

2012/1126
REPORT TO

**GENERAL MANAGER
SUSTAINABLE DEVELOPMENT COMMITTEE MEETING
20 NOVEMBER 2012**

FROM TOWN PLANNER (KATHERINE STOTT)

DATE 9 NOVEMBER 2012

ON ORANGE LEP 2011 - AMENDMENT 2

133/552/255/6/3

EXECUTIVE SUMMARY

It is proposed to amend Orange Local Environmental Plan 2011 to permit a childcare centre at 217 235 McLachlan Street, Orange. The subject land is a 4000m² vacant site within an approved subdivision of Lot 101 DP 1163891. The site is currently zoned IN1 General Industrial, in which childcare centres are not permitted. This report recommends a rezoning of the subject site to facilitate the development.

FINANCIAL IMPLICATIONS

There are no financial implications as the proposal is funded by the applicant.

POLICY/GOVERNANCE IMPLICATIONS

This report recommends a rezoning of the subject site which would entail an amendment to Orange LEP 2011.

RECOMMENDATION

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| 1 | That Council support the planning proposal on the basis that the site be rezoned to B5 so as to permit consideration of the childcare centre. |
| 2 | That Council forward the planning proposal to the Department of Planning for consideration under the gateway process. |
| 3 | That any additional studies required by gateway be undertaken at the proponent's expense. |
| 4 | That once any additional studies have been completed, the planning proposal be placed on exhibition in accordance with the gateway determination. |

SUPPLEMENTARY INFORMATION

The 4000m² subject site located on the corner of Dalton and McLachlan Streets consists of two proposed lots (identified as Lots 1 and 2) within an approved subdivision of Lot 101 DP 1163891. The site is zoned IN1 General Industrial. A childcare centre is a prohibited use under the current zoning. Therefore the proponent is seeking an amendment to Orange LEP 2011 so as to enable the proposed development.



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Supplementary Information (cont)

The subject site is located within an area of mixed zoning that includes commercial land use opposite the site in Dalton Street, a neighbourhood shopping centre diagonally opposite and residential land use in McLachlan Street.

Merits

Although the subject site lies within an industrial corridor, it also interfaces with commercial, retail and residential land, and is therefore considered compatible with the surrounding land uses.

In terms of its location the subject site also presents an opportunity to provide a childcare facility in a location that offers convenience to families in the north-eastern sector of the City (including Clifton Grove), being situated on a local collector road (Dalton Street). This may reduce the kilometres travelled by parents who drive into town from the north-eastern sector for work and drop off/collect their children on the way.

The proposed childcare service would benefit Orange families by improving the availability of both long day care and preschool positions. The provision of additional positions is not expected to jeopardise the viability of existing services due to demand exceeding supply in the City. It should also be noted that there are no other childcare centres in the immediate vicinity, the nearest centres being the Council operated Spring Street Children's Centre (1.3kms away) and Bright Horizons centre located at 19-21 Seymour Street, (1.4kms away from the subject site).

One of the objectives of the current IN1 Industrial zoning is to encourage employment opportunities. The proposed centre is estimated to generate 24 full time equivalent staff positions, so the development will not compromise the intentions of the current zoning, even if a rezoning is made to allow the proposal to proceed. In addition, the childcare places will facilitate parents' participation in paid employment. If the centre offers 120 places as proposed, the development has the potential to enable around 80 parents (assuming 1.5 children per parent) to participate in the economy full-time, or an even greater number part-time. This would generate financial and social benefits both for the families involved and the wider community.

The site has access to a good range of utility services including water and sewer reticulation, natural gas and communication infrastructure.

Issues

It is considered that a detailed traffic study needs to be undertaken as part of any development application for the proposed centre to consider potential impacts and ensure that the proposed development does not compromise efficiency and safety.

Two conceptual site plans were submitted as part of the preliminary proposal. Council engineers have advised that the second site layout proposal (HRP Design) is the preferred option as it separates incoming and outgoing traffic, reducing congestion associated with a single entrance and allowing a better flow through for vehicles.

The site is currently being filled to the 1 in 100 year flood level as part of subdivision works. Any building on the site will need to have its finished floor level 500mm above the 1 in 100 year flood level.

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Issues (cont)

The subject land forms part of the previous Transgrid site on the corner of Dalton and McLachlan Streets. A detailed contamination assessment was undertaken by Envirowest in March 2009, and remediation works were subsequently carried out to enable the site to be used for commercial land use. As specified in the State government's Planning Guidelines for SEPP 55 in relation to remediation of land, it is not appropriate to proceed with a spot rezoning unless the subject land is proven suitable for that development or it can be demonstrated that the land can, and will be remediated to make the land suitable. According to the Guidelines this demonstration of suitability is particularly important if the land is proposed to be developed for *"residential, educational, recreational or childcare purposes, as the risk to health is higher under those uses than most other uses"* which has particular relevance in this case.

The Remediation and Validation assessment of the site published by Envirowest in October 2010 confirms that *"Lot 101 is suitable for commercial land use"*. However, this finding does not make it clear as to whether or not the site is suitable for childcare purposes. It is advised that verification as to whether the site is suitable for a childcare development is required from an accredited contaminated sites auditor at the expense of the applicant.

Given that the land immediately surrounding the proposed centre is vacant and still zoned industrial, it will be important to ensure that the childcare centre is compatible with any possible future industrial development on surrounding lots. Although potential issues would be addressed at the development application stage, it is important to flag the need for play areas to be appropriately fenced/walled for safety and adequate buffer zones to be provided to reduce noise impact. It is also advisable that neighbouring development be required to turn their backs on the child care centre and place their buildings along these boundaries with access on the far side boundaries so as to keep trucks and service vehicles at a distance from the centre.

It should be noted that the proponent will be liable for Developer Contributions and other expenses such as Engineering plan approval and inspection fees for civil construction works associated with the building (following DA approval).

Amendment Options

There are three main ways in which the LEP might be amended to allow for the proposed development on this site.

- Option 1: To rezone the subject land to a zone under which a childcare centre is permitted.
- Option 2: To make a site specific use amendment (APU Additional Permitted Use) that would allow the proposed centre without requiring a rezoning.
- Option 3: To remove childcare centres from the list of prohibited uses under the IN1 General Industrial zone.

Option 2 is not recommended by the Department of Planning and Infrastructure (DoPI) because it compromises the integrity of the LEP and is inconsistent with State policy. The Department's view is that an appropriate zone which permits the intended uses should be selected as this provides greater clarity to all.

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Amendment Options (cont)

Likewise it is not advisable to universally permit childcare centres in industrial zones (Option 3) due to the possibility of incompatibility in land use and conflicts such as traffic, noise, pollution etc.

The most appropriate option is to rezone the site to allow for the development to occur (Option 1). Not only is this option consistent with State policy, but it is appropriate given the locational context of the site within an area of mixed land use. It is considered that the proposed use would be compatible with the industrial, commercial, retail and residential activities in the surrounding area. As outlined below in the report this option requires careful consideration of the zoning options. The selection must take into consideration the nature and appropriateness of other possible developments that may occur on the site if the childcare centre fails to eventuate, or possible subsequent reuses of the childcare centre if market circumstances change.

1 Rezoning

The most appropriate option is to rezone the site to allow for the development to occur. This option is supported by the locational context of the subject site and is consistent with State policy. As mentioned above, it is important to consider the possible implications of the selected zoning in the event that the proposed childcare centre does not proceed, as well as its potential reuses if circumstances change. A number of zones listed in Orange LEP 2011 include childcare centres as either permitted development or permitted with consent, including:

- R2 Low Density Residential
- R3 Medium Density Residential
- R5 Large Lot Residential
- B1 Neighbourhood Centre
- B2 Local Centre
- B3 Commercial Core
- B4 Mixed Use
- B5 Business Development
- B7 Business Park.

The residential rezoning options are not recommended on the basis that such a rezoning for this particular site would open up the possibility for residential development to occur within this industrial corridor should the proposed childcare centre fall through. It is advisable to avoid this implication as it is generally undesirable to allow for residential development to directly interface with industrial land due to the potential for land use conflicts to emerge, such as pollution, noise, and industrial traffic affecting residential areas. Although there are some sites in Orange where residential and industrial land neighbour, it is not advisable to replicate this legacy from the past. It might also be noted that residential development would fail to generate the employment opportunities that the current industrial zoning seeks to generate.

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1 Rezoning (cont)

Of the listed zones in which childcare centres are permitted it is considered that zone B5 Business Development and zone B7 Business Park are the most suitable options. The permitted forms of development within these zones (such as neighbourhood shops, warehouse or distributions centres, bulky goods premises (B5) and office premises (B7)) are regarded as appropriate to the location should the childcare centre not proceed or change in use at a later time. These zone options would also generate employment opportunities as intended in the existing IN1 zoning.

2 APU (Additional Permitted Use)

The second option is an APU amendment which allows a parcel of land to be used for another reason to that permitted by the surrounding zone in the Land Use Table. The mechanism by which such an amendment is invoked is based on Clause 2.5 of the Standard Instrument and all APUs are listed in Schedule 1. There is one APU listed under Schedule 1 of the current LEP which provides an illustration of how such an amendment might be worded:

1 *Use of Certain Land at 426 Molong Rd, Orange*

- (1) *This clause applies to land at 426 Molong Road, Orange, being Lot 209, DP 1018862.*
- (2) *Development for the purposes of agricultural produce industries and food and drink premises is permitted with consent*
- (3) *Subclause (2):*
 - (a) *ceases to apply 2 years after the commencement of this Plan, and*
 - (b) *applies only if the development occurs within the building envelope of a building existing at the commencement of this Plan.*

It is important to observe that this option is unlikely to be supported by the DoPI. Previous advice from DoPI is that an APU approach should be reserved for rare situations where both rezoning and expanding the range of uses in the current zone are not viable.

3 Add Childcare Centre to the IN1 General Industrial Zone

The third option is to eliminate childcare centres from the list of prohibited uses under the IN1 General Industrial zone. The intent of this zone is *"to provide a wide range of industrial and warehouse land uses."* As outlined in the Land Use Table the following developments are permitted within this zone:

Permitted without consent:

Environmental protections works.

Permitted with consent:

Depots; freight transport facilities; general industries; hardware and building supplies; industrial training facilities; kiosks; landscaping material supplies; light industries; neighbourhood shops; roads; timber yards; vehicle sales or hire premises; warehouse or distribution centres; any other development not specified in item 2 or 4.

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3 Add Childcare Centre to the IN1 General Industrial Zone (cont)

This option would involve adding childcare centres to this list and therefore make them permissible throughout all industrial lands in the LGA. While the subject site is considered suitable for a childcare centre despite its location in an industrial corridor (for the reasons and based on the conditions outlined above), this option is not recommended on the basis that it is inadvisable to universally permit childcare centres in industrial zones due to the potential for land use conflicts.

CONCLUSION

The proposal to provide a childcare centre on the subject site has a number of merits to recommend it in terms of the suitability and benefits of its location, improving the availability and range of choice of both preschool and long day care services to Orange families, and its potential contribution to the local economy both as an employer and by enabling parents to participate in the workforce. While this report recommends an amendment to Orange LEP 2011 to allow the development to proceed, a number of further issues need to be investigated at the DA level, including the potential impact on local traffic and verification that the land has been appropriately remediated for the purposes of a childcare centre.

As discussed within the report, a number of options are available to Council to enable the development to proceed. Of the possible options discussed Option 1 involving rezoning the subject site appears to be the most viable.

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