

Planning and Assessment

IRF19/5654

Gateway determination report

LGA	Kempsey Shire Council
PPA	Kempsey Shire Council
NAME	Hat Head Minimum Lot Size
NUMBER	PP_2019_KEMPS_002_00
LEP TO BE AMENDED	Kempsey Local Environmental Plan 2013
ADDRESS	All land in Zone RU5 Village
DESCRIPTION	To add an additional objective to the RU5 Village zone and amend certain development standards that apply to the Hat Head village
RECEIVED	12 September 2019
FILE NO.	IRF19/5654
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal seeks to amend the Kempsey Local Environmental Plan 2013 as follows:

- Amend the RU5 zone objectives to include an additional objective referring to infrastructure capacity;
- Amend the minimum lot size applying to land zoned RU5 Village in Hat Head from 500m² to 1400m²; and
- Amend clause 4.1A which contains an exception to minimum lot sizes for certain residential development to exclude Hat Head, and to align with changes to the Lot Size Map.

1.2 Site description

The planning proposal relates to all land with a RU5 Village zone in the Kempsey LGA and includes development standards that apply to the village of Hat Head.

The settlements in the Kempsey LGA with a RU5 village zone are Hat Head, Smithtown, Gladstone, Kundabung, Frederickton, Jerseyville, Kinchella, Fishermans Reach, Stuarts Point and Grassy Head. As the impact of the planning proposal on these villages is negligible, this report focuses on the planning proposal as it relates to Hat Head.

The village of Hat Head contains approximately 300 residential lots, a caravan park and a small number of commercial land uses such as a bowling club and general store.

Korogoro Creek divides the village into north and south precincts. The village is surrounded by the Hat Head National Park (Figures 1 and 2).

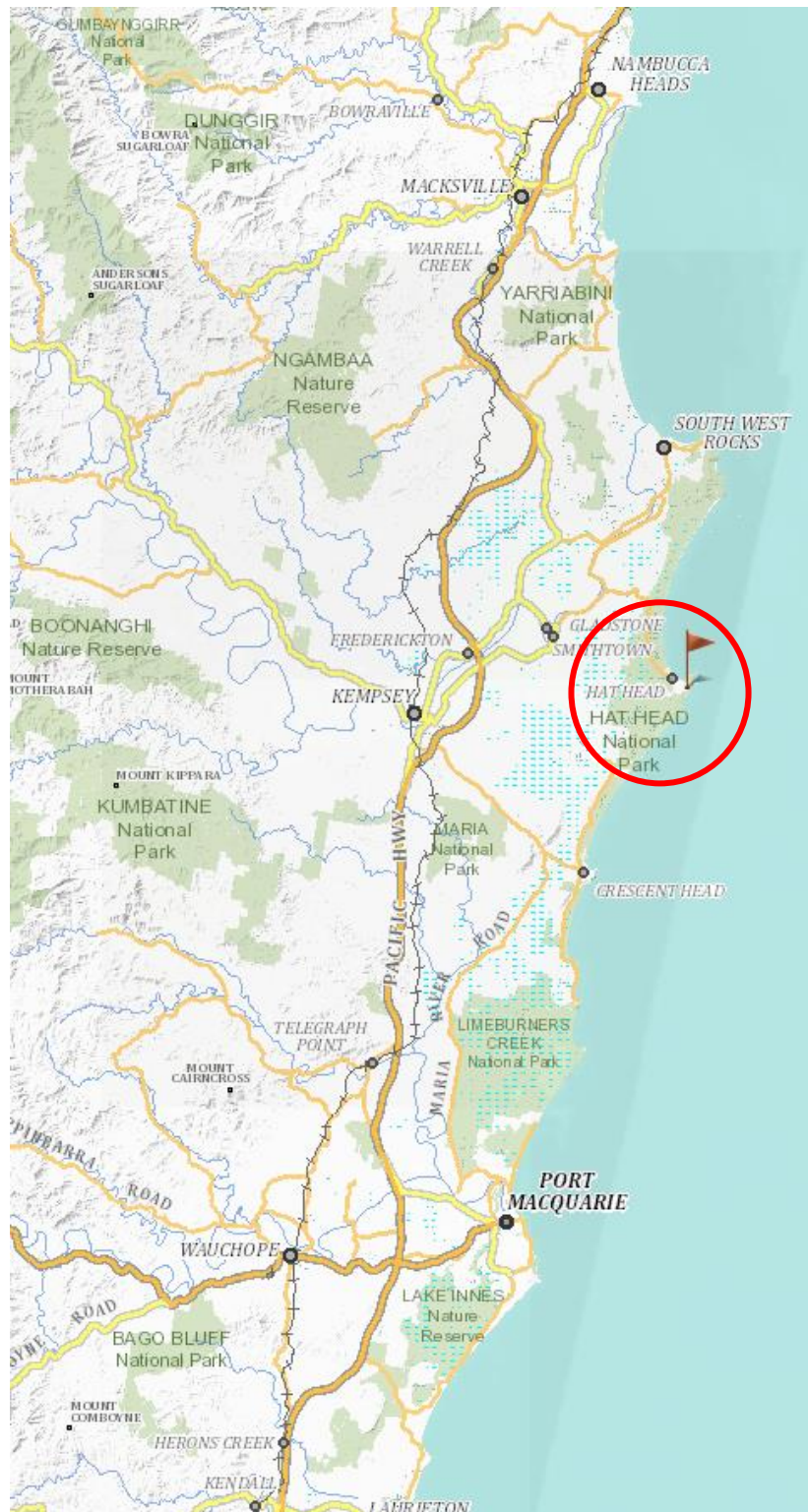


Figure 1: Location Map (Source: Six Maps)

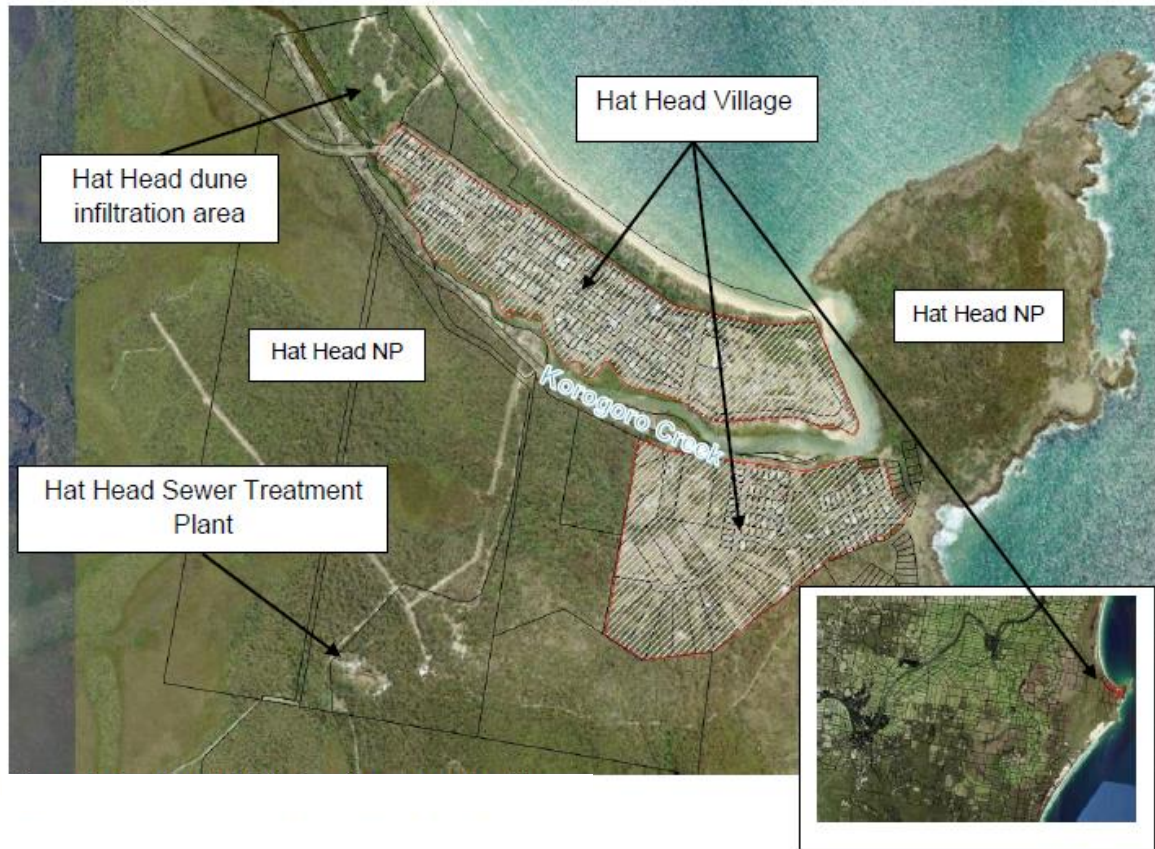


Figure 2: Subject Lands and Location of Sewerage Infrastructure (Source: Planning Proposal)

1.3 Existing planning controls

Pursuant to the Kempsey Local Environmental Plan 2013, all land affected by the amendments to the development standards for Hat Head village:

- Is zoned RU5 Village (Figure 3);
- Has a minimum lot size specified by the Lot Size Map of 500m² (Figure 4);
- Has a building height specified on the Height of Buildings Map of 8.5 m (Figure 5);
- Contains either class 1, 2, 3 or 5 acid sulfate soils as shown on the Acid Sulfate Soils Map (Figure 6); and
- Is identified as “Area Subject to Koala Management Plan” on the Koala Management Plan Map.

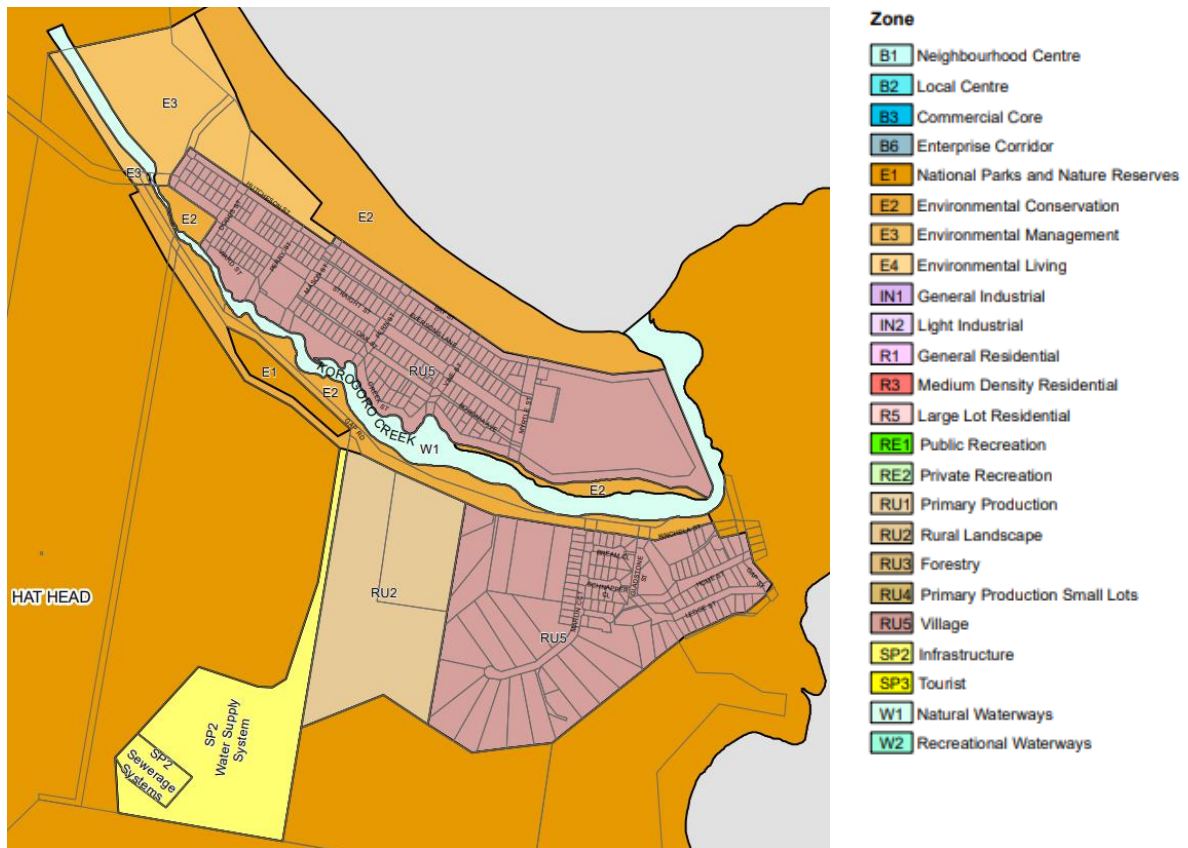


Figure 3: Extract from Land Zoning Map (Source: NSW Legislation)

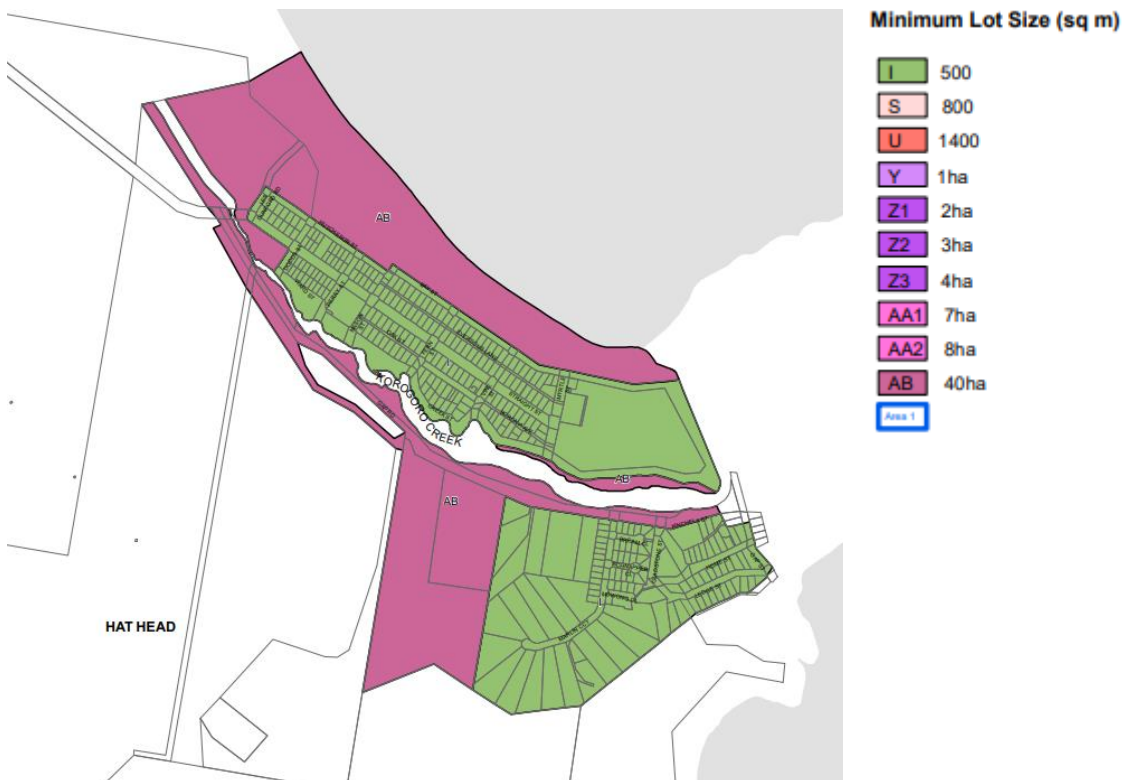


Figure 4: Extract of Lot Size Map (Source: NSW Legislation)



Figure 5: Extract of Height of Buildings Map (Source: NSW Legislation)

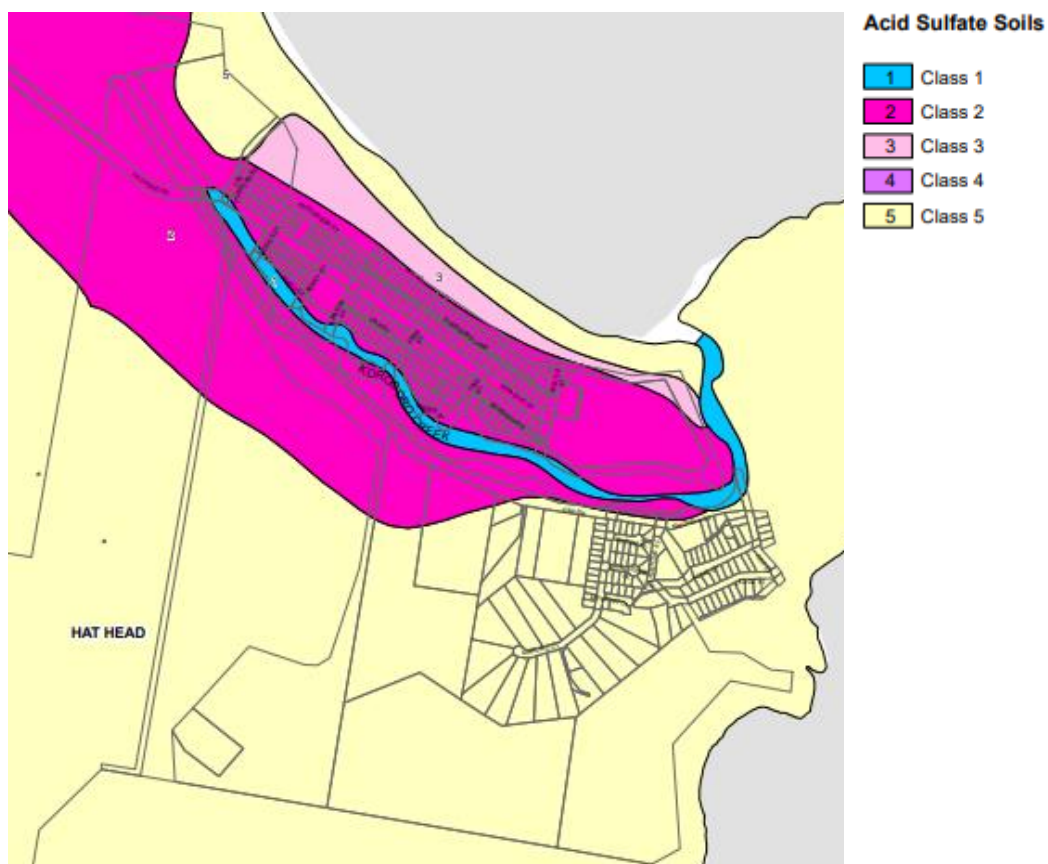


Figure 6: Extract of Acid Sulfate Soils Map (Source: NSW Legislation)

1.4 Surrounding area

Hat Head is located about 30 kilometres by road east of Kempsey. The village of Hat Head is isolated from other settlements, being surrounded by the Hat Head National Park.

1.5 Summary of recommendation

It is considered that the planning proposal has merit to proceed to Gateway for the following reasons:

- The planning proposal is a result of the Hat Head Sewerage Capacity Analysis Report which identifies the scheme is at full capacity in the areas surrounding the caravan park with overall limited capacity to facilitate further connections, and as critical scheme infrastructure is located adjacent to a sensitive National park ecosystem, there is limited opportunity for expansion;
- The planning proposal supports the Kempsey Shire Council Development Control Plan 2013 Chapter F2: Hat Head which highlights infrastructure capacity is a constraint to future development within the village;
- The planning proposal is not inconsistent with the *North Coast Regional Plan 2036* which aims to balance urban expansion and the protection of coastal and sensitive ecosystems; and
- The planning proposal is not contrary to the *Kempsey Shire Local Growth Management Strategy Residential Component (November 2010)*.

It is recommended that this planning proposal be supported, with conditions.

2. PROPOSAL

2.1 Objectives or intended outcomes

The aim of the planning proposal is to ensure that future development within the Hat Head village does not compromise the capacity of the Hat Head sewerage scheme.

The objectives of the planning proposal are to ensure:

- That infrastructure capacity is taken into consideration for future development in the RU5 Rural Village zone by including an additional zone objective;
- That further subdivision in the Hat Head village does not create potential for new dwellings to overload the sewerage scheme by reducing the minimum lot size; and
- There is consistency between Kempsey Local Environmental Plan 2013 and the Kempsey Development Control Plan 2013 objectives as they relate to the Hat Head village.

The objectives and intended outcomes of the planning proposal are adequately described and do not require amendment prior to community consultation.

2.2 Explanation of provisions

The amendments proposed to the Kempsey Local Environmental Plan 2013 to achieve the intended outcomes are to:

- Include an additional RU5 Village zone objective to ensure that infrastructure capacity is a consideration for development;

- Amend the Lot Size Map to increase the minimum lot size in the RU5 Village zone of Hat Head from 500m² to 1400m² to align with the proposed changes to clause 4.1 (Figures 3 and 7).
- Amend clause 4.1A to exclude Hat Head village from the provisions of the clause.

It was suggested to Council that the introduction of a floor space ratio for Hat Head would further strengthen the planning proposal and minimise the pressure for permissible forms of residential accommodation such as secondary dwellings, dual occupancies and multi- dwelling housing. However, Council advised that as floor space ratios are not widely used in the LGA, it was their preference not to introduce one as a component of this planning proposal.

As a floor space ratio is not critical to satisfy the objectives, it is considered that the planning proposal adequately reflects the constraints of existing infrastructure and services and is an acceptable means of achieving the intended outcomes.

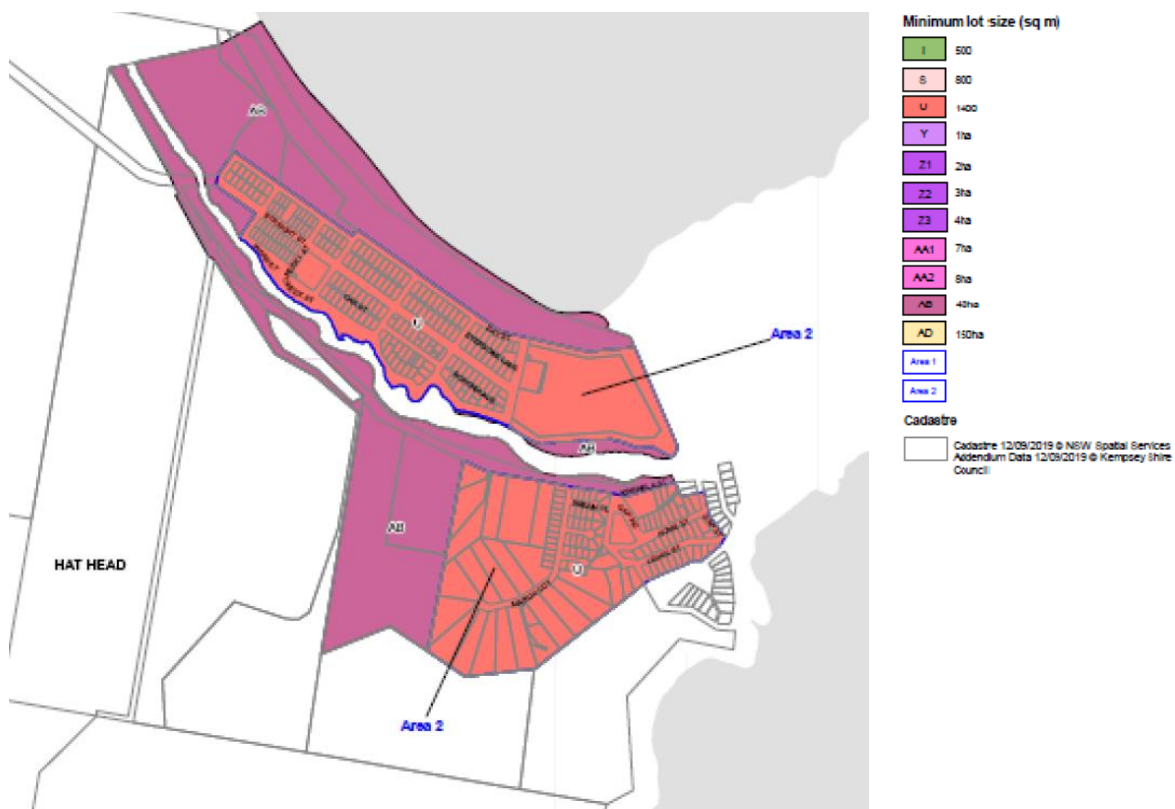


Figure 7: Extract of Proposed Lot Size Map (Source: Planning Proposal)

2.3 Mapping

The planning proposal includes maps that show the existing lot size and proposed lot size, and these are adequate for exhibition.

3. NEED FOR THE PLANNING PROPOSAL

The Kempsey Development Control Plan 2013 Chapter F2: Hat Head, nominates that Council will undertake an ongoing review of the Hat Head Sewerage Scheme capacity. It also states that Council shall not consent to any development likely to increase effluent loadings until such time as it has determined whether sewerage infrastructure is adequate, and a detailed development control plan addressing infrastructure servicing and other development constraints has been prepared.

A capacity analysis of the Hat Head Sewerage Scheme was undertaken in 2018 which included an initial desktop study followed by an onsite assessment/validation. The report identified the Hat Head Vacuum Sewerage Scheme to be operationally sound and adequate for the existing catchment.

However, the capacity analysis report also identified that the scheme is at full capacity in the areas surrounding the caravan park with overall limited capacity to facilitate further connections. This is because the sewerage network and treatment were designed and constructed to cater for the existing village and approved development areas only, with no allowance for any increase in the density of development.

The scheme currently services around 300 residential lots with a few commercial buildings and a caravan park. The scheme is surrounded by the Hat Head National Park, with critical scheme infrastructure such as the sewerage treatment plant, sewerage pumping station and effluent disposal area located adjacent to sensitive National Park ecosystems (Figure 2). Council has advised that the scheme has strict environmental controls for the management and disposal of effluent, limiting the options for expansion.

Due to the potential risks associated with overload of the sewerage scheme, Council has advised that it is critical to ensure that there is an operating buffer in the design capacity to support real time operations. This buffer ensures that there is additional capacity in the scheme to meet peak loading events and emergency operational situations.

The Kempsey Development Control Plan 2013 Chapter F2: Hat Head presently allows an alternative option to manage sewerage using an on-site system. However, due to the existing lot sizes and proximity to sensitive environments, Council has formed the view that this is not an acceptable solution, and it is intended to remove this provision from the Plan.

In the circumstances, the only option is for Council to limit urban consolidation in Hat Head to a level commensurate with the existing sewerage system. For the purpose of assessing sewer system capacity for new development, Council have allowed a maximum of 1 dwelling or 1 equivalent tenement to each existing allotment within the scheme.

The planning proposal represents the best means of achieving the intended outcomes.

4. STRATEGIC ASSESSMENT

4.1 State

The planning proposal does not contain any matters of State or regional significance.

4.2 Regional / District

The *North Coast Regional Plan 2036* has relevance to the planning proposal as follows:

Direction 1 – Deliver environmentally sustainable development

Action 1.1 nominates that the focus for future urban development should be within the mapped urban growth areas. The entire village of Hat Head is identified on the urban growth area map for the Kempsey Local Government Area (Figure 8). The intention of focusing urban development to the mapped urban growth areas is to avoid pressure and safeguard sensitive coastal environments.

The planning proposal is contrary to Action 1.1 as future urban development in Hat Head will be limited. However, it is consistent with the intention to protect sensitive coastal environments, because the capacity of the existing sewerage system and environmental constraints of the location prevent an upgrade.



Figure 8: Urban Growth Area Boundaries

Direction 22 – Deliver greater housing supply

This Direction identifies that having well-located land for residential development will create downward pressure on house prices, maximise the use of existing infrastructure and ensure that environmentally sensitive areas are avoided. It also identifies that mapped urban growth areas have been identified in sustainable locations to cater for overall housing needs. As noted previously, the village of Hat Head is identified on the urban growth area map for the Kempsey LGA. However, the planning proposal is unlikely to deliver a greater housing supply because it aims to discourage urban consolidation due to the capacity of the sewerage system.

The Hat Head Sewerage Capacity Analysis was undertaken in 2018, following the release of the *North Coast Regional Plan 2036* in March 2017. Although, the limitations of the existing scheme have been known and are identified in a development control plan, the extent of those limitations has only just been realised.

Direction 23 – Increase housing diversity and choice

Action 23.1 encourages housing diversity by delivering 40% of new housing in the form of dual occupancies, apartments, townhouses, villas or dwellings on lots less than 400m² by 2036. The planning proposal is consistent with this Action in so far as these forms of residential accommodation will not be prohibited in the zone.

However, it is proposed to increase the minimum lot size from 500m² to 1400m² to discourage urban consolidation and limit development to one dwelling or one equivalent tenement per lot. This will effectively constrain housing diversity in the village. Nonetheless, *Part 4 – Housing Diversity* of the *Kempsey Shire Local Growth Management Strategy Residential Component (November 2010)*, approved by the Director General on 6 June 2011, supports the objectives of the planning proposal as it identifies that the character of Hat Head to be unsuitable for significant medium density development.

Direction 25 – Deliver more opportunities for affordable housing

The planning proposal is unlikely to deliver more affordable housing because the aim is to discourage urban consolidation which may cause demand to exceed supply and housing prices to increase. However, significant growth in Hat Head is not projected by the *North Coast Regional Plan 2036* which nominates Kempsey, Crescent Head and South West Rocks to be the focus for future housing.

Further, there is presently limited opportunity for new development in Hat Head with only 24 of the 300 residential lots in the village undeveloped. The 24 lots include three lots on the northern side of Korogoro Creek, and 13 on the southern side, with the majority of vacant lots located in the area to the west of the southern precinct (Figure 10).

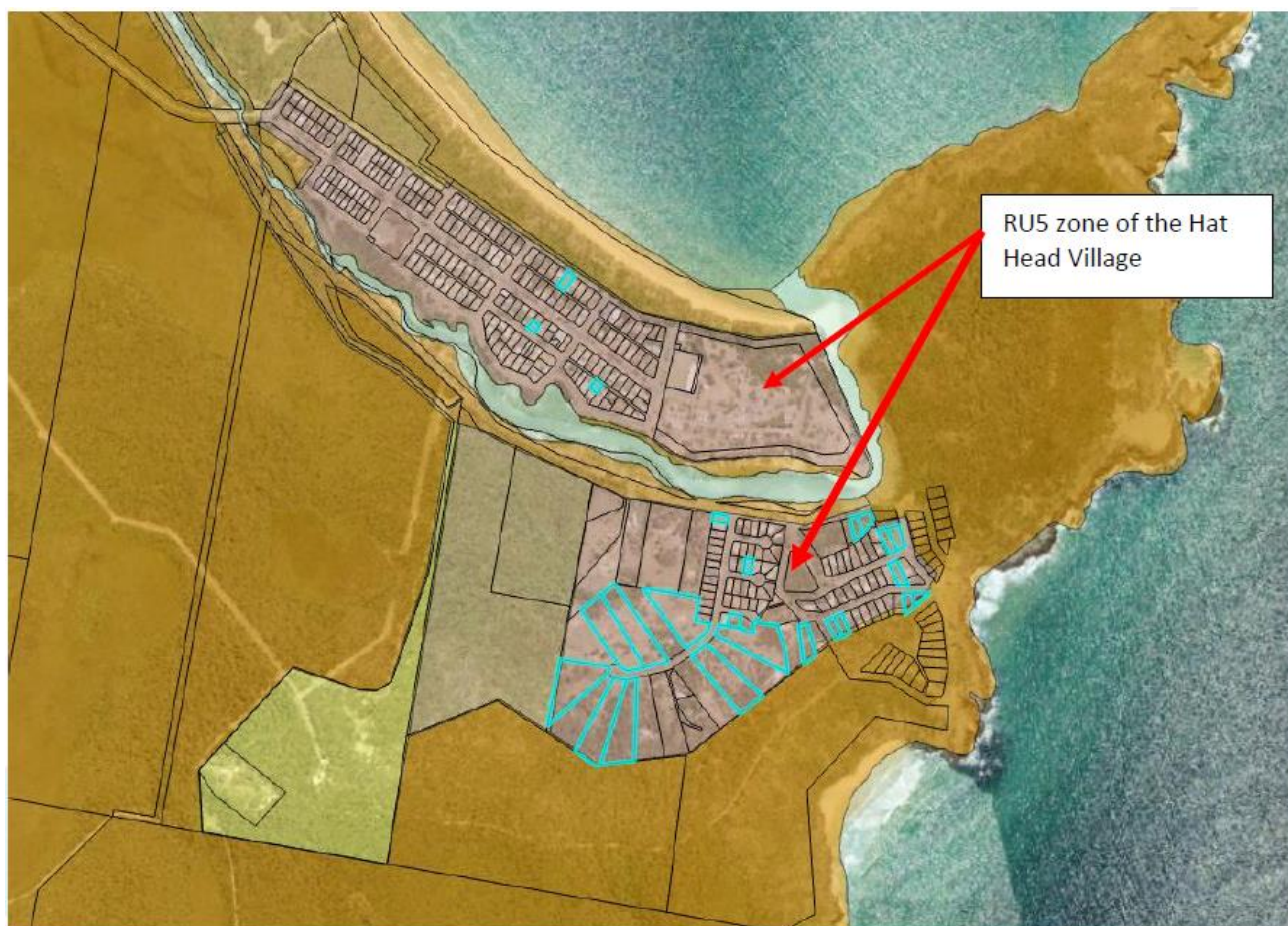


Figure 9: Vacant Lots (Source: Planning Proposal)

Council has also advised that a survey undertaken in 2016 established that about 40% of houses in Hat Head were vacant. This survey is supported by the *Kempsey Shire Local Growth Management Strategy Residential Component (November 2010)* which identifies that there is little potential for long-term growth in Hat Head as a result of permanent residential accommodation and any future growth will be in holiday homes. Due to the large proportion of holiday homes, housing affordability is already likely to be marginal.

Although the planning proposal discourages urban consolidation which may affect housing affordability, the planning proposal is not inconsistent with the provisions of the *North Coast Regional Plan 2036* which aims to provide a balance between development and sensitive coastal ecosystems. In this instance, the village is constrained by lack of suitable land and limited services and infrastructure, meaning it is not suitable for urban growth.

4.3 Local

The planning proposal is consistent with the relevant components of the *Macleay Valley 2036 Community Strategic Plan*. In this regard, the planning proposal aims to ensure that environmental impacts do not negatively affect lifestyle by using planning controls to discourage urban consolidation. It also aims to minimise risk to the community's health and attempts to remove environmental threats by recognising the limitations of the sewerage scheme.

The *Kempsey Shire Local Growth Management Strategy Residential Component* (November 2013), approved by the Director General on the 6 June 2011, is also applicable. The planning proposal is consistent with the relevant parts of the Strategy, specifically the statements that identify:

- Hat Head will only cater for 1% of the total dwellings to 2031, and a significant proportion of these are expected to be holiday houses (Part 2 – Summary of Release Strategy).
- Hat Head is to be retained as a small seaside village and is constrained by lack of suitable land and limited services and infrastructure, and that the character of Hat Head is unsuitable for significant medium density development (Part 4 – Dwelling Demand Analysis).
- Hat Head is controlled by a development control plan which limits the subdivision of existing zoned land due to the functioning of the sewer treatment plant (Part 5 - Capacity of Zoned Land).
- Hat Head is surrounded by Hat Head National Park and is constrained topographically and due to flooding. It has also been limited in growth due to the difficulties with the provision of sewerage infrastructure (Part 6- Details Strategy).
- That further residential subdivision or redevelopment of land in Hat Head was suspended for several years in accordance with the development control plan (now the Kempsey Development Control Plan 2013 Chapter F2: Hat Head) until arrangements were made for the successful functioning of the reticulated sewerage scheme (Part 7- Servicing Analysis).

The *Kempsey Shire Local Growth Management Strategy Residential Component* (November 2013) and various development control plans have historically identified the constraints to development in Hat Head and defined the character of the village.

The capacity analysis undertaken in 2018 confirms the sewerage system remains a constraint to further development. Therefore, the only option is for Council to limit urban consolidation in Hat Head to a level commensurate with the existing sewerage scheme.

4.4 Section 9.1 Ministerial Directions

The planning proposal is consistent with 9.1 Directions, except for those discussed below:

2.2 Coastal Management

The proposal is inconsistent with this Direction as it includes land mapped in *State Environmental Planning Policy (Coastal Management) 2018* and does not include provisions which give effect to the objectives of the *Coastal Management Act 2016*, the *NSW Coastal Management Manual*, the *NSW Coastal Design Guidelines 2003* or any coastal management program or coastal zone management plan that applies to the land. The inconsistency is considered to be of minor significance and is justified because the planning proposal aims to limit further development in the areas to which the SEPP applies.

3.1 Residential Zones

This Direction applies because the planning proposal will affect land in an existing residential zone, and it does not broaden the choice of building types and locations

available in the housing market. Conversely, the planning proposal aims to limit development in Hat Head to a level commensurate to the capacity of the existing sewerage scheme. The inconsistency with this Direction is justified by the *Kempsey Shire Local Growth Management Strategy Residential Component (November 2010)*.

Direction 4.1 Acid Sulfate Soils

This Direction is applicable because the land contains acid sulfate soils and the planning proposal does not consider the *Acid Sulfate Soils Planning Guidelines*. As the planning proposal will not facilitate an intensification of land uses and the Kempsey Local Environmental Plan 2013 contains provisions to address acid sulfate soils at development application stage, the inconsistency is minor and justified.

Direction 4.4 Planning for Bushfire Protection

This Direction is relevant as the proposal applies to land that is bushfire prone. The Direction provides that the Council must consult with the Commissioner of the NSW Rural Fire Service (RFS). Consultation with the RFS is required after a Gateway Determination is issued. Until this consultation has occurred the inconsistency of the proposal with the Direction remains unresolved.

4.5 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

Council, as the local water supply authority has an obligation to operate a sewerage scheme to satisfy community expectation and maintain public health. Equally, they have an obligation to ensure that the operation of their infrastructure complies with environmental controls for management and disposal of effluent.

For this reason it is proposed to identify infrastructure capacity as a consideration for development in all Kempsey LGA villages and restrict future development in Hat Head to a level commensurate with the limitations of the scheme. The planning proposal will not have any detrimental social impacts to Hat Head or other villages in the Kempsey LGA.

5.2 Environmental

The Hat Head Sewerage Scheme is surrounded by the Hat Head National Park, with critical scheme infrastructure such as the sewerage treatment plant, sewerage pumping station, and effluent disposal area located adjacent to sensitive ecosystems.

The sewerage network was designed and constructed to cater for the existing village and approved development areas only, with no allowance for any increase in the density of development resulting from urban consolidation.

The scheme has strict environmental controls for the management and disposal of effluent due to its location. Should the scheme be overloaded and discharge untreated effluent into the sensitive ecological area, it would be harmful to the environment. The planning proposal aims to prevent scheme failure and will have no detrimental impact to the environment.

5.3 Economic

The economic impacts of the planning proposal relate to the potential impact on housing affordability and the cost incurred by Council for remediation should the scheme be overloaded and damage adjacent coastal ecosystems. These potential impacts are limited to Hat Head.

With regard to housing affordability, the planning proposal is unlikely to deliver more affordable housing in Hat Head because the aim is to discourage urban consolidation, which may in the future cause demand to exceed supply, and housing prices to increase. However, affordability is already likely to be marginal with a limited supply of land available (24 vacant lots out of 300 village lots) and development presently constrained by Council's development control plan. It is realistic to assume however that some members of the community may view that proposed changes as having a detrimental economic impact as a result of the loss of development potential.

It is also noted that the *Kempsey Shire Local Growth Management Strategy Residential Component (November 2010)* projects that any growth in Hat Head will be as a result of holiday accommodation, which is typically not an impetus for affordable housing.

5.4 Infrastructure

There will be no impact on State or regional infrastructure or the requirement for additional funding. With respect to local infrastructure, the planning proposal aims to ensure that future development within the Hat Head village does not compromise the capacity of the Hat Head Sewerage Scheme. The scheme is operated by Kempsey Shire Council, as the local water supply authority.

6. CONSULTATION

6.1 Community

Council have committed to undertake community consultation in accordance with the conditions specified in the Gateway Determination, as well as Kempsey Shire Council's Public Notification Policy.

Council have nominated that public exhibition of the planning proposal will include notification on the Kempsey Shire Council website, Department of Planning, Industry and Environment website and a notice in the newspapers that circulate in the LGA.

Information relating to the planning proposal will also be displayed at Kempsey Shire Council Customer Service Centre located on Tozer Street, West Kempsey and Libraries within the Shire.

A timeframe for public exhibition has not been nominated. In accordance with *Local Environmental Plans, a guide to preparing local environmental plans*, a period of 28 days is recommended as the proposed changes will affect all RU5 zoned land as well as the village of Hat Head.

6.2 Agencies

is recommended that Council consult with the following agencies:

- NSW Rural Fire Service

7. TIME FRAME

Council has nominated a timeframe of 11 months to complete the planning proposal. Having regard to the timeframe nominated by Council and that those contained within the *Local Environmental Plans, a guide to preparing local environmental plans*, 12 months is considered to be a practical and appropriate timeframe for this planning proposal. This timeframe also recognises that the planning proposal affects an entire village which contains a significant proportion of absent landowners.

8. LOCAL PLAN-MAKING AUTHORITY

The planning proposal is consistent or justifiably inconsistent with the State, regional and local planning framework and deals primarily with matters of local significance. It is therefore considered appropriate that Council be provided authorisation to act as the local making authority.

9. CONCLUSION

It is considered that the planning proposal has merit to proceed to Gateway for the following reasons:

- The planning proposal is a result of the Hat Head Sewerage Capacity Analysis Report which identifies the scheme is at full capacity in the areas surrounding the caravan park with overall limited capacity to facilitate further connections, and as critical scheme infrastructure is located adjacent to a sensitive National park ecosystem, there is limited opportunity for expansion;
- The planning proposal supports the Kempsey Shire Council Development Control Plan 2013 Chapter F2: Hat Head which highlights infrastructure capacity is a constraint to future development within the village;
- The planning proposal is not inconsistent with the *North Coast Regional Plan 2036* which aims to balance urban expansion and the protection of coastal and sensitive ecosystems; and
- The planning proposal is not contrary to the *Kempsey Shire Local Growth Management Strategy Residential Component (November 2010)*.

It is recommended that this planning proposal be supported, with conditions.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. **agree** that any inconsistencies with section 9.1 Directions 2.2 Coastal Management, 3.1 Residential Zones and 4.1 Acid Sulfate Soils are minor or justified; and
2. **note** that the consistency with section 9.1 Directions 4.4 Planning for Bushfire Protection is unresolved and will require justification.

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

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities:

- NSW Rural Fire Service
3. The time frame for completing the LEP is to be **12 months** from the date of the Gateway determination.
 4. Given the nature of the planning proposal, Council should be the local plan-making authority.



3-10-2019

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