

## Planning Services

### Gateway Determination Report

<b>LGA</b>	Kempsey Shire Council
<b>PPA</b>	Kempsey Shire Council
<b>NAME</b>	Rezone land and amend the minimum lot size at Neville Morton Drive, Crescent Head (4 homes, 0 jobs)
<b>NUMBER</b>	PP_2018_KEMPS_003_00
<b>LEP TO BE AMENDED</b>	Kempsey LEP 2013
<b>ADDRESS</b>	Neville Morton Drive, Crescent Head
<b>DESCRIPTION</b>	Lot 3 DP 1164661
<b>RECEIVED</b>	16 July 2018
<b>FILE NO.</b>	IRF18/4021
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required OR a political donation disclosure statement has been provided
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal OR include details of meetings or communications with registered lobbyists.

## INTRODUCTION

### Description of planning proposal

The proposal seeks to rezone part of Lot 3 DP 1164661, Neville Morton Drive, Crescent Head, from E2 Environmental Conservation to R5 Large Lot Residential and alter the minimum lot size for the subject land from 40 hectares to 1 hectare. The rezoning will result in a 3 hectare expansion of the existing R5 Large Lot Residential area to facilitate 4 additional lot large residential lots.

### Site description

The subject site is approximately 5km west of Crescent Head and adjoins the existing Dulconghi Heights large lot residential estate. The land comprises a mixture of coastal wetlands and cleared pastoral land with some scattered open forest. The land being rezoned is outside the coastal wetland area on the site. A locality plan is at Figure 1.

### Existing planning controls

The land to be rezoned is currently E2 Environmental Conservation (Figure 2) with a 40 hectare minimum lot size under Kempsey LEP 2013.



Figure 1 – Locality Plan

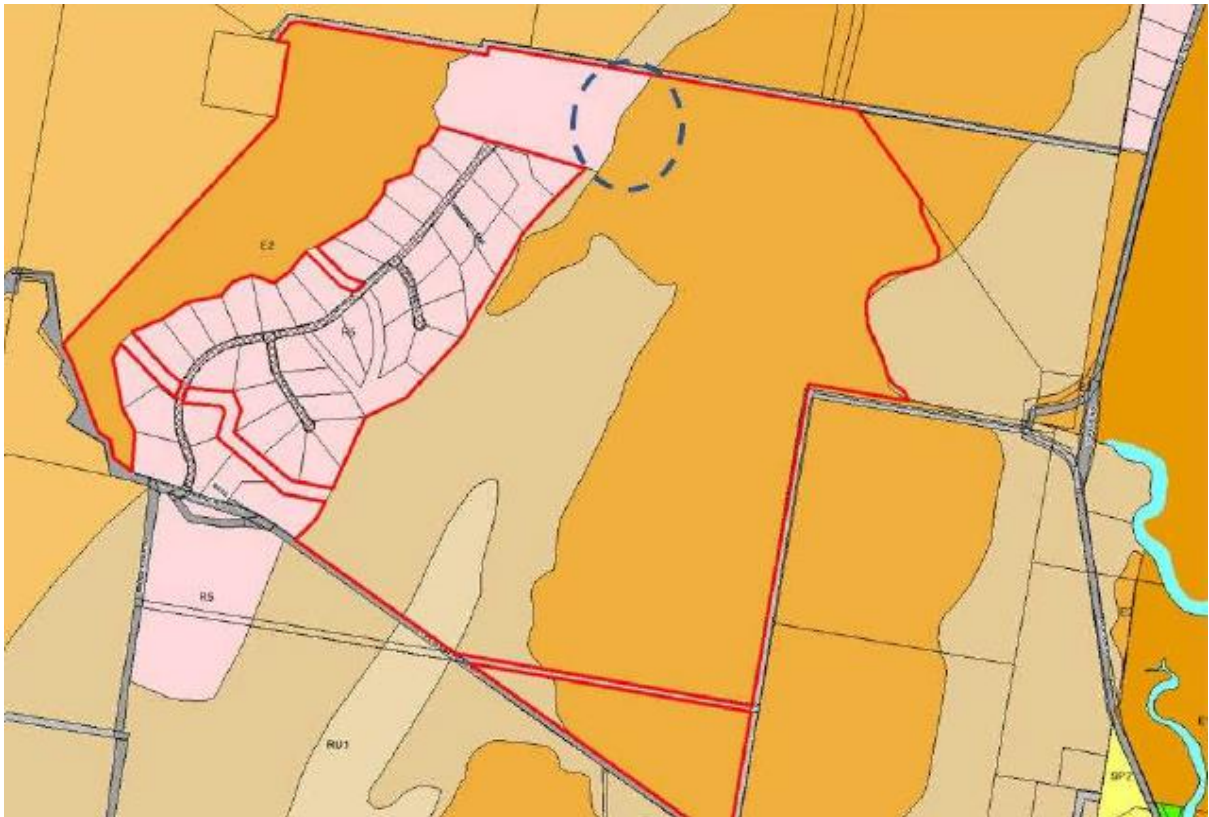


Figure 2 – Area to be rezoned on existing zoning map

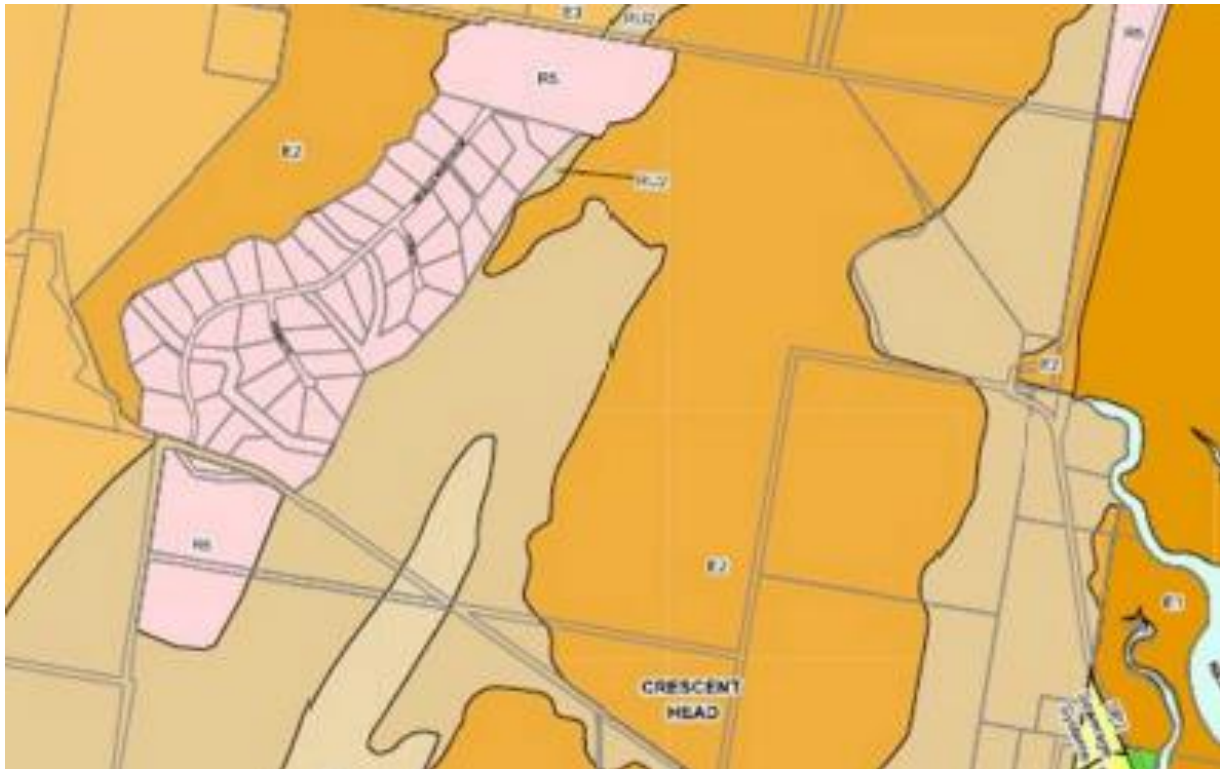


Figure 3 – proposed zoning map

### **Surrounding area**

The surrounding area is a mixture of farmland, large lot residential and environmental uses as illustrated by the above zoning map.

### **Summary of recommendation**

It is recommended that the proposal proceed subject to conditions as it is primarily seeking to correct a mapping error that occurred during the plan making of Kempsey LEP 2013 (Amd 8) and is also taking the opportunity to realign the E2 Environmental Conservation Zone boundary to be more consistent with the coastal wetland mapping under the recently released SEPP (Coastal Management) 2018.

## **PROPOSAL**

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### **Objectives or intended outcomes**

The objectives of the planning proposal are appropriately detailed.

### **Explanation of provisions**

The planning proposal appropriately details the mapping changes that will be required to implement the intended objectives.

### **Mapping**

The planning proposal contains suitable mapping for agency and community consultation and includes existing and proposed zoning and minimum lot size maps.

## **NEED FOR THE PLANNING PROPOSAL**

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The planning proposal is required to correct a mapping error that occurred during the finalisation of Kempsey LEP 2018 (Amd 8) and to amend the zoning boundary to



better align with the coastal wetland mapping under the recently released SEPP (Coastal Management) 2018.

Kempsey LEP 2013 (Amd 8) rezoned the existing R5 Large Lot Residential area on the site in July 2017 to facilitate a 14 lot subdivision (Figure 4). Kempsey Shire Council as the Minister's delegate in making the plan inadvertently aligned the minimum lot size with the R5 / E2 Zone boundary rather than the eastern boundary of the subdivision. This has resulted in the 4 eastern lots shown in Figure 4 having a split minimum lot size of 1ha and 40ha and being unable to be created. The planning proposal seeks to amend this error by applying the intended 1ha minimum lot size to the entire footprint of the subdivision as proposed under Kempsey LEP 2013 (Amd 8).

Since the making of Kempsey LEP 2013 (Amd 8), SEPP (Coastal Management) 2018 has been released and has updated the coastal wetland mapping in the area. The current E2 Zone boundary aligns with the former SEPP 14 Coastal Wetlands mapping. Previously the Office of Environment and Heritage had objected to the rezoning of this area under Kempsey LEP 2013 (Amd 8) due to SEPP 14 wetland mapping. The proposal now seeks to update the land zoning map to better reflect the intended large lot residential nature of the land and align with the updated coastal wetland SEPP mapping for the area (Figure 5).

The planning proposal is necessary to enable the proposed amendment to Kempsey LEP 2013. The planning proposal is the only means of achieving the intended outcomes.

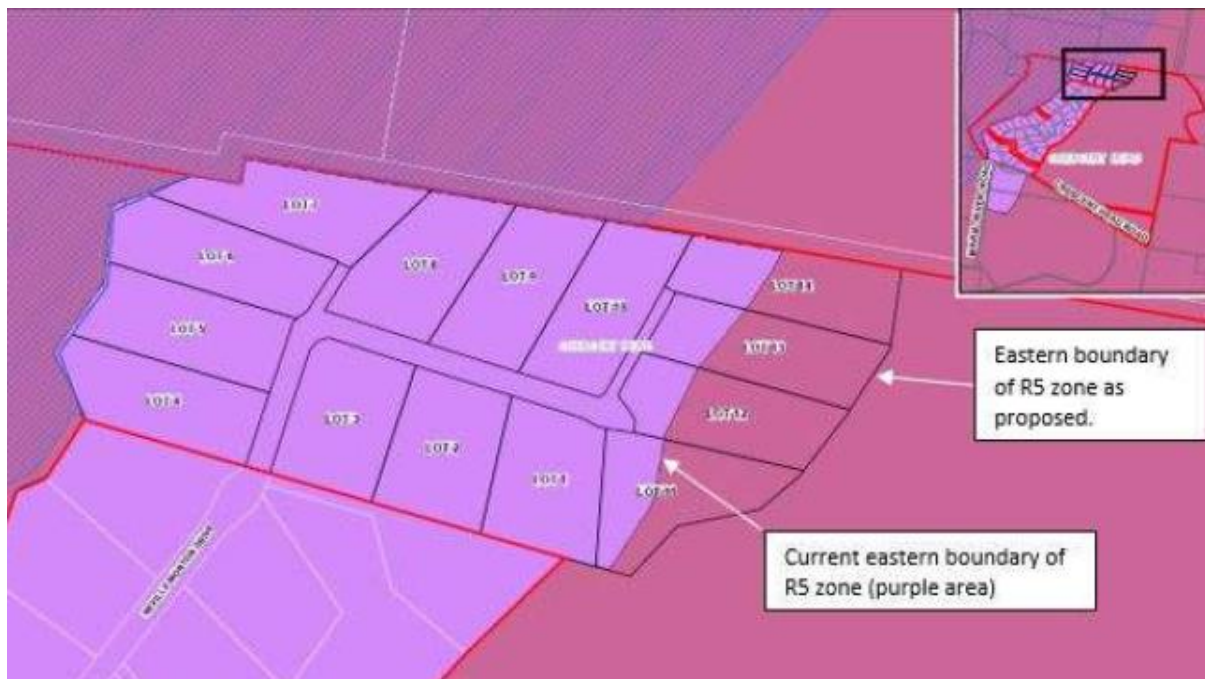


Figure 4 – Proposed subdivision layout and existing zoning and lot size boundary



Figure 5 – SEPP (Coastal Management) 2018 - Coastal Wetlands

## STRATEGIC ASSESSMENT

### State

The proposal is considered to be consistent with the relevant State planning framework.

### Regional / District

The proposal is consistent with Council's Department approved rural residential release strategy and is therefore generally consistent with the North Coast Regional Plan 2036.

A small area of the proposed most south-east lot is affected by the 1 in 100 ARI flood event (Figure 6). The North Coast Regional Plan 2036 and the associated Settlement Planning Guidelines identify that future development should reduce risk from natural hazards and avoid areas of potential hazard. Due to the minor quantity of flood planning area involved, and the ability to locate a dwelling envelope on the proposed lot above the 1 in 100 ARI flood event, this issue is considered to be satisfactory and of minor significance.

The land is also identified as potential high environmental land under the North Coast Regional Plan 2036. The North Coast Regional Plan 2036 advocates that development be directed to the least biodiversity sensitive areas of the region. An ecology assessment has been prepared to support the proposal which confirms the land to be rezoned is primarily cleared grazing land with some dispersed and modified remnant Blackbutt Tallowwood dry open forest. The proposal also confirms that despite being identified as secondary koala habitat under Council's Comprehensive Koala Plan of Management, no koala feed trees are located in the area to be rezoned under the current proposal. As Blackbutt Tallowwood is not an

endangered ecological community, it is considered that the land is unlikely to constitute high environmental land.

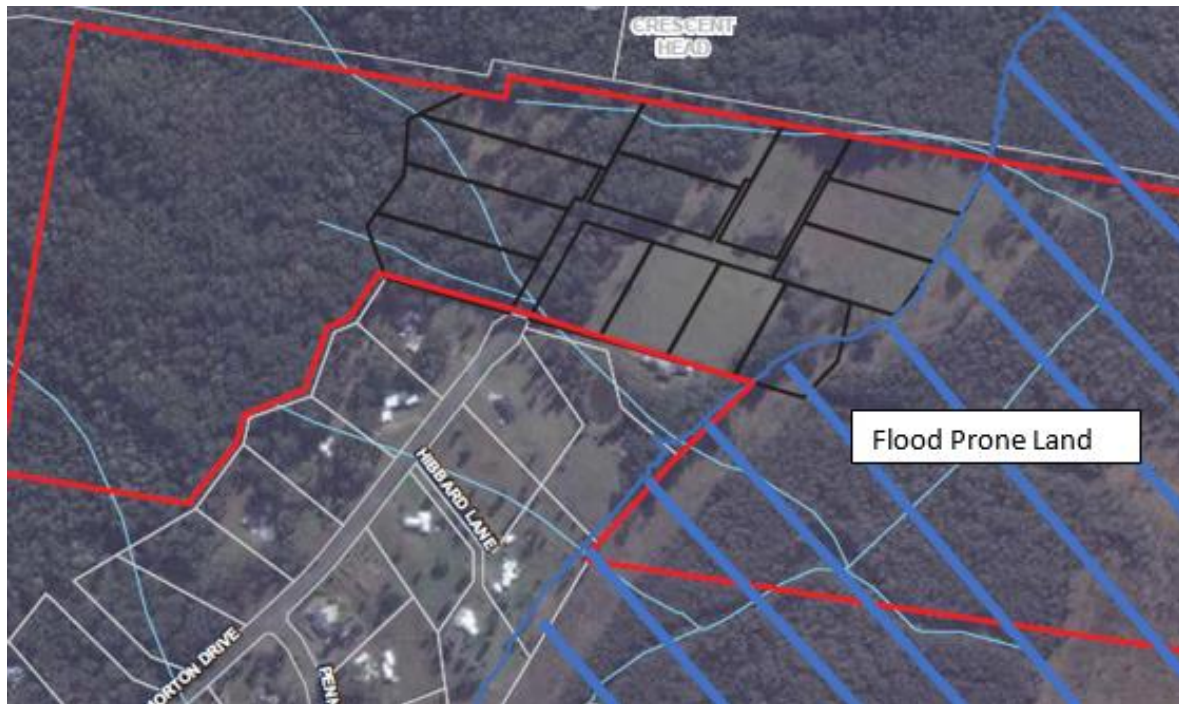


Figure 6 – 1 in 100 ARI flooding (dark blue hatching)

## Local

The subject land is identified in Council's Department approved Rural Residential Release Strategy 2014. The strategy requires prior to rezoning that consideration be given to visual and ecological impacts, along with flooding and the former SEPP 14 wetland. These matters were all considered and addressed as part of Kempsey LEP 2013 (Amd 8) which zoned the existing R5 Large Lot Residential area on the site. In regard to the current proposal it is noted:

- the potential visual impacts identified in the strategy related to the higher areas of the site already zoned under Amendment 8;
- the wetland area on the site has been investigated and revised mapping under SEPP (Coastal Management) 2018 has been released which shows the area being rezoned is located outside of the wetland area;
- that land is primarily open grazing land with some remnant tree cover and no significant adverse ecological impacts have been identified. The Office of Environment and Heritage reviewed Amendment 8 which included the subject land, and raised no objection on biodiversity grounds, noting in part that a significant vegetation offset for the proposal was being rezoned E2 Environmental Conservation on the site as part of Amendment 8.

The proposal is considered to be consistent with Council's Department approved Rural Residential Release Strategy 2014.



## **Section 9.1 Ministerial Directions**

### **2.1 Environment Protection Zones**

The planning proposal is inconsistent with this direction as it reduces the environmental protection standards which apply to the site by rezoning the land from E2 Environmental Conservation to R5 Large Lot Residential. The land was originally zoned E2 Environmental Conservation due to its identification as SEPP 14 Coastal Wetland. As revised mapping under SEPP (Coastal Management) 2018 has been released which shows the area being rezoned is located outside of the wetland area, the inconsistency is considered to be of minor significance.

### **4.1 Acid Sulfate Soils**

The planning proposal is inconsistent with this direction as it will permit an intensification of land uses on class 5 acid sulfate soils without a supporting acid sulfate soils study by rezoning the land to R5 Large Lot Residential. This inconsistency is considered to be of minor significance as Kempsey LEP 2013 contains suitable local provisions that will ensure that this matter can be appropriately considered and addressed at the development application stage.

### **4.3 Flood Prone Land**

The planning proposal is inconsistent with this direction as it will permit a significant increase in the development potential of a small area of flood prone land by rezoning it to R5 Large Lot Residential. This inconsistency is considered to be of minor significance as it affects only one proposed allotment, that allotment has sufficient area for a building envelope above the flood planning area, and Kempsey LEP 2013 contains flooding planning provisions that will ensure that this matter can be appropriately considered and addressed at the development application stage.

### **4.4 Planning for Bushfire Protection**

This direction applies as the subject land is identified as bushfire prone. Consistency with this direction is unable to be determined until after consultation has been undertaken with the NSW Rural Fire Service.

### **5.10 Implementation of Regional Plans**

The planning proposal is inconsistent with this direction as it rezones a small area of flood prone land to R5 Large Lot Residential. As discussed above, this inconsistency is considered to be of minor significance as it affects only one proposed allotment, that allotment has sufficient area for a building envelope above the flood planning area, and Kempsey LEP 2013 contains flooding planning provisions that will ensure that this matter can be appropriately considered and addressed at the development application stage.

## **State environmental planning policies**

The proposal is considered to be consistent with all applicable State Environmental Planning Policies.

## **SITE-SPECIFIC ASSESSMENT**

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### **Social**

No adverse social impacts have been identified as likely to result from the proposal. The subject land has ready access to facilities in both Crescent Head (5kms) and

Kempsey (17kms). Aboriginal cultural heritage was also considered and addressed previously under Amendment 8, including consultation with the Kempsey Local Aboriginal Land Council, and confirmed that any issues can be appropriately considered and addressed at the development application stage.

### **Environmental**

As discussed above in the body of the report, no adverse environmental outcomes are anticipated with the proposal. The land contains no ecologically endangered communities, is located outside the adjoining coastal wetland, does not require the removal of any koala feed trees and no potential land contamination has been identified. As the proposal will remove an existing E2 Environmental Conservation Zoning, it is considered appropriate that consultation be undertaken with the Office of Environment and Heritage.

### **Economic**

The proposal is considered only to have positive economic impacts by facilitating 4 additional rural residential lots in the existing large lot residential estate.

### **Infrastructure**

No additional State infrastructure will be required as a result of the proposal. The local infrastructure needs of the 4 additional large residential lots can be appropriately considered and addressed at the development application stage. It is understood that sealed road access, electricity, telecommunications and reticulated water will be provided to the sites consistent with the remainder of the estate. Similar to other lots in the estate, each lot will provide suitable on-site waste disposal facilities.

## **CONSULTATION**

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### **Community**

As the proposal is consistent with Council's Department approved local strategy, and is primarily seeking to correct an error in the making of Amendment 8, a 14 day community consultation period is considered appropriate.

### **Agencies**

It is considered appropriate that consultation be undertaken with the following agencies:

- Office of Environment and Heritage
- NSW Rural Fire Service

## **TIME FRAME**

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The proposal time line identifies a 6 month period to finalise the amendment. To ensure an adequate period to finalise the proposal, a 9 month period is recommended.

## **LOCAL PLAN-MAKING AUTHORITY**

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The proposal is not considered to contain State or regional issues, and as a local planning matter, it is appropriate that Council be provided authorisation to exercise its local plan making delegations.



## CONCLUSION

The planning proposal is required to correct a mapping error that occurred during the finalisation of Kempsey LEP 2018 (Amd 8) and to amend the zoning boundary to better align with the coastal wetland mapping under the recently released SEPP (Coastal Management) 2018. The changes will help facilitate an additional 4 rural residential lots in an existing large lot residential estate and is supported.

## RECOMMENDATION

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It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 2.1 Environment Protection Zones, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land and 5.10 Implementation of Regional Plans are minor or justified; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Minister for Planning determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 14 days.
2. Consultation is required with the following public authorities:
  - Office of Environment and Heritage
  - NSW Rural Fire Service
3. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.



24-7-2018

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