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IRF 22/1619

## Gateway determination report – PP-2021-7144

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Amend the minimum lot size of Lot 17 DP 818185  
1022 Crescent Head Road, Crescent Head

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# Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
Planning Proposal - Prepared by Brickwood Planning Services December 2021 (Amended March 2022)
Bush Fire Assessment Report – Midcoast Building and Environmental – November 2021

Ecological Assessment – Wolfpeak – November 2021

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Aboriginal Cultural Heritage Assessment Report – Kempsey Aboriginal Land Council – September 2021

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Onsite Wastewater Management Assessment Report – Midcoast Building and Environmental – November 2021

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Ordinary Council Meeting Report and Minutes – Kempsey Shire Council – April 2022

## Table 2 Attachments

Attachments
Attachment A – Planning Proposal
Attachment B – Gateway determination
Attachment C – Letter to Council

# 1 Planning proposal

## 1.1 Overview

**Table 3 Planning proposal details**

<b>LGA</b>	<b>Kempsey Shire Council</b>
<b>PPA</b>	Kempsey Shire Council
<b>NAME</b>	Amend the minimum lot size of Lot 17 DP 818185, 1022 Crescent Head Road, Crescent Head
<b>NUMBER</b>	PP-2022-7144
<b>LEP TO BE AMENDED</b>	Kempsey LEP 2013
<b>ADDRESS</b>	1022 Crescent Head Road, Crescent Head
<b>DESCRIPTION</b>	Lot 17 DP 818185
<b>RECEIVED</b>	27/04/2022
<b>FILE NO.</b>	IRF22/1619
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to amend the Kempsey LEP 2013 to reduce the minimum lot size on Lot 17 DP 818185, 1022 Crescent Head Road, Crescent Head from 8 hectares to 4 hectares to facilitate a two lot subdivision.

The objectives of this planning proposal are clear and adequate.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Kempsey LEP 2013 by amending the minimum lot size map (LSZ\_012) as follows:

- Amend Lot 17 DP 818185 from AA2 – 8 hectares to Z3 – 4 hectares (Figure 1).

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

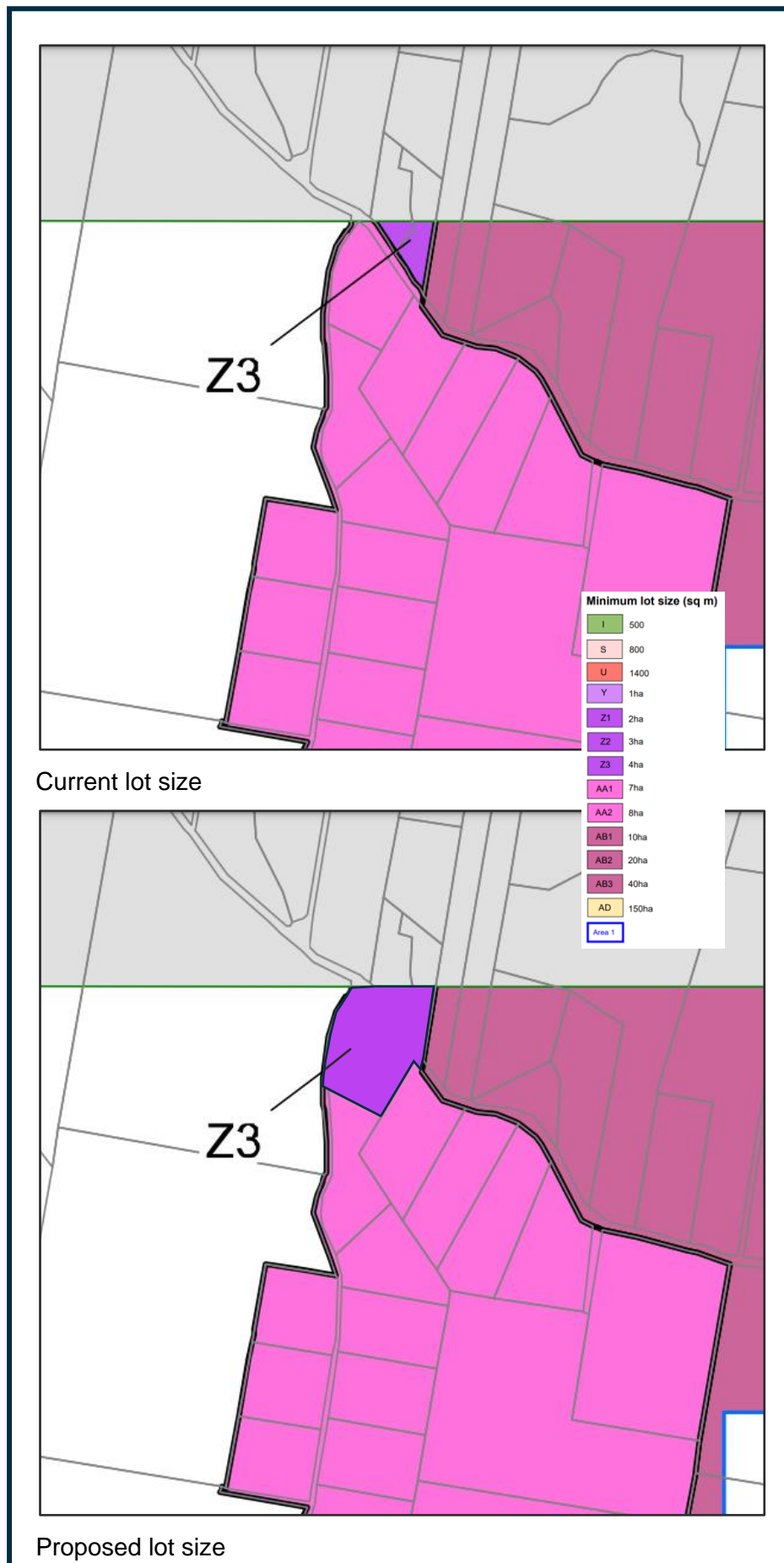


Figure 1 – Current and Proposed minimum lot size maps (source: Planning Proposal)

## 1.4 Site description and surrounding area

The subject land is described as Lot 17 DP 818185, known as 1022 Crescent Head Road, Crescent Head. It is located on the corner of Crescent Head Road and Beranghi Road and is adjacent to Maria National Park (Figure 2 and 3). The allotment is 8.6 hectares in size and is improved by an existing dwelling house, sheds and a Lemon-Scented Myrtle plantation (Figure 4).

The site is zoned RU4 Primary Production Small Lots under the Kempsey LEP 2013. The land is not proposed to be rezoned.

The site contains an approximate 1.3 hectare stand of native vegetation in the south of the site (Figure 4). This vegetation is identified as containing preferred Koala food trees. No threatened flora species were detected on site during the preparation of the supporting Ecological Assessment. The supporting documents indicate the site is suitable for the proposed reduction in lot size to accommodate the subdivision of the land into two lots.



Figure 2 Subject site (source: ePlanning spatial viewer)





Figure 3 Site context (source: Nearmap)





**Figure 4 Site detail and concept subdivision and building envelope (source: SIX maps)**

## 1.5 Existing planning controls

Existing planning controls are as follows:

- Land Zone: RU4 Primary Production Small Lots
- Lot Size AA2: 8 hectares
- Acid Sulfate Soils: Class 5
- Bushfire Prone Land

## 1.6 Mapping

The planning proposal includes mapping (Figure 1) showing the proposed changes to the Kempsey LEP 2013 maps, which are suitable for community consultation.

Maps consistent with the Standard Technical Requirements will need to be prepared before the making of the LEP amendment.

## 1.7 Background

This planning proposal was originally proposed to Council with an alternate concept subdivision layout that divided the stand of native vegetation. Council sought advice from the Biodiversity and Conservation Division (BCD) who raised concerns with the layout due to the potential for clearing of the vegetation under the Rural Boundary Clearing Code. The Code creates an entitlement for clearing 25 metres either side of new property boundaries resulting from subdivision of rural zoned land for bushfire protection. Council shared the concerns of the potential for land clearing and advised the proponent the proposal would not be supported.

The proponent subsequently amended the planning proposal, and the new concept subdivision boundary is shown in Figure 4.

The supporting Bushfire Assessment Report, Ecological Assessment and Onsite Wastewater Management Assessment Report still refer to and were based upon the original concept plan. It will be necessary for these documents to be updated to reflect the proposed concept plan before public exhibition. It is unlikely that these assessment report will significantly alter their final conclusions or recommendation, however, if they do the planning proposal will need to be updated to reflect this.

## 2 Need for the planning proposal

This planning proposal has been prepared to justify an amendment to the Kempsey LEP 2013 seeking to reduce the minimum lot size of the subject land. If approved, the proposed amendment will permit lodgement of a development application for a two lot subdivision.

It is considered the planning proposal is the best means to achieve the intended outcome.

The proposal is proponent initiated and is consistent with the Kempsey Shire Rural Residential Land Release Strategy that identifies this area as being suitable for subdivision into lots not less than 4ha.

## 3 Strategic assessment

### 3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the North Coast Regional Plan 2036.



Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
Direction 1: Deliver environmentally sustainable growth	<p>This Direction aims to manage growth to protect the conservation and economic value of important coastal landscapes and the natural environment. Directing future growth to locations that can sustain additional development, and are readily serviced, will deliver sustainable growth across the region and help protect the environment.</p> <p>The planning proposal comprises low density infill development and is supported by studies which indicate that the land is capable of supporting the proposed intensified use.</p>
Direction 2: Enhance biodiversity, coastal and aquatic habitats, and water catchments	<p>This Direction advocates for development to be appropriately located to limit any adverse impact on the region's biodiversity and water catchments.</p> <p>The subject land contains an area of native vegetation that is not proposed to be impacted by clearing by the concept plan of subdivision. It will remain a contiguous area and retain its linkages to the adjoining area of national park.</p>
Direction 3: Manage natural hazards and climate change	<p>This Direction acknowledges natural hazards that may impact land on the North Coast and aims to reduce the risk from such hazards.</p> <p>While the subject land is subject to bushfire risk and acid sulfate soils, it is considered that these matters are capable of being addressed as part of the development application process. It should also be noted that consultation is required to be undertaken with the RFS as a condition of the Gateway determination.</p>
Direction 11: Protect and enhance productive agricultural lands	<p>This Direction aims to protect and enhance productive agricultural lands.</p> <p>The land is not identified as regionally significant farmland and is within an existing rural residential area not located near any existing or likely future intensive agricultural land uses or clusters.</p>
Direction 18: Respect and protect the North Coast's Aboriginal Heritage	<p>This Direction aims to avoid harm to Aboriginal objects and places, or areas of significance to Aboriginal people.</p> <p>The subject land does not contain any mapped known or predictive Aboriginal Cultural Heritage. An Aboriginal Heritage Information Management System (AHIMS) search did not reveal any Aboriginal Cultural Heritage on or near the subject site. A Cultural Heritage Impact survey was undertaken by the Kempsey Local Aboriginal Land Council Senior Sites Officer who concluded there is no evidence of Aboriginal Cultural activity in the surveyed area.</p>
Direction 21: Coordinate local infrastructure delivery	<p>This Direction aims to maximise the cost-effective and efficient use of infrastructure by directing development towards existing infrastructure or promoting the co-location of new infrastructure.</p> <p>The proposed change to the lot size and subsequent subdivision will not require additional infrastructure to be built or maintained by Council. The subdivision will utilise existing infrastructure.</p>

Direction 22: Deliver greater housing supply	<p>This Direction aim to deliver an appropriate supply of residential land within local growth management strategies and local plans to meet the regions projected housing needs.</p> <p>Rural residential development in identified release areas of the Shire are expected to accommodate a significant proportion of the anticipated population growth. The proposed change to the lots size a subsequent subdivision will contribute to this.</p>
Direction 24: Deliver well-planning rural residential housing areas	<p>This Direction aims to ensure that rural residential development is planned strategically in order to reduce conflict with viable agricultural or environmental land.</p> <p>The planning proposal is consistent with the intent of the Kempsey Shire Rural Residential Land Release Strategy which aims to manage population and housing growth. This area as being suitable for subdivision into lots not less than 4ha.</p> <p>The subject land is not within any area affected by State Environmental Planning Policy (Resilience and Hazards) 2021 (Chapter 2 Coastal Management).</p>

## 3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

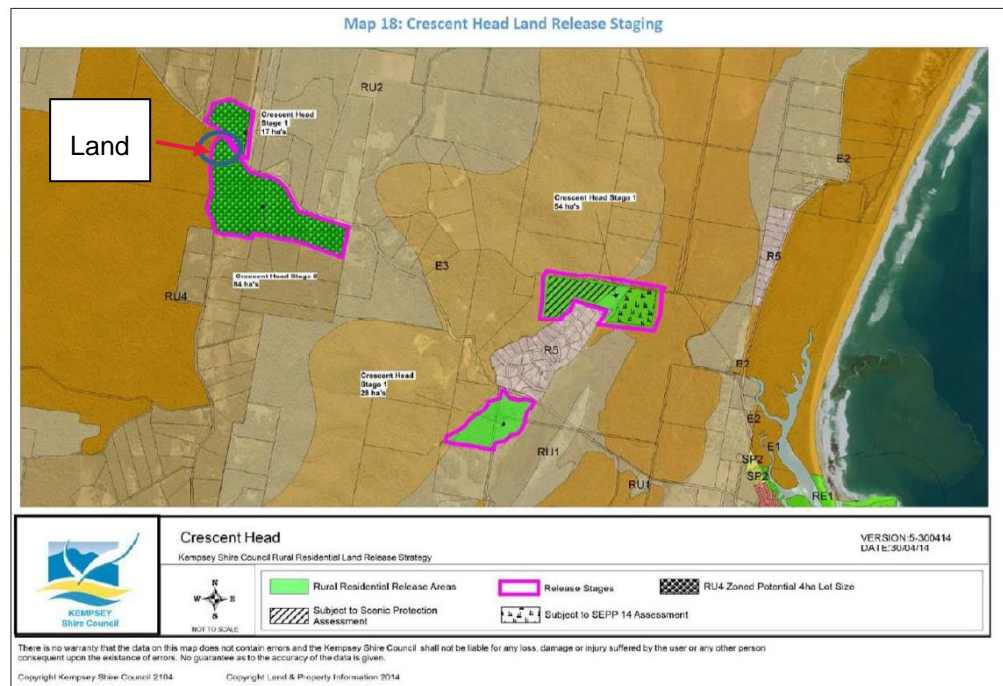
**Table 5 Local strategic planning assessment**

Local Strategies	Justification
Future Macleay Growth and Character - Local Strategic Planning Statement	The Proposal is consistent with Council's LSPS and aligns with Planning Priority H1: Deliver growth that does not compromise the Shire's rich biodiversity, Planning Priority S1: Plan for housing demand and Planning Priority S4: Deliver well-planned rural residential housing areas



## Kempsey Shire Rural Residential Land Release Strategy

The Proposal is consistent with the Kempsey Shire Rural Residential Land Release Strategy which was endorsed by the former Executive Director, Regions on 17 December 2012. The Strategy identifies this area as being suitable for subdivision into lots not less than 4ha. The site is identified for a Stage 2 release (Figure 5). Council has indicated that Stage 1 has largely been subdivided to its potential and that the remaining undeveloped land within Stage 1 may not reach the forecasted yield due to flooding, bushfire and environmental constraints. This Strategy includes an option to vary the release of staging of the land. It is considered that all the circumstances identified in the Strategy have been satisfied and the variation is appropriate.



**Figure 5 Crescent Head Land Release Staging (Rural Residential Land Release Strategy 2014)**

## 3.3 Section 9.1 Ministerial Directions

The planning proposal references superseded section 9.1 Directions. A condition has been included as part of the Gateway determination requiring this section to be updated prior to exhibition.

The planning proposal is consistent with current section 9.1 Directions except for those discussed below:

**Table 6 Section 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.3 Planning for Bushfire Protection	Unresolved	<p>The land subject to this planning proposal is identified as bushfire prone and as such, a Bushfire Assessment Report has been prepared.</p> <p>This direction provides that Council must consult with the Commissioner of the NSW Rural Fire Service (RFS) following the issue of a Gateway determination and prior to community consultation. Until consultation with the RFS has occurred, consistency with this direction remains unresolved.</p>
4.5 Acid Sulfate Soils	Justifiably inconsistent	<p>The land subject to this planning proposal is identified as being affected by Class 5 acid sulfate soils under the Kempsey LEP 2013.</p> <p>The planning proposal is inconsistent with this direction as it enables intensification of land use on acid sulfate soils and the proposal is not supported by an acid sulfate soils study.</p> <p>The inconsistency is considered to be of minor significance. Class 5 acid sulfate soils are a low risk class and Kempsey LEP 2013 contains suitable provisions (Clause 7.1) to ensure that this matter can be appropriately considered and addressed as part of any future development application.</p>
Direction 9.1 Rural Zones	Justifiably inconsistent	<p>The land is subject to this Direction as the planning proposal contains provisions which increase the permissible density of rural land. The inconsistency is considered to be of minor significance as the proposal is justified by the Kempsey Shire Rural Residential Land Release Strategy which was endorsed by the former Executive Director, Regions on 17 December 2012.</p>
Direction 9.2 Rural Lands	Justifiably inconsistent	<p>The land is subject to this Direction as the planning proposal changes the minimum lot size of land within a rural zone. The inconsistency is considered to be of minor significance as the proposal is justified by the Kempsey Shire Rural Residential Land Release Strategy.</p>

### 3.4 State environmental planning policies (SEPPs)

The planning proposal references superseded SEPPs. A condition has been included as part of the Gateway determination requiring this section to be updated prior to exhibition.

Despite this, the planning proposal is consistent with all relevant current SEPPs.


## 4 Site-specific assessment

### 4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

**Table 7 Environmental impact assessment**

Environmental Impact	Assessment
Biodiversity	<p>The subject site is currently utilised for rural residential purposes and has large areas that are highly modified. The area of the site proposed to retain the exiting dwelling following subdivision will include the plantation of Lemon Scented Myrtle but very little areas of native vegetation. The other portion of the lot includes approximately 1.3ha stand of native vegetation that is identified as containing some preferred Koala food trees. The proposed concept plan for the future subdivision of the site has been designed to avoid impacts upon this vegetation.</p> <p>The supporting Ecological Assessment is based on a previous alternate concept plan that bisected this stand of native vegetation. A condition is recommended to be include as part of the Gateway Determination requiring this report to be updated prior to exhibition to address the current concept plan layout. However, it is not expected that the conclusions or recommendations of the report would alter significantly.</p>
On-site sewage management	<p>The proposal is supported by an Onsite Wastewater Management Assessment that concludes the site and soil characteristics of the allotment are suitable for the use of the onsite wastewater provided suitable mitigation measures are adopted.</p>
Contamination	<p>The planning proposal does not propose a change in land use.</p> <p>The proposal includes advice that the owner of the land has occupied the site for over 30 years and can confirm no past activities that would potentially cause land contamination. Furthermore, the site is not:</p> <ul style="list-style-type: none"> <li>land that is within an investigation area within the meaning of the Contaminated Land Management Act 1997</li> <li>land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or known to have been, carried out.</li> </ul>
Heritage	<p>The subject land does not contain any heritage items listed within the Kempsey LEP 2013 and there are a no known or predictive areas of Aboriginal Cultural Heritage.</p> <p>An Aboriginal Heritage Information Management System (AHIMS) search did not reveal any Aboriginal Cultural Heritage on or near the subject site. A Cultural Heritage Impact survey was undertaken by the Kempsey Local Aboriginal Land Council Senior Sites Officer who concluded there is no evidence of Aboriginal Cultural activity in the surveyed area.</p>

Environmental Impact	Assessment
Bushfire	<p>The subject site is bushfire prone and as such a Bushfire Assessment Report has been prepared which includes an assessment of the requirements of the NSW Rural Fire Service Planning for Bushfire Protection, 2019.</p>  <p>The report identifies that all requirements of the Planning for Bushfire Protection document can be achieved for the proposed concept plan and the building envelope on the proposed lot is consistent with the specified bushfire protection measure solutions provided by the guidelines. It is noted that the required asset protection zones can be achieved without the need to undertake any clearing.</p> <p>The bushfire risk is therefore considered manageable subject to compliance with the relevant requirements of the NSW Rural Fire Service, who are to be consulted in accordance with section 9.1 Ministerial Direction 4.3 Planning for Bushfire Protection.</p>
Flooding	The subject site is not mapped as being prone to flooding.

## 4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.



**Table 8 Social and economic impact assessment**

Social and Economic Impact	Assessment
Social	<p>The creation of an additional allotment in an existing rural residential area will result in positive social impacts within the Kempsey Shire LGA via:</p> <ul style="list-style-type: none"> <li>• additional housing stock to assist in catering for anticipated population growth;</li> <li>• flow on community / social benefits to the wider local government area.</li> </ul>
Economic	<p>Although limited, it is expected that the proposal will provide a positive economic contribution to the local economy directly as a result of the construction of a new dwelling and indirectly through a greater population base to support local business.</p>

## 4.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal.

**Table 9 Infrastructure assessment**

Infrastructure	Assessment
Local	<p>The local road network as well as power and telecommunication infrastructure can support the proposal without upgrade. Suitable area exists on each proposed allotment to accommodate on-site sewage management.</p>
State	<p>There will be no impact on State or regional infrastructure or the requirement for additional funding.</p>

## 5 Consultation

### 5.1 Community

Council acknowledges that the Gateway determination will specify the community consultation requirements that must be undertaken for the planning proposal.

In accordance with the Local Environmental Plan Making Guideline dated December 2021, an exhibition period of 10 working days is recommended.

### 5.2 Agencies

The proposal does not specifically raise which agencies will be consulted.

It is recommended the following agency be consulted on the planning proposal and given 30 days to comment:

- NSW Rural Fire Service
- Biodiversity and Conservation Division

## 6 Timeframe

Council does not propose a time frame to complete the LEP.

The Department recommends a time frame of 6 months (128 working days) to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the planning proposal is consistent or justifiably inconsistent with the State, regional and local planning framework and deals only with matters of local significance, it is considered appropriate that Council be provided authorisation to act as the local plan-making authority.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- the proposal to amend the minimum lot size on a site-specific basis is supported by council's Local Growth Management Strategy 2020, endorsed by the Department and the Kempsey Shire Rural Residential Land Release Strategy.
- the reduction in the minimum lot size will allow for an increase in the density of rural residential development in an area identified as being suitable for such.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- reference the Local Environmental Plan Making Guideline, dated December 2021.
- reference current State Environmental Planning Policies.
- reference current section 9.1 Ministerial Directions.
- Revise and update the supporting assessment reports to reflect the amended concept subdivision plan.

## 9 Recommendation

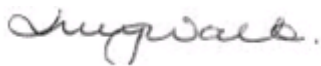
It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 4.5 Acid Sulfate Soils is minor or justified; and
- Note that the consistency with section 9.1 Directions 4.3 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to undertaking Government agency and community consultation, the planning proposal is to be updated to:
  - (a) reference the Local Environmental Plan Making Guideline, dated December 2021;
  - (b) reference the updated section 9.1 Ministerial Directions that commenced on 1 March 2022;

- (c) reference the new consolidated State Environmental Planning Policies that commenced on 1 March 2022; and
- (d) update the following reports to accurately reflect the area to which the planning proposal relates
  - (i) Bush Fire Assessment Report prepared by Midcoast Building and Environmental – November 2021;
  - (ii) Ecological Assessment prepared by Wolfpeak – November 2021; and
  - (iii) Onsite Wastewater Management Assessment Report prepared by Midcoast Building and Environmental – November 2021
2. Consultation is required with the following public authorities:
  - NSW Rural Fire Service
  - Biodiversity and Conservation Division of the Department of Planning and Environment.
3. The planning proposal should be made available for community consultation for a minimum of 10 days.
4. The planning proposal must be exhibited 2 months from the date of the Gateway determination.
5. The planning proposal must be reported to council for a final recommendation 4 months from the date of the Gateway determination.
6. The timeframe for completing the LEP is to be 6 months from the date of the Gateway determination.
7. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



24/05/2022

\_\_\_\_ (Signature)

\_\_\_\_ (Date)

Lucy Walker

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27/5/2022

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