

Kempsey LEP 2013 - Rezone land from RU1 Primary Production to R5 Large Lot Residential for the purposes of a 36 lot subdivision at Old Station Road, Verges Creek

Proposal Title :	Kempsey LEP 2013 - Rezone land from RU1 Primary Production to R5 Large Lot Residential for the purposes of a 36 lot subdivision at Old Station Road, Verges Creek		
Proposal Summary :	The planning proposal seeks to amend the Kempsey Local Environmental Plan (LEP) 2013 by rezoning land at Old Station Road, Verges Creek, from zone RU1 Primary Production to zone R5 Large Lot Residential and to amend the Lot Size Map from 40ha to 1 hectare to facilitate a future 36 lot rural residential subdivision.		
PP Number :	PP_2017_KEMPS_005_00	Dop File No :	17/07539

Proposal Details

Date Planning Proposal Received :	25-May-2017	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 :	145 Old Station Road		
Suburb :		City :	Verges Creek
		Postcode :	2440
Land Parcel :	Lot 7 DP 255922		

DoP Planning Officer Contact Details

Contact Name :	Jenna McNabb		
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RPA Contact Details

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DoP Project Manager Contact Details

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	North Coast Regional Plan 2036	Consistent with Strategy :	Yes

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MDP Number :		Date of Release :	
Area of Release (Ha) :	46.55	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	0	No. of Dwellings (where relevant) :	36
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 and Environment's 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 :	The Northern Region has not met any lobbyists in relation to this proposal, nor has the Region been advised of any meeting between other officer's within the agency and lobbyists concerning this proposal.		

Supporting notes

Internal Supporting Notes :

External Supporting Notes :

Adequacy Assessment

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

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

Comment : The statement of objectives adequately describes the intention of the planning proposal. The proposal seeks to rezone the subject land and reduce the minimum lot size to facilitate rural residential development.

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

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

Comment : The explanation of provisions adequately addresses the intended changes to Kempsey LEP 2013.

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
2.2 Coastal Protection
3.1 Residential Zones
3.4 Integrating Land Use and Transport
4.1 Acid Sulfate Soils
4.3 Flood Prone Land

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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? **No**

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

d) Which SEPPs have the RPA identified?

SEPP No 44—Koala Habitat Protection
SEPP No 55—Remediation of Land
SEPP No 71—Coastal Protection
SEPP (Infrastructure) 2007
SEPP (Rural Lands) 2008

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

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

The planning proposal includes current and proposed Land Zoning and Minimum Lot Size maps which adequately reflect the proposed amendments. These maps are suitable for exhibition purposes.

Amendments to the Land Zoning and Minimum Lot Size maps are to be prepared in accordance with the Standard Technical Requirements for Spatial Datasets and Maps prior to finalisation of the LEP.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The planning proposal indicates that community consultation will be undertaken however it does not nominate the timeframe for this consultation period.

As the proposal is generally consistent with the intent of the Department approved Kempsey Local Growth Management Strategy - Rural Residential component a 14 day community consultation period is recommended.

Additional Director General's requirements

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

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

The planning proposal is considered to satisfy the adequacy criteria by:

- 1) Providing appropriate objectives and intended outcomes;
- 2) Providing a suitable explanation of the provision proposed by the LEP to achieve the outcomes;
- 3) Providing an adequate justification for the proposal;
- 4) Proposing a community consultation process.

Delegation

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Council has completed an evaluation for the issuing of an authorisation to exercise delegation. As the proposal deals with only matters of local significance, it is recommended that an authorisation to exercise plan making delegation be issued to Council in regard to this matter.

Project Timeline

Council have indicated in the cover letter to the Department that a 9 month time period is required to complete the amendment. This is considered adequate. Council will be required to update the planning proposal to include this timeframe for exhibition purposes.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : The Kempsey Local Environmental Plan 2013 commenced on the 3 February 2014. This planning proposal seeks to make amendments to the Kempsey LEP 2013.

Assessment Criteria

Need for planning proposal : The planning proposal is a direct result of the outcomes of the Kempsey Local Growth Management Strategy (LGMS) Rural Residential component and the North Coast Regional Plan 2036.

The Kempsey Shire Rural Residential Land Release Strategy identifies the majority of the subject land as a Stage 1 release area in the Shire. The proposal has also included land for rezoning outside of the strategy, being approximately 4.2ha slither of mapped Regionally Significant Farmland in the south-west and north-east corners of the site.

The proposal seeks to rezone the subject land from RU1 Primary Production to R5 Large Lot Residential. The minimum lot size is also proposed to be reduced from 40 hectares to 1 hectare.

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Consistency with strategic planning framework :

NORTH COAST REGIONAL PLAN 2036

The proposal is generally consistent with the intent of Goal 4 of the Plan as it supports 'great housing choice and lifestyle options' and delivers rural residential housing generally in accordance with Direction 24 through a Department approved local strategy.

An area of approximately 4.2ha of land that is not included in the local strategy and is mapped as regionally significant farmland has also been included. As the land is mapped as important farmland, the inclusion of this land for rural residential use is inconsistent with Goal 1 and specifically action 11.1 which aims to steer rural residential development away from mapped farmland. It is also noted that this land has been identified as being flood prone and rezoning would also be inconsistent with the provisions of Direction 3 of the Regional Plan.

In regard to flooding and regionally significant farmland issues, it is noted that:

- each site has a building envelope in accordance with Council's requirements above the flood planning level;
- the site adjoins fragmented rural lifestyle and small holdings to the west, which makes the consolidation of the small slither of regionally significant farmland on the site into a viable and worthwhile holding with other similar farmland extremely unlikely.

While the proposal contains an assessment justifying its consistency with the Important Farmland Interim Variation Criteria and managing natural hazards, it is considered inappropriate that these inconsistencies with the Regional Plan be determined until after Council has consulted with the Department of Industry - Agriculture and the Office of Environment and Heritage regarding farmland and flooding issues in regard to the 4.2ha area of the site located outside the approved local strategy.

KEMPSEY SHIRE RURAL RESIDENTIAL LAND RELEASE STRATEGY 2014

The proposal is generally consistent with the outcomes of the Kempsey Rural Residential Land Release Strategy (KRRLRS) except for approximately 4.2ha on the western boundary of the site that is identified regionally significant farmland. The Strategy identifies the remainder of the subject land as part of the Verges Creek Rural Residential Release Area.

The subject land was identified in the strategy as being suitable for further rural residential investigation as it is generally cleared and above the flood planning area, with access from the existing sealed local road network and limited environmental constraints/issues.

The Rural Residential Land Release Strategy raises a number of locally specific issues including:

- the proximity to the Kempsey Bypass and the subsequent noise impacts;
- flooding;
- koala habitat;
- Acid Sulfate Soils; and
- bushfire.

Reports addressing these issues have been submitted in support of this application. These are discussed in further detail below.

SEPPS

The proposal is consistent with all applicable SEPP's except in relation to:

SEPP (Rural Lands) 2008

SEPP Rural Lands (the RSEPP) contains Rural and Subdivision Planning Principles to guide development on rural land. The proposal is consistent with the majority of the principles by providing additional opportunities for rural lifestyle, settlement and housing in the Verges Creek area, but is unable to satisfy all the principles generally. This matter should therefore be considered further after the Department of Industry - Agriculture has reviewed and provided comment on the proposal in regard to the area mapped as regionally significant farmland as discussed above.

S117 DIRECTIONS

The proposal is consistent with all relevant s117 Directions except in relation to the

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following:

Direction 1.2 Rural Zones

The proposal is inconsistent with this direction as it proposes to rezone land from a rural zone to a residential zone. This inconsistency is generally justified by the Department approved Kempsey Rural Residential LGMS. Due however to the 4.2ha of regionally significant farmland outside the strategy that has been included, it considered appropriate that this inconsistency remain unresolved until after consultation with the Department of Industry - Agriculture to confirm the suitability of this additional land being rezoned.

Direction 1.5 Rural Land

The proposal is inconsistent with this direction as discussed above in regard to the SEPP (Rural Lands) 2008. This inconsistency is generally justified by the Department approved Kempsey Rural Residential LGMS. Due however to the 4.2ha of regionally significant farmland outside the strategy that has been included, it considered appropriate that this inconsistency remain unresolved until after consultation with the Department of Industry - Agriculture to confirm the suitability of this additional land being rezoned.

Direction 4.1 Acid Sulfate Soils

The proposal is inconsistent with this direction as it contains Class 2 and 4 Acid Sulfate Soils and is not supported by an acid sulfate soils study. This inconsistency is of minor significance as further consideration regarding this issue can be adequately addressed at the development application stage as required by the acid sulfate provisions of Kempsey LEP 2013.

Direction 4.3 Flood Prone Land

The proposal is inconsistent with this direction as it seeks to rezone land in a flood prone area to residential, contrary to the Department approved local strategy which identified only land above the floodplain for rural residential development.

The concept subdivision identifies building envelopes located above the 100 year ARI flood area. That part of the land affected by the 1% flood is not subject to flood flows but rather is impacted as flood fringe on the eastern and western edges of the proposal and associated with gullies draining off the ridge. It considered appropriate that the inconsistency with this direction remain unresolved until after consultation with the Office of Environment and Heritage.

Direction 4.4 Planning for Bushfire Protection

This direction is applicable to the proposal as part of the land has been mapped as bushfire prone. A Bushfire Hazard Assessment has been prepared as part of the site identified as being bushfire prone. Consultation with the RFS is required after a Gateway Determination is issued and before public exhibition, and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

Direction 5.10 Implementation of Regional Plans

As discussed above, the proposal is generally considered to be consistent with the Regional Plan except potentially in regard to flooding and regionally significant farmland issues and that it is appropriate that the inconsistency with this direction remain unresolved until after consultation with the Department of Industry - Agriculture and the Office of Environment and Heritage. It is also noted that the proposal currently refers incorrectly to direction 5.1 Implementation of Regional Strategies instead of direction 5.10 Implementation of Regional Plans. This should be amended prior to consultation.

Environmental social
economic impacts :

VERGES CREEK RELEASE AREA CONSIDERATIONS

NOISE FROM KEMPSEY BYPASS

The planning proposal has considered the subject land's proximity to the Kempsey bypass, which is located 680m east of the site at its closest corner.

The Operational Noise Report for the Kempsey Bypass modeled future noise impacts up to 300m from the highway. The closest future dwelling as a result from the proposed rezoning

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is mapped as being approximately 400m from the bypass. The modelling showed that the subject land is well outside the modeled noise contours for 50dBA and 55dBA. It is not expected that there are will be any significant issues as a result of highway noise.

ACCESS AND ROAD CAPACITY

The concept subdivision plan included in the planning proposal shows a single point intersection from Old Station Road, retaining the existing driveway entrance at the property.

The access and local road network appear to be suitable and have capacity to support the proposal. It is also noted that this issue can be further considered and addressed if necessary by Council during the development assessment process.

ACID SULFATE SOILS

Refer to discussion above

FLOOD

Refer to discussion above

BUSHFIRE

Refer to discussion above

KOALA HABITAT

The land is mapped as 'unknown koala habitat'. A site survey and tree identification has been undertaken on the site. This has not identified any feed tree species which will be required to be removed to facilitate building envelopes for future subdivision. It is considered appropriate that this matter, along with other general environmental issues, be referred to the Office of Environment and Heritage for consideration to confirm the suitability of the proposal.

ONSITE WASTE WATER MANAGEMENT

An Onsite Sewage Management Assessment has been undertaken by Midcoast Building and Environmental, which concludes that the 1 hectare allotments are sufficient in size to contain onsite wastewater treatment and disposal systems.

CULTURAL HERITAGE

An AHIMS search has been undertaken which did not return any known articles of aboriginal or European heritage identified on the site. Consultation with the Local Aboriginal Land Council will be required post gateway determination. It is considered appropriate that this issue also be referred to the Office of Environment and Heritage for consideration to confirm whether the proposal has satisfactorily addressed this matter.

Assessment Process

Proposal type :	Consistent	Community Consultation Period :	14 Days
Timeframe to make LEP :	9 months	Delegation :	RPA
Public Authority Consultation - 56(2)(d) :	NSW Aboriginal Land Council Office of Environment and Heritage NSW Department of Primary Industries - Agriculture NSW Rural Fire Service		

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

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

If no, provide reasons :

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

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

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
2017-05-25 Attachment_1_-_Information_checklist.pdf	Proposal	Yes
2017-05-25 Council Report Proceed to gateway request resolution.pdf	Proposal	Yes
2017-05-25 Planning Proposal Appendices.pdf	Proposal	Yes
2017-05-25 Planning Proposal.pdf	Proposal	Yes
Evaluation Criteria for the Delegation of Plan Making Functions.pdf	Proposal	No

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
- 2.2 Coastal Protection
- 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
- 5.1 Implementation of Regional Strategies
- 6.1 Approval and Referral Requirements
- 6.3 Site Specific Provisions

Additional Information :

- 1. The Planning Proposal be supported.
- 2. The Planning Proposal be exhibited for 14 days.
- 3. The Planning Proposal be completed within 9 months.
- 4. The Planning Proposal is to be amended prior to consultation to include the following:
 - * a discussion on the consistency of the planning proposal with section 117 Direction 5.10 Implementation of Regional Strategies and removal of references to section 117 Direction 5.1 Implementation of Regional Strategies and the Mid North Coast Regional Strategy ;
 - and
 - * an updated project timeline.

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5. The Secretary (or her delegate) note the current unresolved inconsistencies with S117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection and 5.10 Implementation of Regional Strategies.

6. The Secretary (or her delegate) agree that the inconsistency of the proposal with S117 Direction 4.1 Acid Sulfate Soils is justified in accordance with the terms of the directions.

8. That consultation be undertaken with the following agencies prior to community consultation:

- NSW Rural Fire Service
- NSW Department of Primary Industries - Agriculture
- Office of Environment and Heritage
- Local Aboriginal Land Council

9. A written authorisation to exercise delegation be issued to Kempsey Shire Council.

Supporting Reasons :

The proposed rezoning is generally consistent with Council's Department approved local strategy, and will help ensure a sufficient supply of rural residential land is maintained within the Verges Creek locality.

Signature:



Printed Name:

Craig Diss

Date:

7/6/17