



Uralla Shire Council Planning Proposal

27 August 2012

1 Objectives and Intended Outcomes of the Planning Proposal

The objectives and intended outcomes of the Planning Proposal are:

- To provide protection for the high conservation values (flora and ecological community) located on Lot 1 DP 1168505 Devoncourt Road, Uralla and Lots 2 – 7 DP 1168505, Panhandle Road, Uralla (DP 1168505).
- To correct drafting errors in Uralla Local Environmental Plan 2012.

2 Explanation of the Proposed Provisions

In relation to Lot 1 DP 1168505 Devoncourt Road, Uralla and Lots 2 – 7 DP 1168505, Panhandle Road, Uralla (DP 1168505), it is proposed to rezone the subject lots from R5 Large Lot Residential to E3 – Environmental Management and to vary the minimum lot size on Lot 7 DP 1168505 from 2 ha to 5 ha, to ensure that no further subdivision (other than that already approved) is able to be undertaken.

In relation to the correction of drafting errors in Uralla LEP 2012, Clause 4.2A of Uralla LEP 2012 includes provisions for the erection of dwelling houses on land in certain rural and environmental protection zones. Sub-clause 2(c) refers to Zone E2 Environmental Conservation and appears to confer a pathway for the approval of a dwelling on E2 land in some circumstances. However, the Land Use Table expressly prohibits dwelling houses in E2 and thus reference to Zone E2 in clause 4.2A is at odds with this. Advice from the Department of Planning & Infrastructure is that the Land Use Table should take precedence over this clause, and thus it is proposed to remove Zone E2 Environmental Conservation as land to which Clause 4.2A applies to clarify this matter.

3 Justification of Objectives, Outcomes and Provisions

3.1 Need for the Planning Proposal

3.1.1 *Is the planning proposal a result of any strategic study or report?*

With respect to the land at Devoncourt Road and Panhandle Road, Uralla, the land has been approved for subdivision into seven lots ranging in size from 2.01ha to 5.10ha. As part of the approval process, studies were undertaken to determine whether there were any threatened species or ecological communities present. As a result of these studies, the following were identified:

- One species (*Dichanthium setosum*) listed as vulnerable under the NSW *Threatened Species Conservation (TSC) Act* and the Commonwealth *Environmental Protection and Biodiversity Conservation (EPBC) Act* was observed on the site;
- The threatened ecological community Box-gum Woodland occurs on the site – this is listed as endangered under the TSC Act and is also known as White Box / Yellow Box / Blakely's Red Gum Grassy Woodland and Derived Native Grassland and as such is listed as critically endangered under the EPBC Act.

As the site contains a vulnerable species and an endangered ecological community concurrence was sought under the NSW TSC Act and the Commonwealth EPBC Act. As part of obtaining concurrence for the subdivision, it was proposed that the land be rezoned to an environmental zone.

Concurrence was received for a controlled action being the construction of any infrastructure or clearance of native vegetation, excluding for the erection of fences, associated with the proposed action and/or the placing of lots on the market for sale to the public on 4 May 2011 from the Department of Sustainability, Environment, Water, Population and Communities. It was subject to the following requirements:

- a) a conservation area of at least 10.6 ha is to be established to provide protection for the White Box – Yellow Box Blakely’s Red Gum Grassy Woodland and Derived Native Grasslands.
- b) a covenant is to be placed on the title of all lots containing conservation areas which will provide in-perpetuity protection and management of the White Box – Yellow Box – Blakely’s Red Gum Grassy Woodland and Derived Native Grasslands.
- c) a Vegetation Rehabilitation and Management Plan has to be prepared to maintain and improve the condition of the White Box – Yellow Box – Blakely’s Red Gum Grassy Woodland and Derived Native Grasslands. This must be included as part of the covenant attached to the title of all lots.

The expiry date of the controlled activity is 31 June 2031.

Council resolved at its meeting in April 2010 to “Rezone the land within the subdivision as conservation in the next Local Environmental Plan as the appropriate Environmental Protection Zone”. This decision was intended to recognize and to better define the conservation area and to help protect the nationally listed critically endangered ecological community being the White Box – Yellow Box – Blakely’s Red Gum Grassy Woodland and Derived Native Grasslands.

Following a detailed consideration of the various studies that have been undertaken and in consultation with Department of Planning & Infrastructure regional staff, it is proposed that the land be zoned as E3 Environmental Management. The objectives of this zone are:

- To protect, manage and restore areas of special ecological, scientific, cultural or aesthetic values; and
- To provide for a limited range of development that does not have an adverse effect on those values.

Given that the subject land has had Section 88B instruments (covenants) placed on the titles which restricts development to areas not containing the ecological values to be protected, the E3 zone will provide an appropriate level of protection for the identified areas.

The need for the proposed variation to Clause 4.2A was identified when considering the appropriate zone for the above land, and is based upon advice from the Department of Planning & Infrastructure Regional Office.

3.1.2 *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

A number of other planning approaches have been considered to protect the ecological values in question. After consultation with Department of Planning & Infrastructure, the proposed approach is considered to be the most appropriate.

Amendments to Clause 4.2A can only be made through a Planning Proposal.

3.1.3 *Is there a net community benefit?*

The guidelines for preparing Planning Proposals indicate that only external costs and benefits should be considered here, and that private costs and benefits should be ignored as it can be assumed that they would cancel each other out.

The broad community (through government action) has identified inherent conservation values occurring on the land (i.e. the threatened ecological community and the vulnerable species). Various economic analytic techniques (hedonic pricing, choice modelling, contingent valuation) have been used over the years to demonstrate that generally there is an economic benefit to the community from enhanced environmental protection (a so-called positive externality). Based on this generalisation, it can be inferred that as the proposal will result in additional protection to identified inherent conservation values it will deliver a net community benefit.

The net community benefit identifiable with respect to the proposed amendment to Clause 4.2A comes about through removing an ambiguity in the LEP which could lead to uncertainty and potential legal challenge. The proposed change reflects the actual original intent of the LEP (i.e. not to allow dwellings in E2), and thus removes the potential for wasted legal or other argument about whether or not Clause 4.2A should be applied to the E2 zone.

3.2 Relationship to Strategic Planning Framework

3.2.1 Is the planning proposal consistent with the objectives and actions contained within the New England Regional Strategy?

With respect to the proposed E3 zoning, the Strategy is silent on this issue. The proposal is not inconsistent with the objectives and detail of the Strategy.

3.2.2 Is the planning proposal consistent with Uralla Shire Council's Community Strategic Plan, or other local strategic plan?

There are no such plans applicable.

3.2.3 Is the planning proposal consistent with applicable state environmental planning policies?

The only SEPP that appears to be relevant is SEPP 44 Koala Habitat Protection. A threatened species assessment carried out for the site found that "No Koalas were observed on the site nor was there any evidence of Koala usage of potential food trees on the site". The planning proposal will result in an *increased* level of general environmental protection and would thus tend to lead to enhanced Koala habitat. The proposal is consistent with SEPP 44.

3.2.4 Is the planning proposal consistent with the New England North West Draft Strategic Regional Land Use Plan?

The New England North West Draft Strategic Regional Land Use Plan was exhibited in early 2012, and this planning proposal is not considered to be inconsistent with this state policy.

Is the planning proposal consistent with applicable Ministerial Directions (S.117 directions)?

The following S.117 directions apply to this planning proposal.

Direction	Consistency / Comment
<p>1.5 Rural Lands. Must be consistent with the Rural Planning Principles in SEPP (Rural Lands) 2008.</p>	<p>The planning proposal is consistent with rural planning principles 7(d) ... to balance the social, economic and environmental interests of the community, and 7(e) ... the protection of native vegetation. To the extent that the proposal is inconsistent with the other rural planning principles is of minor significance.</p>
<p>2.1 Environmental Protection Zones. Must facilitate the protection and conservation of environmentally sensitive areas, and must not reduce the environmental protection standards that apply to land.</p>	<p>The proposal is consistent with this direction.</p>
<p>2.3 Heritage Conservation. Must contain provisions that protect natural and human heritage.</p>	<p>Planning proposal should be read in conjunction with existing Uralla LEP 2012 which does contain these provisions. The proposal is thus consistent with this direction.</p>
<p>2.4 Recreational Vehicle Areas. Must not enable land to be used for this purpose within environmental protection zone ...</p>	<p>The proposal is consistent with this direction.</p>

<p>3.1 Residential Zones. Specifies various provisions that should be included. It also states that the proposal must not contain provisions which will reduce the permissible residential density of land.</p>	<p>Planning proposal should be read in conjunction with existing Uralla LEP 2012 which generally meets the requirements. The proposal is thus consistent with this direction in this regard. However, the proposal does include a proposed increased in minimum lot size from 2ha to 5ha in order to ensure that no further subdivision can occur on one lot in the subdivision. The intent of this is to support the overall ecological protection measures proposed. This inconsistency with the direction is justifiable on the grounds of minor significance.</p>
<p>3.2 Caravan Parks and Manufactured home Estates. Proposal must contain certain provisions to permit caravan parks and manufactured home estates.</p>	<p>Planning proposal should be read in conjunction with existing Uralla LEP 2012 which does contain these provisions. The proposal is thus consistent with this direction.</p>
<p>3.3 Home Occupations. Must permit home occupations to be carried out in dwelling houses without the need for development consent.</p>	<p>Planning proposal should be read in conjunction with existing Uralla LEP 2012 which does contain these provisions. The proposal is thus consistent with this direction.</p>
<p>3.4. Integrating Land Use and Transport. The proposal must locate urban zones to facilitate the integration of land use and transport.</p>	<p>Planning proposal should be read in conjunction with existing Uralla LEP 2012 which does contain these provisions. The proposal is thus consistent with this direction.</p>
<p>4.4 Planning for Bushfire Protection. A planning proposal must incorporate various criteria to protect life, property and the environment from bushfire hazard.</p>	<p>The planning proposal is inconsistent with this direction as it does not contain all of the required development provisions as per the NSW Rural Fire Service guidelines <i>Planning for Bushfire Protection 2006</i>. A Bush Fire Asset Protection Plan has been carried out as part of the subdivision approval process. It is anticipated that the planning proposal will be consistent once written advice has been received from NSW Rural Fire Service after the Gateway Determination.</p>
<p>6.1 Approval and Referral Requirements</p>	<p>This planning proposal is consistent with this direction.</p>
<p>6.2 Reserving Land for Public Purposes</p>	<p>This planning proposal is consistent with this direction.</p>

3.3 Environmental, social and economic impact

3.3.1 *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?*

The effect of the proposal will be to reduce any potential adverse impacts on the identified endangered species and threatened ecological community.

3.3.2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The land is not flood prone. There are no defined watercourses on the topographic map and none were detected during site assessment of the subdivision.

A preliminary contaminated site investigation was carried out for subdivision. It recommended that the land was suitable for residential use.

The land is bushfire prone. A Bush Fire Asset Protection Plan was carried out in 2008. Building envelopes have been established to gain the best asset protection zones. All building construction assessed and carried out as per the provisions of the *Building Code of Australia 2012* and the NSW Rural Fire Services guideline *Planning for Bushfire Protection 2006* Appendix 3.

3.3.3 How has the planning proposal adequately addressed any social and economic effects?

The planning proposal to rezone some R5 land to E3 is the result of a development on land containing identified ecological values that need protection. The current owner of the land has agreed with the proposed rezoning as part of a strategic approach to ensuring that the ecological values are protected. The economic effects of the proposed change have thus already been internalised within the overall development. The most likely social effect would be from the increased value accorded by people to the enhanced protection of the identified threatened community and specie.

3.4 State and Commonwealth interests

3.4.1 Is there adequate public infrastructure for the planning proposal?

Not relevant to the planning proposal as no public infrastructure will be impacted through the creation of an environmental zone.

3.4.2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

The agencies that will be consulted with are the Department of Sustainability, Environment, Water, Population and Communities and the NSW Rural Fire Service. They will be consulted after completion of the gateway determination.

4 Proposed Community Consultation

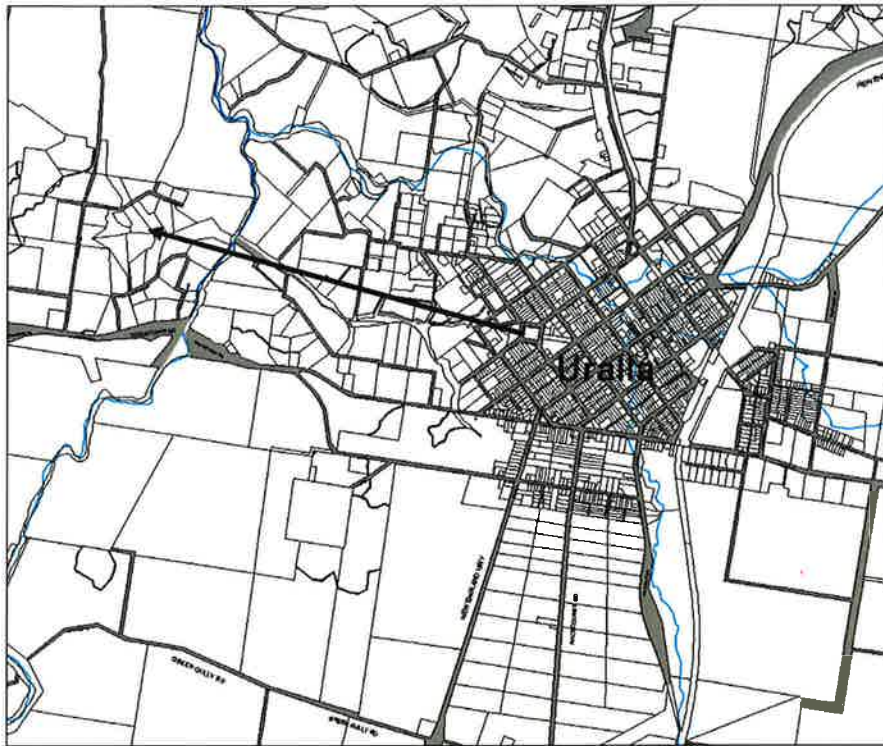
This proposal is considered to be a low impact planning proposal (in accordance with the Department of Planning's publication "A guide to preparing local environmental plans". As such, the required exhibition period only need be 14 days in duration. Once permission to undertake community consultation has been received from the Director-General, Council will undertake community consultation in accordance with the Department's guidelines. This will include:

- Notification in the local newspaper (Armidale Express);
- Notification on Council's website; and
- Written notification to the affected landowner and adjoining landowner's.

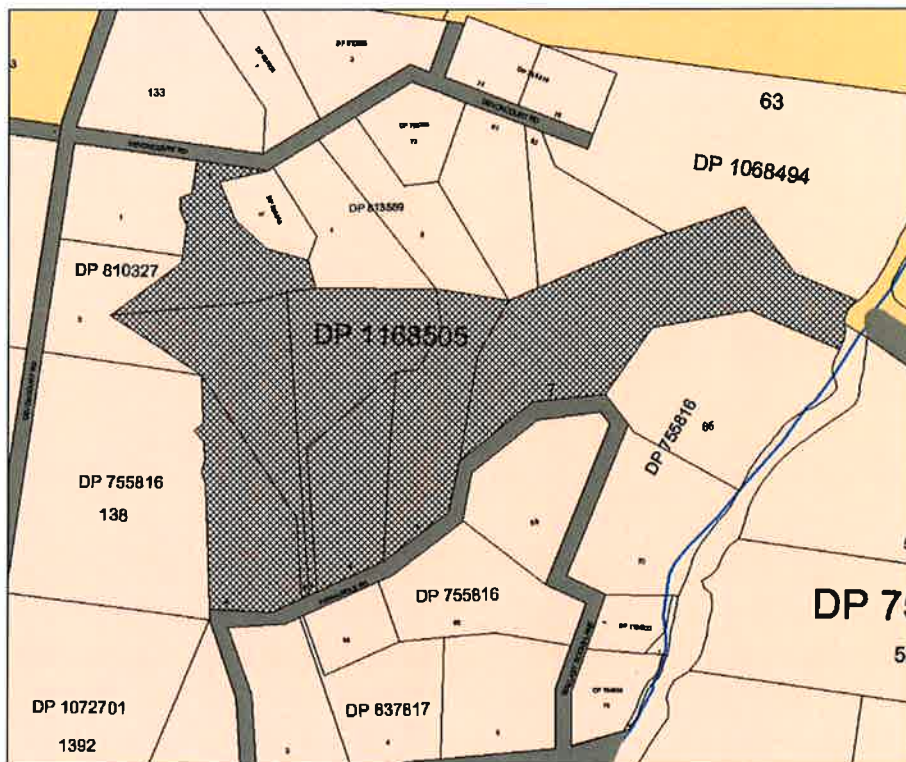
In addition, notification will be provided in Council's monthly newsletter which is circulated to all residents.

5 Mapping of the Proposed Changes

Location in relation to Uralla



Hatching indicates land to be rezoned from R5 to E3



Hatching indicates land to have minimum lot size changed from 2ha to 5 ha

