

Planning Services

Gateway Determination Report

LGA	Kempsey
RPA	Kempsey Shire Council
NAME	Kempsey Housekeeping Amendments
NUMBER	PP_2017_KEMPS_007_00
LEP TO BE AMENDED	Kempsey Local Environmental Plan 2013
ADDRESS	Land in the rural zones in Kempsey LEP 2013, Loftus Road, Crescent Head and Belmore River Sand Quarry, Belmore River Road
DESCRIPTION	Lot 1, 2, 4 & 5 DP 882231, part of Lot 1324 DP 785874, part of Lot 323 DP 855616 and part of Lot 2 DP 1121920 and rural zoned land in Kempsey LEP 2013.
RECEIVED	05/07/2017
FILE NO.	17/09407
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POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of Planning Proposal

The planning proposal seeks to amend the Kempsey Local Environmental Plan (LEP) 2013 by:

- incorporating the provisions from Schedule 1 of SEPP (Integration & Repeals) 2016 in regards to Rural Landsharing Communities;
- rectifying an error to the minimum lot size for a subdivision on land near Crescent Head; and
- rezoning land from RU1 Primary Production to E2 Environmental Conservation to reflect a consent condition for a Joint Regional Planning Panel (JRPP) approved Extractive Industry (Sand Quarry) at Belmore River Road.

Site Description

The land applies to:

- rural zoned land generally (rural landsharing communities land use),
- 4 adjoining lots (Lots 1, 2, 4 and 5 DP 882231) on Loftus Road, Crescent Head, and
- 3 lots (part Lot 1324 DP 785874, part Lot 323 DP 855616 and part Lot 2 DP 1121920) accessed by Belmore River Road.

Surrounding Area

The site on Loftus Road is zoned RU2 Rural Landscape and is surrounded by Hat Head National Park to the east, dense vegetation to the north and west and the Bush in Beach Retreat to the south. The site is approximately 5km north of Crescent Head village.

The land adjoining the quarry site are zoned partly RU1 Primary Production, E1 National Parks and Nature Reserves and E2 Environmental Conservation. The E2 zoned areas are identified as mapped SEPP 14 Coastal Wetlands. The sites are surrounded by Hat Head National Park to the east, SEPP 14 Coastal Wetlands to the north and west and a combination of SEPP 14 Wetland and rural land to the south. The sites are approximately 5km southwest of Hat Head village.

Summary of Recommendation

The proposed housekeeping amendment should proceed subject to a number of conditions. The housekeeping planning proposal is supported as it gives certainty for the permissibility of Rural Landsharing Communities in the future, applies appropriate minimum lot sizes to existing rural residential lots, and implements condition of consent for extractive industry enabling it to commence operations.

PROPOSAL

Objectives or Intended Outcomes

The statement of objectives adequately describes the intention of the planning proposal.

Explanation of Provisions

The explanation of provisions adequately addresses the intended changes to Kempsey LEP 2013. The planning proposal seeks to:

- incorporate the Schedule 1 provisions from SEPP (Integration & Repeals) 2016 to allow for assessment of Rural Landsharing Communities in the Kempsey LEP 2013;
- amend the Lot Size Map for Lots 1, 2, 4 & 5 DP 882231 from a 40 ha minimum lot size to a 1ha minimum lot size. This provision was part of Kempsey LEP 1987 Amendment No 49 which was not brought across with the transfer of planning controls into the Kempsey LEP 2013.
- rezone part of Lot 1324 DP 785874, part of Lot 323 DP 855616 and part of Lot 2 DP 1121920 from RU1 Primary Production to E2 Environmental Conservation as these sites have been identified as a 'habitat offset area' in accordance with the consent conditions applies to development application T6-14-122 to reflect an JRPP approved Extractive Industry (sand quarry) at Belmore River.

Mapping

The planning proposal includes current Land Zoning and Minimum Lot Size maps, however maps reflecting the proposed amendments have not been included. Council has indicated that some of the map data was unavailable at the time of submission. It is recommended that the Gateway determination apply a condition that these proposed maps will be prepared and included in the planning proposal prior to community consultation.

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

NEED FOR THE PLANNING PROPOSAL

The housekeeping amendments are not directly related to a specific study but are resultant from legislative timeframes and reflect existing development approvals.

A detailed review of each proposed amendment is provided below.

Rural Landsharing Communities

The SEPP (Integration and Repeals) keeps the provisions of the former SEPP 15 (Rural Land Sharing Communities) in force for 2 years or until Councils make a decision to reflect these provisions, or a form of them, into their LEP. Kempsey Shire Council is proposing to incorporate all relevant provisions from Schedule 1 of the Integration and Repeals SEPP into the KLEP.

With the incorporation of the landsharing provisions into Kempsey LEP 2013, any reference to Kempsey LEP 2013 will need to be removed from the SEPP (Integration & Repeals) as the LEP would no longer apply.

Minimum Lot Size

The minimum lot size for Lot 1, 2,4 & 5 DP 882231 is proposed to be reduced from 40 hectares to 1 hectare. Kempsey LEP 1987 Amendment No 49 introduced a clause in the LEP (Cl 54) to allow the land to be subdivided into 5 lots and each allotment is not less than 1 hectare minimum lot size. With the transfer of the provision into Kempsey LEP 2013, the 1 hectare minimum lot size in the clause was not included and a 40 hectare minimum lot size was applied to the land. This proposed change will reinstate the intent of Amendment 49 by amending the minimum lot size maps from the current 40 ha minimum lot size to a 1ha minimum lot size reflective of the current lot configuration.

Rezoning to satisfy consent condition

The Northern Joint Regional Planning Panel on 28 April 2016 approved an Extractive Industry (Sand Quarry) at Belmore River. A condition of consent for this land use was that a 'habitat offset area' be incorporated, and that the applicant request the rezoning of these offset areas from RU1 Primary Production to E2 Environmental Conservation. The areas proposed to be rezoned will adjoin existing E1 and E2 zoned land, some of which is also mapped as SEPP 14 Coastal Wetlands. The habitat offset will naturally extend the buffers around these sensitive areas and satisfies the requirement for biodiversity offset for the quarry activity. The rezoning request satisfies the consent condition enabling the commencement of the quarry operations.

The amendments to the instrument, zoning and minimum lot size maps is the most appropriate mechanism to achieve the objectives and intent of the proposal.

STRATEGIC ASSESSMENT

Regional

The proposal is consistent with the North Coast Regional Plan 2036 Goal 4 as it supports 'great housing choice and lifestyle options' and is generally consistent with Direction 24 of the plan delivering 'well planned rural residential housing'. The proposal delivers on these directions through the incorporation of the rural landsharing community provisions.

The proposal is also consistent with all applicable Kempsey Local Government Narratives.

Local

The planning proposal is not inconsistent with Council's Community Strategic Plan 2013.

Section 117(2) Ministerial Directions

Direction 5.10 Implementation of Regional Plans

This Direction requires the planning proposal to be consistent with the North Coast Regional Plan 2036. While the proposals consistency with the plan has been discussed, and is accepted, this has not been included in the S117 direction table. A condition will be included requiring the table to be updated to reflect the application of 5.10.

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

Direction 1.3 Mining, Petroleum Production and Extractive Industries

S117 1.3 requires consultation with the Director General of DPI where a proposal impacts on identified resource areas of State or regional significance. The land at Belmore River Road is identified by the 2014 Mineral Resource Audit maps as being of State or regional significance. It is identified as McGuire's Crossing Proposal (Grandia) and as a source of construction sand. While this proposal is consistent with the development consent, referral to DPE – Resources and Energy is prudent prior to agreeing to this inconsistency is of minor significance.

Direction 4.1 Acid Sulfate Soils

The proposal is inconsistent with this direction as the land at Loftus Road contains Class 5 Acid Sulfate Soils and is not supported by an acid sulfate soil study. The inconsistency is of minor significance as the amendment will not result in intensification of the land use in this area, as the rural residential lots already exist, and ASS provisions are already included in the KLEP.

Direction 4.4 Planning for Bushfire Protection

This direction is applicable to the proposal as the land at Belmore River has been mapped as bushfire prone and with the Rural Landsharing Communities being permissible on all rural land, some of which could be bushfire prone. It is noted that Bushfire Protection has been considered as part of the approved development for the proposed Sand Quarry site at Belmore River.

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.

State Environmental Planning Policies

SEPP (Rural Lands)

The three housekeeping amendments involve rural land. The provisions for Rural Landsharing Communities will affect all rural land within the Kempsey LGA. Incorporating the provisions for Rural Landsharing Communities to the rural zones is not inconsistent with the Rural Planning Principles and supports the opportunities for rural lifestyle and housing choice.

The sites at Loftus Road involve rural land however no further subdivision is possible and this proposal merely reflects the existing governance of this land.

The areas to be rezoned at Belmore River Road have been identified as having significant environmental value, and are required to be maintained as such by conditions of consent. It is considered that the planning proposal is consistent with the SEPP.

SEPP (Integration and Repeals)

SEPP 15 Rural Landsharing Communities was repealed in August 2016. The Integration and Repeals SEPP however maintains this former SEPP's provisions for a two year period until August 2018. There has been no final determination as to what will happen to Councils who have not considered adopting rural land sharing provisions in their LEP at this date.

Kempsey Shire Council is seeking to maintain the existing provisions by incorporation into their LEP, this approach was one the Department recommended Councils consider.

The proposal is consistent with all other SEPP's.

SITE SPECIFIC ASSESSMENT

Social

The planning proposal does not result in any additional development opportunities, nor restrict any opportunities, it merely reflects alternative governance frameworks. As such no social impacts will result from this proposal.

Environmental

The area identified for environmental protection in the Belmore River Road quarry will be permanently identified as such raising greater awareness of the lands attributes.

For rural land sharing communities any potential impacts on threatened species, population or ecological communities or their habitat can be addressed at DA stage.

There are no other changes resultant from this planning proposal that will impact on the environmental governance arrangements.

Economic

The planning proposal does not result in any additional development opportunities, nor restrict any opportunities, it merely reflects alternative governance frameworks. As such no economic impacts will result from this proposal.

CONSULTATION

Community

The planning proposal has indicated a 28 day community consultation period. This is considered acceptable.

Agencies

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

TIMEFRAME

The planning proposal includes a project time line which suggests a completion time within 9 months. It is recommended that a 12 month period be accepted to capture any

unforeseen holdups. This does not restrict Council from finalising the LEP amendment sooner.

DELEGATION

Council has completed an evaluation for the issuing of an authorisation to exercise delegation. As the proposal is the first to incorporate the SEPP (Integration & Repeals) Schedule 1 provisions into the LEP the Department considers this LEP should not be delegated so as to allow the Department to consider the best mechanism to amend the Integration and Repeals SEPP as part of the LEP amendment.

The Department will liaise with Parliamentary Counsel Office directly when drafting the amendment. Council will be consulted with each draft to ensure that the LEP amendment achieves the objectives and satisfies Council requirements for implementing the Rural Landsharing Community provisions through its LEP.

CONCLUSION

The preparation of a housekeeping planning proposal is supported as it:

- give certainty for the permissibility of Rural Landsharing Communities in the future;
- applies appropriate minimum lot sizes to existing rural residential lots; and
- implements condition of consent for extractive industry enabling it to commence operations.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. **Agree** any inconsistency with Section 117 Directions 4.1 Acid Sulfate Soils is minor; and
2. **Notes** that the consistency with Section 117 Directions 1.3 Mining, Petroleum Production and Extractive Industries and 4.4 Planning for Bushfire Protection are unresolved and will require justification.

It is recommended that the delegate of the Minister for Planning, determine that the planning proposal should proceed subject to the following:

1. The planning proposal is required to be updated prior to community consultation to:
 - a) provide an explanation of what Rural Landsharing Communities are, the areas where Rural Landsharing Communities will be permissible and which relevant provisions from the SEPP are to be transferred;
 - b) provide land zoning and minimum lot size maps that illustrate the proposed amendments;
 - c) update Appendix C to reflect s117 Direction 5.10 Implementation of Regional Plans, and
 - d) incorporate the planning proposal timeframe.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the NSW Rural Fire Service and Department of Planning and Environment – Resources and Energy.
4. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.

5. Council have not been granted authorisation to exercise delegation to make the plan.

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