

**PLANNING PROPOSAL AUTHORITY**  
**RECORD OF DECISION TO SUBMIT REVISED PLANNING**  
**PROPOSAL TO GATEWAY DETERMINATION**  
 STRATEGIC PLANNING PANEL of the  
 NORTHERN REGIONAL PLANNING PANEL

<b>DATE OF DETERMINATION</b>	24 October 2023
<b>DATE OF DECISION</b>	13 October 2023
<b>PANEL MEMBERS</b>	Dianne Leeson (Chair), Stephen Leathley, David Ryan, Rhonda Hoban & Daniel Walsh
<b>APOLOGIES</b>	Lucy Walker, DPE
<b>DECLARATIONS OF INTEREST</b>	None

**PLANNING PROPOSAL**

PP-2021-4455 – Kempsey LGA – Lot 44 DP1274452 Swift Place, South West Rocks

The updated planning proposal (May 2022) seeks to amend the Kempsey Local Environmental Plan, 2013 to:

- rezone from RU2 Rural Landscape to R1 General Residential;
- reduce the Minimum Lot Size from 40ha to 500m<sup>2</sup>; and
- apply a maximum Height of Building of 8.5m

**PANEL CONSIDERATION AND DECISION**

The Strategic Planning Panel of the Northern Regional Panel met with the Department of Planning and Environment (Department), Kempsey Shire Council (Council) and the proponent (Hunter Town Planning (Proponent) and Lex and Robbie Tall (Landowner)) for a Pre-Gateway briefing to consider whether the additional information provided by the proponent had addressed the previous Panel's conditions from the Rezoning Review of 15 October 2021. The conditions to be complied with prior to the planning proposal proceeding to a Gateway determination are:

1. an ecological study by an independent party is to be undertaken;
2. undertake a study to determine the compensation measures necessary to address koala tree loss;
3. augmentation of the Douglas Partners (August 2016) groundwater study;
4. undertake an Aboriginal Cultural Heritage Assessment;
5. undertake a preliminary contaminated site investigation;
6. undertake an acid sulfate soils investigation;
7. an amended planning proposal which incorporates all reasonable and practical management and mitigation strategies given in the studies; and
8. the amended planning proposal is to be submitted to the Department to confirm the Panel conditions have been met.

As the Planning Proposal Authority, the Panel determined to defer its decision on whether to submit the revised planning proposal for a Gateway determination.

The Panel has deferred its decision for a maximum period of eight weeks to allow the proponent four weeks to submit to the Department further information addressing condition 2 of the Rezoning Review of 15 October 2021. The Department has a further four weeks to consult with the Biodiversity Conservation Division (BCD) of the Department and prepare a supplementary report (if required). The Panel will then reconvene and make a decision based on the information before it.

Subject to condition 2 being satisfactorily addressed and the Proposal recommended to proceed to Gateway, the Panel requires an Odour Impact Assessment to be undertaken to confirm the 150m buffer zone to the South West Rocks Sewage Treatment Plant is adequate. This is to occur prior to public exhibition of the Planning Proposal.

The Panel's decision was unanimous.

## **REASONS FOR THE DECISION**

The Panel noted that the Department's Pre-Gateway Briefing Report, 19 September 2023 found that the revised planning proposal had adequately addressed the previous Panel's conditions except for condition 2.

The Report recommended the proponent update the revised planning proposal and supporting ecological studies to address the following comments from the Biodiversity and Conservation Division (BCD) to:

- reflect the koala habitat compensation measures in accordance with the Kempsey Shire Comprehensive Koala Plan of Management, rather than the Coffs Harbour Development Control Plan 2015 (which does not apply to the site);
- assess high environmental value (HEV) land as required under the North Coast Regional Plan;
- demonstrate whether the C2 Environmental Conservation zoned land to the south has the necessary ecological attributes for the required koala habitat compensation area; and
- address the suitability of the C2 Environmental Conservation zoned land to the south with regards to land ownership and management responsibilities.






Rather than proposing one option for any required protection or compensation measures, the Report also recommends that the proponent consider several options for discussion and agreement from BCD.

The Panel concurred with the Department's Pre-Gateway Briefing Report recommendation that conditions 1 and 3-8 had been adequately met by the proponent but further work is required to address condition 2.

The Panel notes that the Department's Sewerage System EIS Guidelines refers to the Department's recommended setback for residential development from Sewerage Treatment Plants (STP) of 400m. This Planning Proposal will result in residential development with a 150m setback from the STP site boundary. This setback is based on the South West Rocks Waste Water Treatment Plant Odour Impact Assessment, 12 May 2014, prepared by Jacobs SKM for Kempsey Shire Council. The Panel considers odour impacts from the STP are a critical consideration in the site specific merit test.

Should the Panel be satisfied that condition 2 has been satisfactorily addressed, and prior to the Planning Proposal going on exhibition, the applicant will be required to satisfy the Panel that the site has the capability to accommodate alternate sludge handling operations (based on an upgraded plant capacity of 12,000 EP) to enable the reduced 150m odour setback. The Panel recommends the applicant consult with Council on the preparation of this work.

The Department's Pre-Gateway Briefing Report further recommended that the proponent pay the outstanding Planning Proposal Authority (PPA) fee for the proposal to proceed to Gateway. During the briefing with the proponent, the proponent confirmed that arrangements would be made with the Department to pay the outstanding PPA fee immediately.

PANEL MEMBERS	
 Dianne Leeson (Chair)	 Stephen Leathley
 David Ryan	 Rhonda Hoban
 Daniel Walsh	

SCHEDULE 1		
1	LGA – ADDRESS	PP-2021-4455 – Kempsey LGA Lot 44 DP1274452 Swift Place, South West Rocks
2	LEP TO BE AMENDED	Kempsey Local Environmental Plan 2013
3	PROPOSED INSTRUMENT	The revised planning proposal seeks to amend the Kempsey Local Environmental Plan, 2013 to: <ul style="list-style-type: none"> <li>• rezone from RU2 Rural landscape to R1 General Residential;</li> <li>• reduce the Minimum Lot Size from 40ha to 500m<sup>2</sup>; and</li> <li>• apply a maximum Height of Building of 8.5m</li> </ul>
4	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Briefing report from Department of Planning and Environment, 19 September 2023</li> </ul>
5	SITE INSPECTION AND BRIEFINGS BY THE PANEL	<ul style="list-style-type: none"> <li>• <b>Site inspection:</b> 11:40am – 1:00pm, 11 October 2023 <ul style="list-style-type: none"> <li>○ Panel members in attendance: Dianne Leeson (Chair), Stephen Leathley, David Ryan, Rhonda Hoban &amp; Daniel Walsh</li> <li>○ DPE staff in attendance: Lisa Kennedy</li> <li>○ Council representatives in attendance: Marine Jeffery, Peter Orr and Wes Trotter</li> <li>○ Proponent representatives in attendance: Keiley Hunter, Lex Tall, Robbie Tall, Craig Campbell and Scott Marchant</li> <li>○ Key issues discussed: <ul style="list-style-type: none"> <li>• Outstanding issues for consideration; South West Rocks Structure Plan &amp; sporting field requirements; interface along site's western boundary with golf course; proposed Hilliar Road link road; character of the locality; existing residential developments; Koala presence on site &amp; management; sewerage treatment works reports; new odour &amp; noise assessment reports to be done; further information to be provided by proponent and brought to the briefing by Council.</li> </ul> </li> </ul> </li> <li>• <b>Briefing with Department of Planning and Environment (DPE):</b> 1.04pm – 1:45pm, 13 October 2023 <ul style="list-style-type: none"> <li>○ Panel members in attendance: Dianne Leeson (Chair), Stephen Leathley, David Ryan, Rhonda Hoban and Daniel Walsh</li> <li>○ DPE staff in attendance: Brendon Roberts, Tim Correy, Craig Diss, Lucy Walker, Aoife Wynter, Lisa Kennedy and Taylah Fenning</li> <li>○ Key issues discussed: <ul style="list-style-type: none"> <li>• Interface along the site's western boundary with the Golf Course resolved with further information from proponent</li> <li>• Biodiversity Conservation Division (BCD) comments on revised planning proposal and studies. Further information required including mapping of High Environmental Value (HEV) lands</li> <li>• Sewerage Treatment Works and odour buffer requirements - latest Council report; capacity to address current population &amp; projected population in</li> </ul> </li> </ul> </li> </ul>

		<p>the Kempsey Growth Management Plan, 2023; required buffer zone width; Council 2018 report</p> <ul style="list-style-type: none"> <li>• Potential revisions to the planning proposal</li> <li>• South West Rocks Structure Plan – proposed sporting fields &amp; possible local acquisition clause</li> </ul> <ul style="list-style-type: none"> <li>• <b>Briefing with Kempsey Shire Council: 1:46pm – 2:29pm, 13 October 2023</b> <ul style="list-style-type: none"> <li>○ Panel members in attendance: Dianne Leeson (Chair), Stephen Leathley, David Ryan, Rhonda Hoban and Daniel Walsh</li> <li>○ DPE staff in attendance: Brendon Roberts, Tim Correy, Craig Diss, Aoife Wynter, Lisa Kennedy and Taylah Fenning</li> <li>○ Council representatives in attendance: Marine Jeffery, Peter Orr, Michael Jackson and Wes Trotter</li> <li>○ Key issues discussed: <ul style="list-style-type: none"> <li>• Biodiversity issues – mapped HEV lands; Council’s mapping of koala presence within South West Rocks – haven’t heard whether landholder will allow koala detention dog and ecologist onto the site</li> <li>• Sewerage Treatment Works and odour buffer requirements – 2014 &amp; 2018 Council reports - not aware of a 2018 report; capacity to address current population &amp; projected population in the Kempsey Growth Management Plan, 2023; required upgrade works &amp; costs; recoupment of upgrade costs, including using developer contributions; no potential for new sewerage treatment works site; buffer zone width</li> <li>• South West Rocks Structure Plan – proposed sporting fields; confirmed partial residential potential is for RU2 zoned land; additional requirements for sporting fields across the shire &amp; town; possible local acquisition clause</li> </ul> </li> </ul> </li> <li>• <b>Briefing with Keiley Hunter Town Planning (Proponent) and Lex and Robbie Tall (Landowner): 2:30pm – 3.03pm, 13 October 2023</b> <ul style="list-style-type: none"> <li>○ Panel members in attendance: Dianne Leeson (Chair), Stephen Leathley, David Ryan, Rhonda Hoban and Daniel Walsh</li> <li>○ DPE staff in attendance: Brendon Roberts, Tim Correy, Craig Diss, Aoife Wynter, Lisa Kennedy and Taylah Fenning</li> <li>○ Proponent representatives in attendance: Keiley Hunter, Lex Tall, Robbie Tall, Craig Campbell and Scott Marchant</li> <li>• Key issues discussed: <ul style="list-style-type: none"> <li>• Interface along the site’s western boundary with the Golf Course resolved with further information from proponent</li> <li>• Payment of outstanding Planning Proposal Authority fee – fee can be paid today</li> <li>• Sewerage Treatment Works and odour buffer requirements – 2014 Council report; any offer from proponent to make a contribution to upgrade works;</li> </ul> </li> </ul> </li> </ul>
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