



REPORT: Orana Mall Planning Proposal

AUTHOR: Planning Services Supervisor
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EXECUTIVE SUMMARY

A Planning Proposal, or Local Environmental Plan amendment application, has been lodged for the rezoning of Lot 1 DP 258008 and Part Lot 2 DP 258008 from RE1 Public Recreation to B2 Local Centre under the provisions of the Dubbo Local Environmental Plan 2011. This is the first amendment to the new LEP. Any amendment to the LEP now requires assessment and consideration in accordance with the new 'Gateway' system for the Local Environmental Plan amendments from the State Department of Planning and Infrastructure.

The Planning Proposal was lodged on 17 February 2012 by the owner of the adjoining Orana Mall Marketplace who has also offered to purchase the land from Council subject to the land being rezoned as proposed. A copy of the Planning Proposal documentation submitted by the Applicant is provided attached in **Appendix 1**.

It is considered that rezoning the land to B2 Commercial Core will not provide any substantial economic impacts in the short or medium term based on the size, shape and characteristics of the land, as the owners of Orana Mall propose to utilise the land for vehicle parking, which has been recently constructed on the land.

The Economic Impact Assessment provided with the Planning Proposal has provided information that the land could be used for commercial purposes in the future. Based on the fact that under the provisions of the former Dubbo Local Environmental Plan 1998 – Urban Areas, Council could have considered a Development Application for an expansion of the Mall to a retail floor space of 33,936 square metres from the approved 25,606 square metres, it is considered that the rezoning will not impact the adopted commercial hierarchy of the City.

If Council resolves to support the proposed rezoning, the Planning Proposal will be submitted to the Department of Planning and Infrastructure to seek a Gateway Determination. A Gateway Determination will allow further consideration of the proposed rezoning and consultation to be undertaken with the public and State Government Agencies.

It is recommended that Council supports the Planning Proposal as proposed.

FINANCIAL IMPLICATIONS

Council at its meeting on 27 February 2012 considered a report in relation to the proposed sale of the subject land. Council is in receipt of an offer for purchase of the land by the owner of the adjoining Orana Mall Marketplace. Council resolved to accept the offer for purchase of the land subject to the outcome of the rezoning process the subject of this Planning Proposal.

POLICY IMPLICATIONS

There are no policy implications arising from this report.

RECOMMENDATION

It is recommended that:

- 1. Council supports the Planning Proposal for the rezoning of Lot 1 DP 258008 and Part Lot 2 DP 258008 from RE1 Public Recreation to B2 Local Centre under the provisions of the Dubbo Local Environmental Plan 2011;**
- 2. Council seeks removal of the Public Reserve status from Lot 1 DP 258008 and Part Lot 2 DP 258008 as a component of the Planning Proposal;**
- 3. Council supports a 28 day public exhibition period for the Planning Proposal;**
- 4. Council undertakes the formal process to close the unformed road reserve situated on the land; and**
- 5. Any necessary dealings are undertaken under the Common Seal of Council.**

Steven Jennings
Planning Services Supervisor

BACKGROUND

Lot 1 DP 258008 and Part Lot 2 DP 258008 were created with a subdivision of land that created Lot 3 DP 258008 on 23 December 1977. Lot 3 is currently the Orana Mall Marketplace. Lot 1 and Part Lot 2 were listed on the Deposited Plan to be dedicated as Public Reserve.

The land was dedicated as Public Reserve to restrict the provision of vehicle access locations to Lot 3, to ensure public access was available to a large area of public open space adjacent to the Mitchell Highway and to the residential areas in the southern section of Wheelers Lane. Provision of this land as Public Reserve is consistent with adjoining land to the north, which also provides a similar barrier between private development and Wheelers Lane.

As the land was dedicated as Public Reserve, it was also classified as Community Land under the provisions of the former Local Government Act, 1993.

In 1999, the owners of the Orana Mall Marketplace undertook construction of a vehicle parking area and associated playground on the Mitchell Highway frontage of Part Lot 2. The adjoining playground and the Orana Mall Marketplace have had the benefit of these vehicle parking spaces since that time.

In May 2000, Council considered a report from the Director Parks and Landcare in relation to Council's approach and methods in allowing access over Community Land to private developments. Council's review of such arrangements was undertaken as the result of a Court ruling which found that councils will not have the ability to grant leases or rights of way for access to private developments over Community Lands.

As a result of this ruling, Council undertook Amendment No. 5 to the former Dubbo Local Environmental Plan 1998 – Urban Areas. The purpose of a component of the Amendment was to reclassify the subject land from Community Land to Operational Land under the provisions of the Local Government Act, 1993, which reflects the use of the land for access purposes into Orana Mall.

The former State Department of Planning did not support a full reclassification of the subject land and provided information that only the locations of the existing access points to the Mall would be considered for reclassification from Community Land to Operational Land. Reflecting this arrangement, Amendment 5 to the former Urban LEP was gazetted on 24 December 2004.

Orana Mall first opened in 1979. The Mall was expanded in 1987 and again in 1993. The Joint Regional Planning Panel approved Development Application No. D2009-502 on 4 May 2010 for a further expansion of the Mall. The Development Application approved the following:

- *Additional retail floor space of 3,606 square metres in the form of 10 tenancies consisting of 6 stores and 4 kiosks;*
- *Alterations to the existing centre;*

- *Provision of a multistorey car parking facility consisting of underground, ground floor and above ground floor car parking resulting in an additional 153 car parking spaces, six (6) additional motor cycle parking spaces, three (3) bus parking spaces and parking for long vehicles;*
- *Additional service vehicle access and waste storage facility;*
- *Advertising signs;*
- *Access improvements for pedestrians; and*
- *Landscaping.*

At the present time preparatory works in relation to alterations to the existing vehicle parking area have been carried out on the land. No further works have been undertaken.

The Dubbo Local Environmental Plan 2011 was gazetted on 11 November 2011. The LEP reclassified Lot 1 DP 258008 and Part Lot 2 DP 258008 from Community Land to Operational Land under the provisions of the Local Government Act, 1993. Reclassification of the land allowed Council to have the flexibility in the use of the land and its embellishment for public recreation purposes.

After discussion with Council, the owners of the Orana Mall lodged a further Development Application in relation to Lot 1 DP 258008 and Part Lot 2 DP 258008 to undertake the following:

- *Playground area;*
- *Cycleway 2.5 metres wide (along Wheelers lane and the Mitchell Highway frontage);*
- *Public footpaths 1.5 metre wide (along Wheelers Lane frontage);*
- *Landscaping;*
- *Additional car parks (additional 126 spaces) along Wheelers Lane frontage (identified as Car Park No.1 and Car Park No.2);*
- *Resurfacing existing car park along the Mitchell Highway frontage;*
- *Vehicle and pedestrian access improvements; and*
- *Demolition of existing works necessary for the proposed development.*

Development Application No. D2011-295 was approved on 11 November 2011. All works have now been undertaken on the land, apart from landscaping works, which are currently under way.

REPORT

1. Particulars of the Application

Applicant:	Comet (Aust) Pty Limited
Current Zoning:	RE1 Public Recreation under the provisions of the Dubbo Local Environmental Plan 2011
Proposed Zoning:	B2 Local Centre under the provisions of the Dubbo Local Environmental Plan 2011
Lodgement date:	17 February 2012

2. Amendments to Local Environmental Plans

The State Department of Planning and Infrastructure created a new process for the consideration of amendments to Local Environmental Plans in 2009. The process for consideration of an amendment to an LEP now commences with Council's consideration of a Planning Proposal.

The role of a Planning Proposal is to explain the intended effect of a proposed LEP amendment and the justification for undertaking the amendment. Council has the role of considering the Planning Proposal. If Council resolves to continue with the Planning Proposal, the LEP amendment is provided to the Department to seek a Gateway Determination.

The Gateway is a new addition to the plan making process, which ultimately reviews and considers Planning Proposals in the initial stages prior to further consideration by Council. After consideration by the Department, Council is provided with a Gateway Determination for the LEP amendment.

The Gateway Determination specifies that the Department will allow the proposed amendment to proceed, specify any matters that require additional information, the level of public consultation required and State Government Agencies to be consulted.

After Council has undertaken the required consultation, a report will be provided back to Council for consideration. After Council's final consideration, the LEP amendment is provided to the Department for gazettal. It is unclear as to the specific time involved in the process with consideration by the Department.

3. Planning Proposal

Council is in receipt of a Planning Proposal on behalf of Comet (Aust) Pty Limited to rezone Lot 1 DP 258008 and Part Lot 2 DP 258008 from RE1 Public Recreation to B2 Local Centre under the provisions of the Dubbo Local Environmental Plan 2011. The Planning Proposal also seeks approval to remove the Public Reserve status from the land. The area subject to the Planning Proposal is shown on the map provided attached in **Appendix 2**.

As a separate item, the land contains a road reserve area, which provided a former vehicular entrance point to Orana Mall. This report recommends that Council commence the process of closing this road reserve with the State Government Department of Lands. The road reserve area is proposed to also be zoned B2 Local Centre and is included in the area Council previously resolved to sell to the proponent subject to the outcome of the rezoning process.

The Applicant for the Planning Proposal is also the owner of the adjoining Orana Mall Market Place.

4. Site Characteristics

Lot 1 DP 258008 and Part Lot 2 DP 258008 have an overall area of 8,788 square metres. The land subject of the Planning Proposal does not have frontage to Wheelers Lane, as Council will retain ownership of an area of land containing a pedestrian path and associated landscaping.

Lot 1 has direct access from Wheelers Lane and Part Lot 2 has direct access from the Mitchell Highway. The land will continue to maintain access from the existing vehicle entry points on both the Mitchell highway and Wheelers Lane after rezoning of the land.

The area of land with frontage to both Wheelers Lane is vacant land owned by Council. The area of land fronting the Mitchell Highway is also owned by Council with an existing carpark located near the Wheelers Lane and the Mitchell Highway intersection.

Development within the immediate vicinity of the land predominately consists of single dwelling houses to the south and west and a medical centre to the north.

5. Planning Considerations

5.1 Section 117 Directions

Direction 1.1 Business and Industrial Zones

The Direction applies to the Planning Proposal. The Direction requires a Planning Proposal to:

- (a) *give effect to the objectives of this direction,*
- (b) *retain the areas and locations of existing business and industrial zones,*
- (c) *not reduce the total potential floor space area for employment uses and related public services in business zones,*
- (d) *not reduce the total potential floor space area for industrial uses in industrial zones, and*
- (e) *ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning.*

It is considered that the Planning Proposal is consistent with the Direction. The Planning Proposal will provide for additional land to be zoned for business purposes, which will be utilised in the short to medium term for the purposes of vehicle parking associated with the Orana Mall Marketplace on the adjoining Lot 3 DP 258008. The land is also surplus to Council's public open space requirements.

It is considered that the location and shape of the land will make any separate business land use activity difficult to achieve having regard to the location adjacent to the Mitchell Highway.

The land will result in the rezoning of 8,788 square metres of land currently zoned for public open space purposes. However, the area proposed to be rezoned is not being used for the purposes of public open space and has been historically used for over-flow vehicle parking associated with Orana Mall.

Direction 3.4 Integrating Land Use and Transport

The Direction applies to the Planning Proposal. The Direction requires the following:

- “(2) A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:*
- (a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and*
 - (b) The Right Place for Business and Services – Planning Policy (DUAP 2001).”*

It is considered that the Planning Proposal is consistent with this Direction. The Direction requires business areas to be consolidated to ensure transport systems and the road network can provide an appropriate level of access to the community. The Direction also requires public transport systems to be located within a reasonable proximity and provide infrastructure for pedestrians and cyclists.

As previously discussed in the report, the land adjoins the Orana Mall Marketplace, which is a 22,000 square metre sub-regional shopping centre situated in the eastern section of the City. The land will be serviced by regular public bus services and has access to and through the land for the purposes of pedestrians and cyclists.

Direction 6.2 Reserving Land for Public Purposes

The Direction applies to the Planning Proposal. The Direction states the following in relation to preparation of a Planning Proposal:

“A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).”

It is considered that the Planning Proposal is consistent with this Direction. The land is surplus to Council’s requirements for the provision of open space. An area of land adjacent to both the Mitchell Highway and Wheelers Lane, which contains a pedestrian walkway and playground will not be subject to the Planning Proposal and will be retained as public open space with a zoning of RE1 Public Recreation.

The Planning Proposal will require removal of the Public Reserve status on the Title of both Lot 1 and Part Lot 2, which will require approval as part of the rezoning process.

5.2 State Environmental Planning Policies

State Environmental Planning Policy (Infrastructure) 2007

Clause 101 the SEPP requires Council to not grant consent to any development on land that has frontage to a classified road or has access within 90 metres of a classified road unless it is satisfied that:

- “(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and*
 - (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (ii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
 - (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.”*

It is considered that the Planning Proposal will not result in any alteration to the vehicular access or traffic movement systems onto or through the site. The land subject of the Planning Proposal is being used for the purposes of vehicle parking and access to the Orana Mall Marketplace. This is not proposed to alter.

Any further Development Application relating to further expansion and/ or alteration to vehicular access on the land or the Orana Mall Marketplace will require consideration under the provisions of the SEPP and referral to Roads and Maritime Services (formerly the Roads and Traffic Authority) for consideration.

5.3 Urban Areas Development Strategy

The Urban Areas Development Strategy guides further development and land use controls in the urban areas of the City. The Dubbo Local Environmental Plan 2011 implements components of the Urban Areas Development Strategy through zoning of lands and development controls.

In consideration of the Dubbo Local Environmental Plan 2011, which was gazetted by the Minister for Planning on 11 November 2011, the Director General of the Department of Planning and Infrastructure provided correspondence specifying that the Dubbo Urban Areas Development Strategy and the Dubbo Rural Areas Development Strategy were endorsed on 3 February 2012.

It is considered that certification of Council's Strategies provides recognition of the strategic direction of development in the City and the provisions of the Dubbo LEP 2011.

Commercial Areas Development Strategy

A component of the Urban Areas Development Strategy is the Commercial Areas Development Strategy. The Commercial Areas Development Strategy guides the use of land for commercial or business purposes and sets a commercial hierarchy for the City.

Council in adopting the Dubbo Local Environmental Plan considered the draft Commercial Areas Development Strategy prepared by consultants Andrews Neil in 2009 and the Dubbo Retail Demand Review prepared by consultants Hill PDA in 2010.

Council resolved to adopt the Commercial Areas Development Strategy 2009 and the Dubbo Retail Demand Review 2010 as planning reference documents only. Council also resolved the following in relation to the Commercial Areas Development Strategy:

“That a new Comprehensive Commercial Areas Development Strategy be prepared based on the expanded commercial footprint of the City utilising the following:

- a) The existing Commercial Areas Development Strategy;*
- b) The draft Commercial Areas Development Strategy 2009 prepared by Andrews Neil;*
- c) The Dubbo Retail and Commercial Demand Review Addendum prepared by Hill PDA; and*
- d) Any relevant recommendations of the Dubbo Economic Development Strategy.*

The comprehensive Commercial Areas Development Strategy is currently under preparation by Council officers.

The original Commercial Areas Development Strategy prepared by Council as a component of the Urban Areas Development Strategy in 1997, the Commercial Areas Development Strategy prepared by consultants Andrews Neil in 2009 and the Dubbo Retail Demand Review 2010 do not list the subject land as being unsuitable for use and/or rezoning for commercial or business purposes.

The Strategy lists Orana Mall as fulfilling a sub-regional role in the City and Region in complementing the Dubbo Central Business District. Given the location of the land directly adjoining the Orana Mall Marketplace, the size and shape of the land and the fact that the land contains approved vehicle parking areas, it is considered that rezoning for business purposes is not inconsistent with the Strategy.

Further, Council in consideration of the Dubbo Local Environmental Plan 2011 resolved to remove the growth ratios between the growth of the Central Business District and Orana Mall and the Central Business District and the Neighbourhood Centres.

Under the requirements of the former Dubbo Local Environmental Plan 1998 – Urban Areas, the Orana Mall Marketplace was permitted to grow to 33,936 square metres of retail floor area. Approval of Development Application No. D2009-502 provides an additional 3,606 square metres of retail floor area, which will take the overall approved retail floor area to 25,606 square metres.

5.4 Dubbo Local Environmental Plan 2011

The Planning Proposal proposes to zone the subject land B2 Local Centre under the provisions of the Dubbo Local Environmental Plan 2011 from its current zoning of RE1 Public Recreation. The objectives of the B2 Local Centre zone are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To ensure Orana Mall remains primarily a retail centre that allows for land use activities expected to fulfil a local centre role.*
- *To protect and recognise land within the zone as providing a second order retail focus in the commercial hierarchy of the City of Dubbo.*
- *To ensure that office premises only form a minor component of the land use activities within Orana Mall.*

As previously discussed in this report, the Applicant for the Planning Proposal is proposing to utilise the land for the purposes of vehicle parking in association with the adjoining Orana Mall Marketplace for the short to medium term. The current use of the land is not proposed to alter as a result of the Planning Proposal.

It is considered that rezoning the land to B2 Local Centre is an appropriate zone given the location of the land and its relationship with the Orana Mall Marketplace.

5.5 Economic Impact Assessment

The Applicant provided an Economic Impact Assessment with the Planning Proposal, which has been prepared by a suitably qualified and experienced professional. A copy of the Economic Impact Assessment is included in the Planning Proposal documentation provided by the Applicant and is attached here in **Appendix 1**.

The Economic Impact Assessment has been undertaken utilising two different development scenarios for the land. The first considers continued use of the land for the purposes of a vehicle parking area. The second considers use of the land for the purposes of support commercial development including use of the land for the purposes of food and drink premises, service station and medical centre. This option also considers use of the land for the purposes of office premises, retail premises and bulky goods premises.

Option 1

The EIA provides information that the proponent intends to utilise the land for the purposes of vehicle parking in accordance with Development Application No. D2011-295, which was approved by Council on 11 November 2011. As a major extension and refurbishment of the Orana Mall Marketplace has been approved for construction, the aim of the proponent is to have the subject land available for use for the purposes of vehicle parking and to have the option to provide site construction infrastructure within this area. This will allow the Mall to continue to trade with minor impacts to the public and retailers.

The proposed rezoning may allow use of the vehicle parking within this area to be included in the overall parking consideration for Orana Mall once the rezoning has been undertaken. This may lead to additional development being undertaken with the provision of additional retail floor space.

Based on the fact that under the provisions of the former Urban LEP, Orana Mall had the ability to expand to a total of 33,936 square metres of retail floor area, this is not considered to present a significant economic impact to the CBD and the Neighbourhood Centres.

Option 2

In the longer term the EIA provides an analysis of the likelihood and suitability of the land to be used for commercial purposes including food and drink premises, service station, medical centre, office premises, retail premises or bulky goods retail.

The most likely activity that could be undertaken on the land in the long term is considered to be food and drink premises. The remaining activities are not considered to be suited to the location of the land, the design of the Orana Mall Marketplace and other appropriately zoned areas in the City present more significant development opportunities.

It is considered that the rezoning of the land to B2 Local Centre to complement the zoning of the adjoining Orana Mall Marketplace is not anticipated to present any economic impacts in the short to medium term. As discussed above, zoning the land for commercial purposes may present some opportunity in the medium or longer term for the purposes of food and drink premises etc. When considered in the context of the fact that under the provisions of the former Urban LEP 1998 the Orana Mall Marketplace was permitted to grow to 33,936 square metres of retail floor space, it is considered that this rezoning will not impact other commercial development or commercially zoned land within the City.

5.6 Net Community Benefit Test

Consideration of a Planning Proposal and ultimately an amendment to the new LEP requires consideration of a Net Community Benefit Test. The Test is a broad assessment of policy and the benefit of a proposed rezoning to the community.

The Test is a component of the draft Centres Policy prepared by the Department of Planning and Infrastructure and requires consideration for any amendments to the LEP.

The Test requires consideration of an LEP amendment under the major subject areas provided below:

- *Consistency with relevant Local and State Policy*
- *Strategic Location*
- *Accessibility*
- *Opportunity for choice*
- *Places for People*
- *Economic Viability*
- *Environmental Sustainability*
- *Amenity and Safety*

The Applicant provided supporting information with the Planning Proposal including the submissions of a Net Community Benefit Test.

It is considered that the proposed rezoning will have a community benefit. Prior to the construction of a vehicle parking area on the land and the provision of associated landscaping, the land provided a pedestrian walkway linking land to the north with the residential areas south of Wheelers Lane and an open space area adjacent to the Mall. The land was not used for any other community or open space purpose.

The owners of the Orana Mall Marketplace have undertaken construction of the vehicle parking area on the land, provision of associated traffic infrastructure, facilities for cyclists and pedestrians and will be undertaking a significant landscaping regime on the land. The public will benefit from the works undertaken by the owners of the Mall in that the area containing the pedestrian walkway and associated landscaping, which will be maintained in Council ownership. In addition, the owners of the Mall are also undertaking construction of a new playground facility adjacent to the Mitchell Highway, which will be maintained in Council ownership.

The proposed rezoning will not reduce the level of commercial choice available within the City and will facilitate provision of a more comprehensive use of public open space land, which has not had its potential realised in the past.

If the Planning Proposal is successful, proceeds from the sale of the land will be available for the provision of Council services and/ or infrastructure across the City.

5.7 Other Implications

Traffic

The existing traffic arrangements on the land including the vehicle parking area will not be altered as a result of the proposed rezoning. The vehicle parking area and associated access points were constructed on the land in accordance with the requirements of Council and Roads and Maritime Services (formerly the Roads and Traffic Authority).

The land contains an area of road reserve, which formed the major access point into the Orana Mall Marketplace from Wheelers Lane. Council has initiated closure of this road reserve area with the State Government Department of Lands as it is not required for any other purpose.

Adjoining and adjacent development

It is considered that adjoining and adjacent development within a reasonable proximity of the subject land will not be impacted by the proposed rezoning. Any further development on the land will be subject to the submission of Development Applications to Council for consideration, which would be notified to adjoining and adjacent property owners for consideration.

Subdivision of the land

At the present time the land subject to the rezoning and the land proposed to be maintained in Council ownership have not been separated through the undertaking of a formal subdivision of the land. Council's Parks and Landcare Division will be undertaking a subdivision of the land to ensure the area between the Mitchell Highway/Wheelers Lane and the subject land is under separate title and can be maintained in Council ownership. As previously discussed, this area of land contains the existing pedestrian walkway and will contain extensive landscape plantings.

SUMMARY

The owners of the Orana Mall Marketplace have lodged a Planning Proposal with Council for consideration to facilitate the rezoning of Lot 1 DP 258008 and Part Lot 2 DP 258008 from RE1 Public Recreation to B2 Local Centre under the provisions of the Dubbo Local Environmental Plan 2011. This Planning Proposal is the first amendment to the new LEP, which was gazetted on 11 November 2011.

It is considered that the Planning Proposal does not raise any issues of concern at this stage of the rezoning process and that Council should seek a Gateway Determination from the Department of Planning and Infrastructure.

After a Gateway Determination is received from the Department, Council can place the LEP amendment on public exhibition and consult with relevant State Agencies.

At the conclusion of the consultation stage of the process, a further report will be presented to Council for consideration.

Appendices:

- 1 Planning Proposal
- 2 Development Plan