

Kempsey LEP 2013 Amendment No 8 - Neville Morton Drive, Crescent Head

Proposal Title : Kempsey LEP 2013 Amendment No 8 - Neville Morton Drive, Crescent Head

Proposal Summary : The Planning Proposal aims to rezone Lot 3 DP 1164661, Neville Morton Drive, Crescent Head to facilitate a rural residential development. Specifically, the Planning Proposal involves the following:

- * Rezoning 4.6ha of land currently zoned RU2 Rural Landscape to R5 Large Lot Residential and amending the minimum lot size to 1ha;
- * Rezoning 7.7ha of land currently zoned E3 Environmental Management to R5 Large Lot Residential and amending the minimum lot size to 1ha;
- * Rezoning 37.9 ha of land zoned E3 Environmental Management to E2 Environmental Conservation; and
- * Amending the Kempsey LEP 2013 Scenic Protection Map which identifies part of the site as having scenic values.

The Planning Proposal estimates the creation of 14 lots which will cover an area of approximately 12.3ha.

PP Number : PP_2016_KEMPS_005_00

Dop File No : 15/16696

Proposal Details

**Date Planning
Proposal Received :** 06-Oct-2016

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 : Neville Morton Drive

Suburb :

City : Crescent Head

Postcode : 2440

Land Parcel : Lot 3 DP1164661

DoP Planning Officer Contact Details

Contact Name : **Gina Davis**
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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name : **Tamara Prentice**
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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 :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :	12.30	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	0	No. of Dwellings (where relevant) :	14
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 communications 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? : **Yes**

If Yes, comment : **The Northern Region office has not met any lobbyists in relation to this proposal, nor has the Region been advised of any meeting between other officers 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.**

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

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

Comment : **The Planning Proposal provides an adequate explanation of the intended provisions to achieve the objectives which are as follows:**
*** Rezone 4.6ha of land zoned RU2 Rural Landscape to R5 Large Lot Residential and amend the minimum lot size to 1ha;**
*** Rezone 7.7ha of land zoned E3 Environmental Management to R5 Large Lot Residential and amend the minimum lot size to 1ha;**
*** Rezone 37.9 ha of land zoned E3 Environmental Management to E2 Environmental Conservation; and**
*** Amend the Kempsey LEP 2013 Scenic Protection Map which identifies part of the site as having scenic values.**

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
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

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 14—Coastal Wetlands
SEPP No 44—Koala Habitat Protection
SEPP No 55—Remediation of Land
SEPP (Exempt and Complying Development Codes) 2008
SEPP (Infrastructure) 2007
SEPP (Rural Lands) 2008

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

An assessment of the applicable directions and SEPP's is provided within the 'Assessment' section of this planning team report.

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

If No, explain : **See the 'Assessment' section of this planning team report.**

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **The Planning Proposal has included maps that show the locality and the current and proposed zonings and minimum lot size standards. A proposed Scenic Protection Land Map (SPL Map) has also been included. These maps are considered adequate for**

exhibition purposes subject to the inclusion of the existing SPL map.

Revised maps which comply with the Department's 'Standard Technical Requirements for LEP Maps' will also be needed prior to the making of the LEP.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **The Planning Proposal has indicated a 28 day timeframe for community consultation. Whilst the proposal is considered to be low impact in nature and the land is identified in Council's Department approved Rural Residential Land Release Strategy, Council have nominated a 28 day community consultation period in accordance with its Rezoning Policy Public Notification Guidelines. This community consultation period is considered appropriate.**

It is understood that Council intends to consult with the following authorities:

- * OEH;**
- * NSW Rural Fire Service; and**
- * DPI (Agriculture).**

This is considered to be satisfactory subject to the addition of the Kempsey Local Aboriginal Land Council as discussed further below.

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 and accompanying documentation are considered to satisfy the adequacy criteria by:**

- 1. Providing appropriate objectives and intended outcomes;**
- 2. Providing a suitable explanation of the provisions proposed by the LEP to achieve the outcomes;**
- 3. Providing an adequate justification for the proposal;**
- 4. Outlining a proposed community consultation program; and**
- 5. Providing a project time line.**

Council is seeking an authorisation to exercise its plan making delegations. As the proposal deals with only matters of local significance consistent with a Department approved local strategy, it is recommended that an authorisation to exercise plan making delegations be issued to Council in regard to this matter.

The RPA has provided a project timeline which estimates that the LEP will be ready for notification in March 2017. This timeframe has however assumed a start time of August 2016 for submission of the Planning Proposal to the Department. The Planning Proposal wasn't formally submitted until 6 October 2016. A 9 month timeframe is considered suitable to allow Council to complete the draft LEP.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : The Kempsey LEP 2013 commenced on 3 February 2014.

Assessment Criteria

Need for planning proposal :

The aim of the Planning Proposal is to facilitate residential development on part of Lot 3 DP 1164661, Neville Morton Drive, Crescent Head. This development will be an extension of the existing rural residential estate known as Dulconghi Heights. The subject site has been identified in Council's Department approved Rural Residential Land Release Strategy 2014 (RRLRS) as having potential for an extension of the adjoining R5 Large Lot Residential zone (Dulconghi Heights). Prior to rezoning however, the RRLRS requires that consideration be given to the specific visual and ecological impacts of the site as well as flooding and the presence of SEPP 14 wetland.

Issues relating to the proposed lot boundaries and lot sizes, presence of SEPP 14 wetlands and potential EEC's and vegetation removal have been discussed between representatives of the Department, OEH, Council and GHD (proponent). The issues raised have been addressed through the Planning Proposal or by completing further studies to provide further assurance and support.

1. Ecological assessment

* There will be impacts to approximately 7.34ha of modified Blackbutt Tallowwood grassy open forest vegetation. This vegetation is in a degraded state having been previously thinned. It is not listed as an EEC in NSW, and of this 7.34ha of modified woodland, 2.36ha of vegetation will be cleared for residential dwellings and associated infrastructure with the remaining land being partially cleared to accommodate bushfire protection areas. The rezoning will require the removal of 3 remnant Paperbark trees to allow for the construction of the access road.

* The majority of the vegetation community detailed above is regarded as Secondary (Class A) Preferred Koala habitat and does contain some scattered individual KFT's. It is considered to form part of a larger home range for the Koala.

The Planning Proposal will require the removal of 4 KFTs with the other KFTs being retained in APZs and in areas proposed for dwelling construction through the use of TPOs or s88B instruments.

* The Planning Proposal will only have a minor impact due to the small area of land being cleared (2.36ha), the limited tree removal in APZ's, the retention of almost all KFT's and hollow bearing trees, the siting of potential dwellings to already cleared areas and the protection of habitat trees via TPOs or s88B instruments.

* The ecology assessment has also taken into consideration the requirements of Kempsey's Comprehensive Koala Plan of Management (KCKPoM). The proposal will impact on 6.98 ha of Secondary (Class A) Preferred Koala habitat and as such compliance with clause 4.6 of the KCKPoM is required. In accordance with the KCKPoM, all possible KFTs over 250 mm dbh will be retained and the provisions outlined in section 4.1 of the plan which relate to the planning provisions for development applications will apply. In addition, a habitat compensation package for the required habitat removal in accordance with section 4.12 of the plan will form part of the development application. Details of this package include:

- securing at least twice the area of habitat to be lost to clearing under a conservation mechanism. The land required for the offset would be located within the 37.9ha of land to be rezoned from E3 to E2;
- the offset will be located adjacent to the site in vegetation that has been mapped as the same type however is in better condition having not been subject to grazing; and
- the offset would be subject to a vegetation management plan or similar and managed for conservation purposes.

* SEPP 14 Wetland

A SEPP 14 wetland is located partially within the proposed eastern lots of the subdivision. The PP does not include any change to the mapped boundary of the SEPP 14 wetland or the changing of the E2 zone that applies to the wetland. The subdivision has been

designed to ensure that an adequate development footprint for each lot can be situated clear of the SEPP 14 wetland and as such, no clearing or filling is proposed to be undertaken on lands within the mapped SEPP 14 area.

2. Bushfire Assessment

Council has identified that site as being bushfire prone land. An assessment has identified that adequate land is available to meet APZ requirements however some vegetation would need to be cleared. Any potential development application would need to be assessed in accordance with Planning For Bushfire Protection 2006 and consultation with the NSW Rural Fire Service will be necessary.

3. Traffic assessment

The consultants have reviewed traffic generation rates for residential dwellings in accordance with the Roads and Maritime Services 'Guide to Traffic Generating development' (2002). The traffic volume estimated to be generated from the potential residential development is considered to be low volume and the surrounding road network is considered adequate to accommodate this.

4. Cultural heritage assessment

A literature review as well as a survey of the site was undertaken for the purpose of a cultural heritage assessment. The survey of the proposed site was originally undertaken by the Kempsey Local Aboriginal Land Council in 1996. No surface relics were noted and there was no recollection of the site having contemporary Aboriginal significance or occupation. A representative from NPWS at that time also conducted an onsite survey to verify the presence of an Aboriginal site listed on the NPWS Aboriginal Sites Register. No Aboriginal relics were detected. It was however recommended that monitoring of the initial subsurface excavation for development works be undertaken.

A recent inspection in 2015 of the site was also undertaken by members of the Kempsey Local Aboriginal Land Council. This inspection while identifying an Aboriginal site consisting of 2 stone flakes, concluded the site was likely to be of low to moderate significance, however additional investigation would be required to confirm this prior to development.

5. Visual assessment

The future development of the site is not considered likely to have a significant detrimental impact on the visual amenity of the Crescent Head area for the following reasons:

- only a limited amount of vegetation is to be cleared to facilitate the potential residential development with the visual impact of any residential development being consistent with the existing and adjoining Dulconghi Estate;
- indicative building envelopes have been sited on the lower elevations of the proposed lots thereby minimising any exposure from Crescent Head;
- the position of the site is located at the base of the predominant feature in the landscape, which is Dulconghi Hill; and
- a large patch of intact vegetation to the east of the site will largely block the view of any future dwellings to Crescent Head.

6. Flooding

As a result of the wetland located to the east of the subject site, some lots have land located below 4.21m AHD and are affected by the 1 in 100 year flood event. The proposed easterly boundary of the lots has generally been located to coincide with the 1 in 100 year ARI flood level. Future building envelopes and would therefore be located above this flood level.

Council has indicated that it intends to seek from the proponent a reticulated water servicing strategy prior to exhibition of the planning proposal. This is not however considered to be a matter needing to be addressed at the rezoning stage as the proposal

confirms that each lot will need to provide suitable on-site water storage and collection for their own needs.

The proposed rezoning is considered to be the only means by which to achieve the intended outcomes.

Consistency with strategic planning framework :

Mid North Coast Regional Strategy (MNCRS).

The proposed amendments to the Kempsey LEP 2013 are consistent with the MNCRS.

Draft North Coast Regional Plan

The proposal is not inconsistent with the Draft North Coast Regional Plan.

STATE ENVIRONMENTAL PLANNING POLICIES

The proposal is consistent with the provisions of all applicable SEPPs relevant to the site. Comments are provided below regarding key relevant SEPPs for the proposed rezoning.

SEPP 14 - Coastal Wetlands

The boundary of the SEPP 14 wetlands is located within the proposed eastern lots of the subdivision. The Planning Proposal does not include any change to the mapped boundary of the SEPP 14 wetland or the changing of the E2 zone. The subdivision has been designed to ensure that an adequate development footprint can be situated on the lots affected by the SEPP 14 wetland and as such, no clearing or filling is proposed to be undertaken on lands within the mapped SEPP 14 area. The Planning Proposal is therefore considered to be consistent with the provisions of the SEPP.

SEPP 44 - Koala Habitat Protection

Kempsey Comprehensive Koala Plan of Management (KPoM) is relevant to this Planning Proposal. The proposal confirms that it is consistent with the requirements of the KPoM, including the provision of a suitable environmental offset if required, and that this matter will be considered in more detail at the DA stage.

SECTION 117 DIRECTIONS

The following directions are applicable to the proposal:

1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.1 Environment Protection Zones, 3.1 Residential Zones, 3.4 Integrating Landuse 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.

Of the above s117 Directions the proposal is considered to be inconsistent with the following Directions:

1.2 Rural Zones

The Planning Proposal is inconsistent with this direction as it seeks to rezone land from rural to residential. The land to be zoned from RU2 and E3 to R5 has been identified in Council's Department approved local strategy as being a possible site for the extension of the existing Dulconghi Heights Estate subject to various additional studies being conducted. These studies have now been carried out and the land found to be generally suitable. The Planning Proposal is considered to be of minor significance due to its consistency with a Department approved local strategy.

2.1 Environmental Protection Zones

The Planning Proposal is inconsistent with this direction as it reduces the environmental protection standards which currently apply to part of the land. The Planning Proposal will rezone approximately 7.7ha of land from Zone E3 to Zone R5 for the purpose of rural residential development. This will result in the removal of 2.36ha of vegetation for residential development and the partial clearing of 4.98ha to accommodate APZ's. None of the land to be cleared contains EEC's and much of it is in a degraded state as a result of cattle grazing. The original E3 zoning of this site was applied due to the previous LEP's scenic protection zoning rather than because it contains environmentally sensitive lands. Any impacts to Koala habitat are also considered to be minor and can be further assessed in accordance with the KCKPoM at the DA stage. It is also noted that approximately 37.9ha will be rezoned from E3 to E2 to ensure future conservation and protection of habitat in the area and for offsetting purposes at DA stage if required. Any inconsistency with this direction is considered to be justified as minor significance.

2.3 Heritage Conservation

The proposal is inconsistent with this direction as it does not seek to facilitate the conservation of the Aboriginal site identified in 2015 by members of the Kempsey Local Aboriginal Land Council. This inconsistency is considered to be of minor significance due to the existing legislative protection provided to such sites, the cultural heritage work undertaken in 1996 for the site, and the conclusion of the Kempsey Local Aboriginal Land Council in 2015 that the site was likely to be of low to moderate significance, subject to additional investigation at DA stage. It is however considered appropriate that the Kempsey Local Aboriginal Land Council again be formally consulted as part of the Planning Proposal process.

4.4 Planning for Bushfire Protection

This Direction applies as the subject lots have been mapped as bushfire prone land. Consistency with the Direction is currently unresolved. Consultation with the NSW Rural Fire Service would be required after a Gateway Determination is issued to satisfy the requirements of the Direction.

Environmental social
economic impacts :

In regard to environmental impacts, the Planning Proposal will not have any direct significant adverse impact on critical habitat or EECs and will have very minimal impact on threatened species by limiting the number of KFTs to be removed and by ensuring that suitable vegetation offsets in regards to area and location are an approved component of any future development application.

The subject land contains bushfire prone land, acid sulfate soils and is also prone to flooding. The planning proposal has been designed in such a way through the location of lot boundaries and development footprints that these issues will not be magnified. A preliminary contamination review has been undertaken that has not identified any likely potential contamination which would make the site unsuitable for its intended future use.

No SEPP 14 wetlands will be detrimentally impacted by the proposal.

In regards to potential socio-economic impacts, the proposed rezoning will largely result in positive impacts by providing additional rural residential land to the Crescent Head locality. The planning proposal is in effect implementing the strategic planning suggestions of the KRRLRS and as such, will facilitate the efficient and orderly development of land and provide for greater housing choice.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
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Timeframe to make LEP :	9 months	Delegation :	RPA
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Public Authority Consultation - 56(2)(d) :	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
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(2)(a) Should the matter proceed ?	Yes
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If no, provide reasons :

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

If Yes, reasons :

Kempsey LEP 2013 Amendment No 8 - Neville Morton Drive, Crescent Head

Identify any additional studies, if required. :

Other - provide details below

If Other, provide reasons :

Referral to the Kempsey Local Aboriginal Land Council

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
3468_2016-10-05_Rev6_Planning Proposal Crescent Head_reduced.pdf	Proposal	Yes
3507_2016-10-05_Rev5_Ecology Assessment reduced.pdf	Proposal	Yes
Cover Letter_KLEP 2013 AM8 .pdf	Proposal Covering Letter	Yes
Kempsey Att 4_completed.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
- 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 28 days;
- 3. The Planning Proposal be completed within 9 months;
- 4. The Planning Proposal be amended prior to exhibition to include an updated project timeline and inclusion of the existing Scenic Protection Land Map.
- 5. That the RPA consult with the Commissioner of the NSW Rural Fire Services in accordance with the requirements of S117 Direction 4.4 Planning for Bushfire Protection;
- 6. That the Secretary (or her delegate) note the current inconsistency with section 117 Direction 4.4 Planning for Bushfire Protection and that this inconsistency will need to be resolved prior to the proposal being finalised;
- 7. It is recommended that a delegate the Secretary agree that the inconsistency of the proposal with S117 Directions 1.2 Rural Zones, 2.1 Environment Protection Zones and 2.3 Heritage Conservation are justified in accordance with the terms of the directions;
- 8. That consultation be undertaken with the following agencies:
 - Office of Environment and Heritage;
 - Kempsey Local Aboriginal Land Council;
 - Department of Primary Industries (Agriculture); and
- 9. A written authorisation to exercise delegation be issued to Kempsey Shire Council

Supporting Reasons :

The reasons for the recommendation are as follows:

- 1. The proposal will allow for residential development on land that additional studies have shown is suitable in regards to the provision of infrastructure, avoidance of flooding and impacts on SEPP 14 wetlands, connectivity to adjoining residential development and

Kempsey LEP 2013 Amendment No 8 - Neville Morton Drive, Crescent Head

ability to offset vegetation clearing and therefore minimise any potential long term environmental harm;

3. The inconsistencies of the proposal with the S117 directions are of minor significance; and

4. The proposal is consistent with all relevant local and regional planning strategies and SEPP's.

Signature:



Printed Name:

Craig Doss

Date:

19/10/16

