



Item: 7.6 **Ref:** INT/2010/09794
Title: PLANNING PROPOSAL TO EXTEND SUNSET PERIOD
FOR RURAL DWELLING ENTITLEMENTS
Container: A02/0582-16
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Attachments: 1. Notation report on rural dwelling entitlements 1 June 2010
2. DIGAR letter on rural dwelling sunset clauses
3. Planning Proposal to extend sunset period for rural
dwelling entitlements

Introduction:

Under Armidale Dumaresq Local Environmental Plan 2008 (LEP 2008) certain historical 'dwelling entitlements' in the General Rural 1(a), Rural Living 1(b) and Rural Fringe 1(c) zones will expire on 15 February 2011.

It is proposed to amend LEP 2008 by extending the sunset period for another two years to allow consideration of historical dwelling entitlements in the Rural 1(a) and 1(b) zones within the context of the 'regional' LEP. The four Councils involved in preparing the 'regional' LEP(s) all have provisions in their current LEPs for historical dwelling entitlements and preparation of the regional LEP(s) has sought to adopt a consistent approach across the four local government areas wherever possible. The proposed amendment has also been in part due to recent development industry and community concerns at the loss of rural dwelling entitlements in February 2011. The opportunity will also be taken to correct drafting errors which occurred just prior to the gazettal of LEP 2008, to ensure consistent use of the terms 'holding' and 'existing holding' as defined in the Dictionary to LEP 2008 and Dumaresq LEP No 1, as amended.

It is proposed to include the Planning Proposal for extending the sunset period for rural dwelling entitlements with the Planning Proposal to remove rural fringe release areas in Draft Amendment No 6 to LEP 2008, which is subject of a separate Report on this Business Paper.

Report:

For the purposes of this Report a 'dwelling entitlement' means the erection of a dwelling is permitted subject to development consent.

Under LEP 2008 two types of dwelling entitlements in the General Rural 1(a), Rural Living 1(b) and Rural Fringe 1(c) zones will expire on 15 February 2011, being three years from the date of gazettal of the LEP (the sunset provisions). Details of the two types of dwelling entitlements are set out overleaf. These types of dwelling entitlements are frequently referred to as 'historical' dwelling entitlements as they have been carried through from previous LEPs, in this case Dumaresq LEP No. 1, as amended.



Holdings or lots that may be affected by the sunset provisions include those that are below the minimum lot size for rural housing which normally applies in the current rural zones. The minimum lot size standards which normally apply under LEP 2008 are 200 hectares in Rural 1(a) zone and 40 hectares in Rural 1(b) zone and the Rural 1(c) zone outside the first release areas. In relation to the Rural 1(c) zone it is proposed to remove the staged release areas and permit large lot residential development throughout the zone. This proposed amendment is subject of a separate Report on this Business Paper.

Background

During preparation of the then Draft Armidale Dumaresq LEP (Draft LEP), NSW Agriculture indicated the provisions for dwelling entitlements anywhere in the rural zone below the minimum lot size area presents the opportunity for de facto hobby farming under the guise of agriculture.

At the beginning of 2005 Council sought certification of the Draft LEP from the Department of Planning to enable public exhibition of the draft plan. The Draft LEP that Council sent to the Department included the historical dwelling entitlements in the Rural 1(a) zone, without a sunset clause. The Department advised that the Draft LEP should include a sunset clause that would allow for historical dwelling entitlements to continue for up to three years after the LEP commenced. The three year sunset provision was included for historical dwelling entitlements in the Rural 1(a) zone prior to public exhibition of the Draft LEP.

In introducing a sunset clause it was felt that as some historical dwelling entitlements under Dumaresq LEP No. 1 dated back many years, it could be argued that they could be phased out on the basis that sufficient time had passed in which to utilise such entitlements. Retaining the provisions indefinitely also increased the potential for future landuse conflict between residents on smaller lots within predominantly agricultural areas.

The provisions in the Draft LEP for the Rural 1(b) and 1(c) zones, which were based on the Armidale Dumaresq Rural Residential Study (2005), did not retain historical dwelling entitlements as new dwelling entitlements were being introduced. However, they were re-introduced into the Draft LEP following exhibition to cover any possible instances where an historical dwelling entitlement may not be covered by the new entitlements proposed in the Draft Plan.

Additional background information including notification and consideration of submissions on the Draft LEP relating to the sunset clauses for rural dwelling entitlements, was distributed to Councillors on 1 June 2010, a copy of which is included in the Attachments.

Relevant dwelling entitlements

The particular types of dwelling entitlements that are subject to the sunset provisions in LEP 2008 are those relating to 'existing holdings' or to lots created in accordance with Dumaresq LEP Nos. 1 to 6:



- 'Existing holdings' dwelling entitlements were preserved initially 25 years ago when Dumaresq LEP No 1 was gazetted in June 1985. Under LEP 2008, consent may be granted for a development application lodged with Council by 15 February 2011 for the erection of a dwelling house on land within the Rural 1(a), Rural 1(b) or 1(c) zones where the land comprises the whole of an 'existing holding'.
- Dwelling entitlements for lots created in accordance with Dumaresq LEP Nos 1 to 6 were initially preserved in full 18 years ago with the gazettal of Dumaresq LEP No 7 on 31 July 1992. Some aspects of this type of dwelling entitlement relate to lots created for the purpose of a dwelling up to 35 years ago. Under LEP 2008 consent may be granted for an application lodged with Council by 15 February 2011 for the erection of a dwelling house on a lot within the Rural 1(a), 1(b) or 1(c) zones where the lot was created prior to 31 July 1992 and a dwelling house could have been erected on the lot under Dumaresq LEP Nos 1 to 6.

Proposed amendments and justification

It is now proposed to extend the sunset period for the above dwelling entitlements in the Rural 1(a) and 1(b) zones by 2 years, that is up to 15 February 2013. It is not proposed to extend the sunset period in the Rural 1(c) zone as it is proposed to remove the provisions in LEP 2008 for the staged release of land for large lot residential subdivision. The removal of staged land release provisions means that all land within the Rural Fringe 1(c) zone will be able to be subdivided, with consent, into lots with a minimum lot size of 2 hectares or, where the lot is to be connected to a reticulated sewerage system, a minimum lot size of 1 hectare (refer to relevant Report on this Business Paper).

One of the reasons for extending the sunset provisions in Rural 1(a) and 1(b) zones by 2 years is to enable further consideration of retaining or removing historical dwelling entitlements as part of preparing the 'regional' LEP(s). The four Councils involved in preparing the 'regional' LEP(s) all have provisions in their current LEPs for existing holdings, with the relevant dates varying between 1970 and 1995. Preparation of the regional LEP(s) has sought to adopt a consistent approach across the four local government areas wherever possible.

While there may be valid planning reasons for phasing out or removing historical dwelling entitlements, such as avoiding future potential for rural land use conflict and rationalising service demands relating to new rural housing, these reasons should be considered along with equity and natural justice issues for affected property owners as part of preparing the regional LEP(s).

Further, since preparation of LEP 2008, the Department of Planning has indicated that Councils may retain historical dwelling entitlements in their LEPs, with or without sunset provisions. This has been reflected in the Circular issued with State Environmental Planning Policy – Rural Lands (2008) and recently exhibited draft Model clauses for the Standard LEP Instrument. In recent weeks, Council has also received development industry (refer to Attachments) and some community concerns about the lapsing of historical dwelling entitlements in the Rural 1(a) and 1(b) zones.



It is also proposed to amend LEP 2008 to correct drafting errors which occurred prior to its gazettal. Both amendments seek to ensure that the provisions in LEP 2008 are consistent with the definition of a 'holding' in the Dictionary to LEP 2008 and with the original provisions in Dumaresq LEP No 1, as amended. The amendments comprise:

- Altering the definition for an 'existing holding' in Clauses 14(6) and 15(7)(f) by inserting the underlined words into the definition of 'existing holding' so that 'existing holding' means:
 - (a) except as provided by paragraph (b), a holding comprising a lot or parcel of land as it was on 26 July 1974, or
 - (b) if on 14 June 1985, a person owned 2 or more adjoining or adjacent lots or parcels of land, a holding comprising the aggregation of the areas of those lots or parcels as they were on 26 July 1974.
- Altering Clause 15(7)(b) so that the land referred to in part (iv) is a 'holding' and not a 'lot'.

The proposed amendments to LEP 2008 are included in the Planning Proposal attached to this Report. It is recommended that this Planning Proposal be included with the Planning Proposal to remove rural fringe release areas to form Draft Amendment No 6 to LEP 2008.

The attached Planning Proposal requires Council's endorsement to be sent to the Department of Planning for a Gateway Determination which will indicate whether the proposal can proceed and the required consultations with the community and State government agencies.

Financial Implications:

Financial implications to the value of a rural property where a dwelling entitlement is extinguished.

Environmental/Policy Implications:

Extending the sunset period for historical dwelling entitlements will enable a co-ordinated consideration of this issue across the Councils involved in preparing the regional LEP(s).

Management Plan Issues:

None apparent.

Social Implications:

Phasing out dwelling entitlements likely to reduce some rural property values while potentially improving agricultural sustainability by reducing land use conflict. Extending the sunset period for historical dwelling entitlements will enable a co-ordinated consideration of this issue across the Councils involved in preparing the regional LEP(s).

Risk Management Issues:

None evident.

Legal Issues:



An amending LEP must be prepared in accordance with the relevant provisions of the Environmental Planning and Assessment Act 1979.

RECOMMENDATION:

- (a) That Council endorse the Planning Proposal in the Attachments which seeks to amend Armidale Dumaresq Local Environmental Plan 2008 by:**
 - (i) increasing the sunset period from 3 years to 5 years for historical dwelling entitlements in General Rural 1(a) and Rural Living 1(b) zones, and**
 - (ii) correcting drafting errors to ensure provisions are consistent with the definition of a holding in the LEP Dictionary and with the original provisions in Dumaresq Local Environmental Plan No 1, as amended.**
- (b) That Council forward the Planning Proposal referred to in (a) to the Minister for Planning, requesting that a Gateway Determination be provided in accordance with Section 56 of the Environmental Planning and Assessment Act 1979.**