
APPENDIX D – SECTION 117 DIRECTIONS

COMPLIANCE AND JUSTIFICATIONS



Table of Relevant 117 Directives		
Directive	Key requirement	Complies or 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 if: (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, or (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.	Justification The planning proposal seeks to rezone the land from a RU1 Rural to R5 Large Lot Residential and therefore is inconsistent with (a) of 117 Direction 1.2. This inconsistency is justified by the Mid North Coast Regional Strategy and Kempsey Shire Council's adopted Rural Residential Strategy as follows: The Mid North Coast Regional Strategy 2009 proposes new rural-residential development within proximity of an existing settlement and states: <i>"However 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. Protection of primary production and biodiversity values of rural areas will be achieved by limiting settlement and controlling subdivision."</i> The identified area is consistent with the above in that:



		• It is close to the existing township of Kempsey, away from the coast and not sufficiently proximate or connected to be an urban expansion area. • The site is adjacent existing large lot residential areas to the south and east. • The Planning Proposal will not result in the loss of significant vegetation or biodiversity values. A small part of the site is mapped under the Regionally Significant Farmland mapping. Analysis of this part of the site has been undertaken (at Appendix C) utilising the: • <i>Soil Landscapes Decision making Criteria for Regionally Significant Farmland, Mid North Coast Farmland Mapping Project 2008</i> • <i>Assessment of Potential Conflicting Land Use from the Living & Working in Rural Areas Handbook 2009, Department of Primary Industries, Northern Rivers CMA & Southern Cross University, and</i> • <i>Interim Variation Criteria under the Draft North Coast Regional Environmental Plan 2016 Department of Planning & Environment.</i>
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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 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>.	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 provisions of the planning proposal that are inconsistent are: (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 and is in force, or (b) is of minor significance.	Justification The Kempsey Shire Rural Residential Strategy seeks to facilitate the orderly and economic development for rural residential purposes and in doing so, must relate to adjacent rural lands and rural land uses. The Rural Planning Principles of SEPP (Rural Lands) 2008 are addressed in Appendix E. The proposal's impact on the agricultural production value of rural land is of minor significance and exclusion of the farmland mapped section would be contrary to achieve orderly and economic development under the Rural Release strategy.
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2.1 Environment Protection Zones The objective of this direction is to protect and conserve environmentally sensitive areas.	A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 <i>"Rural Lands"</i>.	Not applicable. The planning proposal does not impact upon land within an environmental protection zone or land otherwise identified for environmental protection. The western extent of the site interfaces with the Macleay River and adjacent steep bank vegetation. The concept plan in Appendix A of the proposal demonstrates that each building envelope is over 50m from the edge of vegetation and the character of the bank is such that access through that area is unachievable. See photo below. 
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2.2 Coastal Protection The objective of this direction is to implement the principles in the NSW Coastal Policy.	This direction applies to the coastal zone, as defined in the <i>Coastal Protection Act 1979</i>.	Not Applicable. Council GIS mapping indicates that the subject land is not mapped as part of the Coastal Zone mapping under SEPP 71.
3.1 Residential Zones The objectives of this direction are: (a) to encourage a variety and choice of housing types to provide for existing and future housing needs, (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and (c) to minimise the impact of residential development on the environment and resource lands. This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed residential zone (including the alteration of any existing residential zone boundary).	A planning proposal must, in relation to land to which this direction applies: (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and (b) not contain provisions which will reduce the permissible residential density of land.	Consistent The land is proposed to be zoned R5 Large Lot Residential and has a suitable level of services available including sealed road frontage, electricity and telecommunications. Sustainability provisions for the site include on site water capture and re-use and on site waste water treatment and disposal systems.



3.4 Integrating Land Use and Transport The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives: (a) improving access to housing, jobs and services by walking, cycling and public transport, and (b) increasing the choice of available transport and reducing dependence on cars, and (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and (d) supporting the efficient and viable operation of public transport services, and (e) providing for the efficient movement of freight.	A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of: (a) <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001), and (b) <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001).	Consistent with Council’s Rural Residential strategy. Land has proximity to local bus services which pass the property frontage along Marys Bay Road and on regular basis and Kempsey township is approximately 3.5 km to the east. Bus and sealed road services to Kempsey then link to rail station at Kempsey and national coach services on the Pacific Highway. A range of primary and secondary schools are available at Kempsey . Tertiary education by way of various Tafe campuses and University linked educational services at Port Macquarie.
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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 on the Acid Sulphate Soils Planning Maps 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.	Justified Kempsey LEP 2013 maps the land as Class 5 potential Acid Sulphate Soils(ASS). Acid Sulphate soils testing has been undertaken and report provided at Appendix B. The area for proposed road works and dwellings are located well above the sampled areas and no ASS issues are anticipated. The objective of the LEP provisions applying to ASS is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. Clause 7.1 of the LEP requires development consent for works which in relation to Class 5 ASS land within 500metres of adjacent Class 1,2,3 or 4 land that is below 5 m AHD and by which the watertable is likely to be lowered below 1 metre AHD on adjacent Class 1,2 3 or 4 land. It further requires preparation of an ASS management plan prior to Council granting any consent, subject to a number of exemptions. Exemptions relevant to this planning proposal and future subdivision application are: “(6) Despite subclause (2), development consent is not required under this clause to carry out any works if: (a) the works involve the disturbance of less than 1 tonne of soil, and (b) the works are not likely to lower the watertable.
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		The intended outcome of the planning proposal and subdivision satisfies the exemption criteria (a) & (b) above.
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 Flood Prone Land Policy 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 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 <i>Floodplain Development Manual 2005</i> (including the <i>Guideline on</i>	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 Floodplain Development Manual 2005, or (b) the provisions of the planning proposal that are inconsistent are of minor 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>.	Justified The planning proposal is in accordance with the requirements of Kempsey Shire floodplain risk management plan, prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005. One of the principal objectives of the policy is: <i>To ensure that new development in flood prone lands is compatible with the degree of flood hazard and that adequate flood risk management measures are incorporated in the design of the development thereby minimising the possibility of loss of life and damage to property</i> The policy defines Flood Prone land. Land which is inundated by a 1 in 100 year flood event. The Flood Planning Levels are the combination of the 1 in 100 flood levels and 0.5m freeboard and within the Policy are shown as minimum floor levels. Kempsey Shire Council has further adopted revised flood levels for the Lower Macleay Floodplain and coastal estuaries as an Interim Policy pending completion of the review of its Flood Risk Management Strategy Policy. The revised flood level for Euroka is 15.88m AHD.



<i>Development Controls on Low Flood Risk Areas).</i> (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.		The policy also states Council will not support the re-zoning of land for rural development unless it is shown to have at least 1000sqm at or above the flood planning level. The subdivision concept at Appendix A demonstrates each 10,000 sqm (1 ha) lot has well in excess of 1000 sqm above the identified flood planning level. Further the location of flood prone elements area at the fringe of the site and associated with gullies draining off the ridge. The entrance road can be designed to achieve flood free levels without affecting flows for levels, due to it being the uppermost extent of the gully and categorised as flood fringe.
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.	Complies: The Bushfire Hazard Assessment by Midcoast Building and Environmental October 2016 has been prepared to meet the aims and objections of the NSW Rural Fire Service's <i>Planning for Bushfire Protection 2006</i> and Section 2 of AS 3959-2009 and has measures sufficient to minimise the impact of bushfire. The Bushfire Hazard Assessment is provided at Appendix B.



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 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.	Justified The proposal is of minor significance and does not undermine the achievement of the strategy. The proposal meets the variation criteria under the draft North Coast Regional Plan for farmland mapped areas has been justified in detail in the Planning Proposal and appendices above. It is demonstrated to be of minor significance.
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	Complies: 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.



	authority 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.	
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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 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.	Complies: The planning proposal seeks to rezone the site to an existing zone already applying in the environmental planning instrument consistent with item 4(b) of the 117 Direction and does not propose any additional development standards or requirements to those already contained in the relevant zone.
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APPENDIX E – STATE ENVIRONMENTAL PLANNING POLICIES

E1. State Environmental Planning Policy (Rural Lands) 2008

The proposal to rezone rural land to Large Lot Residential requires consideration of the provisions of the SEPP for Rural Lands and flags the mid north coast farmland mapping for consideration.

The Planning Proposal is consistent with a Kempsey Council's Local Growth Management Strategy which has been prepared by Council in consideration of the SEPP for Rural Lands 2008 and has been approved by the Director- General.

In considering Clause 7 of the SEPP for Rural Lands is addressed as follows.

2 Aims of Policy

The aims of this Policy are as follows:

- (a) to facilitate the orderly and economic use and development of rural lands for rural and related purposes,*
- (b) to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,*
- (c) to implement measures designed to reduce land use conflicts,*
- (d) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- (e) to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.*

Part 2 Rural Planning Principles

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,*

Comment: The planning proposal does include a small area of land identified under the regional farmland mapping. Detailed analysis of the land has identified that its inclusion would be of minor significance on the basis of its inconsistency with the selection criteria of the Farmland Mapping project, the small and isolated nature of the piece of land adjoined by existing large lot residential holdings on 3 sides and compliance with the Interim Variation criteria under the draft North Coast Regional Plan. Refer Appendix C of the planning proposal.



In considering principle (a) retention of a small segregated piece of land in the RU1 zone would make no material difference to the 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,

Comment: Refer to the assessment at Appendix C.

(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,

Comment: The planning proposal will result in additional economic benefits to the rural area.

(d) in planning for rural lands, to balance the social, economic and environmental interests of the community,

Comment: The adopted Rural Residential Strategy assesses the subject land under specific Environmental Sustainability Criteria, including economic and environmental interests within Appendix 5 of the Background Report to the Rural Residential Strategy.

(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,

Comment: The Background Studies supporting the adopted Rural Residential Strategy assesses the natural resources of the subject area and include reference to a range of ecological assessments. Regard has been had to maintaining biodiversity, protection of native vegetation, water resources and avoiding constrained lands.

The intended outcome for the land, subdivision concept at Appendix A, demonstrates that no Koala Food Trees need to be removed and avoids bank vegetation along the river frontage.

(a) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,

Inclusion of the front of Lot 101 in the RU5 zone would see a rounding off the rural lifestyle neighbourhood at Euroka and in accord with principle (f) provides opportunities for rural lifestyle and housing that contributes to the social and economic welfare of rural communities. The planning proposal for approximately 23 x 1ha lots would support rural lifestyle settlements already established in the immediate area.

(g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,

The site is already serviced by sealed public road, electricity & telecommunications. Reticulated water pressure investigations indicate that each resulting residence should allow for self supply. Road network capacity is also adequate. In considering principle (g), the existing services and



infrastructure of the Euroka neighbourhood have capacity to incorporate this land and would further support cost efficiencies for garbage collection, school bus services and the like.

(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 contains a minor inconsistency with the regional strategy policy on farmland mapping and with the local rural release strategy on precise rezoning boundaries.

In considering the above Rural Planning Principles, the area of land mapped under Regional Farmland mapping is less than 2.5 ha and is located within an area dominated by rural lifestyle lots to the south and east, and under strategy immediately west. Land to the north remains under grazing and to retain that part of Lot 101 as primary production would result in an isolated piece, not contiguous with an agricultural holding or ongoing agricultural activity and incongruous to the established land use patterns.

On balance, taking into account the soils analysis and the farmland mapping criteria, the small piece of land mapped as farmland does not meet the definition of Regionally Significant Farmland and its retention outside the proposed RU5 zone is likely to leave a small un-utilisable piece of rural land.

The Planning Proposal is consistent with interim Variation Criteria for farmland mapping in the draft North Coast Regional Plan.

Refer to Appendix C for assessment of the proposal in context of various Rural Lands policies and assessment tools, the Agronomy report and assessment of the agricultural potential.

E.2 State Environmental Planning Policy No. 44 – Koala Habitat

The land is within the area mapped under the Kempsey Shire Comprehensive Koala Plan of Management, which has been prepared and adopted under SEPP 44. As discussed elsewhere in the planning proposal, a Koala Habitat assessment has been completed and is provided at Appendix B and the subdivision concept plan demonstrates how lots, roads and building envelopes can be achieved on the land without the need for removal of identified Koala Food Trees.

E.3 State Environmental Planning Policy No. 71 – Coastal Protection

The land is not mapped as part of the Coastal Zone mapping under SEPP 71.

E.4 State Environmental Planning Policy No. 55 – Remediation of Land

Clause 6 of the *SEPP 55 – Remediation of Land* requires a planning authority to consider whether the land is contaminated and if the land is contaminated, to be satisfied that the land will be suitable for the proposed use or appropriately remediated.



In accordance with Clause 6(2) a preliminary investigation of the land in accordance with the contaminated land guidelines has been undertaken and the land has not been used for any of the purposes referred to in Table 1 of the contaminated land planning guidelines.

Enquiries of the current owners familiar with the land described wholly as Lot 101 DP 778496 indicate that:

- The previous and current land use has been domestic occupation and cattle grazing.
- The land has formerly been used for dairying and has a dairy building at the front gate.
- There is no on site cattle tick dip or former tick dip site.
- The land has not been used for Market Gardens or Orchards.
- There are no oil storage depots or former fuel depots associated with the past or present uses.
- There are no refuse or garbage land fill areas

Searches of the land contamination register, record of notices and contaminated sites notified to EPA have not identified the subject land.

E.5 State Environmental Planning Policy (Infrastructure) 2007

Lot 101 has frontage to Marys Bay Road which is a local road under care and control of Kempsey Shire Council.

The intended outcome concept plans demonstrate a single entrance/intersection with Marys Bay Road with reasonable site distances and good separation distance to the next intersection.

