

Pre-Gateway Report – RR-2021-89 (PP-2021-4455)

The planning proposal seeks to amend the Kempsey Local Environmental Plan 2013 to enable a residential subdivision with associated works at Swift Place, South West Rocks (approximately 144 dwellings)

1 Introduction

The purpose of this report is to update the Northern Regional Planning Panel (the Panel) on the status of the planning proposal at Swift Place, South West Rocks (PP-2021-4455).

On 24 October 2023, the Panel decided to submit revised Planning Proposal to Gateway determination (**Attachment B**), however revisions were needed prior to submitting the proposal to the Department for Gateway Assessment. Subsequently, the proposal was updated by the proponent in an attempt to comply with these revisions.

Table 1 – Overview of planning proposal

Element	Description
LGA	Kempsey Shire Council
LEP to be amended	Kempsey Local Environmental Plan 2013 (KLEP)
Address	Swift Place, South West Rocks (Lot 44 DP 1274452)
Reason for review	<div><input type="checkbox"/> Council notified the proponent it will not support the proposed amendment.</div> <div><input checked="" type="checkbox"/> Council failed to indicate support for the proposal within 90 days.</div>
Brief overview of the timeframe/progress of the planning proposal	<p>14 May 1996 – Development application KE/96/2 was approved for the clearing of approximately 30 hectares for tea-tree plantation establishment.</p> <p>16 February 2021 – Planning proposal lodged with Council.</p> <p>27 May 2021 – Rezoning review request lodged by proponent as Council failed to indicate its support within 90 days of lodgement.</p> <p>15 October 2021 – Panel determined that proposal should be submitted for a Gateway determination after conditions have been addressed.</p> <p>14 February 2023 – Proponent provides revised planning proposal (V2: Post NRPP Review, dated May 2022) and additional information in response to the Panel's conditions.</p> <p>27 March 2023 – Biodiversity and Conservation Division (BCD) of Environment and Heritage Group (EHG) provide advice on the proponent's response to the conditions.</p> <p>12 May 2023 – Proponent provides a response to BCD comments.</p>

Element	Description
	<p>30 June 2023 – Council advise Planning Proposal Authority team that they adopted the Structure Plan at the July 2023 Council meeting and provide an odour impact assessment.</p> <p>24 October 2023 – The Panel determined that proposal should be submitted for a Gateway determination after conditions have been addressed (Attachment B).</p> <p>7 December 2023 – The Department's Planning Proposal Authority (PPA) team receive a revised ecological study and request BCS review.</p> <p>8 December 2023 – Proponent provided a revised planning proposal (V3) (Attachment B).</p> <p>23 January 2024 – The Biodiversity, Conservation and Science division (BCS) (formally BCD), provide advice on the proponents' response to conditions (Attachment C).</p> <p>8 February 2024 - Proponent response to BCD comments (Attachment D).</p> <p>21 February 2024 – Proponent further response to BCD comments (Attachment E).</p> <p>27 February 2024 – Proponent email regarding panel condition 4 (Attachment F).</p>
Department contact:	Alexander Galea, Manager, Planning Proposal Authority

1.1 The site and local context

The site (**Figure 1**) is located within South West Rocks, approximately 35km north east of Kempsey. The site is used as a Tea Tree plantation, is relatively flat (around 4.5m AHD), mapped as bush fire prone land, partially flood affected and may contain some Koala feed trees.

Neighbouring land includes (**Figure 1**):

- the South West Rocks Country Club (and golf course) to the immediate west;
- an existing residential area to the immediate north;
- a residential subdivision including 63 lots being constructed (SWRUT) to the immediate north east;
- an environmental buffer to a sewerage treatment plant (STP) to the immediate south west;
- E2 Environmental Conservation zoned land to the immediate south; and
- a residential subdivision with a concept masterplan and stage 1 subdivision for 221 lots approved in 2019 (DA T6-17-446) to the immediate east.

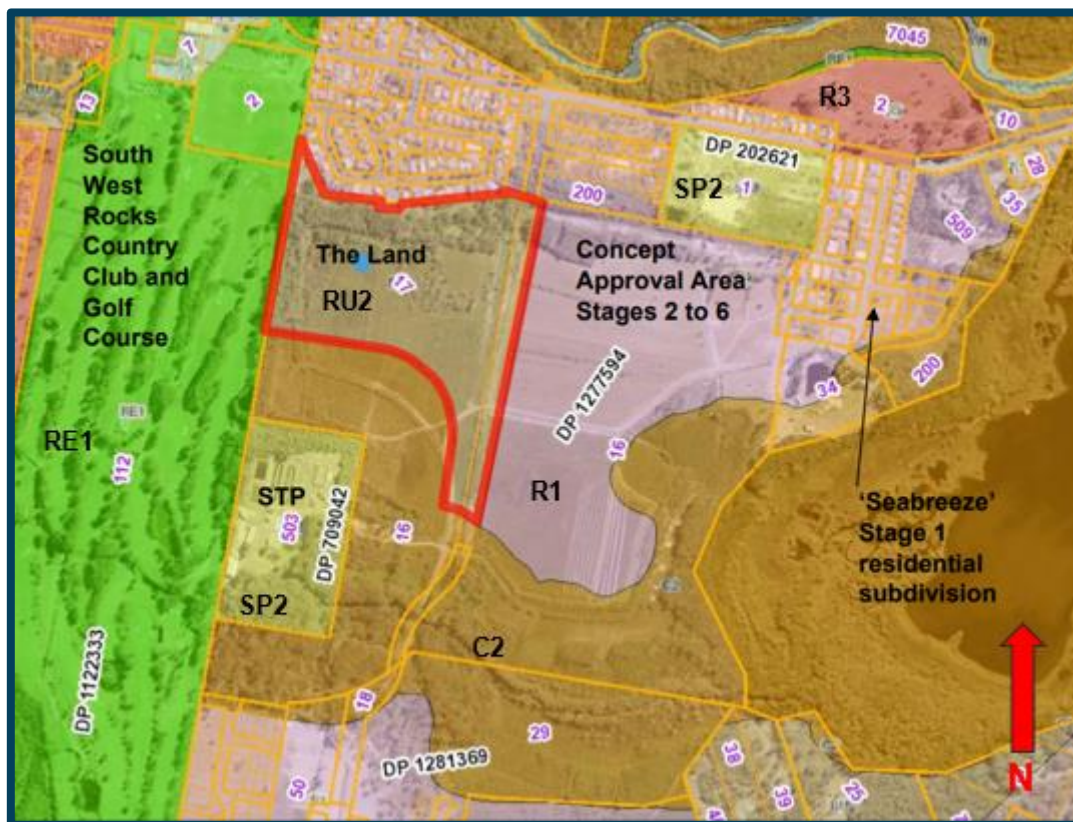


Figure 1: The site outlined in red (source: planning proposal, Dec 2023)

1.2 Planning proposal

Table 2 – Overview of planning proposal

Element	Description
Site area	12.3 hectares
Proposal summary	<p>The planning proposal seeks to amend the KLEP (Table 3) to enable residential development on the site to provide approximately 144 dwellings (Figure 2).</p> <p>Table 3 of this report includes the proposed LEP amendments.</p>
Relevant State and Local Planning Policies, Instruments	<ul style="list-style-type: none"> • A guide to preparing local environmental plans, December 2018 • North Coast Regional Plan 2041 (NCRP) • Relevant State Environmental Planning Policies (SEPP's), include: <ul style="list-style-type: none"> ○ SEPP – (Biodiversity and Conservation) 2021 ○ SEPP – (Resilience and Hazards) 2021 ○ SEPP – (Housing) 2021

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Element	Description
	<ul style="list-style-type: none">• Relevant Section 9.1 Ministerial Directions, include:<ul style="list-style-type: none">○ 3.1 Conservation Zones○ 4.1 Flood Prone Land○ 4.2 Coastal Management○ 6.1 Residential Zones○ 9.1 Rural Zones○ 9.2 Rural Lands• Kempsey Shire Council Local Growth Management Strategy 2010• Kempsey LEP 2013• Macleay Valley 2036: Community Strategic Plan• Kempsey Shire Comprehensive Koala Plan of Management (CKPoM).

Table 3 – Current and proposed controls

Control	Current	Proposed
Zone	RU2 Rural Landscape	R1 General Residential
Maximum height of the building	N/A	8.5m
Minimum Lot Size	40Ha	500m ²

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

Concept Masterplan

The proposal forms the next stage of a broader residential development which was approved in 2019 as a Concept Masterplan and Stage 1 subdivision (DA T6-17-446) for a total of 223 lots to the east of the site. This broader development is highlighted yellow with the site highlighted red in **Figure 2**. This also forms part of the same lot (Lot 16 DP 1277594).

The proposal relates to the western part of the site (not part of the approved masterplan) and would facilitate approximately 144 dwellings.

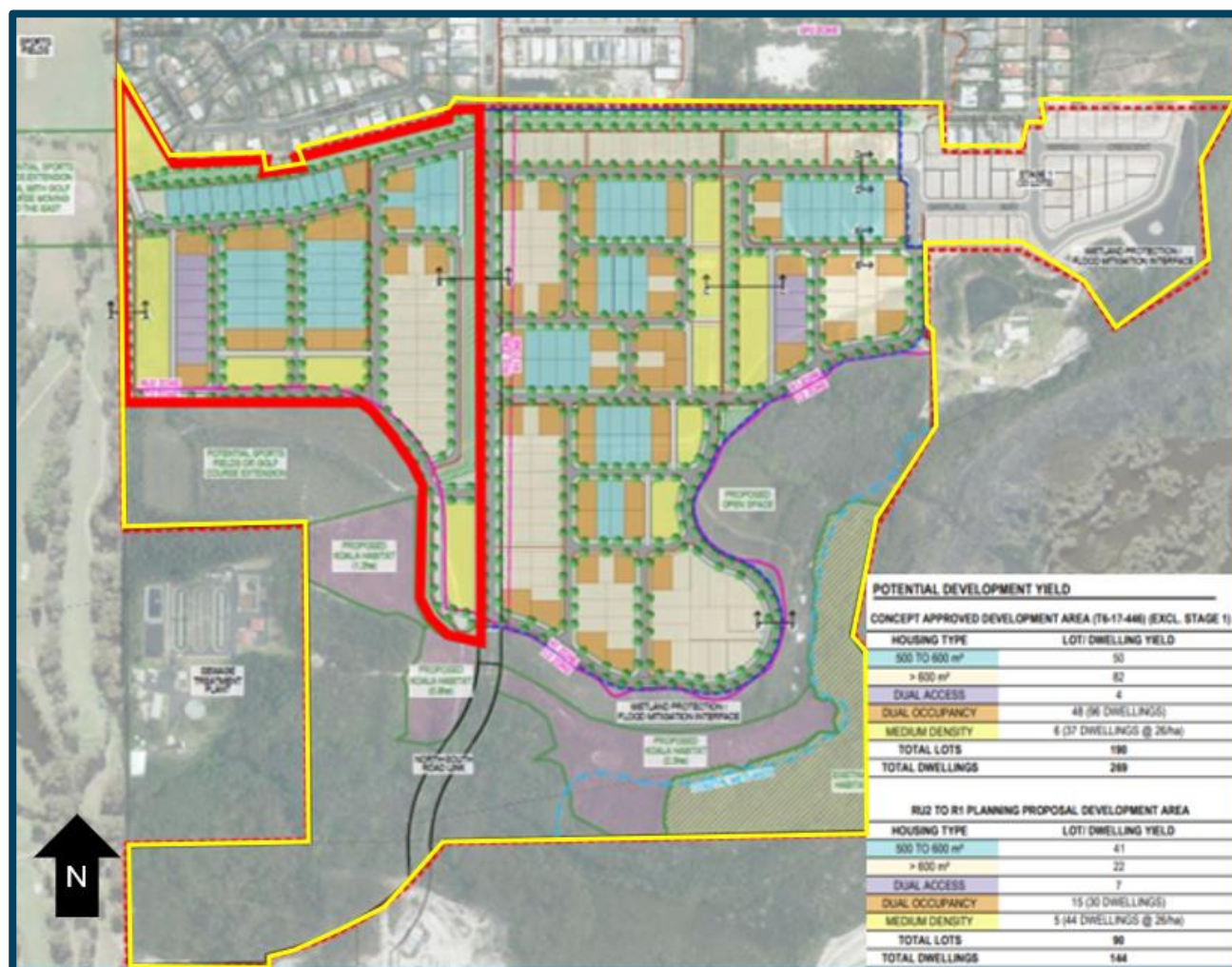


Figure 2: Proponent's indicative master plan (source: Concept Subdivision Masterplan, Dec 2023)

2 Rezoning review

October 2021 Rezoning Review

On 15 October 2021, the Panel considered a rezoning review for the planning proposal because Council failed to indicate its support for the proposal within 90 days of lodgement.

The Panel determined that the planning proposal should be submitted for Gateway determination after eight conditions have been satisfactorily addressed as the proposal has demonstrated strategic and site-specific merit.

While Council initially indicated it would accept the role of planning proposal authority (PPA), on 28 July 2022 it wrote to the Department supporting the proponent's request to appoint an alternate PPA, noting that in moving forward it:

- encourages the proponent to participate in the upcoming exhibition of the draft South West Rocks Structure Plan (Structure Plan);
- requests the PPA ensure that the planning proposal is consistent with the Structure Plan (which may result in a short delay in submitting the planning proposal for Gateway determination to allow the draft Structure Plan to be published);

- requests that the Department not issue a Gateway determination until the conditions set by the Panel have been properly addressed, and the proponent has demonstrated consistency with Council's strategic planning for the area as set out in the Structure Plan; and
- requests that it be a key stakeholder to be consulted during the planning proposal process.

On 29 September 2022, the Panel was appointed as the alternate PPA.

October 2023 Pre-Gateway Meeting

On 13 October 2023, the Panel considered a report by the PPA team on the compliance of the proposal to the original panel conditions of 15 October 2021. The Panel determined that proposal met the majority of the original conditions, and that the proposal should be submitted for a Gateway determination after the planning proposal and supporting ecological studies are updated to address the comments from the Biodiversity and Conservation Division (now called the Biodiversity Conservation and Science division (BCS) (**Attachment B**).

The Panel also noted that the odour impacts from the Sewerage Treatment Plant (STP) are a critical consideration in the site-specific merit test. The Panel recommended that the proponent consult with Council prior to exhibition to determine if the STP has capability to accommodate the reduced 150m odour setback.

3 Assessment against Panel conditions

The Pre-Gateway Report recommendation that was endorsed by the Panel on 13 October 2024, required a revised planning proposal and supporting ecological studies based on BCS comments, to:

1. *'reflect the koala habitat compensation measures is 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);*
2. *assess high environmental value (HEV¹) land as required under the North Coast Regional Plan;*
3. *demonstrate whether the C2 Environmental Conservation zoned land to the south has the necessary ecological attributes for the required koala habitat compensation area; and*
4. *address the suitability of the C2 Environmental Conservation zoned land to the south with regards to land ownership and management responsibilities.'*

On 7 December 2023, the proponent provided an updated planning proposal package responding to the Mach 2023 BCS comments included in the Panel's decision (**Attachment A**). Subsequently, the PPA team wrote to BCS requesting comment on the revised package against the Panel decision (**Attachment K**).

On 23 January 2024, BCS provided its response to the revised planning proposal and ecological study provided by the proponent (**Attachment C**) and is summarised in the table below:

	Original BCS Comments dated March 2023	Further BCS Response dated January 2024
1	reflect the koala habitat compensation measures in accordance with the Kempsey Shire	Satisfied.

¹ The [North Coast Regional Plan 2041](#) defines HEV land on pages 23-24.

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	Original BCS Comments dated March 2023	Further BCS Response dated January 2024
	Comprehensive Koala Plan of Management, rather than the Coffs Harbour development Control Plan 2015 (which does not apply to the site);	
2	assess high environmental value (HEV) land as required under the North Coast Regional Plan;	Further work required, including updated Zoning mapping to C2 Environmental Conservation Zone, further surveys for Wallum froglet with appropriate zoning mapping and updated C2 zoning mapping for Plant Community Type 4004.
3	demonstrate whether the C2 Environmental Conservation zoned land to the south has the necessary ecological attributes for the required koala habitat compensation area; and	Satisfied.
4	address the suitability of the C2 Environmental Conservation zoned land to the south with regards to land ownership and management responsibilities.	Further information be provided on the proposed koala habitat compensation area regarding its tenure, any existing in-perpetuity biodiversity management agreements over the land, the proposed future tenure for the land, and the mechanism proposed to secure its in-perpetuity management, if the Northern Regional Planning Panel decides to proceed to gateway determination with the planning proposal.

The proponent was provided with these comments and on 8 February 2024, the proponent responded to BCS comments (**Attachment D**), with further responses on the 21 February (**Attachment E**) and 27 February 2024 (**Attachment F**).

The PPA team undertook further consultation with BCS on the updated material provided by the proponent in February 2024 and confirmed that the advice provided in January 2024 remained.

A detailed review of the BCS comments by the PPA Team is included as **Attachment H**.

The PPA team is:

- satisfied that the proponent has adequately addressed the original BCS comments 1 and 3; and
- the original BCS comments 2 and 4 have not been adequately addressed and are discussed in further detail below.

Original BCS Comment 2

The original BCS Comment 2 related to requiring further information to assess high environmental value (HEV) land. On 23 January 2024, BCS provided advice on the proponent's assessment of HEV on the land, the advice required *'the planning proposal to accurately map the presence of HEV land in the planning area in accordance with criteria 1, 2 and 3 set out in the North Coast Regional Plan 2041 and to apply Environmental Conservation zones to that land'*.

BCS has identified that the site is either mapped or may have HEV due to the presence of habitat for threatened species and ecological communities, including:

- threatened species or communities with potential for serious and irreversible impacts on the NSW Biodiversity Values Map (**Figure 3**);

- Wallum Froglets (**Figure 4**); and
- Plant Community 4004 (**Figure 5**).

BCS advice noted that the survey for the Wallum froglet was not carried out in accordance with the NSW Survey Guide for Threatened Frogs. However, the proponent's HEV report (**Attachment A7**) notes the October 2023 survey confirmed the presence of the previously recorded Wallum froglet frequently over the planning area.

PPA Team Comment

The site has several identified HEV areas (**Figures 3 to 5**). In accordance with the North Coast Regional Plan 2041 land use intensification should be focused away from HEV assets and appropriate zoning mechanisms such as conservation zones and Biodiversity Stewardship Agreements should be used to protect HEV land within a planning area. The C2 zone under the Kempsey LEP 2013 includes objectives seeking to protect high ecological value areas. The proposal at this stage fails to provide the adequate conservation zoning mechanism to protect the HEV land on the site.

BCS has identified that additional work is required to prepare an adequate Wollum Froglet Survey to determine this species extent across the site in accordance with current guidance. This guidance identifies that this survey can only be undertaken in certain weather events².

Despite the possibility that an adequate survey may identify a reduced extent of Wollum Froglet on the site, there is no certainty:

- when an adequate survey can be undertaken noting the certain weather events required; and
- if any portion of the site can be developed if the extent of Wollum Froglet is reduced from that identified in **Figure 4** following an adequate survey being prepared.

It is anticipated that should a reduced extent of Wollum Froglet be found, the intended residential development outcome would likely be limited to the eastern boundary area of the site. This notes the large portion of the site with HEV land because of the several different ecological communities present requiring a C2 zoning for protection.

BCS have not identified the BDAR process as an appropriate mechanism to offset the biodiversity impacts of the proposal in the site's HEV land.

² The NSW Survey Guide for Threatened Frogs (DPIE 2020) specifies the survey period for Wallum froglet (*Crinia tinnula*) to be all year, but only after flooding rains, specifying flooding rains for Wallum froglet as rainfall occurring after acid swamps have filled.



Figure 3: Revised Biodiversity Values Mapping – the site highlighted red (Source: Biodiversity Assessment, 14 February 2024)

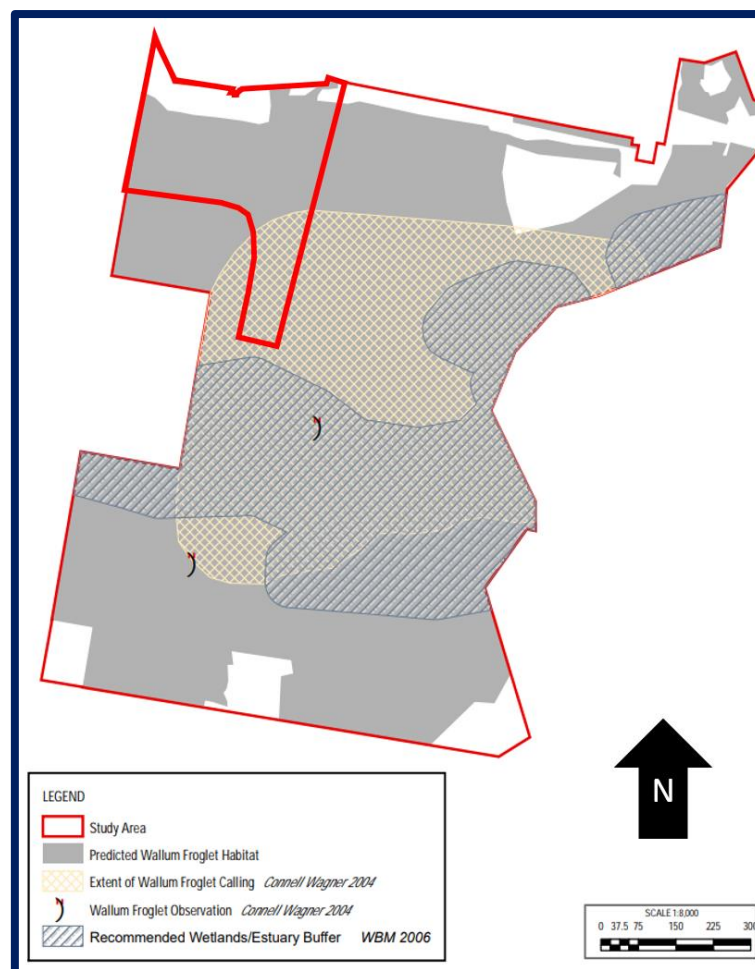


Figure 4: Predicted Wallum Froglet Habitat study 2006 – the site highlighted red (Source: High Environmental Values Report, Nov 2023)



Figure 5: NSW State Vegetation Type Mapping – the site hatched blue (Source: High Ecological Values Report, November 2023)

Original BCS Comment 4

Comment 4 relates to the suitability of the land to the south of the site that is proposed to be used as koala compensation area.

On 23 January 2024, BCS provided advice identifying ‘...there is no information on the tenure of that land, whether it is already subject to existing in-perpetuity biodiversity management agreements, or whether it can be secured in perpetuity for such management.’

On 27 February 2024, the proponent provided further information to address comment 4 (**Attachment F**). This response includes ‘the proposed koala habitat land (4.5ha shown below) is ...to be established, maintained for 5 years (similar to Stage 1 Seabreeze Estate), then dedicated to Council or National Parks.’

PPA Team Comment

This matter requires resolution to ensure the ecological attributes of the land to the south can be suitably maintained through appropriate management agreements. No confirmation has been provided from these agencies that they will accept the dedication of this land or that discussions to this effect are occurring.

4 Housing supply

Council’s South West Rocks Structure Plan (**Attachment L**) identifies the need for an additional 1,582 homes in South West Rocks by 2041.

The structure plan has identified a number of locations within South West Rocks that could accommodate the required dwellings (**Figure 6**).

PPA Team Comment

The site is not identified as a location to provide future housing growth to meet Council’s housing targets. The progression of this proposal does not preclude the delivery of adequate housing in the Kempsey LGA.

It is also understood that Council continues to identify the site for public open space in its strategic plans, including sporting fields. This position of Council has been previously considered by the Panel during previous decisions on this planning proposal.

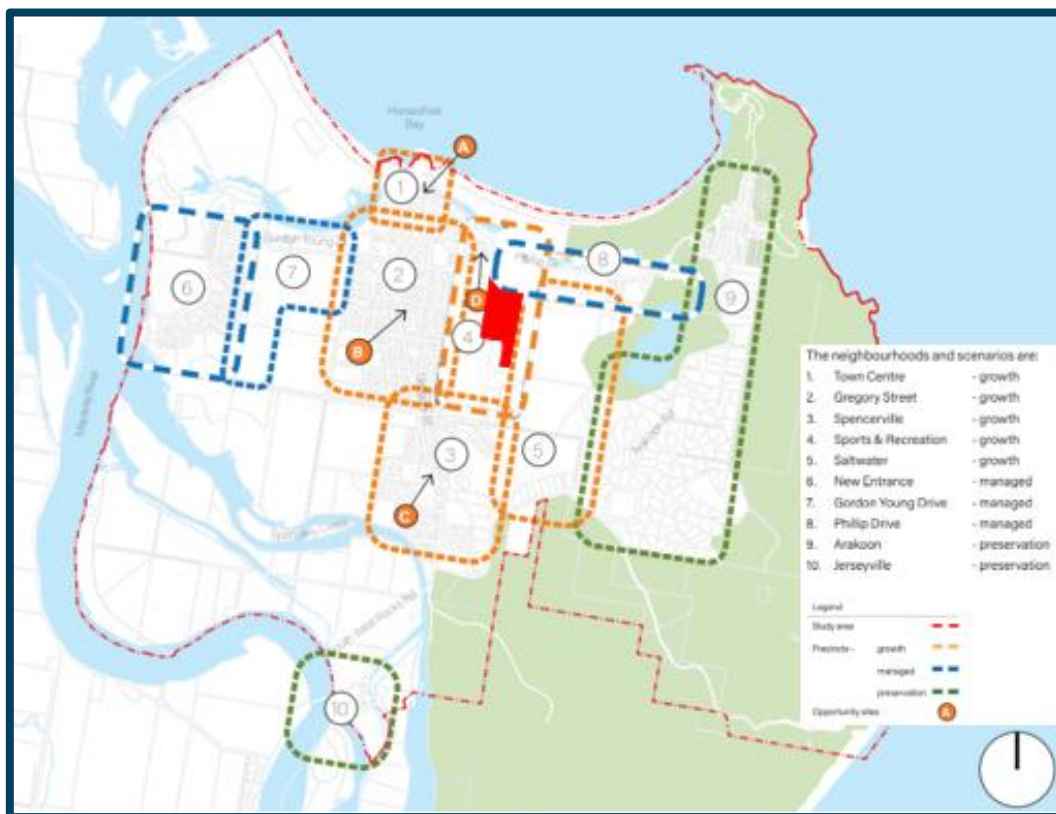


Figure 6: South-West Rocks Neighbourhoods, approximate location of the subject site shown in red (South West Rocks Structure Plan 2023)

5 Sewerage Treatment Plant

The Panel previously noted that the Department's Sewerage System EIS Guidelines dated 1996 refers to the Departments recommended setback for residential development from Sewerage Treatment Plants (STP) should, ideally, be at least 400m wide, but that the actual size may vary to suit the local conditions.

This planning proposal will result in a 150m setback from the STP. The Panel recommended that the applicant consult with Council regarding the required upgrades and mitigation measures to the STP that would permit a 150m setback.

Council has produced a wastewater treatment plant odour impact assessment dated May 2014 (the odour assessment) (**Attachment I**), which details odour emissions for the existing and proposed future upgrade of the plant. To meet odour concentration levels in the relevant guidelines, the buffer needs to be approximately 150-160m from the existing STP. The odour assessment anticipates this increasing to approximately 300-320m for modelled future expansions of the STP.

Council is now preparing an Integrated Water Cycle Management Strategy (IWCM), as well as several sewer servicing strategies, including for South West Rocks. Upon completion, these strategies will help to inform the ability and proposed timing for certain areas to be serviced to cater for projected population growth.

The proponent has discussed the proposed STP upgrade with Council in December 2023, however no information has been provided to support either a reduced setback nor any proposed upgrade of the STP.

PPA Team Comment

It is not clear as to when or to what extent upgrades to the STP will be required. This creates uncertainty to the extent of a buffer zone required and the extent of residential development that can be provided.



Figure 7: Odour buffer zones – the site highlighted green (Source: Nearmap 2024)

6 Recommendation

The PPA team recommends that the planning proposal should not progress at this time, because:

- it still has significant unresolved Government agency issues despite being initially considered by the Panel in May 2021, including:
 - the HEV land on the site. The North Coast Regional Plan 2041 requires the appropriate protection of HEV land, which is a C2 zoning. As inadequate information has been provided to BCS to confirm the environmental values on the site, the appropriate zoning is still uncertain.

- no certainty can be provided on when an adequate Wollum Froglet Survey can be prepared and if such a survey can demonstrate any part of the site is suitable for the intended residential development outcome.
Should the extent of Wollum Froglet remain consistent with current mapping a C2 zone will need to be applied across the site;
- no confirmation from Council or National Parks and Wildlife Services that they will accept dedication of the identified Koala habitat compensation area;
- though the BDAR process can provide for the suitable offsetting of some HEV land, it is not a suitable pathway for resolving this issue because of the extent and uncertainty of HEV land on the site; and
- it is not clear as to when or to what extent upgrades to the STP will be required, creating uncertainty around the required extent of buffer zones and the associated implications for the extent of residential development.
- Council's strategic plans have identified other areas for housing supply in the Saltwater area. This proposal not proceeding at this time is anticipated to not significantly impact housing supply.

Despite this recommendation, the proponent is not precluded from undertaking an adequate Wollum Froglet Survey which if it demonstrates a reduced extent on the site to that currently identified could justify a new planning proposal. This new planning proposal should be informed by pre-Gateway consultation with relevant agencies, including:

- BCS to confirm the matters they have raised have been adequately address; and
- Council to appropriately address the neighbouring STP's required buffer zones and the Koala habitat compensation area.

Attachments

Attachment A – Revised panning proposal (V3, dated December 2023)

Attachment A1 - DLLA Masterplan Vision

Attachment A2 - Landscape Masterplan

Attachment A3 - Planit Masterplan

Attachment A4 - Consistency with SEPPs

Attachment A5 - Consistency with Planning Directions

Attachment A6 - Bushfire Assessment

Attachment A7 - High Environmental Values Report

Attachment A8 - Flood Assessment

Attachment A9 - KSC Correspondence

Attachment A10 - Record of Decision

Attachment A11 - Aboriginal Cultural Heritage Assessment

Attachment A12 - Servicing

Attachment A13 - Contamination Assessment

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Attachment A14 - Groundwater Assessment

Attachment A15 - Acid Sulfate Soils.

Attachment B – Panel's record of decision to submit revised Planning Proposal to Gateway Determination (24 October 2023)

Attachment C – BCD submission dated 23 January 2024

Attachment D – Proponent response to BCD advice (dated 8 February 2024)

Attachment E – Proponent further response to BCD advice (dated 21 February 2024)

Attachment F – Proponent email regarding panel condition 4 (dated 27 February 2024)

Attachment G – South West Rocks Structure Plan (January 2023)

Attachment H – PPA team's review against Panel conditions

Attachment I – South West Rocks Wastewater Treatment Plant Odour Impact Assessment

Attachment J – Revised Biodiversity Values Map

Attachment K – Planning Proposal Authority request for BCS review 7 December 2023

A handwritten signature in black ink, appearing to read "A. Galea".

16 October 2024

Alexander Galea

Manager, Planning Proposal Authority

A handwritten signature in black ink, appearing to read "L. McMahon".

Louise McMahon

Director, Planning Proposal Authority

____ 17/10/24 ____

Assessment officer

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