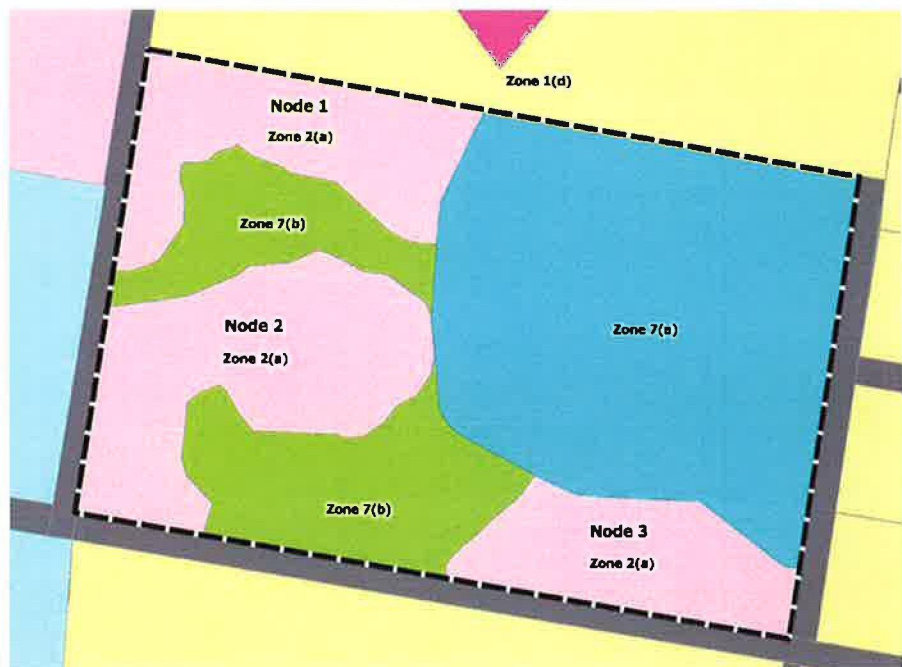


Planning Proposal Rezoning of Land South West Rocks



Prepared for:

Hunterwatt Project Pty Limited
C/- Peter Robinson
PO Box 589
Newcastle NSW 2300

Prepared by:

Wells Environmental Services
PO Box 205
East Maitland NSW 2323



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1 INTRODUCTION

The purpose of this Planning Proposal is to seek the rezoning of part of Lot 10 DP 754396 Gilbert Cory Street, South West Rocks, New South Wales (the site) for residential development. It is intended to rezone the remainder of the land for environment protection purposes. The site falls within the Kempsey Shire local government area (LGA) and is described in detail below.

It is currently zoned 1(d) Rural Investigation by the Kempsey Local Environmental Plan (Kempsey LEP) 1987. It is proposed that three distinct parts of the site, which have been identified as suitable for urban development, be rezoned to Zone No 2(a) (Residential "A" Zone).

The land has been identified by Kempsey Shire Council (KSC) and the New South Wales Department of Planning and Infrastructure (DoPI) in relevant strategic planning strategies as potentially suitable for future urban development. A number of investigations have been carried out over the site, which have examined the constraints and opportunities applying to the land. These investigations have confirmed that parts of the site are suitable for residential development. It is the view of the proponent that those areas unsuitable for development be set aside for environmental protection.

1.1 The Site

The site is located on the Mid North Coast of New South Wales, approximately 28 kilometres (km) north east of Kempsey. It is located approximately 2km south-west of the South West Rocks commercial centre, refer to **Figure 1**.

It is approximately 40 hectares in size, consisting of predominantly vegetated land. Areas of Endangered Ecological Communities (EEC) occupying western portions of the site and wetlands (Wetland No. 438) occupy the north eastern portion of the site. Various tracks traverse the site providing unauthorised vehicular and pedestrian access. The tracks are utilised by unregistered motor cycle riders, as a 'short cut' by residents of the area to access Keith Andrews Avenue and the central and southern areas of South West Rocks. It has also been used for illegal rubbish dumping. There is a small section of cleared land in the central area where bee hives are being kept.

Keith Andrews Avenue forms the site's southern boundary. It is an unformed road reservation that provides pedestrian and some vehicular access to land owners and residents of the area. Keith Andrews Avenue is generally cleared of vegetation and contains a 330kv electrical transmission line which runs in an east-west direction. Land adjoining the north, east, south and southern portion of the western boundary are currently undeveloped and moderately vegetated. Existing urban development is located to the north west of the site. There is a disused quarry to the south west of the site and a house to the south, refer to **Figure 2**.

The site's western boundary is Gilbert Cory Street. Gilbert Cory Street acts as an interface between the existing residential development to the west and undeveloped lands to the east.



File: 20110309_Figure 1_Location Plan



Location Plan

Base: South West Rocks 1:25,000 Sheet - Land and Property Information NSW, 2002

Australia MGA94 (56)
Scale: 1:20000@A3

**Lot 10, DP754396
South West Rocks**

Tuesday, 22 March 2011 Drawn: P8

Figure 1



 Subject Site

File: 20110315_Figure 2_Aerial



Aerial Photograph of Subject Site and Surrounds

Australia MGA94 (56)
Scale: 1:10000 @A3

**Lot 10, DP754396
South West Rocks**

Monday, 21 March 2011 Drawn: PB

Figure 2

2 OBJECTIVES OR INTENDED OUTCOMES

The objective of this Planning Proposal is to amend the Kempsey LEP 1987 in the following manner:

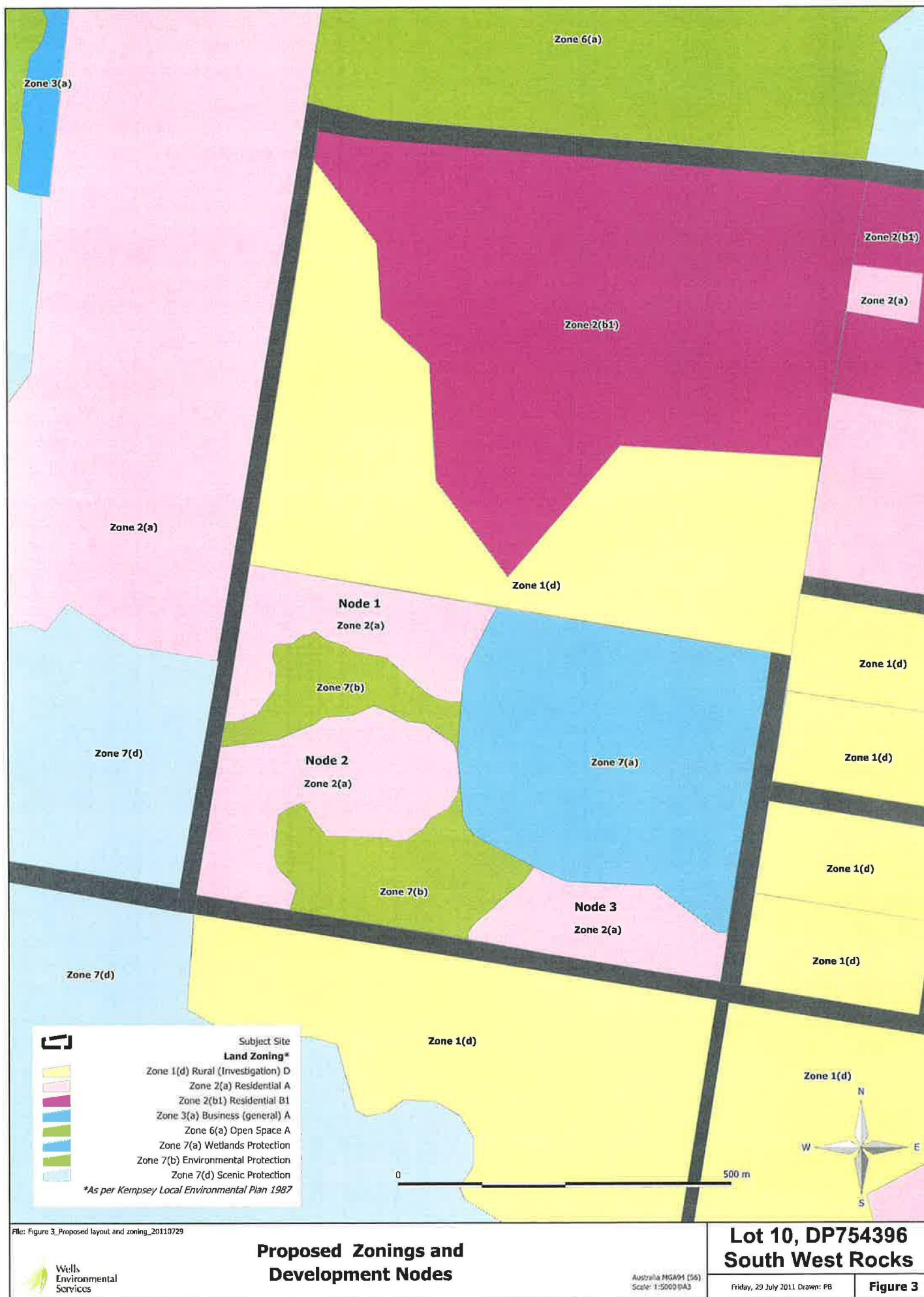
- a) To enable residential development on the site on those areas that have been identified as being suitable for that purpose. The residential portion of the land will be adjacent and to existing residential zones and be able to utilise the urban infrastructure, facilities and services available in South West Rocks

This outcome is best achieved by rezoning those parts of the land to Zone No. 2(a) (Residential "A" Zone).

- b) To provide protection to the remainder of the site consistent with the environmental attributes applying.

This outcome is best achieved by rezoning the wetland area to Zone No. 7(a) (Wetland Protection Zone) with the remainder of the non-residential land to Zone No. 7(b) (Environment Protection (Habitat) Zone).

The proposed zone layout is shown in **Figure 3**.



3 EXPLANATION OF PROVISIONS

The provisions of the proposed LEP amendment are straight forward. It is proposed to alter the zones applying to the land only. There is no intention to insert, alter or add to any provisions within the current Kempsey LEP 1987.

The amendment requires the insertion of new maps into the Kempsey LEP. This is achieved by adding to the definition of “*the map*” in clause 5 to the LEP, in numerical order, *Kempsey Local Environmental Plan 1987 (Amendment No xxx)*.

4 JUSTIFICATION

This section discusses the basis for the proposed change in planning controls sought in the Planning Proposal. It relies, in part, on studies previously prepared on behalf of the proponent.

It is noted that DoPI, through its document entitled "*A guide to preparing Planning Proposals*", indicate that generally technical studies and investigations should not be carried out in the first instance. The issues which give rise to the studies should be identified and this would be confirmed by the "Gateway Determination". However, this position of the Department was put in place in July 2009 when the provisions of Part 3 of the Environmental Planning and Assessment Act 1979 relating to the plan making processes were amended. Many of the studies were either available or had been commissioned at that time. It is also noted that the site is vegetated and ecological assessments have been required to determine if any areas are suitable for development.

Therefore, it is appropriate that these studies inform this Planning Proposal. The need to do these studies has been supported by KSC and the Regional office of DoPI.

A list of studies conducted over the site appears as **Appendix 1**.

4.1 Need for the Planning Proposal

The ultimate residential development of part of the site is not permitted by the existing zoning. Therefore, this Planning Proposal is required to implement the objectives and intended outcomes not only for the provision of residential housing but for the stated environmental protection purposes. There is no other mechanism to achieve these outcomes as the scale of development proposed is not considered to be of State or regional significance.

It is noted that both the State and local strategic planning undertaken to date identify the site as an investigation area for future urban development.

The growth strategy for South West Rocks is identified principally within the DoPI Mid North Coast Growth Strategy 2006 and the KSC Residential Land Release Strategy 1997 documents. The land was not included in the recently endorsed Kempsey Local Growth Management Strategy (LGMS). However, DoPI has indicated that KSC could write seeking an amendment to the LGMS. It also advised that an amendment to the LGMS and this Planning Proposal could be considered concurrently. This is further discussed in **Section 4.2.5**.

The KSC Residential Land Release Strategy recognised South West Rocks as the fastest growing urban area in Kempsey Shire. It also acknowledges that its growth is constrained in all directions, by Hat Head National Park to the east, Spencers Creek to the south, Macleay River to the west and the Pacific Ocean to the north. The resident population of South West Rocks is projected to rise to 7,597 by the year 2016. KSC predicted that from the year 2011, there will be a deficit of residential land supply and that it will be necessary to rezone land to accommodate population growth within South West Rocks.

The Mid North Coast Regional Strategy (Growth Areas Map 6) identifies the western portion of the site as a new urban release area.

4.1.1 Net Community Benefit

In accordance with *A guide to preparing Planning Proposals* an examination of the net benefit to the community associated with the future development of the land follows.

Costs of Development

- Land clearing associated with residential development. It is acknowledged that there will be loss of vegetation associated with future residential development.
- Provision of services. It is estimated that the site could produce around 120 -140 lots which will generate the need for services and infrastructure.

Benefits of Development

- Provision of land for housing to meet projected growth. The strategic framework identifies a need for residential land in South West Rocks to accommodate current and future growth.
- Location close to existing residential land and services. Whilst services will be required, the location of the site adjoining existing residential areas means that infrastructure (water, sewer, roads and communications) can readily be extended to the site. The site is near the South West Rocks shopping facilities, including the newly developed "Bi Lo" centre. The use of part of the site for residential development is efficient use of infrastructure and services
- Environmental protection. Wetlands and EECs are present on the site. The proposal to zone those parts of the land for environmental purposes will afford their long term protection. The proponent is supportive of these lands being transferred into public ownership. This aspect should be considered through the agency consultation process.
- Surface waters from existing residential development to the west of the site drain through the site directly into Wetland No 438. Residential development of parts of the site presents the opportunity to control this drainage thus minimising nutrient and pollutant flow into this sensitive land.
- Reduced unauthorised use of the land through trail bike riding and dumping of rubbish.
- Provision of additional access to existing residential areas. Keith Andrews Avenue will be improved to allow access to the residential subdivision west of the site and provide improved traffic management opportunities.
- Reduced bushfire hazard to existing residential areas. The formation of Keith Andrew Avenue will give a second egress in times of fire to the existing residential subdivision west of the site in accordance with accepted bushfire management practices.
- Opportunity to provide services and facilities on a user pay basis. KSC has the opportunity to negotiate a Section 94 Contributions Plan or Voluntary Planning Agreement (VPA) to seek contributions for local services.

- Provision of employment opportunities during the construction of the subdivision and subsequent housing construction in the building trades and allied building supply industry.
- Ongoing employment opportunities linked to increased local population.
- Economic benefits for local companies including, but not limited to, building and construction companies, building material suppliers, retailers and commercial service providers.

4.2 Relationship to Strategic Planning Framework

4.2.1 State Environmental Planning Policies

The following SEPPs apply in respect to the development of land within the South West Rocks area.

SEPP No. 14 – Coastal Wetlands

This policy ensures coastal wetlands are preserved and protected for environmental and economic reasons. The policy applies to LGAs outside the Sydney metropolitan area that front the Pacific Ocean. Land clearing, levee construction, drainage work or filling may only be carried out within these wetlands with the consent of the local council and the agreement of the Director General of DoPI. Such development also requires an environmental impact statement to be lodged with a development application.

Approximately 12ha of SEPP 14 Wetland No. 438 is located on the north-eastern portion of the site. The wetlands have been excluded from the proposed development envelope and a 50 metre buffer applied to protect this sensitive ecological community and mitigate any potential impacts.

SEPP No. 44 – Koala Habitat Protection

SEPP No. 44 encourages the conservation and management of koala habitats, to ensure permanent free living koala populations will be maintained over their present range. The policy applies to 107 LGAs including Kempsey. Development cannot be approved in the areas covered by the policy without a prior investigation of core koala habitat. Potential Koala habitat is defined as 'areas of native vegetation where the trees listed in Schedule 2 of SEPP 44 (Table 4) constitute at least 15% of the total number of trees in the upper and lower strata of the tree component'. The site contained four species of preferred koala feed trees which were found to constitute greater than 15% of the total number of trees in the upper and lower strata of the tree component.

Given the presence of potential koala habitat onsite, further investigation for the existence of core koala habitat is to be undertaken. Core koala habitat is defined as 'an area of land with a resident population of koalas, evidenced by attributes such as breeding females and recent sightings of and historical records of a population'. If such habitat is found to be present, then a detailed Plan of Management should be prepared for the koala colony in the area.

Studies of the site have not shown presence of koalas, or evidence of their presence. However, given recent records of Koalas in proximity (within 5 kilometres of the site), as part of the assessment of any future development the performance criteria of the forthcoming KSC Koala Plan of Management would be applied.

SEPP No. 71 – Coastal Protection

The aim of this policy is to ensure that development in the NSW coastal zone is appropriate and suitably located, to ensure that there is a consistent and strategic approach to coastal planning and management and to ensure there is a clear development assessment framework for the coastal zone.

The site is located within the coastal zone. As the site does not have frontage or close proximity to the coastal foreshore many of the provisions of SEPP 71 are not applicable. The site is classified as a sensitive coastal location as it is within 100 metres of land to which SEPP 14 – Coastal Wetlands applies (i.e. it contains part of Wetland No. 438). The designation as a sensitive coastal location means that in the event of the rezoning application being approved, a masterplan for the site must be prepared and approved, or the need for such a plan be waived, by the Planning Minister, before consent for subdivision of the land can be granted.

SEPP (Housing for Seniors or People with a Disability) 2004

The aim of the policy is to encourage the provision of housing (including residential care facilities) that meets the needs of seniors or people with a disability. The policy applies to land within the state that may be rezoned and developed for urban purposes. This SEPP is therefore applicable to the site.

4.2.2 Section 117 Directions

The following Directions under section 117(2) of the Environmental Planning and Assessment Act are applicable to this Planning Proposal.

Direction 2.1 - Environmental Protection Zones

The objective of this direction is to protect and conserve environmentally sensitive lands. By virtue of clause (4) to the direction a Planning Proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. It is proposed to zone identified wetlands to 7(a) and EECs to 7(b).

The proposal is consistent with the direction.

Direction 2.1 - Coastal Protection

The objective of this is to implement the principles in the NSW Coastal Policy. The environmental investigations supporting the preparation of the Planning Proposal have taken the Coastal Policy and relevant North Coast Design Guidelines into account as well as sea level rise. Furthermore it is noted that the site is identified in the Mid North Regional Strategy which takes the objectives of this direction into account.

It is considered that the proposal is consistent with this direction. Should KSC or DoPI form the view the proposal is inconsistent with the direction, the inconsistency is justified as it is in accordance with the Mid North Coast Regional Strategy.

Direction 3.1 Residential Zones

The objectives of this direction are:

- (a) to encourage a variety and choice of housing types to provide for existing and future housing needs,

- (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and
- (c) to minimise the impact of residential development on the environment and resource lands.

In accordance with clause (4) of the direction, a Planning Proposal must include provisions that encourage the provision of housing that will:

- (a) broaden the choice of building types and locations available in the housing market, and
- (b) make more efficient use of existing infrastructure and services, and
- (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and
- (d) be of good design.

Clause (5) states a Planning Proposal must, in relation to land to which this direction applies:

- (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and
- (b) not contain provisions which will reduce the permissible residential density of land.

The proposal is to utilise the existing 2(a) zone in the Kempsey LEP, which provides for the provision of a range of housing. The site's location will utilise existing infrastructure and services. Sensitive lands have been identified and avoided.

The proposal is consistent with this direction.

Direction 4.1 - Acid Sulfate 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 sulfate soils. The direction applies to land identified on the Acid Sulfate Soils Planning Map having a probability of containing acid sulphate soils.

The 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 2(a), are identified as having no known occurrences of acid sulphate soil materials.

As Wetland No. 438 is proposed to be zoned 7(a) with no development potential, the proposal is consistent with this direction.

Direction 4.3 - Flood Prone Land

The objectives of this direction are:

- (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the *Floodplain Development Manual 2005*, 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 land.

This direction applies to circumstances where a Planning Proposal affects flood prone land.

According to the KSC Flood Risk Management Policy, the north eastern portion of the site, Wetland No. 438, lies at an elevation of approximately 4m Australian Height Datum (AHD).

This portion of the site is subject to inundation from South West Rocks Creek and lies below the relevant flood planning level (combination of 1 in 100 year flood levels and 0.5m freeboard), 5.25m AHD – 5.37m AHD for the site, making it unsuitable for rezoning.

The remainder of the site, including the three proposed development nodes, lie at an elevation of 6m AHD to 34m AHD, and are therefore above the relevant flood planning levels and suitable for rezoning in accordance with the provisions of the KSC Flood Risk Management Policy.

The NSW Coastal Planning Guideline – Adapting to Sea Level Rise adopts the benchmark of a projected 40cm rise in sea levels by 2050 and 90cm rise in sea levels by 2100, from mean 1990 levels. This rise in sea levels will see a corresponding increase in coastal flooding in lowland areas in the future.

Projected sea level rise was not taken into consideration in the KSC Flood Risk Management Policy. Therefore, the conservative approach of increasing the KSC flood planning levels by 90cm has been adopted, to demonstrate that the site is suitable for rezoning and development. When sea level rise projects are added to existing KSC flood planning levels, minimum floor levels increase to between 6.15m AHD and 6.27m AHD. With these revised levels, the entire area of each of the three development nodes are above the flood planning levels cognisant of sea level rise.

The proposal is therefore consistent with this direction.

Direction 4.4 - Planning for Bushfire Protection

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.

Bushfire mapping shows that the whole of the site, excluding the north eastern portion of the site containing Wetland No. 438, is bushfire prone. The site is currently classified as a vegetation buffer.

Ecobiological was also engaged to undertake a bushfire hazard assessment of the site (please refer to Appendix 2 in the LES prepared by Wells Environmental Services 2011)). The site and surrounding landscape is considered bushfire prone and any proposed development will need to provide suitable bushfire setbacks based on fuel load and slope.

The bushfire hazard was determined from observations of surrounding vegetation and surveys within the site. Forest vegetation type is considered as the hazard in all direction.

A slope analysis of the site and surrounding areas was undertaken. Slopes varied between 0-5 degrees over most aspects and up to 5-10 degrees at the south western boundary. Slopes were determined as suitable to achieve appropriate setback distances.

The proposed subdivision will serve to improve access/egress by providing an additional route to Gordon Young Drive for residents/occupants on the western side of South West Rocks, therefore improving bushfire safety management regimes to the existing urban areas to the north west of the site. In addition, clearing to be undertaken for the proposed development node 1 will reduce current bushfire hazard risk levels to Marlin Drive residents in the adjoining residential precinct to the northwest.

The proposal is consistent with this direction. It is noted however that subsequent to any Gateway Determination, the Planning Proposal is to be referred to the Rural Fire Service for comment.

4.2.3 Mid North Coast Regional Strategy

The (then) Minister for Planning in 2006 released the Mid North Coast Regional Strategy. The purpose of the strategy is to guide sustainable development of the Mid North Coast region over the next 25 years. A key objective of the strategy is to ensure adequate supply of land and housing is available to cater for increasing demand resulting from anticipated strong population growth in the region whilst protecting ecological and coastal values.

Within the strategy, South West Rocks is identified as a growth area. The challenge in the area is to develop land to meet increasing demand, whilst identifying and protecting land of high biodiversity values. The western portion of the site has been identified within the strategy as a proposed future urban release area with significant issues for development and high level constraints.

Appendix 2 to the strategy identifies the growth areas requiring significant issues to be resolved. With respect to South West Rocks (western area) the following issues and considerations have been listed:

- *“(The land) Already included in an adopted local growth management strategy.*
- *Extent of any development potential is to be based on the identification and protection of land with high biodiversity values, consistent with current study underway.”*

Cognisant of these issues and constraints, this Planning Proposal demonstrates that economic development of three portions or development nodes of this site can be achieved whilst maintaining the environmental integrity of the site. This Planning Proposal also provides the mechanism for the protection of those sensitive lands being the identified EECs and wetlands. The investigations carried out in the development of this Planning Proposal provide the local detail that is required to determine actual development boundaries. These investigations have indicated parts of the site as suitable for development.

The proposed rezoning and subsequent development of the site is consistent with the broad strategy of the strategy in offsetting the strong demand for residential development. The studies already conducted provide the finer detail required for the implementation of the strategy.

4.2.4 Kempsey Shire Council Land Release Strategy

The KSC Residential Land Release Strategy was released in 1997. The strategy was prepared in response to the former North Coast REP in 1988 and its requirement to prepare and adopt urban and rural land release strategies. The strategy aims to coordinate future land use in an integrated and orderly manner and ensure that future growth is accommodated within environmentally suitable lands which are able to be economically serviced.

The strategy identifies South West Rocks as the fastest growing urban area in Kempsey Shire. It also acknowledges that its growth is constrained in all directions, by Hat Head National Park to the east, Spencers Creek to the south, Macleay River to the west and the Pacific Ocean to the north. The resident population of South West Rocks is projected to rise to 7,597 by the year 2016. The strategy predicts that in the 5 year period from 2011-2016, the population will increase by 756 people.

This growth in population leads to an increase in demand for residential land. An analysis of the Councils' residential land supply register for South West Rocks, in conjunction with predicted population growth and dwelling densities, reveals there will be a shortfall of residential land supply that will occur sometime between 2006 and 2011-2012. Residential land supply comprises of existing subdivided vacant residential and un-subdivided residentially zoned land. To address this shortfall, KSC has resolved to rezone land to accommodate medium and long term population growth.

Within the strategy, KSC has identified areas of land available for potential residential development for staged and coordinated release. Within the strategy, the western portion of the site is identified as a long term residential land release area, long term being a 10 year time horizon (i.e. from 1997).

The proposed rezoning and subsequent development of the site is consistent with the broad strategy of KSC in offsetting the strong demand for residential land.

The strategy recognises that future urban development requires requisite infrastructure, including water supply, sewer, waste disposal and power to service urban development and population growth. At the time of the strategy release a strong emphasis was placed on the ability of existing service infrastructure to cope with development and growth at the rates projected. Particular emphasis was placed on a water supply system approaching capacity and the need to augment the (then) existing South West Rocks Sewerage Treatment Plant (STP) of the time of release of this strategy.

A water augmentation and recycling scheme has since be constructed and is operational.

The STP has been augmented to provide adequate capacity to handle the projected population increase reflected in the strategy. The scheme is now operational.

The Kempsey Land Release Strategy has now been superseded by the Kempsey LGMS. However, consideration of the former strategy is valid in order to present the history and planning context of the site. Both the Land Release Strategy and LGMS reflect KSC's view that the site has potential to provide for the expected growth of South West Rocks. This is further evidenced by the Kempsey LEP of 1987 zoning the land for investigation purposes.

4.2.5 Kempsey Local Growth Management Strategy

A draft LGMS was prepared on behalf of KSC in accordance with Settlement Planning Guidelines for the Mid and Far North Coast Regional Strategies (DoPI 2007). The site was identified within Release Area South West Rock Urban Investigation Area 6 Spencerville to New Entrance (SWRUIA 6).

The draft strategy identifies that 50% of the shire's growth will be catered for in South West Rocks. This is based on its location on the coast and spectacular setting. It has also been the focus for infrastructure funding to meet anticipated growth. The strategy identifies significant short term land release to utilise the planned infrastructure provision. It also states that in the medium to long term supply will decline due to the lack of currently identified suitable land. SWURIA 6 is identified in the strategy for release in 2015 – 16. This is largely based on the UIA being subject to identification and protection of land with biodiversity values.

It is considered that this Planning Proposal is consistent with the findings of the draft strategy. As documented elsewhere in this proposal, parts of the site have high biodiversity values, namely the wetland and EECs. These areas have clearly been identified. The

protection of these sites will be implemented through the making of an LEP amendment which rezones those areas to 7(a) and 7(b) respectively, meeting the requirements of the draft strategy.

The site has access to all infrastructure required for residential development and adjoins existing residential precincts.

Given that it usually takes 3 to 5 years from the submission of a Planning Proposal to the completion of on-site housing (and often longer), the timing of this Planning Proposal and subsequent LEP accords with those timframes listed in the draft strategy.

The Director General of DoPI endorsed the LGMS on 6 June 2011. The endorsement excluded two (2) sites, one of which being Spencerville (SWRUIA6). In the letter of endorsement to KSC the Director General advised:

"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 to 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 Director General's correspondence also advised that any Planning Proposal for land release in South West Rocks should address water supply infrastructure.

Based on discussions with DoPI Regional officers, it appears that officers were largely unaware of the extent of ecological investigations that had been conducted over the site. The studies are considered "adequate investigation". In accordance with the Director General's advice, there is enough evidence available to demonstrate the suitability of parts of the site for development. It is understood that KSC has written to the DoPI Regional office seeking an amendment to the LGMS to include the subject land.

Furthermore, representatives of the DoPI Regional office indicated that there is no reason as to why a Planning Proposal for the site would not be considered by DoPI concurrently with KSC's request to amend the LGMS (Personal communications 19 July 2011).

Therefore, the non-inclusion of the subject land in the LGMS is not a valid reason for KSC not to consider the Planning Proposal on its merits and forward it to DoPI for its assessment and Gateway Determination.

This aspect of the Planning Proposal will require updating in line with any decision made by the Director General of DoPI with regard to the LGMS.

4.2.6 Kempsey Local Environmental Plan 1987

The planning controls for the Kempsey LGA are generally contained in Kempsey LEP 1987. The aims of the LEP, relevant to this Planning Proposal, include protecting and enhancing the environmental values of the land within the LGA, economic provision of services to new developments, provision of residential accommodation in appropriate locations on flood free land.

The site is currently zoned 1(d) (Rural (Investigation) "D" Zone). The objectives of this zone are to provide for the future expansion of Kempsey Shire's population, ensure that the land

is not subject to excessive capital investment and to allow for the thorough investigation of land prior to release for development.

It is proposed that the developable areas of the site be rezoned to Zone No 2(a) (Residential "A" Zone) under the Kempsey LEP consistent with adjoining land to the north west of the site. The objective of this zone is to provide areas for low density residential development into allotments of not less than 500m². Should the rezoning application be approved, under the LEP, any future subdivision application would require that each lot be connected to a reticulated water supply and sewerage system.

4.2.7 Draft Kempsey Local Environmental Plan 2012

Like all Council's in NSW, KSC has a requirement from DoPI to prepare a new Standard Instrument compliant LEP for the Kempsey LGA. The published timeframe for completing this comprehensive LEP is June 2011, although it is clear that this timeframe cannot be achieved.

At the time of preparing this Planning Proposal it is understood that KSC has prepared a draft LEP document and has been liaising with DoPI since July 2010 regarding that draft plan. However, DoPI has yet to approve any exhibition. As such there are no informed comments that can be made on the draft LEP that may affect this Planning Proposal.

A review of the Standard instrument template indicates that:

- The existing 2(a) zone in the Kempsey LEP 1987 could most likely be converted to either the R1 General Residential Zone or R2 Low Density Residential Zone; and
- The 7(a) and 7(b) zones on the site would be suitable for the application of the E2 Environmental Conservation Zone.

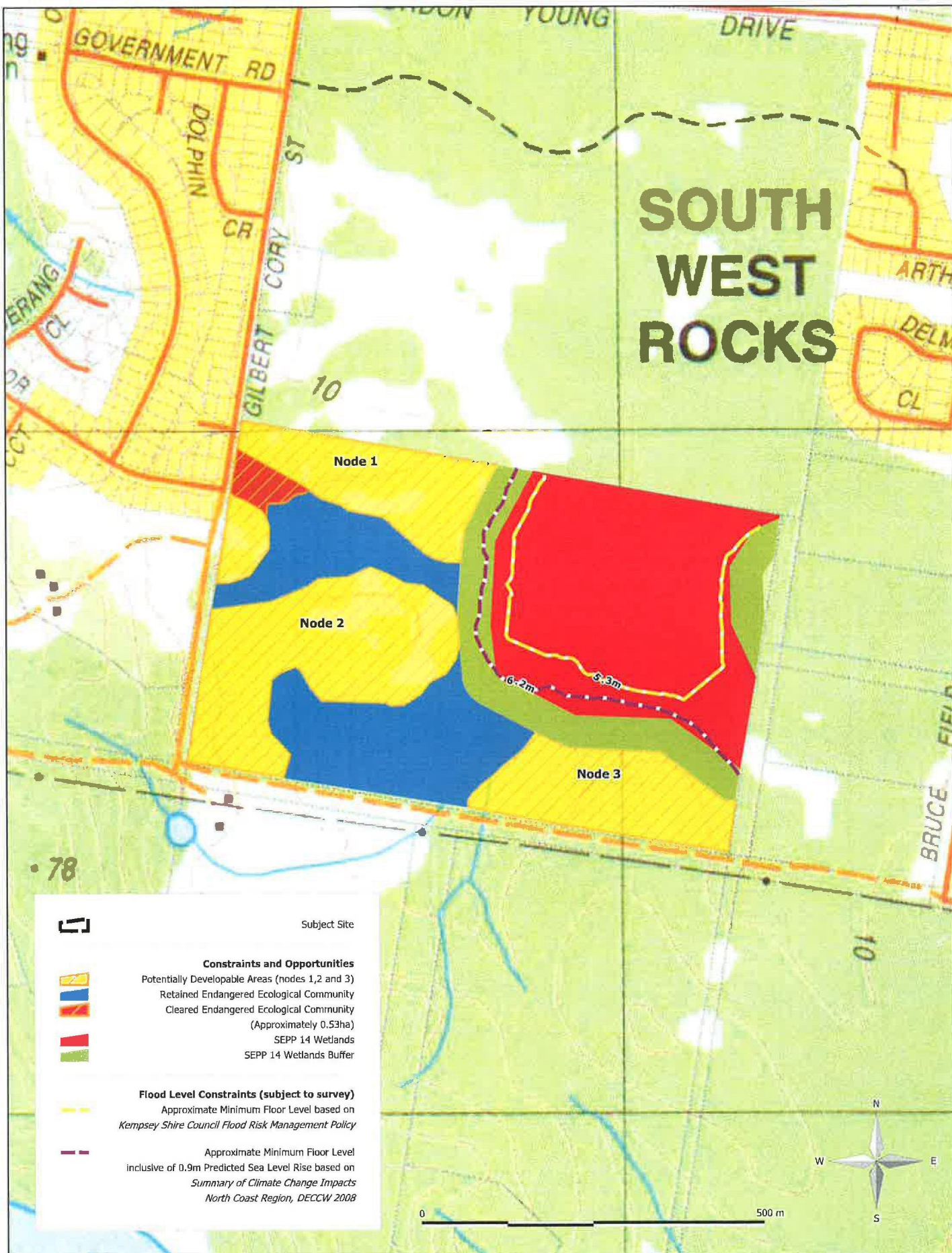
4.3 Environmental Social and Economic Impact

The site investigations have identified that the site has constraints to development. Despite these constraints; there is opportunity for urban development of the site consistent with the vision and development principles outlined in the relevant land release strategies cited above.

The key constraints for the site identified by these investigations include Wetland No. 438 which occupies the north eastern corner of the site, the presence of two (2) EECs, bushfire hazard and flood and sea level rise.

Based on these key constraints and opportunities, three specific areas of the site have been identified as being suitable for urban development and to minimise environmental impact. A concept plan of the proposed development areas and corresponding zonings for the site is presented in **Figure 3**. The concept plan comprises three separate development nodes. Proposed lots within these development nodes would not be smaller than 500m². Average lot sizes could be approximately 750m². **Figure 4** illustrates the constraints and opportunities of the site on which the concept plan was based.

Development Node 1 could require the removal of a small section of EEC (approximately 0.5 hectares) in the north western corner of the site. The impact of the removal of EEC could be further assessed in a masterplan development application and biodiversity offsets negotiated as appropriate.



File: Figure 4_constraints_20110729

Constraints and Opportunities Map

Constraints mapping by Ecobiological Pty Limited
Base: South West Rocks 1:25:000 Sheet - Land and Property Information NSW, 2002

Australia MGA94 (56)
Scale: 1:5000@A3

Lot 10, DP754396
South West Rocks

Friday, 29 July 2011 Drawn: PB

Figure 4

It has been determined that less than half of the 40 hectare site is suitable for development. 15.45 hectares (approximately 40%) of the site would be developed into residential allotments and associated roads, leaving 24 hectares (approximately 60%) of the site for conservation of environmental, ecological values and bushfire buffer zones.

It is likely that Development Node 1 would be the first development area, followed by Node 2 and finally Node 3.

It is expected that development of the site will not only assist in the conservation of the EECs, and Wetland No. 438, but also with their enhancement. The site is currently used for illegal dumping and also for unauthorised vehicular and motorbike access, potentially contributing to the degradation of these ecological assets. Development of the site will eliminate these activities and assist in the improvement of water quality, therefore adding to the conservation and enhancement of these ecological assets.

The EECs and Wetland No. 438 are also subject to nutrient rich runoff from the existing urban precinct to the northwest, upstream of the site. There are currently no erosion and sediment controls regulating runoff from the adjoining development which has led to increased nutrient loads entering the site and wetland. These increased nutrient loads have potential to degrade the quality of the receiving environment through the deposition of gross pollutants and sediment, increased nutrient loads, altered runoff regimes and potential for weed invasion. Development of the site will require appropriate erosion, sediment and stormwater controls to be implemented to control runoff entering and leaving the site and also to control runoff from proposed development areas of the site from entering the EECs and Wetlands No. 438.

Development of the site could see the construction of the entire length of Gilbert Cory Street and the length of Keith Andrews Avenue that fronts the site. Construction of these roads and the remaining length of Keith Andrews Avenue east to Gregory Street by KSC will provide residents and motorists with an alternative and additional access route between the eastern and western precincts of South West Rocks. Currently the only road available to access the western side of the village from the main township is Gordon Young Drive. This alternative route would not only offer the benefit of convenience, but would also provide a valuable and much needed alternative access/egress to the western side of South West Rocks in the event of Gordon Young Drive becoming inaccessible.

Management recommendations for identified constraints and opportunities, having regard to the concept plan, vision and guiding principles and the subsequent specialist studies are shown in **Table 1**.

Table 1: Identified constraints and opportunities.

Constraint/ Opportunity	Suggested Management Response
Wetlands No. 438.	• Conservation and enhancement of SEPP 14 wetland by eliminating illegal dumping and reducing nutrient rich urban runoff from proposed development of the site and from existing urban development to the north west by implementing appropriate erosion and sediment controls. • The SEPP 14 wetlands area is to be excluded from the rezoning for future urban development and be given the 7(a) zoning.

Constraint/ Opportunity	Suggested Management Response
Flora and fauna.	- The SEPP 14 wetland is to be protected by a minimum 50m buffer zone. - Conservation and enhancement of existing EECs by eliminating illegal dumping onsite, illegal vehicular and motor bike access and reducing nutrient rich urban runoff from proposed development of the site and from existing urban development by implementing appropriate erosion and sediment controls. - Minimal impact is to occur on the EECs identified on the site, including the Paperbark Swamp Forest and Swamp Mahogany Swamp Forest. - Future development should be primarily contained on the communities which are not EECs, including the Scribbly Gum – Red Bloodwood Forest and Wet Heathland. - Future development should consider the potential impact on the threatened fauna species detected on the site. - Appropriate biodiversity offsets are met by the inclusion of 12 ha of SEPP 14 wetland plus 50m buffer and approximately 21 ha of EEC into Environment Protection zones plus biobanking. - Targeted summer surveys (December to February) are recommended for the threatened Leafless Tongue Orchid (<i>Cryptostylis hunteriana</i>) given that suitable habitat for this species is present on the site and that previous surveys may have been conducted at inappropriate periods to detect this species. - No study has shown the presence of koalas, nor evidence of their presence, however, given the recent records of koalas in the proximity of the site and identification of potential koala habitat, prior to any future development the performance criteria of the forthcoming KSC Koala Plan of Management document be applied to any future developments on primary or secondary preferred koala habitat, habitat buffers or habitat linking areas. - Additional studies would be required to determine if a referral under the provisions of the <i>EPBC Act 1999</i> to the Department of Environment and Heritage is required, to permit urban development.
Bushfire.	- Provision of alternative access/egress route to Gordon Young Drive in the event of a bushfire for residents/occupants on the western side of South West Rocks from the construction of the full length of Gilbert Cory Street and Keith Andrews Avenue (jointly by KSC and Hunterwatt). - Reduction of bushfire hazard risk to Marlin Drive residents in the adjoining residential precinct to the north west from required clearing for Development Node 1. - A 20m APZ will provide adequate setback to bushfire prone vegetation in order to meet the requirements set in the NSW RFS <i>Planning for Bushfire Protection Guidelines</i>. - The following bushfire planning constraints should be addressed at future development stages: - Access (public roads), providing through roads for passive and emergency situations; - Emergency management arrangements and planning; - Water and utility provisions; - Building construction and design associated with minimum setbacks to

Constraint/ Opportunity	Suggested Management Response
	hazards; and – Landscaping and bushfire hazard management. • Ensure the development design complies with bushfire safety requirements at development application stage.
Coastal area/protection.	• The site is a sensitive coastal location under SEPP 71 Coastal Protection requiring approval of a masterplan by the Minister for Planning and Infrastructure prior to any future subdivision application being approved (under current requirements which are being reviewed). • Proposed subdivision is currently classified as a major development in accordance with SEPP (Major Development) 2005 (noting that this instrument is currently under review).
Aboriginal heritage.	• Extensive AHIMS database search to be undertaken to determine if any Aboriginal artefacts are likely to be present on site. • Undertake Aboriginal Heritage Assessment if required.
Hydrology and flooding.	• Stormwater management to mitigate downstream water quality and hydrological impacts. The future development of the site to include Water Sensitive Urban Design initiatives.
Landscape.	• Ensure the development of the site enhances the visual quality of the locality.
Roads.	• Design the estate road system in conjunction with KSC and RTA to ensure attractive, safe living environments for pedestrians, cyclists and motorists.
Soils	• Further investigate localised occurrences of highly reactive soils and implement appropriate mitigation measures.
Solar access and energy efficiency.	• Ensure the subdivision design achieves solar access and energy efficiency in keeping with Council's DCPs.
Utility services.	• A site specific water and sewer servicing strategy will be developed. • Sewer servicing strategy to be designed and planned in conjunction with proposed Settlers Hill subdivision. • Rate of development on site to be consistent with electricity capacity augmentation works by Country Energy.
Local Community Services	• The opportunity exists for KSC to negotiate with the proponent about the provision of local facilities. • Implementation through Section 94 or a voluntary planning agreement.

It is considered that the development of parts of the site will have no adverse economic impacts upon the community.

It has been stated that any future residential development of the site will require the extension of existing services to the site. In particular infrastructure such as water, sewer roads and communications will have to be provided on a user pay basis. Section 94

contributions or a VPA would consider the impacts of development on local services and the commensurate development contributions required.

At the time of preparing this Planning Proposal no detailed work has been carried out on subdivision layouts or lot yields. None of the strategic planning documents reviewed in the preparation of this proposal have identified target dwelling or lot yields (e.g. X lots per hectare). It is likely, given the constraints applying to the site, yields in the order of 8 or 9 lots per hectare are most likely or in the vicinity of 120 – 140 lots on the 15.45 ha of developable land.

It is estimated that construction costs for the subdivision are likely to be in the order of \$60,000 per lot. Based on the projected lot yield of 120 -140 lots the proposed development is likely to generate \$7.2M to \$8.4M in capital expenditure. Much of this capital cost would be distributed to local construction and development contractors.

In addition, using a conservative amount of \$200,000 per house construction, subsequent development on the land for housing could generate anywhere between \$24M and \$28M for the local building industry.

Presently, Section 94 contributions for South West Rocks are approximately \$12,000 per lot but it is noted that Council has the ability to seek contributions up to \$20,000 per lot under current practices, where such an amount can be justified. This would result in up to \$2.8M being available for KSC provided services.

Services that KSC collects Section 94 contributions for in South West Rocks include:

- Recreational facilities including parks and bush reserves;
- Street scaping and public domain improvements;
- Traffic and transport including cycle ways;
- Community centre and public library;
- Drainage and stormwater; plus
- Safety services such as fire services and local surf life-saving facilities.

The proposed residential development will assist in the facilitation of social services important for the health and wellbeing of the community and assist in the strengthening of the social and economic fabric of South West Rocks.

4.4 State and Commonwealth Interests

In *A Guide to Preparing Local Environmental Plans* two fundamental questions are posed under this heading:

- *Is there adequate public infrastructure for the Planning Proposal?* The concise answer to this question is "Yes". The proposed residential development will require the extension of existing infrastructure such as roads, water, sewer, electricity and communications. All of these services have adequate capacity to cater for the proposed development. Extension of, and connection to, this infrastructure will be at the cost of the proponent with no costs to be borne by the relevant service providers or the community. Local community services required by KSC will be addressed via the applicable S.94 contributions plan or voluntary planning agreement.

The Director General of DoPI has specifically advised that any Planning Proposal in South West Rocks address water supply. Input from a local engineering consultancy provides the following additional information in this regard. There is adequate local infrastructure to service the project. A trunk main is located along the southern boundary of the site and a large gravity main runs along the western boundary. This system is fed by a high level reservoir situated immediately to the west of the site purposely built for the Spencerville precinct (circa 1990). Macleay Water has a contributions plan in place as well as a recycled water scheme. The water recycling is yet to come on line, but could be extended to the site if required. There is opportunity for joint funding of such a scheme with a proposed 220 lot subdivision east towards Gregory Street which is to be submitted shortly. (It is understood this application will be under Part 3A of the EP&A Act). It is concluded that there are unlikely to be water supply issues at South West Rocks sufficient to create any problems when and if this site is developed.

- *What are the views of State and Commonwealth Public Authorities consulted in accordance with the Gateway Determination, and have they resulted in any variations to the Planning Proposal?* The Gateway Determination will confirm which agencies the Planning Proposal is referred to. If necessary, this section of the Planning Proposal will be amended or completed in line with any comments received.

It is noted that in Schedule 4 (Major Infrastructure Projects) to the Mid North Coast Regional Strategy there is no reference to any infrastructure projects proposed in the South West Rocks Area. The projects in that Schedule are those items listed in the State Infrastructure Strategy 2008 - 2009 to 2017 – 2018 in the region.

5 COMMUNITY CONSULTATION

The Gateway Determination ultimately establishes the appropriate agency and public consultation processes.

A guide to preparing Planning Proposals indicates the appropriate exhibition period for low impact Planning Proposals of 14 days and 28 days for all other proposals. It defines a low impact Planning Proposal “as a Planning Proposal that, in the opinion of the person making the Gateway Determination: is consistent with the pattern of surrounding land use zones and/or land uses; is consistent with the strategic planning framework; presents no issues with regard to infrastructure servicing; is not a principal LEP; and does not reclassify public land.”

It is apparent that this Planning Proposal meets the criteria contained in the DoPI guide for a low impact Planning Proposal. As such a 14 day exhibition period is recommended.

It is further recommended that the Planning Proposal be referred to the following NSW government authorities:

- Macleay Water (Kempsey Shire Council) as the Director General of DoPI has advised water supply is to be addressed in any Planning Proposal In South West Rocks,
- Other service providers (e.g. electricity and telecommunications);
- Rural Fire Service (refer to S117 Direction 4.4); and
- Office of Environment and Heritage (refer to SEPP 14, SEPP 44 and S117 Directions 2.1 and 4.3).

6 CONCLUSIONS

The key issues in relation to the site include:

- Portions of the site have been identified in the Mid North Coast Growth Strategy the KSC Residential Land Release Strategy and draft Kempsey LGMS as a new urban release area and is consistent with the broad objectives of these strategies;
- The endorsement of the Kempsey LGMS by the Director General of DoPI provides an opportunity for reconsideration of the decision not to include SWRUIA6 based on adequate investigation. These investigations have been carried out;
- The concept plan identifies areas for environmental protection including the SEPP 14 Wetland No. 438 and the identified EECs;
- Should the rezoning application be approved, approval of any subsequent Development Application in accordance the provisions of SEPP 71 (Coastal Protection) and SEPP (Major Development) 2005;
- Suitable asset protection zones to be included into subdivision design relevant to assigned land uses and potential bushfire hazards;
- Approval of this rezoning and future development applications would serve to improve the local road network by providing an alternative route of connectivity between the eastern and western side of South West Rocks; and
- Connection and extension of existing water, sewer, communications and electricity networks is required to service proposed urban development of the site.

It should be noted that the initial concept plan for the site has been modified considerably to conserve and protect the environmental resources of the site. This follows the findings of an LES prepared by Wells Environmental Services (2011). The initial concept plan for the site proposed a total development area of 26.2 hectares (approximately 65% of the whole site), creating approximately 225 allotments. This initial concept plan excluded Wetland No. 438 from the development envelope, with the remainder of the site being included in the development envelope, with limited regard for the identified EEC's, nature corridors and required bushfire APZs.

The decision to decrease the development envelope and increase the conservation area demonstrates the integrity and commitment of the proponent to its vision and development principles and protection of the environment, despite associated decreased yields and associated infrastructure servicing costs.

The proposed concept plan also offers additional opportunities and benefits for the environment and community.

Whilst it is recognised that the site is constrained in terms of development opportunities, there is the opportunity to develop three portions of the site without adversely comprising ecological integrity or detrimentally impacting on the environment or surrounding community.

As highlighted in this Planning Proposal, population increase also strengthens demand for infrastructure and services both within the site and in the local South West Rocks Area in general. It has been demonstrated that the existing infrastructure and services have capacity to cater for the modest increase in population from the proposed residential development (i.e. 120 – 140 lots). Likewise, the increase in population also supports

governments' (local and NSW) decisions to invest in infrastructure in the area. Contributions from the development will also assist in the provision of local services adding to the social and economic wellbeing of the local community.

A review of Council's strategic planning documents indicates that the proposed development will take place at a rate that is commensurate with KSC's planning goals for South West Rocks and the capacity to service such growth.

Ultimately the rezoning of the subject land would be consistent with the following objectives of the Environmental Planning and Assessment Act 1979:

- The proper management and conservation of natural resources;
- The promotion and co-ordination of the economic and orderly use of land;
- The provision and co-ordination of communication, utilities plus community services and facilities;
- The protection of the environment; and
- Ecologically sustainable development.

Therefore this Planning Proposal seeks an amendment to the Kempsey LEP in accordance with the following recommendations and **Figure 3**.

- The concept plan for the site identifies three separate areas for residential development, development nodes 1 - 3. In accordance with the KSC LEP 1987, it would be appropriate to apply the Zone No 2(a) (Residential 'A' Zone) to these three identified areas;
- Conservation of the SEPP 14 Wetland No. 438 on the north eastern portion of the site will require application of Zone No 7(a) (Wetlands Protection Zone); and
- Conservation of the two areas of EEC identified on the site by in the ecological assessments will require application of the Zone No 7(b) (Environment Protection (Habitat) Zone).

7 REFERENCES

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- Ecobiological Survey and Assessment, (2011). Environmental Constrains Assessment of Lot 10 DP 754396, Gilbert Cory Street, South West Rocks, NSW. Hunterwatt Projects Pty Ltd.
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- State Environmental Planning Policy No. 14 – Coastal Wetlands.
- State Environmental Planning Policy No. 44 – Koala Habitat Protection.
- State Environmental Planning Policy No. 71 – Coastal Protection.
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
- *Threatened Species Conservation Act, 1995.*
- Umwelt Environmental Consultants, (2003). Flora and Fauna Assessment for the Proposed Rezoning of Lot 10 Gilbert Cory Drive, South West Rocks. Hunterwatt Projects Pty Ltd.
- Umwelt Environmental Consultants, (2005). Flora and Fauna Assessment for the Proposed Dwelling of Lot 10 Gilbert Cory Street, South West Rocks. Hunterwatt Projects Pty Ltd.
- Wells Environmental Services, (2009). Planning Path for Possible Rezoning of Land at South West Rocks, Lot 10 Gilbert Cory Street. Hunterwatt Projects Pty Ltd.
- Wells Environmental Services (2011). Local Environmental Study – Rezoning of Land South West Rocks. Hunterwatt Project Pty Ltd.

Appendix 1 – List of Environmental Investigations

- Geotechnical Investigation for Proposed Rezoning and Residential Development Lot 10, DP 754396, Gilbert Cory Street South West Rocks, November 2003. Document prepared by Chandler Geotechnical Pty Ltd for Hunterwatt Projects Pty Ltd;
- Flora and Fauna Assessment for Proposed Rezoning of Lot 10 Gilbert Cory Drive, South West Rocks, December 2003. Document prepared by Umwelt for Hunterwatt Projects Pty Ltd;
- Flora and Fauna Assessment for Proposed Dwelling, Lot 10 DP745396, Gilbert Corey Street, South West Rocks, July 2005. Document prepared by Umwelt for Hunterwatt Projects Pty Ltd;
- South West Rocks Landscape Ecology Specialist Study Ecological Modelling, June 2008. Document prepared by SMEC Australia Pty Ltd for Kempsey Shire Council; and
- Planning Path for Possible Rezoning of Land at South West Rocks, Lot 10 Gilbert Cory Street, December 2009. Letter Report prepared by Wells Environmental Services for Hunterwatt Projects Pty Ltd.
- Environmental Constraints Assessment: Lot 10 DP 754396 Gilbert Cory Street South West Rocks, October 2010. Document prepared by Ecobiological.
- Local Environmental Study – Rezoning of Land South West Rocks, March 2011. Document prepared by Wells Environmental Services for Hunterwatt Projects Pty Ltd.