



IRF24/192

Gateway determination report – PP-2023-2403

322 Stuarts Point Road, Yarrahapinni

February 24



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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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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning proposal Amended September 2023
Biodiversity Assessment October 2023
Aboriginal Heritage Due Diligence Assessment September 2023
On-site Sewage Assessment February 2023
Kempsey Shire Council Ordinary Council Meeting Minutes December 2023
Contaminated Land Use History Appendix G
Bushfire Hazard Assessment February 2023
Flooding Appendix E and Further Information January 2024

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Kempsey
PPA	Kempsey Shire Council
NAME	Proposal to rezone Lot 333 DP 805299, 322 Stuarts Point Road, Yarrahapinni to R5 Large Lot Residential, C2 Environmental Conservation and C3 Environmental Management and amend the minimum lot size map.
NUMBER	PP-2023-2403
LEP TO BE AMENDED	Kempsey Local Environmental Plan 2013
ADDRESS	322 Stuarts Point Road, Yarrahapinni
DESCRIPTION	Lot 333 DP 805299
RECEIVED	27/12/2023
FILE NO.	IRF24/192
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	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 objectives of the planning proposal are to:

- Amend Kempsey Local Environmental Plan 2013 to give effect to part of Kempsey Shire Rural Residential Land Release Strategy 2014
- Allow for an environmentally sensitive rural residential subdivision with a minimum lot size of 1 ha and a residual rural lot.
- Retain and protect the watercourse, riparian vegetation and identified TECs through conservation zoning.

The objectives of this planning proposal are clear and adequate. As discussed below further, Council and the proponent have however due to flood constraints now determined not to pursue for rezoning the land east of the internal watercourse. The objectives of the proposal will need updating prior to agency and community consultation to address this issue.

1.3 Explanation of provisions

The planning proposal seeks to amend the Kempsey LEP 2013 per the changes below:

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	RU1 Primary Production	Part R5 Large Lot Residential, Part C2 Environmental Conservation, Part C3 Environmental Management and Part RU1 Primary Production
Maximum height of the building	N/A	N/A
Floor space ratio	N/A	N/A
Minimum lot size	40ha	Part 1ha and part 40ha
Number of dwellings	1	17
Number of jobs	N/A	N/A
Reclassify land from	N/A	N/A

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

As highlighted above and discussed below further, Council and the proponent have now determined not to pursue for rezoning the land east of the internal watercourse. The explanation of provisions and associated maps will need updating prior to agency and community consultation to address this issue.

1.4 Site description and surrounding area

The site is legally described as Lot 333 DP 805299, 322 Stuarts Point Road, Yarrahapinni. The small town of Stuarts Point is located north east of the site and Stuarts Point Road connects to the Pacific Highway to the south.

The site has an approximate area of 47 ha and has a history of agricultural and rural lifestyle usage. The site contains a dwelling house occupied by the owners as well as several farm buildings. A creek edged with riparian vegetation flows through the site, effectively splitting the site into a western half and eastern half. The site slopes from 26m AHD at the frontage of Stuarts Point Road down towards the creek line. A small rise exists up to 18 AHD along the south-eastern edge, with most of the site in the eastern half being below 6 AHD.



Figure 1 Subject site (source: NSW spatial viewer)

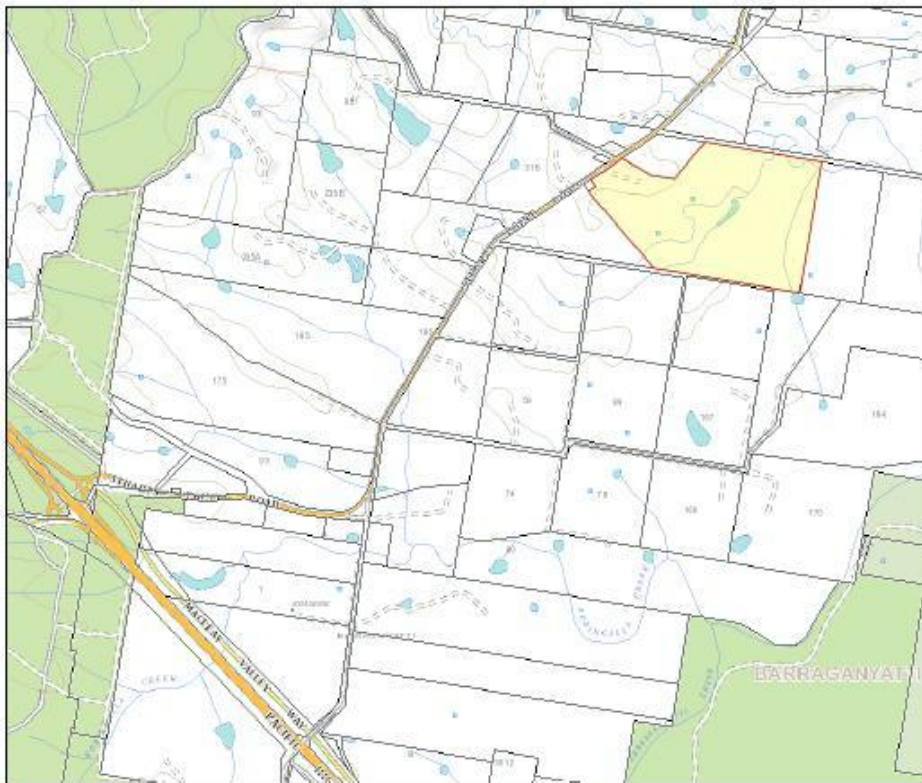


Figure 2 Site context (source: Planning proposal)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Land Zoning and Lot Size maps. A recommendation of this report is to remove the R5 Large Lot Residential Zoning east of the creek due to flooding concerns. The maps within the proposal are required to be updated accordingly prior to community consultation.

The proposal also includes indicative subdivision maps which align with the proposed R5 zoned area. These maps will need to be amended or removed to reflect the changes recommended to

the zoning and lot size maps discussed within this report.

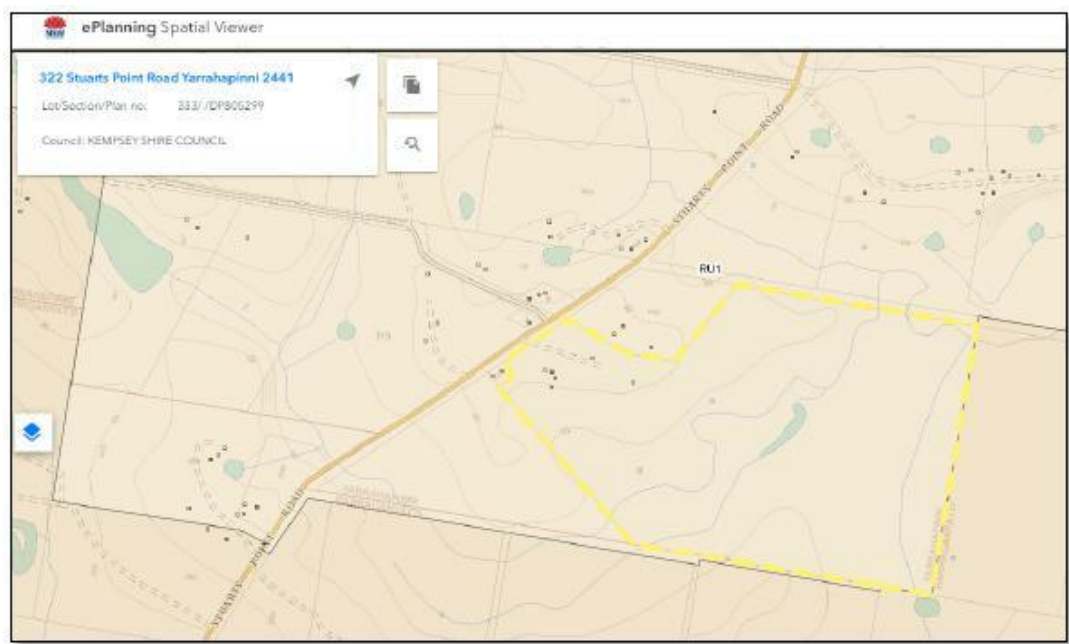


Figure 3 Current zoning map (source: NSW spatial viewer)

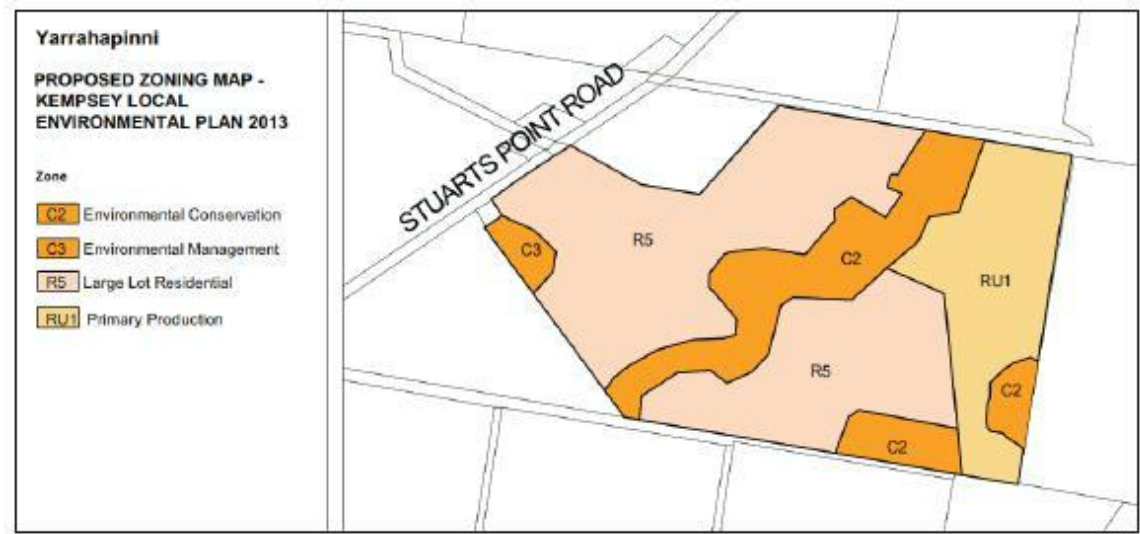


Figure 4 Proposed zoning map (source: Planning proposal)

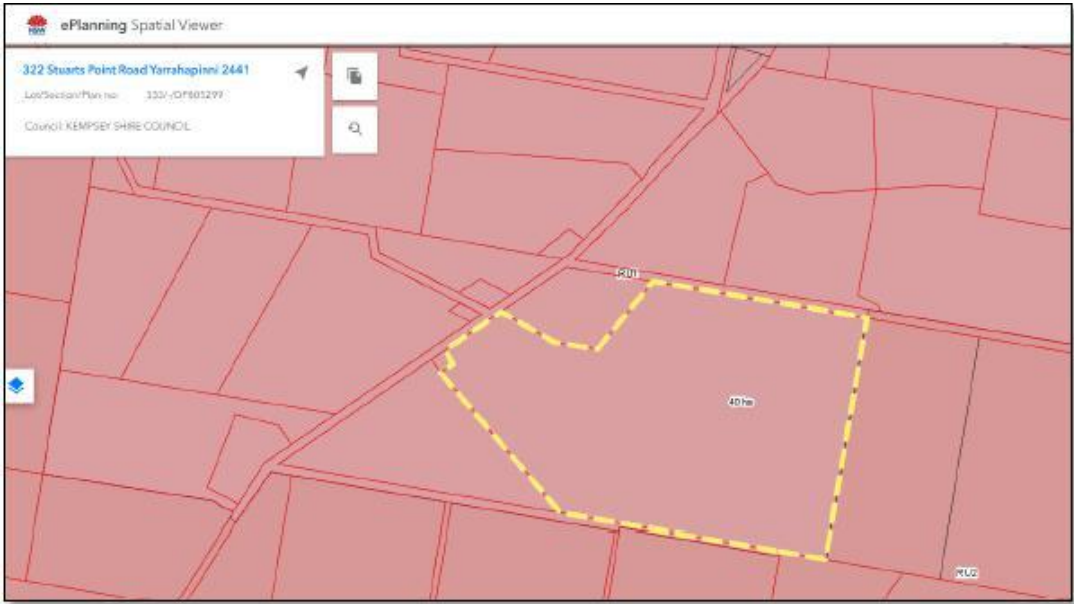


Figure 5 Current minimum lot size map (source: Planning proposal)



Figure 6 Proposed minimum lot size map (source: Planning proposal)



Figure 7 Indicative subdivision layout (source: Planning proposal)

1.6 Background

The proposal as submitted included land both east and west of the internal waterway that traverses the site.

Council was requested to provide further flood information including PMF levels, evacuation considerations and hazard during the assessment of the proposal.

The further information provided by Council highlighted the proposal had not been prepared in accordance with Council's Lower Macleay Flood Study 2023. This study confirms a significantly higher PMF level (8.4AHD) and 1%AEP level (6.88AHD) for the site than the previous study which was used to inform the submitted proposal.

Concerns were raised with Council over the impact the revised flood levels had on the proposed development footprint east of the internal waterway. Much of this area was now affected by both the 1%AEP and the PMF levels and had limited evacuation options. Council was advised that a fully detailed site-specific flood study that addressed all these matters would be required to support the proposal prior to a Gateway determination.

Council subsequently advised that the proponent had determined not to proceed with the proposed rezoning of the land east of the internal waterway, and requested a Gateway determination that only considered the land west of the internal waterway adjoining Stuarts Point Rd.

2 Need for the planning proposal

The planning proposal is a result of Council's Department approved Kempsey Shire Council Rural Residential Land Release Strategy 2014. The strategy is also recognised in the Kempsey Shire Local Strategic Planning Statement. The LSPS planning priority S4 seeks to deliver well planned rural residential housing areas that are identified within the strategy.

The proposal indicates that there is a shortage of rural residential housing options in the area, with no land within the identified release areas being rezoned in the 10 years since the adoption of the 2014 rural residential strategy.

The planning proposal is the best means of achieving the objectives and intended outcomes.

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 2041.

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
O1: Provide well located homes to meet demand	Strategy 1.5 requires new rural residential housing to be located on land identified in a strategy approved by the Department. The site is identified in the Kempsey Rural Residential Land Release Strategy 2014 which was approved by the Department in December 2014. The approval noted that the identified sites would need to consider environmental and land use constraints at the planning proposal stage. The proposal is considered consistent with this objective.
O3: Protect regional biodiversity and areas of high environmental value.	The proposal seeks to preserve areas of environmental value, including the riparian area the traverses the site which is identified by the regional plan as potential high environmental value, by zoning them C2 Environmental Conservation or C3 Environmental Management. The proposal is accompanied by a biodiversity assessment which acknowledges that some potential minor impacts may occur due to the proposed rural residential land use, however through the application of conservation zones and other mitigation measures applied at the development application stage, these can be suitably managed. The proposal is considered to be consistent with this objective.
O4: Understand, celebrate and integrate aboriginal culture	The proposal is accompanied by an Aboriginal Heritage Due Diligence Assessment report which concludes that no aboriginal sites or potential archaeological deposits were identified. The proposal is considered consistent with this objective.
O5: Manage and improve resilience to shocks and stresses, natural hazards and climate change.	<p>The site is mapped as bushfire and partly flood prone land. A bushfire hazard assessment report has been provided which concludes that bushfire protection measures are available and can be implemented to facilitate the proposed development. Importantly, the report has identified asset protection zones that do not impede into the land zoned for conservation. Consultation with RFS will be required as part of the exhibition process.</p> <p>Flooding information has been provided that shows the riparian area and land to the east of the creek are impacted by 1% AEP and the PMF. The land to the west of the creek is not impacted by this flooding and has direct access to Stuarts Point Road.</p> <p>It is considered that the planning proposal will be consistent with this objective through the conditions recommended within the Gateway determination that</p>

	removes the land east of the creek from the proposal.
O8: Support the productivity of agricultural land	The site is not mapped as, or in proximity to state or regionally significant farmland and has been identified for rural residential investigation in an approved strategy consistent with this objective.

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

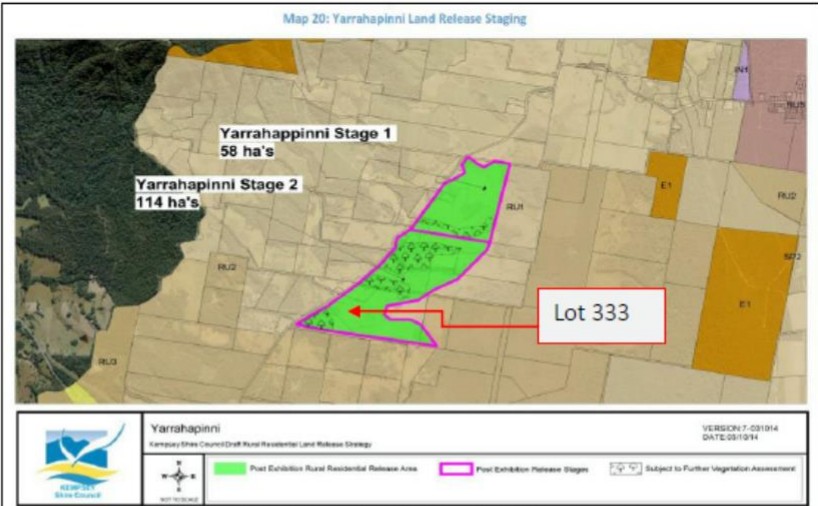
Local Strategies	Justification
Local Strategic Planning Statement	Kempsey LSPS <i>Your Future Macleay</i> includes a planning priority to deliver well planned rural residential housing areas by restricting new rural residential subdivisions to land identified within the Kempsey Shire Rural Residential Land Release Strategy.
Kempsey Shire Rural Residential Land Release Strategy	<p>Kempsey Shire Rural Residential Land Release Strategy was approved by the Department in December 2014. The subject site is identified in Map 20 of the strategy.</p> <p>The site is located in the stage two release along with several other adjacent sites. The reason for the site being stage two is not addressed in the strategy. To date no planning proposal has been received for any land identified in stage one of the Yarrahapinni release area. Given the time passed since the strategy was approved, Council has considered it appropriate to proceed with this proposal to in order to deliver additional housing supply and options in the area.</p> 

Figure 8 Kempsey Shire Rural Residential Land Release Strategy Map 20 (source: planning proposal)

Several locality specific issues for consideration are identified in the strategy for the Yarrahapinni land release area, which have been addressed within the proposal.

These include:

Consideration	Justification
The means of rationalising access to facilitate an efficient pattern of subdivision, whilst minimising access points to Stuarts Point Road.	The proposal seeks to utilise the existing single access point from Stuarts Point Road.
The relationship of the area to potential fauna corridor linkages	The riparian area has been zoned as C2 Environmental Conservation as has other areas of environmental significance to enable linkages.
The means by which vegetation retention can be maximised, whilst satisfying bushfire requirements.	Vegetation has been retained through application of conservation zones in consultation with BCS. The bushfire report has considered APZ's and the conservation zones.
The extent of the 1 in 100-year flood.	Some lots have minor flooding in the 1 in 100-year flooding identified in the appended report. Further detail was requested from Council in regard to flooding impacts. As discussed above, the proponent has now removed the land east of the creek from the proposal. It is also recommended that the area to be zoned R5 is reduced to minimise residential land impacted by the 1%AEP and PMF level.
Impacts from adjacent horticultural enterprises	The proposal states that no horticultural enterprises adjoin the site. Satellite imagery confirms no intensive horticulture uses are located adjacent to the site that could contribute to a land use conflict. It is still recommended however that DPI be consulted on the appropriateness of the proposal.
Unknown 2A and 2B koala habitat	The eastern portion of Kempsey Shire including this site is covered by a Comprehensive Koala Plan of Management. The Biodiversity Assessment Report states that secondary habitat is mapped on part of the site and is largely retained within the proposed conservation zones. It is further stated that the site is not considered to be core koala habitat and the rezoning layout appears compliant with the criteria for Preferred Koala Habitat within Council's CKPoM.

		The rezoning is not likely to have a significant impact on koalas or their habitat. Further assessment on koala habitat will also be required at the development application stage.
	Bushfire prone land	The site is mapped as bushfire prone land being predominately category 3 in the proposed R5 zoned land and category 1 along the creek and in areas zoned for conservation. The proposal is accompanied by a bushfire assessment report which demonstrates adequate and appropriate bushfire protection measures are available and can be implemented to facilitate the proposal.
	Class 4 and Class 5 Acid Sulfate Soils	Kempsey LEP 2013 clause 7.1 considers development on Acid Sulfate Soils with class 5 applying to the R5 zoned area. It is considered that any earthworks that may potentially disturb class 5 ASS can be mitigated at the development application stage through clause 7.1.

3.3 Section 9.1 Ministerial Directions

The planning proposal's is considered to be consistent with all relevant section 9.1 Directions except those discussed below.

Table 6 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
3.1 Conservation Zones	Justified	The proposal is inconsistent with this direction as it does not include provisions that protect and conserve seeks to rezone all the environmentally sensitive land the site. This inconsistency is considered to be of minor significance as the proposal rezones the majority of these areas to either C2 or C3 and the biodiversity assessment that accompanies the proposal confirms suitable mitigation measures for the scattered vegetation can be adequately addressed at the development application stage.
4.3 Planning for Bushfire Protection	Unresolved	This proposal is inconsistent with this direction as it seeks to rezone bushfire prone land for residential purposes. Consultation with NSW

		Rural Fire Service is required to resolve the inconsistency with this direction.
4.5 Acid Sulfate Soils	Justified	The proposal is inconsistent with this direction as the rezoning will enable intensification of land mapped as Class 5 acid sulfate soils. Kempsey Local Environmental Plan 2013 clause 7.1 considers development on acid sulfate soils. Earthworks that may potentially disturb class 5 soils can be mitigated at the development application stage through clause 7.1. The inconsistency with this direction is considered of minor significance and justified.
5.1 Integrating Land Use and Transport	Justified	The proposal is inconsistent with this direction as it will facilitate rural residential land in a rural area which will be predominately serviced by private vehicles. The proposal presents a strategically planned large lot residential land release identified in a Department approved local strategy and will allow for a growing population to support the Stuarts Point village and Macksville. The inconsistency with this direction is therefore considered of minor significance and justified.
6.1 Residential Zones	Justified	The proposal is inconsistent with this direction as it will not reduce the consumption of land for housing on the urban fringe as it will facilitate rural residential land in a rural area which will be predominately serviced by private vehicles. The proposal presents a strategically planned large lot residential land release identified in a Department approved local strategy and will allow for a growing population to support the Stuarts Point village and Macksville. The inconsistency with this direction is therefore considered of minor significance and justified.
9.1 Rural Zones	Justified	The proposal is inconsistent with this direction as it seeks to rezone land from a rural zone to a residential zone. The inconsistency is considered to be justified as the site is identified in the Kempsey Rural Residential Land Release Strategy which was approved by the Department of Planning in December 2014.
9.2 Rural Lands	Justified	The proposal is inconsistent with this direction as it seeks to rezone land from a rural zone to a residential zone. The inconsistency is considered to be justified as the site is identified in the Kempsey Rural Residential Land Release Strategy which was approved by the Department of Planning in December 2014.

3.4 State environmental planning policies (SEPPs)


The planning proposal is considered to be consistent with all relevant SEPPs.


4 Site-specific assessment

4.1 Environmental

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

Table 8 Environmental impact assessment

Environmental Impact	Assessment
Potential High Environmental Value Vegetation	<p>The riparian area is mapped as potential high environmental value under the NCRP 2041 and is proposed to be zoned C2 Environmental Conservation. Other significant areas of environmental sensitivity identified by the biodiversity assessment are also proposed to be zoned C2 Environmental Conservation or C3 Environmental Management. Some scattered trees on the western part of the site may need to be removed as part of its future development. The biodiversity assessment confirms that suitable mitigation measures can be undertaken to address the loss of these trees to ensure no overall adverse environmental impact. It is also noted that the removal of the proposed development east of the creek as now requested by Council and the proponent will have a significant positive impact compared to the original as it will no longer require a road to build through the PHEV area. Consultation with BCS is recommended during public exhibition.</p>
Key fish habitat	<p>The site is mapped as containing key fish habitat. This area is proposed to be zoned C2 Environmental Conservation. It is also noted that the proposal is supported by an onsite waste disposal report that confirms the proposal is satisfactory and will not cause any adverse environmental outcomes. Consultation with NSW Department of Primary Industries – Fisheries is recommended.</p>  <p>Figure 9 Key Fish Habitat Map (source: Fisheries NSW Spatial Data Portal)</p>
Biodiversity	<p>The planning proposal is accompanied by a biodiversity assessment report that nominates areas of high environmental value for retention through conservation</p>

	<p>zoning. These areas have been identified and zoned accordingly in the planning proposal. It is considered that the planning proposal has been designed to minimise any adverse impacts on biodiversity and further mitigation measures are possible at the development application stage. The site is not mapped on the biodiversity values map. Consultation with BCS is recommended.</p>
Flood prone land	<p>The site is mapped as flood prone land. The area impacted by the 1% AEP flooding under Council's previous flood study is predominately in the creek and the eastern portion of the site and is shown in Figure 10.</p>  <p>Figure 10 Flood prone land map (source: Kempsey Shire Council)</p> <p>Further information was provided by council that confirms a significantly higher PMF level (8.4AHD) and 1%AEP level (6.88AHD) for the site than the previous study which was used to inform the submitted proposal. Overlaying this information to the submitted contour plan shows much of the area east of the creek is affected by both the 1%AEP and the PMF levels and has limited evacuation options.</p> <p>Each lot on the western side of the creek has sufficient land above the 8m contour with most of the land being above the 10m contour.</p>

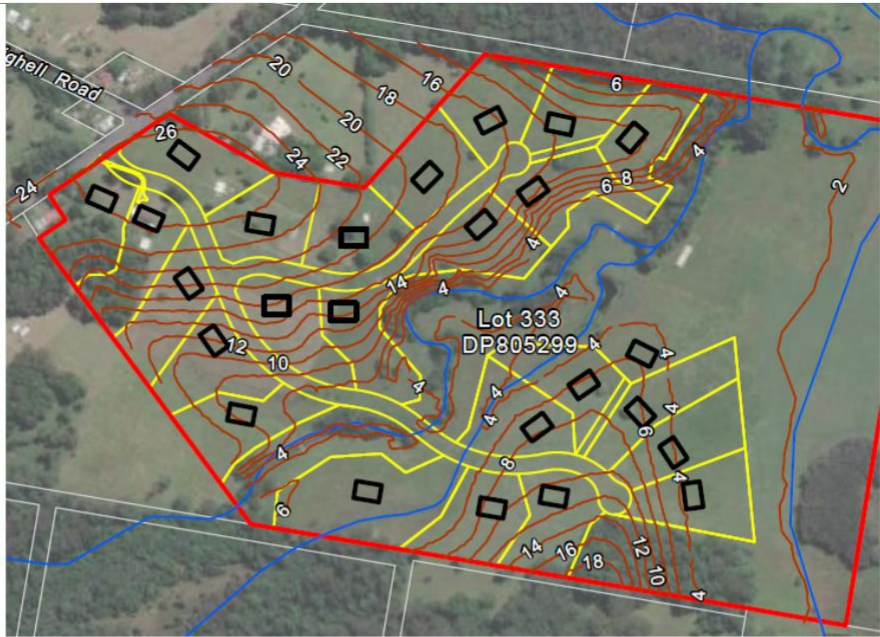


Figure 11 indicative subdivision plan and contours (source: Onsite Effluent Disposal Report)

It is recommended that the planning proposal be updated prior to public exhibition to remove the proposed R5 land east of the creek and to include updated details on the site's flood mapping, PMF levels, confirmation that all future building envelopes can be located above the PMF and consideration of evacuation utilising Council's latest flooding information. Consultation with BCS on flooding impacts is recommended.

Bushfire prone land

The site is mapped as bushfire prone land being predominately category 3 in the proposed R5 zoned land and category 1 along the creek and in areas zoned for conservation. The proposal is accompanied by a bushfire assessment report which demonstrates adequate and appropriate bushfire protection measures are available and can be implemented to facilitate the proposal. Consultation with RFS is recommended.

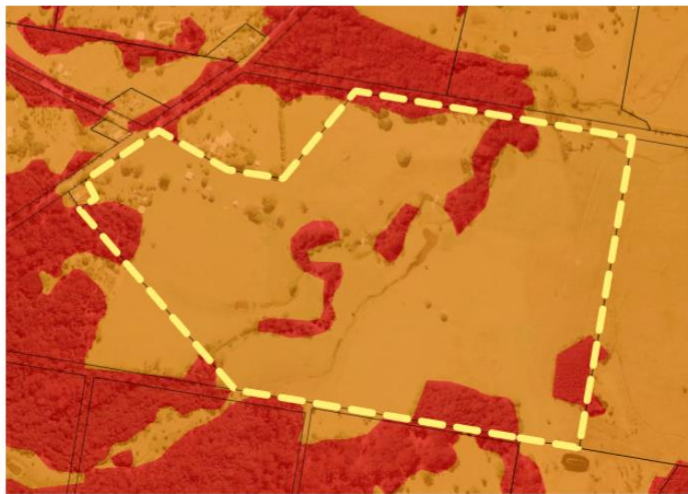


Figure 12 Bushfire prone land map (source: NSW spatial viewer)

4.2 Social and economic

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

Table 9 Social and economic impact assessment

Social and Economic Impact	Assessment
Aboriginal and cultural heritage	The proposal is accompanied by an Aboriginal Heritage Due Diligence Assessment which included a site walking survey that did not find any Aboriginal sites or areas of Potential Archaeological Deposits and concluded the proposal could proceed without the need for any further investigation. The proposal is not likely to have an adverse impact on Aboriginal heritage.
Housing	The proposal will provide additional housing options in a rural residential setting.
Economic benefits	The provision of new dwellings will provide economic benefit by creating jobs during the construction process and allow for additional population supporting the Stuarts Point Village and Macksville.

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 and what infrastructure is proposed in support of the proposal.

Table 10 Infrastructure assessment

Infrastructure	Assessment
Waste water	The proposal is accompanied by a waste water investigation report that concludes the site has capacity for on-site wastewater management in accordance with the proposed subdivision plan.
Traffic	The proposal will result in a single entrance from Stuarts Point Road which is considered satisfactory to service the development. Final details of intersection works can be resolved by Council at the development application stage.
Social infrastructure	The development will primarily be supported by the two closest towns including Stuarts Point which has a small supermarket and cafes, library and primary school. Larger shops and schools are available in Macksville being 24km north of the site.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days.

The exhibition period proposed is considered appropriate and forms to the conditions of the Gateway determination.

5.2 Agencies

Council has nominated the public agencies to be consulted about the planning proposal.

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

- NSW Rural Fire Service
- NSW Biodiversity, Conservation and Science
- Department of Primary Industries - Fisheries
- Department of Primary Industries - Agriculture

6 Timeframe

Council proposes a 7 month time frame to complete the LEP.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a standard

An LEP completion timeframe of 7 months in line with the Department's benchmark timeframes and commitment to reducing processing times. A condition to the above effect is recommended in the Gateway determination.

It is recommended that if the Gateway is supported it is accompanied by guidance for Council in relation to meeting key milestone dates to ensure the LEP is completed within the benchmark timeframes.

7 Local plan-making authority

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

As the proposal is consistent with the Department approved Kempsey Shire Rural Residential Land Release Strategy 2014 and the North Coast Regional Plan 2041 it is recommended that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

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

- the site is identified with potential for a Large Lot Residential zone in a Department approved local strategy;
- areas of environmental importance will be retained through conservation zoning;
- an amended zoning map will ensure new housing is not outside flood prone areas; and
- the proposal will provide additional housing options in the Kempsey local government area.

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

- Remove the R5 Large Lot Residential zone and the corresponding 1ha Lot size on the eastern side of the creek;
- Update the anticipated lot yields; and
- update details on the site's flood mapping, PMF levels, confirmation that all future building envelopes can be located above the PMF and consideration of evacuation utilising Council's latest flooding information.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 3.1 Conservation Zones, 4.5 Acid Sulfate Soils, 5.1 Integrating Land Use and Transport, 6.1 Residential Zones, 9.1 Rural Zones and 9.2 Rural Lands are minor or justified and
- Note that the consistency with section 9.1 Direction 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 conditions.

The following conditions are recommended to be included on the Gateway determination:

1. Prior to community consultation, the planning proposal is to be amended to:

- Remove the R5 Large Lot Residential zone and the corresponding 1ha Lot size on the eastern side of the creek.
- Update the anticipated lot yields; and
- update details on the site's flood mapping, PMF levels, confirmation that all future building envelopes can be located above the PMF and consideration of evacuation utilising Council's latest flooding information.

2. Consultation is required with the following public authorities:

- NSW Rural Fire Service
- NSW Biodiversity, Conservation and Science
- NSW Department of Primary Industries – Fisheries
- NSW Department of Primary Industries – Agriculture

3. The planning proposal should be made available for community consultation for a minimum of 20 working days.

Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority and that an LEP completion date of 7 months from the Gateway determination date be included on the Gateway.



_____ (Signature)

____ 14/02/2024 _____ (Date)

Craig Diss

Manager, Northern Region



_____ (Signature)

____ 26/02/2024 _____ (Date)

Jeremy Gray

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