



Goulburn Mulwaree Council
**Amendments to Clauses 4.1AA & 4.2B (RU6 –
Transition Zone) Planning Proposal**
Local Environmental Plan 2009

25 March, 2019

Introduction

Goulburn Mulwaree Council resolved at its meeting of 5 March, 2019 to prepare a Planning Proposal to include the RU6 Transition zone under *Goulburn Mulwaree Local Environmental Plan (GM LEP) 2009* within the provisions of Clauses 4.1AA (Community Title Subdivision) and 4.2B (Strata Title Subdivision) in relation to the application of minimum allotment sizes specified in Clause 4.1 within the RU6 Transition zone.

Council had previously considered the inclusion of the RU6 Transition Zone in a Planning Proposal associated with GM LEP 2009 (Amendment 8). The inclusion of the RU6 zone in the provisions of Clauses 4.1AA and 4.2B was exhibited as a part of that Planning Proposal with no submissions received. However, Council later resolved to exclude this zone for consideration in the *Draft Urban and Fringe Housing Strategy*. The Draft Urban and Fringe Housing Strategy has since been exhibited and provides specific criteria for the location of rural lifestyle lots (which are most likely to be located in the RU6 zone). The current provisions of Clause 4.1AA and 4.2B are more flexible than the RU6 zone objectives would suggest in relation to the potential for residential subdivision. A further report to Council on 5 March, 2019 concluded that:

“The need to amend GM LEP 2009 is due to the lack of strategic direction provided for the location of Community Title and Strata Title subdivisions within the Ru6 Transition zone which covers extensive areas around towns and villages.”

The current situation lends itself to the lodgement of [development applications] DAs for residential subdivisions which are contrary to the zone objectives and to other provisions within the GM LEP 2009. The Planning proposal is intended to provide clarity and consistency to the GM LEP 2009 in relation to the consideration of subdivisions in the RU6 Transition zone.

The Planning Proposal amends *Goulburn Mulwaree LEP 2009* as outlined in Table 1:

Table 1 Proposed LEP amendments and supporting rationale.

| Amendment proposed | Rationale |
|---|--|
| <p>1. Amendment of the Goulburn Mulwaree LEP 2009 <i>Clause 4.1AA Minimum subdivision lot size for community title schemes</i> by inserting the RU6 Transition zone under subclause (2).</p> | <p>Introducing the RU6 Transition zone to Clause 4.1AA will ensure that Community Title subdivision will occur without any adverse impact on environmental or rural values.</p> |
| <p>2. Amendment of the Goulburn Mulwaree LEP 2009 <i>Clause 4.2B Minimum subdivision lot size for strata subdivision of residential or tourist and visitor accommodation in certain zones</i> by inserting the RU6 Transition zone under subclause (2)</p> | <p>Inclusion of the RU6 Transition zone will ensure that rural land is not fragmented via Strata subdivision for the purposes of residential or tourist and visitor accommodation development.</p> |

Part 1 – Intended Outcomes

The **intended outcome** of the instrument proposed by this Planning Proposal is to introduce the RU6 Transition zone into clauses 4.1AA and 4.2B of the *Goulburn Mulwaree LEP 2009*.

Part 2 – Explanation of Provisions

The proposed outcome will be achieved by:

1. Amendment of the *Goulburn Mulwaree LEP 2009* Clause 4.1AA Minimum subdivision lot size for community title schemes by inserting the RU6 Transition zone under subclause (2).
2. Amendment of the *Goulburn Mulwaree LEP 2009* Clause 4.2B Minimum subdivision lot size for strata subdivision of residential or tourist and visitor accommodation in certain zones by inserting the RU6 Transition zone under subclause (2).

No changes to any other provisions or the mapping are included in this Planning Proposal.

Part 3 – Justification

Section A – Need for Planning Proposal

3.1 Is the Planning Proposal a result of any strategic study or report?

No, however, Council is currently preparing an *Urban and Fringe Housing Strategy*, a draft of which was publicly exhibited in January/February 2019. One of the intentions of the Draft Strategy is to provide criteria for the consideration of Planning Proposals in future for land located on the fringe of the towns, specifically Goulburn and Marulan. Much of the land in the investigation area surrounding Goulburn is zoned RU6 Transition. The area is dominated by rural residential development and is currently un-serviced by town reticulated water and sewer. As discussed in the report to Council dated 5 March, 2019 (Attachment 1) and Resolution (Attachment 2), it is important to ensure that development within the RU6 Transition zone is undertaken in an orderly manner so as to ensure the orderly and economic (efficient) utilisation of services. It is also intended to provide a more cohesive urban form around the edges of existing towns.

3.2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

A planning proposal is the best means of addressing the orderly development of the RU6 Transition zone, specifically, the control of lot sizes within *Goulburn Mulwaree LEP 2009*. Flexibility for the size

of lots under certain circumstances is still provided by Clause 4.1C which provides for the lot averaging of subdivisions to allow for the protection of rural and environmental values of the land.

Currently the exclusion of the RU6 Transition zone from the provisions of Clause 4.1AA and 4.2B is contradictory to the minimum allotment sizes expressed for this zone under the mapping associated with Clause 4.1. The RU6 Transition zone has a relatively large range of minimum allotment sizes for Torrens subdivision ranging from 10ha through to 100ha, allowing Community Title or Strata Title subdivision below these lots sizes encourages the fragmentation of rural land which was specifically identified to provide a transition area between the more intense rural activities permitted in RU1 and RU2 zones and the areas zoned Residential within the towns. Furthermore, the potential for unlimited Community or Strata Title subdivision is also contradictory to Clause 4.2A in relation to dwelling entitlements within the RU6 zone.

A development control plan (DCP) provision would not be a suitable means of addressing the inherent conflicts between the zone objectives, various clauses and provisions in the LEP should the RU6 Transition zone continue to be excluded from Clauses 4.1AA and 4.2B.

Section B – Relationship to Strategic Planning Framework

3.3 Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

South East Tablelands Regional Plan

Goal 4 of the South East and Tablelands Regional Plan: Environmentally Sustainable Housing Choices, is the most relevant goal in relation to this Planning Proposal. The following directions are of particular relevance:

Direction 25: Focus housing growth in locations that maximise infrastructure and services.

The actions associated with Direction 25 are:

25.1 Focus future settlement to locations that:

- maximise existing infrastructure and services and minimise the need for new services;
- prioritise increased densities within existing urban areas; and
- prioritise new release areas that are an extension of existing strategic and local centres.

25.2 Plan for and prioritise services and infrastructure investment to maximise cost efficiencies, coordinate the delivery of different infrastructure assets, and achieve equitable sharing of responsibility, including funding, procurement and ongoing maintenance.

The Planning Proposed is consistent with the above actions as it is intended to provide for the orderly development of land within the RU6 Transition zone by requiring compliance with the minimum allotment sizes expressed in the mapping associated with Clause 4.1 for Community Title subdivision and Strata Title subdivision (for residential and tourist and visitor accommodation uses). The current situation with the RU6 Transition zone exclusion from Clauses 4.1AA and 4.2B allows for residential development that does not maximise existing infrastructure and services and does not prioritise new releases which are extensions to existing strategic local centres.

Direction 28: Manage rural lifestyles

The actions associated with Direction 28 are:

28.1 Enable new rural residential development only where it has been identified in a local housing strategy prepared by council and approved by the Department of Planning and Environment.

28.2 Locate new rural residential areas:

- close to existing urban settlements to maximise the efficient use of existing infrastructure and services, including roads, water, sewer and waste services, and social and community infrastructure;
- to avoid and minimise the potential for land use conflicts with productive, zoned agricultural land and natural resources; and
- to avoid areas of high environmental, cultural and heritage significance, important agricultural land and areas affected by natural hazards.

28.3 Manage land use conflict that can result from cumulative impacts of successive development decisions.

The Planning Proposal is consistent with the above direction and actions as it is seeking to restrict new development to where it will be identified in the *Draft Urban and Fringe Housing Strategy* (once adopted and endorsed by the NSW Department of Planning and Environment). The current GM LEP 2009 provisions have the potential for development applications being the determining factor on the

location of residential subdivisions which are contrary to the zone objectives and other applicable controls in the LEP.

3.4 Is the Planning Proposal Consistent with a council's local strategy or other local strategic plan?

3.4.1 Goulburn Mulwaree Strategy 2020

The Planning Proposal is consistent with the *Goulburn Mulwaree Strategy 2020* in terms of the community vision and plans for growth outlined in the strategy. The objectives for agricultural lands in the strategy are:

- Encourage continued growth in the area's rural economic base by protecting prime agricultural areas.
- Introduce niche agricultural operations near towns and villages,
- Recognise the contribution agriculture makes to the Goulburn Mulwaree local government area.
- Prevent inappropriate fragmentation of agricultural lands.
- Permit compatible non-agricultural land uses within rural zones that would not adversely affect the future agricultural operations of the area.
- Protect and conserve prime agricultural lands and encourage sustainable agricultural operations.
- Promote appropriate access and efficient use of water resources.
- Prevent inappropriate development of inappropriate non-agricultural uses including large lot residential that will adversely affect the productivity potential of agricultural areas and result in inappropriate fragmentation.

The Planning Proposal is consistent with the above rural objectives in that it seeks to prevent the fragmentation of rural land for the creation of large lot residential subdivision. The RU6 Transition zone is a rural zone which is intended to provide a buffer between towns and rural areas to minimise the interface impacts between residential and rural land uses.

3.4.2 Goulburn Mulwaree Community Strategic Plan 2030

The Planning Proposal is consistent with the *Community Strategic Plan 2030* as follows:

Key Direction 1 – Quality Infrastructure, Goal 1.7 Asset Management.

The Strategy for asset management identified in 1.7.1 is

“The management of financial, economic, engineering and other practices applied to physical assets with the objective of providing the required level of service in the most cost effective manner”.

The Planning Proposal is consistent with this strategy as it seeks to reduce the potential for ad hoc residential development following lodgement of development applications for residential subdivision rather than following a strategic planning process for the identification of land for future urban or rural residential purposes which includes consideration of the orderly and economic management of infrastructure assets.

3.4.3 Draft Goulburn Mulwaree Urban and Fringe Housing Strategy

The *Draft Goulburn Mulwaree Urban and Fringe Housing Strategy (2019)* provides criteria for the identification of future urban land and criteria for the consideration of land to be used for rural residential lifestyle lots. The inclusion of the RU6 Transition zone in the provisions of clause 4.1AA and 4.2B of the LEP will allow for the orderly development of land in accordance with the criteria for identification and location of suitable land.

3.5 Is the Planning Proposal consistent with the applicable State Environmental Planning Policies (SEPP)?

Most SEPP's are not applicable to this Planning Proposal. The Planning Proposal is consistent with the relevant SEPP's outlined below in **Table 2**.

Table 2 Planning Proposal compliance with relevant State Environmental Planning Policy's

| State Environmental Planning Policy (SEPP) | Compliance of Planning Proposal |
|--|--|
| SEPP (Primary Production and Rural Development) 2019 | <p>This Planning Proposal is consistent with the SEPP as it is intended to introduce provisions which are intended to complement the following aims of the policy:</p> <p><i>(a) to facilitate the orderly economic use and development of lands for primary production,</i></p> <p><i>(b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,</i></p> |
| State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 | <p>The SEPP requires that development consent cannot be granted unless there is a neutral or beneficial effect on water quality. The proposed inclusion of the RU6 zone into Clauses 4.1AA and 4.2B is consistent with the need for the strategic planning to achieve the following aim of the SEPP:</p> <p><i>(a) to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal, and</i></p> <p><i>(b) to provide that a consent authority must not grant consent to a proposed development unless it is satisfied that the proposed development will have a neutral or beneficial effect on water quality, and</i></p> <p><i>(c) to support the maintenance or achievement of the water quality objectives for the Sydney drinking water catchment.</i></p> <p>Water NSW was consulted as a part of the preparation of this Planning Proposal and advised:</p> <p><i>"Water NSW supports the proposal to include the RU6 zone in the listed clauses. The LEP amendment will reflect the limited opportunity for expansion of the residential development in these areas due to significant constraints, as identified in the draft Housing Strategy, as well as help to avoid ad hoc proliferation of small residential lots on the fringe of existing towns and villages".</i></p> <p>A copy of Water NSW' advice is attached (Attachment 3).</p> |

3.6 Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

The Planning Proposal is consistent with the relevant Section 9.1 Directions. The following directions are most relevant to the proposal:

1. Employment and Resources

1.2 Rural Zones

Under this direction 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).*

The Planning Proposal will not rezone any rural zoned land. It does not include any changes that will increase dwelling density in rural zones. It is consistent with this direction.

1.5 Rural Lands

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.*

A planning proposal to which clauses (a) and (b) apply must:

- (a) be consistent with any applicable strategic plan, including regional and district plans endorsed by the Secretary of the Department of Planning and Environment, and any applicable local strategic planning statement*
- (b) consider the significance of agriculture and primary production to the State and rural communities*
- (c) identify and protect environmental values, including but not limited to, maintaining biodiversity, the protection of native vegetation, cultural heritage, and the importance of water resources*
- (d) consider the natural and physical constraints of the land, including but not limited to, topography, size, location, water availability and ground and soil conditions*

(e) promote opportunities for investment in productive, diversified, innovative and sustainable rural economic activities

(f) support farmers in exercising their right to farm

(g) prioritise efforts and consider measures to minimise the fragmentation of rural land and reduce the risk of land use conflict, particularly between residential land uses and other rural land uses

(h) consider State significant agricultural land identified in State Environmental Planning Policy (Primary Production and Rural Development) 2019 for the purpose of ensuring the ongoing viability of this land

(i) consider the social, economic and environmental interests of the community.

The planning Proposal is consistent with the *South East Tablelands Regional Plan* as discussed in Section 3.3. The Planning Proposal will have no impact upon the agricultural and primary production value of land zoned RU6 Transition to either the State or rural community, the Planning Proposal is intended to prevent the fragmentation of rural land acting as a transition zone between the towns and productive areas. The Planning Proposal is a broad approach to prevent inappropriate residential subdivision within a rural zone and, therefore, no specific environmental values are identified in the proposal relating to maintaining biodiversity, the protection of native vegetation, cultural heritage, or the importance of water resources. The Planning Proposal does not include any provision to change the range of permissible uses within the RU6 Transition zone. The retention of Clause 4.1C of the LEP will allow for the use of lot averaging provisions to ensure that lot sizes and subdivision patterns for residential accommodation conserve and provide protection for the rural and environmental values of the land. At the time that this Planning Proposal was prepared there were no sites listed under Schedule 1 of State Environmental Planning Policy (Primary Production and Rural Development) 2019 as State significant agricultural land within the Goulburn Mulwaree local government area (LGA).

2. Housing, Infrastructure and Urban Development

2.3 Residential Zones

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

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

A planning proposal must include provisions that encourage the provision of housing that will:

- a. broaden the choice of building types and locations available in the housing market, and*
- b. make more efficient use of existing infrastructure and services, and*
- c. reduce the consumption of land for housing and associated urban development on the urban fringe, and*
- d. be of good design.*

A planning proposal must, in relation to land to which this direction applies:

- (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and*
- (b) not contain provisions which will reduce the permissible residential density of land.*

The Planning Proposal is consistent with this direction, in that the RU6 Transition zone is not adequately serviced for residential development. Furthermore, the provisions proposed are intended to reduce the consumption of land on the urban fringe for housing.

3. Hazard and Risk

4.3 Planning for Bushfire Protection

Applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.

In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made.

A planning proposal must:

- (a) have regard to Planning for Bushfire Protection 2006,*
- (b) introduce controls that avoid placing inappropriate developments in hazardous areas,*
and

- (c) ensure that bushfire hazard reduction is not prohibited within the APZ.

A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:

- (a) provide an Asset Protection Zone (APZ) incorporating at a minimum:
 - (i) an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and
 - (ii) an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,
- (b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,
- (c) contain provisions for two-way access roads which link to perimeter roads and/or to fire trail networks,
- (d) contain provisions for adequate water supply for fire fighting purposes,
- (e) minimise the perimeter of the area of land interfacing the hazard which may be developed,
- (f) introduce controls on the placement of combustible materials in the Inner Protection Area.

The Planning Proposal has the potential to affect land mapped as bushfire prone given the extensive area currently zoned RU6 Transition. The Planning Proposal is consistent with *Planning for Bushfire Protection 2006*, as it will not place inappropriate development in a hazardous area and will not prohibit bushfire hazard reduction within any APZ's. Consultation with the NSW Rural Fire Service will be undertaken should a positive gateway be received under Section 3.34 of the Act.

4. Regional Planning

4.1 Implementation of Regional Strategies

Planning proposals must be consistent with a regional strategy released by the Minister for Planning.

The Planning Proposal is consistent with *The Sydney–Canberra Corridor Regional Strategy 2006-2031*, it is noted however, that this Strategy has been superseded by the *South East Tablelands Regional Plan*.

5.1 Sydney Drinking Water Catchments

Applies when a relevant planning authority prepares a planning proposal that applies to the hydrological catchment.

The Planning Proposal affects land within the Sydney Drinking Water Catchment. Development within the catchment is to have a neutral or beneficial effect on water quality. It is unlikely that any of the proposed amendments in this Planning Proposal will result in a negative effect on water quality.

Consultation with Water NSW has been undertaken prior to seeking a gateway determination and continued consultation will occur should a positive gateway be received under Section 3.34 of the Act.

Water NSW in its letter dated 22 March, 2019 has supported the draft Planning Proposal (Attachment 3).

Section C – Environmental, social and economic impact

3.7 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?

No. Whilst the RU6 Transition zone may incorporate land which contains critical habitat or threatened species, populations or ecological communities, or their habitats. Environmental impacts are likely to be reduced with the inclusion of the RU6 Transition zone under Clause 4.1AA (Community Title subdivision) and Clause 4.2B (Strata Title subdivision) requiring compliance with the Minimum Lot Size Maps.

3.8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are negligible environmental effects likely as a result of the amendments outlined in this Planning Proposal.

3.9 Has the planning proposal adequately addressed any social and economic effects?

There are negligible social and economic impacts as a result of the amendments outlined in this Planning Proposal.

Section D – State and Commonwealth interests

3.10 Is there adequate public infrastructure for the planning proposal?

The Planning Proposal will not result in:

- residential subdivision in excess of 150 lots;
- substantial urban renewal;
- infill development; or
- development that will result in additional demand on infrastructure.

The Planning Proposal is partly intended to prevent inappropriately located residential subdivision in relation to existing and proposed public infrastructure.

3.11 What are the views of State and Commonwealth public authorities consultation in accordance with the gateway determination?

Commonwealth public authorities have not been formally involved in this particular Planning Proposal as it is yet to receive a Gateway Determination. At this early stage it appears unlikely that there will be any issues of interest to Commonwealth authorities.

Water NSW was consulted prior to the submission of the Planning Proposal to the Gateway process. Water NSW advised in its letter dated 22 March, 2019 that it supported the Planning Proposal (Attachment 3).

It is proposed that the authorities listed below are consulted in relation to this Planning Proposal, and that this consultation is undertaken concurrent with the public exhibition of the Planning Proposal:

- NSW Rural Fire Service;
- Water NSW

Part 4 – Mapping

No amendments to the mapping are required as a result of this Planning Proposal.

Part 5 – Community Consultation

Council will commence community consultation post-Gateway Determination. For the purposes of public notification, Council considers that a fourteen (14) day public exhibition period is appropriate.

Notification of the exhibited Planning Proposal will include:

- A newspaper advertisement that circulates in the area affected by the Planning Proposal;
- The website of Goulburn Mulwaree Council and the Department of Planning and Environment.

The written notice will:

- Provide a brief description of the objectives or intended outcomes of the Planning Proposal;
- State where and when the Planning Proposal can be inspected; and
- Provide detail that will enable members of the community to make a submission.

Exhibition Material:

- The Planning Proposal, in the form approved for community consultation by the Director General of the Department of Planning and Environment;
- The Gateway Determination;
- Consultation with Public Authorities; and
- Report to Council Item No. 12.3 *“Planning Proposal to Amend Goulburn Mulwaree LEP 2009 to Exclude the RU6 Transition Zone From Clause 4.1AA and Clause 4.2B”* dated 5 March 2019; and Council Resolution.

Part 6 – Project Timeline

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|---|---------------------------------|
| Gateway Determination | April 2019 |
| Timeframe for completion of technical studies | No further studies required |
| Timeframe for agency consultations | May 2019 |
| Public exhibition | June 2019 (14 days recommended) |
| Public hearing | Not anticipated |
| Consideration of submission | July 2019 |
| Date of submission of LEP to DoPE | August, 2019 |
| Council to make LEP amendment (if delegated) | September, 2019 |
| Anticipated date plan forwarded to DoPE for notification | October, 2019 |

Conclusion

Goulburn Mulwaree Council has initiated a planning proposal to modify its 2009 LEP to include the RU6 Transition zone within the provisions of Clauses 4.1AA and 4.2B.

The planning proposal is broadly consistent with the South East Tablelands Regional Plan, SEPPs, and 9.1 Directions.

It is not considered that this planning proposal raises any issues that require further studies or detailed assessment. It requires minimal public consultation.

It is a minor matter that can be dealt with by Council under delegation.