

12.3 PLANNING PROPOSAL TO AMEND GOULBURN MULWAREE LEP 2009 TO EXCLUDE THE RU6 TRANSITION ZONE FROM CLAUSE 4.1AA & CLAUSE 4.2B

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Attachments: Nil

Link to Community Strategic Plan:	EN4 Maintain a balance between growth, development and environmental protection through sensible planning
Cost to Council:	The cost of the rezoning will be funded from operational budgets.
Use of Reserve Funds:	Nil

RECOMMENDATION

That

1. The report to amend the provisions of Clause 4.1AA and 4.2B of the *Goulburn Mulwaree Local Environmental Plan 2009* in relation to the RU6 - Transition Zone by the Business Manager Strategic Planning be received.
2. Council resolve to prepare a Planning Proposal to amend Clause 4.1AA (2) and Clause 4.2B (2) of *Goulburn Mulwaree Local Environmental Plan 2009* to include the RU6 Transition Zone.
3. When the Planning Proposal is prepared, a request for a Gateway Determination be forwarded to the Department of Planning and Environment.
4. The Department of Planning and Environment be requested to issue delegations so that Council is the Relevant Planning Authority to process the subject Planning Proposal.

BACKGROUND

The NSW Standard Instrument was amended to clarify the provisions of Clause 4.1 (Minimum Allotment Size) in LEPs so as to make it clear that Community Title Scheme subdivisions and Strata Title Scheme Subdivisions were exempt from compliance with the minimum lot size maps.

This clause applies to all zones, therefore Councils including Goulburn Mulwaree Council had moved to amend the LEP to specify that certain zones (particularly rural and environmental zones) would be excluded from the provisions of Clause 4.1(4), thereby requiring development in these zones to meet the minimum allotment size regardless of the form of subdivision.

The Planning Proposal for *Goulburn Mulwaree Local Environmental Plan (GM LEP) 2009* (Amendment 8) which was gazetted in 2018 originally included a proposal to include the RU6 – Transition zone into Clause 4.1AA and Clause 4.2B in order to exclude this zone (in addition to the other Rural, Environmental and Large Lot Residential zones) from the provisions of Clause 4.1(4)(a) which permits Community Title subdivision and Strata Title subdivision without complying with the minimum allotment size provision.

Council's resolution of 6 March 2018 had originally included the RU6 zone, however a later report dated 5 June 2018 recommended excluding the RU6 for consideration in the Draft Housing Strategy.

The report to Council dated 5 June 2018 concluded that this is a matter which could be considered in the Draft Housing Strategy and advised:

It should be noted that if Council was to reverse the decision recommended in this report at a later date, a subsequent amendment to the GM LEP 2009 would need to be prepared under separate cover. This may occur if the outcomes of the Housing Strategy warrant a more rigorous enforcement of the minimum allotment size by a Community Title or Strata Subdivision of land in the zone RU6 Transition under GMC LEP 2009.

It is noted that no submissions were made to the original planning proposal in relation to this matter.

Since this matter was considered in mid-2018 a development application (DA/0100/1819) for a Community Title subdivision of 119 Marys Mount Road has been submitted. This DA proposes a twenty four (24) lot residential subdivision of land with lots ranging in size from 590m² – 620m². Under a Torrens subdivision this site would have a 100ha minimum allotment size and potentially not enjoy a dwelling entitlement under Clause 4.2A. This report is not intended to provide an assessment of this DA, but rather highlights the potential for this type of application to be made on RU6 zoned land.

In addition to the above DA, other enquiries have been made for potential residential development in the RU6 zone, therefore, reconsideration of this issue has been brought forward as a separate matter to the now exhibited *Draft Urban and Fringe Housing Strategy* (Draft Housing Strategy) given the implications of the current provisions to the Draft Housing Strategy recommendations and land use planning in the interim.

REPORT

The purpose of this report is to present a justification for the inclusion of the RU6 Transition Zone within the provisions of both Clause 4.1AA and Clause 4.2B, the effect of which would be that both Community Title subdivision and Strata Title subdivision (of residential and tourist and visitor accommodation) would be required to meet the minimum allotment size provisions in Clause 4.1 as specified in the GM LEP 2009 mapping. The RU6 Transition Zone has the following objectives:

- *To protect and maintain land that provides a transition between rural and other land uses of varying intensities or environmental sensitivities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

The RU6 zone is a transitional rural zone which is located around the periphery of various town and village centres to provide a buffer between rural and residential development. The minimum allotment size for subdivision within this zone varies considerably from 10ha to 100ha depending on the locality. The RU6 zone is quite extensive especially around Goulburn as indicated in the map below (refer Figure 1).

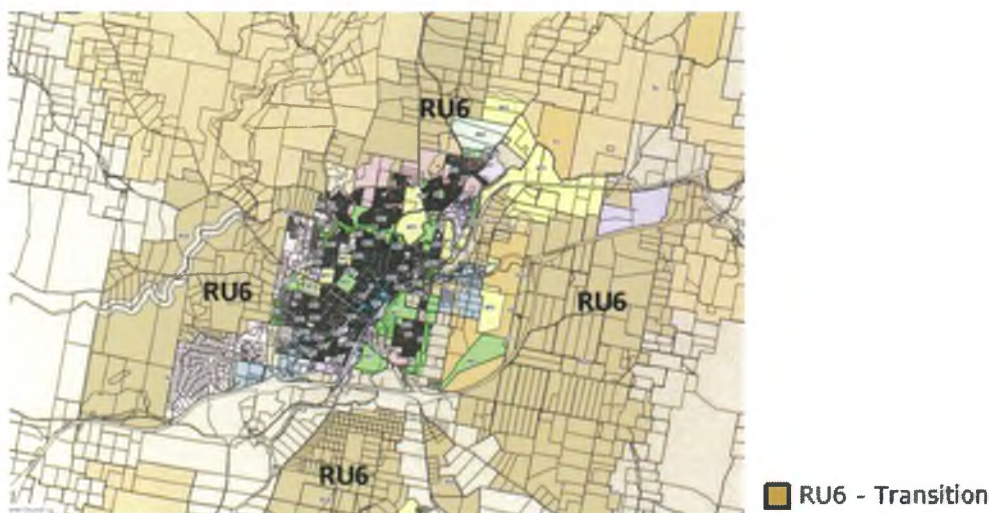


Figure 1 – Locations of RU6 Zoned Land around Goulburn

The potential for residential subdivision within the RU6 area is not limited by the lack of connection to Council's reticulated water and sewer services, as community lots could provide for sewerage treatment facilities and water could be provided either on site or also within a centralised facility on a community lot.

The concern is that the current provisions allow for ad hoc residential development on the fringe of existing towns and villages. Over time such developments will undermine Council strategic planning documents which intend to identify appropriate locations and criteria for further development such as the work being undertaken with the *Draft Urban and Fringe Housing Strategy*. Such unplanned developments could negatively impact on the orderly expansion of towns and villages.

Where other Councils include RU6 zones in their LEPs the zone has been excluded from the provision of Clause 4.1(4) for the purposes of Community Title and Strata Title subdivision. The following provisions are an extract from the Wagga LEP 2010:

4.1AA Minimum subdivision lot size for community title schemes

(1) *The objectives of this clause are as follows:*

(a) *to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.*

(2) *This clause applies to a subdivision (being a subdivision that requires development consent) under the Community Land Development Act 1989 of land in any of the following zones:*

(a) *Zone RU1 Primary Production,*

(b) *Zone RU2 Rural Landscape,*

(c) *Zone RU4 Primary Production Small Lots,*

(d) Zone RU6 Transition,

(e) *Zone R5 Large Lot Residential,*

(f) *Zone E4 Environmental Living,*

but does not apply to a subdivision by the registration of a strata plan.

(3) *The size of any lot resulting from a subdivision of land to which this clause applies (other than any lot comprising association property within the meaning of the Community Land Development Act 1989) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

(4) *This clause applies despite clause 4.1.*

and

4.2B Minimum subdivision lot size for strata subdivision of residential or tourist and visitor accommodation in certain zones

(1) *The objective of this clause is to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.*

(2) *This clause applies to land in the following zones that is used, or proposed to be used, for residential accommodation or tourist and visitor accommodation:*

(a) *Zone RU1 Primary Production,*

(b) *Zone RU2 Rural Landscape,*

(c) *Zone RU4 Primary Production Small Lots,*

(d) Zone RU6 Transition,

(e) *Zone R5 Large Lot Residential,*

(f) *Zone E4 Environmental Living.*

(3) *Development consent must not be granted for the subdivision of a lot to which this clause applies under a strata plan that would create lots below the minimum size shown on the Lot Size Map for that land.*

The above provisions from the Wagga LEP and from GM LEP 2009 (for certain zones) are intended to ensure that land to which the clause applies is not fragmented by subdivisions which would create additional dwelling entitlements.

There is also an apparent conflict with the current situation (relating to the RU6 zone) between minimum lot size provision in the GM LEP 2009 and provisions for dwelling entitlements in Clause 4.9 which states:

4.2A Erection of dwelling houses on land in certain rural and environmental zones

(1) This clause applies to land in the following zones:

Zone RU1 Primary Production,

Zone RU2 Rural Landscape,

Zone RU3 Forestry,

Zone RU6 Transition,

Zone E2 Environmental Conservation,

Zone E3 Environmental Management.

(2) 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 created in accordance with this Plan, or

(b) a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or

(c) a lot created before this Plan commenced that is at least the minimum lot size specified for that lot by the Lot Size Map, or

(d) a lot for which subdivision approval was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible immediately before that commencement, or

(e) an existing holding.

Since Clause 4.1 only applies to Torrens subdivision in the RU6 zone, the limitation on dwelling entitlement identified in Clause 4.2A for the RU6 zone is potentially contradicted by the potential for subdivision and then dwelling entitlement under a Community Title scheme. The technical issues around the use of Strata title under this clause become even more complex, as Strata title typically involves the design or approval of the building prior to the subdivision thereby creating a potential conflict with Clause 4.2 if the subject site is undersized and does not meet the other criteria for a dwelling entitlement.

For development application preparation and assessment, considerations of site suitability and location are largely unaddressed in the current LEP provisions and are reliant on:

- Environmental Planning and Assessment (EP&A) Act, 1979 and LEP Zone objectives;
- Site suitability assessment under Section 4.15 of the EP&A Act; and
- State Environmental Planning Policy (Rural Lands).

The current approach is unclear, more difficult in relation to assessment and does not provide a strategic framework for the identification of appropriate urban expansion sites. Council is effectively providing a “mixed message” by allowing unrestricted Strata and Community Title subdivision in a rural zone which has objectives and other clauses which are contrary to allowing unconstrained residential in a rural area.

The current situation is also contradictory to the approach taken with the draft Housing Strategy which has the following criteria for the expansion of urban areas into green field sites:

Location

- *the site is within the area identified for urban expansion in the Housing Strategy adopted by Council*
- *the site location supports a logical and contiguous development with the existing settlements of Goulburn and Marulan.*
- *the site is within the urban fringe identified by the Housing Strategy*
- *the site can be connected to water and sewer infrastructure*
- *the site has minimal or limited impact on matters of biodiversity or heritage*
- *the site will not result in the fragmentation of biodiversity corridors*
- *the sites is not identified as bring subject to flooding*
- *the proposal will preserve and enhance riparian corridors as open space networks and utilise for active travel connections. Development around riparian corridors is to be in accordance with the guidelines for waterfront land defined by the NSW Office of Water DPI*
- *avoid residential development on the southern/eastern side of the Hume Highway*
- *the proposal will satisfy the requirements of rural planning and subdivision principles (Rural Lands SEPP).*

Housing

- *housing contributes the required demand identified in the Housing Strategy for the Goulburn Mulwaree LGA*
- *the proposal delivers appropriate housing to meet the demographic needs of the region*
- *development reinforces and enhances any existing residential character*
- *development will contribute housing affordability, choice and diversity appropriate for the anticipated demographic profile of the LGA.*

Use

- *development will not result in land use conflicts particularly with agriculture and primary industries*
- *minimise disturbance or conflict with State Significant Quarry Areas.*

There is a substantial risk that a DA will be presented which is in an area identified to be unsuitable for residential development by Council. Refusal of applications could lead to appeals against Council decisions in the NSW land and Environment Court which may otherwise have been avoidable should the LEP be amended.

The Draft Strategy is also potentially undermined by developments lodged before its adoption and before an amendment to the LEP can be made following its adoption. It is considered that the LEP be amended so as to make it clear whether or not Council is supportive of such developments in the outlying rural areas around the towns and villages.

CONCLUSION

In conclusion, a Planning Proposal is recommended to be prepared and forwarded to the Department of Planning and Environment (DPE) for the inclusion of the RU6 Transition Zone within the provisions of both Clause 4.1AA and Clause 4.2B, the effect of which would be that both Community Title subdivision and Strata Title subdivision (of residential and tourist and visitor accommodation) would be required to meet the minimum allotment size provisions in Clause 4.1 as specified in the GM LEP 2009 mapping.

The need to amend the GM LEP 2009 is due to the lack of strategic direction provided for the location of Community Title and Strata subdivisions within the RU6 Transition zone which covers extensive areas around the towns and villages.

The current situation lends itself to the lodgement of DAs for residential subdivisions which are contrary to the EP&A Act, Rural Lands SEPP and zone objectives. The potential for DAs for residential subdivision within the RU6 zone to be lodged before the adoption of the Draft Strategy and to undermine the established criteria of the Draft Strategy is also apparent.

The conflict between zone objectives and the provision on Clause 4.1 as it currently applies to the RU6 zone should be corrected as soon as practicable through a Planning Proposal to amend the relevant clauses.