

PGF000921

Ref: T5-115
IS:KMP

24 May 2011

DEPARTMENT OF PLANNING
LOCKED BAG 9022
GRAFTON NSW 2460

Dear Sir/Madam

SUBJECT: PLANNING PROPOSAL T5-115
PROPERTY: Lot 82 DP263591 – NEW ENTRANCE ROAD, SOUTH WEST ROCKS

Received
25 MAY 2011
11/09009
North Coast

On 10 March 2011, a Planning Proposal was lodged with Council for the rezoning of part of the above property from Zone 7(d) – Scenic Protection Zone to Zone 2(a) – Residential A Zone. This Planning Proposal was considered at the Council meeting of 11 May 2011 where Council resolved to forward the Planning Proposal to the Department of Planning for a Gateway Determination pursuant to Section 56 of the *Environmental Planning and Assessment Act 1979*.

Please find enclosed copies of the planning proposal and all associated documentation provided by the applicant, as well as a copy of the Council resolution. All the relevant issues are discussed in the enclosed Council report.

If you wish to discuss this matter or require any information please contact the undersigned on 6566 3200 or by email at ilija.susnja@kempsey.nsw.gov.au

Yours faithfully

Ilija Sushja
Area Planner
SUSTAINABLE ENVIRONMENT

1.7.2 Planning Proposal for Residential Rezoning

File: T5-115 {Folio No. 450704}

1211

RBP

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 <i>Threatened Species Conservation Act 1995</i>) 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 <i>Fisheries Management Act 1994</i>) 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 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.

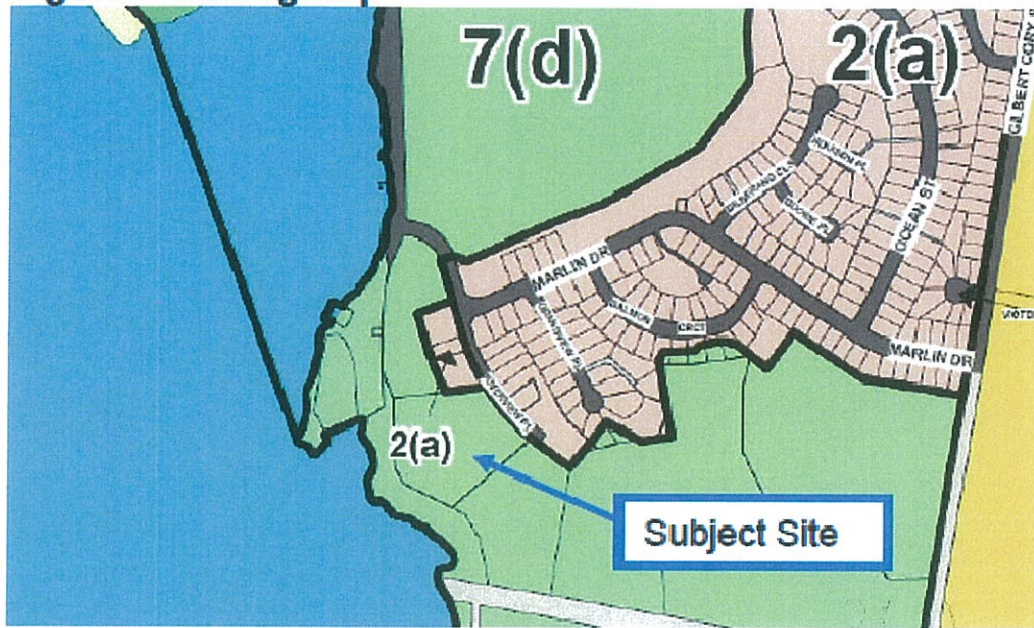
Upon completion of the consultation with agencies, the draft LEP will be reported to Council to endorse for the purposes of public exhibition. In accordance with Council's Rezoning Applications Policy, the method for notifying the public exhibition will also be advised at the time.

Figure 1: Locality Map



Source: Google Maps

Figure 2: Zoning Map



Kempsey LEP 1987 Zoning Map Extract

Figure 3: Draft Rezoning Plan





Rezoning Planning Proposal



***Lot 82 DP 263591
Riverview Place, South West Rocks***

March 2011



HOPKINS CONSULTANTS

DEVELOPMENT MANAGERS • SURVEYORS • ENGINEERS • PLANNERS



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1 INTRODUCTION

The following Planning Proposal is for the rezoning of Lot 82 DP263591 from 7(d) Scenic Protection to Part 7(d) Scenic Protection and Part 2(a) Residential under Kempsey Local Environmental Plan 1987, as amended.

Planning Proposal

Proposal: Rezone part of the land from 7(d) Scenic Protection to 2(a) Residential, retaining the remainder in the 7(d) Scenic Protection zone.

Property Details: Lot 82 DP 263591, Riverview Place, South West Rocks

Applicant: Hopkins Consultants

Owner: Mr RG & Mrs SK Melville

An assessment of the site's role within the scenic landscape and consideration of its role as "visually significant land" has revealed that the site has been inappropriately zoned "Scenic Protection" over its entirety. The subject land is lower in elevation and of lesser visual exposure than adjoining zoned & developed residential lands.

The land has been identified for residential use under the 1997 Residential strategy and is included in the draft Urban Growth Management Strategy, currently being finalised with the Department of Planning and Kempsey Shire Council.

2 SUBJECT SITE

The subject site is situated on the south west side of Riverview Place, New Entrance, South West Rocks. It has an area of 2.02 hectares.

Pursuant to the Kempsey LEP 1987, the subject land is currently zoned 7(d) Scenic Protection.

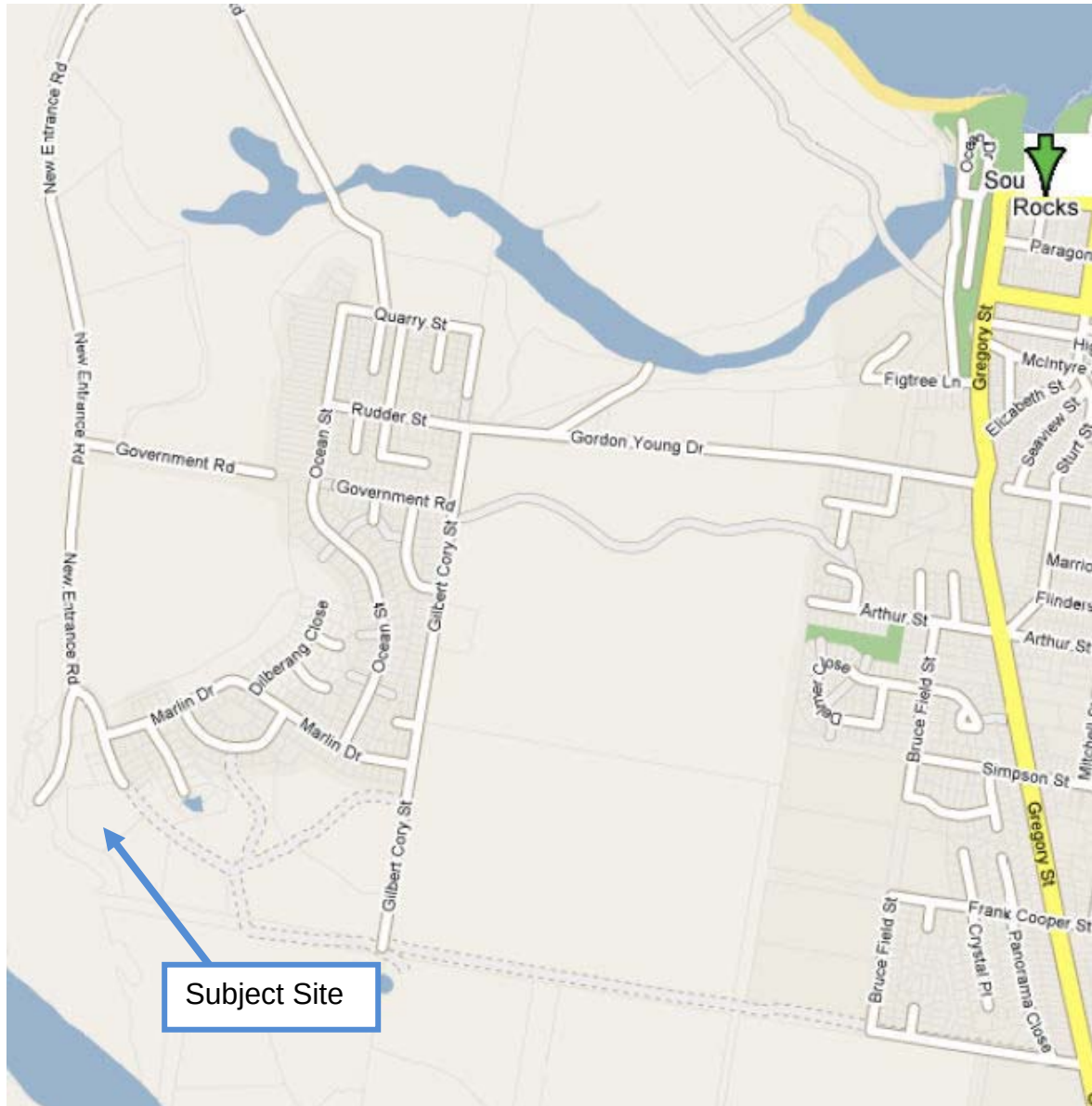
The site is clear of vegetation with the exception of a small area of forested vegetation in the north western corner of the lot. There are no dwellings located on the site, but does retain a dwelling entitlement under the current LEP provisions.

The site adjoins existing residential properties to the north and west. Mangrove and salt marshes are located downhill to the east and south of the site. Beyond this is the Macleay River / Spencers Creek. Wet sclerophyll forest vegetation is located off site to the south west.

A locality Map is located at **Figure 1** below.



Figure 1: Locality Map



Source: Google Maps



3 JUSTIFICATION

The proposed rezoning of part of Lot 82 is essentially an infill proposal. It represents the last of the strategy area "SWR 13 New Entrance" from Council's 1997 Residential Land Release Strategy.

3.1 Need for the planning proposal.

A Planning Proposal is needed to facilitate the residential use of part of the land and to enable completion of Council's 1997 strategy. The proposal is consistent with Council's resolution of 10 November 2009 in relation to the draft Kempsey Local Growth Management Strategy – Residential Component.

3.2 Is the planning proposal a result of any strategic study or report?

As mentioned above, the subject land is identified within Council's adopted 1997 Residential Land Release Strategy, designated as "site description SWR 13 New Entrance". The 1997 strategy illustrates the subject land in the map appendix titled "Residential Land Release Strategy 2000 – South West Rocks".

In May 2009 Kempsey Council placed on public exhibition its draft Local Urban Growth Management Strategy - Residential Component. At Council's meeting of 10 November 2009 it was resolved to:

"A. Finalise the Draft Local Growth Management Strategy – Residential Component. The following changes have been made to the Strategy which was placed on public exhibition:

- Incorporation of additional properties such as Lot 82 DP 263591, (partly) Lot 2 DP 565498, (partly) Lot 29 DP 1067942 and Lot 50 DP 843912;"*

The body of the Council report, comment 59, page SDS-11 states:

"A portion of Lot 82 has been included in the draft strategy on the basis that it contains few environmental constraints. Another portion of the land however is not considered suitable given its topography (slope greater than 20 percent)."

Adjoining the land to the north and west are established residential areas and the land to the east and south of the site is zoned 7(d) Scenic Protection.

The site slopes from the eastern boundary at about RL 28 midway along its frontage to Riverview Place down to the western boundary at about RL 5m AHD. Contours across the site are shown on the detail survey contained within **Appendix A.**

Photographs of the site and surrounding land are provided at **Appendix B.**



4 BACKGROUND

In January 2008, we made enquiries on behalf of the owner to progress the rezoning in accordance with Council's 1997 strategy. Council staff indicated that they intended to review the residential strategy and advised us to incorporate in our submission a request for inclusion of the subject land in the new Residential Release Strategy.

A submission was prepared and sent to Council on 4 February 2008.

In March 2008, we received email advice from Kempsey Shire Council officers that:

"Council is currently preparing to undertake a review of the Residential Land Release Strategy. Your request for the above property to be considered for inclusion in the Residential Land Release Strategy will be considered in the review."

In early 2009, the State Government released its Mid North Coast Regional Strategy incorporating lands already identified under adopted growth strategies as well as identifying future release areas. We are advised that the land was not intentionally omitted from the Regional Strategy as correspondence from the Department of Planning dated 17 July 2009 indicates. A copy of the letter received from Department of Planning is provided at **Appendix C**.

In May 2009 Kempsey Shire Council placed on public exhibition its draft Local Urban Growth Management Strategy - Residential Component. Hopkins Consultants again made submissions on behalf of the land owners and at Council's meeting of 10 November 2009 it was resolved to:

"A. Finalise the Draft Local Growth Management Strategy – Residential Component. The following changes have been made to the Strategy which was placed on public exhibition:

- Incorporation of additional properties such as Lot 82 DP 263591, (partly) Lot 2 DP 565498, (partly) Lot 29 DP 1067942 and Lot 50 DP 843912;"*

Following on from a meeting with Council staff in August 2010 and consultation with Department of Planning Officers by Council staff, it was determined that a Planning Proposal could be submitted prior to the final adoption of the Kempsey Local Growth Management Strategy – Residential Component.



5 PLANNING PROPOSAL

5.1 Objectives or Intended Outcomes

To enable the development of land at Riverview Place, South West Rocks, described as Lot 82 DP 263591, for residential purposes.

Rezoning of part Lot 82 DP263591, Riverview Place, New Entrance, South West Rocks, in accordance with the draft Urban Growth Management Strategy arising from Council resolution of 10 November 2009.

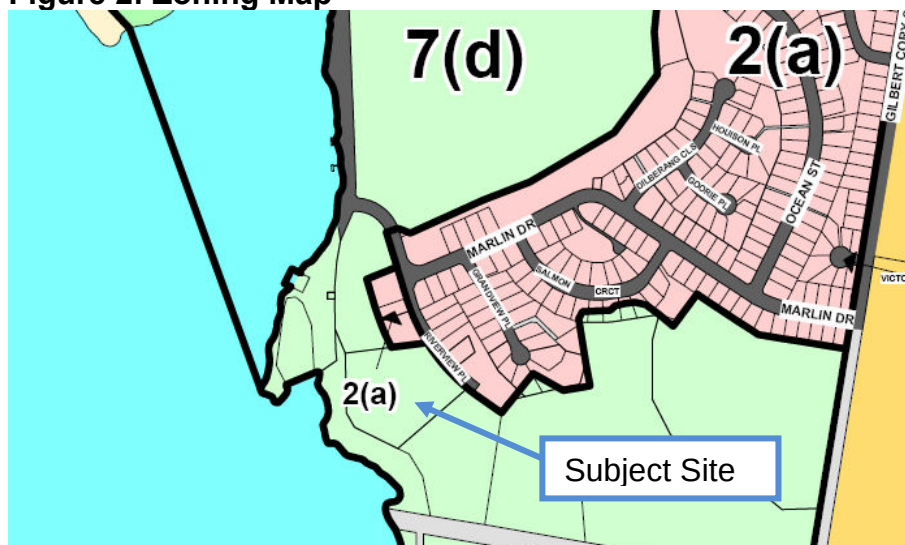
The intended outcome is to:

- Enable appropriate residential development of the land
- Ensure steep slopes greater than 20% and vegetated areas are excluded from residential usage.
- Protect the down-stream environment.

5.2 Explanation of Provisions

Pursuant to Kempsey LEP 1987, the subject land is currently zoned 7(d) (Scenic Protection Zone). A copy of the zoning plan for the subject site is included as **Figure 2**.

Figure 2: Zoning Map



Kempsey LEP 1987 Zoning Map Extract

The objectives of the 7(d) (Scenic Protection Zone) are expressed as follows:

“The objective is to conserve the environmental and scenic quality of visually significant land by controlling development so that it will accord with the appearance of the landscape. “



Further

Clause 29 – North Coast REP 1988

“...A draft local environmental plan should:

- (a) ...*
- (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;...*

An assessment of the site's role within the scenic landscape and consideration of its role as “visually significant land” has revealed that a large proportion of the site has been inappropriately zone ‘scenic protection’.

The subject land is lower in elevation and has less visual exposure than adjoining lands already zoned and developed as residential.

A number of photographs of the subject land from the Macleay River and Spencers Creek have been taken and the site identified in each. These photographs are contained within **Appendix D**.

Figure 3: Location Shot



As can be seen from the photographs at **Appendix C**, there are areas to the east and to the north of the subject land that have already been zoned residential and developed accordingly. Since this photograph was taken additional residential development has occurred above this site.



The development of the subject land for residential purposes would have a minimal impact on the scenic amenity of the site when viewed from the Macleay River for the following reasons:

- ▶ The residential land to the east of the site is higher in elevation than the subject land and is more visually prominent when viewed from the Macleay River than any development of the subject land would be.
- ▶ Mature trees and screening vegetation would be retained and protected along the western boundary;
- ▶ Steep lands (ie those greater than 20% slope) would be retained in the 7(d) zoning together the vegetation on the western boundary, facing the river.
- ▶ The residential land to the north of the site is not screen by vegetation and is visible from the Macleay River.

Further, three of the reasons put forward in the report to Council supporting the residential rezoning of the adjoining Lot 81 to the north are similarly applicable to the subject land, Lot 82, these being:

When viewed from the riverbank immediately to the west of the subject land the area proposed for rezoning is screened by the heavily vegetated and steeply rising bank which forms an effective visual barrier.

The highest point of the subject land is approximately 22 metres AHD. The highest point of the 7(d) zone behind this area is approximately 78 metres AHD, over 50 metres higher in elevation and visually dominant.

The proposed development will not occur in isolation but will adjoin the existing residential development in the area utilising the existing Riverview Place roadway. (Source: Report to Council on rezoning of Lot 81, 2002)

It is considered that the current extension of the Scenic Protection zone over the whole of the site is inappropriate and unnecessary. The inclusion of part of the land in Council's draft Urban Growth Management Strategy on 9 November 2009, confirms this. The report to Council dated 9 November 2009 specifically addresses Lot 82 and indicates that lands sloped >20% should be retained in the 7(d) zone, leaving the remainder for inclusion in the proposed residential zone.

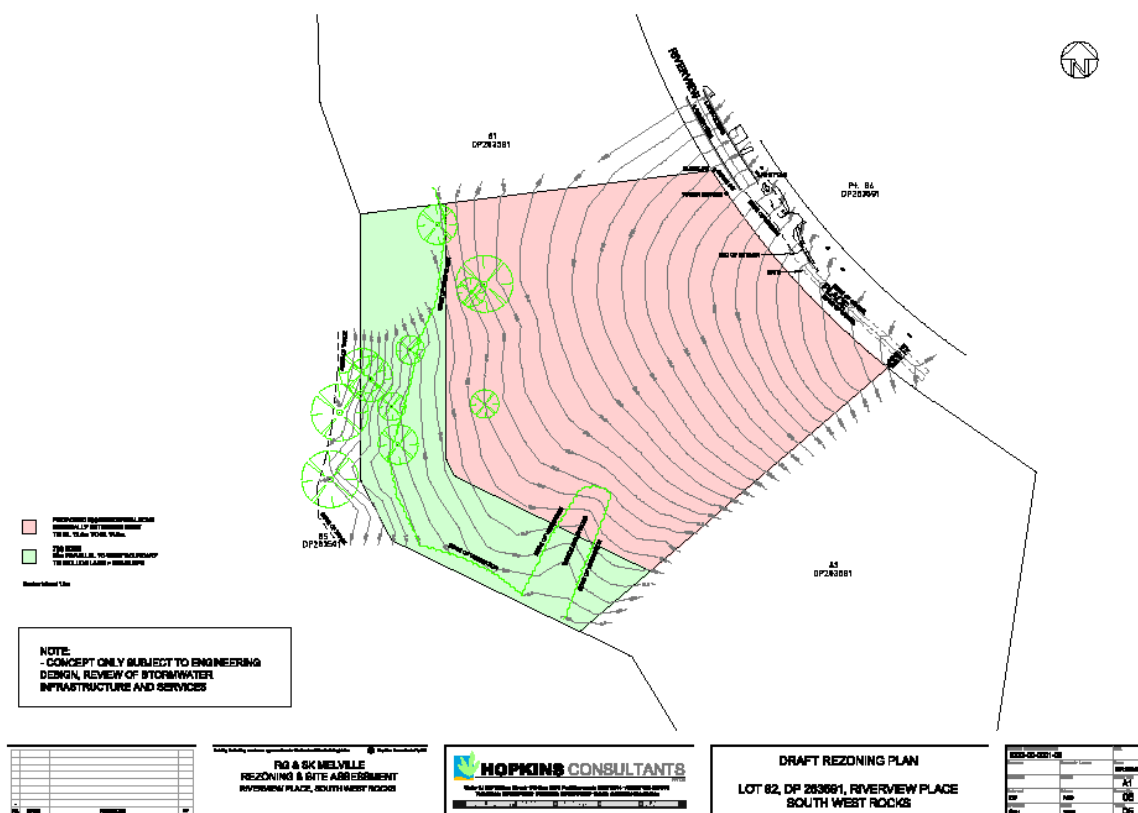
Generally, the area of steepest slope is in the lower part of the site, along the western boundary of Lot 82 adjacent the public land fronting the river.

Rezoning of the central & eastern part of the land would not impact on the scenic amenity of the New Entrance Ridgeline when viewed from the Macleay River and other public places and would have a far lesser impact than that of existing adjacent residential development. The vegetation along the western boundary of the site is proposed to be retained within the 7(d) zone.



5.3 Proposed Amendment to Kempsey Local Environmental Plan 1987

Amendment to Kempsey Local Environmental Plan 1987, by rezoning the land to 2(a) Residential and retaining the steeper land (>20% slope) (generally that land in the west of the site and vegetated) within the zoned 7(d) scenic protection, as illustrated in the figure below.



Possible subdivision layouts have been investigated and two concepts (with water quality measures) are provided below. These concepts are provided to given an indication of how a subdivision may apply to the land.





Following on from a meeting with Council staff in August 2010 and consultation with Department of Planning Officers by Council staff, it was determined that a Planning Proposal could be submitted prior to the final adoption of the Kempsey Local Growth Management Strategy – Residential Component.

5.3.1 Is the planning proposal the best means of achieving the objectives or intended outcomes?

Yes – there is no other mechanism available to achieve the objective of residential development on the unconstrained part of the land.

5.3.2 Is there a Net Community Benefit?

The future development of the unconstrained part of Lot 82 for residential purposes will utilise existing infrastructure and services. Coastal villages such as South West Rocks have a very limited supply of unconstrained lands and generally new release areas are often a balancing act between protecting environmental values and providing additional land supply. In this case, there are no ecological constraints within the suitable areas of elevated land proposed for residential use.

Net Community Benefit arises from the provision of additional land supply without any impact on threatened species or their habitat.

6 RELATIONSHIP TO STRATEGIC FRAMEWORK

6.1 Consistency with Regional Strategies

Enquiries with the Department of Planning and Kempsey Shire Council indicate that the subject land was possibly omitted from Mid North Coast Regional Strategy as a result of a GIS mapping anomaly.

By correspondence dated 17 July 2009 (**Appendix C**), the Department of Planning suggested two options would be available to address omission of Part Lot 82 from the Mid North Coast Regional Strategy. The option preferred by the land owner is:

- 1. On page 18 of the MNCRS (first paragraph) it is indicated that “where demonstrated through the local growth management strategy or rezoning process that a reasonable adjustment to a growth area boundary is desirable and is consistent with the Regional Strategy, then a variation of the boundary may be considered.*

As noted above, Council has resolved on 10 November 2009 to include Part Lot 82 in the Kempsey Local Growth Management Strategy – Residential Component.



This Planning Proposal supports the inclusion of the land in the strategy and provides detail to enable the rezoning process to begin.

6.2 Consistency with Council's Strategic Planning

The proposal is consistent with Council's resolution of 10 November 2009 and addresses the site specific comments in Council report referenced as item 59.

This planning proposal brings a greater level of detail as to the physical characteristics of Lot 82 and identifies more accurately the suitable areas for residential development.

6.3 Consistency with applicable State Environmental Planning Policies

a) State Environmental Planning Policy No. 71 – Coastal Protection

The entire village of South West Rocks is mapped as being within the Coastal Zone under SEPP 71. The subject land is also within 100m of a coastal waterway and under the provisions of the SEPP No. 71 any subsequent development application would need to address the provisions for Sensitive Coastal Locations.

Under SEPP 71 considerations which should be taken into account by a Council, when it prepares a draft local environmental plan are set out in Clause 8.

Clause 8 Table 1: SEPP 71 - Aims

Aims	How proposal satisfies aims
<i>(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and</i>	The proposal will not adversely impact on the natural, cultural, recreational and economic attributes of the NSW coast;
<i>(b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and</i>	The subject land backs onto to Public Reserve lands adjoining Spencers Creek (Macleay River). It does not have direct physical access to the waterway due to the topography and vegetation barriers and the width of the intervening Public Reserve lands. Refer DP263591 and aerial photographs.
<i>(c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this</i>	The character of the site is such that it already has public access by way of the existing public land between Lot 82 and the river.



Aims	How proposal satisfies aims
<i>is compatible with the natural attributes of the coastal foreshore, and</i>	Opportunities to introduce additional public access to the water front from this property would be undesirable to do so in this location due to the steep slope of the western edge of the site and the retention of screening vegetation. The existing access to the Public Reserve land and the waterfront from the north would not be affected by this proposal.
<i>(d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and</i>	Investigation by representatives of the Kempsey Local Aboriginal Land Council found no evidence of any aboriginal activity on Lot 82. A copy of the Aboriginal Archaeological Survey is provided at Appendix E. An AHIMS search has also revealed no recorded items of Aboriginal Cultural Heritage, Archaeological or Historic significance on the site. There are recorded aboriginal shell middens to the South – West of Lot 82 in the mangrove mud flats of Spencers Creek. A copy of the AHIMS search is provided at Appendix E.
<i>(e) to ensure that the visual amenity of the coast is protected, and</i>	The assessment of potential visual impact including photographs, is provided in Appendix D. The subject land is lower in elevation and has less visual exposure than the established residential areas and the vegetation along the western boundary of the site is to be protected under the scenic protection zone.
<i>(f) to protect and preserve beach environments and beach amenity, and</i>	The proposal will not adversely affect beach environments or beach amenity.



Aims	How proposal satisfies aims
(g) to protect and preserve native coastal vegetation, and	Native coastal vegetation will not be impacted by the subdivision.
(h) to protect and preserve the marine environment of New South Wales, and	The future residential development of the site will be required to connect to reticulated sewer and ensure that proper stormwater quality measures are in place for any subdivision that may occur.
(i) to protect and preserve rock platforms, and	N/A
(j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the <u>Protection of the Environment Administration Act 1991</u>), and Section 6(2) states that Ecologically sustainable development can be achieved through the implementation of the following principles and programs: a) the precautionary principle b) inter-generational equity c) conservation of biological diversity and ecological integrity d) improved valuation, pricing and incentive mechanisms e) polluter pays	The proposal is believed to be consistent with the principles of ecologically sustainable development. By utilising existing infrastructure and services off Riverview Place, by ensuring the steep slope vegetation area along the west boundary of the site is retained in an Environmental Protection zoning. By following best practice engineering design, on site construction management and ensuring storm water quality treatment criteria are met in the design and construction of any subsequent residential subdivision. Further, the provisions of the SEPP (BASIX) will ensure that any new dwelling constructed on the land addresses energy and water consumption efficiently.
(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and	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



Aims	How proposal satisfies aims
	development control provisions.
(l) to encourage a strategic approach to coastal management.	The proposal does not interfere or conflict with the proper strategic management of the coast.



Table 2: SEPP 71 - Matters for Consideration

Matters for Consideration	How proposal satisfies consideration
(a) the aims of this Policy set out in clause 2,	See Table 1.
(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,	See Table 1 – item (b).
(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,	See Table 1 – item (c).
(d) the suitability of development given its type, location and design and its relationship with the surrounding area,	See Table 1 – item (k).
(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,	See Table 1 items (e), (f), & (g)
(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,	As demonstrated at Appendix C the proposal should not have a detrimental impact on the scenic qualities of the NSW Coast.
(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), and their habitats,	No clearing required or proposed for the rezoning, nor should any clearing be required at a subsequent development application stage.
(h) measures to conserve fish (within	N/A



Matters for Consideration	How proposal satisfies consideration
the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats	
(i) existing wildlife corridors and the impact of development on these corridors,	The proposed rezoning and any resultant residential subdivision does not rely upon clearing of vegetation.
(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,	This section of the Macleay River/Spencers Creek is approximately 2.8 km from the River entrance to the Ocean and the subject land is over 2 km in a direct line from the ocean shore (Trial Bay). The part of the land proposed to be zoned residential would not be subject to coastal processes & hazards, being generally higher than RL 10 AHD.
(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,	The land is physically separated from the waterfront by substantial areas of Public Reserve land.
(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,	See Table 1 – item (d).
(m) likely impacts of development on the water quality of coastal waterbodies,	See Table 1 - item (h). 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.
(n) the conservation and preservation of items of heritage, archaeological or historic significance,	See Table 1 - item (d)
(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	The proposed rezoning would achieve additional infill residential land supply, utilising existing services and infrastructure.



Matters for Consideration	How proposal satisfies consideration
towns and cities,	
(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	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.
(ii) measures to ensure that water and energy usage by the proposed development is efficient.	BASIX would apply to any subsequent dwelling applications.

b) State Environmental Planning Policy (Rural Lands) 2008 & Farmland Mapping

The Mid North Coast Farmland Mapping project identifies areas of regionally significant farmland in the six LGAs from Clarence Valley south to Port Macquarie.

The subject land, Lot 82 is not mapped as Regionally Significant Farmland.

The SEPP (Rural Lands) contains provisions relating to construction of dwellings on land zoned Rural, Rural Residential and Environment Protection. As the subject land is currently zoned Environment Protection and is approximately 2ha in size, the Principles under Clause 7 have been considered and generally found to be not applicable.

Clause 7 Rural Planning Principles

The Rural Planning Principles are as follows:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*



- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

**c) Deemed State Environmental Planning Policy
North Coast Regional Environmental Plan
1 July 2009 – Deemed SEPP**

Division 2 Coastal Development – Clauses 31, 32A, 32B and 33

The various matters to address in these clauses are embodied in the provisions of SEPP 71 as addressed above and below in the Section 117 No. 2.2 below.

Division 3 Geological Resources

The objective of this division is to prevent sterilisation of known resources by inappropriate development on or near to potential extraction sites.

The Rudder's Quarry is a long standing Public Works quarry utilised on an intermittent basis for maintenance and repairs to the breakwater and training walls along the Macleay River.

The subject land (Lot 82) is approximately 500m from the closest disturbed section of Rudders Quarry. The topography between the quarry and Lot 82 comprises vegetated ridges and gullies. The topography is such that the ridges between the quarry site and Lot 82 are of sufficient height as to shield the property both in terms of noise and visual amenity.

In addition, it is worth noting that allotments at the end of Grandview Place are closer to Rudders Quarry than Lot 82 and have dwellings constructed upon them.

Investigation of potential quarry buffer requirements for Rudders Quarry has included review of the following documents.



Title	Author	Date	Comment
Noise Dust & Vibration Assessment Lots 81 & 82 DP 263591, South West Rocks	ERM Mitchell McCotter Pty Ltd for Blyth Hadlow & Associates	August 1997	Dwelling on lot 82 approved based on this report T4-97-56 on 20/8/97.
Revised Noise Assessment for dwelling on Lot 82	ERM for Dutton Engineering Excellence	May 2002	Additional data considered. Did not change the criteria, results or conclusions
Statement of Environmental Effects - Proposed Dwelling House, Lot 41 DP 1009860, South West Rocks	ERM for Shallow Bay Developments	October 2003	DA for a dwelling on Lot 41 which is immediately adjacent the quarry on its north. Dwelling approved 450 m buffer.
Statement of Environmental Effects - Proposed Dwelling House, Lot 41 DP 1009860, South West Rocks	ERM for Shallow Bay Developments	October 2003	DA for a dwelling on Lot 42 which is immediately adjacent the quarry on its south. Dwelling approved 450m buffer.
Rudders Quarry Revised Blast Analysis	ERM for Shallow Bay Developments	February 2005	Buffer of 150m supported by analysis.

In the material accompanying these reports are documents describing the history of use of the quarry and the Department's express intention that the *"quarry is used solely for the maintenance of the breakwater and training walls within the Kempsey District"*. It goes on to say that :

"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.

The abovementioned information would be on Council's files for Rudder's Quarry as it appears to be part of a SEPP 37 submission for recognition of existing use rights.

I have been advised by the former owner of Lots 41 & 42 which are immediately adjacent the quarry site, that Council has accepted a 250m buffer from the quarry and that amended development consents have been issued accordingly.

Taking in account the extensive amount of investigation and professional analysis that supported the abovementioned determinations, we consider that rezoning of



Lot 82 to residential would be consistent with the recommendations of the reports and with Council's previous decisions.

The infrequent use of the quarry means that nuisance that may arise during an active phase is not long lasting and is countered by extended periods of no use.

The importance of the resource is readily evident to all residents of South West Rocks as they directly benefit from the breakwall and training walls. Unlike complaints from residents next to continuously operating commercial quarries, this quarry is not used frequently and is being used for an identifiable local benefit.

Rezoning and subsequent residential use of Lot 82 would not, we believe, jeopardise the ongoing use of Rudder's Quarry by the Department of Lands.

6.4 Consistency with applicable Ministerial Directions

a) 117 Direction No.2.2 – Coastal Protection

The subject site is mapped as part of the 1km Coastal Zone.

A draft LEP shall include provisions that give effect to and are consistent with:

(a) the NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997, and

(b) the Coastal Design Guidelines 2003, and

(c) the manual relating to the management of the coastline for the purposes of section 733 of the Local Government Act 1993 (the NSW Coastline Management Manual 1990).

The character of the locality is such that it is already part of an urbanized environment and the relationship of this land to the coastal foreshore is protected by the public reserve land located between Lot 82 and the Macleay River/Spencers Creek.

Adjacent to the north, part Lot 81 was rezoned from 7(d) Scenic Protection to 2(a1) Residential in 2002/2003, with further urbanisation occurring on the more elevated and visually exposed lands uphill to the east.

Rezoning of part of Lot 82 to Residential is not considered as conflicting with the intent and provisions of the above policy, guidelines and manual.

b) 117 Direction No.9 – Conservation and Management of Environmental and Indigenous Heritage

The subject land is not within the vicinity of a designated heritage item under Council's LEP. An AHIMS search for Lot 82 reveals that there are no recorded



sites or relics on Lot 82 itself. The search indicates that there are middens to the South West of Lot 82 in the mangrove flats of Spencers Creek and The Macleay River. Further, a site specific Aboriginal Archaeological Survey conducted by members of the Kempsey Local Aboriginal Land Council also found no evidence of any aboriginal activity on the site. A copy of the search and the survey is provided at **Appendix E**.

c) 117 Direction No.19 – Planning for Bushfire Protection

The lot area is 2.02 ha and consists of managed grasslands, with a very small area of forested vegetation in the north west corner of the lot. The block slopes moderately to the west towards the mangrove and salt marsh vegetation.

The site adjoins existing residential areas to the north and east. Mangrove and salt marsh vegetation occurs to the south.

A preliminary Bushfire Hazard Assessment has been prepared for the site by Midcoast Environmental Services and is included within **Appendix F**.

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.

d) 117 Direction No.25 – Site Specific Zoning

Taking into account the history of the land's inclusion in Kempsey Council's adopted 1997 Residential Release Strategy and in light of the most recent advice from the Department of Planning, North Region office, a site specific zoning of the land is considered the most appropriate course of action.

As mentioned above, the development of part of Lot 82 is essentially an infill scenario, with the existing frontage to Riverview Place able to be upgraded to a residential street standard (bitumen sealed kerb & gutter) and ability to be serviced with sewer & water. On site water quality controls both during construction and longer term, should be a key consideration in any future subdivision design.



7 RELATIONSHIP TO STRATEGIC FRAMEWORK

7.1 Critical Habitat or Threatened Species, Populations or Ecological Communities

As evidenced by the enclosed photographs (**Appendix B**), the subject land contains mown grass for the majority of the site. There are some mature trees located along the west/north west boundary of the land and these are to be retained and protected under the 7(d) Scenic Protection zoning.

We do not anticipate that there would be any adverse impact on flora or fauna, should the land be rezoned to residential and subsequently developed. By virtue of Section 5 of the EP & A Act any subsequent development application for subdivision is required to address the provisions of the Threatened Species Act.

Taking into account that the future development area is predominantly mown grass, a Flora & Fauna assessment of the area to be zoned 2(a) Residential has not been undertaken at this point in time.

7.2 Any Other Likely Environmental Effects

Access, Transport & Traffic	Extension of Riverview Place along the frontage of Lot 82 will provide access to the land.
Public Domain	Retention of a section of land zoned 7(d) Scenic Protection between the public reserve land to the west and the developable area of the site.
Utilities	The site is able to be adequately serviced by electricity, telecommunications, reticulated water & sewer systems.
Waste (Garbage Service)	The site is able to be serviced by Council's waste management service.
Heritage & Archaeology	The proposed development site is not within the vicinity of a designated heritage item. There are no items of heritage significance being environmental, archaeological, cultural, spiritual, aboriginal or non aboriginal known to exist on the site. There are recorded aboriginal shells middens to the south-west of Lot 82 in the mangrove mud flats of the river.
Soils / Acid Sulphate Soils	The site is not mapped as potential Acid Sulfate Soils pursuant to Council's mapping. Australian Standards compliant sediment and erosion control measures will be employed and it is anticipated that conditions of consent would be applied to any subsequent subdivision approval.



Air & Microclimate	The development would not have an impact upon air quality and microclimatic conditions in the locality. The development as proposed is unlikely to give rise to any forms of pollution or impact in any way upon prevailing meteorological conditions.
Flora & Fauna	The proposal is not expected to adversely impact on Flora and Fauna.
Noise & Vibration	The rezoning proposal does not give rise to any concerns regarding noise and vibration. An extract from our previous submission (Sept 2009) addressing the Rudders Quarry (Public Works) is provided at the end of this table.
Natural Hazards Including:	
Bushfire	Pursuant to Council's bushfire prone land mapping the site is considered to be bushfire prone land. As such a bushfire hazard assessment has been prepared for the site. A copy of the assessment is included in Appendix F. It is considered that the proposal will not give rise to any significant technological hazard, risk to people, property or the biophysical environment.
Flooding	Enquiries with Registered Surveyor, Mr Mark Rogers indicates that the 1 in 100 year flood level in the vicinity is estimated at RL 2.55 m AHD. The plans show that the lowest part of Lot 82 proposed for Residential use is above RL12m AHD. As such, the subject land is not flood prone and has ample freeboard above any likely future floor event and climate change allowance.
Slip and Subsidence	No known slip and subsidence issues.
Safety, Security & Crime Prevention	The proposal does not give rise to any safety, security and crime prevention issues.
Social Impact	No adverse social impacts are anticipated.
Economic Impact	It is considered that the proposal would have a beneficial economic impact on the locality.



Site Design	The proposal has considered the site's characteristics and physical constraints. As a result it is proposed to retain the western part of the site (roughly that area below RL10 m AHD, sloped > 20% and vegetated) in the 7(d) zone and locate the residential land on the lesser sloped areas.
Cumulative Impacts	No detrimental cumulative impacts are anticipated as a result of the proposed rezoning and future residential subdivision.

8 STATE & COMMONWEALTH INTERESTS

8.1 Is there adequate public infrastructure

- a) Water Supply
- b) Reticulated Sewerage Services
- c) Roads & Bus Services

Yes – adequate public infrastructure is in place as part of the existing urban fabric and the proposal provides an infill opportunity to utilise existing infrastructure and services.

8.2 What are the views of State and Commonwealth authorities consulted?

This section is completed following consultation with the State and Commonwealth authorities should the Director General determine to proceed with the Planning Proposal and identifies which authorities are to be consulted with.

8.3 Part 4 – Community Consultation

This section is completed following Council's consideration of the extent of consultation required.



9 CONCLUSION

The site analysis of Lot 82 revealed that the application of the 7(d) Scenic Protection zone over the entire site under the 1987 LEP was perhaps based on inaccurate information and broadscale mapping.

This view is further supported by Council's 1997 residential strategy which identified the land for partial rezoning to residential and by Council's more recent resolution of 10 November 2009 to include the site as residential, except those areas steeper than 20% slope.

The proposal presented in this document, will retain more than just the steepest land in a 7(d) zone and has proposed two subdivision concepts to demonstrate how the site might be developed if the rezoning proceeds.

Protection of water quality in this location is a priority and has been incorporated in the two subdivision concepts presented to ensure it can be achieved without removal of any mature vegetation.

The proposed rezoning of Lot 82, DP263591, has sought to protect the visual amenity of the area by retaining the steep and vegetated western edge of the site within an environmental protection zone and allows for the middle and eastern part of the site to be developed.

Consideration of Rudder's Quarry reveals that it is about 500 m to the south east and protected by heavily vegetated timber ridges. This combined with the intermittent use of the Quarry to repair and maintain the Macleay River breakwalls and training walls (ie a local public benefit) it is believed to be unlikely to generate complaints from future residents.

We submit that potential environmental impacts associated with the rezoning have and can continue to be appropriately mitigated through the rezoning proposal and subsequent development applications.

As demonstrated through this report the proposed rezoning of part of Lot 82 from 7(d) Scenic Protection to 2(a) Residential is appropriate for the site and consistent with the character of the locality.

Yours faithfully

Geraldine Haigh
Senior Planner



APPENDIX A

Aerial Photograph Site Contours & Slopes (Survey) Deposited Plan



Aerial Photograph





APPENDIX B

Site Photographs



Photograph 1



Photograph 2



Photograph 3



Photograph 4



Photograph 5



Photograph 6



Photograph 7



Photograph 8



APPENDIX C

Correspondence from Department of Planning



Letter from Dept. of Planning (Page 1 of 2)

22 JUL 2009



NSW GOVERNMENT
Department of Planning

Contact: Greg Yeates
Phone: 02 6641 6600
Fax: 02 6641 6601
Email: northcoast@planning.nsw.gov.au

Ms Geraldine Haigh
Hopkins Consultants Pty Ltd
PO Box 1556
PORT MACQUARIE NSW 2444

Our ref: GRA6323800-3
Your ref: 6323

17 July 2009

Dear Ms Haigh *Geraldine*,

Subject: Mid North Coast Regional Strategy: Lot 82 Riverview Place, South West Rocks

Thank you for your letter dated 6 July 2009 on behalf of the owners of Lot 82 Riverview Place, New Entrance, South West Rocks. Your letter notes that the subject land is included in Council's Residential Land Release Strategy, but not included in the Mid North Coast Regional Strategy's (MNCRS) "growth area".

The Department has investigated this matter. We can confirm that the area tagged "SWR13" was approved by the Director-General's delegate as part of an amended Kempsey Shire Residential Land Release Strategy on 22 April 2002. Part of SWR13 was rezoned to 2(a) Residential on 14 February 2003 (Amendment No.61). This area is included in the "growth area" of the MNCRS, however the part that applies to Lot 82 was not included.

The areas included in the MNCRS's "growth area" were based largely upon existing zoned land and areas included in approved local strategies. The approved local strategy shape files were supplied to the Department by Council. We have discussed the omission of Part Lot 82 from the "growth area" with staff at Kempsey Shire Council. Neither Council staff nor Department staff are able to ascertain why part of SWR13 was not included in the MNCRS "growth area". Given that the Amendment No.61 rezoning process raised a number of issues causing a lengthy delay in the rezoning process, it may be that Lot 82 has similar issues and a decision was made at Council level at some stage not to pursue the remainder of SWR13. Otherwise, we can only surmise that the omission is an oversight. Further, there was no submission to the draft MNCRS maps to alert us to the omission.

Two options are available to address the omission of Part Lot 82 from the MNCRS "growth area":

1. On page 18 of the MNCRS (first paragraph) it is indicated that, "where demonstrated through the local growth management strategy or rezoning process that a reasonable adjustment to a growth area boundary is desirable and is consistent with the Regional Strategy, then a variation of the boundary may be considered ...". This option could be canvassed with Council (having regard also for the rest of the paragraph). We note that Council is currently finalising a draft local growth management strategy, so the timing might be appropriate for Council to consider the merits of your client's case; or
2. Lot 82 could be considered at the first five year review of the MNCRS. In this regard, we have already listed the matter in our database of sites and issues for consideration at that review.



Letter from Dept. of Planning (Page 2 of 2)

Either of the above options would depend upon Council's support of development of the subject land, which may hinge on any history or issues already known to Council.

I hope the above information helps to clarify the matter.

Yours sincerely

Greg Yeates
Acting Regional Director

Cc Kempsey Shire Council



APPENDIX D

Visual Analysis



Visual Analysis

Lot 82 DP263591, Riverview Place, South West Rocks
January 2008

Photo No.	Description
Photo 1	Photo taken directly opposite site (west bank)
Photo 2	Photo taken south of block (middle of river)
Photo 3	Photo taken western bank opposite ramp
Photo 4	Photo taken western bank opposite showing existing visual impact from development
Photo 5	Photo taken north of block (midstream)
Photo 6	Photo taken directly opposite site (midstream)
Photo 7	Photo taken further south (opposite Cox's Wharf)







Photo 5



Photo 6

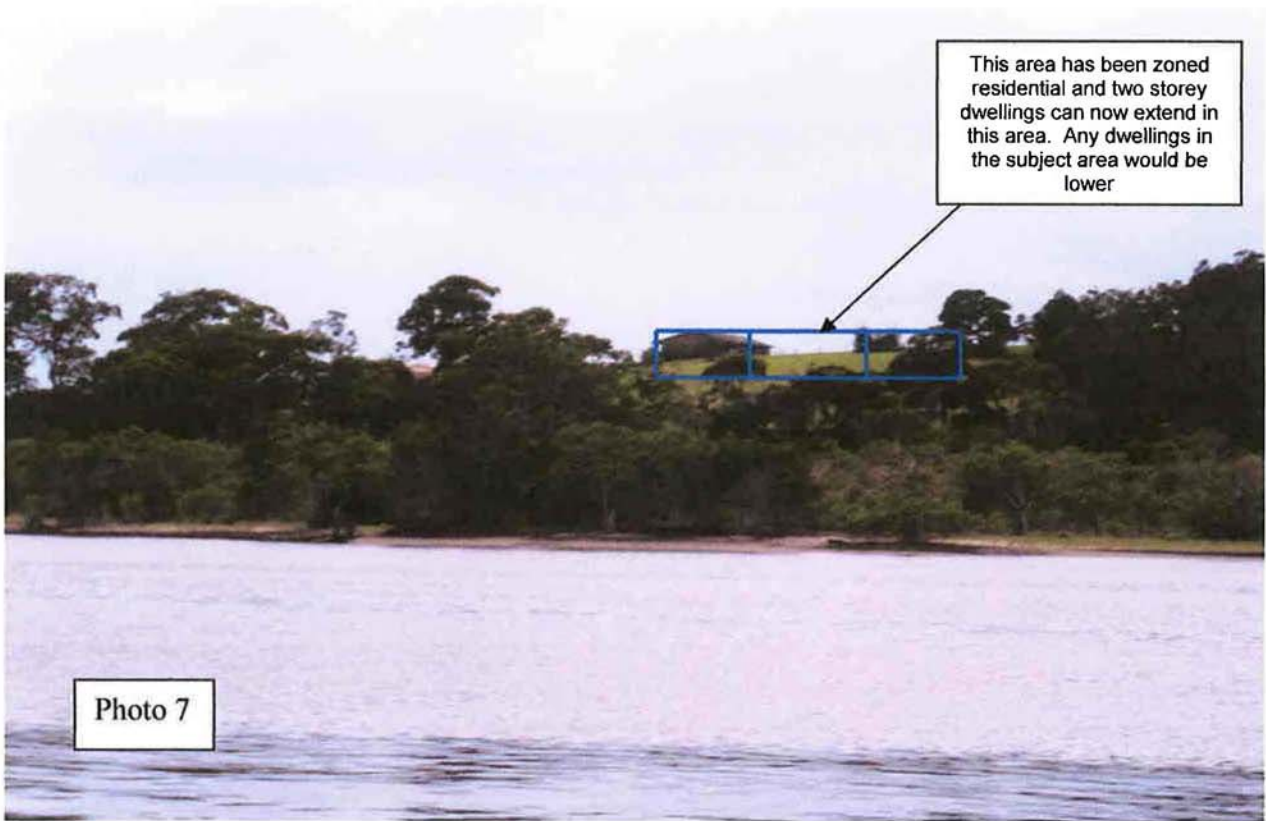
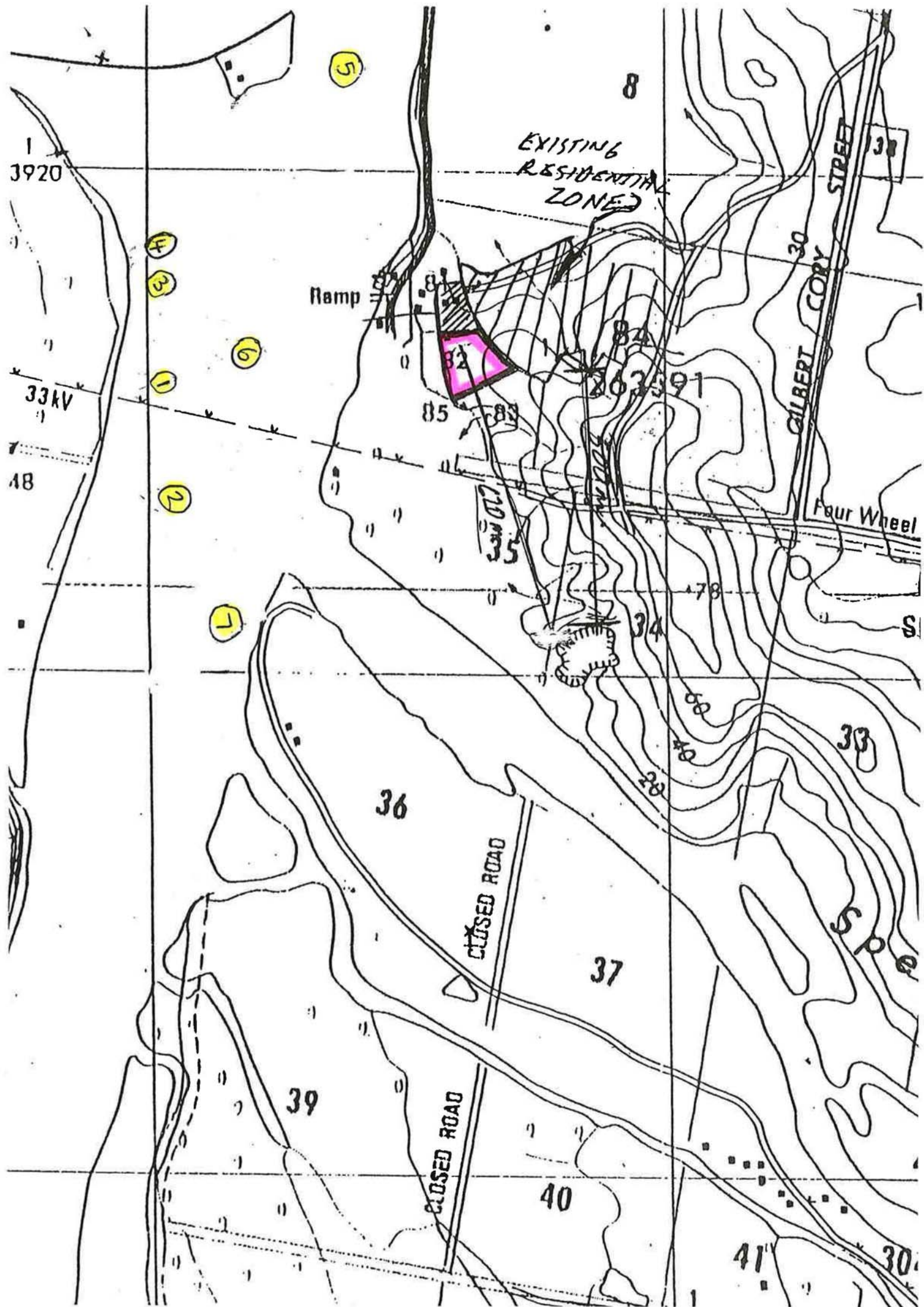


Photo 7

This area has been zoned residential and two storey dwellings can now extend in this area. Any dwellings in the subject area would be lower





Appendix E

Aboriginal Archaeological Survey & AHIMS Search



P.O. Box 540,
Kempsey, N.S.W. 2440
Phone (02) 6562-8688
Fax (02) 6563-1293

KEMPSEY LOCAL ABORIGINAL LAND COUNCIL

ABN: 92 091 716 063

ABORIGINAL ARCHAEOLOGICAL SURVEY: LOT 82 DP263591

RIVERVIEW PLACE SOUTH WEST ROCKS

DATE: 03 February 2011

PARTICIPANTS:

CRAIG & EDWARD SMITH
SITE OFFICERS
KEMPSEY LOCAL ABORIGINAL LAND COUNCIL

REASON FOR INVESTIGATION:

REZONING APPRECIATION HAS BEEN LODGED WITH KEMPSEY COUNCIL TO REZONE LOT 82 RIVERVIEW DRIVE SWR THAT REQUIRE AN ABORIGINAL ARCHAEOLOGICAL SURVEY INVESTIGATION TO ASCERTAIN ANY EVIDENCE OF ABORIGINAL ACTIVITY ON THE DEVELOPMENT SITE.

LOCAL ABORIGINAL HISTORY:

BEFORE EUROPEAN SETTLEMENT ABORIGINAL PEOPLE ROAMED THE RIVERS AND USED THE LAND TO HUNT AND GATHER FOOD, WITHOUT SAYING TOO MUCH, ABORIGINAL TIES TO THE LAND CAN BE IDENTIFIED WITH THE SIGNIFICANCE SITE IN THE AREA FOR INSTANCE THE LARGE MIDDEN SITE LOCATED ACROSS THE RIVER AND THE MIDDEN SITE LOCATED AT THE BOTTOM OF RIVERVIEW PLACE AND ALONG MARLIN DRIVE WHICH INDICATE THE AMOUNT OF ABORIGINAL ACTIVITY IN AND AROUND THE AREA.



VEGETATION ON SITE:

THE LOT IS 95% CLEARED OF TIMBER APART FROM A SMALL AMOUNT OF REGROTH ALONG THE FENCH LINE INCLUDING WEED THE LOT HAS A HEAVY LAYER OF GRASS OVER IT WHICH MAKES SUBSURFACE IINVESTIGATIONS VERY HARD TO LOCATE ANY EVIDENCE OF ABORIGINAL ACTIVITY ON THE LOT.

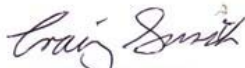
RESULT OF SURVEY:

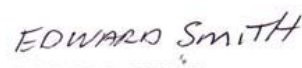
THE SURVEY WAS LIMITED SOME WHAT DUE TO THE AMOUNT OF VEGETATION (GRASS) ON THE LOT.

THERE HAS BEEN A LOT OF EUROPEAN DISTURBANC ON THIS LOT OVER THE YEARS (FARMING, QUARRY ACTIVITY) THERE WAS TEN TEST PITS DUG AT VARIOUS LOCATION ON LOT 82 WITH NIL RESULT, WALK OVER RESULT WAS NIL AS WELL.

RECOMMENDATIONS:

AFTER SPENDING SOME HOURS INVESTIGATION LOT 82 RIVERVIEW PLACE SOUTH WEST ROCKS FOR ANY ABORIGINAL ACTIVITY KEMPSEY LOCAL ABORIGINAL COUNCIL SITE OFFICERS FOUND NO EVIDENCE OF ANY ABORIGINAL ACTIVITY AND SEE NO REASON WHY DEVELOPMENT CANT CONTINUE ON THE ABOVE LOT. (Note once development start and any ARTEFACTS is located KLALC site officer to be contacted)


CRAIG SMITH


EDWARD SMITH

AHIMS Search

 Environment, Climate Change & Water AHIMS Web Services (AWS) Extensive search - Site list report		Your Ref Number : 6232	
SiteID 22-4-0057	SiteName Spencer Cr Quarry Rd 3	Datum AGD	Zone 56
Contact		Easting 501600	Northing 6581550
		Context Open site	SiteUses Earth Mound,Shell,Artefact
		Records	SiteUses Midden Permits
		Records	Records

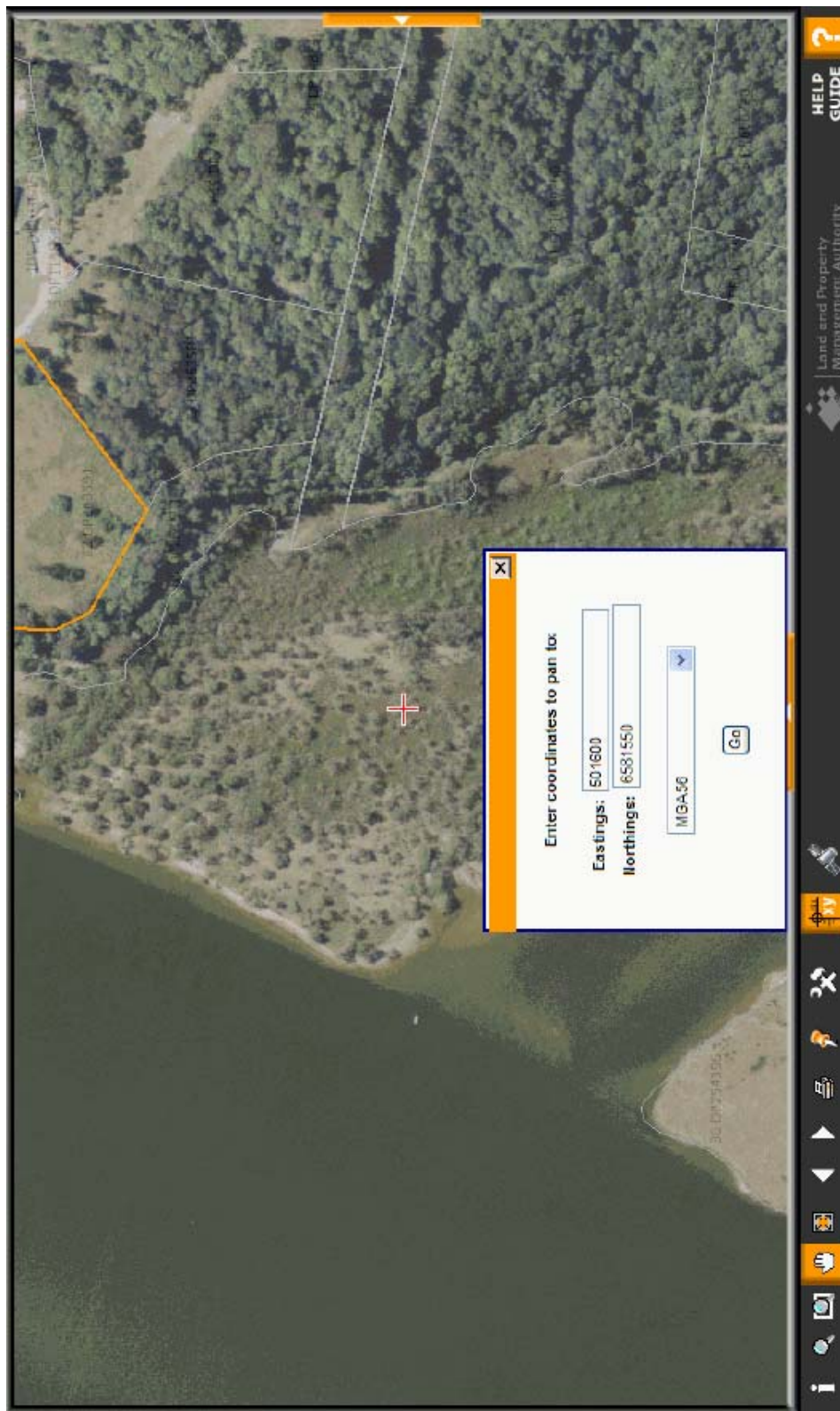
Report generated by AHIMS Web Service on 7/10/2010 for Naomi Lee for Lot : 82, DP-DP263591, Section : with a Buffer of 0 meters. Additional Info : Reasoning Application for landowner. Number of Aboriginal sites and Aboriginal objects found is 1
This information is not guaranteed to be free from error omission. The Department of Environment, Climate Change & Water (NSW) and its employees disclaim liability for any act done or omission made on the information and consequences of such act or omission.

Page 1 of 1





AHIMS





APPENDIX F

Bushfire Hazard Assessment



BUSHFIRE HAZARD ASSESSMENT

Lot 82 DP 263591 New Entrance Road South West Rocks

NSW Client: G Melville

PRELIMINARY BUSHFIRE HAZARD INVESTIGATION

Prepared May 2007 by

PO Box 42, Crescent Head, NSW, 2440 ph: 65631292





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3.0 ASSET PROTECTION ZONES	7
4.0 CATEGORY OF BUSHFIRE ATTACK	8
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1.0 INTRODUCTION

As requested a preliminary Bushfire Hazard Assessment has been carried out for Lot 82 DP 263591 New Entrance Road, South West Rocks. The report is to investigate constraints of the site in relation to bushfire hazards and is based upon site assessments carried out in April and May 2007.

NOTE

The report has been prepared with all reasonable skill, care and diligence.

The information contained in this report has been gathered from field survey, experience and has been completed in consideration of the following legislation.

1. Rural Fires Act 1997
2. Environmental Planning and Assessment Act 1979/Building Code of Australia 1996.
3. Council Local Environment Plans and Development Control Plans where applicable.
4. NSW Rural Fire Services, Planning for Bushfire Protection, 2006.
5. AS 3959-1999 Construction of Buildings in Bushfire Prone Areas.

The report recognizes the fact that no property and lives can be guaranteed to survive a bushfire attack. The report examines ways the risk of bushfire attack can be reduced where the site falls within the scope of the legislation.

The report is confidential and the writer accepts no responsibility of whatsoever nature, to third parties who this report or part thereof is made known. Any such party relies on this report at their own risk.

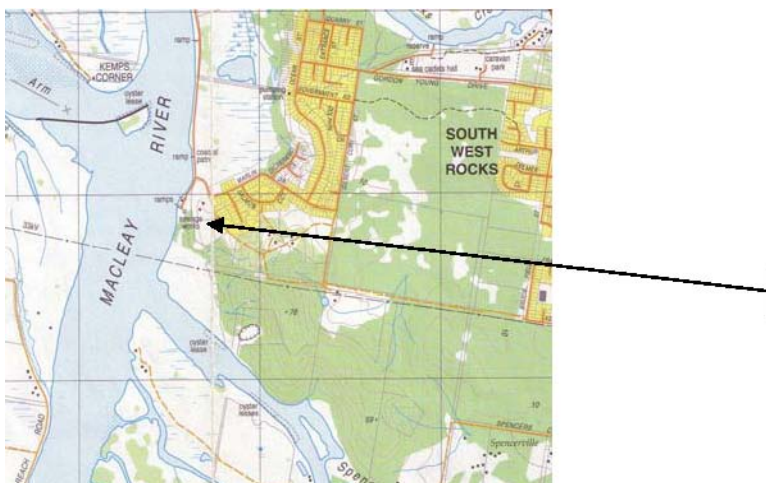
1.1 Purpose of the Report

The purpose of this report is to identify and assess the hazards affecting the subject site for future planning and indicate the Asset Protection Zones required for the residential development on the site, in accordance with NSW Rural Fire Service, **Planning for Bushfire Protection**, 2006. The report also assesses the category of bushfire attack for dwellings based upon setbacks from the identified hazards.

1.2 Location and Description of the Development Site.

The site is located at Lot 82 DP 263591 New Entrance Road, South West Rocks. The site is adjoins existing residential area to the north and mangrove and salt marsh to the south. The block is situated within the Kempsey Council Local Government Area.

Subject site





The block is a 2.02 ha lot that has been cleared in the past. The site contains managed grassland with a small area of forested vegetation in the north western corner of the lot. The block moderately slopes to the west (towards the mangrove salt marsh estuarine wetland).

1.3 Method

A detailed assessment of the slopes and vegetation structures on and surrounding the site of the site was carried out by Mid Coast Environmental Service in April and May 2007. The assessment was carried out in accordance with Appendix 2 and 3 of NSW Rural Fire Service, **Planning for Bushfire Protection**, 2006. The structural characteristics of the vegetation surrounding and on the subject site was classified in accordance with the identification key in *Keith D* (2004). Slopes were measured using a Suunto PM-5/360 PC Clinometer and a contour plan of the site.

2.0 BUSHFIRE HAZARD

2.1 Procedure

Several factors need to be considered in determining the bushfire hazard for the block. These factors are slope, vegetation type, and distance from hazard, access/egress and fire weather. Each of these factors has been reviewed in determining a bushfire hazard rating for the block.

2.2 Slope

Slope is a major factor to consider when assessing the bushfire risk of the block. The slopes affecting the subdivision were measured using a Suunto PM-5/360 PC Clinometer.

The gradient within the hazard vegetation that is likely to most significantly influence fire behaviour in regard to the vegetation was determined for each aspect of the site. The hazard vegetation was identified to be the vegetation to the west and south.

A thin strip of forest vegetation (approximately 20m in width) is positioned on a short steep bank (15° to 18° downslope) that runs along the western boundary of the block. The slope to the west of the steep bank is low lying flat estuarine mangrove wetland. The short steep slope to the west is not considered to be the gradient within the hazard vegetation that is likely to most significantly influence fire behaviour for this aspect. It is considered any fire attack to the site from the vegetation to the west would be across the slope from the south west or north west. Therefore a slope gradient of 0° to 5° downslope was used to assess the hazard to the west.

The slopes within the vegetation to the south and south east of the site are moderate to steep upslopes extending for >140m from the site. The slopes to the south west are upslopes of 10° to 12° and 8° to 10° upslopes to the south. The upslopes to the south and south east slope towards a gully adjacent to the southern boundary of the site. An area of vegetation approximately 20 to 30m in width rises from the gully to adjoin the southern boundary of the site on a downslope of 12°. It is however considered that the extended upslopes to the south and south east are the gradients that would most significantly influence fire behaviour.

The above slopes were considered when assessing the required Asset Protection Zones and category of bushfire attack for the site.

2.3 Vegetation

The predominant vegetation communities within 140m of the proposed site were determined by a field assessment. The vegetation formation was classified using the system adopted as per *Keith* (2004).



The site has been cleared in the past and contains managed grassland, however a small area of riparian vegetation is positioned in the north western corner of the site.

Adjoining the northern boundary of the block is managed grassland and riparian vegetation adjoining the north eastern corner of the site.

To the south of the site is wet sclerophyll forest, however the forest vegetation adjoining the south eastern corner of the site has been modified in the past to have characteristics of woodland. It is unlikely that this vegetation would re-generate into a vegetation structure other than woodland and therefore was assessed accordingly.

To the east of the site is managed vegetation positioned on existing residential land.

A thin strip (approximately 20m in width) of riparian vegetation positioned on a steep bank adjoining the western boundary of the block. The riparian vegetation adjoins mangrove estuarine wetland to the west (at the base of the slope of the riparian vegetation). In accordance with PfbP, 2006, riparian areas which are no greater than 20m width are treated the same as rainforests.

The following table summarises the vegetation and slopes affecting the site.

Table 2.3.1 Vegetation affecting the site	Vegetation type	Position of vegetation	Slope
Aspect			
North	Managed grassland and riparian vegetation	Managed vegetation to the north east and riparian vegetation to the north west.	0° to 5° Downslope (within the riparian vegetation)
South	Wet Sclerophyll forest and woodland	Adjoining the southern boundary	Upslopes
East	Managed vegetation and existing residential development	To the east of the site	Slopes not applicable
West	Riparian vegetation (assessed as equivalent to rainforest) and Mangrove saline wetland	To the west of the site	0° to 5° downslope (riparian vegetation)



Photo 2.3.2
Aerial photo of the site

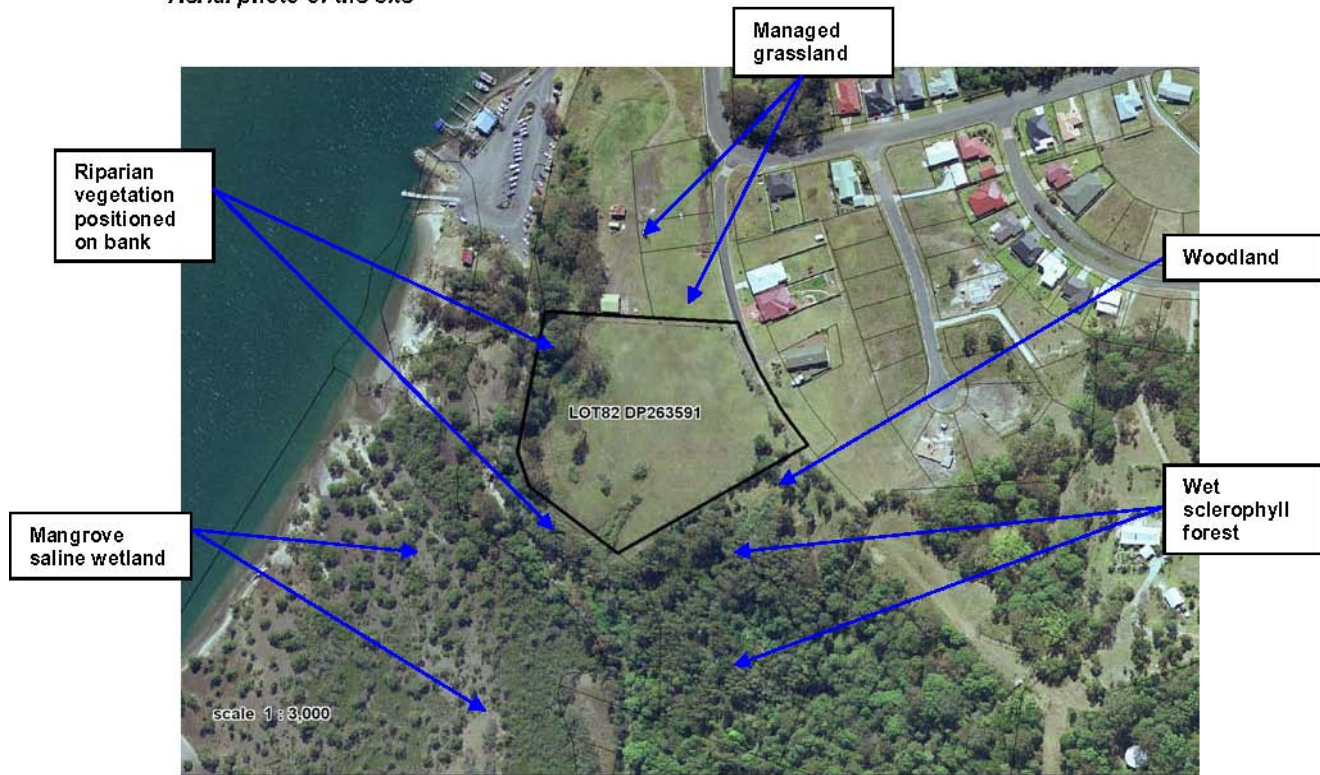


Photo taken from the eastern end of the site looking west, showing the riparian vegetation



Photo taken from the eastern end of the site looking north east, showing the managed grassland



Photo taken on the site looking south, showing the wet sclerophyll forest adjoining the southern boundary

2.2 Fire Danger Index

The fire weather for the site is assumed on the worst-case scenario. In accordance with NSW RFS, **PfBP**, 2006 the fire weather for the site is based upon the 1:50 year fire weather scenario and has a Fire Danger Index (FDI) of 80.

3.0 ASSET PROTECTION ZONES

An Asset Protection Zone (APZ) is to accompany any development on the block and is to be positioned between the hazard and the development. The APZ provides for; minimal separation for safe fire fighting, reduced radiant heat, reduced influence of convection driven winds, reduced ember viability and dispersal of smoke. The APZ consists of an Inner Protection Area (IPA) and Outer Protection Area (OPA). The IPA is an area closest to the building that incorporates defensible space and is used for managing heat intensities at the building surface. The OPA is positioned adjacent to the hazard and the purpose of the OPA is to reduce the potential length of flame by slowing the rate of spread, filtering embers and suppressing the crown fire.

The APZ required from the various hazards surrounding the site vary for the development. The following table indicates the minimum APZ requirements in accordance with **PfBP** 2006 from the various hazard areas. The table should be read in conjunction with **Aerial Photo**

2.3.2

Table 3.1.1 Asset Protection Zones

Hazard Area and vegetation type	Slope	IPA	OPA	APZ
Riparian vegetation adjoining the north western corner of the site	0° to 5° downslope	10m	-	10m
Wet sclerophyll forest to the south of the site	Upslope	10m	10m	20m
Woodland to the south east of the site	Upslope	10m	-	10m
Riparian vegetation to the west of the site	0° to 5° downslope	10m	-	10m

It is noted that no APZ is required from the managed grassland adjoining the northern boundary and managed

grassland to the within the residential area to the east



4.0 CATEGORY OF BUSHFIRE ATTACK

The methods used in Appendix 3 of **Planning for Bushfire Protection**, NSW Rural Fire Services, 2006 have been used in determining the minimum set back distances for dwellings positioned on the site.

The following construction requirements in accordance with AS 3959 – 1999 is required for the bushfire attack categories.

Bushfire attack category	Level of construction (AS 3959-1999)
Low	No construction requirements under AS 3959-1999
Medium	Level 1 construction
High	Level 2 construction
Extreme	Level 3 construction
Flame Zone	Outside the scope of AS 3959-1999

Table 3.2.1

The following table indicates the category of bushfire attack and AS 3959-1999 Levels of construction required for any dwellings positioned on the site based upon the setback from the various hazard areas.

The table is based upon the vegetation type, slope, setback from vegetation and FDI.

Hazard Area	Level 3 AS 3959-1999 Extreme	Level 2 AS 3959-1999 High	Level 1 AS 3959-1999 Medium	Low (no requirements)
Riparian vegetation to the west of the site and within the north western end of the site	9m to 14m	14 to 20m	20 to 50m	>50m
Wet sclerophyll forest adjoining the southern boundary	17m to 25m	25m to 35m	35m to 100m	>100m
Woodland adjoining the south eastern end of the site	9m to 14m	14m to 25m	35 to 100m	>100m

Table 4.1.1

Category of Bushfire Attack

As can be seen in the above table the category of bushfire attack for any dwellings positioned on the site will be dependant on the setback distances from the various surrounding hazards. The category of bushfire attack will need to be assessed in more detail when a proposed subdivision layout is produced.

5.0 CONCLUSION

Any proposed residential development on the subject site will need to provide APZ's in accordance with **PfBP** 2006 as shown in section 3.0 of this report.

Further issues such as access and egress, perimeter roads or fire trails and water supply will need to be addressed with the future development application for the site.

It should be noted that the report is based on the requirements of residential land (not special



Bill Larkin Mid Coast Environmental Services



6.0 REFERENCES

NSW Rural Fire Services, ***Planning for Bushfire Protection***, 2001 NSW Rural Fire Services, ***Planning for Bushfire Protection***, 2006 AS 3959-1999 ***Construction of Buildings in Bushfire Prone Areas*** Keith David
2004, Ocean ***Shores to Desert Dunes, The Native Vegetation of New South***
Wales and the ACT, Department of Environment and Conservation



2 May 2011

Our Ref: 6232

Your Ref: RZ-11-1

Kempsey Shire Council
P O Box 3078
WEST KEMPSEY NSW 2440

Attn: Mr Ilija Susnja

Dear Sir,

Re: Rezoning Lot 82 New Entrance road, South West Rocks

I refer to your email correspondence of 14 April 2001 and enclose an addendum to the Planning Proposal, updating the section 117 Directives as per your request.

The following is to replace Section 6.4 of the planning proposal. It is important that the response to the directives is read in conjunction with the overall planning proposal, not in isolation.

Yours faithfully,

Geraldine Haigh
Planner



WINNER
2009

Directors

MICHAEL S MOWLE

B E Civ (Hons)
Chartered Engineer

GERALDINE E HAIGH

B App Sc (Env Plng)
Senior Planner

GEOFFREY E HILL

B Surv
Registered Land Surveyor

DANIEL J BAKER

B Surv
Registered Land Surveyor



ABN 27 055 060 878

Suite 1, 109 William St

PO Box 1556, Port Macquarie 2444 NSW

Telephone: 02 6583 6722 Facsimile: 02 6584 9009

Email: mail@hopcon.com.au

Section 6.4 Consistency with applicable Ministerial Directions

a) 117 Direction No. 1.3 Mining, Petroleum Production and Extractive Industries

The objective of this directive is to ensure regionally significant reserves of extractive materials are not compromised by inappropriate development.

The Rudder's Quarry is a long standing Public Works quarry utilised on an Intermittent basis for maintenance and repairs to the breakwater and training walls along the Macleay River.

Rudder's Quarry is not a particularly large quarry and may not necessarily qualify as a "regionally significant" resource. However it is locally significant to South West Rocks and is an integral part of the maintenance of the training walls to the Macleay River.

The subject land (Lot 82) is approximately 500m from the closest disturbed section of Rudder's Quarry. The topography between the quarry and Lot 82 comprises vegetated ridges and gullies. The topography is such that the ridges between the quarry site and Lot 82 are of sufficient height as to shield the property both in terms of noise and visual amenity.

In addition, it is worth noting that allotments at the end of Grandview Place are closer to Rudders Quarry than Lot 82 and have dwellings constructed upon them.

Investigation of potential quarry buffer requirements for Rudder's Quarry has included review of the following documents as summarized in the table to Section 6.3 in the planning proposal.

In the material accompanying these reports are documents describing the history of use of the quarry and the Department's express intention that the *"quarry is used solely for the maintenance of the breakwater and training walls within the Kempsey District"*. It goes on to say that :

"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."

The abovementioned information would be on Council's files for Rudder's Quarry as it appears to be part of a SEPP 37 submission for recognition of existing use rights.

I have been advised by the former owner of Lots 41 & 42 which are immediately adjacent the quarry site, that Council has accepted a 250m buffer from the quarry and that amended development consents have been issued accordingly.

Taking in account the extensive amount of investigation and professional analysis

that supported the abovementioned determinations, we consider that rezoning of Lot 82 to residential would be consistent with the recommendations of the reports and with Council's previous decisions.

The infrequent use of the quarry means that nuisance that may arise during any active phase is not long lasting and is countered by extended periods of no use.

The importance of the resource is readily evident to all residents of South West Rocks as they directly benefit from the breakwall and training walls. Unlike complaints from residents next to continuously operating commercial quarries, this quarry is not used frequently and is being used for an identifiable local benefit.

Rezoning and subsequent residential use of Lot 82 would not, we believe, jeopardise the ongoing use of Rudder's Quarry by the Department of Lands.

b) 117 Direction No. 1.4 Oyster Aquaculture

The objective of this directive is to ensure that Priority Oyster Aquaculture Areas are adequately considered to ensure they would not be adversely affected by proposed change in land use.

The subject land, Lot 82, is proposed to be zoned residential on that part of the land above RL 12 m AHD (generally). The residential use is then separated by a retained strip of environmental protection lands and then public lands interface through to the river.

The closest mapped Priority Oyster Aquaculture Areas for the Macleay River is approximately 450 m upstream in Spencers Creek. Extracts from the Priority Oyster Aquaculture Area maps (source: NSW Department of Primary Industries website) are enclosed, to demonstrate the location of the POAA in relation to Lot 82.

Any subsequent residential development of Lot 82 would be connected to Council reticulated sewerage system as well as requiring water quality measures to ensure meet Australian standards and water quality targets. These are standard requirements for any residential subdivision, particularly one that adjoins public lands and water ways.

Extract from DPI POAA maps

c) *117 Direction No. 1.5 Rural Lands*

The objective of this directive is to protect agricultural lands, which includes lands within an existing environmental protection zone.

The SEPP (Rural Lands) 2008 has been considered in relation to Lot 82 and the proposed amendment to part of the environment protection zoning.

The Mid North Coast Farmland Mapping project identifies areas of regionally significant farmland in the six LGAs from Clarence Valley south to Port Macquarie.

The subject land, Lot 82 is not mapped as Regionally Significant Farmland.

As the subject land is currently zoned Environment Protection and is about 2ha in size, the Principles under Clause 7 have been considered and generally found to be not applicable.

Clause 7 Rural Planning Principles

The Rural Planning Principles are as follows:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The planning proposal may be inconsistent with the terms of this directive as it is justified by a Strategy which gives consideration to the objectives of this direction and identifies the land which is the subject of the planning proposal. Kempsey Council's draft Local Growth Management Strategy – Residential Component has been forwarded to the Department of Planning & Infrastructure for approval by the

Director General.

c) 117 Directive No. 2.1 Environment Protection Zones

This objective of this directive is to protect and conserve environmentally sensitive areas. As discussed throughout the planning proposal, the application of an environmental protection zone over the entire sight in the mid eighties may have been an anomaly as the land was not vegetated on its gentler slopes and is not as visually prominent as other residential lands immediately behind it.

This anomaly is recognised in Council's current Local Growth Management strategy – residential component and in Council's previously adopted 1997 residential strategy. Council's report SDS 11 of 10 November 2009 on page 59 states:

A portion of Lot 82 has been included in the draft strategy on the basis that it contains few environmental constraints. Another portion of the land however is not considered suitable given its topography (slope greater than 20 %).

The planning proposal seeks to rezone the land consistent with Council's comments of 10 November 2009.

As such, inconsistency with this directive is supported and justified by the aforementioned local growth management strategy.

d) 117 Directive No. 2.2 Coastal Protection

The subject site is mapped as part of the Coastal Zone. The directive requires that a planning proposal shall give effect to and be consistent with:

(a) the NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997, and

(b) the Coastal Design Guidelines 2003, and

(c) the manual relating to the management of the coastline for the purposes of section 733 of the Local Government Act 1993 (the NSW Coastline Management Manual 1990).

The character of the locality is such that it is already part of an urbanized environment and the relationship of this land to the coastal foreshore is protected by the public reserve land located between Lot 82 and the Macleay River/Spencers Creek and by the retained 7(d) Scenic Protection zoned lands within Lot 82.

Adjacent to the east and further elevated than Lot 82 are lands currently develop and developing as residential. Rezoning of part of Lot 82 to Residential is not in conflict with the intent and provisions of the above coastal policy, guidelines and manual.

e) 117 Direction No. 3.1 Residential Zones

The objective of this directive is to encourage a variety and choice of housing types and make efficient use of existing infrastructure and services, as well as ensuring the impact of residential development on environmental and resource lands is minimised.

The planning proposal is consistent with this directive in that it will utilise and therefore, make more efficient the use of existing infrastructure and services.

The proposed residential zone is the same as applied to adjacent lands and that zone provide opportunity for a range of residential uses. The design of the future subdivision and dwellings on the land will be subject to the development control provisions currently in place for South West Rocks. 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.

The proposal seeks to integrate with the existing urban environment and be consistent with the character of the area.

The potential for impact on nearby environments and extractive resources has been addressed under the specific directives 1.3, 14, 2.1 & 2.2.

f) 117 Direction No. 3.4 Integrating Land Use and Transport

This directive seeks to improve the opportunities for walking, cycling and public transport usage and ultimately reduce travel demand by car where ever possible.

Future residents of Lot 82 will be able to utilise the existing bus service routes and the quiet nature of the locality is such that walking along small local streets down to the boat ramp and nearby tavern is both safe and pleasant.

Opportunities to introduce additional public access to the water front directly from this property would be undesirable in this location due to the steep slope of the western edge of the site and the protection of existing vegetation. Existing access to the Public Reserve land and the waterfront from the north is supported by this proposal.

g) 117 Direction No. 4.1 – Acid Sulphate Soils

Extensive searching could not find Kempsey Shire Council Acid Sulphate Soils outlined in the wider planning proposal, the area proposed for rezoning to residential applies to land of RL 12 m AHD and above.

The area of land included in the proposed residential land does not demonstrate the

characteristics of Acid Sulphate Soil conditions.

The traditional soil and water indicators of acid sulphate soils include landscape characteristics dominated by mangroves, reeds, rushes and other marine/estuarine or swamp-tolerant vegetation. Low lying areas, back swamps or scalded/bare areas in coastal estuaries and floodplains which have a sulfurous smell after rain following a dry spell or when the soils are disturbed actual acid sulphate soil.

Typical Soil characteristics include waterlogged soils - unripe muds (soft, buttery, blue grey or dark greenish grey) or estuarine silty sands or sands (mid to dark grey) or bottom sediments of estuaries or tidal lakes (dark grey to black).

The elevation (above RL 12 m AHD), grass and drainage characteristics of that part of the land proposed for residential zoning does not demonstrate Acid Sulphate Soil characteristics.

The western most part of the site remaining in an environmental protection zone may include some ASS characteristics. However, as this area is not subject to rezoning it is considered that this directive is not applicable.

h) 117 Direction No. 4.4 Planning for Bushfire

The objective of this direction is to protect life, property and the environment from bush fire hazard and limit incompatible land uses in bush fire prone areas.

The planning proposal includes in Appendix F a Bushfire Hazard Assessment prepared by Midcoast Environmental Services dated May 2007.

The concept future subdivision layouts provided in section 5.3 (p 9) demonstrate two options for development of the site which would meet Planning for Bushfire Guidelines. The first concept has longer block lengths on the side adjacent the hazard, such that a dwelling and APZ can be accommodated within each lot. The second concept has a perimeter road on the hazard side.

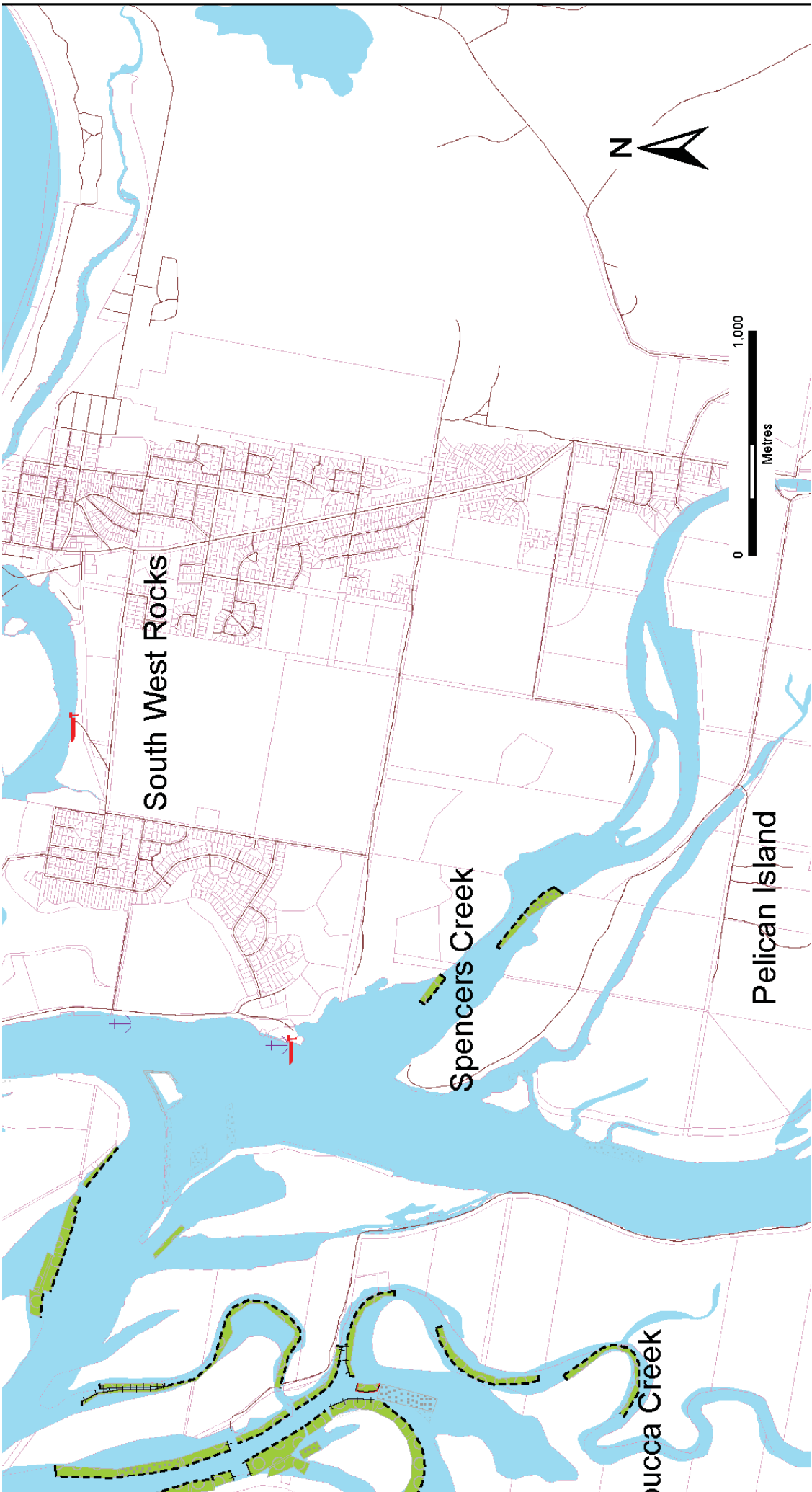
Adequate water supply can be provided and APZs can be managed within the site. A more detailed bushfire assessment, incorporating recent BCA amendments (July 2010) is being prepared and will be submitted shortly.

A final subdivision layout has not been chosen, but it is considered that a "Planning for Bushfire" compliant (and feasible) residential subdivision can be achieved on the site, should the rezoning be approved and a development application is able to be submitted.

i) *117 Direction No. 5.1 Implementation of Regional Strategies*

The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions in regional strategies.

The planning proposal is consistent with the Mid North Coast Regional Strategy and with the Kempsey Shire Local Growth Management Strategy – Residential component.



This map illustrates the Macleay River Oyster Aquaculture Strategy. It shows the river's course through the landscape, with various islands and creeks labeled. The river is depicted in blue, while the surrounding land is white. Green dashed lines indicate the boundaries of the aquaculture strategy areas. Key locations include Fishermans Reach, Shark Island, Whiskey Island, Little Shark Island, South West Rocks, Point Briner, Trial Bay, Spencers Creek, Pelican Island, Andersons Inlet, and Clybucca Creek. A scale bar at the bottom right indicates distances in meters (0 to 1,000). A north arrow is located in the bottom right corner.



NSW DEPARTMENT OF
PRIMARY INDUSTRIES
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Legend

- Priority oyster aquaculture areas
- Current oyster aquaculture leases to be phased out
- Current leased area in National Park Estate
- Leases within Marine Park boundaries

Minimum Lease Marker post intervals

- 10 metre intervals
- 25 metre intervals
- 50 metre intervals
- Special navigation and mooring considerations