



IRF25/710

Gateway determination report – PP-2024-2316

Proposal to rezone part of Lot 3 DP1231274, 476
Macleay Valley Way, South Kempsey and amend
associated development controls

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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 supporting the proposal

Relevant reports and plans
Planning Proposal (3/02/2025) – prepared by King and Campbell – submitted KSC 24/03/2025
Strategic Bushfire Study (January 2025) – submitted by KSC 24/03/2025
Civil Engineering Report (23/09/2025) – submitted by KSC 24/03/2025
Traffic Impact Assessment (July 2024) - submitted by KSC 24/03/2025

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Kempsey Shire
PPA	Kempsey Shire Council
NAME	Rezone part of 476 Macleay Valley Way, South Kempsey to E4 General Industrial
NUMBER	PP-2024-2316
LEP TO BE AMENDED	Kempsey LEP 2013
ADDRESS	Part of 476 Macleay Valley Way, South Kempsey
DESCRIPTION	Part of Lot 3 DP1231274
RECEIVED	26/03/2025
FILE NO.	IRF25/710
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 rezone part of Lot 3 DP1231274, 476 Macleay Valley Way, South Kempsey to enable development of the area for employment purposes.

The proposal seeks to rezone and amend associated development controls on the western part of the site, including minimum lot size and floor space ratio controls, in order to facilitate the development of the site.

The controls applied to the planning area are in accordance with the controls applied to the wider surrounding employment area and the existing E4 zoned area of the site.

The objectives of this planning proposal are clear and adequate.

It is noted that the planning proposal includes concept subdivision plan. It is recommended that this attachment is removed from the planning proposal package prior to exhibition in recognition that the suitability of this proposed layout will be determined as part of any future development application.

1.3 Explanation of provisions

The planning proposal seeks to amend the Kempsey LEP 2013 to apply the following zone and associated controls to the planning area:

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	RU2 Rural Landscape	E4 General Industrial
Floor space ratio	nil	0.5:1
Minimum lot size	40ha	nil

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

1.4 Site description and surrounding area

The site is an irregular shaped lot comprising 7.48ha, located approximately 4km from the Kempsey central business district (**Figure 1**)

The site has an approximately 125m frontage along Macleay Valley Way, the former Pacific Highway. The site increases at the rear of the lot to 250m at the widest point between the northern and southern boundary. The site is bounded by heavily vegetated land to the southern, western and northern boundary, with a small section of the northern boundary adjoining an existing industrial lot (**Figure 2**).

The planning area is a portion of the lot at the rear, comprising approximately 3.6ha (48 per cent) of the site (**Figure 3**). The planning area is currently mostly cleared of vegetation and occupied by an existing industrial type development, for storage of heavy machinery parts.

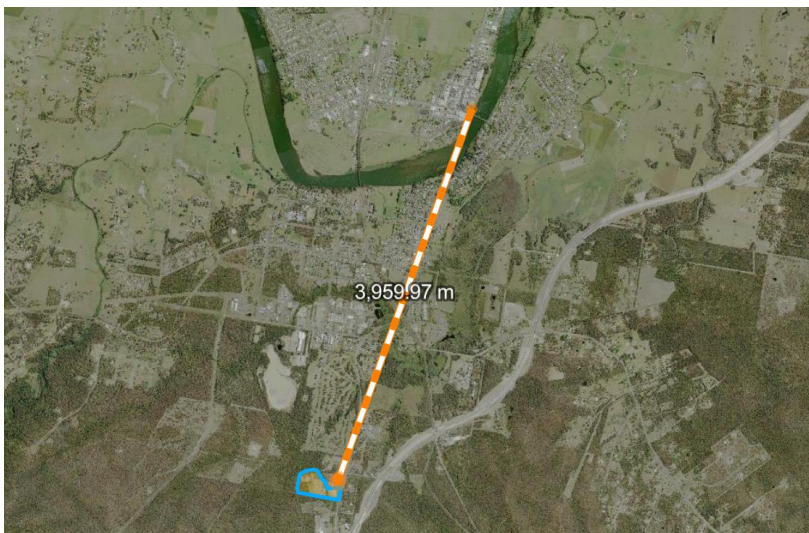


Figure 1 Subject site in proximity to Kempsey CBD (source: NSW Explorer)

LEGEND

--- SUBJECT SITE LOT TOPOLYLINE

--- EXISTING LOT BOUNDARY

--- LOT SUBJECT TO PROPOSED LPP AGREEMENT FOR EXTENSION OF EXISTING 64' GENERAL EASEMENT, 2016 - 2019

It is noted that there is a minor discrepancy in how the planning proposal document refers to the lot, alternating between Lot 3 DP1231274 in its entirety, or part of. The proposal relates to part of Lot 3 DP1231274. As such, a condition has been included on the consent requiring the proposal to refer consistently to “part of Lot 3 DP1231274”, to avoid any confusion at consultation stage.

The planning proposal includes mapping showing the proposed changes to the land zoning, floor space ratio and minimum lot size maps, which are suitable for community consultation. Technical maps in accordance with the NSW Department of Planning, Housing and Infrastructure requirements will be required to be prepared prior to finalisation of the proposal.

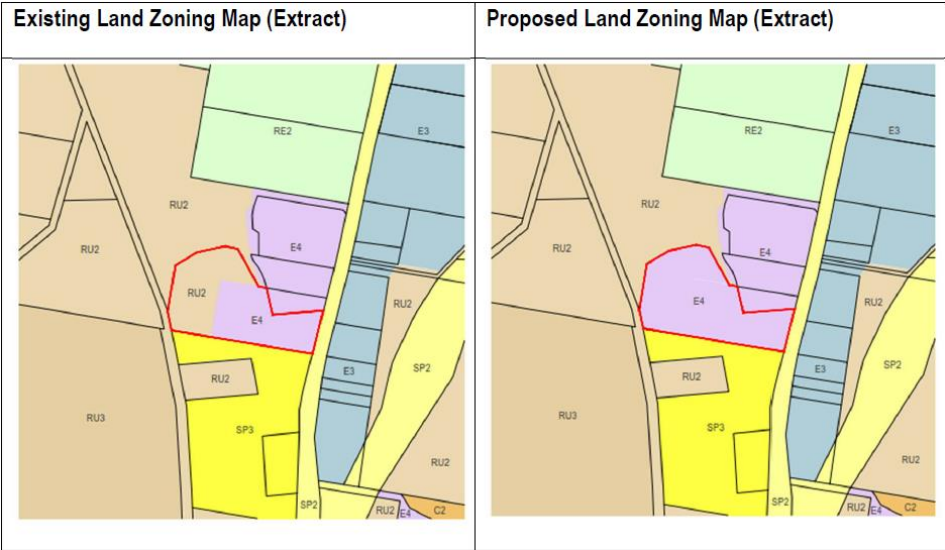


Figure 4 Current and proposed zoning map (Source: Planning Proposal)



Figure 5 Current and proposed floor space ratio map (Source: Planning Proposal)



Figure 6 Current and proposed minimum lot size map (Source: Planning Proposal)

1.6 Background

The planning proposal confirms development consent T6-13-137 approved by Kempsey Shire Council approved vegetation clearing and earthworks to the site.

2 Need for the planning proposal

The planning proposal is consistent with Council's Local Strategic Planning Statement and Department approved local growth management strategy.

The planning proposal is the only means of achieving rezoning of part of Lot 3 DP1231274 for employment purposes.

3 Strategic assessment

3.1 Regional Plan

The proposal is consistent with the North Coast Regional Plan 2041 which identifies the land within the Urban Growth Area boundary and as an Investigation Area – Employment Land.

The land was previously identified by Council as having potential environmental sensitivity as shown in Figure 7 (green demonstrates biodiversity values, pink threatened ecological communities and red high environmental value). As noted above, the proposal confirms these values were assessed in more detail by Council and development consent T6-13-137 was issued for clearing and earthworks that have now removed any potential values from the rezoning area. As a result, the proposal has not undertaken any additional or detailed flora and fauna assessment on the basis that these have already been assessed and none now exist as a result of the existing development.

While this is considered reasonable in the circumstances, consultation with the Department of Climate Change, Energy, the Environment and Water (DCCEEW) is recommended to confirm that the proposal is satisfactory and will have no adverse impact on any values that may exist in the wider area.



Figure 7 Biodiversity Map (Source: Planning Proposal)

3.2 DPHI Industrial Lands Action Plan

The Department's Industrial Lands Action Plan was released in January 2025. The Action Plan recognises the importance of industrial lands in providing jobs and services for NSW's growing population and the need to secure and maintain these areas.

The proposed rezoning is consistent with the Action Plan as it seeks to increase the supply of industrial lands in the Kempsey Shire LGA.

3.3 Local

The proposal is consistent with the following local plans and endorsed strategies as outlined in the table below:

Table 6 Local strategic planning assessment

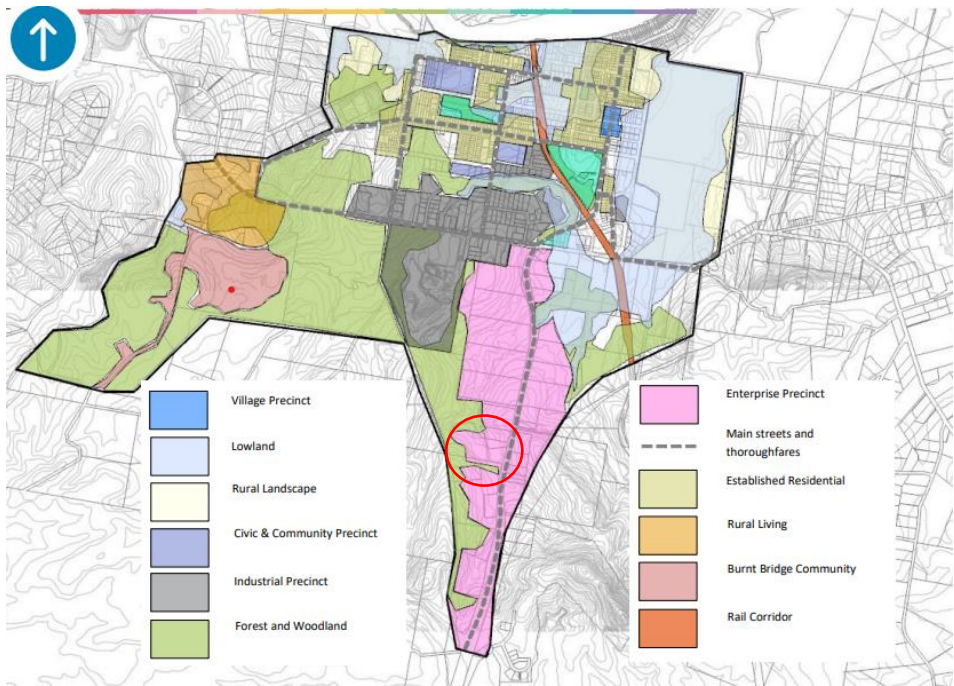
Local Strategies	Justification
Local Strategic Planning Statement	<p>The Local Strategic Planning Statement was released in July 2020, prior to the Department's approval of the Local Growth Management Strategy (LGMS).</p> <p>The proposal demonstrates consistency with priorities outlined in the LSPS, to capitalise on the opportunities within South Kempsey and maximise opportunities for development of South Kempsey.</p> <p>There is one minor inconsistency between the proposal with the LSPS, in that the LSPS identifies the planning area as partly containing land identified as 'forest and woodland' and not 'enterprise precinct', which is identified on the wider site.</p> <p>This inconsistency is considered of minor significance noting the approved clearing and earthworks that have already taken place.</p> 

Figure 8 LSPS Extract for South Kempsey - site circled (Source: LSPS)

Kempsey Local Growth Management Strategy

The site is identified within the South Kempsey Region of the Local Growth Management Strategy, which was conditionally approved by the Department on 23 August 2023.

There are no specific actions relevant to the site. The site is however adjacent to the South Kempsey Enterprise Precinct along Macleay Valley Way which is identified as being an important driver of future development and employment potential.

The Department's approval letter dated 23 August 2023 notes that any future proposals for rezoning in the area are to be supported by infrastructure servicing plans and detailed studies and assessment of site-specific development constraints, including HEV, bushfire risk, flood levels up to and including the probable maximum flood, and consistency with the regional plan, SEPPs and Local Planning Directions.

All matters are discussed in further detail in the body of this report.

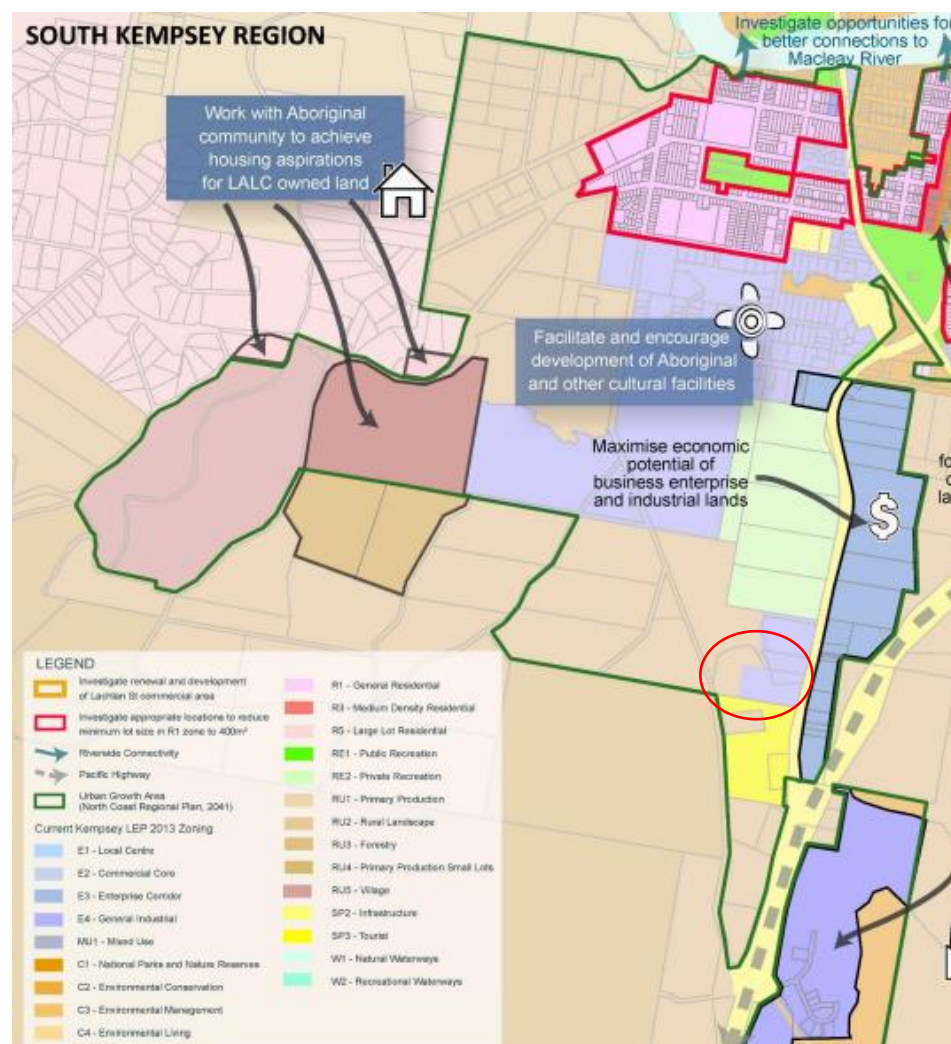
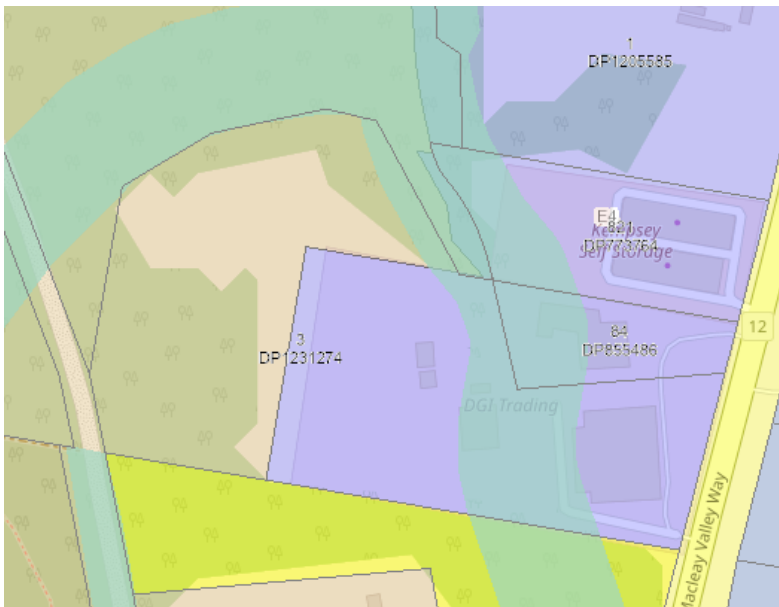


Figure 9 LGMS Extract for South Kempsey - site circled (Source: LGMS)

3.4 Section 9.1 Ministerial Directions

The planning proposal is consistent with all relevant section 9.1 Directions, except for the following:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Inconsistency
3.1 Conservation Zones	Justifiably inconsistent	<p>The proposal is potentially inconsistent with this direction as it doesn't facilitate the protection and conservation of environmentally sensitive areas that are located primarily on the area of the site already zoned E4 and as shown by the PHEV mapping from the NCRP 2041 (Figure 10).</p>  <p>Figure 10 Flood Planning Level (Source: Northern Region Spatial Viewer)</p> <p>This is inconsistency considered to be of minor significance as the planning area as defined by the NCRP 2041 is the area to be rezoned, and the proposal confirms that this area has already been cleared and earthworks undertaken and no environmentally sensitive areas will be impacted as a result.</p>
4.1 Flooding	Justifiably inconsistent	<p>The planning proposal is inconsistent with this direction as it applies to land that is mapped as flood prone and does not include provisions that give effect to and are consistent with the policies identified within the Direction.</p> <p>The inconsistency with this direction is considered to be of minor significance as only a very small portion of the rezoning area is impacted by the PMF, there is flood free access to Macleay Valley Way, the change in land use is not for highly sensitive residential uses and any issues can be managed at the development stage.</p>

Directions	Consistent/ Not Applicable	Reasons for Inconsistency
4.3 Planning for Bushfire Protection	Unresolved	<p>The proposal is potentially inconsistent with this direction as the planning area is mapped as bushfire prone land.</p> <p>The supporting Strategic Bushfire Study has been prepared in accordance with Chapter 4 of Planning for Bushfire Protection 2019 and indicates that whilst the planning area and wider site are at risk of bushfire attack, specific measures can be implemented that will manage this risk.</p> <p>Until post Gateway consultation is undertaken with the NSW Rural Fire Service as required by the direction, consistency with this direction cannot be determined.</p>
4.5 Acid Sulfate Soils	Justifiably inconsistent	<p>The proposal is inconsistent with this direction as the planning area is identified as Class 5 Acid Sulfate Soils.</p> <p>The inconsistency is however considered to be minor as Kempsey LEP 2013 already contains acid sulfate soil clauses that ensure this matter can be appropriately addressed at the development applications.</p>
5.1 Integrating Land Use and Transport	Justifiably inconsistent	<p>The proposal is inconsistent with this direction as it does not specifically consider Improving Transport Choice – Guidelines for planning and development (DUAP 2001) and The Right Place for Business and Services – Planning Policy (DUAP 2001).</p> <p>A Traffic Impact Assessment (TIA) has been prepared in support of the application. The site has frontage to Macleay Valley Way and suitable arrangements are able to be made to facilitate development on the subject land. Inconsistencies with this direction are considered to be of minor significance, however it is recommended that consultation be undertaken with Transport for NSW to confirm the suitability of the proposal.</p>
6.2 Caravan Parks and Manufactured Home Estates	Justifiably inconsistent	<p>The proposal is inconsistent with this direction as it would reduce the opportunity for caravan parks and manufactured home estates on the portion of the land currently zoned RU2. Under the Kempsey LEP 2013, caravan parks are permitted with consent in the RU2 land use table.</p> <p>The inconsistency is considered of minor significance due to the small area involved (3.6ha), the large areas elsewhere across the LGA where caravan parks are permissible and the proximity to existing industrial uses making the planning area unlikely appropriate for caravan parks due to noise, dust, odour, etc.</p>

Directions	Consistent/ Not Applicable	Reasons for Inconsistency
8.1 Mining, Petroleum Production and Extractive Industries	Justifiably inconsistent	<p>The proposal is inconsistent with this direction as the rezoning of land from rural will limit mining and extractive industries due to the change in zoning.</p> <p>The inconsistency is considered to be of minor significance due to the small area involved and as the proximity of the site to urban land uses is unlikely to make it appropriate for extractive industries. Notwithstanding, consultation with Department of Primary Industries and Regional Development – NSW Resources is recommended.</p>
9.1 Rural Zones	Justifiably inconsistent	<p>The proposal is inconsistent with this direction as it will rezone land from a rural zone to an employment zone. This inconsistency is considered to be of minor significance as the proposal is consistent with an approved local strategy and the urban growth area boundaries within the North Coast Regional Plan 2041.</p>
9.2 Rural Lands	Justifiably inconsistent	<p>The proposal is inconsistent with this direction as it will rezone rural land for urban purposes and does not support all the objectives of the direction such as promoting opportunities for investment in productive, diversified, innovative and sustainable rural economic activities, supporting farmers in exercising their right to farm or prioritising efforts to minimise the fragmentation of rural land.</p> <p>The inconsistency is considered to be of minor significance as the proposal is consistent with an approved local strategy and the urban growth area boundaries within the North Coast Regional Plan 2041.</p>

3.5 State environmental planning policies (SEPPs)

The proposal identifies several SEPPs that may be relevant to a future development application on the site. Further consideration of these SEPPs shall be given at that future stage.

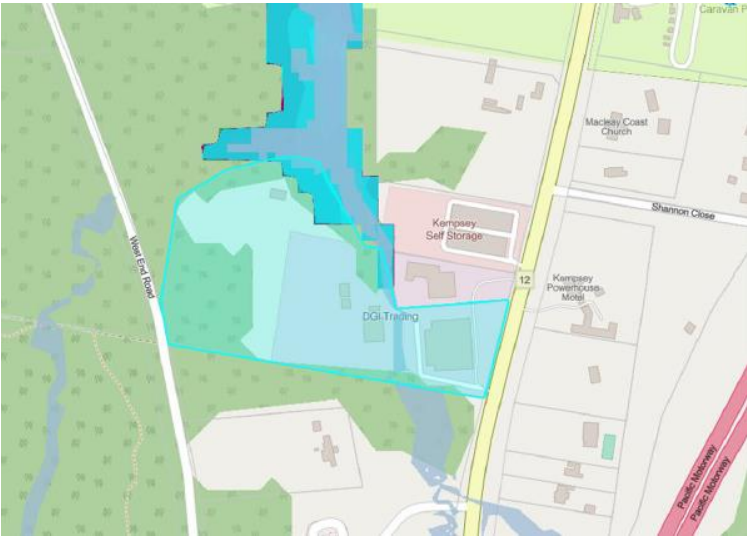
4 Site-specific assessment

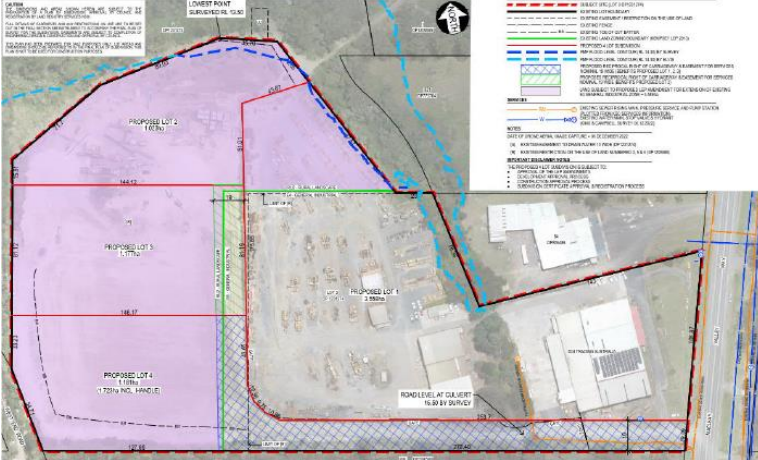
4.1 Environmental

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

Table 9 Environmental impact assessment

Environmental Impact	Assessment
Flooding	<p>The site is partially affected by the 1% AEP as well as the PMF. The Planning Area is identified as being partially affected by the PMF.</p> <p>Notwithstanding, the flood planning level is determined to be 12.30m AHD according to information contained in the planning proposal.</p>

Environmental Impact	Assessment
	<p>The planning proposal indicates the lowest level on the site is 13.5m AHD which is above the defined FPL and FPA.</p> <p>The PMF level at the subject site is 14.30m AHD and affects a small area of the rezoning area in the north. As discussed above previously, this is considered satisfactory in the circumstances.</p>  <p>This map shows a site area outlined in red. A cyan line represents the Flood Planning Level (FPL). The site is adjacent to a road labeled 'Shannon Close' and a 'Public Highway'. Other labels include 'Kempsey Self Storage' and 'DGL Trading'.</p> <p>Figure 11 Flood Planning Level (Source: Planning Proposal)</p>  <p>This map shows the Probable Maximum Flood (PMF) area in cyan. The flood area covers the site and extends to the north. The site is outlined in red. The map includes labels for 'Shannon Close', 'Kempsey Self Storage', 'DGL Trading', 'Kempsey Powerhouse Motel', 'Mackellar Coast Church', and 'Public Highway'. A road labeled '12' is also visible.</p> <p>Figure 12 Probable Maximum Flood (Source: Planning Proposal)</p>

Environmental Impact	Assessment
	 <p>Figure 13 Probable Maximum Flood in site context (Source: Planning Proposal)</p>
Bushfire	<p>The accompanying bushfire report confirms that the requirements identified in Planning for Bushfire Protection 2019 can be satisfied and the risk to the planning area can be appropriately mitigated.</p> <p>Consultation with NSW RFS will be undertaken to confirm the findings of the report are satisfactory.</p>
Environment	<p>The area to be rezoned is cleared and earthworks undertaken pursuant to an approval issued by Kempsey Shire Council and contains no environmental values.</p> <p>Consultation is however still recommended with DCCEEW to confirm the proposal is satisfactory.</p>
Contamination	<p>Council have confirmed in email correspondence dated 25 March 2025 that there is no known site contamination in relation to the land that is to be rezoned under the proposal at 476 Macleay Valley Way, South Kempsey.</p>
Aboriginal Cultural Heritage	<p>The site is highly modified, with earthworks and clearing undertaken on site. The likelihood of Aboriginal areas, objects, places or landscapes being present is very low.</p> <p>Notwithstanding, future development applications should consider stop work conditions in the event of an unexpected find.</p>

4.2 Social and economic.

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

Table 10 Social and economic impact assessment

Social and Economic Impact	Assessment
Traffic	<p>The proposal is located on Macleay Valley Way, the former Pacific Highway.</p> <p>A TIA has been prepared, to support the proposal. The assessment has been conducted based on the generation of traffic for the wider site and is not limited to just the planning area.</p> <p>A future development proposal would seek to provide an access road easement (along the southern boundary of the site) that connects to Macleay Valley Way, to service the future industrial site and potential allotments.</p> <p>The TIA concludes that the proposed intersection with Macleay Valley Way would be required to have appropriate turn treatments to support traffic to and from the wider site.</p> <p>Specific design requirements for the development will be considered at a future development application stage. However, due to the proximity of the site to the Pacific Highway, it is appropriate the proposal be forwarded to Transport for NSW for review and comment.</p>
Employment Land	<p>It is considered that the proposal will have a net positive benefit in terms of the delivery of additional employment land for the Kempsey LGA in an area located within the UGA and identified as potential employment land.</p>
Loss of Rural Land	<p>Whilst the proposal will result in the rezoning of RU2 Rural Landscape land, the use of this land for the purposes of rural enterprise are unlikely and will rationalise the current operations carried out on the wider site. Further, the rezoning of the land for industrial purposes is strategically supported.</p> <p>Land use conflict and land use fragmentation impacts are therefore considered to be low. It is however, recommended that consultation be undertaken with Department of Primary Industries and Regional Development – Agriculture as a condition of the Gateway determination.</p>

4.3 Infrastructure

The planning proposal confirms that water, sewer, electrical and telecommunication facilities can be augmented from the services currently connected to the site.

Further, servicing strategies for managing stormwater, sewerage, water supply, electricity and telecommunications have been demonstrated in the Civil Engineering Report.

Pursuant to clause 7.9 of the Kempsey LEP 2013, the consent authority for a future development application will be required to be satisfied that servicing of the site can be achieved at the appropriate time.

5 Consultation

5.1 Community

The report does not specify a community consultation period. The planning proposal is categorised as a standard under the LEP Making Guidelines (September 2022). Accordingly, a community

consultation period of 20 working days is recommended and this forms part of the conditions to the Gateway determination.

5.2 Agencies

Council has nominated several public agencies to be consulted about the planning proposal. These have been reviewed but are not considered warranted, given the nature of the proposal.

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

- NSW Rural Fire Service,
- Department of Climate Change, Energy, the Environment and Water – Biodiversity
- Transport for NSW
- Department of Primary Industries and Regional Development – Agriculture
- Department of Primary Industries and Regional Development – NSW Resources
- Kempsey Local Aboriginal Land Council

6 Timeframe

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 date of nine months from the date of Gateway determination is recommended in line with the Department's commitment to reducing processing times and regarding the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a local plan-making authority.

As the planning proposal is a standard planning proposal of local significance to the Kempsey LGA, 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 as the proposal has demonstrated strategic merit, including consistency with the North Coast Regional Plan 2041, the Local Growth Management Strategy 2041 and broadly with the Local Strategic Planning Statement.

9 Recommendation

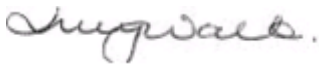
It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 3.1 Conservation Zones, 4.1 Flooding, 4.5 Acid Sulfate Soils, 5.1 Integrating Land Use and Transport, 6.2 Caravan Parks and Manufactured Home Estates and 8.1 Mining, Petroleum Production and Extractive Industries 9.1 Rural Zones and 9.1 Rural Lands are minor or justified; and
- Note that the consistency with section 9.1 Direction 4.3 Planning 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. The planning proposal is to be amended prior to agency and community consultation to:
 - a) reference to the legal description and address for the lot to ensure the planning proposal refers to “part of Lot 3 DP1231274 – 476 Macleay Valley Way, South Kempsey”; and
 - b) remove the concept subdivision plan attachment from the planning proposal package.
2. Consultation is required with the following public authorities:
 - NSW Rural Fire Service
 - Department of Climate Change, Energy, the Environment and Water – Biodiversity
 - Transport for NSW
 - Department of Primary Industries and Regional Development – Agriculture
 - Department of Primary Industries and Regional Development – NSW Resources
 - Kempsey Local Aboriginal Land Council
3. The planning proposal should be made available for community consultation for a minimum of 20 working days.
4. Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority.
5. The timeframe for the LEP to be completed is on or before nine months from the date of Gateway determination.



01/04/2025

(Signature)

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