

16 OUR ECONOMY**16.1 PLANNING PROPOSAL CORRECTION OF CLAUSE 4.2C NARRANDERA LOCAL ENVIRONMENTAL PLAN 2013****Document ID:** 438462**Author:** Senior Planner**Authoriser:** Deputy General Manager Infrastructure**Theme:** Our Economy**Attachments:** 1. Planning Proposal LEP 2013 Amendment [↓](#)**RECOMMENDATION**

That Council:

1. Agree to the draft planning proposal as attached and consent to staff progressing all stages of the planning proposal through to completion subject to a further report being provided in the event of any significant issues arising during agency consultation or if any objections are received from the community during the exhibition period.
2. Agree to staff having the error corrected through a more streamlined process should it become available.

PURPOSE

The purpose of this report is to seek permission to commence and progress a planning proposal process with the Department of Planning, Industry and Environment in order to correct an error in Clause 4.2C of the Narrandera Local Environmental Plan 2013 (NLEP) which impacts on the permissibility of dwellings in the RU4 Primary Production Small Lots Zone.

SUMMARY

A drafting error occurred during the completion of the NLEP which impacts on the ability to have a dwelling in the RU4 zone. The drafting error creates confusion surrounding interpretation and can result in interpretations and outcomes which do not align with Council's policy position or best practice.

Correction of this error will ensure a suitable balance between the provision of dwellings in the RU4 zone and protection of agricultural land and rural industries.

BACKGROUND

The draft NLEP was publicly exhibited three times between April and December 2012 and included the RU4 zone in clause 4.2C(2). At the time, inclusion of the RU4 zone in clause 4.2C(2) was agreed to by agencies, the local community and Council. However, an administrative oversight occurred when the NLEP was completed by the Department of Planning on 28 June 2013. The completed NLEP did not include the RU4 zone in clause 4.2C(2). The department has acknowledged responsibility for this error. Council's policy intent was always to permit dwellings on certain RU4 land subject to restrictions, and this is reflected in the Narrandera Development Control Plan 2013.

Council has attempted to have the error corrected by the department through a more streamlined error correction process. However, the department has refused to do so indicating that Council is required to follow a planning proposal process in order to correct the error. While staff are still in consultation with the department attempting to have a more expedited process implemented, it has been decided to commence a planning proposal process in order to prevent any further delays should those negotiations be unsuccessful.

Correcting the error in the NLEP will ensure Council's policy is implemented as intended, prevent confusion, prevent unplanned rural residential development and ensure that dwellings are still permitted on RU4 land subject to suitable restrictions which respect historical rights and support agricultural operations in the zone. A draft planning proposal is included as an attachment and provides further detail.

RELEVANCE TO COMMUNITY STRATEGIC PLAN AND OTHER STRATEGIES / MASTERPLANS / STUDIES

Theme

Our Economy

Strategy

3.1 - To encourage new business and industry that can be sustained also support local business and industry to grow and prosper

Action

5.1.7 - Planning instruments reflect the intent and direction of land use strategies and facilitate development and growth of the Shire

ISSUES AND IMPLICATIONS

Policy

The proposed changes will correct a drafting error to ensure that development is managed as originally intended by Council and the community. This will prevent unplanned rural residential development and reduce the likelihood of land use conflict while at the same time supporting dwellings on RU4 land subject to suitable restrictions.

Financial

Council will be required to cover the costs of advertising the proposal in line with the Gateway determination by the Department of Planning, Industry and Environment. It is expected that these costs can be covered under the current operational budget.

Legal / Statutory

The proposal is to correct a drafting error to bring the NLEP in line with that which was previously publicly exhibited and agreed upon.

Community Engagement / Communication

The Department of Planning, Industry and Environment will determine consultation requirements through the Gateway process. Preliminary advice from the Department is that public exhibition can be limited to 14 days due to the proposal being reflective of what was previously consulted on during the creation of the NLEP. Should any submissions object to the proposed changes a further report will be put to Council for consideration.

Human Resources / Industrial Relations (if applicable)

The planning proposal has been prepared by staff in consultation with the Department of Planning, Industry and Environment and will be progressed by staff in consultation with the department.

RISKS

In the interim until the planning proposal is finalised the risk of confusion and unintended outcomes in the RU4 Primary Production Small Lots zone remains.

OPTIONSOption 1

Do nothing or delay the correction for inclusion with the full NLEP review.

This requires fewer resources but will result in continued confusion through differing interpretations and the risk of unintended outcomes in the RU4 zone which may be to the detriment of landowners, agricultural operations and rural industries.

Option 2

Agree to the draft planning proposal and for it to be sent to the Department of Planning, Industry and Environment for Gateway Determination. Further reports to then be sent at each stage of the process.

This approach ensures that Council is briefed at each step of the process. However, it would result in significant delays due to the time between each scheduled meeting.

Option 3

Agree to the draft planning proposal and consent to staff progressing all stages of the planning proposal through to completion subject to no significant issues arising through consultation with the Department of Planning, Industry and Environment, other agencies and the community. Should any issues arise through consultation with agencies or should any objections be received during the community consultation process a further report will be provided to enable consideration of the matter by Councillors.

This approach will ensure that the error correction is made as quickly as possible while providing suitable safeguards to ensure that Councillors have the opportunity to make a judgement regarding any issues arising out of consultation with agencies or the community.

CONCLUSION

The current controls relating to dwellings on RU4 zoned land do not align with Council's policy, best practice or with what has been subject to community consultation.

Correction of the error in the NLEP will provide greater certainty to all interested parties and reduce the potential for unintended outcomes in the zone.

RECOMMENDATION

That Council:

1. Agree to the draft planning proposal as attached and consent to staff progressing all stages of the planning proposal through to completion subject to a further report being provided in the event of any significant issues arising during agency consultation or if any objections are received from the community during the exhibition period.
2. Agree to staff having the error corrected through a more streamlined process should it become available.

Planning Proposal

Narrandera Local Environmental Plan 2013

**AMEND CLAUSE
4.2C**



Planning Proposal - Amend Clause 4.2C Narrandera Local Environmental Plan 2013

Objectives and Intended Outcomes

To amend the Narrandera Local Environmental Plan (LEP) 2013 to include zone RU4 Primary Production Small Lots in Clause 4.2C(2) 'Erection of dwelling houses on land in certain rural and environment protection zones'. The intended outcome of this proposal is to rectify a final drafting oversight that occurred during the finalisation process of the LEP in 2013. The proposal will minimise unplanned rural residential development while suitably accommodating dwellings on specific historical lots and holdings on land zoned RU4 Primary Production Small Lots. This will provide fairness and clear direction to Council, landowners and the public. The proposed amendment will reinstate the intention of Council when the LEP was prepared.

Explanation of Provisions

The objective will be achieved by inserting zone 'RU4 Primary Production Small Lots' in Section 4.2C(2) of the Narrandera LEP 2013. The proposed LEP amendment will allow Council to approve 'dwelling houses' on RU4 land where the lot meets the criteria of clause 4.2C(3). For example, through meeting the Minimum Lot Size (MLS) of 200ha, by virtue of the land being an historical lot with an historical dwelling entitlement or when the land is an existing holding.

Justification

Need for the Planning Proposal

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

The draft Narrandera LEP was publicly exhibited three times between April and December 2012 (see Attachment A) and included the RU4 zone in clause 4.2C(2). At the time, inclusion of the RU4 zone in clause 4.2C(2) was agreed to by agencies, the local community and Council. However, an administrative oversight occurred when the Narrandera LEP was notified by the department on 28 June 2013. The notified LEP did not include the RU4 zone in clause 4.2C(2). Council's policy intent was always to permit dwellings on certain RU4 land subject to restrictions, and this is reflected in the Narrandera Development Control Plan 2013 (see Attachment B). Therefore, the planning proposal is required to rectify a drafting issue which occurred during the very final stages of the Narrandera LEP 2013 process.

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

Council identified the drafting issue and have sought advice from the Department of Planning, Industry and Environment. The Department's view is that the proposal is not considered an erratum or 'minor' for the purposes of an expedited amendment (i.e. with no public consultation) due to the time elapsed since Narrandera LEP 2013 was notified. The department has therefore indicated that a planning proposal is the best means of achieving the objective to rectify the oversight.

While Council is firmly of the opinion that this amendment does comply with Section 3.22(1)(a) of the Act in that it is to correct an obvious error through the insertion of obviously missing words, the department will

Planning Proposal - Amend Clause 4.2C Narrandera Local Environmental Plan 2013

not correct the error through that process.

Therefore, the preparation of this planning proposal is the only way to ensure that the erection of dwellings on land zoned RU4 Primary Production Small Lots is managed in the manner agreed by our Council, the community and agencies.

Relationship to Strategic Planning Framework

Riverina Murray Regional Plan 2036

The proposal is consistent with the Riverina Murray Regional Plan. This proposal relates directly to:

- Direction 1 Protect the regions diverse and productive agricultural land
- Direction 2: Promote and grow the agribusiness sector

The proposal is consistent with the Regional Plan as it will minimise unplanned rural residential development while suitably accommodating dwellings on specific historical lots and holdings on land zoned RU4 Primary Production Small Lots.

This will effectively protect agricultural land from incompatible land use while balancing the need for some rural dwellings to be provided.

Consistency with relevant SEPPs

State Environmental Planning Policy (Primary Production and Rural Development) 2019

The objective of this proposal will facilitate the orderly economic use and development of lands for primary production, by balancing agricultural related uses and residential development on land zoned RU4 Primary Production Small Lot. The proposal is therefore consistent with the aims of this Policy.

State Environmental Planning Policy (Exempt and Complying Development Code) 2008 (Code SEPP)

The omission of zone RU4 in clause 4.2C(2) results in the ability for the Code SEPP to be utilised in a manner which creates unintended consequences, confusion and land use conflict. Rectifying clause 4.2C(2) will provide clarity for Council, landowners and the public and help prevent unintended land use conflicts.

Consistency with Section 9.1 Directions

Direction 1.2 Rural Zones

The proposal impacts on development within an existing rural zone. The proposal will not rezone land from a rural zone to a residential, business, industrial, village or tourist zone. Therefore, the proposal is consistent with this Direction.

Direction 1.3 Mining, Petroleum Production and Extractive Industry

The proposal affects land where mining, petroleum production or extractive industries are permitted. The objective of this Direction is to ensure planning proposals do not prohibit or restrict the development of resources. The planning proposal will clarify where dwelling houses can be erected on RU4 zoned land. Noting they are already permissible development with consent. The intent of the planning proposal is to reinstate that dwelling houses are permissible subject to clause 4.2C(3) criteria. Therefore, the planning

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proposal is consistent with this Direction.

Direction 1.5 Rural Lands

The proposal effects development within an existing rural zone. The proposal is considered to minimise unplanned rural residential development while suitably accommodating dwellings on specific historical lots and holdings on land zoned RU4 Primary Production Small Lots. It will not adversely affect the operation and viability of rural land uses, it is considered necessary to support them. Therefore, the proposal is consistent with this Direction.

Direction 2.1 Environment Protection Zones

The objective of this Direction is to protect and conserve environmentally sensitive areas. The planning proposal is consistent with this Direction as it clarifies when a dwelling house can be erected on certain RU4 land. This is not expected to reduce the environmental protection standards that apply to land. Through clarifying restrictions on the erection of dwellings in this zone it is considered to further support environmental protection. Therefore, the proposal is consistent with this Direction.

Direction 2.3 Heritage Conservation

This Direction applies as the planning proposal will affect all zone RU4 land which may contain environmental or indigenous heritage significance. The planning proposal is an administrative amendment to the principal development standard clause 4.2C and will not affect any other provision of the LEP which could impact on the conservation of heritage significance. Therefore, the proposal is considered consistent with this Direction.

Direction 4.3 Flood Prone Land

The proposal may affect development within an existing flood planning area. The zoning of the land for RU4 Primary Production Small Lots considers the flood impacts on and off the land. The proposed amendment will not increase the development potential of flood prone land. Therefore, the proposal is consistent with this Direction as it does not affect flood prone land controls.

Direction 4.4 Planning for Bushfire Protection

The proposal may affect development within existing bushfire prone land. The zoning of the land for RU4 Primary Production Small Lots considers establishment of incompatible land uses in bush fire prone areas. The proposed amendment will not increase the development potential of bushfire prone land. To comply with this Direction NSW RFS will be consulted during the exhibition period to ensure consistency.

Direction 5.10 Implementation of Regional Plans

This Direction applies to the planning proposal as it relates to directions of the Riverina Murray Regional Plan. As previously described, the planning proposal is consistent with Direction 1 and 2 of the Regional Plan. Therefore, the proposal is consistent with this Direction.

Environmental Social and Economic Impact

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?

The planning proposal is an administrative amendment to the LEP to clarify when already permissible development can occur on certain zone RU4 land. There is no known State or Commonwealth listed

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critical habitat (also known as Areas of Outstanding Biodiversity Value) within the Narrandera Local Government Area. Depending where development is proposed the impact to threatened species, populations or ecological communities or their habitats will be assessed at the development application stage. As the proposal will not permit additional development types or intensification of development on any given lot, the proposal is not expected to have an adverse effect on threatened species, populations or ecological communities or their habitats.

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

No, the planning proposal minimises the erection of unplanned dwelling houses on land in zone RU4 Primary Production Small Lots while suitably accommodating dwellings on specific historical lots and holdings. This will further protect the environmental and agricultural values of the land.

Has the planning proposal adequately addressed any social and economic impacts?

The objective of this planning proposal is to resolve a drafting oversight that occurred during the finalisation of the LEP. This will reinstate fair assessment criteria for dwellings in the RU4 Zone while also providing greater certainty for investment in agriculture and rural industries which will benefit employment and economic activity in our shire. The proposal will achieve the original intent of the Narrandera LEP 2013. This is expected to have positive social and economic impacts.

Mapping

The proposed LEP amendment does not require any changes to LEP mapping.

Community Consultation

The planning proposal is considered a low impact planning proposal, as per 'A guide to preparing local environmental plans' as it is a minor administrative amendment, consistent with the strategic planning framework. Previous exhibition found there were no issues from agencies, or the community and the proposal will only rectify a drafting oversight. For this reason, 14 days is considered adequate period for exhibition.

Consultation with NSW RFS is also proposed to ensure consistency with 9.1 Direction 4.4 Planning for Bushfire Protection.

Project Timeline

The proposal is expected to be finalised within 6 months of receiving a Gateway determination as it requires minor consultation and minor legal drafting. Given the minor nature of the planning proposal, Council requests delegation to make the plan.

Attachment A

Version for exhibition November 2012

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.

4.2C Erection of dwelling houses on land in certain rural zones [local]

- (1) The objectives of this clause are as follows:
 - (a) to minimise unplanned rural residential development, and
 - (b) to enable the replacement of lawfully erected dwelling houses in rural and environmental protection zones.
- (2) This clause applies to land in the following zones:
 - (a) Zone RU1 Primary Production,
 - (b) Zone RU4 Primary Production Small Lots.
- (3) Development consent must not be granted for the erection of a dwelling house on a lot in a zone to which this clause applies, and on which no dwelling house has been erected, unless the lot is:
 - (a) a lot that is at least the minimum lot size specified for that lot by the Lot size Map, or
 - (b) a lot created under an environmental planning instrument before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or
 - (c) a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement.
 - (d) an existing holding,

Note. A dwelling cannot be erected on a lot created under clause 9 of *State Environmental Planning Policy (Rural Lands) 2008* or clause 4.2.

- (e) a lot created in accordance with clause 4.2B.
- (4) 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 RU4 Primary Production Small Lots, and
 - (b) The lot has an area of not less than 40ha 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 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 of the proposed use.

Attachment A

Version for exhibition November 2012

- (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.

- (5) Despite any other provision of this clause, development consent may be granted for the erection of a dwelling house on land in a zone to which this clause applies if:
 - (a) there is a lawfully erected dwelling house on the land and the dwelling house to be erected is intended only to replace the existing dwelling house, or
 - (b) the land would have been a lot or a holding referred to in subclause (3) had it not been affected by:
 - (i) a minor realignment of its boundaries that did not create an additional lot, or
 - (ii) a subdivision creating or widening a public road, public reserve or for another public purpose, or
 - (iii) a consolidation with adjoining public road, a public reserve or for another public purpose.
- (6) In this clause:
 - existing holding* means all adjoining land, even if separated by a road or railway, held in the same ownership:
 - (a) on 12 July 1991, and
 - (b) at the time of lodging a development application for the erection of a dwelling house under this clause, and includes any other land adjoining that land acquired by the owner since 12 July 1991.

Note. The owner in whose ownership all the land is at the time the application is lodged need not be the same person as the owner in whose ownership all the land was on the stated date.

4.2D Erection of rural workers dwellings [local]

- (1) The objective of this clause is to ensure the provision of adequate accommodation for employees of existing agricultural or rural industries.
- (2) This clause applies to land in the following zones:
 - (a) Zone RU1 Primary Production, and
 - (b) Zone RU4 Primary Production Small Lots.
- (3) Development consent must not be granted to the erection of a rural worker' dwelling on land to which this clause applies, unless the consent authority is satisfied that:
 - (a) the development will not impair the use of the land for agricultural or rural industries, and

Attachment B

Narrandera Development Control Plan 2013

**Part D Rural, residential, business and industrial controls****Chapter 6 Rural subdivision and large lot residential development****6.1 Rural subdivision for agricultural purposes only**

Clause 4.2 of the Narrandera LEP permits, on merit, the subdivision of a lot for the purpose of primary production, which is less than the minimum lot size shown on the relevant LEP map. This clause applies to the RU1 Primary Production zone and the RU4 Primary Production Small Lots zone.

The LEP provides that such a lot cannot be created if an existing dwelling would be situated on the lot, and a dwelling cannot be erected on such a lot following its creation.

In considering a development application to create a lot for the purpose of primary production the Council will have regard to the following matters (this list is not exhaustive).

- The zone objectives.
- The location, size and intended agricultural purpose of the lot.
- Whether the creation of the lot will assist with farm adjustment.
- Whether the creation of the lot will assist the introduction of new or innovative agricultural practice or a rural industry or permissible employment generating industry.
- If the lot is in the RU4 zone, whether its agricultural use will likely impact on the amenity of residents of the RU4 zone.
- Any relevant circumstances of the case.

6.2 Rural subdivision for agriculture with dwelling entitlement

Clause 4.2C of the LEP permits, on merit, the creation of a lot for the purposes of agriculture, and the erection of a dwelling on that lot, provided the lot is of the minimum size prescribed on the lot size map in the LEP. The minimum lot size for a dwelling in the RU1 Primary Production zone is 400 hectares. The minimum lot size for a dwelling in the RU4 Primary Production Small Lots zone is 200 hectares. Refer to the LEP map sheet for the zone applying to the land.

The LEP also permits, on merit, rural subdivision for the purposes of intensive plant agriculture, within the RU4 Primary Production Small Lots zone. Clause 4.2B of the LEP sets out the full requirements for consideration of such a lot, including a minimum lot size of 40 hectares, adequate arrangements being made for a water irrigation license suitable to the proposed use, and the intensive plant agriculture activity must have commenced or been established before the subdivision is registered.