

Kempsey LEP 2013 – Rezone 30 hectares land from zone RU1 Primary Production to zone R5 Large Lot Residential for the purpose of a 23 lot subdivision at Mary's Bay Road, Euroka

Proposal Title :	Kempsey LEP 2013 – Rezone 30 hectares land from zone RU1 Primary Production to zone R5 Large Lot Residential for the purpose of a 23 lot subdivision at Mary's Bay Road, Euroka		
Proposal Summary :	To rezone land at 262 Marys Bay Road, Euroka, known as Bradbury's Mountain, from zone RU1 Primary Production to zone R5 Large Lot Residential and to amend the Lot Size Map from 40 hectares to 1 hectare to facilitate a future 23-lot rural residential subdivision.		
PP Number :	PP_2017_KEMPS_003_00	Dop File No :	17/05671

Proposal Details

Date Planning Proposal Received :	12-Apr-2017	LGA covered :	Kempsey
Region :	Northern	RPA :	Kempsey Shire Council
State Electorate :	OXLEY	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	262 Marys Bay Road		
Suburb :	City :	Euroka	Postcode : 2440
Land Parcel :	Lot 101 DP 778496		

DoP Planning Officer Contact Details

Contact Name :	Jenna McNabb
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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name :	Gina Davis
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Land Release Data

Growth Centre :	Other	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Mid North Coast Regional Strategy	Consistent with Strategy :	Yes

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MDP Number :

Date of Release :

Area of Release (Ha) **30.00**

Type of Release (eg Residential / Employment land) :

Residential

No. of Lots : **0**

No. of Dwellings (where relevant) : **23**

Gross Floor Area : **0**

No of Jobs Created : **0**

The NSW Government **Yes**

Lobbyists Code of Conduct has been complied with :

If No, comment : **The Department's Code of Conduct in relation to communication and meetings with Lobbyists has been complied with to the best of the Region's knowledge.**

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment : **Northern Region has not met any lobbyists in relation to this proposal, nor has Northern Region been advised of any meeting between other agencies and lobbyists concerning the proposal.**

Supporting notes

Internal Supporting Notes :

External Supporting Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **A statement of objectives has been provided. It is noted that the objective of the proposal is to rezone the subject land and reduce the minimum lot size to facilitate a future 23 lot residential subdivision.**

The intention of the planning proposal is to:

- Provide the opportunity for additional rural residential development in close proximity to Kempsey;
- Implement Council's Rural Residential Land Release Strategy for the Euroka area; and
- Facilitate the future subdivision of the site into 23 new large lot residential allotments.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The explanation of provisions is consistent with the statement of objectives.**

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

1.2 Rural Zones

* May need the Director General's agreement

1.5 Rural Lands

2.1 Environment Protection Zones

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2.2 Coastal Protection
3.1 Residential Zones
3.4 Integrating Land Use and Transport
4.1 Acid Sulfate Soils
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies
6.1 Approval and Referral Requirements
6.3 Site Specific Provisions

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 44—Koala Habitat Protection
SEPP No 55—Remediation of Land
SEPP (Rural Lands) 2008

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Refer below to the assessment of the applicable S117 directions / SEPPs and the North Coast Regional Plan 2036.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

The Planning Proposal includes maps that identify the site, current and proposed minimum lot size standards.

Maps which comply with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps' would need to be prepared for the making of the LEP.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

Community consultation has been proposed, however no time period has been specified. As the Planning Proposal is consistent with the Kempsey Local Growth Management Strategy - Rural Residential component and the North Coast Regional Plan 2036, a 14 day community consultation period is considered adequate.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **No**

If No, comment :

The Planning Proposal and accompanying documentation are considered to satisfy the adequacy criteria by:
1. Providing appropriate objectives and intended outcomes;
2. Providing a suitable explanation of the provisions proposed by the LEP to achieve the outcomes;
3. Providing an adequate justification for the proposal;
4. Outlining a proposed community consultation program; and
5. Providing a project time-line.

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Council is seeking an authorisation to exercise its plan making delegations. As the proposal deals with only matters of local significance, it is recommended that an authorisation to exercise plan making delegations be issued to Council in regard to this matter.

The RPA has provided a project timeline which estimates that the LEP will be ready for notification in October 2017. To ensure an adequate period to finalise the proposal, a 9 month timeframe is considered appropriate.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : The Kempsey LEP 2013 was notified on 20 December 2012.

Assessment Criteria

Need for planning proposal :

The planning proposal is the direct result of the outcomes of the Kempsey Local Growth Management Strategy (LGMS) Rural Residential Component and the North Coast Regional Plan 2036. The Kempsey Shire Rural Residential Land Release Strategy 2014 (the 'RRLRS') identifies the subject land as the only future land release area in Euroka. The landowner has requested the subject site be rezoned on this basis.

The RRLRS identifies the subject lot as suitable for future residential development, however, the area to be considered for rezoning is identified as only being 28 hectares. The strategy identified a slightly smaller area due to the removal of all the parts of the lot which are flood affected or identified as regionally significant farmland.

The proposal seeks to rezone the subject land from RU1 Primary Production to R5 Large Lot Residential to be consistent with the adjoining rural subdivision located directly to south. The minimum lot size of the land is also proposed to be reduced from 40 hectares to 1 hectare.

The amendment to the zoning and minimum lot size is the most appropriate mechanism to achieve the objective of the proposal at this time to enable the future subdivision of the site.

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Consistency with strategic planning framework :

***Kempsey Shire Rural Residential Land Release Strategy 2014 (the 'RRLRS')**

The proposal is generally consistent with the outcomes of the RRLRS. The RRLRS identifies the subject land as the Euroka Land Release Area. The RRLRS raises locally specific issues to be considered for the Euroka Land Release Area, which are considered below:

Land use conflict adjoining agricultural areas:

Whilst adjoining zone RU1 Primary Production land, the subdivision pattern of the area is fragmented. The proponent has included a conceptual subdivision plan for consideration as part of the proposal, identifying building envelopes set back a minimum of 50m from the northern boundary of the site, which is currently used for cattle grazing. Natural buffers to RU1 land to the east and west already exist due to the Macleay River and Mary's Bay Road. Any potential land use conflicts will be required to be considered by Council at the development application stage, however, Council have indicated that the mitigation measure of the building envelopes is satisfactory.

Means of access to facilitate efficient pattern of subdivision: A single access point from Mary's Bay Road has been proposed in the indicative subdivision pattern. The proposal will be referred to Transport for NSW – Roads and Maritime Services for comment on access and traffic generation.

Bushfire Prone Land:

A Bushfire Threat Assessment report has been provided which identifies that the subject land can meet the requirements of Planning for Bushfire Protection 2006. A referral to the NSW Rural Fire Service is also required.

Koala Habitat:

A Koala Habitat Assessment has been provided, which indicates compliance with Council's Koala Plan of Management.

Class 5 Acid Sulfate Soils:

The Kempsey LEP 2011 Acid Sulfate Soils map sheets identify the subject land as being substantially comprised of Class 5 Acid Sulfate Soils. There is also a small area (approximately 0.2532ha) adjacent to the river frontage containing Class 1 Acid Sulfate Soils. An acid sulfate soils testing report has been completed and Council is satisfied that the proposal is of 'minor significance', as the proposed subdivision will be restricted to the elevated portion of the site.

The proposed rezoning of the site is a sound planning outcome that implements the findings of the RRLS. The proposal will provide flexibility for housing provision in Euroka and ensure a sufficient supply is maintained.

***North Coast Regional Plan**

The proposal is consistent with the Local Government Narratives and Urban Growth Area Maps contained within the Regional Plan. The subject site is specifically identified as an area for rural residential housing opportunities.

The proposal is consistent with Direction 11, to protect and enhance productive agricultural lands. The subject site is acknowledged as being unsuitable for productive agriculture, given the fragmentation of the land, soil types and size of the site.

The proposal is consistent with Goal 4 of the Plan as it supports 'great housing choice and lifestyle options' and is consistent with Direction 24 of the plan delivering 'well planned rural residential housing'.

The proposal is not inconsistent with any other provisions of this plan.

The proposal has also considered the 'Important Farmland Interim Variation Criteria', and is considered to be a suitable example of appropriate variation of this criteria as the subject lot, despite being zone RU1 Primary Production land, is an isolated 2 ha piece of

mapped farmland, that is not considered to be capable of supporting sustainable agricultural production in its own right, that is fragmented from other regionally significant farmland, is not likely to result in land use conflict and is suitable in terms of infrastructure, heritage, the environment and avoiding risk. The proposal is considered to be consistent with the variation criteria.

***SEPPS**

The proposal is consistent with all applicable SEPP's except in relation to:

SEPP (Rural Lands) 2008

SEPP Rural Lands (the RSEPP) contains Rural Planning Principles to guide development on rural land. The proposal is consistent with the rural planning principles by providing additional opportunities for rural lifestyle, settlement and housing in the Euroka township. The subject site has been previously fragmented by the adjoining rural residential subdivision, and therefore its agricultural productivity has been compromised.

The proposal is consistent with the Rural Subdivision Principles, as the conceptual subdivision plan has been designed taking into consideration the natural and physical constraints of the site, as well as the minimisation of land use conflict by separating dwellings from the adjoining site through buffers.

The proposal is consistent with all other relevant SEPPs.

***S117 Directions**

The proposal is consistent with all relevant s117 Directions except in relation to the following:

Direction 1.2 Rural Zones

The proposal is inconsistent with this direction as it proposes to rezone land from a rural zone to a residential zone, and increase the permissible density of the site. This inconsistency is of minor significance as the subject site is identified in the Kempsey Shire Rural Residential Land Release Strategy, is an extension of the existing zone R5 Large Lot Residential area.

Direction 1.5 Rural Land

The proposal is inconsistent with this direction as it proposes to rezone rural land and reduce the minimum lot size. The inconsistency is of minor significance as the subject site is identified in the Kempsey Shire Rural Residential Land Release Strategy and is an extension of the existing zone R5 Large Lot Residential area. The subject site has an area of regionally significant farmland identified on the site, however as discussed above, the proposal is considered to be consistent with the NCRP 2036 'Important Farmland Interim Variation Criteria'.

Direction 4.1 Acid Sulfate Soils

The proposal is inconsistent with this direction as it contains Class 1 & 5 Acid Sulfate Soils and is not supported by an acid sulfate soils study. This inconsistency is of minor significance as further consideration regarding this issue can also be adequately addressed at the development application stage as required by the acid sulfate provisions of Kempsey LEP 2013.

Direction 4.3 Flood Prone Land

The proposal is inconsistent with this direction as it seeks to rezone flood prone land to residential.

This direction is applicable to the proposal. The area of the site proposed to be developed and the proposed building envelopes are all located above the 100 year ARI flood area. That part of the land affected by the 1% flood is not subject to flood flows but rather is impacted as flood fringe adjacent to flood storage areas provided by low land grazing creek flats adjacent to the property. The inconsistency with this direction is therefore considered to be of minor significance as each proposed lot will have sufficient land

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above the flood planning level for a building envelope and as future development can be further considered by council at the development application stage in accordance with the flood planning provisions in Kempsey LEP 2013.

It is recommended that the proposal be referred to OEH for comment.

Direction 4.4 Planning for Bushfire Protection

This direction is applicable to the proposal as part of the land has been mapped as bushfire prone. A Bushfire Hazard Assessment has been prepared as part of the site identified as being bushfire prone. Consultation with the RFS is required after a Gateway Determination is issued and before public exhibition and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

The proposal is otherwise consistent with s117 Directions.

Environmental social
economic impacts :

The rezoning of the land from RU1 Primary Production to R5 Large Lot Residential is not expected to pose any environmental impacts.

The land is an irregular shaped allotment approximately 30 hectares in area, with the Macleay River forming the western boundary of the site. The land also has a 254m frontage to Mary's Bay Road, to the east. The site is locally known as 'Bradbury's Mountain' and is largely elevated pastoral land, with scattered native vegetation. A single dwelling house and a disused dairy shed are the only improvements on the land, located towards the eastern frontage of the site.

The land is generally located outside of the 1 in 100 year flood zone, however referral to Office of Environment and Heritage (OEH) due to the small area of flood prone land that is proposed to be rezoned.

A section of the site is mapped as bush fire prone land and as a result, the proposal is to be referred to the NSW RFS prior to community consultation, to satisfy section 117 Direction 4.4 Planning for Bushfire Protection.

The proposal indicates that the land is subject to the Kempsey Comprehensive Koala Plan of Management (CKPoM). The Koala Habitat Assessment provided as part of the proposal concludes that none of the trees on the site provided any evidence of koala's scats or usage. The site is unlikely to support viable koala population, due to the small size, the highly disturbed nature and isolation of the site. However, the subdivision access road and building envelope location have been located so as to retain as many trees as possible.

The proposal states that a preliminary contaminated land assessment has been undertaken and found that the land has not been used for any purpose listed in the guidelines which may have resulted in contamination of the land.

Land use conflict has been considered as part of the proposal through a Land Use Conflict Risk Assessment (LUCRA), considering the proximity of the subject site to grazing land. The indicative subdivision plan shows a 50m buffer has been proposed between the indicative building envelopes and the adjoining primary production land, which is consistent with the Living and working in rural areas handbook.

Positive social and economic impacts can be expected from the proposal, providing additional large lot residential housing within the Euroka locality, which is consistent with Council's RRLRS.

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Assessment Process

Proposal type : **Consistent** Community Consultation Period : **14 Days**

Timeframe to make LEP : **12 months** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) : **Office of Environment and Heritage
NSW Rural Fire Service
Transport for NSW - Roads and Maritime Services**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
i) Planning Proposal_Application.pdf	Proposal	Yes
ii) Planning Proposal_V7_Main Body.pdf	Proposal	Yes
iii) Planning Proposal_Appendix A&B.pdf	Proposal	Yes
iv) Planning Proposal_Appendix C_V7.pdf	Proposal	Yes
v) Planning Proposal_Appendix D&E.pdf	Proposal	Yes
vii) Information Checklist.pdf	Proposal	Yes
vii) Evaluation_Criteria for the Delegation of Plan Making Functions.pdf	Proposal	Yes
vi) Council Determination Marys Bay Rd_Euroka.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **1.2 Rural Zones
1.5 Rural Lands
2.1 Environment Protection Zones
2.2 Coastal Protection
3.1 Residential Zones
3.4 Integrating Land Use and Transport**

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- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 6.1 Approval and Referral Requirements
- 6.3 Site Specific Provisions

Additional Information :

1. The Planning Proposal be supported.
2. The Planning Proposal be exhibited for 14 days.
3. The Planning Proposal be completed within 9 months.
4. The Planning Proposal be amended prior to consultation to include an updated project timeline.
5. The Secretary (or her delegate) note the current unresolved inconsistencies with Direction 4.4 Planning for Bushfire Protection.
6. The Secretary (or her delegate) agree that the inconsistency of the proposal with S117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are justified in accordance with the terms of the directions.
8. That consultation be undertaken with the following agencies:
 - NSW Rural Fire Service;
 - Roads and Maritime Services; and
 - Office of Environment and Heritage;
9. A written authorisation to exercise delegation be issued to Kempsey Shire Council.

Supporting Reasons :

The proposed rezoning of the site is a sound planning outcome rezoning land identified as suitable for residential purposes within Council's Department approved local strategy. The proposal will provide flexibility for housing provision in Euroka and ensure a sufficient supply is maintained within the locality.

Signature:



Printed Name:

Anna Davis

Date:

24/4/17