



DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

13 September, 2005

DSDS1	KEMPSEY LOCAL ENVIRONMENTAL PLAN 1987 (AMENDMENT NO 88) (KLEP 1987 AM 88) – APPLICATION TO REZONE LAND AT GLADSTONE FOR RESIDENTIAL PURPOSES FILE: T5-88 GGL
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SUMMARY:

Reporting that Council has received advice from the Department of Infrastructure, Planning and Natural Resources (DIPNR) advising they are not prepared to support gazettal of KLEP (AM 88) to rezone land from 1(a3) (Rural Agricultural Protection) to 2(v) (Village or Township), and requesting Council provide advice before a recommendation is made to the Minister.

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Applicant:	Dutton Engineering
Subject Property:	Lot 1 and 2 DP 1039916 Kinchela Street, Gladstone
Description of Proposal:	To zone 7,700m ² of land 2(v) to enable subdivision to create 500m ² lots

Background

Council received an application on 20th February 2003 to rezone land at Gladstone lying west of Barnard Street totalling 7,700m² from 1(a3) Rural to 2(v) Village.

Council, at its meeting of 8th April 2003, resolved to refer the application to the Land Release Committee and the applicant was asked to provide more information. [\(Appendix A\)](#) [Part 1](#), [Part 2](#).

The Committee considered the matter at its meeting of 27th May 2003 and resolved "that the matter be referred back to Council with a

recommendation that the application not be supported as it is contrary to Clause 12 of Kempsey Local Environmental Plan 1987'.

Council, at its meeting of 10th June 2003 resolved not to support the application to rezone the land at Gladstone, as the land is subject to flooding being contrary to Council's Flood Risk Management Policy and Clauses 38 and 45A of the North Coast REP. In addition, Clause 12(1) of Kempsey Local Environmental Plan 1987 would prevent subdivision of the land to be rezoned.

The property owners' consultant re-applied in September 2003 to have the land rezoned.

The application was again considered by Council on 25th November 2003 and Council resolved to support the rezoning.

Initially, DIPNR required additional information on the impact of the development on flooding to further justify the proposed rezoning. Following receipt of this information from the proponent, Council proceeded to prepare and exhibit the draft plan.

At its meeting of 18th January 2005 following exhibition of the draft plan, Council resolved to ask DIPNR to make the plan.

The draft plan was submitted to DIPNR by letter dated 18th March 2005. DIPNR advised it was not prepared to recommend the draft plan to the Minister as any subsequent subdivision proposal would be contrary to clause 12(1) of KLEP 87 and requested Council to demonstrate how the draft plan will be able to be implemented in view of the requirements of Clause 12.

Council advised DIPNR that as clause 12(1) is a development standard, a SEPP1 objection may be made to Clause 12(1) of KLEP 87, which would enable the rezoned land to be subdivided for residential purposes.

DIPNR have advised by letter dated 2nd August 2005 that they are not prepared to support the rezoning as it would set up a requirement for continual use of SEPP 1 to permit development for which the land is to be rezoned. However they have separately indicated they would support a SEPP 1 Objection to allow the boundary adjustment.

Proposed Boundary Adjustment

The applicant lodged a development application (T6-03-566) on 26 August 2003 to carry out a boundary adjustment between Lots 1 and 2 DP 1039916. This application was to realign the lot boundaries so

that Lot 1 contained all the land west of Barnard Street and Lot 2 would contain land east of Barnard Street. This required submission of a SEPP 1 objection, as both lots were less than the 40 hectare development standard, and required concurrence from DIPNR. The application was referred to DIPNR on 20th November 2003. DIPNR advised by letter dated 8th January 2004 that they did not intend to determine the SEPP 1 objection until such time as the rezoning is decided. [\(Appendix B\)](#)

REPORT IMPLICATIONS:

- ***Environmental***

The rezoning, if it had proceeded, would have resulted in additional village zone being subject to flooding.

- ***Social***

The rezoning, if it had proceeded, would have resulted in additional residents being impacted by major flood events.

- ***Economic (Financial)***

The rezoning, if it had proceeded, would have resulted in increased damage during major flood events.

- ***Policy or Statutory***

DIPNR have indicated the matter will be reported to the Minister recommending that the plan not be made. Section 70(7) of the Act provides for the Minister to inform Council the reasons why a plan is not made and give direction on how his decision is to be notified to the public.

Conclusion

Council was previously advised of the concerns of staff relating to the potential impacts of allowing further residential development on floodprone lands in the Shire.

The rezoning is contrary to consistent advice to Council over many years that the wider public interest is not served by seeking to create opportunities to place more people at risk during times of flooding, particularly in the villages of Smithtown and Gladstone.

DIPNR have indicated that rezoning of land should not proceed as it would give rise to the continual use of SEPP 1 to allow development to proceed.

There is considered to be no grounds to request DIPNR to proceed with making of the plan.

Now that it is unlikely that the rezoning will proceed, it is recommended that Council request DIPNR to determine the SEPP 1 objection in relation to Development Application T6-03-566, to approve the boundary adjustment.

RECOMMENDATION:

- 1 That Council provide no further advice to DIPNR in relation to the rezoning.**

- 2 That Council request the Department of Infrastructure, Planning and Natural Resources to determine the SEPP 1 objection for Development Application T6-03-566 and approve the boundary adjustment for Lots 1 and 2 DP 1039916 Kinchela Street, Gladstone.**

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R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES