

Planning Proposal – Orange Local Environmental Plan 2011 – Amendment 4

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 4. 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 5 Project Timeline

This part consists of a table that sets out the key project milestones and anticipated commencement and completion dates for each milestone. The dates shown are indicative only and subject to review as the project progresses.

Part 1 Objectives and Intended Outcomes

The objectives of this planning proposal are:

To ensure the LEP provides a consistent planning framework for the South Orange “Shiralee” Urban Release Area. The Release area has been master planned as part of the Orange Development Control Plan, in order to satisfy the requirements of Part 6 of the Orange Local Environmental Plan 2011.

To amend the Minimum Lot Size map to reflect the range of lot sizes identified in the South Orange “Shiralee” structure plan.

To amend the Land Zoning map to reflect the range of land use zones identified in the South Orange “Shiralee” structure plan.

To amend the Land Reservation Acquisition map to ensure land identified for public purposes in the South Orange “Shiralee” structure plan are reflected in the Orange Local Environmental Plan 2011.

To amend clause 4.1B Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings, in order to give effect to the intent of the South Orange “Shiralee” Urban Release Area Masterplan.

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

Amendment of the Land Reservation Acquisition Map in accordance with the proposed Land Reservation Acquisition Map shown at attachment 3

Amendment of Clause 4.1B by inserting the following subclause in the appropriate order:

(3) This clause does not apply to land in the Shiralee Urban Release Area.

Part 3 Justification

Section A – Need for the planning proposal

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

Subsequent to Orange LEP 2011 Amendment 1, Council has undertaken a master-planning exercise for the Urban Release Area. As part of this exercise a Local Environmental Study has been undertaken to confirm the land capability and constraints. This work builds upon the work previously undertaken in Amendment 1. That amendment was justified on the basis that:

“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 of Additional Permitted Uses to provide the range of densities intended. This was rejected on the grounds that amending the LEP maps and clause 4.1B would provide greater clarity.
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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.

Also relevant is **SEPP 55 Remediation of Land**. This SEPP seeks to ensure that land contamination is evaluated during the rezoning process, so as to minimise the risks to human health and the environment generally.

The Gateway Determination for Amendment 1 required that Council must "ensure that the planning proposal satisfies the requirements of State Environmental Planning Policy No 55 (SEPP 55) – Remediation of Land. If required, Council is to prepare an initial site contamination investigation report to demonstrate that the site is suitable for rezoning to the proposed use. This report is to be placed on public exhibition with the planning proposal."

The Department of Planning and Infrastructure has prepared a document titled *Managing Land Contamination, Planning Guidelines SEPP 55 – Remediation of Land*. These guidelines establish a 4 phase process as follows:

- 1. Preliminary Investigation** – to identify any past or present uses that have potential to contaminate the land, provide a preliminary assessment of any known contamination and if required, provide a basis for a more detailed investigation.
- 2. Detailed Investigation** – This is only required if the preliminary investigation indicates there may be contamination. The detailed investigation seeks to define the nature, extent and degree of contamination; to assess potential risk posed by contaminants to health and the environment; and to obtain sufficient information to develop a remedial action plan if required.
- 3. Remedial Action Plan (RAP)** – If the detailed investigation confirms the need for remediation a RAP is prepared which sets objectives, processes and documents the means by which remediation is to be achieved.
- 4. Validation and Monitoring** – This stages seeks to demonstrate whether the objectives of the RAP and any development consent conditions have been achieved. Validation requires a notice of completion for all remedial work identified in the RAP.

In terms of rezoning, the guidelines require "*consideration of contamination issues when rezoning land. If a rezoning allows a change of use that may increase the risk to health or the environment from*

*contamination then the planning authority must be satisfied that the land is suitable for the proposed use **or can be remediated to make it suitable**. If remediation is necessary, the planning authority must **be satisfied that suitable planning controls are in place to ensure that this occurs**. In addition the guidelines also require consideration of a Preliminary Investigation where a rezoning allows a change of use that may increase the risk to health or the environment from contamination.” (section 4.1 emphasis added)*

However, the guidelines also acknowledge that *“Rezoning (which) cover a large area, for example, more than one property, usually describe proposed land uses very generally both in type and location. This makes it difficult for a planning authority to be satisfied that every part of the land is suitable for the proposed use(s) in terms of contamination at the rezoning stage. In these cases, **the rezoning should be allowed to proceed**, provided measures are in place to ensure that the potential for contamination and the suitability of the land for any proposed use are assessed once detailed proposals are made.” (section 4.1.2 emphasis added)*

Importantly section 6.4 of the LEP ensures that the entirety of Part 6 of the LEP prevails over any other provision of the LEP. Designation as an Urban Release Area will therefore prevent any further development, regardless of zoning or minimum lot size provisions until appropriate DCP provisions are prepared, exhibited and adopted. This provides appropriate measures to ensure that the potential for contamination and the suitability of the land for any proposed use are assessed in more detail.

Council’s preliminary investigation of these areas indicates that some past uses, notably orchards and vineyards in and around the site, may have involved the use of chemical spraying. Accordingly, prior to any subsequent development of these lands Council shall require detailed investigation and, where necessary, Remedial Action Plan. This will need to be completed before Council will consider adoption of any related Development Application.

While it would be ideal to complete extensive site investigations, soil sampling and analysis prior to this amendment, the guidelines make it clear that this is not strictly necessary.

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

Yes. Direction 3.1 Residential Zones, Direction 4.3 Flood Prone Land, Direction 4.4 Planning for Bushfire Protection have all been considered in the preparation of this planning proposal.

Direction 3.1 seeks to encourage a diversity in housing choice types to provide for future housing needs and to make efficient use of existing infrastructure and services while minimising the impact of residential development on the environment and resource lands. This planning proposal achieves the above through a diverse mix of lot sizes, utilisation of the existing road network and identification of lands for open space and drainage purposes.

Direction 4.3 seeks to ensure that development of flood prone land is consistent with the NSW Government’s Flood Prone Land Policy and principles of the Floodplain Development

Manual 2005. The direction also seeks to ensure provisions of an LEP on flood prone land are commensurate with the hazard and includes consideration of the potential flood impacts on and off the site. This planning proposal has identified the drainage corridors and detention basin locations that will be required to both manage stormwater runoff and avoid the risk of flooding. Such land is proposed to be zoned for open space purposes to reduce the risk of flooding.

Direction 4.4 relates to bushfire protection and seeks to protect life, property and the environment from bushfire hazards, by discouraging incompatible land uses in bush fire prone areas. This planning proposal has been located clear of bush fire prone lands. Land to the east of the site is identified as a hazard and this has been responded to in the design of a masterplan for the area to ensure that road reserves provide a buffer and there are multiple exit points.

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 site is not known to be affected by native habitat.

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

No.

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. The masterplanning for the site has identified existing and required infrastructure that can be provided within the normal means of section 64 and section 94 developer contribution plans

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 affected 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.

Part 5 Project Timeline

The following table provides an overview of the intended project timeline for this Planning Proposal.

Project stage	Commencement	Completion
Gateway Determination	11 September 2014	11 September 2014
Government Agency consultation	15 September 2014	6 October 2014
Public Exhibition Period	20 September 2014	20 October 2014
Public Hearing	Not required (as per the Gateway Determination)	
Consideration of Submissions	21 October 2014	31 October 2014
Consideration of post exhibition proposals (Report to Council)	4 November 2014	
Seeking and obtaining legal opinion from Parliamentary Counsels Office	5 November 2014	Dependent on PCO
Submission to the Department of Planning and Infrastructure to finalise	Dependent on PCO	
Anticipated date the plan will be forwarded to the Department for notification	Dependent on PCO	