

Planning Services

Gateway Determination Report

LGA	Oberon
PPA	Oberon Council
NAME	Rezoning RU1 Primary production to R5 Large lot residential with a minimum lot size reduction from 100ha to 10ha to facilitate rural residential development.
NUMBER	PP_2018_OBERO_001_00
LEP TO BE AMENDED	Oberon LEP 2013
ADDRESS	2519 O'Connell Rd, O'Connell NSW 2795
DESCRIPTION	Part Lot 4 DP1023024
RECEIVED	22 February 2018. Further information provided on 18 April 2018
FILE NO.	IRF18/3837
POLITICAL DONATIONS	There are no known donations known or gifts to disclose and a political donation disclosure is not required OR a political donation disclosure statement has been provided
LOBBYIST CODE OF CONDUCT	There have been no known meetings or communications with registered lobbyists with respect to this proposal OR include details of meetings or communications with registered lobbyists.

INTRODUCTION

Description of planning proposal

The planning proposal seeks to rezone approximately 200ha of Part Lot 4 DP 1023024 (289ha) from land zoned RU1 Primary Production to zone R5 Large Lot Residential. It also seeks to reduce the minimum lot size from 100ha to 10ha to facilitate a 17 lot rural residential subdivision (allotments of approximately 10ha in size).

Site description

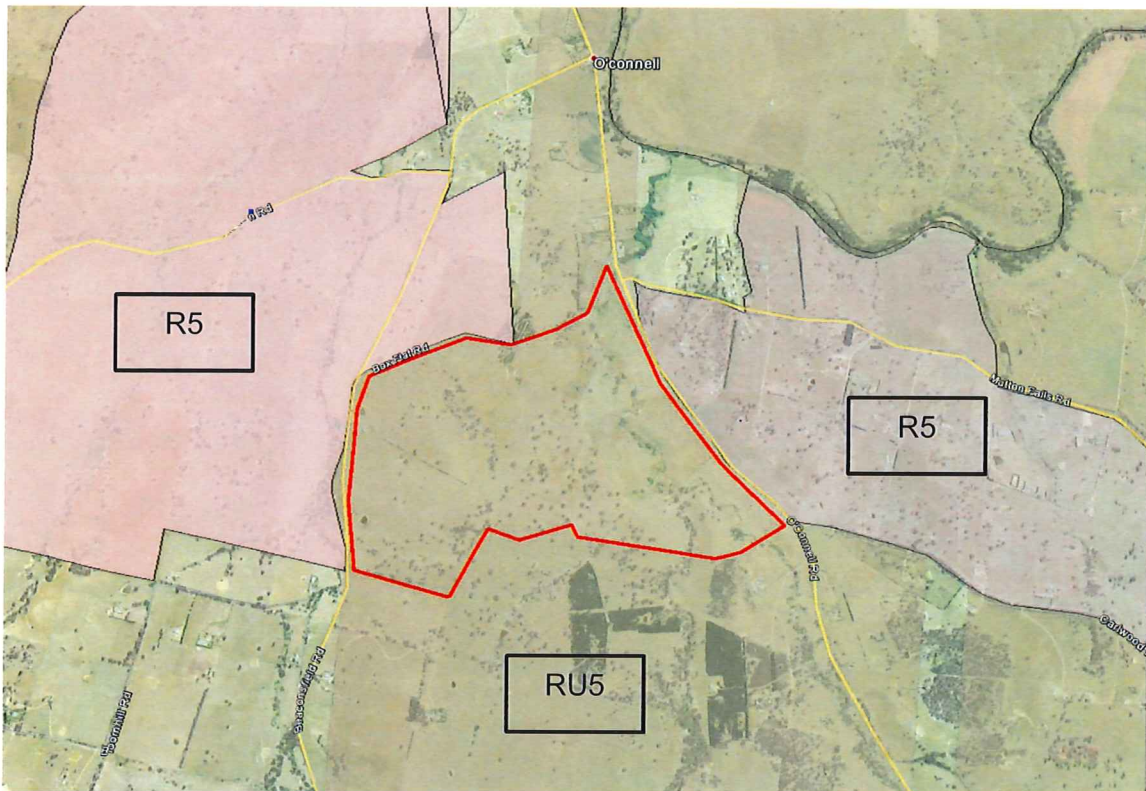
The subject lot is 289ha in size with the proposal applying to approximately 200ha on the southern side of Box Flat Road. Existing dwellings and improvements are located the remainder of Lot 4 and this land will remain as zone RU1 Primary Production. The historic town of O'Connell (adjoins the subject land to the north (see map 1 below).

Currently, the land is used for primary production, primarily grazing with a portion of the site mapped as strategic agricultural land located on the eastern portion of the lot.

O'Connell is located 22km north of the Oberon and 18kms south of Bathurst.

The site is generally cleared with scattered remnant paddock trees which form part of the White Box Yellow Box Blakely's Red Gum Woodland, listed as an Endangered Ecological Community.

There are 2 waterways that flow through the site, the Eight Mile Swamp Creek and Antony's Creek.



Map 1 - Subject Land map – Current Oberon LEP 2013 land zones (Generated from Google Earth)

Existing planning controls

The Oberon LEP 2013 applies to the subject land which zones the whole of Lot 4 DP 1023024 as RU1 Primary Production and a minimum lot size of 100ha.

The site is identified as having a Riparian Lands and Watercourses layer which follows the creek lines.

Surrounding area

The subject land lies to the south of the historic town of O'Connell (see map 1 above) which is listed in the Oberon LEP as a Heritage Conservation area (C2).

The western and eastern portions of land adjoining the subject site are zoned R5 Large Lot Residential. To the east of the site, (east of O'Connell Road)

approximately 400 ha of is land zoned R5 Large Lot Residential with approximately 130ha that has yet to be developed for rural residential.

To the west of the subject site is approximately 637ha with an existing subdivision containing 10 lots (no existing dwellings). There is potential for an additional 60 lots in this area.

To the south of the subject land is land zoned RU1 Primary Production, primarily used for grazing.

Summary of recommendation

It is recommended that the planning proposal be refused as there is insufficient strategic justification to amend the Oberon LEP 2013 at this time because:

- The planning proposal is not consistent with the Central West and Orana Regional Plan 2036 (CWO RP). The proposal undermines direction 28 contained within the Regional plan which seeks to ensure the provision of suitable located rural residential land that is supported strategically by a local land use strategy.
- The planning proposal is inconsistent with the endorsed Oberon Land Use Strategy (Oberon Strategy). The Oberon Strategy does not identify the subject land for future rural residential development. The subject lands do not comply with the objectives (1, 2, 3 & 4) and strategic criteria (3, 4, 5, & 7) for locating new rural residential land.
- The proposal is inconsistent with Ministerial Directions (1.2 Rural Zones, Direction 1.5 Rural Lands and 5.10 Implementation of Regional Plans) and the State Environmental Planning Policy (Rural Lands) 2008. The inconsistencies have not been justified as being of minor significance.
- Council and the proponent advise that there is 10 years supply of rural residential land in vicinity of O'Connell with an additional 411 potential lots across the Oberon LGA.

Oberon Land Use Strategy (Oberon Strategy)

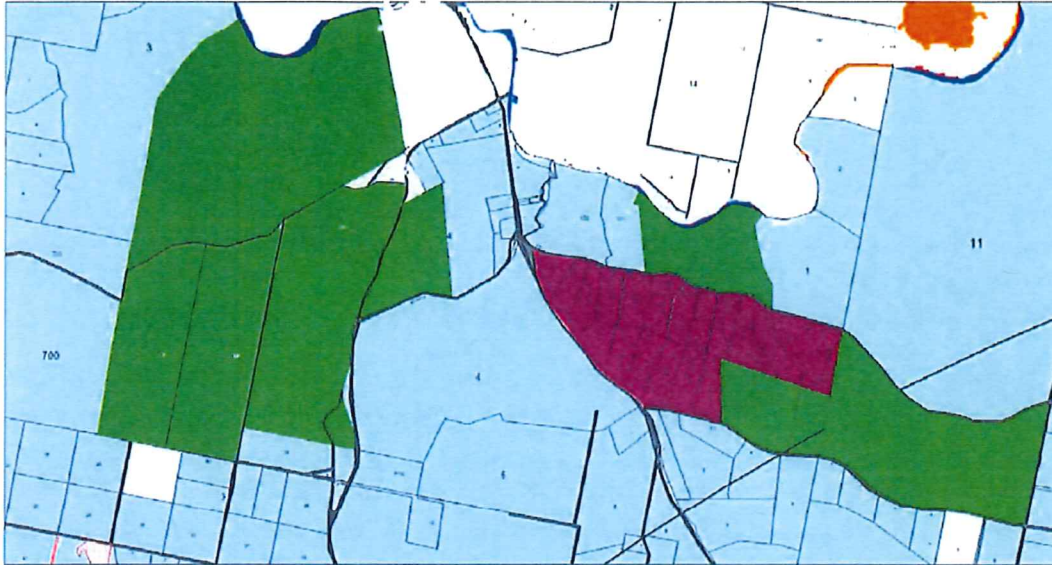
The Oberon LEP 2013 (OLEP) and supporting Oberon Strategy were notified and endorsed in 2013. The Oberon Strategy was endorsed by DPE on 16 December 2013. The Oberon Strategy considered the suitability of providing additional rural residential land in the vicinity of O'Connell. During the community consultation of the draft Strategy, strong submissions from the community indicated a preference to not further develop the land surrounding O'Connell, particularly land adjoining the O'Connell Road.

As a result of this process, land deemed as being strategically suitable for large lot residential was identified in the Oberon Strategy (see map 2 below).

The subject land was included in this investigation which resulted in a portion of the northern section of the subject lot being zoned R5 Large Lot Residential.

The subject land was included in this investigation which resulted in a portion of the northern section of the subject Lot 4 being zoned R5 Large Lot Residential.

The southern portion of the subject lot was explicitly excluded from being identified as large lot residential in the LUS. The land identified in the Oberon Strategy near O'Connell was zoned R5 Large lot resident under the OLEP 2013.



Legend

- Future Large Lot Residential
- Existing Rural Small Holdings

Map 2: Identification of Oberon Land Use Strategy Existing and Future Large Lot Residential land (Oberon Land Use Strategy 2013)

Large Lot Residential Supply

Information provided by Council and the proponent indicates that O'Connell has an existing supply of land zoned R5 Large Lot Residential with the potential for approximately 63 lots. This provides the immediate locality with approximately 13 years of supply.

The Oberon Council area has a total of approximately 1348ha of existing vacant land zoned R5 Large Lot Residential providing the potential for approximately 411 lots.

Given the site is not identified in the Oberon Strategy and there is a significant supply of land zoned for large lot residential across the LGA, there is insufficient justification to amend the planning controls on this subject land at this time.

It is also recommended that the Oberon Strategy be reviewed in the near future and during this process the subject land and the suitability of the existing large lot residential supply across the Council area should be investigated.

PROPOSAL

Objectives or intended outcomes

The statement of objectives clearly states that the purpose of the planning proposal is to allow for rural residential on the subject land at Part Lot 4 DP1023024, O'Connell Road, O'Connell under the Oberon LEP 2013.

Explanation of provisions

The explanation of provision clearly states that the objectives of the planning proposal will be achieved by rezoning the subject site from RU1 Primary Production to R5 Large Lot Residential and also reducing the minimum lot size from 100ha to 10ha under the Oberon LEP 2013. This would be achieved by amending the following Map Sheets in the Oberon LEP 2013:

- Land Zoning Map – Sheet LZN_001
- Lot Size Map - Sheet LSZ_001.

NEED FOR THE PLANNING PROPOSAL

The planning proposal is required as it seeks to rezone land and reduce the minimum lot size.

STRATEGIC ASSESSMENT

Regional

The subject land is subject to the Central West and Orana Regional Plan 2036 (CWORP). There are several actions in the Plan that are relevant to the planning proposal.

Direction 28: Manage rural residential development. This direction highlights that rural residential development is a popular lifestyle housing option driven by the desire for a rural lifestyle, particularly close to regional cities and strategic centres.

It also highlights the potential land use conflict that can arise from this land use with productive agriculture, industry or resource lands.

Action 28.1 provides 3 directives of where rural residential should be suitably located:

- *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 or heritage significance, regionally important agricultural land or areas affected by natural hazards.*

The subject land is located adjacent to O'Connell, a small locality which provides services including; waste collection, primary school, church, RFS, park/playground,

café (Fri-Sun) and a pub. Water and sewer is not provided to the town of O'Connell. The closest urban settlements to the subject land for provision of other services and facilities is 18km to Bathurst or 22km to Oberon. Additional land zoned R5 Large Lot Residential will create a quasi-low density "Urban development" where expectations for urban services may outweigh costs. Additionally, leakage of additional rural residential away from the existing urban centres creates inefficiencies with existing infrastructure located in and surrounding the urban centres of Oberon and Bathurst.

The rezoning of the subject land will permit rural residential development adjacent to primary production zoned land north and south which potentially create additional unplanned land use conflicts which contradicts the directive of this action.

The planning proposal states that the subject land is not constrained by high environmental value land or affected by natural hazards. However, it is recognised in the planning proposal that 10% of the subject land is mapped as having high land capability with the remaining land having lower land capability (class 5). While the site is reality free of physical constraints, there is potential for primary production to be impacted on by the proposed rural residential proposal. The site also forms part of the Fish River catchment.

Action 28.2 requires the support to be given to new rural residential development, only where it is supported strategically in a local housing strategy.

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

The Oberon Strategy, which applies to the subject land, clearly delineates the existing and future sites for rural residential areas. The subject land is explicitly omitted from being identified for future rural residential in the Oberon Strategy. The Oberon Strategy recommended the inclusion of some land near O'Connell for rural residential. As part of these rural residential recommendations, a portion of the subject lot was recommended to be zone R5 Large Lot Residential. This northern portion of the subject lot along with other land in the vicinity of O'Connell have subsequently been rezoned to R5 Large Lot Residential. The land identified in the Oberon Strategy and now zoned for large lot residential is compliant with the wishes of the then Council and community. Therefore, the subject land is not identified in a Department endorsed local strategy, which places the planning proposal at odds with this CWORP action. It is noted that the Oberon Strategy was endorsed in 2013, and recommends that a review of rural residential land supply be carried out every 4 years and major review of every 3 to 5 years.

Council advised on 18 April 2013 that it does not intend to review the strategy.

Prior to this proposal being further considered it is recommended that Council undertake a review of the Oberon Strategy and in respect to the supply and demand of large lot residential in the O'Connell locality and overall Council area.

Action 28.3 requires land use conflicts to be managed that can result from the cumulative impacts of development.

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

O'Connell has approximately a supply of 63 rural residential lots in the immediate vicinity. While this large lot residential zoned land exists, it is necessary to consider the cumulative impact in a strategic context of additional rural residential development near O'Connell and throughout the Oberon Council area.

Local

The planning proposal does not adequately address the inconsistencies with the endorsed Oberon Strategy.

The Oberon Strategy sets out clearly the criteria in identifying future rural lifestyle living sites and the objectives for rural lifestyle development. The planning proposal is not consistent with the following criteria:

- *Areas which are particularly visible from key visual points and which would impact on the historic, rural character of the Oberon LGA are not favoured for rural residential development.*

O'Connell is a historic township which has significant European history. O'Connell is listed in the Oberon LEP 2013 as a heritage conservation area. The subject land not only directly adjoins this conservation area, it faces generally northeast towards O'Connell (see Figure 1 perspective below). The O'Connell conservation area is listed to capture the historic rural setting. The proposal to develop the subject land into 17 rural residential lots may have a visual impact not only on the historic village setting but also the main road leading into O'Connell. The land has been retained as rural to limit intensification and visual impact.

The heritage impact is to be considered in consultation with OEH and under clause 5.10(4) of the OLEP.

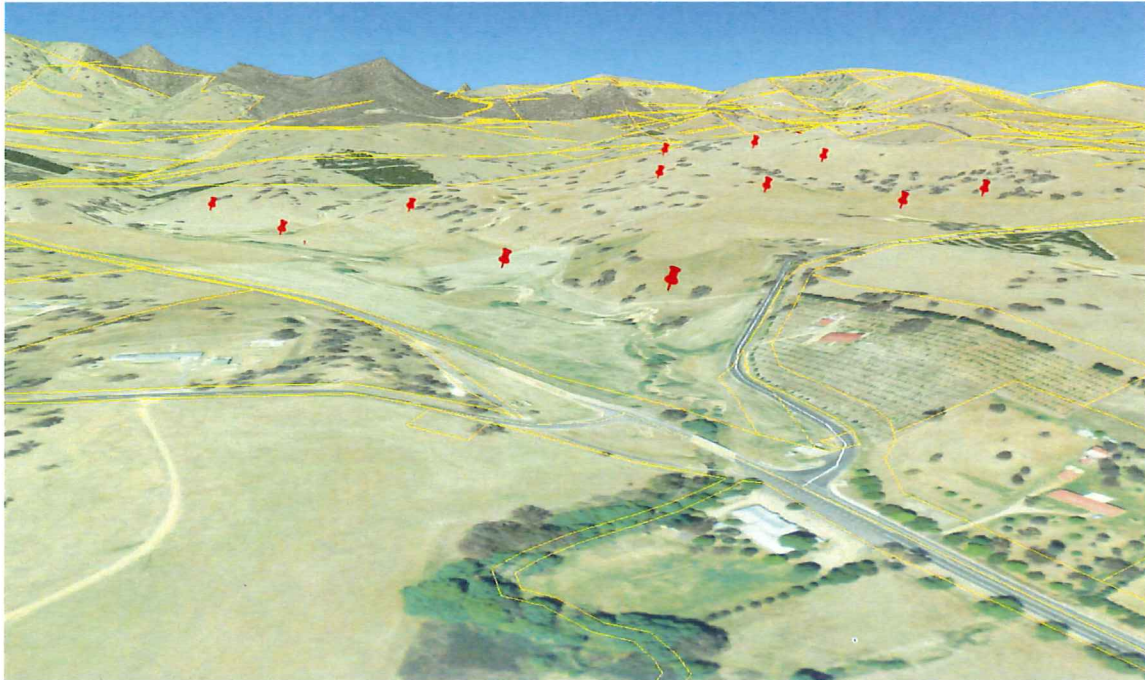


Figure 1: Perspective of the Subject Land – Red Pin indicated indicative location of potential dwelling – as viewed from the village of O’Connell.

- *New rural residential development should have reasonable proximity to one of the LGA’s primary or secondary service centres.*

The Oberon Strategy states the need to locate new rural residential in proximity to existing primary or secondary service centres to ensure that essential services and facilities are readily available and to better utilise the existing infrastructure provisions. While the Oberon Strategy does not clearly articulate numerical thresholds to define primary and secondary service centres, Council staff have stated that O’Connell is neither a primary or secondary service centre, relying on earlier iterations of the Strategy which classed Oberon as the Primary service centre and Black Springs and Burruga as the secondary service centres.

Allowing for additional rural residential around smaller centres will have the affect of diluting the critical mass required in the higher order service centres required with the intent to make these more suitable locations efficient and economically viable. Allowing further rural residential in the O’Connell area will potentially generate a disproportionate demand for services, facilities and infrastructure in O’Connell, which currently is zoned RU1 Primary Production, preventing suitable supportive development and placing strain on Council’s limited resources.

- *Rural residential development should be located within reasonable proximity to primary and high schools, with links to the public transport network and opportunities for students to walk or cycle, wherever possible.*

O’Connell is located approximately 18km to Bathurst and 22km to Oberon, which are the two closest primary service centres for essential services and facilities. The O’Connell Public School is located approximately 3km from the subject land. There is a community bus service servicing O’Connell which runs from Bathurst to Oberon, via O’Connell.

- *Rural residential development should be planned as part of a coordinated, logical settlement pattern, and should not generate disproportionate demands for services and infrastructure.*

The Oberon Strategy states the need to locate new rural residential in proximity to existing primary or secondary service centres to ensure that essential services and facilities are readily available and to better utilise the existing infrastructure provisions.

Infrastructure planning is crucial for Council to understand what the future demand will be on essential services and infrastructure. Allowing for unplanned urban expansion has the potential to impact on Council's ability to fund and deliver services and essential facilities and infrastructure. Allow further rural residential in the O'Connell area will potentially generate a disproportionate demand for services, facilities and infrastructure in O'Connell. O'Connell is currently is zoned RU1 Primary Production, which is does not permit a range of supportive development land uses such as commercial or retail developments.

The planning proposal is not consistent with the objectives outlined in the Oberon Strategy for rural lifestyle developments including the following:

- *Provide opportunities for additional rural residential subdivision and development in suitable locations, and enable a range of different types of rural residential development. Provide for a supply of rural residential lots at an annual rate sufficient to encourage progressive increase in settlement with a focus on existing settlement areas. To enable this to occur, zone adequate land for between five and 10 years supply, with review of land supply being undertaken every four years.*

This objective requires new rural residential areas to be to maintain a supply of five to ten years. It has been demonstrated by both Council and the Proponent that currently O'Connell has approximately 13 years supply rural residential land. While the existing oversupply of rural residential land in O'Connell is minimal, it does however remove the urgency to rezone additional primary production land which is not supported by the Oberon Land Use Strategy.

- *Ensure that adequate infrastructure and services are available for rural residential lots.*

As discussed in the above responses in detail, the subject land does not have adequate access to essential infrastructure, services and facilities. The proposed minimum lot size of 10ha has previously been supported by DPI Water as being suitable for sustainable onsite water collection.

- *Apply criteria to identify the best location for rural residential estates and balance socioeconomic goals associated with new rural residential development with the need to preserve areas of high agricultural, scenic or environmental value.*

As discussed the Oberon Strategy contains 9 criteria to be used in guiding the suitable location for rural residential land. Responses have been provided above to the strategy criteria which the planning proposal does not adequately address. The subject land does contain some high value agricultural land as well as adjoining a heritage conservation area. The socioeconomic benefits of rezoning the land are limited and potentially outweighed by disincentives such as; limited public transport options, increased travel distances to service centres, limited availability of services and facilities in the local vicinity and loss of potential viable agriculture lands.

There is also a socioeconomic impact on the community and landowners of the existing zone R5 land who have an expectation and acceptance that the existing R5 will be developed. It is clear in the Oberon Strategy that the subject land was not supported for R5 use. The subject land should only be supported after a review of the Oberon Strategy has been undertaken.

Section 9.1 Ministerial Directions

Direction 1.2 Rural Zones

The Ministerial Direction is relevant as the planning proposal seeks to rezone land from a rural zone (RU1 Primary Production) to a residential zone (R5 Large Lot Residential). The objective of this direction is to protect the agricultural production value of rural land. A planning proposal may be inconsistent with this Direction if such inconsistency is justified by an endorsed strategy or demonstrated that it is of minor inconsistency. The planning proposal is inconsistent with this Direction. The subject land is currently grazing land and the current land zoning and land use is considered suitable to continue given the endorsed Oberon Strategy clearly does not identify the subject land for large lot residential use.

The inconsistency with this Direction is not considered minor and has not been justified at this time.

Direction 1.5 Rural Lands

The Ministerial Direction is relevant as the planning proposal affects land within an existing rural zone. The objective of the Direction is to protect the agricultural value of rural land and facilitate its orderly development for rural and related purposes.

A planning proposal may be inconsistent with this Direction if such inconsistency is justified by an endorsed strategy or demonstrated that it is of minor inconsistency.

The planning proposal is inconsistent with Direction and has not been justified as being of minor significance at this time. The endorsed Oberon Strategy clearly does not identify the subject land for large lot residential use. The Strategy does however recommend that the northern portion of the subject lot be zoned for rural residential which is now reflected in the Oberon LEP 2013.

Direction 5.10 Implementation of Regional Plans

This Direction applies when a planning proposal is prepared. The planning proposal must be consistent with a Regional Strategy. In this instance the Central West and Orana Regional Plan 2036 (CWO RP) applies.

The planning proposal references to the draft Regional Plan that was prepared. The final plan is adopted.

Direction 28: Manage rural residential development. This Regional Plan direction highlights that rural residential development is a popular lifestyle housing option driven by the desire for a rural lifestyle, particularly close to regional cities and strategic centres.

It also highlights the potential land use conflict that can arise from this land use with productive agriculture, industry or resource lands.

An assessment of the relevant Actions CWORP is detailed in the above section titled "Regional".

While a planning proposal may be inconsistent with this Direction, the **inconstancy** in this case **are** not of minor significance but rather undermine the directions contained within the Regional plan which seek to ensure the provision of suitably located rural residential land that is supported strategically by a local land use strategy.

The inconsistency with this Direction is not considered minor and has not been justified at this time.

State environmental planning policies

SEPP (Rural Lands) 2008

This SEPP applies given the planning proposal seeks to rezone land from a rural zone to large lot residential. The planning proposal must be consistent with the Rural Planning Principles contained in the SEPP. The planning proposal seeks to demonstrate consistency with the Rural Planning Principles however, the inconsistency is not minor or supported by the endorsed Oberon Strategy.

SEPP 55 – Remediation of Land

The site contamination has not been satisfactorily investigated. A preliminary contamination assessment has been carried out which indicates elevated levels of arsenic. In accordance with State Environmental Planning Policy No. 55 – Remediation of Land, prior to rezoning land, the planning authority must be satisfied that the land is suitable for the proposed use. Given the preliminary is inconclusive of the extent of the contamination and the remediation required, it is not suitable zone the land to zone R5 Large Lot Residential.

Contamination of the site has not fully been resolved. A preliminary contamination assessment has been carried out which indicates elevated levels of arsenic.

The strategic assessment of the planning proposal does not have justification at this stage. The proposal should be considered in a broader strategic context including the supply and demand for large lot residential development to inform the strategic merit of the proposal. Council should undertake a review of the Oberon Strategy particularly in relation to large lot living opportunities for O'Connell and in the broader Oberon Council local government area.

SITE-SPECIFIC ASSESSMENT

Social

The planning proposal seeks to provide for additional housing which may provide for some social benefits to the community in additional supply and a variety of housing choice and stock.

The Oberon Strategy describes the social criteria that should guide the appropriate location for new rural residential such that public transport, social services and facilities and education opportunities are readily available. The subject land does not offer the social advantages that lands identified in closer proximity to the primary service centres would. There is a community and landowner expectation that the lands identified in the Oberon Strategy and zoned R5 in Oberon LEP will be developed.

Environmental

The planning proposal is considered to have some potential impacts on the environment in the general locality. It is considered the proposed land uses will impact on the visual amenity of the O'Connell heritage conservation area, which directly adjoins the site.

While the site is relatively cleared from previous farm practices, it is identified that there are scattered remnant paddock trees which form part of the White Box Yellow Box Blakely's Red Gum Woodland, listed as an Endangered Ecological Community.

There are 2 waterways that flow through the site, the Eight Mile Swamp Creek and Antony's Creek. Additional residential development may have impacts on these riparian corridors.

While there is adequate information in the planning proposal about the environmental issues formal consultation with relevant agencies will be required to address potential impacts in detail.

Economic

It is recognised that the proposed development would provide additional housing choice and supply. However, there is economic impact where there is an oversupply of a land use. The endorsed Oberon Strategy states that it is preferable to locate new rural residential lands in closer proximity which provides better economic efficiencies with the provision of strategically planned infrastructure and services. While the proposal may provide some economic benefit, the community economic impacts are not justified in this instance.

Infrastructure

The endorsed Oberon Strategy states that it is preferable to locate new rural residential lands in closer proximity to centres which provides better economic efficiencies with the provision of strategically planned infrastructure and services. O'Connell has limited capacity to provide the necessary infrastructure and related service provisions to support additional rural residential development. RMS have provided initial comments and do not raise any significant objections to the proposal other than requesting that access is provided off the local road rather than the classified road.

CONSULTATION

Community

The planning proposal outlines that due to the inconsistencies with the endorsed Oberon Strategy and OLEP, the community consultation will entail a 28 day public exhibition period should the proposal proceed.

CONCLUSION

The proposal is to rezone approximately 200ha of land from RU1 Primary Production to R5 Large Lot Residential at O'Connell. After assessment of the planning proposal it is recommended that given there is insufficient strategic justification, the Minister's delegate issue a Gateway determination to refuse the planning proposal for the following reasons:

- The planning proposal is not consistent with the Central West and Orana Regional Plan 2036. The proposal undermines the directions contained within the Regional plan which seek to ensure the provision of suitable located rural residential land that is supported strategically by a local land use strategy.
- The planning proposal does not adequately address the inconsistencies with the endorsed Oberon Land Use Strategy. The Strategy does not identify the subject land for future rural residential development. The subject lands do not comply with the objectives and strategic criteria for suitably locating new rural residential land.
- The proposal is inconsistent with section 9.1 Directions (1.2 Rural Zones, Direction 1.5 Rural Lands and 5.10 Implementation of Regional Plans) and the State Environmental Planning Policy (Rural Lands) 2008. The planning proposal's inconsistencies are not considered to have been justified as being of minor significance and are not supported by an endorsed strategy.
- Information provided by Council indicates there will be an oversupply of land zoned R5 land at this time.
- The proposal should be considered in a broader strategic context including the supply and demand for large lot residential development. Council should undertake a review of the Oberon Strategy particularly in relation to large lot living opportunities for O'Connell and in the broader Oberon Council local government area

RECOMMENDATION

It is recommended that the delegate of the Minister for Planning determine that the planning proposal should not proceed subject to the following reasons:

1. The planning proposal to rezone land RU1 Primary Production to R5 Large Lot Residential is not strategically considered and is inconsistent with the endorsed Oberon Land Use Strategy.
2. The planning proposal will create a disproportionate demand on services and infrastructure in O'Connell which is zoned RU1 Primary Production and therefore prohibitive to developing services and facilities that would be required to support additional rural residential development.
3. The planning proposal does not adequately address inconsistencies with Section 9.1 Directions 1.2 Rural Zones, 1.5 Rural Lands, 5.10 Implementation of regional plans as well as State Environmental Planning Policy (Rural Lands) 2008 as it will result in the loss of 200ha of agricultural land and potential land use conflicts by expanding the residential area into the rural area.

*Refusal not supported by
Director Regions, Western
25/05/2018*

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