

Rezone land at Crescent Head for residential use

Proposal Title : **Rezone land at Crescent Head for residential use**

Proposal Summary : **The planning proposal intends to rezone land for residential use at Crescent Head. The land is currently zoned part 1(c) Rural (Small Holdings), part 7(d) Scenic Protection and part 1(a1) Rural. The planning proposal will amend either the existing Kempsey LEP 1987 or the new Kempsey Standard Instrument LEP, whichever is in operation at the time of finalisation of the planning proposal.**

PP Number : **PP_2013_KEMPS_001_00** Dop File No : **10/10988**

Proposal Details

Date Planning Proposal Received :	24-Apr-2013	LGA covered :	Kempsey
Region :	Northern	RPA :	Kempsey Shire Council
State Electorate :	OXLEY	Section of the Act :	55 - Planning Proposal
LEP Type :	Spot Rezoning		

Location Details

Street :	Crescent Head Road		
Suburb :	Crescent Head	City :	Crescent Head
		Postcode :	2440
Land Parcel :	Lots 704-705 DP 749885 and Part Lot 707 DP 1032859		

DoP Planning Officer Contact Details

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RPA Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Mid North Coast Regional Strategy	Consistent with Strategy :	No

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MDP Number :		Date of Release :	
Area of Release (Ha)		Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	80	No. of Dwellings (where relevant) :	111
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with :	Yes		
If No, comment :	The Department of Planning Code of Practice in relation to communication and meetings with lobbyists has been complied with to the best of the Region's knowledge.		
Have there been meetings or communications with registered lobbyists? :	No		
If Yes, comment :	Northern Region has not met any lobbyists in relation to this proposal, nor has Northern Region been advised of any meeting between other Departmental officers and lobbyists concerning this proposal.		
Supporting notes			
Internal Supporting Notes :	The proposal extends beyond the area designated for future growth under the Mid North Coast Regional Strategy - this extension needs to be justified during the planning process		
	NOTE: Council has requested (10 May 2013) that this proposal be delayed from submission to the Panel until further information can be provided to the Department in relation to flooding issues. Additional information was provided by Council on 17 May 2013.		
External Supporting Notes :	A similar planning proposal for this land was commenced under the former Part 3 of the EP & A Act, but was discontinued in 2011 pending reconsideration of study requirements for the site.		

Adequacy Assessment

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

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

Comment : **The objective and intended outcomes of the planning proposal are adequately expressed for the proposed amendment to either the existing Kempsey LEP 1987 or the new Standard Instrument Kempsey LEP, whichever is in operation when the proposal is finalised.**

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

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

Comment : **The planning proposal provides a clear explanation of the intended provisions to achieve the objectives and intended outcomes.**

The proposal involves changes to the zoning, minimum lot size and height of buildings provisions for the land. Should part of the land currently zoned 7(d) Scenic Protection be rezoned, amendment to the relevant Scenic Protection Map within the draft SI Kempsey LEP will also be required.

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Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.5 Rural Lands

2.1 Environment Protection Zones

2.3 Heritage Conservation

3.1 Residential Zones

3.3 Home Occupations

3.4 Integrating Land Use and Transport

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

6.1 Approval and Referral Requirements

6.3 Site Specific Provisions

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

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 44—Koala Habitat Protection

SEPP (Rural Lands) 2008

North Coast REP 1988

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

The rezoning of the proposed site for residential purposes is partly consistent with Council's approved residential local growth management strategy and partly consistent with the Mid North Coast Regional Strategy.

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

Expansion of the proposal beyond approved strategy area is yet to be fully justified. Further studies proposed will enable proper consideration of the merits or otherwise of extending the proposed residential zone to the area outside the approved strategy. Further approval of inconsistencies with S117 Directions will be required following the completion of the studies.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

The mapping adequately shows the subject land and the proposed zoning. Mapping that complies with the Department's 'Standard Technical Requirements for LEP Maps' will be provided for the making of the LEP.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The planning proposal has proposed a public exhibition period for community consultation. The Gateway will determine the timeframe required for exhibition. Community consultation will be in accordance with the Department's 'A Guide to Preparing an LEP'. An exhibition period of 28 days is considered to be appropriate in this case.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

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Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? Yes

If No, comment :

The planning proposal satisfies the adequacy criteria by:

1. Providing appropriate objectives and intended outcomes;
2. Providing a suitable explanation of the provisions proposed for the LEP to achieve the outcomes;
3. Providing an adequate justification for the proposal;
4. Outlining a proposed community consultation program;
5. Providing a project timeline; and
6. Completing the evaluation criteria for the delegation of plan making functions.

A project timeline of 16 months is provided by Council. Due to the level of investigation required, a timeframe of 18 months is considered to be appropriate.

Council has requested the delegation of plan making functions. Delegation of plan making functions is not considered to be appropriate in this case as Council's record of completion of planning proposals on time is not satisfactory. This planning proposal has previously been discontinued by the Department due to ongoing delays with its completion. Further studies to support this proposal are yet to be undertaken. Inconsistencies with the Mid North Coast Regional Strategy and s117 Directions are yet to be approved.

Proposal Assessment

Principal LEP:

Due Date : June 2013

Comments in relation to Principal LEP :

The Comprehensive Kempsey LEP is currently under preparation under the SI LEP program. It has recently been publicly exhibited. The LEP is expected to be submitted to the Department under the former s68 of the Act within the next two months. The LEP should be finalised by December 2013.

Assessment Criteria

Need for planning proposal :

The planning proposal was originally put forward as a result of the Kempsey Land Release Strategy 1997, which was approved by the Department. The majority of the site was included in this approved strategy for investigation for residential use. Council completed its Local Growth Management Strategy Residential Component (LGMS) in 2011, which was approved by the Department and replaced the earlier 1997 Strategy. Only part of the subject site (that part currently zoned 1(c) Rural (Small Holdings)) is included in the approved strategy. The portion zoned 7(d) Scenic Protection and 1(a1) Rural was excluded from the approved LGMS. The approved area within the LGMS reflects the area included in the Mid North Coast Regional Strategy (MNCRS) growth boundary for potential future urban use.

The planning proposal has been underway in various forms since 1997. In November 2010 the rezoning proposal (known then as draft Amendment No. 59) was converted to a planning proposal with a 12 month timeframe under the new Part 3 provisions of the Act, with all studies yet to be completed. The planning proposal was discontinued by the Department in November 2011 after it became evident that the planning proposal could not be completed within a satisfactory timeframe. None of the required studies had been completed, with many not having been commenced. Council was advised at that time to resubmit a revised planning proposal when studies had been completed, or substantially commenced, to allow completion of the rezoning process within 24 months. Although the required studies have not progressed since the Department's advice in 2011, Council believes that the studies can now be completed within a reasonable timeframe and has resubmitted the planning proposal.

The proposed change to the LEP is the most appropriate means of achieving the desired

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outcome for the proposal. The community benefit of the proposal stems from the fact that the land would provide for residential development on relatively unconstrained land close to Crescent Head. Crescent Head has a limited supply of existing zoned areas which can accommodate residential development, with only scattered vacant lots available throughout the village. New housing stock is required to meet demand in the area. Although the site is not adjacent to other land zoned or developed for urban uses, the site is the only area identified in the LGMS and MNCRS for future urban release in Crescent Head and is considered by Council to be the only viable location in the area for future land release. The land is considered by Council to be largely suitable for residential uses.

Additional housing that will occur from the rezoning proposal will contribute to Council's housing targets as set by the MNCRS and provide for housing in an area experiencing residential demand.

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Consistency with strategic planning framework :

As mentioned above, the land is partly included within Council's approved LGMS and the MNCRS growth area.

SEPPs

Several SEPPs were raised as being relevant to the proposal, including SEPP 44 Koala Habitat Protection and SEPP (Rural Lands) 2008. The North Coast REP is a deemed SEPP and is also relevant to the proposal.

SEPP 44

This SEPP potentially applies to the land as it is more than 1 hectare in size and is partly forested. Further studies relating to the natural values of the land will include a koala habitat assessment. Any proposed development that affects identified koala habitat will need to be consistent with Council's approved Comprehensive Koala Plan of Management. The requirements of the SEPP can therefore be met by the proposal.

SEPP (Rural Lands) 2008

The planning proposal is considered to be inconsistent with SEPP (Rural Lands) 2008. The planning proposal does not demonstrate consistency with the rural planning principles and rural subdivision principles set out within the SEPP. These principles have not been adequately addressed within the planning proposal. Further studies proposed to be undertaken to justify the rezoning of the rural land will determine whether consistency with the SEPP can be met.

North Coast REP

The proposal is currently inconsistent with the North Coast Regional Environmental Plan (NCREP), which is a deemed SEPP. The inconsistency arises from the fact that part of the land is not identified within an approved strategy and is constrained by certain hazards to development, as detailed below.

Clause 38(2) states that a planning proposal to rezone land should be generally consistent with Council's approved strategy. Part of the land (roughly half) is not included within Council's approved strategy. Further studies are required to investigate the development potential of the land and to justify its inclusion in the proposed residential zone.

Clause 45 states that rezoning of land for urban purposes should not occur on land subject to certain hazards unless an assessment has been made by Council of the extent of the hazard and the proposal includes provisions to minimise adverse impacts. Flooding, acid sulfate soils and bush fire are listed as relevant hazards. These issues all apply to the site to varying degrees. Further studies or consultation are proposed by Council to assess the extent of these hazards and refine the proposal accordingly.

Clause 45A deals with the rezoning of flood prone land in more detail. As per Clause 45 above, further investigation and consultation regarding flooding issues is proposed to assess the extent of land affected by flooding and any related impacts and to refine the proposal accordingly.

The inconsistencies with the NCREP are considered to be able to be resolved following consideration of the various studies proposed.

S117 Directions

Several S117 Directions apply to the proposal, as detailed below.

Inconsistencies:

The planning proposal is currently inconsistent with S117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.3 Heritage Conservation, 3.1 Residential Zones, 3.4 Integrating Land Use and Transport, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection and 5.1 Implementation of Regional Strategies.

1.2 Rural Zones

The planning proposal is not consistent with this direction as it is proposed to rezone land

from a rural zone to a residential zone. The rezoning is not strictly in accordance with an approved strategy or draft LGMS. The site is only partially within the MNCRS growth area boundary. While the MNCRS allows for minor adjustment to the growth area boundary in defined circumstances, the merits of such an adjustment have not yet been demonstrated. Studies are proposed to determine whether extension of the proposed residential zone beyond the area identified within the strategies is justified. The inconsistency of the proposal with the Direction is therefore not yet considered to be justified, and will need to be reconsidered once studies are complete.

1.5 Rural Lands

The planning proposal is not consistent with this direction as it is proposed to rezone land from a rural zone to a residential zone. The inconsistencies with the rural planning and subdivision principles were explained earlier in relation to SEPP (Rural Lands) 2008. The inconsistency of the proposal with the Direction is therefore not yet considered to be justified, and will need to be reconsidered once studies are complete.

2.1 Environment Protection Zones

The planning proposal involves the rezoning of land within an environmental protection zone (scenic protection) to a residential zone. The purpose of the current zoning is to protect the scenic qualities of the land. A visual/scenic assessment is proposed to be undertaken to determine the scenic importance of the land. The portion of the site to which this Direction applies is not included in Council's approved LGMS or the MNCRS. The change in zoning and subsequent development is not considered to be of minor significance. The inconsistency with the Direction is therefore not yet considered justified, and will need to be reconsidered once studies are complete.

2.3 Heritage Conservation

This Direction applies to the proposal as land is proposed for rezoning. An assessment is yet to be undertaken to confirm whether the site has (archaeological) heritage value. The planning proposal intends to apply measures to protect any heritage values that are identified, and consultation with OEH, the local Aboriginal community and the relevant LALC will be required. The planning proposal is therefore considered to be capable of being consistent with this Direction and its current inconsistency is considered to be justified as of minor significance.

3.1 Residential Zones

The planning proposal is inconsistent with this Direction, as land is proposed to be rezoned for residential use on the urban fringe away from existing services. Part of the land is within an approved strategy and the MNCRS growth area, thus the inconsistency in this regard is justified. Further studies will be required to justify extension of the proposed residential zone into land that is not within the approved strategies. However, given that the extra land will be developed in conjunction with the approved strategy land, the inconsistency in relation to this Direction is considered to be justified as of minor significance.

3.4 Integrating Land Use and Transport

The planning proposal is potentially inconsistent with the Direction due to the location of the site away from the existing village. Insufficient detail is provided to determine at this stage whether the proposal is inconsistent with the Direction. Further studies are proposed in relation to traffic and transport issues. The proposal will need to demonstrate that it is consistent with the relevant aims, objectives and principles within the documents referred to in the Direction: "Improving Transport Choice - Guidelines for planning and development" and "The Right Place for Business and Services - Planning Policy". These documents encourage planning decisions which reduce the need for private transport and promote options for walking and cycling. Council argues that the land, although not adjacent to the village, is close enough (within 1 km) to enable compliance with the Direction. Land between the Village and the site is flood liable and heavily vegetated and is unlikely to be ever developed. Options for cycleways and footpaths to reduce car dependence will be investigated. Part of the land is included within an approved strategy. The inconsistency is therefore considered to be justified as of minor significance.

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4.1 Acid Sulfate Soils

This Direction may apply as Council has identified the site as having potential acid sulfate soils. This issue will be investigated as part of the studies proposed to be undertaken. In any case there are acid sulfate soil management provisions within the principal Kempsey LEP and any inconsistency with this Direction is considered to be justified as of minor significance.

4.3 Flood Prone Land

This Direction applies as the proposal intends to zone a small portion of flood prone land for residential use. The portion of the site affected by flooding is considered to be minor, with the proposal largely sitting on flood free land. The planning proposal intends that development will not occur on the flood prone portion of the site, and that the access road will not be flood liable. Accurate mapping for the 1:100 year flood level is not currently available, but Council engineers have calculated an estimate of the level at the site. Further consideration of this issue is required in consultation with OEH to determine the accuracy of the estimated level. This further investigation and consultation will enable refinement of the area proposed for rezoning and the location of the access road to ensure development will not occur on flood prone land. Given the uncertainty regarding the flood level is minor and the majority of the site is clearly not flood affected, the inconsistency with the Direction is considered to be justified as of minor significance.

4.4 Planning for Bushfire Protection

The NSW Rural Fire Service (RFS) has not yet been consulted in relation to the planning proposal. The planning proposal is therefore currently inconsistent with the Direction. Consultation with the RFS following the Gateway determination is proposed. The inconsistency with this Direction is resolved once the required consultation has occurred.

5.1 Implementation of Regional Strategies

The planning proposal is not consistent with this Direction as part of the proposed site is situated outside the MNCRS growth area boundary. The MNCRS provides an avenue to consider an amendment to the growth area boundary where it is demonstrated through the LGMS or rezoning process that a reasonable adjustment to a growth area boundary is desirable and is consistent with the Regional Strategy. Studies are proposed to determine whether extension of the proposed residential zone beyond the area identified within the strategies is justified. The inconsistency of the proposal with the Direction is therefore not yet considered to be justified, and will need to be reconsidered once studies are complete.

The proposal is considered consistent with all other relevant s117 Directions.

It should be noted that, although Council identifies the land as being within the Coastal Zone, this is incorrect. S117 Direction 2.2 Coastal Protection and SEPP 71 Coastal Protection therefore do not apply.

Environmental social
economic impacts :

The land is potentially constrained or affected by various environmental issues, including flooding, native vegetation, scenic value, habitat value, acid sulfate soils, bush fire and stormwater runoff to a nearby SEPP 14 coastal wetland. The land is adjacent to National Parks estate to the south. All of these issues require further investigation or consultation with relevant agencies in order to determine the development potential of the land and establish justification for such development.

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 require detailed investigation in order to justify its inclusion within an urban zone. Any measures to preserve visually important stands of vegetation will need to be determined by the outcomes of the study.

The site is yet to be assessed for heritage values. The outcomes and recommendations of the proposed heritage assessment and consultation with the local Aboriginal community will need to be reflected in the final proposal.

The proposal is not adjacent to existing urban development and is not connected to any services. Council indicates that existing reticulated water and sewerage systems can be

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provided to the site, although further assessment is required to determine whether existing capacity is sufficient to service the proposed new development. The site will require connection to other essential services, including power and telecommunications.

The rezoning proposal potentially has small economic benefits due to the job opportunities that will arise during construction of the development and the flow-on effect of a larger resident base within the local community as an increase in revenue to the local businesses and wider area.

Further consultation with relevant agencies is required regarding the provision of social, health, educational and emergency services to an increased population of Crescent Head and the capacity of existing services to cope with the proposed increase.

Council anticipates the proposal will result in positive economic and social effects. Council has undertaken a net community benefit test and is satisfied that the proposal will be of net community benefit.

Assessment Process

Proposal type :	Inconsistent	Community Consultation Period :	28 Days
Timeframe to make LEP :	24 Month	Delegation :	DDG
Public Authority Consultation - 56(2)(d) :	Essential Energy Ambulance Service of NSW Catchment Management Authority - Northern Rivers Department of Family and Community Services Department of Education and Communities Office of Environment and Heritage Office of Environment and Heritage - NSW National Parks and Wildlife Service Fire and Rescue NSW Department of Health and Ageing NSW Police Force NSW Rural Fire Service Origin Energy Transport for NSW - Roads and Maritime Services State Emergency Service Telstra Other		

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons : **Other consultation required:**
- Local Aboriginal Land Council
- Local Aboriginal Community

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

Flora

Fauna

Heritage

Bushfire

Other - provide details below

If Other, provide reasons :

The following specialist studies are identified by Council as being required to investigate the development

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potential of the land and the potential environmental effects of the proposal:

- ☐ Flora and Fauna
- ☐ Water quality and stormwater management
- ☐ Soils, groundwater and urban capability
- ☐ Bushfire
- ☐ Archaeological/Heritage Assessment
- ☐ Visual/scenic quality
- ☐ Traffic and Transport
- ☐ Infrastructure and servicing capability and provision
- ☐ Flood-free development footprint including access from the site to Crescent Head

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Cover_letter.pdf	Proposal Covering Letter	Yes
Planning_Proposal_May2013.pdf	Proposal	Yes
Evaluation_criteria_for_delegation_of_plan_making_fun ctions.pdf	Proposal	No
Additional_flooding_information.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

- S.117 directions:
- 1.2 Rural Zones
 - 1.5 Rural Lands
 - 2.1 Environment Protection Zones
 - 2.3 Heritage Conservation
 - 3.1 Residential Zones
 - 3.3 Home Occupations
 - 3.4 Integrating Land Use and Transport
 - 4.1 Acid Sulfate Soils
 - 4.3 Flood Prone Land
 - 4.4 Planning for Bushfire Protection
 - 5.1 Implementation of Regional Strategies
 - 6.1 Approval and Referral Requirements
 - 6.3 Site Specific Provisions

Additional Information : **It is recommended that:**

- 1). The planning proposal is supported with conditions;
- 2). The planning proposal is to be exhibited for a period of 28 days;
- 3). The planning proposal should be completed within 18 months;
- 4). The following studies be required to be undertaken prior to exhibition:
 - ☐ Flora and Fauna
 - ☐ Water quality and stormwater management
 - ☐ Soils, groundwater and urban capability
 - ☐ Bushfire
 - ☐ Archaeological/Heritage Assessment
 - ☐ Visual/scenic quality
 - ☐ Traffic and Transport
 - ☐ Infrastructure and servicing capability and provision

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☐ Flood-free development footprint including access from the site to Crescent Head

5). The Director-General (or an officer of the Department nominated by the Director-General) agree that the inconsistencies with s117 Directions 1.2, 1.5, 2.1, 4.4 and 5.1 will need to be justified after the completion of the required studies or consultations;

6). The Director-General (or an officer of the Department nominated by the Director-General) agree that the inconsistencies with s117 Directions 2.3, 3.1, 3.4, 4.3 and 4.1 are justified; while all other S117 directions are consistent with the planning proposal;

7). Consultation be required with the following agencies and/or organisations:

- ☐ Essential Energy
- ☐ Ambulance Service of NSW
- ☐ Catchment Management Authority - Northern Rivers
- ☐ Department of Family and Community Services
- ☐ Department of Education and Communities
- ☐ Office of Environment and Heritage
- ☐ Office of Environment and Heritage - NSW National Parks and Wildlife Service
- ☐ Fire and Rescue NSW
- ☐ Department of Health and Ageing
- ☐ NSW Police Force
- ☐ NSW Rural Fire Service
- ☐ Origin Energy
- ☐ Transport for NSW - Roads and Maritime Services
- ☐ State Emergency Service
- ☐ Telstra
- ☐ Local Aboriginal Land Council
- ☐ Local Aboriginal Community

8). An authorisation to exercise delegation to make the plan not be issued to the RPA for this planning proposal.

Supporting Reasons :

The planning proposal represents a continuance of a previous planning process. The proposal has a long history of strategic planning which supports its continued consideration despite the number of issues requiring further investigation and resolution.

The proposal is largely consistent with relevant strategies and is potentially capable of being consistent with relevant State policies subject to further studies.

It is recommended that authorisation to exercise delegation to make the plan not be issued to the RPA for this planning proposal, as the RPA's past record in completing planning proposals within the timeframe given is not satisfactory. This planning proposal has previously been discontinued by the Department due to ongoing delays with its completion and several further studies are yet to be undertaken.

Signature:



Printed Name:

CIREG YEATES

Date:

17/05/2013

