



Armidale Dumaresq Council

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Date 4 January 2010

Your Ref

Our Ref A09/4719



Mr C Diss
Team Leader, Northern Region
Department of Planning
PO Box 550
TAMWORTH NSW 2340

Dear Mr Diss

DRAFT AMENDMENT No 4 ARMIDALE DUMARESQ LEP 2008

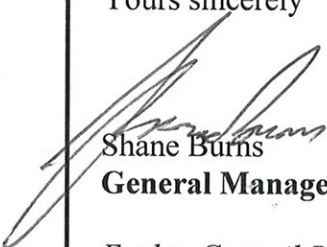
At its meeting on 21 December 2009 Council considered proposed minor amendments to Armidale Dumaresq Local Environmental Plan 2008 and resolved:

- “(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.”

The proposed amendments are considered to be of a minor nature for the reasons outlined in the Council report, a copy of which is enclosed. Please also find enclosed a completed Section 73A Environmental Planning and Assessment Act submission for the Department's consideration.

If you should have any further enquiries regarding this matter you may contact Council's Strategic Planner, Ms Kathy Martin, by phone (02) 6770 3632 or by email: kmartin@armidale.nsw.gov.au.

Yours sincerely


Shane Burns
General Manager

Encls: Council Report and Minute for Item 6.2, Council meeting held on 21 December 2009.
Section 73A EP&A Act submission.
Draft Amendment No 4 Armidale Dumaresq Local Environmental Plan 2008.

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thrive
in Armidale





Section 73A EP&A Act submission

Part A Council to complete

Subject:

Armidale Dumaresq Local Environmental Plan (Draft Amendment No 4)

Report requesting the making of amending local environmental plan under section 70 and section 73A.

Background:

Armidale Dumaresq Council resolved on 21 December 2009, to amend Armidale Dumaresq Local Environmental Plan 2008 (LEP 2008) and to request that the Minister for Planning make the plan under section 70 and section 73A of the *Environmental Planning and Assessment Act 1979*.

The draft amending plan is attached.

The land to which this amendment applies is:

1. Clause 15(7)(e) – land within the Rural Living 1(b) zone that is located between the Main Northern Railway Line and Long Swamp Road and shown with orange diagonal hatching on the LEP 2008 map.
2. Schedule 2 Heritage Items:
 - 108 Faulkner Street, Armidale
 - "Thalgarrah", 1602 Rockvale Road, Armidale
 - 116 Rusden Street, Armidale.

Why there is a need for the amendment:

1. Clause 15(7)(e) – the exhibited Draft Armidale Dumaresq LEP included the provision that 2 years following commencement of LEP 2008 (i.e. after 15 February 2010) consent may be granted for the erection of a dwelling house on land subject of subclause 15(7)(e). This provision was based on the recommendations of the Armidale Dumaresq Rural Residential Study (2005). However, the provision was inadvertently altered as part of the final legal drafting process just prior to gazettal of LEP 2008 so that consent may be granted to the erection of a dwelling house where a development application is submitted within 2 years of the commencement of LEP 2008. If the current 'sunset' provision in LEP 2008 is not removed, then after 15 February 2010 dwelling houses will not be permitted under circumstances where it was intended that they should be allowed, subject to consent.
2. Schedule 2 Heritage Items - the proposed amendment corrects the property descriptions for three heritage items listed in Schedule 2 of the LEP. The amendment is required to ensure that the properties are correctly listed.

What the amendment does:

1. Clause 15(7)(e) – the proposed amendment corrects a drafting error in LEP 2008 by removing the sunset provision for the erection of a dwelling house on land within the Rural Living 1(b) zone that is located between the Main Northern Railway Line and Long Swamp Road and is shown with orange diagonal hatching on the LEP map. The proposed amendment deletes the following from Clause 15(7)(e): "for an application lodged with the consent authority within 2 years of the commencement of this Plan".
2. Schedule 2 Heritage Items - the proposed amendment corrects typographical errors relating to the property descriptions for the following three heritage items listed in Schedule 2 of the LEP:
 - Replace 118 Faulkner Street with 108 Faulkner Street
 - Replace 1062 Rockvale Road with 1602 Rockvale Road
 - Replace 31 Faulkner Street with 116 Rusden Street.



Section 73A EP&A Act submission

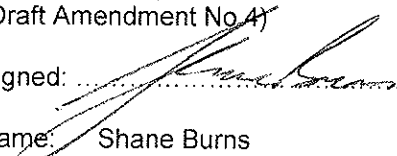
Why the amending plan is suitable to be made in accordance with section 73A:

The amending plan is suitable to be made in accordance with section 73A for the following reasons:

1. the amendment corrects a drafting error
2. the amendment corrects typographical errors.

It is not considered necessary to exhibit the amending plan as the proposed changes are consistent with the intent of Armidale Dumaresq LEP 2008.

The council requests that the Minister agree to make Armidale Dumaresq Local Environmental Plan 2008 (Draft Amendment No 4)

Signed:  Date: 4/1/10

Name: Shane Burns Position: General Manager

On behalf of: Armidale Dumaresq Council

Part B. Department of Planning use only

Date of referral to LEP Review Panel: (Insert date)

Department position:

The draft LEP amendment has been considered by the Department and it is satisfied that the amendment can be considered as a minor amendment under section 73A (see advice tagged 'A').

Parliamentary Counsel opinion:

The Parliamentary Counsel has provided an opinion indicating that the plan may legally be made (tagged 'B').

Recommendation:

It is recommended that the Minister:

- (a) under sections 70(1)(a) and (8) and section 73A of the *Environmental Planning and Assessment Act 1979* make tagged 'B')
(Name of LEP)

- (b) authorise the Department to advise council of the Minister's decision.



Section 73A EP&A Act submission

Date:

Signed: Name:

Position:
for Director-General

Armidale Dumaresq Local Environmental Plan 2008 (Draft Amendment No 4)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning

Armidale Dumaresq Local Environmental Plan 2008 (Draft Amendment No 4)

under the

Environmental Planning and Assessment Act 1979

1 Name of plan

This plan is *Armidale Dumaresq Local Environmental Plan 2008 (Draft Amendment No 4)*.

2 Aims of plan

The aim of this Plan is to correct a drafting error and typographical errors.

3 Land to which plan applies

This Plan applies to land to which *Armidale Dumaresq Local Environmental Plan 2008* applies.

Schedule 1 Amendment of Armidale Dumaresq Local Environmental Plan 2008

[1] Clause 15 Zone No 1(b) Rural Living

Omit “, for an application lodged with the consent authority within 2 years of the commencement of this Plan,” from subclause (7)(e).

[2] Schedule 2 Part 1

Omit the matter relating to No 118 Faulkner Street in Part 1.

Insert instead in appropriate order in Part 1:

No 108 Lands Office (corner Cinders Lane) Lot 6, Sec 5, DP 758032

Omit the matter relating to No 1062 Rockvale Road in Part 1.

Insert instead in appropriate order in Part 1:

No 1602 “Thalgarrah” Part Lot 1, DP 706601

[3] Schedule 2 Part 2

Omit the matter from St Peter’s Church Group relating to No 131 Former St Peter’s Church Hall (31 Faulkner Street)*.

Insert instead in appropriate order in Part 2:

No 131 Former St Peter’s Church Hall Lot 1 DP 605314
(116 Rusden Street)*



Item:	6.2	Ref: INT/2009/14428
Title:	DRAFT AMENDMENT No 4 TO ARMIDALE DUMARESQ LEP 2008	Container: A09/4719
Author:	Strategic Planner	
Attachments:	Nil	

Introduction:

Since the Armidale Dumaresq Local Environmental Plan (LEP) 2008 came into effect on 15 February 2008, some matters of a minor nature that require correction have been identified in the LEP. Initial corrections were made through Amendment No 1 to LEP 2008 which came into effect on 22 May 2009. Further minor amendments have been identified and will comprise Draft Amendment No 4 to Armidale Dumaresq LEP 2008.

It is proposed to make Draft Amendment No 4 in accordance with Sections 70 and 73A of the Environmental Planning and Assessment Act 1979. Section 73A seeks to expedite the making of minor LEP amendments by not requiring compliance with the procedures that usually apply to preparing and approving an LEP.

Report:

Armidale Dumaresq Local Environmental Plan 2008 (LEP 2008) was gazetted and came into effect on 15 February 2008. Since then some changes of a minor nature that require correction have been identified in the Plan. Initial corrections were made through Amendment No 1 to LEP 2008 which came into effect on 22 May 2009. Since then further minor amendments have been identified and it is proposed that Council seek to make these changes in accordance with Section 73A of the Environmental Planning and Assessment (EPA) Act 1979.

Section 73A allows for a minor LEP amendment to be expedited, without the need to comply with all of the statutory procedures which normally apply to the preparation of an LEP amendment. Minor amendments to LEPs still require the approval of the Minister for Planning.

The types of minor amendments to which Section 73A applies are those that:

- correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error;
- address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature;
- deal with matters that the Minister considers do not warrant compliance with the conditions that usually apply to the making of an LEP amendment because they will not have any significant adverse impact on the environment.



The consequence of a minor LEP amendment should be that there is no need for exhibition of the proposed amendment and it will not have any material effect 'on-the-ground'.

The proposed amendments to LEP 2008 are listed in the Table below. The differences between the current and proposed provisions are underlined and shown in italics and the reasons why the changes are considered to be of a minor nature are also provided.

	CURRENT PROVISION	PROPOSED PROVISION	COMPLIANCE WITH S.73A OF EPA ACT 1979
1.	Clause 15(7)(e) Dwelling houses in Rural Living 1(b) zone Consent may be granted, <i>for an application lodged with the consent authority within 2 years of the commencement of this Plan</i>, for the erection of a dwelling house ...	Clause 15(7)(e) Dwelling houses in Rural Living 1(b) zone Consent may be granted for the erection of a dwelling house ...	Drafting error. The exhibited Draft Armidale Dumaresq LEP included the intended provision that consent may be granted for the erection of a dwelling 2 years following the gazettal of LEP 2008, i.e. after 15 February 2010. However, the provision was inadvertently altered as part of the final legal drafting process just prior to gazettal of LEP 2008. If the 'sunset' provision for submitting a development application is not removed, then after 15 February 2010 dwelling houses will not be permitted under the circumstances where they would otherwise be permitted.
2.	Schedule 2 Heritage items Part 1 Individual buildings Faulkner Street No <u>118</u> Lands Office (corner Cinders Lane) Rockvale Road No <u>1062</u> "Thalgarrah" Part 2 Buildings in groups or located on special sites St Peter's Church Group No 131 Former St Peter's Church Hall (<u>31 Faulkner Street</u>)*	Schedule 2 Heritage items Part 1 Individual buildings Faulkner Street No <u>108</u> Lands Office (corner Cinders Lane) Rockvale Road No <u>1602</u> "Thalgarrah" Part 2 Buildings in groups or located on special sites St Peter's Church Group No 131 Former St Peter's Church Hall (<u>116 Rusden Street</u>)*	Typographical errors. Typographical error. Note: the building is located on the corner of Faulkner and Rusden Streets.



None of the proposed amendments are likely to result in any material effect 'on-the-ground'. The Department of Planning will determine whether the proposed LEP amendments in the Table will be subject to section 73A of the EPA Act 1979.

Financial Implications:

There are unlikely to be financial implications should Draft Amendment No 4 to LEP 2008 proceed.

Environmental Implications:

The proposed minor amendments to LEP 2008 will contribute to the achievement of the environmental outcomes intended by the LEP and are unlikely to have any significant adverse impact on the environment.

Policy Issues:

The proposed amendments to LEP 2008 will ensure that the provisions in the document are accurate and internally consistent.

Management Plan Issues:

There are no apparent Management Plan issues associated with proposed Draft Amendment No 4 to LEP 2008.

Social Implications:

One of the minor amendments to the LEP 2008 seeks to correct a drafting error which would otherwise result in the loss of 'dwelling entitlements'. Therefore, it is considered desirable that the drafting error be corrected.

Risk Management Issues:

The proposed amendments to the Armidale Dumaresq LEP 2008 will ensure that the provisions in the document are accurate and internally consistent.

Legal Issues:

The proposed amendments to the Armidale Dumaresq LEP 2008 will ensure that the provisions in the document are accurate and internally consistent.

RECOMMENDATION:

- (a) That Armidale Dumaresq Local Environmental Plan 2008 be amended as outlined in this 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*.



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).

The Motion on being put to the Vote was CARRIED UNANIMOUSLY.

DIVISION The result being:-

FOR: Councillors Beyersdorf, Ducat, Gadd, Halligan, Kelly, Richardson, Robinson and Whan

AGAINST: Nil.

6.2 DRAFT AMENDMENT NO 4 TO ARMIDALE DUMARESQ LEP 2008

Ref: INT/2009/14428

Moved Cr Richardson Seconded Cr Gadd

- (a) That Armidale Dumaresq Local Environmental Plan 2008 be amended as outlined in this 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*.

The Motion on being put to the Vote was CARRIED UNANIMOUSLY.

DIVISION The result being:-

FOR: Councillors Beyersdorf, Ducat, Gadd, Halligan, Kelly, Richardson, Robinson and Whan

AGAINST: Nil.

Councillors Ducat and Kelly and Mr Gow left the Chamber at 8.05pm and Councillor Beyersdorf took the Chair (Acting)

