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Our ref: PP_2011_KEMPS_005_00 (11/17920)
Your ref: T5-116

Mr David Rawlings
General Manager
Kempsey Shire Council
PO Box 78
WEST KEMPSEY NSW 2440

Dear Mr Rawlings,

Re: Planning Proposal to rezone land at South West Rocks from 1(d) (Rural (Investigation) "D" Zone) to 2(a) (Residential "A" Zone), 7(a) (Wetlands Protection Zone) and 7(b)(Environmental Protection (Habitat) Zone)

I am writing in response to your Council's letter dated 28 September requesting a Gateway Determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") in respect of the planning proposal to amend the Kempsey Shire Local Environmental Plan 1987 to rezone land at South West Rocks from 1(d) (Rural (Investigation) "D" Zone) to 2(a) (Residential "A" Zone), 7(a) (Wetlands Protection Zone) and 7(b)(Environmental Protection (Habitat) Zone).

As delegate of the Minister for Planning and Infrastructure, I have now determined that the planning proposal should not proceed for the reasons outlined in the attached Gateway Determination.

It is noted that the land does not form part of Council's agreed local growth management strategy, as it was excluded as a result of unresolved biodiversity investigations. It is acknowledged however that the land is identified in the Mid North Coast Regional Strategy Growth Area as future urban, subject to the protection of land with high biodiversity values.

While it is acknowledged that Council wishes to include the subject land in its local growth management strategy, Council has not yet demonstrated that unconstrained land is available for development. It is noted that offsets have been suggested to address the loss of environmental values. However the Department is not confident that offsetting would be feasible given the advice on the matter from the Office of Environment and Heritage, which suggests that the extent and knowledge of the environmental value and threatened species on the site is insufficient to advance the planning for residential development.

Given that a regional wildlife corridor traverses the site, two Endangered Ecological Communities are located on the site and a wetland and potential koala habitat are also present, the Department does not support the proposal proceeding at this time. If Council wishes to progress the matter, it is suggested that Council contact the Department's Regional office who

will facilitate a meeting between Council and the Office of Environment and Heritage to resolve the following matters:

- Identification of unconstrained land;
- Offsetting feasibility; and
- Inconsistencies with S117 Directions, particularly S117 Direction 4.4 Planning for Bushfire Protection.

Should you have any queries in regard to this matter, please contact Claire Purvis of the Regional Office of the Department on 02 6641 6611.

Yours sincerely,



Tom Gellibrand
Deputy Director General
Plan Making & Urban Renewal

3/11/11

Gateway Determination

Planning Proposal (Department Ref: PP_2011_KEMPS_005_00): to rezone land at South West Rocks from 1(d) (Rural (Investigation) "D" Zone) to 2(a) (Residential "A" Zone), 7(a) (Wetlands Protection Zone) and 7(b)(Environmental Protection (Habitat) Zone).

I, the Deputy Director General, Plan Making & Urban Renewal as delegate of the Minister for Planning and Infrastructure, have determined under section 56(2) of the EP&A Act that an amendment to the Kempsey Shire Local Environmental Plan 1987 to rezone land at South West Rocks from 1(d) (Rural (Investigation) "D" Zone) to 2(a) (Residential "A" Zone), 7(a) (Wetlands Protection Zone) and 7(b)(Environmental Protection (Habitat) Zone) should not proceed for the following reasons:

1. The planning proposal does not adequately demonstrate that there is sufficient unconstrained land available for the proposal to proceed at this stage.
2. The planning proposal is inconsistent with a number of S117 Directions including 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environmental Protection and 4.4 Planning for Bushfire Protection. Insufficient justification has been provided for the departure from these requirements regulating the release of land for urban purposes.
3. The planning proposal is unjustifiably inconsistent with the North Coast Regional Environmental Plan in that the land is not consistent with Council's local growth management strategy.
4. The planning proposal has not provided sufficient evidence that offsetting is feasible, because the extent of knowledge about the Endangered Ecological Communities and threatened species on the site is unclear, finding an adequate like-for-like offset area is problematic, and fragmentation of the site is undesirable. Council is to resolve the level of biodiversity value investigations and feasibility of offsetting arrangements with the Office of Environment and Heritage if it wishes to progress the matter.

Dated

3rd

day of

November

2011.



Tom Gellibrand
Deputy Director General
Plan Making & Urban Renewal
Delegate of the Minister for Planning and
Infrastructure