

Proposed Residential Land Release, Gilbert Cory Drive, South West Rocks

Proposal Title : **Proposed Residential Land Release, Gilbert Cory Drive, South West Rocks**

Proposal Summary : **To rezone land at South West Rocks from 1(d) Rural Investigation to 2(a) Residential; 7(a) Wetlands Protection and 7(b) Environmental Protection (Habitat) under Kempsey LEP 1987.**

PP Number : **PP_2012_KEMPS_002_00** Dop File No : **11/17920**

Proposal Details

Date Planning : **31-Aug-2012** LGA covered : **Kempsey**
 Proposal Received :
 Region : **Northern** RPA : **Kempsey Shire Council**
 State Electorate : **OXLEY** Section of the Act : **55 - Planning Proposal**
 LEP Type : **Spot Rezoning**

Location Details

Street : **Gilbert Cory Drive**
 Suburb : City : **South West Rocks** Postcode :
 Land Parcel : **Lot 10 DP 754396**

DoP Planning Officer Contact Details

Contact Name : **Jim Clark**
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 Contact Email : **jim.clark@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Ilija Susnja**
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DoP Project Manager Contact Details

Contact Name :
 Contact Number :
 Contact Email :

Land Release Data

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

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MDP Number :		Date of Release :	
Area of Release (Ha) :	15.00	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	120	No. of Dwellings (where relevant) :	120
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with :

If No, comment :

Have there been meetings or communications with registered lobbyists? :

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes : **An earlier planning proposal for this site, (PP_2011_KEMPS_005_00) lodged in October 2011, was not allowed to proceed, for the reason (in summary) that the extent of information on Endangered Ecological Communities and threatened species was insufficient and an adequate offset area had not been located. The Council was to resolve with the Office of Environment and Heritage the level of biodiversity value investigations required and the feasibility of offsetting arrangements if it wished to progress the matter.**

This is a reconsideration of the same proposal with additional information, including the results of the required investigations.

Adequacy Assessment

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

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

Comment :

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

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

Comment :

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.5 Rural Lands

2.1 Environment Protection Zones

2.2 Coastal Protection

2.3 Heritage Conservation

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

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **No**

d) Which SEPPs have the RPA identified?

**SEPP No 14—Coastal Wetlands
SEPP No 44—Koala Habitat Protection
SEPP No 71—Coastal Protection**

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

The planning proposal does not list the SEPP North Coast REP 1988. However, this SEPP is relevant in terms of clause 38(2). That clause requires LEPs to be consistent with an agreed land use strategy which does not include land for development that has conservation value. REP clause 29(c) is also relevant, requiring an LEP to include significant areas of natural vegetation (including wildlife habitat) in environmental protection zones.

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

If No, explain :

a) The land is not part of the Council's agreed local growth management strategy. The Director General specifically excluded the land in his 6 June 2011 approval of Kempsey Local Growth Management Strategy, because biodiversity investigations had not proceeded. The Director General advised the Council that land in the locality could be considered for inclusion in a future strategy amendment if an adequate investigation found that unconstrained areas existed. This was the basis for refusal of the earlier planning proposal for this site.

b) The proposal is inconsistent with Section 117 Directions 1.2 (Rural Zones) and 1.5 (Rural Lands). The inconsistencies relates to the fact that the land is not identified in the Council's local growth management strategy as outlined above; or does not clearly meet the principles for rezoning set out in the Rural Lands SEPP.

However the land has been included in the Mid North Coast Regional Strategy as growth area, while constrained due to biodiversity issues. It is considered that the investigations carried out with the assistance of OEH resolve the biodiversity issues and the proposal could proceed. In these circumstances the inconsistencies with clause 38 of the North Coast REP and with section 117 Directions 1.2 and 1.5 are justified. There are more details on this aspect later in the report.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The Council has not indicated a time frame for community consultation. 28 days would be appropriate.

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? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **June 2013**

Comments in relation
to Principal LEP :

A section 65 certificate was issued in mid-September and the draft principal plan is being prepared for exhibition. The land is zoned RU2 and E2 in the draft , neither of which would permit the development. If the proposal proceeds to finalisation, likely zonings in the principal LEP will be R2 or E4 and E2.

Assessment Criteria

Need for planning
proposal :

The Mid North Coast Regional Strategy identifies a need for 18,300 new dwellings in the Hastings-Macleay Valley sub-region. South West Rocks is identified as a 'town', being reliant on the major town of Kempsey for services and employment.

Benefits listed include provision of housing land near services, improved drainage, provision of access to residential areas, protection of wetland and EECs, and short-term local employment associated with the housing industry. However the proposal identifies land clearing and infrastructure provision as costs.

Consistency with strategic planning framework :

The land is in a locality (western part of South West Rocks) identified as Proposed Future Urban Release Area in the Mid North Coast Regional Strategy 2009. The locality is shown stippled, indicating areas of high level constraints. It is also hatched, denoting its status as a site with significant issues where there is a process underway to determine any development potential.

The Strategy notes that 'the extent of any development potential in the locality is to be based on the identification and protection of land with high biodiversity values, consistent with the current study underway'. The locality study to which the Strategy refers was not completed. Several studies have been undertaken, some of them conflicting. The current proposal includes an assessment of EECs with which the Office of Environment and Heritage (OEH) did not agree.

The locality is not part of the Council's agreed (June 2011) local growth management strategy. The Director General specifically excluded this land due to the incomplete biodiversity investigations. The Director General advised the Council that if an adequate investigation was carried out within the locality, and any land was found to be unconstrained, the Council's strategy could be submitted for amendment. In lodging the current planning proposal, the Council also forwarded its resolution to request the Department to include the land in its local growth management strategy. The request is based on the same information as the original planning proposal, which did not demonstrate that unconstrained land is available.

In the original proposal, the proponent suggested using offsets to address loss of environmental values, as a way of facilitating the land's inclusion in Council's local growth management strategy. In response, the Department indicated it needed to be confident that offsetting would be feasible, and would take the advice of the Office of Environment and Heritage (OEH). OEH subsequently advised the proponent that offsetting was unlikely to be feasible because: the extent of knowledge about EECs and threatened species on the site was unclear; finding an adequate like-for-like offset area was problematic; fragmentation of the site was undesirable; and a more suitable use for the land would be to use it as an offset area for developments of lesser impact. The proponent has indicated that EECs are to be 'largely avoided', and was of the view that offsets were feasible.

In other respects, the original proposal was acceptable.

In these circumstances the Gateway determined that the Planning Proposal not proceed, but that the Council was to resolve with the Office of Environment and Heritage the level of biodiversity value investigations required and the feasibility of offsetting arrangements if it wished to progress the matter.

The applicant arranged for consultants Ecobiological to prepare a report on offset options for the site. The report (included in the attached documents) considered the four vegetation types on the site (Paperbark Swamp Forest, Swamp Mahogany Swamp Forest; Scribbly Gum - Red Bloodwood Forest and Wet Heathland), two of which (Scribbly Gum and Wet Heathland) needed to be compensated, according to OEH advice. The report found 33 suitable offset sites scattered throughout the North Coast - 26 for Scribbly Gum and 7 for Wet Heath.

OEH was requested on 3 August 2012 to provide comment on the methodology and conclusions to the report. OEH's advice concluded that the required quantum of offsets for the planning proposal appear to exist in appropriate Catchment Management Authority sub-regions. The OEH response also recommended as below (DP&I comments in brackets):

1. The proponent direct further attention to the Scribbly Gum Forest areas identified within the Kempsey LGA (for the reason that it would be appropriate to find offset locations within the LGA rather than elsewhere on the North Coast);
2. The proponent should confirm the actual availability of these lands for use as offsets

by undertaking further investigation of other 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;

3. The proponent consult further with OEH and the Department of Planning and Infrastructure to determine a mutually acceptable quantum of offset required. This may involve the provision of additional data to refine the accuracy of the current notional outcome (It is noted that according to the applicant, the director general advised him at a meeting on 13 April 2012, that a compensation ratio of 4:1 may be sufficient - OEH however originally suggested 14:1 but is apparently prepared to settle for between 5:1 and 8:1. The applicant also points out that 24ha of EECs (60% of the site) is to be zoned for conservation purposes); and

4. Any rezoning of the land should be made strongly conditional on confirmation that an appropriate offset has been found and secured for conservation in perpetuity. (OEH advises that its preferred method of security is by way of Voluntary Planning Agreement.)

There remain some unknowns and inconsistent advice. However the applicant, in liaison with Council and OEH have carried out the requirements set out in the previous Gateway Determination for reconsideration of the proposal.

On balance the inconsistencies with section 117 directions 1.2 and 1.5 and clause 38 of the REP can be considered justified.

The advice from OEH is that it would like to be involved in deciding conditions attached to a Gateway decision. However if the additional information required by OEH in its response (outlined above) was included in appropriate format as conditions, this should be sufficient.

it is noted that the proposal is also inconsistent with section 117 direction 4.4 as there has been no consultation yet with the Rural Fire Service. This issue can be addressed following the Gateway decision.

Environmental social
economic impacts :

The proposal is for low-density residential development (average size 750 square metre lots) on 15 ha of a 40 ha site. The site is thickly vegetated and in good condition. It includes two Endangered Ecological Communities, a SEPP 14 wetland and potential koala habitat. While limited fauna surveys have been carried out, a variety of threatened species are predicted to occur.

A regional wildlife corridor identified by OEH traverses the site. Development is proposed on land in the wildlife corridor. Removal of 0.5 hectares in an EEC is proposed. Because of the high level of constraints, development is proposed in three nodes, creating a significant interface area between houses and vegetation. The land is bushfire-prone and any development will require cleared setbacks to mitigate bushfire risk. The Infrastructure SEPP permits bushfire hazard reduction without consent on any land, including clearing. This creates the potential for impacts on vegetation outside the proposed residential zone.

Consideration of offsetting arrangements and securing appropriate long-term protection for sensitive areas form the basis of OEH advice following refusal of the original proposal. The proposal can now be supported - see consideration above.

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Assessment Process

Proposal type : **Precinct** Community Consultation **28 Days**
Period :

Timeframe to make **24 Month** Delegation : **DG**
LEP :

Public Authority **NSW Aboriginal Land Council**
Consultation - 56(2)(d) **Catchment Management Authority - Northern Rivers**
 Office of Environment and Heritage
 NSW Department of Primary Industries - Fishing and Aquaculture
 NSW Rural Fire Service

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 :

Flora

Fauna

Bushfire

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
1. Kempsey Gateway.pdf	Determination Document	Yes
Offset Options - June 2012_.pdf	Study	Yes
Kempsey Shire Council_12-03-2012 00_00_00_Lot 10 DP	Proposal Covering Letter	Yes
754396 Gilbert Cory St South West Rocks - Request to		
Reconsider Gateway Determination_.pdf		
Office of Environment and Heritage - Coffs	Study	Yes
Harbour_31-08-2012 00_00_00_Offset Options Paper -		
Gilbert Corey Drive South West Rocks Planning		
Proposal_.pdf		
Planning Proposal_Gilbert Corey Drive_South West	Proposal	Yes
Rocks.pdf		

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

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- 2.2 Coastal Protection
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Additional Information :

It is recommended that:

1. The Planning Proposal be supported;
2. The Planning Proposal is to be exhibited for a period of 28 days;
3. The Planning Proposal should be completed within 24 months;
4. The Director General (or an officer of the Department nominated by the Director General) agree that the inconsistencies with s117 Directions 1.2, 1.5 and clause 38 of the SEPP - North Coast REP are justified as the proposal is located within a conditional growth area under the Mid North Coast Regional Strategy;
5. The Director General note that the inconsistency between the Planning Proposal and s117 direction 4.4 will be justified when the Council consults with the NSW Rural Fire Service;
6. Council is to address the following issues in collaboration with the Office of Environmental Heritage:

A. The proponent direct further attention to the Scribbly Gum Forest areas identified within the Kempsey LGA;

B. The proponent confirm the actual availability of lands proposed for use as offsets by undertaking further investigation of other 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;

C. The proponent consult further to determine a mutually acceptable quantum of offset required. This may involve the provision of additional data to refine the accuracy of the current notional outcome; and

D. Appropriate offset be secured for conservation in perpetuity; and

7. Council to consult also with the NSW Rural Fire Service, the Northern Rivers Catchment Management Authority, the Local Aboriginal Land Council and Department of Primary Industries - Fisheries.

Supporting Reasons :

Sufficient consideration of biodiversity issues and offsets in compensation for potential loss of key habitats has been undertaken in collaboration with the Office of Environment and Heritage to resolve concern expressed previously and to allow the proposal to proceed to the next stage of investigation. In other respects the land is appropriately located to provide accommodation for future residents of South West Rocks.

Signature:



Printed Name:

Craig Diss

Date:

21/9/12