



Mr David Rawlings  
General Manager  
Kempsey Shire Council  
PO Box 78  
West Kempsey NSW 2440

Our ref: PP\_2017\_KEMPS\_008\_00 (OBJ17/04505)

Dear Mr Rawlings

### **Planning proposal to amend Kempsey Local Environmental Plan 2013**

I am writing in response to your Council's letter dated 8 March 2017 and additional information received 20 November 2017 requesting a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 (the Act) in respect of the planning proposal to amend Kempsey LEP 2013 by changing the minimum lot size for Lot 13 DP 878784, Seams Road, Kundabung from 40 hectares to part 10 and part 20 hectares to enable subdivision of the land.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

Council will still need to obtain the agreement of the Department's Secretary to comply with the requirements of relevant S117 Directions 2.1 Environmental Protection Zones, 2.3 Heritage Conservation and 4.4 Planning for Bushfire Protection. Council should ensure this occurs prior to the plan being made.

Plan making powers were delegated to councils by the Minister in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan (LEP) is to be finalised within 12 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning and Environment for administrative purposes.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, I have arranged for Mr Paul Garnett of the Department's regional office to assist you. Mr Garnett can be contacted on (02) 6641 6607.

Yours sincerely



5-12-2017.

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

Encl:  
Gateway Determination  
Written Authorisation to Exercise Delegation  
Attachment 5 – Delegated Plan Making Reporting Template.

## Gateway Determination

**Planning Proposal (Department Ref: PP\_2017\_KEMPS\_008\_00):** to change the minimum lot size for Lot 13 DP 878784, Seams Road, Kundabung from 40 hectares to part 10 and part 20 hectares to enable subdivision of the land.

I, the Director Regions, Northern, at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act, 1979* (the Act) that an amendment to the Kempsey Local Environmental Plan (LEP) 2013 to change the minimum lot size for Lot 13 DP 878784, Seams Road, Kundabung from 40 hectares to part 10 and part 20 hectares to enable subdivision of the land should proceed subject to the following conditions:

1. Prior to community consultation the planning proposal is to be amended as follows:
  - a. the planning proposal is to be amended to reflect that access from Old Coast Road to Lot 13 will be provided by a 20m wide access handle across Lot 43 instead of a right of way;
  - b. a map that also shows the proposed minimum lot sizes is to be included in Part 4 of the planning proposal;
  - c. figure 7 on page 11 of the planning proposal is to be reinstated;
  - d. a project timeline is to be included in Part 6 of the planning proposal;
2. Prior to community consultation the following additional investigations are to be undertaken and are to be included in the material used for community consultation. The planning proposal is to be amended as necessary should these investigations conclude changes to the proposal are necessary:
  - a. an Aboriginal cultural heritage study for the site and the location of the proposed 20m wide vehicular access across Lot 43 DP 592703;
  - b. an additional flora and fauna assessment of the route of the agreed 20m wide future access across Lot 43 DP592703 from the site to Old Coast Road that confirms that the clearing of the access way will not have any significant adverse ecological impact. If the route of the proposed access way needs to be realigned the planning proposal is to be amended as necessary; and
  - c. a preliminary contaminated land assessment for the proposed dwelling envelopes, including soil sampling as considered appropriate by the relevant planning authority.
3. Consultation is required with the following public authorities/organisations under section 56(2)(d) of the Act and to comply with the requirements of relevant Section 117 Directions:
  - NSW Office of Environment and Heritage;
  - NSW Rural Fire Service;



- Forestry Corporation of NSW; and
- The Local Aboriginal Land Council.

Each public authority/organisation is to be provided with a copy of the Planning Proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

The consultation with NSW Office of Environment and Heritage, NSW Rural Fire Service and Forestry Corporation of NSW is to occur after the additional site investigations have been completed and prior to community consultation.

- Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
  - the planning proposal is classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning and Environment 2016) and must be made publicly available for a minimum of **14 days**; and
  - the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016).
- Before the proposed amendment to the Kempsey LEP 2013 to amend the minimum lot size for Lot 13 DP 878784 is made, the subdivision between Lot 13 DP 878784 and Lot 43 DP 592703 to create a 20m wide access handle to provide access between Old Coast Road and Lot 13 DP 878784 is to be finalised and the plan of subdivision registered.
- A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
- The timeframe for completing the LEP is to be **12 months** following the date of the Gateway determination.

Dated **5** day of **DECEMBER** 2017.



**Jeremy Gray**  
**Director Regions, Northern**  
**Planning Services**  
**Department of Planning and**  
**Environment**

**Delegate of the Minister for Planning**



## WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Kempsey Shire Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

| Number               | Name   |
|----------------------|--|
| PP_2017_KEMPS_008_00 | Planning proposal to change the minimum lot size for Lot 13 DP 878784, Seams Road, Kundabung from 40 hectares to part 10 and part 20 hectares to enable subdivision of the land. |

In exercising the Minister's functions under Section 59 of the EP&A Act, the Council must comply with the Department's "*A guide to preparing local environmental plans 2016*" and "*A guide to preparing planning proposals 2016*".

Dated *5 DECEMBER* 2017

**Jeremy Gray**  
Director Regions, Northern  
Planning Services  
Department of Planning and Environment

**Delegate of the Secretary  
of the Department of Planning and Environment**

## Attachment 5 – Delegated plan making reporting template

### Reporting template for delegated LEP amendments

#### Notes:

- Planning proposal number will be provided by the Department of Planning and Environment following receipt of the planning proposal
- The Department of Planning and Environment will fill in the details of Tables 1 and 3
- RPA is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the RPA should add additional rows to **Table 2** to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the Department of Planning and Environment with the RPA's request to have the LEP notified

**Table 1 – To be completed by Department of Planning and Environment**

| Stage   | Date/Details         |
|---|----------------------|
| Planning Proposal Number                            | PP 2017_KEMPS_008_00 |
| Date Sent to DP&E under s56                         | 20 November 2017     |
| Date considered at LEP Review Panel (if applicable) | N/A                  |
| Gateway determination date                          | 5 DECEMBER 2017      |

**Table 2 – To be completed by the RPA**

| Stage   | Date/Details | Notified Reg Off |
|---|--------------|------------------|
| Dates draft LEP exhibited   |              |                  |
| Date of public hearing (if held)  |              |                  |
| Date sent to PCO seeking Opinion  |              |                  |
| Date Opinion received   |              |                  |
| Date Council Resolved to Adopt LEP  |              |                  |
| Have changes been made to the draft LEP after obtaining final PC opinion? | YES NO       |                  |
| Date LEP made by GM (or other) under delegation                           |              |                  |
| Date sent to DPE requesting notification                                  |              |                  |

**Table 3 – To be completed by Department of Planning and Environment**

| Stage                         | Date/Details |
|-------------------------------|--------------|
| Notification Date and details |              |

#### Additional relevant information: