

## Planning and Assessment

IRF20/161

### Plan finalisation report

**Local government area:** Orange

#### 1. NAME OF DRAFT LEP

Orange Local Environmental Plan 2011 (Amendment No 13) – Rosedale Gardens

#### 2. SITE DESCRIPTION

The planning proposal applies to land (the subject site) at:

- 463 Leeds Parade, Orange, being Lot 15, DP 6694.
- 440 Clergate Road, Orange being Lots 2 and 3 DP 255983, Lots 14 and 25 DP 6694 and Lot 1, DP 1251250.

The subject site covers approximately 290ha of RU1 Primary Production (256ha) and IN1 General Industrial (34ha) land. The subject site is approximately 5km north of Orange CBD and is bounded by the Cabonne and Orange LGA boundary on the northern perimeter of the subject site. The rural part of the subject site has been historically grazed, while Lot 15, DP 6694 was previously used as an abattoir.

#### 3. PURPOSE OF PLAN

The draft LEP seeks to:

- rezone the RU1 Primary Production land to a combination of R5 Large Lot Residential, E4 Environmental Living, RE1 Public Recreation and SP2 Infrastructure;
- rezone the IN1 General Industrial land to a combination of R5 Large Lot Residential and RE1 Public Recreation;
- reduce the Minimum Lot Size (MLS) of the RU1 land from 100ha to 4,000m<sup>2</sup>, with a small area of 8,000m<sup>2</sup> MLS to the north-east where there is steep terrain;
- establish a new Urban Release Area (URA) across the subject site.

These amendments to the Orange LEP 2011 are required to enable subdivision of the land to establish 450 large lot residential dwellings for the proposed Rosedale Gardens estate, formally known as Clergate Hills.

#### 4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Orange state electorate. Philip Donato MP is the State Member.

The site falls within the Calare Federal electorate. Hon Andrew Gee MP is the Federal Member.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

<b>NSW Government Lobbyist Code of Conduct:</b> There have been no known meetings or communications with registered lobbyists with respect to this proposal.
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<b>NSW Government reportable political donation:</b> There are no known donations or gifts to disclose and a political donation disclosure is not required.
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## 5. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 10 June 2016 (**Attachment B**) determined that the proposal should proceed subject to conditions. The Gateway determination was altered on 6 February 2017 following a post-Gateway review request from the proponent to review condition 1 of the Gateway determination which required removal of approximately 100ha of the western portion of the subject site from the proposal. The post-Gateway review allowed for the 100ha to be included in the proposal and required for additional strategic work, endorsed by the Department to justify the proposal. The additional work required was an Addendum to the Blayney Cabonne Orange Rural and Industrial Lands Strategy (BCO), which also required consultation with the affected Blayney and Cabonne councils. While the BCO has not been formally adopted by the Council's or the Department it is at the advanced stage where there is agreement that the subject land is not required for industrial purposes and can be changed to large lot residential.

The BCO Addendum has undergone many revisions in consultation with the Department and as a result the proposal has required multiple timeframe extensions. The most recent Alteration to Gateway determination occurred on 17 December 2019, for a six (6) month time extension until 17 June 2020.

## 6. PUBLIC EXHIBITION

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 4 October 2019 until 1 November 2019.

During the public exhibition four submissions were received, of which two were objections and two requested minor alterations to the proposed residential subdivision.

- One land holder is surrounded by the proposal on three sides and requested for a buffer and vegetation screening to be provided between theirs and the future proposed properties. Council have recommended for a 10m buffer around this property to be catered for which will provide a suitable location for vegetation to be planted for additional privacy.
- Another adjacent land holder objected to the proposal due to potential impacts to their operational apple and cherry orchard. The landholder's concerns are around topography as eastern extent of the proposal is located at the top of a steep hill and will create a 'grandstand' effect onto their orchard. This setting is the cause of the landholder's three main concerns:
  - Reduce downhill flow of stormwater which the orchard currently harvests.
  - Land use conflict from noise and spray drift to the residential properties.
  - Reduce the visual amenity of the hilly, agricultural land.

Council's response to these concerns is they can be addressed through a site-specific DCP, as required for all new URAs. The DCP controls will require for stormwater runoff from the proposal to not alter from current conditions, which can address the first concern. Council also expects plantings of tall trees between the proposed residential area and rural areas will provide a physical barrier to reduce land use conflict and visual amenity impacts. Furthermore, BCO has identified the eastern extent of the proposal for potential future residential uses since 2008.

- Two other landholders from another suburb submitted objections to the proposal due to inconsistencies with local strategies and concern for fragmentation of rural land.
  - The proposal is known to be inconsistent with the BCO and Orange Sustainable Settlement Strategy 2004, hence the Gateway condition to produce an Addendum to the BCO to justify the inconsistency with updated

information. The public objections to the BCO Addendum are around supply and demand of housing versus industrial land. This has been concurrently investigated by an independent contractor who is reviewing the entirety of the BCO. The preliminary findings show the proposal would not result in an undersupply of industrial land for the life of the BCO. The BCO Addendum has been reviewed by the Department with no objections and is the interim local strategic justification for the proposal while the BCO is being formally reviewed.

- A Land Use Conflict Risk Assessment was completed for the proposal and found interface with adjacent rural land would be suitably managed through education, buffers and vegetation screening. Furthermore, the proponent intends to build a 1.7m high animal exclusion fence to remove the interface concerns between domestic animals and livestock.

Note the planning proposal was not referred to local planning panel under section 2.19(1)(b). Furthermore, there was no requirement for a public hearing, therefore, one was not held.

## **7. ADVICE FROM PUBLIC AUTHORITIES**

In accordance with the Gateway determination, Council was required to consult with:

- NSW Rural Fire Service.
- Department of Primary Industries – Water.
- Office of Environment and Heritage.
- Transport for NSW and Roads and Maritime Services.
- NSW Fire and Rescue.
- Local Land Services Central West.
- Department of Primary Industries – Agriculture.
- Essential Energy and TransGrid.
- Australian Rail Track Corporation – John Holland.

Council has consulted these authorities. Noting since the Gateway determination was issued, some of these public authorities have changed and the equivalent authority was consulted with.

Seven responses were received, a summary of the responses is provided below:

- Department of Primary Industries (DPI) Agriculture and Department of Planning, Industry and Environment (DPIE) Water did not respond.
- Essential Energy and Local Land Services had no concerns with the proposal.
- Roads and Maritime Services (RMS) responded on behalf of Transport for NSW and raised many concerns regarding traffic impacts. To address these concerns RMS requested for the Traffic Impact Assessment to be updated. Council have resolved to address these concerns at the Development Application stage.
- John Holland Rail raised no objections to the proposal, however, had a few concerns regarding sewer, stormwater, noise and access issues to nearby railways and crossings. Council have resolved to address these concerns at the Development Application stage through development conditions and a site-specific DCP.
- Former Office of Environment and Heritage, now DPIE Biodiversity and Conservation Division raised concerns with impact to the identified Aboriginal Objects at the site and the need for an Aboriginal Heritage Impact Permit (AHIP). An

AHIP is usually issued at the Development Application stage, which Council will require as a condition of development consent.

- TransGrid had concerns with the proposal's potential impact to the Wallerawang – Dubbo 132KV transmission line. In response to these concerns the proposal was amended to rezone the transmission line to SP2 Infrastructure as requested.
- Rural Fire Service (RFS) originally requested additional information, including an assessment of grassland bushfire risks on 22 August 2019. On 27 September 2019 RFS amended their advice as the additional grassland assessment could occur at the Development Application stage, which Council has agreed to. Therefore, the proposal is now consistent with section 9.1 Direction 4.4 Planning for Bushfire Protection.

There are no outstanding agency responses which need to be addressed before the LEP amendment is made.

## **8. POST-EXHIBITION CHANGES**

Of note, the planning proposal and associated studies were updated during the public exhibition period to remove the name of the proponent at the proponent's request. No other amendments were made to the planning proposal following public exhibition.

## **9. ASSESSMENT**

The nine conditions of the Gateway determination (10 June 2016) and Altered Gateway determination (6 February 2017) have been met as detailed below. There are no outstanding actions and the draft LEP be made should be made.

On 3 July 2019 the Department informed Council conditions 1 and 2 had been met and they could begin agency consultation. These conditions had been met as the Addendum BCO had provided sufficient evidence to resolve the Department's concerns regarding supply and demand of industrial and residential land, and potential land use conflict between the Main Western Railway and future residential land. The Addendum BCO had also been given to Blayney Shire and Cabonne Councils for comment. While both councils objected to the Addendum BCO as their preference was for this matter to be resolved during the BCO Review, the condition to consult with neighbouring councils was met. The BCO is now at an advanced stage that provides strategic merit for the LEP Amendment. The Department's ePlanning GIS team prepared the maps in line with the technical requirements of conditions 2 and 7.

Following agency consultation, the proposal and associated mapping was updated to rezone the Wallerawang – Dubbo 132KV transmission line corridor to SP2 Infrastructure. Council submitted the updated planning proposal package to the Department on 23 September 2019, as per condition 3 of the Gateway determination and requested permission to progress to community consultation. The Department informed Council they had met all requirements of condition 5 (agency consultation) and condition 3 (amended planning proposal) and could progress to community consultation on 27 September 2019.

Council publicly exhibited the planning proposal package for 28 days as required by condition 3 of the Gateway determination. A public hearing was not held as it was not required by the Gateway determination (see condition 6) or requested by Council or the public.

The Department confirmed all Gateway determination and Altered Gateway determination conditions had been met in a letter sent to council on 10 February 2020. This resolved the uncertainty around meeting conditions 8 and 9 of the Altered Gateway determination.

## 9.1 Section 9.1 Directions

The initial planning team report (section 3.34 report) of 18 May 2016 stated the proposal was inconsistent with the following section 9.1 Ministerial Directions:

- Direction 1.1 Business and Industrial Zones.
- Direction 2.3 Heritage Conservation.
- Direction 4.4 Planning for Bushfire Protection.

The proposal was originally deemed inconsistent with Direction 1.1 as the loss of 34ha of industrial land was not justified. The BCO Addendum has since been developed which justifies the loss of 34ha of industrial land will not result in a deficit of industrial land for the life of the BCO. The Secretary's delegate can be satisfied that any inconsistency with Direction 1.1 is now considered justified.

Agency consultation with Biodiversity Conservation Division and Rural Fire Services have met the requirements of Directions 2.3 and 4.4 to resolve the inconsistency through additional assessment at the development approval stage. Secretary's delegate can now be satisfied that any inconsistency with Directions 2.3 and 4.4 is now considered justified.

Furthermore, the planning proposal was submitted to the Department on 18 April 2016, just after Direction 5.10 Implementation of Regional Plans was issued on 14 April 2016. Given this Direction was not enforced when the planning proposal was written it was originally not addressed. On 27 September 2019 additional information was provided by the proponent including addressing Direction 5.10. This information has now adequately addressed the requirements of Direction 5.10 and the proposal is considered consistent with this Direction.

## 9.2 State environmental planning policies

The planning proposal is consistent with *State Environmental Planning Policy No 44—Koala Habitat Protection* and *State Environmental Planning Policy No 55—Remediation of Land* as outlined in the section 3.34 report of 2016.

The section 3.34 report of 2016 outlined concerns of the proposal's ability to meet the objectives of *State Environmental Planning Policy (Rural Lands) 2008* (Rural Lands SEPP) due to land use conflict with adjacent agricultural land. Concerns of potential residential and rural land use conflict were also raised during the public consultation phase. Council will address these issues through a site-specific DCP which will ensure adequate buffers and vegetation screening is used to reduce land use conflict. The Rural Lands SEPP has since been repealed and replaced by the *State Environmental Planning Policy (Primary Production and Rural Development) 2019* (Primary Production SEPP). However, the objective to reduce land use conflict between potential residential and rural land remains. Given the proposed fencing, screening and buffers to be implemented for this proposal at the development control stage, and the Secretary's Delegate can be satisfied that the inconsistency with the SEPP is considered justified.

## 9.3 State, regional and district plans

The additional information provided on 27 September 2019 demonstrates the proposal is consistent with the Central West Orana Regional Plan 2036. No other State or regional plans are considered relevant to this proposal.

## 10. MAPPING

The proposal will amend five map sheets and create a new URA map sheet. The maps have been checked by the Department's ePlanning Team and sent to Parliamentary Counsel. The following map sheets are affected:

- Lot Size Map Sheets LSZ\_006 and LSZ\_007C
- Land Zoning Map Sheets LZN\_006 and LZN\_007C.

- Urban Release Area Map Sheets URA\_006 and URA\_007C.

### 11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment C**) on 10 February 2020. Council confirmed on 10 February 2020 that it was satisfied with the draft and that the plan should be made (**Attachment D**). Council does not have delegation to make the draft LEP.

### 12. PARLIAMENTARY COUNSEL OPINION

On 11 February 2020 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

### 13. RECOMMENDATION

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- All conditions of the Gateway determination (10 June 2016) and Altered Gateway determination (6 February 2017) have been met.
- All inconsistencies with section 9.1 Ministerial Directions have been resolved.
- The proposal is now considered consistent with regional and local strategic plans.



18.2.20

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