



Planning Proposal

Crescent Head Proposed Residential Rezoning

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Contents

1. INTRODUCTION	1
1.1 Background	1
1.1.1 Amendment 59 to Kempsey Local Environmental Plan 1987.....	1
1.1.2 Request for extension of time to complete rezoning.....	1
1.1.3 Continuing with studies following refusal of extension.....	1
1.1.4 Resubmission of a new planning proposal.....	2
1.2 Land to which the planning proposal applies	2
1.3 Site context and setting	3
1.4 Existing planning Controls.....	4
1.4.1 Zoning.....	4
1.4.2 Minimum Lot Size	4
1.4.3 Height of Buildings.....	4
1.4.4 Floor Space Ratio	5
1.4.5 Scenic Protection Maps.....	5
2. PART 1 – OBJECTIVES OR INTENDED OUTCOMES	6
3. PART 2 – EXPLANATION OF PROVISIONS	7
4. PART 3 – JUSTIFICATION.....	8
4.1 Section A – Need for the Planning Proposal.....	8
4.1.1 Is the planning proposal a result of any strategic study or report?	8
4.1.2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?	8
4.1.3 Is there a net community benefit?	8
4.2 Section B Relationship to strategic planning framework	8
4.2.1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?	8
Mid North Coast Regional Strategy.....	8
4.2.2 Is the planning proposal consistent with the local council's Community Strategic Plan or other local strategic plan?.....	10
4.2.3 Is the planning proposal consistent with applicable State Environmental Planning Policies?	11
4.2.4 Is the planning proposal consistent with applicable Ministerial Directions (S 117 directions)?	11
4.3 Section C – Environmental, Social and Economic Impact.....	11
4.3.1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?	11

4.3.2	Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?.....	11
4.4	Section D – State and Commonwealth interests	13
4.4.1	Is there adequate public infrastructure for the planning proposal?.....	13
5.	PART 4 – MAPS	14
6.	PART 5 – COMMUNITY CONSULTATION	15
7.	PART 6 – PROJECT TIMELINE	16

Appendices

Appendix A	— Council Resolution.....	17
Appendix B	— Site Context Map	29
Appendix C	— Land to which the planning proposal applies	31
Appendix D	— Existing Land Zoning Map – KLEP 1987	33
Appendix E	— Existing Land Zoning Map – DKLEP 2012	35
Appendix F	— Proposed Land Zoning Map – KLEP 1978.....	37
Appendix G	— Proposed Land Zoning Map – DKLEP 2012	39
Appendix H	— Net Community benefit Test.....	41
Appendix I	— Urban Release Area Map – Kempsey Local Growth Management Strategy — Residential Component	45
Appendix J	— Consistency with SEPP's	47
Appendix K	— Consistency with section 117 Directions	65

Figures

Figure 1	— Site Context.....	2
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Photos

Photo 1	— Site view facing west	3
Photo 2	— Site view facing south west	3
Photo 3	— Site view facing north	4

1. INTRODUCTION

This planning proposal has been prepared by Kempsey Shire Council (Council) on behalf of the owners of the subject land; Portofino Enterprises Pty Ltd. The site comprises three (3) allotments of land (lots 704 & 705 DP 749885 and part lot 707 DP103859) located approximately 800m west of the village of Crescent Head. Council is seeking to rezone the subject land for residential use.

At the Ordinary Meeting of Council on 19th February 2013 a resolution was passed to prepare a planning proposal to rezone the subject land and submit to the Department of Planning and Infrastructure (DoPI) for a gateway determination. The Council resolution is included in **appendix A**.

1.1 Background

The proposed rezoning has previously been before the Department. Formerly it was known as Amendment 59 to KLEP 1987, and subsequently became a planning proposal after the introduction of the gateway system.

The following is a summary of the key points in the planning proposals history.

1.1.1 Amendment 59 to Kempsey Local Environmental Plan 1987

An amendment to *Kempsey Local Environmental Plan 1987* (KLEP 1987) has been in progress since June 1997 when Council resolved to rezone the subject land for residential use. That became amendment no. 59 (Am 59) to KLEP 1987.

Initially, the DoPI advised Council that the rezoning proposal should wait for other land to be rezoned first as it was leap frogging areas closer to services and was therefore considered to be 'out of sequence'. The land first in sequence was Crown land, which was later determined to be unsuitable for urban development due to environmental constraints.

In September 2010 Council requested the DoPI to convert Am 59 to a planning proposal as required by the transitional provisions for pending LEP amendments arising from changes to the *Environmental Planning and Assessment Act 1979* (EP&A Act). The DoPI advised Council that Am 59 had been converted to a planning proposal, with all studies yet to be completed.

1.1.2 Request for extension of time to complete rezoning

On 17 October 2011 Council requested an extension for a gateway determination from the DoPI. Within that request, Council advised the progress to date, and the reasons that the extension was required. The DoPI advised on 25th November 2011 that Council's request for an extension to complete the rezoning was refused as it was not able to be completed within a satisfactory timeframe.

The DoPI subsequently advised Council to resubmit a planning proposal when studies had been completed, or sufficiently commenced, to allow the whole process to be completed within 24 months.

1.1.3 Continuing with studies following refusal of extension

The content and method required for the flood assessment has been ongoing, with the land owner's preference as to where eventual access and infrastructure would be located being critical to the level of flood assessment required at the rezoning stage.

In March 2012 the landowners agreed to locate the proposed area for rezoning within 1m of the 1% AEP flood level (incorporating sea level rise adjustments) subject to obtaining agreement

from the NSW Office of Environment and Heritage (OEH) and the DoPI. This was suggested as an alternative to a detailed flood study and is considered consistent with the *NSW Flood prone Land Policy*, the *NSW Flood Plain Development Manual 2005* and Council's Flood Risk Management Strategy.

Formal confirmation of whether this approach could be considered of 'minor significance' with regards to any inconsistency with S117 direction 4.3 was not given by the DoPI upon request, as no planning proposal was in the system at the time.

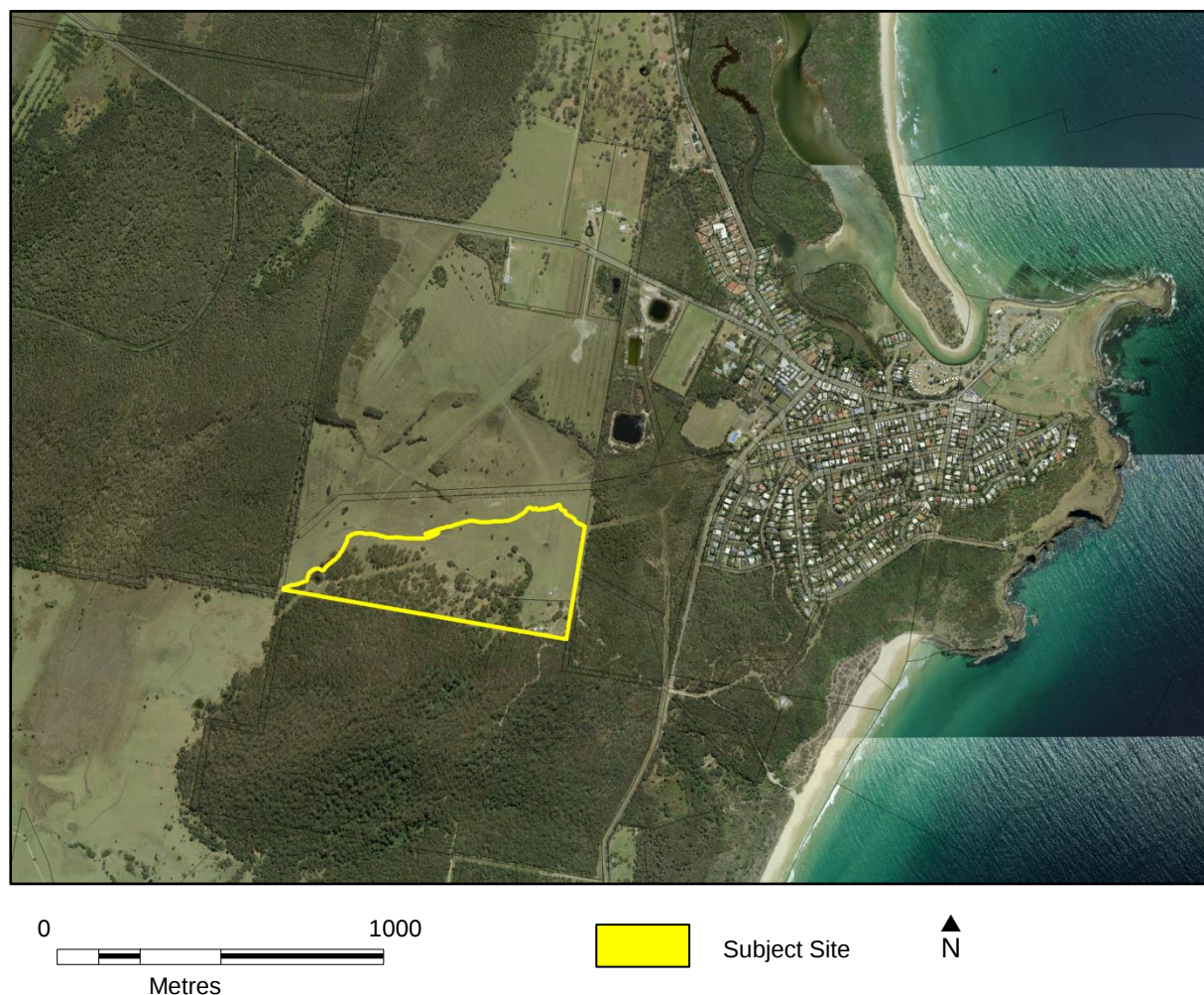
1.1.4 Resubmission of a new planning proposal

Following consultation with the landholders, Council has agreed to prepare a new planning proposal for submission to the DoPI seeking a gateway determination.

1.2 Land to which the planning proposal applies

This planning proposal relates to the area of land identified in **appendices B and C**. Only the areas bounded by the heavy yellow line are proposed to be rezoned. The subject land is indicated below in **figure 1**.

Figure 1 – Site context map



1.3 Site context and setting

The site consists of three (3) allotments of land located approximately 800m west of Crescent Head, a coastal village situated 20 minutes' drive south-east of Kempsey.

The site slopes steeply at the southern boundary and runs at a moderate grade down to low lying wetlands to the north. The majority of the land was cleared long ago for grazing however significant stands of vegetation still exist on the southern boundary adjoining Killuke Mountain.

The majority of the subject land is currently zoned for rural residential and scenic protection purposes however no new development has occurred since the land was rezoned in 1992 (Amendment 29 to KLEP 1987). Existing development comprises a single detached dwelling and shed.

The site is located beyond the fringe of Crescent Head village and is not adjacent to any existing urban areas. Surrounding land consists of low lying agricultural or investigation land unsuitable for urban development. An area of SEPP 14 Wetlands lies 350m to the north-west and land to the south is national park.



Photo 1 - Site view facing West

Cleared land, zoned 1(c) (Rural (Small Holdings) "C" Zone)



Photo 2 - Site view facing South West

Sloping land with existing stand of vegetation zoned 7(d) (Scenic Protection Zone)



Photo 3 - Site view facing North

Low lying land to the North of the subject site zoned 1(a) (Rural "A1" Zone)

1.4 Existing planning Controls

1.4.1 Zoning

The land to which the planning proposal relates is currently zoned 1(a1) (Rural "A1" Zone), 1(c) (Rural small holdings "C" Zone) and 7(d) (Scenic Protection Zone). Under Draft Kempsey LEP 2012, the land is proposed to be zoned R5 Large Lot Residential, E3 Environmental Conservation, and RU2 Rural Landscape.

Existing zoning maps for KLEP 1987 and DKLEP 2012 are included in **appendices D and E**.

1.4.2 Minimum Lot Size

Under KLEP 1987 land in the 1(c) (Rural (Small Holdings) "C" Zone) has a minimum lot size of 1 hectare. Land in the 7(d) (Scenic Protection) zone has minimum lot size of 40 Hectares. These lot sizes have also been proposed for the subject land under DKLEP2012.

Changes to the minimum lot size to allow smaller subdivisions will be required to facilitate future development under any R1 or 2(a) zoning. Further investigations to determine an appropriate lot size standard will be determined following a gateway determination.

1.4.3 Height of Buildings

There is currently no maximum building height for the subject land, consistent with its existing rural and scenic protection zoning. Under KLEP 1987, the zone change would automatically invoke clause 24 which sets a two (2) storey height limit in the 2(a) zone. Under DKLEP 2012 it is anticipated that changes to the Height of Building Maps may be required to introduce an 8.5m limit consistent with other urban areas in Crescent Head. More detailed investigations into suitable height controls will be determined following further specialist studies.

1.4.4 Floor Space Ratio

The subject land does not currently have a floor space ratio, and no change is proposed. The density of permissible development will be determined through other LEP standards and relevant DCP controls.

1.4.5 Scenic Protection Maps

Amendments to the Scenic Protection Maps under DKLEP 2012 will be required should any part of the land currently zoned 7(d) scenic protection be rezoned. The full extent of any amendments will not be known until specialist studies are undertaken.

2. PART 1 – OBJECTIVES OR INTENDED OUTCOMES

The intended outcome of the planning proposal is to facilitate a change in zoning to allow future residential development of the site. If achieved, this will help to provide additional housing stock in Crescent Head in order to meet sustained demand, and to support regional and local growth strategies which have identified the site as a future urban release area.

In summary, the objectives of the planning proposal are:–

1. To facilitate a change in zoning to provide additional residential land at Crescent head;
2. To ensure that development within the Kempsey Shire appropriately supports and reflects the growth strategies identified in the Mid North Coast Regional Strategy and the Kempsey Shire Council Local Growth Management Strategy - Residential Component.

3. PART 2 – EXPLANATION OF PROVISIONS

The objectives and intended outcomes described in part 1 will be achieved through the following means:

- (1) By amending KLEP 1987 and the Land Zoning Map in accordance with the proposed Land Zoning Map shown in **appendix F**.
- (2) By amending DKLEP 2012 and the Land Zoning Map (LZN Map) in accordance with the proposed Land Zoning Map shown in **appendix G**.

Amendments to the DKLEP 2012 Lot Size Map, Height of Buildings Map, Floor Space Ratio Map and Scenic Protection Map will be determined depending on the outcome of further studies following a gateway determination.

4. PART 3 – JUSTIFICATION

4.1 Section A – Need for the Planning Proposal

4.1.1 Is the planning proposal a result of any strategic study or report?

In 1994 Council completed a major strategic planning study of the Crescent Head area which incorporated the subject land. The study, entitled *Crescent Head 5 Kilometre Radius Study*, identified the site as a potential area for future land release. In 1996 Council invited the respective land owners to lodge a rezoning application based on the recommendations of the study.

Since that time, the area has been identified as an urban release area in the Mid North Coast Regional Strategy and the Kempsey Shire Council Local Growth Management Strategy – Residential Component, which are discussed in section 4.2.

4.1.2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The site is currently zoned 1(a1) Rural, 1(c) Rural Small Holdings and 7(d) Scenic Protection. Under KLEP 1987 there is no alternative way to facilitate residential development, as lots smaller than 1 hectare are prohibited in those zones. Any amendment to the lot size map under DKLEP 2012 would also need to be accompanied by a zone change in order to ensure consistency with the proposed R5, RU2 and E3 zone objectives under the draft LEP. Rezoning the land is the only way to enable the objectives and/or intended outcomes of the planning proposal to be achieved.

4.1.3 Is there a net community benefit?

A Net Community Benefit Test is provided in **appendix H**. The test demonstrates that the proposed rezoning can achieve a net community benefit.

4.2 Section B Relationship to strategic planning framework

4.2.1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

Mid North Coast Regional Strategy

Growth Areas

The planning proposal is consistent with the Mid North Coast Regional Strategy (MNCRS), which provides a regional framework for urban land release in the Kempsey Shire. The MNCRS has identified part of the subject land as a 'Proposed Future Urban Release Area'.

The proposed 2(a) Residential and R1 General Residential zoning is consistent with the Growth Strategy identified in MNCRS. The rezoning will facilitate the development of new residential housing stock required to meet current and future demand in Crescent Head.

Aims and Objectives

The overall aims of the Mid North Coast Regional Strategy (MNCRS) are to:

- *Protect high value environments, including significant coastal lakes, estuaries, aquifers, threatened species, vegetation communities and habitat corridors by ensuring that new urban development avoids these important areas and their catchments;*

The site is a mixture of cleared and vegetated land zoned for rural and scenic protection purposes. Sensitive environments are known to exist nearby. Further environmental and technical studies will be required to identify constraints for future urban development.

- *Cater for a housing demand of up to 59 600 new dwellings by 2031 to accommodate the forecast population increase of 94 000 and any anticipated growth beyond this figure arising from increased development pressures in the southern part of the Region;*

Council's Local Growth Management Strategy – Residential Component has identified that 5% of Kempsey's future housing supply is to be accommodated at Crescent Head. This equates to 195 dwellings split between 117 detached houses and 78 attached dwellings. Current estimates indicate that the planning proposal will provide about 70 detached dwellings and 41 attached dwellings, representing a significant proportion of the numbers required to meet the dwelling targets for Crescent Head under the regional strategy.

- *Ensure that new housing meets the needs of smaller households and an ageing population by encouraging a shift in dwelling mix and type so that 60 per cent of new housing is the traditional detached style and 40 per cent is of multiunit style.*

The proposed R1 Residential zoning is capable of supporting a broad range of residential development types and will be flexible enough to meet the needs of smaller households and an ageing population.

- *Ensure an adequate supply of land exists to support economic growth and the capacity for an additional 48 500 jobs in the Region by protecting existing commercial and employment areas and securing sufficient land to support new employment opportunities;*

The planning proposal is unlikely to have any direct impact on the supply of employment land as it aims to rezone rural and scenic protection lands for residential purposes. Facilitating an increase in population may have an indirect impact on jobs by stimulating demand for local products and services.

- *Encourage the growth and redevelopment of the Region's four major regional centres and six major towns as a means of protecting sensitive coastal and natural environments and strengthening the economic and administrative functions of these centres as well as meeting increased housing density targets*

The planning proposal is unlikely to undermine the economic growth and or administrative function of any major regional centres or towns. The proposal will facilitate a small percentage of the Shires overall dwelling targets and will have minimal impact on the hierarchy of centres in the region.

- *Protect the coast and the character of coastal villages by limiting growth to the agreed growth areas of towns and villages leaving greenbelts between settlements;*

The subject land is located within an agreed urban growth area identified by the Mid North Coast Regional Strategy and Council's Local Growth Management Strategy – Residential Component.

- *Direct new rural residential development to areas close to existing settlements away from the coast*

Most of the subject land is currently zoned for rural residential use. The planning proposal will replace this with a general residential zoning in accordance with the vision of the MNCRS.

- *Only consider additional development sites outside of agreed local strategies if they can satisfy the Sustainability Criteria (Appendix1);*

A portion of the subject land falls outside the area identified in the Mid North Coast Regional Strategy; however the extent of the inconsistency is deemed to be minor. The MNCRS notes on page 18 that the boundary maybe adjusted where reasonable through the rezoning process. It is considered that this is a reasonable adjustment.

- *Limit development in places constrained by coastal processes, flooding, wetlands, important farmland and landscapes of high scenic and conservation value;*

Further studies in relation to visual and environmental impact will be required following a gateway determination.

- *Protect the cultural and Aboriginal heritage values and visual character of rural and coastal towns and villages and surrounding landscapes; and*

It is anticipated that aboriginal heritage and archaeology studies may be required should the planning proposal proceed past the gateway. The proposal will need to demonstrate due diligence has been met as per the *National Parks and Wildlife Act 1974*.

- *Where development or rezoning increases the need for State infrastructure, the Minister for Planning may require a contribution to the infrastructure having regard to the NSW Government State Infrastructure Strategy and equity considerations.*

It is estimated that the rezoning will facilitate about 70 detached dwellings and 41 attached dwellings. Further consultation with relevant agencies will be required post-gateway to determine any future requirements for State infrastructure.

Kempsey Shire Council Local Growth Management Strategy 2010 - Residential Component

The Residential Component of the Strategy (KLGMS – RC) is the first part of Council’s Local Growth Management Strategy, with future reviews to incorporate rural residential, commercial and industrial land uses.

The KLGMS-RC has identified the following areas for future residential growth: Kempsey, South West Rocks, Crescent Head, Frederickton and Stuarts Point. Crescent Head is expected to provide approximately 5% of the total new dwellings in the Shire to 2031.

Crescent Head has a limited supply of existing zoned areas which can accommodate residential development. There are no new residential estates in the area, and only a scatter of vacant lots throughout the village. As demand outstrips supply, it is expected these vacant lots will be developed.

KLGMS-RC has identified the subject land for ‘short term release’ between 2009 and 2012. The release area is identified in **appendix I**.

4.2.2 Is the planning proposal consistent with the local council’s Community Strategic Plan or other local strategic plan?

Kempsey Shire Council Community Strategic Plan (CSP) 2007

The planning proposal is consistent with the vision, themes and goals of the Kempsey CSP. The planning proposal primarily relates to *Goal 1* in the CSP (see below).

Goal 1: To facilitate ecological and economic sustainable development in the Shire

1. To protect and enhance the environment.

Environmental studies will be required to following a gateway determination to determine potential impacts and measures required to protect and enhance the environment.

2. *To plan strategically for development.*

New housing stock is required in Crescent Head to meet sustained demand in the area. The subject site is identified as a future urban release area in Council's Local Growth Management Strategy-Residential Component and the Mid North Coast Regional Strategy. The site is the only viable location in Crescent Head for future land release and will form a strategic part of Council's plan for meeting dwelling targets over the coming years.

3. *To provide employment opportunities*

By facilitating a moderate increase in population the planning proposal may have an indirect impact on employment by increasing demand for local goods and services.

4. *To have a positive impact of development on social wellbeing.*

S94 contributions levied from future development of the site will contribute to the provision of new facilities and services in the local area.

4.2.3 Is the planning proposal consistent with applicable State Environmental Planning Policies?

An investigation of all State Environmental Planning Policies has been undertaken and is included in **appendix J**. The planning proposal is considered to be consistent with all relevant SEPP's which apply to the subject land.

4.2.4 Is the planning proposal consistent with applicable Ministerial Directions (S 117 directions)?

An evaluation of the planning proposal's consistency with all S117 ministerial directions has been undertaken. Some inconsistencies have become apparent however Council believes they are of minor significance. More detailed discussion on S117 Directions are included in **appendix K**).

4.3 Section C – Environmental, Social and Economic Impact

4.3.1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

Crown land to the east is known to contain *Swamp Sclerophyll Forest*, an endangered ecological community listed under Schedule 1 of the *Endangered Species Conservation Act 1995*. Additionally, an area of SEPP 14 Coastal Wetlands is located approximately 350m north-west of the subject land, while an area of national park is located to the south.

The extent to which the proposed rezoning could affect neighbouring habitat or threatened species is not fully known. Environmental studies will be required to assess potential impacts of the proposal following a gateway determination.

4.3.2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The following specialist studies may be required to investigate the potential environmental effects of the proposal:

- ***Flora and Fauna***

Investigation into potential impacts on threatened species, communities and habitat may be required. The study should identify areas of high biodiversity value and possible

constraints to development. Management options will be determined upon conclusion of the study.

- **Water quality**

Studies will be required to identify the quality of flows entering nearby water bodies and to establish water quality objectives for future site run off in accordance with any relevant guidelines. Potential erosion and sedimentation of soils will need to be considered as well as the impacts of urban runoff.

- **Soils, groundwater and urban capability**

Investigations into site soil characteristics and suitability for future urban development may be considered. Reports may provide comment on erosion characteristics, drainage, acid sulphate soils and potential impact of development on groundwater levels could be investigated further. Management options will be implemented as per recommendations of any study.

- **Bushfire**

A preliminary bushfire threat assessment will be required, in addition to any requirements or measures resulting from consultation with the RFS. The bushfire assessment will need to consider slope, vegetation and hazard classification and access.

- **Archaeological Assessment**

The proposal will need to demonstrate due diligence as per the *National Parks and Wildlife Act 1974*.

- **Visual/scenic quality**

An assessment of the visual quality of the site and the potential impact of development on the scenic quality of the area will need to be undertaken. In particular, the existing areas of 7(d) land on the southern boundary of the site may require detailed investigation. Any measures to preserve important visually important stands of vegetation will be determined by the outcomes of the study.

- **Traffic and Transport**

No subdivision concept has been formalised however initial estimates indicate that up to 70 detached dwelling and 41 attached dwellings could be provided. A single access road linking the site to Baker drive has been proposed. A traffic analysis report may be required identifying the type and capacity of the new access road, assessment of the capacity of surrounding roads to handle additional load, and possible cycle ways and pedestrian links connecting the site important elements in Crescent Head.

4.3.3 How has the planning proposal adequately addressed any social and economic effects?

Technical and environmental studies, together with community consultation and discussions with other agencies will investigate the range of social and economic impacts, and consider possibilities for their management where necessary.

4.4 Section D – State and Commonwealth interests

4.4.1 Is there adequate public infrastructure for the planning proposal?

Water & Sewer

The site is not currently serviced by reticulated water or sewer as it does not adjoin an existing urban area. Preliminary assessment of the capacity to provide these services have been undertaken as part of the areas inclusion in the Kempsey Local Growth Management Strategy – Residential Component. Further investigations into the capacity of local infrastructure to handle additional loads will be required.

Road

Roads will be required to join the new area into the existing road network. A single access road connecting the site to Baker Drive has been proposed, however no formal subdivision concept has yet been put forward.

Electricity, Gas and Telecommunication

There are no electricity, gas or telecommunication services available to the site. It is anticipated that these services will be provided by the developer at the subdivision stage.

Essential Services

The area is generally well serviced by Police, Ambulance, Fire and other emergency services. It is anticipated that consultation with the appropriate public bodies may be undertaken post-gateway.

4.4.2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

At this stage, relevant State and Commonwealth agencies have not yet been consulted. Consultation with all relevant Government, agencies and other stakeholders will be undertaken in accordance with any requirements of a gateway determination notice.

Prior to the last Gateway Proposal being extinguished, consultation with various agencies was undertaken prior to the preparation of the brief for the preparation of specialist studies. The agency responses did not indicate any prohibitive matters.

5. PART 4 – MAPS

Maps illustrating the existing and proposed zones for the subject site in KLEP 1987 and DKLEP 2012 are included in appendices D-G (see table below).

Map	Appendix
Existing zoning - Kempsey Local Environmental Plan 1987	Appendix D
Existing zoning – Draft Kempsey Local Environmental Plan 2012	Appendix E
Proposed zoning - Kempsey Local Environmental Plan 1987	Appendix F
Proposed zoning – Draft Kempsey Local Environmental Plan 2012	Appendix G

6. PART 5 – COMMUNITY CONSULTATION

It is anticipated that a Gateway Determination would specify the community consultation to be undertaken. Community consultation will then occur in accordance with the gateway determination. Upon completion of the consultation with agencies and stakeholders, the amending LEP will be reported to Council to be endorsed for public exhibition. The method for notifying the public exhibition will also be advised at the time.

7. PART 6 – PROJECT TIMELINE

The following table indicates the anticipated timeline for the completion of the LEP. Further amendments to the timeline will depend on the requirements for various studies following a gateway determination. It is assumed that Council will be assuming delegation to carry out certain plan making functions.

Timeline	Anticipated Commencement	Anticipated Completion
Anticipated commencement date (Gateway Determination)	June 2013	June 2013
Anticipated timeframe for the completion of required studies	September 2013	February 2014
Timeframe for government agency consultation	September 2013	March 2014
Commencement and completion dates for public exhibition period	April 2014	May 2014
Dates for public hearing (if required)	June 2014	June 2014
Timeframe for consideration of submissions	June 2014	June 2014
Timeframe for the consideration of a proposal post exhibition	July 2014	July 2014
Anticipated date RPA will make the plan (if delegated), and	August 2014	August 2014
Anticipated date RPA will forward to the department for notification (if delegated).	September 2014	September 2014



Appendix A

Council resolution and report to Council

SUMMARY

MINUTES OF THE ORDINARY MEETING OF KEMPSEY SHIRE COUNCIL

19 February 2013 commencing at 9.02am.

A Planning Proposal to enable the continuation of an expired Gateway Determination to rezone land at Crescent Head for residential use is required to be prepared and submitted to the Department of Planning and Infrastructure.

2013. 32 RESOLVED: Moved: Cl. Saul Seconded: Cl. Williams

- 1 That a Planning Proposal be prepared seeking to rezone land comprising part Lot 707 DP 1032859, Lot 704 DP749885 and Lot 703 DP749885 for residential use.**
- 2 That the Planning Proposal, once prepared be submitted, to the Department of Planning and Infrastructure, requesting a Gateway Determination.**
- 3 That this item be listed for a site inspection**

RECOMMENDATION IMPLICATIONS

Environmental: Required studies to be completed in the rezoning process, will ensure that no negative environmental implications will occur, by confining any residential zoning to land that is suitable.

Social: The provision of additional residential land in Crescent Head is considered likely to have positive social implications, by providing more housing choice, and lessening the pressure on the existing housing stock.

Economic (Financial): The completion of the rezoning proposal is considered to have positive economic implications for Crescent Head, by providing an area in which the town can expand, and reduce pressure on the existing housing stock.

Policy or Statutory: Preparation of the planning proposal will satisfy the Departments requirements with respect to seeking a fresh Gateway Determination. The rezoning of the land is supported in Local and Regional Strategies.

REPORT DETAILS

It is recommended that Council, as the Relevant Planning Authority (RPA), lodge a planning proposal, on behalf of landowners, who have been in the process of seeking to rezone land comprising part Lot 707 DP1032859, Lot 704 DP749885 and Lot 703 DP749885 at Crescent Head for residential development (**Appendix C - Page SE243**).

The subject land is identified in the Residential Component of the Kempsey Local Growth Management Strategy in 2010 as a residential growth/release area. The land is also identified in the Mid North Coast Regional Strategy as being within an Urban Growth Area.

Background

The Need for a Planning Proposal

An amendment to *Kempsey Local Environmental Plan 1987* has been in progress since 3 June 1997, when Council resolved to rezone the subject land for residential purposes. That became Amendment No 59 (Am 59), to KLEP 1987.

Initially the Department of Planning (now Department of Planning and Infrastructure (DoPI)) advised that the rezoning proposal, should wait for other land to be rezoned first, as it was leapfrogging land closer to services and existing residential land, and was therefore considered out of sequence. The land first in sequence was Crown land, which was subsequently determined to be unsuitable and no longer intended to be developed for residential use.

Note: The subject land is currently zoned 1(c) (Rural (Small Holdings) "C" Zone) 7(d) (Scenic Protection Zone) and 1(a1) (Rural "A1" Zone) in the Kempsey Local Environmental Plan (LEP) 1987. It is noted that in the Draft Kempsey LEP 2012, which is currently on public exhibition, it is proposed to convert the existing zones to R5 Large Lot Residential, E3 Environmental Management and RU2 Rural Landscape. This is consistent with other lands in the same zones under the Kempsey LEP 1987. Initially Am 59 proposed to amend the Kempsey LEP 1987 to rezone the subject land from 1(c) Rural and 7(d) Scenic Protection to 2(a) (Residential "A" Zone). The corresponding zone under the Draft Kempsey LEP 2012 is R1 General Residential. Depending upon the progress of Draft Kempsey LEP 2012, it may be that the eventual Amendment rezones the land to R1 General Residential.

Conversion to Planning Proposal and Gateway Determination

In September 2010 Council requested the DoPI to convert Am 59 to a Planning Proposal as required by transitional provisions for pending LEP Amendments, arising from changes to the *Environmental Planning and Assessment Act (EP&A Act) 1979*. The rezoning and LEP amendment process was changing to be known as the Gateway system.

The DoPI advised that Am 59 had been converted to a Planning Proposal, with all studies to be completed.

The landowners funded a project manager in accordance with Council's rezoning policy, to raise the priority of the rezoning proposal within Council's Strategic Planning Program. Consultation with agencies was undertaken, as per the requirements of the DoPI, and an Expression of Interest was issued to various consultants to prepare the required LES.

Responses to the EOIs to prepare the LES, resulted in quotes being close to or over \$150,000. Apart from the concerns of cost to the landholders, it was determined that a Tender would need to be issued for the preparation of the LES to comply with the Local Government Act.

Given that flooding was a critical issue on the site, it was decided as a first step to prepare a flood study to identify what areas of land were able to be considered for residential use. It was considered that this would inform the LES rather than the flood assessment being incorporated into the LES, thereby reducing the upfront cost the developer.

Briefs were issued for the flood study, which included liaising with Office of Environment and Heritage (OEH) (then Department of Environment Climate Change and Water (DECCW)), as required by the DoPI.

Request for Extension of time to Complete Rezoning

On 17 October 2011 Council requested an extension to the Gateway Determination from the DoPI. Within that request, Council advised the progress to date, and the reasons that the extension was required.

The DoPI advised on 25 November 2011 that Council's request for an extension to complete the rezoning was refused, as it was not able to be completed within a satisfactory timeframe. Council staff contacted the DoPI with concerns about the refusal, and were advised to resubmit a planning proposal when studies have been completed, or sufficiently commenced to allow the whole process to be completed within 24 months.

Continuing with Studies Following Refusal of Request for Extension of Time

The content and method required for the flood assessment has been undergoing, with the landowners preference as to where eventual access and servicing infrastructure would be located being critical to the level of flood assessment required at the rezoning stage.

In March 2012 the landowners (proponents) agreed to locate the proposed zone boundary at a point 1 metre vertically below the current Council adopted 1% AEP flood level (incorporating sea level rise adjustments) subject to obtaining agreement from both OEH and the DoPI. This was suggested as an alternative to a detailed flood study and is consistent with the NSW Floodplain Development Manual and Council's Flood Risk Management Strategy.

On 12 April 2012 Council sent a letter to the DoPI seeking a determination from the Director General as to whether relocating the zone boundary as noted above would be considered of minor significance.

The DoPI responded on 9 May 2012 advising that the Director General could not make a determination as there was no active planning proposal.

The letter notes the DoPI's previous advice about continuing with the studies, and that while what was proposed by Council with respect to the zone boundary and flood line seemed reasonable, they were unable to provide formal advice.

Actions Taken in Response to DoPI advice of 9 May 2012

On 15 August 2012, Council sent a letter to the DoPI requesting a review of the Gateway Determination that refused the extension of time. It was requested that adequate time be allowed for Am 59 to be completed. This would save the preparation of a fresh planning proposal, and would enable the Department to provide certain advice about how to proceed with the necessary studies.

The Department responded on 5 September 2012, advising that they are unable to reverse or review the decision.

Legislative Framework

Kempsey KLEP 1987

The land is currently zoned, Zone No 1 (c) (Rural (Small Holdings "C" Zone), Zone No 7 (d) (Scenic Protection Zone) and 1(a1) (Rural "A1" Zone) under the KLEP. It is proposed to zone the subject land, 2(a) (Residential "A" Zone) with potential for reduction in the 7(d) area of land and the 1(c) zone reverting back to 1(a1). The planning proposal will propose an amendment to the KLEP 1987, and will also make provision for zoning under the Draft Kempsey LEP 2012, which is currently on exhibition.

Draft Kempsey LEP 2012

The Draft Kempsey LEP 2012 is currently on exhibition and the planning proposal will make provisions for how to amend that draft instrument should the rezoning be in progress when the draft becomes the Principal Planning Instrument.

The land has been proposed to be zoned R5 Large Lot Residential E3 Environmental Management and RU2 Rural Landscape under the Draft Kempsey LEP 2012. It would be proposed to be R1 General Residential, with a potential in the reduction of the area of E3 Environmental Management Land. In addition part of the R5 area could be zoned to RU2.

Directions Under s117 of Environmental Planning and Assessment Act 1979

The following table summarises the directions under s117 of the Environmental Planning and Assessment Act 1979.

Direction	Objectives	Application	Consistency
1. Employment and Resources			
1.1 Business and Industrial Zones Issued 1 July 2009		N/A	
1.2 Rural Zones Issued 1 July 2009	The objective of this direction is to protect the agricultural production value of rural land	Applies to land in an existing or proposed rural zone	The planning proposal is inconsistent with the directions as it will result in the increased density of development. It is considered that the inconsistency is justified as the land is included within the Kempsey Local Growth Management Strategy (LGMS) which has been approved by the Department of Planning in 2010 as an urban expansion area and the land has limited agricultural potential
1.3 Mining, Petroleum Production and Extractive Industries Issued July 2009	The objective of this direction is to ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development		The planning proposal will be submitted to the DPI as per the direction and the DPI will have a period of 40 days in which to comment
1.4 Oyster Aquaculture Issued 1 July 2009	N/A		
1.5 Rural Lands Issued 1 July 2009	Objectives are to protect the agricultural production value of rural land, and to facilitate the orderly and economic development of rural lands for rural and related purposes	Applies as the land is within an existing Rural Zone, and also covers an environmental zone, which is proposed to change to part residential zone	The inconsistency is considered minor, as the land is identified within the Kempsey Local Growth Management Strategy (LGMS) as an urban investigation area, which has been approved by the Department of Planning in 2010 and has limited agricultural potential

2. Environment and Heritage			
2.1 Environment Protection Zones Issued 1 July 2009	The objective of this direction is to protect and conserve environmentally sensitive areas	The planning proposal may result in the planning proposal may result in the reduction of environmental areas and may result in the reduction of minimum lot sizes in that zone	Any inconsistency is considered justified as any inconsistency is considered justified as the land is identified within the Kempsey Local Growth Management Strategy (LGMS) as an urban investigation area, which has been approved by the Department of Planning in 2010. The affected land is largely cleared and its ecological value will need to be addressed in subsequent studies
2.2 Coastal protection Issued 1 July 2009	Objective is to implement the principles in the NSW Coastal Policy	Applies as the land is within the Coastal Zone	The proposal is consistent as the land is not visually prominent or affected by coastal processes
2.3 Heritage Conservation Issued 1 July 2009	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance	The planning proposal recommends an Aboriginal Heritage Assessment.	Should the assessment reveal the existence of Aboriginal Heritage on the site, the required measures to ensure their protection will be implemented
2.4 Recreation Vehicle Areas Issued 1 July 2009	N/A		
3. Housing, Infrastructure and Urban Development			
3.1 Residential Zones Issued 1 July 2009	The objective is to encourage a variety and choice of housing types to provide for existing and future housing needs, make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, minimise the impact of residential development on the environment and resource lands	Planning proposal affects land which is identified for future urban investigation in the Kempsey LGMS 2010 and the Mid North Coast Regional Strategy	The land can be serviced by water and sewerage, the details of which will need to be determined. The planning proposal will contain a requirement that residential development will not be permitted until land is adequately serviced (or arrangements satisfactory to the Council, or other appropriate authority, have been made to service it. The planning proposal will not reduce the permissible residential density of land
3.2 Caravan Parks and		The planning proposal	N/A

Manufactured Home Estates —Issued 1 July 2009		does not involve consideration of suitable zones for caravan parks. Caravan parks are currently prohibited in the 2(a) Residential Zone in Kempsey LEP 1987 , and will also be prohibited in the R1 General Residential Zone in the Draft Kempsey LEP 2012	
3.3 Home Occupations Issued 1 July 2009	The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses	The planning proposal will not prohibit home occupations as a land use	Planning Proposal is consistent with this direction
3.4 Integrating Land Use and Transport Issued 1 July 2009	The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve: - improving access to housing, - jobs and services by walking, cycling and public transport - increasing the choice of available transport and reducing dependence on cars supporting the efficient and viable operation of public transport services providing for the efficient movement of freight	The planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of: <i>Improving Transport choice – Guidelines for planning and development (DUAP 2001) and the Right Place for Business and Services</i>	The details of these principles will be considered in the planning proposal. However if there are inconsistencies, it should be considered to be of minor significance having regard to the restricted scale of the development
3.5 Development Near Licensed Aerodromes Issued 1 July 2009	N/A		
3.6 Shooting Ranges Issued 16 February 2011	N/A		
4. Hazard and Risk			
4.1 Acid Sulfate Soils Issued 1 July 2009	The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils	The subject land contains Class 5 acid Sulfate Soil and part of the area may be affected by Class 2 Acid Sulfate Soil	An Acid Sulfate Soils assessment will be undertaken as part of the other studies required for the planning proposal
4.2 Mine Subsidence and Unstable Land Issued 1 July 2009	N/A – Land is not within a mine subsidence district		
4.3 Flood Prone Land Issued 1 July 2009	The objectives of this direction are: - to ensure that development of flood prone land is consistent	The subject land is partly flood prone land. The landowners have agreed to locate the proposed zone boundary to 1m	The proposal while inconsistent is considered to be of minor significance. Given the proposed changes to the

	with the NSW Government's Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i>, - to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land	below the currently mapped 1%AEP flood level	access by the landowners, Council will seek the Director-Generals support for the position that the provisions of the planning proposal is in accordance with S117 Direction 4.3(9)(b) of "minor significance" and the requirement to prepare a Floodplain Risk Management Plan is not required in the circumstances. The following points support Council's case for seeking the Director – Generals support in this matter: 1. The proposal is compliant with the <i>NSW Flood Risk Management Guide 2010</i> incorporating sea level rise benchmarks in flood risk assessments as the land to be developed will be above 4m AHD, above 1.5 metres of the maximum historic height of the entrance berm and is not located within tidal waters. 2. The proposal is compliant with the prime objective of the <i>NSW Flood Prone Land Policy</i> and associated <i>Floodplain Development Manual</i> which is to reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone property, and to reduce private and public losses resulting from floods. In this instance the prime objective has been accomplished by moving the zone boundary to higher ground (from RL 1.3m AHD to RL 3.21m AHD) thereby significantly reducing the exposure of any
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			future development on the identified land parcel. The amended proposal will ensure that future development will be located at or above the assessed flood planning level (incorporating sea level rise) for this locality with the option of filling above the residential flood planning level (1 in 100 year flood level) to a point one metre below the residential flood planning level. 3. The proposal is consistent with Council's <i>Floodplain Management Strategy Policy</i> in that at least 500 square metres of each proposed lot will be above the 1 in 100 year and/or highest flood level, the 500m2 identified in the subdivision is to be utilised for the erection of buildings on the site, the maximum depth of filling is not to exceed 1 metre and the product of the depth and velocity of flow of waters during a 1 in 100 flood is equal to, or less than, one (1); and 4. The proposed access road that links Crescent Head Village with the subject land can be provided to the 1in 100 year flood level in order to maintain access to the existing village infrastructure during a flood event of this magnitude
4.4 Planning for Bushfire Protection Issued 1 July 2009	The objectives of this direction are: - to protect life, property and the environment from bush fire hazards, by discouraging the establishment of	The subject land is mapped as bushfire prone land. It is proposed to undertake consultation with the NSW Rural Fire Service. Consultation has already occurred on the proposed rezoning	It is considered that the planning proposal will not be inconsistent with this direction with further detailed investigations required

	incompatible land uses in bush fire prone areas; - to encourage sound management of bush fire prone areas	with the NSW Rural Fire Service and no prohibitive matters were raised. It is proposed to incorporate any requirements as part of additional studies to be undertaken after obtaining a Gateway Determination	
5. Regional planning			
5.1 Implementation of Regional Strategies Issued 1 July 2009	The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies	The planning proposal is consistent with Mid North Coast Regional Strategy, as the subject land is located within the mapped Growth Area for Crescent Head	Consistent.
5.2 Sydney Drinking Water Catchments Issued 3 March 2011	N/A		
5.3 Farmland of State and Regional Significance on the NSW Far North Coast Issued 1 July 2009	N/A		
5.4 Commercial and Retail Development along the Pacific Highway, North Coast Issued 29 November 2009	N/A		
5.8 Second Sydney Airport: Badgerys Creek Issued 1 July 2009	N/A		
6. Local Plan Making			
6.1 Approval and Referral Requirements Issued 1 July 2009	The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development	It is not proposed to have any concurrence, consultation or referral provisions	Consistent.
6.2 Reserving of Land for Public Purposes Issued 1 July 2009	The objectives of this direction are: - to facilitate the provision of public services and facilities by reserving land for public purposes, - to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition	The proposal does not reduce or create land for a public purpose	Consistent
6.3 Site Specific Provisions Issued 1 July 2009	The objective of this direction is to discourage unnecessarily restrictive site specific planning controls	The planning proposal does not propose any site specific provisions or requirements in addition to those already	Consistent

		contained in the principal environmental planning instrument being amended	
7. Metropolitan planning			
7.1 Implementation of the Metropolitan Plan for Sydney 2036 Issued 1 February 2011	N/A		

Relationship to Strategic Planning Framework

The subject land is identified in the Kempsey Local Growth Management Strategy (LGMS) Residential Component 2010, as an Urban Investigation area. The land is also identified as a Growth Area in the Mid North Coast Regional Strategy. It is considered that sufficient strategies underpin the potential rezoning of the subject land, and therefore justify it as suitable for a Planning Proposal.

Full details of other matters, such as 117 Directions and Environmental Impacts, Servicing, how it fits within the Standard Local Environmental Plan provisions, will all be discussed in the Planning Proposal submitted to the Department of Planning and Infrastructure.

Further Studies Required

Environmental issues and matters for further assessment have already been identified. The Gateway Determination will advise or re-advise what studies are necessary to be completed prior to the public exhibition of the Planning Proposal. It is considered likely, that the same studies required by the Department of Planning and Infrastructure previously will still be required in any new Gateway Determination. The Planning Proposal will outline what studies are suggested, and these will be all of those previously required by the Department.

Currently it is envisaged that these studies will include flooding, flora and fauna assessment, stormwater, soil and groundwater analysis, bushfire threat assessment, indigenous and European cultural significance assessment, transport network analysis, services and facilities analysis, and visual and landscape setting analysis.

Views of State and Commonwealth Public Authorities

Consultation with State and Commonwealth public authorities has occurred previously in 2009, under what was then section 62 of the Environmental Planning and Assessment Act. It is possible that a fresh Gateway may require further consultation. In accordance with section 56(2)(d) of the Environmental Planning and Assessment Act 1979, a Gateway Determination would specify the consultation to be undertaken with State and Commonwealth public authorities for the planning proposal. Consultation with State and Commonwealth public authorities must occur in accordance with the gateway determination at that stage. It will however be submitted in the Planning Proposal, that former Amendment No 59 was well progressed and included consultation with relevant authorities, and the details of their responses.

Community Consultation

In accordance with section 56(2)(c) of the Environmental Planning and Assessment Act 1979, a Gateway Determination would specify the community consultation to be undertaken for the planning proposal. Community consultation must occur in accordance with the gateway determination.

Upon completion of the consultation with agencies, the draft Local Environmental Plan will be reported to Council to endorse for the purposes of public exhibition. In accordance with Council's

Rezoning Applications Policy, the method for notifying the public exhibition will also be advised at the time.

The Planning Proposal

At the time of drafting this report, drafting of the Planning Proposal has commenced but is not yet completed. In the interests of progressing the rezoning it was considered having regard to Council's previous resolution to rezone the land, that a further resolution to continue, and submit a fresh planning proposal could be obtained, without the need to view the actual Planning Proposal. The Planning proposal is likely to be completed by the end of February 2013, and can be submitted to the Department then, or prior to the March 2013 Council meeting, if a resolution from Council is obtained. Copies of the Planning Proposal when completed can be made available to the Councillors for information and comment, prior to submitting it to the Department of Planning and Infrastructure. If drafting of the Planning Proposal is complete in time for the 19 February 2013 meeting, a copy will be tabled and made available to the Councillors and the Public.



Appendix B

Site Context Map

Crescent Head

SITE CONTEXT MAP

 Subject Site

0 1000
Metres



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Appendix C

Land to which the planning proposal applies

Crescent Head

LAND TO WHICH THE PLANNING PROPOSAL APPLIES



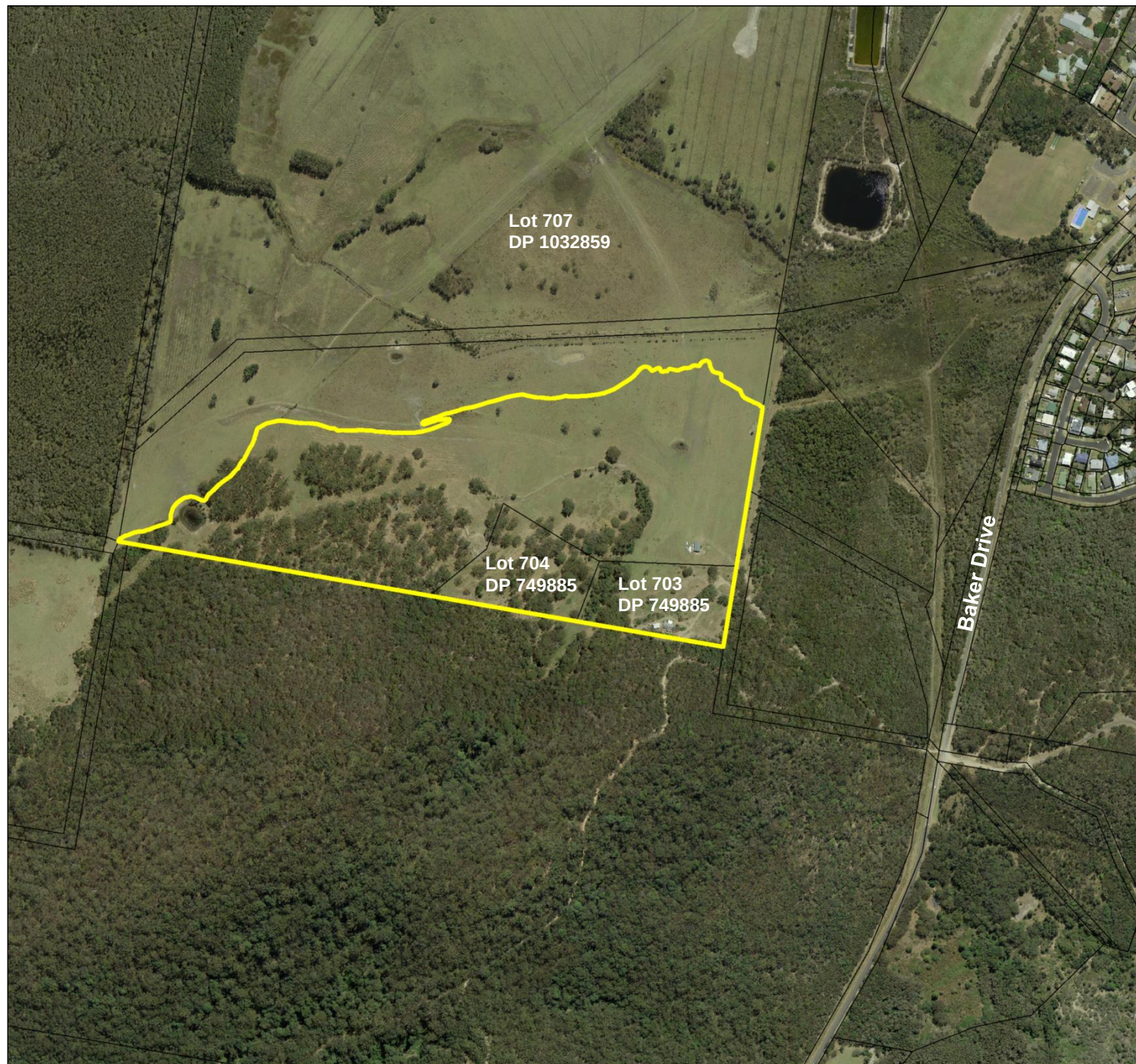
Affected Land

- Part of Lot 707 DP 1032859
- Lot 704 DP 749885
- Lot 703 DP 749885

0 100
Metres



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Appendix D

Existing zoning – Kempsey Local Environmental Plan 1987



Kempsey
Shire Council

Crescent Head

EXISTING ZONING – KEMPSEY LOCAL ENVIRONMENTAL PLAN 1987



Subject Site

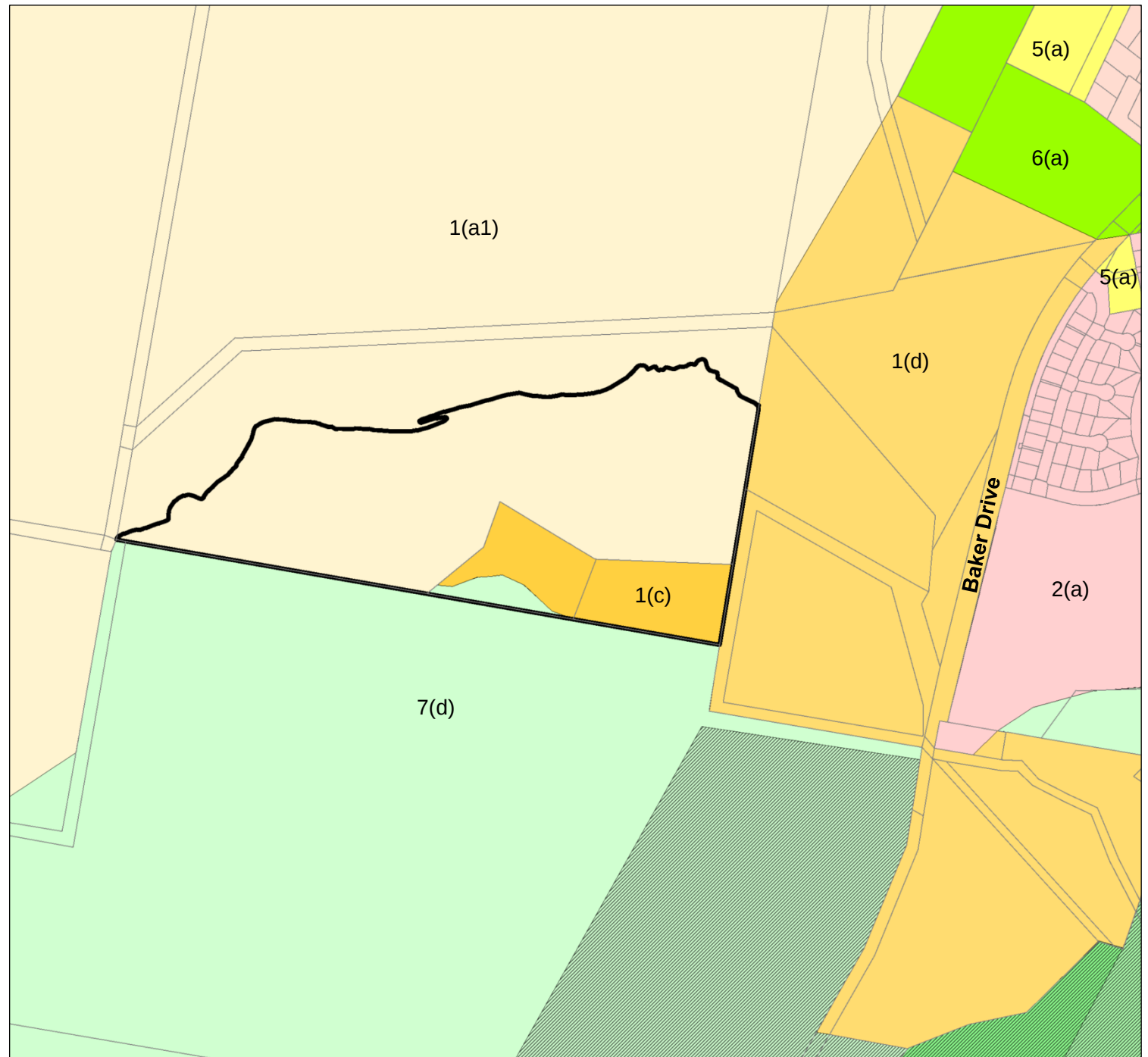
-  2(a) (Residential "A" Zone)
-  1(d) (Rural (Investigation) "D" Zone)
-  7(d) (Scenic Protection Zone)
-  5(a) (Special Uses "A" Zone)
-  6(a) (Open Space "A" Zone)
-  1(a1) (Rural "A1" Zone)
-  1(g) (Rural (Small Agricultural Enterprises) "G" Zone)

0 100

Meters



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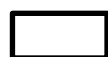


Appendix E

Existing zoning – Draft Kempsey Local Environmental Plan 2012

Crescent Head

EXISTING ZONING – DRAFT KEMPSEY LOCAL ENVIRONMENTAL PLAN 2012



Subject Site

-  R1 General Residential
-  R3 Medium Density Residential
-  R5 Large Lot Residential
-  RU2 Rural Landscape
-  E1 National Parks and Nature Reserves
-  E2 Environmental Conservation
-  E3 Environmental Management
-  RE1 Public Recreation

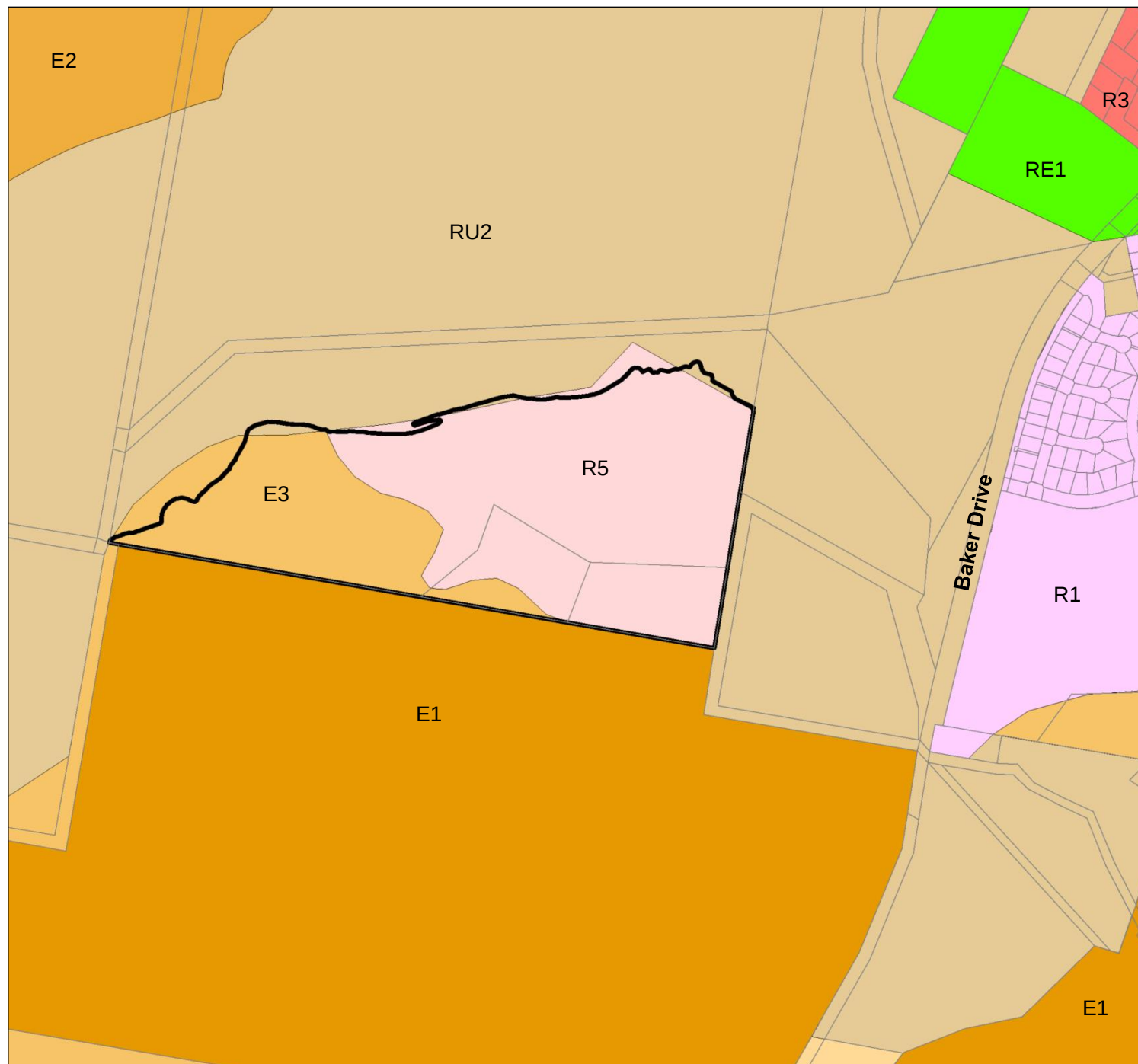
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Appendix F

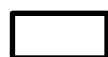
Proposed zoning – Kempsey Local Environmental
Plan 1987



Kempsey
Shire Council

Crescent Head

PROPOSED ZONING MAP – KEMPSEY LOCAL ENVIRONMENTAL PLAN 1987



Subject Site

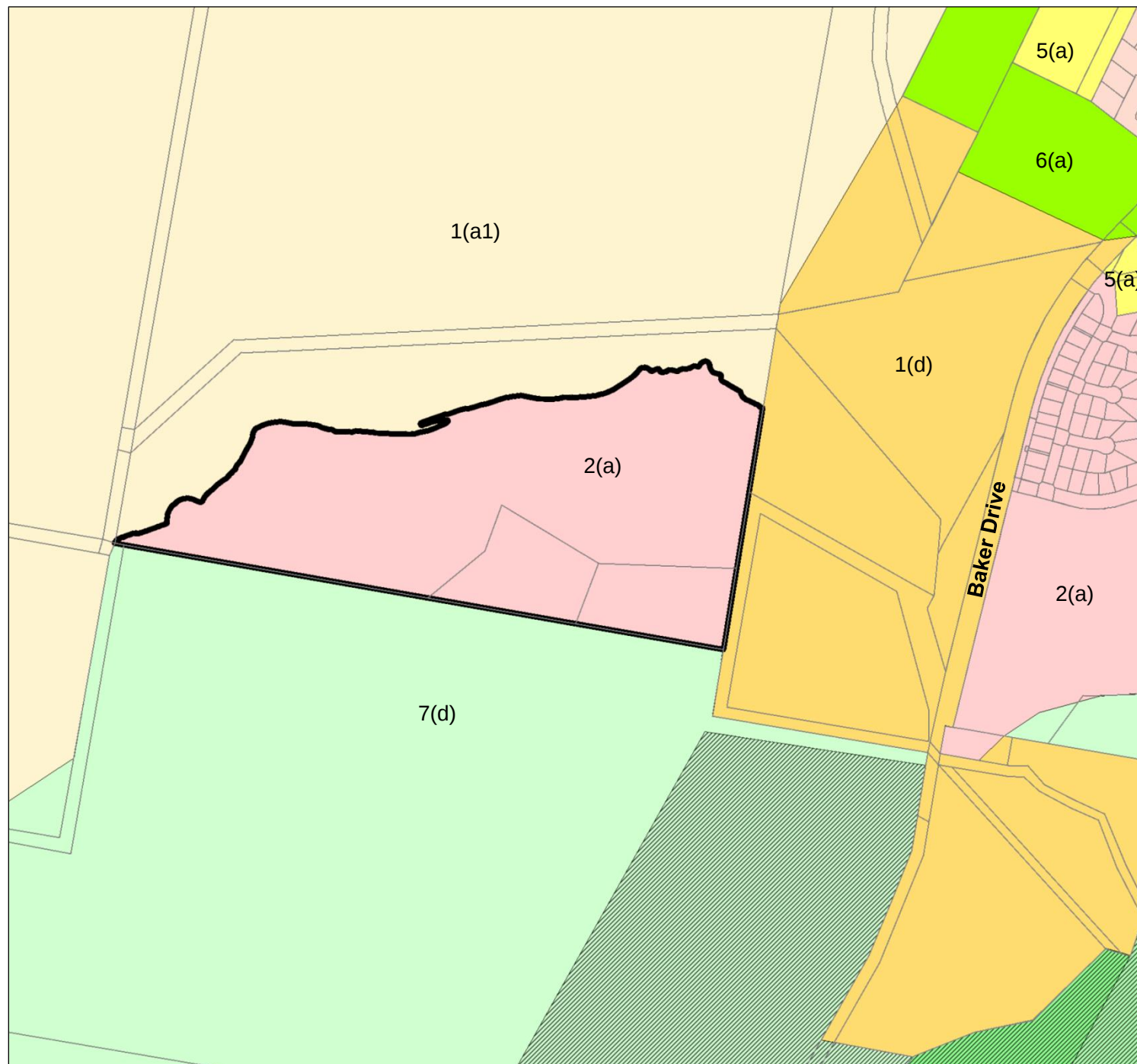
-  2(a) (Residential "A" Zone)
-  (1d) (Rural (Investigation) "D" Zone)
-  7(d) (Scenic Protection Zone)
-  5(a) (Special Uses "A" Zone)
-  6(a) (Open Space "A" Zone)
-  1(a1) (Rural "A1" Zone)

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Appendix G

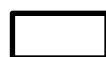
Proposed zoning – Draft Kempsey Local Environmental Plan 2012



Kempsey
Shire Council

Crescent Head

PROPOSED ZONING MAP – DRAFT KEMPSEY LOCAL ENVIRONMENTAL PLAN 2012



Subject Site

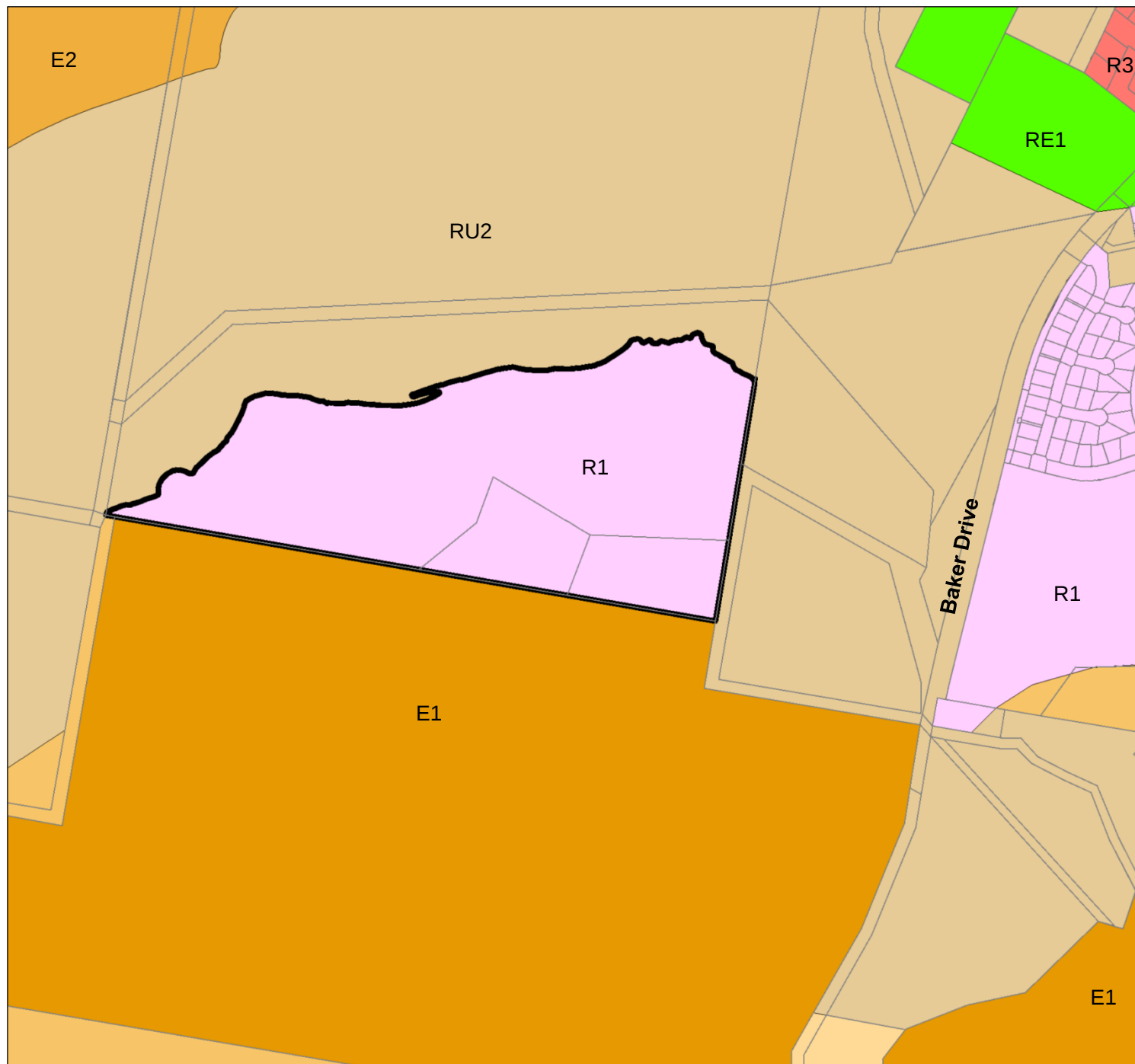
-  R1 General Residential
-  R3 Medium Density Residential
-  RU2 Rural Landscape
-  E1 National Parks and Nature Reserves
-  E2 Environmental Conservation
-  RE1 Public Recreation

0 100

Meters



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Appendix H

Net community benefit test

Net Community Benefit Test

“a. Will the LEP be compatible with agreed State and regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800 metres of a transit node)?”

Yes. The *Mid-North Coast Regional Strategy* (MNCRS) is the primary document for setting the strategic direction for the Kempsey LGA to the year 2031. The MNCRS has identified a portion of the subject land as a proposed future urban release area. The planning proposal is considered to be consistent with aims and strategic directions of MNCRS.

“b. Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?”

No. The subject land is located in the village of Crescent Head, which is not a regional city or strategic centre under the *Mid North Coast Regional Strategy*.

“c. Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landholders?”

There is some possibility that the planning proposal may create an expectation that other land in the Crescent Head area could be rezoned for residential use. However due to environmental constraints, there are few sites which could accommodate new residential development. This is clearly illustrated in Council's *Local Growth Management Strategy* which identifies the subject land as the only potential new urban release area in Crescent Head. Future re-zonings which rely on this planning proposal as a precedent are unlikely to be supported by Council.

“d. Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?”

No. There are no other spot re-zonings currently under consideration in the Crescent Head area.

“e. Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?”

No. The proposed rezoning will not directly facilitate employment generating activities or result in the loss of employment lands. The rezoning may have a positive impact on employment generating activities indirectly by facilitating a slight increase in population.

“f. Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?”

Yes. The subject land is some of the only available land left in the Crescent Head area able to accommodate new housing. The *Kempsey Local Growth Management Strategy 2010* has identified that the Urban Investigation Area may yield up to 70 detached dwellings and 41 attached dwellings.

Crescent Head has experienced constant growth for many years and continues to experience demand for residential and tourist accommodation. The proposed rezoning is likely to have a positive effect on housing supply and affordability in the area.

“g. Is the existing public infrastructure (roads, rail, utilities etc.) capable of servicing the proposed site? Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity to support future public transport?”

Yes. The site is located close to existing public infrastructure. It is anticipated that utilities and infrastructure systems will be capable of servicing the proposed site. Proximity to the existing village creates opportunities for walking and cycling access in the future.

“h. Will the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?”

No. The rezoning is unlikely to significantly change the travel patterns and distances between customer’s employers or suppliers.

“i. Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal? If so, what is the expected impact?”

Consultation will be undertaken with relevant public authorities following a Gateway Determination to determine infrastructure or services in the area whose patronage will be affected by the proposal. It is noted that the planning proposal will facilitate a moderate increase in population (relative to the existing population in crescent head) which may place additional load on the local State Primary School.

“j. Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?”

The subject land itself is to not known to have high biodiversity values, however the surrounding land is environmentally sensitive, or has special environmental features. It is noted that the site is bounded by SEPP 14 Wetlands to the North, National Park to the South, and *Swamp Sclerophyll Forest* to the east which is listed as an Endangered Ecological Community under the *Threatened Species Conservation Act 1995*.

The site is constrained by flooding; however the extent of the zone boundary is contained to an area approximately 1m below the 1% AEP Flood level.

It is anticipated that further environmental studies will be required to assess the impact of the proposed rezoning and its suitability for urban development.

“k. Will the LEP be compatible / complementary with surrounding land uses? What is the impact on amenity in the location and wider community?”

Yes. The proposed R1 General Residential and 2(a) (Residential “A”) zoning will be compatible with surrounding land uses. The zoning is consistent with much of Crescent Head and is unlikely to cause any significant conflict with neighbouring land uses.

“l. Will the public domain improve?”

A more detailed visual impact assessment will be required to assess the impact on the public domain. Some of the land is currently zoned 7(d) scenic protection and further analysis will be necessary to assess the visual impacts on that portion of the land.

“m. Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?”

No. The planning proposal will have no direct impact on retail choice or competition as it seeks to rezone land for residential uses only. Indirectly, the re-zoning may have a positive impact on retail choice and competition by facilitating population increase in the area.

“n. If a stand-alone proposal and not a centre does the proposal have the potential to develop into a centre in the future?”

No. The planning proposal relates to land adjacent to the village of Crescent Head and has no potential to develop into a separate centre.

“o. What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?”

The planning proposal is in the public interest as it allows for the future expansion of Crescent Head in order to accommodate predicted population growth and demand for housing in the area. There are no known implications for not proceeding at the present time however a continued lack of housing supply may place upward pressure on housing prices in the area if demand remains strong.



Appendix I

New urban release area map – Kempsey Local
Growth Management Strategy – Residential
Component

Crescent Head

LEGEND

-  New Release Area
-  Existing Residential
-  Lodged Planning Application (not part of the Mid North Coast Regional Strategy)
-  Growth Area
-  Coalmine
-  From Mid North Coast Regional Strategy
Kempsey Growth Area may indicate areas of high land suitability within or around future urban release areas and potential employment areas



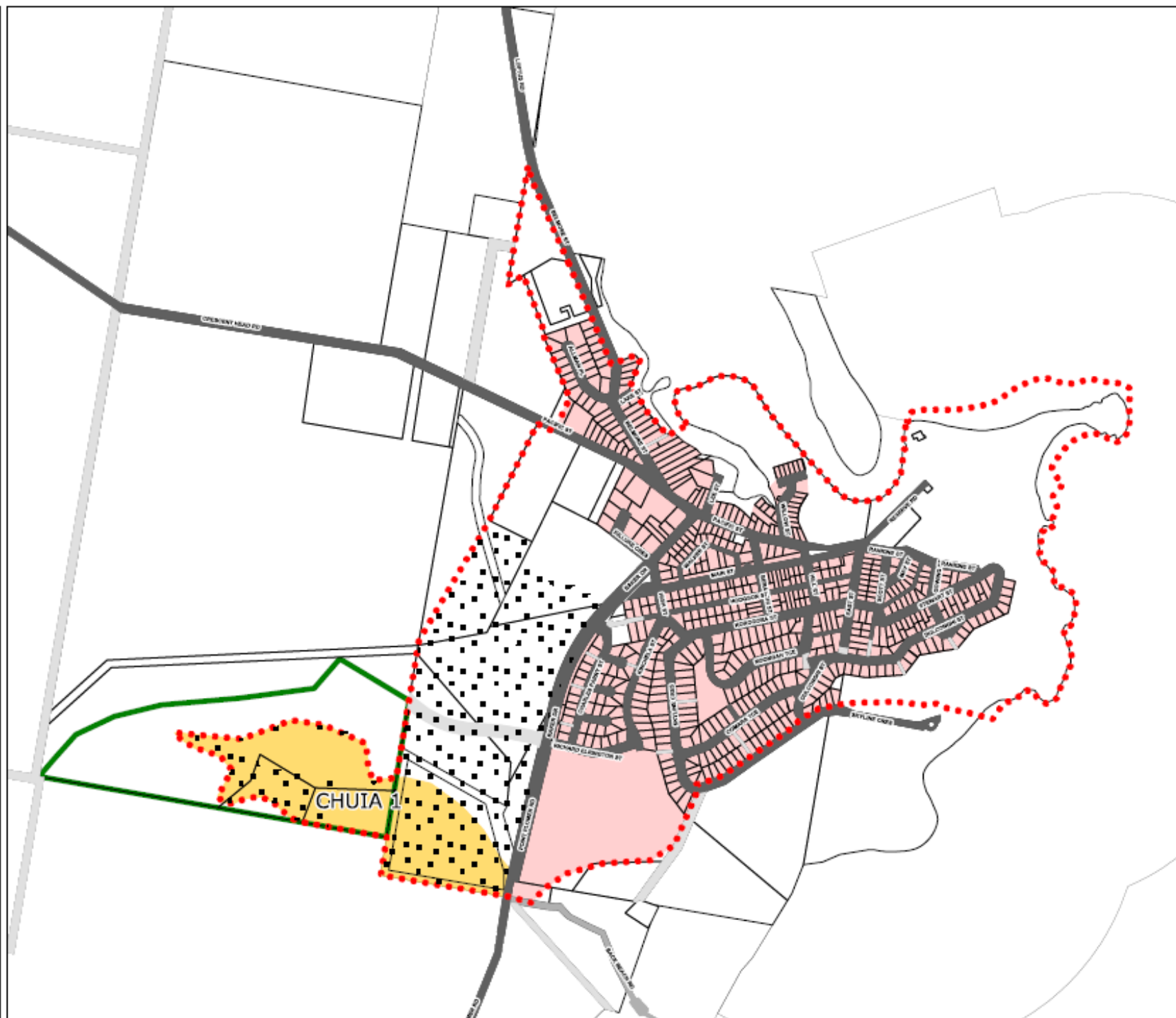
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Meters
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Appendix J

Consistency with State Environmental Planning Policies

No.	State Environmental Planning Policy	Aims of Policy	Consistency
1	Development Standards	The Policy provides flexibility in the application of planning controls	Consistent. SEPP 1 applies to KLEP 1987 but not to DKLEP 2012. The proposed zone change does not undermine the aims and/or objectives of the policy.
4	Development without Consent and Miscellaneous Exempt and Complying Development	The Policy is designed to permit development for a purpose which is of minor environmental significance, development for certain purposes by public utility undertakings and development on certain land reserved or dedicated under the <i>National Parks and Wildlife Act 1974</i> without the necessity for development consent being obtained	Consistent. No exempt or complying provisions in KLEP 1987 and DKLEP 2012 will be altered by the planning proposal.
6	Number of Storeys in a Building	The Policy aims to remove any confusion arising from the interpretation of provisions in environmental planning instruments which control the height of buildings by reference to the number of storeys, floors or levels which the buildings contain, by specifying the manner in which that number is to be determined	Consistent. KLEP 1987 refers to SEPP 6 for determining the height of buildings. Height of buildings is defined separately under DKLEP 2012. The planning proposal will not alter the definitions relating to the height of buildings as described in SEPP 6.
14	Coastal Wetlands	The aim of this policy is to ensure that the coastal wetlands are preserved and	Consistent. The subject land does not contain any coastal wetlands to which SEPP 14

		protected in the environmental and economic interests of the State.	applies. The subject land is located approximately 500m South West of an area of SEPP 14 Coastal Wetlands. Further studies may be required to determine the impact of the proposed rezoning on those wetlands.
15	Rural Land sharing Communities	The policy aims to encourage and facilitate the development of rural landsharing communities committed to environmentally sensitive and sustainable land use practices	Not Applicable. The planning proposal will change the subject land from a Rural zone to a Residential zone. SEPP 15 will no longer be applicable on the subject land should the rezoning be approved.
19	Bushland in Urban Areas	Policy seeks to protect and preserve bushland within the urban areas referred to in Schedule 1 because of: (a) its value to the community as part of the natural heritage, (b) its aesthetic value, and (c) its value as a recreational, educational and scientific resource	Not Applicable. Does not apply to Kempsey LGA
21	Caravan Parks	The aim of this Policy is to encourage the orderly and economic use and development of land used for caravan parks, encouraging the proper management of the land, provision of community facilities and the protection of the environment	Consistent. The Planning proposal will not alter the sites ability to be used as a caravan park. Caravan parks are prohibited under the current zoning, and will continue to be prohibited under the proposed zoning.
22	Shops and Commercial	Policy aims to permit within a	Not Applicable.

	Premises	business zone: the change of use of a building lawfully used for a particular kind of commercial premises to another kind of commercial premises or to a shop, or a change of use from a shop to another kind of shop	The planning proposal does not affect provisions relating to changes of use.
26	Littoral Rainforests	The aim of this Policy is to provide a mechanism for the consideration of applications for development that is likely to damage or destroy littoral rainforest areas with a view to the preservation of those areas in their natural state.	Not Applicable. The subject land is not affected by SEPP 26. No mapped areas of littoral rainforest under SEPP 26 are in the vicinity of the subject land.
29	Western Sydney Recreation Area	The aim of this Policy is: (a) to enable the development of a recreation area of State significance (in this Policy referred to as the Western Sydney Recreation Area), and (b) to enable the carrying out of development for recreational, sporting and cultural purposes within the Western Sydney Recreation Area	Not Applicable. Does not apply to Kempsey LGA
30	Intensive Agriculture	Aims to require development consent for cattle feedlots having a capacity to accommodate 50 or more head of cattle, and piggeries having a capacity to	Not Applicable. The planning proposal does not provide for cattle feedlots or piggeries.

		accommodate 200 or more pigs or 20 or more breeding sows	
32	Urban Consolidation	Aims to enable urban land which is no longer required for the purpose for which it is currently zoned or used to be redeveloped for multi-unit housing and related development, and to implement a policy of urban consolidation which will promote the social and economic welfare of the State	Consistent. The subject land is not currently considered to be urban land.
33	Hazardous and Offensive Development	Seeks to provide clarify the definition of hazardous industries and to ensure that the consent authority has sufficient information to assess whether the development is hazardous or offensive	Consistent. The planning proposal will not facilitate any hazardous or offensive industries.
36	Manufactured Home Estates	The policy seeks to facilitate the establishment of manufactured home estates as a contemporary form of medium density residential development that provides an alternative to traditional housing arrangements	Consistent. The planning proposal makes no provisions to allow Manufactured Home Estates on the subject land.
39	Spit Island Bird Habitat	The aim of this Policy is to encourage the protection of the environment by enabling	Not Applicable. SEPP 39 does not apply to the subject land.

		development to be carried out without consent for the purpose of creating and protecting a bird habitat at Spit Island	
44	Koala Habitat Protection	The Policy aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline	Consistent. Further flora and fauna reports will be necessary to determine any potential impacts.
47	Moore Park Showground	The Policy aims to enable the redevelopment of the Moore Park Showground in a manner that is consistent with its status as an area of importance for State and regional planning in New South Wales	Not Applicable. SEPP 47 does not apply to the subject land
50	Canal Estate Development	The Policy aims to prohibit canal estate development as described in this Policy in order to ensure that the environment is not adversely affected by the creation of new developments of this kind.	Consistent. The planning proposal will not facilitate any canal estate development.
52	Farm Dams and other works in land management areas	Policy aims to require environmental assessment under Part 4 of the <i>Environmental Planning and</i>	Consistent . The planning proposal is consistent with the provisions of the SEPP.

		<i>Assessment Act 1979</i> of development for the purpose of artificial water bodies that will be carried out under farm plans that implement land and water management plans	
55	Remediation of Land	The object of this Policy is to provide for a State wide planning approach to the remediation of contaminated land.	Consistent. The subject land is not known to be contaminated.
59	Central Western Sydney Regional Open Space and Residential	To provide for residential development on suitable land to assist in accommodating future population growth.	Not Applicable. SEPP 59 does not apply to the subject land
60	Exempt and Complying Development	Seeks to provide for exempt development and complying development in certain local government areas that have not provided for those types of development through a local environmental plan	Consistent. Applies to the subject land under KLEP 1978, but does not apply to the subject land under DKLEP 2012 (see clause1.9) The planning proposal makes no provisions for exempt and complying development.
62	Sustainable Aquaculture	Seeks to encourage sustainable aquaculture, including sustainable oyster aquaculture, in the State, namely, aquaculture development which uses, conserves and enhances the community's resources so that the total quality of life now and in the future can be preserved and enhanced	Consistent. The planning proposal is not deemed to have any significant effect on Aquaculture or oyster aquaculture.

64	Advertising and Signage	Policy aims to ensure that signage is compatible with the desired amenity and visual character of an area, and provides effective communication in suitable locations, and is of high quality design and finish	Consistent. The planning proposal makes no provisions for advertising and signage.
65	Design Quality of Residential Flat Development	Policy aims to improve the design quality of residential flat development in New South Wales.	Consistent. The planning proposal makes no provisions for the design quality of Residential Flat Building's which would be inconsistent with SEPP 65.
70	Affordable Housing (Revised Schemes)	The aim of this Policy is to insert revised affordable housing provisions into environmental planning instruments for certain EPI's	Not Applicable. SEPP 70 does not apply to the subject land.
71	Coastal Protection	Policy aims to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and to encourage a strategic approach to coastal management	Not Applicable. The subject land is outside the Coastal Zone as identified in the <i>Coastal Protection Act 1979</i>.
	SEPP (Affordable Rental Housing) 2009	Policy aims to provide a consistent planning regime for the provision of affordable rental housing, and to facilitate the development of housing for the homeless and other disadvantaged people who may require support services	Consistent. The planning proposal will enable the provision of additional housing in the area which would have previously been prohibited due to its Rural zoning. The planning Proposal makes no specific provisions for affordable housing.

	Building Sustainability Index: BASIX 2004	Policy aims to encourage sustainable residential development	Consistent. The Planning Proposal does not seek to amend the application of the BASIX SEPP on the subject land.
	Exempt and Complying Development Codes 2008	Seeks to provide streamlined assessment process for development that complies with specified development standards.	Consistent. The Planning Proposal does not seek to amend the application of the Codes SEPP on the subject land.
	Housing for Seniors or People with a Disability 2004	This Policy aims to encourage the provision of housing that will increase the supply and diversity of residences that meet the needs of seniors or people with a disability, make efficient use of existing infrastructure and services, and be of good design.	Consistent. The planning proposal does not seek to amend the application of the Seniors Housing SEPP on the subject land.
	Infrastructure 2007	The aim of this policy is to facilitate the effective delivery of infrastructure across the State	Consistent. The planning proposal does not seek to amend the application of the Infrastructure SEPP on the subject land.
	Kosciuszko National Park – Alpine Resorts 2007	The aim of this Policy is to protect and enhance the natural environment of the alpine resorts, in the context of Kosciuszko National Park, by ensuring that development in those resorts is managed in a way that has regard to the principles of ecologically sustainable development	Not Applicable. SEPP does not apply to the subject land.
	Kurnell Peninsula 1989	To conserve the natural environment of the Kurnell	Not Applicable.

		Peninsula and ensure that development is managed having regard to the environmental, cultural and economic significance of the area to the nation, State, region and locality	SEPP does not apply to the subject land.
	Major Development 2005	Policy aims to facilitate the development, redevelopment or protection of important urban, coastal and regional sites of economic, environmental or social significance to the State	Consistent. The planning proposal does not seek to amend the application of the Major Development SEPP.
	Mining, Petroleum and Extractive Industries 2007	The aims of this Policy are to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State, and to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources	Consistent. The Planning Proposal does not seek to amend the application of the Mining SEPP on the two sites.
	Rural Lands 2008	Policy seeks to facilitate the orderly and economic use and development of rural lands for rural and related purposes	Consistent. The planning proposal is seeking to change land zoned for a rural purpose, to a residential purpose. See the section at the end of this report on how the planning proposal meets the Rural Planning Principals.

	SEPP 53 Transitional Provisions 2011	The aim of this Policy is to enact transitional provisions consequent on the repeal of <i>State Environmental Planning Policy No 53—Metropolitan Residential Development</i> .	Not Applicable. SEPP does not apply to the subject land.
	State and Regional Development 2011	Policy aims to identify development that is State significant development, to identify development that is State significant infrastructure and critical State significant infrastructure and to confer functions on joint regional planning panels to determine development applications	Consistent. The Planning Proposal does not seek to amend the application of the State and Regional Development SEPP on the subject land.
	Sydney Drinking Water Catchment 2011	Policy aims to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal	Not Applicable. SEPP does not apply to the subject land.
	Sydney Region Growth Centres 2006	Aims to co-ordinate the release of land for development in the North West and South West Growth Centres.	Not Applicable. SEPP does not apply to the subject land.
	Temporary Structures	Policy aims to ensure that suitable provision is made for ensuring the safety of persons using temporary structures, and to encourage the protection of the	Consistent. The Planning Proposal does not seek to amend the application of the State and Regional Development SEPP on the subject land.

		environment at the location, and in the vicinity of temporary structures	
	State Environmental Planning Policy (Urban Renewal) 2010	Policy aims to establish the process for assessing and identifying sites as urban renewal precincts, to facilitate the orderly and economic development and redevelopment of sites in and around urban renewal precincts	Not Applicable. SEPP does not apply to the subject land.
	State Environmental Planning Policy (Western Sydney Employment Area) 2009	This Policy aims to protect and enhance the land to which this Policy applies (the Western Sydney Employment Area) for employment purposes	Not Applicable. SEPP does not apply to the subject land.
	Western Sydney Parklands	The aim of this Policy is to put in place planning controls that will enable the Western Sydney Parklands Trust to develop the Western Parklands into a multi-use urban parkland for the region of western Sydney.	Not Applicable. SEPP does not apply to the subject land.
	North Coast Regional Environmental Plan (Deemed SEPP)	Policy aims to develop regional policies that protect the natural environment, encourage an efficient and attractive built environment and guide development into a productive yet environmentally sound future	See next page. Note. North Coast Regional Environmental Plan does not apply to DKLEP 2012

North Coast Regional Environmental Plan (Deemed SEPP)

The following is a summary of the relevant parts of the North Coast Regional Environmental Plan and how they apply to the proposed rezoning.

Part 3 Conservation and the environment

Division 1 The natural environment

Clause 29 Plan preparation—natural areas and water catchments

A draft local environmental plan should:

- (a) Retain existing provisions allowing the making of tree preservation orders,*

The Planning Proposal does not alter any existing provisions in relation to tree preservation orders.

- (b) Not alter or remove existing environmental protection, scenic protection or escarpment preservation zonings or controls within them, without undertaking a detailed analysis to determine whether there will be adverse environmental effects resulting from such action,*

The planning proposal is intending to rezone a section of land which is currently zoned for scenic protection. More detailed analysis will be required should the planning proposal proceed past the gateway.

- (c) Include significant areas of natural vegetation including rainforest and littoral rainforest, riparian vegetation, wetlands, wildlife habitat, scenic areas and potential wildlife corridors in environmental protection zones,*

There is currently no provision in the planning proposal for environmental protection zones. Part of the subject land is currently zoned 7(d) scenic protection. More detailed analysis will be required should the planning proposal proceed past the gateway.

- (d) Contain provisions which require that development in domestic water catchment areas or on land overlying important groundwater resources does not adversely affect water quality, and*

The subject land is not in a domestic water catchment or over important groundwater resources.

- (e) Require consent for the clearing of natural vegetation in environmental protection, scenic protection or escarpment preservation zones.*

The planning proposal does not alter any existing provisions for the clearing of natural vegetation in any zone.

Part 4 Urban Development

Division 1 Strategic Planning

Clause 38 Plan preparation – urban land release strategy

- (1) The council should not prepare a draft local environmental plan which permits development that, in the opinion of the council, constitutes significant urban growth unless it has adopted an urban land release strategy for the whole of its local government area.*

The planning proposal applies to land which is identified in the Kempsey Local growth Management Strategy – Residential Component and the Mid North Coast Regional Strategy.

- (2) *A draft local environmental plan referred to in subclause (1) should be generally consistent with the strategy referred to in that subclause.*

The Planning proposal is consistent with the KLGMS-RC, and the MNCRS, which identify the subject land as a future urban release area. The urban release area is shown in **appendix H**.

- (3) *The strategy referred to in subclause (1) shall:*

- (a) *be based on a land release program and population projections,*
- (b) *give preference to development resulting in urban growth on land that adjoins other land which is already being used for urban purposes and is the most economic to service,*

The Kempsey Local Growth Management Strategy – Residential Component is a land release strategy which is based upon population projections and analysis of existing capacity in various parts of the Shire. The subject land does not directly adjoin any existing urban areas. Neighbouring land has previously been determined to be unsuitable for urban development due to environmental constraints. The subject land is the only viable area for urban land release in Crescent Head.

- (b1) *not provide for development of land which is unsuitable for urban growth due to its agricultural capability or which adjoins land that is currently used for agriculture,*

The land has limited agricultural potential and does not adjoin any land with any significant agricultural capability

- (b) *not include for development land that is unsuitable due to any environmental hazard unless the council has made an assessment of the risk and considered it to be minor or alternatively has made provision for the control or reduction of that hazard*

The land is subject to flooding and bushfire. The rezoning boundary is within 1m of the 1% AEP flood level and is considered to be a minor risk. Further studies may be required following a gateway determination.

- (c) *not include for development land which has conservation value or which has heritage, environmental or cultural significance,*

A section of the site is currently zoned for scenic protection. More detailed investigations into the environmental and cultural impacts of the rezoning may be required following a gateway determination.

- (e) *have regard to the rural character and heritage significance of villages and small coastal settlements and the need to maintain that character and significance, and*
- (f) *provide substantial buffer areas between coastal urban centres to avoid uninterrupted coastal development.*

Further studies into the planning proposals impacts on Character and heritage may be required following a gateway determination. The proposed rezoning will maintain a substantial buffer between coastal urban centres.

- (4) *The council must ensure that a copy of the strategy adopted under subclause (1):*

- (a) *is available, without charge, for public inspection and comment at the office of the council during normal office hours, and*
- (b) *is immediately after it is adopted, forwarded by the council to such public authorities as, in the opinion of the council, have responsibilities reasonably requiring them to be aware of the strategy.*

The KLGMS-RC is publicly available at Council's Customer Service Centre, and on Council's website.

Part 4 Urban Development

Division 2 Urban Housing

Clause 40 Plan preparation—principles for urban zones

A draft local environmental plan applying to urban areas should adopt the following principles:

- (a) zoning should be simple and flexible,*
- (b) provisions for flexible zone boundaries may apply to any zones except environmental protection zones,*
- (d) detailed guidelines within the broad zone parameters should be identified in a development control plan, and*
- (e) the principle of minimising energy use, in particular in the design of buildings and effective transport systems.*

The proposed 2(a) and R1 zoning is a simple and flexible solution to facilitating the objectives of the planning proposal outlined in part 1. Flexible zone boundaries will not be applicable given the constraints of flooding bushfire and national park which surround the site.

Detailed guidelines for development of the site will be provided by applicable Development Control Plans. Energy use and design will be governed by the provision of BASIX at the development application stage.

Clause 42 Plan preparation—principles for housing

This clause aims to provide a wide range of suitable housing options to meet the region's population.

There are existing provisions in place under KLEP 1987 and DKLEP 2012 to adequately provide for the above requirements. The 2(a) and R1 zoning will be flexible enough to accommodate a wide range of residential development types, while services and utilities will be required to be provided as part of any future subdivision application.

Division 3 Environmental hazards

Clause 45 Plan preparation—hazards

- (1) A draft local environmental plan should not permit development for tourism, rural housing or urban purposes on land subject to the following hazards, namely:*
 - (a) coastal processes,*
 - (b) flooding or poor drainage,*
 - (c) dangers arising from potential or actual acid sulphate soils,*
 - (c1) dangers arising from contaminated land,*
 - (c2) geological or soil instability,*
 - (d) bush fire,*
 - (e) aircraft noise at levels of more than 25 (measured according to the Australian Noise Exposure Forecast),*
 - (f) air or water pollution, or airborne pollution, within 400 metres of sewage treatment works,*

- (g) *disposal of septic effluent,*
- (h) *existing offensive or hazardous industries, and*
- (i) *high tension electrical power lines,*

unless the council has made an assessment of the extent of the hazard and included provisions in the plan to minimise adverse impact.

- (3) *In the event of a bush fire hazard being identified for land on which dwellings are proposed to be permitted, the council shall not permit development unless it is satisfied that arrangements where appropriate have been made to:*
 - (a) *Require the creation of a perimeter road or reserve which circumscribes the hazard side of the land intended for that development,*
 - (b) *Require the creation of a fire radiation zone located on the bushland side of the perimeter road,*
 - (c) *Specify minimum building setbacks for buildings that will be erected on allotments adjoining the perimeter road,*
 - (d) *Set standards for the use of fire retardant materials for buildings and building construction, and*
 - (e) *Provide fire trails which link with individual access roads or a through road fire trails which link with individual access roads or a through road.*

The site is known to be affected by flooding. The extent of the flooding impact is deemed to be of minor significance. The planning proposal currently makes no provision for the Bushfire mitigation measures specified in clause 45(3). Detailed studies and consultation with the RFS will be required to determine appropriate measures following a gateway determination.

Detailed investigations into geology, drainage and potential acid sulphate soils will be required also be required. There will be no disposal of septic effluent as the site is expected to be connected to Council reticulated sewerage system.

45A Plan preparation—flood liable land

- (2) *A draft local environmental plan should:*
 - (a) *not alter the zoning of flood liable land the zoning of which is described as special use—flood liable, rural, open space, scenic protection, conservation, environment protection, water catchment or coastal lands protection, or similarly described, to a zone described as residential, business, industrial, special use, village or similarly described, and*
 - (b) *not contain provisions which apply to flood liable land and which:*
 - (i) *permit an intensification of development on that land, or*
 - (ii) *are likely to result in an increase in the need for flood mitigation measures (including emergency measures), infrastructure or services, or*
 - (iii) *permit development to be carried out without development consent, except development for the purpose of agriculture which does not include landfill, drainage canals, fences, buildings or structures in the following places:*
 - *floodways,*
 - *high hazard flood fringe,*
 - *high hazard flood storage areas, as defined in the Floodplain Development Manual, unless justified by a floodplain management plan prepared by the council in accordance with the Floodplain Development Manual*

(3) *A draft local environmental plan should:*

- (a) *Zone land identified in accordance with the principles contained in the Floodplain Development Manual as high hazard flood liable or as floodway so as to reflect its potential for flooding, and*
- (b) *Provide that the erection of new buildings on any such land be restricted.*

Only a small portion of the subject site will be within the 1% AEP Flood Level. Council believes that the nature of the inconsistency is minor, and is consistent with the aims and objectives of the NSW Floodplain development Manual 2005 and the NSW Flood Prone Land Policy.

Division 5 Tall buildings

50 Plan preparation—height controls

Before preparing a draft local environmental plan applying to an urban area, the council should consider the necessity for height controls on buildings and include such controls as it considers appropriate.

Under KLEP 1987, the 2(a) zone will automatically have a height limit of two storeys. Under DKLEP 2012 an amendment to the height of buildings may be required. Further consideration of an appropriate height limit will be required post-gateway.

58 Plan preparation—servicing urban areas

A draft local environmental plan should not permit development for urban purposes unless the council is satisfied that:

- (a) *the proposed development will make the most economic use of existing services,*

No subdivision concept has been proposed, however it is anticipated that the subject land will be connected to existing services and utilities.

- (b) *where the proposed development is adjacent to an existing urban area and that urban area will be substantially increased, the provision of a reticulated water and sewer system will be provided at reasonable cost to each lot,*

It is anticipated that existing reticulated water and sewerage systems can be provided to the subject land without prohibitive costs.

- (c) *the proposed development is located in an area which is consistent with the findings of any urban land release strategy prepared for the local government area or, where no such strategy has been prepared, the proposed development is located in the area to which services can be provided most readily,*

The subject land is identified as an urban release area in Council's Local Growth Management Strategy – Residential Component, and the Mid North Coast Regional Strategy.

- (d) *consideration has been given to the identification of effluent disposal and discharge points,*

Further investigations to identify suitable effluent disposal and discharge points may be required post gateway

- (e) *domestic water catchment areas and water storage areas are not likely to be polluted as a result of the proposed development, and*

The subject land is not in a drinking water catchment or water storage area.

- (f) *consideration has been given to the provision of public transport facilities, pedestrian and cycleway.*

Transport and access considerations are addressed in section 4.3.2

Division 3 Health and Education

61 Plan preparation—health and education facilities

A draft local environmental plan should not zone land for residential purposes on either urban or rural land unless:

(a) the council is satisfied that:

- (i) there is adequate access available from the proposed development to both health and education facilities, and*
- (ii) the proposed development is so located as to make the best use of existing health and education facilities, and*
- (b) where the expected future population is unable to be accommodated by the existing health and educational facilities in the region, the council:*
 - (i) has identified, in a draft local environmental plan, sites for the location of health and education facilities, or*
 - (ii) identifies such sites in a subsequent development control plan.*

The proposed rezoning is not anticipated to significantly impact on the provision of health or education facilities in the area.

65 Plan preparation—provision of community, welfare and child care services

(1) A draft local environmental plan should:

- (a) not zone land for residential purposes (including rural residential) unless the council has made an assessment of the need for additional community and welfare services and is satisfied that the plan contains adequate provisions to enable the provision of those services, and*
- (b) include child care centres as a land use which is permissible with the council's consent in all rural, residential and business zones.*

The proposed rezoning is unlikely to significantly increase the demand for community and welfare services.



Appendix K

Consistency with Section 117 Directions

Direction	Objectives of Direction	When the direction applies	Consistency
1. Employment and Resources			
1.1 Business and Industrial Zones Issued 1 July 2009	- To encourage employment growth in suitable locations; - To protect employment land in business and industrial zones, and - Support the viability of identified strategic centres.	Applies when a council prepares a draft LEP that affects land within an existing or proposed business or industrial zone	Not Applicable. The planning proposal will not affect any existing or future industrial or business zoned land
1.2 Rural Zones Issued 1 July 2009	To protect the agricultural production value of rural land.	Applies when a planning proposal is prepared that affects land within an existing or proposal rural zone (includes alteration of any existing rural zone boundary)	Inconsistent. The planning proposal is inconsistent with the direction as it seeks to change land from a rural to a residential zone. It is considered that the inconsistency is justified as the land is identified within the Kempsey Local Growth Management Strategy – Residential Component and the Mid North Coast Regional Strategy which was prepared by the Department of Planning in 2010. Additionally, the land has limited agricultural potential.
1.3 Mining, Petroleum Production and Extractive Industries Issued 1 July 2009	To ensure that the future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.	Applies when a council prepares a draft LEP that would have the effect of prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance	Consistent Planning Proposal will not prohibit or restrict the mining or potential development of coal, other minerals, petroleum production or obtaining extractive minerals of State or regional significance. The planning proposal will be submitted to the DPI as per the Direction. The DPI will have 40 days in which to make comment.

1.4 Oyster Aquaculture Issued 1 July 2009	To protect Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area from land uses that may result in adverse impacts on water quality and consequently, on the health of oysters and oyster consumers.	Applies to Priority Oyster Aquaculture Areas as identified in the NSW Oyster Industry Sustainable Aquaculture Strategy (2006)	Not Applicable. The subject land is not a priority Oyster Aquaculture Area as identified in the <i>NSW Oyster Industry Sustainable Aquaculture Strategy</i> .
1.5 Rural Lands Issued 1 July 2009	To protect the agricultural production value of rural land and facilitate the orderly and economic development of rural land.	Applies when a council prepares a draft LEP that affects land or changes the minimum lot size within an existing or proposed rural or environment protection zone	Inconsistent. The planning proposal is inconsistent with the direction as it is not consistent with the rural planning principles set out in <i>State Environmental Planning Policy (Rural Lands) 2008</i> . It is considered that the inconsistency is justified as the land is included within the Kempsey local Growth Management Strategy (LGMS) which was approved by the Department of Planning in 2010 as an urban expansion area, and the land has limited agricultural potential.
2. Environment and Heritage			
2.1 Environment Protection Zones Issued 1 July 2009	To protect and conserve environmentally sensitive areas.	This direction applies when a council prepares a draft LEP.	Inconsistent. The planning proposal is inconsistent with the direction as it seeks to rezone land which is currently zoned for scenic protection for residential use. It is considered that the inconsistency is justified as the land is included within the Kempsey local Growth Management Strategy (LGMS) which was approved by the Department of Planning in 2010. Further detailed studies will need to be undertaken to determine the impact of the rezoning on the scenic qualities of the site.
2.2 Coastal protection Issued 1 July 2009	To implement the principles of the NSW Coastal Policy.	This direction applies when a council prepares a draft LEP that applies to land in the coastal zone.	Consistent. The proposal is consistent as the land is not visually prominent or affected by Coastal processes.
2.3 Heritage Conservation Issued 1 July 2009	To conserve items, areas, objects and places of environmental heritage significance and indigenous heritage	This direction applies when a council prepares a draft LEP	Consistent. Should the assessment reveal the existence of Aboriginal heritage on the site, the required measures to ensure their protection will be implemented.

	significance.		
2.4 Recreation Vehicle Areas Issued 1 July 2009	To protect sensitive land or land with Significant conservation values from adverse impacts from recreation vehicles.	This direction applies when a council prepares a draft LEP.	Consistent. Does not relate to the current planning proposal
3. Housing, Infrastructure and Urban Development			
3.1 Residential Zones Issued 1 July 2009	- To encourage a variety and choice of housing types to provide for existing and future housing needs - To make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and - To minimise the impact of residential development on the environment and resource lands.	Applies when a planning proposal affects land within an existing or proposed residential zone (including the alteration of any existing zone boundary) or any other zone in which significant residential development is permitted or proposed to be permitted.	Consistent. The land can be service by water and sewerage, the details of which will need to be determined. The planning proposal will contain a requirement that residential development will not be permitted until land is adequately serviced, or arrangements satisfactory to the Council or other approval authority have been made to service it.
3.2 Caravan Parks and Manufactured Home Estates Issued 1 July 2009	- To provide for a variety of housing - types and opportunities for caravan parks and manufactured home estates	Applies when a draft LEP is prepared. Does not apply to Crown land reserved or dedicated for any purposes under the Crown Lands Act 1989 (except Crown land reserved for accommodation purposes) or land dedicated or	Consistent The Planning Proposal does not propose to permit a Caravan Park or a Manufactured Home Estate.

		reserved under the NP&W Act 1974.	
3.3 Home Occupations Issued 1 July 2009	To encourage the carrying out of low-impact small businesses in dwelling houses.	This direction applies when a council prepares a draft LEP.	Consistent The Planning proposal will not restrict the carrying out of low-impact small businesses in dwelling houses as no change to the permissibility of home occupations is proposed.
3.4 Integrating Land Use and Transport Issued 1 July 2009	- To ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts: - improve access to housing, jobs and services by walking, cycling and public transport, - increase transport choice and reduce travel demand and reducing dependence on cars, - reduce travel demand including distances travelled, especially by car, - support the efficient and viable operation of public transport services, and - Provide for the efficient movement of freight.	Applies to draft LEP's that create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.	Consistent. The details of these principles will be considered in the planning proposal. However if there are inconsistencies, it should be considered minor significance having regard to the restricted scale of the development.
3.5 Development Near	To ensure the effective and safe	Applies to a planning proposal that will create,	Consistent

Licensed Aerodromes Issued 1 July 2009	operation of aerodromes - To ensure that the operation of aerodromes is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity. - To ensure development for residential purposes or human occupation incorporates appropriate mitigation measures	alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome.	Subject land is not in the vicinity of a licensed aerodrome.
3.6 Shooting Ranges Issued 16 February 2011	To maintain appropriate levels of public safety and amenity and reduce land use conflict when rezoning land adjacent to an existing shooting range,	Applies to a planning proposal that will affect, create, alter or remove a zone or a provision relating to land adjacent to and/ or adjoining an existing shooting range.	Consistent The Planning Proposal is not in the vicinity of a shooting range.
4. Hazard and Risk			
4.1 Acid Sulfate Soils Issued 1 July 2009	To avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.	Applies to planning proposal on land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps.	Consistent An Acid Sulfate Soils Assessment will be undertaken as part of the other studies required for the planning proposal.
4. 2 Mine Subsidence	To prevent damage to life, property and	Applies to a draft LEP on land within a mine	Does not apply

and Unstable Land Issued 1 July 2009	the environment on land identified as unstable or potentially subject to mine subsidence.	subsidence district or that has been identified as unstable in a study, strategy or other assessment	The subject land is not within a mine subsidence district and has not been identified as being unstable by a study, strategy or other assessment.
4.3 Flood Prone Land Issued 1 July 2009	- To ensure that development of flood prone land is consistent with the <i>NSW Government's Flood Prone Land Policy</i> and the principles of the <i>Floodplain Development Manual 2005</i>; and - To ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.	Applies to a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.	Inconsistent. The planning proposal is inconsistent with the Direction as it seeks to rezone flood prone land rural to residential purposes. The inconsistency is considered to be of minor significance. Given the proposed changes to the access by the landowners Council will seek the Director-Generals support for the position that the provisions of the planning proposal is in accordance with S117 Direction 4.3(9)(b) of "minor significance" and the requirement to prepare a Flood Plain Risk Management Plan is not required in the circumstances. The following points support the Council's case for seeking the Director General's support in the matter: 1. The proposal is compliant with the <i>NSW Flood Risk Management Guide 2010</i> incorporating sea level rise benchmarks in flood risk assessments as the land to be developed will be above 4m AHD, above 1.5m of the maximum historic height of the entrance berm and is not located within tidal waters. 2. The proposal is compliant with the objectives of the <i>NSW Flood Prone Land Policy</i> and associated <i>Flood Plain Development Manual</i> which is to reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone property, and to reduce private and public losses resulting from floods. In this instance the prime objective has been accomplished by moving the zone boundary to higher ground (from RL 1.3m AHD to RL 3.21m AHD) thereby significantly reducing the exposure of any future development on the identified land parcel. The amended proposal will ensure that future development will be located at or above the assessed flood planning level (incorporating sea level rise) for this locality with the option of filling above the residential flood planning level (1% AEP Flood Level) to a point one metre below the residential flood planning level. 3. The proposal is consistent with Council's <i>Flood Management Strategy Policy</i> in that at least 500m² of each proposed lot will be above the 1% AEP flood level. 4. The 500m² identified in the subdivision concept is to be utilised for the erection of buildings on the site, the maximum depth of filling is not to exceed 1m and the depth and velocity of flowing waters during a 1% AEP flood event is equal to or less than one (1); and 5. The proposed access road that links crescent Head Village with the subject land can be provided to the 1% AEP flood level in order to maintain access to the existing village infrastructure during a flood event.

4.4 Planning for Bushfire Protection Issued 1 July 2009	To protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas and encourage sound management of bush fire prone areas.	Applies when Council prepares draft LEP that affects, or is in proximity to land mapped as bushfire prone land.	Consistent It is considered that the planning proposal will not be inconsistent with this direction. Further detailed investigation s may be required.
5. Regional planning			
5.1 Implementation of Regional Strategies Issued 1 July 2009	To give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.	This direction applies when a council prepares a draft Local Environmental Plan (LEP).	Consistent. The area of land is identified as an urban land release area in the Mid north Coast regional Strategy. The planning proposal also includes some additional land outside this area, however the extent of the inconsistency is deemed to be minor.
5.2 Sydney Drinking Water Catchments Issued 3 March 2011	The objective of this direction is to protect water quality in the hydrological catchment.	Applies to; Blue Mountains, Campbelltown, Cooma Monaro, Eurobodalla, Goulburn, Mulwaree, Kiama. Lithgow, Oberon, Palerang, Shoalhaven, Sutherland, Wingecarribee, Wollondilly, Wollongong.	Not applicable. The subject land is not in a Sydney Drinking water catchment
5.3 Farmland of State and Regional Significance on the NSW Far North Coast Issued 1 July 2009	To protect, provide certainty and reduce land use conflict associated with agricultural land	Applies to: Ballina, Byron Shire Council, Kyogle, Lismore City Council, Richmond and Tweed.	Not applicable. The subject land is not located on the Far north Coast.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast Issued 29 November 2009	To manage commercial and retail development along the Pacific Highway	This direction applies when a council prepares a draft LEP for land in the vicinity of the existing and/or proposed alignment of the Pacific Highway	Not Applicable. The subject land is not in the vicinity of the Pacific highway

5.8 Second Sydney Airport: Badgerys Creek Issued 1 July 2009	To avoid incompatible development in the vicinity of any future second Sydney Airport at Badgerys Creek.	Applies to land shown within the boundaries of the proposed Badgerys Creek airport site.	Not Applicable. Subject land not located near Badgerys Creek
6. Local Plan Making			
6.1 Approval and Referral Requirements Issued 1 July 2009	To ensure that LEP provisions encourage the efficient and appropriate assessment of development.	This direction applies when a council prepares a draft LEP.	Consistent. The planning proposal does not introduce any additional requirements for concurrence with other Government agencies.
6.2 Reserving of Land for Public Purposes Issued 1 July 2009	To facilitate the provision of public services and facilities by reserving land for public purposes and the removal of reservations of land for public purposes where the land is no longer required for acquisition.	This direction applies when a council prepares a draft LEP.	Consistent. The planning proposal does not create or remove any land dedicated for a public purpose.
6.3 Site Specific Provisions Issued 1 July 2009	To discourage unnecessarily restrictive site specific planning controls.	This direction applies when a council prepares a draft LEP.	Consistent. The planning proposal does not introduce unnecessarily restrictive site specific planning controls.
7. Metropolitan planning			
7.1 Implementation of the Metropolitan Plan for Sydney 2036 Issued 1 February 2011	To give legal effect to the vision, transport and land use strategy, policies, outcomes and actions contained in the Metropolitan Plan for Sydney 2036.	Does not apply to the Kempsey local government area.	Not Applicable. The subject land is not affected by the Metropolitan Plan for Sydney 2036.