

ITEM 3 PLANNING PROPOSAL CRESCENT HEAD ROAD CRESCENT HEAD

Delivery Program Activity: (HD-04-03) Planning for a sustainable environment	Reporting Officer: Director Sustainable Environment
Effect of Recommendation on Budget: Nil	File: RZ-15-3

REPORT SUMMARY

Reporting that a Planning Proposal has been prepared to amend Kempsey Local Environmental Plan (KLEP) 2013 to revise the *minimum lot size* as it applies to a land parcel near Crescent Head.

2016.77

RESOLVED:

Moved: Cl. Morris
Seconded: Cl. Patterson

That the Planning Proposal and associated documentation be submitted to the Minister for Planning for consideration of issuing a “gateway” determination pursuant to Section 56 of the Environmental Planning and Assessment Act 1979.

A Division resulted in the following votes.

F = Voted For

A = Voted Against

Campbell	F	Green	F	Kesby	F	Morris	F
Patterson	F	Saul	F	Williams	F		

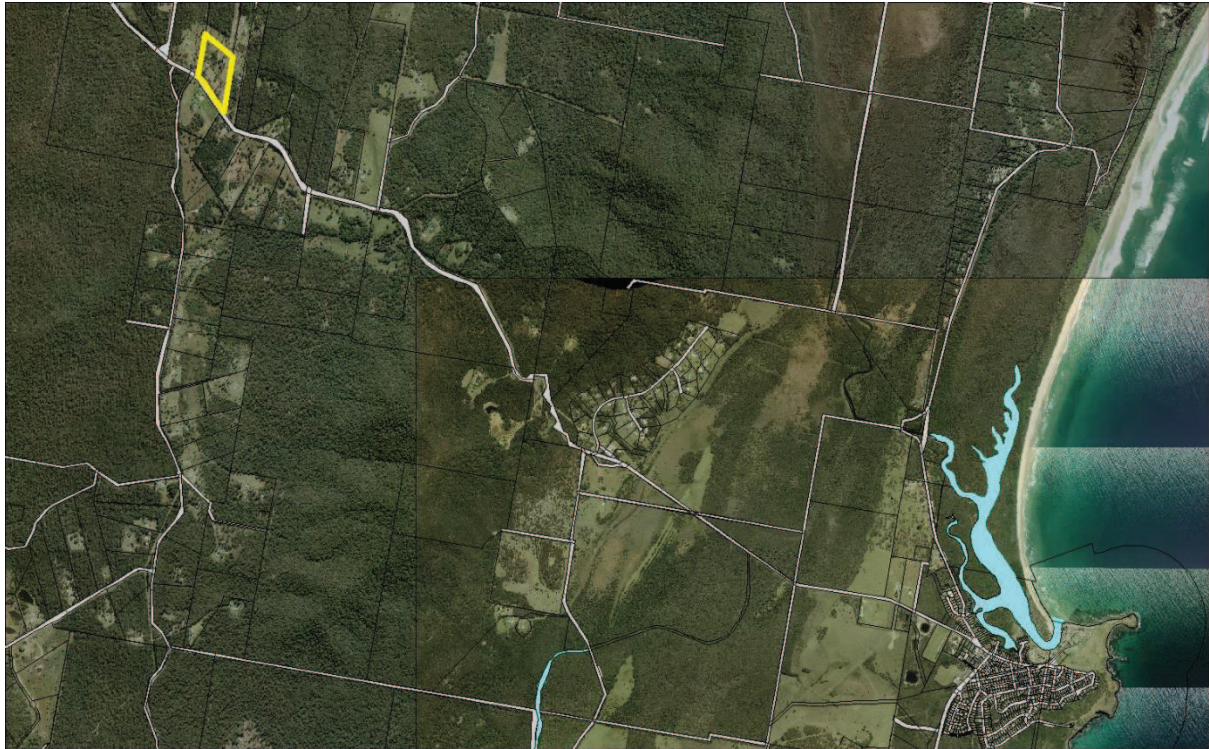
COMMENTARY

Pursuant to Clause 55 of the *Environmental Planning and Assessment Act 1979* Council has received an application to amend KLEP 2013 to revise the Lot Size Map for a rural land parcel to facilitate future subdivision and provide rural residential opportunities in the vicinity of Crescent Head. The subject land is zoned RU4 – Primary Production Small Lots and it is proposed to amend the Lot Size Map for the subject land from eight (8) hectares to four (4) hectares. A full copy of the Planning Proposal and associated reports are appended [\(Appendix C – Page 3\)](#).

Subject Land

The subject land is legally defined as Lot 41 DP 1098163, 1023 Crescent Head Road, Crescent Head and is located approximately 8km north-west of Crescent Head township, just east of the intersection with Beranghi Road. The area is characterised by rural and rural residential housing.

The subject land has a total area of 8.002 ha including a right-of-way which runs along the eastern boundary.



Existing Kempsey Local Environmental Plan 2013 Provisions

The existing RU4 Primary Production Small Lots zone that applies to the subject land permits a range of rural landuses that are consistent with the objectives of the zone, being:

- To enable sustainable primary industry and other compatible land uses.
- To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To ensure that the nature, scale and operation of any development is compatible with the amenity of the locality.

Objectives or intended outcomes of Planning Proposal

As stated above, it is not proposed to alter the RU4 zone that applies to the land. Rather the proposal is to amend the Lot Size Map that applies to this lot from 8 ha to 4 ha. This will:

- Enable the subdivision of the referred lot; and
- Provide rural residential housing opportunity that is consistent with the Mid North Coast Regional Strategy 2009 and the Kempsey Shire Rural Residential Land Release Strategy 2014.

Proposed Amendments to the Kempsey Local Environmental Plan (KLEP) 2013

It is proposed to amend the minimum lot size map, as it applies to the subject lot, from 8ha to 4ha.

Land parcel subdivision options if minimum lot size is reduced from 8ha to 4ha



Potential Subdivision - Option A



Potential Subdivision - Option B

The proposed minimum lot size of 4ha (from 8ha) would permit further subdivision of this lot (1 lot into 2) which is not currently permissible.

Justification for the Planning Proposal

The justification for the proposal is summarised as follows:

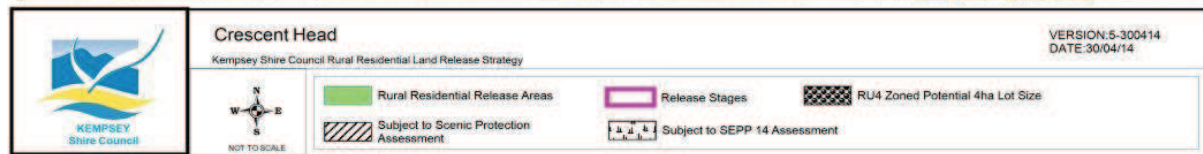
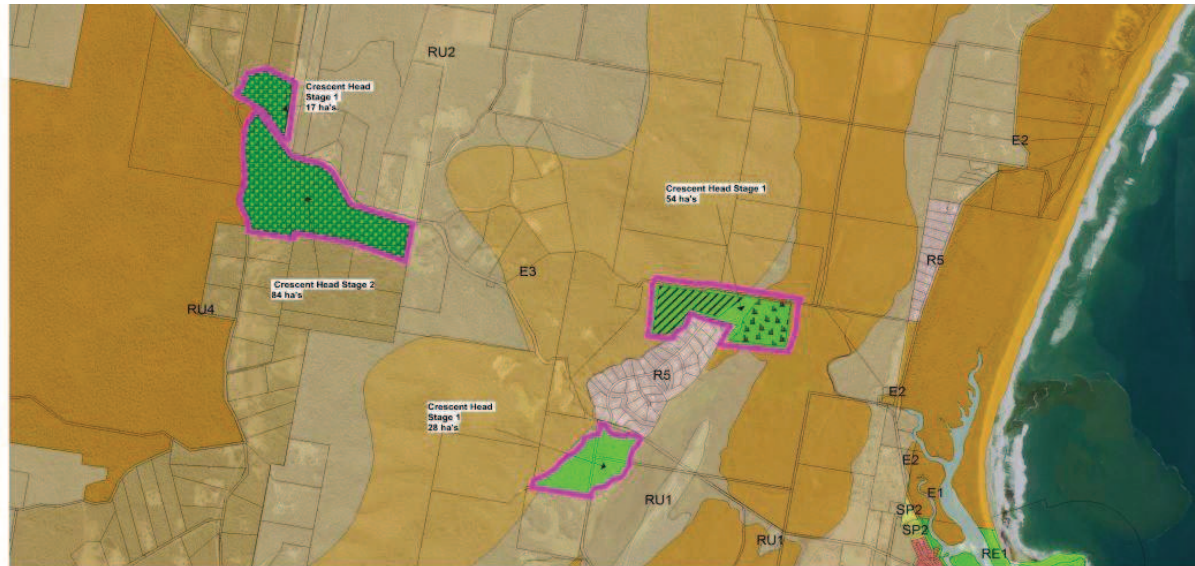
- The proposal seeks to meet Council's obligations to manage population growth through the provision of additional housing stock to the area.
- The location has good accessibility, strong market demand and moderate infrastructure availability.
- The proposal meets the criteria outlined in the *Mid North Coast Regional Strategy 2009*.
- The subject land is identified and mapped in Council's Rural Residential Land Release Strategy 2014 as 'Rural Residential Release Areas' land.
- The proposal is considered achievable against identified site constraints.
- The proposal is considered to have site-specific merit and compatibility with surrounding land uses.
- The proposal satisfies relevant legislation, planning instruments, strategies, SEPPs and Section 117 Directions.

Kempsey Shire Rural Residential Land Release Strategy 2014

The subject land has been identified in Council's Rural Residential Land Release Strategy 2014 mapping as being within the Crescent Head Rural Residential Release Area and the 'RU4 Zoned Potential 4ha Lot Size' area, subject to satisfying the relevant locality-specific issues identified by the strategy including:

Issue	Comment
The means of rationalising access to facilitate an efficient pattern of subdivision, whilst minimising access points to Crescent Head Road	The existing dwelling will continue to rely on the current access arrangements to Crescent Head Road. Any new dwelling could utilise the existing Right-of-Way via the eastern boundary
The relationship of the area to potential fauna corridor linkages	Minimal tree removal would be required to facilitate future subdivision of the land, and no identified or potential fauna corridor linkages will be affected
The means by which vegetation retention can be maximised, whilst satisfying bushfire requirements	The area the subject of the Planning Proposal requires minimal tree removal to accommodate required APZs
An assessment of the E3 zone to ensure that there are no adverse visual impacts of future dwellings when viewed from Crescent Head	Not relevant to this Planning Proposal
An assessment of the E2 zone to ensure that the land does not possess the attributes that lead to inclusion in State Environmental Planning Policy 14 – Coastal Wetlands	Not relevant to this Planning Proposal
The extent of the 1 in 100 year flood	This site is not identified as being flood prone
Unknown and 2B Koala habitat.	Adequate measures can be employed to protect all potential koala food trees without restricting future subdivision of the land

Issue	Comment
Bushfire prone land	The information provided in support of the Planning Proposal demonstrates that relevant standards can readily be achieved
Class 5 and Small area of Class 2 Acid Sulfate Soil	The subject land parcel is identified as being Class 5. It is not expected that any development would disturb any ASS or result in any lowering of the water table



Consistency with Relevant State Environmental Planning Policies

The applicable policies and comments on consistency are provided in the table below:

State Environmental Planning Policy	Comments
State Environmental Planning Policy No. 14 – Coastal Wetlands	The site contains does not contain nor adjoin land containing SEPP 14 wetlands
State Environmental Planning Policy No. 44 – Koala Habitat	The proposal is consistent with Council's Comprehensive Koala Plan of Management (CKPOM) which satisfies the requirements of SEPP 44 with all Koala food trees proposed to be retained
State Environmental Planning Policy No. 55 – Remediation of Land	All known previous land uses indicate cattle grazing with a single dwelling occupancy. It is further noted that: - There is no known on-site cattle tick dip or former tick dip site. - The land has not been used for Market Gardens or Orchards - There are no oil storage depots or former fuel depots associated with the past or present uses - There are no refuse or garbage land fill areas

State Environmental Planning Policy	Comments
	In addition, the planning proposal notes that searches of the land contamination register and record of notices and contaminated sites notified to EPA have not identified the subject land
State Environmental Planning Policy (Infrastructure) 2007	The proposal will not generate sufficient traffic movements to require referral under Schedule 3. Although the site has a frontage to Crescent Head Road – a classified road, it is intended that all access will be gained via an existing Right-of-Way and/or existing direct access to Crescent Head Road
State Environmental Planning Policy (Rural Lands) 2008	The application is considered to have demonstrated compliance with the Rural Planning Principles listed under this instrument as the proposal would not limit the productive potential or residue lands, supports the provision of opportunities for rural residential housing with adequate infrastructure and has regard for maintaining biodiversity, protection of native vegetation, water resources and constrained lands

Consistency with Section 117 Ministerial Directions

The proposal is consistent with the following relevant Ministerial Directions.

Directive	Key Requirement	Justification
1.2 Rural Zones		
The objective of this direction is to protect the agricultural production value of rural land A planning proposal must: (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone (b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village)	May be inconsistent unless: (a) justified by a strategy which: (i) gives consideration to the objectives of this direction, (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and (iii) is approved by the Director-General of the Department of Planning, or (b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, <u>or</u> is: (c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives	The planning proposal is consistent with Council's Rural Residential Land Release Strategy 2014 which identifies the land as being suitable for investigation for potential 4ha lot sizes within the RU4 zone and was prepared in accordance with relevant state and regional strategies, duly approved by the Director-General of the Department of Planning The identified area is consistent with the Mid North Coast Regional Strategy in that: - It is close to the existing settlements of Crescent Head, away from the coast and not sufficiently proximate or connected to be an urban expansion area - The site is separated from Crescent Head Village by ecologically significant flood prone land - The Planning Proposal will not result in the loss of significant vegetation, biodiversity values or primary production

Directive	Key Requirement	Justification
	consideration to the objective of this direction, or (d) is of minor significance	
1.5 Rural Lands		
The objectives of this direction are to: (a) protect the agricultural production value of rural land (b) facilitate the orderly and economic development of rural lands for rural and related purposes A planning proposal to which clauses 3(a) or 3(b) apply must be consistent with the Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>	A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are: (a) justified by a strategy which: (i) gives consideration to the objectives of this direction (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites, and (iii) is approved by the Director-General of the Department of Planning and is in force, or (b) is of minor significance	The Kempsey Shire Rural Residential Strategy specifically seeks to facilitate the orderly and economic development for rural residential purposes and in doing so, must relate to adjacent rural lands and rural land uses The Rural Planning Principles of SEPP (Rural Lands) 2008 are <i>(a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas</i> Comment: The planning proposal does not impinge upon the current agricultural capacity of the residue lands <i>(b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State</i> Comment: The adopted Rural Residential Strategy for Crescent Head road area, avoids areas of prime agricultural land and recognises that changing nature of agriculture in this area <i>(c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development</i> Comment: The planning proposal which will increase the local population, will result in additional economic and social benefits to the surrounding locality through local spending and participation <i>(d) in planning for rural lands, to balance the social, economic and environmental interests of the community</i> Comment: The adopted Rural Residential Strategy assesses the subject land under specific Environmental Sustainability

Directive	Key Requirement	Justification
		Criteria, including economic and environmental interests <i>(e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land</i> Comment: The Background Studies supporting the adopted Rural Residential Strategy assesses the natural resources of the subject area and include reference to a range of ecological assessments. Regard has been had to maintaining biodiversity, protection of native vegetation, water resources and avoiding constrained lands <i>(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities</i> The planning proposal for approximately 8 ha of RU45 land to be allocated a proposed minimum lot size of 4ha would result in 2 x 4ha lots which would support rural lifestyle settlements already established in the immediate area <i>(g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing</i> The site is serviced by sealed public road, electricity & telecommunications. Any resulting residence will be self-supply for water. Road network capacity is also adequate <i>(h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General</i> The Mid North Coast Regional Strategy is the applicable regional strategy and the Kempsey Rural Residential Strategy is the relevant local strategy. The proposal is consistent with both strategies.
4.1 Acid Sulphate Soils		
The objective of this direction is to avoid significant adverse environmental impacts	A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on	Kempsey LEP 2013 ASS map Sheet 11 identifies the subject land as being within Class 5 potential Acid Sulfate Soils (ASS) such that there is a low probability that

Directive	Key Requirement	Justification
from the use of land that has a probability of containing acid sulphate soils.	land identified as having a probability of containing acid sulphate soils on the Acid Sulphate Soils Planning Maps unless the relevant planning authority has considered an acid sulphate soils study assessing the appropriateness of the change of land use given the presence of acid sulphate soils	development would disturb, expose or drain acid sulfate soils and cause environmental damage.
4.3 Flood Prone Land		
The objectives of this direction are: (a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and (b) 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 (4) A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas) (5) A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential,	A planning proposal may be inconsistent with this direction only if the relevant planning authority can satisfy the Director-General (or an officer of the Department nominated by the Director-General) that: (a) the planning proposal is in accordance with a floodplain risk management plan prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005, or (b) the provisions of the planning proposal that are inconsistent are of minor significance Note: "flood planning area", "flood planning level", "flood prone land" and "floodway area" have the same meaning as in the Floodplain Development Manual 2005	The subject land is not identified as being affected by the designated 1 in 100 year flood event

Directive	Key Requirement	Justification
Business, Industrial, Special Use or Special Purpose Zone		
4.4 Planning for Bushfire Protection		
The objectives of this direction are: (a) 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 (b) to encourage sound management of bush fire prone areas	(5) A planning proposal must: (a) have regard to <i>Planning for Bushfire Protection 2006</i> (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and (c) ensure that bushfire hazard reduction is not prohibited within the APZ (6) A planning proposal must, where development is proposed, comply with the following provisions, as appropriate: (a) provide an Asset Protection Zone (APZ) incorporating at a minimum: (i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ within the property, and (ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road (c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks (d) contain provisions for adequate water supply for firefighting purposes (e) minimise the perimeter of the area of land interfacing the hazard which may be developed, (f) introduce controls on the placement of combustible materials in the Inner Protection Area	A Bushfire Hazard Assessment has been completed which demonstrates that each lot has appropriate APZ and BAL construction levels

Potential Environmental Impacts

Flora and Fauna

The Planning Proposal notes that the subject land is the residual block from a 1999 subdivision. The site has been substantially cleared and is not identified as providing habitat for any threatened species. An additional future dwelling can be located on the site with minimal or no clearing being required.

Utilities

The site provides access to power and telephone services but does not have access to Council's reticulated services. On-site domestic sewage management systems will be required and a report provided identifies that the site contains a soil structure with 'moderate' limitations and will require an Aerated Wastewater Treatment System. The site is limited to self-supply for potable water requirements and firefighting.

Limited public infrastructure exists to service the proposal - being direct access from Crescent Head Road. Access to reticulated water is impractical as the nearest connection is approximately 4 km distant from the site. Notwithstanding, self-supply of water at the site is considered viable for a potential 2 lot subdivision.

Community and Public Agency Consultation

Consultation will be undertaken with the State and Commonwealth authorities should the Director General determine to allow the planning proposal to proceed as part of the overall public exhibition and consultation for the planning proposal post Gateway Determination.

Community Consultation is proposed to be undertaken in accordance with any conditions specified in the Gateway Determination and Kempsey Shire Council's Rezoning Application Procedure 1.1.9 Section 3 Public Notification and Consultation including any specific requirements of the LEP Review Panel.

PLANNING PROPOSAL

1023 CRESCENT HEAD ROAD
CRESCENT HEAD

S H ASHLEY & G M HARVEY

DECEMBER 2015
(updated March 2016)

