

PP_2014_ORANG_001_00

Proposal Title : **PP_2014_ORANG_001_00**

Proposal Summary : **The planning proposal sought to amend the Orange LEP 2011 by rezoning the subject site zoned R1 to permit take away food and drink premises and service stations through amendment to Schedule 1.**

NOTE: If the proposal proceeds, it is being recommended that the method of amending Orange LEP 2011 be in the form of a rezoning of the site from R1 to B2 instead of amendment to Schedule 1 APU.

PP Number : **PP_2014_ORANG_001_00**

Dop File No : **14/08042**

Proposal Details

Date Planning
Proposal Received : **30-Jul-2014**

LGA covered : **Orange**

Region : **Western**

RPA : **Western Joint Regional Planning**

State Electorate : **ORANGE**

Section of the Act : **55 - Planning Proposal**

LEP Type : **Spot Rezoning**

Location Details

Street : **Corner Farrell Rd and Telopea Way**

Suburb : **North Orange**

City : **Orange**

Postcode : **2800**

Land Parcel :

DoP Planning Officer Contact Details

Contact Name : **Nita Scott**

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RPA Contact Details

Contact Name : **Angela Kenna**

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DoP Project Manager Contact Details

Contact Name : **Nita Scott**

Contact Number : **0268412180**

Contact Email : **nita.scott@planning.nsw.gov.au**

Land Release Data

Growth Centre :		Release Area Name :	
Regional / Sub Regional Strategy :		Consistent with Strategy :	
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment : **Planning and Environment is not aware of any meetings or communications with registered lobbyists concerning this Planning Proposal**

Supporting notes

Internal Supporting Notes : **Council rejected an application to rezone the subject land in December 2012 and again in April 2013. Council's reasons for not supporting the proposal were focused on alternative zoned sites 1km away and 'lack of significant merit'.**

The applicant approached Council again in September 2013 and was advised that the Planning Proposal was not supported as the proposal was 'essentially the same' as the previous applications.

The applicant submitted a Planning Proposal to the Department with the request for a Pre-Gateway review in October 2013. Council advised the Department on 8 November 2013 that it did not support the Planning Proposal, due to traffic concerns, existence of suitable zoned land elsewhere and the potential for land use conflict with a nearby child care centre.

A summary of Council's other concerns:

- * the relative growth of the North Orange commercial precinct and potential for land use conflict with nearby child care centres.**
- * Strategic considerations: the subject site is inappropriate due to South Orange now being the focus of new development, with the recent (2014) rezoning of land for residential development in that area. (It should be noted that this land is at masterplanning stage and not yet serviced or commenced development).**
- * Council deems the proposal a 'highway service centre' and would prefer its location on an undeveloped site zoned SP3 owned by Council 1km east on the Northern Distributor Road; and**
- * the proposed method of amending the LEP, via Schedule 1 Additional Permitted Uses is not supported. This is agreed by the Department.**
- * the potential land use conflict risks associated with a service station near residential land and child care centres.**

The Western Joint Regional Planning Panel considered the matter on 20 February 2014. The JRPP was unanimous in finding that there was strategic merit in the proposal being submitted to the Gateway.

The Deputy Director-General endorsed the Western Joint Regional Planning Panel's recommendation that the Planning Proposal proceed to Gateway on 1 April 2014.

Council advised on 2 May 2014 that it did not want to act as RPA on this matter.

In order for the matter to proceed through the planmaking process as recommended by the JRPP, an alternative RPA was required.

The Western JRPP was appointed as RPA by the Minister on 30 July 2014.

The proponent was asked to provide the required fee. This was paid on 18 August 2014.

The Department supported the proposal on the basis that North Orange is the most rapidly developing residential precinct in Orange with demonstrated demand for retail services and facilities. The Orange LEP 2011 released land for residential purposes (approximately 250ha) and industrial/business park uses in North Orange, as informed by endorsed strategies. There is also a growing rural lifestyle population on the Orange – Cabonne LGA boundary, located just north of Orange city and the subject site. Orange is projected to increase in population by 17% and Cabonne 24% to 2031 respectively. Most recent and rapid growth in Cabonne is on or near the North Orange LGA boundary.

In relation to the Council's concern regarding the potential risk of service stations, the Department is of the view that the development assessment process will ensure that the amenity and safety of surrounding development is preserved.

The approval of a 'McDonalds' take away food and drink premises on the adjoining site by the Land and Environment Court ([2013] NSWLEC 1211) was based on the view that Telopea Way had a 'mixed use' nature and that the use of the land for food and drink premises is appropriate, with potential amenity impacts minimised through the DA process.

The Department supports the Council's preferred method of amending the Orange LEP 2011 as a rezoning and not using Schedule 1 Additional Permitted Uses.

External Supporting
Notes :

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : The proposal seeks to amend Orange LEP 2011 by addition to Schedule 1 Additional Permitted Uses to permit take away food and drink premises and service stations on the subject land. The proponent states that the proposal will cater for expressed demand for a service station and take away food and drink premises due to the growing population in North Orange; as well as complement the adjacent shopping centre.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : The explanation of provisions clearly present the preferred mechanism for amending the Orange LEP. It is proposed to amend Orange LEP Schedule 1 as it applies to the subject land, permitting service stations and take away food and drink premises on the site. It is

also proposed to prepare FSR mapping for the subject site as per the FSR on the adjacent Woolworths site, 0.2:1.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

6.3 Site Specific Provisions

* May need the Director General's agreement

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 55—Remediation of Land

e) List any other matters that need to be considered :

The proponent has provided a detailed site contamination study, which has concluded that the site does not contain risk of contamination.

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

In relation to 117 Direction 3.1 Residential zones, the proponent has stated that the proposal is consistent with the Direction as it will complement the adjacent local neighbourhood shopping centre "that was established to serve the growing community of North Orange in accordance with Orange City Council's Business Centre Strategy Review Study and Orange Sustainable Settlement Strategy; and the removal of 6037m² of residential land will not have a significant impact on residential land supply in Orange, housing choice or efficiency in the use of infrastructure".

In relation to 117 Direction 6.3 Site Specific Provisions, the proposal is deemed to be consistent with the Direction on the grounds that the proposal allows the land use to be carried out in the zone the land is situated on only, and does not refer to drawings showing details of the proposal.

It is considered that the approach selected by the proponent to use Schedule 1 is unnecessary in the circumstances; to use the more accepted alternative approach of zoning the land with mapping and LUT would remove the need for site specific provisions and therefore remove any question of inconsistency with 117 Direction 6.3 Site Specific Provisions.

Therefore, the key consideration is that of 117 Direction 3.1 Residential zones; In the event the subject land is being removed from residential use through the PP, the amount of land at just over 6000m² is considered to be of minor significance, and broadly supported by the strategic framework, which indicates neighbourhood scale shopping facilities are appropriate in North Orange to support recent residential releases.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

A proposed Floor Space Ratio Map is provided, which can be formalised through the PP process. Other mapping is provided for site identification purposes on the premise that no other mapping was required given the proponent's approach to amend Schedule 1 through text; however mapping can be generated by the Department if necessary to reflect the preferred approach of zoning and LUT.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

The proponent accepts that a period of public consultation is required. There has been consultation with Council to date and some publicity which has had the effect of raising

awareness of the proposal.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date : **February 2012**

Comments in
relation to Principal
LEP :

The LEP has been in effect for two years, and has been the subject of several PPs for land release and other administrative amendments.

Assessment Criteria

Need for planning
proposal :

A planning proposal is required to permit the intended uses on the subject land. The General Residential R1 zone does not allow 'take away food and drink premises' or 'service stations'.

Consistency with strategic planning framework :

The proposal is broadly consistent with the need for neighbourhood scale retail services in North Orange. The proponents state that the proposal "is consistent with Council's Orange Sustainable Settlement Strategy 2004/10 for the urban expansion and development of North Orange which has generated a demand for the proposed service station and take away food and drink premises adjacent to the local shopping centre and new residential estates in this locality".

They also state that the proposal "is consistent with Council's Business Centre Strategy Review Study (2005) in that it complements the local shopping centre at North Orange and does not seek to compete with the Orange CBD". The Business Centre Strategy Review Study found that "by 2011 a full line supermarket (2,500m²) would be viable in North Orange and when North Orange is fully developed, the area could support two full-line supermarkets or increasing the existing supermarket to at least 3,500m²".

It should be noted that an amendment to Orange LEP 2000 gazetted in 2010 (just prior to the notification of the SI LEP) included a Schedule which included an Additional Use clause to permit supermarkets and specialty stores at 9 Telopea Way, Orange. Approval of a supermarket of 3,200m² and 1,500m² specialty shops was given in 2010 (approved by JRPP October 2010).

It is interesting to note that former Orange LEP 2000 zoned the subject land Residential 2(a), which permitted takeaway food shops, shops, convenience stores and the like.

The Orange LEP 2011 zoned the subject site and surrounding land R1 General Residential and a small parcel of land adjacent to the Northern Distributor Road SP3 (Mcdonalds approved by the Land and Environment Court), and the adjoining supermarket site B2 Local Centre, following on from the JRPP approval in 2010.

North Orange is the most rapidly developing residential precinct in Orange, and there has been numerous dwellings approved and constructed north of the Northern Distributor Road in the new release areas. There has also been two approvals of child care centres, with one approved January 2013 and the other approved and extended in 2012.

The demand for take away food and drink premises and service stations has been assessed by sub-consultants (Location IQ) for the proponents and form part of the PP. In summary, this work has found that there is "clearly demand for further food catering and service station floorspace within the Orange LGA. Given the population growth within the North Orange area and lack of facilities currently, it is logical that a proportion of this future demand is catered for within the North Orange area...it is suggested that the opening of the North Orange marketplace has had limited impact on the existing retail floorspace within the Orange CBD....the planned service station and takeaway food outlet at North Orange...will not have any discernible impact on retailers within the Orange CBD. Additionally, given the extensive provision of floorspace provided within the Orange CBD and the convenience nature of the proposed development, the addition of a service station and takeaway food outlet at North Orange will in no way impact on the existing or future Orange retail hierarchy . The Orange CBD will continue to be the major non-food and higher order retail destination for North Orange residents"

Increasing retail services in North Orange would result in fewer trips across Orange by residents and visitors using the Northern Distributor Road. The nearest service station is a minimum of 4km away from the Northern Distributor Road and the North Orange precinct. Other fast food premises are located in the CBD and Bathurst Road, approximately 6 km away, through Orange via Summer Street or the Distributor Road.

The Northern Distributor is a major arterial road that circumnavigates the northern extremes of Orange city, and links the Mitchell Highway to the East of the City with the Molong Road (route to Dubbo and western NSW). The Northern Distributor Road has had a positive effect by reducing traffic flow through Summer Street, Orange's main street. However, currently there are no fast food outlets or service stations along the NDR and travellers looking for these services need to divert off the arterial road into the Orange CBD, in turn defeating the purpose of the CBD bypass.

The LEC's approval of a 'Mcdonalds' take away food and drink premises on the site directly adjoining the subject site will provide an alternative to the other 'Mcdonalds' in Orange, over 7 km away on Bathurst Road in East Orange.

Other established strategic principles are met by the proposal:

- * close proximity of new services to existing retail development
- * access to and from an arterial road
- * provision of a wider range of services to a growing population
- * reduction of car trips through and across Orange
- * accessible to and by pedestrians.

Environmental social
economic impacts :

Environmental impacts are not expected as the site is devoid of environmental attributes, being without vegetation, drainage lines or other natural features. There is no flood or bushfire risk.

A soil contamination study has been carried out and there is no contamination reported. The contamination assessment confirms that the site is suitable for the proposed development and no further environmental works or remediation is necessary.

Traffic - The Traffic report prepared by Colston Budd Hunt and Kafes P/L in March 2013 identified that that surrounding road network can accommodate the additional traffic generated by the proposed development sought by this planning proposal, and the cumulative impact of other development, with the NDR-Telopea Way intersection operating at a satisfactory level of service in peak periods.

Operational matters can be resolved at DA stage. The traffic report notes that access arrangements to the subject site will be provided clear of the adjacent intersection (Telopea Way and NDR) and in accordance with the Australian Standard. Parking layout, internal circulation and service arrangements will be provided in accordance with Australian Standards and parking will be provided onsite in relation to Council's DCP.

The proposal is of a nature that is unlikely to adversely impact upon infrastructure and services, and can use road, drainage and other essential infrastructure that already exists in the area.

Orange City Council has raised issues of the potential impacts of service stations on local areas. The proponents have stated in the PP that a multi-level Risk Assessment will be undertaken at DA stage to address the relevant clauses of SEPP 33 - Potentially Hazardous and Offensive Development in relation to the proposed service station. The Australian Standard AS/NZS 1596:2008 The Storage and Handling of LP Gas will be addressed at DA stage, concerning the storage and handling of LG gas. The proponents state that "it is considered that the site can facilitate all the necessary statutory requirements and that options available will ensure that there are no hazards to surrounding residents and businesses as has been carried out in various locations around NSW.

It is also noted that in relation to fumes arising from the service station, a vapour recovery system will be incorporated in the design, an important matter for resolution at DA stage.

The JRPP agreed that development assessment will deal with and resolve any operational issues associated with land use.

In terms of social and economic effects, the proponent commissioned a report by Location IQ into the economic impacts of the proposal. This report found the following:

"" There is clearly demand for further food catering and service station floorspace within the Orange LGA. Given the population growth in the Orange within the North Orange area and the lack of facilities currently, it is logical that a proportion of this future demand is catered for within the North Orange area.

* The demography of North Orange is predominantly young, two parent working families, likely to be time poor. It is important to provide this market with adequate provision of convenience based retail facilities within close proximity to their homes. This should include service stations and food catering floorspace.

- * The location of the proposed site opposite the newly developed North Orange Marketplace is an ideal site to accommodate future demand. The co-location with the newly approved McDonalds will give choice and variety.
- * The Orange CBD since the opening of the North Orange Marketplace is a vibrant centre, suggesting there has been limited impact on existing retail floorspace within the CBD, with the Summer Centre already under construction and Council planning a further 8,400 m2 of floorspace on the Council car park site.
- * This would indicate the planned service station and take away food outlet at North Orange, which is likely to achieve sales of \$2 million or only 5%-6% of the sales estimated at North Orange Marketplace, will not have any discernible impact on retailers in the Orange CBD.
- * Given the extensive provision of floorspace provided within the Orange CBD and the convenience nature of the proposed development, the addition of a service station and takeaway food outlet at North Orange will in no way impact on the existing or future Orange retail hierarchy. The Orange CBD will continue to be the major non-food and higher order retail destination for North Orange residents".

The proponent has summarised the following positive impacts of the proposal:

- meeting consumer demand for a service station and food and drink premises in the growing community of North Orange;
- providing a greater consumer choice in Orange for fuel and takeaway food;
- complementing the adjacent shopping centre;
- providing employment during construction and operation of the proposed uses, and
- reducing travel distances for residents of North Orange for the proposed uses and facilitating multi-purpose trips.

Other matters such as security and crime prevention will be addressed in any future Development Application.

There is adequate infrastructure to support such development, with the road network being a key locational factor in the success of the proposal. The Northern Distributor Road carries a large amount of local and other traffic around Orange, being part of the Orange bypass.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	28 Days
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Timeframe to make LEP :	9 months	Delegation :	RPA
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Public Authority Consultation - 56(2)(d) :	Transport for NSW Transport for NSW - Roads and Maritime Services
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Is Public Hearing by the PAC required?	No
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(2)(a) Should the matter proceed ?	Yes
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If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Planning Proposal Farrell Road Telopea Way Orange.pdf	Proposal	No
JRPP report to Minister from Panel - Pre gateway review.pdf	Proposal Covering Letter	No
Minister's Signed Brief and Letter.pdf	Proposal Covering Letter	No
Cheque from proponents Aug 14.pdf	Proposal Covering Letter	No

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **6.3 Site Specific Provisions**

Additional Information : **It is recommended that the planning proposal proceed subject to the following conditions:**

1. Prior to undertaking exhibition, the RPA is to provide an amended draft of Orange LEP 2011 map LZN_007D, zoning the relevant portion of the subject to B2 Local Centres, instead of amending Schedule 1 of the Orange LEP 2011. A revised draft of Orange LEP 2011 map FSR_007D for the site, showing a FSR of 0.2:1 is also to be provided.

2. Consultation is required with Orange City Council and the Roads and Maritime Service.

3. The Planning Proposal is to be exhibited for a minimum of 28 days.

4. The Planning Proposal is to be completed within 9 months of the Gateway Determination.

Inconsistency with s117 Direction 6.3 is overcome with the amendment of the land use zone on the site from R1 General Residential to B2 Local Centre instead of Schedule 1.

Inconsistency with s117 Direction 3.1 Residential Zones is of minor significance in this instance. The Secretary's approval to proceed under these Directions has been granted. No other consideration of Section 117 Directions is required.

No further studies are required.

Supporting Reasons : **The Planning Proposal seeks to amend the Orange LEP 2011 to allow a higher order zone on the subject land to facilitate service stations and take away food and drink premises adjacent to a neighbourhood shopping centre zoned B2 Local Centre and land zoned SP3, which will result in new services appropriate, and new to the location.**

The method of achieving the PP is preferred as a rezoning of the site to B2 Local Centre as opposed to amendment of Schedule 1 of the Orange LEP 2011 to permit the subject land uses.

The rezoning of the site and preparation of Height and Floor Space Ratio mapping will also provide more certainty for both the owners and surrounding residents as opposed to amendment of Schedule 1 of the LEP.

Signature: _____

Printed Name: _____

Date: _____