
2.4 ORANGE LOCAL ENVIRONMENTAL PLAN 2011 - PLANNING PROPOSAL FOR AN ADMINISTRATIVE AMENDMENT

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EXECUTIVE SUMMARY

Orange Local Environmental Plan 2011 came into effect in February 2012. Amendment 1 to the LEP was an administrative or 'housekeeping' amendment, which dealt with a range of issues that had not been able to be resolved within the timeframe required of the principle LEP project. Subsequently a range of largely proponent driven amendments, typically spot re-zonings, have been conducted.

The Department of Planning and Environment requires that councils undertake a review of their LEPs on a regular basis, ideally on a five yearly basis. Amendment 1 was gazetted in March 2014, accordingly it is appropriate to consider a new administrative housekeeping amendment.

During the last five years staff have identified a range of minor matters that could be improved and anomalies that need to be rectified. Additionally, several landowners have approached Council seeking to change the status of their land in various minor ways that would not, on their own, justify the time and expense to both the landowner and Council required to proceed with standalone amendments.

This report outlines a range of matters that are recommended to be addressed via a Planning Proposal for a housekeeping amendment to the LEP, including:

- heritage corrections
- expansion of local exempt development provisions
- land use table updates
- cadastre map updates
- clause changes
- additional permitted uses
- minor rezonings
- other map updates (flooding and airport obstacle limitation surface).

These matters introduced in this report are more fully outlined in the attached draft Planning Proposal document, which would also serve as the basis for the amendment and public exhibition process. Formal LEP maps, where relevant, will be prepared prior to public exhibition.

Due to the diverse range of matters identified in this Planning Proposal, it is possible that the Department of Planning and Environment, at the Gateway stage, may require specific matters or sites to be dealt with separately - such as if a particular site needs a traffic study or similar. In this situation it is anticipated that the remaining matters of the Planning Proposal could still proceed and that the excluded matter could then be considered at a later time.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan strategy “7.1 Preserve - Engage with the community to develop plans for growth and development that value the local environment”.

FINANCIAL IMPLICATIONS

Nil

POLICY AND GOVERNANCE IMPLICATIONS

Nil

RECOMMENDATION

That Council resolves:

- 1 To endorse the attached scope of the next administrative housekeeping amendment to Orange Local Environmental Plan 2011.**
- 2 That staff prepare a formal Planning Proposal in accordance with the attached scope.**
- 3 To send the Planning Proposal to the NSW Department of Planning and Environment seeking a Gateway Determination.**
- 4 That staff proceed to address any conditions or requirements of the Gateway Determination and then place the draft Planning Proposal on public exhibition for 28 days (or as required by the Gateway Determination).**

FURTHER CONSIDERATIONS

Consideration has been given to the recommendation’s impact on Council’s service delivery; image and reputation; political; environmental; health and safety; employees; stakeholders and project management; and no further implications or risks have been identified.

SUPPORTING INFORMATION**1 Heritage Corrections**

The following table outlines a range of issues that have been identified in relation to existing heritage items and one heritage conservation area. In some cases the item has been listed in Schedule 5 but is not reflected in the heritage map; in others an item on the map has either not been listed or has been mis-described in the schedule. This has potential to confuse the public and open the door for debate on the heritage significance of the relevant item. The response column details the proposed course of action to rectify these issues.

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Property Affected	Issue	Response
26 Caroline Street	Heritage Item I268 is shown on the maps but not listed in the schedule	Listing to be added to the schedule
34 Telopea Way "Emmaville Cottage"	Emmaville Cottage has been relocated	Existing site to be removed from the schedule and map
106 and 106A Franklin Road	Heritage Item I75 straddles both lots, but 106A Franklin Road was not mapped	106A Franklin Road to be mapped as part of heritage Item I75
154 Peisley Street	The Geolyse building has been included within the mapping of the railway station – it should be mapped and listed as separate item to reflect that it is legally and functionally a different property	Listing to be added to the schedule and mapped independently of the railway station
65 Dalton Street	The property is listed as Item I89 covering two lots but has not been mapped as such	Heritage map to be updated with Item I89 shown on both relevant lots
Summer Street	Brass footpath inlays in the pavement of Summer Street, mapped as Byng Street road reserve	Heritage map to be updated removing the item from Byng Street and mapped onto the Summer Street road reserve
26 Kinghorne Lane	Shown as heritage Item I282 on the map but has not been listed in the schedule	Add entry to schedule for Item I282.
170, 172 and 174 Moulder Street	Three properties mapped as heritage Item I110 but not listed in the schedule	Add entry to schedule for Item I110
166 Edward Street	Now part of 85-89 McLachlan Street. The heritage conservation area was originally mapped to include cottages in Edward Street. This property was converted to parking area for a motor dealership. The legacy heritage conservation area status may hinder future (re)development of the motor dealership in McLachlan Street	Amend the extent of Heritage Conservation Area C3 to exclude the entirety of the motor dealership
Former Ambulance Station	Currently mapped as a heritage item but the schedule description relates to the adjoining property	Amend the schedule entry for Item I254 to relate to the former Ambulance station
3 Spring Street, Spring Hill	Schedule lists Lot 2 Section 8 DP 758921, however the correct property is Lot 3 Section 8 DP 758921	Amend the schedule entry for Item I303 to be Lot 3
282-294 Summer Street	Item I158 is listed as 286 Summer Street and should be 282 Summer Street. Item I159 is listed as 288-294 Summer Street and should be 286-294 Summer Street	Amend listing in schedule with correct street address and lot/DP numbers
107 Prince Street	Currently listed in the schedule but has not been properly mapped	Amend heritage map to include the item
C6 Heritage Conservation Area	The duration cottages HCA are mapped but not listed in the Schedule	Amend the Schedule to include the C6 Heritage Conservation Area.

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2 Additional Exempt Development

Schedule 2 of the LEP provides a mechanism for councils to list types and forms of development that can be undertaken as exempt development. Generally, exempt development is suited to small scale benign developments and activities where the potential for adverse consequences is negligible. Adding matters to schedule 2, with appropriate standards and default conditions, ensures that Council staff time is not diverted to their assessment. This also provides the community with guidance on how to undertake minor projects in a manner that should not unduly impact on neighbours or the broader environment.

The first section of proposed additions involves a range of advertising signs, as such it is proposed to include a “general requirements” section that all exempt signs would need to comply with (rather than repeating the same matters in each listing).

- **signage - general requirements**
- **amend advertising signage (business identification signs in zones IN1 and IN2)**
- **amend advertising signage (other signs)**
- **signage - A-framed signs on private land**
- **signage (sports field advertising)**
- **signage - sponsorship signs (corporate sponsorship of a community or sporting use)**
- **bee keeping in zones RU1, RU5, R1, R2, R5, E2, E3 and E4**
- **change of use - exhibition home to dwelling**
- **emergency services facilities**
- **balconies, decks, patios, pergolas, terraces and verandahs on large lots**
- **community use of educational establishments, places of public worship and centre-based child care facilities**
- **farm dams**
- **fences (swimming pool safety fences)**
- **hail protection structure in zones RU1 and E3**
- **subdivision**
- **security grills, screens or shutters - commercial purposes**
- **re-stumping an existing building**
- **scaffolding, hoardings and temporary construction site fences (being development to which State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 does not apply)**
- **grain silos and grain bunkers in zone E3 Environmental Management**
- **temporary structures (other than temporary builders’ structures)**
- **demolition**
- **tennis courts (private and non-commercial)**
- **truck parking areas in zones RU1, RU2, RU4, E3 and E4)**
- **boundary adjustment in zones RU1 and E3**
- **casual leasing areas.**

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3 Land Use Table Updates

The following items are proposed to be added to the land use table of the zones indicated.

- (a) **Bee Keeping** is proposed to be added as permitted with consent in the R1, R2, R5 and RU5 zones. This use is proposed to be allowed as exempt development subject to a limitation on the number of hives. People seeking more hives would need to seek development consent. Consequently, by adding the use to the land use tables this would enable consideration of development applications and the ability to impose appropriate conditions, if merited.
- (b) **Extensive Agriculture** is proposed to be added as permitted with consent in the R5 zone. This reflects the larger lot sizes typical of the zone and would enable some basic forms of agriculture such as grazing. Many home owners on larger lots may already keep animals as a combination of pets and grass control. However, should the number of animals increase there is the potential for Council to receive complaints, which currently would need to be evaluated as deemed to be either the keeping of domestic pets, which would be exempt, or undertaking an agricultural activity, which would currently be prohibited. By adding the use to the land use table this would enable consideration of development applications and the ability to impose appropriate conditions, if merited.
- (c) **Secondary Dwellings** are proposed to be added as permitted with consent in the R2 Low Density Residential zone. Currently secondary dwellings in this zone can only be considered under the provisions of *State Environmental Planning Policy (Affordable Rental Housing) 2009*, which has the effect of limiting the floor space to 60m². Secondary dwellings in other zones are limited in size to the greater of 60m² or 50% of the floor space of the principle dwelling. By adding this use to the land use table secondary dwellings in the R2 zone would also be able to access the 50% rule.

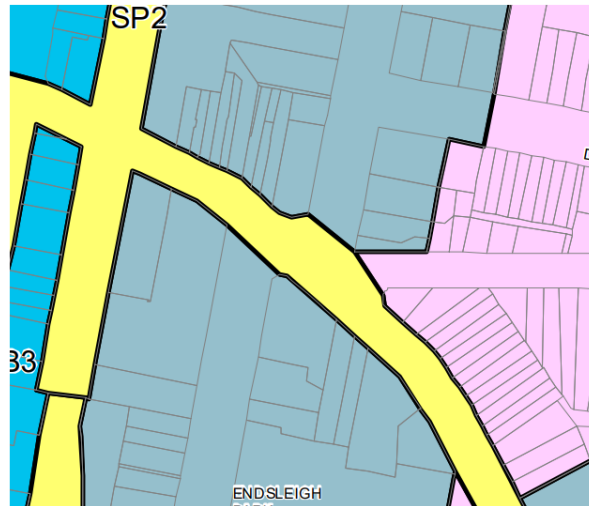
4 Cadastre Map Updates

Geographical Information Systems (GIS) involve mapping, or projecting, spatial information onto a model of the real world. Because the earth is not a perfect sphere it is represented by a geoid, which is a hypothetical solid figure whose surface corresponds to mean sea level and its imagined extension under (or over) land areas. In other words, the geoid model accounts for bulges and depressions in the overall shape of the earth. Two-dimensional data, such as cadastral property boundaries are then projected onto this model by the GIS program.

Therefore when the State updates the official geoid (as it did in 2015) it can appear to shift the position of features that were mapped to the previous version relative to the new maps. Since all new LEP maps are required to be based on the current geoid an issue has emerged where some polygons used for things like zones and minimum lot sizes can appear to be out of alignment with the cadastral property boundaries leading to the false impression that, when viewed through the GIS system, some land appears to be slightly split zoned or otherwise affected by changes.

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The two figures below demonstrate how these anomalies can occur. The figure on the top is the official legal LEP map, while the figure on the bottom is what may be seen through the GIS system.



5 Clause Changes

- ***Multi Dwelling Housing in Ploughmans Valley***

Clause 4.1C(2)(b)(ii) includes the phrase “multi dwelling housing” when in practice it only relates to dual occupancy development. This may create a false impression of what the clause enables. In practice, multi dwelling housing (which comprises three or more dwellings) is unlikely to be able to satisfy the DCP design requirements on lots of only 600m², and this form of development is more intensive than was intended for the Ploughmans Valley area.

It is therefore proposed to delete the phrase from the clause.

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- ***Split Zoned and Split Sized Land***

Amendments to the LEP can result in some parcels of land, particularly on the edge of project areas, being given two or more zones or lot sizes in order to deliver the intention of the relevant project. This raises a technical issue in that to subdivide land, all resultant lots need to be compliant with the appropriate controls. However, where land is partially within a project area the residue of land outside the project area may not meet the minimum lot size, obstructing the orderly attainment of the project. Additionally, where land is subject to more than one zone it can create confusion as to what forms of development are permissible on the land and how such developments are to be designed and sited.

It is proposed to enable land in such situations to be subdivided consistent with the zone or lot size boundaries in order to reflect the intent of the LEP and facilitate more orderly management of land. It should be noted that this is not intended to create additional development potential (such as dwelling entitlements) over and above the existing situation.

- ***Clustered Dual Occupancies in E3 and RU1 Zones***

Prior to adoption of Orange LEP 2011, dual occupancy developments in rural areas (when permissible) were required to be “clustered” in close proximity. This was intended to preserve as much of the land as possible for primary production and to discourage the fragmentation of rural land into lifestyle residential developments. The clustering concept was not accommodated in the standard template for LEPs, and as such Orange LEP 2011 relied upon use of the “Attached Dual Occupancy” definition.

In practice, requiring dual occupancy development to be physically attached in a rural context has been found to be unduly restrictive, but the alternative of allowing detached dual occupancies (without any means to require clustering) may undermine the intention of protecting primary production.

- ***Rural Subdivisions, Boundary Adjustments and Farm Paddock Transfers***

Clause 4.2 allows rural subdivision of any size that does not create a dwelling entitlement, allowing farmers to adjust the size of their enterprise through trading land with other farmers without creating dwelling entitlements. However, this clause does not apply to the E3 zone, greatly restricting the amount of land within Orange that can benefit.

It is proposed to insert zone E3 Environmental Management into the clause as a zone to which the clause applies.

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6 Additional Permitted Use

- ***Restoration of Dwelling Entitlement at 120 Calton Road***

When Orange LEP 2011 was adopted in February of 2012 it sought to extinguish a range of 'existing holding' dwelling entitlements but provided affected landowners a period of time, expiring on 31 December 2012. A number of these landowners lodged Development Applications in the days leading up to the cut-off date. Several of these applications had issues with the level of documentation required but were ultimately resolved. The owner of 120 Calton Road lodged documentation; however, due to staff leave around the Christmas break the application was overlooked. Staff support this Additional Permitted Use.

7 Minor Rezoning and Associated Map Changes

- Residue land in Narrambla is currently split zoned, to be corrected so that industrial land can be appropriately developed without compromising the buffer area of the Sewage Treatment Works.
- Correct the alignment of the Teamsters Walkway in the area of Crinoline Street, Anson Street, Hargraves Crescent and Heatherbrae Parade.
- 1385 Forest Road to clarify that the SP2 zone is intended to be used for Emergency Services Facilities.
- Part rezoning of 1 Barrett Street to enable surplus industrial land to be consolidated with adjoining residential unit development.
- Jack Brabham Park – change to RE1 Public Recreation instead of RE2 Private Recreation to reflect the general public accessibility and intent of the site.
- Function centre rezoning to facilitate further development and/or adaptation of the site.
- Eastern extension of the B3 zone and creation of an eastern B4 zone.
- Shiralee update to reflect approved subdivision layouts.
- East Orange neighbourhood shops.
- Minimum lot size on the caravan park site to be removed.

8 Other Mapping Updates

- ***Flood mapping and controls***

Council has been undertaking a review of the Blackmans Swamp Creek Floodplain Risk Management Study and Plan, as well as developing a similar study and plan for Ploughmans Creek. This matter is the subject of a separate report before Council, but has implications for Orange LEP 2011.

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Within the LEP, flood planning controls are currently implemented through a combination of a clause that makes reference to a Flood Planning Map in the LEP. This effects advice provided to the public through Section 10.7 Planning Certificates when properties are bought and sold. Information provided on these certificates needs to be as accurate as possible as it may affect mortgage applications and insurance premiums. Unfortunately, amending an LEP map is not a simple process and can result in a delay of many months between the time that Council has updated its floodplain risk management plan and that updated advice being reflected in planning certificates.

Due to this issue, the recommended approach set out in the Floodplain Risk Management Study and Plan (FRMS&P) is to remove the flood map from the LEP. Instead, the current LEP clause would be amended to apply to land at or below the flood planning level, this would then be defined to reference any adopted floodplain risk management plan. This would effectively update flood planning controls dynamically as and when updated studies are adopted.

The proposal is to amend clause 7.2 of Orange LEP 2011 by removing the reference to the LEP flood map in subclause (2), meaning that the clause will only apply to land at or below the flood planning level, and to amend the definition of flood planning level to read:

Flood planning level means the level of a 1% AEP (annual exceedance probability) flood event plus 0.5 metre freeboard, or other freeboard as determined by any floodplain risk management plan adopted by the Council in accordance with the Floodplain Development Manual.

In addition the term 'Floodplain Development Manual' will be defined to mean:

Floodplain Development Manual means Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005.

Another recommendation from the FRMS&P is to include a new floodplain risk management clause in relation to developments which may require particular evacuation or other emergency responses. The clause discourages such uses from land between the flood planning level and the probable maximum flood and provides additional matters for consideration where such a development is nonetheless pursued. This would assist emergency response agencies to be able to focus their resources on the particular event rather than needing to divert personnel to assist in evacuations.

Such a clause would also be supported by the inclusion of the following definition in the Dictionary:

Probable maximum flood means the largest flood that could conceivably occur at a particular location, usually estimated from probable maximum precipitation.

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- ***Airport Obstacle Limitation Surface update***

The Orange regional airport runway was extended in 2015 and the obstacle limitation surface (OLS) has not yet been updated in the LEP. The OLS does not prohibit any particular form of development but does trigger the need to consider the appropriate siting and design of structures that might be proposed under the flightpaths of the airport. This administrative amendment is therefore an opportunity to bring the LEP up-to-date and better reflect the extent of the OLS given the extension of the runway.

ATTACHMENTS

- 1 Planning Proposal - LEP Amendment 24, D18/64309 (Under Separate Cover)