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*APPENDIX D – SECTION 117 DIRECTIONS*

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<b>Table of Relevant 117 Directives</b>		
<b>Directive</b>	<b>Key requirement</b>	<b>Complies or Justification</b>
<p>1.2 Rural Zones</p> <p>The objective of this direction is to protect the agricultural production value of rural land.</p> <p>A planning proposal must:</p> <p>(a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.</p> <p>(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).</p>	<p>May be inconsistent if:</p> <p>(a) justified by a strategy which:</p> <p>(i) gives consideration to the objectives of this direction,</p> <p>(ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and</p> <p>(iii) is approved by the Director-General of the Department of Planning, or</p> <p>(b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or</p> <p>(c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or</p> <p>(d) is of minor significance.</p>	<p>Consistent as the planning proposal does not seek to rezone land to any of the nominated zones in 1.2(a) and will decrease the permissible density on land.</p>



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<p>1.5 Rural Lands</p> <p>The objectives of this direction are to:</p> <p>(a) protect the agricultural production value of rural land,</p> <p>(b) facilitate the orderly and economic development of rural lands for rural and related purposes.</p> <p>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>.</p>	<p>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:</p> <p>(a) justified by a strategy which:</p> <p>i. gives consideration to the objectives of this direction,</p> <p>ii. identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites, and</p> <p>iii. is approved by the Director-General of the Department of Planning and is in force,</p> <p>or</p> <p>(b) is of minor significance.</p>	<p>Justification</p> <p>The land is primarily zoned E2 Environmental Conservation and partly zoned RU2 Rural Landscape. The planning proposal seeks to apply the E3 Environmental Management zone to the land instead of the RU2 and in a more appropriate locate on.</p> <p>The planning proposal is consistent with the Rural Planning Principles of SEPP (Rural Lands ) 2008 as follows</p> <p><i>(a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,</i></p> <p><b>Comment:</b> The planning proposal does not impinge upon or alter the current agricultural capacity of the lands. The areas zoned RU2 Rural Landscape are 11 discrete areas of approximately 1 ha in size, square in shape. Taking into account the vegetated state of the land and poor soil types there small areas zoned Rural have little to nil agricultural capacity.</p> <p><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></p>
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		<p><b>Comment:</b> The planning proposal does not impact upon any areas of prime agricultural land capacity.</p> <p><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></p> <p><b>Comment:</b> The planning proposal does not conflict with this principle.</p> <p><i>(d) in planning for rural lands, to balance the social, economic and environmental interests of the community,</i></p> <p><b>Comment:</b> The planning proposal recognises the environmental interests of the community and proposes to rezone the lands accordingly.</p> <p><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></p> <p><b>Comment:</b> The Background Studies supporting the planning proposal assesses the natural resources of the subject area and include reference to historic and more recent ecological assessments. Regard has been had to maintaining biodiversity, protection of</p>
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		<p>native vegetation, water resources and avoiding constrained lands.</p> <p><i>(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,</i></p> <p>The planning proposal for an intended outcome of 3 large rural lots with dwelling sites located within the E3 Environmental Management Zone.</p> <p><i>(g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,</i></p> <p>The site had access to public road network and with sufficient capacity for 3 additional lots. The intended outcome is for an environmental sustainable development and as such extension of traditional urban services such as mains electricity supply, water and the like is not proposed. Each lot has ample area set aside under the proposed E3 zone to establish a dwelling, solar panels on dwelling &amp; sheds, on site waste water disposal areas, asset protection zone and on site water capture such as dams and rain water tanks.</p> <p><i>(h) ensuring consistency with any applicable regional strategy of the Department of Planning or</i></p>
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		<p><i>any applicable local strategy endorsed by the Director-General.</i></p> <p>The Mid North Coast Regional Strategy is the applicable regional strategy. The planning proposal is consistent with the strategy as the <i>Local environmental plan will protect and zone land with high environmental, vegetation, habitat, riparian, aquatic, coastal or corridor values for environmental protection.</i></p>
<p>2.1 Environment Protection Zones</p> <p>The objective of this direction is to protect and conserve environmentally sensitive areas.</p>	<p>A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.</p> <p>A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land).</p> <p>This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 “Rural Lands”.</p>	<p>Complies: The planning proposal increases the amount of land under Environmental Protection zones and carries forward the existing provisions of the Kempsey LEP 2013 that further protect those lands.</p>



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<p>2.2 Coastal Protection</p> <p>The objective of this direction is to implement the principles in the NSW Coastal Policy.</p>	<p>This direction applies to the coastal zone, as defined in the <i>Coastal Protection Act 1979</i>.</p>	<p>Not Applicable.</p> <p>Council GIS mapping indicates that the subject land is not mapped as part of the Coastal Zone mapping under SEPP 71.</p>
<p>4.1 Acid Sulphate Soils</p> <p>The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.</p>	<p>A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on 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.</p>	<p>Justified</p> <p>Kempsey LEP 2013 ASS map Sheets 12 &amp; 12A identifies the land the subject of this planning proposal as predominately Class 5 potential Acid Sulphate Soils (ASS), with small areas of Class 2 at the western creek frontage and Class 3 at the north east corner of the land. The objective of the LEP provisions applying to ASS is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.</p> <p>Clause 7.1 of the LEP requires development consent for works which in relation to Class 5 ASS land within 500metres of adjacent Class 1,2,3 or 4 land that is below 5 m AHD and by which the watertable is likely to be lowered below 1 metre AHD on adjacent Class 1,2 3 or 4 land.</p> <p>It further requires preparation of an ASS management plan prior to Council granting any consent, subject to a number of exemptions.</p> <p>Exemptions relevant to this planning proposal and future subdivision application are:</p>



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		<p>“(6) Despite subclause (2), development consent is not required under this clause to carry out any works if:</p> <p>(a) the works involve the disturbance of less than 1 tonne of soil, and</p> <p>(b) the works are not likely to lower the watertable.</p> <p>The intended outcome of the planning proposal and subdivision satisfies the exemption criteria (a) &amp; (b) above.</p>
<p>4.3 Flood Prone Land</p> <p>The objectives of this direction are:</p> <p>(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 <i>Floodplain Development Manual 2005</i>, and</p> <p>(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.</p> <p>(4) A planning proposal must include provisions that give effect to and are</p>	<p>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:</p> <p>(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</p> <p>(b) the provisions of the planning proposal that are inconsistent are of minor significance.</p> <p><b>Note:</b> “flood planning area”, “flood planning level”, “flood prone land” and “floodway area” have the same meaning as in the <i>Floodplain Development Manual 2005</i>.</p>	<p>Justified</p> <p>The planning proposal is in accordance with the requirements of Kempsey Shire floodplain risk management plan, prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005.</p> <p>One of the principal objectives of the policy is: <i>To ensure that new development in flood prone lands is compatible with the degree of flood hazard and that adequate flood risk management measures are incorporated in the design of the development thereby minimising the possibility of loss of life and damage to property</i></p> <p>The policy defines Flood Prone land. Land which is inundated by a 1 in 100 year flood event. The Flood</p>





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<p>consistent with the NSW Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> (including the <i>Guideline on Development Controls on Low Flood Risk Areas</i>).</p> <p>(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, Business, Industrial, Special Use or Special Purpose Zone.</p>		<p>Planning Levels are the combination of the 1 in 100 flood levels and 0.5m freeboard and within the Policy are shown as minimum floor levels.</p> <p>The proposal is for 3 large rural allotments with the area designated for future dwellings being located above the 1 in 100 year flood level of 3.55m AHD plus 500 mm freeboard. Compliance with Kempsey Council's rural flood free land area requirement of 1,000 square metres is readily achieved within the proposed E3 zone parts of the land.</p> <p>The concept subdivision plan provided at Appendix A demonstrates that all 3 proposed lots have the required 1,000 square metres of land more than 500mm above the 1 in 100 year flood level.</p>
<p>4.4 Planning for Bushfire Protection</p> <p>The objectives of this direction are:</p> <p>(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</p> <p>(b) to encourage sound management of bush fire prone areas.</p>	<p>A planning proposal must:</p> <p>(a) have regard to <i>Planning for Bushfire Protection 2006</i>,</p> <p>(b) introduce controls that avoid placing inappropriate developments in hazardous areas, and</p> <p>(c) ensure that bushfire hazard reduction is not prohibited within the APZ.</p>	<p>Complies:</p> <p>The Bushfire Hazard Assessment by Midcoast Building and Environmental June 2014 (the report) has been prepared to meet the aims and objections of the NSW Rural Fire Service's <i>Planning for Bushfire Protection 2006</i> and Section 2 of AS 3959-2009 and has measures sufficient to minimise the impact of bushfire.</p> <p>Recommendations made in the report include:</p> <ol style="list-style-type: none"> <li>1. An Asset Protection Zones as detailed in Section 3.1.1 of this report are to be provided.</li> </ol>



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		<p>2. The proposed subdivision is to comply with the relevant performance criteria/acceptable solutions as provided for by Section 4.1.3 of NSW Rural Fire Services, PfBP, 2006.</p> <p>3. Adopt landscaping principals in accordance with Section 3.1.4 of the NSW Rural Fire Services, PfBP, 2006.</p> <p>A full copy of the Bushfire Hazard Assessment is provided at <b>Appendix B</b>.</p>
<p><b>5.1 Implementation of Regional Strategies</b></p> <p>The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.</p> <p>Planning proposals must be consistent with a regional strategy released by the Minister for Planning.</p>	<p>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 extent of inconsistency with the regional strategy:</p> <p>(a) is of minor significance, and</p> <p>(b) the planning proposal achieves the overall intent of the regional strategy and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.</p>	<p>Consistent:</p> <p>The planning proposal is consistent with the Mid North Coast Regional Strategy 2009 which sets the following objective for local environmental plans:</p> <p><i>Local environmental plan will protect and zone land with high environmental, vegetation, habitat, riparian, aquatic, coastal or corridor values for environmental protection.</i></p> <p>A further objective expressed in the MNCRS 2009 is “ <i>protects high value environments, including coastal lakes, estuaries, aquifers and threatened species, vegetation communities and habitat corridors by ensuring that new development avoids these important areas and their catchments.</i> ”</p>



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		<p>The planning proposal is consistent with the objectives expressed for <i>Environment and Natural Resources</i> within the Regional Strategy.</p>
<p>6.1 Approval and Referral Requirements Objective</p> <p>The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.</p>	<p>A planning proposal must:</p> <p>(a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and</p> <p>(b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:</p> <p>(i) the appropriate Minister or public authority, and</p> <p>(ii) the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General), prior to undertaking community consultation in satisfaction of section 57 of the Act, and</p> <p>(c) not identify development as designated development unless the relevant planning authority:</p> <p>(i) can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the class of development is</p>	<p>Complies:</p> <p>The planning proposal does not include any provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, other than those already required by existing “Integrated Development provisions and State Environmental Planning Policies.</p>



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	<p>likely to have a significant impact on the environment, and  (ii) has obtained the approval of the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in satisfaction of section 57 of the Act.</p>	
<p>6.3 Site Specific Provisions</p> <p>The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.</p>	<p>A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:</p> <ul style="list-style-type: none"> <li>(a) allow that land use to be carried out in the zone the land is situated on, or</li> <li>(b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or</li> <li>(c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.</li> </ul> <p>A planning proposal must not contain or refer to drawings that show details of the development proposal.</p>	<p>Complies:</p> <p>The planning proposal seeks to rezone the site to an existing zone already applying in the Kempsey LEP 2013 and is consistent with item 4(b) of the 117 Direction. It does not propose any additional development standards or requirements to those already contained in the relevant zone and supporting LEP provisions.</p>

