

Mr Craig Milburn  
General Manager  
Kempsey Shire Council  
PO Box 3078  
WEST KEMPSEY NSW 2440

Our ref: IRF23/2891

Via email: [council@kempsey.nsw.gov.au](mailto:council@kempsey.nsw.gov.au)  
[marnie.jeffrey@kempsey.nsw.gov.au](mailto:marnie.jeffrey@kempsey.nsw.gov.au)

Dear Mr Milburn

**Planning proposal PP-2023-2105 to amend Kempsey Local Environmental Plan 2013**

I am writing in response to the planning proposal you have forwarded to the Minister under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to implement a height of buildings development standard to various sites in South West Rocks.

As delegate of the Minister for Planning and Public Spaces, I have determined that the planning proposal should proceed subject to the conditions in the enclosed gateway determination.

I have also agreed, as delegate of the Secretary, the inconsistency of the planning proposal with applicable directions of the Minister under section 9.1 of the Act, being 6.1 Residential Zones and 7.1 Employment Zones, is justified in accordance with the terms of the Direction. No further approval is required in relation to the Directions.

Council may still need to obtain the agreement of the Secretary to comply with the requirements of relevant applicable directions of the Minister under section 9.1 of the Act, being 4.3 Planning for Bushfire Protection. Council should ensure this occurs prior to the LEP being made.

The Department has been made aware of concerns by some landowners affected by the planning proposal. Considering this, I have determined not to authorise Council to be the local plan-making authority so that the Department can undertake a final, impartial review of the proposal and the submissions during consultation prior to finalisation.

The amending local environmental plan (LEP) is to be finalised within six months from the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning and Environment to draft and finalise the LEP should be made eight weeks in advance of the date the LEP is projected to be made.

The NSW Government has committed to reduce the time taken to complete LEPs. To meet these commitments, the Minister may appoint an alternate planning proposal authority if Council does not meet the timeframes outlined in the gateway determination.

The Department's categorisation of planning proposals in the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023) is supported by category specific timeframes for satisfaction of conditions and authority and Government agency referrals, consultation, and responses. Compliance with milestones will be monitored by the Department to ensure planning proposals are progressing as required.

Should you have any enquiries about this matter, I have arranged for Ms Kate Campbell to assist you. Ms Campbell can be contacted on 5778 1401.

Yours sincerely



13/11/2023

**Jeremy Gray**  
**Director, Northern Region**  
**Local and Regional Planning**

Encl: Gateway determination

## Gateway Determination

**Planning proposal (Department Ref: PP-2023-2105):** implementation of a height of buildings development standard to various sites in South West Rocks.

I, the Director, Northern Region at the Department of Planning and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Kempsey Local Environmental Plan 2013 to implement a height of buildings development standard to various sites in South West Rocks should proceed subject to conditions.

The LEP should be completed within six months from the date of the Gateway determination.

### Gateway Conditions

1. Prior to exhibition, the planning proposal is to be updated to include details regarding the capacity of existing and proposed zoned land in South West Rocks as detailed in the Local Growth Management Strategy 2041 and South West Rocks Structure Plan 2023, thereby demonstrating that any loss of potential housing in the area as a result of the planning proposal can be adequately accommodated elsewhere within the town.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
  - (a) the planning proposal is categorised as standard as described in the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023) and must be made publicly available for a minimum of 20 working days; and
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023).
3. Consultation is required with the NSW Rural Fire Service under section 3.34(2)(d) of the Act. The NSW RFS is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 30 working days to comment.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

Dated 13 November 2023



**Jeremy Gray**  
**Director, Northern Region**  
**Local and Regional Planning**  
**Department of Planning and Environment Delegate**  
**of the Minister for Planning and Public Spaces**