

**Item:** 7.1.1 **Ref:** AINT/2016/06488  
**Title:** Planning Proposal No 10 to amend Armidale Dumaresq LEP 2012  
**Container:** A16/7020  
**Author:** Acting Director Planning and Environmental Services  
**Attachments:** 1. Planning Proposal No 10 - October 2016  
2. Threatened Species Assessment

**RECOMMENDATION:**

- a) **That Planning Proposal No 10 to amend Armidale Dumaresq Local Environmental Plan 2012, which proposes to:**
- **rezone Lots 661 and 662 DP 755808, Lot 1 DP 1129031 and Lot 2 DP 1213220 at 48-72 Kurrawatha Avenue, Armidale, from R5 Large Lot Residential to part R2 Low Density Residential and part E4 Environmental Living, and**
  - **alter the lot size standard for Lots 661 and 662 DP 755808, Lot 2 DP 1213220 and part Lot 1 DP 1129031 to 4,000m<sup>2</sup>,**
- be forwarded to the Department of Planning and Environment with a request for a Gateway Determination, in accordance with section 56 of the *Environmental Planning and Assessment Act 1979*.**
- b) **That a further report be provided to Council following public exhibition of Planning Proposal No 10 to amend Armidale Dumaresq Local Environmental Plan 2012.**
- c) **That the proponent be advised of Council's resolution.**

**Introduction:**

Council has received a Planning Proposal to amend Armidale Dumaresq Local Environmental Plan 2012 (ADLEP 2012) from New England Surveying & Engineering, prepared on behalf of the owners of 48-72 Kurrawatha Avenue, Armidale. The Planning Proposal applies to the northern part of the property at 48-72 Kurrawatha Avenue, Armidale.

The objective of the Planning Proposal is to zone Lots 661 and 662 DP 755808, Lot 2 DP 1213220 and part Lot 1 DP 1129031 at 48-72 Kurrawatha Avenue, Armidale, to R2 Low Density Residential and reduce the lot size standard to enable future subdivision of this part of the property. It is also proposed to protect the environmental values of a section of Martins Gully that traverses Lot 1 DP 1129031 by zoning part of this lot to E4 Environmental Living. The proposed E4 zoning will also prevent subdivision and the erection of dwellings on flood prone land along this section of Martins Gully.

This report recommends that the Planning Proposal submitted by New England Surveying & Engineering, as amended by Council, be forwarded to the Department of Planning and Environment with a request for a Gateway Determination. Council will be seeking to use its local plan making delegations as the Planning Proposal is considered to be of local significance, subject to the agreement of the Gateway.

**Report:**

The Planning Proposal submitted by New England Surveying & Engineering has been reviewed and amended by Council staff and is in Attachment 1.

### **Planning Proposal No 10**

Planning Proposal No 10 applies to Lots 661 & 662 DP 755808, Lot 2 DP 1213220 and Lot 1 DP 1129031 (the Site), which form part of the property at 48-72 Kurrawatha Avenue, Armidale. The Site is currently zoned R5 Large Lot Residential. Generally, the minimum lot size standard for R5 zoned land is 2 hectares, except where a reticulated water supply and sewerage services are available when the minimum lot size standard becomes 1 hectare, which is the current situation for the Site.

The Planning Proposal proposes to rezone the Site to part R2 Low Density Residential with a minimum lot size standard of 4,000m<sup>2</sup> and part E4 Environmental Living with a lot size standard of 2 hectares. The intended outcome of the Planning Proposal is to allow for low density residential subdivision of part of the Site while restricting future development of flood prone land and protecting riparian values along most of Martins Gully, which traverses the eastern section of the Site.

The Site is approximately 12.5 hectares and forms the northern part of the property at 48-72 Kurrawatha Avenue. The total area of the property is 39.6 hectares. Development consent (DA-2-2014) was granted by Council on 2 May 2014 for a 28 lot subdivision of the entire property. The southern part of the property will retain its current part E3 Environmental Management and part E4 Environmental Living zonings with minimum lot size standards of 4 hectares and 1 hectare, respectively. The proponent has indicated that the proposed rezoning of the Site will allow for a master plan approach to future subdivision of the entire property and provide a greater choice of lot sizes for the market.

The Planning Proposal is supported by a Threatened Species Assessment (3E Environment Engineering and Energy, 2013). The Threatened Species Assessment is in Attachment 2.

### **Request for Gateway Determination and local plan making delegations**

The next step in progressing the Planning Proposal is to refer it to the Department of Planning and Environment (DP&E) with a request for a Gateway Determination.

The Planning Proposal does not meet the types of proposed LEP amendments that are routinely delegated to councils, although other types of LEP amendments may be delegated if the Gateway agrees that the matter is of local significance. Council will be seeking to use its local plan making delegations on the basis that the proposed LEP amendment is considered to be of local significance.

### **Community Engagement and Internal Consultation**

Part 5 of Planning Proposal No 10 suggests that community consultation comprise public exhibition of the proposal for 28 days, including notification to adjoining landowners. The final form of the community consultation will be specified in the Gateway Determination.

The review of the submitted Planning Proposal by Council's Strategic Planning staff involved consultations with relevant Council staff, including Engineering services.

Section D of the Planning Proposal recommends the Commonwealth and State agencies to be consulted regarding the proposal, subject to the Gateway Determination.

### **Financial Implications**

Clause 11 of the *Environmental Planning and Assessment Regulation 2000* (EPA Regulation) allows Council to enter into an agreement or arrangement with a person who requests preparation of a Planning Proposal for the payment of the costs and expenses incurred by Council in undertaking studies and other matters required in relation to the Planning Proposal. Council has entered into an agreement with the landowner for Planning Proposal No 10 to pay for costs associated with preparing the proposal in accordance with the Fees Schedule in Council's Operational Plan 2016-2017.

### **Good Governance**

#### Statutory

An LEP is a statutory document and preparation and making of an amending LEP must be in accordance with the EPA Act and EPA Regulation. Section 55(2) of the EPA Act sets out the matters to be included in a Planning Proposal.

Section B of the Planning Proposal also considers whether the Planning Proposal is consistent with relevant State Environmental Planning Policies (statutory plans) and Ministerial Directions under section 117 of the EPA Act.

The Planning Proposal is considered to be consistent with applicable State Environmental Planning Policies and applicable section 117 Directions, except for the following directions:

- Section 117 Direction 1.3 *Mining, Petroleum Production and Extractive Industries* – inconsistency is considered to be of minor significance and therefore justified.
- Section 117 Direction 1.5 *Rural Lands* – inconsistency is considered to be of minor significance and therefore justified.
- Section 117 Direction 4.3 *Flood Prone Land* – the inconsistency is considered to be justified as there is a process in place to ensure that any flood related controls applying to the Site will be within the framework of a Flood Plain Risk Management Plan (FRMP) being prepared for Armidale. Until such time as the FRMP is prepared and adopted, future development will be restricted on that part of the Flood Planning Area to be zoned E4. For the remainder of the Flood Planning Area on the Site the current flood related planning controls in LEP 2012 and Armidale Dumaresq Development Control Plan 2012 will apply to development of this land.
- Section 117 Direction 3.5 *Development Near Licensed Aerodromes* - to address the inconsistency the Planning Proposal recommends that the Commonwealth Department for licensed aerodromes be consulted, subject to a Gateway determination.

#### Policy and risk management

The *Armidale Flood Study Review and Update – Stage 3* (BMT WBM, 2014) identifies the eastern part of the Site along Martins Gully and a tributary to Martins Gully as being below the Flood Planning Level. A Floodplain Risk Management Plan (FRMP) will be prepared for the urban reaches of Dumaresq Creek in Armidale in accordance with the State government's *Floodplain Development Manual 2005*. The planning controls, including LEP provisions, applying to the Site will be reviewed along with those applying to other flood prone land in Armidale as part of preparing the FRMP. It is anticipated that the FRMP will be finalised by the end of 2016 and if LEP amendments are recommended these will be introduced in a single LEP amendment that introduces flood planning controls for land in the Dumaresq Creek floodplain.

In the intervening period, between the Site being zoned in accordance with the Planning Proposal and a single LEP amendment for flood prone land coming into effect, risks associated with flooding on the Site will be managed as follows:

- The Planning Proposal proposes to rezone most of the land along Martins Gully to E4 Environmental Living and apply the lot size standard of 2 hectares, the combined effect of which will be to prevent subdivision and/or the erection of dwellings on this land.
- For the remainder of the land below the Flood Planning Level that the Planning Proposal zones R2 Low Density Residential, any development applications will be subject to the current provisions of the EPA Act and ADLEP 2012:
  - Any development that involves works within 40 metres of a watercourse is likely to require a Controlled Activity Approval under the *Water Management Act 2000* and the development application would be subject to the provisions for integrated development under the EPA Act.
  - Clause 6.2 *Flood Planning* in ADLEP 2012 applies to land below the Flood Planning Level. It seeks to minimise flood risks to life and property associated with the use of the land as well as avoiding significant adverse impacts on flood behaviour and the environment. There is sufficient land available in the proposed R2 zone to provide for building envelopes above the Flood Planning Level and flood free access can be made available to the western part of the Site by providing a suitably designed crossing over Martins Gully and its tributary. It is therefore considered that the impact of flooding on lot layout, appropriate building sites and the provision of flood free access can be addressed as part of a development application for future development of the Site.

The Site is not identified as bush fire prone land on Council's Bush Fire Prone Land Map.

#### **Integrated Planning and Reporting Framework**

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

- Our People – to have a strong and resilient local economy
- Our Environment – to manage the landscape for improved water quality and riparian stability.

#### **Sustainability Assessment**

##### Social and physical infrastructure

The proposed R2 Low Density Residential zoning will provide for 21 potential residential lots on the Site that may place some demand on existing social infrastructure. However, due to the scale of future development the impact on existing social infrastructure is considered to be limited. The Site is in proximity to schools and bus routes and within walking/cycling distances to recreation areas. Other social infrastructure can be readily accessed by public transport (buses and taxis) and private vehicles.

Adequate physical infrastructure (eg water supply, sewerage services, roads, power and telecommunications) is available, or can be made available, to serve future low density development of the Site.

The Site is located within the Airport Buffer zone for the Armidale Regional Airport. However, it is not within an Australian Noise Exposure Forecast contour for the Airport of 20 or greater.

Future development of the Site will not penetrate the Obstacle Limitation Surface for the Airport and is unlikely to be adversely affected by aircraft noise or result in aviation hazards such as bird strikes.

#### Heritage

The Planning Proposal recommends that an Aboriginal cultural heritage assessment of the Site be undertaken subject to a Gateway Determination or as part of a future development application to develop the land. There are no European heritage items on or adjoining the Site.

#### Environmental protection

Land along Martins Gully has been identified as being flood prone and having environmental values. The proposed E4 Environmental Living zone will include flood prone land, riparian areas and trees that form part of a Ribbon Gum woodland that is listed as an endangered ecological community under the *Threatened Species Conservation Act 1995*. The proposed E4 zoning and lot size standard of 2 hectares will assist in protecting the environmental values of this land by preventing subdivision and/or the erection of dwellings.