

PGF001108

Ref T5-116
IS:IS

28 September 2011

DEPARTMENT OF PLANNING
LOCKED BAG 9022
GRAFTON NSW 2460

Received

4 OCT 2011

11/17920

North Coast

Dear Sir/Madam,

SUBJECT: PLANNING PROPOSAL T5-116
PROPERTY: Lot 10 DP754396 – GILBERT CORY STREET, SOUTH WEST ROCKS

On 25 March 2011, a Planning Proposal was lodged with Council for the rezoning of the above property from Zone 1(d)(Rural Investigation "D" Zone) to Zone 2(a) (Residential "A" Zone), Zone 7(a)(Wetlands Protection Zone) and Zone 7(b)(Environmental Protection (Habitat) Zone). This Planning Proposal was considered at the Council meeting of 20 September 2011 where Council resolved to forward the Planning Proposal to the Department of Planning for a Gateway Determination pursuant to Section 56 of the *Environmental Planning and Assessment Act 1979*.

Please find enclosed copies of the planning proposal and all associated documentation provided by the applicant, as well as a copy of the Council resolution. All the relevant issues are discussed in the enclosed Council report.

If you wish to discuss this matter or require any information please contact the undersigned on 6566 3200 or by email at ilija.susnja@kempsey.nsw.gov.au

Yours faithfully

Ilija Susnja
Area Planner
SUSTAINABLE ENVIRONMENT

1.7.2 Planning Proposal for Residential Rezoning

File: T5-116 {Folio No. 457426}

1312

RBP

SUMMARY

Reporting that Council has received a Planning Proposal to rezone land from 1(d) (Rural (Investigation) "D" Zone) to 2(a) (Residential "A" Zone), 7(a) (Wetlands Protection Zone) and to 7(b) (Environmental Protection (Habitat) Zone).

Applicant: Wells Environmental Services – Gary Freeland
Subject Property: Lot 10 DP754396, Gilbert Cory Street, South West Rocks
Zone: 1(d) (Rural (Investigation) "D" Zone)

011. 394 RESOLVED:

**Moved: Cl. Bowell
Seconded: Cl. Walker**

- A That planning proposal T5-116 be forwarded to the Department of Planning for a Gateway Determination pursuant to Section 56 of the Environmental Planning and Assessment Act 1979.**
- B That Council request the Department of Planning & Infrastructure, to include the growth area boundary in the Residential Component of the Local Growth Management Strategy as previously endorsed by Council.**

A Division resulted in the following votes.

F = Voted For

A = Voted Against

Bowell	F	Campbell	F	Green	F	Saul	F	Snowsill	F
Sproule	F	Walker	F						

Environmental: The proposed residential zone areas are located in areas that would have the least environmental impact on the site. However, the flora and fauna reports conducted to date do not sufficiently demonstrate that the development within the proposed residential zones will not have an adverse environmental impact. It is a possibility that the findings of any Species Impact Statements prepared for future development applications may sterilise development of the land. The gateway determination is likely to require more in-depth ecological studies to be conducted to demonstrate that the proposed rezoning will have no adverse environmental impact or require that arrangements be made to provide environmental offsets on another site.

Social: The rezoning is considered to have the following social implications:

- New residential land adjacent to existing residential land reduces fragmentation and land use conflicts, as well as creating a coherent and more complete neighbourhood;
- New residential land contributing to satisfying the projected demand for housing in South West Rocks.

Economic (Financial): The rezoning is considered to have the following economic implications:

- Increase in the variety of residential land available locally;
- In the short term, increased employment during construction phases of future subdivision and subsequent dwellings; and
- In the long term, a minor strengthening of the local economy due to additional customers purchasing from local businesses.

Policy or Statutory: The proposed residential use of parts of the land is not consistent with Council's Residential Component of the Local Growth Management Strategy (LGMS) as the DoPI deleted the release area previously endorsed by Council. Part of the site is identified in the Mid North Coast Regional Strategy as the Release Area South West Rocks Urban Investigation Area 6 Spencerville to New Entrance (SWRUIA6), with an overlay indicating that the site has high level constraints to development, which require further flora and fauna studies demonstrating that the land is suitable for release. It is anticipated that the Gateway Determination will require additional flora and fauna studies as the ecological report submitted with the Planning Proposal may not have enough detail to determine the impacts on Threatened Species in the proposed development areas. In order to address the proposal's conflict with these strategic studies, the Department of Planning have advised that they will consider a request by Council to re-include the land in the growth area boundary of the LGMS at the same time they consider the planning proposal.

REPORT DETAILS

The Planning Proposal is to rezone the subject land, from 1(d) (Rural (Investigation) "D" Zone) to three parts zoned 2(a) (Residential "A" Zone), one part to be zoned 7(a) (Wetland Protection Zone) and the remainder of the site being rezoned to Zone 7(b)(Environmental Protection (Habitat) Zone). The entire site is forested, with different vegetation communities. The site is located between the two main developed areas of South West Rocks, with existing residential land lying to the west/north-west and east/north-east of the site. The adjoining land to the north of the site is undeveloped and forested. Land directly to the south of the site is largely undeveloped and forested, with the exception of a rural-residential development. The adjoining land to the north and south of the site is located in Zone 1(d)(Rural (Investigation) "D" Zone). Crown road reserves adjoin the eastern and southern boundaries of the site. Gilbert Cory Street adjoins the western boundary of the site – which is mostly a gravel road where it adjoins the subject land (Appendix E - Page SE13).

The constraints affecting the subject land include:

- 1 The site is located in a bushfire prone area;
- The site is known to contain numerous Threatened Fauna Species;
 - The site is known to contain two (2) Endangered Ecological Communities;
 - The site is located in the coastal area referred to in State Environmental Planning Policy No.71 – Coastal Protection;
 - The site contains a coastal wetland designated under State Environmental Planning Policy No.14 – Coastal Wetlands;
 - The site contains potential koala habitat referred to in State Environmental Planning Policy No.44 – Koala Habitat Protection;
 - The Planning Proposal indicates that an Aboriginal Heritage Information Management System (AHIMS) search did not indicate any records of Aboriginal significance on the land but further studies are required to confirm whether the site contains any significance to Aboriginal culture; and
 - The site is not included in the current version of the Residential Component of the Kempsey Local Growth Management Strategy as an urban growth

area which was deleted from the Council endorsed draft strategy. The Department of Planning and Infrastructure have advised that they will consider a request from Council to amend the growth area boundary of the strategy at the same time as the Planning Proposal is being considered.

Additional studies addressing the above constraints may form part of the Gateway determination.

Objective of the Planning Proposal

The objectives of the planning proposal are to:

- Enable three (3) areas of the site to be considered for development for low-density residential development. These three areas are located on those parts of the site with the least environmental significance;
- Protect the wetland on site by rezoning to Zone No 7(a)(Wetlands Protection Zone) and through the provision of suitable buffers; and
- Protect the remainder of the site by placing it in Zone No (b)(Environmental Protection (Habitat) Zone) (Appendix F - Page SE15).

Need for a Planning Proposal

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

The strategic documents relevant to the proposed rezoning include the following:

- The Department of Planning and Infrastructure's *Mid North Coast Growth Strategy 2006*;
- Kempsey Shire Council's *Residential Land Release Strategy 1997*;
- The *Mid North Coast Regional Strategy* (Growth Areas Map 6) identifies the western portion of the site as a new urban release area, albeit subject to further investigations regarding the environmental constraints on the land.

It is noted that the subject land is not included in the recently endorsed *Kempsey Local Growth Management Strategy* (LGMS). The Department of Planning and Infrastructure have advised that the LGMS may be amended to include the site, upon Council writing to the Department requesting this amendment. The Department further advised that such a request to amend the LGMS may be considered at the same time as the Department considers the Planning Proposal.

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

The subject land is currently wholly within Zone No. 1(d) (Rural (Investigation) "D" Zone), which has a minimum allotment size of forty (40) hectares. The current zoning provisions do not allow the level of residential development proposed or provide for the level of environmental protection envisaged for the remainder of the site. The scale of development envisaged is not considered to be of State or Regional significance. Consequently, the proposed rezoning is the only mechanism available to enable residential development and environmental protection areas to be established on the site.

Is there a net community benefit?

The Planning Proposal includes a Net Community Benefits test which indicates that the proposed rezoning will result in a Net Community Benefit. The Net Community Benefit assessment takes into account the external costs and benefits of the

proposal and those costs and benefits that have a net impact on community welfare (that is, excluding private benefits). It is considered that the proposed rezoning will have a Net Community Benefit, measured in these terms, by providing housing supply to address the demand for housing in South West Rocks, contributing to the local building and supply industries, increasing the size of the local market by increasing population at the expense of land clearing and the cost of provision of services to facilitate the development of the subject land. It is noted that Council has the opportunity to negotiate Section 94 Contributions or a Voluntary Planning Agreement to seek developer contributions for the extension of local infrastructure to service the development.

Relationship to Strategic Planning Framework

The following is the relevant strategic planning framework that applied to the planning proposal.

North Coast Regional Environmental Plan 1998 (NCREP)

Clause 29(c) of the NCREP states that land containing significant areas of natural vegetation, wetlands and wildlife habitat should be placed in environmental protection zones. The Planning Proposal includes the wetland and most of the site within environmental protection zones. For those areas to be rezoned for residential development, the Planning Proposal argues that these are the least constrained parts of the site. The Gateway Determination is likely to require additional ecological studies or a species impact statement to confirm that the environmental value within the proposed residential zones is not of such a high value to preclude the rezoning. Alternatively, habitat offsets may be considered as a means of justifying the proposed residential development.

Clause 38(2) requires Planning Proposals to be consistent with adopted growth strategies. The subject land is not included in the growth areas identified in *Kempsey Local Growth Management Strategy*, and this issue will require Council to issue a request to the Department to have the growth area boundary amended to include the subject land, at the same time the Department is considering the Planning Proposal.

The Planning Proposal addresses the remainder of the relevant sections of the NCREP including placing the wetland and wildlife habitat in environmental protection zones, urban development, flood liable land, bushfire prone land, water and sewer reticulation. The NCREP also includes additional detailed requirements which will be taken into consideration at the stage when the draft LEP is being written. (See also "*Section 117 Ministerial Directions*")

Mid North Coast Regional Strategy

The *Mid North Coast Regional Strategy* (MNCRS) outlines the general principals and objectives for the management of sustainable growth in the region to 2031. The Planning Proposal is generally consistent with the principals contained within the MNCRS, being the provision of additional residential land to cater to residential demand, whilst providing protection for sensitive ecological communities.

The MNCRS identifies preferred growth areas for each sub-region. The western portion of the subject land is identified in the Growth Area Map No.6 – Kempsey as being within a "Proposed Future Urban Release" area with an overlay stating "Indicative areas of high level constraints within Proposed Future Urban Release Areas." Appendix 2 of the MNCRS identifies the site as being within a "growth area requiring significant issues to be resolved" with the specific consideration being "extent of any development potential to be based on the identification and protection of land with high biodiversity values, consistent with current study underway." An ecological study forms part of the supporting documentation of the

Planning Proposal, which demonstrates that the proposed residential areas of the site are the least constrained areas of the site.

The Planning Proposal together with the accompanying Ecological Study addresses the MNCRS. However, it is considered highly likely that the Gateway Determination will require additional, more detailed, ecological assessments to be undertaken on the site.

Kempsey Residential Land Release Strategy 1997

The western portion of the subject land was identified as a long term residential release area under the Residential Land Release Strategy 1997. This plan has since been superseded by the Kempsey Local Growth Management Strategy – Residential Component 2009.

Kempsey Shire Council Local Growth Management Strategy Residential Component 2009 (LGMS)

The draft LGMS previously adopted by Council identified the site as being within Release Area South West Rocks Urban Investigation Area 6 Spencerville to New Entrance (SWRUIA6). The Director General of the Department of Planning and Infrastructure (DoPI) endorsed the LGMS on 6 June 2011; however, the endorsed version of the LGMS excluded two growth areas, including the SWRUIA6, which includes the subject land. The DoPI included the following advice in relation to the subject land in their letter of endorsement to Council:

"The Spencerville site is marked by hatching in the Mid North Coast Regional Strategy area map indicating that biodiversity investigations were then underway. I understand the process is not proceeding at present. The release of SWRUIA6 cannot be agreed at this stage. However, if an adequate investigation is carried out within the site and any land is found to be unconstrained, the LGMS can be amended to include that land only, and be resubmitted to me for an updated approval."

The Planning Proposal includes an ecological study to demonstrate that those areas proposed to be rezoned for residential development are located on the least constrained parts of the site. In this regard, it is considered that sufficient justification has been provided in the Planning Proposal to justify the inconsistency with the strategy.

State Environmental Planning Policy No.14 – Coastal Wetlands (SEPP 14)

Approximately 12 hectares of SEPP 14 Wetland No. 438 is located on the north-eastern portion of the site. SEPP 14 will apply to future development applications that involve clearing, constructing a levee, draining or filling the land. The Planning Proposal excludes the wetlands from the proposed development envelope and proposes to rezone the land to 7(a). A 50 metre buffer will apply to protect the sensitive ecological community of the wetland. Consequently, it is considered that the proposed rezoning will not compromise the ability of future development applications to comply with the requirements of SEPP 14.

State Environmental Planning Policy No.44 – Koala Habitat Protection

The Planning Proposal was received by Council prior to the Kempsey Comprehensive Koala Plan of Management (CKPoM) being approved by DoPI. Subsequent development applications will be subject to the provisions of the plan, which may involve the need for some habitat compensation measures. The ecological study submitted with the Planning Proposal demonstrates that the site contains "Potential Koala Habitat", and has made no determination whether the site contains "Core Koala Habitat." SEPP 44 requirements are only triggered for

development applications and are not required to be applied when considering Planning Proposals. Consequently, the Planning Proposal is deemed to be consistent with the SEPP. However, it is considered likely that the Gateway Determination will require further ecological studies to be undertaken.

State Environmental Planning Policy No.71 – Coastal Protection (SEPP 71)

SEPP 71 is applicable to the subject site as it is located within the Coastal Zone and is within 100m of a Coastal Wetland.

It is considered that the proposed rezoning is generally consistent with the "matters for consideration" that SEPP 71 requires Council to consider when assessing Planning Proposals as follows:

Requirement	Comment
(a) the aims of this Policy set out in clause 2	The proposal is not considered contrary to the aims and objectives as set out in clause 2 of the SEPP.
(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and	The proposal will not interfere with any existing public access to the foreshore.
(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability	The subject site is too far away from the coastal foreshore to have opportunities to provide new public access to the coastal foreshore.
(d) the suitability of development given its type	The proposed rezoning will rezone parts of the site to residential and new residential development will be subject to existing controls, including a two-storey height limit, which will ensure suitable development in this coastal location.
(e) any detrimental impact that development may have on the amenity of the coastal foreshore	The future residential subdivision and development will not have a detrimental impact on the wetland on site as it will not be visually intrusive, will retain existing significant vegetation on the site, and will have no impact on beach environments.
(f) the scenic qualities of the New South Wales coast	The development will not detract from the scenic qualities of the New South Wales Coast line. Retention of significant amounts of existing vegetation will mitigate the visual impacts of any future development within the proposed residential zones.
(g) measures to conserve animals (within the meaning of the <i>Threatened Species Conservation Act 1995</i>) and plants (within the meaning of that Act)	The planning proposal is based on an ecological report which identifies that the least constrained areas of the site will be converted to a residential zone, wildlife corridors will be maintained and sufficient buffers will be applied to preserve water quality in the wetlands. It is considered likely that the gateway determination will recommend the preparation of a further, more detailed, ecological assessment to be undertaken.
(h) measures to conserve fish (within the meaning of Part 7A of the <i>Fisheries Management Act 1994</i>) and marine vegetation (within the meaning of that Part)	There will be no impacts on marine ecosystems from the proposal.
(i) existing wildlife corridors and the impact of development on these corridors	The proposed rezoning will retain existing wildlife corridors and include these areas of the site in Zone 7(b) (Environmental Protection (Habitat) Zone).

(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards	There are no perceived impacts upon coastal process, due to the distance between the subject land and the coast.
(k) measures to reduce the potential for conflict between land-based and water-based coastal activities	The subject land is located too far away from water courses to result in a potential conflict between land-based and water-based activities. The wetland on site is unlikely to be used for any activities.
(l) measures to protect the cultural places	An AHIMS search has revealed that there are no records of items of Aboriginal cultural heritage significance on the site. It is noted that on-site investigations to determine if there are any items of areas of Aboriginal cultural heritage significance have not been undertaken to date. This may form a recommendation of the gateway determination.
(m) likely impacts of development on the water quality of coastal water bodies	The proposed rezoning will place the on-site wetland and a 50m buffer within Zone No. 7(a) (Wetlands Protection Zone), thereby protecting water quality. Stormwater quantity and quality controls will be developed in later stages of this rezoning.
(n) the conservation and preservation of items of heritage, archaeological or historic significance	There are no items of heritage, archaeological or historic significance known to exist on the subject site.
(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities	The layout of the proposed residential zones will lead to a compact town form.
- only in cases in which a development application in relation to proposed development is determined: - the cumulative impacts of the proposed development on the environment, and (ii) measures to ensure that water and energy usage by the proposed development is efficient	No unacceptable cumulative impacts are anticipated in terms of the visual amenity of the area, the natural environmental conditions of the surrounding locality or the surrounding land uses. BASIX would apply to any subsequent dwelling applications.

Requirement	Comment
Clause 16. The consent authority must not grant consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.	Any future subdivision and development of the residentially zoned part of the site will need to comply with Australian Standards in relation to the quality of stormwater discharge. Further stormwater quantity and quality controls may be developed in later stages of the rezoning process.

Section 117 Ministerial Directions

The following Section 117 Directions are considered in more detail as they are relevant to the planning proposal:

Direction 1.2 – Rural Zones provides that Council must not rezone land from a rural zone to a residential zone. Clause 5 of this direction allows consideration of planning proposals that are inconsistent with this direction, provided the inconsistency can be justified.

It is considered that the proposed rezoning of parts of the site to a residential zone are justified on the basis of:

- The proposed rezoning is generally consistent with strategies, such as the Mid North Coast Regional Strategy, which identify the land as a potential urban growth area and have been approved by the Director-General of the Department of Planning; and
- In its present state, the subject land has no agricultural production values as it is covered in forests and is constrained by a wetland.

Direction 1.5 – Rural Lands. This direction applies insofar that it involves rezoning land in a rural zone to residential and environmental protection zones and requires that the Planning Proposal be consistent with the Rural Planning Principles and the Rural Subdivision Principles contained in *SEPP (Rural Lands) 2008*.

It is considered that the Planning Proposal is consistent with Rural Planning Principles as:

- (p) The principals promote the protection of potentially productive agricultural land. Given the environmental constraints affecting the site, the land is considered to have minimal productive potential;
- (q) The principles specifically require avoidance of land constrained by water resources, native vegetation and recognised biodiversity warranting protection; and
- (r) The Planning Proposal seeks to rezone the most constrained parts of the site into environmental protection zones, rather than rural zones.

It is considered that the Planning Proposal is consistent with the Rural Subdivision Principles as:

- (i) The Planning Proposal will not result in rural land use conflicts between residential uses and other rural land uses;
- (ii) The Planning Proposal takes into consideration the planned supply of residential land; and
- (iii) The Planning Proposal is based on an assessment of the natural and physical constraints and opportunities of the subject land.

Direction No. 2.1 – Environmental Protection Zones. The objective of this direction is to protect and conserve environmentally sensitive lands. The Planning Proposal achieves consistency with this direction by proposing to place the wetland in Zone 7(a)(Wetlands Protection Zone) and identified Endangered Ecological Communities in Zone No. 7(b) (Environmental Protection (Habitat) Zone).

Direction No. 2.2 – Coastal Protection applies to the Coastal Zone and requires a Planning Proposal to be consistent with the *NSW Coastal Policy: A Sustainable Future for NSW Coast 1997*, the *Coastal Design Guidelines 2003* and the *NSW Coastline Management Manual 1990*. The site is located in the Coastal Zone and provisions may be included in the draft LEP to ensure consistency with the documents referenced in this direction. The ecological study supporting the preparation of the Planning Policy has taken the Coastal Policy and relevant North Coast Design Guidelines into account, as well as sea level rise. It is considered that the proposal is consistent with this direction.

Direction No. 2.3 – Heritage Conservation requires councils preparing a draft LEP to protect and conserve heritage items, places and areas. The Planning Proposal included an Aboriginal Heritage Information Management Systems (AHIMS) search

which indicated no known places or items of Aboriginal heritage value on the subject land.

Direction No. 3.1 – Residential Zones requires councils preparing a draft LEP where residential development is permitted to encourage a variety and choice of housing types, and to make effective use of existing infrastructure. Given the location of existing services and the size of the subject land and Council's planning policies, the rezoning will facilitate achievement of this direction.

Direction No. 3.4 – Integrated Land Use and Transport requires councils preparing a draft LEP to ensure walking, cycling and public transport options are available to reduce dependence on motor vehicles. The subject land is within cycling distance from the South West Rocks CBD. Otherwise, access to the site will be dependent on private transport.

Direction No. 4.1 – Acid Sulfate Soils. The objective of this direction is to avoid significant adverse environmental impacts from the use of land that contains acid sulphate soils. The direction applies to land identified on the Acid Sulfate Soils Planning Map having a probability of containing acid sulphate soils.

A portion of the site contains an area identified as having a low probability of occurrence of acid sulphate soils within the soil profile. However, this land corresponds with Wetland No. 438, which is intended to be zoned 7(a).

The remainder of the site, including those areas proposed to be zoned No. 2(a) (Residential A Zone), are identified as having no known occurrences of acid sulphate soil materials.

As Wetland No.438 is proposed to be included in Zone 7(a) (Wetlands Protection Zone) with no development potential, the Planning Proposal is consistent with this direction.

Direction No. 4.3 – Flood Prone Land. The north-east part of the site, predominantly containing the wetland, is subject to flooding. The flood planning level for the site is 5.25m AHD to 5.37 m AHD. The addition of the conservative value of 0.9m to the flood planning levels, to take account of projected sea level rise in accordance with *NSW Coastal Planning Guideline – Adapting to Sea Level Rise*, raises the flood planning level between 6.15m AHD and 6.27m AHD. The proposed residential zones are located above these flood planning levels. Consequently, the Planning Proposal is consistent with this direction.

Direction No. 4.4 – Planning for Bushfire Protection applies to land mapped as bushfire prone land. The Planning Proposal is supported by a bushfire hazard assessment of the site which indicates that a 20m wide Asset Protection Zone will be required around all proposed residential development areas, taking into account the predominant 0-5 degree slope across the site and the nature of the vegetation. In addition, the proposed rezoning will improve vehicle accessibility to the subject land and neighbouring bushfire affected properties. The Planning Proposal is consistent with this direction.

This direction requires Council to consult with the Rural Fire Service following the Gateway Determination.

The APZs referred to in the Bushfire Assessment report may be incorporated into the Draft LEP.

Direction No. 5.1 – Implementation of Regional Strategies requires councils preparing a draft LEP to address the regional strategy for their region. The Mid North Coast Regional Strategy applies to Kempsey. Section 6.1 of the Planning Proposal addresses the Mid North Coast Regional Strategy. The subject land is

contained within the growth area identified in the Strategy, which is also identified as having high level constraints. The Planning Proposal is supported by an ecological study which demonstrates that the proposed residential rezoning will occur on the least constrained areas of the site. The Planning Proposal is considered to be consistent with this direction.

Traffic and Access

Gilbert Cory Street adjoins the western boundary of the subject land and is mostly a gravel road with a small length of sealed road adjacent to the northern part of the western boundary. Keith Andrews Drive adjoins the southern boundary and an unnamed road adjoins the eastern boundary of the subject land. Both Keith Andrews Drive and the unnamed road are unformed. The proposed development would result in Gilbert Cory Street and Keith Andrews Drive being constructed for the entire length of the adjacent property boundaries.

Following the proposed road construction, only that part of Keith Andrews Drive between the subject land and Gregory Street will remain unformed. When Keith Andrews Drive is completed, it will provide an alternative connection between the eastern and western parts of South West Rocks. This will provide advantages to residents in terms of convenience and accessibility in the event that Gordon Young Drive becomes inaccessible.

The local street network will have sufficient capacity to accommodate the expected traffic generation from the future subdivision of the subject land.

Public Infrastructure

Council water mains are currently located within the road reserve directly in front of the site in both Gilbert Cory Street and Keith Andrews Drive. The Planning Proposal includes comments from a local engineering consultancy who have advised that there is adequate local infrastructure to service the site and it is highly unlikely that there will be water supply issues in servicing the development.

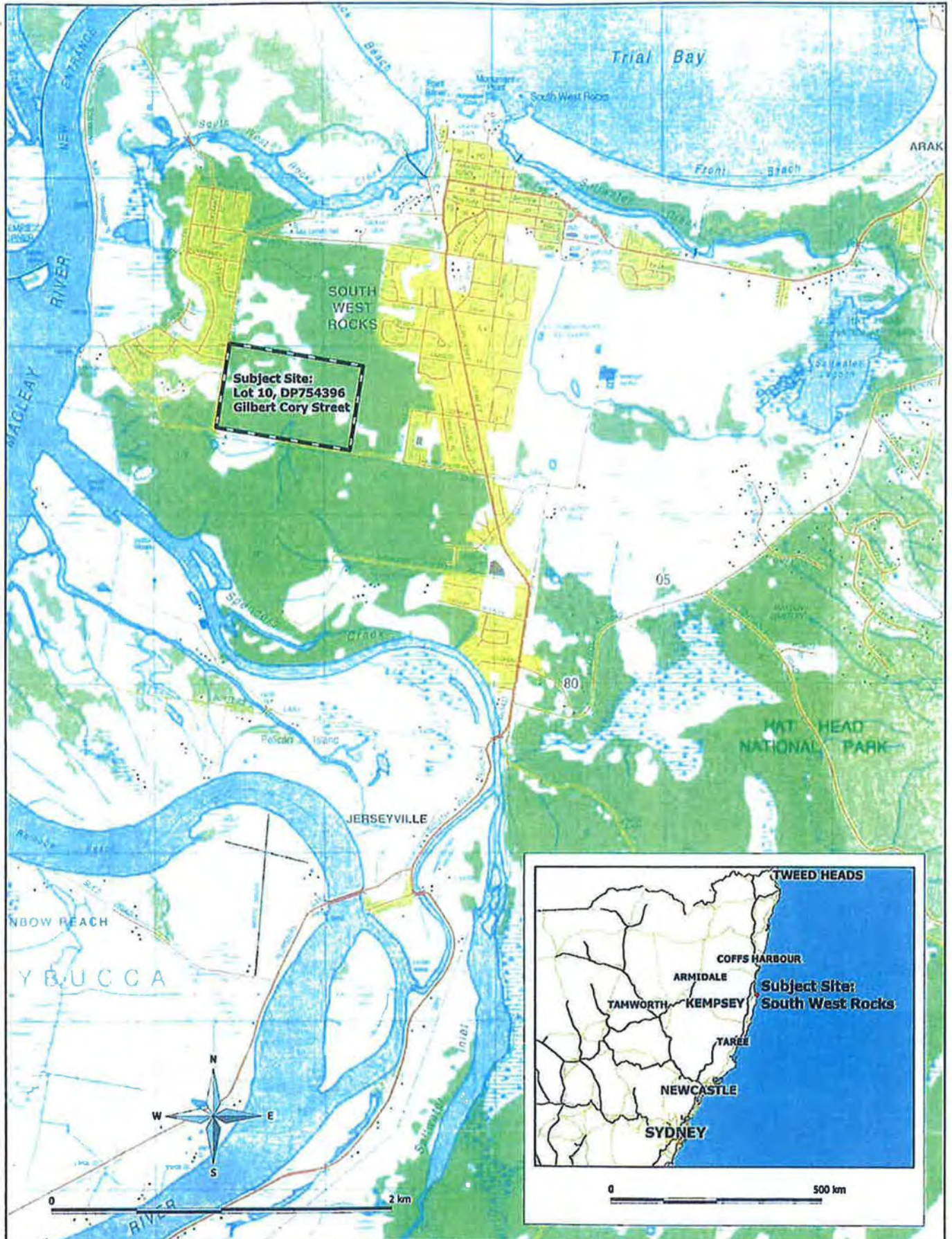
There are no sewer lines in place to service the property, but there is existing sewerage infrastructure provided to the residential areas located to the north-west of the site. As the subject land slopes towards the east and away from the existing residential area, it is anticipated that pumping of the sewage will be required. Further analysis is required to determine the capacity for the reticulation system and pump-station.

The subject land has electrical and telecommunications infrastructure in the vicinity.

Community Consultation

In accordance with section 56(2)(c) of the Environmental Planning and Assessment Act 1979, a gateway determination would specify the community consultation to be undertaken for the planning proposal. Community consultation must occur in accordance with the gateway determination.

Upon completion of the consultation with agencies, the draft LEP will be reported to Council to endorse for the purposes of public exhibition. In accordance with Council's Rezoning Applications Policy, the method for notifying the public exhibition will also be advised at the time for Council's determination.



Plan: 20110309_Figure 1_Location Plan



Location Plan

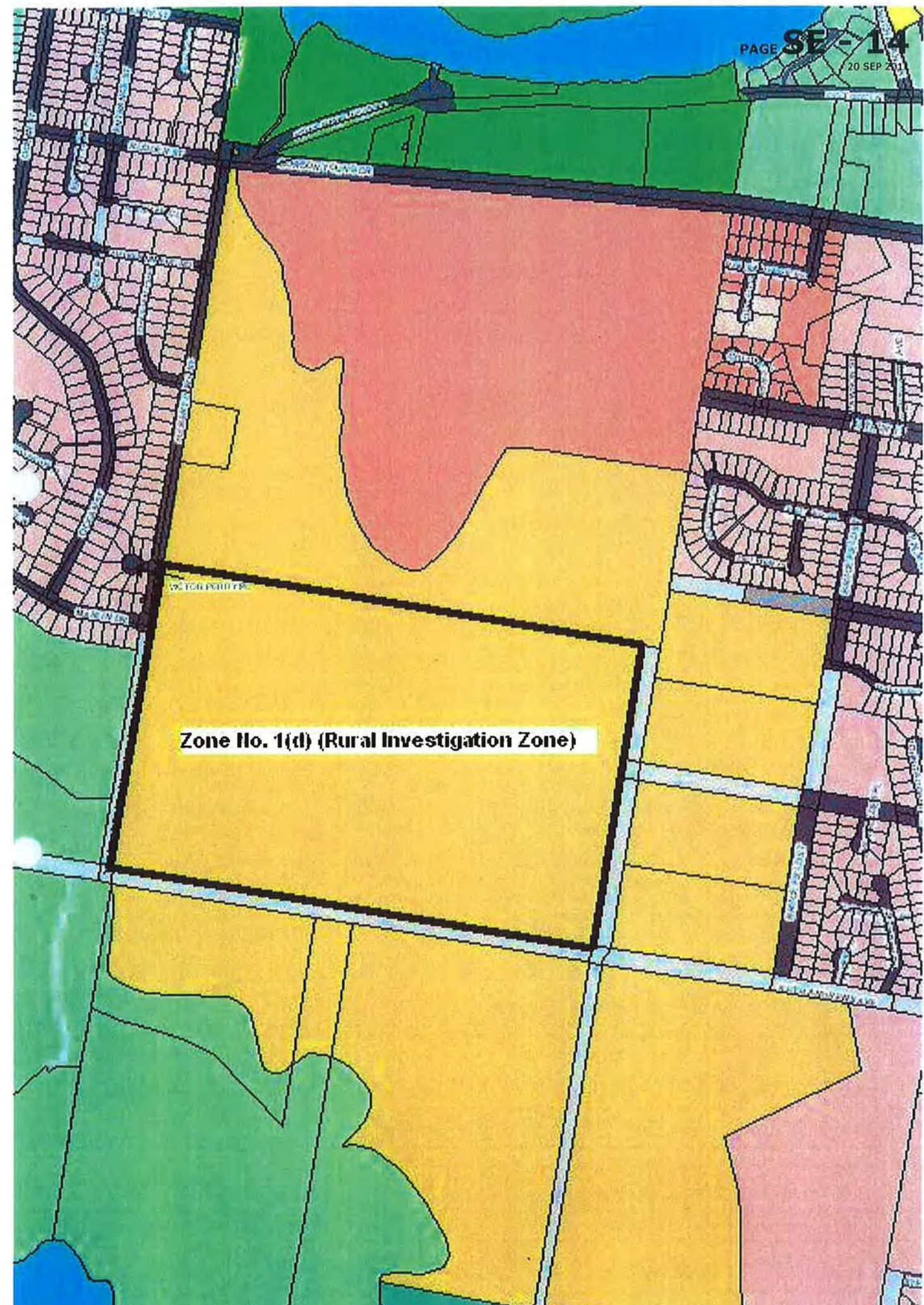
Base: South West Rocks 1:25000 Sheet - Land and Property Information NSW, 2002

Australia MGA94 (56)
Scale: 1:200000@A3

Lot 10, DP754396
South West Rocks

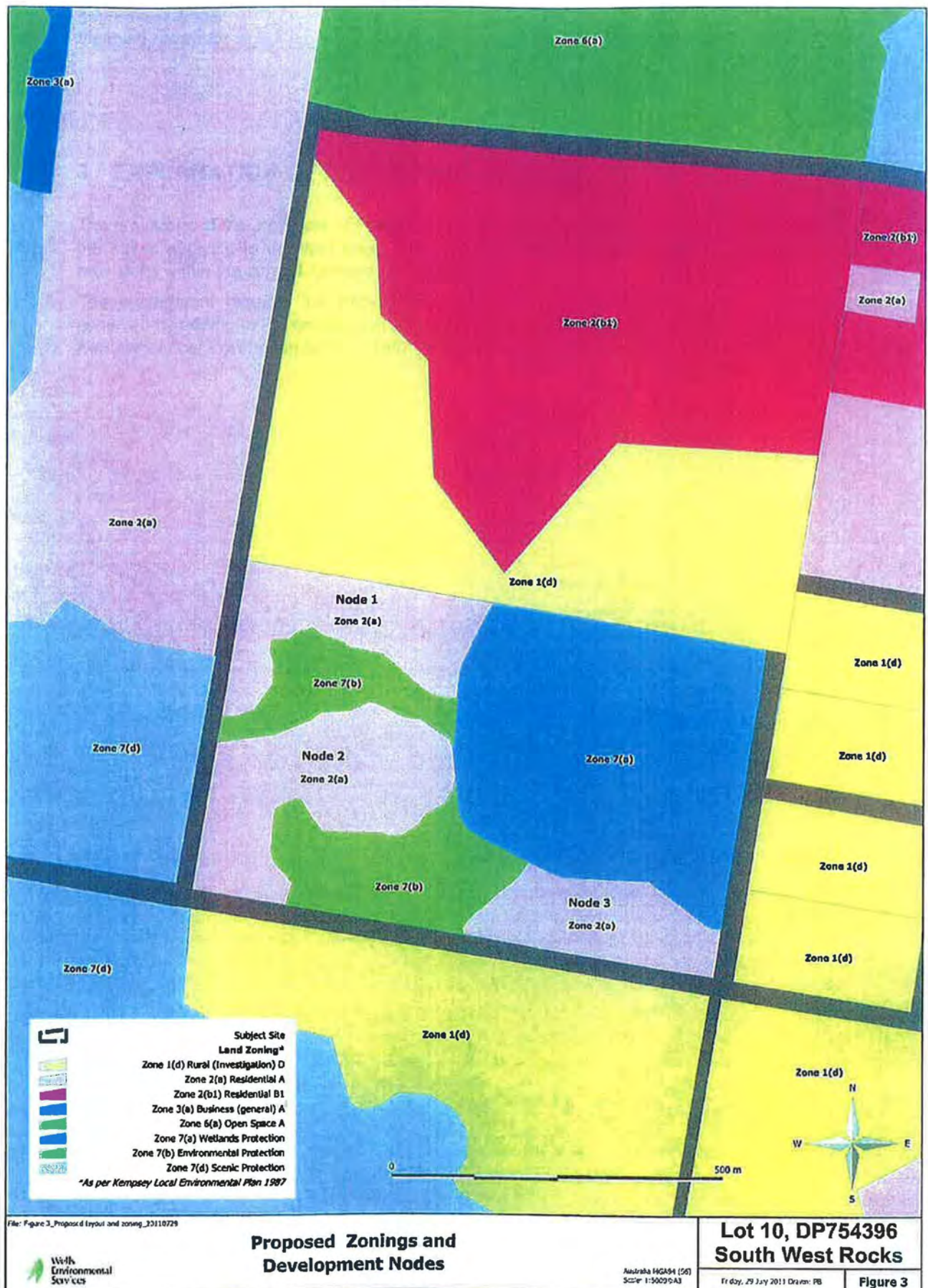
Tuesday, 22 March 2011 Drawn: PB

Figure 1



The map is an aerial photograph with several colored overlays. A large yellow area is outlined with a thick black border and contains the text 'Zone No. 1(d) (Rural Investigation Zone)'. Above this yellow area is a large red area. To the left and right of the yellow area are pink areas with street grids. At the top is a blue area representing water. At the bottom left is a green area. Street names are visible: 'SANDY CREEK' at the top, 'VICTORIA PARK' on the left, and 'SANDY CREEK' on the right. A road runs horizontally across the middle of the map, separating the yellow area from the pink areas.

Zone No. 1(d) (Rural Investigation Zone)





Office of Environment & Heritage

Your reference: 727; T5-116; LA 14256; GLR:GLR
Our reference: DOC11/39701 FIL07/9391-03
Date: 13 September 2011

Mr D Rawlings
General Manager
Kempsey Shire Council
PO Box 3078
WEST KEMPSEY NSW 2440

KSC RECEIVED	
FOLIO	457391
14 SEP 2011	
FILE	T5-116
COPY LA 14256	
OFFICER	SDS GLR (mms)

Att: Ms Georgia Rayner, Strategic Planning

Dear Mr Rawlings

Potential for environmental offsets for Lot 10 DP754396, Gilbert Cory Street, South West Rocks.

I refer to Council's letter dated 24 August 2011 seeking comment from the Office of Environment and Heritage (OEH) on the above matter. OEH notes this request is in response to advice from the Department of Planning and Infrastructure (DP&I) that the feasibility of such offsets must be established prior to inclusion of the land in Council's Local Growth Management Strategy (LGMS) and subsequently to any rezoning consideration.

At the outset, and despite its inclusion in the Mid North Coast Regional Strategy as a pre-existing urban investigation area, OEH has fundamental concerns with a proposal to develop land that is entirely covered by original native vegetation in good condition. It is contended that the entire lot is highly constrained, as the vegetation it supports is either listed as an endangered ecological community (EEC) or is known threatened species habitat (see below for further discussion).

The Regional Strategy states (page 32) that "Local environmental plans [LEPs] will protect and zone land with high environmental, vegetation, habitat, ... values for environmental protection." It also states on the Growth Areas maps that "Not all land identified within the growth Areas can be developed for urban uses. All sites will be subject to more detailed investigations to determine capability and future yield. Land that is subject to significant natural hazards and/or environmental constraints will be excluded from development."

The draft Mid North Coast Regional Conservation Plan reinforces the Regional Strategy in advocating the conservation planning principles: avoid direct impacts on high biodiversity value areas; mitigate indirect impacts and/or refine development footprints to minimise direct impacts, and only after exhausting all opportunities for avoidance, should offsets be contemplated. This proposal appears to be predicated on offsetting as a first step, not a last resort.

Furthermore, inclusion of Lot 10 in the LGMS should be based on the outcome of a comprehensive constraints analysis and not simply on whether environmental offsets are feasible or not. Such matters should include, but not be limited to, any priorities for the supply of additional urban lands, flooding and

The Department of Environment, Climate Change and Water is now known as the
Office of Environment and Heritage, Department of Premier and Cabinet

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drainage issues, infrastructure capacity and include a detailed master plan across the broader area. Because there are substantial areas east of the main South West Rocks township that have been recently rezoned for residential uses, there does not appear to be any short or medium term reason for proceeding with a planning proposal for Lot 10. It is also noted in Council's LGMS (Table 6.6) that the Spencerville to New Entrance (UIA 6) is the last of the areas in South West Rocks proposed for urban release and that any yield remains subject to protection of land with high biodiversity values. Consequently, there is time for a master planning exercise across the entire Spencerville to New Entrance precinct to be completed.

Notwithstanding the above concerns, the following comments are provided for your consideration.

1. The BioBanking methodology under Section 127B of the *Threatened Species Conservation Act 1995* (TSC Act) is the preferred means by which OEH assesses ecological impacts and the quantum of offset required to ensure an "improve or maintain" outcome. However, adoption of its outcomes is voluntary on the part of developers and/or other planning authorities. This means any final acceptance of offset type and quantum must rest with DP&I and/or Council. Any OEH recommendation remains advisory. It is emphasised that if the land was rezoned, the proponent could decline to provide offsets altogether, let alone offsets independently assessed via BioBanking as meeting an "improve or maintain" outcome.
2. In order to maximise "maintain or improve" outcomes for development areas identified in the Mid North Coast Regional Strategy and meet the State's NRM targets adopted in the draft NSW Biodiversity Management Strategy, OEH considers that offsets should be provided on lands which would otherwise remain unprotected. Offsets should also be identified based on OEH offset principles that place emphasis on like-for-like habitat requirements and complementarities. The latter means that offset land should complement protected high conservation value areas and/or identified wildlife corridors etc.
3. A number of ecological studies have established the presence of EECs and a variety of threatened species either on or with high potential to occur on the site. OEH notes that there continue to be discrepancies with respect to the mapping extent and identification of the EECs. In particular, the distribution of Paperbark, a key canopy dominant in the *Swamp sclerophyll forest on coastal floodplains of the NSW North Coast* EEC determination appears to have been narrowly interpreted. Certain areas containing Swamp Oak/Forest Oak as subdominants have been excluded from the mapped extent of EEC in the most recent assessment by Eco-biological P/L. These latter species are actually included in the sub-dominant canopy layers referred to in the formal determination. It is also noted that earlier studies by Kendall and Kendall P/L for the Kempsey Shire Council concluded that the site was covered almost entirely by EEC with the exception of the extreme south east and south west corners.
4. Agreement on the type and extent of EECs and threatened species' present is important in establishing the feasibility of any offsets because of the potential for "red flags" to be raised in the Biobanking methodology. "Red flags" are raised where an area of land contains high conservation value native vegetation in good condition that has been cleared in excess of 70% in the relevant CMA since 1750 or the presence of endangered ecological communities or the existence one or more threatened species that cannot withstand further loss of habitat. Under the BioBanking methodology, development of "red flag" areas must be avoided unless a specific variation is gained from the Director General (now the Chief Executive). Review of the "red flag" variation criteria with respect to this site reveals it is unlikely that a case could be made to vary the "red flags", should they be triggered.
5. There are a number of threatened species with high potential to occur on the proposed development site irrespective of the presence of EECs. These are species with specialist requirements and/or where their ecology is poorly known. Their response to offsetting cannot be adequately predicted based on ecosystem criteria under the BioBanking methodology. They include, but may not be limited to, the

Square-tailed Kite, Giant Barred Frog, Brush-tailed Phascogale, Common Planigale and possibly the Eastern Chestnut Mouse. The feasibility of offsetting would depend on adequate surveys demonstrating the presence of these species in appropriate numbers on any proposed offset site or, alternatively, detailed expert assessment of the development site to demonstrate conclusively that they do not occur.

6. Notwithstanding the discrepancies in EEC mapping discussed above and lack of information regarding fauna, OEH has conducted a notional Biobanking assessment based on the proposed development site. It is understood that Eco-biological P/L may have conducted a similar assessment. However the results in terms of offset credits required have not been made available to OEH, so a comparison of results, or of the data used, cannot be made. For the OEH analysis, "red flags" were ignored for the sake of deriving an outcome for further discussion. This assessment concluded that around 224ha of habitat would need to be found to offset removal of vegetation within the proposed development footprint (Paperbark 9ha, Scribbly Gum 199ha and wet heath 16ha).
7. An analysis of updated CRA forest ecosystem mapping within Kempsey LGA (the only LGA wide surrogate for Biobanking vegetation types on freehold lands that OEH has for Kempsey LGA) shows that about 10,040ha of Paperbark, 1,574ha of Scribbly Gum and 9ha of heath more generally are mapped over freehold lands within the LGA, based on a "like for like" basis (refer attached map). This indicates that the wet heath proposed for development cannot be offset within the LGA and that some 13% of the potentially available Scribbly Gum would be required for this site alone, unless like for like requirements are relaxed. This reduces the possibility that future development in Scribbly Gum habitat can occur in accordance with the BioBanking methodology.
8. The above LGA-wide vegetation map also places the main concentration of Scribbly Gum forest in the Maria River area, with the South West Rocks occurrence being an isolated outlier. This isolation, within a viable-sized patch of vegetation in good condition, significantly increases its biodiversity value.
9. It is also important to realise that other constraints may apply over potential offset land that restricts its use as an offset. These constraints may relate to use of certain lands under the Regional Strategy (outside proposed growth areas or already approved for development), existing LEP zone, mineral titles, infrastructure covenants on title (future roads, reservoirs, telecommunications, power lines etc), areas already conserved under voluntary schemes (wildlife refuges, property agreements) and, above all, whether the owners in question wish to participate. Offset availability depends on these issues being addressed. Without detailed analysis of these matters and knowledge of land owner attitude, an assessment of the feasibility of offsetting remains theoretical.
10. The Biobanking outcomes also require the offsets for Scribbly Gum and Paperbark to be found in minimum patch sizes of 100ha and with a minimum canopy cover of 30%. These values reflect the good condition of the vegetation on site and the fact that it is contiguous with substantial areas of similar vegetation in the area. These are also matters to be addressed as part of determining the feasibility of offsetting in this instance.

In summary, OEH does not consider offsetting to be feasible in this case because of the following:

- the extent of EECs and potential direct and indirect impacts is unclear,
- the lack of knowledge about certain threatened species means offset requirements cannot be quantified,
- demonstrating, and finding, an adequate and enduring like-for-like offset area is problematic
- fragmentation of the site, being central to the broader vegetated area, is likely to further reduce the long term viability of local fauna, given that the New Entrance/Spencerville precinct is already isolated by development to the east and west and agriculture/estuary habitat north and south.

It is considered that a more suitable land use for this lot would be to use it as an offset area for developments of lesser impact elsewhere in the LGA.

It is noted that in the letter to Council from DoP&I dated 4 August 2011, it was stated that representatives of Wells Environmental Services liaised with the Coffs Harbour office of the former Department of Environment, Climate Change and Water in October 2010, and that it was agreed that offsetting would be dealt with under BioBanking provisions at DA stage for the development. OEH would like to confirm that it has no record or recollection of any meeting or phone conversation relating to the applicability of Biobanking to this proposal.

Finally, OEH emphasises that notional Biobanking offset analyses, such as the one described above, must be viewed without prejudice where overriding planning matters such as compliance with regional strategies, growth strategies and/or proposed LEPs are yet to be resolved.

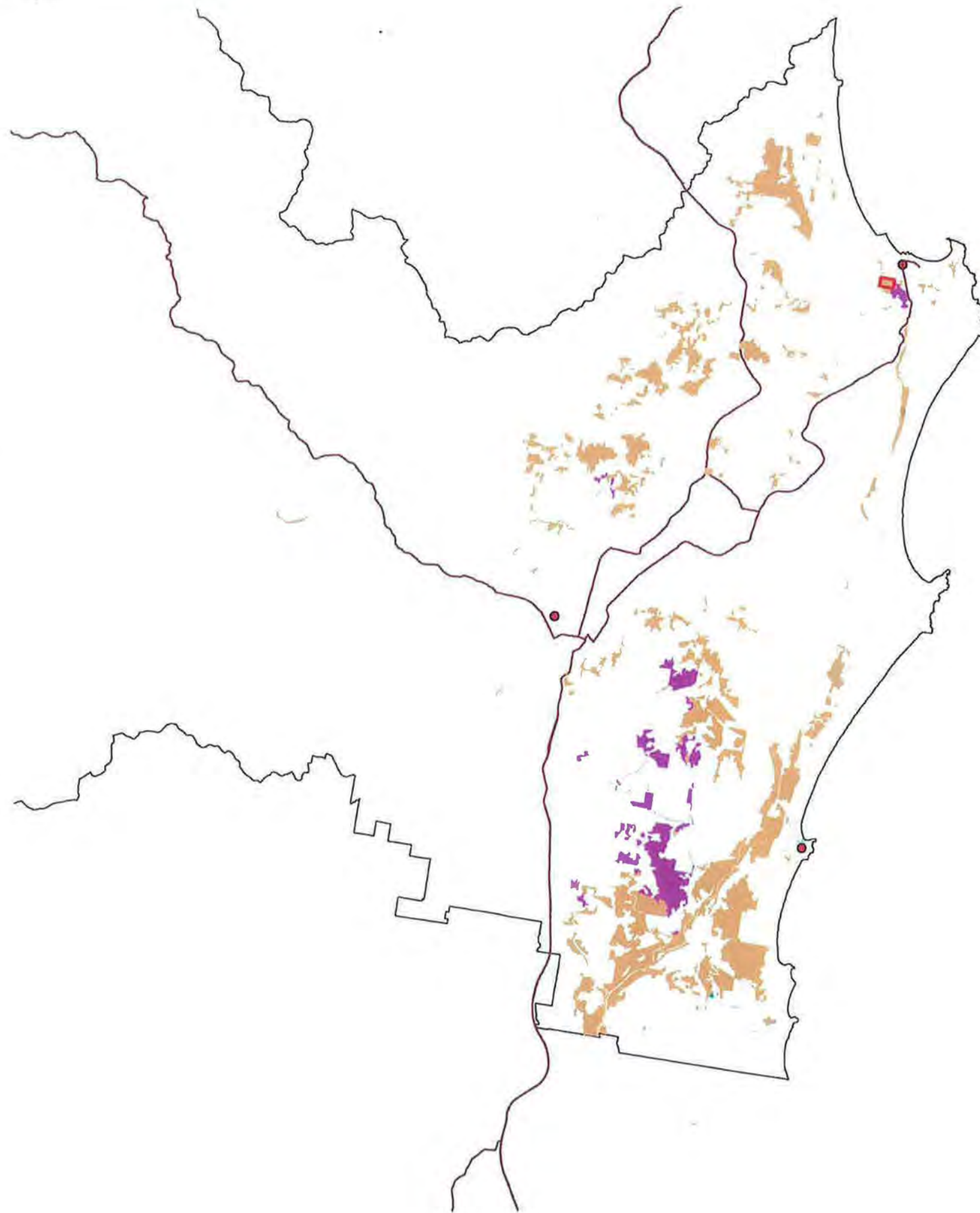
Thank you for the opportunity to provide comment on this proposal. Should you have any further enquiries, please contact Conservation Planning Officer, Mr John Martindale on telephone 02 6659 8222 or myself on telephone 02 6659 8256.

Yours sincerely

A handwritten signature in cursive script that reads "Estelle Blair".

ESTELLE BLAIR
Acting Head, North Coast Planning Unit
Planning and Aboriginal Heritage Section – North East
Environment Protection and Regulation
Office of Environment and Heritage
Department of Premier and Cabinet

Cc: Greg Yeates, Department of Planning and Infrastructure, Grafton



Potential offset vegetation on freehold lands for Lot 10 DP754396

Department of
Environment and Climate Change NSW

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- Lot10_DP754396.shp
- Paperbark 10040ha.shp
- Heaths 9ha.shp
- Main Roads c.GA
- Scribbly Gum 1574ha.shp
- Towns (pop >1000) c.GA
- Kempsey_lga.shp

0 5 10 Kilometres



PROJECTION : AMG Zone 58 (AGD86)



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13 September 2011

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