

PLANNING PROPOSAL

COMPONENT B

EXTENSION OF SUNSET PERIOD FOR DWELLING ENTITLEMENTS IN GENERAL RURAL 1(a) AND RURAL LIVING 1(b) ZONES AND CORRECTION TO DRAFTING ERRORS

Prepared by

ARMIDALE DUMARESQ COUNCIL

PART 1 - OBJECTIVES OR INTENDED OUTCOMES OF THE PROPOSED LEP

The intended outcomes of this Planning Proposal are:

- to extend the sunset period for certain historical dwelling entitlements in Zone 1(a) General Rural and Zone 1(b) Rural Living under Armidale Dumaresq Local Environmental Plan (LEP) 2008 by a period of two (2) years. The current sunset period is 3 years from commencement of Armidale Dumaresq LEP 2008, which occurred on 15 February 2008.
- to correct a drafting error in the definition of 'existing holdings' in Zone 1(a) General Rural and Zone 1(b) Rural Living so that it is consistent with the definition in Dumaresq LEP No 1, as amended.
- to correct a provision relating to a dwelling entitlement on a holding in Zone 1(b) Rural Living. The correction will remove inconsistent use of the terms 'lot' and 'holding'.

The particular types of dwelling entitlements that are subject to the sunset provisions in Armidale Dumaresq 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 - 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) and 1(b) 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 - 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) or 1(b) 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.

PART 2 - EXPLANATION OF PROVISIONS TO BE INCLUDED IN THE PROPOSED LEP

The intended outcome of the Planning Proposal shall be achieved by:

- amending the period for lodgement of a development application under clauses 14(8)(c) and 14(8)(d) of Armidale Dumaresq LEP 2008 from three (3) years to five (5) years from the commencement of the Plan; and
- amending the period for lodgement of a development application under clauses 15(7)(c) and 15(7)(d) of Armidale Dumaresq LEP 2008 from three (3) years to five (5) years from the commencement of the Plan.

- amending the definition of ‘existing holdings’ in clauses 14(6) and 15(7)(f) of Armidale Dumaresq LEP 2008 to become:

‘existing holding’ means:

- (a) except as provided by paragraph (ii), 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.
- amending clause 15(7)(b) of Armidale Dumaresq LEP 2008 so that provision (iv) can become “the land is a holding with the same configuration as it had on 1 July 2004.” The proposed changes to clause 15(7)(b) are shown as underlined:

Consent may be granted for a dwelling house to be erected on land in this zone if:

- (i) the land is a lot that has an area of at least 40 hectares, or
- (ii) the land is a lot lawfully created before the commencement of this Plan in accordance with clause 11 of *Dumaresq Local Environmental Plan No 1*, as amended, or Dumaresq Local Environmental Plan 3, 5 or 17, or
- (iii) the land is a lot referred to in subclause 6(d) and the consent authority is satisfied that the dwelling house is ancillary or subsidiary to the present or intended development or use of the lot for the purpose of agriculture, or
- (iv) the land is a holding with the same configuration as it had on 1 July 2004.

PART 3 - JUSTIFICATION

A. NEED FOR THE PLANNING PROPOSAL.

A1. Is the Planning Proposal a result of any strategic study or report?

It is proposed to amend Armidale Dumaresq 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 preparing the ‘regional’ LEP(s). The ‘regional’ LEP(s), which will be based on the Standard Instrument, is being prepared for Armidale Dumaresq, Guyra Shire, Uralla Shire and Walcha Councils. Preparation of the regional LEP(s) has sought to adopt a consistent approach across the four local government areas wherever possible.

Guyra LEP 1988, Uralla LEP 1988 and Walcha LEP 200 all contain provisions relating to historical dwelling entitlements in rural zones. Extending the sunset period for the relevant clauses in Armidale Dumaresq LEP 2008 will enable further investigation of the issue across the four Councils and the possibility of a consistent approach regionally.

The Planning Proposal has also been in part due to recent local development industry and community concerns at the proposed loss of some rural dwelling entitlements in February 2011.

Preparation of the Planning Proposal has also taken the opportunity to correct words or terms relating to rural dwelling entitlements that were inadvertently changed during the final legal drafting stages of preparing Armidale Dumaresq LEP 2008.

A2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The Planning Proposal is considered the best means of achieving the intended outcomes described in Part 2.

A3. Is there a net community benefit?

It is considered that there will be no overall change to net community benefit as a result of the Planning Proposal. Extending the sunset period for historical dwelling entitlements in the Rural 1(a) and 1(b) zones:

- will maintain the supply of rural land on which a dwelling is permitted and therefore, not adversely affect housing affordability
- may increase the potential for rural land use conflict
- may reduce the potential for rationalising service demands relating to new rural housing
- will allow the equity and natural justice issues for affected property owners to be further investigated.

B. RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK.

B1. Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including exhibited draft strategies)?

A New England Development Strategy has been prepared to inform preparation of the regional LEP(s) for Armidale Dumaresq, Uralla Shire, Guyra Shire and Walcha Councils. The New England Development Strategy (February 2010) was endorsed by the Director General, NSW Department of Planning on 16 March 2010.

With regard to rural land and associated dwelling entitlements, the New England Development Strategy notes that *the Government's current position is that current minimum lot sizes for a locality can be retained. Any proposals to vary existing minimums will need to be based on the set of principles contained in State Environmental Planning Policy (Rural Lands) 2000.*

It is also noted in the Strategy that *applications for rural dwellings are subject to development consent and an assessment on merit. In this respect, the minimum size area merely identifies the amount of rural land required before an application can be made for a dwelling. At this stage the New England Strategic Alliance of Councils (NESAC) considers it appropriate to maintain the existing range of minimum lot sizes over the four LGAs.*

With regard to dwelling entitlement sunset clauses the Strategy notes that *preparation of a new LEP provides the opportunity for a Council to apply a sunset clause to dwelling entitlement, but makes no specific recommendation for action in relation to existing clauses in Armidale Dumaresq LEP 2008.*

This Planning Proposal is consistent with the New England Development Strategy in that it intends to maintain current provisions with respect to dwelling entitlements in Rural 1(a) and 1(b) zones under Armidale Dumaresq LEP 2008. A two (2) year extension of the existing sunset periods for a dwelling in Rural 1(a) and 1(b) zones will enable the current situation to continue until such time as the matter can be assessed and re-examined in the broader context of the regionally based Standard Instrument LEP(s), which Council intends to undertake within the two (2) year extension period.

B2. Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Armidale Dumaresq Council is currently in the process of preparing its Community Strategic Plan which is due for completion by June 2011. The Council has prepared a Consultation and Discussion Document for the preparation of an Armidale Dumaresq Community Strategic Plan 2011-2021.

While the Consultation and Discussion Document has a strong economic and social focus, there are no specific objectives relating to rural housing. Loss of rural diversity is identified as a problem/issue/constraint with regard to having a strong and resilient local economy and it is considered that this issue can be partly addressed through the Planning Proposal by maintaining existing opportunities for rural housing and, therefore, diversity of land use and development in rural areas.

B3. Is the Planning Proposal consistent with applicable state environmental planning policies?

The Planning Proposal is not considered to be inconsistent with applicable state environmental planning policies (refer to Appendix 1).

The Department of Planning Circular PS 08-002 *State Environmental Planning Policy (Rural Lands) 008* indicated a shift in the approach that the Department had taken to rural dwelling entitlements during preparation of Armidale Dumaresq LEP 2008. The Planning Proposal is considered to be consistent with the information and advice provided in the Circular.

B4. Is the planning proposal consistent with applicable Ministerial Directions (s. 117 directions)?

Details of the level of consistency between the Planning Proposal and applicable s.117 Ministerial Directions are contained in Appendix 2.

C. ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

C1. 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?

A specific assessment of the likelihood of threatened species, populations, ecological communities or their habitats occurring on any of land within the Rural 1(a) or 1(b) zones to which the Planning Proposal applies has not been undertaken and is beyond Council's resources to do so.

The Planning Proposal will retain the requirement for a development application to be submitted for a dwelling under the subject sunset clauses. It is considered that this process of development assessment is sufficient to allow for the presence of any threatened species, populations, ecological communities or their habitats occurring on the land to be specifically assessed on a site-by-site basis. This method is consistent with the assessment of any development application that would be undertaken under the current sunset provisions.

C2. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

Specific lots to which the Planning Proposal applies may be subject to environmental constraints, however an individual assessment of affected land has not been undertaken and would be beyond Council's resources.

The Planning Proposal will not remove the requirement for a development application to be submitted for any dwelling proposed under the sunset clauses for the Rural 1(a) and 1(b) zones under Armidale Dumaresq LEP 2008. The development application process will enable a thorough assessment of individual specific sites and the incorporation of appropriate conditions of development consent to manage any arising environmental issues.

C3. How has the planning proposal adequately addressed any social and economic effects?

Social and economic effects which may need to be considered for a proposal to erect a dwelling in the Rural 1(a) or 1(b) include European and Aboriginal cultural heritage. Such matters will be considered and addressed as part of the development application process, as is currently the case.

The Planning Proposal will also permit further investigation of equity and natural justice issues for affected property owners to be investigated, particularly within a regional context.

D. STATE AND COMMONWEALTH INTERESTS.

D1. Is there adequate public infrastructure for the Planning Proposal?

The main type of public infrastructure required for dwellings in Rural 1(a) and 1(b) zones is adequate road connections to Armidale. Where existing infrastructure is not sufficient, development must comply with Council's requirements, which are included in Armidale Dumaresq Development Control Plan 2007: Chapter D4 – Development in Rural and Rural Residential Zones Code.

Although the extension of the sunset period for certain rural dwelling entitlements may potentially create an additional demand for essential services such as health, transport, education and emergency services this is unlikely to have a significant impact on these services.

D2. What are the views of State and Commonwealth Public Authorities consulted in accordance with the Gateway Determination, and have they resulted in any variations to the Planning Proposal?

To be completed following consultation with the State and Commonwealth Public Authorities identified in the Gateway Determination.

PART 4 - COMMUNITY CONSULTATION THAT IS TO BE UNDERTAKEN

The Planning Proposal, which is considered to be a low impact Planning Proposal in accordance with 'A Guide to Preparing Local Environmental Plans' (Department of Planning, 2009), will be exhibited for 14 days.

Notice of the public exhibition will be given:

- (a) in the Armidale Extra newspaper and Armidale Independent newspaper;
- (b) on Council's web-site at www.armidale.gov.au

Appendix 1: Consideration of State Environmental Planning Policies

The following State Environmental Planning Policies apply to the Armidale Dumaresq local government area (as at 18 June 2010) and are considered relevant to this Planning Proposal.

SEPP	Applicable	Consistent
SEPP No. 1 - Development Standards	Yes	Yes
SEPP No. 15 - Rural Landsharing Communities	Yes	Yes
SEPP No. 44 - Koala Habitat Protection	Yes	Yes
SEPP No. 55 - Remediation of Land	Yes	Yes
SEPP (Building Sustainability Index: BASIX) 2004	Yes	Yes
SEPP (Exempt and Complying Development Codes) 2008	Yes	Yes
SEPP (Rural Lands) 2008	Yes	Yes

Appendix 2: Consideration of Section 117 Ministerial Directions

1. Employment and Resources

	Applicable	Consistent
1.1 Business and Industrial Zones	No	Not applicable
1.2 Rural Zones	Yes	Yes
1.3 Mining, Petroleum Production and Extractive Industries	Yes	See below
1.4 Oyster Aquaculture	No	Not applicable
1.5 Rural Lands	Yes	See below

1.3 Mining, Petroleum Production and Extractive Industries

Clause 3(b) of Ministerial Direction 1.3 (as below) applies to the Planning Proposal as a dwelling permitted under the Planning Proposal may have the potential to be incompatible with mineral related developments.

- (b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.

However, the level of inconsistency between the proposed LEP and the provisions of Ministerial Direction 1.3 is considered to be of minor significance for the following reasons:

- a dwelling house is currently, and has previously been, permitted in rural zones under the historical dwelling entitlement clauses in Armidale Dumaresq LEP 2008 where there may be potential for incompatibility with current or proposed mineral resource developments. The proposed LEP will not alter this existing situation.
- a development application for a dwelling house in a rural zone under Armidale Dumaresq LEP 2008, whether permitted under a general provision or sunset provision of that Plan, requires an assessment of the proposal under Section 79C of the Environmental Planning and Assessment Act 1979. The matters for consideration under Section 79C require both the likely impact of the proposed development and the suitability of the site for the development to be assessed. It is considered that this process of development assessment allows for potential conflict with mineral resource developments to be adequately addressed.

Council has been provided with a copy of the NSW Department of Primary Industries – Statewide Mineral Resource Audit (July 2009) for the Armidale Dumaresq local government area. Accordingly, Council is aware of the location of identified mineral resources and considers that no further consultation with the Director-General of the Department of Primary Industries is necessary for this Planning Proposal.

1.5 Rural Lands

Ministerial Direction 1.5 applies by virtue of clause 3(a), being *a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary)*.

Accordingly, the planning proposal must be consistent with the Rural Planning Principles listed in SEPP (Rural Lands) 2008. The Planning Proposal is not considered to be inconsistent with the Rural Planning Principles outlined in clause 7 of SEPP (Rural Lands) 2008. Moreover, it is considered that the proposed LEP will achieve the following specific Rural Planning Principles:

- (a) *the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) *n/a*
- (c) *recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) *in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) *n/a*
- (f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

2. Environment and Heritage

	Applicable	Consistent
2.1 Environment Protection Zones	Yes	Yes
2.2 Coastal Protection	No	Not applicable
2.3 Heritage Conservation	Yes	See below
2.4 Recreation Vehicle Areas	Yes	Yes

2.3 Heritage Conservation

The Planning Proposal does not include heritage provisions, which is considered to be of minor significance, as relevant heritage provisions are currently included in Division 5 of Armidale Dumaresq LEP 2008.

3. Housing, Infrastructure and Urban Development

	Applicable	Consistent
3.1 Residential Zones	Yes	Yes
3.2 Caravan Parks and Manufactured Home Estates	Yes	Yes
3.3 Home Occupations	Yes	Yes
3.4 Integrating Land Use and Transport	No	Not applicable
3.5 Development Near Licensed Aerodromes	Yes	Yes (see below)

3.5 Development Near Licensed Aerodromes

The Planning Proposal applies to certain land within Zone No 1(b) in the vicinity of Armidale Regional Airport. The Planning Proposal is considered to be consistent with Ministerial Direction 3.5 for the following reasons:

- Armidale Dumaresq LEP 2008 currently contains provisions relating to development in the vicinity of Armidale Regional Airport, including provisions requiring consultation with the Civil Aviation Safety Authority for tall structures and structures that exceed the limitations specified in the Obstacle Limitation Surface Plan, and consideration of airport generated noise;
- a dwelling house is currently permitted on certain land in Rural Living 1(b) under Armidale Dumaresq LEP 2008 in the vicinity of Armidale Regional Airport subject to consideration of matters relating to noise, the obstacle limitation surface plan, height of structures and lighting (Armidale Dumaresq LEP 2008 clauses 41, 42, 43, 44 and 45). This situation will not be altered by the Planning Proposal; and
- the Planning Proposal does not intend to rezone any land.

4. Hazard and Risk

	Applicable	Consistent
4.1 Acid Sulfate Soils	No	Not applicable
4.2 Mine Subsidence and Unstable Land	No	Not applicable
4.3 Flood Prone Land	Yes	Yes (see below)
4.4 Planning for Bushfire Protection	Yes	Yes (see below)

4.3 Flood Prone Land

A Flood Study has not been undertaken by Council for areas outside the urban area of Armidale. However, there is likely to be land subject to flooding in the Rural 1(a) and 1(b) zones and, therefore, possibly land affected by the historical dwelling entitlements subject of the sunset provisions. The Planning Proposal will alter a provision in Armidale Dumaresq LEP 2008 that may affect flood prone land.

Development applications for dwellings in the rural areas subject of the sunset clauses will continue to be assessed, including any issues relating to flooding, as they have to date. In this respect the situation is not altered by the Planning Proposal and, therefore, any inconsistency with the Direction is considered to be of minor significance.

4.4 Planning for Bushfire Protection

The Planning Proposal applies to land within Zone 1(a) General Rural and Zone 1(b) Rural Living under Armidale Dumaresq LEP 2008, part of which is mapped as bushfire prone land.

In accordance with Ministerial Direction 4.4 (4), Council will consult with the NSW Rural Fire Service following receipt of a Gateway Determination for this Planning Proposal.

5. Regional Planning

	Applicable	Consistent
5.1 Implementation of Regional Strategies	No	Not applicable
5.2 Sydney Drinking Water Catchments	No	Not applicable
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	No	Not applicable
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	No	Not applicable
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	No	Not applicable
5.8 Second Sydney Airport: Badgerys Creek	No	Not applicable

6. Local Plan Making

	Applicable	Consistent
6.1 Approval and Referral Requirements	Yes	Yes
6.2 Reserving Land for Public Purposes	Yes	Yes
6.3 Site Specific Provisions	No	Not applicable

7. Metropolitan Planning

	Applicable	Consistent
7.1 Implementation of the Metropolitan Strategy	No	Not applicable