



Item:	6.1	Ref: INT/2009/14495
Title:	DRAFT AMENDMENT No 3 TO ARMIDALE DUMARESQ LEP 2008	Container: A09/4607
Author:	Strategic Planner	
Attachments:	1. Attachment 1 - Circulated Separately 2. Attachment 2 - Circulated Separately 3. Attachment 3 - Circulated Separately 4. Attachment 4 - Circulated Separately 5. Attachment 5 - Circulated Separately 6. Attachment 6 - Circulated Separately	

Introduction:

Since gazettal of Armidale Dumaresq Local Environmental Plan 2008 (LEP 2008) on 15 February 2008, Council has resolved to make three LEP amendments.

Council has received further requests for LEP amendments to be made. The requests seek to increase the maximum permitted retail floor space for a neighbourhood shop from 75 square metres to 150 square metres and rezone part of 15-57 Crest Road, Armidale, from Special Uses 5(a) to Residential 2(a). It is proposed to include these changes in Draft Amendment No 3 along with the proposed amendment to increase in minimum lot sizes for subdivision in Residential 2(a) zone which Council has previously resolved to prepare.

Planning Proposals for each of the amendments that comprise Draft Amendment No 3 have been prepared in accordance with the new legislation for local plan making that came into effect on 1 July 2009. Following Council endorsement, the Planning Proposals are forwarded to the Minister for Planning seeking a 'Gateway Determination' as to whether the Proposals should proceed and other associated matters, such as the level of community consultation to be undertaken.

Report:

Armidale Dumaresq Local Environmental Plan 2008 (LEP 2008) was gazetted and came into effect on 15 February 2008. Since then Council has resolved to make three amendments to LEP 2008.

Amendment No 1 to LEP 2008

Amendment No 1 involved alterations of a minor nature, comprising mainly corrections to typographical errors. The Department of Planning agreed that the amendments were of a minor nature and Amendment No 1 came into effect on 22 May 2009.

Draft Amendment No 2 to LEP 2008

Draft Amendment No 2, which Council resolved to prepare at its meeting on 23 March 2009, seeks to update a reference in LEP 2008 to the date of adoption of a development control plan (DCP) that contains Exempt and Complying Development



controls. The existing DCP was amended to remove duplication between Council's DCP and SEPP (Exempt and Complying Development Codes) 2008.

Draft Amendment No 3 to LEP 2008

Draft Amendment No 3 includes the proposed changes to the minimum lot size development standard for subdivision in the Residential 2(a) zone considered at its meeting on 28 September 2009. The report to the Planning and Development Committee and Council's resolution of 28 September 2009 (Item 10.2) are included in the Attachments. The proposed amendments to LEP 2008 include increasing the minimum lot size for subdivision in the Residential 2(a) zone from 400 square metres to 500 square metres and, for subdivisions that will create 10 or more lots, requiring that no more than 25% of the new lots created will be less than 600 square metres.

Further proposed amendments to LEP 2008

At the time Council resolved to prepare an LEP amendment to increase the minimum lot sizes for subdivisions in Residential 2(a) zone, initial inquiries were being made as to whether LEP 2008 could be altered to increase the permitted retail floor area for convenience shops and to allow the erection of dwellings on 4 approved residential lots at 15-57 Crest Road, Armidale. Council has since received formal request to alter LEP 2008 in line with the initial inquiries. It is proposed to include these proposed amendments in Draft Amendment No 3, along with the proposed changes relating to the minimum lot size standards for subdivision in the Residential 2(a) zone outlined above.

Convenience or neighbourhood shops

Council has received a submission to increase the permitted retail floor space for corner stores from 75 square metres to 150 square metres. A copy of the submission is included in the Attachments.

While the submission relates to a specific development proposal, it is recommended that LEP 2008 be amended to apply to all convenience shops and not just the particular shop subject of the submission.

In the Dictionary to Armidale Dumaresq Local Environmental Plan 2008 (LEP 2008):

"convenience shop means a shop that:

- (a) trades principally in the retail sale of groceries, takeaway foods, smallgoods and household items and services and may include the facilities of a post office, and*
- (b) may be attached to or form part of a dwelling, and*
- (c) does not have an area devoted to retailing that exceeds 75 square metres."*

It is not considered appropriate to have the nominated minimum retail floor area in the definition. Rather, it should be included as a development standard in the relevant provisions of the LEP. The Standard (LEP) Instrument includes a definition for a 'neighbourhood shop' as well as a standard compulsory clause relating to retail floor area:



- *'neighbourhood shop' means retail premises used for the purposes of selling small daily convenience goods such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises.*
- Clause 5.4(7) provides that 'if a development for the purposes of a neighbourhood shop is permitted under this Plan, the retail floor area must not exceed [Council to insert number not less than 80] square metres.

It is recommended that LEP 2008 be amended to include the definition for neighbourhood shop from the Standard (LEP) Instrument.

In terms of an appropriate retail floor space, the submission has sought a maximum limit of 150 square metres. To determine whether the requested retail floor space is appropriate the floor areas of some existing convenience shops in Armidale have been considered as well as the standard adopted by recently gazetted or exhibited LEPs in other inland regional areas.

The average retail floor area of the following neighbourhood shops in Armidale was found to be 115 square metres, with floor areas ranging from approximately 100 to 140 square metres:

- 201 Brown Street (Neville's Store)
- 43 Mann Street (East Armidale Store)
- 104 Mann Street (White's Store).

A survey was also carried out of some recently gazetted or exhibited LEPs, many of which are based on the Standard Instrument, and the results are summarised in the following Table.

Maximum retail floor area for neighbourhood shops	Council LEP
100m ²	Wingecarribee Draft LEP 2009 Muswellbrook LEP 2008 Wagga Wagga Draft LEP 2008
150m ²	Tamworth Draft LEP 2009
1,000m ²	Goulburn Mulwaree LEP 2009

In general, one of the main reasons for limiting the retail floor space of neighbourhood shops is to avoid the situation where large out-of-centre stores or retail complexes could be developed and jeopardise the viability of a town's central business district. While convenience shops are currently permitted with consent in the Residential zones in Armidale, new shops are only permitted if they are not within 400 metres of another convenience shop, shop, business zone or group of convenience shops (i.e. 4 or more shops on adjoining land). A similar provision applies to convenience shops in Rural zones, except the minimum separation distance is 800 metres, rather than 400 metres. These provisions will be retained in LEP 2008.



A maximum retail floor space of 150 square metres is considered reasonable taking into consideration the floor area of some existing neighbourhood shops in Armidale, the standards adopted by other regional centres, and the provisions in LEP 2008 that assist in preventing the larger shopping centres in Residential or Rural zones.

Residential rezoning Part Lot 1 DP 1003685, 15-57 Crest Road, Armidale

Council has received a request to rezone part Lot 1 DP 1003685, 15-57 Crest Road, Armidale (the site) to Residential 2(a). A copy of the submission is included in the Attachments. The site, which adjoins the Presbyterian Ladies College Armidale, is zoned Special Uses 5(a) under LEP 2008 and is shown on the zoning map with the particular purpose of 'Education'.

Development consent (DA478-2007) was granted on 22 April 2008 for subdivision of the site into 4 residential lots. The development application was lodged and assessed under Armidale LEP 1988 which permitted the erection of dwellings on land in the Special Uses 5(a) – Community Services zone.

Under the exhibited Draft Armidale Dumaresq LEP development permitted on adjacent land was also permitted, with consent, on land in the Special Uses 5(a) zone. The site is adjacent to land zoned Residential 2(a) and, therefore, under the Draft LEP the erection of dwellings on the site was permitted. However, on 22 August 2007 the Department of Planning advised Council that it did not support the provision in the Special Uses 5(a) zone that allowed for development permitted on adjacent land, as it was concerned that ad hoc planning and land use decisions could result. The provision was removed from the Draft LEP, and consequently the gazetted LEP 2008, and the erection of dwellings on the site became prohibited.

Rezoning the site to Residential 2(a) would permit, with consent, the erection of a dwelling house on each of the 4 residential lots approved in development consent DA 478-2007. Although the rezoning would also allow for other types of development permitted in the Residential 2(a) zone, this is considered appropriate as the site adjoins a school and is within a residential area.

Planning Proposals for Draft Amendment No 3

On 1 July 2009 changes were made to the local plan making provisions in the EPA Act 1979. The legislative changes were considered by Council's Planning and Development Committee at its meeting on 31 August 2009 (Item 3.3 on the Agenda). One of the changes requires preparation of a Planning Proposal for an LEP amendment. A Planning Proposal must include a statement of the objectives or intended outcomes of the proposed LEP, an explanation of the provisions that are to be included in the proposed LEP, and justification for the proposed LEP. Following endorsement of a Planning Proposal it is sent to the Minister for Planning seeking a 'Gateway Determination'. Details of the community consultation and Government Agencies to be consulted are included in the Gateway Determination.



Planning Proposals have been prepared for each of the proposed amendments that comprise Draft Amendment No 3 to LEP 2008. The Planning Proposals, which are in the Attachments, are:

- Planning Proposal A: Increase minimum lot sizes for subdivision in Residential 2(a) zone
- Planning Proposal B: Increase retail floor area for neighbourhood shops
- Planning Proposal C: Rezoning of part 15-57 Crest Road, Armidale, to Residential 2(a).

Draft Amendment No 4

It is also proposed to prepare a further LEP amendment, Draft Amendment No 4 (refer to separate Item in this Business Paper). This amendment is of a minor nature and it is proposed to request the Department of Planning to expedite its preparation in accordance with Sections 70 and 73A of the EPA Act 1979. Unlike the preparation of other types of LEP amendments, those made in accordance with Section 73A do not need to comply with the usual requirements, such as public exhibition.

Financial Implications:

None apparent for Council.

Environmental Implications:

The proposed LEP amendments are unlikely to impact adversely on the environment or the efficient use of infrastructure.

Policy Issues:

A change to the minimum lot size standard for residential subdivisions and associated implications will require amendments to Armidale Dumaresq Development Control Plan 2007 to ensure consistency between policies.

Management Plan Issues:

The proposed amendments to LEP 2008 and DCP 2007 are to be included in the Strategic Work Plan for 2009-2010.

Social Implications:

The proposed increase in the minimum lot size for residential subdivisions is considered to be modest and is unlikely to impact significantly on housing affordability. Increasing the maximum permitted retail floor area for neighbourhood shops may provide the opportunity for improved services within a locality.

Risk Management Issues:

None apparent.

Legal Issues:

Any amendments to LEP 2008 and DCP 2007 are to be prepared in accordance with the requirements of the EPA Act 1979.



RECOMMENDATION:

That Council seek to amend Armidale Dumaresq Local Environmental Plan 2008 and the following Planning Proposals, 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:

- **Planning Proposal A: Increase minimum lot sizes for subdivisions in Residential 2(a) zone**
- **Planning Proposal B: Increase permitted retail floor area for neighbourhood shops**
- **Planning Proposal C: Rezoning part 15-57 Crest Road, Armidale, to Residential 2(a).**