

**Orange Local Environmental Plan 2011 – Amend schedule 1 to insert an Additional Permitted Use to allow Food and Drink Premises, Agricultural Produce Industries, Light Industry, Function Centres, Hotel or Motel Accommodation and Shops and 4-lot subdivision with minimum lot size of 3500m2.**

Proposal Title : Orange Local Environmental Plan 2011 – Amend schedule 1 to insert an Additional Permitted Use to allow Food and Drink Premises, Agricultural Produce Industries, Light Industry, Function Centres, Hotel or Motel Accommodation and Shops and 4-lot subdivision with minimum lot size of 3500m2.

Proposal Summary : The Planning Proposal is to establish the subject site (426 Mitchell Highway (Lot 209 DP 1018862) as a local food and produce hub complemented by tourist accommodation. The proposal would enable, by way of an Additional Permitted Use (APU) listing in Schedule 1 of the LEP, several forms of development to be permitted with consent on this subject site. The additional uses being sought include:

- Food and drink premises,
- Agricultural produce industries,
- Light industries,
- Function centres, and
- Hotel or motel accommodation.
- Shops

The APU will also allow for the subdivision of land into 4 lots with a minimum resultant lot size of 3500m2, as per the conceptual subdivision layout in the Planning Proposal.

PP Number : PP\_2017\_ORANG\_004\_00      Dop File No : 17/09579

#### Proposal Details

|                                   |               |                      |                        |
|-----------------------------------|---------------|----------------------|------------------------|
| Date Planning Proposal Received : | 07-Aug-2017   | LGA covered :        | Orange                 |
| Region :                          | Western       | RPA :                | Orange City Council    |
| State Electorate :                | ORANGE        | Section of the Act : | 55 - Planning Proposal |
| LEP Type :                        | Spot Rezoning |                      |                        |

#### Location Details

Street : Mitchell Highway

Suburb : Orange      City : Orange      Postcode : 2800

Land Parcel : The Planning Proposal applies to the subject 2ha site 426 Mitchell Highway (Lot 209 DP 1018862) which is zoned R5 Large Lot Residential. A local produce outlet is established on the subject site.

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**Land Release Data**

|                                    |                                           |                                                      |                 |
|------------------------------------|-------------------------------------------|------------------------------------------------------|-----------------|
| Growth Centre :                    | N/A                                       | Release Area Name :                                  | N/A             |
| Regional / Sub Regional Strategy : | Central West and Orana Regional Plan 2036 | Consistent with Strategy :                           | No              |
| MDP Number :                       |                                           | Date of Release :                                    |                 |
| Area of Release (Ha) :             | 0.12                                      | Type of Release (eg Residential / Employment land) : | Employment Land |
| No. of Lots :                      | 0                                         | No. of Dwellings (where relevant) :                  | 0               |
| Gross Floor Area :                 | 0                                         | No of Jobs Created :                                 | 20              |

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 :

**Supporting notes**

Internal Supporting Notes : The Planning Proposal seeks to further develop the subject site (426 Mitchell Highway (Lot 209 DP 1018862) as a local food and produce hub complemented by tourist accommodation.  
 The Orange LEP 2011 has an Additional Permitted Use, Item 1, to allow agricultural produce industries and food and drink premises on the subject site. However, there was a 2-year sunset clause which has meant that this APU lapsed on 24 February 2014.  
 The proponent has stated that the 2-year sunset period was difficult to meet given they had

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not considered the future use of the site for a number of complex inter-related land uses based on agricultural secondary processing. The site already supports cheese making, brewery, cool rooms, wine store, café, produce store and a food transport business. Development concept plans for the Planning Proposal indicate a widened range of land uses: smallgoods, florist, bakery, function centre, chocolatier or cordial juice manufacturing plus 6 retail shops for uses such as craft/gifts, leather goods, health foods etc with a local or regional provenance focus. The total amount of new retail space is 833.83m<sup>2</sup> and the function centre of 369.72m<sup>2</sup>. There are 8 one-or two bed cabins also proposed as complementary tourist and visitor accommodation.

The surrounding land use zones are R5 Large Lot Residential and RU1 Primary Production. The locality is on the northern entrance to Orange on the Mitchell Highway and one of the fastest growing precincts in the city. A Gateway determination was recently issued for land zoned R2 Low Density Residential immediately adjoining the subject site east over Ploughmans Creek for intensification of residential density.

The land immediately across the Mitchell Highway to the west is zoned R5 Large Lot Residential, with a 2ha minimum lot size. A private school is located opposite the site, providing satisfactory buffer between the proposed intensification of the subject site and the existing dwellings located to the west. The surrounding land uses have remained consistent such that the broadened APU being proposed is suitable on this site.

The concept plan design seeks to keep activities centred within the block and afford opportunity for boundary landscaping buffers to help screen neighbouring lands. During the preparation of the Orange LEP 2011, the site then known as Totally Local presented some issues over the selection of an appropriate land use zone; with the result that the R5 Large Lot Residential was applied and an item listed in Schedule 1 Additional Permitted Uses. This approach was agreed at the time to be the most conservative compared to zoning the entire site for light industrial or business uses, where there was a perceived risk that a more intensive form of development could eventuate, such as a service station or out of centre shop. The position of the site at the key northern entry to Orange requires sensitive management in terms of traffic generation and amenity. The Totally Local building complex is a 'repurposed' former apple packing shed and outbuildings, and since 2014 has developed into a food manufacturing and sales outlet specialising in provenance, now known as 'The Agrestic Grocer'. Expansion of the land uses at the site under the former approvals include a café, fresh produce sales, wine sales and food transport business. The Orange LEP 2011 APU listing reflected the position of the landowners of Totally Local in terms of the current and future development plans. The Department and Council elected to apply an expiry date to the APU in the event the development did not occur as proposed.

As noted, the site is zoned R5 Large Lot Residential with a minimum lot size of 2ha. There is also one dwelling house on the site, and currently it is not possible to subdivide the dwelling from the rest of the lot. The area of Lot 209 is approximately 2ha meaning that no further subdivision is possible. It is understood the relevant planning authority assumes the ability to permit the subdivision of the dwelling house, commercial premises and proposed tourist and visitor accommodation into separate titles – however recent case law to this effect indicates that subdivision can only occur where the community (or strata title) already exists.

Additional information provided by Council on 7 August 2017 requests that the subdivision of land be considered during the assessment of the Planning Proposal. To facilitate the subdivision of land, the APU will stipulate the number of lots to be 4 and the resultant minimum lot size to be 3500m<sup>2</sup>. Due to the uncertainty about the APU it is recommended that delegation not be authorised in this case.

Notwithstanding the unique set of circumstances surrounding the application of an appropriate zone and planning provisions discussed above, the loss of 2ha of residentially-zoned land is negated by the expansion of residential development in the general locality.

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In terms of local impacts, there are no unforeseen issues that would not be able to be dealt with at the development application stage where it is expected a relevant state agencies would be consulted with – such as RMS and OEH (Condition 4).

By including shops in the APU it may potentially lend itself to a range of unintended development, potentially not unsuitable for this site – such as sale of everyday goods and necessities.

Shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop, but does not include food and drink premises or restricted premises.

It may be appropriate to introduce restrictions on scale and floorspace in order to limit the extent of development on site. This issue can be considered by the Department in consultation with Council and PCO prior to finalising the LEP.

External Supporting  
Notes :

## **Adequacy Assessment**

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

Is a statement of the objectives provided? Yes

Comment :                      The statement of objectives clearly states the intent of the Planning Proposal is to permit:

- Food and Drink Premises,
- Agricultural Produce Industries,
- Light Industry,
- Function Centres, and
- Hotel or Motel Accommodation.
- Shop

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

Is an explanation of provisions provided? Yes

Comment :                      It is proposed that the Orange LEP 2011 Schedule 1 be amended allow several forms of development be permitted with consent on the subject site.  
Given Schedule 1 contains an APU relating to this proposal, which has lapsed in accordance with its 2-year sunset provision, the amendment will in effect replace or amend the current APU listing item 1.

The subdivision of land can be facilitated by stipulating in the APU the number of lots and the resultant minimum lot size of 3500m2.

Due to the nature of the proposal and the uncertainty about the APU it is recommended that delegation not be authorised to Council in this instance. This is to ensure that the subdivision is carried out for the purpose outlined in the APU, the following could be included to address:

- the subdivision of the land to create no more than 4 lots, and
- a minimum lot size of not less than 3500m2, and
- the land uses, outlined in this planning proposal and generally in accordance with the concept plan.

The Department will work closely with Council and PCO to resolve this matter prior to

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finalising the LEP.

**Justification - s55 (2)(c)**

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

b) S.117 directions identified by RPA : **1.1 Business and Industrial Zones**  
**3.1 Residential Zones**  
 \* May need the Director General's agreement **5.10 Implementation of Regional Plans**

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

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

d) Which SEPPs have the RPA identified? **N/A**

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

**Business Centre Strategy**

The Planning Proposal intends to amend the LEP to allow for out of centre retail and business activity. The Planning Proposal demonstrates that it is consistent with this Strategy in that:

- The Strategy identifies an additional floor space of 25,490m2 could be sustained in Orange between 2009 and 2021. Given the proposal on this site is minimal (833.83m<sup>2</sup>), the impact of the demand/supply for commercial premises within the Orange CBD is negligible.
- The proposed retail uses will not conflict with the closest North Orange Shopping Centre. The proposed retail uses are based around the concept of local produce sales which is already established on the land.

**Section 117 2.3 Heritage Conservation**

This Direction is applicable to the Planning Proposal because the subject land is in the vicinity of other identified heritage items. The Orange LEP 2011 Heritage map shows that the Ammerdown Carriageway (Item 331 of Local Significance) and Ammerdown Homestead (Item 2 of State Significance) are on the adjoining property to the north at 450 Mitchell Highway.

The objective of this Direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

The Planning Proposal is inconsistent with this Direction at this time as the impact on the heritage items have not been assessed.

The proposal does not change the Orange LEP 2011 heritage provisions or considerations but the impact on the adjoining local and state heritage items are unknown at this stage. This matter can be satisfied at Section 59 Report after consultation with OEH, further detail assessment can be made at DA stage.

**Section 117 3.1 Residential Zones.** The Planning Proposal will not introduce provisions which will reduce the permissible residential density of land, but will enable an additional non-residential use on the site which is zoned R2 Low Density Residential.

However, the lot size at 2ha is matched with a LEP mapped minimum lot size of 2ha which allows for a single dwelling. The site contains an existing dwelling and therefore the Planning Proposal has negligible impact on the residential zone. The Director Regions, Western can be satisfied the proposal is consistent with this Direction and no further work is required.

**Section 117 - 5.10 Regional Plans –** The Planning Proposal has not addressed the Central West and Orana Regional Plan. This can be undertaken prior to community consultation.

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

If No, explain :

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**Mapping Provided - s55(2)(d)**

Is mapping provided? **Yes**

Comment : The Planning Proposals seeks to add a APU which will require the APU map to be updated.

**Community consultation - s55(2)(e)**

Has community consultation been proposed? **Yes**

Comment : Community consultation of the Planning Proposal is proposed for a period of 28 days. Public will be notified through notice in the local newspaper and Councils Website. Adjoining land owners will also be notified.

**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 : The Planning Proposal is adequate in the information provided.

**Proposal Assessment**

**Principal LEP:**

Due Date :

Comments in relation to Principal LEP : Orange LEP 2011 was notified on 24 February 2012

**Assessment Criteria**

Need for planning proposal : The Planning Proposal is required to amend Schedule 1 of the Orange LEP to include an APU for the uses being sought, given the uses are not suitable to be permitted in the R5 Large Lot Residential land use tables.

Consistency with strategic planning framework : CWO Regional Plan 2036  
The Planning Proposal's consistency with the Central West and Orana Regional Plan is to be addressed prior to community consultation (condition 1).

**Orange Business Centre Strategy**

The Planning Proposal intends to amend the LEP to allow for out of centre retail and business activity. The Planning Proposal demonstrates that it is consistent with this Strategy in that:

- The Strategy identifies an additional floor space of 25,490m2 could be sustained in Orange between 2009 and 2021. Given the proposal on this site is minimal, the impact of the demand/supply for commercial premises within the Orange CBD is negligible; and
- The proposed retail uses will not conflict with the closest North Orange Shopping Centre. The proposed retail uses are based around the concept of local produce sales following secondary processing of agricultural produce.

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Environmental social  
economic impacts :

There are no known specific environmental effects associated with the development of site. The existing commercial uses has meant the site is highly modified.

**Heritage**

The site does not contain any known items of European or Aboriginal cultural heritage. The Orange LEP identifies 2 heritage items on adjoining lots – item 2 Ammerdown Homestead (state significant) and item 331 Ammerdown Carriageway (local significance).

The items are significantly separated from the subject site and as such it is unlikely that the heritage items value will be impacted by this proposal. Consultation will be required with OEH. A heritage impact statement may be required at development application stage.

**Traffic and parking Impacts**

The proposal will likely generate additional car parking and traffic. The subject site is accessed from a Regional Road and therefore consultation with RMS is required. Detailed parking and traffic impact assessment can be carried out and assessed at a development application stage.

**Assessment Process**

Proposal type : **Minor** Community Consultation Period : **28 Days**

Timeframe to make LEP : **12 months** Delegation : **RPA**

Public Authority Consultation - 56(2)(d) : **Office of Environment and Heritage  
Transport for NSW - Roads and Maritime Services**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

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 :

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## Documents

| Document File Name                                                     | DocumentType Name | Is Public |
|------------------------------------------------------------------------|-------------------|-----------|
| SEPP schedule of consistency.pdf                                       | Proposal          | Yes       |
| Section 117 Directions statement of consistency.pdf                    | Proposal          | Yes       |
| Planning Proposal - Orange.pdf                                         | Proposal          | Yes       |
| Planning Proposal Development Concept Plans - Totally Local - DC11.pdf | Map               | Yes       |
| Planning Proposal Development Concept Plans - Totally Local - DC10.pdf | Map               | Yes       |
| Planning Proposal Development Concept Plans - Totally Local - DC09.pdf | Map               | Yes       |
| Planning Proposal Development Concept Plans - Totally Local - DC08.pdf | Map               | Yes       |
| Planning Proposal Development Concept Plans - Totally Local - DC07.pdf | Map               | Yes       |
| Planning Proposal Development Concept Plans - Totally Local - DC06.pdf | Map               | Yes       |
| Planning Proposal Development Concept Plans - Totally Local - DC05.pdf | Map               | Yes       |
| Planning Proposal Development Concept Plans - Totally Local - DC04.pdf | Map               | Yes       |
| Planning Proposal Development Concept Plans - Totally Local - DC03.pdf | Map               | Yes       |
| Planning Proposal Development Concept Plans - Totally Local - DC02.pdf | Map               | Yes       |
| Planning Proposal Development Concept Plans - Totally Local - DC01.pdf | Map               | Yes       |

## Planning Team Recommendation

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

S.117 directions:

- 1.1 Business and Industrial Zones
- 3.1 Residential Zones
- 5.10 Implementation of Regional Plans

Additional Information :

1. Prior to community consultation the Planning Proposal is to be amended to address Section 117 Direction 5.10 - Implementation of Regional Plans. This work is to address the final Central West and Orana Regional Plan.
2. Prior to community consultation the Planning Proposal is to be amended to reflect the proposed minimum lot size for the site of 3500m2 .
3. Community consultation is required under Sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 as follows:
  - (a) the Planning Proposal must be made publicly available for a minimum of 28 days;
  - (b) the relevant planning authority must comply with the notice requirements for public exhibition of Planning Proposals and the specifications for material that must be made publicly available along with Planning Proposals as identified in Section 5.5.2 of A Guide to Preparing LEPs (Department of Planning & Environment 2016).
4. Consultation is required with the following public authorities under Section 56(2)(d) of the Environmental Planning and Assessment Act, 1979:
  - NSW Office of Environment and Heritage, and

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- NSW Roads and Maritime Services.

Each public authority/organisation is to be provided with a copy of the Planning Proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

5. A public hearing is not required to be held into the matter by any person or body under Section 56(2)(e) of the Environmental Planning and Assessment Act, 1979. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

6. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

7. Council not be authorised to exercise delegation in this case.

Supporting Reasons :

This Planning Proposal will allow for the proposed uses to be developed on the subject site. By including the land uses in Schedule 1 of the LEP it prevents potentially unsuitable land uses on other land zoned R5 large lot residential.

The Planning Proposal has strategic merit and is able to be supported by issuing a conditional Gateway determination.

Signature:



Printed Name:

Tim Collins

Date:

15/8/17

Endorsed  
W/yanusey 15/8/17  
TLWR

