

SECTION 59 PLANNING REPORT

Planning proposal details:

PP_2012_KEMPS_002_00

Planning proposal summary:

To rezone and amend the minimum lot size on a portion of land at Gilbert Cory Drive, South West Rocks, to permit general residential development.

Date of Gateway determination:

8 October 2012

1.0 SUMMARY

Details of Proposed Amendment

The Planning Proposal aims to:

The intent of the Planning Proposal is to amend the Kempsey Local Environmental Plan 2013 to rezone a portion of the rural zoned component of the land for a future subdivision to provide general residential housing opportunity in the locality of South West Rocks. The subject land is currently zoned RU2 – Rural landscape and E2 Environmental Conservation with a minimum lot size of forty (40) hectares and it is proposed to rezone a portion of the RU2 land to R1 – General Residential with a minimum lot size of 500m².

The Planning Proposal was placed on public exhibition from 16 April to 15 May 2013. Five (5) objections to the proposal were received. However since the initial public exhibition, further ecological studies and consultation with Office of Environment and Heritage were carried out. The rezoning layout and planning proposal was amended, in order to achieve better environmental outcomes consistent with the Biodiversity Assessment Report and to satisfy requirements of DP&E and OEH. The amendment to the planning proposal includes a planning agreement that was drafted to secure commitments for suitable offset arrangements prior to rezoning the land. The amended planning proposal including the Biodiversity Assessment Report and Planning Agreement was placed on public exhibition from 8 May to 5 June 2018. No objections to the proposal were received.

2.0 GATEWAY DETERMINATION

The Gateway Determination was issued 8 October 2012 and was given a 24 month timeframe for completion (from the week following the date of the Gateway determination). Subsequent alterations to the Gateway Determination have been issued and the most recent alteration was issued 23 March 2018 with a further 9-month timeframe to complete the LEP amendment. All the conditions of the Gateway Determination have been complied with.

3.0 COMMUNITY CONSULTATION

Dates of Exhibition	Start: 8 May 2018		Finish: 5 June 2018	
Number of Submissions Received	Ni I	Issues Raised -	Responses -	Recommendation Proceed without amendment
Date of Public Hearing	N/ A	Issues Raised -	Responses -	Recommendation -
Consultation Requirements of Gateway Complied With	Yes Minimum of 14 days		Details as required Notified for a period of 28 days	
Any Amendments Made to Planning Proposal to Respond to issues Raised in Public Exhibition	No			

4.0 VIEWS OF PUBLIC AUTHORITIES

Agency Consulted	Response Received	Issues Raised	Recommendations
Kempsey Local Aboriginal land Council	Response received 11 April 2013	No objections to the planning proposal and provided general comments regarding LEPs (without reference to the subject planning proposal).	
Northern Rivers CMA	Response received 29 April 2013	<p>The NRCMA response indicated no objection to the planning proposal however, concerns were noted regarding the removal of an area of Endangered Ecological Community in the north western corner of the site as part of the rezoning.</p> <p>The NRCMA also indicated that it would be preferable for a 100m buffer to the SEPP14 wetland rather than 50m.</p>	<p>It is noted that the rezoning layout has since been amended to include the EEC area in the north western corner of the site as part of the E2 Environmental Conservation zone and exclude from development.</p> <p>The amended rezoning layout will have a minimum of 50m buffer to the SEPP14 wetland in one area, however over 50% of the SEPP 14 wetland will have greater than 100m buffer from the development area. It is also noted that the R1 zone layout in relation to the SEPP14 buffer has been determined in consultation with OEH.</p>

Office of Environment and Heritage (OEH)	Response received 29 April 2013	<p>OEH recommended that Council;</p> <p>1. Ensure that the matters required by Condition 4 of the Gateway Determination are resolved.</p> <p>Condition 4 of the Gateway Determination requires the following;</p> <p>Council is to collaborate with the Office of Environment and Heritage (OEH) to address the following issues:</p> <p>a) The proponent is to direct further attention to Scribbly Gum Forest areas within the Kempsey LGA. It would be more appropriate to find offset locations within the LGA than other areas on the North Coast.</p> <p>b) The proponent should confirm the actual availability of lands proposed for use as offsets by undertaking further investigations of tenure, land use management factors and land owner attitudes. These factors may influence the future conservation value of these lands and their availability, and consequently limit their suitability as offsets under the OEH offset principles.</p> <p>c) The proponent is to consult further to determine a mutually acceptable quantum of offset required. This may the provision of additional data to refine the accuracy of the current notional outcome; and appropriate offsets are to be secured for</p>	<p>1. This initiated communications between Council, OEH and the proponent, including joint meetings in 2016 and 2017, and which ultimately culminated in further studies and revised zoning layouts. OEH has confirmed that it supports the proponents most recent Biodiversity Assessment, zoning layout and biodiversity offset proposal which includes registering relevant proportions of the land as a Bio Banking site. OEH noted that application of an E2 zone on the remaining land that is not zoned R1 would be consistent with the Department of Planning and Environment LEP practice note (PN 09-002), which recommends that the E2 zone apply to land with a registered Bio Banking agreement.</p> <p>2. The rezoning layout has since been redesigned and OEH is satisfied with the current planning proposal layout from the response from 7 February 2017.</p> <p>3. The land subject of the planning proposal is within the Kempsey Shire Council Local Growth Management Strategy, Residential Component 2010.</p>
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		<p>conservation in perpetuity.</p> <p>2. Consider the implications for future land uses on adjoining lands to the east and south of the planning area of the Planning Proposal.</p> <p>3. Consider formally adopting the area subject to the Planning Proposal in Council's Local Growth Management Strategy before the Planning Proposal is finalised.</p>	
NSW Department of Primary Industries – Fishing and Aquaculture	Response received 2 May 2013	DPI Fisheries supported the zoning of the SEPP14 to E2 and the proposed 50m buffer to the SEPP14 incorporated into the proposed E2 zoning. The response also noted that future master planning for the site must ensure best practice water management principles are implemented, particularly in regard to management of SEPP14 wetland attributes and values.	Information was noted and water sensitive urban design principles will be required to be incorporated into the subdivision design by Council at Development Application stage.
NSW Rural Fire Service (RFS)	20 November 2012	The NSW RFS indicated no objection to the Planning Proposal and commented that any future subdivision will require strict compliance with the requirements and specifications of <i>Planning for Bushfire Protection 2006</i> .	The proponent will be required to submit a comprehensive bushfire assessment report at Development Application stage for future subdivision of the land. It is a requirement for Council to refer the subdivision bushfire assessment report to NSW RFS for review at that stage to ensure compliance with the specifications of <i>Planning for Bushfire Protection 2006</i> , are adhered to in the design.

5.0 CONSISTENCY WITH S.117 DIRECTIONS AND OTHER STRATEGIC PLANNING DOCUMENTS

Secretary's agreement that inconsistencies with section 9.1 Direction 4.4 are justified has been provided.

6.0 PARLIAMENTARY COUNSEL OPINION

The Parliamentary Counsel opinion has been provided and is attached.

7.0 OTHER RELEVANT MATTERS

There are no other relevant matters associated with the Planning Proposal.

8.0 MAPPING

Mapping amendments, as provided for this Planning Proposal, have been finalised with the Department.

9.0 RECOMMENDATION

That the proposed amendments to the KLEP 2013 proceed to Notification.

NOTES:

Please find enclosed:

- The Council Report with an assessment of the results of the public exhibition period;
- Agency responses;
- Map Cover Sheet and LEP amendment signed under authorised delegation; and
- The Secretary's agreement to the section 9.1 Direction 4.4.