

Alteration of Gateway determination for planning proposal PP_2013_KEMPS_001_00

Purpose: To recommend the Director, as delegate of the Minister, agree to alter the Gateway determination for planning proposal no. PP_2013_KEMPS_001_00.

Analysis: A Gateway determination was issued in June 2013 for the planning proposal, which seeks to rezone land at Crescent Head to enable it to be developed for residential purposes. Kempsey Shire Council has requested a Gateway alteration to undertake a number of amendments in response to matters raised during the public exhibition period and to extend the timeframe for completion. The request is considered to have merit and an alteration to the Gateway determination has been prepared.

Approval required: 21 August 2020

Reason for deadline: The Gateway alteration is to be issued by the above date, being 15 days since receiving the alteration request.

Recommendation

That the Director, as delegate of the Secretary:

1. **note** that the consistency with section 9.1 Directions 1.3 Mining, Petroleum Production and Extractive Industries and 4.4 Planning for Bushfire Protection remain unresolved and will require justification.

That the Director, as delegate of the Minister:

1. **agree** under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* (the Act) to alter the Gateway determination for planning proposal no. PP_2013_KEMPS_001_00 in accordance with the Alteration of Gateway determination document (**Attachment A**), which is proposed to involve the following:
 - amend the land zoning map from R5 Large Lot Residential to part R1 General Residential, part E3 Environmental Management and part RU2 Rural Landscape;
 - amend the minimum lot size map to permit a minimum lot size of 650 square metres as it applies to the R1 General Residential zoned land;
 - amend the minimum lot size map to permit a minimum lot size of 40 hectares as it applies to the RU2 Rural Landscape and E3 Environmental Management zoned land;
 - expand the scenic protection zone mapping to correspond with the enlarged E3 Environmental Management zone;
 - amend the height of building map to apply a maximum building height limit of 8.5 metres, corresponding to the R1 General Residential zoned land;
 - amend Clause 4.2D 'Subdivision of certain land at Crescent Head' of the Kempsey LEP 2013 to require preparation of a Vegetation Management Plan prior to granting development consent for the subdivision of the land as identified by 'Area 1' on the Lot Size Map;
2. **direct** under schedule 1, clause 4 of the Act that the revised planning proposal should be subject to further community consultation as proposed in condition 9 of the Alteration of Gateway determination (**Attachment A**);
3. **sign** the Alteration of Gateway determination (**Attachment A**); and
4. **sign** the letter to Kempsey Shire Council (**Attachment B**).

Director approval



Approved

Jeremy Gray

Director, Northern Region

Local and Regional Planning

Date: 18-8-2020

Key reasons

Planning proposal

Kempsey Shire Council has prepared a planning proposal to rezone land at Crescent Head Road, Crescent Head, to enable it to be developed for residential purposes. This planning proposal originally proposed an amendment to the Kempsey Local Environmental Plan (LEP) 1987 to rezone the land to 2(a) Residential 'A' Zone (or to R1 General Residential under draft Kempsey LEP 2012 should it be completed) and amend the associated lot size, height of buildings and scenic protection planning controls. The original study area is shown in Figure 1. The originally proposed and existing zonings are shown in Figures 2 and 3.

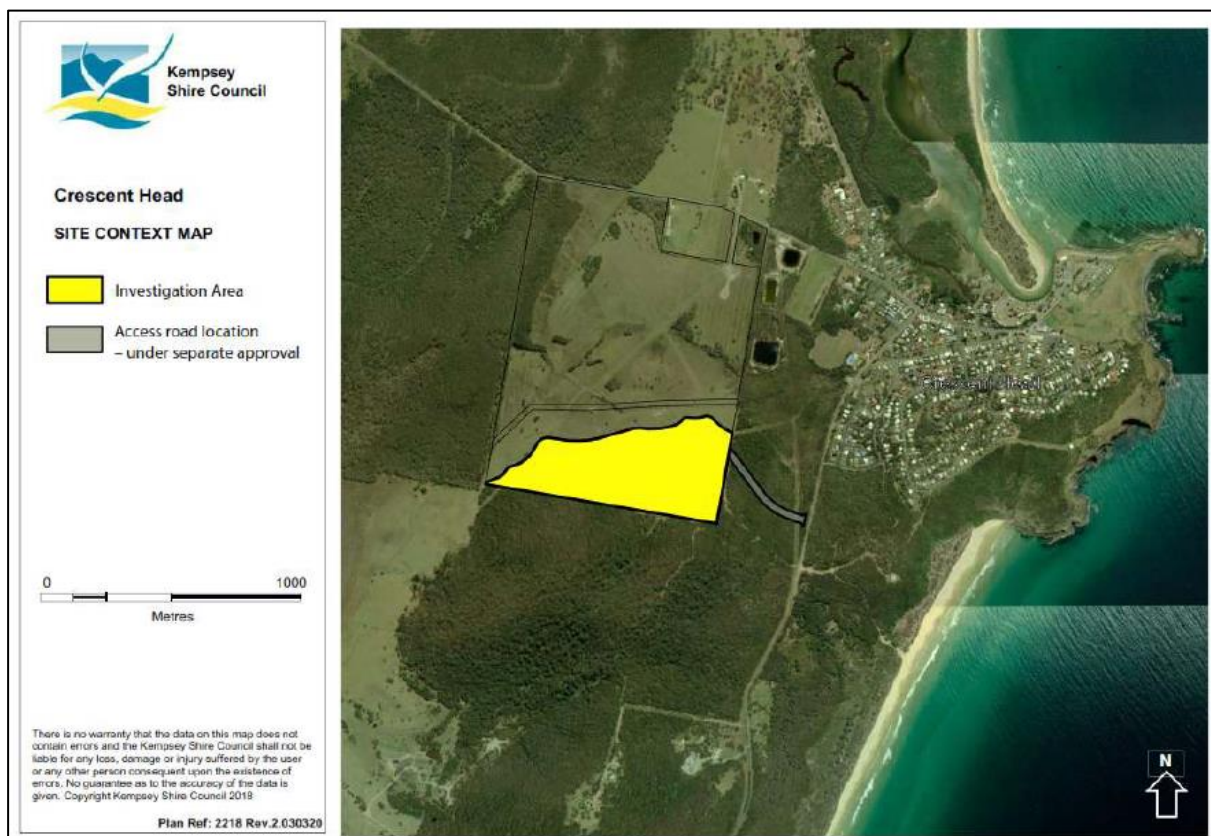


Figure 1 - Original study area

The Gateway determination issued on 6 June 2013 (**Attachment C**) determined that the proposal should proceed subject to conditions and required that the LEP be finalised by 13 December 2014. The Gateway determination has previously been altered on 19 December 2014 (**Attachment D**), 15 July 2016 (**Attachment E**), 19 December 2017 (**Attachment F**) and 30 May 2019 (**Attachment G**) to extend the completion date to 13 June 2020.

Council has revised the planning proposal

Council has requested an amended Gateway determination (**Attachments H & J**) and has submitted a revised planning proposal (**Attachment I**) to support their request. Council have advised that the proposed amendments are a direct response to matters raised during the public exhibition period undertaken between 21 January 2019 and 19 February 2019.

The revised planning proposal seeks:

- an extension of time for a further period of 6 months, until 13 December 2020. The further extension is required due to delays associated with negotiations between the proponent and Council to satisfactorily address the matters raised during exhibition;
- exclusion of Lot 703 DP 749885 from the proposal. The revised planning proposal now applies to land described as Lot 704 DP 749885 and part of Lot 707 DP 1032859;
- a reduced R1 General Residential zone footprint;
- retention of the existing E3 Environmental Management zone;
- introduction of a 50m wide E3 Environmental Management zone buffer along the common boundary with the National Park estate to the south to satisfy matters raised by the NSW Biodiversity and Conservation Division (BCD);
- a minor addition to the RU2 Rural Landscape zone along the northern boundary due to flooding issues making the land unsuitable to be zoned R1 General Residential;
- expansion of the scenic protection mapping to include the proposed E3 Environmental Management zone areas;
- application of a 650 square metre minimum lot size corresponding with land proposed to be zoned R1 General Residential;
- application of a 40 hectare minimum lot size corresponding with land proposed to be zoned E3 Environmental Management and RU2 Rural Landscape; and
- to delete Clause 4.2D 'Subdivision of certain land at Crescent Head' of the Kempsey LEP 2013 and remove the associated 'Area 1' notation on the Lot Size Map. Council has however subsequently advised (**Attachment J**) that in order to address matters raised by BCD (**Attachment K**), they now wish to proceed with a planning proposal that amends Clause 4.2D 'Subdivision of certain land at Crescent Head' of the Kempsey LEP 2013 to require preparation of a Vegetation Management Plan prior to granting development consent for the subdivision of the land as identified by 'Area 1' on the Lot Size Map.

The proposed alterations will be achieved through the following amendments to the Kempsey LEP 2013:

- amend the land zoning map Sheet LZN_012B from R5 Large Lot Residential to part R1 General Residential, part E3 Environmental Management and part RU2 Rural Landscape (Figure 4);
- amend the minimum lot size map LSZ_012B to permit a minimum lot size of 650 square metres as it applies to the R1 General Residential zoned land (Figure 6);

- amend the minimum lot size map LSZ_012B to permit a minimum lot size of 40 hectares as it applies to the RU2 Rural Landscape and E3 Environmental Management zoned land (Figure 6);
- retain the reference to 'Area 1' on the minimum lot size map LSZ_012B (Figure 5);
- expand the scenic protection zone map SCP_012B to correspond with the enlarged E3 Environmental Management zone (Figure 8);
- amend the height of building map HOB_012B to apply a maximum building height limit of 8.5 metres, corresponding to the R1 General Residential zoned land (Figure 10). It is noted that there are no existing building height limits that apply to the subject land;
- amend Clause 4.2D 'Subdivision of certain land at Crescent Head' of the Kempsey LEP 2013 to require preparation of Vegetation Management Plan prior to granting development consent for the subdivision of the land as identified by 'Area 1' on the Lot Size Map.

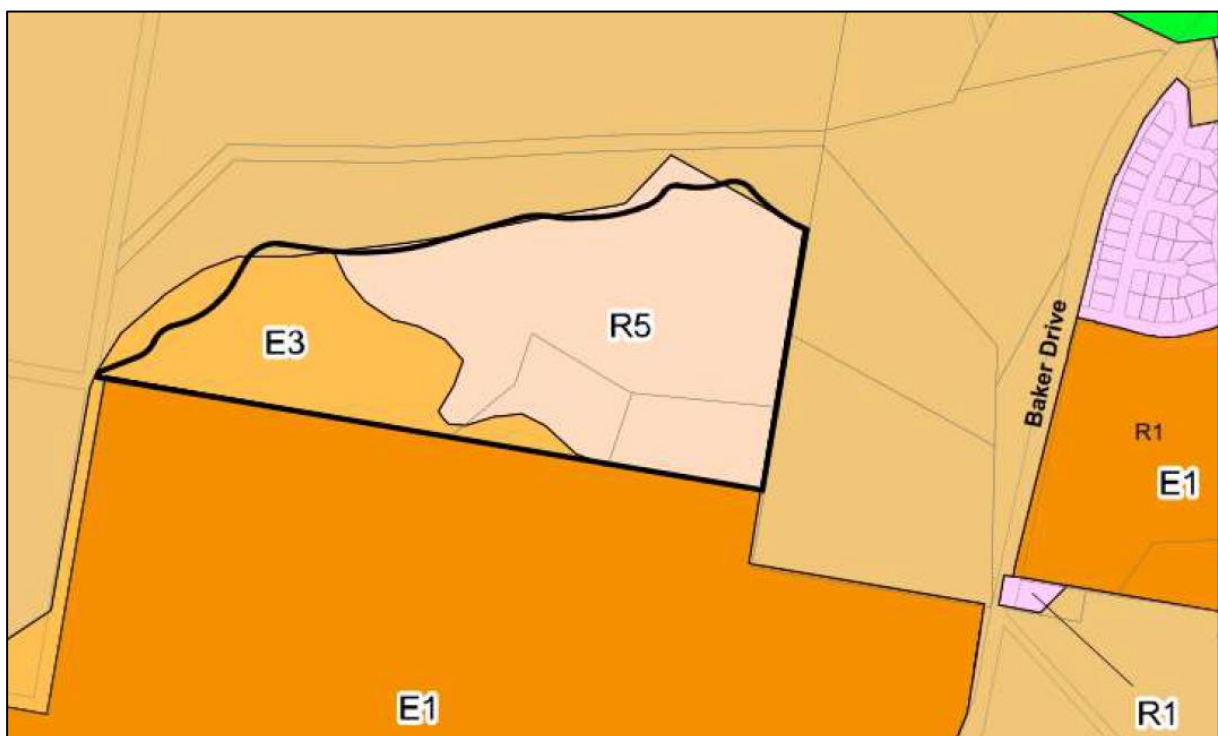


Figure 2 - Existing land zoning, Kempsey LEP 2013

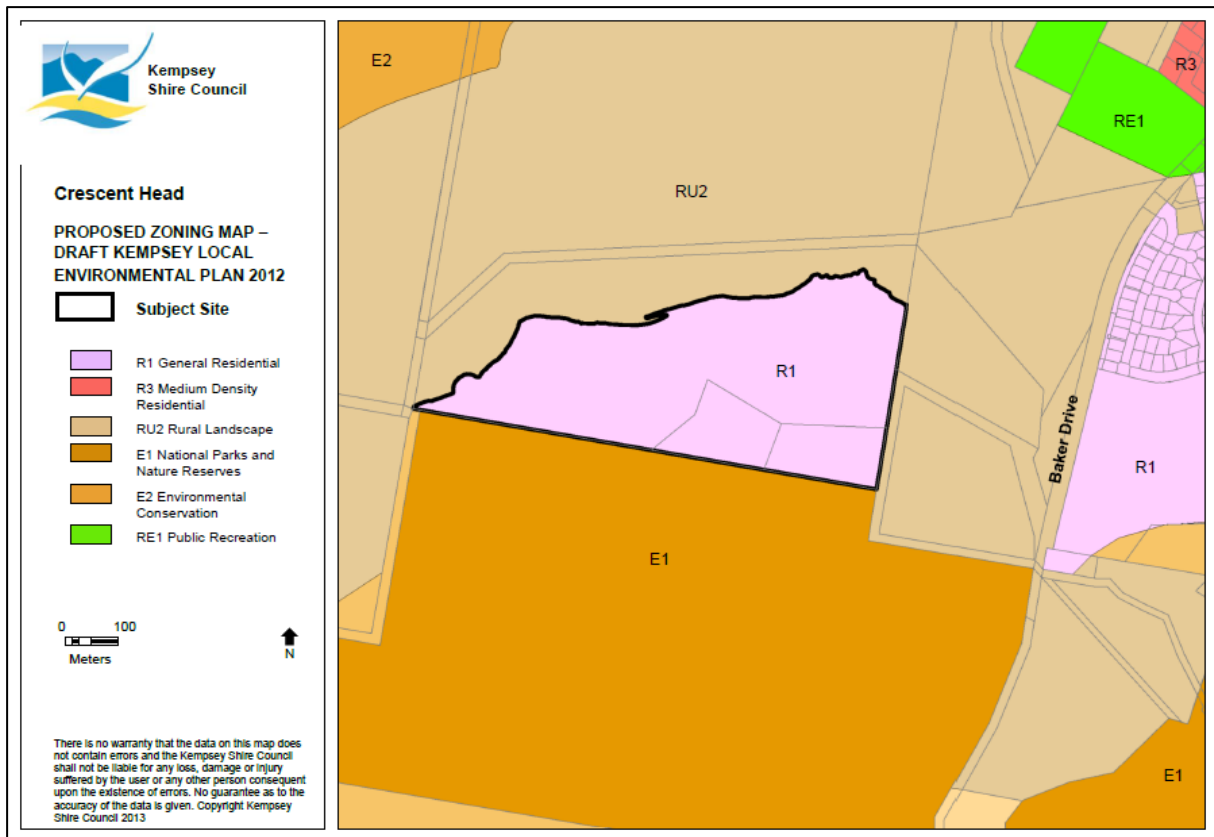


Figure 3 – Proposed land zoning under original Gateway determination

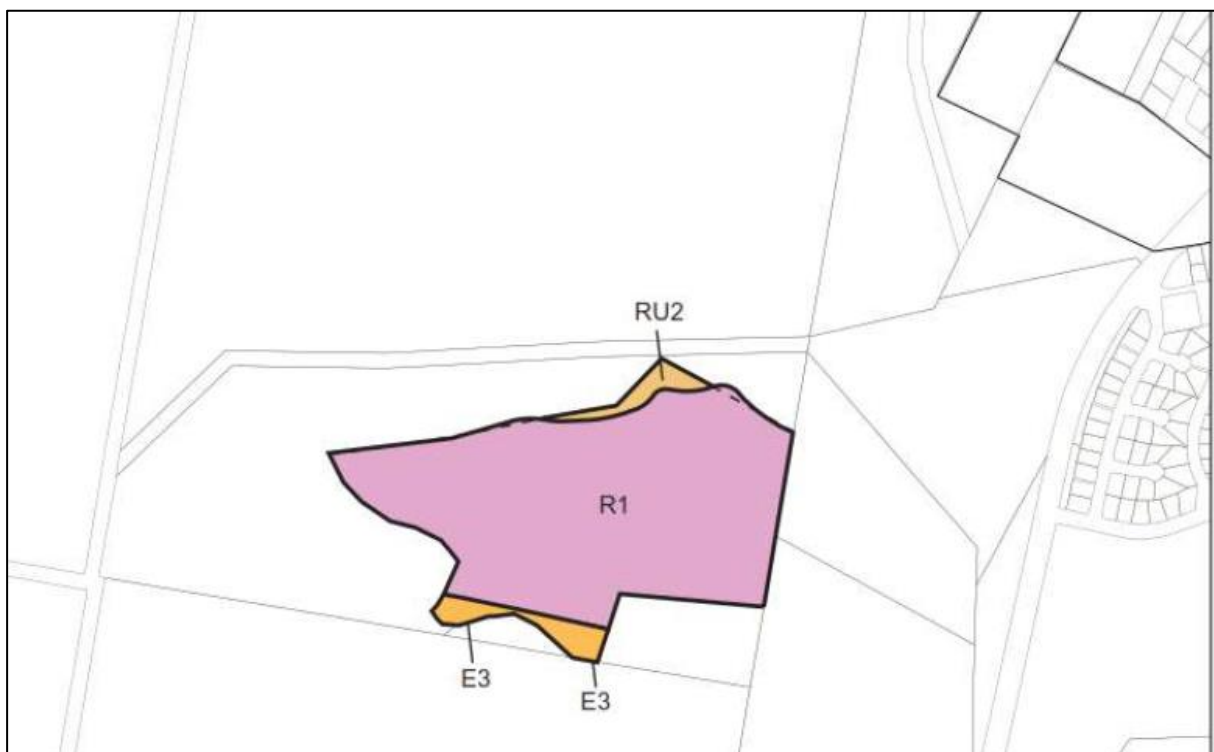


Figure 4 – Proposed land zoning under amended Gateway determination

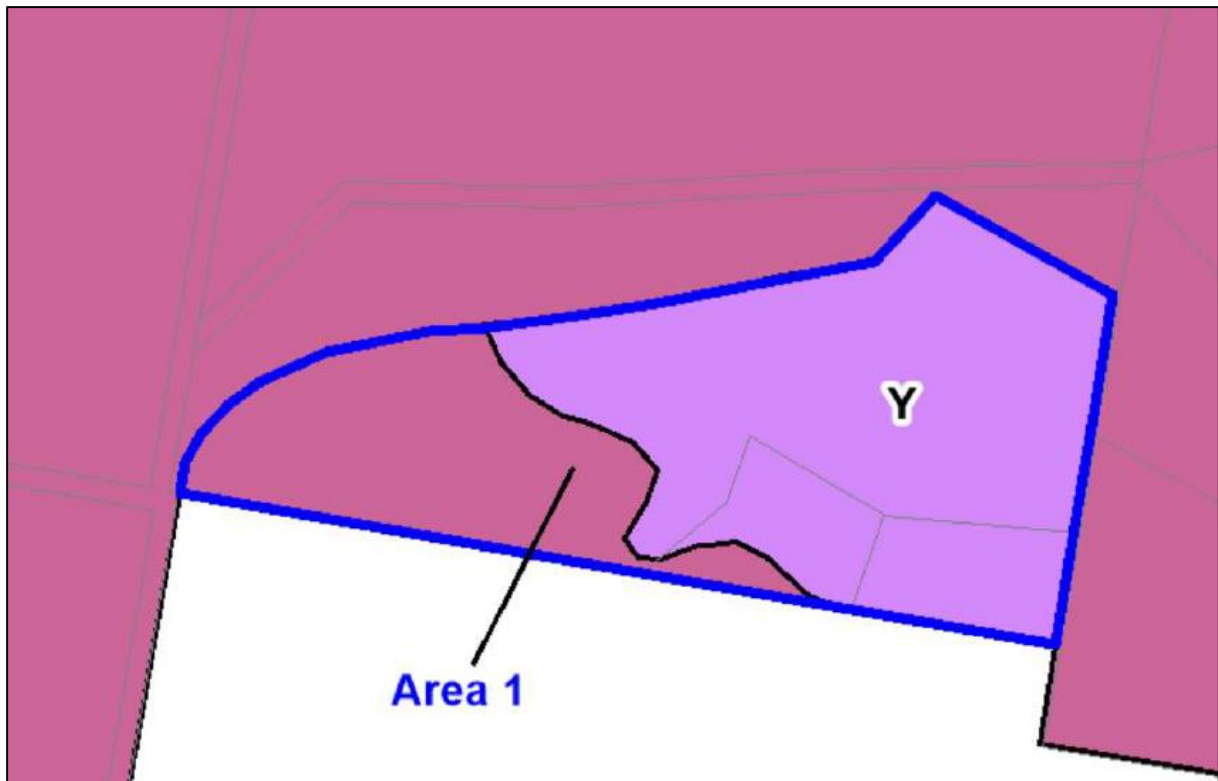


Figure 5 - Existing minimum lot size, Kempsey LEP 2013

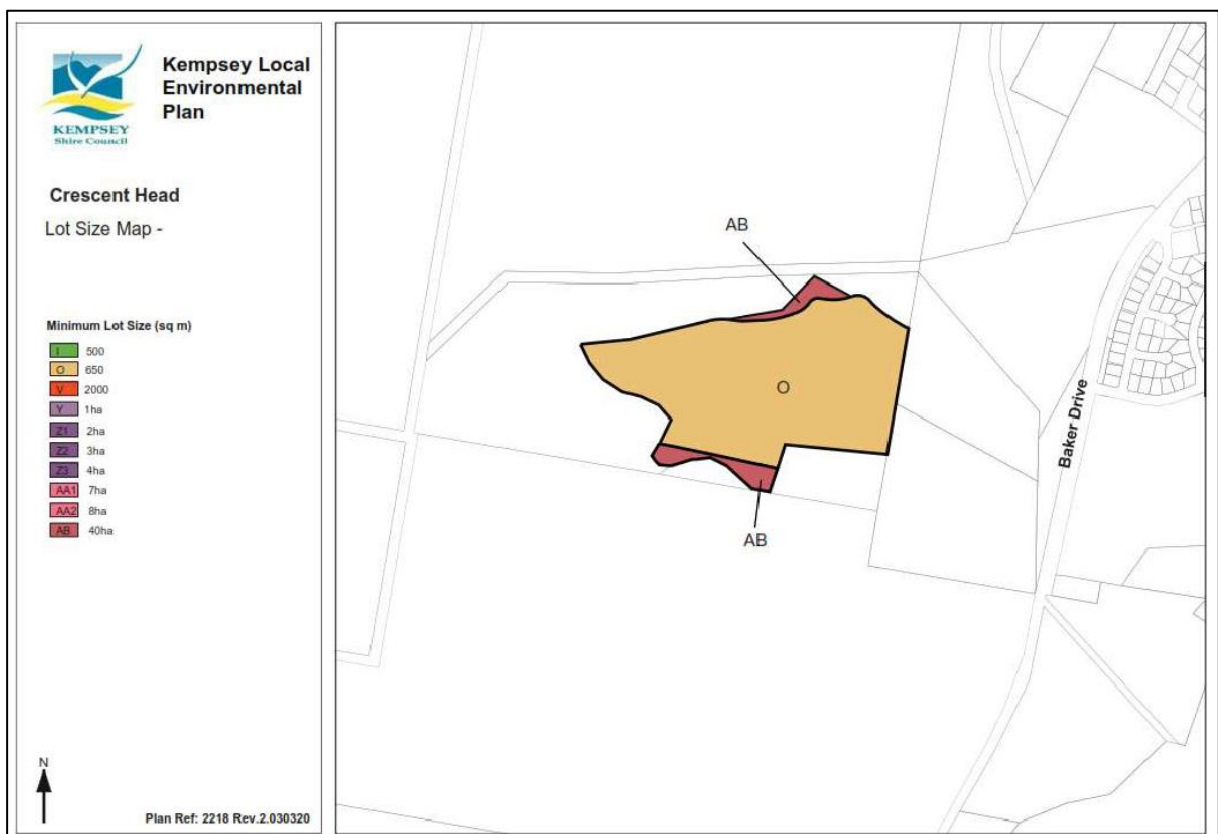


Figure 6 - Minimum lot size, proposed amended Gateway determination

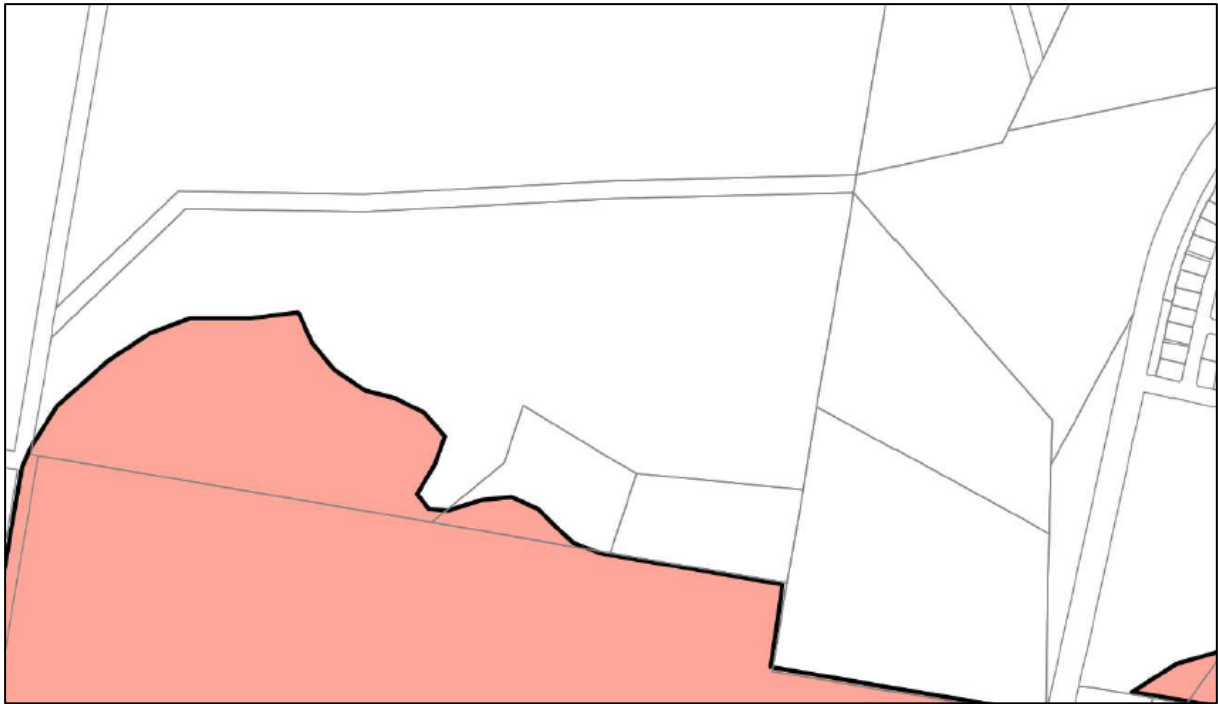


Figure 7 - Existing scenic protection map, Kempsey LEP 2013



Figure 8 - Proposed addition to the scenic protection map, proposed amended Gateway determination

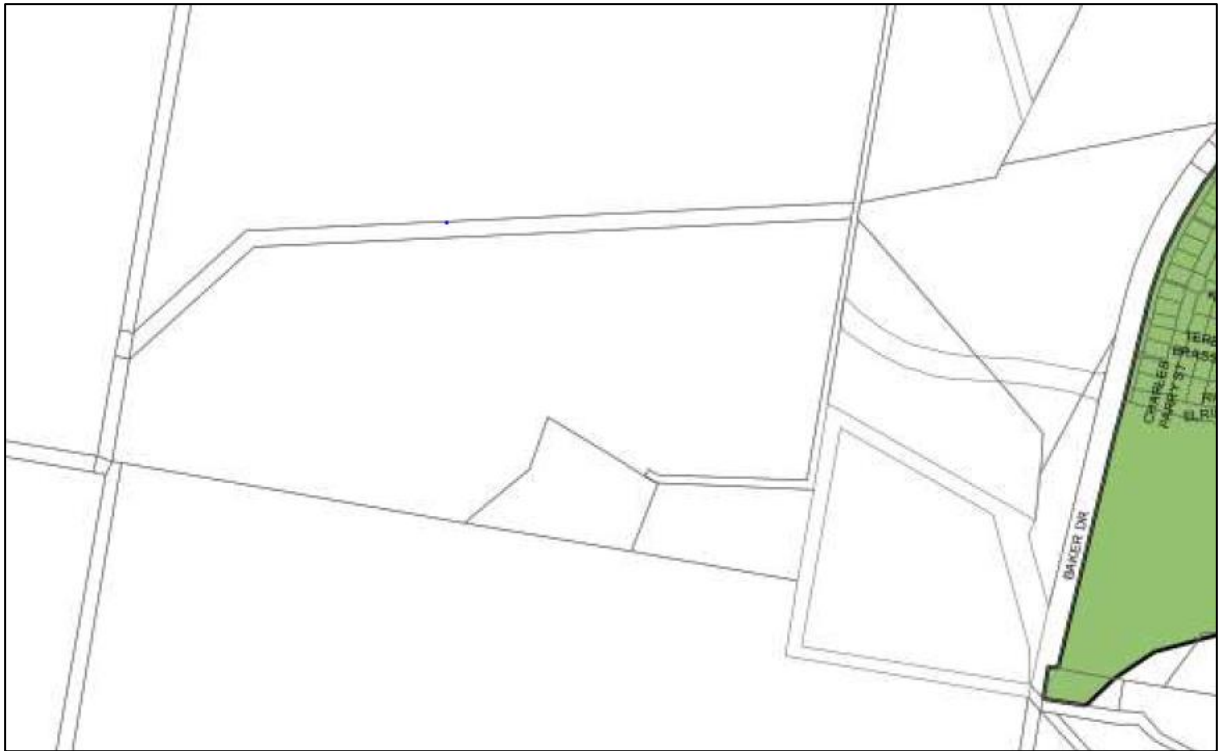


Figure 9 - Existing height of building map, Kempsey LEP 2013

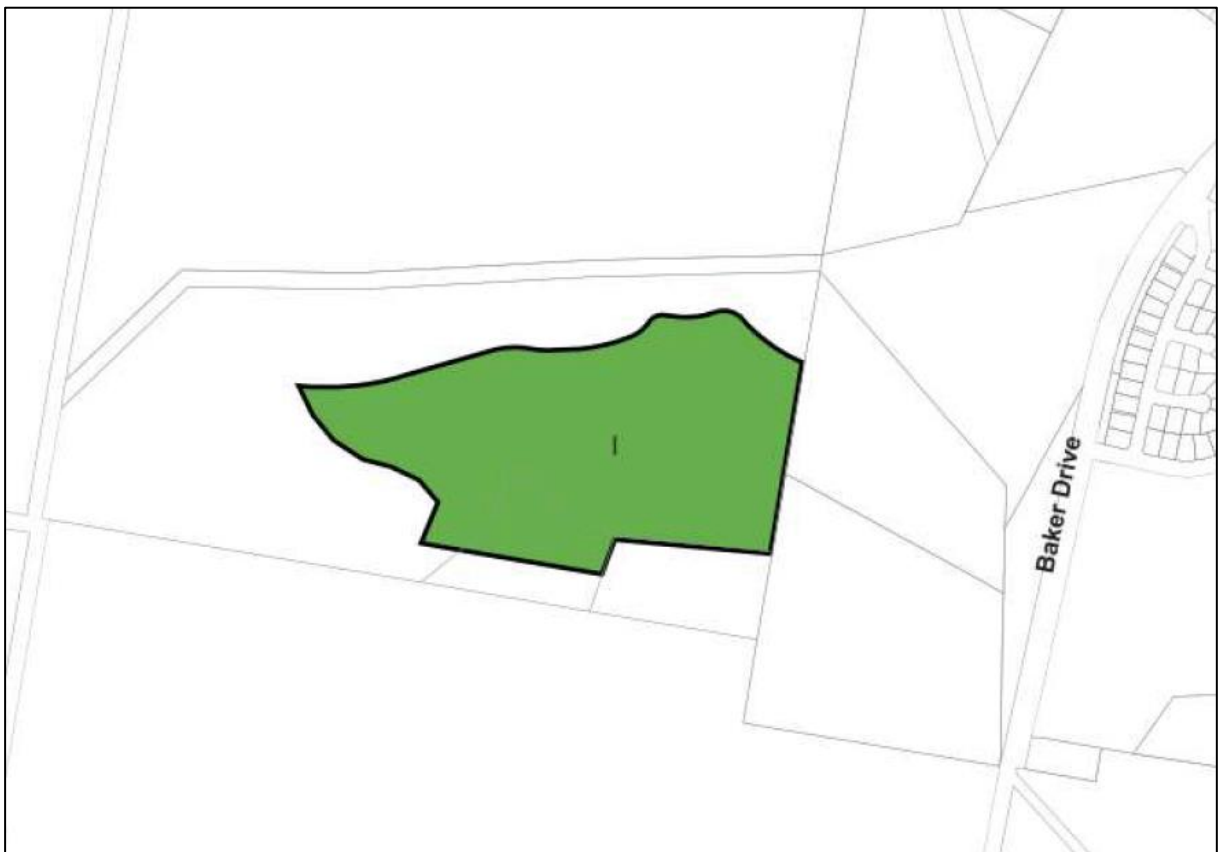


Figure 10 - Height of building, proposed amended gateway determination

It is considered that the proposed alterations to the planning proposal have merit. The amendments will result in a reduced development footprint and corresponding environmental impact and respond to matters raised during the public exhibition period. It is recommended that the Gateway determination be altered accordingly.

Community consultation

Community consultation in relation to the planning proposal occurred between 21 January 2019 and 19 February 2019. Due to the extent of the revisions to the planning proposal, it is considered that further community consultation for 14 days is warranted (see proposed condition 9 in the Alteration of the Gateway determination at **Attachment A**).

Initially, Council anticipated the preparation of a Voluntary Planning Agreement (VPA) to address matters such as the preparation of a Vegetation Management Plan (VMP) as well as the dedication of a cycleway. Council has however recently advised that these matters will be addressed via an amendment to Clause 4.2D of the LEP as well as via a site-specific DCP chapter. Although the DCP will require a 28-day exhibition period, it is not necessary that the planning proposal be exhibited concurrently for the entire period with this document and therefore a 14-day exhibition of the Gateway alteration is considered satisfactory.

The original Gateway determination required consultation with a number of public authorities. Considering the nature of the proposed amendments, further consultation with the following agencies is considered appropriate:

- Department of Planning, Industry and Environment (Division of Biodiversity & Conservation);
- Department of Planning, Industry and Environment (Division of Resources and Geoscience);
- NSW Department of Primary Industries – Agriculture; and
- NSW Rural Fire Service.

Consistency with section 9.1 Directions

A number of changes have occurred to the applicable section 9.1 Directions since the issue of the Gateway determination in 2013 (**Attachment C**) and amendment dated 19 December 2017 (**Attachment F**). An assessment of consistency with applicable directions has been confirmed that the proposal is consistent with all relevant directions except:

1.3 Mining, Petroleum Production and Extractive Industries

This direction applies when a relevant planning authority prepares a planning proposal that would have the effect of prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials. While development for the purposes of 'agriculture' and 'industry' are already both prohibited in the R5 Large Lot Residential and R1 General Residential zones, gazettal of the LEP will prohibit 'extractive industry' from being undertaken on the subject land.

The proposal is therefore inconsistent with this direction. Until consultation with the Director-General of the DPI, consistency of the proposal with this direction will remain unresolved. Due to Machinery of Government changes and shifting roles, consultation with Department of Planning, Industry and Environment (Division of Resources and Geoscience) will also be required.

4.4 Planning for Bushfire Protection

The proposal is inconsistent with this direction as the land is classified as bushfire prone. This direction requires Council as the Relevant Planning Authority to consult with the Commissioner of the NSW Rural Fire Service after a Gateway determination has been issued. It is considered appropriate that Council consult with the Commissioner regarding the revised planning proposal. Until this consultation has occurred, consistency of the proposal with this direction will remain unresolved.

Attachments

Attachment	Title
A	Alteration of Gateway determination
B	Letter to Council
C	Gateway determination
D	Gateway determination dated 19 December 2014
E	Gateway determination dated 15 July 2016
F	Gateway determination dated 19 December 2017
G	Gateway determination dated 30 May 2019
H	Council request for alteration and extension of time
I	Revised planning proposal
J	Council request to revise scope of planning proposal alteration
K	BCD advice 2020-08-14

Departmental approval and contact

Approver	Position	Date approved
Craig Diss	Manager, Local and Regional Planning, Northern Region	17/8/20
Jeremy Gray	Director, Northern Region	18/8/2020
Contact name	Position	Phone number
Kate Campbell	Planning Officer	5778 1401