

**Kempsey LEP 2013 - Reduction of minimum lot size to facilitate 2 lot subdivision at Lot 424
DP 710381, 15 Feltons Lane, Hampden Hall**

Proposal Title :	Kempsey LEP 2013 - Reduction of minimum lot size to facilitate 2 lot subdivision at Lot 424 DP 710381, 15 Feltons Lane, Hampden Hall		
Proposal Summary :	The planning proposal seeks to amend the minimum lot size from 40 hectares to 7 hectares to facilitate a future 2 lot rural residential subdivision of Lot 424 DP 710381, 15 Felton's Lane, Hampden Hall.		
PP Number :	PP_2017_KEMPS_006_00	Dop File No :	17/07802

Proposal Details

Date Planning Proposal Received :	08-Jun-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 :	15 Felton's Lane		
Suburb :		City :	Hampden Hall
		Postcode :	2440
Land Parcel :	Lot 424 DP 710381		

DoP Planning Officer 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 :	No

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MDP Number :		Date of Release :	
Area of Release (Ha) :	20.83	Type of Release (eg Residential / Employment land) :	Residential
No. of Lots :	0	No. of Dwellings (where relevant) :	2
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's Code of Conduct in relation to communication and meetings with Lobbyists has been complied with to the best of the Region's knowledge.		
Have there been meetings or communications with registered lobbyists? :	No		
If Yes, comment :	Northern Region has not met any lobbyists in relation to this proposal, nor has Northern Region been advised of any meeting between other agencies and lobbyists concerning the proposal.		

Supporting notes

Internal Supporting Notes :

The proposal as submitted is to amend the minimum lot size of Lot 424 DP 710381 to enable the land to be subdivided into two lots, with each allotment created benefiting from a dwelling entitlement.

The subject lot is bisected by Old Station Road. The planning proposal proposes to create two allotments based on the severance by Old Station Road to amend the Lot Size Map from 40 hectares to 7 hectares for proposed Lot 1 (being on the northern side of Old Station Road). Proposed Lot 2 which would contain the existing dwelling and would not be subject to a change to the minimum lot size, remaining as 40 hectares.

Currently, there are no provisions within the Kempsey LEP 2013 that would provide for the subdivision for the purposes of a dwelling as the 40ha minimum lot size could not be met.

Following discussions with Council, the following revised minimum lot sizes are proposed:

- Proposed Lot 1: 7 hectares
- Proposed Lot 2: 8 hectares.

For the purposes of this report, the assessment of the proposal is based on the revised minimum lot sizes. If this planning proposal is supported, a condition would need to be included requiring the planning proposal to be updated to reflect this amendment.

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 describes the intention of the planning proposal. The proposal intends to amend Kempsey LEP 2013 to facilitate the subdivision of the land to create one additional rural residential lot through the reduction of the minimum lot size.

As discussed earlier in this report, the proposal is recommended to be amended by

reducing the minimum lot size of both allotments to facilitate the proposed two lot subdivision.

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

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

Comment : **The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal. The proposal intends to make changes to the Minimum Lot Size map.**

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

1.2 Rural Zones

1.5 Rural Lands

* May need the Director General's agreement

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

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

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 (Rural Lands) 2008

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

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

If No, explain : **See assessment section of this report.**

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **Maps have been included in the planning proposal which adequately show the intended outcome of this amendment.**

Maps prepared in accordance with the Department's technical mapping standards will also be needed before a Parliamentary Counsel's opinion can be sought.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council has proposed community consultation, however a specific time period has not been nominated. As the proposal is not identified in Council's adopted local growth management strategy, if the proposal is supported it is considered appropriate that a community consultation period of 28 days be undertaken.**

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; and
- 3) Proposing a community consultation process.

The justification for the proposal is discussed further in this report.

Delegation

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 if the proposal proceeds.

Project Timeline

Council have indicated in the cover letter to the Department that a 6 month time period is required to complete the amendment. It is recommended that the project be completed within 9 months as additional studies may be required. The planning proposal will be required to be updated to reflect the revised timeframe prior to community consultation.

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 was an unsolicited request from the landowner to Council. The planning proposal has been prepared due to landowner concerns regarding access and management of lots split by a rural road. These concerns cited include:

- the site already operates as two separate parcels due to the bisecting road;
- rural activities are difficult to manage in a safe manner when access is required between land on opposing sides of a road;
- the value of the severed land for agricultural purposes is minimal due to size and management constraints;
- the severed land is a logical extension to a nearby rural residential area; and
- the surrounding settlement pattern is consistent with rural residential lot sizes.

A planning proposal is the only mechanism to achieve the intent of the proposal.

While the management of land split by a road is not an ideal outcome, subdivision, for the purposes of a dwelling house, on this basis is a dangerous precedent, particularly where there is a demonstrated over supply of rural residential land within the locality. A recent proposal to enable subdivision of all rural lots bisected by a road was recently not supported by the Department as such bisection was determined to be insufficient justification for fragmentation. Should management of the split allotment prove too onerous there is an opportunity to subdivide this land, without the creation of a dwelling entitlement pursuant to the SEPP (Rural Lands).

Further, when approving the Kempsey Rural Residential Land Release strategy DPE noted

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that the projected demand to 2031 for rural dwellings was 375 dwellings. Councils studies confirmed an existing zoned land mass capable of providing approximately 809 dwellings. Irrespective, noting that some of the zoned land may be constrained, and that Council had aspirational targets exceeding the demographic predictions, the Department supported the strategy. This strategy identifies land most suitable for rural residential development, and has a theoretical yield of 7,155 dwellings, approximately 20 times the number DPE projects as necessary and 7 times Councils most aspirational targets. The land subject to this planning proposal is outside Councils identified rural residential land supply. It is blatantly clear that there is no need for additional rural residential dwellings on land outside Councils endorsed strategy.

Consistency with
strategic planning
framework :

NORTH COAST REGIONAL PLAN 2036

The proposal does not address the North Coast Regional Plan 2036, instead discussing the now repealed Mid North Coast Regional Strategy 2006-2031. Should the proposal be supported this section would need to be updated prior to exhibition.

The proposal is inconsistent with

- Direction 3, as it proposes a dwelling on land which will be isolated during flood events, and potentially liable to be inundated during the PMF,
- Direction 11, as it proposes rural residential development on mapped regionally significant farmland, and
- Direction 24 as it proposes rural residential housing outside a Department approved local strategy.

While the proposal contains an assessment criteria against its consistency with the Important Farmland Interim Variation Criteria and Urban Growth Area Variation Criteria, it is considered that these inconsistencies are not justified in regard to the site which is flood prone, bushfire prone and mapped as regionally significant farmland.

KEMPSEY SHIRE RURAL RESIDENTIAL LAND RELEASE STRATEGY 2014

The proposal is inconsistent with the outcomes of the Kempsey Rural Residential Land Release Strategy (KRRLRS).

The subject land was excluded from this strategy as being unsuitable for further rural residential development as it is located within a flood prone area with flood liable access to Kempsey and provides a visual break in the landscape.

The justification for the proposal is based upon the operation of the allotments as two separate sites due to the bisection by Old Station Road. The principle of permitting ad hoc and scattered rural subdivision and dwellings on the basis of a potential physical constraint (such as the location of a sealed road) without a detailed strategic analysis of its implications and merits is considered to be inconsistent with the existing planning framework.

Such a principle if adopted (and potentially extended once accepted to allow subdivision in more remote locations, wherever rural properties are severed by watercourses and other physical obstacles, or when landowners are not capable of managing their land with respect to these features), would have significant State wide precedence and adverse implications for the future development of rural lands, the protection of primary production lands and the wider agricultural sector, and minimising rural land use conflict.

The Kempsey Shire Rural Residential Land Release Strategy (2014) identified that in the Verges Creek locality (including Hampden Hall), 121 rural residential allotments were available, with a further 485 estimated lots identified in the strategy. A 36 allotment rural residential concept proposal has recently been supported with the rezoning having been issued a Gateway in May. This land is less than a kilometre from the subject land.

It is not expected that one additional allotment which is extremely environmentally constrained will contribute positively to the supply and demand of rural residential allotments in the locality. The need for one additional allotment that is located outside of the approved LGM strategy has not been satisfactorily justified.

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 inconsistent with the majority of the principles. If supported, this planning proposal should be considered further after the Department of Industry - Agriculture has reviewed and provided comment on the proposal in regard to the predominant mapping as regionally significant farmland.

S117 DIRECTIONS

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

Direction 1.2 Rural Zones

The objective of this direction is to protect the agricultural production value of rural land. The proposal is inconsistent with this direction as it proposes to increase the permissible density of development within a rural zone. Due to the significant area of regionally significant farmland on this site it is considered appropriate that consultation with the Department of Industry - Agriculture be undertaken prior to the community consultation should this proposal be supported. The inconsistency with this s117 direction remains unresolved.

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 not justified. Due to the significant area of regionally significant farmland on this site it is considered appropriate that consultation with the Department of Industry - Agriculture be undertaken prior to the community consultation should this proposal be supported. The inconsistency with this s117 direction remains unresolved.

Direction 4.1 Acid Sulfate Soils

The proposal is inconsistent with this direction as it contains Class 3, 4 and 5 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 intensify the density of development in a flood prone area, contrary to the Department approved local strategy which identified only land above the floodplain for rural residential development.

The proposal identifies an area of 1100m² of land located above the 100 year ARI flood area on proposed lot 1, the remainder of this proposed lot is flood prone. There is a flood channel traversing the subject site which is mapped as floodway in Council's Draft CBD flood mapping. No assessment has been made against the Probable Maximum Flood (PMF). It is considered inappropriate to provide for a dwelling on the subject site which is isolated during a flood event and potentially inundated during PMF. There is no acceptable justification for this inconsistency.

Direction 4.4 Planning for Bushfire Protection

This direction is applicable to the proposal as part of the land is mapped as bushfire prone. A Bushfire Hazard Assessment has been prepared as part of the site identified as being bushfire prone. Should a Gateway determination be issued, consultation with the RFS is required 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 does not address the North Coast Regional Plan 2036, and is considered to be inconsistent with the Plan as it proposes rural residential type development, outside an adopted strategy on a site subject to flooding and mapped as regionally significant farmland. The inconsistency with this s117 direction remains unresolved.

Environmental social
economic impacts :

ACID SULFATE SOILS
Refer to discussion above

FLOOD
Refer to discussion above

BUSHFIRE

A small portion of the eastern boundary of Proposed Lot 2 is identified as bushfire prone land (category 2) and vegetation buffer. A Bushfire Hazard assessment has been undertaken and concludes that any additional dwellings can comply with the provisions of Planning for Bushfire Protection. If supported it is recommended that the proposal be referred to the NSW RFS for consideration to confirm whether the proposal has satisfactorily addressed this matter.

KOALA HABITAT

The land is mapped as 'unknown koala habitat'. A site survey and tree identification has not been undertaken on the site. It is considered appropriate that if supported, this proposal be referred to the Office of Environment and Heritage for consideration.

CULTURAL HERITAGE

An AHIMS search has been undertaken which did not return any known articles of aboriginal or European heritage identified on the site. If supported, 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.

SOCIAL AND ECONOMIC

It is considered that there are limited social and economic benefits to the proposal, given the demonstrated over supply of rural residential land in this locality. The subdivision of the site will contribute only one additional dwelling to the locality, benefitting only the landowner in the on-sale of the property.

Assessment Process

Proposal type : **Inconsistent** Community Consultation Period : **Nil**

Timeframe to make LEP : **0 months** Delegation : **Nil**

Public Authority Consultation - s56(2)(d) :

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

(2)(a) Should the matter proceed ? **No**

If no, provide reasons : **It is considered that the potential flood risk, as well as the majority of the site being identified as regionally significant farmland outside of an approved strategy, makes the site inappropriate for further subdivision.**

The subject land is able to be subdivision currently for the purposes of primary production using the provisions of clause 4.2 of the Kempsey LEP 2013. A dwelling is not permissible to be erected on a lot subdivided for the purposes of primary production.

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

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

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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

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Not Recommended**

S.117 directions:

- 1.2 Rural Zones
- 1.5 Rural Lands
- 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

Additional Information : The planning proposal should not proceed for the following reasons:

1. The proposal is inconsistent with the North Coast Regional Plan 2036,
2. The proposal is inconsistent with Councils Rural Residential Land Release Strategy,
3. The proposal is unjustifiably inconsistent with S117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 4.3 Flood Prone Land and 5.10 Implementation of Regional Plans,
4. The proposal is inconsistent with subdivision planning guidelines of the SEPP (Rural Land) 2008 as the proposal fragments rural land which is identified as regionally significant farmland,
5. Kempsey has a sufficient supply of rural residential land for at least 20 years, with ample supply both existing and in the pipeline within the locality of this proposal,
6. The planning proposal has the potential to place individuals at unacceptable risk due to flood inundation across the site. The subject land is completely inundated in 1:100 flood, with the exception of a small building envelope on proposed Lot 1. There is a flood channel traversing the subject site. The property is isolated due to the road network being flood prone and no assessment of the PMF has been undertaken, and
7. The planning proposal will fragment regionally significant farmland.

Supporting Reasons : The planning proposal is not strategically supported and is inconsistent with government policy, and should management of the split allotment prove too onerous there is an opportunity to subdivide this land, without the creation of a dwelling entitlement pursuant to the SEPP (Rural Lands).

Signature:

T. Rentine

Printed Name:

Tamara Rentine

Date:

16 June 2017.

