



Item: 6.2 **Ref:** INT/2010/02619
Title: DRAFT AMENDMENT No 5 TO ARMIDALE
DUMARESQ LEP 2008 **Container:** A10/4773
Author: Strategic Planner
Attachments: 1. Gateway Determination - Planning Proposal to Correct
Drafting Error and Typographical Errors within the LEP
2008
2. Draft Amendment No 5 Planning Proposal correct drafting
error dwelling houses in Rural Living 1b zone

Introduction:

At its meeting on 21 December 2009 Council decided to prepare Draft Amendment No 4 to Armidale Dumaresq Local Environmental Plan 2008 (LEP 2008). Draft Amendment No 4 comprised what were considered to be amendments of a minor nature that could be made in accordance with section 73A of the Environmental Planning and Assessment (EPA) Act 1979. Section 73A allows for minor amendments to be expedited.

Council was subsequently advised in a Gateway Determination from the Department of Planning that one of the amendments which sought to correct a drafting error affecting 'dwelling entitlements' in the Rural Living 1(b) zone could not be dealt with under section 73A. For the amendment to proceed it needs to be subject of a Planning Proposal and a new Gateway Determination.

A Planning Proposal has been prepared, with the proposed amendment becoming Draft Amendment No 5 to LEP 2008.

Report:

At its meeting on 21 December 2009 Council considered the following proposed amendments to LEP 2008:

- Amendment to clause 15(7)(e) of LEP 2008 to correct an inadvertent drafting error that was made as part of the final legal drafting process. The effect of the proposed amendment will be to retain 'dwelling entitlements' for certain land within the Rural Living 1(b) zone.
- Amendments to the property descriptions of 3 heritage items in Schedule 2 of LEP 2008. The amendments will correct typographical errors to ensure properties are correctly listed in Schedule 2.

All of the amendments were considered to be of a minor nature that could be dealt with under section 73A of the EPA Act 1979. Section 73A allows for minor amendments to be expedited, without the need to comply with all of the statutory procedures which normally apply to the preparation of LEP amendments.

Council resolved:

- “(a) That Armidale Dumaresq Local Environmental Plan 2008 be amended as outlined in the report and included in Draft Amendment No 4 to Armidale Dumaresq Local Environmental Plan 2008.*



- (b) That the Minister for Planning be requested to make Draft Amendment No 4 to Armidale Dumaresq Local Environmental Plan 2008 under section 70 and section 73A of the Environmental Planning and Assessment Act 1979."*

Draft Amendment No 4 was forwarded to the Department of Planning and considered by the Department's Gateway Panel. A Gateway Determination was issued on 25 January 2010 advising that Draft Amendment No 4 can proceed with the matters being dealt with under section 73A, except for the proposed amendment to clause 15(7)(e) which is concerned with the permissibility of dwellings on some land within the Rural Living 1(b) zone. The Panel was of the view that the consequences of the proposed amendment to clause 15(7)(e) could not be regarded as minor in nature. A copy of the Gateway Determination is included in the Attachments.

In order for the proposed changes to clause 15(7)(e) to proceed, Council must prepare a Planning Proposal and submit it with the Department of Planning for a new Gateway Determination. A Planning Proposal has been prepared and is included in the Attachments. The Planning Proposal will constitute Draft Amendment No 5 to LEP 2008.

The Gateway Determination allows for the remaining matters in Draft Amendment No 3, which are concerned with correcting the property descriptions for 3 heritage items, to be dealt with in accordance with section 73A. The Determination specifies that Draft Amendment No 3 is to be finalised within 3 months from the week following 25 January 2010.

Planning Proposal

The Planning Proposal in the Attachments seeks to correct a drafting error so that the provisions of LEP 2008 will be consistent with the intent 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 following the consideration of submissions.

The Armidale Dumaresq Rural Residential Study included a recommendation that 2 years following gazettal of LEP 2008, dwelling houses be permitted on vacant lots created prior to 1 July 2004, which are zoned Rural Living 1(b) zone, and located between the Main Northern Railway Line and Long Swamp Road.

The exhibited Draft LEP and the version of the Draft LEP sent to the Department of Planning following consideration of submissions reflected the recommendations of the Armidale Dumaresq Rural Residential Study. However, during the final legal drafting stages of the LEP prior to its gazettal, the time period in the relevant provision (clause 15(7)(e)) was changed from 2 years after commencement of the LEP to within 2 years of the LEP's commencement.

Following the realization that a drafting error had occurred, Council wrote to the owners of properties within the Rural Living 1(b) zone between the Main Northern



Railway Line and Long Swamp Road advising them of the different provisions in the exhibited Draft LEP and gazetted LEP 2008. Land owners were also advised that the provisions in LEP 2008 would be reviewed as part of preparing the regional LEP(s) for the former New England Strategic Alliance of Councils. However, given the relatively slow progress of the regional LEP(s) it is now proposed to amend LEP 2008 instead.

The Planning Proposal removes the sunset provision, which is underlined, from clause 15(7)(e) in LEP 2008:

“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.”

LEP 2008 was gazetted on 15 February 2008 and, therefore, after the 15 February 2010 a development application cannot be submitted for the erection of a dwelling in accordance with clause 15(7)(e) until such time as the clause is amended.

As the Planning Proposal is considered to be a low impact proposal a 14 day exhibition period is considered appropriate.

Financial Implications:

None apparent for Council.

Environmental Implications:

The proposed amendment will be consistent with the intended outcomes of LEP 2008 and the Armidale Dumaresq Rural Residential Study.

Policy Issues:

The proposed LEP amendment will correct a drafting error which occurred during finalisation of LEP 2008. In doing so LEP 2008 will be consistent with the Armidale Dumaresq Rural Residential Study

Management Plan Issues:

Draft Amendment No 5 to LEP 2008 to be included in the Strategic Work Plan for 2009-2010.

Social Implications:

The amendment seeks to correct a drafting error which would otherwise result in the loss of ‘dwelling entitlements’. These ‘dwelling entitlements’ are consistent with the recommendations of the Armidale Dumaresq Rural Residential Study 2005.



Risk Management Issues:

There are unlikely to be risk management issues related to Draft Amendment No 5 to LEP 2008.

Legal Issues:

Draft Amendment No 5 to LEP 2008 must be prepared in accordance with the requirements of the EPA Act 1979.

RECOMMENDATION:

- (a) That Council seek to amend clause 15(7)(e) of Armidale Dumaresq Local Environmental Plan 2008 in the terms outlined in the officer's report.
- (b) The related Planning Proposal, prepared in accordance with Section 55 of the Environmental Planning and Assessment Act 1979 (the Act) and included in the Attachments, be endorsed by Council and forwarded to the Minister for Planning, requesting that a Gateway Determination be provided in accordance with Section 56 of the Act.