

EXTRACT FROM MINUTES OF THE ORDINARY MEETING OF KEMPSEY SHIRE COUNCIL HELD 21 MARCH 2017

ITEM 13.1 PLANNING PROPOSAL MARYS BAY ROAD, EUROKA

Contact Person: Robert Pitt – Director Sustainable Environment

File: RZ-16-6

PURPOSE

To advise that a Planning Proposal has been prepared to amend Kempsey Local Environmental Plan (KLEP) 2013 to change the zoning and minimum lot size for a rural land parcel in Euroka.

2017.71 RESOLVED

Moved: Cl. Patterson

Seconded: Cl. Baxter

That the Planning Proposal and associated documentation be submitted to the Minister for Planning for consideration of issuing 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

Baxter	F	Campbell	F	Hauville	F	McGinn	F	Morris	F
Patterson	F	Saul	F	Shields	F	Williams	F		

ISSUES

The Planning Proposal is to amend the *Land Zoning Map* for the subject lot from RU1 – Primary Production to R5 – Large Lot Residential and to amend the *Lot Size Map* from 40 ha to 1ha to facilitate a future 23-lot rural residential subdivision at the site.

BACKGROUND

The subject land is legally defined as Lot 101 DP778496, 262 Marys Bay Road, Euroka and is located 10 kilometres southwest of Kempsey. The area is characterised by fragmented rural land that now functions predominately as rural lifestyle blocks and rural residential development.

The subject land (refer to Figure 1 below) is an irregular shaped lot with a total area of approximately 30.15ha with the Macleay River forming the western boundary. To the east, the site has approximately 245m of frontage to Marys Bay Road.

The site rises in a westerly direction from Marys Bay Road before dropping to the Macleay River. The site is also elevated above the adjoining land to the north and south. The site is locally known as ‘Bradbury’s Mountain’ and is largely pasture land with intermittent trees and a vegetated embankment on the western boundary. Improvements at the site include a dwelling house and a dilapidated dairy shed adjacent the road frontage.



Figure 1: Subject site (within yellow border) located south west of Kempsey

Existing Kempsey Local Environmental Plan 2013 Provisions

The current minimum lot size applying to the subject lot and immediate surrounds to the north and east is 40ha, zoned RU1 – Primary Production. To the south, in the vicinity of the intersection of Marys Bay and Gowings Hill Road (refer Figure 2 below), the minimum lot size is 1ha and is zoned R5 – Large Lot Residential.

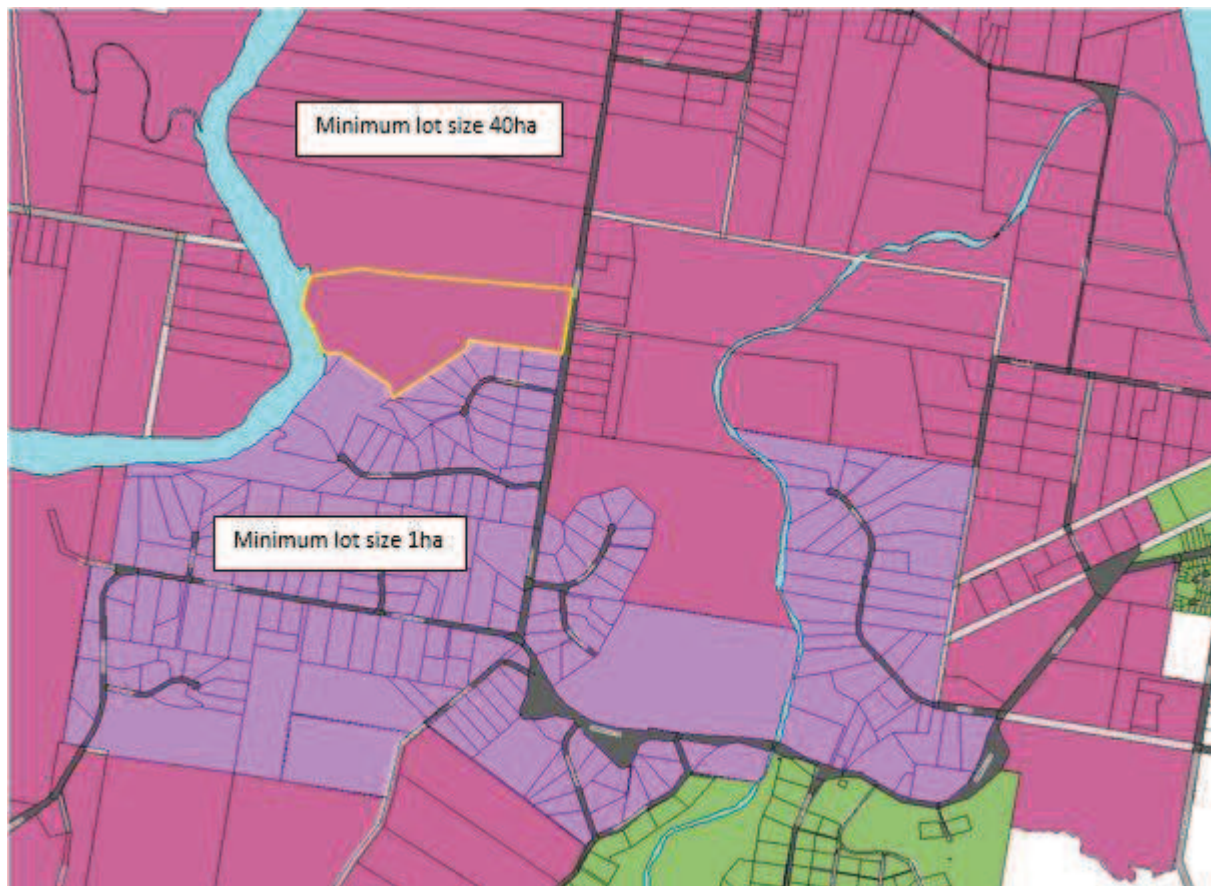


Figure 2: Existing minimum lot size mapping for the area including and surrounding the subject site (within yellow boundary)

Objectives or intended outcomes of the Planning Proposal

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 lots (refer Figure 3 below).

Proposed Amendments to the Kempsey Local Environmental Plan (KLEP) 2013

It is proposed to amend the *Land Zoning Map* for this site from RU1 – Primary Production to R5 – Large Lot Residential and the *Lot Size Map* from 40ha to 1ha.

State Environmental Planning Policy	Comments
State Environmental Planning Policy No. 14 – Coastal Wetlands	The site does not contain or adjoin land containing SEPP 14 wetlands. It is noted that the site is captured by the draft <i>SEPP (Coastal Management) 2016</i> due to its proximity to the Macleay River. The site is partially contained within the Coastal Environment Area Map (which extends a standard 100m from the river) and the Coastal Area Map (this extends a standard 1km from the river) which captures the entire lot. The proposal is considered to be in accordance with these draft provisions as the proposal is unlikely to result in an ‘adverse’ impact on natural processes, ecological values, Aboriginal cultural heritage or water quality.
State Environmental Planning Policy No. 44 – Koala Habitat	The site is not identified as Core Koala habitat under Council’s Comprehensive Koala Plan of Management (CKPOM), which satisfies the requirements of SEPP 44. The proposal can comply with the provisions of the CKPOM through the retention of identified Koala Feed Trees.
State Environmental Planning Policy No. 55 – Remediation of Land	The proponent advises that there is no known historical uses that would indicate that the site is contaminated. Searches of the Land Contamination Register and record of notices and contaminated sites notified to EPA have not identified the subject land.
State Environmental Planning Policy (Rural Lands) 2008	The application complies with the Rural Planning Principles listed under this instrument as the proposal applies to land with substantial limitations on productive potential; will not impinge on the productive capacity of adjoining rural lands; supports the provision of opportunities for rural residential housing with adequate public infrastructure; and will maintain existing biodiversity, and provide protection of native vegetation and water resources.
State Environmental Planning Policy (Infrastructure) 2007	The site will access onto Marys Bay Road, which is a local road. The referral provisions of this SEPP are not triggered by the planning proposal.

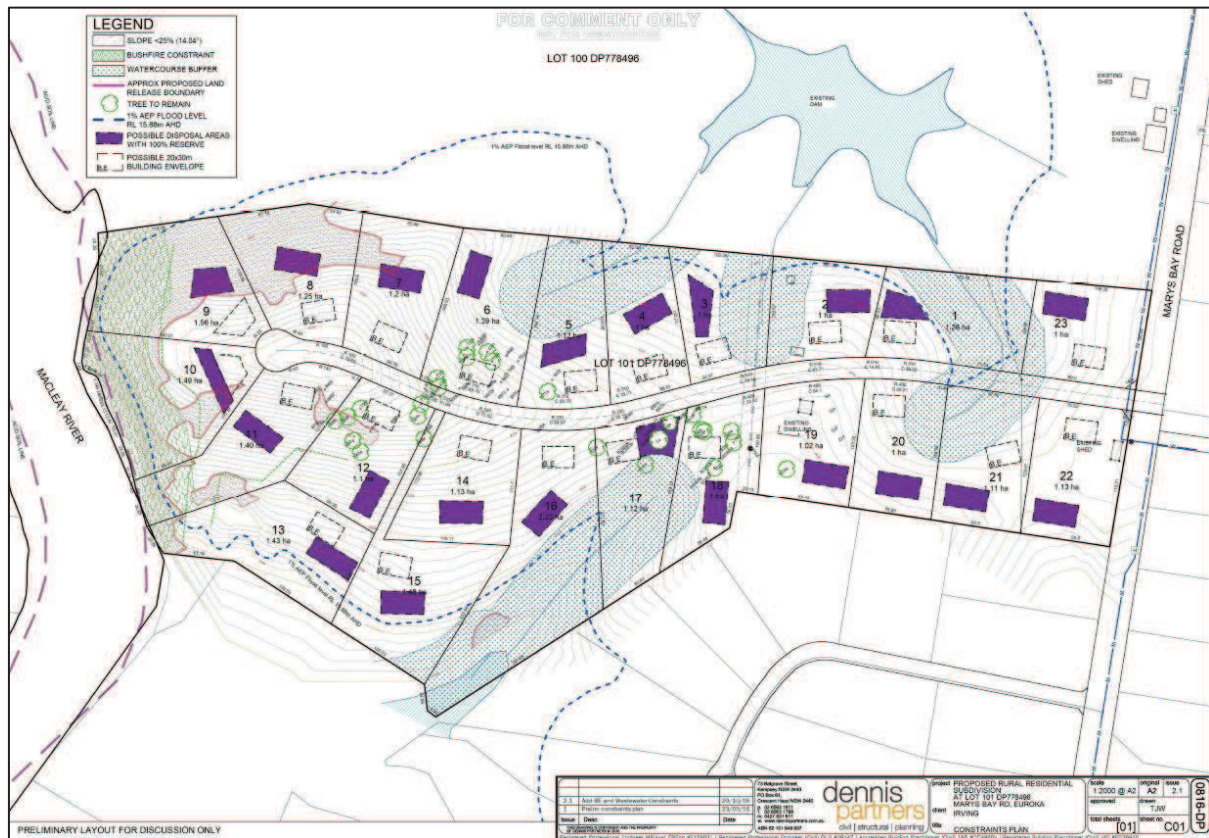


Figure 3: Indicative future 23-lot subdivision layout.

Justification for the Planning Proposal

Justification for the proposal is summarised as follows:

- The planning proposal will allow for large lot residential development consistent with similar development located to the south of the site;
- Identified ecological constraints are manageable with all proposed future dwelling sites and the requisite onsite sewage management systems located above the flood level;
- The site has existing access to a reticulated water supply, sealed public roads, electricity and telecommunications services;
- Identified Koala Feed Trees will be retained and protected;
- The planning proposal will enable the fulfilment of Council's strategic rural residential land release aspirations for the Euroka area;
- The proposal satisfies the relevant legislation, planning instruments, strategies, SEPPs and section 117 Directions; and
- The proposed lot size amendments are compatible with adjoining land uses.

Consistency with Relevant State Environmental Planning Policies

The applicable policies and comments on the consistency of the proposal is provided in the table below:

Consistency with Section 117 Ministerial Directions

The proposal is consistent with the following relevant Ministerial Directions.

Directives	Key Requirement	Justification
1.2 Rural Zones		
The objective of this direction is to protect the agricultural production value of rural land. A planning proposal must: (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. (b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).	May be inconsistent unless: (a) justified by a strategy which: (i) gives consideration to the objectives of this direction, (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and (iii) is approved by the Director-General of the Department of Planning, or (b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, <u>or</u> is: (c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or (d) is of minor significance.	The inconsistency with clause 4(a) is justified through clause 5(a) & (c) in that the proposal is identified in the <i>Kempsey Shire Rural Residential Land Release Strategy</i> and is generally consistent with the provisions of the <i>Mid North Coast Regional Strategy 2009</i>.
1.5 Rural Lands		
The objectives of this direction are to: (a) protect the agricultural production value of rural land, (b) facilitate the orderly and economic development of rural lands for rural and related purposes.	A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Department of Planning that the provisions of the planning proposal that are inconsistent are: (a) justified by a strategy which: (i) gives consideration to the	The site is currently zoned RU1 – Primary Production. The planning proposal seeks to amend the zoning map to R5 – Large Lot Residential and the lot size map from 40ha to 1ha minimum lot size. The planning proposal is generally consistent with this directive as the proposal is justified by its inclusion in the <i>Kempsey Shire Rural Residential Land Release Strategy</i>. The consistency of the proposal with the

Directives	Key Requirement	Justification
A planning proposal to which clauses 3(a) or 3(b) apply must be consistent with the Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i> .	objectives of this direction, (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites, and (iii) is approved by the Director-General of the Department of Planning and is in force, or (b) is of minor significance.	provisions of <i>State Environmental Planning Policy (Rural Lands) 2008</i> has been established in the earlier section above (<i>Consistency with Relevant State Environmental Planning Policies</i>).
4.1 Acid Sulphate Soils		
The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.	A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulphate soils unless the relevant planning authority has considered an acid sulphate soils study assessing the appropriateness of the change of land use given the presence of acid sulphate soils.	Kempsey LEP 2013 ASS map sheets 011 and 011A identify the site as being substantially comprised of Class 5 potential Acid Sulphate Soils (ASS) with an area of approximately 0.2532ha adjacent the river frontage containing Class 1 potential ASS which will remain undeveloped. In accordance with this directive, the planning proposal is supported by an acid sulphate soil testing report. The proposal is considered to be of 'minor significance' as the extent of development is restricted to the elevated portion of the site, not less than 20m AHD; will involve site works at restricted soil depths; and is considered to be consistent with the <i>Acid Sulfate Soils Planning Guidelines</i> .
4.3 Flood Prone Land		
The objectives of this direction are: (a) to ensure that development of flood prone land is consistent with the NSW Government's <i>Flood Prone Land Policy</i> and the principles of the <i>Floodplain Development Manual 2005</i> , and (b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts	A planning proposal may be inconsistent with this direction only if the relevant planning authority can satisfy the Director-General (or an officer of the Department nominated by the Director-General) that: (a) the planning proposal is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the <i>Floodplain Development Manual 2005</i> , or (b) the provisions of the planning proposal that are inconsistent are of minor	As identified in Figure 3 above, the area of the site to be developed is located above the 100 year ARI flood area (15.88m AHD) and is therefore consistent with this directive.

Directives	Key Requirement	Justification
both on and off the subject land. (4) A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas). (5) A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.	significance. Note: “flood planning area”, “flood planning level”, “flood prone land” and “floodway area” have the same meaning as in the <i>Floodplain Development Manual 2005</i>.	
4.4 Planning for Bushfire Protection		
The objectives of this direction are: (a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and (b) to encourage sound management of bush fire prone areas.	A planning proposal must: (a) have regard to <i>Planning for Bushfire Protection 2006</i>, (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and (c) ensure that bushfire hazard reduction is not prohibited within the APZ.	The Bushfire Hazard Assessment provided has been prepared to meet the aims and objectives of the NSW Rural Fire Service’s <i>Planning for Bushfire Protection 2006</i> and Section 2 of AS 3959-2009 and includes measures to minimise the impact of bushfire. Recommendations made in the report include: 1. Asset Protection Zones as detailed are to be provided. 2. The proposed subdivision is to comply with the relevant performance criteria/acceptable solutions as required by Section 4.1.3 of NSW Rural Fire Services, PfBP, 2006. 3. Adoption of landscaping principals in accordance with Section 3.1.4 of the NSW Rural Fire Services, PfBP, 2006.
5.1 Implementation of Regional Strategies		

Directives	Key Requirement	Justification
The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies. Planning proposals must be consistent with a regional strategy released by the Minister for Planning.	A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), that the extent of inconsistency with the regional strategy: (a) is of minor significance, and (b) the planning proposal achieves the overall intent of the regional strategy and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.	Consistent The planning proposal is consistent with the Mid North Coast Regional Strategy 2009 (MNCRS) which sets the following objectives for rural residential development: <i>...any new planning for rural residential settlement should focus on land close to an existing urban settlement, away from the coast, away from areas that may in the future have value as urban expansion areas, where significant vegetation clearing would not be required and where current or potential future primary production will not be affected. And</i> <i>Future rural residential land will only be zoned for release if it is in accordance with a local growth management strategy agreed to between council and the Department of Planning ...</i> The Growth Area Map 6 – Kempsey within the MNCRS identifies a Growth Area for Euroka. While the development site is located outside of the indicated growth area, the subordinate <i>Kempsey Shire Rural Residential Land Release Strategy</i> has identified that the subject locality is within the Euroka Land Release area. In accordance with the MNCRS, this proposal can accommodate additional rural residential housing without adverse impact on primary production land or environmental values in the vicinity of the site.
6.1 Approval and Referral Requirements Objective		
The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	A planning proposal must: (a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and (b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority	The planning proposal does not include any provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, other than those already required by existing Integrated Development provisions and State Environmental Planning Policies.

Directives	Key Requirement	Justification
	unless the relevant planning authority has obtained the approval of: (i) the appropriate Minister or public authority, and (ii) the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), prior to undertaking community consultation in satisfaction of section 57 of the Act, and (c) not identify development as designated development unless the relevant planning authority: (i) can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and (ii) has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act.	
6.3 Site Specific Provisions		
The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either: (a) Allow that land use to be carried out in the zone the land is situated on, or (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that	The planning proposal seeks to reduce the minimum lot size map as it applies to the site. The proposed land use for the site is consistent with the proposed zoning and is therefore consistent with item 4(c) of the 117 Directions. The proposal does not propose any additional development standards or requirements to those already contained in the relevant zone and supporting LEP provisions.

Directives	Key Requirement	Justification
	land use without imposing any development standards or requirements in addition to those already contained in that zone, or c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended. A planning proposal must not contain or refer to drawings that show details of the development proposal.	

Consistency with the Kempsey Shire Rural Residential Land Release Strategy

The subject site is located within the Euroka Land Release Area contained in the *Kempsey Shire Rural Residential Land Release Strategy* (strategy).

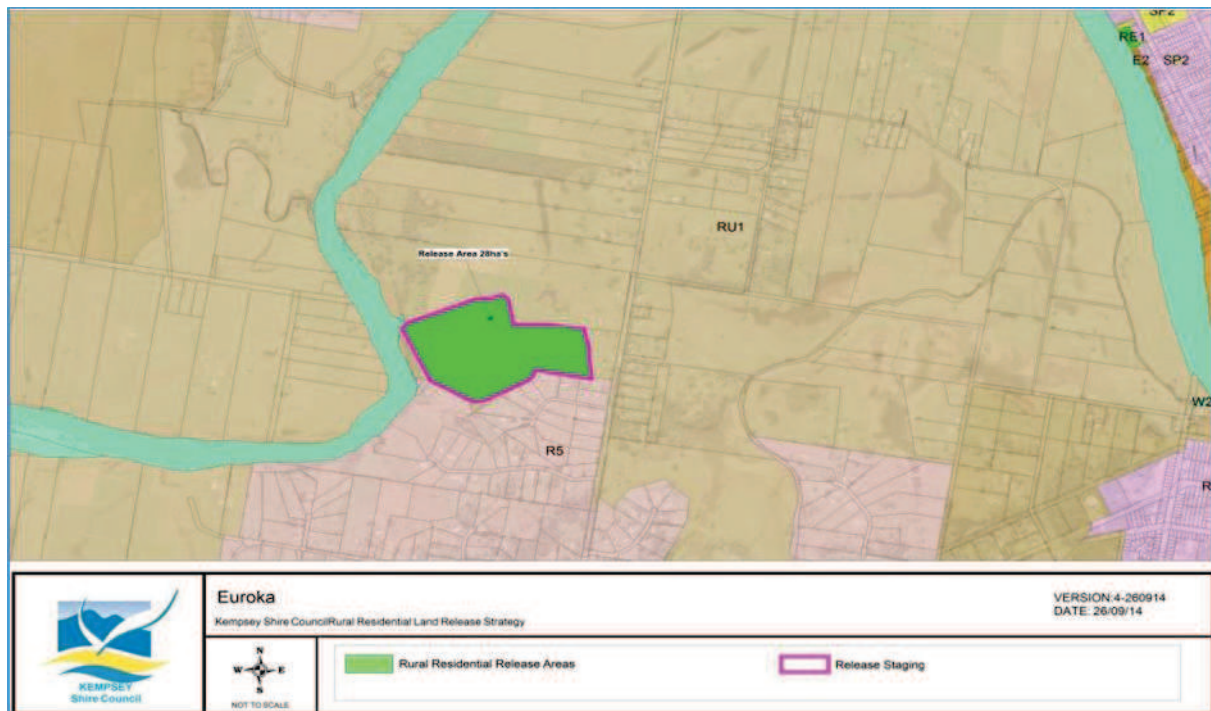


Figure 4: Euroka Land Release staging plan

The locality specific issues for consideration of a planning proposal in the Euroka Land Release Area are discussed below.

Euroka Land Release Area locality specific issues

Locality Specific Issues	Response
The impact of any conflicting adjoining agricultural uses	This location is characterised by fragmented rural land to the north and rural residential development to the south. The lot to the north is used for cattle grazing. In acknowledgment of the potential impacts arising from this adjoining activity, the indicative proposed building envelopes have all been setback a minimum of 50m from the northern boundary to provide a buffer. The subject site encompasses a local hill and the indicative dwelling envelopes will be elevated well above the adjoining land to the north. (See Figure 3)
The means of rationalising access to facilitate an efficient pattern of subdivision	As shown in the indicative subdivision plan provided (refer Figure 3 above), access to Marys Bay Road will be via a single access road along the spine of the elevated site. Any road treatments required at the intersection point with Marys Bay Road can be resolved through the subdivision development application process.
Part of the release area is bushfire prone land	The site is partially identified as bushfire prone land. A Bushfire Threat Assessment report has been provided which identifies that the proposed development can meet the requirements of <i>Planning for Bushfire Protection 2006</i> .
2B and unknown Koala habitat	A Koala Habitat Assessment has been provided which indicates compliance with Council's CKPoM and the means to ensure that Koala feed trees are retained can be achieved.
Class 5 Acid Sulfate Soil	The site is identified as containing Class 5 Acid Sulfate Soils. As expanded upon earlier in this report, the proposal can comply with the section 117 Ministerial Directions with regard to Class 5 Acid Sulfate Soils.

Part 7 – Variations to this Strategy

The planning proposal received applies to the entirety of the subject lot. However, as identified in Figure 4 above, the Euroka Land Release Staging area does not include a portion of the eastern boundary of the site (approximately 3.27ha), adjacent Marys Bay Road, which is identified as regionally significant farmland.

Council Procedure 1.1.16 *Consideration of Planning Proposals for Land Not Identified in the Rural Residential Land Release Strategy* applies when a variation is proposed. The requirements for consideration of a variation are provided in the table below.

Procedure 1.1.16 - Consideration of Planning Proposals for Land Not Identified in the Rural Residential Land Release Strategy

Variation Considerations	Response
(a)(i) The land has direct access from a dedicated public road constructed to bitumen-sealed standard in accordance with the requirements of Kempsey DCP 2013	Complies: The site will have direct access to Marys Bay Road, which is sealed to Council standard.
(a)(ii) The subdivision will contribute to the social activities offered in the Shire's towns and villages	Complies: The additional residents from 23 future dwellings in close proximity to Kempsey will add to the social diversity and participation rates in social activities in this area.
(b)(i) The land is within 500 metres of the nearest Council provided garbage service	Complies: The site is within the existing Council provided, garbage service area.
(b)(ii) The development will support increased expenditure on goods and services provided in Kempsey	Complies: The additional residents from 23 future dwellings in close proximity to Kempsey contribute to the local economic base and demand for local goods and services.
(b)(iii) The development may be carried out in an economically viable manner through reduced costs of clearing, roads and other required infrastructure	Complies: The location already provides access to existing public infrastructure including reticulated water, sealed roads, electricity supply and telephone services.
(c)(i) The land is not within 500 metres of any permanent creeks, rivers or wetlands or suitable means to prevent the discharge of nutrients into any watercourse cannot be demonstrated	Complies: In response to the site's characteristics, an onsite sewage management assessment report has been provided which identifies the placement and design parameters required for the effective management of future onsite sewage systems.
(c)(ii) The land is not located in a visually prominent location	Complies: The site is elevated above alluvial plains (rural land) located to the north of the site. However through the retention of existing vegetation (Koala feed trees); a minimum 50m setback from the northern boundary; and the restricted height of residential development; the development will have a limited visual impact on surrounding development.
(c)(iii) The land contains less than 10% tree cover as a result of the lawful removal of trees	Complies: The site was formally utilised as a dairy farm and the site contains scattered trees of an area significantly comprising of pasture. Existing trees will largely be retained having been identified as Koala feed trees.
(c)(iv) The proposed subdivision is consistent with the existing pattern of development in the locality	Complies: The site is a natural extension of the R5 – Large Lot Residential zone which adjoins the southern boundary (refer to Figure 2 above).
(c)(v) No clearing of any Core, Primary, Class A or Class B Koala habitat identified by the Kempsey Comprehensive Koala Plan of Management is likely to result from the development	Complies: A Koala Habitat Assessment has been provided with the planning proposal. The assessment identifies Koala feed trees which will be protected by a section 88B instrument under any future development application for the subdivision

Variation Considerations	Response
	approval.
(d)(i) The land is not within or adjacent to any residential or industrial land release areas	Complies.
(d)(ii) The land is not within 1,000 metres of any potentially conflicting industrial, recreational, commercial or intensive agricultural land use or within 100 metres of any land use buffer specified by Kempsey DCP 2013	Complies.
(d)(iii) The land does not require construction of any new access point to the Pacific Highway	Complies.
(d)(iv) The land is not zoned RU4 under KLEP 2013	Complies.

Regionally Significant Farmland Mapping Variation

While the provisions of the Mid North Coast Regional Strategy (and subordinate policies such as the Mid North Coast Farmland Mapping Project) provide limited scope for variation to the regionally significant farmland mapping, the draft provisions of the *North Coast Regional Plan* provides Council with interim variation criteria for this matter.

The proponent has provided a soil audit which identifies that the soil at the site is not capable of supporting primary production and does not fit the definition of regionally significant farmland. In accordance with the draft provisions of the *North Coast Regional Plan*, a variation request has been completed which satisfies the draft *State and Regionally Significant Farmland Interim Variation Criteria* which is provided below (and which forms part of the planning proposal material - refer [\(Appendix A - Page 1\)](#)).

State and Regionally Significant Farmland Interim Variation Criteria	
Interim Variation Criteria	Response
Agricultural Capability: the land is isolated from other important farmland and is not capable of supporting sustainable agricultural production	"Complies: Agricultural viability assessment by Ludwig Mueller & Associates demonstrates that the farmland mapped land is not capable of supporting sustainable agricultural production and would end up an isolated and fragmented piece of rural land between rural lifestyle lots." This, in turn would create potential conflicts between residential and rural activities.
Land Use Conflict: the land use does not increase the likelihood of conflict and does not impact on current or future agricultural activities in the locality	An evaluation in accordance with the <i>Land Use Conflict Risk Assessment Guide</i> is provided as part of the planning proposal. The assessment identifies that the locality comprises of fragmented farmland and rural-residential allotments. Additionally, there is unlikely to be conflict with neighbouring agricultural uses as the proposal will include a minimum 50m building envelope buffer from

Interim Variation Criteria	Response
	adjoining rural land to the north (in addition to the site being elevated above the adjoining development).
Infrastructure: the provision of infrastructure (utilities, transport, open space, communications and stormwater) required to service the land is physically and economically feasible at no cost to State and Local Government. Adverse impacts on adjoining farmland must be avoided	“Satisfied: The site has frontage to Marys Bay Road and immediate proximity to existing Large Lot residential neighbourhoods and has access to the services and existing infrastructure. The site capacity reports addressing on site waste water management and bushfire safety demonstrate the land is physically capable of the proposed use.”
Environment and Heritage: the proposed land uses do not have an adverse impact on areas of high environmental value, and Aboriginal or historic heritage significance; and	“An AHIMS search of the locality indicates recorded sites some distance to the north ... There are no European heritage items identified.”
Avoiding Risk: risks associated with physically constrained land are avoided and identified, including: flood prone; bushfire prone; highly erodible; severe slope; and acid sulfate soils	“The intended outcome plan at Appendix A demonstrates future building envelopes and waste water disposal areas above the identified flood planning level and the Bushfire Hazard assessment demonstrates requirements are met under Planning for Bushfire Guidelines.”

Economic and Social Impacts

The planning proposal will result in positive economic and social benefits – through the provision of additional local housing stock, the sustained growth of the Euroka/Kempsey area and the provision of further rural-residential housing stock opportunity in close proximity of Kempsey.

Public Infrastructure

The site has flood-free access to Marys Bay Road which is a sealed local road. Electricity, telephone and reticulated water supply are available for connection. Onsite septic disposal arrangements will apply.

Community and Public Agency Consultation

Consultation will be undertaken with the State and Commonwealth authorities should the Director General determine to allow the planning proposal to proceed as part of the overall public exhibition and consultation for the planning proposal post Gateway Determination.

Community Consultation is proposed to be undertaken in accordance with any conditions specified in the Gateway Determination and Kempsey Shire Council’s Rezoning Policy and Procedure 1.1.9, Section 3 Public Notification and Consultation, including any specific requirements of the LEP Review Panel.