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Plan finalisation report – PP-2023-2105

Application of building heights to various allotments in
South West Rocks

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Acknowledgment of Country

The Department of Planning, Housing and Infrastructure 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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1 Introduction

Overview

1.1.1 Name of draft LEP

Kempsey Local Environmental Plan 2013 (Amendment No. 33).

The objective of the planning proposal is to amend the Kempsey LEP 2013 to implement a building height standard to various allotments in South West Rocks in accordance with the recommendations of the South West Rocks Structure Plan 2023.

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal (Attachment A) applies to various allotments in South West Rocks as detailed in Figures 1 and 2.
Type	Area
Council	Kempsey Shire Council
LGA	Kempsey

Lot and DP	Street Address	Building Height Change	
		Current	Proposed
Lot 2 DP 1091323	Phillip Drive	-	8.5m
Lot 364 DP754396	2 Sportsmans Way	-	8.5m
Lot 367 DP754396		-	8.5m
Lot 4 DP 1032643		-	8.5m
Lot 5 DP 1032643		-	8.5m
Lot 6 DP 1032643		-	8.5m
Lot 7 DP 1032643		-	8.5m
Lot 7001 DP 1073214	Buchanan Drive	-	8.5m
Lot 7002 DP 1073215	Ocean Drive / O'Keefe Road	-	8.5m
Lot 7041 DP 1120754	2A Livingstone Street	-	8.5m
Lot 7042 DP 1120754	Ocean Drive	-	8.5m
Lot 7308 DP 1138202	Buchanan Drive	-	8.5m
Lot 372 DP 704869	Buchanan Drive	-	8.5m
Lot 1 DP 778105	Livingstone Street	-	8.5m
Lot 337 DP 754396	Livingstone Street	-	8.5m
Lot 7305 DP 1127502	Livingstone Street	-	8.5m
SP62275	1 Ocean Drive	-	8.5m
Lot 375 DP 822657	3 Ocean Drive	-	8.5m
Lot 374 DP 822657	9 Ocean Drive	-	8.5m
Lot 373 DP 822657	Ocean Drive	-	8.5m
Lot 286 DP 754396	Gregory Street	-	8.5m
Lot 235 DP 754396	1 Gregory Street	-	8.5m
Lot 269 DP 754396	1 Gregory Street	-	8.5m
Lot 341 DP 754396	Gregory Street	-	8.5m
Lot 2331 DP 1196964	19A Gregory Street	-	8.5m
SP 100324	19 Gregory Street	-	8.5m
Lot 377 DP 823789	Gordon Young Drive	-	8.5m
Lot 376 DP 823789	39-89 Gordon Young Drive	-	8.5m
Lot 379 DP 823785	91 Gordon Young Drive	-	8.5m
Lot 3 DP 20188	98 Gregory Street	-	11m
Lot 2031 DP 579067	102 Gregory Street	-	11m
Lot 231 DP 754396	255-279 Gregory Street	-	11m

Figure 1 - Land subject to the planning proposal (Source: Council report, 19/03/2024)

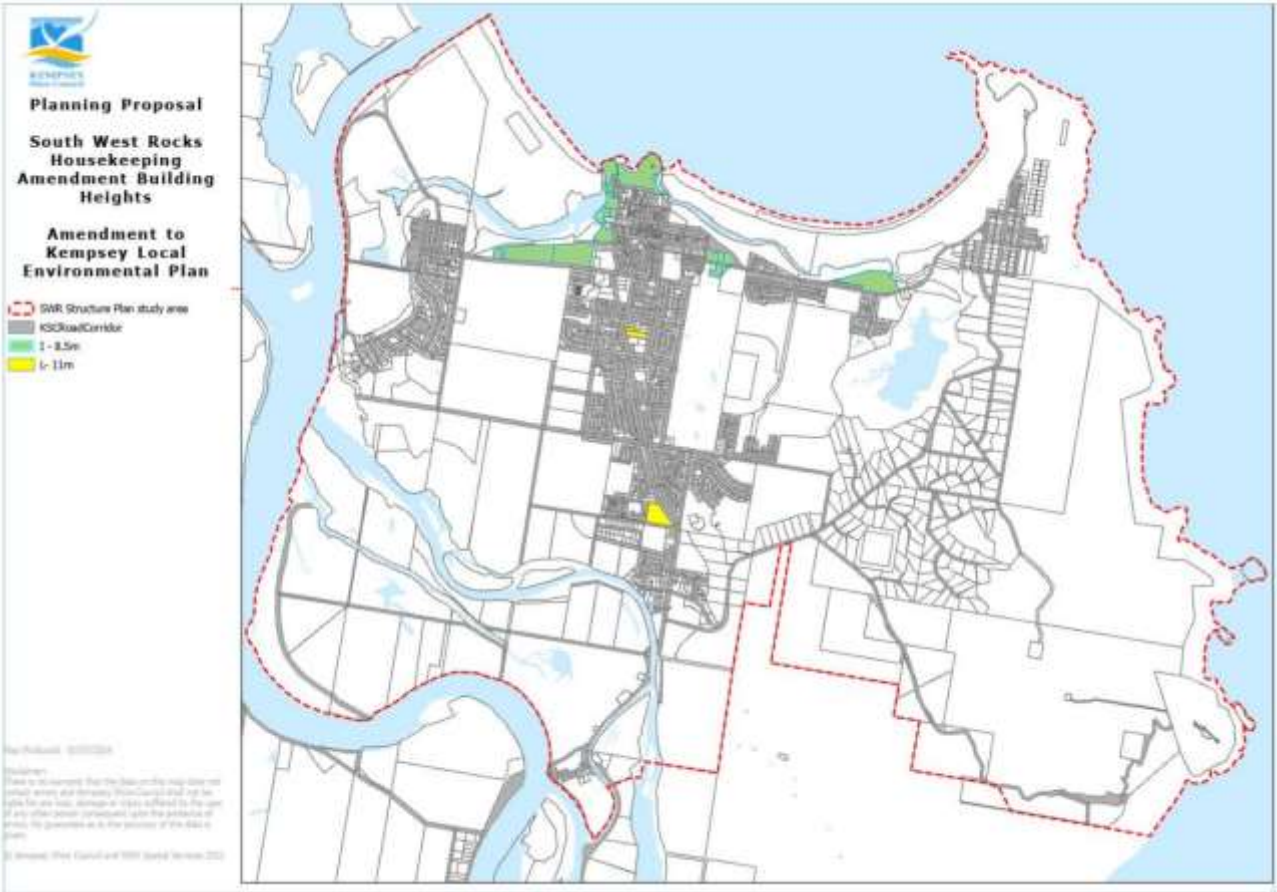


Figure 2 - Land subject to the planning proposal (Source: Council report, 19/03/2024)

1.1.3 Purpose of plan

The table below outlines the current and proposed controls for the LEP.

Table 2 Current and proposed controls

Control	Current	Proposed
Maximum height of the building	N/A	8.5m (residential areas) and 11m (employment areas) to various allotments as detailed by Figures 1 and 2

1.1.4 State electorate and local member

The site falls within the Oxley state electorate. Mr Michael Peter Kemp MP is the State Member.

The site falls within the Cowper federal electorate. Mr Pat Conaghan MP is the Federal Member.

To the team’s knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 13/11/2023 (**Attachment B**) determined that the proposal should proceed subject to conditions. Council has met all the Gateway determination conditions.

In accordance with the Gateway determination (as altered) the proposal is due to be finalised on 13/05/2024 (since passed).

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 16/11/2023 to 15/12/2023.

A total of 120 community submissions were received, comprising of seven objections (5.8%) and 113 submissions supporting the proposal (94.2%) (**Attachment C1**).

Submissions during exhibition

3.1.1 Submissions supporting the proposal

113 community submissions received support the proposed amendments. Key points raised include:

- the proposal will preserve the special character of the village as well as the visual amenity of our beautiful area. It is consistent with the community's long-term vision as well as principles of sustainable growth;
- maintaining the environment for future generations is of utmost importance and the proposal will ensure the preservation of our sensitive coastal areas;
- the proposal is consistent with the South West Rocks Structure Plan, which reflects the community's position regarding development density.

One resident raises concern that the old oil terminal site on Phillip Drive (Lot 1 DP 202621) doesn't have an applicable building height and recommends that this be rectified before the land is developed for residential purposes. Although the height of buildings map doesn't apply to the site the land is zoned SP2 Infrastructure. Only infrastructure and related uses (including development that is ordinarily incidental or ancillary to development for infrastructure purposes) can be approved on the allotment. As such, it is not considered necessary to extend the application of the height of buildings map to this land under the current proposal.

3.1.2 Submissions objecting to and/or raising issues about the proposal

There were seven objections received from individuals and organisations in relation to four specific sites. The key points raised are addressed in the Table below. The four sites are identified in **Figures 3 – 6**.

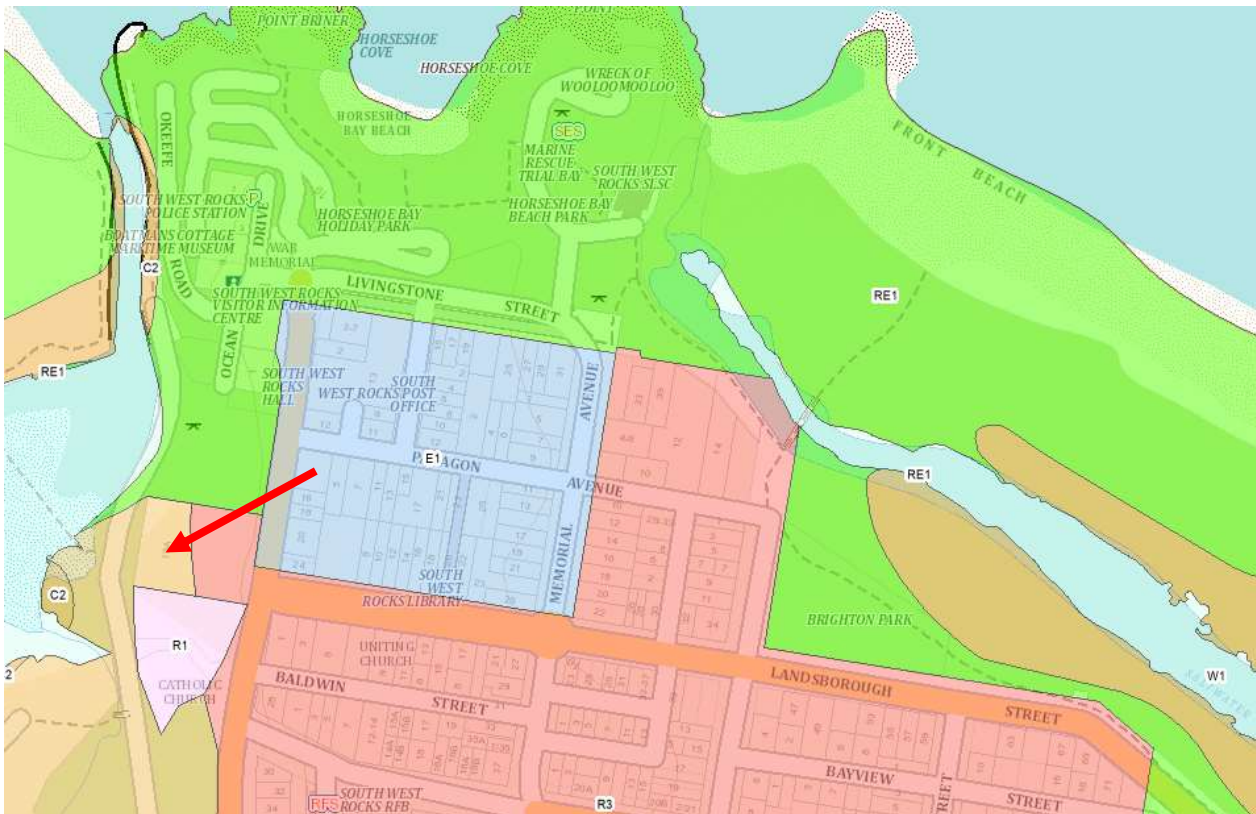


Figure 3 - Lot 2331 DP 1196964, 19A Gregory Street (Source: eplanning spatial viewer)



Figure 4 - Lots 364 and 367 DP 754396 and Lots 4 – 7 DP 1032643, 2 Sportsmans Way (South West Rocks Country Club) (Source: eplanning spatial viewer)



Figure 5 - Lot 337 DP 754396, Livingstone Street (South West Rocks Surf Life Saving Club) (Source: eplanning spatial viewer)



Figure 6 - Lot 2 DP 1091323, Phillip Drive (Source: eplanning spatial viewer)

Table 3 Summary of Key Issues

Issue raised	Additional matters raised, Council response and Department assessment of adequacy of response
<p>Four objections to an 8.5m building height being imposed on Lot 2331 DP 1196964, 19A Gregory Street</p>	<p><u>Matters raised in the submission:</u></p> <ul style="list-style-type: none"> • zoned C3 Environmental Management. • improved by the historic schoolhouse building. • Aboriginal Midden present. • subject to a tree management plan and has significant native trees. • any further development let alone one of 8.5m in height would have a drastic change in the character and the ability to maintain the C3 objectives of the lot. • the site has been developed with the visual and environmental benefit to the community, a priority that should not be put at risk. <p><u>Council Response</u></p> <p>The subject land does not currently contain a building height limit. The introduction of a height limit is not to promote development of a site, it is to ensure any future development, if any, is sympathetic to the site and its surrounds.</p> <p>Any future development must obtain the necessary approvals through the State government and Council and must comply with the provisions of:</p> <ul style="list-style-type: none"> • any relevant State legislation, i.e. Heritage, Biodiversity, etcetera; • objectives of the land zone, permissibility and any other relevant clauses of the KLEP 2013; • the Kempsey Development Control Plan; and • any other relevant Council plans and policies. <p><u>Department Response</u></p> <p>While the site is zoned C3 Environmental Management a range of land uses are permissible including bed and breakfast accommodation, dual occupancy (attached), dwelling houses and eco-tourist facilities. The application of a building height standard to the site is therefore considered appropriate to guide future development and is supported.</p> <p>It is noted that the objections to the proposed building height for this site have misinterpreted the intent of the proposal and believed the change was seeking to encourage development that would be built to 8.5m rather than restricting development that can built under the current no building height standard.</p> <p>A maximum building height of 8.5m consistent with the R1 General Residential Zone adjoining the site is considered appropriate. It is also noted that the building height limit is only one development standard that is required to be considered at the development application stage. A full merit-based assessment will need to be undertaken in relation to all future development proposals lodged over the land, which would need to consider matters such as heritage, biodiversity and visual impacts raised in the objection.</p>

Objection to an 8.5m building height being imposed on Lots 364 and 367 DP 754396 and Lots 4 – 7 DP 1032643, 2 Sportsmans Way (South West Rocks Country Club)

Matters raised in the submission:

In summary the submission:

- objects to the proposed application of an 8.5m Height of Building development standard over the subject land; and
- recommends that the planning proposal be amended to include a 13.5m Height of Building standard for the subject land.

The subject land accommodates the South West Rocks Country Club and is designated as a 'sports and recreation precinct' by the SWR Structure Plan. It is identified as a key site with the opportunity to expand sport and recreation facilities and create a connected hub for the differing uses. The Structure Plan also notes suitable land uses may include those appropriate for residents (services), visitors (nature tourism, accommodation, activities) and business.

New proposed development within the Sports and Recreation Precinct for the future 'Bay Hotel' project cannot be delivered within the 8.5 m height limit recommended in the Planning Proposal.

Housing choice and affordability in South West Rocks is adversely impacted by the use of existing dwelling stock as short-term holiday rentals (Airbnb and the like). This is an important observation in the context of this planning proposal as reducing the height of building control over the RE2 zoned land appurtenant to the Country Club will jeopardize future plans to deliver the Bay Hotel project, a purpose designed, fit for purpose, accessible tourist and visitor accommodation development.

The planning proposal does not assess or consider the key views and vistas within South West Rocks and as such has not provided any context or detail around why the height limits were selected for each land parcel.

A Visual Impact Study for the Bay Hotel project demonstrates that the proposed four storey hotel building will be below the coastal vegetation canopy line and will not be visible from either Horseshoe Bay beach or Trial Bay Headland. Therefore, it is expected that the future Bay Hotel will meet the Coastal Design Guidelines, however the 8.5m building height proposed for the subject land will not allow for the development and therefore future sustainable growth of the Country Club, a well-supported local recreation facility, would be jeopardised.

The existing Country Club building has a building height of 12.2 metres above a natural ground level of RL 9.3 metres AHD. The proposed maximum building height above natural ground level for the Bay Hotel building is assumed to be approximately 13.5 m based on at-grade construction, 4 m basement parking and 3 m floor to ceiling height per residential floor with roof terrace.

It is disingenuous for Council or the Department to rely on Clause 4.6 variations to enable development that is (a) envisaged now, and (b), in the public interest. As the body of caselaw operates to diminish the efficacy of Clause 4.6 variations, there is no certainty that such a request would be approved for a development application for the planned Bay Hotel project.

The planning proposal in its current form fails to:

- Consider the site-specific merit of the RE2 Private Recreation zoned land comprising the South West Rocks Country Club;
- Enable new development or re-development within the subject land that is of a similar height to the existing Country Club building; or

Issue raised	Additional matters raised, Council response and Department assessment of adequacy of response
	<ul style="list-style-type: none"> • Reflect the themes and planning priorities of the Kempsey Local Strategic Planning Statement to enable the growth of tourism and the key site objectives of the South West Rocks Structure Plan, Sports and Recreation Precinct, as an opportunity neighbourhood. <p><u>Council Response:</u></p> <p>Any proposal to redevelop the site would be assessed on its merits and compliance with the relevant provisions.</p> <p>However, under the provisions of KLEP 2013, development standards such as building height can be varied under cl. 4.6 – Exceptions to development standards. Any proposal would need to demonstrate how the development meets the objectives of cl. 4.6 and demonstrates that the development standard being varied is unreasonable or unnecessary in the circumstances.</p> <p>Alternatively, a separate planning proposal could be submitted to amend the building height standard.</p> <p><u>Department Response:</u></p> <p>This site is zoned RE2 Private Recreation and is identified by the South West Rocks Structure Plan to be a key site in the sport and recreation precinct. A height of building standard does not currently apply to the land.</p> <p>The Structure Plan notes the opportunity to expand sport and recreation facilities in this area and create a connected hub for the differing uses. It is considered that the construction of tourist and visitor accommodation is not inconsistent with the direction of the Structure Plan and has the potential to deliver long-term housing onto the market by relieving stock from short-term holiday rental accommodation.</p> <p>The 12.2m height limit of the existing Country Club building is noted along with the height of the recently completed 660-seat multi-level grandstand which is part of the Mid North Coast High Performance Centre. Furthermore, it is understood that the precinct is isolated from residential development by the surrounding road network.</p> <p>The Department's full assessment of an appropriate building height for this land is detailed in Section 4.</p>

Issue raised	Additional matters raised, Council response and Department assessment of adequacy of response
<p>Objection to 8.5m building height being imposed on Lot 337 DP 754396, Livingstone Street (South West Rocks Surf Life Saving Club)</p>	<p><u>Matters raised in the submission:</u></p> <p>The Club has advised Kempsey Shire Council in previous correspondence that they have been undertaking investigations for a reconstructed premises which would provide broad community benefits. The existing building is no longer sustainable and requires an urgent upgrade.</p> <p>SWR SLSC has engaged architects to pursue options and provide preliminary concepts. The favoured concept proposal is to provide a 4-storey building with 2 levels above lower ground and 2 levels above upper ground, with a proposed sloping height line.</p> <p>The KSC proposed Structure Plan states 11m for business & commercial as per page 12 of the Structure Plan.</p> <p>The height of the existing and proposed premises does not adversely affect the environmental, aesthetic, or social aspects of the South West Rocks CBD precinct.</p> <p>The proposed SLSC building height facilitates safe observation and management of both Horseshoe Bay and Main beaches and will enhance the overall panorama of the foreshore area. The premises will provide modern facilities for members, the public and opportunities for community groups to utilise the amenities. Most importantly the top level will accommodate an emergency response hub which will provide greater capability for all sectors of the emergency management network.</p> <p>The Club provides a vital community service that supports tourism, the local economy and aquatic safety.</p> <p><u>Council Response:</u></p> <p>Any proposal to redevelop the site would be assessed on its merits and compliance with the relevant provisions.</p> <p>However, under the provisions of KLEP 2013, development standards such as building height can be varied under cl. 4.6 – Exceptions to development standards. Any proposal would need to demonstrate how the development meets the objectives of cl. 4.6 and demonstrates that the development standard being varied is unreasonable or unnecessary in the circumstances.</p> <p>Alternatively, a separate Planning Proposal could be submitted for consideration, to amend the building height standard.</p> <p><u>Department Response:</u></p> <p>This site is zoned RE2 Private Recreation and is identified by the South West Rocks Structure Plan as being part of the 'town centre' neighbourhood. A height of building standard does not currently apply to the land. While the allotment is in proximity to the CBD it is separated by public open space and is in a prominent location.</p> <p>The Department's full assessment of an appropriate building height for this land is detailed in Section 4.</p>

Objection to 8.5m building height being imposed on Lot 2 DP 1091323, Phillip Drive

Matters raised in the submission:

Summary and Site History

The proposal fails to:

- consider the site-specific merit of any of the sites impacted by the PP;
- consider existing development approvals over land parcels and the height of existing development;
- provide any economic, environmental or social impact assessments that detail the potential implications of the PP;
- provide sufficient evidence that there is available land supply to cater to the growing housing demand;
- provide any justification based on visual analysis as to why the building heights were selected for each site;
- provide sufficient justification as to how the PP meets the strategic intentions of the State Government and Council's own Strategic Planning documents; and
- provide sufficient justification that would allow the contradiction of several ministerial directions.

Alternative maximum heights of building of 8.5m to the frontage along Phillip Drive, RL 21.7 for the front portion of the site and RL 24.3 to the rear of the site have been nominated in this submission based on detailed review of the site context, visual impacts and character, and feasibility, to present an appropriate site-specific maximum height limit development standard.

- The site gained development approval for a 180-dwelling resort with associated retail and function centre for buildings up to four-storeys in 1993 (ref: T4-91-195). The project was paused in 1995 after it was substantially commenced and is still an active consent (it is understood that it has now been surrendered associated with DA2200404).
- In 2022, a development application was lodged and subsequently approved in 2023 for Stage 1 of the masterplan being 18 townhouses, 6 shop tenancies and 12 units in a two storey multi dwelling building (ref: DA2200404).
- A formal pre-lodgement meeting was held with Council in September 2022 to discuss Stages 2 and 3 of the masterplan. A concept development application was formally lodged with Council on the 14 November 2023 (ref: DA2300926). This DA is regionally significant development and seeks to provide a mix of affordable dwellings, serviced apartments, mixed residential apartment sizes and some cafes.

Categorisation of the PP

The PP has been considered as a housekeeping amendment by Council, and the indicative timeline would allow for a gazettal of the KLEP2013 amendment by April 2024, which is approximately 6 months. It is considered that the PP is not a basic amendment, due to the considerable implications it could have on housing supply and impacts on existing land holdings. There are serious concerns that this categorisation by Council demonstrates that due process has not been followed. The early lodgement of this PP is an attempt to curtail existing development rights for some of the specific sites, to restrict development.

Council Response:

The Department of Planning, Housing and Infrastructure categorises the planning proposal as a 'standard', not basic, planning proposal in accordance with the Local Environmental Plan Making Guideline, August 2023.

Department Response:

In accordance with the Department's LEP Plan Making Guideline, the planning proposal was classified as 'standard' by the Department at the Gateway application stage as it relates to altering the principal development standards of the Kempsey LEP 2013. Due process has been followed as specified by the Guideline.

*Discrepancy with Kempsey LEP 2013*Matters raised in the submission:

The zoning of the site is R3 Medium Density. The PP would preclude the construction of many of the housing typologies which are permissible with consent in the R3 zone and therefore does not meet the objective to allow a diverse array of housing to be provided in a medium density environment. The restriction to the height would limit the ability to provide services and facilities to serve the community and seeks to discourage urban infill development of an appropriately zoned site. A Residential Flat Building or mixed-use building with tourist and visitor accommodation and any food and drink premises at ground floor would be unviable at two storeys.

The proposed 8.5m height limit is more akin to development heights expected in an R2 Low Density Residential zone.

It is noted within the PP that a Clause 4.6 variation may be considered to deliver higher density development based on site specific merits, however the Clause 4.6 process is intended to be used in exceptional circumstances and should not have to be utilised for permissible development that is appropriate in the context. To justify any departure from a development standard is an onerous process and should not be relied upon when this PP process may easily take into consideration appropriate building height limits.

Council Response:

The objectives of the R3 Medium Density Residential zone can still be achieved within the 8.5m building height limit, e.g. provide housing needs for the community, provide a variety of housing types and enables other uses that provide facilities or services that meet the day to day needs of residents.

Department Response:

The Department's LEP practice note PN 11-002 'Preparing LEPs using the Standard Instrument: standard zones' states that the R3 Medium Density Residential zone is for land where a variety of medium density accommodation is to be established or maintained. Other residential uses (including typically higher or lower density uses) can also be permitted in the zone where appropriate.

Kempsey Shire Council has applied the R3 Medium Density Residential zone to a substantial section of the village of South West Rocks. A building height of 8.5m generally applies consistently to that zone with only a few exceptions where an 11m limit applies. As such, the planning proposal is consistent with Council's historic approach to zoning and building heights. However, it is noted that the allotment is a key site and is subject to Schedule 1 of the LEP 'Additional

permitted uses' which permits development for the purposes of food and drink premises, residential accommodation, shops and tourist and visitor accommodation with development consent.

The Department's full assessment of an appropriate building height for this land is detailed in Section 4.

Strategic merit

Matters raised in the submission:

North Coast Regional Plan

- The PP would not support provision of housing to meet the rising demand, as it would limit the amount of housing and especially medium density housing opportunities across South West Rocks.
- The NCRP aims to target 40% of new housing to be apartments to which this PP would directly contradict.
- Height restrictions would result in affordable and low-cost housing being difficult to achieve as part of any large-scale development, as it relies on the viability and allowance for additional low-cost housing to be developed alongside market housing.
- Height restrictions would result in increased sprawl and may require development of uncleared land previously not been identified for development to meet the demand.
- Height restrictions limit the opportunity for different building typologies and future housing products which may be better placed to be resilient to natural hazards and climate change.
- Height restrictions would result in any potential shop top housing opportunities, and tourist accommodation being unviable and as such would hinder the economic development of South West Rocks. The PP would essentially limit development opportunity and reduce construction opportunities and local jobs within South West Rocks.
- Local character should be enhanced and improved with the opportunity for compatible development to occur. The PP relies on existing nearby height limits as the foundation for imposing restrictive height limits across South West Rocks.
- The PP does not foster delivery of housing or housing diversity and does not present any evidence that as to how diverse housing could still be achieved.

Community Strategic Plan

- Height restrictions would result in increased sprawl and building footprints, reduce overall landscaping and opportunities to retain the natural environment.
- The site is within the active transport corridor between South West Rocks and Arakoon which could assist in providing better connections and routes between the two towns.
- Further restrictions within the KLEP 2013 does not promote change or inspire community cohesion.
- The PP would limit the availability of housing and does not support growth in the population to support existing businesses.

- The character of South West Rocks can be maintained without strict height limits being imposed.
- The PP directly impacts the ability to provide sufficient housing for the area.

Kempsey LGMS

- The PP is overly restrictive in managing density and does not ensure that South West Rocks provides a range of housing densities and types. Commercial, retail or industrial opportunities would not be supported by adequate housing or visitor accommodation to make them viable.
- The proposed amendment would not allow the delivery of the 360 apartments targeted, as the reduced heights would result in an oversupply of detached housing typologies only.

South West Rocks Structure Plan

- The overly restrictive height controls do not consider how the character and scenic views can be maintained while improving residential areas and amenity across the South West Rocks.

SEPPs

- SEPP (Housing) 2021 – while the Housing SEPP would prevail to the extent of inconsistencies, it is not considered that the PP supports the intent of the Housing SEPP to deliver housing diversity.
- SEPP 65 Design Quality of Residential Apartment – the PP would restrict development that would be considered under SEPP 65, being residential development greater than 3 storeys and greater than 4 dwellings. An 8.5m restriction would not allow for 3 or more storeys and as such no development would be required to meet the SEPP 65 provisions.
- SEPP (Resilience and Hazards) 2021 – the PP would likely result in greater impacts on the Coastal environment within which South West Rocks sits due to increased footprints of development. A height restriction does not limit impacts on the coastal environment, coastal wetlands or the coastal zone.

Section 9.1 Directions

- The PP is inconsistent with Direction 6.1, as it does not meet the objectives. Restricting building heights would limit development typologies and feasible delivery of affordable housing and diverse housing products. Restricting building heights would limit the development potential on existing appropriately zoned sites, which could make use of existing infrastructure and services. Restricting buildings heights may result in detrimental impacts on the environment and other lands, through promoting greater urban sprawl and higher site coverage.
- Direction 6.1 (2)(b) notes that a planning proposal must not contain provisions which will reduce the permissible residential density of land. The current permissible density would allow residential flat buildings and shop top housing of greater densities than the 8.5m height limit would allow.
- Under Local Planning Direction 4.2 (Coastal Management), planning proposals that seek to amend a local environmental plan in the coastal zone must be consistent with the NSW Coastal Design Guidelines.

There has been no assessment of the building heights against the coastal forms and these building heights have been arbitrarily selected based on existing heights of development and does not allow for future sustainable growth within South West Rocks.

Council Response:

The Planning Proposal aligns with the regional focused goals of the North Coast Regional Plan 2041:

- Goal 1: liveable, sustainable and resilient
- Goal 3: growth change and opportunity

The proposal also aligns with Council's strategic plans, the Local Strategic Planning Statements (LSPS), Kempsey Local Growth Management Strategy (2023) and the South West Rocks Structure Plan (2023).

The land subject to this submission is within the Coastal Use Environment Area, Coastal Environment Area, partly within the Coastal Wetland Proximity Area and adjacent to Coastal Wetlands. The proposed building height amendment assists in ensuring any development on the site aligns with the following objectives of the North Coast Regional Plan 2041 goals:

- protect regional biodiversity and areas of high environmental value;
- manage and improve resilience to shocks and stresses, natural hazards and climate change; and
- celebrate local character.

The delegate for the Department of Planning, Housing and Infrastructure justified inconsistencies with the applicable Ministerial Directions under section 9.1 of the Environmental Planning & Assessment Act 1979, being 6.1 Residential Zones and 7.1 Employment Zones. Council may still need to obtain the agreement of the Secretary to comply with 4.3 Planning for Bushfire Protection prior to the LEP being made. As Department of Planning, Housing and Infrastructure are the plan-making authority in this instance, the Secretary's agreement can be provided at the finalisation stage. The Planning Proposal was referred to the NSW Rural Fire Service and no objection was received.

Department Response:

Consistency with North Coast Regional Plan 2041, Kempsey Local Growth Management Strategy, South West Rocks Structure Plan and Section 9.1 Directions was assessed at the Gateway application stage (**Attachment E**). Any unresolved inconsistencies are addressed in Section 4 of this report.

The following clarifications are made in response to the submitter's comments:

- the Regional Plan requires that Council's future local housing strategies have a clear road map outlining and demonstrating how to deliver 40% of new dwellings by 2036 in the form of multi dwelling / small lot housing. Demonstrated movement towards achieving this target will be essential when seeking to justify any urban growth area boundary variations for new greenfield land supply. The Kempsey Local Growth Management Strategy demonstrates that the anticipated population growth can be accommodated within the Shire without any variations to the existing urban growth area boundary or need to provide new greenfield land, and that there is sufficient land zoned with appropriate development controls

that can facilitate 40% of new dwellings by 2036 to be in the form of multi dwelling / small lot housing.

- the planning proposal recognises that many of the subject sites are within the coastal strip and heritage precinct and aims to ensure that development does not adversely impact these sensitive environments.
- while the 8.5m and 11m building heights applied by Council may have been arbitrarily selected, they have been consistently applied across the village with the exception of a small number of buildings. The character of South West Rocks is generally low rise residential which reflects its seaside coastal village status. The Kempsey Local Growth Management Strategy and South West Rocks Structure Plan have been developed in consultation with the community in an effort to ensure compatible future development.
- Section 9.1 Ministerial Direction 4.2 'Coastal Management' refers to the NSW Coastal Design Guidelines which were published on 10 November 2023. As the planning proposal was lodged prior to 10 November 2023, transitional arrangements apply.

Site specific merit

Matters raised in the submission:

The PP fails to address the site-specific merit of the building height amendments to any of the individual sites which are affected. There has been no consideration of nature, constraints, hazards or context of any of the sites, nor of any existing and approved development of the sites. In particular, the site is constrained flooding and other environmental constraints, which would require a minimum floor level above natural ground level in some areas. Furthermore, the site sits at a lower level than Phillip Drive, and as such future development of the site when viewed from Phillip Drive would only capture the higher elements. No consideration has been given to the existing historic approvals on the site which have substantially commenced, or the setting in which the site sits and how this may be advantageous and allow greater heights. There is no consideration of views and vistas or key scenic values presented in the PP which underpins the restriction of heights across all the sites subject to the PP.

Council Response:

Any proposal to redevelop sites subject to this Planning Proposal would be assessed on their merits and compliance with the relevant provisions.

However, under the provisions of KLEP 2013, development standards such as building height can be varied under cl. 4.6 – Exceptions to development standards. Any proposal would need to demonstrate how the development meets the objectives of cl. 4.6 and demonstrates that the development standard being varied is unreasonable or unnecessary in the circumstances.

Alternatively, a separate Planning Proposal could be submitted to amend the building height standard.

Department Response:

It would be inappropriate for the planning proposal to consider historic approvals which have substantially commenced (and it is understood have since been abandoned and surrendered) as the basis for an appropriate building height. The provisions of the *Environmental Planning and Assessment Act 1979* ensure that any development that meets the requirements of substantial commencement are

valid in perpetuity. LEP amendments should reflect legislation, strategic plans and community expectations at the time they are made.

In the interests of procedural fairness and natural justice however, should any development application/s be lodged but not finally determined over any of the land subject to this planning proposal prior to finalisation of the LEP, it is recommended that a savings provision be provided to ensure that such application/s be determined as if the plan has not commenced.

Environmental impacts

Matters raised in the submission:

Restricting building heights on land within South West Rocks would result in the need for greater development footprints, encourage urban sprawl, and result in higher site coverage being required to achieve a similar quantum of housing or development. Furthermore, the larger footprint would likely result in loss of significant vegetation and trees throughout South West Rocks and therefore a loss of biodiversity.

Council Response:

Social, environmental and economic impacts on South West Rocks have been considered in the preparation of Council's strategic plans, including the SWR Structure Plan, which supports revitalisation to existing commercial centres and gives greater certainty to the community and for future development of the area.

Department Response:

As stated earlier, the Kempsey Local Growth Management Strategy demonstrates that the anticipated population growth can be accommodated within the Shire without any variations to the existing urban growth area boundary or need to provide new greenfield land. Environmental impacts of specific development proposals are to be assessed at the development application stage in accordance with applicable legislation.

Social and economic impacts

Matters raised in the submission:

It is considered that there is a significant lack of evidence supporting the assumptions made that there are no social and economic impacts. A Social and Economic Assessment has not been undertaken to support this PP and as such there is no evidence to suggest that the PP would result in a positive impact. The PP does not support revitalisation of the existing commercial centre, as it restricts the building heights here to the existing height that most developments are in this location. There is no economic benefit or social benefit that would result from demolishing an existing asset to replace with a like for like built form.

The PP would significantly limit the provision of social, affordable or diverse housing opportunities, as the construction costs to deliver a 2-3 storey product are considerable and is not conducive to providing an associated product which is affordable.

Based on considerable desktop analysis, a height limit of 8.5m means that the cost of building a Residential Flat Building (RFB) is considerably greater than developing a Townhouse and as such would likely preclude any development in the form of an RFB. Furthermore, the costs associated with building a 3 storey product would be far greater and likely unviable than construction of a development of 6 or more storeys.

It considered that an Economic and Social Impact Assessment should be undertaken to outline the potential positive and negative impacts that may result from the PP.

As this PP for building height amendments has been done in isolation of a larger scale review which may consider zoning or other changes that would allow greater development opportunities, there is insufficient evidence provided that the PP would not effectively restrict development of much needed housing within South West Rocks.

Insufficient community consultation has been undertaken with landholders in relation to the PP. Furthermore, the Structure Plan and therefore the PP has seemingly not taken on board these recommendations and suggests imposition of a reduced height limits to a number of areas, which previously were not limited by height controls. It is not considered that the feedback from the Community was taken into account within the original Structure Plan nor that the expert recommendations from GHD were brought forward.

Council Response:

Social, environmental and economic impacts on South West Rocks have been considered in the preparation of Council's strategic plans, including the SWR Structure Plan, which supports revitalisation to existing commercial centres and gives greater certainty to the community and for future development of the area.

Large portions of R3 Medium Density Residential zoned land are underutilised, and some R1 General Residential land is yet to be delivered. The development of this R3 and R1 zoned land can deliver the dwelling targets projected for South West Rocks and the introduction of the building height limits subject to this Planning Proposal will not result in losses in potential housing in the area. The Kempsey Local Growth Management Strategy (2023) indicates that across the Kempsey Shire there is adequate areas zoned and/or approved for residential development, which can meet the projected housing demand.

Department Response:

The planning proposal has been prepared in response to the Kempsey Local Growth Management Strategy and Structure Plan recommendations which were supported by specialist studies and subject to significant community input. The proposed building height changes have been identified as one mechanism to retain the preferred local character determined by the community. This is considered appropriate noting that Council has completed extensive analysis which indicates that there is sufficient capacity of existing and proposed zoned land within South West Rocks to meet anticipated growth rates to 2041, despite the reduction in building heights for the subject sites.

Imposition of building heights aims to balance development and growth with the preservation of local character and the overall public interest.

Visual impacts

Matters raised in the submission:

A Visual Assessment has been undertaken to consider the potential impacts development on the site within the parameters of the proposed building heights would have. It outlines that the highest point of any building (being a maximum height of RL24.3) would not be visible from any key points including the town centre, Trial Bay Beach and foreshore area or the Trial Bay Gaol. Future development in line with the building heights proposed would sit entirely below

the existing tree line, and the stepping to Phillip Drive would assist in integration back into the streetscape context. The proposed heights would therefore have no visual impact on South West Rocks from any strategic locations.

The Visual Assessment has determined that the 8.5m building height limit has not seemingly been based on objective visual aids or effects and would unduly constrain the development potential of a site which is a low to negligible visibility from important sensitive views.

Council Response:

All the land subject to the Planning Proposal does not currently contain a regulated building height. The heights selected for the sites are sympathetic to the surrounding land and aim to ensure that future development is not inconsistent with the desired future character of the area, as identified in collaboration with the community, in the SWR Structure Plan.

Department Response:

The Visual Assessment prepared by Urbis dated December 2023 and included as part of the submission regarding the planning proposal is noted. It is understood that the visual assessment is limited to an analysis of the potential visibility of the proposed development on Lot 2 DP 1091323, Phillip Drive. It does not assess potential visual impacts of this change on the local visual context, scenic character or scenic quality of the site or its wider setting.

The Visual Assessment concentrates on whether the development proposed on the subject land is visible from near Stingray Rock looking south-east along Trial Bay Beach and looking south-west from Trial Bay Gaol Beach. An analysis from elevated locations such as the headland behind the Surf Life Saving Club is not included.

Nevertheless, the proposal to impose building heights on land subject to this planning proposal does not simply aim to limit visual impact of a development. It aims to ensure a place-based character approach to development in the village of South West Rocks as well as an understanding of context and the people that populate places, consistent with the Coastal Design Guideline.

The Department's full assessment of an appropriate building height for the site is detailed in Section 4.

Character

Matters raised in the submission:

The R3 Medium Density Residential zone objectives do not consider local character as an objective of development within this zone, however, objective (1)(a) of Clause 4.3 Height of Buildings of the KLEP2013 is to preserve the existing character in residential and business areas within Kempsey.

Planning Circular PS 21-026 provides an overview of local character and its role in NSW Planning. It notes that compatibility is different from sameness, as different features can coexist harmoniously.

The site is not a prominent entrance into South West Rocks and is not visible from any key vantage points due to the surrounding dunes and native vegetation. It is considered that with appropriate detailed design and planning considerations including setbacks, stepping, articulation that development on the site may still be considered within the existing character, but would be compatible with the local character as it would have no detrimental impact on that character.

Detailed matters around character would need to be considered at a development application stage, however it is considered that the PP does not offer the opportunity to consider what scale of development may be suitable to achieving the local character or development that is compatible with the local character.

Council Response:

Nil

Department Response:

Planning Circular PS 21-026 provides advice on how development should meet the growing needs of NSW and is contextual, local and of its place. Such matters were considered by Council during the preparation of their Local Growth Management Strategy and the South West Rocks Structure Plan which aim to support the delivery of new homes in the right locations to meet the needs of a growing and changing population.

PS 21-026 further states that where the existing character is valued by the community there are opportunities to plan for the enhancement of that character for the enjoyment of existing and future residents. Such opportunities can include the imposition development standards such as building heights.

It is noted that the Coastal Design Guideline states that increasing population and development pressures along the coast can make it difficult to retain existing local character, protect surrounding environments and retain heritage values.

Recommended clauses

Matters raised in the submission:

To ensure that the current live application for the concept development application on the site is considered in its current form, and assessment can continue in a fair and reasonable way, a savings provision is proposed to be included within the KLEP2013 should the PP proceed to gazettal.

Furthermore, it is recommended that the building heights are adopted as outlined above, however to provide certainty about any future development on the site, it is considered that an additional site specific clause could be inserted to ensure that future applications do not exceed the dominant tree line to provide certainty that future development would not have any visual impact.

Council Response:

Nil

Department Response:

In the interests of procedural fairness and natural justice, should any development application/s be lodged but not finally determined over any of the land subject to this planning proposal prior to finalisation of the LEP, it is recommended that a savings provision be provided to ensure that such application/s be determined as if the plan has not commenced.

Parliamentary Counsel will be responsible for the drafting of suitable wording for the savings provision.

Building heights represent a numerical development standard only and a full merit-based assessment of any development application lodged over the subject land is required. As such, an additional site-specific clause for Lot 2 DP

Issue raised	Additional matters raised, Council response and Department assessment of adequacy of response
	1091323, Phillip Drive as recommended by the submitter is not considered necessary.

Two additional submissions were received regarding Lot 2 DP 1091323, Phillip Drive post-exhibition, following Council's report and consideration of the proposal (**Attachments C2 and C3**). The matters raised and the Department's response are detailed below.

Table 4 Additional Issues

Issue raised	Department response
Failure to meet condition 1 of the Gateway determination prior to exhibition	<p>The submitter's comments regarding Council's amendments to the planning proposal in order to satisfy condition 1 of the Gateway determination prior to exhibition are noted. The suggestion that the LEP amendment would be liable to a judicial review challenge in the Land and Environment Court because the condition was not satisfied is also understood.</p> <p>It is considered that Council's amendments to the planning proposal prior to exhibition as required by condition 1 of the Gateway determination were satisfactory. The intent of the condition was to ensure that the planning proposal referenced the outcomes of relevant strategic planning so that interested parties would be aware that implications of the proposal had been considered. It did not intend to require that the proposal replicate the outcomes of these strategies. As such, it is considered that compliance with the Gateway determination has been achieved.</p>
Disregard and limited response to submissions raised	<p>The comment that Council's responses to the submissions received during exhibition are cursory is noted.</p> <p>The Department is the local plan-making authority in relation to this proposal and detailed consideration of the issues raised in the submissions received during the exhibition period has been undertaken in this report.</p>
Inconsistency of the planning proposal with Ministerial Direction 6.1	<p>Consistency with this Ministerial Direction was considered at the Gateway stage and the Secretary's delegate has agreed that any inconsistencies with the direction are justified.</p> <p>The proposal is a result of a Local Growth Management Strategy which considers the objectives of the direction. Existing urban growth area boundaries are capable of accommodating anticipated housing growth in the local government area to 2041 and sufficient land is available for infill development to accommodate the multi dwelling / small lot density target to 2036 as set by the North Coast Regional Plan 2041.</p> <p>Furthermore, the planning proposal will not result in the prohibition of a certain land use. A development application that exceeds the prescribed height of buildings could still be lodged and approved subject to clause 4.6 of the Kempsey LEP 2013, providing that the application can demonstrate that the development standard is unreasonable or unnecessary in the circumstances of the case and that sufficient environmental grounds are maintained to justify the variation.</p>

Issue raised	Department response
Lack of detailed expert studies or background evidence that supports the economic, social or environmental impacts of the proposal	<p>The Kempsey Local Growth Management Strategy and South West Rocks Structure Plan, which recommended the changes in building heights in South West Rocks, were informed by a local housing strategy (2023), an employment lands assessment (2023), a scenic protection layer review (2022) and a local character statement review (2022).</p>
Disregard of the importance of genuine and transparent community consultation	<p>In accordance with Council's Community Participation Plan, the South West Rocks Structure Plan was initially placed on public exhibition for a period of 28 days from 1 February 2023 to 28 February 2023. The exhibition period was extended to 14 March 2023 following requests from the community.</p> <p>In accordance with Council's Community Participation Plan and the Gateway determination, the planning proposal was exhibited for a period of at least 20 working days from 16 November 2023 to 15 December 2023.</p>
Council's strategic planning constraints allow almost no capacity for feasible medium density development	<p>The South West Rocks High-level Feasibility assessment prepared by Hill PDA Consulting (Attachment C3) on behalf of the objector analysing the capacity of residential zoned land in South West Rocks and supporting the submission is noted.</p> <p>The Kempsey Local Growth Management Strategy predicts that 2,790 additional dwellings will be required in the local government area to 2041 with 1,582 of these dwellings likely to be provided in South West Rocks due to its high amenity levels. The South West Rocks High-level Feasibility assessment prepared by Hill PDA Consulting estimates that the South West Rocks locality will require an additional 1,626 - 1,656 dwellings to 2041.</p> <p>The figures outlined above are considered to be aspirational population targets. DPHI's 2022 dwelling projections indicate that from 2023 – 2041, 1,217 dwellings will be required across the Kempsey local government area. It is noted that provision of these dwellings can be accommodated across the LGA as a whole and not only in South West Rocks.</p> <p>The Feasibility assessment report prepared by Hill PDA Consulting indicates that existing capacity of zoned residential land in South West Rocks alone is 1,521 dwellings. This exceeds the 1,217 dwellings required across the entire LGA to 2041 as forecast by the Department.</p> <p>It is understood that the High-level Feasibility assessment states that South West Rocks will not meet its medium density dwelling targets as prescribed by the Regional Plan and that additional capacity within the existing planning framework is likely required. As noted previously, the Regional Plan requires that Council's future local housing strategies have a clear road map outlining and demonstrating how to deliver 40% of new dwellings by 2036 in the form of multi dwelling / small lot housing when seeking to justify any urban growth area boundary variations for new greenfield land supply. The Kempsey Local Growth Management Strategy demonstrates that the anticipated population growth can be accommodated within the Shire without any variations to the existing urban growth area boundary or need to provide new greenfield land.</p>

Advice from agencies

In accordance with the Gateway determination Council was required to consult with the NSW Rural Fire Service. Council elected to undertake consultation with additional agencies and all feedback received is included as **Attachment D**, summarised in Table 4, below.

Table 5 Advice from public authorities

Agency	Advice raised	Council response
NSW Rural Fire Service (RFS)	No objection to the LEP (building height map) amendment proposal. Future development applications to address bushfire threat and recommend measures (Planning for Bushfire Protection guidelines) to minimise bushfire risk.	N/A
Department of Climate Change, Energy, the Environment and Water – Biodiversity, Conservation and Science Group (BCS)	Whilst BCS welcomes the introduction of building heights, we note that some of the allotments subject to the planning proposal are zoned C2 Environmental Conservation and/or C3 Environmental Management under the Kempsey Local Environmental Plan 2013. Kempsey Shire Council should ensure any future development of those allotments is undertaken in a sustainable manner that ensures the existing environmental values are retained and enhanced. The BCS raises no further issues with this planning proposal.	<p>Future development on C2 and/or C3 land must comply with the provisions of:</p> <ul style="list-style-type: none"> any relevant State legislation, i.e. Heritage, Biodiversity; objectives of the land zone, permissibility and any other relevant clauses of KLEP 2013; Kempsey Development Control Plan; and any other relevant Council plans and policies.

Agency	Advice raised	Council response
Department of Climate Change, Energy, the Environment and Water – Heritage NSW	<p>The subject site includes the State Heritage Register (SHR) listed 'South West Rocks Pilot Station Complex' (SHR 01788), located at 5 Ocean Drive South West Rocks NSW 2431.</p> <p>While it would be advisable that a lower height limit is proposed surrounding the Pilot Station, equivalent to a single storey, the current proposal is noted as being a housekeeping amendment which is intended to protect the character of South West Rocks and the heritage significance of the Pilot Station.</p> <p>Prior to finalisation of the proposal, Council should be satisfied that all necessary heritage assessments have been undertaken and that any impacts have been sufficiently addressed. Council's assessment should include, but not be limited to, a search of the State Heritage Inventory and the Aboriginal Heritage Information Management System.</p>	N/A

The submission from the Department of Climate Change, Energy, the Environment and Water – Heritage NSW indicates that their understanding is that 8.5m is the minimum building height as identified within the standard instrument. It also notes the amendment to be a housekeeping amendment. As such, Heritage NSW recommends that prior to finalisation of the proposal, Council should be satisfied that all necessary heritage assessments have been undertaken and that any impacts have been sufficiently addressed.

The planning proposal imposes a building height in an effort to preserve the amenity of the heritage precinct. While a maximum building height of 8.5m is recommended, the building height limit is only one development standard that is required to be considered at the development application stage. A full merit-based assessment will need to be undertaken in relation to all future development proposals lodged over the land, which should also consider matters such as heritage and visual impacts.

The Department considers that matters raised in submissions from public authorities have been adequately addressed in the planning proposal.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional Plan and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment E**), the planning proposal submitted to the Department for finalisation:

- remains consistent with the North Coast Regional Plan.
- remains consistent with the Council's Local Strategic Planning Statement and Local Growth Management Strategy.
- remains consistent or justifiably inconsistent with all relevant Section 9.1 Directions.
- remains consistent with all relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1

Table 6 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 7 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Key impacts	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Detailed assessment

4.1.1 Section 9.1 Ministerial Directions

Table 8 Assessment against outstanding section 9.1 Ministerial Directions

Direction	Consistency	Reasons
4.3 Planning for Bushfire Protection	Consistency with this direction was unresolved at the Gateway determination stage until consultation with the Commissioner of the RFS was undertaken.	<p>Council has consulted with the RFS in relation to the planning proposal, who raised no objection (Attachment D).</p> <p>The inconsistency with the direction is justified as Council has received written advice from the RFS confirming that it raises no objection to the proposal proceeding.</p>

4.1.2 Key impacts

The following section provides details of the Department's assessment of key impacts and recommended revisions to the planning proposal.

Overall, submissions received during the exhibition of the planning proposal highlighted the community's support for the proposal. However, the objections received the South West Rocks Country Club, South West Rocks Surf Life Saving Club and Lot 2 DP 1091323, Phillip Drive warrant further consideration. It is considered that these three properties are key sites within South West Rocks and have the ability to deliver either tourist and visitor accommodation, commercial development, community facilities, emergency services facilities and diverse housing opportunities. As such, it is considered appropriate that they be afforded an increased height limit than that of a standard residential allotment.

While the allotments are considered to be key sites, the Kempsey Local Growth Management Strategy and South West Rocks Structure Plan represents comprehensive strategic planning approach for the local government area and any revised building height should be consistent with the intent of these documents. The building height must also recognise that the three sites are within the coastal environment and coastal use areas.

It is therefore considered appropriate that an 11m building height, rather than the proposed 8.5m building height, be applied to these three key sites.

An 11m building height is not inconsistent with the character of South West Rocks considering that this standard already applies to the commercial areas as well as limited R3 Medium Density Residential areas in John Shaw Close and Mitchell Street. It is also recommended that a design excellence clause apply to these three sites via a Key Sites map to ensure that future development contributes to the natural, cultural, visual and building character values of South West Rocks, complementing the existing and/or desired local character of the village. The design excellence clause drafted by Parliamentary Counsel is detailed in **Attachment LEP**. The design excellence clause aims to recognise that height is not the only matter which may cause a visual impact on these three key sites. Compliance with the design excellence clause may also assist in the justification of a Clause 4.6 variation for the minor extra additional heights above 11m being requested in particular by the Country Club and Surf Club if sufficient merit can be demonstrated.

- ensure that development matters on three key sites within South West Rocks are appropriately addressed at the development application stage;
- do not materially alter the overall intent of the planning proposal, which is to support and maintain the existing built character of South West Rocks.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 9 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Two maps (Height of Buildings and Key Sites) have been prepared by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment F).</p> <p>Council confirmed on 15/05/2024 that it had no objections and that the plan should be made (Attachment G).</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 22/05/2024, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC .	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No, see below for details

6 Recommendation

It is recommended the delegate of the Secretary:

- agree that the inconsistency of the proposal with section 9.1 Direction 4.3 Planning for Bushfire Protection is justified in accordance with the terms of the Direction.

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The draft LEP has strategic merit being consistent with the Kempsey Local Growth Management Strategy and South West Rocks Structure Plan.
- It is consistent with the Gateway Determination.
- Issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



30/5/24

Craig Diss

Manager, Hunter and Northern Region



5/6/24

Jeremy Gray

Director, Hunter and Northern Region



14/06/2024

Daniel Thompson

A/Executive Director, Local Planning and Council Support

Assessment officer

Kate Campbell

Senior Planning Officer, Hunter and Northern Region

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Attachments

Attachment	Document
A	Final planning proposal
B	Gateway determination
C1	Public submissions
C2	Additional public submissions received post exhibition
C3	South West Rocks High-level Feasibility Assessment (Hill PDA Consulting)
D	Agency submissions
E	Gateway determination report
F	Section 3.36(1) consultation with Council on draft LEP
G	Council response to draft LEP
LEP	LEP Instrument
PC	Parliamentary Counsel's Opinion
Map	Height of Buildings map
MCS	Map Cover Sheet
Council	Letter to Council advising of decision