

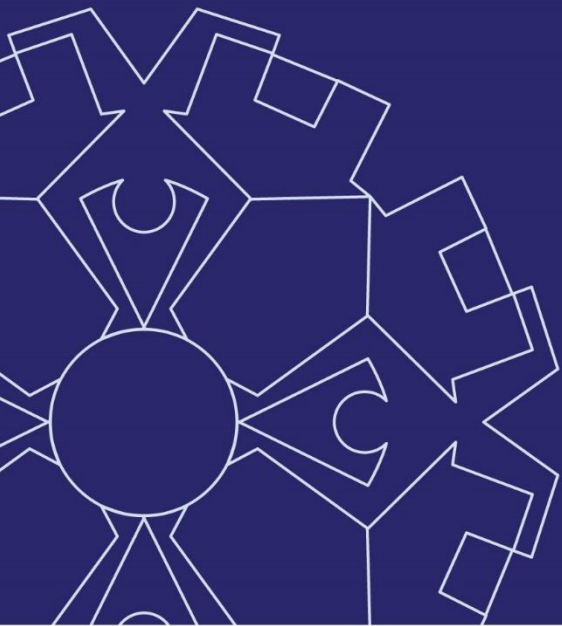


**GEOLYSE**

**PLANNING PROPOSAL  
AMENDMENT TO BOURKE LOCAL ENVIRONMENTAL PLAN 2012**

**PREPARED FOR  
BOURKE SHIRE COUNCIL**

**MAY 2017**



• Civil, Environmental & Structural Engineering • Surveying • Environmental • Planning • Architecture

**PLANNING PROPOSAL**  
**AMENDMENT TO BOURKE LOCAL ENVIRONMENTAL**  
**PLAN 2012**

**PROPOSAL TO AMEND PERMITTED USES IN THE RU1 AND R5 ZONES**

PREPARED FOR:  
**BOURKE SHIRE COUNCIL**

**MAY 2017**



**POSTAL ADDRESS** PO Box 1963  
**LOCATION** 154 PEISLEY STREET  
**TELEPHONE** 02 6393 5000  
**EMAIL** ORANGE@GEOLYSE.COM

**ORANGE NSW 2800**  
**ORANGE NSW 2800**  
**FACSIMILE** 02 6393 5050  
**WEB SITE** WWW.GEOLYSE.COM

|                      |                                                          |
|----------------------|----------------------------------------------------------|
| <b>Report Title:</b> | <i>Planning Proposal</i>                                 |
| <b>Project:</b>      | <i>Amendment to Bourke Local Environmental Plan 2012</i> |
| <b>Client:</b>       | <i>Bourke Shire Council</i>                              |
| <b>Report Ref.:</b>  | <i>213146_PP_001D.docx</i>                               |
| <b>Status:</b>       | <i>Final</i>                                             |
| <b>Issued:</b>       | <i>17 May 2017</i>                                       |

Geolyse Pty Ltd and the authors responsible for the preparation and compilation of this report declare that we do not have, nor expect to have a beneficial interest in the study area of this project and will not benefit from any of the recommendations outlined in this report.

The preparation of this report has been in accordance with the project brief provided by the client and has relied upon the information, data and results provided or collected from the sources and under the conditions outlined in the report.

All information contained within this report are/is prepared for the exclusive use of Bourke Shire Council to accompany this report for the land described herein and are not to be used for any other purpose or by any other person or entity. No reliance should be placed on the information contained in this report for any purposes apart from those stated therein.

Geolyse Pty Ltd accepts no responsibility for any loss, damage suffered or inconveniences arising from, any person or entity using the plans or information in this study for purposes other than those stated above.

## **TABLE OF CONTENTS**

|                                                        |            |
|--------------------------------------------------------|------------|
| <b>ABBREVIATIONS.....</b>                              | <b>III</b> |
| <b>BACKGROUND .....</b>                                | <b>1</b>   |
| 1.1 INTRODUCTION .....                                 | 1          |
| <b>INTENT AND PROVISIONS .....</b>                     | <b>4</b>   |
| 2.1 OBJECTIVE .....                                    | 4          |
| 2.2 EXPLANATION OF PROVISIONS .....                    | 4          |
| <b>JUSTIFICATION .....</b>                             | <b>6</b>   |
| 3.1 NEED FOR THE PLANNING PROPOSAL.....                | 6          |
| 3.2 RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK ..... | 6          |
| 3.2.1 DIRECTIVE 1.2 – RURAL ZONES.....                 | 6          |
| 3.2.2 DIRECTION 1.4 – RURAL LANDS .....                | 7          |
| 3.2.3 DIRECTION 3.1 – RESIDENTIAL ZONES.....           | 7          |
| 3.3 ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACTS .....   | 8          |
| 3.4 STATE AND COMMONWEALTH INTERESTS .....             | 8          |
| <b>COMMUNITY CONSULTATION.....</b>                     | <b>9</b>   |
| 4.1 TYPE OF COMMUNITY CONSULTATION REQUIRED.....       | 9          |
| <b>REFERENCES.....</b>                                 | <b>10</b>  |

## **ABBREVIATIONS**

| <b>Abbreviation</b> | <b>Full Name</b>                                      |
|---------------------|-------------------------------------------------------|
| PP                  | Planning Proposal                                     |
| DP&E                | NSW Department of Planning and Environment            |
| EP&A Act            | <i>Environmental Planning and Assessment Act 1979</i> |
| SEPP                | State Environmental Planning Policy                   |
| LEP                 | Local Environmental Plan                              |
| AHD                 | Australian Height Datum                               |
| LGA                 | Local Government Area                                 |

# Background

## 1.1 INTRODUCTION

It has become apparent whilst assessing a development application for a proposed manufactured dwelling in the RU1- Primary Production zone that the current provisions of the *Bourke Local Environmental Plan 2012* (LEP) contain a loophole that permits a standard dwelling house to be erected, but prohibits the development of manufactured dwellings. This loophole has arisen due to the definitions of manufactured dwellings, dwellings and dwelling houses as per the LEP.

A dwelling is defined as:

*dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.*

A dwelling house is defined as:

*dwelling house means a building containing only one dwelling.*

A building is defined as:

*building has the same meaning as in the Act.*

*Note.*

*The term is defined to include part of a building and any structure or part of a structure, but not including a manufactured home, a moveable dwelling or associated structure (or part of a manufactured home, moveable dwelling or associated structure).*

A manufactured dwelling is a form of moveable dwelling, which is defined as:

*moveable dwelling means:*

*(a) any tent, or any caravan or other van or other portable device (whether on wheels or not), used for human habitation, or*

*(b) a manufactured home, or*

*(c) any conveyance, structure or thing of a class or description prescribed by the regulations (under the Local Government Act 1993) for the purposes of this definition.*

Manufactured homes are a type of self-contained relocatable home or moveable dwelling constructed off-site, transported and installed on site. A manufactured home comprises one or more major sections but is not a registrable vehicle like a motor home or campervan.

Dwelling houses are listed in Part 3 of the RU1 Land Use Table and are therefore permitted with the consent of Council in the RU1 zone. Any other use not listed in Part 2 or 3 of the Land Use Table is prohibited, by virtue of the wording of Part 4. As a dwelling house is a building containing a dwelling, but a manufactured dwelling is not a building, it follows that a manufactured dwelling is not a dwelling house. There are no other logical permitted land uses within the RU1 Land Use Table that would capture a manufactured dwelling.

A manufactured dwelling can be considered as a form of residential accommodation on the basis that it is '*...place used predominantly as a place of residence*'. Therefore it is proposed to update Part 3 of the RU1 Land Use Table to include residential accommodation. Residential accommodation as an umbrella term is currently prohibited, with a number of specific residential accommodation types permissible by virtue of inclusion in Part 3 of the Land Use Table.

The same scenario exists in the R5 zone as per the LEP, ie, residential accommodation is prohibited and dwelling house are permitted with consent. It is therefore proposed to also take the opportunity to amend the R5 Land Use Table to facilitate the development of manufactured dwellings in the R5 zone.

The standard instrument definition of residential accommodation lists a number of types of residential accommodation. As not it is not desirable to make all of these land use types permissible in the RU1 and R5 zones, Part 4 of the Land Use Tables relating to the RU1 and R5 zones will be updated to specifically prohibit those land use types to remain prohibited in these zones.

Consistent with the terms of the current LEP, the following explicit types of residential accommodation are proposed as prohibited in the RU1 zone:

- Attached dwellings;
- Boarding houses;
- Group homes;
- Hostels;
- Multi dwelling housing;
- Residential flat buildings;
- Secondary dwellings;
- Semi-detached dwellings;
- Seniors housing;
- Shop top housing.

All forms of residential accommodation not listed above will therefore be permitted with consent in the RU1 zone.

Consistent with the terms of the current LEP, the following explicit types of residential accommodation are proposed as prohibited in the R5 zone:

- Attached dwellings;
- Boarding houses;
- Hostels;
- Multi dwelling housing;
- Residential flat buildings;
- Secondary dwellings;
- Semi-detached dwellings;
- Seniors housing;
- Shop top housing.

All forms of residential accommodation not listed above will therefore be permitted with consent in the R5 zone.

Due to the geographic separation of development sites within the Bourke LGA, the cost of developing a traditional dwelling house is prohibitive. Therefore, many developers prefer to utilise the cost savings associated with installing a manufactured dwelling. Due to the way they are used, the likelihood of the manufactured dwelling being relocated to another site in the future is low (although cannot be ruled out entirely).

Recent work by the Department of Planning and Environment, including release of a discussion paper, has acknowledged the changing ways in which manufactured dwellings are being used and has proposed an amendment to the definition of a building to include manufactured dwellings, therefore bringing them into line with traditional buildings in terms of construction approvals and sustainability requirements (eg, BASIX). This would address the loophole however there is no certainty as to when this will occur. Applications for installation of manufactured homes are common both in Bourke and other western Councils. Therefore an immediate solution is required. This planning proposal provides that solution.

It is proposed via this planning proposal to amend the LEP to include “residential accommodation” within Part 3 of the RU1 and R5 Land Use Tables to enable the installation of manufactured dwellings in the RU1 and R5 zones. Part 4 of these Land Use Tables will be amended to include the following uses as prohibited to ensure no change to the character of the RU1 and R5 zones and to ensure consistency with the current LEP provisions:

**Table 1.1 – Uses prohibited via Part 4 of the Land Use Table by zone**

| <b>RU1 zone</b>            | <b>R5 zone</b>              |
|----------------------------|-----------------------------|
| Attached dwellings         | Attached dwellings;         |
| boarding houses            | Boarding houses;            |
| Group homes                |                             |
| Hostels                    | Hostels;                    |
| Multi dwelling housing     | Multi dwelling housing;     |
| Residential flat buildings | Residential flat buildings; |
| Secondary dwellings        | Secondary dwellings;        |
| Semi-detached dwellings    | Semi-detached dwellings;    |
| Seniors housing            | Seniors housing;            |
| Shop top housing           | Shop top housing.           |

Council staff are supportive of the proposed amendment as they recognise the need to close a loophole that prevents a cost effective method of enabling dwelling development on rural and rural-residential land in Bourke.

This same issue has not arisen in other zones that allow dwelling house development under the Bourke LEP, such as the R1 and RU5 zones, as the Land Use Tables for these zones are ‘open’ and permit developments that are not listed as prohibited. As residential accommodation is not currently prohibited in the R1 or RU5, changes to those land use tables is not required.

Similarly, the limitation does not apply for the erection of rural workers dwellings in the RU1 zone, as the definition for a rural workers dwelling refers to a building or place. Use of the word place is considered to provide sufficient flexibility to allow the development of a manufactured dwelling as a rural workers dwelling.

# Intent and Provisions

## 2.1 OBJECTIVE

To enable dwellings and dwelling houses to be constructed on RU1 and R5 land within the Bourke Local Government Area.

## 2.2 EXPLANATION OF PROVISIONS

This is simple planning proposal to amend the LEP to include residential accommodation in Part 3 of the RU1 – Primary Production and R5 – Large Lot Residential Land Use Tables and list those specific types of residential accommodation that are to be prohibited in Part 4 of the table.

The RU1 land use table would therefore be amended as follows:

### Zone RU1 Primary Production

#### 1 Objectives of zone

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

#### 2 Permitted without consent

*Environmental protection works; Extensive agriculture; Home-based child care; Home occupations; Roads; Water reticulation systems*

#### 3 Permitted with consent

*Air transport facilities; Airstrips; Animal boarding or training establishments; Aquaculture; Bed and breakfast accommodation; Biosolids treatment facilities; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Camping grounds; Caravan parks; Cellar door premises; Cemeteries; Community facilities; Correctional centres; Crematoria; Depots; Dual occupancies; Dwelling houses; Eco-tourist facilities; Environmental facilities; Extractive industries; Farm buildings; Farm stay accommodation; Flood mitigation works; Forestry; Freight transport facilities; Hazardous industries; Heavy industrial storage establishments; Helipads; Home businesses; Home industries; Home occupations (sex services); Industrial training facilities; Information and education facilities; Intensive livestock agriculture; Intensive plant agriculture; Jetties; Landscaping material supplies; Offensive industries; Open cut mining; Plant nurseries; Recreation areas; Recreation facilities (major); Recreation facilities (outdoor); **Residential Accommodation**; Roadside stalls; Rural industries; Rural workers' dwellings; Sewage treatment plants; Veterinary hospitals; Water recreation structures; Water recycling facilities; Water storage facilities; Water treatment facilities*

#### 4 Prohibited

***Attached dwellings; boarding houses; group homes; hostels; multi dwelling housing; residential flat buildings; secondary dwellings; semi-detached dwellings; seniors housing; shop top housing; Any development not specified in item 2 or 3.***

The R5 land use table would be amended as follows:

## **Zone R5 Large Lot Residential**

### **1 Objectives of zone**

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

### **2 Permitted without consent**

*Environmental protection works; Home-based child care; Home occupations; Roads; Water reticulation systems*

### **3 Permitted with consent**

*Bed and breakfast accommodation; Building identification signs; Business identification signs; Dual occupancies; Dwelling houses; Group homes; Home industries; Kiosks; Neighbourhood shops; **Residential Accommodation**; Roadside stalls; Any other development not specified in item 2 or 4*

### **4 Prohibited**

*Agriculture; **Attached dwellings**; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; **Boarding houses**; Boat building and repair facilities; Car parks; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematoria; Depots; Entertainment facilities; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Helipads; Highway service centres; **Hostels**; Industrial retail outlets; Industrial training facilities; Industries; Marinas; Mooring pens; Moorings; Mortuaries; **Multi dwelling housing**; Open cut mining; Public administration buildings; Recreation facilities (indoor); Recreation facilities (major); Registered clubs; Research stations; **Residential flat buildings**; ~~Residential accommodation~~; Resource recovery facilities; Restricted premises; Rural industries; **Secondary dwellings**; **Semi-detached dwellings**; **Seniors housing**; Service stations; Sewage treatment plants; Sex services premises; **shop top housing**; Signage; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Warehouse or distribution centres; Waste disposal facilities; Water treatment facilities; Wharf or boating facilities; Wholesale supplies*

# Justification

## 3.1 NEED FOR THE PLANNING PROPOSAL

A planning proposal is required as an amendment to the LEP RU1 and R5 Land Use Tables is proposed.

This is an administrative change proposed to amend a loophole in the LEP that allows the development of dwelling houses but not manufactured dwellings (a form of dwelling).

The cost-effective nature of manufactured dwellings in the RU1 and R5 zones in Bourke makes their use an attractive option. This amendment will enable applications for development consent for manufactured dwellings in the RU1 and R5 zones to be supported. At present, they must be refused.

## 3.2 RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

The proposed amendment is proposed to close a loophole in the LEP.

It is not linked specifically to the Bourke strategic planning framework.

A review of environmental planning instruments (EPI) applying to the site confirms that the planning proposal does not conflict with the principles of any EPI.

A review of the Section 117 Ministerial Directives identifies that the planning proposal has the potential to be affected by three directions; these are:

- Directive 1.2 - Rural zones;
- Directive 1.5 – Rural Lands; and
- Direction 3.4 – Residential Zones.

### 3.2.1 DIRECTIVE 1.2 – RURAL ZONES

The objective of this direction is to protect the agricultural production value of rural land.

A planning proposal must:

- (a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.*
- (b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).*

This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).

The planning proposal affects land that would be within a rural zone and therefore the directive is applicable.

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- (a) justified by a strategy which:*
  - (i) gives consideration to the objectives of this direction,*

- (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
- (iii) is approved by the Director-General of the Department of Planning, or*
- (b) justified by a study prepared in support of the planning proposal which gives consideration to the objectives of this direction, or*
- (c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*
- (d) is of minor significance.*

The planning proposal is considered to be of minor significance and is therefore consistent with the above terms.

### **3.2.2 DIRECTION 1.4 – RURAL LANDS**

The objectives of this direction are to:

- (a) protect the agricultural production value of rural land,*
- (b) facilitate the orderly and economic development of rural lands for rural and related purposes.*

This direction applies when:

- (a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) or*
- (b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone.*

The planning proposal affects land zoned RU1 but does not affect zone boundaries or amend minimum lot sizes.

The substantive effect of the change would be to allow for residential accommodation, including manufactured homes, to be developed in the RU1 zone. It would not allow a greater density of dwellings to be constructed nor allow a greater amount of types of residential accommodation than is currently permitted, and is therefore consistent with objectives of the direction.

A planning proposal must be substantially consistent with the following terms of the direction:

*A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:*

- (a) justified by a strategy which:*
  - i. gives consideration to the objectives of this direction,*
  - ii. identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
  - iii. is approved by the Director-General of the Department of Planning and is in force, or*
- (b) is of minor significance.*

The planning proposal is considered to be of minor significance and is therefore consistent with the above terms.

### **3.2.3 DIRECTION 3.1 – RESIDENTIAL ZONES**

The objectives of this direction are to:

- (a) to encourage a variety and choice of housing types to provide for existing and future housing needs,*

- (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and*
- (c) to minimise the impact of residential development on the environment and resource lands.*

This direction applies when:

*This direction applies when a relevant planning authority prepares a planning proposal that will affect land within:*

- (a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary),*
- (b) any other zone in which significant residential development is permitted or proposed to be permitted.*

This planning proposal affects an existing residential zone (R5).

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

*A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:*

*(a) justified by a strategy which:*

- (i) gives consideration to the objective of this direction, and*
- (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
- (iii) is approved by the Director-General of the Department of Planning, or*

*(b) justified by a study prepared in support of the planning proposal which gives consideration to the objective of this direction, or*

*(c) in accordance with the relevant Regional Strategy, Regional Plan or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*

*(d) of minor significance.*

The planning proposal is considered to be of minor significance and is therefore consistent with the above terms.

### **3.3 ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACTS**

The amendment would affect all zoned RU1 and R5 land to enable the development of manufactured dwellings within the RU1 and R5 zones. No greater environmental impacts beyond existing measured impacts are predicted.

Social and economic impacts would be positive by virtue of enabling the use of manufactured dwellings for development of new and replacement dwellings in the RU1 and R5 zones. This is positive for land owners and lessees in the RU1 and R5 zones as it removes an economic prohibition that exists due to the high cost of engaging building contractors in remote locations.

### **3.4 STATE AND COMMONWEALTH INTERESTS**

It is not considered that the minor change proposed via this planning proposal would conflict with any State or Commonwealth interests. The views of State and commonwealth public authorities would be ascertained via the Gateway Determination.

# Community Consultation

## 4.1 TYPE OF COMMUNITY CONSULTATION REQUIRED

Given the minor nature of the proposal, and the relative localised nature of any impacts, it is considered that the planning proposal is a low impact proposal and that a public exhibition period of 14 days is required. It is recommended that the planning proposal be publically exhibited for 14 days via the local newspaper and the Council's website.

# References

---

**NSW Department of Planning & Environment (DP&E). 2016a, *A Guide to Preparing Local Environmental Plans*, DP&E, Sydney.**

---

**NSW Department of Planning & Environment (DP&E). 2016b, *A Guide to Preparing Planning Proposals*, DP&E, Sydney.**

---