

PLANNING PROPOSAL

REZONING
LOT 7 DP 255922
145 OLD STATION ROAD
VERGES CREEK EAST KEMPSEY

M Thompson & S Kennett

December 2016
(amended March 2017)



CONTENTS

1.	INTRODUCTION	1
2.	SUBJECT SITE	1
3.	PLANNING PROPOSAL.....	4
3.1	PART 1: Objectives or Intended Outcomes	4
3.2	PART 2: Explanation of Provisions	4
3.3	PART 3: Justification.....	5
	Section A: Need for the Planning Proposal	5
3.3.1	Is the planning proposal a result of any strategic study or report?.....	5
	Section B: Relationship to Strategic Planning Framework	6
3.3.2	Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?	6
3.3.3	Is the planning proposal consistent with a council's local strategy or other local strategic plan?	7
	Flood prone land on fringes	7
	Potential noise from Pacific Highway	8
	Access.....	9
	Road network capacity.....	10
	Acid Sulphate Soils.....	10
	Flooding.....	10
	Bushfire	10
	Cultural Heritage.....	10
	Unknown Koala Habitat.....	10
	Onsite Waste Water Management.....	10
	Stormwater	10
	Infrastructure.....	11
	Potential for conflict with adjoining agricultural uses	11
	Farmland Mapping	11
3.3.4	Is the planning proposal the best means of achieving the objectives or intended outcomes?	14



3.3.5 Is the planning proposal consistent with council’s local strategy or other local strategic plans?	15
3.3.6 Is the planning proposal consistent with applicable State Environmental Planning Policies?	15
3.3.7 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?	15
3.3.8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?	15
3.3.9 Has the planning proposal adequately addressed any social and economic effects?	16
3.3.10 Is there adequate public infrastructure for the planning proposal?	16
3.3.11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?	16
3.4 Part 4: Mapping	17
3.4.1 The land subject to the planning proposal	17
3.4.2 Current land use zone	18
3.4.3 Current development standards	18
3.4.4 Suggested alternative zone(s)	19
3.4.5 Suggested alternative minimum lot size – Y1 1ha	19
3.5 Part 5: Community Consultation	20
3.6 Part 6: Project Timeline	20



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Geraldine Haigh

GEM Planning Projects Pty Ltd

Date: ...29 Mar 2017..... Ref: 0054 THK



1. INTRODUCTION

Proposal:	Rezone land from RU1 Primary Production to R5 Large Lot Residential
Property Details:	145 Old Station Road, Verges Creek East Kempsey Lot 7 DP 255922 46.55ha
Applicant:	M Thompson & S Kennett

2. SUBJECT SITE

The subject land is located at 145 Old Station Road, Verges Creek East Kempsey, approximately 3 km north east of the Kempsey CBD. The area is characterized by rural and rural residential holdings.

This planning proposal is consistent with the Kempsey Shire Rural Residential Land Release Strategy (dated December 2014) which identifies this portion of land for potential rural residential land supply.

The subject land has a total area of 46.55ha with sealed road frontage to Old Station Road. There is an existing dwelling and ancillary farm structures, dams and multiple sheds. The land is used for cattle grazing.

The site is bordered by drainage lines associated with Pola Creek and rises to the centre along a north south low ridge and rolls off gently to the west, north and east.





Figure 1 Site Plan



Figure 2 Aerial of Planning Proposal Site

Pursuant to the provisions of Kempsey Local Environmental Plan 2013 the subject land is presently zoned RU1 Primary Production. A Planning Proposal is necessary to rezone the land to R5 Large Lot Residential in accordance with the adopted Rural Residential Land Release Strategy.

The rezoning would facilitate subdivision of the land, potentially into approximately 36 x1ha allotments each with flood free area for a residence. A concept plan demonstrating the intended outcome for the subject land is provided at ***Appendix A***.



3. PLANNING PROPOSAL

3.1 PART 1: Objectives or Intended Outcomes

To rezone land at Verges Creek East Kempsey for Rural Residential purposes.

The intended outcome is large lot residential subdivision utilising the flood free areas of the land for dwelling sites, retention of scattered trees and ensuring appropriate stormwater and water quality controls

3.2 PART 2: Explanation of Provisions

The desired future use of the site would be best served by the application of the R5 Large Lot Residential zone to Lot 7 DP 255922, being No. 145 Old Station Road, Verges Creek East Kempsey.

An amendment to the Kempsey Local Environmental Plan 2013 is required to achieve the Large Lot Residential zoning over the identified portion of land.

The R5 Large Lot Residential zone is expressed in the Kempsey Local Environmental Plan 2013 as follows:

Zone R5 Large Lot Residential

1 Objectives of zone

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

2 Permitted without consent

Environmental protection works; Home-based child care; Home occupations.

3 Permitted with consent

Dual occupancies (attached); Dwelling houses; Extensive agriculture; Farm stay accommodation; Group homes; Home industries; Horticulture; Neighbourhood shops; Roads; Roadside stalls; Viticulture; Any other development not specified in item 2 or 4.

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Boat building and repair facilities; Camping grounds; Car parks; Caravan parks; Commercial premises; Correctional centres; Crematoria; Dairies (pasture-based); Depots; Eco-tourist facilities; Emergency services facilities; Entertainment facilities;



Exhibition homes; Exhibition villages; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Helipads; Highway service centres; Industrial retail outlets; Industrial training facilities; Industries; Information and education facilities; Mortuaries; Passenger transport facilities; Public administration buildings; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Residential accommodation; Restricted premises; Rural industries; Service stations; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Warehouse or distribution centres; Waste or resource management facilities; Wholesale supplies

The proposed zone provisions would enable the owners of the land to proceed with their vision for the land, subject to Kempsey Council's consideration of a suitable development application for subdivision.

The proposed zone is consistent with the zoning of land immediately to the south and south east along Verges Creek, East Kempsey. The LEP maps relating to the land south & south east of this site indicates a minimum lot size of 1ha and the same control is to be applied to the subject site by way of an amendment to the Lot Size Map – Sheet 11.

3.3 PART 3: Justification

The Planning Proposal seeks to rezone land at Verges Creek, East Kempsey to allow large lot residential development, consistent with the character of the area immediately south and south east of the site.

The outermost fringes of the site are subject to flooding as illustrated by the Survey Plan in *Figure 3* above. The western edge of the land is mapped under the Regional Farmland Mapping and this is addressed in detail elsewhere in the Planning Proposal.

Identified ecological constraints are manageable and the land is already serviced by reticulated water supply, sealed public road frontage, electricity and telecommunication services. The proposal will provide additional housing stock for the area.

The land proposed for future dwelling sites is above the flood level and each lot has suitable area for building envelopes having regard to bushfire asset protection zones, protection of identified koala food trees and on site waste water disposal.

Section A: Need for the Planning Proposal

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

Yes - The Planning Proposal is generally consistent with the Kempsey Local Growth Management Strategy (LGMS) Rural Residential Component. It includes a narrow fringe of additional land which is discussed below.



Section B: Relationship to Strategic Planning Framework

3.3.2 Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?

a. Does the proposal have strategic merit and

- *Is consistent with a relevant local strategy endorsed by the Director –General or*
- *Is consistent with the relevant regional strategy or Metropolitan Plan or*
- *Can it otherwise demonstrate strategic merit, giving consideration to the relevant section 117 Directions applying to the site and other strategic considerations (e.g. proximity to existing urban areas, public transport and infrastructure accessibility, providing jobs closer to home etc.).*

(i) Local Strategy

Kempsey Shire Rural Residential Land Release Strategy dated December 2014 identifies this site for rural residential purposes within Map 15 of the Strategy. The land is part of the Stage 1 implementation phase of the Strategy.

Rezoning of Lot 7 DP 255922, being No. 145 Old Station Road, Verges Creek East Kempsey is generally consistent with the area identified in Map 15 of the Kempsey Local Growth Management Strategy with exception of a small area fronting the western boundary currently mapped under the Regionally Significant Farmland mapping and by default excluded from the land release strategy mapping.

The Planning Proposal has been considered in relation to Council's Procedure 1.1.16 for *Consideration of Planning Proposals for Land Not identified in the Rural Residential Land Release Strategy* and satisfies the criteria demonstrated in the Table at page 12 below. The merits of the proposal, including the additional land is addressed in the S117 Directions below.

In addition, since publishing the Local Growth Management Strategy, the North Coast Regional Plan 2036 has been released and includes the Important Farmland Interim Variation Criteria to address



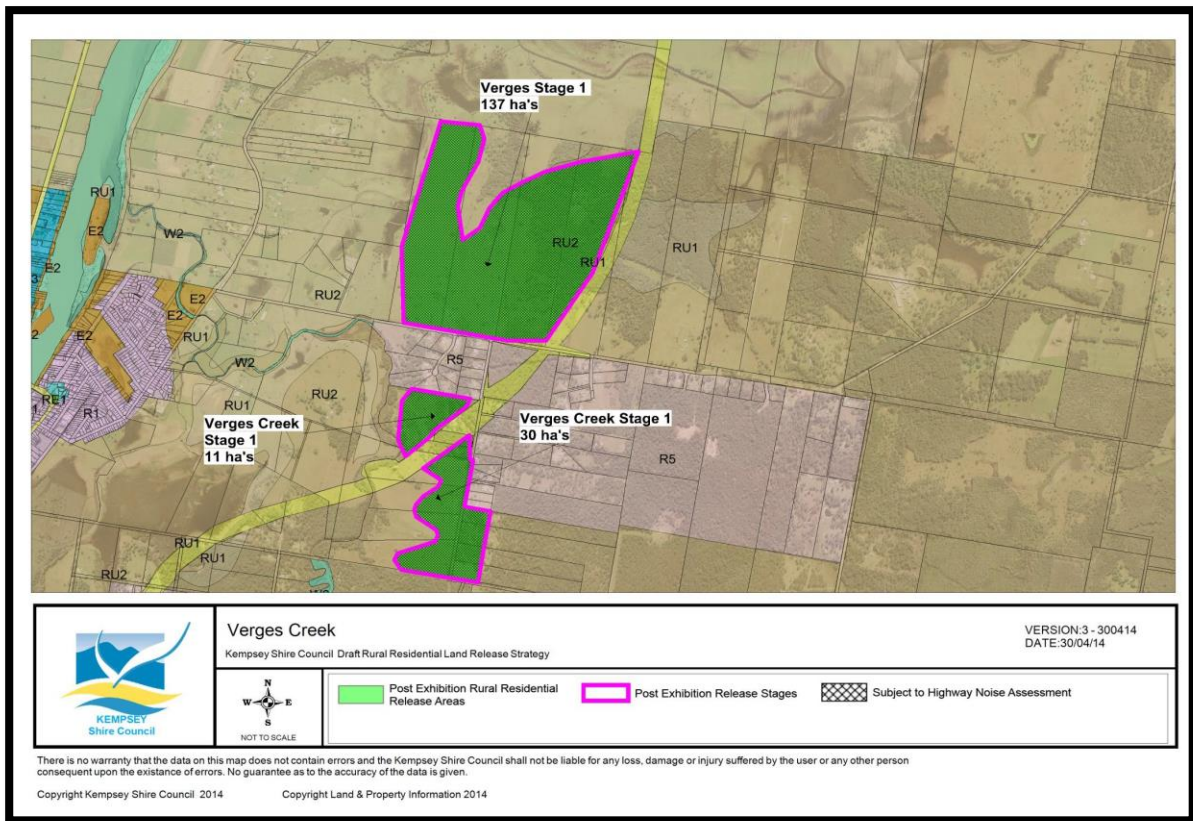


Figure 3: Extract Kempsey LGMS Map 15

3.3.3 Is the planning proposal consistent with a council's local strategy or other local strategic plan?

Issues identified in the Local Strategy as relevant to the preparation of this Planning Proposals include:

- The extent of the 1 in 100 year flood
- Impacts of noise from the Pacific Highway
- The means of rationalising access to facilitate an efficient pattern of subdivision
- Class 5 Acid Sulphate Soils
- Primary and Class 2A and 2B Koala habitat
- Partly bushfire prone land

A concept layout for the site addressing the constraints identified above and demonstrating an acceptable outcome is provided at **Appendix A**.

Copies of the site-specific assessment reports relating to identification of Koala Food Tree locations, Bushfire and On Site Waste Water management are provided at **Appendix B**.

Flood prone land on fringes

The topography of the land is such that there are flood fringe areas draining the gentle ridge to the low lying grazing lands to the west and north. The lowest edges of the site are identified as being within the 1% AEP level RL 6.60m AHD. As demonstrated on the

subdivision concept each 1 ha lot has ample area of flood free land served by the internal road.

Potential noise from Pacific Highway

The recently completed Kempsey By-pass is located over 680m East of the site at its closest corner. Reference to the Operational Noise Report (ONR) for the Kempsey By-pass reveals that the land the subject of the Planning Proposal is outside the areas modelled as impacted by the Highway noise over the long term. The Operational Noise Report modelled current and future noise impacts up to 300m from the highway.

The Noise Goals for receivers subject to new road traffic noise as a result of the Bypass projects are identified as **Daytime** 7am to 10 pm LAeq 55dBA and 50 dBA **Nighttime** 10pm to 7am with dwellings being eligible for acoustic treatment if there is a resulting increase in existing noise by more than 0.5dBA.

In relation to the planning proposal site, the Operational Noise Report modelled noise in this location shows that the noise goals would not be exceeded at the subject land. Further, to validate the noise modelling on site noise monitoring at selected sites was completed under the ONR.

The following extract (Figure 5) shows the closest section of the Highway Bypass to the land subject to this planning proposal. This section of the Highway bypass also includes properties which were subject to on site noise monitoring to check the model accuracy.

The subject land is located approximately 400m west of the modelled area in Figure 5 below and is well outside the modelled noise contours for 50dBA and 55 dBA.





Figure 4: Extract Kempsey Bypass Post Construction Operational Noise Report

Copy of the Kempsey By-pass Operational Noise Report (ONR) is on public record through the Roads and Maritime Services Website. Key highlighted extracts from the ONR are provided at **Appendix C** of the planning proposal.

Access

The number of access points onto Old Station Road is limited to one additional only as indicated on the concept subdivision plan at **Appendix A**. The proposal avoids multiple access points onto Old Station Road with a single road intersection for any future subdivision and retains the driveway entrance for the existing dwelling within a future allotment.

Road network capacity

Examination of Old Station Road network reveals that the current standard of construction and road network capacity appears adequate for the likely additional traffic generation from a future likely 36 rural residential allotments.

Acid Sulphate Soils

The majority of the site is mapped as Class 5 Acid Sulphate Soils with the low lying western edge along the drainage line mapped as a combination of Class 2 & 4 acid Sulphate Soils, corresponding with land below the 1% AEP flood level.

The provisions of Council's LEP clause would continue to apply to the land. The gentle slopes and flood free character of the land means that substantial earthworks and excavations would not be required for construction of a dwelling nor ancillary features.

The management of Acid Sulphate Soils is addressed under the relevant S117 provision.

Flooding

The majority of Planning Proposal area is flood free with some outer edges subject to fringe flooding. All future lots have flood free dwelling sites and surrounds.

Bushfire

The bushfire hazard assessment demonstrates that a future subdivision can comply with Planning for Bushfire Guidelines and ensure all dwellings could be built to the requirements of BAL 29. A copy of the Bushfire Assessment is provided at **Appendix B**

Cultural Heritage

An AHIMS search for the Lot/DP with 200m buffer gave no result. A copy of the search result is provided at **Appendix B**. It is anticipated that consultation with the Local Aboriginal Community associated with this locality would be required as part of the Gateway process.

Unknown Koala Habitat

The subject land is mapped as 'Unknown Koala Habitat'. Detailed site survey and tree identification in the field has confirmed no koala feed trees species need to be removed to provide for a reasonable building envelope within each proposed allotment. A plan marking the tree species and location is provided at **Appendix B**.

Onsite Waste Water Management

The Onsite Sewage Management Assessment by Midcoast Building and Environmental recommends a range of options for wastewater treatment and disposal systems for the land. A copy of the Bushfire Assessment is provided at **Appendix B**

Stormwater

Each lot is 1 ha in area or greater and has sufficient dimensions to accommodate stormwater capture, re-use and release within the site boundaries. Road stormwater will be conveyed by way of grass dish drains/swales and detailed engineering design will determine where (if any) road drainage easements might be needed through the lots. Taking into account the



large lot sizes proposed, further stormwater detail is not considered necessary for the planning proposal.

Infrastructure

The site is already serviced by sealed public road, electricity & telecommunications. Reticulated water supply mains are available at the road frontage and it is proposed to serve some of the allotments subject to confirming suitable water pressures.

Potential for conflict with adjoining agricultural uses

DPI buffers

The department of Primary Industry Guidelines for buffers to agriculture recommend a 50m buffer from grazing lands to residences. The character of the site is such that the areas of flood fringe land combined with the dimensions of most of the lots create a minimum 50m buffer and physical separation distance from farmland to the west and north. An assessment of potential conflicting land use (LUCRA) from the Living & Working in Rural Areas Handbook 2009 has been undertaken and is provided at **Appendix C**.

Farmland Mapping

A long narrow section along the western boundary of the subject land, is mapped as Regionally Significant Farmland.



Figure 5: Extract Regionally Significant Farmland Mapping project

Important Farmland Interim Variation Criteria – North Coast Regional Plan

The North Coast Regional Plan 2036 has identified that some land currently mapped as State and Regionally Significant Farmland may be suitable for uses other than farmland and sets

out interim variation criteria that can be used to assess the suitability of land for continued rural land use or for conversion to other uses.

Completion of these assessments demonstrates that inclusion of the western edge of the land in the planning proposal would not impact agricultural productivity of the area. The fringe strip of mapped farmland varies at the north west and south west edges if the site, corresponding with the lower lying lands adjacent a drainage line. Retention of this narrow variable shaped piece in the RU1 zone would be meaningless and result in an anomalous situation.

Appendix C provide an assessment of the Planning Proposal in relation to:

- Assessment of Potential Conflicting Land Use from the *Living & Working in Rural Areas Handbook 2009*, Department of Primary Industries, Northern Rivers CMA & Southern Cross University
- *Important Farmland Interim Variation Criteria* under the North Coast Regional Plan 2036, NSW Planning & Environment

Kempsey Shire Council Procedure 1.1.16 - The planning proposal received applies to the entirety of the subject lot. However, as identified in Figure 3, the Verges Creek Land Release Staging area does not include a small portion in the north western and south western edges of the site (approximately 7ha), adjacent to the western boundary of the site, which is identified as flood prone land.

Council Procedure 1.1.16 *Consideration of Planning Proposals for Land Not Identified in the Rural Residential Land Release Strategy* applies when a variation is proposed. The requirements for consideration of a variation are provided in the table below.

Procedure 1.1.16 - Consideration of Planning Proposals for Land Not Identified in the Rural Residential Land Release Strategy	
Variation Considerations	Response
(a)(i) The land has direct access from a dedicated public road constructed to bitumen-sealed standard in accordance with the requirements of Kempsey DCP 2013	Complies: The site will have direct access to Old Station Road, which is sealed to Council standard.
(a)(ii) The subdivision will contribute to the social activities offered in the Shire's towns and villages	Complies: The additional residents from 36 future dwellings in close proximity to Kempsey will add to the social diversity and participation rates in social activities in this area.
(b)(i) The land is within 500 metres of the nearest Council provided garbage service	Complies: The site is within the existing Council provided, garbage service area.
(b)(ii) The development will support increased expenditure on goods and services provided in Kempsey	Complies: The additional residents from 36 future dwellings in close proximity to Kempsey contribute to the local economic base and demand for local goods and services.



(b)(iii) The development may be carried out in an economically viable manner through reduced costs of clearing, roads and other required infrastructure	Complies: The location already provides access to existing public infrastructure including reticulated water, sealed roads, electricity supply and telephone services.
(c)(i) The land is not within 500 metres of any permanent creeks, rivers or wetlands or suitable means to prevent the discharge of nutrients into any watercourse cannot be demonstrated	Complies: In response to the site's characteristics, an onsite sewage management assessment report has been provided which identifies the placement and design parameters required for the effective management of future onsite sewage systems.
(c)(ii) The land is not located in a visually prominent location	Complies: The site is elevated above alluvial plains (rural land) located to the north and west of the site. However through the retention of existing vegetation (Koala feed trees) and the restricted height of residential development; the development will have a limited visual impact on surrounding development.
(c)(iii) The land contains less than 10% tree cover as a result of the lawful removal of trees	Complies: The site historically has been and currently utilised as grazing property and the site contains scattered trees and the majority of land is pasture. Existing trees will largely be retained having been identified as Koala feed trees.
(c)(iv) The proposed subdivision is consistent with the existing pattern of development in the locality	Complies: The site is a natural extension of the R5 – Large Lot Residential zone which is located to the south of the site on the southern side of Old Station Road lot size of 1ha (refer to Figure 2).
(c)(v) No clearing of any Core, Primary, Class A or Class B Koala habitat identified by the Kempsey Comprehensive Koala Plan of Management is likely to result from the development	Complies: A Koala Habitat Assessment has been provided with the planning proposal. The assessment identifies Koala feed trees which will be protected by a section 88B instrument under any future development application for the subdivision approval.
(d)(i) The land is not within or adjacent to any residential or industrial land release areas	Complies.
(d)(ii) The land is not within 1,000 metres of any potentially conflicting industrial, recreational, commercial or intensive agricultural land use or within 100 metres of any land use buffer specified by Kempsey DCP 2013	Complies.
(d)(iii) The land does not require construction of any new access point to the Pacific Highway	Complies.



(d)(iv) The land is not zoned RU4 under KLEP 2013	Complies.
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(ii) Regional Strategy

The Planning Proposal is consistent with the North Coast Regional Plan 2036 as it provides for new housing for the expanding population and proposes new rural-residential development within proximity of an existing settlement.

As discussed above the North Coast Regional Plan 2036 recognises that flexibility is needed in relation to the Farmland Mapping provisions to permit considering of changes to zone and land use of small, isolated pieces of mapped farmland by way of the *important Farmland Interim Variation Criteria*..

3.3.4 Is the planning proposal the best means of achieving the objectives or intended outcomes?

Yes – there is no other mechanism available to achieve the objective of large lot residential development on the land. Council has not indicated a timeframe for a shire wide rezoning to reflect the recommendations of the Strategy and will in the interim consider site specific Planning Proposals consistent with the LGM Strategy.

(iii) 117 Directions

Of the current Section 117 Directions the following are directly relevant to the proposal and/or the subject land and require specific comment.

117 Direction No. 1.2 Rural Zones
117 Direction No. 1.5 Rural Lands
117 Direction No. 2.1 Environment Protection Zones
117 Directive No. 2.2 Coastal Protection
117 Direction No. 3.1 Residential Zones
117 Direction No. 3.4 Integrating Land Use and Transport
117 Direction No. 4.1 Acid Sulphate Soils
117 Direction No. 4.3 Flood Prone Lands
117 Direction No. 4.3 Planning for Bushfire Protection
117 Direction No. 5.1 Implementation of Regional Strategies
117 Direction No. 6.1 Approval and Referral Requirements
117 Direction No. 6.3 Site Specific Provisions

The table at **Appendix D** provides a summary of the relevant S117 directions and where relevant justifies any inconsistencies.

b. Does the proposal have site-specific merit and is it compatible with the surrounding land uses, having regard to the following:

- The natural environment (including known significant environmental values, resources or hazards) and



- The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal and
- The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure.

As discussed in Section 3.3.3 above.

The *natural environment* of the site is limited due to a long history of cattle grazing. The flood free area subject to this planning proposal contains a dwelling house and farm infrastructure. The vegetation predominantly consists of grassland with scattered mature trees and creek edge grasses.

3.3.5 Is the planning proposal consistent with council's local strategy or other local strategic plans?

Refer Section 3.3.3 above.

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

Yes - The proposal is consistent with or justifiable as inconsistent with the relevant State Environmental Planning Policies. Refer to **Appendix E** for details.

Section C: Environmental, Social and Economic Impact

3.3.7 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?

No – The subject land has been used for cattle grazing and is mostly cleared, comprising scattered mature trees and 'rough pasture' grassy communities.

The final concept layout provided at **Appendix A** demonstrates that full Koala Food tree retention is feasible as part of a subsequent development application.

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

Matters Considered on a case by case basis	
Access, Transport & Traffic	Access & traffic can be satisfactorily addressed with any subsequent development proposal.
Public Domain	No public domain issues have been identified at this juncture.
Utilities	The site has benefit of existing utilities and preliminary investigations indicate there is capacity to extend/increase relevant services. The front of the site has access to existing reticulated water mains subject to sufficient pressure to allow connection to future allotments.



Waste (Garbage Service)	The locality is within Council's waste removal service area and any resultant development would be incorporated into that service.
Heritage & Archaeology	AHIMS search indicates no recorded sites.
Soils / Acid Sulphate Soils	The land subject to the planning proposal is mapped as Class 5 ASS.
Noise & Vibration	Potential noise nuisance from the recently completed Highway Bypass is addressed in Section 3.3.3 above.
Natural Hazards Including:	
Bushfire	Bushfire hazard has been assessed and provision for building envelopes and APZ can be achieved.
Flooding	
Slip and Subsidence	No identified subsidence issues. Steep slopes have been identified on parts of the site and are addressed as part of the building envelopes assessment.
Public Domain	No public domain issues have been identified at this juncture.

3.3.9 Has the planning proposal adequately addressed any social and economic effects?

A positive economic benefit is anticipated both in the short term, during construction and longer term, with respect to the local economy and social vibrancy. The residents of the future lots and dwellings are likely to utilise the schools, shops and other services available in nearby Kempsey.

The social benefits providing additional local housing stock is considered positive both locally & regionally. The style of housing being large lot rural-residential properties satisfies the need for additional housing whilst limiting pressure of existing infrastructure such as mains sewage and reticulated water supply.

Section D: State and Commonwealth Interests

3.3.10 Is there adequate public infrastructure for the planning proposal?

Public infrastructure is in place as part of the existing rural lifestyle area adjacent to the south.

3.3.11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

This section is completed following consultation with the State and Commonwealth authorities should the Director General determine to proceed with the Planning Proposal and identifies which authorities are to be consulted with.



3.4 Part 4: Mapping

3.4.1 The land subject to the planning proposal

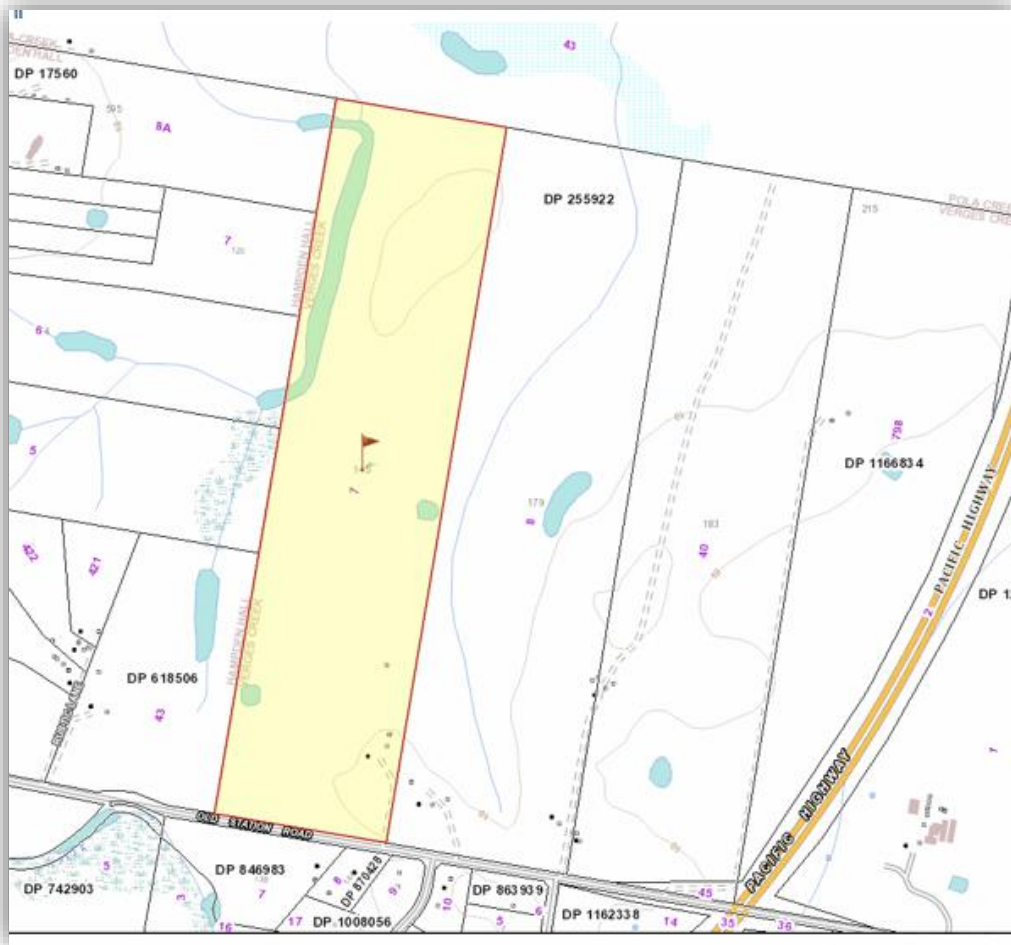


Figure 6 Lot 7 DP 255922 No 145 Old Station Rd Verges Creek

3.4.2 Current land use zone

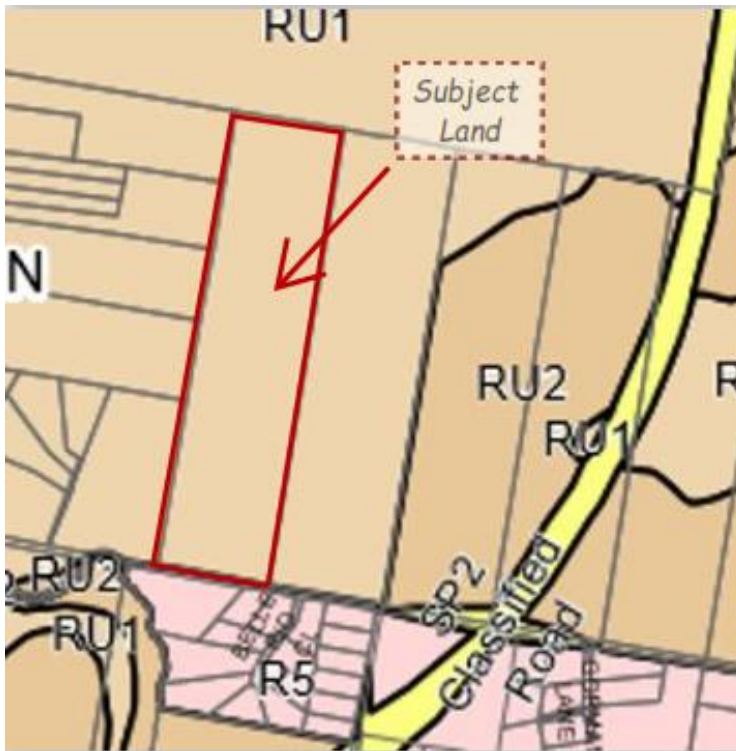


Figure 7 RU1 Primary Production

3.4.3 Current development standards

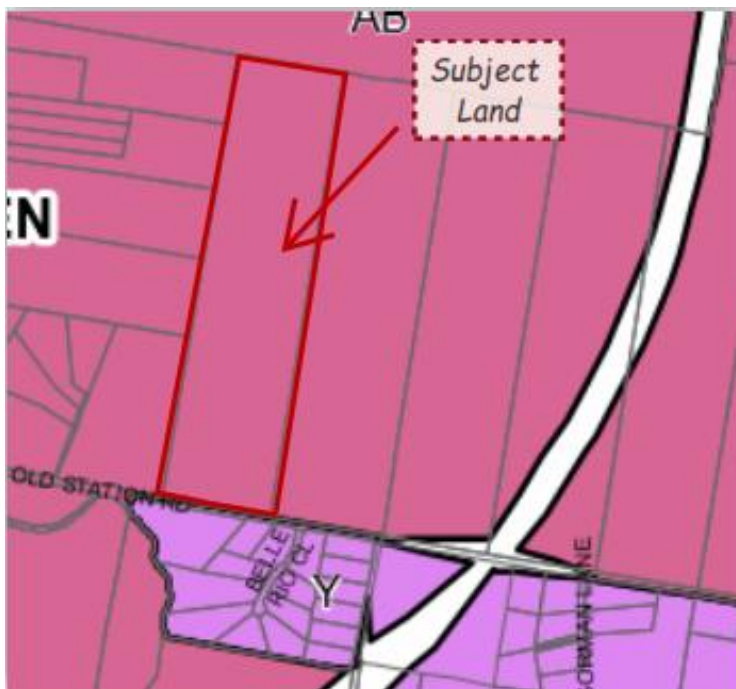


Figure 8 40ha minimum lot size for subdivision and dwellings

3.4.4 Suggested alternative zone(s)

The planning proposal is to apply the R5 Large Lot Residential to the whole of the site. Justification of this is provided in Section 3.3.3 above and supported by the material in the Appendices.



Figure 9 Suggested Alternative Zone

3.4.5 Suggested alternative minimum lot size – Y1 1ha

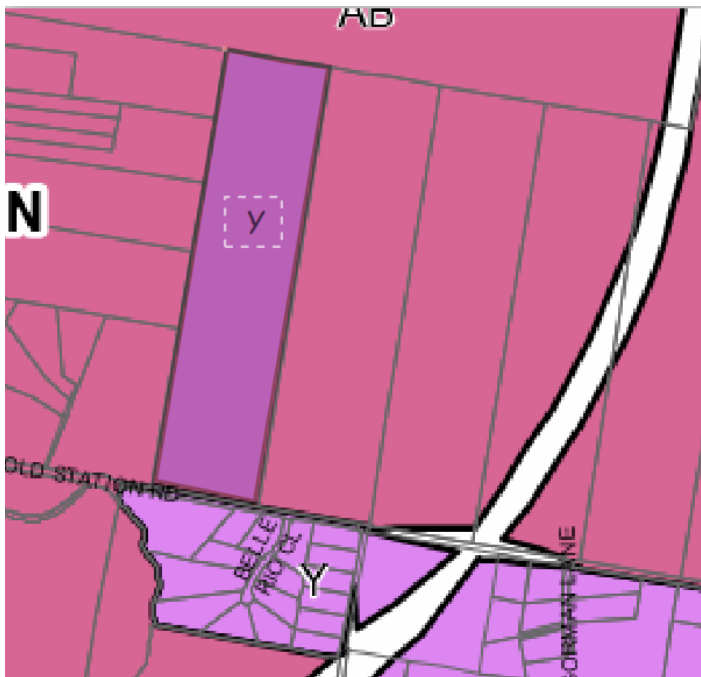


Figure 10 Suggested Alternative Minimum Lot Size – Y1 1ha

3.5 PART 5: Community Consultation

Community Consultation will be undertaken in accordance with any conditions specified in the Gateway Determination and Kempsey Shire Council's Rezoning Policy & Procedure 1.1.9, Section 3 Public Notification and Consultation.

3.6 Part 6: Project Timeline

The project is to be completed in accordance with the preliminary timeline below:

LEP Amendment Steps	Estimated Project Timing
Submit Planning Proposal to DP& E	
Receive Gateway Determination	
Preparation of additional studies/planning proposal inclusions *	
Authority consultation pre exhibition	
Preparation of materials for public exhibition & authority consultation	
Review and consideration of submissions	
Council report preparation	
Public submission report and draft LEP amendment to Council for adoption	
Submission to the department to finalise the LEP	

* If required ^ If delegated

Yours faithfully



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