

Planning Proposal – Orange Local Environmental Plan 2011 – Amendment 1

Introduction

The purpose of this document is to describe a planning proposal for an amendment of the Orange Local Environmental Plan 2011, to be known as amendment 1. The preparation of a planning proposal is the first step in preparing an LEP (or an amendment to an LEP).

Note: Throughout the course of preparing the proposed LEP, the planning proposal evolves. This is particularly the case for complex proposals in which the initial gateway determination will confirm the technical studies and consultation required to justify the proposal.

As the studies and consultation are undertaken, relevant parts of the planning proposal will be updated, amended and embellished. Therefore, particularly when viewed at an early stage, the level of detail in a planning proposal may appear to be limited in one or more respects.

This planning proposal has been prepared in accordance with the Department of Planning and Infrastructure's document *A guide to preparing planning proposals* and is comprised of four parts;

Part 1 Objectives and Intended Outcomes

This part comprises a brief statement outlining the objectives and intended outcomes of the proposed amendment.

Part 2 Explanation of the Provisions

This part comprises a plain English explanation of the provisions and changes that are to be included in the amendment.

Part 3 Justification

This part establishes the justification for the objectives, outcomes and provisions and the process for their implementation.

Part 4 Community Consultation

This part details the level and methods of community consultation that is to be undertaken on the planning proposal.

Part 1 Objectives and Intended Outcomes

The objectives of this planning proposal are:

To provide for a diversity of lifestyle options and housing opportunities at a mix of price points, within the capacity of existing and planned infrastructure, having regard to the need to protect and maintain productive agricultural lands and ecological values, and

To amend the Minimum Lot Size Map and Urban Release Area Map to provide for additional rural residential development opportunities in proximity to the urban areas of Orange without compromising the long term urban expansion needs of the community, and

To amend the Minimum Lot Size map, Land Zoning Map, and Urban Release Area Map to provide for additional urban residential opportunities and infill development in proximity to existing and planned infrastructure, and

To facilitate the planned expansion of the Orange Airport, and

To amend the Land Zoning Map and Minimum Lot Size Map to allow for the planned expansion of the Orange Airport and its future management, and

To provide for appropriate protection of Orange's cultural heritage, and

To amend the Heritage Map to provide for additional heritage conservation items, an additional heritage conservation area and alteration to an existing heritage conservation area, and

To rectify unintended consequences with regard to dual occupancies in Ploughmans Valley, and

To introduce a new provision permitting subdivision of dual occupancies below the minimum lot size on certain land in Ploughmans Valley, and

To provide flexibility in the extent of rural subdivision to appropriately cater for intensive plant agriculture, and

To introduce a new provision permitting subdivision of land in rural and environmental zones below the minimum lot size for the purpose of intensive plant agriculture, and

To introduce a new provision clarifying that all subdivision of land is, or will be, adequately provisioned with essential services.

Part 2 Explanation of the Provisions

Amendment of the Minimum Lot Size Map in accordance with the proposed Minimum Lot Size Map shown at attachment 1

Amendment of the Land Zone Map in accordance with the proposed Land Zone Map shown at attachment 2

Amendment of the Heritage Map in accordance with the proposed Heritage Map shown at attachment 3

Amendment of the Urban Release Area Map in accordance with the proposed Urban Release Area Map shown at attachment 4

Amendment of the Orange Local Environmental Plan 2011 written instrument to amend column 3 of the table to clause 4.1B in relation to dual occupancies in Zone R2 Low Density Residential to remove the entry:

1,250 square metres in areas with a minimum lot size on the Lot Size Map

And insert in it's place the following entry:

1,200 square metres in areas with a minimum lot size on the Lot Size Map

Amendment of the Orange Local Environmental Plan 2011 written instrument to include the following additional local provision, inserted in the appropriate order:

4.1C Exceptions to minimum lot sizes for certain residential development

(1) This clause applies to the following land:

(a) land in Ploughmans Valley that is within Zone R2 Low Density Residential and identified on the Minimum Lot Size Map as having a minimum lot size of 850 square metres.

(2) Despite any other provision of this Plan, development consent may be granted to the subdivision of land to which this clause applies if:

(a) a dual occupancy is lawfully erected on the land, and

(b) the area of each resulting lot will not be less than:

(i) 650 square metres for a dual occupancy (attached), or

(ii) 600 square metres for a dual occupancy (detached) or multi dwelling housing, and

(c) only one dwelling will be located on each lot resulting from the subdivision.

(3) Development consent may be granted to a single development application for development to which this clause applies that is both of the following:

- (a) *the subdivision of land into 2 or more lots,*
- (b) *the erection of a dual occupancy (attached) or dual occupancy (detached) with a single dwelling on each lot resulting from the subdivision, if the size of each lot is equal to or greater than:*
 - (i) *650 square metres for a dual occupancy (attached), or*
 - (ii) *600 square metres for a dual occupancy (detached) or multi dwelling housing.*

Amendment of the Orange Local Environmental Plan 2011 written instrument to include the following additional local provision, inserted in the appropriate order:

4.2B Rural subdivision for intensive plant agriculture

- (1) *The objectives of this clause are as follows:*
 - (a) *to enable flexibility in the application of lot size standards for subdivision for the purpose of intensive plant agriculture, which is intended to include an associated dwelling,*
 - (b) *To apply controls on subdivision to avoid land being used for non-sustainable intensive plant agriculture.*
- (2) *This clause applies to the following rural and environmental zones:*
 - (a) *RU1 Primary Production,*
 - (b) *E3 Environmental Management*

Note. *The SEPP (Rural Lands) 2008 and the Department of Primary Industries 'Assessing Intensive Plant Agriculture Developments' sets out other relevant issues for consent authorities to consider when assessing intensive plant agriculture applications.*

- (3) *Land in a zone to which this clause applies may, with development consent, be subdivided for the purpose of intensive plant agriculture to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land.*
- (4) *However, such a lot cannot be created if an existing or new dwelling house would as a result of the subdivision, be situated on the lot unless the consent authority is satisfied that:*
 - (a) *The allotment has an area of not less than 25ha and,*
 - (b) *The land is being or will be used for the purpose of intensive plant agriculture and,*
 - (c) *The quality and area of the land is suitable for the commercial production of the proposed or existing intensive plant agriculture use and,*
 - (d) *The dwelling house is required to support the carrying out of any such purpose, and*

- (e) *The land has an average annual rainfall, recorded over a minimum five year period, sufficient for the proposed use, or the land is subject or will be subject to irrigation requiring a licence under the Water Act 1912 or Water Management Act 2000 and the volume and entitlement of water available under this licence is adequate for the proposed use, and*
- (f) *Services for the supply of electricity and other infrastructure to support the agricultural activity are available or adequate arrangements have been made to make them available when required, and*
- (g) *The sustainable intensive plant agriculture activity must have commenced or been established before the subdivision is registered.*

Note. *The SEPP (Rural Lands) 2008 and the Department of Primary Industries 'Assessing Intensive Plant Agriculture Developments' sets out other relevant issues for consent authorities to consider when assessing intensive plant agriculture applications.*

Amendment of the Orange Local Environmental Plan 2011 written instrument to amend clause 4.2A to include subclause 7 and the associated notation, inserted in the appropriate order as follows:

- (7) *Despite any other provision of this clause, development consent must not be granted for the erection of a dwelling house on land which is being, or is intended to be used for the purpose of intensive plant agriculture unless the consent authority is satisfied that:*
 - (a) *The land is located wholly within Zone RU1 Primary Production or E3 Environmental Management or a combination of those two zones, and*
 - (b) *The lot has an area of not less than 25ha and,*
 - (c) *The land is being or will be used for the purpose of intensive plant agriculture and,*
 - (d) *The quality and area of the land is suitable for the commercial production of the proposed or existing intensive plant agriculture use and,*
 - (e) *The dwelling house is required to support the carrying out of any such purpose, and*
 - (f) *The land has an average annual rainfall, recorded over a minimum five year period, sufficient for the proposed use, or the land is subject to, or will be subject to irrigation requiring a licence under the Water Act 1912 or Water Management Act 2000 and the volume and entitlement of water available under this licence is adequate of the proposed use.*
 - (g) *Services for the supply of electricity and other infrastructure to support the agricultural activity are available or adequate arrangements have been made to make them available when required.*
 - (h) *The sustainable intensive plant agriculture activity must have commenced or been established over 50% of the lot before the dwelling house is approved.*

Note. *The SEPP (Rural Lands) 2008 and the Department of Primary Industries 'Assessing Intensive Plant Agriculture Developments' sets out other relevant issues for consent authorities to consider when assessing intensive plant agriculture applications.*

Amendment of the Orange Local Environmental Plan 2011 written instrument to include the following additional local provision, inserted in the appropriate order:

7.11 Essential services

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) storm water drainage or on-site conservation,*
- (e) suitable road access.*

Part 3 Justification

Section A – Need for the planning proposal

1. *Is the planning proposal a result of any strategic study or report?*

Yes. The Orange City Council Sustainable Settlement Strategy (SSS) and its May 2010 update identified the supply and demand situation for urban development to the 2030. The Blayney, Orange, Cabonne subregional strategy identifies a range of sites across the three LGAs that are suitable for larger lifestyle allotments.

The planning proposal is the result of a council resolution of 16 May 2011, which deferred consideration of subdivision for intensive plant agriculture as well as a number of submissions seeking rural residential subdivision potential.

2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

The planning proposal is the best known means of achieving the intended outcomes. In reaching this conclusion the following alternative approaches were considered:

- Drafting a local clause to provide flexible subdivision for rural-residential lifestyle allotments in agricultural areas. This was rejected on the grounds that it would result in a scatter gun pattern of lifestyle allotments which would maximise land use conflicts with surrounding productive agricultural lands.
- Amending the minimum lot size map in agricultural areas to provide for a mix of lot sizes, such as 16ha, 25ha, 40ha and the like that may be more suited to intensive plant agriculture. This was rejected on the grounds that such lot sizes need to be tied firmly to the establishment and ongoing operation of an intensive plant agriculture operation. Without this nexus any reduced lot size would simply be used for oversized rural-residential allotments.

3. *Is there a net community benefit?*

Yes. The result of the planning proposal will provide greater flexibility and variety in housing options catering to a range of lifestyle preferences. Additionally, flexibility in the subdivision of land for intensive plant agriculture will enable the land to respond to its best, highest order use within an agricultural context. This will also enhance food security and the viability of this sector of the local economy.

Section B – Relationship to strategic planning framework

4. *Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?*

Yes. The Blayney, Orange, Cabonne subregional strategy details the need to provide for an appropriate level of rural-residential lifestyle allotments.

5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

Yes. The Orange Community Strategic Plan was adopted by Council on 19 April 2012 and contains a series of Delivery and Operational Plans. Each of these are divided into four categories, being 'city', 'community', 'economy' and 'environment'. The environment sections are the most directly relevant to the planning proposal. The objectives of which include to:

Undertake research and review of community aspirations to support the planning and regulation of balanced growth and development

The planning proposal directly responds to the strategies and actions outlined within the Community Strategic Plan

6. Is the planning proposal consistent with applicable state environmental planning policies?

Yes. The planning proposal is considered to be consistent with all SEPP's. Of most direct relevance is the SEPP (Rural Lands) 2008. This SEPP seeks:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,
- (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) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,
- (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.

In selecting lands for rural lifestyle, settlement and housing opportunities, Council has sought to preserve as much productive agricultural land as possible and minimise potential conflicts between future residents and the operational needs of agricultural enterprises. This has been done through selection of sites that are contiguous with the existing urban footprint and by seeking to achieve higher densities on land already identified for lifestyle residential purposes, thereby reducing the extent of sprawl into agricultural areas.

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

Yes. Direction 1.2 Rural Zones, Direction 1.5 Rural Lands, Direction 3.1 Residential Zones, Direction 4.3 Flood Prone Land, Direction 4.4 have all been considered in the preparation of this planning proposal.

Direction 1.2 Rural Zones states that a planning proposal must:

- (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.
- (b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).

Except that a planning proposal may be inconsistent with the above where a planning authority can satisfy the Director-General that the inconsistency is:

- (e) justified by a strategy which:
 - (i) gives consideration to the objectives of this direction,
 - (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
 - (iii) is approved by the Director-General of the Department of Planning, or
- (b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or
- (c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
- (d) is of minor significance.

In this regard Council has prepared the planning proposal to be consistent with adopted strategies such as the Sustainable Settlement Strategy, Blayney, Cabonne and Orange Sub-Regional Rural and Industrial Land Use Strategy. It is therefore considered that the inconsistencies are supported by those strategies and of a minor significance.

Section C – Environmental, social and economic impact

8. *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?*

No. The sites selected for rural residential subdivision potential have been chosen to avoid conflicts with ecologically sensitive lands.

9. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

None envisaged.

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

The planning proposal seeks to improve the range of diversity of housing opportunities available within the LGA. This is intended to improve both local social and local economic outcomes for the community.

Section D – State and Commonwealth interests

11. *Is there adequate public infrastructure for the planning proposal?*

Yes. Rural-residential subdivisions of 2ha and above do not require reticulated sewer and the existing road network in the vicinity of the selected sites able to absorb the minor increase in traffic.

12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Not applicable, the planning proposal is at the pre-gateway stage.

Part 4 Community Consultation

Community consultation will be undertaken in accordance with the requirements of the gateway determination. It is anticipated that this proposal will not be deemed to be a low impact proposal. Accordingly an exhibition period of 28 days is expected.

This will commence by giving notice of the public exhibition of the planning proposal via:

- an advertisement in the Central Western Daily;
- a notification on the Orange City Council website www.orange.nsw.gov.au; and
- written advice direct to adjoining landowners.

All forms of the notice shall include:

- a brief description of the objectives and intended outcomes of the planning proposal;
- an indication of the land affected by the planning proposal;
- the location and dates where the planning proposal may be inspected;
- the contact name and address at Orange City Council where submissions may be directed; and
- the closing date of the submission process.

During the exhibition period, the following materials will be made freely available for public inspection:

- The planning proposal, in the form approved for community consultation by the Director-General of Planning;
- The gateway determination; and
- All studies and supporting material relied upon by the planning proposal.

Following the exhibition period, a report will be prepared analysing any submissions received and making recommendations as to any appropriate changes or adjustments to the planning proposal, for the consideration of Orange City Council.

Where contact details have been provided all persons and organisations making a submission will be advised of the date and time of the relevant council (or committee) meeting where the report is to be considered, and subsequently advised of the determination.