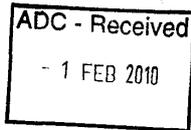




Planning



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Department Generated Correspondence (Y)

Office of the Director-General

Mr Shane Burns
General Manager
Armidale Dumaresq Council
PO Box 75A
ARMIDALE NSW 2350

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Postal: PO Box 550, Tamworth NSW 2340

Our ref: PP_2010_ARMID_001_00 (10/01302)
Your ref: A09/4719

Dear Mr Burns,

Re: Planning Proposal to correct drafting error and typographical errors within the Armidale Dumaresq LEP 2008 under Section 73A

I am writing in response to your Council's letter dated 4 January 2010 requesting a Gateway Determination under section 56 of the Environmental Planning and Assessment Act 1979 ('EP&A Act') in respect of the planning proposal to correct drafting error and typographical errors within the Armidale Dumaresq LEP 2008 under Section 73A.

As delegate of the Minister for Planning, I have now determined that the planning proposal should proceed subject to the conditions in the attached Gateway Determination and the removal of the proposed amendment to clause 15 (7)(e).

It is not considered that section 73A of the Act is the appropriate mechanism for dealing with this proposal as the consequences of the amendment cannot be regarded as minor in nature. If Council intends to progress this aspect of the Plan, it should prepare a Planning Proposal in accordance with the Department's guidelines and submit the matter for a separate Gateway Determination.

The Gateway Determination requires that the remaining matters be dealt with under section 73A of the EPA Act and therefore public exhibition and agency consultation is not required in this instance.

The amending Local Environmental Plan (LEP) is to be finalised within 3 months of the week following the date of the Gateway Determination.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under s54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, please contact Gina Davis of the Regional Office of the Department.

Yours sincerely,

Ian Reynolds
A/Director General

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Planning

Gateway Determination

Planning Proposal (Department Ref: PP_2010_ARMID_001_00): to correct drafting error and typographical errors within the Armidale Dumaresq LEP 2008 under Section 73A.

I, the A/Director General as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Armidale Dumaresq Local Environmental Plan 2008 to correct drafting error and typographical errors within the Armidale Dumaresq LEP 2008 should proceed, subject to the following conditions:

1. This is a minor matter that can be dealt with under section 73A of the EP&A Act.
2. Removal of the proposed amendment to clause 15(7)(e) of the Armidale Dumaresq LEP.
3. No public hearing is to be held into the matter under section 56(2)(e) of the EP&A Act.
4. The timeframe for completing the LEP is to be **3 months** from the week following the date of the Gateway determination.

Dated 25th day of January 2010.

A large, handwritten signature in black ink, appearing to read 'Ian Reynolds'.

Ian Reynolds
A/Director General
Delegate for the Minister for Planning

Armidale Dumaresq (10/01302)

PLANNING PROPOSAL

CORRECT DRAFTING ERROR

DWELLING HOUSES IN RELEASE AREA, RURAL

LIVING 1(b) ZONE

Prepared by

ARMIDALE DUMARESQ COUNCIL

PART 1 – OBJECTIVES OR INTENDED OUTCOMES OF THE PROPOSED LEP

The objective(s) or intended outcome(s) of the Planning Proposal is to correct a drafting error in Armidale Dumaresq Local Environmental Plan 2008 (LEP 2008) by removing a sunset provision.

The sunset provision prevents the erection of a dwelling house on certain land in the Rural Living 1(b) zone after 15 February 2010. The provision applies to vacant lots created before 1 July 2004 that are located between the Main Northern Railway Line and Long Swamp Road, Armidale, and are in the first release area which is shown with diagonal hatching on the LEP map.

Land zoned Rural Living 1(b) that is located between the Main Northern Railway Line and Long Swamp Road and shown with orange diagonal hatching on the LEP map is hereinafter referred to as the Subject Area. A map showing the Subject Area is attached (Attachment 1).

PART 2 - EXPLANATION OF PROVISIONS TO BE INCLUDED IN THE PROPOSED LEP

The Planning Proposal is the result of a drafting error that occurred during the final legal drafting of LEP 2008, following exhibition of the Draft LEP and just prior to its gazettal.

The Planning Proposal seeks to amend clause 15(7)(e) of LEP 2008 so that the outcomes will be consistent with:

- the recommendations of the Armidale Dumaresq Rural Residential Study (Edge Land Planning, 2005)
- the exhibited Draft LEP
- the Draft LEP that was forwarded to the Department of Planning in accordance with the previous section 68 of the Environmental Planning and Assessment Act 1979 (EPA Act).

A copy of the Armidale Dumaresq Rural Residential Study is submitted with the Planning Proposal.

The Armidale Dumaresq Rural Residential Study recommended that 2 years after the gazettal of LEP 2008, a dwelling house be allowed on a vacant lot created before 1 July 2004 that is located in the Subject Area. The drafting error changed the wording so that a development application for a dwelling house on the subject land could only be submitted within 2 years of the LEP's gazettal.

Clause 15(7)(e) of LEP 2008 currently provides:

“Consent may be granted, for an application lodged with the consent authority within 2 years of the commencement of this Plan, for the erection of a dwelling house on land in this zone if the land is a lot that:

- (i) was created before 1 July 2004, and
- (ii) is located between the Main Northern Railway Line and Long Swamp Road and is shown with orange diagonal hatching on the map.”

Armidale Dumaresq LEP 2008 was gazetted on 15 February 2008. Therefore, under Clause 15(7)(e), a development application cannot be submitted after the 15 February 2010 for the erection of a dwelling house on a vacant lot created prior to 1 July 2004 and located in the Subject Area.

It is proposed to amend Clause 15(7)(e) by deleting the sunset provision so that the clause becomes:

“Consent may be granted for the erection of a dwelling house on land in this zone if the land is a lot that:

- (iii) was created before 1 July 2004, and
- (iv) is located between the Main Northern Railway Line and Long Swamp Road and is shown with orange diagonal hatching on the map.”

PART 3 - JUSTIFICATION

A. NEED FOR THE PLANNING PROPOSAL

A1. Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal seeks to amend clause 15(7)(e) of LEP 2008 so that the outcomes will be consistent with the recommendations of the Armidale Dumaresq Rural Residential Study. The Study was adopted by Council and endorsed by the then Department of Infrastructure, Natural Resources and Planning. Its recommendations informed the provisions for rural residential development in LEP 2008.

The key findings and recommendations that are relevant to the Planning Proposal are found in Chapter 6 of the Study and are briefly summarised below:

- The estimated demand for rural living development up until 2021 is 136 new dwellings.
- The land to the south of the study area between Kellys Plains Road and Waterfall Way (which includes the Subject Area) presents the best capability for further rural living development because of its proximity to the urban area of Armidale as well as being relatively flat and cleared of native vegetation.

- The number of existing vacant lots should be considered when identifying the future supply of land needed to meet demand for rural living development. There are 91 vacant lots between the Main Northern Railway Line and Waterfall Way (as at September 2004). It is recommended a dwelling house be allowed on each of these vacant lots.
- It is recommended that that the land between the Main Northern Railway Line and Long Swamp Road be released first (i.e. the Subject Area).
- Existing vacant holdings (which may comprise 1 or more lots) in the Rural Living zone also need to be considered when identifying suitable land to meet demand. It is recommended that a dwelling house be allowed on existing vacant holdings within the proposed Rural Living zone and that 2 years be given for this land to be taken up.
- After the LEP has been gazetted for 2 years, it is appropriate to allow dwellings on the existing vacant lots between the Main Northern Railway Line and Waterfall Way as outlined above.

A2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The Planning Proposal is considered to be the best means of correcting the drafting error in LEP 2008.

A3. Is there a net community benefit?

There is considered to be a net community benefit associated with the Planning Proposal for the following reasons:

- The provision for dwelling houses to be permitted on existing vacant lots in the Subject Area will assist in meeting the projected demand for rural small holdings up until 2021. The location and timing of this land supply for rural small holdings has a strategic basis in the Armidale Dumaresq Rural Residential Study. If the Proposal does not proceed then the projected demand for rural small holdings may not be met.
- The Planning Proposal will ensure that 'dwelling entitlements', which would otherwise be lost, will continue to be available 2 years following gazettal of the LEP, thereby meeting any landowner expectations resulting from the exhibited and section 68 versions of the Draft LEP.

B. RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK.**B1. Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including exhibited draft strategies)?**

The Draft New England Development Strategy has been prepared to inform preparation of LEP(s) for Armidale Dumaresq, Guyra Shire, Uralla Shire and Walcha Councils.

The Draft Strategy was exhibited from 15 September 2008 to 27 October 2008. The four Councils considered the submissions and adopted a final Draft Strategy at their meetings in April or May 2009. Endorsement of the final Draft Strategy by the Department is expected to be sought during February 2010.

The Planning Proposal is consistent with the final Draft Strategy which supports the recommendations for rural small holdings development from the Armidale Dumaresq Rural Residential Study 2005, including the proposed land releases for dwellings in the Rural Living 1(b) zone.

B2. Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Council is in the process of preparing its Community Strategic Plan which will be completed by June 2011.

B3. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

The Planning Proposal is consistent with applicable State Environmental Planning Policies (refer to Appendix 1).

B4. Is the Planning Proposal consistent with applicable Ministerial Directions (s. 117 directions)?

The Planning Proposal is considered to be inconsistent with the following Ministerial Directions:

- 2.1 Environment Protection Zones
- 2.3 Heritage Conservation.

The extent to which the Planning Proposal is inconsistent with the above Directions is considered to be of minor significance for the reasons outlined in Appendix 2.

Direction 4.4 Planning for Bushfire Protection requires that Council consult with the Commissioner of the NSW Rural Fire Service following receipt of a Gateway Determination.

C. ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT.**C1. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the Proposal?**

A Biodiversity assessment of the land subject of the Planning Proposal has not been undertaken due to the size of the area concerned (approximately 15.9 km²) and insufficient Council resources to carry out such a study. The impact of the Planning Proposal on biodiversity values will not differ from the current situation and possible impacts will continue to be assessed as part of determining future development applications for lots in the Subject Area.

C2. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

The purpose of the Planning Proposal is to correct a drafting error in order to continue to permit dwelling houses to be erected on vacant lots in the Subject Area that were created prior to 1 July 2004. Therefore the Planning Proposal is unlikely to have any additional environmental effects to the present situation. Environmental constraints and opportunities for identifying land suitable for rural small holdings development were considered in Chapters 2 and 5 of the Armidale Dumaresq Rural Residential Study.

C3. How has the Planning Proposal adequately addressed any social and economic effects?

Social and economic effects of the Planning Proposal were addressed in Chapter 2 of the Armidale Dumaresq Rural Residential Study. Site specific effects, such as European or Aboriginal cultural heritage, will be considered when Council assesses development applications for dwelling houses in the Subject Area.

D. STATE AND COMMONWEALTH INTERESTS.**D1. Is there adequate public infrastructure for the Planning Proposal?**

The adequacy of public infrastructure was considered in Sections 2.3 and 5.5 of the Armidale Dumaresq Rural Residential Study when identifying areas suitable for closer residential development in the Rural Living 1(b) zone.

The main type of public infrastructure required to serve dwellings on land within the Subject Area are local roads. None of the land subject of the Planning Proposal has direct access to a State Highway or arterial road. Generally the Subject Area has good road connections to Armidale. Where existing road infrastructure is not sufficient, development is to comply with Council's requirements, which are included in Armidale Dumaresq Development Control Plan 2007: Chapter D4 – Development in Rural and Rural Residential Zones Code.

D2. What are the views of State and Commonwealth Public Authorities consulted in accordance with the Gateway Determination, and have they resulted in any variations to the Planning Proposal?

To be completed following consultation with State and Commonwealth Authorities that may be identified in the Gateway Determination.

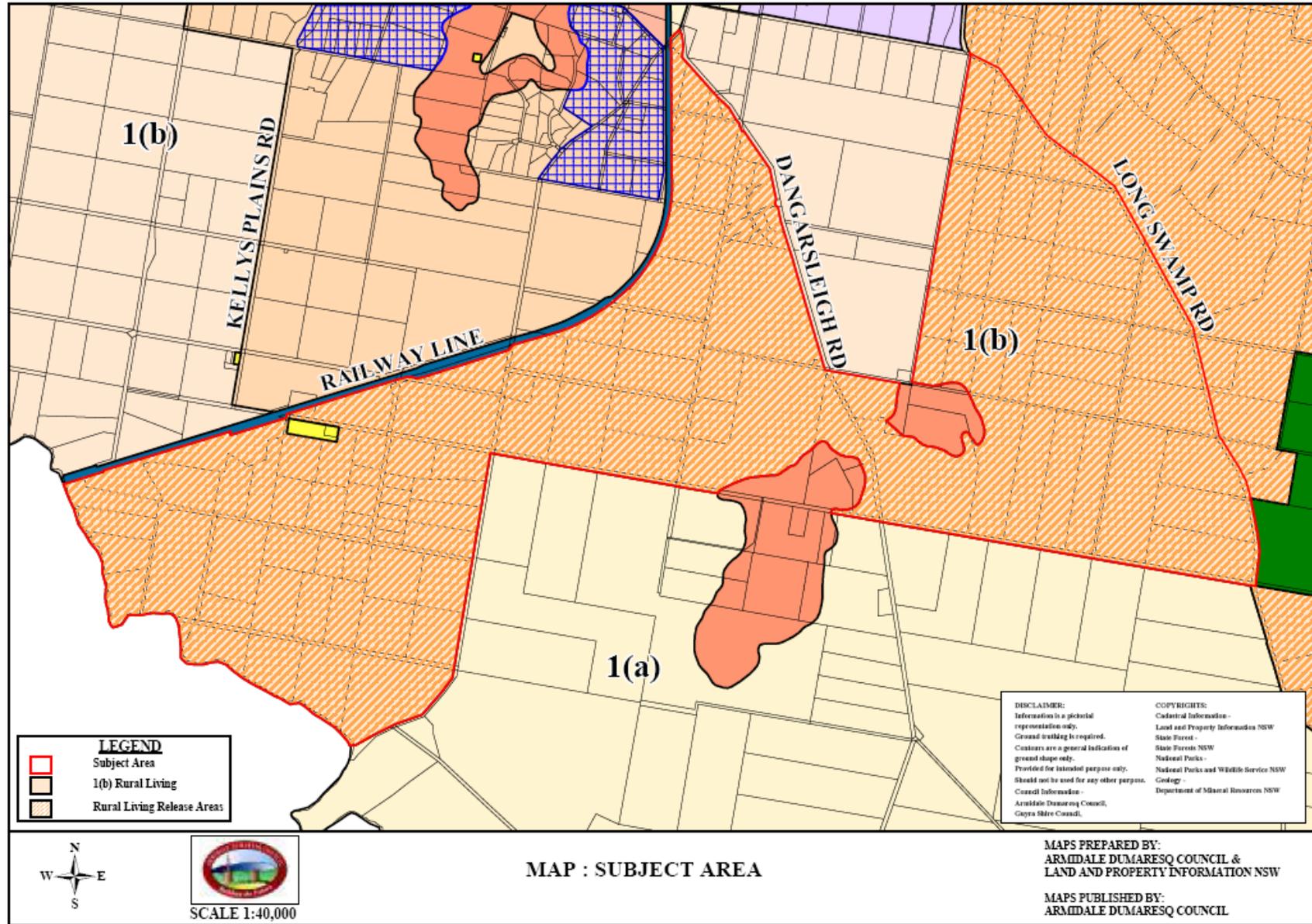
PART 4 – COMMUNITY CONSULTATION THAT IS TO BE UNDERTAKEN

The proposal, which is considered to be a low impact Planning Proposal in accordance with 'A Guide to Preparing Local Environmental Plans' (Department of Planning, 2009), will be exhibited for 14 days.

Notice of the public exhibition will be given:

- In local weekly newspapers being the Armidale Extra and Armidale Independent newspapers.
- On Council's web-site at www.armidale.gov.au

ATTACHMENT 1



Appendix 1: Consideration of State Environmental Planning Policies

The following SEPP's apply to the Armidale Dumaresq local government area, as at 2/2/2010

SEPP	Applicable	Consistent	Reason for inconsistency
No. 1 Development Standards	Yes	Yes	
No. 4 Development Without Consent and Miscellaneous Exempt and Complying Development	No	Not applicable	
No. 6 Number of Storeys in a Building	No	Not applicable	
No. 15 Rural Landsharing Communities	Yes	Yes	
No. 21 Caravan Parks	No	Not applicable	
No. 22 Shops and Commercial Premises	No	Not applicable	
No. 30 Intensive Agriculture	No	Not applicable	
No. 32 Urban Land Consolidation (Redevelopment of Urban Land)	No	Not applicable	
No. 33 Hazardous and Offensive Development	No	Not applicable	
No. 36 Manufactured Home Estates	No	Not applicable	
No. 44 Koala Habitat Protection	Yes	Yes	
No. 50 Canal Estate Development	No	Not applicable	
No. 55 Remediation of Land	No	Not applicable	
No. 62 Sustainable Aquaculture	No	Not applicable	
No. 64 Advertising and Signage	No	Not applicable	
No. 65 Design Quality of Residential Flat Development	No	Not applicable	
Housing for Seniors or People with a Disability 2004	Yes	Yes	
Building Sustainability Index: BASIX 2004	Yes	Yes	
Major Development 2005	No	Not applicable	
Mining, Petroleum Production and Extractive Industries 2007	Yes	Yes	
Temporary Structures 2007	No	Not applicable	
Infrastructure 2007	Yes	Yes	
Rural Lands 2008	Yes	Yes	
Exempt and Complying Development Codes 2008	Yes	Yes	
Affordable Rental Housing 2009	No	Not applicable	

Appendix 2: Consideration of Section 117 Ministerial Directions

1. Employment and Resources

Direction	Applicable	Consistent	Reason for inconsistency
1.1 Business and Industrial Zones	No	Not applicable	
1.2 Rural Zones	Yes	Yes	
1.3 Mining, Petroleum Production and Extractive Industries	Yes	Yes	
1.4 Oyster Aquaculture	No	Not applicable	
1.5 Rural Lands	Yes	Yes	

2. Environment and Heritage

Direction	Applicable	Consistent	Reason for inconsistency
2.1 Environment Protection Zones	Yes	No	See below.
2.2 Coastal Protection	No	Not applicable	
2.3 Heritage Conservation	Yes	No	See below.
2.4 Recreation Vehicle Areas	Yes	Yes	

Reasons for inconsistency:

2.1 Environment Protection Zones

The Planning Proposal does not include provisions that facilitate the protection and conservation of environmentally sensitive areas and this respect the inconsistency with Section 117 Direction 2.1 is considered to be of minor significance.

2.3 Heritage Conservation

The Planning Proposal does not include provisions that facilitate heritage conservation and this respect the inconsistency with Section 117 Direction 2.3 is considered to be of minor significance.

3. Housing, Infrastructure and Urban Development

Direction	Applicable	Consistent	Reason for inconsistency
3.1 Residential Zones	No	Not applicable	
3.2 Caravan Parks and Manufactured Home Estates	Yes	Yes	
3.3 Home Occupations	Yes	Yes	
3.4 Integrating Land Use and Transport	No	Not applicable	
3.5 Development Near Licensed Aerodromes	No	Not applicable	

4. Hazard and Risk

Direction	Applicable	Consistent	Reason for inconsistency
4.1 Acid Sulfate Soils	No	Not applicable	
4.2 Mine Subsidence and Unstable Land	No	Not applicable	
4.3 Flood Prone Land	No	Not applicable	
4.4 Planning for Bushfire Protection	Yes	Yes	See below

4.4 Planning for Bushfire Protection

Within the Subject Area, 3 lots are partly shown as bushfire prone land and a further 2 lots are considered to be in the vicinity of bushfire prone land, as identified on Council's Bush Fire Prone Land Map, certified by the Commissioner of the NSW Rural Fire Service on 26 August 2008. Correcting the drafting error will retain, not change, the permissibility of erecting a dwelling house on the land. An application to build a dwelling on that part of a lot that is bush fire prone land will need to satisfy the requirements for "Planning for Bushfire Protection 2006".

The Direction requires that Council consult with the Commissioner of the NSW Fire Service following receipt of a Gateway Determination.

5. Regional Planning

Direction	Applicable	Consistent	Reason for inconsistency
5.1 Implementation of Regional Strategies	No	Not applicable	
5.2 Sydney Drinking Water Catchments	No	Not applicable	
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	No	Not applicable	
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	No	Not applicable	
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	No	Not applicable	
5.8 Second Sydney Airport: Badgerys Creek	No	Not applicable	

6. Local Plan Making

Direction	Applicable	Consistent	Reason for inconsistency
6.1 Approval and Referral Requirements	Yes	Yes	
6.2 Reserving Land for Public Purposes	Yes	Yes	
6.3 Site Specific Provisions	No	Not applicable	

7. Metropolitan Planning

Direction	Applicable	Consistent	Reason for inconsistency
7.1 Implementation of the Metropolitan Strategy	No	Not applicable	