

Proposed Residential Zone, Gilbert Cory Drive, South West Rocks

Proposal Title :	Proposed Residential Zone, Gilbert Cory Drive, South West Rocks		
Proposal Summary :	The proposal is to rezone land at South West Rocks from 1(d) (Rural (Investigation) "D" Zone to 2(a) (Residential "A" Zone, 7(a) (Wetlands Protection Zone) and 7(b)(Environmental Protection (Habitat) Zone.		
PP Number :	PP_2011_KEMPS_005_00	Dop File No :	11/17920

Proposal Details

Date Planning Proposal Received :	04-Oct-2011	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 :	Gilbert Cory Drive		
Suburb :		City :	South West Rocks
Land Parcel :	Lot 10 DP 754396	Postcode :	

DoP Planning Officer Contact Details

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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name :	Jim Clark		
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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Mid North Coast Regional Strategy	Consistent with Strategy :	Yes

Proposed Residential Zone, Gilbert Cory Drive, South West Rocks

MDP Number :		Date of Release :	
Area of Release (Ha)	15.00	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	120	No. of Dwellings (where relevant) :	120
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

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

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes : **While the site is identified as a release area under the Mid North Coast Regional Strategy, this designation is dependent on biodiversity issues being resolved. A proposed amendment to include the land in the Kempsey Council's Local Growth Management Strategy is under consideration.**

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment :

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

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

Comment :

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.5 Rural Lands

2.1 Environment Protection Zones

2.2 Coastal Protection

2.3 Heritage Conservation

3.1 Residential Zones

3.4 Integrating Land Use and Transport

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

Proposed Residential Zone, Gilbert Cory Drive, South West Rocks

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **No**

d) Which SEPPs have the RPA identified?

SEPP No 14—Coastal Wetlands

SEPP No 44—Koala Habitat Protection

SEPP No 71—Coastal Protection

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

The planning proposal does not list the SEPP North Coast REP 1988. However, this SEPP is relevant in terms of clause 38(2). That clause requires LEPs to be consistent with an agreed land use strategy which does not include for development land which has conservation value. REP clause 29(c) is also relevant, requiring an LEP to include significant areas of natural vegetation (including wildlife habitat) in environmental protection zones.

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

If No, explain :

a) The land is not part of the Council's agreed local growth management strategy. The Director General specifically excluded the land in his recent (6 June 2011) approval of Kempsey Local Growth Management Strategy, because biodiversity investigations had not proceeded. Those investigations were the basis for the land's inclusion in the Mid North Coast Regional Strategy Growth Area. The Director General advised the Council that land in the locality could be considered for inclusion in a future strategy amendment if an adequate investigation found that unconstrained areas existed.

b) The proposal is inconsistent with Section 117 Directions 2.1 (Environment Protection Zones), 1.5 (Rural Lands) and 1.2 (Rural Zones). In each case, the inconsistency cannot be justified, as the land is not identified in the Council's local growth management strategy, as outlined above. Additionally, the land is not identified as being suitable for development in the Regional Strategy - it is identified as Future Urban subject to protection of land with high biodiversity values.

c) The proposal is inconsistent with the SEPP North Coast REP as outlined above.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The Council has indicated community consultation would be necessary, but has not recommended an exhibition period.

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 :

Proposal Assessment

Principal LEP:

Due Date : July 2012

Comments in relation
to Principal LEP :

The land is identified as RU2 and E2 in the draft Kempsey Comprehensive LEP. The LEP has not yet been exhibited for community comment. Neither zone would allow the proposed development.

Assessment Criteria

Need for planning
proposal :

The Mid North Coast Regional Strategy identifies a need for 18,300 new dwellings in the Hastings-Macleay Valley sub-region. South West Rocks is identified as a 'town', being reliant on the major town of Kempsey for services and employment.

Benefits listed include provision of housing land near services, improved drainage, provision of access to residential areas, protection of wetland and EECs, and short-term local employment associated with the housing industry. However the Proposal identifies land clearing and infrastructure provision as costs.

Consistency with
strategic planning
framework :

The land is in a locality (western part of South West Rocks) identified as Proposed Future Urban Release Area in the Mid North Coast Regional Strategy 2009. The locality is shown stippled, indicating areas of high level constraints. It is also hatched, denoting its status as a site with significant issues where there is a process underway to determine any development potential.

The Strategy notes that 'the extent of any development potential in the locality is to be based on the identification and protection of land with high biodiversity values, consistent with the current study underway'. The locality study to which the Strategy refers was not completed. Several studies have been undertaken, some of them conflicting. The current proposal includes an interpretation of EECs with which the Office of Environment and Heritage (OEH) does not agree.

The locality is not part of the Council's agreed (June 2011) local growth management strategy. The Director General specifically excluded this land due to the incomplete biodiversity investigations. The Director General advised the Council that if an adequate investigation was carried out within the locality, and any land was found to be unconstrained, the Council's strategy could be submitted for amendment.

In lodging the current planning proposal, the Council also forwarded its resolution to request the Department to include the land in its local growth management strategy. The request is based on the same information as the planning proposal, which does not demonstrate that unconstrained land is available.

The proponent has suggested using offsets to address loss of environmental values, as a way of facilitating the land's inclusion in Council's local growth management strategy. In response, the Department indicated it needed to be confident that offsetting would be feasible, and would take the advice of the Office of Environment and Heritage (OEH). OEH subsequently advised the proponent that offsetting is unlikely to be feasible because: the extent of knowledge about EECs and threatened species on the site is unclear; finding an adequate like-for-like offset area is problematic; fragmentation of the site is undesirable; and a more suitable use for the land would be to use it as an offset area for developments of lesser impact. The proponent has indicated that EECs are to be 'largely avoided', and is of the view that offsets are feasible. However wet heathland is a community which may necessitate a variation to be sought from OEH.

In these circumstances of insufficient justification for departure from the requirements of the section 117 directions regulating release of rural land for urban purposes, the Planning Proposal should not proceed at this stage.

Proposed Residential Zone, Gilbert Cory Drive, South West Rocks

Environmental social
economic impacts :

The proposal is for low-density development (average size 750 square metre lots) on 15 ha of a 40 ha site. The site is thickly vegetated and in good condition. It includes two Endangered Ecological Communities, a SEPP 14 wetland and potential koala habitat. While limited fauna surveys have been carried out, a variety of threatened species are predicted to occur.

A regional wildlife corridor identified by OEH traverses the site. Development is proposed on land in the wildlife corridor. Removal of 0.5 hectares in an EEC is proposed. Because of the high level of constraints, development is proposed in three nodes, creating a significant interface area between houses and vegetation. The land is bushfire-prone and any development will require cleared setbacks to mitigate bushfire risk. The Infrastructure SEPP permits bushfire hazard reduction without consent on any land, including clearing. This creates the potential for impacts on vegetation outside the proposed residential zone.

Discussions between OEH and the proponent have not resulted in an agreed view of specific biodiversity values or potential offsetting arrangements. OEH has advised the proponent that it does not consider offsetting to be feasible.

In these circumstances of insufficient justification for departure from the requirements of the section 117 direction 2.1 (Environmental Zones) and SEPP REP clause 29, the Planning Proposal should not proceed at this stage.

Assessment Process

Proposal type : **Inconsistent** Community Consultation Period : **28 Days**

Timeframe to make LEP : **24 Month** Delegation : **DDG**

Public Authority Consultation - 56(2)(d) : **NSW Aboriginal Land Council
Catchment Management Authority - Northern Rivers
Office of Environment and Heritage
Department of Primary Industry (Fisheries)
Home Care Service of NSW
NSW Rural Fire Service**

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

(2)(a) Should the matter proceed ? **No**

If no, provide reasons : **The subject land has not been agreed to by the Director General for inclusion in the Council's local growth management strategy. That, and the unresolved status of biodiversity constraints, result in unjustifiable inconsistencies with Section 117 Directions 2.1 (Environment Protection Zones), 1.5 (Rural Lands) and 1.2 (Rural Zones), SEPP North Coast REP, and SEPP 71 Coastal Protection.**

The Department is currently considering a request by the Council to include the land in its local growth management strategy. The request is based on information on the extent of EECs, with which OEH does not agree. OEH has advised that offsets for vegetation loss are unlikely to be feasible. No adequate studies are available to resolve the issue at this point. The proponent has not demonstrated that any unconstrained land is available.

If the proposal should be considered suitable to proceed at this stage, adequate information would be required, demonstrating that unconstrained land exists. The Department will take the advice of OEH on the adequacy of the information.

Resubmission - s56(2)(b) : **Yes**

If Yes, reasons : **The proposal may be resubmitted if the Director General approves an amendment to the**

Proposed Residential Zone, Gilbert Cory Drive, South West Rocks

Council's local growth management strategy to include the land.

Identify any additional studies, if required. :

Flora

Fauna

Heritage

Bushfire

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

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

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
letter from Director General re Kempsey Local Growth Management Strategy.pdf	Determination Document	Yes
Gilbert Cory St Planning Proposal.pdf	Proposal	Yes
Gilbert Cory St Council report.pdf	Proposal Covering Letter	Yes
Gilbert Cory St location map.pdf	Map	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Not Recommended**

S.117 directions:

- 1.2 Rural Zones**
- 1.5 Rural Lands**
- 2.1 Environment Protection Zones**
- 2.2 Coastal Protection**
- 2.3 Heritage Conservation**
- 3.1 Residential Zones**
- 3.4 Integrating Land Use and Transport**
- 4.1 Acid Sulfate Soils**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**

Additional Information : **It is recommended that:**

The planning proposal not proceed on the basis that it is unjustifiably inconsistent with Section 117 Directions 1.2 (Rural Zones), 1.5 (Rural Lands) and 2.1 (Environment Protection Zones and SEPP North Coast REP.

The proposal may be resubmitted if the Director General approves an amendment to the Council's local growth management strategy to include the land.

Should the planning proposal be supported now, it is recommended that

- 1. The Planning Proposal is exhibited for a period of 28 days;**
- 2. The Planning Proposal be completed within 12 months;**
- 3. Consultation with OEH take place and a further report be prepared (to be considered under section 57(2) of the Act) with a view to justifying inconsistencies with section 117 directions 1.2, 1.5, 2.1, 2.3, 4.3, 4.4 and 5.1.**

Supporting Reasons : **The proposal is not part of Council's agreed local growth management strategy.**

Proposed Residential Zone, Gilbert Cory Drive, South West Rocks

The proponent has not shown that unconstrained areas exist, and OEH as the expert agency does not believe offsets through biobanking are feasible. It is considered there is not sufficient information available to justify inconsistencies with section 117 directions relating to the environmental impact of the proposal.

Signature: _____



Printed Name: _____

JIM CLARK

Date: _____

7 October 2011