

ITEM 13.3 PLANNING PROPOSAL – KLEP 2013 - 'HOUSEKEEPING' AMENDMENTS

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PURPOSE

To advise that a Planning Proposal has been prepared by Council to amend Kempsey Local Environmental Plan (KLEP) 2013. The proposal is to enable a number of 'housekeeping' amendments to be made.

RECOMMENDATION

That the Planning Proposal and associated documentation be submitted to the Minister for Planning for consideration of issuing a "gateway determination" pursuant to Section 56 of the *Environmental Planning and Assessment Act 1979*.

ISSUES

The Planning Proposal comprises of the following KLEP 2013 'housekeeping' amendments:

- Incorporate the relevant Schedule 1 provisions of *SEPP (Integration & Repeals) 2016* into KLEP 2013 to enable the assessment of *rural landsharing communities*;
- Correct a *Lot Size Map* anomaly at Loftus Road, Crescent Head; and
- Amend the *Land Zoning Map* for a Belmore River sand quarry, in fulfilment of a condition imposed by the Notice of Determination issued by Council for an Extractive Industry.

A full copy of the Planning Proposal is attached [\(Appendix E - Page 17\)](#).

Subject Land

These 'housekeeping' amendments apply to:

- rural zoned land generally (*rural landsharing communities* land use);
- four (4) adjoining lots in Loftus Road, Crescent Head (refer Figure 1 below); and
- three (3) adjoining lots accessed by Belmore River Road (refer Figure 2 below).

Objectives or intended outcomes of the Planning Proposal

The KLEP 2013 came into effect on 3 February 2014. This 'housekeeping' amendment is to ensure the KLEP 2013 remains accurate and fit-for-purpose. Additionally, the amendments will permit the commencement of an approved Extractive Industry land use by rezoning Environmentally Sensitive land to Environmental Protection.

Proposed Amendments to the Kempsey Local Environmental Plan (KLEP) 2013

Rural Landsharing Communities:

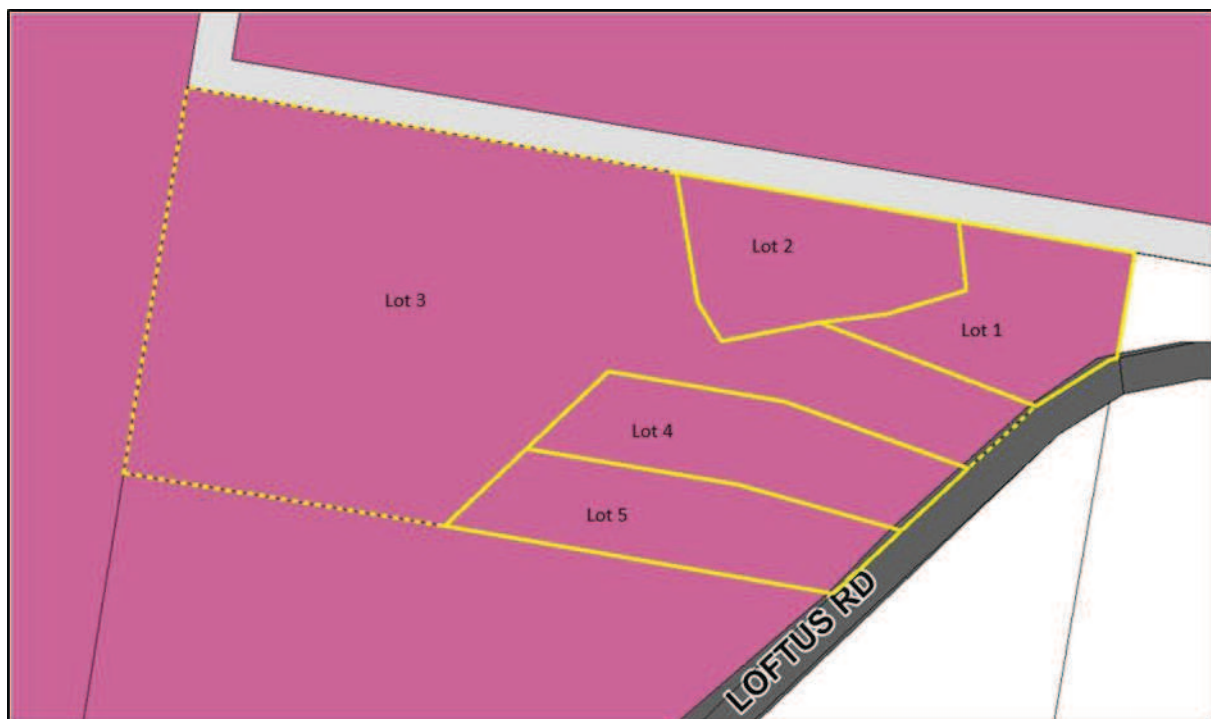
SEPP 15—Rural Landsharing Communities which facilitated the assessment of ‘rural landsharing communities’ in NSW was repealed on 4th August 2016. *Rural landsharing communities* is a land use which enables the collective ownership and erection of multiple dwellings on a single lot. From 5th August 2016, *SEPP (Integration & Repeals) 2016* provides Council with a two year period to incorporate provisions for the assessment of *rural landsharing communities* into the KLEP 2015. The *rural landsharing communities* land use would only apply to Council’s rural land zones.

It is considered that Council should support the amendment as it provides the opportunity to provide affordable housing in rural areas, supports the viability of the shire’s towns and villages and compliments biodiversity and rural lands initiatives Council has commenced. The provisions also deter the erection of unauthorised dwellings in circumstances where land is held by multiple owners by providing the legal means of considering such forms of development.

Loftus Road, Crescent Head:

This amendment is to correct the minimum lot size for lots 1,2,4 and 5, DP882231 through the reinstatement of the provisions of KLEP 1987 Amendment No. 49 which was not brought across to KLEP 2013.

Amendment 49 of KLEP 1987 permitted a one into five lot subdivision at this site, with a minimum lot size of 1ha. The subdivision was completed in the required period, however the relevant *Lot Size Map* within KLEP 2013 incorrectly states that the minimum lot size is 40ha (refer Figure 1 below) rather than 1ha. It was the intention of Council that the referred minimum lot size be assigned through the LEP review process, however this did not occur, in error.



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Figure 1: Identified Lots 1-5 are all within the minimum 40ha lot size area
Sand Quarry Belmore River

Condition C6(a) of the Notice of Determination issued for an Extractive Industry at Belmore River on 28 April 2016 states that the applicant is to request Council to rezone an identified 'habitat offset area' from RU1 – Primary Production to E2 – Environmental Protection, prior to the commencement of operations. Figure 2 below identifies the portions of Lot 1324 DP785874, Lot 323 DP855616 and Lot 2 DP1121920 to be rezoned.

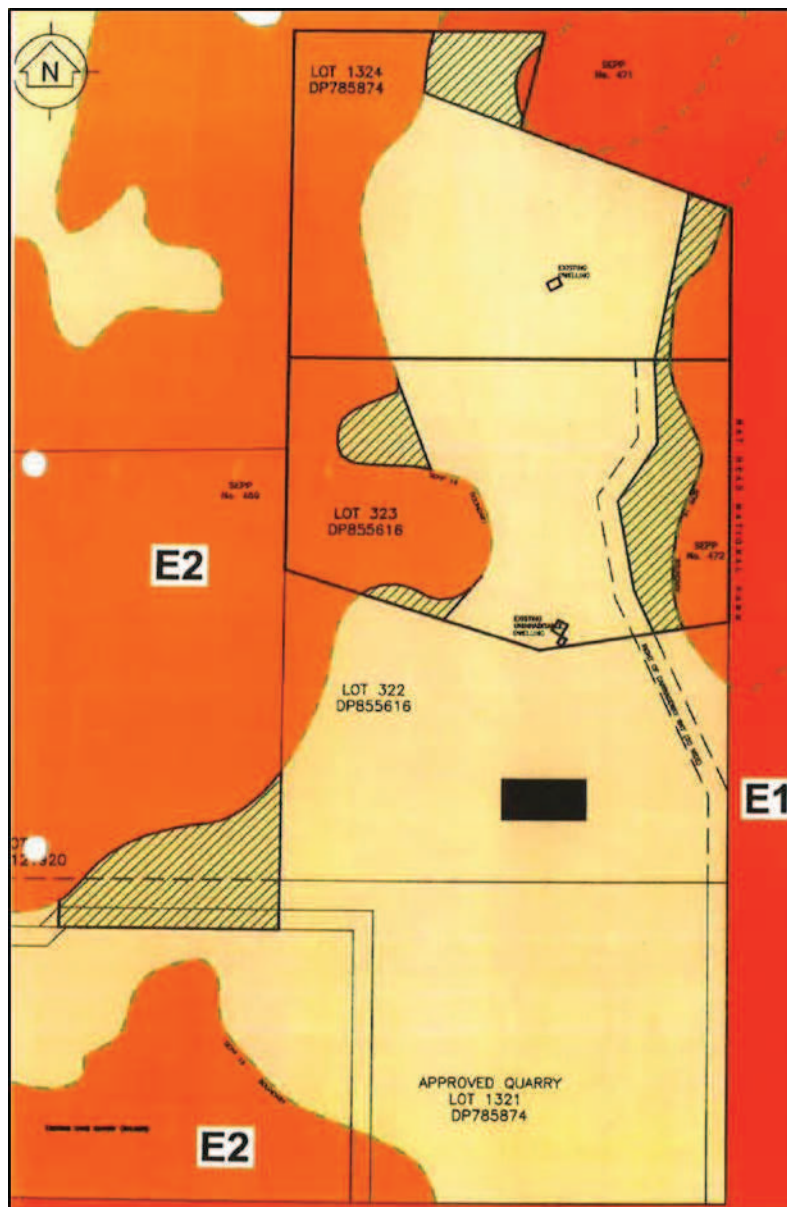


Figure 2: Extent of land to be rezoned (identified by green diagonal lines)

Justification for the Planning Proposal

Justification for the proposed 'housekeeping' amendments is summarised as follows:

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- provides for the establishment of *rural landsharing communities* in the KLEP 2013, to deliver greater housing choice for the Shire;
- corrects lot size map errors that should have been brought over from the Council's previous LEP (KLEP 1987) at Loftus Road, Crescent Head; and
- to achieve intended environmental outcomes (through zone amendment) as prescribed by a condition of consent for an approved Extractive Industry land use.

Consistency with Relevant State Environmental Planning Policies

The applicable policies and comments on the consistency of the proposal is provided in the table below:

State Environmental Planning Policy	Comments
State Environmental Planning Policy No. 14 – Coastal Wetlands	Coastal wetlands protected under SEPP 14 exist on part of the site of the sand quarry at Belmore River. The proposed amendment will provide additional environmental protection through the incorporation of a 'habitat offset area' identified in the development application and consent, which will be rezoned from RU1 – Primary Production to E2 – Environmental Protection.
State Environmental Planning Policy No. 44 – Koala Habitat	The planning proposal will not result in intensified impacts on any identified Koala habitat.
State Environmental Planning Policy No. 55 – Remediation of Land	None of the sites are identified as being contaminated.
State Environmental Planning Policy (Rural Lands) 2008	The sites at Loftus Road, Crescent Head and the sand quarry at Belmore River both involve rural land (RU2 and RU1 respectively). The Loftus Road land has already been subdivided - the planning proposal is to correct the minimum lot size mapping (which will not enable further subdivision). In regard to the quarry site at Belmore River, the proposal will rezone a limited portion of RU2 land to E2 in recognition of the lands' environmental values. On this basis, the planning proposal is considered to be consistent with the SEPP.
State Environmental Planning Policy (Infrastructure) 2007	The referral provisions of this SEPP are not triggered by the planning proposal.

Consistency with Section 117 Ministerial Directions

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The proposal is consistent with the following relevant Ministerial Directions.

Directives	Key Requirement	Justification
1.2 Rural Zones		
The objective of this direction is to protect the agricultural production value of rural land. A planning proposal must: (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. (b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).	May be inconsistent unless: (a) justified by a strategy which: (i) gives consideration to the objectives of this direction, (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and (iii) is approved by the Director-General of the Department of Planning, or (b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, <u>or</u> is: (c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or (d) is of minor significance.	Any inconsistency with clause 4(a) is justified through clause 5(d) in that while the proposal will reduce the minimum lot size for RU2 land at Loftus Road, Crescent Head, the site has already been subdivided to the extent that further subdivision (and therefore increased permissible density) is not permitted. It is noted that the impacts of increased dwellings in rural zones associated with rural landsharing communities will be addressed at Development Application stage in accordance with the model rural landsharing communities' clause.
1.3 Mining, Petroleum Production and Extractive Industries		
To ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.	Applies when planning proposal is prepared that would prohibit or restrict the mining or potential development of coal, other minerals, petroleum production or obtaining extractive minerals of State or regional significance	The planning proposal will not prohibit or restrict the mining or future extraction of State or regionally significant coal, other minerals, petroleum and extractive materials (in this instance a condition of consent for the creation of a 'habitat offset area' is being fulfilled to enable the commencement of operations

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Directives	Key Requirement	Justification
	permitting incompatible land use.	for a sand quarry at Belmore River).
1.5 Rural Lands		
The objectives of this direction are to: (a) protect the agricultural production value of rural land, (b) facilitate the orderly and economic development of rural lands for rural and related purposes. A planning proposal to which clauses 3(a) or 3(b) apply must be consistent with the Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>.	A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Department of Planning that the provisions of the planning proposal that are inconsistent are: (a) justified by a strategy which: (i) gives consideration to the objectives of this direction, (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites, and (iii) is approved by the Director-General of the Department of Planning and is in force, or (b) is of minor significance.	The planning proposal applies to rural sites where an alteration to an existing rural/environment zone boundary is being amended to permit the commencement of an extractive industry at Belmore River. Minimum lot size mapping for rural land in Loftus Road, Crescent head is proposed to reflect previous approvals and a subdivision that has already been completed. The consistency of the proposal with the provisions of <i>State Environmental Planning Policy (Rural Lands) 2008</i> has been established in the earlier section above (<i>Consistency with Relevant State Environmental Planning Policies</i>) and will be dealt with at Development Application stage under the model clause.
4.1 Acid Sulphate Soils		
The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.	A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulphate soils unless the relevant planning authority has considered an acid sulphate soils study assessing the appropriateness of the change of land use given the presence of acid sulphate soils.	As the planning proposal is merely to reinstate previously approved minimum lot size at Loftus Road, Crescent Head and to enable the fulfilment of a condition of consent for an approved extractive industry use, the provisions of this S117 Direction, is considered not to apply.
4.3 Flood Prone Land		

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Directives	Key Requirement	Justification
The objectives of this direction are: (a) to ensure that development of flood prone land is consistent with the NSW Government's <i>Flood Prone Land Policy</i> and the principles of the <i>Floodplain Development Manual 2005</i>, and (b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land. (4) A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas). (5) A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.	A planning proposal may be inconsistent with this direction only if the relevant planning authority can satisfy the Director-General (or an officer of the Department nominated by the Director-General) that: (a) the planning proposal is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or (b) the provisions of the planning proposal that are inconsistent are of minor significance. Note: "flood planning area", "flood planning level", "flood prone land" and "floodway area" have the same meaning as in the <i>Floodplain Development Manual 2005</i>.	The identified sites at Loftus Road are not flood prone. The E2 zoned land at Belmore River is flood prone however the proposal is consistent with this requirement as it would reduce development potential. The model clause for rural landsharing communities would restrict the placement of dwellings on any flood prone land.
4.4 Planning for Bushfire Protection		

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Directives	Key Requirement	Justification
The objectives of this direction are: (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and (b) to encourage sound management of bush fire prone areas.	A planning proposal must: (a) have regard to <i>Planning for Bushfire Protection 2006</i>, (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and (c) ensure that bushfire hazard reduction is not prohibited within the APZ.	The planning proposal is for land that is identified as bushfire prone. Notwithstanding, the approved development at Loftus Road has already been assessed for compliance with the provisions of Planning for Bushfire Protection. Bushfire protection is a matter that is addressed under the model clause for rural landsharing communities.
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. Planning proposals must be consistent with a regional strategy released by the Minister for Planning.	A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), that the extent of inconsistency with the regional strategy: (a) is of minor significance, and (b) the planning proposal achieves the overall intent of the regional strategy and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.	This planning proposal is entirely consistent with the North Coast Regional Plan 2036.
6.1 Approval and Referral Requirements		
The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	A planning proposal must: (a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and	The planning proposal does not introduce any additional requirements for concurrence with other Government agencies.

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Directives	Key Requirement	Justification
	(b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of: (i) the appropriate Minister or public authority, and (ii) the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), prior to undertaking community consultation in satisfaction of section 57 of the Act, and (c) not identify development as designated development unless the relevant planning authority: (i) can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and (ii) has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act.	
6.3 Site Specific Provisions		
The objective of this direction is to discourage unnecessarily restrictive	A planning proposal that will amend another environmental planning instrument in order to allow a particular	This proposal is consistent with this S117 Direction.

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Directives	Key Requirement	Justification
site specific planning controls.	development proposal to be carried out 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. A planning proposal must not contain or refer to drawings that show details of the development proposal.	

Community and Public Agency Consultation

Consultation will be undertaken with the State and Commonwealth authorities should the Director General determine to allow the planning proposal to proceed as part of the overall public exhibition and consultation for the planning proposal post Gateway Determination.

Community Consultation is proposed to be undertaken in accordance with any conditions specified in the Gateway Determination and Kempsey Shire Council's Rezoning Policy and Procedure 1.1.9, Section 3 Public Notification and Consultation, including any specific requirements of the LEP Review Panel.