Environmental social
economic impacts :

The proposal is unlikely to have any impact on critical habitat or threatened species, populations or ecological communities or their habitats. Merit assessment including considerations of environmental impacts will be required at the development application stage before consent will be granted for any new development opportunities resulting from the proposed amendment.

The proposal is not expected to have a significant social or economic impact and does not require any significant public infrastructure.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **14 Days**

Timeframe to make LEP : **12 months** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) **NSW Department of Primary Industries - Agriculture
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. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Kempsey LEP Amendment 9 - Additional Permitted Development with consent: 'information and education facilities', 'restaurants or cafes' and 'tourist and visitor accommodation'.

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

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
2015-12-08 Planning Proposal - TouristAccom, Restaurant or Cafe, Information and Ed in Rural Zones.pdf	Proposal	Yes

Planning Team Recommendation

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

S.117 directions:

- 1.2 Rural Zones
- 1.3 Mining, Petroleum Production and Extractive Industries
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 3.5 Development Near Licensed Aerodromes
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 5.4 Commercial and Retail Development along the Pacific Highway, North Coast
- 6.1 Approval and Referral Requirements
- 3.6 Shooting Ranges

Additional Information : It is **RECOMMENDED** that the General Manager, as delegate of the Minister for Planning, determine under section 56(2) of the EP&A Act that the proposal to amend the land use provisions prescribed within Kempsey LEP 2013 to allow 'information and education facilities' and 'restaurants or cafes' as uses that are permitted with consent in the RU1 Primary Production, RU2 Rural Landscape and RU4 Primary Production Small Lots zones, as well as permit 'tourist and visitor accommodation' with consent in the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and R5 Large Lot Residential zones under the Kempsey Local Environmental Plan 2013 should proceed as a routine planning proposal subject to the following conditions:

1. 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)'.

2. Consultation with the following agencies and organisations should be required prior to public exhibition:

- NSW Rural Fire Service;
- NSW Department of Primary Industries - Agriculture

3. No public hearing is required to be held into the matter under section 56(2)(e) of the EP&A 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 or if reclassifying land).

4. The timeframe for completing the LEP is to be 12 months from the week following the

Kempsey LEP Amendment 9 - Additional Permitted Development with consent: 'information and education facilities', 'restaurants or cafes' and 'tourist and visitor accommodation'.

date of the Gateway determination.

5. Council be authorised to use the Minister's plan making functions under sections 59(2),(3)&(4) of the Environmental Planning and Assessment Act 1979.

6. Section 117 Directions - It is recommended that:

(a) The Secretary's delegate agrees that the Planning Proposal's inconsistencies with S117 Directions 3.6 Shooting Ranges, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land and 5.4 Commercial and Retail Development along the Pacific Highway, North Coast are of minor significance.

(b) The unresolved inconsistency with s117 Direction 4.4 be noted.

Supporting Reasons :

The reasons for the above recommendations for the Planning Proposal are as follows:

1. The planning proposal is supported in this instance as the land-uses proposed for the RU1, RU2, RU4 and R5 zones are considered to be compatible with the relevant zones and therefore the risk of land-use conflict is considered to be low in many cases.

2. The proposal will also enable certain rural land, particularly that unsuited to agriculture, and large lot residential areas to utilise the land for a range of other commercial uses. This in turn will help to diversify the rural economy and provide additional income streams for rural landholders.

3. The inconsistencies with the strategic planning framework are of minor significance.

Signature:



Printed Name:

PAUL GARNETT

Date:

15/12/15

Acting Team Leader.
Local Planning.

