

Item: 6.1 **Ref:** INT/2015/01590
Title: Draft Amendment No 4 Armidale Dumaresq LEP 2012
Container: A13/6135
Author: Manager Sustainability and Strategic Planning
Attachments: 1. Southern boundary for proposed R1 General Residential zone

RECOMMENDATION:

- (a) That the Planning Proposal for Draft Amendment No 4 to Armidale Dumaresq Local Environmental Plan 2012, prepared by consultants All About Planning and amended by Council, which proposes to:
- Rezone Part Lot 9 and Lot 10 DP 836850 and the adjoining Ross Street road reserve, Armidale, from E4 Environmental Living to R1 General Residential, and
 - Alter the minimum lot size standards applying to Lots 9 and 10 DP 836850 and the adjoining Ross Street road reserve, as follows:
 - From 1 hectare to 500 square metres for land proposed to be rezoned from E4 Environmental Living to R1 General Residential
 - From 4 hectares to 3 hectares for the part of Lot 9 DP 836850 that will retain its current E3 Environmental Management zoning,
- be forwarded to the Department of Planning and Environment with a request for a Gateway Determination, in accordance with the *Environmental Planning and Assessment Act 1979*.
- (b) That a further report be provided to Council after a Gateway Determination is issued and following public exhibition of the Planning Proposal for Draft Amendment No 4 to Armidale Dumaresq Local Environmental Plan 2012.
- (c) That the proponent, All About Planning, be advised of Council's resolution.

GENERAL MANAGER'S ADVISORY NOTE TO:

Councillors

Applicant

Persons making public submissions (written or verbal) Members of the Public

Record (Division) of Voting

In accordance with Section 375A(3) of the Local Government Act 1993, a Division is required to be called whenever a motion for a planning decision is put at a meeting of the Council or a Council Committee.

Relevant Planning Application

In accordance with Section 147(4) of the Environmental Planning and Assessment Act 1979, a person who makes a relevant planning application to Council is required to disclose the following reportable political donations and gifts (if any) made by a person with a financial interest in the application within the period commencing 2 years before the application is made and ending when the application is determined:

- (a) All reportable political donation made to any local councillor of the Council;

- (b) All gifts made to any local councillor or employee of the Council.

Relevant Public Submission

In accordance with Section 147(5) of the Environmental Planning and Assessment Act 1979, a person who makes a relevant public submission to Council in relation to a relevant planning application made to the Council is required to disclose the following reportable political donations and gifts (if any) made by the person making the submissions or any associate of that person within the period commencing two years before the submission is made and ending when the application is determined:

- (a) All reportable political donations made to any local councillor of the Council;
- (b) All gifts to any local councillor or employee of the Council.

Disclosure of Reportable Political Donations and Gifts

Planning Applications - Nil

Public Submission - Nil

Introduction:

PROPOSAL: Planning Proposal to rezone land and amend minimum lot size standards

PROPERTY DESCRIPTION/ADDRESS: Part Lot 9 and Lot 10 DP836850. 53A The Avenue Armidale

APPLICANT: All About Planning

LAND OWNER: Mr PM & Mrs JT Hanna.

Council has received a Planning Proposal to amend Armidale Dumaresq Local Environmental Plan 2012 (LEP 2012). The Planning Proposal has been prepared by consultants All About Planning on behalf of the owners of 53A The Avenue. It seeks to rezone part of the property from E4 Environmental Living to R1 General Residential and alter the minimum lot size standard to enable future residential subdivision of the land. The proposed amendments will also apply to an access denial strip and the Ross Street road reserve adjoining 53A, 53B and 53C The Avenue, Armidale. The access denial strip is owned by Council and classified as Operational land under the *Local Government Act 1993*. Due to its classification Council may sell or dispose of the access denial strip.

While a Planning Proposal can be prepared by a developer, landowner or a consultant on behalf of a landowner, Council is responsible for the quality and accuracy of the information as well as the content of a Planning Proposal. The Planning Proposal for 53A The Avenue has been reviewed by Council officers and certain changes have been made. The main change has been to alter the proposed southern boundary for that part of 53A The Avenue to be zoned R1 General Residential. This alteration has been included in the Planning Proposal in order to minimise the impact of future residential development on the scenic values of the Environment Protection zones.

Council will not be seeking to use its local plan making delegations as the Planning Proposal does not satisfy the types of LEP amendments routinely delegated by the Department of Environment and Planning (DP&E) to councils.

This Report recommends that the Planning Proposal prepared by All About Planning and amended by Council be forwarded to DP&E with a request for a Gateway Determination.

[Note: A site inspection for Councillors will be arranged prior to the meeting.]

Report:

The first step in amending a local environmental plan (LEP) is preparing a Planning Proposal. A Planning Proposal explains the intended effect of a proposed LEP and sets out the justification for making the amendment. Section 55(2) of the *Environmental Planning and Assessment Act 1979* (EPA Act) sets out the matters to be included in a Planning Proposal. A Planning Proposal can be prepared by a council, a landowner, developer or a third party on behalf of a landowner or council. Irrespective of who prepares a Planning Proposal, council is responsible for the content of the Planning Proposal and quality of the information provided in support of the proposal. Council must ensure that the information is accurate, current and sufficient for issuing a Gateway determination and detailed enough for the purposes of consulting with agencies and the general community (*A Guide to Preparing Planning Proposals*, NSW Department of Planning and Infrastructure, 2012).

Planning Proposal No. 4

Council has received a Planning Proposal to amend LEP 2012. The Planning Proposal has been prepared by consultants All About Planning on behalf of the owners of Lot 9 DP 83650 (Lot 9) at 53A The Avenue, Armidale. The proposed amendment comprises rezoning part of Lot 9 from E4 Environmental Living to R1 General Residential and altering the corresponding minimum lot size standard for subdivision from 1 hectare to 500m². The Planning Proposal would enable future residential subdivision and development of 53A The Avenue, Armidale.

Environment Protection zones

The primary purpose of the environment protection zones is to protect the scenic values of the land and the visual contribution that the ridges, hilltops and supporting slopes makes to the setting of Armidale.

Environment protection zones have been in place for Armidale city since at least 1988 when Armidale LEP 1988 came into effect. Under Armidale LEP 1988 the average minimum lot size (MLS) for subdivision in the Environmental Protection Zone was 10 hectares. A review of the zones was undertaken in 1995 by Hilltop Planners – Manidis Roberts. The *City of Armidale Environmental Protection Zone Review* (EP Review) recommended some changes to the zone boundaries and differentiated between ‘support’ or ‘prime’ scenic areas based on a visual assessment. LEP 2008 adopted the revised zone boundaries and introduced support and prime scenic zones, with a MLS of 1 hectare and 4 hectares, respectively. The MLSs were based on consideration of the EP Review’s recommendations along with the outcomes of the *Visual Assessment Report for Dumaresq Shire* (EDAW, 1993). The provisions in LEP 2008 were carried through into Council’s Standard Instrument LEP 2012, with the support scenic zone becoming E4 Environmental Living and the prime scenic zone becoming E3 Environmental Management.

The EP Review was carried out at a landscape scale, not at the level of individual properties. Varying the environmental zone boundaries on an individual property may be considered where a visual analysis demonstrates that the variation being sought does not adversely impact on the visual significance of the hills, ridges and slopes surrounding Armidale. The Planning Proposal submitted by All About Planning includes a Scenic Quality/Visual Impact Analysis for the proposed rezoning of part Lot 9 from E4 Environmental Living to R1 General Residential.

Review of Planning Proposal No. 4

The Planning Proposal submitted by All About Planning has been reviewed and certain changes have been made. The main changes are:

- realigning the southern boundary of the proposed R1 General Residential zone on Lot 9 from an approximation of the Reduced Level (RL) 1080 to follow the RL 1080 contour in order to reduce the visual impact of future residential development on the scenic values of land in the environment protection zones. Consideration of this matter is included in Attachment 1 to this Report.
- rezoning Lot 10 DP 836850 (Lot 10) and the adjoining Ross Street road reserve from E4 Environmental Living to R1 General Residential. Lot 10 is an access denial strip adjoining the northern boundary of 53A The Avenue as well as the adjoining properties to the west at 53B and 53C The Avenue. It was created when the subdivision creating 53A, 53B and 53C The Avenue was registered. Council no longer requires access denial strips where it wishes to control access to its roads. If road access needs to be controlled, this is usually achieved by requiring a suitable covenant to be placed on the land at the time the Title Plan for a subdivision is registered. Lot 10 is owned by Council and is classified as Operational land under the Local Government Act 1993. Due to its classification Council may sell or dispose of Lot 10. Future residential subdivision of Lot 9 does not require the developer to own Lot 10 although the developer may wish to do so that the land can be incorporated into Lot 9.
- reducing the MLS from 4 hectares to 3 hectares for that part of Lot 9 that will retain its E3 Environmental Management zoning in order to allow the creation of a lot for the existing dwelling house on the land. The area of the land zoned E3 on Lot 9 is approximately 3.13 hectares.
- varying the justification for any inconsistencies between the Planning Proposal and the New England Development Strategy (Worley Parsons, 2010), which has been adopted by Council and endorsed by the Director-General of the DP&E. The Planning Proposal submitted by All About Planning considered the proposed R1 General Residential zoned land to be part of the supplementary supply or land bank identified in the New England Development Strategy. A supplementary supply was included in the Strategy to ensure sufficient residentially zoned land would be available to meet the projected population growth for Armidale up to 2021. The proposed residential rezoning does not form part of the supplementary supply and is inconsistent with the Strategy. However, the review of the Planning Proposal has identified reasons justifying the inconsistency with the Strategy and supporting the proposed residential rezoning. The reasons mainly relate to maximizing development of land suitable for residential purposes prior to carrying out future residential rezonings of land on the urban fringes.

The Planning Proposal that includes the changes resulting from the review by Council officers is included in Attachment 2 to this Report.

Next step

Planning Proposal No. 4 may be forwarded to the Department of Planning and Environment (DP&E) with a request for a Gateway Determination. In doing so, Council will not be seeking to use its local plan making delegations as the proposal does not satisfy the delegations outlined in *A Guide to Preparing Local Environmental Plans* (Department of Planning and Infrastructure, 2013) for the following reasons:

- the Planning Proposal is for a spot rezoning which is not consistent with a local strategy endorsed by the Director-General of the DP&E, i.e. the New England Development Strategy (2010), and

- the Planning Proposal is for a spot rezoning and is not an upzoning of land in existing areas zoned for residential, business and industrial purposes. The upzoning applies to land currently zoned environment protection.

Should the proponent not support the amendments resulting from the council officers' review of the Planning Proposal, the proponent may ask the DP&E for a pre-Gateway review. The outcomes of the review are informed by advice from Regional Panels or the Planning and Assessment Commission.

Financial Implications:

There may be financial implications to Council should Council sell Lot 10 so it may be incorporated into future residential development of Lot 9. Future residential subdivision of Lot 9 is not dependent on Council selling Lot 10 to the developer of Lot 9.

Environmental Implications:

The Planning Proposal seeks to rezone land from E4 Environment Protection to R1 General Residential and is supported by a visual analysis of the impact of the proposed rezoning on the scenic values of the E4 zone. The issue of whether such a rezoning could provide a precedent is considered in the Planning Proposal and it is concluded that it is unlikely to set an undesirable precedent.

Policy Issues:

Not applicable.

Social Implications:

The proposed zoning will provide land suitable for future residential development that may place some demand on existing facilities but due to the scale of the development it will not require significant new social infrastructure. The land is in proximity to schools and recreational areas that can be accessed by pedestrians and/or cyclists. Other social infrastructure can be readily accessed via public transport (buses and taxis) and private vehicles.

Integrated Planning and Reporting Issues:

By providing new housing sites, the Planning Proposal is considered to support the following Strategic Objectives in Council's Community Strategic Plan 2013-2028:

- Support our local economy
- Develop and sustain the economic growth of the local government area.

Risk Management Issues:

There are no known constraints, eg flooding, bushfire, applying to the land subject of the Planning Proposal.

Legal Issues:

Preparation of an amending LEP must be in accordance with the *Environmental Planning and Assessment Act 1979*.