



PGF001653

Ref T5-115
IS:IS

DEPARTMENT OF PLANNING
LOCKED BAG 9022
GRAFTON NSW 2460

27 November 2012

Received

30 NOV 2012

11/09009
North Coast

Dear Sir/Madam,

RE: REQUEST TO MAKE PLAN FOR PLANNING PROPOSAL
(Department Ref: PP_2011_KEMPS_002_00)
SUBJECT: DRAFT KEMPSEY LEP AMENDMENT 115
PROPERTY: Lot 82 DP263591 – NEW ENTRANCE ROAD, SOUTH WEST ROCKS

Regarding the above Planning Proposal, the exhibition period finished on Wednesday 20 June 2012. The Planning Proposal was reported to the Council meeting held on 20 November 2012 and the following resolution was made:

"That the Kempsey Local Environmental Plan 1987 Amendment No. 115 be sent to the Department of Planning and Infrastructure requesting that the Minister make the Plan."

A copy of the following is attached:

- a) Minutes of the Council Meeting held on 17 May 2011, where Council resolved to prepare the plan.
- b) Minutes of the Council meeting held on 20 November 2012, including Council's responses to comments received from the notified agencies.
- c) Stormwater Study and Management Plan.
- d) Acoustic Study.
- e) Bushfire Hazard Report.

In accordance with this resolution, Council requests the Department of Planning and Infrastructure to draft and finalise the LEP, in accordance with section 59 of the *Environmental Planning and Assessment Act 1979*. Council requests a draft of the LEP Instrument for review, prior to the LEP being made.

Thank you for your consideration of this matter.

If you have any enquiries in relation to this matter, please contact the undersigned on 6566 3200 or by email at ilija.susnja@kempsey.nsw.gov.au

Yours faithfully



Ilija Susnja
TOWN PLANNER
SUSTAINABLE ENVIRONMENT

Objection	Planning Comment
7 Proposed development is too close to the memorial gardens.	intensified and therefore no road upgrade should be required. 7 The proposal is outside of the bounds of the memorial garden. Due to the high levels of visual surveillance provided by Middleton Street, it is considered unlikely that there will be any additional risk to the memorial gardens posed by this development.
8 A toilet facility is currently available approx 35 metres from existing oval.	8 The proposed facility will not be open to the general public as the primary use of the facilities is to support the function of the Kempsey Cricket Club.
9 No landscaping has been specified on proposed application.	9 The recommended conditions of consent require a landscaping plan to be provided to Council including a 2.5 metre buffer on the northern and western sides of the proposed building.
10 Large mature trees in the vicinity are to be removed.	10 Revised plans ensure no felling of trees is required as part of this development. This is also reflected in the recommended conditions of consent.

1.7.2 Planning Proposal for Residential Rezoning
File: T5-115 {Folio No. 450704}

SUMMARY

Reporting that Council has received a Planning Proposal to rezone land from 7(d) (Scenic Protection Zone) to part 2(a) (Residential "A" Zone) and part 7(d) (Scenic Protection Zone) at Lot 82 DP263591, New Entrance Road, South West Rocks.

Applicant: Hopkins Consultants Pty Ltd
PO Box 1556
Port Macquarie NSW 2444
Subject Property: Lot 82 DP263591,
New Entrance Road, South West Rocks
Zone: 7(d) (Scenic Protection Zone)

Proposed Development

Council, as a Relevant Planning Authority (RPA), has received a planning proposal, prepared by Hopkins Consultants Pty Ltd, seeking an amendment to the Kempsey Local Environment Plan (KLEP) 1987.

2011. 200 RESOLVED:

Moved: Cl. Hayes

Seconded: Cl. Campbell

That planning proposal T5-115 be forwarded to the Department of Planning for a Gateway Determination pursuant to Section 56 of the Environmental Planning and Assessment Act 1979.

A Division resulted in the following votes.

F = Voted For

A = Voted Against

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

RECOMMENDATION IMPLICATIONS

Environmental: Preliminary investigations and studies indicate that residential use of the site is not likely to have any negative environmental impacts. Further consideration of environmental impacts may be required as part of a gateway determination.

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

- New residential land adjacent to existing residential land reduces fragmentation and land use conflicts, as well as creating a coherent and more complete neighbourhood.

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

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

Policy or Statutory: The proposed residential use of the land is consistent with Council's Draft Residential Component of the Local Growth Management Strategy. The proposed rezoning is consistent with the Mid North Coast Regional Strategy.

REPORT DETAILS

Background

The Planning Proposal is for the rezoning of part of the subject land, being Lot 82 DP263591, New Entrance Road, South West Rocks, from 7(d) (Scenic Protection Zone) to 2(a) (Residential "A" Zone). The subject land is currently vacant and clear of vegetation, with the exception of a small area of forested vegetation in the north western corner of the lot. The subject site is located on the western fringe of South West Rocks, adjacent to the Macleay River. Existing residential land lies to the north and east of the site. To the west of the site is the Macleay River. Land to the south of the site is forested land located in zone 7(d) – Scenic Protection Zone.

A location map, existing zoning map and proposed zoning map are appended (Appendix C - Page SE8).

The site is located within a bushfire prone area and is located within the coastal area referred to in State Environmental Planning Policy No.71 – Coastal Protection. The site adjoins a wetland referred to in State Environmental Planning Policy No.14 - Coastal Wetlands. No other major constraints affect the land. An Aboriginal Heritage Information Management Systems (AHIMS) search and aboriginal archaeological survey show there are no aboriginal heritage items on site.

Relationship to Strategic Planning Framework

The following is the relevant strategic planning framework applicable to the planning proposal.

North Coast Regional Environmental Plan 1998 (NCREP)

The Planning Proposal provides justification for the proposed rezoning conflict with clause 29 of the NCREP, which states that:

"...A draft local environmental plan should...

- (b) not alter or remove existing environmental protection, scenic protection or escarpment preservation zonings or controls within them, without undertaking a detailed analysis to determine whether there will be adverse environmental effects resulting from such action;..."*

The Planning Proposal includes a detailed visual analysis to demonstrate that the subject land is lower and less visually prominent than nearby land already zoned 2(a) Residential. Consequently, this more detailed visual analysis indicates that the zone boundary between Zone 7(d) – Scenic Protection and Zone 2(a) – Residential A, would be more appropriate in the proposed location.

The information contained throughout the remainder of the Planning Proposal addresses the remainder of the relevant sections of the NCREP including conservation of the environment, urban development, flood liable land, development adjacent to a waterway and prevention of sterilisation of known resources.

Mid North Coast Regional Strategy

The *Mid North Coast Regional Strategy* (MNCRS) outlines the general principles and objectives for the management of sustainable growth in the region to 2031. The Planning Proposal is generally consistent with the principles contained within the MNCRS.

In addition, the MNCRS identifies preferred growth areas for each sub-region. The subject land is not identified in the Growth Area Map No.6 – Kempsey as being within a "Proposed Future Urban Release" area. However, the subject land adjoins the Proposed Future Urban Release area and this rezoning application was submitted to correct the omission of part of the site from the MNCRS. The MNCRS includes provision for reasonable adjustment of a growth area boundary, through the rezoning process, with variations to be determined through a joint analysis undertaken between the Department of Planning and the local Council.

Draft Kempsey Shire Council Local Growth Management Strategy Residential Component 2009

Under the draft *Kempsey Shire Council Local Growth Management Strategy Residential Component* (KLGMS), the subject land is located adjacent to the South West Rocks growth area and part of the site is identified as a New Release Area. The Strategy is awaiting approval from the Department of Planning.

Kempsey Residential Land Release Strategy 1997

Part of the subject land is identified for release under the existing Residential Land Release Strategy 1997. The portion for release only applied to part of the proposed residential rezoning.

State Environmental Planning Policy No.44 – Koala Habitat Protection

The proposed rezoning will retain all possible feed trees within Zone 7(d) – Scenic Protection and it is considered that a Flora and Fauna Assessment is not necessary. The area sought for inclusion in the proposed Residential Zone contains no trees at all. Consequently, the proposed rezoning does not compromise the SEPP.

State Environmental Planning Policy No.14 – Coastal Wetlands

This SEPP applies as part of the Macleay River that adjoins the subject land and is identified as a Coastal Wetland. This SEPP will apply to future development applications that involve clearing, constructing a levee, draining or filling the land. It is considered that the proposed rezoning will not compromise the ability of future development applications to comply with the requirements of this SEPP.

Management of stormwater discharge and impacts on the water quality of coastal wetlands and the Macleay River are discussed in a later section of this report.

State Environmental Planning Policy No.71 – Coastal Protection

The site is located within the Coastal Zone under SEPP71. The Planning Proposal includes a detailed response to the considerations that the SEPP requires to be considered in the preparation of Draft LEPs. The Planning Proposal demonstrates that the proposed rezoning will satisfy the aims of the policy and addresses the matters for consideration to be included in the preparation of LEPs. Items of note include:

- Access to the foreshore to be maintained by retention of the riparian area in Zone 7(d) – Scenic Protection;
- An Aboriginal Heritage Information System (AHIMS) search and Aboriginal Archaeological Survey have determined that the site is not of significance to Aboriginal culture;
- Rezoning of part of the subject land will not detrimentally impact on the scenic qualities of the site; and
- Preservation of the marine environment through requiring connections to the sewer and ensuring that proper stormwater quality measures are in place for any subdivision that may occur.

The following table provides an assessment against the “matters for consideration” that the SEPP requires Council to consider when assessing Planning Proposals.

Requirement	Comment
(a) the aims of this Policy set out in clause 2.	The proposal is not considered contrary to the aims and objectives as set out in clause 2 of the SEPP.

(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained.	The proposal will not interfere with any existing public access to the foreshore.
(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability.	It is noted that due to the steep bank on the western side of the property, no direct practical access to the foreshore will be possible from the subject land. That is, there are no opportunities to provide new access to the foreshore from the subject land.
(d) the suitability of development given its type.	The planning proposal provides the following response: <i>The proposed rezoning will facilitate future residential development of the land, probably standard residential subdivision with single dwellings constructed. The local housing controls for this part of South West Rocks set a two storey height limit and the subject land would be incorporated under those development control provisions.</i>
(e) any detrimental impact that development may have on the amenity of the coastal foreshore.	The future residential subdivision and development will not have a detrimental impact on the wetland and waterway as it will not be visually intrusive, will retain existing significant vegetation on the site, and will have no impact on beach environments.
(f) the scenic qualities of the New South Wales coast.	The development will not detract from the scenic qualities of the New South Wales Coast line. The Planning Proposal includes a Visual Analysis that indicates that future development of the land will have less visual exposure than existing residential development in the neighbourhood.
(g) measures to conserve animals (within the meaning of the <u>Threatened Species Conservation Act 1995</u>) and plants (within the meaning of that Act).	The site will not require clearing and therefore will not impact upon threatened species of flora or fauna.
(h) measures to conserve fish (within the meaning of Part 7A of the <u>Fisheries Management Act 1994</u>) and marine vegetation (within the meaning of that Part).	There will be no impacts on marine ecosystems from the proposal, subject to a satisfactory stormwater quantity and quality management plan being developed for the site.

(i) existing wildlife corridors and the impact of development on these corridors.	There will be no impact upon any wildlife corridor, as the proposed rezoning and subsequent subdivision will not rely on tree clearing.
(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards.	There are no perceived impacts upon coastal process, due to the distance between the subject land and the coast.
(k) measures to reduce the potential for conflict between land-based and water-based coastal activities.	The proposed residential zone will be physically separated from the coast wetland by land to be retained within Zone 7(d) – Scenic Protection Zone. In addition, the impacts of the proposal on water quality may be addressed by a stormwater quality and quantity management plan.
(l) measures to protect the cultural places.	There are no known places or items of cultural significance to the Aboriginal population within the subject land.
(m) likely impacts of development on the water quality of coastal waterbodies.	The Planning Proposal indicates that any future subdivision and development of the residentially zoned part of the site will need to comply with Australian Standards in relation to the quality of stormwater discharge. It is a recommendation of this report that a further stormwater quality and quantity management plan be developed to ensure that water quality will be maintained.
(n) the conservation and preservation of items of heritage, archaeological or historic significance.	There are no items of heritage, archaeological or historic significance known to exist on the subject site.
(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities.	The Planning Proposal states: <i>The proposed rezoning would achieve additional infill residential land supply, utilising existing services and infrastructure.</i>

(p) only in cases in which a development application in relation to proposed development is determined: (i) the cumulative impacts of the proposed development on the environment, and (ii) measures to ensure that water and energy usage by the proposed development is efficient.	The Planning Proposal indicates that subsequent development applications may comply with these requirements as follows: <i>No unacceptable cumulative impacts are anticipated in terms of the visual amenity of the area, the natural environmental conditions of the surrounding locality or the surrounding land uses.</i> <i>BASIX would apply to any subsequent dwelling applications.</i>
Clause 16. The consent authority must not grant consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.	The Planning Proposal indicates that any future subdivision and development of the residentially zoned part of the site will need to comply with Australian Standards in relation to the quality of stormwater discharge. It is a recommendation of this report that a further stormwater quality and quantity management plan be developed to determine the required water treatment measures.

The Planning Proposal does not include any detailed requirements for stormwater disposal. Issues concerning the quality of stormwater runoff are discussed in more detail in a later section of this report.

Section 117 Ministerial Directions

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

Direction No. 1.3 – Mining, Petroleum Production and Extractive Industries. One of the requirements of this Direction is for Council to ensure that a draft LEP does not allow uses that are likely to be incompatible with extracting materials. The subject land is located approximately 500m from Rudder's Quarry. Given the following reasons provided in the Planning Proposal, it is considered that the proposed rezoning will not affect the operation of the quarry and that this direction may not be applicable.

- There is existing residential development approximately 500m from the quarry;
- The quarry is used on an intermittent basis solely for the extraction of large pieces of rock (up to 10 tonnes) to be used in the repair of break walls and training walls; and
- Reports accompanying applications for houses on neighbouring properties and reports related to the operation of the quarry itself support reduced buffer distances down to 150m and suggest that blasting is not a common practice in the quarry as follows:

"The quarry is reserved for the supply of large armour (up to 10 tonnes) for breakwater repairs. This rock is generally not available from commercial

sources, as these operators generally blast their quarries to produce smaller rock suitable for crushing to produce aggregates for the commercial market."

- Council has accepted buffers of 250m and issued development consents for houses on lots adjacent to the quarry;
- Nuisance that may arise during any active phase is not long-lasting is off-set by extended periods of no use; and
- The quarry is being used for a recognised local benefit, being the repair or training and break walls, rather than for commercial gain.

Direction No.1.4 – Oyster Aquaculture requires councils to identify and consider any issues likely to lead to an incompatible use of land between oyster aquaculture and other land uses. The biggest issues in relation to preserve the oyster industry from development relate to preventing/minimising runoff drainage into the estuary with high animal faecal, fertiliser or chemical contamination (e.g. livestock, golf link, or turf farm).

Given the following factors, it is considered that the Planning Proposal will be consistent with this Direction:

- the proposed rezoning is for residential development;
- a riparian vegetation buffer will be maintained along the estuary;
- controls for septic treatment or requiring connection to a sewer are already in the current planning controls for residential development in Kempsey;
- Any subsequent residential development will be required to meet Australian standards and water quality targets. These are standard requirements for any residential subdivision, particularly one that adjoins public lands and water ways; and
- there is existing residential development and the proposal represents only a minor increase in residential development in the neighbourhood.

Direction 1.5 – Rural Lands applies when council prepares an LEP that will affect land within a rural or environment protection zone or changes the minimum lot size within any of these zones. The direction requires a Planning Proposal to be consistent with the Rural Planning Principles and the Rural Subdivision Principles listed in *SEPP (Rural Lands) 2008*. This direction applies insofar that it involves rezoning land in an environment protection zone to a residential zone. It is considered that the Planning Proposal is consistent with the Rural Planning Principles as it protects native vegetation by retaining the vegetated part of the site within Zone 7(d) – Scenic Protection Zone. The Planning Proposal report does not directly address the Rural Subdivision Principles, however it is considered that the Planning Proposal is consistent with this Direction as the proposal does consider the natural and physical constraints for the land in its planning for dwelling opportunities.

Direction No. 2.1 – Environmental Protection Zones requires councils preparing a draft LEP to protect and conserve environmentally sensitive areas. The Planning Proposal seeks to convert the majority of a site located in Zone 7(d) – Scenic Protection to residential. The justification for the conversion is based on a Visual Analysis and the findings of previous studies comprising the *Residential Land Release Strategy* and the *Draft Local Growth Management Strategy- Residential Component*. These previous studies indicate that the proposed rezoning was envisaged, subject to further studies and analysis. The Visual Analysis indicates that the part of the site proposed to be rezoned to Residential is less visually prominent than neighbouring land already zoned Residential. In this regard, it is considered that the Planning Proposal is consistent with this Direction.

Direction No. 2.2 – Coastal Protection applies to the Coastal Zone and requires a Planning Proposal to be consistent with the *NSW Coastal Policy: a Sustainable Future for NSW Coast 1997*, the *Coastal Design Guidelines 2003* and the *NSW Coastline Management Manual 1990*). The site is located in the Coastal Zone. The Planning Proposal indicates that provisions may be included in the draft LEP to ensure consistency with the documents referenced in this direction. While no environmental study has been submitted with the original version of the Planning Proposal, the Department of Planning may require one, if necessary, as part of the Gateway determination. This is considered unlikely as the proposal retains a buffer to the Macleay River and the majority of the site is devoid of significant vegetation. In addition, the visual analysis forming part of the Planning Proposal indicates that the subject land is located lower down the sloped terrain than existing residential development and that retaining the vegetated area of the subject land within Zone 7(d) will maintain a vegetated visual buffer to the site as seen from the water way. Future houses may be clearly visible when viewed from the north and the visual impact may be minimised through sensitive design and landscaping. Consequently, it is considered that the Planning Proposal is consistent with this Direction.

Direction No. 2.3 – Heritage Conservation requires councils preparing a draft LEP to protect and conserve heritage items, places and areas. The Planning Proposal included an Aboriginal Heritage Information Management Systems (AHIMS) search which indicated no known places or items of Aboriginal heritage value on the subject land. There are no listed places or items of European heritage value on the subject land.

Direction No. 3.1 – Residential Zones requires councils preparing a draft LEP where residential development is permitted to encourage a variety and choice of housing types, and to make effective use of existing infrastructure. The proposed development will be located in the same residential zone as neighbouring land and similar development controls will apply, leading to a similar degree of housing choice. Existing water infrastructure appears to be sufficient to service the site. However, a pump station will need to be provided with any subdivision to allow connection to the existing sewerage network. Existing electricity and telephone infrastructure may be extended to service the site.

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

Direction No. 4.4 – Planning for Bushfire Protection applies to land mapped as bushfire prone land. Council must consult with the NSW Rural Fire Service (RFS), following a Gateway determination. A Planning Proposal must include provisions such as Asset Protection Zones, to be incorporated into LEPs. The application states:

"The Bushfire Hazard Assessment identified the asset protection zones required in accordance with Planning for Bushfire Protection 2006. It indicated that the required asset protection zones can be accommodated within the site and bushfire is not considered prohibitive to developing the subject land."

Consultation with the RFS may occur following Gateway Determination.

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

Direction No. 5.1 – Implementation of Regional Strategies requires councils

preparing a draft LEP to address the regional strategy for their region. The Planning Proposal is consistent with the Mid North Coast Regional Strategy and with the Kempsey Shire Local Growth Management Strategy – Residential Component.

Environmental, Social and Economic Impact

Critical Habitat or Threatened Species

The majority of the site is mown grass and that part of the site containing a stand of trees is proposed to be retained in Zone 7(d) – Scenic Protection Zoning. It is anticipated that there will be no adverse impact on flora and fauna, particularly in the mown grass portion of the site that is proposed to be rezoned to Residential 2A. Consequently, a Flora and Fauna Assessment has not been undertaken to date. It is noted that any subsequent development application for subdivision is required to address the provisions of the Threatened Species Act.

The Department of Planning may require further investigation as part of the Gateway Determination.

Noise

The subject land is generally surrounded by residential uses and forested areas which will not generate any adverse noise impacts. However, there is a quarry located 500m away from the subject land, which is unlikely to have significant noise impacts on the proposed residential zone as it is only used intermittently.

The Planning Proposal indicates that the Rudder's Quarry is a quarry specialised in supplying large armour/rocks up to 10 tonnes for the maintenance of breakwaters. In addition, it is suggested that Council has allowed buffers of 250m between the quarry and proposed residences in previous development applications. This decision was made in part due to the intermittent nature of the use. No specific details as to how frequently the quarry is operated is provided in the Planning Proposal.

Living and Working in Rural Areas (Department of Primary Industries, 2007) provides recommended minimum buffers of generally 500m between residential areas and quarries, and a minimum buffer of 1000m where the quarry operations involve blasting.

The Gateway Determination may require the provision of further studies such as an acoustic report, in order to accurately determine the impact of the quarry operations on the amenity of the proposed residential zone.

Traffic & Access

Riverview Place is a sealed road and is adjacent to approximately half of the property frontage. The remainder of the property frontage is adjacent to a Right of Way over the adjoining property to the north, which gives access rights to the subject land. Extension of Riverview Place for the full frontage of the property may form a requirement as part of any approval of a subsequent development application for subdivision.

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

Public Infrastructure

Macleay Water offers the following comments in relation to water and sewerage

services:

Water:

Potable water is available to this property. A 100mm water mains traverses the frontage of the existing property. Post the rezoning, the standard design process would be required to determine the suitability of pressure flow to serve the development.

Recycled water is not currently available to this property.

Sewerage Services:

An assessment indicates the property can be serviced by reticulated sewerage. There are two potential options. One option, to the North West, is particularly dependent upon environmental constraints, these constraints potentially being already assessed as part of the rezoning process.

Sewerage services to the North East (Marlin Drive) are available and would require the construction of a pump station. This pump station may need to provide additional storage as a buffer to near-capacity downstream reticulation, the pumping periods being limited to non-peak times. Should this servicing strategy be preferred by the developer, post the rezoning, this assessment for additional storage will be undertaken as part of the development approval process or section 68 assessments.

Sewerage services to the North West (sewage pump station R27) pose similar concerns to that of Marlin Drive, however buffering storage already exists at this pump station. Should this servicing strategy be preferred by the developer, post the rezoning, an assessment would be undertaken to confirm overflow risks to the waterway, as part of the development approval process or section 68 assessments. The path of the gravity main from the proposed subdivision to sewage pump station R27 would appear to pass through an environmentally sensitive area. Consideration by the future developer of this potential constraint is necessary in determining the preferred sewerage servicing strategy. Additionally, subject to detailed design, it would appear an easement along the gravity main and across the neighbouring allotment would be necessary.

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

Impacts on Water Quality within Macleay River

The Planning Proposal indicates that residential development will be required to connect to reticulated sewer and proper stormwater quality measures will be put in place for any subdivision. In addition, Australian Standards apply to the water quality controls for any new land subdivision, with additional measures expected when in close proximity to a receiving water body. The Planning Proposal does not provide a solution to stormwater management.

It is noted mapping for the SEPP14 Wetlands indicates that a portion of the wetland adjoins the western boundary of the subject land. The site slopes from the east to the west and the topographical constraints leave no alternative but to discharge stormwater towards the wetland. This means that only the proposed Zone 7(d) – Scenic Protection Zone portion of the proposed rezoning, which has a depth of approximately 30m, will act as a buffer from any stormwater discharge from the subsequent residential development and the water-course/wetland. It is further noted that the concept subdivision designs included in the Planning Proposal

indicates the provision of a stormwater detention basin and associated mounding that appears to intrude part way into the proposed Zone 7(d) area. It is considered that any stormwater detention and treatment basins should be contained wholly within the proposed Residential Zone.

Furthermore, in order to ensure that there are no additional pollutant loads into the adjoining wetland and waterway, a system of stormwater quality management (e.g. bio-retention basins) will need to be designed for the proposed subdivision. These systems will take up additional land within the residential zone.

Maintenance of any future stormwater management structures has not been discussed in the Planning Proposal and this information is necessary at an early stage to provide certainty that the stormwater management systems may be maintained over the long term. Maintenance of the system will not be responsibility of Council.

An alternative to the use of on-site detention and bio-retention beds may be to collect stormwater within a basin and pump out to the existing stormwater system in the neighbourhood. However, this is not a practical solution to stormwater management for any future subdivision, due to reliability issues. If the pumps fail, untreated stormwater will flow to the waterway.

The Gateway Determination may require further analysis to determine the likely design solutions for stormwater discharge and the appropriate water sensitive urban design treatments to ensure that water quality is maintained. It is important to develop a stormwater management concept at this early stage to determine the balance of land to be devoted to residential development and stormwater quality and quantity controls within the proposed residential zone and to provide for long-term management of stormwater systems.

Ownership of remaining 7(d) – Scenic Protection Zone Land

The Planning proposed refers to the 7(d) land as public reserve in some instances but does not specify intended future ownership. It is recommended that Council not accept maintenance of the land which could be attached to lot(s) in any future subdivision. Arrangements suitable to Council for the ongoing management of that land will need to be resolved prior to the rezoning being finalised.

Views of State and Commonwealth Public Authorities

Consultation with State and Commonwealth public authorities is yet to occur. In accordance with section 56(2)(d) of the Environmental Planning and Assessment (EP&A) Act 1979, a gateway determination would specify the consultation to be undertaken with State and Commonwealth public authorities for the planning proposal. Consultation with State and Commonwealth public authorities must occur in accordance with the Gateway determination at that stage.

Community Consultation

In accordance with section 56(2)(c) of the EP&A Act 1979, a Gateway determination would specify the community consultation to be undertaken for the planning proposal. Community consultation must occur in accordance with the Gateway determination.

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

1.1 Specific Actions

1211

RBP

2012. 352 RESOLVED:

*Moved: Cl. Green
Seconded: Cl. Saul*

That Council vary the Delivery Plan target for completion of the Rural Residential Strategy to April 2013.

RECOMMENDATION IMPLICATIONS

Environmental, Social, Economic (Financial), Policy or Statutory: Nil

Kempsey Local Growth Management Strategy

- Complete Rural Residential Land Release Strategy

Staff have continued to work with the consultant in preparing the draft strategy which is expected to be completed in December 2012. Having regard to the need to report the draft to Council to endorse for public exhibition, exhibit the plan for 28 days, report submissions back to Council and submit the strategy to DoPI, it is unlikely to be forwarded to DoPI until April 2013.

1.2 Proposed Telecommunication Tower at Stuarts Point File: T6-12-280

This report was dealt with earlier in the meeting just after PUBLIC FORUM.

1.3 Progress of Planning Proposal – New Entrance Road, South West Rocks File: T5-115

1412

RBP

SUMMARY

Reporting that *Kempsey Local Environmental Plan 1987* (KLEP) Amendment No.115, has been publicly exhibited and is recommended to be sent to the Department of Planning and Infrastructure requesting the Minister to make the plan.

Applicant: Hopkins Consultants Pty Ltd
Subject Property: Lot 82 DP263591, New Entrance Road,
South West Rocks
Zone: 7(d) (Scenic Protection Zone)

Proposed Development

The Planning Proposal is to rezone land from 7(d) (Scenic Protection Zone) to part 2(a) (Residential "A" Zone) and part 7(d) (Scenic Protection Zone) at Lot 82 DP263591, New Entrance Road, South West Rocks. [\(Appendix F - Page SE11\)](#).

2012. 353 RESOLVED:

*Moved: Cl. Morris
Seconded: Cl. Green*

That the Kempsey Local Environmental Plan 1987 Amendment No. 115 be sent to the Department of Planning and Infrastructure requesting that the Minister make the plan.

A Division resulted in the following votes.

**F = Voted For
A = Voted Against**

Campbell	F	Green	F	Kesby	F	McGinn	F
Morris	F	Patterson	F	Saul	F	Williams	F

RECOMMENDATION IMPLICATIONS:

Environmental: *The Acoustic Study and Stormwater Study and Management Plan, prepared prior to public notification, demonstrate that the environmental impacts associated with rezoning part of the site to a residential zone are manageable. The submission from NSW Department of Primary Industries – Fisheries raised no objections, subject to considerations of buffer zones and stormwater impacts on adjacent aquatic ecosystems. Control of environmental impacts is recommended to be addressed in the drafting of the LEP amendment.*

Social: *New residential land adjacent to existing residential land reduces fragmentation and land use conflicts, as well as creating a coherent and more complete neighbourhood.*

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

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

Policy or Statutory: *The proposed residential use of the land is consistent with Council's Residential Component of the Local Growth Management Strategy. The proposed rezoning is consistent with the Mid North Coast Regional Strategy.*

REPORT DETAILS

Council resolved on 17 May 2011 to refer Draft Kempsey LEP Amendment No 115 to the Department of Planning and Infrastructure (DoPI) for a Gateway Determination. The DoPI issued a Gateway Determination on 9 June 2011, a copy of which is appended **(Appendix G - Page SE13)**.

Council resolved on 18 October 2012 to publicly exhibit the Draft Kempsey LEP Amendment No 115, in accordance with the method of consultation outlined in that report.

Public Consultation

The Gateway Determination required a public consultation process, which was undertaken for twenty-eight (28) days from 22 May 2012 to 20 June 2012 with no submissions received from the public. Council referred the Planning Proposal documents to the following public authorities, in accordance with the requirements of the Gateway Determination:

- Office of Environment and Heritage (OEH);
- Department of Primary Industries - Fisheries and Minerals (formerly known as DPI Fisheries);
- NSW Department of Trade & Investment, Regional Infrastructure and Services – Resources & Energy Division (formerly known as Department of Primary Industry - Mining) (DPI Mining); and
- Commissioner of NSW Rural Fire Service (RFS).

Responses received from the public authorities, with the exception of DPI Mining, were supportive of the Planning Proposal, copies of which are appended [\(Appendix H - Page SE17\)](#).

Agency	Issue Comments	Response
OEH	• No objections raised; • Consistent with Mid North Coast Regional Strategy and Council's Local Growth Management Strategy; • No impacts flora and fauna, as proposed residential part of the site is cleared; • No Aboriginal cultural heritage significance attached to the site; • OEH recommends adopting Best Practice Guidelines in relation to Noise and Water Sensitive Urban Design;	The matters raised will be addressed at DA stage via appropriate conditions of consent.
DPI Fisheries	• DPI Fisheries normally require buffers of 50m adjacent to the foreshore, with buffers increased to 100m where the buffers are adjacent to ecologically sensitive areas; • The proposed rezoning provides a 30m wide buffer to the adjoining SEPP 14 Wetland; • Council should be satisfied that the proposed width of 30m and the treatment of the proposed buffer zones is sufficient to protect the adjacent aquatic environment; • Only a general Water Sensitive Urban Design Strategy has been formulated. A specific system needs to be designed to ensure the ongoing impacts on the adjoining aquatic system is mitigated; • No objection subject to proper consideration of the above matters.	The Stormwater Study and Management Plan submitted with the application demonstrate that it is possible to develop the site and achieve minimal impacts to the adjoining aquatic systems. The matters raised will be addressed at DA stage via appropriate conditions of consent.
RFS	No objections	Bushfire issues adequately addressed.
DPI Mining	• It is DPI Mining's role to ensure that	Separate consultation with

Agency	Issue Comments	Response
	existing extractive industry resources are not sterilised by inappropriate development; • A working quarry is located approximately 500m from the site; • DPI Mining acknowledge the acoustic studies undertaken to address the acoustic impacts; • DPI Mining note a lack of consultation with the quarry owner; • Consequently, DPI Mining could not support the proposal.	owner of the quarry subsequently undertaken (See <i>Potential Impacts from Adjoining Quarry</i>). Sufficient studies have been undertaken to demonstrate that the proposed rezoning will have no further impact on the quarry operations, compared to existing development.

Potential Impacts from Adjoining Quarry

The response from DPI Mining did not support the proposal on the basis that proper consultation had not been undertaken with the owners of the quarry.

A separate notification letter was sent to the owner of the quarry, being Dept. of Primary Industries (Catchment and Lands Directorate) (DPI Lands), on 28 June 2012 with a response received on 11 July 2012, advising that they require a 1000 metre buffer between residential properties and the quarry, in order to ensure the ongoing operation of the quarry.

The subject land is located between 396 metres and 552 metres from the property boundary of nearby Rudder's Quarry and, by letter of 16 August 2012, Council requested DPI (Lands) to reconsider its position on the required buffer distance, taking into account the following:

- existing houses with the potential to restrict quarry operations were closer than the subject land;
- a noise report submitted with previous development application in the locality supported a 250 metre separation for the closest house in compliance with the NSW Industrial Noise;
- a noise report prepared in relation to a Development Application for a dwelling on the subject land in 1997 concluded that the potential to restrict the operation of the quarry was restricted to the operation of a rock drill at the closest point to the subject land (4dBA only), that could be addressed by acoustic shielding. The report further notes that blast designs would need to be modified so as not to impact on other existing dwellings which are closer, thereby not impacting on the subject land;
- the noise report for this rezoning application supports a 500 metre buffer; and
- a buffer of 1000 metres includes half of the existing residential land in the locality.

DPI (Lands) responded by letter dated 24 October 2012, advising the following:

- the mitigating circumstances and acoustic studies carried out to date are noted;
- *"the DPI is not in a position to make a definitive decision whether the available separation distance will be adequate to avoid future land use conflicts"*;
- Council should take into account the effect of the quarry face advancing towards its northern boundary on the proposed residential zones; and

- Suggest that the potential impact of the quarry operations on the proposed residential zone be noted, should Council approve the Planning Proposal.

It is considered that the proposed rezoning will not sterilise the existing quarry and the impacts of the quarry operations on the proposed rezoning may be mitigated, for the following reasons:

- The studies undertaken thus far support a buffer of 500 metres (and less) to the existing quarry.
- Proper consultation has been undertaken and DPI Lands have been given the opportunity to respond to the proposed LEP amendment.
- DPI Lands have not objected to the Planning Proposal, merely asked Council to consider the impacts of quarry operations on the proposed rezoning.
- The 1000 metre buffer to the quarry desired by DPI Lands is not possible due to existing development.
- The covering letter attached to the Gateway Determination indicates that the DoPI do not consider the impacts of the quarry on the proposed rezoning to be serious, as follows:

The Director General's delegate has also agreed that the planning proposal's inconsistencies with S117 Directions 1.3 Mining, Petroleum Production and Extractive Industries...are of minor significance. No further approval is required in relation to these Directions.

Consequently, it is considered appropriate to forward Draft Kempsey LEP Amendment No 115 to the DoPI, even without the written support of DPI Mining.

Conclusion

The final step in the Gateway process is to refer the Planning Proposal to the Department of Planning Minister, requesting the Minister to make the Plan.

1.4 Two Storey Dwelling

File: T6-12-164

1412

RBP

SUMMARY

Reporting that Council has received an application for a two storey dwelling which requires Council to vary the development standards contained in DCP22 – Local Housing Strategy and for which objections have been received.

Property Details

Applicant: Mr G and Mrs S Bryon
 Subject Property: Lot 1 DP341807, 9 McIntyre Street, South West Rocks
 Zone: 2 (b1) (Residential "B1" Zone)

Proposed Development

Figure 1: Locality Map



Source: Google Maps

Figure 2: Zoning Map

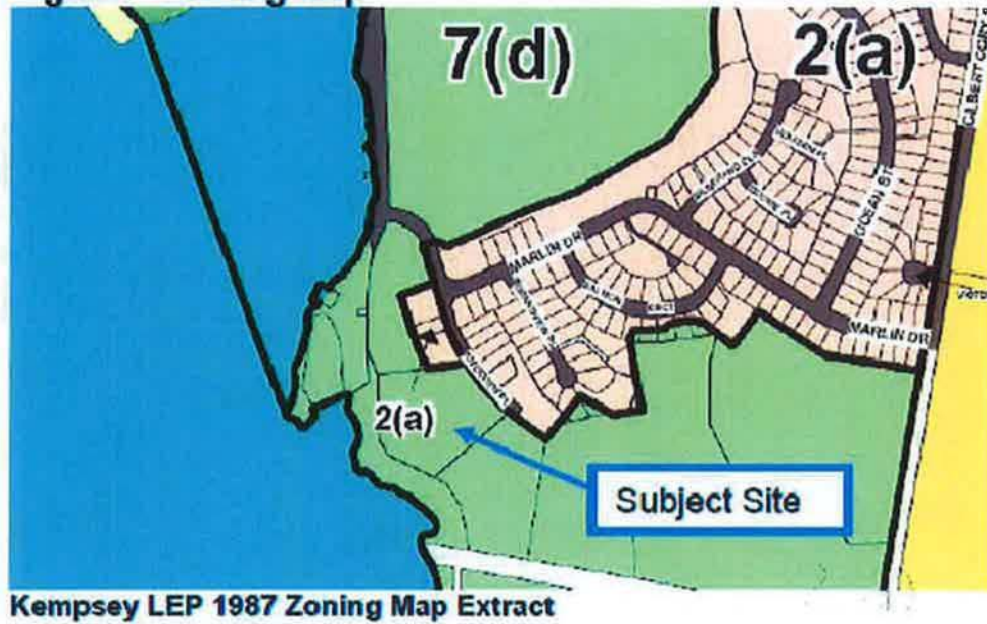
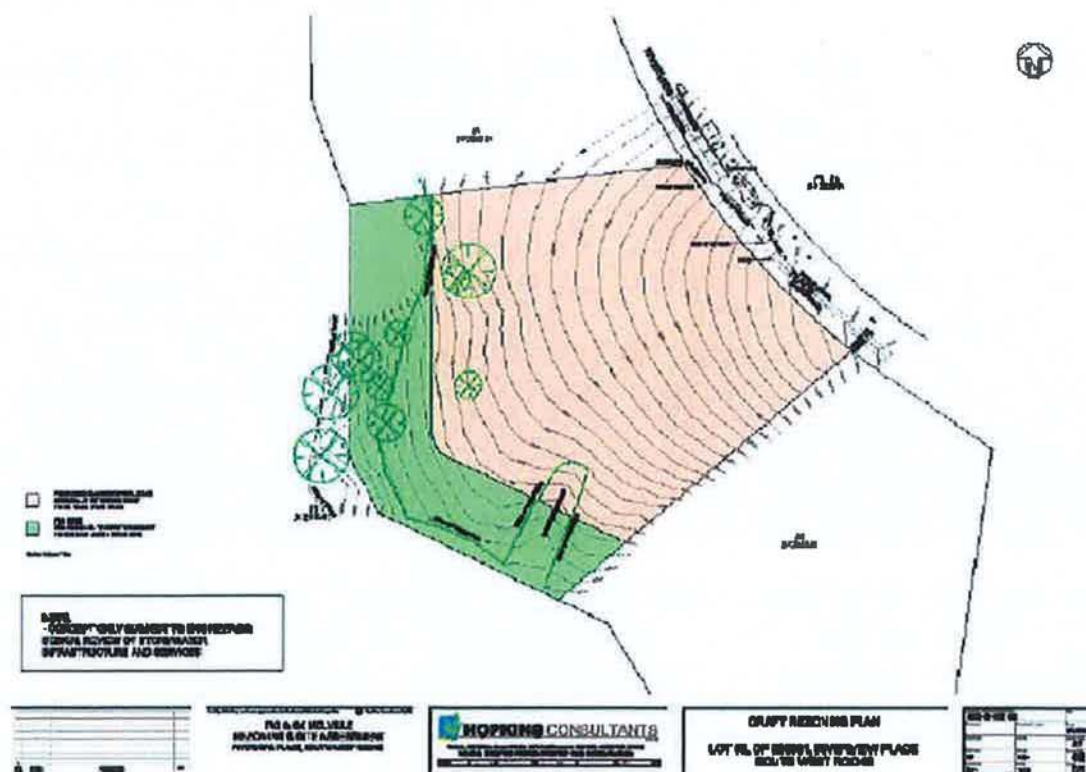


Figure 3: Draft Rezoning Plan



qB169863
11/09788

Department Generated Correspondence (Y)

Contact: Carlie Boyd
Phone: (02) 6641 6600
Fax: (02) 6641 6601
Email: Carlie.Boyd@planning.nsw.gov.au
Postal: Locked Bag 9022, Grafton NSW 2460

Our ref: PP_2011_KEMPS_002_00 (11/08009)
Your ref: TS-115 JS:KMP

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

Dear Mr Rawlings,

Re: Planning Proposal to rezone land at Riverview Place, South West Rocks from 7(d) Scenic Protection to part 7(d) Scenic Protection and part 2(a) Residential

I am writing in response to your Council's letter dated 24 May 2011 requesting a Gateway Determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to amend the Kempsey Local Environmental Plan 1987 to rezone part of Lot 82 DP 263591, Riverview Place, South West Rocks, from 7(d) Scenic Protection to part 2(a) Residential.

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

Council is to prepare the following studies and include these with the planning proposal for exhibition purposes:

- o A stormwater study and management plan to assess and manage potential impacts on adjacent SEPP 14 Coastal Wetlands land;
- o An Acoustic study to assess potential noise impacts from the existing nearby quarry; and
- o An updated Bushfire Hazard Assessment report, which determines required asset protection zones for incorporation into the planning proposal.

The Director General's delegate has also agreed that the planning proposal's inconsistencies with S117 Directions 1.3 Mining, Petroleum Production and Extractive Industries, 1.5 Rural Lands, 2.1 Environment Protection Zones and 5.1 Implementation of Regional Strategies are of minor significance. No further approval is required in relation to these Directions. However, in relation to S117 Direction 4.4 Planning for Bushfire Protection, Council is to consult and obtain written advice from the Commissioner of the NSW Rural Fire Service, to the effect that the NSW Rural Fire Service does not object to the progression of the proposal. Subject to Council satisfying this requirement, the Director General's delegate has agreed that the planning proposal's inconsistencies with S117 Direction 4.4 Planning for Bushfire Protection are of a minor significance.

The amending Local Environmental Plan (LEP) is to be finalised within 9 months of the week following the date of the Gateway Determination. Council should aim to commence the exhibition of the Planning Proposal within four (4) weeks from the week following this determination. Council's request for the Department to draft and finalise the LEP should be made six (6) weeks prior to the projected publication date.

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 s54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, please contact Carlie Boyd of the Regional Office of the Department on 02 6641 6600.

Yours sincerely,



9/6/11
Tom Gellibrand
Deputy Director General
Plan Making & Urban Renewal



Gateway Determination

Planning Proposal (Department Ref: PP_2011_KEMPS_002_00): to rezone land at Riverview Place, South West Rocks from 7(d) Scenic Protection to part 7(d) Scenic Protection and part 2(a) Residential

I, the Deputy Director General, Plan Making & Urban Renewal as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to the Kempsey Local Environmental Plan 1987 to rezone part of Lot 82 DP 263591, Riverview Place, South West Rocks, from 7(d) Scenic Protection to part 2(a) Residential should proceed subject to the following conditions:

1. Council is to prepare the following studies and include these with the planning proposal for exhibition purposes:
 - o A stormwater study and management plan to assess and manage potential impacts on adjacent SEPP 14 Coastal Wetlands land;
 - o An Acoustic study to assess potential noise impacts from the existing nearby quarry; and
 - o An updated Bushfire Hazard Assessment report, which determines required asset protection zones for incorporation into the planning proposal.
2. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
 - (a) the planning proposal must be made publicly available for **28 days**; and
 - (b) 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 4.5 of *A Guide to Preparing LEPs (Department of Planning 2009)*.
3. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
 - Office of Environment and Heritage
 - Department of Primary Industry (Fisheries)
 - Department of Primary Industry (Mining)
 - Commissioner of NSW Rural Fire Service

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A 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).



**Planning &
Infrastructure**

5. The timeframe for completing the LEP is to be **9 months** from the week following the date of the Gateway determination.

Dated *9th* day of *June* 2011.

A handwritten signature in black ink, appearing to read "Tom Gellibrand".

**Tom Gellibrand
Deputy Director General
Plan Making & Urban Renewal
Delegate of the Minister for Planning and
Infrastructure**

**Office of
Environment
& Heritage**

Your reference: T5-115 LA 3943
Our reference: DOC12/20118 FIL07/0391-04

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

p/p 1615112

File

KSC RECEIVED	
FOLIO.....	478241
23 MAY 2012	
FILE.....	T5-115
1 Copy LA 3943	
OFFICER.....	SD/S/S/NN

Att: Mr Ilija Susnja, Sustainable Environment.

Dear Mr Rawlings

Re: Planning Proposal - Lot 82 DP263591 Riverview Place South West Rocks

I refer to Council's letter, dated 16 May 2012, relating to the public exhibition of the above proposal and inviting comment from the Office of the Environment and Heritage (OEH) in accordance with the gateway provisions under Section 56 of the *Environmental Planning and Assessment Act 1979*. OEH has reviewed the documents provided and provides the following comments.

1. The planning proposal appears to be consistent with both the Mid North Coast Regional Strategy and Council's draft Local Growth Management Strategy as the site is subject to inclusion in both strategies as a matter of "minor significance" by the Department of Planning and Infrastructure.
2. The proposed residential component of Lot 82 is completely cleared of native vegetation whilst the steeper vegetated component along the western boundary is to be retained in the existing scenic protection zone.
3. There are no records of threatened flora or fauna occurring on site and the area does not form part of any identified wildlife corridors.
4. Consultation with and detailed surveys by the Kempsey Local Aboriginal Lands Council have concluded the Lot is of no particular Aboriginal cultural heritage significance.
5. Management of stormwater and sewerage will be in accordance with a Management Plan adopting best practice Water Sensitive Urban Design principles outlined in published OEH and Council guidelines.

Accordingly, OEH is able to support the proposal and advises that potential impacts of the proposal on scenic quality along the Macleay River however non-regulatory noise, dust or traffic issues relating to nearby occasional specialist quarry operations are not matters for which it carries statutory responsibility.

If you need further information or clarification, or become aware of any matters affecting the statutory responsibilities of OEH, please contact Conservation Planning Officer, Mr John Martindale on telephone (02) 6659 8222.

Yours sincerely

22 May 2012

DIMITRI YOUNG
Regional Coordinator – North East
Office of Environment and Heritage

Locked Bag 914, Coffs Harbour NSW 2450
Federation House Level 7, 24 Moonee Street,
Coffs Harbour NSW 2450
Tel: (02) 6651 5946 Fax: (02) 6651 8187
ABN 30 841 387 271
www.environment.nsw.gov.au



Resources & Energy

Our Ref: V12/2476, OUT12/13505

The General Manager
Kempsey Shire Council
PO Box 3078
Kempsey NSW 2440

Attn: Ilija Susnja – Area Planner

**Re: T5-115 – Proposed Rezoning from 7(D) Scenic Protection to Part 2(A) Residential.
Property: Lot 82 DP 263591, River View Place South West Rocks**

Thank you for your referral of 16th May 2012 seeking comment from the Department of Primary Industries (Fisheries and Minerals). This is a response from NSW Trade & Investment – Mineral Resources Branch. Department of Primary Industries – Fisheries NSW has responded separately.

DTIRIS – Mineral Resources Branch is responsible for ensuring that valuable mineral, coal, petroleum and extractive industry resources and areas with potential for such resources are not sterilized by inappropriate development.

In this case, DTIRIS – Mineral Resources Branch is concerned to note, as your referral correctly identifies, that the subject site is approximately 500 m from a quarry that is subject of a notification to Council pursuant to Section 117 of the Environmental Planning and Assessment Act 1979.

Where development (particularly residential development) is proposed in the vicinity of an operating quarry, the proponent should actively seek to avoid potential conflict with current and future quarry operations by:

1. Fully understanding those current and potential future operations.
2. Thoroughly assessing potentially adverse impacts, including those involving aesthetic, dust, noise, ground vibration, blast overpressure and/or traffic impacts associated directly or indirectly with quarry operations.
3. Integrating any appropriate mitigating or offset measures into the proposal.
4. Affording the operator appropriate opportunity to assess potentially to object to any aspect of the proposal that may lead to conflict with current or future quarry operations.

DTIRIS – Mineral Resources Branch is unlikely to object to developments that encroach on resources or associated transition (buffer) areas identified in a Section 117 notification provided that the proponent has demonstrated that the proposed development will not adversely affect current or likely future extractive operations (without prejudice).

DTIRIS – Mineral Resources Branch commends Council and the Developer for having attempted to address some of four key issues in conflict avoidance identified above.

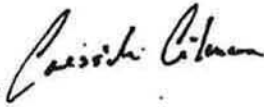
However, DTIRIS – Mineral Resources Branch notes a lack of evidence of consultation between the developer and the quarry owner. Without demonstrating the adequacy of such consultation, neither

NSW Department of Trade and Investment, Regional Infrastructure and Services
RESOURCES & ENERGY DIVISION
PO Box 344 Hunter Region Mail Centre NSW 2310
Tel: 02 4931 6666 Fax: 02 4931 6726
ABN 51 734 124 190
www.dtlris.nsw.gov.au

Council not the proponent can demonstrate compliance with #1 and especially #4 (above). Without evidence of compliance with all four of these key issues in conflict avoidance, DTIRIS – Mineral Resources Branch cannot support the proposal.

For further information regarding mineral issues please contact Mr Jeff Brownlow in the Department's Armidale Office (Tel 02 6738 8513).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cressida Gilmore', written in a cursive style.

Cressida Gilmore
Team Leader Land Use



Primary Industries

The General Manager
Kempsey Shire Council
Po Box 3078
Kempsey NSW 2440

Attention: Iliga Susnja – Area Planner

KSC RECEIVED	
FOLIO.....	479780
- 7 JUN 2012	
FILE.....	T5-115
OFFICER.....	SOS 15 (NAN)

Out12/12115

Re: T5-115 – Proposed Rezoning from 7(D) Scenic Protection to Part 2(A) Residential.

Property: Lot 82 DP 263591, River View Place South West Rocks

Thank you for your referral of 16 May seeking Department of Primary Industries – Fisheries NSW (Fisheries NSW) comments on the subject rezoning proposal. As requested in your letter of 16 May the subject proposal has been forwarded to the Resources and Energy Division of NSW Trade & Investment for separate comment.

Fisheries NSW is responsible for ensuring that fish stocks are conserved and that there is no net loss of key fish habitats upon which they depend. To achieve this, Fisheries NSW ensures that developments comply with the requirements of the *Fisheries Management Act 1994* (namely the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the FM Act, respectively), and the associated *Policy and Guidelines for Aquatic Habitat Management and Fish Conservation (1999)*. In addition, Fisheries NSW is responsible for ensuring the sustainable management of commercial and recreational fishing and aquaculture within NSW.

The following comments are provided to assist Council in its determination the subject proposal:

Buffer zones:

Fisheries NSW's current policy for the conservation of fish, marine vegetation and aquatic habitats (1.2 (e)), in the *Policy and Guidelines for Aquatic Habitat Management and Fish Conservation (1999)* is the following:

"Terrestrial areas adjoining freshwater, estuarine and coastal habitats should be carefully managed in order to minimise land-use impacts on these aquatic habitats. As a precautionary approach, foreshore buffer zones at least 50m wide should be established and maintained, with their natural features and vegetation preserved. Such buffer zones may need to be fenced or marked by signs. The width of these buffer zones may need to be increased to 100m or more where they are adjacent to ecologically sensitive areas."

While it is acknowledged that the proposed rezoning incorporates a 30 metre wide buffer to adjoining aquatic ecosystems, little information is provided to justify this width in relation to the protection of adjacent ecologically sensitive areas (ie SEPP 14 Wetlands – No.437). Council should be satisfied the proposed width of 30 metres and the treatment of the proposed buffer zones is appropriate in protecting adjacent aquatic environments.

Stormwater impacts on adjacent aquatic ecosystems:

The supporting documentation, particularly the stormwater management proposal, indicates that stormwater will be directed to the western side of the property via a series of swales and WSUD features and discharged into the identified mangrove and coastal Saltmarsh ecosystems (ie SEPP 14 – No.437). While there is a general assessment of the broad impacts, there is no specific assessment of impacts (ie increased and concentrated freshwater flows), the scale of these impacts and the specific mitigation treatments proposed for address each identified impact. Council should be satisfied that the level of assessment is sufficient to ensure ongoing protection of the receiving environments and particularly the long term health of SEPP 14 – No.437

Fisheries NSW has no specific objection to the proposed rezoning, given appropriate consideration of the matters raised above.

If you require any further information, please do not hesitate to contact me on 02 66261370.

Yours Sincerely



Marcus Riches
Senior Fisheries Conservation Manager (North)
Fisheries Ecosystems

5 June 2012

All communications to be addressed to:

Headquarters
NSW Rural Fire Service
Locked Mail Bag 17
GRANVILLE NSW 2142

Telephone: (02) 6655 7002
e-mail: csc@rfs.nsw.gov.au

Customer Service Centre
NSW Rural Fire Service
PO Box 203
URUNGA NSW 2455

Facsimile: (02) 6655 7008



The General Manager
Kempsey Shire Council
PO Box 3078
WEST KEMPSEY NSW 2440

Your Ref: File T5-115 LA 3943

Our Ref: LEP/0070
DA12051883393 AB

12 June 2012

ATTENTION: Mr Ilija Susnja

Dear Mr Susnja,

Planning Instrument for Lot 82 DP 263591 Riverview Place South West Rocks 2431

I refer to your letter dated 16 May 2012 seeking advice for the above Planning Instrument in accordance with Section 57 of the 'Environmental Planning and Assessment Act 1979'.

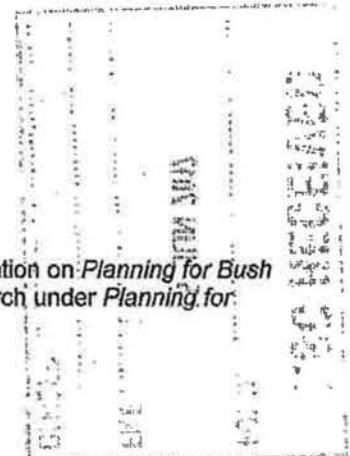
The NSW Rural Fire Service (RFS) has reviewed the documents submitted in support of the rezoning of the land to part residential, including the Bush Fire Report prepared by MidCoast Building and Environmental dated July 2011. Based on that report and the draft subdivision plan, the RFS has no objection to the draft LEP proceeding.

For any enquiries regarding this correspondence please contact Alan Bawden on 6655 7002.

Yours faithfully,

John Ball
Manager – Coffs Harbour Customer Service Centre

The RFS has made getting additional information easier. For general information on *Planning for Bush Fire Protection 2006*, visit the RFS web page at www.rfs.nsw.gov.au and search under *Planning for Bush Fire Protection 2006*.



259

SCANNED

PAGE **SE - 23**
20 NOV 201211/7 9:55 am
1:32 pmDepartment of
Primary Industries
Catchments & LandsCrown Lands NSW
Infrastructure and Land Management Directorate
PO Box 2185 DANGAR NSW 2309Kempsey Shire Council
PO Box 3078
West Kempsey
NSW 2440
Att Area Planner, Sustainable Development, Mr Ilija Susnja

Dear Ilija

Re Lot 82 DP 263591 in vicinity of Rudder's Quarry, South West Rocks

In response to your letter of 28 June, 2012 requesting DPI to comment on the proposed development at Lot 82 DP 263591, I offer the following:

- The proposed rezoning of the land from Scenic Protection 7 (d) to Residential 2 (a) is some 500m from the quarry at lots 2 & 3 DP 606740, known as "Rudders Quarry". Access to this quarry is via an easement within Lot 1 DP 606740.
- In the past Rudders Quarry has been operated to supply armour rock for the breakwaters and training walls of the Macleay River
- The last correspondence with Kempsey Shire Council on usage of this quarry was in 1997, again for a rezoning determination by Council. In that letter DLWC wished to continue to operate the floor of the quarry in accordance with existing usage rights. There are 40,000 m³ reserves sufficient for approximately 20 years to 10m below the present quarry floor level.
- The existing topography of this operation would have no line of sight with the proposed rezoning; however the 500m "buffer zone" should be considered in accordance with DoP Circular E7 Practice guideline for preparation of EIS - Extractive Industries - Quarries. ("no set minimum separation, but merits based assessment"). Generally, to reduce conflicts arising from noise, vibration, dust and contamination of ground water, any proposed residential and rural residential development should have a self contained buffer of 1000 metres.
- At this stage, DPI does not wish to close off possibility of hard rock extraction from Rudders Quarry.

If you have any enquires about this matter, please contact Andrew Ling from Department of Primary Industries on (02) 49205056.

6/7/2012
Stephen Driscoll

A/Director, Infrastructure and Land Management

KSC RECEIVED	
FOLIO	D 12 /
FILE	11 JUL 2012 T 5-115
OFFICER	

(11/7/12)

**Department of
Primary Industries
Catchments & Lands**

Crown Lands NSW
Infrastructure and Land Management Directorate
PO Box 2185 DANGAR NSW 2309

The General Manager
Kempsey Shire Council
PO Box 3078
West Kempsey NSW 2440

Attention: Mr Ilija Susnja – Area Planner

Dear Mr Susnja

**Proposed Land Rezoning: Part of Lot 82, DP 263591 in vicinity of Rudder's Quarry,
South West Rocks**

I refer to: your correspondence of 16 August 2012 responding to our letter dated 6 July 2012; and the Department of Planning & Infrastructure's letter of 9 June 2011 and attached Gateway Determination (Department Ref: PP_2011_KEMPS_002_00).

In regard to the Department of Primary Industries (DPI's) letter dated 6/7/12, the reference to the Department of Planning's Circular E7 Practice Guideline was intended for Council's consideration as a "guideline" with specific reference to "no set minimum separation, but merit based assessment". This is also be consistent with Condition No. 1 of the Gateway Determination i.e. preparation of an acoustic study to assess potential noise impacts from the existing nearby quarry.

With regard to the noise assessment and acoustic study, the intermittent operation of the existing quarry presents some difficulty in obtaining site specific noise monitoring data. Accordingly the DPI is not in a position to make a definitive decision whether the available separation distance will be adequate to avoid future land use conflicts.

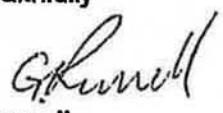
Nevertheless, we note the findings of the Noise Impact Assessment Report (Acoustic Logic, 16 September 2011) that: Council has approved other residential development within 500 metres of the quarry; and the presence of 'geographical ridges' are considered likely to be effective in mitigating any impacts of future quarry operations on the proposed development.

We further note your advice that Council intends to provide for a 500 m buffer to the "quarry face". However, the effect of this could be to compromise future operations especially if the quarry face was to advance towards its northern boundary. Accordingly, we suggest that this is taken into consideration.

Should Council approve the rezoning proposal we suggest the potential for quarrying operations and associated impacts upon on the proposed subdivision be noted

I trust the above clarifies the DPI's earlier correspondence on this matter. If you have any enquires about this matter, please contact Andrew Ling from Department of Primary Industries on (02) 4920 5056.

Yours faithfully


Guy Russell
A/Manager, Coastal Infrastructure
Crown Lands

24/10/12