

## Planning Services

IRF19/816

### Gateway determination report

<b>LGA</b>	Kempsey Shire
<b>PPA</b>	Kempsey Shire Council
<b>NAME</b>	Housekeeping Amendment No 27
<b>NUMBER</b>	PP_2018_KEMPS_004_00
<b>LEP TO BE AMENDED</b>	Kempsey Local Environmental Plan 2013
<b>ADDRESS</b>	Various
<b>DESCRIPTION</b>	<p>Amend the Kempsey LEP 2013 to:</p> <ul style="list-style-type: none"> <li>• remove land from the mapped Saltwater Urban Release Area at South West Rocks;</li> <li>• rezone land and amend the minimum lot size to accurately reflect the NSW National Parks estate; and</li> <li>• rezone part of Lot 332 DP1220901, Belle O'Connor Street, South West Rocks from R5 Large Lot Residential to R1 General Residential and amend the associated minimum lot size and height of building standards.</li> </ul>
<b>RECEIVED</b>	12 December 2018
<b>FILE NO.</b>	IRF18/6990
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## INTRODUCTION

### Description of planning proposal

The planning proposal seeks to make the following housekeeping amendments to the Kempsey Local Environmental Plan (LEP) 2013:

- Item 1      remove part of Lots 1 and 2 DP1229162, and the adjoining road reserve, from the mapped Saltwater Urban Release Area (URA) at Belle O'Connor Street, South West Rocks to streamline the assessment of future development applications for dwellings/buildings in the approved residential subdivision;
- Item 2      amend the zoning and minimum lot size mapping for various lots to accurately reflect the NSW National Parks estate at Limeburners Creek National Park and Willi Willi National Park; and

- Item 3 rezone part of Lot 332 DP1220901, Belle O'Connor Street, South West Rocks from R5 Large Lot Residential to R1 General Residential to correct a minor mapping anomaly and amend the minimum lot size from 1ha to 500m<sup>2</sup> and the height of buildings to 8.5m (currently nil).

### Site description and existing planning controls

#### Item 1

The area proposed to be removed from the Saltwater URA is generally clear of vegetation and is approximately 1.7ha in size. The land is shown as stage 1A in Figure 1. The URA adjoins a golf course to the west, vacant residential land to the east and south, and a sewerage treatment plant and environmental lands to the north (Figures 2 and 3, next page).

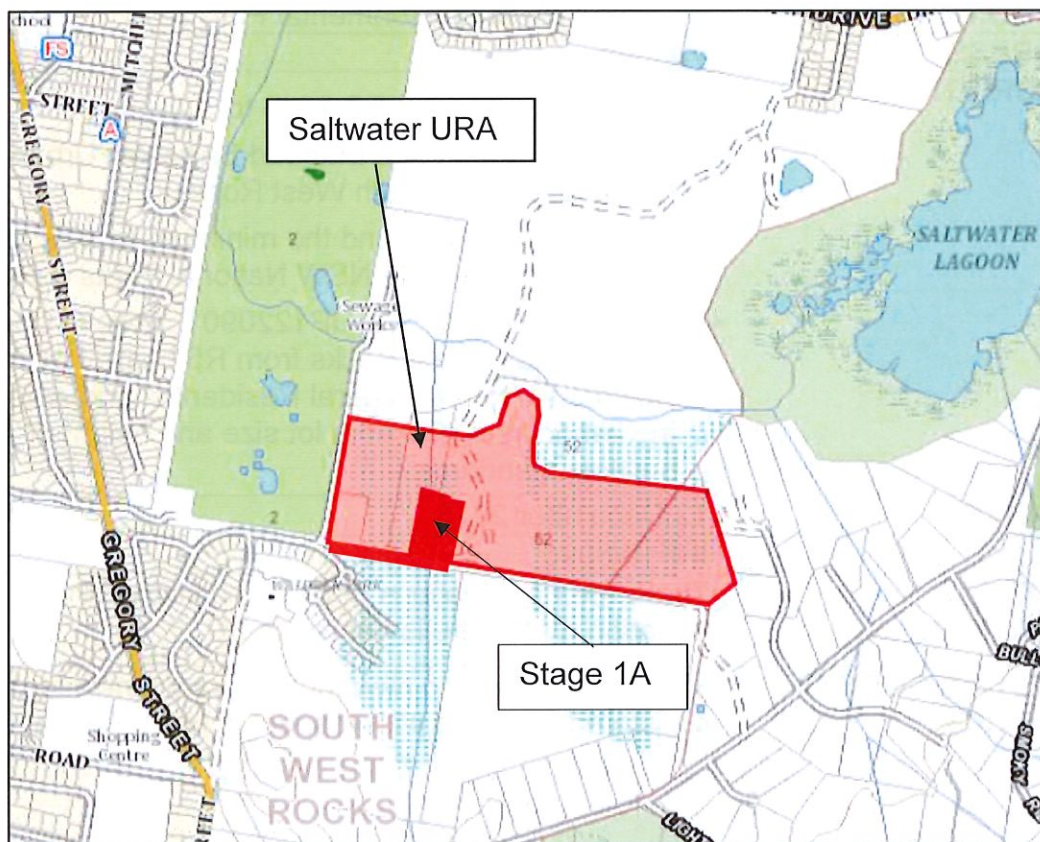


Figure 1: URA showing stage 1A.

The subject site is zoned R1 General Residential, with a minimum lot size of 500m<sup>2</sup> and a total building height of 8.5m. A 269-lot residential subdivision comprising 11 stages has been approved across the Saltwater URA under the former Part 3A of the *Environmental Planning and Assessment Act 1979*.

Clause 6.3 of the Kempsey LEP 2013 applies to the land and requires a development control plan (DCP) to be in place before development consent can be granted for any development (i.e. dwellings) in the approved subdivision.





Figure 2: Adjoining land uses.

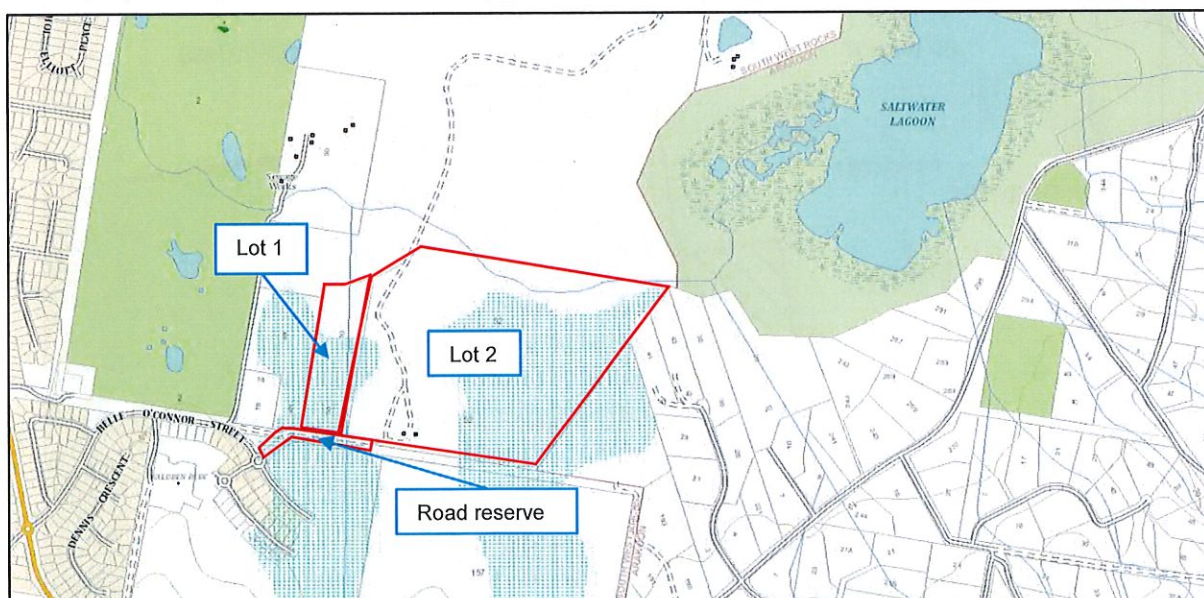


Figure 3: Lot 1, Lot 2 and road reserve for Belle O'Connor Street, South West Rocks.

## Item 2

The current and proposed zoning of the affected areas within and adjoining Limeburners Creek National Park (Figure 4, next page) and Willi Willi National Park (Figure 5, page 6) is shown in Table 1 (next page). The land to be rezoned E1 National Parks and Nature Reserves in Willi Willi National Park is heavily vegetated and is



surrounded by a mixture of national park and rural lands. The land adjoining Limeburners Creek National Park to be rezoned RU2 Rural Landscape is cleared, surrounded by the National Park, and was formerly used for an extractive industry.

Table 1: Current and proposed zoning and minimum lot size for Limeburners Creek and Willi Willi National Parks.

Limeburners Creek National Park		
Lot/DP	Current Zone/Min Lot Size	Proposed Zone/Min Lot Size
8/754441	E1-National Parks/Nil	Portion (see Figure 5 below) to be amended to RU2-Rural Landscape/40ha
*108/754441	E1-National Parks/Nil	E1-National Parks/Nil
*186/754441	E1-National Parks/Nil	E1-National Parks/Nil
Willi Willi National Park		
1/594173	E3-Env Management/RU2-Rural Landscape/40ha	E1-National Parks and Nature Reserves/Nil
42/752424	E3-Env Management/RU2-Rural Landscape/40ha	E1-National Parks and Nature Reserves/Nil
43/752424	E3-Env Management/RU2-Rural Landscape/40ha	E1-National Parks and Nature Reserves/Nil
49/752424	E3-Env Management/RU2-Rural Landscape/40ha	E1-National Parks and Nature Reserves/Nil
113/752431	E3-Env Management/RU2-Rural Landscape/40ha	E1-National Parks and Nature Reserves/Nil
114/752431	E3-Env Management/RU2-Rural Landscape/40ha	E1-National Parks and Nature Reserves/Nil

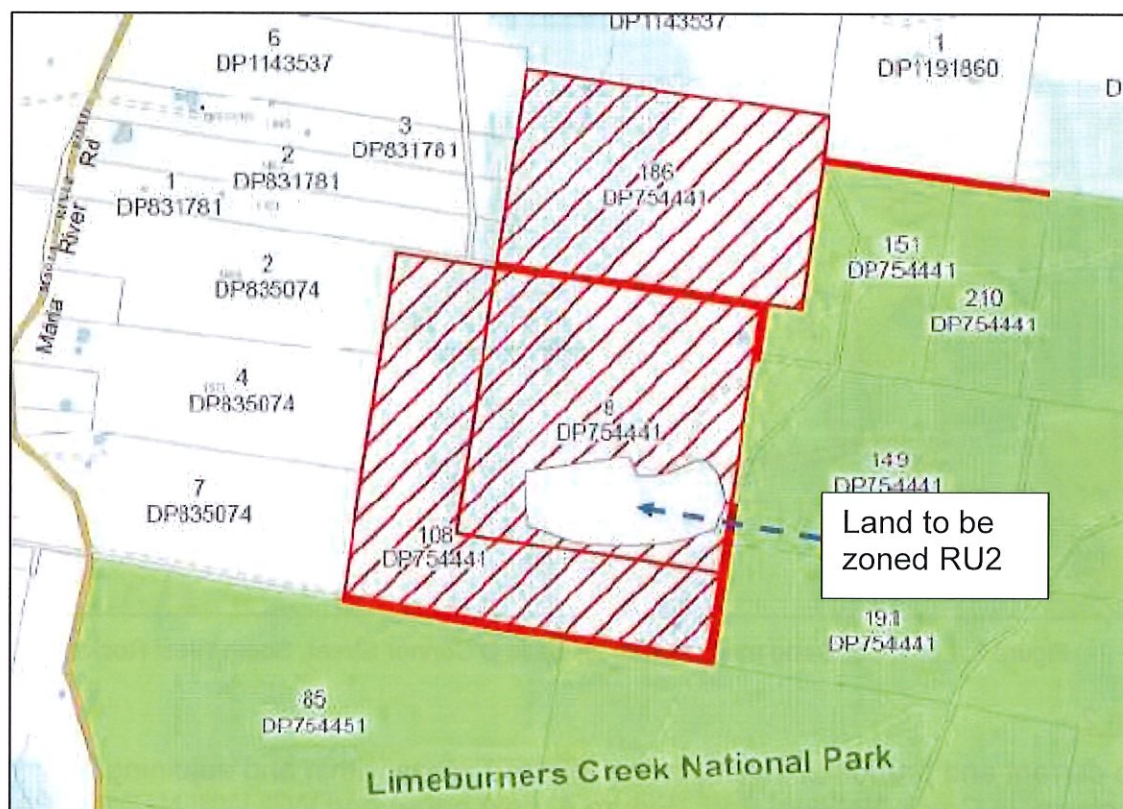


Figure 4: Portion of Lot 8 DP754441 (identified above) to be amended as per Table 1.





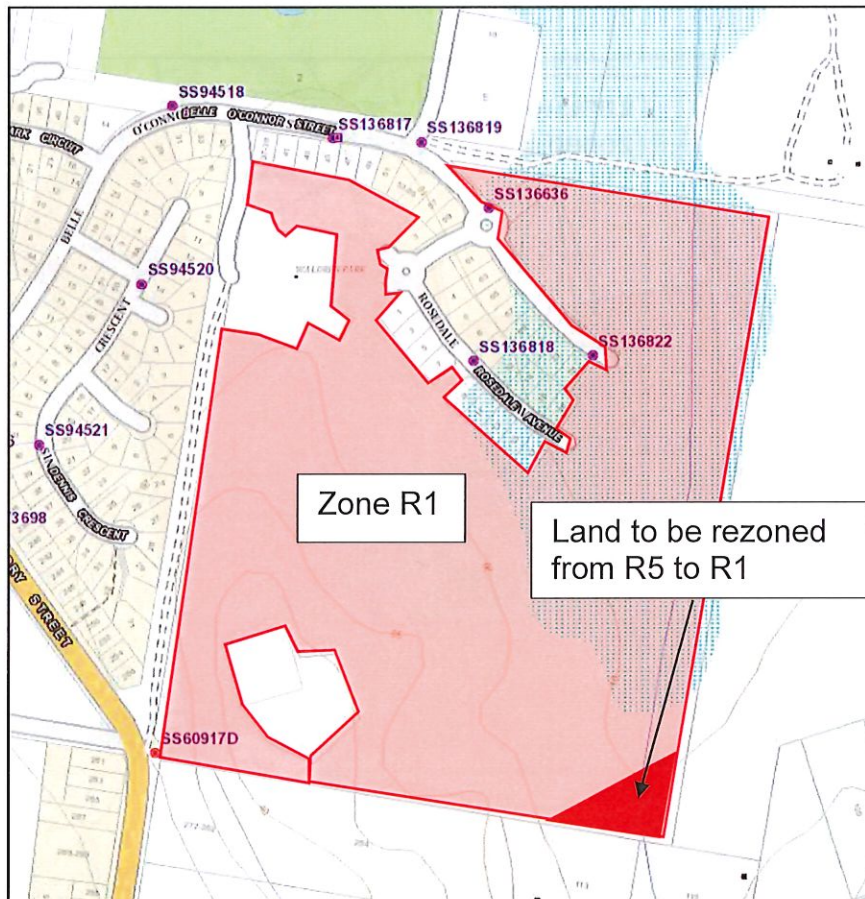


Figure 6: Item 3 – Lot 332 DP1220901, Belle O'Connor Street.



Figure 7: Subject site.



### **Summary of recommendation**

The planning proposal seeks to make various housekeeping amendments to address issues that have been identified during the operation of the Kempsey LEP 2013. The changes are considered reasonable and necessary to ensure the effective and efficient operation of the LEP, and the proposal is supported subject to conditions.

## **PROPOSAL**

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### **Objectives or intended outcomes**

The planning proposal has adequately outlined the objectives and intended outcomes. The intent of the planning proposal is to make various housekeeping amendments.

### **Explanation of provisions**

The planning proposal provides an appropriate explanation of the proposed LEP amendments required to implement the objectives and intended outcomes.

### **Mapping**

The planning proposal includes mapping, which identifies the location and current and proposed planning controls applying to each housekeeping item. These are considered adequate for exhibition purposes.

## **NEED FOR THE PLANNING PROPOSAL**

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The planning proposal has not resulted from any strategic study or report and is the result of issues that have been identified during the operation of the Kempsey LEP 2013. The planning proposal to amend the LEP is considered to be appropriate and necessary for the following reasons:

### Item 1

The land is part of an approved 269-lot residential subdivision comprising 11 stages under the former Part 3A of the *Environmental Planning and Assessment Act 1979*. The land is also mapped as a URA under the Kempsey LEP 2013 to ensure appropriate consideration of infrastructure and urban design matters is undertaken as part of the development approval process.

In accordance with clause 6.3 of the Kempsey LEP 2013, development in a URA cannot be considered unless a DCP for the land addressing the matters set out in that clause has been prepared.

A DCP has not yet been prepared for the URA and Council believes one is no longer necessary for stage 1 as:

- all necessary infrastructure and urban design issues for the release area have been adequately addressed through the existing subdivision approval; and
- Council's DCP 2013 provides appropriate guidelines for future development in the subdivision.

The removal of stage 1A from the URA is therefore needed to streamline the process for the future dwellings in the subdivision, which is being delayed due to the absence of a DCP.

## Item 2

The rezoning of the subject lots in Item 2 is needed to accurately reflect the National Parks estate in the Kempsey LEP 2013. The required changes are:

- zoning additional land E1 National Parks and Nature Reserves that was recently added to Willi Willi National Park; and
- zoning land RU2 Rural Landscape, which is currently incorrectly shown as being part of Limeburners Creek National Park.

Council has received a Notice of Reservation of a National Park issued under the provisions of section 30A(1) of the *National Parks and Wildlife Act 1974* confirming the changes to the National Parks estate in the LGA.

## Item 3

The purpose of Item 3 is to correct a minor mapping anomaly and align the residential zoning and associated planning controls for Lot 322 with the cadastre boundary. This is needed to allow for residential development, which is consistent with the remainder of the subject lot.

## **STRATEGIC ASSESSMENT**

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### **State**

The planning proposal does not contain any matters of state or regional significance. The issue of potential state infrastructure for the Saltwater URA is discussed below.

### **Regional**

The proposal is consistent with the North Coast Regional Plan 2036 except in relation to Action 2.1, which requires that development be focused towards areas of least biodiversity sensitivity. The land in Item 3 to be rezoned from R5 Large Lot Residential to R1 General Residential is mapped as potential high environmental value under the regional plan (Figure 8).

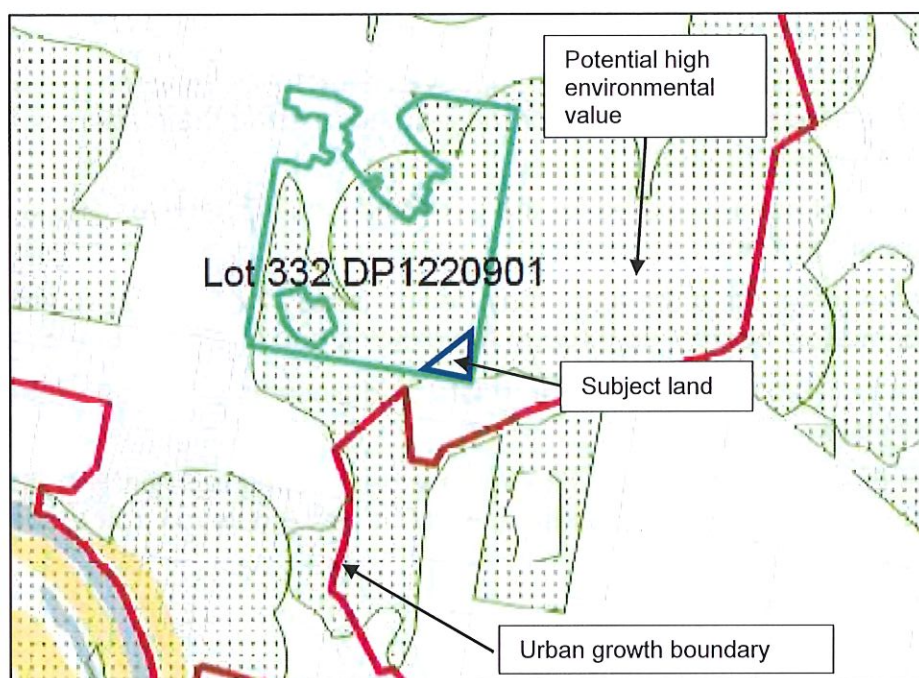


Figure 8: High environmental value and urban growth areas.



This inconsistency is considered to be of minor significance as:

- the land is within the identified regional plan urban growth boundary for South West Rocks;
- the land is cleared and contains only a small number of mature trees;
- the land can be developed for large-lot residential purposes under the current zoning; and
- any environmental issues that may arise can be appropriately considered and addressed at the development application stage.

### **Local**

The planning proposal is considered to be consistent with the provisions of the Macleay Valley 2036 Community Strategic Plan June 2017 and the residential component of the Kempsey Local Growth Management Strategy (for Item 3) endorsed by the Department in 2011.

### **Section 9.1 Ministerial Directions**

The proposal is considered to be consistent with all applicable section 9.1 Directions except the following:

#### 1.5 Rural Lands

The proposed zoning and minimum lot size changes to the NSW National Parks estate associated with Item 2 are inconsistent with this Direction as they are unable to satisfy all the rural planning principles and/or rural subdivision principles under State Environmental Planning Policy (Rural Lands) 2008. This inconsistency is considered to be of minor significance as no loss of viable agricultural land will result and the changes will more accurately reflect the current National Parks estate.

#### 2.1 Environment Protection Zones

Item 2 is inconsistent with this Direction as it proposes to reduce the environmental protection standards for land by rezoning part of Lot 8 DP754441 adjoining Limeburners Creek National Park from E1 National Parks and Nature Reserves to RU2 Rural Landscape. This inconsistency is considered to be of minor significance as the land is not part of the National Park and is incorrectly zoned as E1 National Parks and Nature Reserves.

#### 4.1 Acid Sulfate Soils

Item 3 is inconsistent with this Direction as it proposes an intensification of land uses on class 4 acid sulfate soils by rezoning land from R5 Large Lot Residential to R1 General Residential and is not supported by an acid sulfate soils study. The inconsistency is considered to be of minor significance as the Kempsey LEP 2013 contains appropriate provisions that allow this matter to be considered and appropriately addressed at the development application stage.

#### 4.4 Planning for Bushfire Protection

The proposal is potentially inconsistent with this Direction as Items 1 and 3 contain land that has been mapped as bushfire prone. The Direction requires Council as the planning proposal authority to consult the NSW Rural Fire Service after a Gateway determination has been issued. Until this consultation has occurred, the consistency of the proposal with this Direction remains unresolved.

### 5.10 Implementation of Regional Plans

The proposal is inconsistent with this Direction as discussed above in regard to the North Coast Regional Plan 2036. The inconsistency is considered to be of minor significance for the reasons outlined above.

### 6.2 Reserving Land for Public Purposes

The proposal is inconsistent with this Direction as it will alter the amount of land zoned and reserved for public purposes (E1 National Parks and Nature Reserves) without the Secretary's approval. The inconsistency is considered to be of minor significance as the changes are in accordance with the changes requested by the Office of Environment and Heritage as the relevant acquiring authority and will more accurately reflect the current NSW National Parks estate in the Kempsey LEP 2013.

### **State environmental planning policies (SEPPs)**

The planning proposal is considered to be consistent with all relevant SEPPs, except SEPP (Rural Lands) 2008. The inconsistency is considered to be of minor significance as discussed above in relation to section 9.1 Direction 1.5 Rural Lands.

## **SITE-SPECIFIC ASSESSMENT**

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### **Social/economic**

No adverse socioeconomic impacts have been identified or are anticipated as a result of the proposal.

### **Environmental**

While no adverse environmental impact is anticipated as a result of the proposal, it is recommended that consultation with the Office of Environment and Heritage – National Parks and Wildlife Service be undertaken to confirm the suitability of the proposal.

### **Infrastructure**

No new/additional local or state infrastructure has been identified as being needed as a result of the proposal.

The removal of Saltwater Stage 1A from the Kempsey LEP 2013 URA map will remove the ability to consider satisfactory arrangements for state public infrastructure under clause 6.1 of the LEP. No objection is raised to this removal as:

- all relevant state infrastructure agencies were consulted at the time of the rezoning and it was determined that no state infrastructure would be necessary or sought; and
- clause 6.1 only applies to residential subdivisions and the land has received residential subdivision approval under Major Project MP 08\_0167.

### **Heritage**

No items of heritage significance have been identified as being potentially impacted by the planning proposal.

## **CONSULTATION**

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### **Community**

The proposal is considered to be low impact and a 14-day community consultation period is appropriate.



## **Agencies**

It is recommended that Council consult the following agencies:

- NSW Rural Fire Service; and
- NSW Office of Environment and Heritage – National Parks and Wildlife Service.

## **TIME FRAME**

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The planning proposal includes a timeline, which indicates finalisation in May 2019 based on a Gateway determination being issued in November 2018.

Given the planning proposal contains a range of changes to the LEP, it is considered appropriate that a nine-month time frame from the date of the Gateway determination be given to complete the proposal. Amendments to the planning proposal to update the timeline will be required prior to exhibition.

## **LOCAL PLAN-MAKING AUTHORITY**

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The proposal is consistent or justifiably inconsistent with the state and regional planning framework and primarily addresses matters of local significance. It is considered appropriate that Council be authorised as the local plan-making authority in relation to the proposal.

## **CONCLUSION**

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The planning proposal seeks to make various housekeeping amendments to address issues that have been identified during the operation of the Kempsey LEP 2013. The changes are considered reasonable and necessary to ensure the effective and efficient operation of the LEP and the proposal is supported subject to conditions.

## **RECOMMENDATION**

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It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 1.5 Rural Lands, 2.1 Environment Protection Zones, 4.1 Acid Sulfate Soils, 5.10 Implementation of Regional Plans and 6.2 Reserving Land for Public Purposes are justified in accordance with the terms of the Directions; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Minister for Planning 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 14 days.
2. Consultation is required with the following public authorities:
  - NSW Rural Fire Service; and
  - NSW Office of Environment and Heritage – National Parks and Wildlife Service.
3. The time frame for completing the LEP is to be nine months from the date of the Gateway determination.

4. Given the nature of the planning proposal, Council should be authorised as the local plan-making authority.
5. Prior to exhibition, the planning proposal is to be amended to update the time frame to accurately reflect the Gateway determination and expected completion date.



7/2/19

**Craig Diss**  
Team Leader, Northern



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**Jeremy Gray**  
Director Regions, Northern  
Planning Services

Assessment officer: Melissa Thomson  
Planning Officer, Northern  
Phone: 5778 1486