

issues raised are insufficient to warrant delaying the progress of the amendment to the next stage.

The Subject Land

The subject land is known as Lot 100 and Lot 104 DP 776239, 511 Pacific Highway, South Kempsey. The subject land has an area of approximately 75.39ha and is located approximately 2 Kilometres from the South Kempsey Urban area. The land is currently zoned 1(A1) (RURAL "A1" ZONE) under the provisions of the Kempsey Local Environmental Plan 1987 [\(Appendix A – Page G1\)](#)

The subject land is partly cleared and is currently used for cattle grazing. A dwelling and dam are also located on the subject land. The site also has development approval for an extractive industry (quarry).

Kempsey Local Environmental Plan (KLEP) 1987

The current zoning of the land as 1(a1) (RURAL "A1" ZONE) under the provisions of the Kempsey Local Environmental Plan 1987 prohibits the use of the land for industrial purposes.

The draft LEP will enable the land to be developed for uses permissible under the 4(a) Industrial (General) Zone depending upon servicing requirements, and part of the land to be preserved for a quarry in the proposed 4(e) Industrial (Extractive Zone). In addition, a portion of the area is proposed to be zoned 7(b) Environmental Protection (Habitat) Zone [\(Appendix B – Page G2\)](#)

Relationship with Standard LEP

As a consequence of the Standard Instrument Order 2006, all NSW councils are required to prepare a LEP in accordance with the provisions of the instrument. Kempsey is due to complete the LEP in 2009.

The proposed zones in this draft LEP will convert in accordance with the following table.

Existing LEP	New LEP
Zone No. 4(a) Industrial (General)	IN1 General Industrial
Zone No 4(e) Industrial (Extractive) E Zone	IN1 General Industrial or IN3 Heavy Industrial
Zone No. 7(b) Environmental Protection (Habitat)	E2 Environmental Conservation

Public Exhibition

In accordance with the requirements of section 66 of the Environmental Planning and Assessment Act 1979 the amendment was placed on public exhibition from 4th November 2008 to 2nd December 2008. During this period one (1) public submission was received from a planning consultant on behalf of the landowner [\(Appendix C – Page G6\)](#). The following issues were raised in the submission:

1. Highway Service Centre is permissible within the 4(a) General Industrial Zone and is consistent with Section 117 Direction definition.

Comment

Clause 3 of the written instrument does not prohibit "highway service centres" therefore consideration to a development application seeking approval for such a use can be given.

2. The zones recommended under the Standard Instrument (Local Environmental Plans) are adopted.

Comment

See "Relationship with Standard LEP"

3. Clause 6(f) of the LEP Amendment Instrument requiring a 65 metre buffer along the western boundary be deleted.

Comment

Clause 6(f) of the exhibited written instrument reads as:

- (f) an Urban Development Plan, specifically providing for:
 - a 65 metre wide noise buffer along the western boundary of the site adjacent to the Pacific Highway to be revegetated using endemic species.

Given the RTA's proposed acquisition of land along the site's Pacific Highway frontage, the potential buffer will require further consideration to establish the impacts of any new roadworks. This can be undertaken through the preparation of a DCP for the site. Accordingly, clause 6(f) of the written instrument has been amended to read as:

- (f) an Urban Development Plan, specifically providing for:
 - a noise/landscape buffer along the western boundary of the 4(a) (Industrial (General) Zone) having regard to the Roads & Traffic Authority's (RTA) design for the upgrade of the Pacific Highway; suitable to also reduce the visual impact of future development.

Submissions from state government agencies

As part of the public consultation process correspondence was also issued to a number of state government agencies seeking comment - not all responded. The Department of Water & Energy (DWE), the Department of Environment & Climate Change (DECC) and the Roads & Traffic Authority (RTA) made submissions [\(Appendix D – Page G8, Part 2 – Page G13\)](#)

Department of Water & Energy (DWE)

In correspondence dated 24th November 2008, the Department of Water & Energy (DWE) raised the following issue:

1. The rezoning protects the hydrologic integrity of the site and that the seeps / springs mentioned in the report are identified and protected.

Comment

The proposed 7(b) Environmental Protection (Habitat) zone will, to a large extent, protect the hydrologic integrity of the site. In terms of those areas of the site which will be zoned industrial, further consideration to address this issue can be undertaken in the preparation of the DCP.

Department of Environment & Climate Change (DECC)

The Department of Environment & Climate Change (DECC) in correspondence dated 21st November 2008 sought clarification on issues relating to flora and fauna studies and aboriginal heritage. Council provided additional information to DECC on these issues. In correspondence dated 22 December 2008 DECC raised the following issues:

1. Flora and fauna

"The protection of some areas of both Units 1 and 2 in the proposed 7(b) zone is noted and supported. However DECC recommends that the 7(b) zone along the eastern boundary should be continued north of the quarry footprint to capture at least some of this area of Unit 2, to support the area of Unit 1 already proposed for 7(b) zone along the northern boundary. It is also of concern that the central watercourse, as delineated by Unit 1, does not include a riparian corridor zoned 7(b). DECC recommends that Council ensures this riparian area is protected and not zoned for industrial use."

Comment

These issues can be further considered and addressed in the assessment of development applications for the land.

2. Aboriginal heritage

"DECC therefore considers that reasonable attempts have been made at this stage to relocate the object site and now considers that delaying rezoning of the land on Aboriginal cultural heritage grounds is not warranted."

Comment

It is considered that this issue has been satisfactorily addressed.

Roads and Traffic Authority (RTA)

In correspondence dated 23rd December 2008 the Roads & Traffic Authority (RTA) raised the following objection:

1. *"The RTA requests that consideration of the rezoning be deferred until such time as details of areas of land to be excised from Lots 100 and 104 can be accurately determined by detailed design of the road project."*

Alternatively, the RTA would suggest that the rezoning be deferred to allow the RTA to finalise negotiations with the landowner to acquire the land required for this project on the basis of the current concept design boundaries. For this option to proceed, the RTA would need a written request from the landowner to commence negotiations for the acquisition of that part of the land required for the Kempsey to Eungai project."

Comment

The RTA's objection relates to future land acquisition rather than on planning or environmental grounds. The advice is contrary to previous advice from the RTA which withdrew its objection as the proposed bypass route had been determined to a sufficient degree of certainty.

However, to address this concern it is recommended that the draft LEP be amended with the acquisition area to retain its current 1(a1) (Rural "A1" Zone). This represents an approximate area of 8.17 hectares which will retain its rural zoning. The remainder of the site will be as per the exhibited zonings.

As at the time of writing, Council was awaiting written confirmation of verbal advice from the RTA that this will satisfy their concerns.

Conclusion

It is considered that the issues raised in the submissions are insufficient to warrant delaying the progress of the amendment to the next stage.

REPORT IMPLICATIONS:

- ***Environmental***

The LES concludes that part of the subject land is suitable for use for Industrial Purposes. The LES also indicates areas of land that should be rezoned to 7 (b) (ENVIRONMENTAL PROTECTION (HABITAT) ZONE). The option of having a combination of sewer and on site effluent disposal provides an opportunity for Kempsey to address ESD Principles, by providing an initiative to operate an eco industry or several eco industries on the subject land.

- ***Social***

The provision of additional land for industrial use will provide an opportunity for more services to be provided in the vicinity of Kempsey. In addition there is the potential for the creation of addition employment opportunities.

- ***Economic (Financial)***

The rezoning of the land will provide opportunities for industries to operate and locate within the Shire. The Economic Development Section currently receives many enquiries from new and existing industries about available land.

The increase demand for services and infrastructure will require the preparation, exhibition and adoption of a Developer Contributions Plan and preparation of a Servicing Plan, to ensure the proponent / applicant meets the full cost of the provision of these services.

- *Policy or Statutory*

The LES has been prepared in consultation with relevant Government Departments and in accordance with requirements of the Department of Planning and the Environmental Planning & Assessment Act 1979.

RECOMMENDATION:

That Council resolve to exercise its delegation granted by the Director General under Section 69 of Environmental Planning and Assessment Act 1979 to forward Kempsey Local Environmental Plan 1987 (Amendment No. 81) to the Minister to make the plan.

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R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES