



## **PLANNING AND DEVELOPMENT COMMITTEE**

# **AGENDA**

**2 AUGUST 2022**

Notice is hereby given, in accordance with the provisions of the Local Government Act 1993 that a **PLANNING AND DEVELOPMENT COMMITTEE MEETING of ORANGE CITY COUNCIL** will be held in the **COUNCIL CHAMBER, CIVIC CENTRE, BYNG STREET, ORANGE** on **Tuesday, 2 August 2022**.

David Waddell

**CHIEF EXECUTIVE OFFICER**

For apologies please contact Administration on 6393 8106.

---

## AGENDA

<b>1</b>	<b>INTRODUCTION.....</b>	<b>3</b>
1.1	Declaration of pecuniary interests, significant non-pecuniary interests and less than significant non-pecuniary interests.....	3
<b>2</b>	<b>GENERAL REPORTS .....</b>	<b>5</b>
2.1	Items Approved Under the Delegated Authority of Council .....	5
2.2	Development Application DA 346/2021(1) - 4633 Mitchell Highway .....	11
2.3	Development Application DA 406/2021(1) - 267, 293 and 297 Ploughmans Lane.....	45

## **1 INTRODUCTION**

### **1.1 DECLARATION OF PECUNIARY INTERESTS, SIGNIFICANT NON-PECUNIARY INTERESTS AND LESS THAN SIGNIFICANT NON-PECUNIARY INTERESTS**

The provisions of Chapter 14 of the Local Government Act, 1993 (the Act) regulate the way in which Councillors and designated staff of Council conduct themselves to ensure that there is no conflict between their private interests and their public role.

The Act prescribes that where a member of Council (or a Committee of Council) has a direct or indirect financial (pecuniary) interest in a matter to be considered at a meeting of the Council (or Committee), that interest must be disclosed as soon as practicable after the start of the meeting and the reasons given for declaring such interest.

As members are aware, the provisions of the Local Government Act restrict any member who has declared a pecuniary interest in any matter from participating in the discussion or voting on that matter, and requires that member to vacate the Chamber.

Council's Code of Conduct provides that if members have a non-pecuniary conflict of interest, the nature of the conflict must be disclosed. The Code of Conduct also provides for a number of ways in which a member may manage non pecuniary conflicts of interest.

### **RECOMMENDATION**

It is recommended that Committee Members now disclose any conflicts of interest in matters under consideration by the Planning and Development Committee at this meeting.



## 2 GENERAL REPORTS

### 2.1 ITEMS APPROVED UNDER THE DELEGATED AUTHORITY OF COUNCIL

---

RECORD NUMBER: 2022/1199

AUTHOR: Paul Johnston, Manager Development Assessments

#### EXECUTIVE SUMMARY

Following is a list of more significant development applications approved by the Chief Executive Officer under the delegated authority of Council. Not included in this list are residential scale development applications that have also been determined by staff under the delegated authority of Council (see last paragraph of this report for those figures).

#### LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan Strategy “10.1. Engage with the community to ensure plans for growth and development are respectful of our heritage”.

#### FINANCIAL IMPLICATIONS

Nil

#### POLICY AND GOVERNANCE IMPLICATIONS

Nil

#### RECOMMENDATION

**That Council resolves to acknowledge the information provided in the report by the Manager Development Assessments on Items Approved Under the Delegated Authority of Council.**

#### 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.

<b>Reference:</b>	DA 448/2018(3)	<b>Determination Date:</b>	1 July 2022
<b>PR Number</b>	PR28696		
<b>Applicant/s:</b>	Housing Plus		
<b>Owner/s:</b>	Housing Plus		
<b>Location:</b>	Lot 204 DP 1257565 - 4 Lady Peel Close, Orange		
<b>Proposal:</b>	Modification of development consent - group home (transitional), community facility and hostel. The modified proposal will amend the internal fencing as well as making alterations to the approved landscaping plan.		
<b>Value:</b>	N/A		

2.1 Items Approved Under the Delegated Authority of Council

---

**Reference:** DA 315/2021(2)      **Determination Date:** 1 July 2022  
**PR Number** PR6662  
**Applicant/s:** L-Con Building  
**Owner/s:** Roweth Investments Pty Limited  
**Location:** Lot 53 DP 255071 - 10 Leewood Drive, Orange  
**Proposal:** Modification of development consent - general industry and business identification signage. The modified proposal will result in a reduction of the height and setbacks of the originally approved warehouse and changes to access points.  
**Value:** N/A

**Reference:** DA 449/2021(1)      **Determination Date:** 29 June 2022  
**PR Number** PR27930  
**Applicant/s:** Ken Baker Developments Pty Ltd  
**Owner/s:** Ken Baker Developments Pty Ltd  
**Location:** Lot 81 DP 1217966 - Leeds Parade, Orange  
**Proposal:** Earthworks  
**Value:** \$619,102

**Reference:** DA 494/2021(2)      **Determination Date:** 13 July 2022  
**PR Number** PR12853  
**Applicant/s:** Gregory J Coleman Pty Ltd  
**Owner/s:** Ms AL Bennett  
**Location:** Lot 4 DP 23811 - 176 Woodward Street, Orange  
**Proposal:** Modification of development consent - demolition (existing brick structure), dwelling and attached garage. The modified proposal will alter the Woodward Street elevation by changing the proposed front gable window sizes.  
**Value:** N/A

**Reference:** DA 563/2021(1)      **Determination Date:** 13 July 2022  
**PR Number** PR28469  
**Applicant/s:** Saunders and Staniforth Pty Ltd  
**Owner/s:** Mr WG Ryan  
**Location:** Lot 100 DP 1258232, 291 Giles Road, Springside  
**Proposal:** Demolition (dwelling and tank), dwelling and secondary dwelling (new construction), swimming pool and above ground water tank  
**Value:** \$944,000

**Reference:** DA 61/2022(1)      **Determination Date:** 20 July 2022  
**PR Number** PR4807  
**Applicant/s:** Mr B Johnston  
**Owner/s:** Mr BA and Mrs JP Johnston  
**Location:** Lot A DP 383071 - 11 Green Lane, Orange  
**Proposal:** Demolition (shed) and secondary dwelling  
**Value:** \$95,000

2.1 Items Approved Under the Delegated Authority of Council

---

**Reference:** DA 63/2022(1)                      **Determination Date:** 27 June 2022  
**PR Number** PR28696  
**Applicant/s:** Burge Family Trust and Ortiger Family Trust  
**Owner/s:** Housing Plus  
**Location:** Lot 204 DP 1257565 - 4 Lady Peel Close, Orange  
**Proposal:** Subdivision (six lot Strata)  
**Value:** N/A

**Reference:** DA 72/2022(1)                      **Determination Date:** 20 July 2022  
**PR Number** PR8125  
**Applicant/s:** Mr Marco Pasquali, Designs@m  
**Owner/s:** Mr Ivan Zhang  
**Location:** Lot 8 Sec 5 DP8196 - 21 McLachlan Street, Orange  
**Proposal:** Multi Dwelling Housing (three additional dwellings) and subdivision (four lot Community title and one lot Torrens title)  
**Value:** \$750,000

**Reference:** DA 92/2022(2)                      **Determination Date:** 29 June 2022  
**PR Number** PR11394  
**Applicant/s:** Mr JG Simpson  
**Owner/s:** Mr JG Simpson and Ms JJ Seymour  
**Location:** Lot 1 DP 377665 and Lot A DP386446 - 103 Orchard Road, Springside  
**Proposal:** Modification of development consent - dual occupancy (one additional rural dwelling) and farm building (carport and shed). The proposed modification sought approval for corrections to a minor error/misdescription under Section 4.55(1) of the Environmental Planning and Assessment Act 1979. Specifically, the modification related to amending condition 1(a) of the consent to include omitted plans for the approved farm building  
**Value:** N/A

**Reference:** DA 95/2022(1)                      **Determination Date:** 19 July 2022  
**PR Number** PR29283  
**Applicant/s:** Mr S Ryan  
**Owner/s:** Akura Properties Pty Ltd  
**Location:** Lot 4 SP 104813 - Unit 4/8 Edward Street, Orange  
**Proposal:** Light industry (manufacturing/assembling of trailers) and vehicle repair station (trailer repairs) and building alterations - Unit 4  
**Value:** \$50,605

2.1 Items Approved Under the Delegated Authority of Council

---

**Reference:** DA 99/2022(1)                      **Determination Date:** 1 July 2022  
**PR Number** PR28432  
**Applicant/s:** Source Architects  
**Owner/s:** Mr PJ and Mrs CJ and Mr WT and Ms SJ Gunn  
**Location:** Lot 101 DP 1255887 - 14 Moulder Street, Orange  
**Proposal:** Subdivision (three lot Community title), demolition (tree removal) and dual occupancy  
**Value:** \$1,327,700

**Reference:** DA 101/2022(1)                      **Determination Date:** 23 June 2022  
**PR Number** PR28219  
**Applicant/s:** Mrs EK Osorio  
**Owner/s:** Mr AO and Mrs EK Osorio  
**Location:** Lot 115 DP 1233685 - 105 Buckland Drive, Orange  
**Proposal:** Home business (manufacture of food products)  
**Value:** N/A

**Reference:** DA 123/2022(1)                      **Determination Date:** 24 June 2022  
**PR Number** PR12293  
**Applicant/s:** Mr S I Wilson  
**Owner/s:** Mr S I Wilson  
**Location:** Lot 12 Sec 9 DP 2986 - 5 Wakeford Street, Orange  
**Proposal:** Demolition (shed), subdivision (two lot residential), carport  
**Value:** N/A

**Reference:** DA 135/2022(1)                      **Determination Date:** 13 July 2022  
**PR Number** PR2134  
**Applicant/s:** Mr C Peach  
**Owner/s:** Mrs KK Thomas  
**Location:** Lot B DP 151380 - 12 Byng Street, Orange  
**Proposal:** Demolition (shed) and studio  
**Value:** \$60,000

**Reference:** DA 141/2022(1)                      **Determination Date:** 20 July 2022  
**PR Number** PR29167  
**Applicant/s:** Designs@M  
**Owner/s:** Ashlynne Pty Limited  
**Location:** Lot 307 DP 1280002 - 157 Diamond Drive, Orange  
**Proposal:** Dual occupancy and subdivision (two lot residential)  
**Value:** \$610,000

2.1 Items Approved Under the Delegated Authority of Council

---

**Reference:** DA 148/2022(1)      **Determination Date:** 19 July 2022  
**PR Number** PR4531  
**Applicant/s:** Designs@M  
**Owner/s:** Mr W Shi and Ms H Shang  
**Location:** Lot B DP 417558 - 97 Gardiner Road, Orange  
**Proposal:** Dual occupancy (one additional detached dwelling) and subdivision (two lot Torrens title)  
**Value:** \$339,818

**Reference:** DA 149/2022(1)      **Determination Date:** 23 June 2022  
**PR Number** PR27949  
**Applicant/s:** Inglewood Projects Pty Ltd  
**Owner/s:** Mr GM and Mrs KL Emerson  
**Location:** Lot 211 DP 1238394 - 7 Stevenson Way, Orange  
**Proposal:** Home business (manufacture of food products)  
**Value:** \$5,000

**Reference:** DA 151/2022(1)      **Determination Date:** 19 July 2022  
**PR Number** PR19432  
**Applicant/s:** Mr MA Banks  
**Owner/s:** Bec N Jo Sheds Pty Limited  
**Location:** Lot 103 DP 1067744 - 3 Ralston Drive, Orange  
**Proposal:** Storage premises (160 self-storage units)  
**Value:** \$1,991,000.00

**Reference:** DA 156/2022(1)      **Determination Date:** 19 July 2022  
**PR Number** PR18021  
**Applicant/s:** Mrs A Rodgers  
**Owner/s:** Mr PL and Mrs AM Rodgers  
**Location:** Lot 1 DP 1018804 - 22 Baker Street, Spring Hill  
**Proposal:** Secondary dwelling (detached)  
**Value:** \$200,000

**Reference:** DA 170/2022(1)      **Determination Date:** 20 July 2022  
**PR Number** PR594  
**Applicant/s:** Mrs K Blackwood  
**Owner/s:** Ms AK Blackwood  
**Location:** Lot 1 DP 303905 - 165 Anson Street, Orange  
**Proposal:** Demolition (tree removal)  
**Value:** \$1,000

2.1 Items Approved Under the Delegated Authority of Council

---

**Reference:** DA 176/2022(1)      **Determination Date:** 1 July 2022  
**PR Number** PR27526  
**Applicant/s:** Ms E Densley  
**Owner/s:** Oak Tree Retirement Villages West Orange Pty Ltd  
**Location:** Lot 5 DP 1224367 - 109 Ploughmans Lane, Orange  
**Proposal:** Seniors housing community centre (alterations - screen enclosure to existing patio)  
**Value:** \$20,000

<b>TOTAL NET* VALUE OF DEVELOPMENTS APPROVED BY THE CEO UNDER DELEGATED AUTHORITY IN THIS PERIOD:</b>	<b>\$7,013,225.00</b>
---	-----------------------

*\* **Net** value relates to the value of modifications. If modifications are the same value as the original DA, then nil is added. If there is a plus/minus difference, this difference is added or taken out.*

Additionally, since the July 2022 meeting report period (23 June to 18 July 2022), another 13 development applications were determined under delegated authority by other Council staff with a combined value of \$7,165,813.

**2.2 DEVELOPMENT APPLICATION DA 346/2021(1) - 4633 MITCHELL HIGHWAY**

RECORD NUMBER: 2022/1363

AUTHOR: Ben Hicks, Senior Planner

**EXECUTIVE SUMMARY**

Application lodged	2 August 2021
Applicant/s	Mr NJ Johnson
Owner/s	Mr NJ and Mrs AK Johnson
Land description	Lot 1 DP 171953, 4633 Mitchell Highway, Lucknow
Proposed land use	Demolition (tree removal)
Value of proposed development	\$1,500

Council's consent is sought for proposed *demolition (tree removal)* at 4633 Mitchell Highway, Lucknow. The subject tree is an advanced *Pin Oak (Quercus palustris)* and is located at the site frontage to the Mitchell Highway.

The application was initially considered at Council's Extraordinary meeting on Friday, 25 March 2022. Following deliberations on the matter, Council resolved to provide the proponent additional time to address the matters raised by Council staff outlined in the report. Council staff wrote to the applicant on Wednesday, 30 March 2022 to that effect. The information requested by Council staff has not been forthcoming since.

Notwithstanding, a supplementary image analysis of the issues raised by the proponent has been provided and attached to this report for Council's perusal. Council technical staff have also reviewed the supplementary information, and without supporting professional advice that identifies structural concerns with the tree, or that the tree is contributing to damage to the dwelling and associated patio and footpaths, they provide no assistance in the assessment of the application.

As outlined in the previous report, the site is located in the Lucknow Heritage Conservation Area and is also nearby to Heritage Items. Due to the heritage setting and type of tree, Council's consent is required for its removal.

The application is accompanied by a written statement by an arborist recommending removal of the tree. It is submitted that the subject tree has the potential for limb failure with potential damage to people and property. Furthermore, the written statement suggests that tree is causing damage to the buildings on the subject land and adjoining land as well as adjacent footpaths. Council staff consider the information inadequate and not supported by appropriate evidence or investigations by suitably qualified professionals.

Council's Manager City Presentation (Qualified Horticulturalist, Arborist and Environmental Scientist) has assessed the proposal and does not support removal of the subject tree. The tree is considered to be a structurally sound specimen and in good health. Furthermore, there is no conclusive evidence that the tree is causing structural damage to the building on the subject land or buildings on adjoining land. Damage to the footpath is considered negligible and does not warrant the removal of the tree.

Furthermore, Council's Heritage and Design Advisor concurs that the subject tree should be retained. It is considered that the tree is of heritage value and complements the streetscape within the conservation area.

The applicant has been provided the opportunity to respond to the issues raised by Council staff on multiple occasions; however, no adequate response has been received in relation to these matters to enable reconsideration of the initial recommendation.

In view of the lack of professional evidence to support the removal of the tree, it is recommended the application be refused.

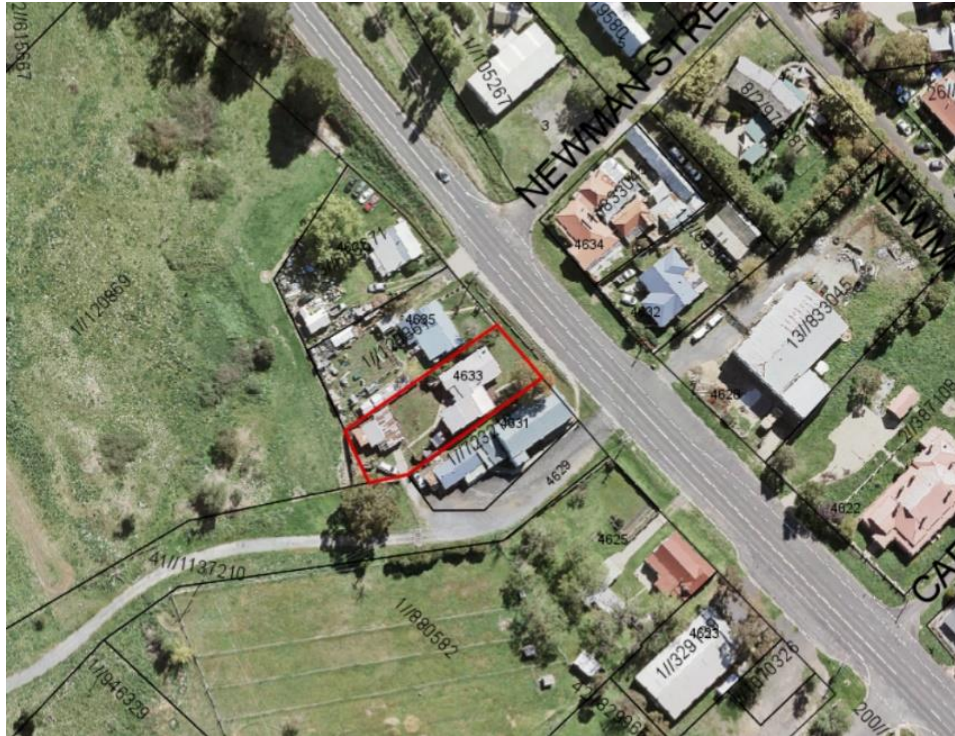


Figure 1 – Locality and Site Context Plan

## DECISION FRAMEWORK

Development in Orange is governed by two key documents Orange Local Environment Plan 2011 and Orange Development Control Plan 2004. In addition, the Infill Guidelines are used to guide development, particularly in the Heritage Conservation Areas and around Heritage Items.

**Orange Local Environment Plan 2011** - The provisions of the LEP must be considered by the Council in determining the application. LEPs govern the types of development that are permissible or prohibited in different parts of the City and also provide some assessment criteria in specific circumstances. Uses are either permissible or not. The objectives of each zoning and indeed the aims of the LEP itself are also to be considered and can be used to guide decision making around appropriateness of development.

**Orange Development Control Plan 2004** - the DCP provides guidelines for development. In general, it is a performance-based document rather than prescriptive in nature. For each planning element there are often guidelines used. These guidelines indicate ways of achieving the planning outcomes. It is thus recognised that there may also be other solutions of merit. All design solutions are considered on merit by planning and building staff. Applications should clearly demonstrate how the planning outcomes are being met where alternative design solutions are proposed. The DCP enables developers and architects to use design to achieve the planning outcomes in alternative ways.

**DIRECTOR'S COMMENT**

The DA requests the removal of an advanced *Pin Oak (Quercus palustris)* and is located in the front yard of the house at 4633 Mitchell Highway, Lucknow. Lucknow has a very limited number of mature trees, therefore this tree makes a substantial contribution to Lucknow's streetscape. The tree has been identified as being in good health and not presenting a significant safety risk, nor does it appear to be damaging nearby buildings.

The removal of the tree is not supported by Council's Manager City Presentation, Council's Heritage Advisor and also development assessment staff.

This application was reported to PDC on 25 March 2022, with Council resolving to request further evidence from the Applicant. Specifically, the applicant was asked to provide evidence from a Structural Engineer of claimed damage to the house and also an updated Arborist's Report.

The additional information requested by Council has not been provided. The applicant was also given an option of withdrawal of the application, for resubmission should they later obtain further supporting information. The position of staff remains the same that the tree is important, does not represent a safety issue and is not causing significant damage to any buildings that would warrant its removal. It is considered that the applicant has been given enough time to respond to Council's requests and it is time to move on.

It is recommended that the application is refused.

**LINK TO DELIVERY/OPERATIONAL PLAN**

The recommendation in this report relates to the Delivery/Operational Plan Strategy "10.1. Engage with the community to ensure plans for growth and development are respectful of our heritage".

**FINANCIAL IMPLICATIONS**

The applicant has the right of appeal in the NSW Land and Environment Court, such an appeal may have budget and resourcing implications for Council.

**POLICY AND GOVERNANCE IMPLICATIONS**

Consideration has been given during the assessment of this application to the historic court case involving *Timbs v Shoalhaven City Council* [2004] NSWCA 81. In this case, the New South Wales Court of Appeal found Shoalhaven Council was negligent for its failure to identify a tree as posing an unacceptable risk (which fell during strong winds, killing a person) and for failing to take appropriate action, including failing to adequately inspect the tree. The tree examined in this case was a spotted gum tree (*Corymbia maculata*) which are a species that have a habit of dropping heavy branches causing damage, injury and even death.

The tree in question as part of this application is a Pin Oak (*Quercus palustris*) and are not known to share the same characteristics as the species examined in the above court case. Council's Arboricultural expert (Manager City Presentation) has inspected the subject tree and considers the tree to be a structurally sound specimen and in good health. No arboricultural evidence to the contrary has been submitted to substantiate that the tree has a structural weakness or that a failure may occur and in the absence of such evidence Council staff are not in the position to support the removal of the tree.

**RECOMMENDATION**

That Council refuses development application DA346/2021(1) for *Demolition (tree removal)* at Lot 1 DP 171953, 4633 Mitchell Highway, Lucknow for the following reasons:

- 1 No Arboricultural evidence has been submitted to substantiate that the tree has a structural weakness or that a failure may occur.
- 2 Damage to the concrete footpath from the front property boundary to the front patio is negligible.
- 3 There is no evidence to show that tree roots have egressed beneath the patio or house foundations.
- 4 Tree removal will have an undesirable impact on the heritage significance of this neighbourhood in the Lucknow Heritage Conservation Area.
- 5 Tree removal will have adverse visual impacts on the streetscape.
- 6 Tree removal will have adverse impacts on the landscape setting in the locality.

**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.

**ENVIRONMENTAL PLANNING ASSESSMENT****Section 1.7 - Application of Part 7 of the *Biodiversity Conservation Act 2016* and Part 7A of the *Fisheries Management Act 1994***

Section 1.7 of the EP&A Act identifies that Part 7 of the Biodiversity Conservation Act 2016 (BC Act) and Part 7A of the Fisheries Management Act 1994 have effect in connection with terrestrial and aquatic environments.

There are four triggers known to insert a development into the Biodiversity Offset Scheme (ie the need for a BDAR to be submitted with a DA):

- Trigger 1: development occurs in land mapped on the Biodiversity Values Map (OEH) (clause 7.1 of BC Regulation 2017);
- Trigger 2: development involves clearing/disturbance of native vegetation above a certain area threshold (clauses 7.1 and 7.2 of BC Regulation 2017); or
- Trigger 3: development is otherwise likely to significantly affect threatened species (clauses 7.2 and 7.3 of BC Act 2016).

The Biodiversity Conservation Act 2016 relates only to the clearing of native vegetation. The tree in question (*Pin Oak (Quercus palustris)*) is an exotic species and thus the proposed removal does not trigger the assessment requirements under the BC Act 2016.

**Section 4.15 of the Environmental Planning and Assessment Act 1979**

Section 4.15 of the *Environmental Planning and Assessment Act 1979* requires Council to consider various matters, of which those pertaining to the application are listed below.

**PROVISIONS OF ANY ENVIRONMENTAL PLANNING INSTRUMENT s4.15(1)(a)(i)****Orange Local Environmental Plan 2011****Part 1 - Preliminary****Clause 1.2 - Aims of Plan**

The particular aims of Orange LEP 2011 relevant to the proposal include:

- (a) to encourage development which complements and enhances the unique character of Orange as a major regional centre boasting a diverse economy and offering an attractive regional lifestyle,*
- (b) to provide for a range of development opportunities that contribute to the social, economic and environmental resources of Orange in a way that allows present and future generations to meet their needs by implementing the principles for ecologically sustainable development,*
- (f) to recognise and manage valued environmental heritage, landscape and scenic features of Orange.*

The application is considered to be contrary to the listed objectives, as outlined in this report.

**Clause 1.6 - Consent Authority**

This clause establishes that, subject to the Act, Council is the consent authority for applications made under the LEP.

**Clause 1.7 - Mapping**

The subject site is identified on the LEP maps in the following manner:

Land Zoning Map:	<b>RU5 Village</b>
Lot Size Map:	<b>1000m<sup>2</sup></b>
Heritage Map:	<b>Lucknow Heritage Conservation Area and nearby to Heritage Items</b>
Height of Buildings Map:	No building height limit
Floor Space Ratio Map:	No floor space limit
Terrestrial Biodiversity Map:	No biodiversity sensitivity on the site
Groundwater Vulnerability Map:	<b>Groundwater vulnerable</b>
Drinking Water Catchment Map:	<b>Within the drinking water catchment</b>
Watercourse Map:	Not within or affecting a defined watercourse
Urban Release Area Map:	Not within an urban release area
Obstacle Limitation Surface Map:	No restriction on building siting or construction
Additional Permitted Uses Map:	No additional permitted use applies
Flood Planning Map:	Not within a flood planning area

Those matters that are of relevance are addressed in detail in the body of this report.

**Clause 1.9A - Suspension of Covenants, Agreements and Instruments**

This clause provides that covenants, agreements and other instruments which seek to restrict the carrying out of development do not apply with the following exceptions:

- (a) *to a covenant imposed by the Council or that the Council requires to be imposed, or*
- (b) *to any relevant instrument under Section 13.4 of the Crown Land Management Act 2016, or*
- (c) *to any conservation agreement under the National Parks and Wildlife Act 1974, or*
- (d) *to any Trust agreement under the Nature Conservation Trust Act 2001, or*
- (e) *to any property vegetation plan under the Native Vegetation Act 2003, or*
- (f) *to any biobanking agreement under Part 7A of the Threatened Species Conservation Act 1995, or*
- (g) *to any planning agreement under Subdivision 2 of Division 7.1 of the Environmental Planning and Assessment Act 1979.*

Council staff are not aware of the title of the subject property being affected by any of the above.

**Part 2 - Permitted or Prohibited Development****Clause 2.1 - Land Use Zones and Clause 2.3 - Zone Objectives and Land Use Table**

The subject site is located within the RU5 Village zone. The proposed tree removal is defined as 'demolition' under LEP 2011, which means:

***Demolish**, in relation to a Heritage Item or an Aboriginal object, or a building, work, relic or tree within a Heritage Conservation Area, means wholly or partly destroy, dismantle or deface the Heritage Item, Aboriginal object or building, work, relic or tree.*

Demolition is permitted with consent pursuant to Clause 2.7 (see below).

**Clause 2.3** of LEP 2011 references the Land Use Table and Objectives for each zone in LEP 2011. These objectives for land zoned RU5 are as follows:

**Objectives of the RU5 Village Zone**

- *To provide for a range of land uses, services and facilities that are associated with a rural village.*
- *To enhance and maintain the unique village character of Lucknow and Spring Hill.*

The proposal is not contrary to the zone objectives.

The following provisions of the OLEP 2011 have been especially considered in the assessment of the proposal:

**Clause 2.7 - Demolition requires Development Consent** - Clause 2.7 of the OLEP 2011 states that the demolition of a building or work may be carried out only with development consent. Accordingly, the applicant has applied for development consent (this application) for the demolition/removal of a Pin Oak tree.

**Clause 5.10 Heritage Conservation** - Clause 5.10(4) of the Orange Local Environmental Plan 2011 requires the consent authority, before granting consent under this clause in respect of a Heritage Item or Heritage Conservation Area, to consider the effect of the proposed development on the heritage significance of the item or area concerned.

The site of the proposed tree removal is within the Lucknow Village Heritage Conservation Area to nearby to Heritage Items at 4622 Mitchell Highway ("Mamhead") and 7-5 Newman Street (Anglican Church).

Council's Heritage Inventory provides the following description and statement of significance with regard to a conservation area:

*Lucknow Village Conservation Area*

*The Village of Lucknow has historic and scientific significance for its links with gold mining activity dating from the very first discovery in 1851 up to the present day. It is a good representative example of the many small gold mining settlements which spread throughout the state, and nation, during the mid-late 19th Century. This significance is enhanced by the degree to which it has retained many key elements of its original character both above and below ground. The above and below ground evidence for the Village's early mining activity is both extensive and varied and the high scientific significance for the Village reflects its potential to provide information on early gold mining activity, if appropriately investigated.*

*The unique and significant character of the Village is enhanced by the extent of the remaining above ground mine shaft structures - particularly the steel head frames of the Wentworth Main and Reform sites - which are rare survivors, both within the region and the state, and give the Village a striking historic immediacy, accessible to all, because of their prominent location on the main road.*

*The historic significance of the Village is enhanced by the degree to which it has retained elements of its early layout - particularly the road network - and various early buildings it has retained, which provide evidence of early residential and associated activities. Several individual buildings are of high historic and aesthetic significance - including Mamhead and the Anglican Church - while others are valuable representative examples of early building styles, and provide evidence of early development patterns in the Village. The historic and aesthetic significance of many early dwellings in the Village has been adversely affected by later alterations and loss of fabric, as well as a more general loss of early/appropriate architectural context.*

*The aesthetic significance of the Village arises in large measure from its attractive siting on the Frederick's Valley Creek, surrounded by low, rolling hills, and the open, largely undeveloped, character of this setting. The simple linear character of the Village itself, with its defined entry points, generally low scale development and remaining early structures, assist in maintaining the important early Village identity and character, though this has been notably eroded, and adversely impacted upon, in recent years, by inappropriate alterations to early buildings and unsympathetic new developments.*

The application was referred to Council's Heritage Advisor to comment on the potential heritage impacts resulting from the removal. Council's Heritage Advisor provides the following:

*The tree is a very tall specimen and dominates views to and from the adjoining hall.*

*A claim has been made that the tree is the cause of localised damage to pavements etc. and may fall leading to consequential damage. The claim does not appear to be borne out by expert reports.*

*In terms of heritage significance, the tree is a contributing element within the streetscape at Lucknow and in the particular context of the former Lucknow School of Arts (now Men's Shed). The tree also serves to screen views to and from the shed and together they produce a visually attractive combination.*

*In conclusion, unless there is an expert backed case for removal, the case for retention due to the contribution the tree makes to the shed and this part of Lucknow is sound and removal would not be supported.*

## **Part 7 - Additional Local Provisions**

### **7.6 - Groundwater Vulnerability**

This clause seeks to protect hydrological functions of groundwater systems and protect resources from both depletion and contamination. Orange has a high-water table and large areas of the LGA, including the subject site, are identified with "Groundwater Vulnerability" on the Groundwater Vulnerability Map. This requires that Council consider:

- (a) whether or not the development (including any onsite storage or disposal of solid or liquid waste and chemicals) is likely to cause any groundwater contamination or have any adverse effect on groundwater dependent ecosystems, and*
- (b) the cumulative impact (including the impact on nearby groundwater extraction for potable water supply or stock water supply) of the development and any other existing development on groundwater.*

Furthermore, consent may not be granted unless Council is satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that impact,*
- (c) if that impact cannot be minimised - the development will be managed to mitigate that impact.*

The proposal is not anticipated to involve the discharge of toxic or noxious substances and is therefore unlikely to contaminate the groundwater or related ecosystems. The proposal does not involve extraction of groundwater and will therefore not contribute to groundwater depletion. However, advanced trees including the subject tree are known to assist in recharging and enriching groundwater tables through percolation. The environmental benefit of the tree on the hydrological functions of the groundwater system would be forfeited in this regard.

### **7.7 - Drinking Water Catchments**

- (1) The objective of this clause is to protect drinking water catchments by minimising the adverse impacts of development on the quality and quantity of water entering drinking water storages.*

- (2) *This clause applies to land identified as “Drinking water” on the Drinking Water Catchment Map.*
- (3) *Before determining a development application for development on land to which this clause applies, the consent authority must consider whether or not the development is likely to have any adverse impact on the quality and quantity of water entering the drinking water storage, having regard to:*
- (a) the distance between the development and any waterway that feeds into the drinking water storage, and*
  - (b) the onsite use, storage and disposal of any chemicals on the land, and*
  - (c) the treatment, storage and disposal of wastewater and solid waste generated or used by the development.*
- (4) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) the development is designed, sited and will be managed to avoid any significant adverse impact on water quality and flows, or*
  - (b) if that impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that impact, or*
  - (c) if that impact cannot be minimised - the development will be managed to mitigate that impact.*

The proposed development is not within proximity to any waterway that feeds into drinking water storage. The proposal does not involve onsite use, storage or disposal of any chemicals on the land nor does the proposal involve the treatment, storage and disposal of wastewater. The proposal is acceptable in this regard.

## **STATE ENVIRONMENTAL PLANNING POLICIES**

### **State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

This SEPP applies to tree removal where a permit is sought from Council. A permit system does not apply to this tree removal, as the subject tree occurs within the Heritage Conservation Area. In this regard, development consent has been sought via this Development Application for the removal of the tree, pursuant to the provisions of Orange LEP 2011.

### **PROVISIONS OF ANY DRAFT ENVIRONMENTAL PLANNING INSTRUMENT THAT HAS BEEN PLACED ON EXHIBITION 4.15(1)(a)(ii)**

There are no draft environmental planning instruments that apply to the subject land or proposed development.

### **PROVISIONS OF ANY DEVELOPMENT CONTROL PLAN s4.15(1)(a)(iii)**

#### **Development Control Plan 2004**

Development Control Plan 2004 (“the DCP”) applies to the subject land. An assessment of the proposed development against the relevant Planning Outcomes will be undertaken below.

**DCP 2004-0 Tree Preservation**

DCP 2004 - 0.4-2 prescribes the following Interim Planning Outcomes for Tree Preservation:

- 1 *Trees prescribed by this DCP must not be ringbarked, cut down, topped, lopped or wilfully destroyed without the Council's approval and landowner's consent.*
- 2 *This clause applies to Eucalypts of any size belonging to the White Box, Yellow Box and Blakely's Red Gum Endangered Ecological Communities, including species indicated as affected in the tree preservation table.*
- 3 *This clause applies to any tree, native or exotic, with a trunk diameter equal to or greater than 300mm at breast height.*
- 4 *This clause does not apply to species indicated as exempt in the tree preservation table.*
- 5 *An application for the Council's approval must be accompanied by an appropriately qualified specialist (arborist) report.*

In consideration of the planning outcomes, a statement from Rural Tree Care was submitted in support of the proposal. The information contained within the statement is restricted in detail and does not accord with general requirements of an Arboricultural Impact Assessment. The statement lacks an objective visual inspection of the tree, provides minimal to no details or assessment of the tree significance, tree retention value or a SULE (Safe and Useful Life Expectancy) assessment.

A copy of the arborist statement is provided as an attachment to this report.

Council's Manager City Presentation has reviewed the submitted arborist report and inspected the subject tree. Council's Manager City Presentation does not support the recommendations of the submitted report and provides the following [paraphrased] advice:

- Damage to the concrete footpath from the front property boundary to the front patio is negligible and such damage doesn't warrant a trees removal as the concrete path can easily be repaired (image of concrete path attached).
- The Orange Men's Shed (a Council property) is built on piers and tree roots will have no more than a very negligible effect on the brick piers.
- Statement that the root system has extended to the front patio and may impact house foundations is unsubstantiated. There is no evidence to show that tree roots have egressed beneath the patio or house foundations. If there is a concern of root egress a PVC root barrier installed along the building foundation will protect the foundations from root travel.
- Statement "*If the tree happens to fail and falls, splits, or loses any branches.....*" No Arboricultural evidence has been submitted to substantiate that the tree has a structural weakness or that a failure may occur. The subject tree from a visual ground inspection was found to be structurally sound; it is some 9m from the closest point of the dwelling located on the subject property.

Council's Manager City Presentation concludes that there is no compelling Arboricultural evidence that substantiates the need to remove the subject specimen.

Visual Tree Assessment



The canopy has full foliage consistency. Branch structure to the extremes appears normal and healthy.



The tree contributes significantly to the streetscape on the western approach to Lucknow.

	<p>Damage to the concrete footpath is negligible</p>
--	--

### DCP 2004-13 Heritage

DCP 2004-13 prescribes the following Planning Outcomes for Heritage Development:

- 1 *Development relates to the significant features of heritage buildings on or near the site, as reflected in inventory sheets.*
- 2 *Development conforms with recognised conservation principles.*
- 3 *Conservation Management Plans are prepared for development having a significant effect on heritage sites.*

As considered earlier in this report, Council's Heritage Advisor does not support the proposal. The subject tree is a landmark feature for the site and streetscape and contributes to heritage character and value of the setting. Proposed tree removal will have adverse visual impacts on the streetscape and landscape setting, and adversely affect the significance of this neighbourhood in the conservation area. The proposed development is considered to be contrary to the above planning outcomes.

### PROVISIONS PRESCRIBED BY THE REGULATIONS s4.15(1)(a)(iv)

The proposed development is not inconsistent with any matter prescribed by Regulation.

### THE LIKELY IMPACTS OF THE DEVELOPMENT s4.15(1)(b)

#### Visual Impacts and Conservation Significance

The subject tree is located at the frontage of the site and grows in isolation. The proposed removal of the tree will have adverse impact on the landscape setting of the site and streetscape as outlined in the forgoing assessment.

**Environmental Impacts**

The environmental impacts associated with tree/vegetation removal are broad and often include impacts on groundwater and stormwater management, atmospheric/microclimate implications, loss of habitat/ecological connectivity and UHI effects. While it is proposed to remove only a single tree, it may contribute to one or more of the above environmental consequences through a process called 'progressive nibbling' i.e. repetitive, often minor impacts eroding environmental conditions.

**THE SUITABILITY OF THE SITE s4.15(1)(c)**

There are no known physical attributes within the site that would unreasonably constrain the proposed development.

**ANY SUBMISSIONS MADE IN ACCORDANCE WITH THE ACT s4.15(1)(d)**

The proposed development was notified under the provisions of the CPP. No submissions were received.

**PUBLIC INTEREST s4.15(1)(e)**


The proposed development is not considered to be in the public interest, by virtue of the adverse impacts on the streetscape, landscape setting and conservation area.

**SUMMARY**

The proposal involves removal of a *Pin Oak (Quercus palustris)* at 4633 Mitchell Highway, located in the Lucknow Village Heritage Conservation Area. Council staff do not support removal of the tree. The tree is considered to be a structurally sound specimen in good health. There is no conclusive evidence that the tree is causing structural damage to the building on the subject land or adjoining land. The tree is of significant value and complements the streetscape within the conservation area. It is recommended the application be refused.

**ATTACHMENTS**

- 1 Notice of Refusal, D22/44264 [↓](#)
- 2 Arborist Report, D22/41454 [↓](#)
- 3 Photos and Histogram, D22/41471 [↓](#)

	<p style="text-align: center;"><b>ORANGE CITY COUNCIL</b></p> <p style="text-align: center;">Development Application No <b>DA 346/2021(1)</b></p> <p>NA22/440 <span style="float: right;">Container PR84</span></p>
---	---

## NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

issued under the *Environmental Planning and Assessment Act 1979*  
Section 4.18

### Development Application

Applicant Name: Mr NJ Johnson  
Applicant Address: 4633 Mitchell Highway  
 LUCKNOW NSW 2800  
Land to Be Developed: Lot 1 DP 171953, 4633 Mitchell Highway, Lucknow  
Proposed Development: Demolition (tree removal)

### Building Code of Australia Building Classification:

Not applicable

### Determination made under Section 4.16

Made On: 2 August 2022  
 Determination: **APPLICATION REFUSED**

### Reason(s) for Refusal:

1. No Arboricultural evidence has been submitted to substantiate that the tree has a structural weakness or that a failure may occur;
2. Damage to the concrete footpath from the front property boundary to the front patio is negligible;
3. There is no evidence to show that tree roots have egressed beneath the patio or house foundations;
4. Tree removal will have an undesirable impact on the heritage significance of this neighbourhood in the Lucknow Heritage Conservation Area;
5. Tree removal will have adverse visual impacts on the streetscape; and
6. Tree removal will have adverse impacts on the landscape setting in the locality.

### Right of Appeal:

#### Applicant:

If you are dissatisfied with this decision, Section 8.7 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court. Pursuant to Section 8.10, an applicant may only appeal within 6 months after the date the decision is notified.

#### Objector:

The *Environmental Planning and Assessment Act 1979* does not give a right of appeal against this determination to an objector.

### Signed:

On behalf of the consent authority:

### Signature:

**Name:** PAUL JOHNSTON - MANAGER DEVELOPMENT ASSESSMENTS

**Date:** 3 August 2022

## Tree Inspection

Rural Tree Care  
5 Nyrang Road, Orange, NSW

4633 Mitchell Highway,  
Lucknow, NSW 2800

Below is the requested Tree Inspection for the Pin Oak in the front yard on the Left-Hand Side of the Footpath.

The Oak is roughly 12-15m high and over 300mm at chest height. It is hard to judge the age of such a tree but estimates and growth/size would place it around 30 to 40 years old.

Below is just a summary of the various reasons why this tree should be removed, and I can be reached on one of the various contact methods above to elaborate if needed. I deem that this tree should be removed for these reasons:

- The root system is lifting the footpath up in various places.
- The root system has spread out towards the nearby Orange Men's Shed next door and your own front patio/house foundations, this is buckling the foundations of both buildings, it also has the potential to damage it even more if left to grow to a more substantial size.
- If the tree happens to fail and falls, splits, or loses any branches, it has the potential to cause excessive damage to one or many of the various areas:
  - Nearby Powerlines or Service wires.
  - Pedestrians or Vehicles Passing by.
  - Nearby fences and Highway retaining wall.
  - Property Surrounding including Men's Shed and your residence.
- This tree was deemed as a high risk five years ago when it was previously assessed for former owners.

Owner/Arborist  
Rural Tree Care

## Pin Oak Tree 4633 Mitchell HWY Lucknow Report



## Pin Oak Tree 4633 Mitchell HWY Lucknow Report



## Pin Oak Tree 4633 Mitchell HWY Lucknow Report

Movement and cracks in brick wall due to foundation movement caused by tree



## Pin Oak Tree 4633 Mitchell HWY Lucknow Report



## Pin Oak Tree 4633 Mitchell HWY Lucknow Report



## Pin Oak Tree 4633 Mitchell HWY Lucknow Report



## Pin Oak Tree 4633 Mitchell HWY Lucknow Report



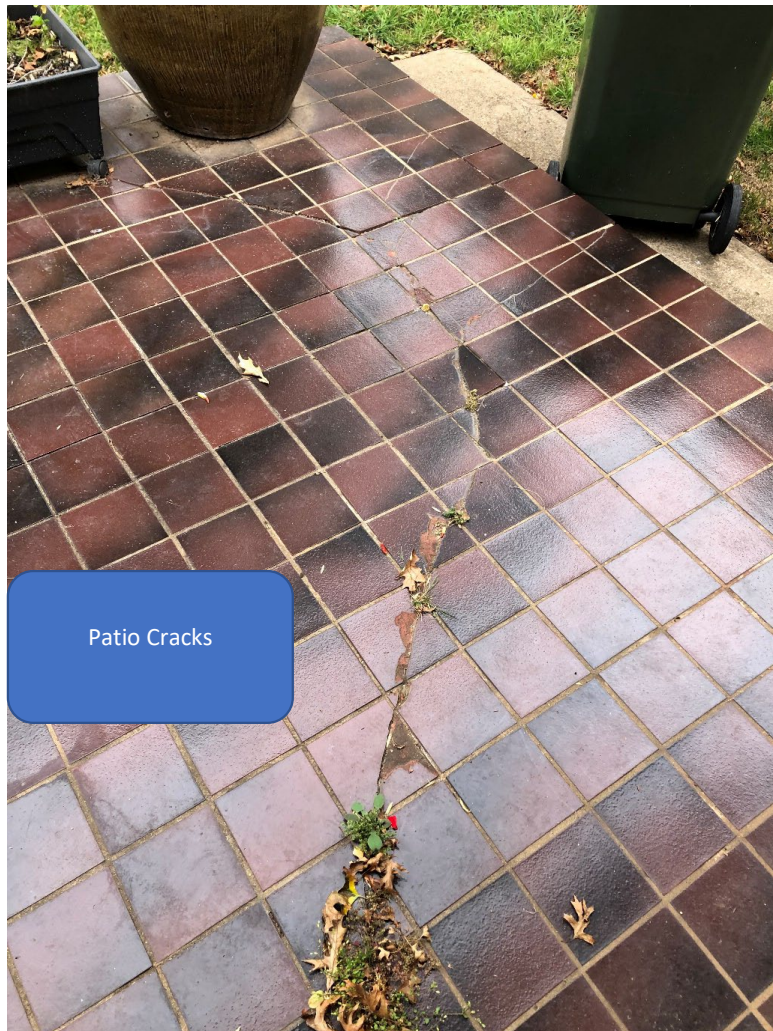
## Pin Oak Tree 4633 Mitchell HWY Lucknow Report



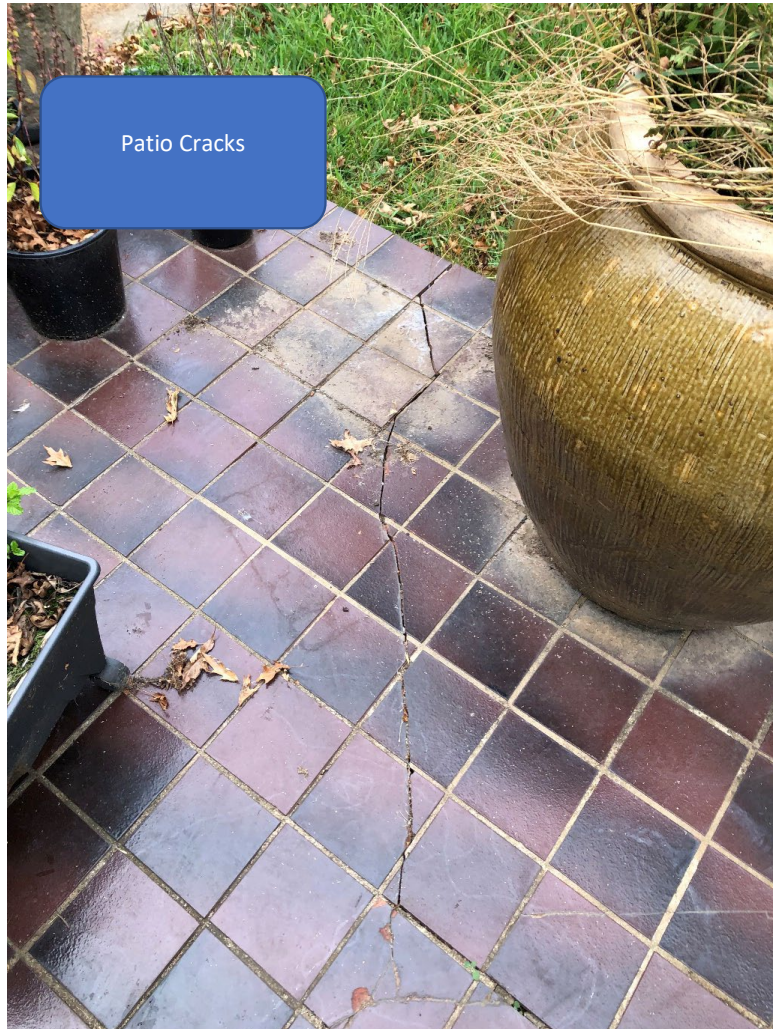
## Pin Oak Tree 4633 Mitchell HWY Lucknow Report



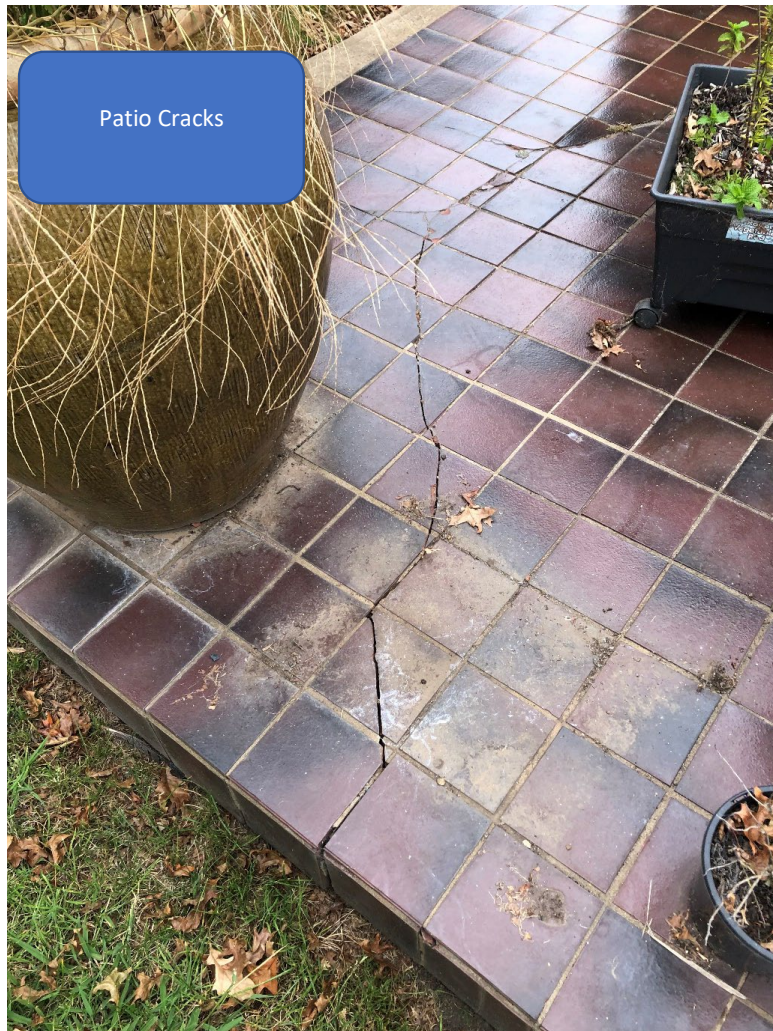
## Pin Oak Tree 4633 Mitchell HWY Lucknow Report



## Pin Oak Tree 4633 Mitchell HWY Lucknow Report



## Pin Oak Tree 4633 Mitchell HWY Lucknow Report



## Pin Oak Tree 4633 Mitchell HWY Lucknow Report



## Pin Oak Tree 4633 Mitchell HWY Lucknow Report



## 4366 Mitchell Hwy Pin Oak Removal histogram



## 4366 Mitchell Hwy Pin Oak Removal histogram



## 4366 Mitchell Hwy Pin Oak Removal histogram



## 4366 Mitchell Hwy Pin Oak Removal histogram



The above is a image of present day which shows it approx. 30-40 years old from the above images and from arborist report.

I believe the Pin Oak doesn't hold any heritage value.



### 2.3 DEVELOPMENT APPLICATION DA 406/2021(1) - 267, 293 AND 297 PLOUGHMANS LANE

RECORD NUMBER: 2022/1401  
 AUTHOR: Summer Commins, Senior Planner

#### EXECUTIVE SUMMARY

Application lodged	16 September 2021 Amended application lodged 31 May 2022
Applicant/s	Developed Pty Ltd
Owner/s	Ploughmans Lane Pty Ltd
Land description	Lot 4 DP 733452 - 267 Ploughmans Lane Lot 3 DP 733452 - 293 Ploughmans Lane Lot 2 DP 733452 - 297 Ploughmans Lane
Proposed land use	Subdivision (22 lot Torrens Title and public reserve), Demolition (outbuildings) and tree removal
Value of proposed development	Not applicable

Council's consent is sought for residential subdivision of land at 267 and 293 Ploughmans Lane (see locality plan below).

The proposed subdivision will create 22 residential lots, one (1) open space lot and one (1) new public road/cul-de-sac which will connect to Ploughmans Lane. Two (2) existing dwellings will be retained on proposed Lots 13 and 18. The balance of the proposed lots will be vacant and are intended for future residential development. Consent is also sought for demolition of various outbuildings over the development site; and tree removal including native trees.

The proposed public road to service the new lots will be partly constructed within property known as 297 Ploughmans Lane. Residential subdivision of 297 Ploughmans Lane is not proposed.

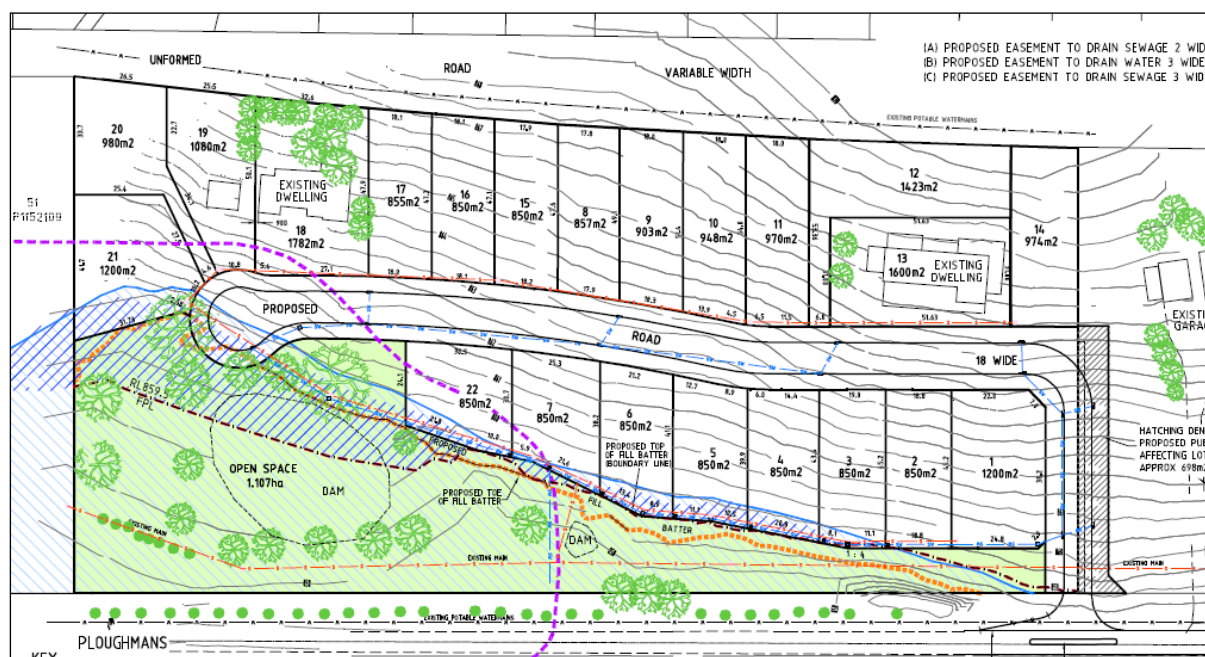


Figure 1 – proposed subdivision

The following notable planning matters considered in this report include:

- The development site contains an established Flying-fox camp, occupied mainly by the Grey-headed Flying Fox (*Pteropus poliocephalus*) and at times by the Little Red Flying-fox (*Pteropus scapulatus*). The Grey-headed Flying Fox is listed as a vulnerable species and matter of national significance under the NSW Biodiversity Conservation Act 2016, and the Commonwealth Environment Protection and Biodiversity Conservation Act 1999. The Little Red Flying-fox is *not* a threatened species under NSW and Commonwealth legislation.

A specialist flora and fauna assessment was submitted to consider the impact of the proposed development on the threatened species. The assessment concludes that the proposal is not likely to have a significant adverse impact on the Flying-fox camp or threatened species. Council's Manager City Presentation concurs with this assessment. Mitigation Conditions are included to protect the camp, Flying-foxes and future residents.

- The subject land is contained within a flood planning area. The subdivision design will incorporate a fill batter along the eastern extent of lots adjoining flood liable land, consistent with the flood planning level for this site. Council's Development Engineers are satisfied that this arrangement will overcome the flood hazard for the proposed lots.
- The proposal involves exotic and native tree removal, either by design or Conditions of consent. Furthermore, exempt tree removal will be undertaken across the development site. The landscape character of the site and setting will be altered. The development site does not present a native system, and trees to be removed do not demonstrate key habitat features. Replacement planting will assist to offset tree loss.
- The development is defined as a Nominated Integrated Development. The proposed subdivision works will be undertaken within 40m of waterfront land (Ploughmans Creek) and approval from the Department of Planning and Environment – Water (DPE) is required pursuant to the Water Management Act 2000. DPE has given General Terms of Approval to the proposal.
- The development site is contained within Area 3 Ploughmans Valley. The proposed subdivision will depart from the intended DCP 2004 Masterplan for Area 3 in relation to lot yield, public open space and intersection treatment. The Masterplan departures are considered to be within reasonable limit, and will satisfy the intended development principles contained in the DCP.
- Public open space within the development will depart the Area 3 Masterplan in terms of configuration and quantity. An additional 710m<sup>2</sup> of public open space will be provided within the proposed public reserve lot. The additional open space will be dedicated to Council in accordance with Section 2.9.2 of the Orange Development Contributions Plan 2017. The proposed open space lot will contain the site's particular ecological attributes, and provide appropriate open space linkages through Ploughmans Valley. Council staff are satisfied with the proposed arrangements for public open space within the development.

The proposal comprises advertised development. At the completion of the exhibition periods for the original development and amended proposal, four (4) submissions were

received. The issues raised in the submissions relate to open space linkages, residential density, tree removal, and impacts on Ploughmans Creek.

As assessed in this report, the proposed development will satisfy Local and State planning controls. Impacts of the development will be within acceptable limit, subject to mitigation conditions. Approval of the application is recommended.

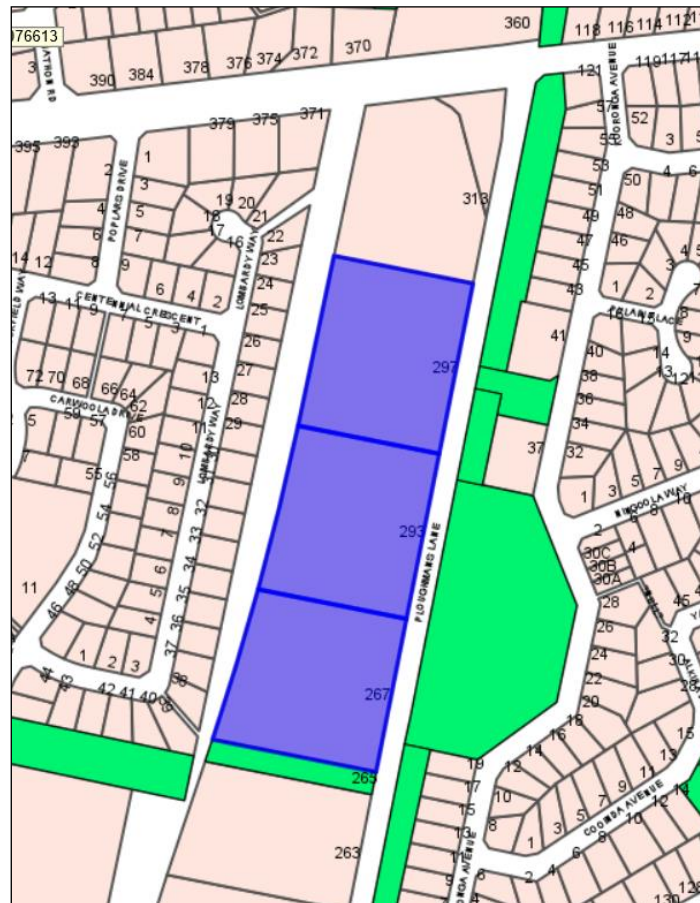


Figure 2 - locality

## DECISION FRAMEWORK

Development in Orange is governed by two key documents Orange Local Environment Plan 2011 and Orange Development Control Plan 2004. In addition, the Infill Guidelines are used to guide development, particularly in the heritage conservation areas and around heritage items.

**Orange Local Environment Plan 2011** - The provisions of the LEP must be considered by the Council in determining the application. LEPs govern the types of development that are permissible or prohibited in different parts of the city and also provide some assessment criteria in specific circumstances. Uses are either permissible or not. The objectives of each zoning and indeed the aims of the LEP itself are also to be considered and can be used to guide decision making around appropriateness of development.

**Orange Development Control Plan 2004** - the DCP provides guidelines for development. In general, it is a performance based document rather than prescriptive in nature. For each planning element there are often guidelines used.

These guidelines indicate ways of achieving the planning outcomes. It is thus recognised that there may also be other solutions of merit. All design solutions are considered on merit by planning and building staff. Applications should clearly demonstrate how the planning outcomes are being met where alternative design solutions are proposed. The DCP enables developers and architects to use design to achieve the planning outcomes in alternative ways.

**DIRECTOR'S COMMENTS**

The proposed subdivision will create 22 residential lots, one (1) open space lot and one (1) new public road/cul-de-sac which will connect to Ploughmans Lane. Two (2) existing dwellings will be retained on proposed Lots 13 and 18. The balance of the proposed lots will be vacant and are intended for future residential development. Consent is also sought for demolition of various outbuildings over the development site; and tree removal including a small number of native trees.

The proposed subdivision will slightly depart from the intended DCP 2004 Masterplan for Area 3 in relation to lot yield, public open space and intersection treatment. The Applicant has worked extensively with Council staff to propose a subdivision that would provide outcomes at or better than those of the original Masterplan, having particular regard to providing additional public open space at no cost to Council, protection of the flying fox camp, providing adequate flooding controls and safe access from Ploughmans Lane taking into account the future development of that road network. It is considered that the proposal satisfies the intended development principles contained in the DCP.

Due to significant complexities of the site, the proposal was altered a number of times since its lodgement. The Application was therefore subject to three (3) exhibition periods. A total of four (4) submissions were received during the exhibition periods. The issues raised in the submissions have been adequately considered in the report.

The proponent has been more than willing to take on board requests of staff and consultants during the assessment process. The result is a final subdivision layout with positive outcomes having regard to sustainable growth. It is recommended that Council supports the proposed development.

**LINK TO DELIVERY/OPERATIONAL PLAN**

The recommendation in this report relates to the Delivery/Operational Plan Strategy "10.1. Engage with the community to ensure plans for growth and development are respectful of our heritage".

**FINANCIAL IMPLICATIONS**

Nil

**POLICY AND GOVERNANCE IMPLICATIONS**

Nil

## RECOMMENDATION

That Council consents to development application DA 406/2021(1) for *Subdivision (22 lot Torrens Title and public reserve), Demolition (outbuildings) and tree removal* at Lots 4, 3 and 2 DP 733452 - 267, 293 and 297 Ploughmans Lane, Orange, pursuant to the conditions of consent in the attached Notice of Approval.

## 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 / HISTORY BACKGROUND

The proposal was amended during assessment of the application.

Consent was originally sought for subdivision to create 28 residential lots, one (1) open space lot and one (1) public road/cul-de-sac (see Figure 3 below).

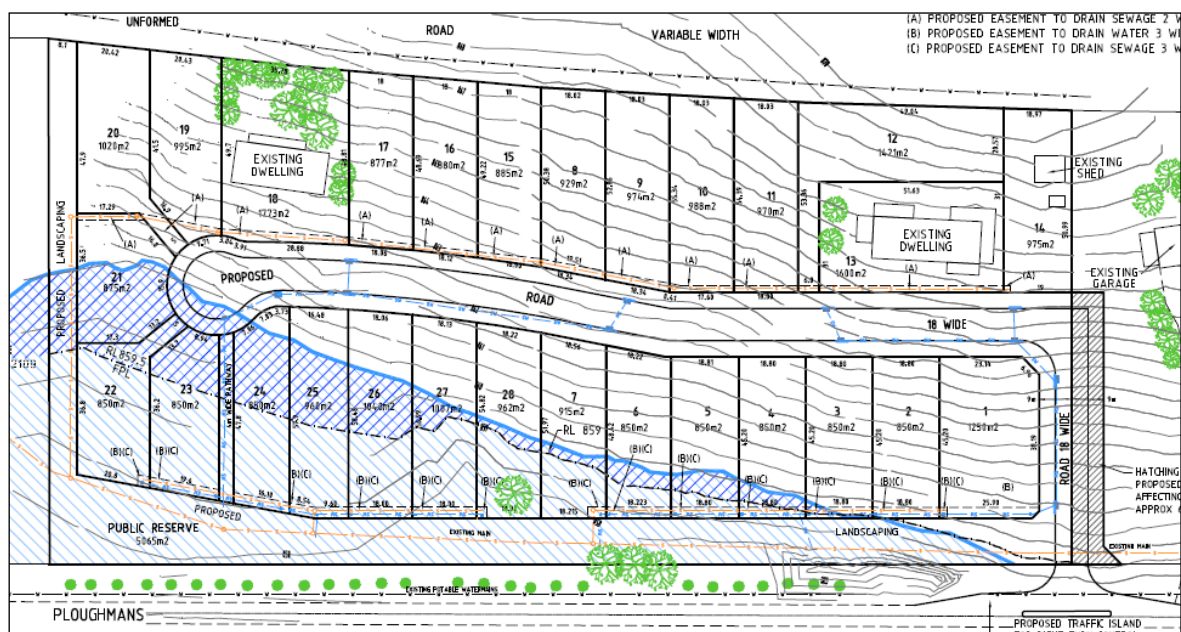


Figure 3 – SUPERSEDED proposed subdivision plan

The proposed subdivision layout was redesigned so that the proposed lots are not affected by flooding during a 1% Annual Exceedance Probability (AEP) flood event, that is, the 1 in 100-year flood; and the impact of the development upon the Grey headed Flying-fox camp within the site is mitigated.

This assessment report is based on the amended proposal.

## THE PROPOSAL

The proposal involves urban residential subdivision of land at 267 and 296 Ploughmans Lane.

The proposed Torrens subdivision will create 22 residential lots ranging in area between 850m<sup>2</sup> and 1,782m<sup>2</sup>. Various outbuildings on proposed Lots 14 and 18 will be demolished.

Two (2) existing dwellings will be retained on proposed Lots 13 and 18. The balance of the proposed lots will be vacant and are intended for future residential development.

The subdivision layout will comprise 20 standard lots and two (2) battleaxe lots, of regular shape and configuration. Each of the proposed lots will have frontage and access to a new full-width public road which will connect to Ploughmans Lane and terminate in a cul-de-sac. The proposed public road will be partly constructed within property known as 297 Ploughmans Lane. Residential subdivision of 297 Ploughmans Lane is not proposed.

An open space lot of 1.070ha will be created in the eastern extent with frontage to Ploughmans Lane. The public reserve will contain an existing dam and mature vegetation, which provides habitat for the Grey-headed Flying Fox (a threatened bat species), known to occupy the site.

The proposed lots will be serviced to full urban standard. Subdivision civil works will also involve construction of a fill batter along the eastern boundary of proposed Lots 2-7 and 22, to remove those lots from the flood planning area.

Trees will be removed from the development site, as follows:

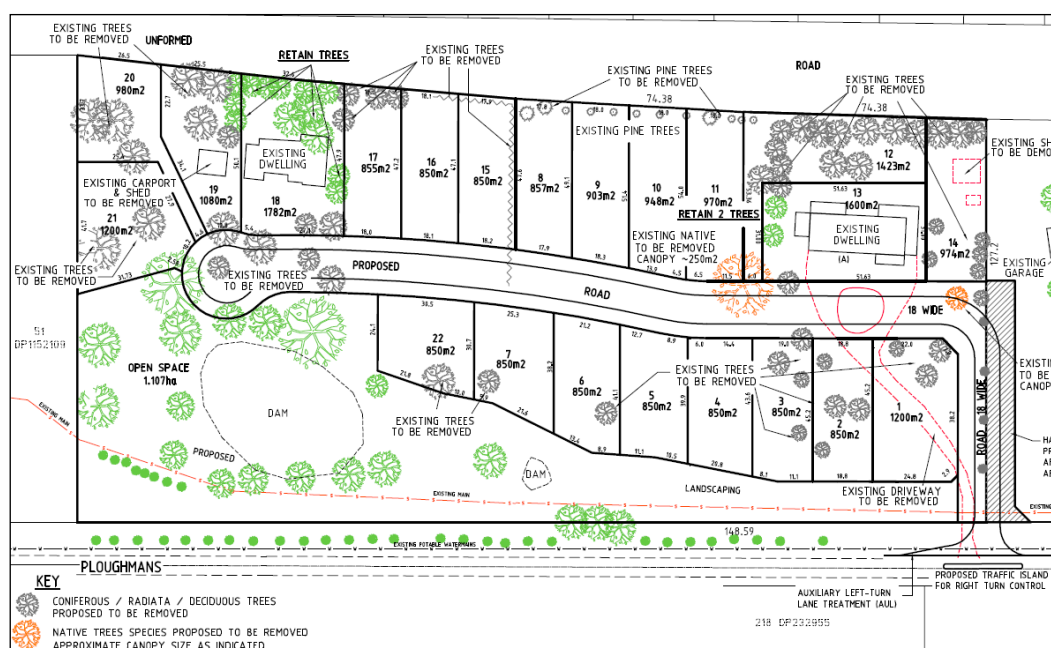
From the proposed residential lots -

- Two (2) Tasmanian Blue Gums (*Eucalyptus globulus*)
- Three (3) River She-Oak (*Casuarina cunninghamiana*)
- Various exotic and ornamental plantings including Tortured Willow (*S. matsudana*) and Radiata Pine (*Pinus radiata*).

From the proposed open space lot -

- Four (4) Tortured Willow (*S. matsudana*)
- Three (3) River She-Oak (*Casuarina cunninghamiana*).

The proposed subdivision plan is depicted below (see Figure 4).



**Figure 4 – proposed subdivision**

**MATTERS FOR CONSIDERATION UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979****Section 1.7 Application of Part 7 of the *Biodiversity Conservation Act 2016* and Part 7A of the *Fisheries Management Act 1994***

Pursuant to Clause 1.7:

*This Act has effect subject to the provisions of Part 7 of the [Biodiversity Conservation Act 2016](#) and Part 7A of the [Fisheries Management Act 1994](#) that relate to the operation of this Act in connection with the terrestrial and aquatic environment.*

In consideration of this section, there are four (4) matters that may trigger the Biodiversity Offset Scheme, and thereby require a Biodiversity Assessment Report (BDAR):

**1. *Whether the development occurs on land identified on the OEH Biodiversity Values Map***

The development site is not identified on the Biodiversity Values Map published under the Biodiversity Conservation Regulation 2016. Furthermore, the site does not contain mapped high biodiversity sensitivity pursuant to the Orange LEP 2011 [Terrestrial Biodiversity Map](#).

**2. *Whether the amount of native vegetation being cleared exceeds a threshold area based on the minimum lot size associated with the property***

A specialist Flora and Fauna Assessment was submitted in support of the proposal (Ecology Consulting, 30 May 2022). The assessment found that the development site contains very little remnant vegetation, with native trees that are non-local and non-endemic.

The proposed subdivision involves removal of two (2) Tasmanian Blue Gums and three (3) River She-Oaks from the proposed residential lots; and three (3) River She-Oaks from the proposed open space lot (as required by Conditions- see following sections of this report).

The Flora and Fauna Assessment confirms that the proposed clearing of native trees will not exceed clearing thresholds prescribed by regulation of 0.25ha (based on land subject to a minimum lot size of less than 1ha).

**3. *Whether the development or activity is “likely to significantly affect threatened species”***

The development site contains part of a known Grey-headed Flying Fox (*Pteropus poliocephalus*) camp, which is occupied on an itinerant basis. The Grey-headed Flying Fox is listed as a vulnerable species under NSW and Commonwealth legislation. The camp is at times, also known to be occupied by the Little Red Flying-fox (*Pteropus scapulatus*). The latter species is not listed as a threatened species under legislation.

The impact of the proposed development on the threatened Grey-headed Flying fox camp was assessed in the submitted Flora and Fauna Assessment (Ecology Consulting, 30 May 2022). The author of this Assessment is an Accredited Assessor authorised to conduct ecological assessment using the Biodiversity Assessment Method under the NSW Biodiversity Conservation Act 2016.

The findings of the Assessment are summarised here:

- The development site contains a partial section of the mapped Ploughmans Lane Flying Fox camp, identified in Orange City Flying-Fox Camp Management Plan (January 2021) (see Figure 5).
- The camp does not meet the criteria or governmental referral requirements for a 'Nationally Important Camp' as determined by *'Referral guideline for management actions in grey-headed and spectacled flying-fox camps'* (Department of the Environment, 2015).
- Defoliated trees (clear signs of Flying-fox occupation) are limited to the eastern boundary and a small area on the western edge of the dam containing four (4) Tortured Willow and three (3) River She-Oak. The Flying-fox roost almost entirely within the trees on the eastern boundary. Trees to the west of the dam provide refuge when the Flying-fox are disturbed by nearby residents.
- The camp is sporadically occupied by Flying-fox. Habitat use is subject to complex and unpredictable seasonable and annual variations.
- A *Threatened Species Test of Significance* (under NSW Biodiversity Conservation Act 2016) for impacts of the proposed subdivision on the Grey-headed Flying-fox has determined that *"there is not likely to be a significant impact on the extent and viability of the community in the local area."* The five-part Test of Significance is contained in Appendix C of the submitted Flora and Fauna Assessment.
- Potential impacts on the Flying-fox camp and habitat will be minimised as follows:
  - The proposed subdivision layout will provide a buffer of 30-50m between the Flying-fox camp and future residential lots, consistent with the recommended buffer contained in *Orange City Flying-Fox Camp Management Plan* (January 2021).
  - The buffer will be achieved by Conditional removal of four (4) Tortured Willow and three (3) River She-Oak on the western side of the dam. Shorter shrubs would be planted to replace lost vegetation, provide a buffer to the conservation area and hinder Flying-fox use. The camp extent should subsequently become concentrated in the south-east portion of the site, removed from future dwellings on the proposed lots.
  - The site offers high rehabilitation potential. A conservation area should be created over the dam and Flying-fox habitat trees in the south-east of the development site to protect habitat and improve biodiversity values. The dam should be rehabilitated; and additional Flying-fox habitat trees and smaller feed trees planted. A Conservation Area Management Plan and Landscaping Plan should be prepared.
  - A Construction Environmental Management Plan should be prepared and implemented.
- Potential impacts on nearby residents will be minimised as follows:
  - The buffer and conservation area above will provide suitable separation between the camp/habitat and future residents.
  - Preparation of a Guidebook for landholders living adjacent to a Flying-fox camp, including details on co-existing, planting guides, community awareness, habitat monitoring, and potential subsidies.
- The final subdivision design will deliver ecologically sustainable development including suitable outcomes for Flying-fox and residents.

- The proposed development has been sited and designed to minimise adverse impacts to the Flying-fox camp; minimise adverse and significant impacts to the Grey-headed Flying-fox (and the Little Red Flying-fox); and minimise future residents' complaints in relation to amenity, health, and vegetation damage.

Council's Manager City Presentation has reviewed the submitted Flora and Fauna Assessment and concurs with the mitigation measures and recommendations. The recommendations will satisfy Council's *Orange City Flying-Fox Camp Management Plan* (January 2021).

Various Conditions are included to minimise the impacts of the development on the camp, the habitat, and future residents, consistent with the recommendations of the Flora and Fauna Assessment.

The submitted Flora and Fauna Assessment has considered **other** threatened fauna and flora species with potential to be present on the site. It is determined that the proposed development is not likely to have a significant adverse impact on any other threatened species or ecological community.



Figure 5 – Flying-fox camp within the development site

**4. Whether the development or activity will be carried out in a declared area of outstanding biodiversity value.**

The subject land is not a declared area of outstanding biodiversity value.

Based on the foregoing consideration, a Biodiversity Assessment Report is not required, and the proposal suitably satisfies the relevant matters at Clause 1.7.

**Section 4.15 Evaluation*****Provisions of any environmental planning instrument S4.15(1)(A)(I)*****Orange Local Environmental Plan 2011 (as amended)****Part 1 - Preliminary****Clause 1.2 Aims of Plan**

The particular aims of the LEP relevant to the proposal include:

- (a) *to encourage development which complements and enhances the unique character of Orange as a major regional centre boasting a diverse economy and offering an attractive regional lifestyle,*
- (b) *to provide for a range of development opportunities that contribute to the social, economic and environmental resources of Orange in a way that allows present and future generations to meet their needs by implementing the principles for ecologically sustainable development,*
- (e) *to provide a range of housing choices in planned urban and rural locations to meet population growth,*
- (f) *to recognise and manage valued environmental heritage, landscape and scenic features of Orange.*

The proposed development will be consistent with the above-listed Aims of the LEP, as outlined in this report.

**Clause 1.6 Consent Authority**

Clause 1.6 is applicable and states:

*The consent authority for the purposes of this Plan is (subject to the Act) the Council.*

**Clause 1.7 Mapping**

The subject site is identified on the LEP maps in the following manner:

Land Zoning Map:	Land zoned R2 Low Density Residential
<b>Lot Size Map:</b>	<b>MLS 850m<sup>2</sup></b>
Heritage Map:	Not a heritage item or conservation area
Height of Buildings Map:	No building height limit
Floor Space Ratio Map:	No floor space limit
Terrestrial Biodiversity Map:	No mapped biodiversity sensitivity on the site
Groundwater Vulnerability Map:	Groundwater vulnerable
Drinking Water Catchment Map:	Not within the drinking water catchment
<b>Watercourse Map:</b>	<b>Contains a mapped watercourse [Ploughmans Creek]</b>
Urban Release Area Map:	Not within an urban release area
Obstacle Limitation Surface Map:	No restriction on building siting or construction
Additional Permitted Uses Map:	No additional permitted use applies

Those matters that are of relevance are addressed in detail in the body of this report.

**Clause 1.9A Suspension of Covenants, Agreements and Instruments**

Clause 1.9A is applicable and states in part:

- (1) *For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.*

In consideration of this clause, the land is subject to a Section 88B Restriction as to User under DP 733452 in favour of Orange City Council. The Instrument contains various restrictions in relation to building envelope, the keeping of animals, boundary setbacks and onsite effluent disposal. The proposed subdivision will supersede the restrictions.

A Condition is included requiring the 88B Restriction on the parent lots be released prior to Subdivision Certificate for the proposed lots.

**Part 2 - Permitted or Prohibited Development****Clause 2.1 - Land Use Zones**

The subject land is zoned R2 Low Density Residential.

The proposal is defined as *subdivision of land*, which means:

*The division of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition* (Section 6.2 Environmental Planning and Assessment Act 1979).

Subdivision is permitted with consent in the R2 Zone pursuant to Clause 2.7 below.

**Clause 2.3 Zone Objectives and Land Use Table**

The objectives of the R2 Low Density Residential Zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure development is ordered in such a way as to maximise public transport patronage and encourage walking and cycling in close proximity to settlement.*
- *To ensure that development along the Southern Link Road has an alternative access.*

The proposed subdivision will not be contrary to the relevant R2 zone objectives; and will facilitate future development of the subject land consistent with the objectives.

**Clause 2.6 Subdivision Consent Requirements**

Clause 2.6 is applicable and states:

- (1) *Land to which this Plan applies may be subdivided but only with development consent.*

Consent is sought for Torrens title subdivision of the subject land in accordance with this clause.

**Clause 2.7 Demolition Requires Development Consent**

Clause 2.7 is applicable and states:

*The demolition of a building or work may be carried out only with development consent.*

The subdivision works will include demolition of several sheds and ancillary structures in accordance with this clause.

**Part 3 Exempt and Complying Development**

The application is not exempt or complying development.

**Part 4 Principal Development Standards****Clause 4.1 Minimum Subdivision Lot Size**

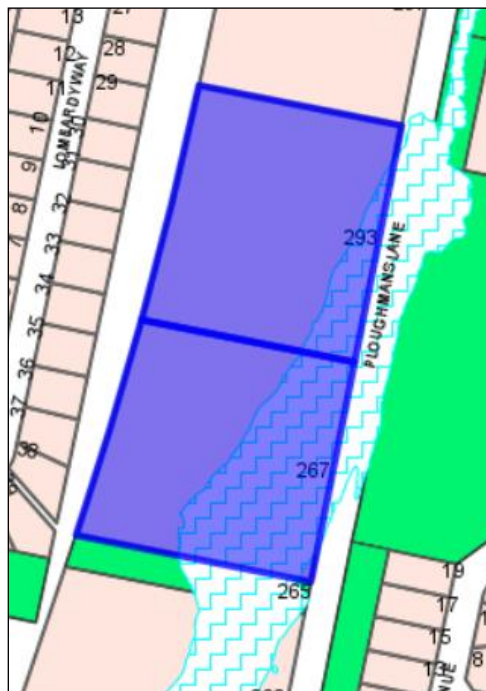
Clause 4.1 is applicable and states in part:

- (3) *The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

The Lot Size Map prescribes a minimum lot size of 850m<sup>2</sup> for the development site. The proposed residential lots will range in area between 850m<sup>2</sup> and 1,782m<sup>2</sup> in compliance with Clause 4.1.

**Part 5 Miscellaneous Provisions****Clause 5.21 Flood Planning**

The land contains a mapped flood planning area associated with Ploughmans Creek (see following sections of this report and Figure 6).



**Figure 6 – flood planning area (blue hatching)**

Clause 5.21 is applicable and states in part:

(2) *Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development-*

- (a) *is compatible with the flood function and behaviour on the land, and*
- (b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

In consideration of this clause, the subdivision design will incorporate a 1:4 fill batter along the eastern extent of proposed Lots 2-7 and 22 with an RL of 859.5, being the adopted flood planning level for the site (see Figure 7). The fill batter will be located within the proposed open space lot, with the top of the batter to form the eastern boundary of the proposed residential lots. The proposed lots will therefore not be subject to inundation associated with a 1% AEP flood event.

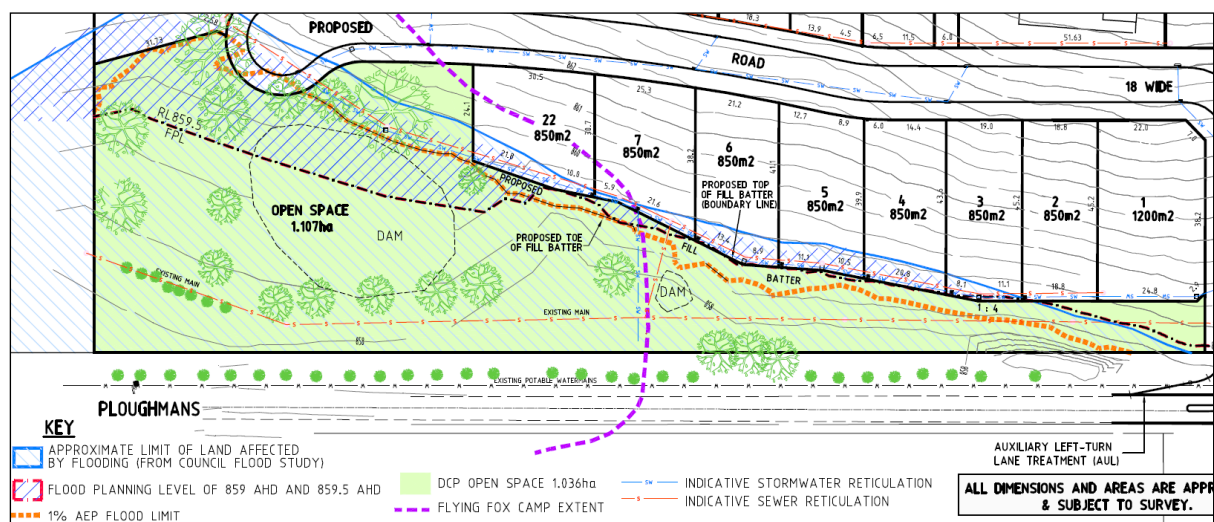


Figure 7 – flood planning area and fill batter adjacent Lots 2-7 and 22

Council's Development Engineers are satisfied that this arrangement will overcome the flood hazard for the proposed lots, and will be compatible with flood function and behaviour. To affect the proposed flood mitigation arrangements, Conditions are included requiring all residential lots adjacent the waterway to have a minimum freeboard above the 1 in 100-year flood level; and land filling below the 1% flood level is not permitted.

As a matter arising, Council's Manager City Presentation is satisfied that the gradient of the fill batter in the open space lot will be suitable for ongoing maintenance (mowing) by City Presentation staff.

There are no aspects of the proposal that will affect the safe occupation of, or evacuation from the land in flood events.

#### **Part 6 - Urban Release Area**

Not relevant to the application. The subject site is not located in an Urban Release Area.

#### **Part 7 - Additional Local Provisions**

##### **Clause 7.1 Earthworks**

The proposal involves ancillary earthworks including:

- Road construction and localised land shaping for the proposed residential lots.
- Trenching for service installations.
- Fill and batter to create dwelling sites within Lots 1-7 and Lot 22 that satisfy the flood planning level for this site.

Clause 7.1 is applicable and states in part:

- (3) *Before granting development consent for earthworks, the consent authority must consider the following matters -*
- (a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,*
  - (b) *the effect of the development on the likely future use or redevelopment of the land,*
  - (c) *the quality of the fill or the soil to be excavated, or both,*
  - (d) *the effect of the development on the existing and likely amenity of adjoining properties,*
  - (e) *the source of any fill material and the destination of any excavated material,*
  - (f) *the likelihood of disturbing relics,*
  - (g) *the proximity to and potential for adverse impacts on any waterway, drinking water catchment or environmentally sensitive area,*
  - (h) *any measures proposed to minimise or mitigate the impacts referred to in Paragraph (g).*

In consideration of the relevant matters:

- Conditional sediment and erosion controls will be installed and maintained.
- The proposed earthworks will facilitate residential development; and create residential lots outside of the flood planning area.
- Excavated material will be reused onsite as far as practicable, subject to engineering design. Conditions are included requiring additional fill to be brought to the site to comprise Virgin Excavated Natural Material (VENM).
- Earthworks and roadworks will be subject to final geotechnical testing prior to completion.

- Conditions are included to maintain neighbourhood amenity including preparation and implementation of a dust management plan. Finished levels will provide suitable landform for congruous built form and maintenance of open space.
- The site is not known to have European or Indigenous cultural values. A Condition is included to protect and manage unexpected finds during civil works.
- Ploughmans Creek is located within the subject land. The proposed subdivision civil works will be located on waterfront land. DPE has given General Terms of Approval under the Water Management Act 2000 for the proposed development. Various conditions are included to protect the waterway, including sediment controls, stormwater detention, stormwater treatment, controlled stormwater discharge, contamination clearance and VENM fill.
- The subject land is not within a *mapped* drinking water catchment or environmentally sensitive area. The particular ecological values of the site will be managed and protected, as outlined in this report.

#### Clause 7.2A Floodplain Risk Management

The land is subject to probable maximum flood (PMF) (see Figure 8).

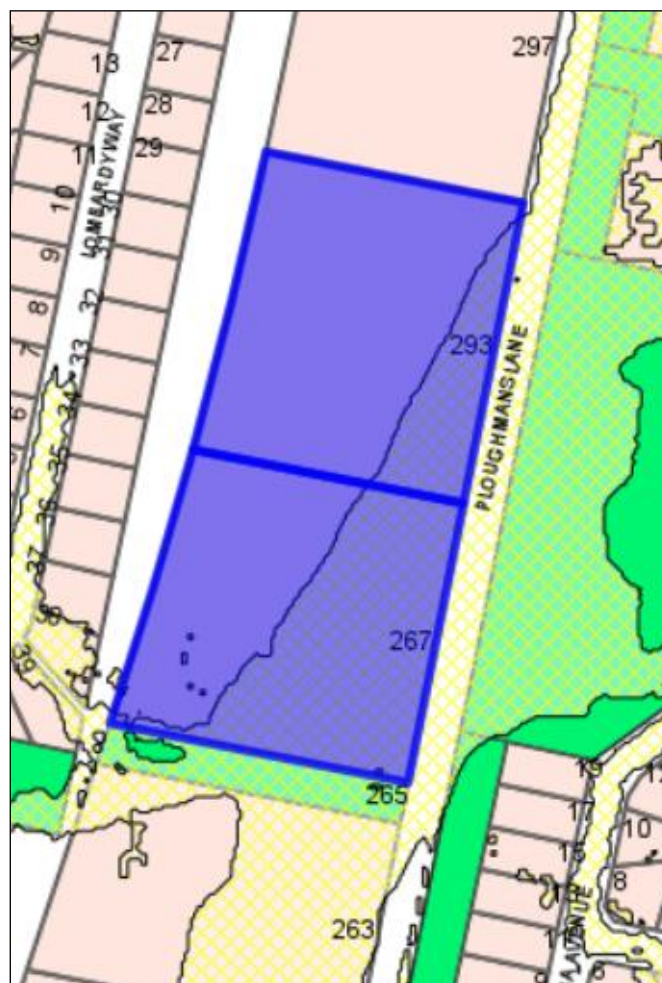


Figure 8 – probable maximum flood (yellow hatching)

Clause 7.2A is applicable and states in part:

- (3) *Development consent must not be granted to development for the following purposes on land to which this clause applies unless the consent authority is satisfied that the development will not, in flood events exceeding the flood planning level, affect the safe occupation of, and evacuation from, the land -*

- (r) *residential accommodation*

As outlined above, a fill batter in the eastern extent will create residential lots above the flood planning level. There are no aspects of the proposal that will affect the safe occupation of, and evacuation from the land in flood events.

### Clause 7.3 Stormwater Management

Clause 7.3 is applicable. This clause states in part:

- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
- (a) *is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting onsite infiltration of water, and*
  - (b) *includes, where practical, onsite stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
  - (c) *avoids any significant impacts of stormwater runoff on adjoining downstream properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

Council's Assistant Development Engineer has included Conditions to satisfy the requirements of Clause 7.3, including interlot stormwater drainage, stormwater treatment, and controlled stormwater discharge to Ploughmans Creek. Stormwater management will be subject to detailed engineering design and approval at Construction Certificate stage.

### Clause 7.5 Riparian Land and Watercourse

Pursuant to the LEP Watercourse Map, Ploughmans Creek is located within the subject land (see Figure 9).

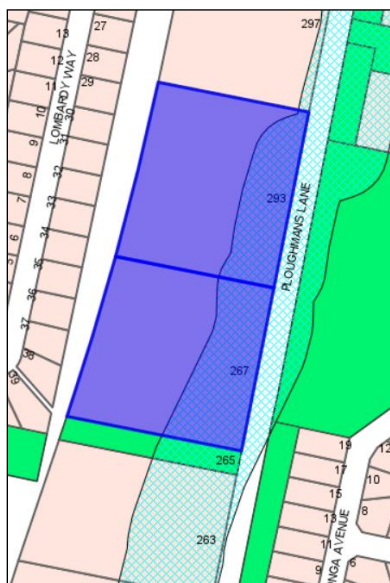


Figure 9 – Ploughmans Creek (blue hatching)

Clause 7.5 is applicable and states in part:

*(3) Before determining a development application to carry out development on land to which this clause applies, the consent authority must consider whether or not the development:*

- (a) is likely to have any adverse impact on the following:*
  - (i) the water quality and flows within a watercourse,*
  - (ii) aquatic and riparian species, habitats and ecosystems of the watercourse,*
  - (iii) the stability of the bed and banks of the watercourse,*
  - (iv) the free passage of fish and other aquatic organisms within or along the watercourse,*
  - (v) any future rehabilitation of the watercourse and its riparian areas, and*
- (b) is likely to increase water extraction from the watercourse.*

In consideration of this clause, the proposed development is unlikely to have an adverse impact on Ploughmans Creek or adjacent riparian land. Various conditions are included to protect the waterway including sediment controls, stormwater detention, stormwater treatment, controlled stormwater discharge, contamination clearance and VENM fill.

The proposed subdivision civil works will be located on waterfront land. DPE raised no objection to the proposed works on waterfront land, subject to Controlled Activity Approval being obtained. Conditions are included to this effect.

#### **Clause 7.6 Groundwater Vulnerability**

The subject land is identified as Groundwater Vulnerable on the Groundwater Vulnerability Map. Clause 7.6 applies. This clause states in part:

*(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider:*

- (a) whether or not the development (including any onsite storage or disposal of solid or liquid waste and chemicals) is likely to cause any groundwater contamination or have any adverse effect on groundwater dependent ecosystems, and*
- (b) the cumulative impact (including the impact on nearby groundwater extraction for potable water supply or stock water supply) of the development and any other existing development on groundwater.*

In consideration of Clause 7.6, the proposed development is unlikely to cause groundwater contamination or effect groundwater dependent ecosystems. Urban residential subdivision does not involve processes or activities that would impact on groundwater resources. The development site will be serviced by reticulated sewer. Conditions are included requiring the existing dwellings on proposed Lots 13 and 18 be connected to sewer, and the existing onsite effluent systems be decommissioned.

#### **Clause 7.11 Essential Services**

Clause 7.11 applies and states:

*Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required:*

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *storm water drainage or onsite conservation,*
- (e) *suitable road access.*

In consideration of Clause 7.11, the listed utility services are available to the land and adequate for the proposed subdivision. Conditions are included requiring extension, augmentation and/or upgrading of urban utility services to an urban standard.

## **STATE ENVIRONMENTAL PLANNING POLICIES**

### **State Environmental Planning Policy (Resilience and Hazards) 2021**

#### **Chapter 4 Remediation of Land**

SEPP (Resilience and Hazards) 2021 is applicable, and states in part:

4.6(1) *A consent authority must not consent to the carrying out of any development on land unless:*

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

In consideration of this Section, a preliminary contamination investigation (PCI) was submitted in support of the proposal (Envirowest Consulting Pty Ltd, 3 August 2021). The findings of the PCI are outlined here:

*The site has a land use history of agriculture including orcharding and grazing with the orchard trees removed and residences constructed in the late 1980s.*

*Surface cover comprised improved pastures with broadleaf weeds, deciduous trees and conifers. Ornamental species had been planted around the dwellings.*

*Potential hotspots were identified across the site and included dam sludge, stockpiles, bare area, former stockpile footprints and sheds.*

*No surface or staining odours were detected on the site. There is no evidence of mines, sheep dips, mixing sheds, or contaminating industrial activities on the site from the review of the site history or site walkover. The use of agricultural pesticides over the area is expected to be low.*

*The soil sampling program did not detect elevated levels of the potential contaminants of concerns across the site or potential hotspot locations. The levels of all substances evaluated were below the adopted thresholds for residential land use with access to soil.*

*The investigation area is suitable for the proposed residential land use. Foreign materials identified on the site are an amenity issue and require removal. An unexpected finds procedure should be adopted for the site development works.*

As such, the subject land is suitable for residential land use. Council's Environment Health Officer has reviewed the submitted PCI and supports the findings and recommendations. A Condition is included requiring an unexpected finds protocol be implemented during construction.

## **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

### **Chapter 2 Vegetation in Non-rural Areas**

#### **2.9 Vegetation to which Part applies**

- (1) *This Part applies to vegetation in any non-rural area of the State that is declared by a development control plan to be vegetation to which this Part applies.*
- (2) *A development control plan may make the declaration in any manner, including by reference to any of the following-*
  - (a) *the species of vegetation,*
  - (b) *the size of vegetation,*
  - (c) *the location of vegetation (including by reference to any vegetation in an area shown on a map or in any specified zone),*
  - (d) *the presence of vegetation in an ecological community or in the habitat of a threatened species.*

#### **2.10 Council may issue permit for clearing of vegetation**

- (1) *A Council may issue a permit to a landholder to clear vegetation to which this Part applies in any non-rural area of the State.*
- (2) *A permit cannot be granted to clear native vegetation in any non-rural area of the State that exceeds the biodiversity offsets scheme threshold.*

Pursuant to the submitted Flora and Fauna Assessment (Ecology Consulting Pty Ltd 30 May 2022), the proposed subdivision will involve tree removal as follows:

From the proposed residential lots-

- Two (2) Tasmanian Blue Gums (*Eucalyptus globulus*)
- Three (3) River She-Oak (*Casuarina cunninghamiana*)
- Various exotic and ornamental plantings including Tortured Willow (*S. matsudana*) and Radiata Pine (*Pinus radiata*).

From the proposed open space lot-

- Four (4) Tortured Willow (*S. matsudana*)
- Three (3) River She-Oak (*Casuarina cunninghamiana*).

The native trees (Blue Gum and She Oak) are prescribed trees under DCP 2004 Part 0 (see below), and approval is required for removal. Consent is not required to remove other trees.

The proposed tree removal is considered suitable as follows:

- The development site has been subject to historical clearing and modification, and no longer presents a native system. Minimal native flora exists on the site with the dominant vegetation being exotic plantings.

- The trees do not demonstrate key habitat features (hollows, nests, etc) for native and threatened fauna (pursuant to the submitted Flora and Fauna Assessment).
- Tree removal in the proposed open space lot will provide a buffer of 30-50m between the Flying-fox camp and proposed residential lots (an important strategy to minimise landuse conflicts and protect the threatened species).
- Tree retention is not possible due to the proposed subdivision layout: in effect, the trees will consume a proposed lot, or be located within the proposed public road. It is noted that the subdivision layout is generally intended in the DCP Masterplan for the site.
- Tree removal is an anticipated outcome in conjunction with the release of urban residential lots.
- Replacement planting in the form of Conditional street trees and Flying-fox habitat trees in the public reserve will assist to offset tree loss.

Council's Manager City Presentation raised no objection to tree removal.

Proposed clearing of native vegetation will not exceed the biodiversity offsets scheme threshold (see Section 1.7 above).

***Provisions of any Draft Environmental Planning Instrument That Has Been Placed on Exhibition 4.15(1)(A)(ii)***

None at present.

***Provisions of any Development Control Plan S4.15(1)(A)(iii)***

**DEVELOPMENT CONTROL PLAN 2004**

**Part 0 Transition Provisions – Tree Preservation**

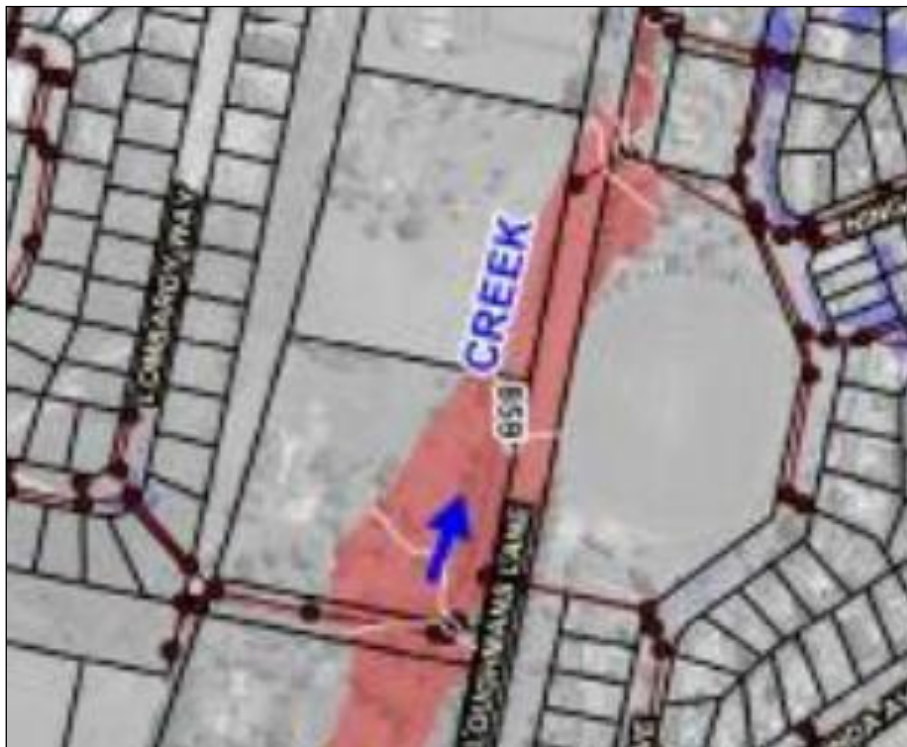
**PO-0.4-2 INTERIM PLANNING OUTCOMES - TREE PRESERVATION**

- 1 Trees prescribed by this DCP must not be ringbarked, cut down, topped, lopped or wilfully destroyed without the Council's approval and landowners consent
- 2 This clause applies to Eucalypts of any size belonging to the White Box, Yellow Box and Blakely's Red Gum Endangered Ecological Communities, including species indicated as affected in the tree preservation table.
- 3 This clause also applies to any tree, native or exotic, with a trunk diameter equal to or greater than 300mm at breast height (refer AS4970-2009 for measurement guidelines).
- 4 Notwithstanding IPO-4(3) this clause does not apply to species indicated as exempt in the tree preservation table.
- 5 An application for the Council's approval must be accompanied by an appropriately qualified specialist (i.e. Arborist) report outlining the following information
  - The location, size, species and condition (i.e. diseased, healthy, etc)
  - A statement that details any anticipated impacts on vegetation that may have derived from endangered ecological communities and/or that may be habitat for threatened species
  - The purpose of removal and whether the pruning of the tree would be a more practical and desirable alternative
  - Whether a replacement tree or trees should be planted
  - The location, size and species of any trees proposed to replace those intended for removal
  - The owners consent to the application being lodged
  - Any other relevant information regarding the tree to be removed (i.e. photographs)

As outlined above, the proposal involves removal of native trees (Blue Gum and She Oak) covered by tree preservation order under this Part. Council's Manager City Presentation raised no objection to tree removal.

**Part 4A Flood Affected Land**

The development site is contained within a Floodway as mapped in Part 4A (see Figure 10).



**Figure 10 – floodway depicted in red**

Pursuant to the DCP, *Subdivision and Filling* is an unsuitable landuse for a Floodway. The DCP does not contain relevant flood response development controls.

As outlined, the proposed subdivision design will incorporate a fill batter along the eastern extent of lots adjoining flood liable land, consistent with the flood planning level for this site. Council's Development Engineers are satisfied that this arrangement will overcome the flood hazard for the proposed lots.

**Part 7 Development in Residential Areas****7.2 Residential Subdivision in Ploughmans Valley**

The DCP prescribes the following applicable planning outcomes for subdivision in Ploughmans Valley:

- *The allotment layout is generally in accordance with the Conceptual Subdivision Layout...*

The Area 3 Conceptual Subdivision Layout and proposed subdivision layout are depicted here (see Figure 11).



**Figure 11 – DCP Masterplan -v- Proposed Subdivision**

As demonstrated, the proposed layout will accord with the Area 3 Masterplan as follows:

- A single road connection will be provided via Ploughmans Lane, terminating in a cul-de-sac.
- The proposed public road will be partly constructed over the common boundary with 297 Ploughmans Lane to the north.
- The existing dwellings will be retained on proposed large lots.
- Public open space will be provided in the eastern extent with frontage to Ploughmans Lane.
- The proposed residential lots will be of regular configuration and frontage.

Conversely, the proposed subdivision will depart the DCP Masterplan in relation to lot yield public open space and intersection treatment.

Lot Yield

The proposed subdivision involves 22 residential lots, while 18 lots are anticipated in the Masterplan. The lot yield departure is considered acceptable due to the following:

- The proposed lots will comply with the MLS of 850m<sup>2</sup>.
- Housing stock over the development site will not exceed that intended in the Masterplan: only 3 of the proposed lots will have sufficient site area for dual occupancy, (1,200m<sup>2</sup>) pursuant to Clauses 4.1B and 4.1C of Orange LEP 2011.
- The proposed lots will be of reasonable size and regular configuration, with acceptable frontage to depth ratios. The lots will be within acceptable orientation for effective solar access.
- An increased lot yield may be offset by the provision of additional public open space within the development (see below).
- The lot yield will promote the orderly and economic use and development of land, and make better use of infrastructure.
- The proposed lot yield will have nil impact on the subdivision potential of adjoining lands.

Public Open Space

As demonstrated in Figure 11 above, the proposal involves public open space in the eastern extent with frontage to Ploughmans Lane, comprising a variable width of 10m-75m, and area of 1.107ha. The Masterplan, however, provides a 20m wide buffer to Ploughmans Lane, a 20m buffer to the southern boundary, and total open space of 1.036ha.

The proposed public open space is considered acceptable, as follows:

- Public open space will exceed the amount anticipated in the Masterplan by 710m<sup>2</sup>.
- The proposed open space lot will contain the mapped flood planning area and waterway.
- The proposed open space area will form a conservation area for the Grey-headed Flying fox.
- Council's Development Engineers advise a minimum 10m buffer to Ploughmans Lane will provide a suitable footpath width.
- An open space buffer adjacent the southern boundary is considered unnecessary. An open space link is already available between Carwoola Drive and Ploughmans Lane on the adjoining southern parcel (see Figure 12).
- The proposed open space area will provide suitable connections with other open spaces nearby the development site in this part of Ploughmans Valley.
- Existing and new Conditional plantings in the open space area will be suitable to provide filtered screening of the proposed residential parcels from Ploughmans Lane.
- Council's Manager City Presentation raised no objection to the configuration and quantity of public open space, noting that the land will be dedicated to Council.

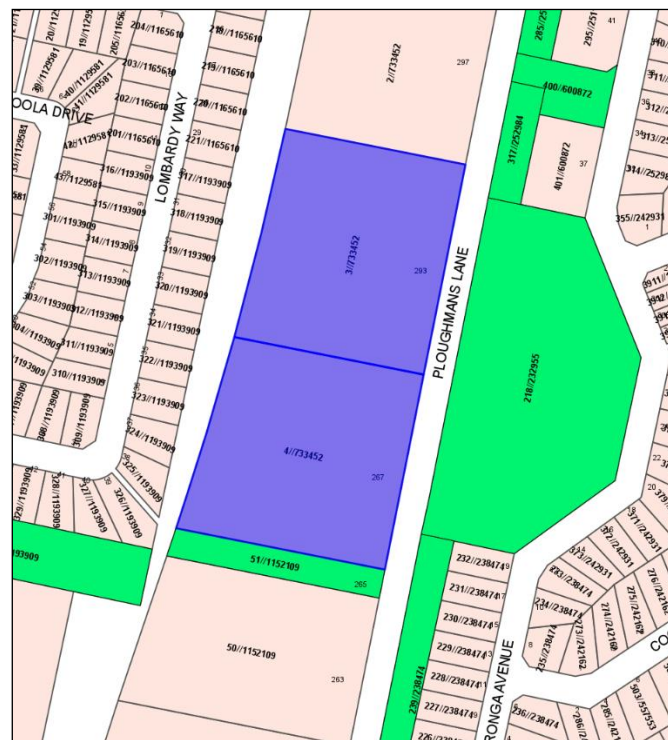
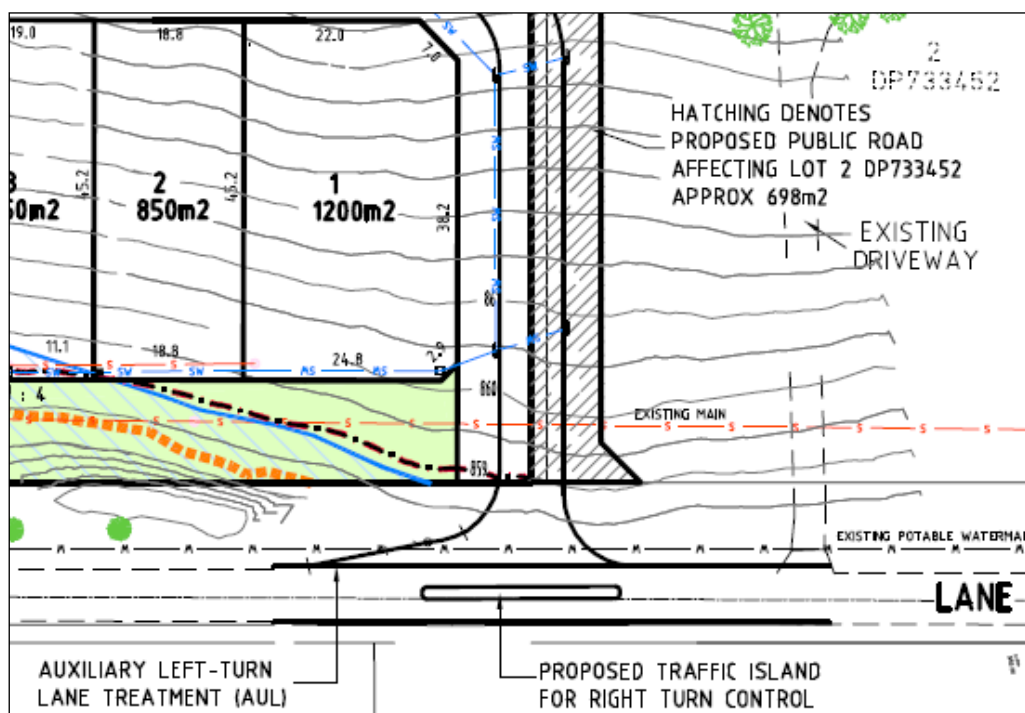


Figure 12 – public open space connections nearby the development site

### Intersection Treatment

The proposed subdivision involves an Auxiliary Left Turn (AUL) treatment for the intersection of Ploughmans Lane and the proposed public road (see Figure 13). The DCP Masterplan, however, provides a Channelised Right Term treatment (CHR) in this location.



Council's Development Engineers advise that the proposed AUL treatment will be suitable for the proposed intersection.

A left turn-in and left turn-out arrangement will be acceptable given the site's location between two key access routes (Coronation Drive and Forbes Road). Furthermore, an AUL treatment will be acceptable pending future upgrading of Ploughmans Lane for the southern feeder road.

Conditions are included in relation to the AUL intersection design, including upgrading and extension of the existing Ploughmans Creek culverts located under the proposed intersection.

The capacity of the local road network will be suitable to accommodate traffic generation associated with the proposed residential lots. Environmental goals on nearby roads will not be exceeded. Referral to Transport for NSW was not required based on proposed access to the development site, and number of proposed lots.

Similarly, the design of the proposed internal road will accommodate traffic volumes within the development.

- *Subdivision design and construction complies with the Orange City Development and Subdivision Code*

A Condition is included requiring compliance with the Orange City Development and Subdivision Code.

- *The allotment layout provides for a high standard of residential amenity. In Areas 2, 3 and 4, lots have a minimum allotment size of 850m<sup>2</sup>*

The subject land is located within Area 3. The proposed lots will range in area between 850m<sup>2</sup> and 1,782m<sup>2</sup>.

- *The allotment layout maximises energy-efficiency principles. Where practicable, lots are rectangular rather than splay-shaped and oriented to provide the long axis within [acceptable] range*

The proposed lots will be of regular configuration and within the acceptable orientation range to achieve effective solar access.

- *Subdivision design retains significant landscape features and minimises disturbance to natural vegetation, landform and overland flow paths*

As variously outlined in this report, the site has particular ecological values associated with the Flying-fox camp in the south-eastern extent. The proposed subdivision has been designed to minimise impacts on the camp and vulnerable species, and curtail future landuse conflicts.

- *The road layout comprises a modified grid layout with restrained use of cul-de-sacs, generally in accordance with the Conceptual Subdivision Layout*

The proposed public road will connect to Ploughmans Lane via an AUL intersection treatment, and terminate in a cul-de-sac, consistent with the DCP Masterplan (see Figure 11 above). Conditions are included in relation to intersection design; footpath crossings and driveways for the existing dwelling and battleaxe lots; and constructed footpaths.

- *Future road connections to adjoining land are provided and located generally in accordance with the Conceptual Subdivision Layout*

The proposed subdivision will have nil impact on future road connections to adjoining land. Part road construction will be required within 297 Ploughmans Lane, adjoining to the north, consistent with the DCP Masterplan.

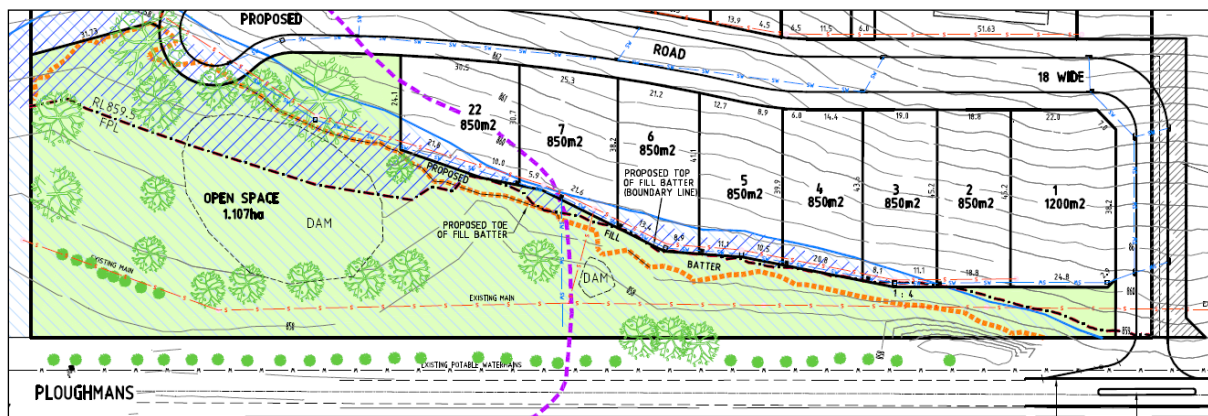
- *Local collector roads connect to Cargo Road, Forbes Road, and Ploughmans Lane generally in accordance with the locations shown on the Conceptual Subdivision Layout*

The location of the proposed new road via Ploughmans Lane will accord with the Conceptual Subdivision Layout.

- *Lots have direct frontage or access to a public road*

The proposed lots will have direct frontage and access to the new public road. Access via Ploughmans Lane will not be available.

Proposed Lots 1-7 and 22 will present a rear boundary/secondary frontage to the open space lot and Ploughmans Lane. Existing and new Conditional plantings in the open space area will be suitable to provide filtered screening of the proposed residential parcels from Ploughmans Lane. In order to provide a secondary frontage suitable to the Ploughmans Lane view corridor and public open space, a Condition is included requiring open-style/rural fencing to the eastern boundary of Lots 1-7 and 22, and southern boundary of Lot 22 (see Figure 14).



**Figure 14 – Lots 1-7 and 22 with frontage to public reserve and Ploughmans Lane**

- *Stormwater runoff from the site is consistent with pre-development stormwater patterns*
- *Drainage systems are designed to consider catchment and downstream capacities, onsite retention and reuse and overland flow paths*

Conditions are included in relation to stormwater management to satisfy the Planning Outcomes including constructed interlot stormwater drainage; stormwater treatment; and stormwater discharge to the watercourse.

- *All utility services are provided to the proposed lots*

The proposed lots will be fully serviced to an urban standard.

- *Public open space linkages are provided across the subdivision*

Public open space will be provided, as outlined above. The proposed open space area will provide suitable connections with other open spaces nearby the development site in this part of Ploughmans Valley.

- *Development proposals shall demonstrate the appropriate retention of existing trees in order to protect the visual backdrop of the City*

This Planning Outcome has been variously addressed in the foregoing sections of this report.

## DEVELOPMENT CONTRIBUTIONS

### Section 7.11 Environmental Planning and Assessment Act 1979

Development contributions are applicable to the proposed subdivision pursuant to the Orange Development Contributions Plan 2017.

The contributions are based on 20 additional residential lots, that is 22 proposed lots less two (2) existing lots. Compensation for 'encumbered' public open space is also applicable. The open space area is considered to be encumbered by flooding, waterway, and threatened species.

A detailed assessment of the proposed open space arrangements for the development has been provided above under the heading "Part 7 Development in Residential Areas – Open space". The proposed changes to the configuration of the open space are supported by Council's City Presentations Manager and Technical Services Department. As discussed, the proposed changes to the configuration of the open space have been designed to facilitate residential development of the site having regard to the known Grey-headed Flying Fox (*Pteropus poliocephalus*) camp on the property, which is occupied on an itinerant basis. The Grey-headed Flying Fox is listed as a vulnerable species under NSW and Commonwealth legislation. In addition the changed configuration of the open space was also undertaken to address flooding impacts from Ploughmans creek and to ensure that riparian ecosystems along the creek are appropriately managed.

The DCP Masterplan makes provision for 1.036ha of public open space within the development site. The proposal involves an additional 710m<sup>2</sup> of public open space. The open space additional to the Masterplan will be dedicated free of cost to Council for Local Infrastructure (including *streetscape treatments* and *recreation*), in accordance with Section 2.9.2 of Orange Development Contributions Plan 2017. The dedication of additional open space was offered by proponent during negotiations on the subdivision layout.

The following development contributions will therefore apply to the proposed subdivision:

Open Space and Recreation	20 additional lots at 3989.24	79,784.80
Community and Cultural	20 additional lots at 1156.85	23,137.00
Roads and Traffic Management	20 additional lots at 5265.66	105,313.20
Local Area Facilities	20 additional lots at 9005.72	180,114.40
Plan Preparation and Administration	20 additional lots at 582.53	11,650.60
<b>Subtotal</b>		<b>\$400,000</b>
Less Open Space Compensation	10,360m <sup>2</sup> x \$15/m <sup>2</sup> for encumbered land	155,400
<b>TOTAL:</b>		<b>\$244,600</b>

Conditions are included requiring payment of applicable contributions prior to subdivision certificate release.

**Section 64 Local Government Act 1993**

Development contributions for water, sewer and drainage works are also applicable to the proposed subdivision. Council's Assistant Development Engineer advises the contributions are based on 20 ETs for water supply headworks (the existing dwellings on proposed Lots 13 and 18 are connected to reticulated water) and 22 ETs for sewerage headworks.

Conditions are included requiring payment of applicable contributions prior to subdivision certificate release.

***Provisions Prescribed by the Regulations S4.15(1)(A)(iv)***

The proposal is not inconsistent with any matter prescribed by Regulation.

***The Likely Impacts of the Development S4.15(1)(B)***

The likely impacts associated with the proposed subdivision have been outlined in the foregoing sections of this report and include:

**Context and setting**

- Ploughmans Valley DCP Masterplan
- Adjoining landuses
- Availability of residential lots and dwellings

**Traffic impacts**

- Traffic generation and network capacity
- Intersection treatment and waterway crossing upgrading
- Internal road layout

**Infrastructure**

- Availability
- Augmentation and extension
- Development contributions
- Orange Development and Subdivision Code

**Biodiversity Values**

- Onsite threatened species
- Compliance with legislation
- Vegetation retention and removal
- Conservation area over open space lot

**Landscape Setting**

- Vegetation removal
- Altered landscape character
- Replacement planting: Conditional street trees and Flying-fox habitat trees

**Cultural Values**

- Unknown European and indigenous cultural heritage
- Conditional protection of unexpected find

**Visual Impacts**

- Civil and construction works typical of release area development
- Altered landscape character and replacement planting
- Secondary frontage presentation to Ploughmans Lane

**Amenity Impacts**

- Lot design for solar access
- Open space and pedestrian linkages.
- Minimise landuse conflicts between threatened species and future residents

**Water Quality**

- Construction controls
- Stormwater management
- Protection of the waterway and adjacent riparian lands
- Contamination clearance and clean fill
- DPE approval

Conditions are included to mitigate and manage arising impacts to within acceptable limits.

***The Suitability of the Site S4.15(1)(C)***

The subject land is suitable for the development due to the following:

- The site is contained within a developing urban residential area, and subject to Area 3 Ploughmans Valley Masterplan.
- Adjoining land uses are residential.
- The broader and internal road network will accommodate traffic generation associated with the proposal.
- Utility services are available and adequate, subject to extension and augmentation.
- The site is contained within a flood planning area; however, the proposed residential lots will not be subject to inundation in a 1% AEP flood event.
- The site terrain does not present construction or servicing constraints.
- The site is suitable for residential landuse from a contamination perspective.
- The land is subject to particular localised biodiversity, which may be protected.
- The subject land does not have known cultural values.

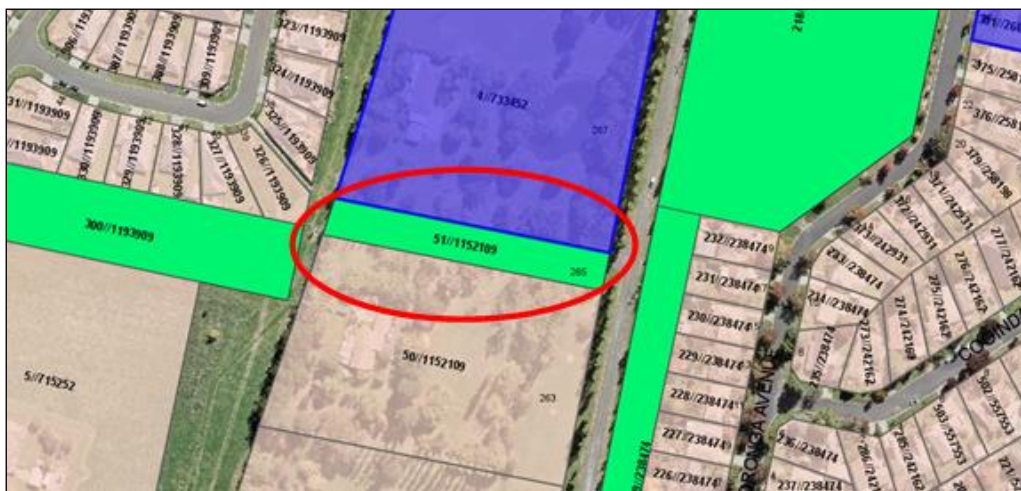
***Any Submissions Made in Accordance with The Act S4.15(1)(D)***

The proposed development is defined as advertised development pursuant to Council's Community Participation Plan 2019 and Schedule 1 Clause 8 Environmental Planning and Assessment Act 1979.

The DA was subject to three (3) exhibition periods, relating to the original proposal and amended proposal. A total of four (4) submissions were received during the exhibition periods. The issues raised in the submissions are considered below.

**Exhibition 1: 2-30 November 2021**

*Would Council consider constructing a formed footpath in the open space link to the south of the development site (Lot 51 DP 1152109 – 265 Ploughmans Lane) (see Figure 15)?*



**Figure 15 – open space link to the south of the development site**

Comment: Lot 51 does not form part of the DA. Council's Development Engineer advises that the open space strip provides an overland flow path to direct stormwater from Lombardy Drive to Ploughmans Lane. It is acknowledged that the strip also provides a pedestrian linkage through Ploughmans Valley, and connects to other open spaces. Construction of a formed footpath over Lot 51 is not planned in the foreseeable future. However, Council could consider this in conjunction with future upgrading of Ploughmans Lane for the southern feeder road.

*The proposed lot yield is excessive.*

Comment: This matter is addressed under DCP 2004 above. Lot yield is considered acceptable for the development site and setting.

*Proposed Lots 11-17 and 14 are narrow, crowded and not in keeping with neighbourhood character.*

Comment: Proposed lots in the western extent will comprise general dimensions of 18m wide x 50m deep. The proposed lots will comply with or exceed the prescribed minimum lot size of 850m<sup>2</sup>. The lots will be of regular configuration and within the acceptable orientation range to achieve effective solar access. The proposed rectangular parcels will not be incongruous with the prevailing cadastre in nearby Lombardy Way and Carwoola Drive. The subdivision will create a low density residential streetscape, as intended by the land zoning and Masterplan.

*Waterways in Ploughmans Lane should not be filled.*

Comment: The proposal does not involve filling of the onsite dam or Ploughmans Creek.

*Too many established trees are to be removed.*

Comment: This matter has been variously addressed in this report. Council's Manager City Presentation raised no objection to tree removal to facilitate the proposed subdivision consistent with the DCP Masterplan, and protect the threatened species on the land.

### **Exhibition 3: 14-28 June 2022**

*The submission rejects the applicant's statement that "the subject land is not within a drinking water catchment of identified as an environmentally sensitive area."*

Comment: The development site is not MAPPED in Orange LEP 2011 as 'drinking water catchment' or 'environmentally sensitive area.' The particular ecological values of the subject land are acknowledged in the design of the proposed subdivision. Mitigation Conditions are included to protect and reinforce those values.

*The proposal will have adverse impact on the Ploughmans Creek Stormwater Harvesting Scheme.*

Comment: Council's Development Engineer advises that the capacity of the Ploughmans Creek Stormwater Harvesting Scheme was predicated on full development of the catchment, consistent with the Ploughmans Valley DCP Masterplan. The proposed lots will not adversely impact on the functioning of the Harvesting Scheme, nor the availability of harvested stormwater to augment supply.

*The proposal will have adverse impact on Ploughmans Creek due to minimum 10m buffer, sediment flows, stormwater discharge and contaminated soil.*

Comment: As variously outlined in this report, mitigation Conditions are included to protect Ploughmans Creek and adjacent riparian land. DPE Water raised no objection to the proposed works on waterfront land.

*Contaminated soil should not be used onsite.*

Comment: Preliminary contamination investigation was undertaken in support of the proposal. The subject land is assessed as suitable for residential landuse. Excavated material will be reused onsite as far as practicable, subject to engineering design. A Condition is included requiring Virgin Excavated Natural Material (VENM) be used for site earthworks if required.

*The proposal will alter the urban forest of Orange and Ploughmans Creek.*

Comment: Tree removal has been variously considered in this report. The proposal will alter the landscape character. Replacement planting in the proposed road reserve and open space lot will offset vegetation loss.

### **Public Interest S4.15(1)(E)**

The proposal is considered to be in the public interest.

The proposal is not inconsistent with any relevant policy statements, planning studies, and guidelines etc. that have not been considered in this assessment.

The proposed subdivision will facilitate ongoing development of Ploughmans Valley in a manner generally consistent with the Area 3 Masterplan. The proposal will contribute to the range and supply of residential land, and enable residential development of the lots, consistent with the land zoning.

The proposal has been sited and designed to minimise adverse impacts to the protected Flying-fox camp; minimise adverse and significant impacts to the Grey-headed Flying-fox; and minimise future residents' complaints in relation to amenity, health, and vegetation damage. The proposal will create a conservation area for protection of the Flying-fox.

### **SUMMARY**

The proposed involves urban residential subdivision in Ploughmans Valley, as contemplated in the DCP Masterplan. The site is subject to particular constraints associated with threatened species, flooding, and a waterway. It is assessed that the proposal will comply with applicable Local and State planning controls. Potential arising impacts may be managed by mitigation conditions. Approval of the application is recommended.

### **ATTACHMENTS**

- 1 Notice of Approval, D22/44448 [↓](#)
- 2 Plans, D22/42392 [↓](#)
- 3 Submissions (Redacted) - First and Third Exhibition Periods, D22/42439 [↓](#)

	<p style="text-align: center;"><b>ORANGE CITY COUNCIL</b></p> <p style="text-align: center;">Development Application No <b>DA 406/2021(1)</b></p> <p>NA22/448 <span style="float: right;">Container PR10145</span></p>
---	--

## NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

issued under the *Environmental Planning and Assessment Act 1979*  
Section 4.18

### Development Application

Applicant Name: Developed Pty Ltd  
 Applicant Address: C/- Peter Basha Planning & Development  
 PO Box 1827  
 ORANGE NSW 2800  
 Owner's Name: Ploughmans Lane Pty Ltd  
 Land to Be Developed: Lot 4 DP 733452 – 267 Ploughmans Lane  
 Lot 3 DP 733452 – 293 Ploughmans Lane  
 Lot 2 DP 733452 – 297 Ploughmans Lane  
 Proposed Development: Subdivision (22 lot Torrens Title and public reserve), Demolition (outbuildings) and tree removal

### Building Code of Australia building classification:

Not applicable

### Determination made under Section 4.16

Made On: 2 August 2022  
 Determination: **CONSENT GRANTED SUBJECT TO CONDITIONS DESCRIBED BELOW:**

**Consent to Operate From:** 3 August 2022  
**Consent to Lapse On:** 3 August 2027

### Terms of Approval

The reasons for the imposition of conditions are:

- (1) To ensure a quality urban design for the development which complements the surrounding environment.
- (2) To maintain neighbourhood amenity and character.
- (3) To ensure compliance with relevant statutory requirements.
- (4) To provide adequate public health and safety measures.
- (5) Because the development will require the provision of, or increase the demand for, public amenities and services.
- (6) To ensure the utility services are available to the site and adequate for the development.
- (7) To prevent the proposed development having a detrimental effect on adjoining land uses.

### Conditions

- (1) The development must be carried out in accordance with:
  - (a) Drawings by Peter Basha Planning & Development, Job No. 21034DA, Figures 1-5 dated 24.5.22 (5 sheets + aerial overlays)
  - (b) statements of environmental effects or other similar associated documents that form part of the approval

**as amended in accordance with any conditions of this consent.**

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 406/2021(1)**

2

**Conditions (cont)****PRESCRIBED CONDITIONS**

- (2) All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- (3) A sign is to be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
  - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out.

**PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

- (4) A Construction Environmental Management Plan (CEMP) shall be prepared by a suitably qualified ecologist. The CEMP shall outline constructions methods and processes suitable to protect the Grey-headed Flying fox camp and habitat located on the subject land, during subdivision civil work and future dwelling construction on affected lots. The CEMP shall be submitted to Council for approval prior to issue of a Construction Certificate.
- (5) A Conservation Area Management Plan and Landscaping Plan shall be prepared by a suitably qualified ecologist for the open space lot and Grey-headed Flying fox camp. The plans shall include, but not be limited to:
  - Removal of four (4) Tortured Willow (*S. matsudana*) and three (3) River She-Oak (*Casuarina cunninghamiana*) from the western side of the dam.
  - New native and climate specific shrubs on the western side of the dam.
  - Planting of additional Flying-fox habitat trees in the south-east portion of the Camp.
  - Weed management.
  - Dam rehabilitation
  - Additional intermittent tree planting to the Ploughmans Lane frontage of the open space lot.

The Conservation Area Management Plan and Landscaping Plan shall be submitted to Council for approval prior to issue of a Construction Certificate.

- (6) Engineering plans, showing details of all proposed work and adhering to any engineering conditions of development consent, are to be submitted to, and approved by, Orange City Council or an Accredited Certifier (Categories B1, C3, C4, C6) prior to the issuing of a Construction Certificate.

The following Orange City Council engineering design and construction requirements shall be used in addition to, or taking precedence over, the Orange City Council Development and Subdivision Code:

- Council requires elastic rebound deflection testing carried out on road base material prior to the placement of any asphalt to determine maximum deflection in accordance with RMS Test Method T160 utilising the Benkelman Beam or equivalent
- all road reserves between the back of kerb and property boundary, and areas of public land shall be either hydro mulched or turfed prior to the issue of a Subdivision Certificate. All allotments shall be spread with topsoil and seed
- the street lighting system shall comprise LED lighting to the requirements of Essential Energy and satisfaction of Council. Details of the street lighting system shall be submitted for approval prior to the issue of a Construction Certificate
- asphaltic cement wearing surface shall not be included in road pavement depth calculations
- a 10 day soaked CBR test shall be used for road subgrade pavement evaluations
- all stormwater drainage design shall be based on the most recent version of Australian Rainfall and Runoff calculations allowing for applicable climate change factor(s).

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 406/2021(1)**

3

**Conditions (cont)****Prior to the issue of a construction certificate (cont)**

- (7) A Soil and Water Management Plan (SWMP) is to be submitted to Orange City Council or an Accredited Certifier (Categories B1, C3, C4, C6) for approval prior to the issuing of a Construction Certificate. The control plan is to be in accordance with the Orange City Council Development and Subdivision Code and the Landcom, Managing Urban Stormwater; Soils and Construction Handbook.

- (8) The development's stormwater design is to include stormwater detention within the development, designed to limit peak outflows from the land to the pre-existing natural outflows up to the 100 year ARI frequency, with sufficient allowance in overflow spillway design capacity to safely pass flows of lower frequency (that is, a rarer event) without damage to downstream developments. Where appropriate, the spillway design capacity is to be determined in accordance with the requirements of the Dam Safety Committee.

The design of the detention storage is to be undertaken using the ILSAX/DRAINS rainfall-runoff hydrologic model or an approved equivalent capable of assessing runoff volumes and their temporal distribution as well as peak flow rates. The model is to be used to calculate the flow rates for the existing and post-development conditions. The developed flows are to be routed through the proposed storage within the model so that the outflows obtained are no greater than the flows obtained for the pre-existing natural flows. A report detailing the results of the analysis, which includes:

- catchment plan showing sub-catchments under existing and developed conditions
- schematic diagram of the catchment model showing sub areas and linkages
- tabulation detailing the elevation, storage volume and discharge relationships
- tabulation for the range of frequencies analysed, the inflows, outflows and peak storage levels for both existing and developed conditions

together with copies of the data files for the model and engineering design plans of the required drainage system are to be submitted to Orange City Council upon application for a Construction Certificate.

- (9) A dust management plan shall be submitted to Orange City Council or an Accredited Certifier (Categories B1, C3, C4, C6) upon application for a Construction Certificate. The approved dust management plan is to be implemented prior to excavation work commencing.
- (10) Proposed lots are to be provided with interlot stormwater drainage, including those lots abutting public land, where the surface of the entire lot cannot be drained to the kerb and gutter at the lot frontage. A grated concrete stormwater pit is to be constructed within each lot provided with interlot stormwater drainage. Engineering plans for this drainage system are to be approved by Orange City Council or an Accredited Certifier (Categories B1, C3, C4, C6) prior to the issuing of a Construction Certificate.
- (11) Stormwater from the site shall be piped to the adjacent watercourse, where stormwater shall be discharged through a stormwater treatment system providing a sediment and litter arrestor, settling basin and appropriate scour protection before entering the watercourse. The selected stormwater treatment system shall be from a range of existing Council approved systems. The stormwater treatment system design shall include sealed all-weather service vehicle access. Prior to a Construction Certificate being issued engineering plans for this stormwater system are to be submitted to and approved by Orange City Council. A licence from the NSW Office of Water shall be obtained for work within 40m of any watercourse.
- (12) A 150mm-diameter sewer main is to be constructed from Council's existing sewer network to serve the proposed lots. Prior to a Construction Certificate being issued engineering plans for this sewerage system are to be submitted to and approved by Orange City Council.
- (13) A water reticulation analysis is to be carried out by Orange City Council on any proposed water reticulation system for the development. Engineering plans are to be submitted to and approved by Orange City Council prior to the issue of a Construction Certificate.
- The reticulation system is to be designed to supply a peak instantaneous demand by gravity of 0.15 L/s/tenement at a minimum residual head of 200kPa.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 406/2021(1)**

---

4

**Conditions (cont)****Prior to the issue of a construction certificate (cont)**

---

- (14) Prior to the issuing of a Construction Certificate, a Road Naming Application form is to be completed and submitted to the Geographical Names Board with a plan of the whole development defining the stage being released - including future road extensions.
- (15) The existing residences are to be connected to the proposed reticulated sewer. The existing septic tanks are to be accurately located and indicated on the submitted engineering plans.
- (16) Engineering plans are to be submitted to and approved by Orange City Council prior to the issue of a Construction Certificate for the proposed intersection works with Ploughmans Lane.

The intersection of the proposed 18.0m wide road and Ploughmans Lane shall be constructed with an auxiliary left turn lane (AUL) for vehicles exiting Ploughmans Lane. This work is to include road pavement and pavement surfacing to key into the existing travel lanes, kerb and gutter construction and an earth-formed footpath on the development side of the road.

The intersection of the 18.0m wide road and Ploughmans Lane shall be provided with a minimum 1.0m wide traffic island of a suitable length to prevent right turns into or out of the 18.0m wide road. Ploughmans Lane travel lanes shall be widened as necessary to accommodate the traffic island, signage, line marking and any shift in alignment.

The existing Ploughmans Creek culverts located under the proposed intersection shall be extended to accommodate the road pavement widening / additional traffic lanes. Both culvert headwalls and any power poles located within the intersection area shall be provided with guard rail including TfNSW approved approach and departure terminals.

The proposed 18.0m wide road shall be constructed as half road width to a full urban standard on existing Lot 2 DP 733452.

**PRIOR TO WORKS COMMENCING**

---

- (17) Soil erosion control measures shall be implemented on the site.
- (18) An application for a Subdivision Works Certificate is required to be submitted to, and a Certificate issued by Council/Accredited Certifier prior to any excavation or works being carried out onsite.
- (19) The approved water and soil erosion control plan shall be implemented prior to construction work commencing.

**DURING CONSTRUCTION/SITEWORKS**

---

- (20) The Construction Environmental Management Plan shall be implemented during construction works.
- (21) Any additional fill to be brought to the site shall comprise Virgin Excavated Natural Material (VENM).
- (22) If Aboriginal objects, relics, or other historical items or the like are located during development works, all works in the area of the identified object, relic or item shall cease, and the NSW Office of Environment and Heritage (OEH), and representatives from the Orange Local Aboriginal Land Council shall be notified. Where required, further archaeological investigation shall be undertaken. Development works in the area of the find(s) may recommence if and when outlined by the management strategy, developed in consultation with and approved by the OEH.
- (23) All materials onsite or being delivered to the site are to be contained within the site. The requirements of the *Protection of the Environment Operations Act 1997* are to be complied with when placing/stockpiling loose material or when disposing of waste products or during any other activities likely to pollute drains or watercourses.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 406/2021(1)**

---

5

**Conditions (cont)****During construction/siteworks (cont)**

- (24) In the event of an unexpected find during works such as (but not limited to) the presence of undocumented waste, odorous or stained soil, asbestos, structures such as underground storage tanks, slabs, or any contaminated or suspect material, all work onsite must cease immediately. The beneficiary of the consent must discuss with Council the appropriate process that should be followed therein. Works onsite must not resume unless the express permission of the Director Development Services is obtained in writing.
- (25) All operations and activities occurring at the premises must be carried out in a manner that minimises or prevents the emission of dust from the premises.
- (26) All construction/demolition work on the site is to be carried out between the hours of 7.00am and 6.00pm Monday to Friday inclusive, and 8.00am to 1.00pm on Saturdays. No construction/demolition work is permitted to be carried out on Sundays or Public Holidays. Written approval must be obtained from the Chief Executive Officer of Orange City Council to vary these hours.
- (27) Building demolition is to be carried out in accordance with *Australian Standard 2601:2001 - The Demolition of Structures* and the requirements of Safe Work NSW.
- (28) Asbestos containing building materials must be removed in accordance with the provisions of the *Work Health and Safety Act 2011* and any guidelines or Codes of Practice published by Safe Work NSW, and disposed of at a licenced landfill in accordance with the requirements of the NSW EPA.
- (29) Any adjustments to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer.
- (30) The provisions and requirements of the Orange City Council Development and Subdivision Code are to be applied to this application and all work constructed within the development is to be in accordance with that Code.  
  
The developer is to be entirely responsible for the provision of water, sewerage and drainage facilities capable of servicing all the lots from Council's existing infrastructure. The developer is to be responsible for gaining access over adjoining land for services where necessary and easements are to be created about all water, sewer and drainage mains within and outside the lots they serve.
- (31) For all single access battleaxe blocks and the existing dwellings on proposed Lots 13 and 18 a concrete driveway, kerb layback and footpath crossing is to be constructed to a minimum width of 3.0m and to the requirements and standards of the Orange City Council Development and Subdivision Code.
- (32) All proposed residential lots adjacent to the waterway, Ploughmans Creek, are to have a minimum freeboard above the 1-in-100-year flood level in accordance with the Orange City Council Development and Subdivision Code and the Floodplain Risk Management Plan.
- (33) A water service and sewer junction is to be provided to every lot in the proposed residential subdivision in accordance with the Orange City Council Development and Subdivision Code.
- (34) Water and sewer services, including mains construction, easements and all associated materials and works, are to be provided for the development at the cost of the developer.
- (35) All services are to be contained within the allotment that they serve.
- (36) The existing water service connections to 267 and 293 Ploughmans Lane shall be sealed off at the Council water main.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 406/2021(1)**

6

**Conditions (cont)****During construction/siteworks (cont)**

- (37) A concrete footpath, a minimum of 1.2m wide, is to be constructed on one side of the 18m wide road from Ploughmans Lane to the head of the cul-de-sac.

Construction work is to be to the requirements and standards of the Orange City Council Development and Subdivision Code.

**PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE**

- (38) The payment of **\$244,600** is to be made to Council in accordance with Section 7.11 of the *Environmental Planning and Assessment Act 1979* and the *Orange Development Contributions Plan 2017* (Ploughmans Valley Release Area) towards the provision of the following public facilities:

Open Space and Recreation	20 additional lots at 3989.24	79,784.80
Community and Cultural	20 additional lots at 1156.85	23,137.00
Roads and Traffic Management	20 additional lots at 5265.66	105,313.20
Local Area Facilities	20 additional lots at 9005.72	180,114.40
Plan Preparation and Administration	20 additional lots at 582.53	11,650.60
<b>Subtotal</b>		<b>\$400,000</b>
Less Open Space Compensation	10,360m <sup>2</sup> x \$15 / m <sup>2</sup> for encumbered land	155,400
<b>TOTAL:</b>		<b>\$244,600</b>

The contribution will be indexed quarterly in accordance with the Orange Development Contributions Plan 2017 (Ploughmans Valley Release Area). This Plan can be inspected at the Orange Civic Centre, Byng Street, Orange.

- (39) Landscaping works shall be undertaken in the open space lot in accordance with the approved Conservation Area Management Plan and Landscaping Plan, to the satisfaction of Council's Manager City Presentation.
- (40) A Restriction-as-to-User under Section 88B of the NSW Conveyancing Act 1919 shall be created on the title of the proposed lots, instructing that the proposed lots are located adjacent to a known Grey-headed Flying Fox (*Pteropus poliocephalus*) camp, which is occupied on an intermittent basis.
- The proponent shall have prepared a *Guidebook for landholders living adjacent to a Flying-fox camps*, including but not limited to details on co-existing, planting guides, community awareness, habitat monitoring, and potential subsidies. The Guidebook shall be provided to Council prior to issue of a Subdivision Certificate. The Guidebook shall be referenced in the Restriction and should be supplied to prospective purchasers of the proposed residential lots.
- The approved Environmental Construction Management Plan required by Condition 4 in relation to dwelling construction on the proposed lots shall be referenced in the same Restriction.
- (41) A Restriction-as-to-User under Section 88B of the NSW Conveyancing Act 1919 shall be created on the title of proposed lots adjoining the public reserve, requiring open style/rural fencing to the common boundaries with the public reserve.
- (42) The Restrictions-as-to-User relating to parent parcels Lots 3 and 4 in DP 733452 shall be released. Evidence of the released restrictions shall be provided to Council prior to issue of a Subdivision Certificate.
- (43) Street trees shall be planted in the proposed road reserve adjacent to the frontage of each proposed residential lot, in accordance with Council's Development and Subdivision Code, and to the satisfaction of the Manager City Presentation.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 406/2021(1)**

---

7

**Conditions (cont)****Prior to the issue of a subdivision certificate (cont)**

---

- (44) Prior to the issuing of the Subdivision Certificate, a Surveyor's Certificate or written statement is to be provided to the Principal Certifying Authority, stating that the buildings within the boundaries of the proposed Lots 13 and 18 comply in respect to the distances of walls from boundaries.
- (46) Application shall be made for a Subdivision Certificate under Section 6.3(1)(d) of the Act.
- (47) **Payment of contributions for water, sewer and drainage works** is required to be made at the contribution rate applicable at the time that the payment is made. The contributions are based on 20 ETs for water supply headworks and 22 ETs for sewerage headworks. A Certificate of Compliance, from Orange City Council in accordance with the *Water Management Act 2000*, will be issued upon payment of the contributions.  
  
This Certificate of Compliance is to be submitted to the Principal Certifying Authority prior to the issuing of a Subdivision Certificate.
- (48) Evidence from a registered NATA laboratory is to be submitted prior to the issuing of a Subdivision Certificate stating that the filling of all dams and low-lying areas has been carried out in accordance with Australian Standard 3798-2007.
- (49) Application is to be made to Telstra/NBN for infrastructure to be made available to each individual lot within the development. Either a Telecommunications Infrastructure Provisioning Confirmation or Certificate of Practical Completion is to be submitted to the Principal Certifying Authority confirming that the specified lots have been declared ready for service prior to the issue of a Subdivision Certificate.
- (50) A Notice of Arrangement from Essential Energy stating arrangements have been made for the provision of electricity supply to the development, is to be submitted to the Principal Certifying Authority prior to the issue of a Subdivision Certificate.
- (51) An easement to drain sewage and to provide Council access for maintenance of sewerage works a minimum of 2.0m wide is to be created over the proposed sewerage works. The Principal Certifying Authority is to certify that the easement is in accordance with the Orange City Council Development and Subdivision Code prior to the issuing of a Subdivision Certificate.
- (52) All services are to be contained within the allotment that they serve. A Statement of Compliance, from a Registered Surveyor, is to be submitted to the Principal Certifying Authority prior to the issuing of a Subdivision Certificate.
- (53) A Certificate of Compliance, from a Qualified Engineer, stating that the stormwater retention basin comply with the approved engineering plans is to be submitted to the Principal Certifying Authority prior to the issuing of a Subdivision Certificate.
- (54) A Maintenance Security Deposit, in accordance with the provisions and requirements of the Orange City Council Development and Subdivision Code, is to be provided to Orange City Council prior to the issuing of a Subdivision Certificate.  
  
A Certificate of Compliance, from Orange City Council, certifying that the maintenance security deposit has been paid, is to be submitted to the Principal Certifying Authority prior to the issuing of a Subdivision Certificate.
- (55) The existing dwellings on proposed Lots 13 and 18 shall be connected to the sewer. Evidence of the satisfactory completion of such work by a licensed plumber shall be provided to the Principal Certifying Authority prior to the issue of a Subdivision Certificate.
- (56) Evidence of the disposal of the septic tanks and contents at an approved waste disposal facility and satisfactory remediation of the absorption trenches shall be provided to the Principal Certifying Authority prior to the issuing of a Subdivision Certificate.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 406/2021(1)**

---

8

**Conditions (cont)****Prior to the issue of a subdivision certificate (cont)**

---

- (57) Where stormwater crosses land outside the lot it favours, an easement to drain water is to be created over the works. A Restriction-as-to-User under section 88B of the *NSW Conveyancing Act 1919* is to be created on the title of the burdened lot(s) requiring that no structures are to be placed on the site, or landscaping or site works carried out on the site, in a manner that affects the continued operation of the interlot drainage system. The minimum width of the easement is to be as required in the Orange City Council Development and Subdivision Code.
- (58) Prior to the issue of a Subdivision Certificate the proposed 18.0m wide road partly located within Lot 2 DP 733452 shall be dedicated as Public Road in Stage 1 of the development at no cost to Orange City Council.
- (59) Where staged release of the subdivision is proposed, all conditions of consent and contributions relative to the proposed staging of the development shall be complied with prior to the issue of a Subdivision Certificate.
- (60) Certification from Orange City Council is required to be submitted to the Principal Certifying Authority prior to the issue of a Subdivision Certificate stating that all works relating to connection of the development to Council assets, works on public land, works on public roads, stormwater, sewer and water reticulation mains and footpaths have been carried out in accordance with the Orange City Council Development and Subdivision Code and the foregoing conditions, and that Council will take ownership of the infrastructure assets.
- (50) All of the foregoing conditions are to be at the full cost of the developer and to the requirements and standards of the Orange City Council Development and Subdivision Code, unless specifically stated otherwise. All work required by the foregoing conditions is to be completed prior to the issuing of a Subdivision Certificate, unless stated otherwise.

---

**Other Approvals**

- (1) *Local Government Act 1993* approvals granted under Section 68.

Nil

- (2) General terms of other approvals integrated as part of this consent.

**Department of Planning and Environment - Water  
Water Management Act 2000**

TC-G001

Before commencing any proposed controlled activity on waterfront land, an application must be submitted to Department of Planning and Environment - Water, and obtained, for a controlled activity approval under the Water Management Act 2000.

TC-G004 A.

This General Terms of Approval (GTA) only applies to the proposed controlled activity described in the plans and associated documents found in Schedule 1, relating to Development Application DA 406/2021 provided by Council to Department of Planning and Environment - Water. B. Any amendments or modifications to the proposed controlled activity may render the GTA invalid. If the proposed controlled activity is amended or modified, Department of Planning and Environment-Water, must be notified in writing to determine if any variations to the GTA will be required.

(Other Approvals (cont))

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 406/2021(1)**

---

9

**Conditions (cont)****Other Approvals (cont)**

(cont) TC-G005

- A. The application for a controlled activity approval must include the following plan(s): i. Detailed civil construction plans; ii. Erosion and sediment control plans; iii. Vegetation Management Plan for Ploughmans Creek iv. Construction detailed bulk earthworks plans;
- B. The plan(s) must be prepared in accordance with Department of Planning and Environment-Water's guidelines located on the website <https://www.nrar.nsw.gov.au/how-to-apply/controlled-activities/guidelines-for-controlled-a>

---

**Right of Appeal**

If you are dissatisfied with this decision, Section 8.7 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court. Pursuant to Section 8.10, an applicant may only appeal within 6 months after the date the decision is notified.

---

**Disability Discrimination Act 1992:**

This application has been assessed in accordance with the *Environmental Planning and Assessment Act 1979*. No guarantee is given that the proposal complies with the *Disability Discrimination Act 1992*.

The applicant/owner is responsible to ensure compliance with this and other anti-discrimination legislation.

The *Disability Discrimination Act* covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references AS1428.1 - "Design for Access and Mobility". AS1428 Parts 2, 3 and 4 provides the most comprehensive technical guidance under the *Disability Discrimination Act* currently available in Australia.

---

**Disclaimer - S88B of the Conveyancing Act 1919 - Restrictions on the Use of Land:**

The applicant should note that there could be covenants in favour of persons other than Council restricting what may be built or done upon the subject land. The applicant is advised to check the position before commencing any work.

---

**Signed:**On behalf of the consent authority **ORANGE CITY COUNCIL****Signature:****Name:**

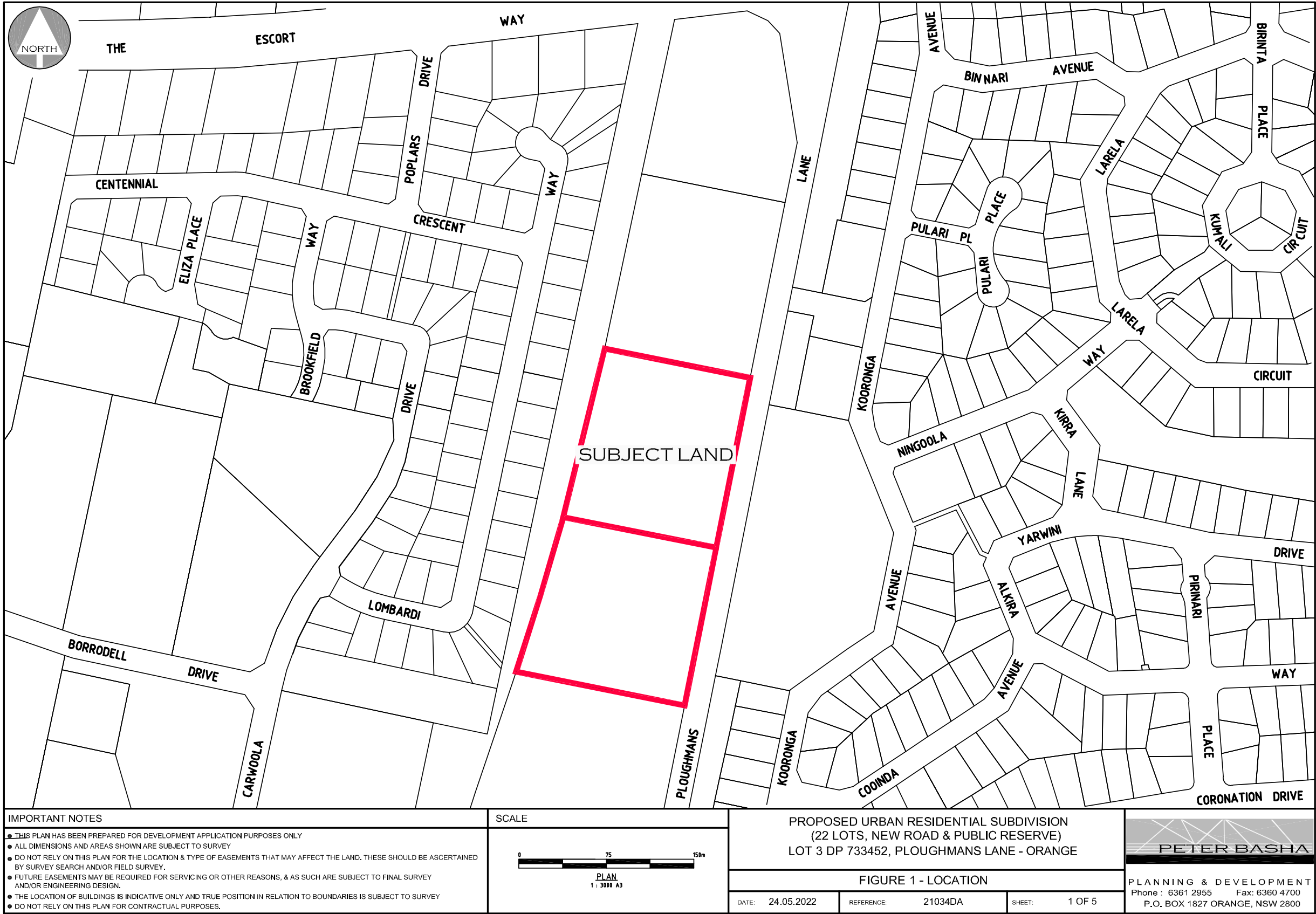
PAUL JOHNSTON - MANAGER DEVELOPMENT ASSESSMENTS

---

**Date:**

3 August 2022

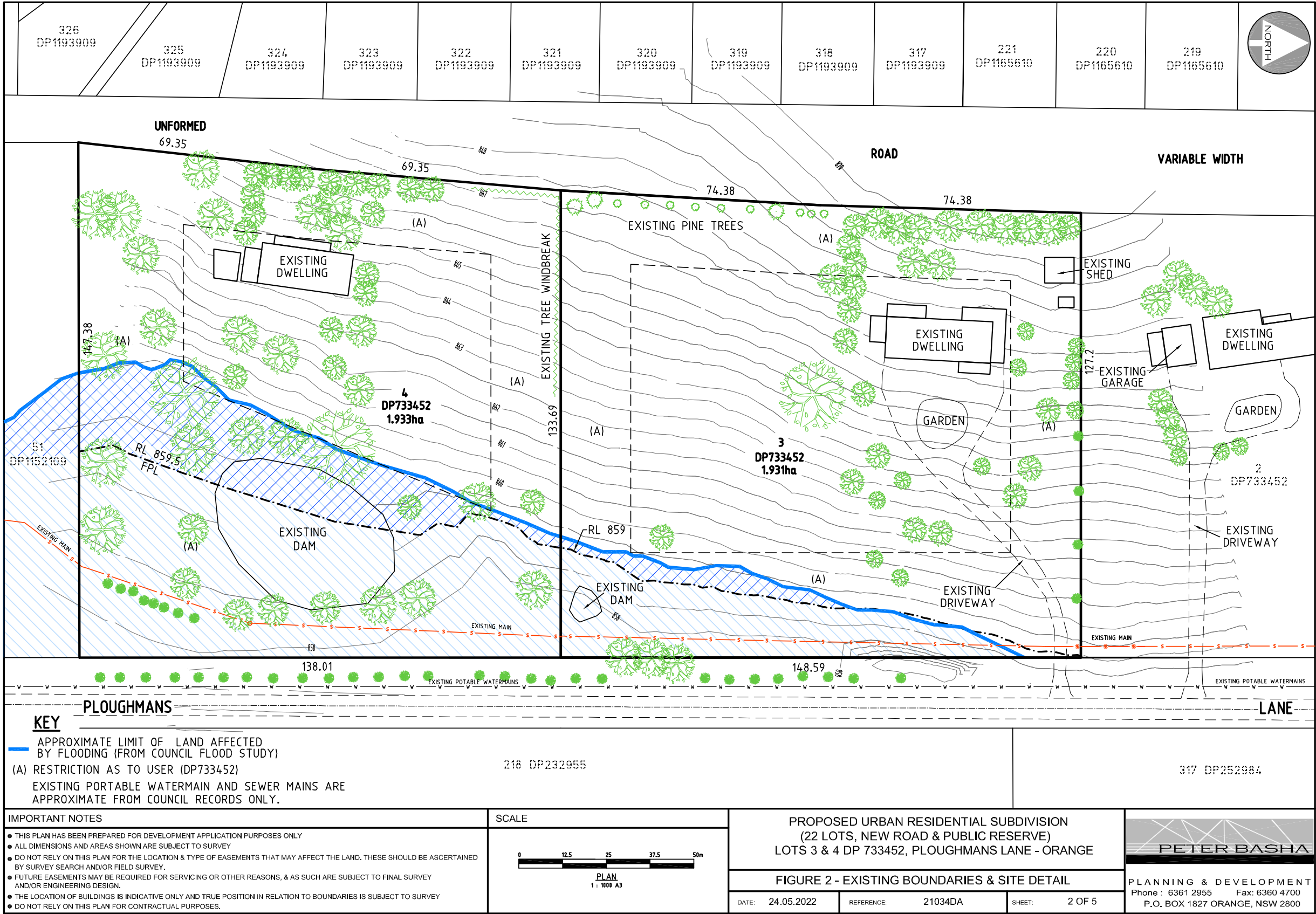








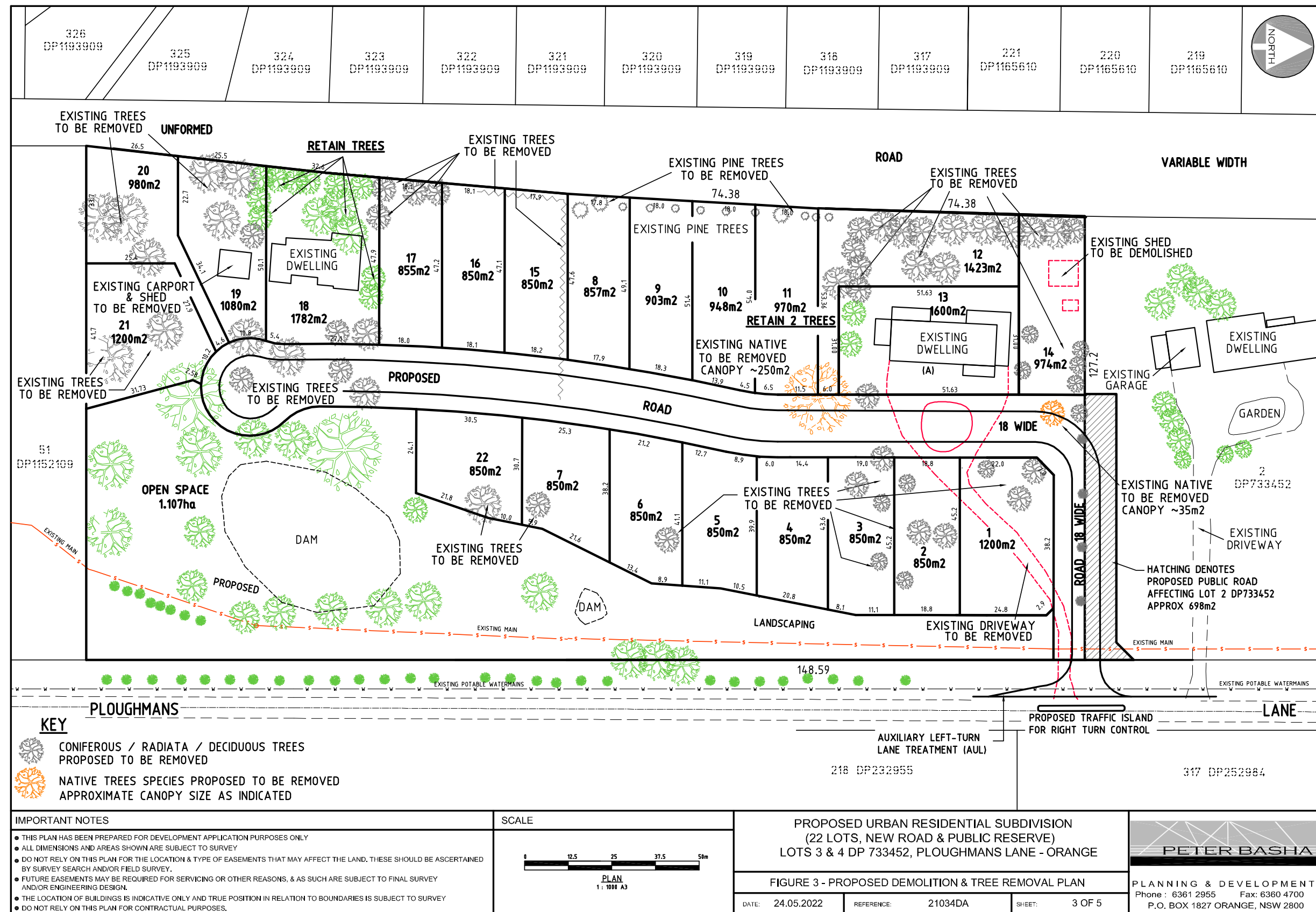








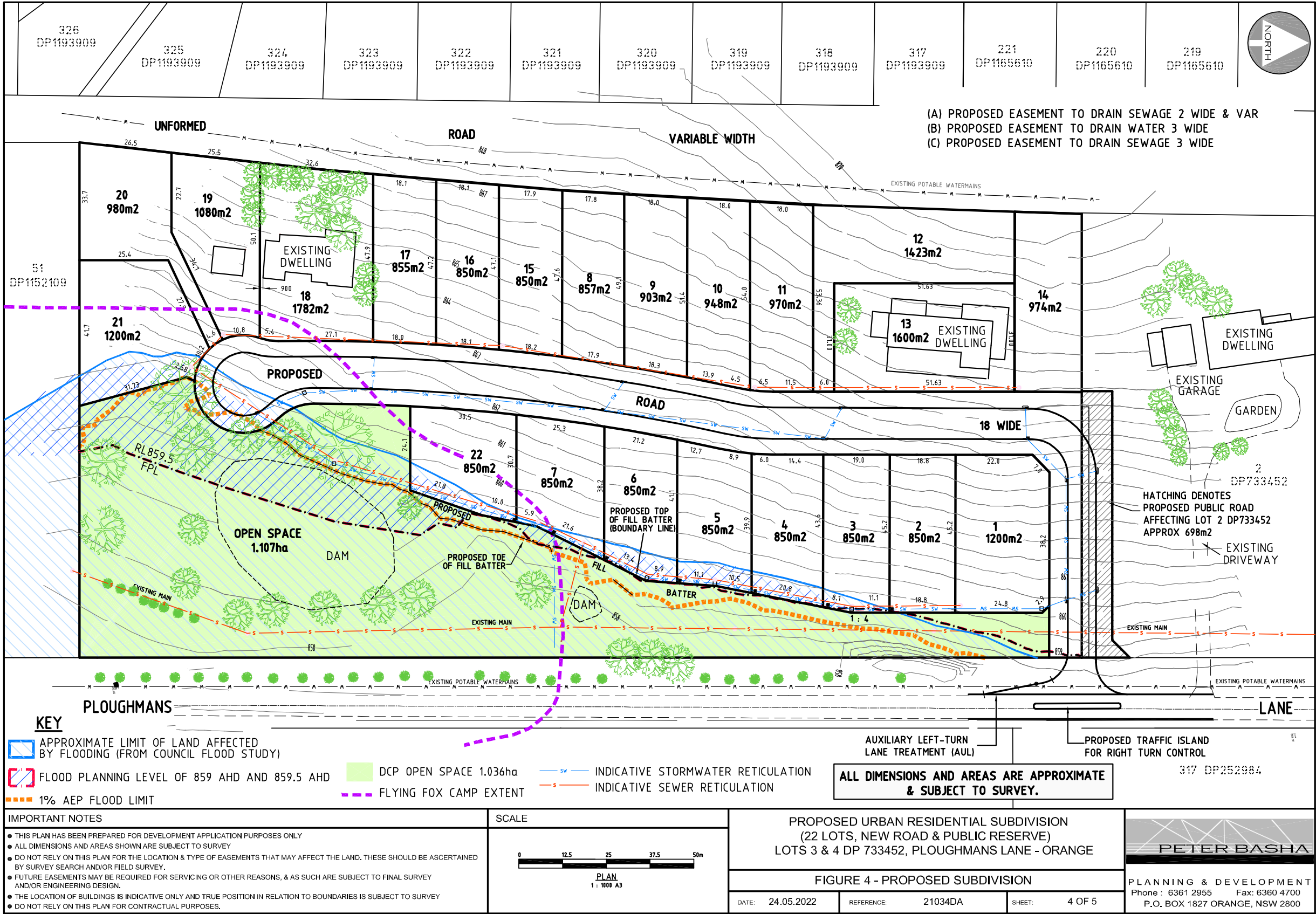




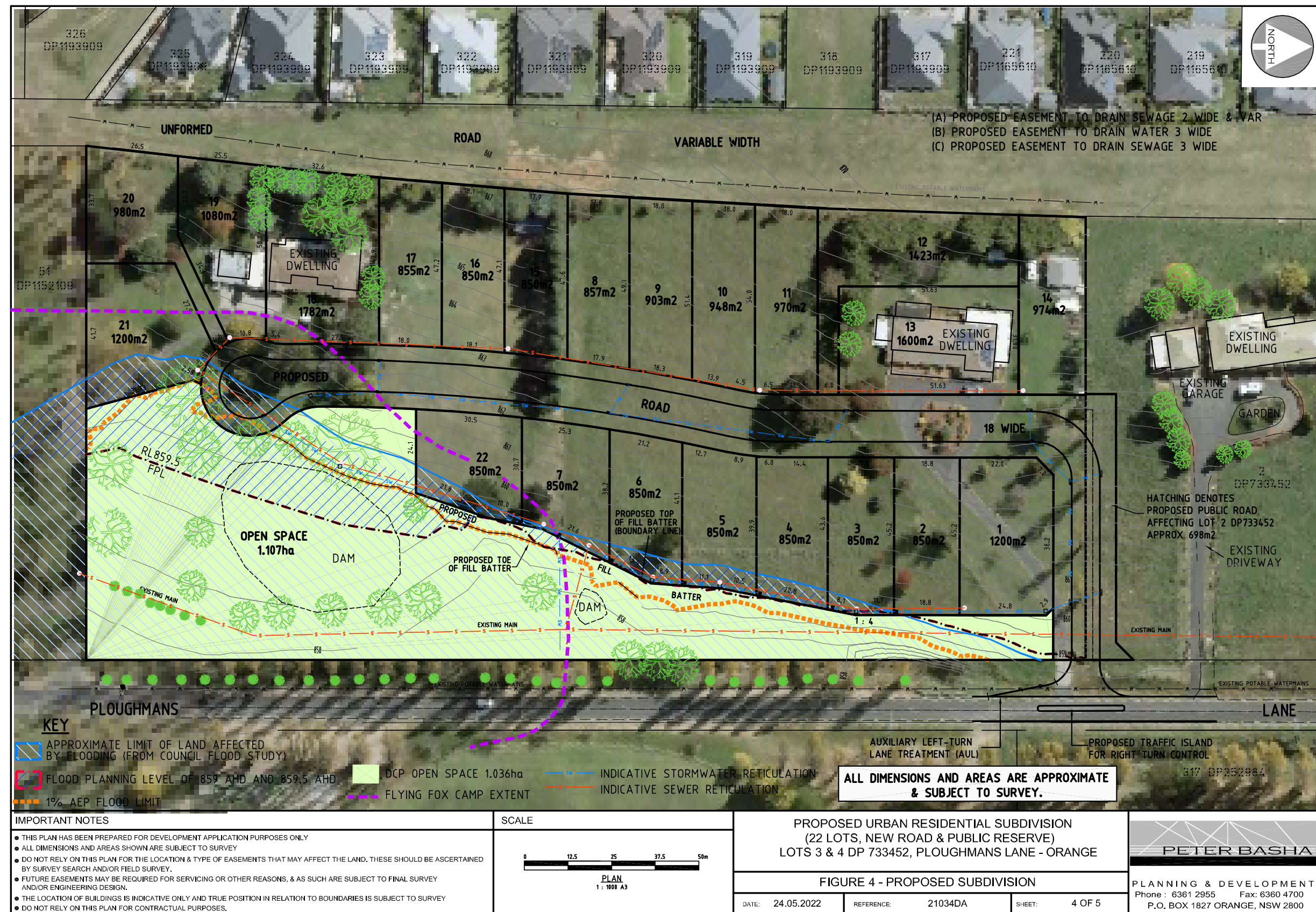




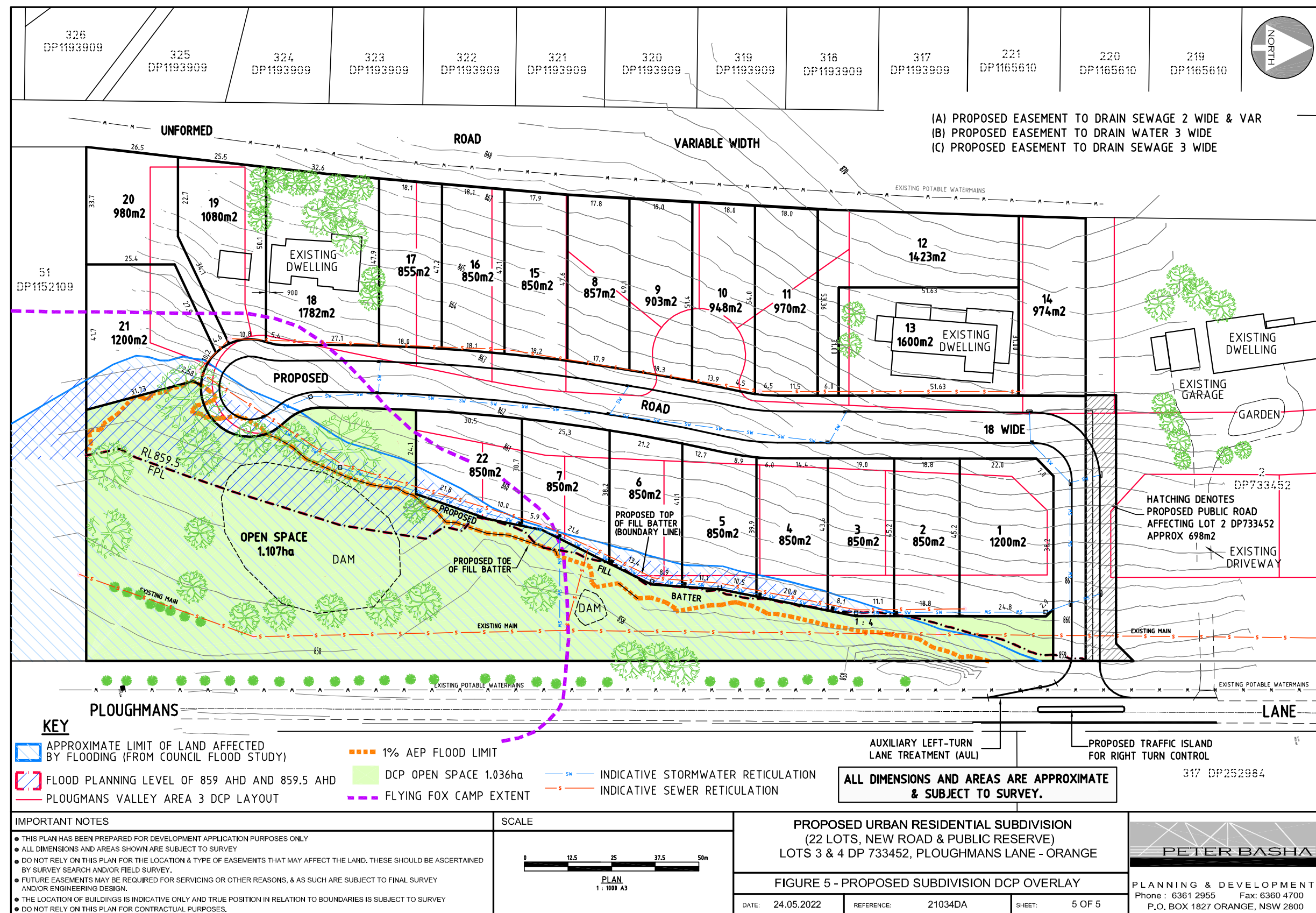














# **Submissions received during the first exhibition period**

Orange City Council

Submission 1

PO Box 35.

ORANGE. NSW.2800.

11/11/2021.

Attention: Summer Commins.

Dear Summer,

Submission: DA 406/2021(1) -293,267, and 297 Ploughman Lane, Orange.

- I would request the inclusion of a formal connecting/linking pathway (Westwards) from this proposed development on to, the dog, leash free zone, between Escort Way and Cargo Road.
- Council has lot 265 (51//1152109) as a registered "Green Zone" (which connects Ploughmans Lane on to the dog, leash free zone, between Escort Way and Cargo Road).
- I would request that lot 265 be attached, to the proposed public reserve as drawn on the proposed development.
- As Lot 265 has direct access to Ploughman's Lane it would enhance, and open up the entire West Orange /Poplars area to Westlea's pathways and Oval.
- There is an existing access pathway (alongside 38 Lombardy Way) on to the dog, leash free, area between Escort Way and Cargo Road.
- There is an opportunity with this new development, to enhance this area of West Orange, making it walker safe and friendly.

Yours sincerely

**ATTENTION: SUMMER COMMINS  
ORANGE CITY COUNCIL**

Submission 2

Orange NSW 2800

29<sup>th</sup> November 2021

**RE: DA 406/2021 (1)– 293, 267, 297 PLOUGHMANS LANE, ORANGE**

I submit the following comments in relation to the above development application.

- I object to the number of blocks this application proposes. I feel it is excessive.
- The blocks on the western side are very narrow, and therefore crowded. This is not in keeping with the general nature of housing in this area.
- I have strong reservations about the wisdom of landfill over existing waterways along Ploughmans Lane.
- Too many established trees are to be removed.

I hope this submission will be given due consideration. I would be happy to discuss my reservations.

Yours sincerely,

# **Submissions received during the third exhibition period**

## Submission 1

Orange NSW 2800  
27 June 2022.

**DA 406/2021(1) - 267, 293 and 297 Ploughmans Lane**

Mr David Waddell  
CEO  
Orange City Council (by email)

Dear Mr Waddell,

The \_\_\_\_\_ would like to make an objection to DA 406/2021(1) Proposed Urban Residential Subdivision (22 Lots, New Road and Public Reserve) Demolition and Tree Removal, 267, 293 and 297 Ploughmans Lane, Orange

Firstly, the \_\_\_\_\_ requests that Council assess this DA within the terms of the Plan of Management for the Ploughmans Valley, adopted by Council in 2006. This document requires, amongst other items, that the watercourse is managed to protect:

- 'the biodiversity and ecological values of the instream environment, particularly in relation to water quality and water flows, and
- 'the riparian environment, particularly in relation to riparian vegetation and habitats and bank stability.'

The \_\_\_\_\_ objection is mainly based on the statement on page 26 of the current DA 406/2021(1):

***'The subject land is not within a drinking water catchment or identified as an environmentally sensitive area.'***

**It is our firm belief that this statement is incorrect.**

The subject land and this reach of Ploughmans Creek is an integral part of the 'drinking water catchment' of Orange, and a vital part of the Ploughmans Creek Stormwater Harvesting Scheme supplying potable water to Orange residents.

Further downstream to the north, as a tributary of Molong Creek, Ploughmans Creek is also part of the drinking water catchment of Molong township.

The Ploughmans Creek Stormwater Harvesting Scheme starts upstream of the land subject to this DA. The upstream Ploughmans Creek catchment is mainly moderately sloping urbanised land, which in rainfall events produces significant stormwater runoff from the expanse of impervious hard surfaces.

The Cargo Road Wetland consists of a constructed wetland within a large area of swampy meadow below the urban area and south of Cargo Road. Here a significant area of reeds and three water basins (one much larger) are managed to:

- slow water runoff,
- substantially reduce downstream flood peaks and subsequent erosion,
- filter and remove suspended sediment from the inflows, improve water quality by filtering contaminants and reducing phosphorous and nitrogen in particular,
- provide an aquatic and riparian ecosystem which is favourable to a wide range of native vegetation, bird life and aquatic species,
- create a high quality amenity landscape which is enjoyed, extensively used and much appreciated by the local community.

Immediately downstream, water of much improved quality and minimal sediment levels is released at managed levels below Cargo Road into Ploughmans Creek. It continues through wide riparian ecosystem buffers and two more constructed wetlands, where stream flow and runoff is further slowed and improved, before being pumped and piped to holding ponds for processing to potable water for Orange City residents.

**The approval of this DA as submitted appears to be contrary to the:**

- objectives of the Ploughmans Creek Stormwater Harvesting Scheme, and
- the role of, and acceptance by the community of harvested stormwater for potable water to augment our water supplies.

**The                refers in particular to the:**

- lack of an appropriate land buffer between the proposed subdivision and
  - the partly treated water from the upstream Cargo Road wetlands
  - the riparian zone of Ploughmans Creek.
- introduction of 'contaminated tested soil' into the subdivision,
- removal of two mature native trees to form the subdivision road,
- removal of most of the exotic deciduous trees, a valued part of Orange's urban forest and the visual amenity of the Ploughmans Creek landscape.

**The lack of an appropriate buffer.**

The                notes the requirement in Clause 7.5 Riparian Lands and Waterways, page 27 of the Proposed Urban Development, DA 406/2021(1).

We also note, on page 36, Landscaping Buffer and Public Open Space, that the applicant requests a variation to the '20-metre wide landscaping buffer' that the DCP Conceptual Layout requires on the eastern side of the proposed subdivision with frontage to Ploughmans Lane.

We draw Council's attention to the fact that the riparian zone and waterway of Ploughmans Creek forms the eastern boundary of this subdivision, separating the subdivision from the verge of Ploughmans Lane.

**The 20-metre buffer referred to is essential to Ploughmans Creek itself.**

The            requests Council to note that a 20-metre or greater buffer already exists along Ploughmans Creek through public land downstream of this subdivision to the point where water is extracted and piped for processing to potable water.

**A similar 20 metre or greater buffer is required through this subdivision**, particularly because the applicant proposes to construct a 1:4 fill batter along the eastern boundary of the subdivision in order to reduce the potential impact of flooding. (1.6.1 Summary of Matters, page 27; 3.4 page 15; and 7.1 Earthworks, page 24, of the Proposed Urban Development, DA 406/2021(1).)

The potential for substantial sediment flow into Ploughmans Creek from expected subdivision earthworks and the construction of the 1:4 fill batter, is considerable, and must be avoided. Plans to restrict the entry of sediment and contaminants are not included in this DA.

Consideration should be given to the construction of a detention basin to receive stormwater from this subdivision before entering Ploughmans Creek.

The water in Ploughmans Creek at this stage has already undergone significant natural ecosystem treatment in the upstream Cargo Wetlands, and is of greatly improved quality. Any subdivision development that reduces its quality should not be supported.

The            recommends that a 20-metre buffer be retained between Ploughmans Creek and the entire eastern boundary of this subdivision, so that the proposed 1:4 fill batter is at least 20 metres from the waterway and its riparian zone, and that sediment and contaminant controls enforced are of the highest order to protect the quality of our drinking water.

This proposal would impact on the position and size of the current Lots 1 – 6.

However, such change is necessary to protect the ‘drinking water catchment’, and the riparian buffer values that this DA does not recognise nor take into account.

**Contamination tested soil.**

The Flora and Fauna Assessment Report for this proposed development, page 12, states ‘that large piles of contamination tested’ soil had been brought to site within the lot 293 Ploughmans Lane.’

No further information is provided in the Assessment Report or the DA itself.

It is vital that all soil used on this site, particularly in the construction of the 1:4 fill batter, is tested and is contaminant free. It is essential in order to maintain the quality of the water in this reach of Ploughmans Creek.

**The urban forest of Orange and Ploughmans Creek.**

The tree canopy of this subdivision is an important part of the urban forest of west Orange and the Ploughmans Creek Valley. Most, if not all, of the exotic deciduous trees and the non-endemic natives have been planted since these semi-rural lots were developed in the 1980s.

As such they are an established and well recognised part of the visual amenity and landscape of the area.

It is disappointing that the Flora and Fauna Assessment Report did not study and report on the variety and health of the exotic deciduous trees.

All trees have a vital role as part of the urban forest of Orange. Besides carbon sequestration, they provide shade, create air movement, ameliorate the urban heat island impact, and contribute to visual amenity. The                      recommends that in any re-assessment of this subdivision:

- the two Tasmanian Blue Gums to be removed to make way for the subdivision road should be retained and the position of the road changed.
- strong consideration be given to the retention of as many of the exotic deciduous trees as possible.

It is important for the future climate of Orange and the wellbeing of residents that as much of the existing urban forest canopy of our city is retained, and that generous offset planting of mature trees is undertaken to replace any trees removed.

The                      works with Orange City Council to maintain the Cargo Road Wetlands, in particular, to improve the quality of water entering Ploughmans Creek. Since the construction of the Cargo Road Wetlands,                      and community have combined to:

- protect the reed beds and the riparian ecosystem from damage by humans and domestic pets,
- planted (and continue to plant) large numbers of appropriate native trees and shrubs, and are soon to develop a native wildflower garden,
- work with Orange City Council to improve the visual amenity and attraction of the wetlands with paths, raised boardwalks, and seating.

**For these reasons, the                      feels well placed to request that Council carefully consider the concerns raised in this objection to DA 406/2021(1), for the future health of our drinking water catchment, its riparian zones, and the potable water that Ploughmans Creek provides for Orange.**

Yours sincerely,

Submission 2

Reference: Ploughmans Lane DA 27622

Cover Letter

Orange NSW 2800

David Waddell (CEO)  
Orange City Council  
[council@orange.nsw.gov.au](mailto:council@orange.nsw.gov.au)

RE: DA 406/2021(1) – 267,293 and 297 Ploughmans Lane Orange  
Proposed Urban Residential Subdivision – 22 Lots, new road and  
tree removal and public reserve

I would like to lodge an objection to the above DA in its current form.

I would suggest that Council hold further discussions with the developer – after the submission period - to achieve a better future outcome that would make Orange a more liveable city.

I would request an appointment to speak to the Town Planner, who is considering this DA.

Kind Regards

signed

27<sup>th</sup> June 2022

cc. Acting Development Services Director  
Mellissa Mccallum

David Waddell  
CEO  
Orange City Council  
[council@orange.nsw.gov.au](mailto:council@orange.nsw.gov.au)

RE: DA 406/2021(1) – 267,293 and 297 Ploughmans Lane Orange  
Proposed Urban Residential Subdivision – 22 Lots, new road and  
tree removal and public reserve

I would like to object to approval of the above DA as proposed.

I make the following points, in an effort to assist the developers and Council to arrive at a much improved proposal that considers many aspects of recent Strategies and Policies – like but not limited to Community Strategic Plan, Climate Change, Tree Preservation, Flood Risk Management and Orange as a water sensitive city. The developers could consider using the Draft NSW Design and Place SEPP for ideas to produce a subdivision to a standard that would satisfy the expected climate conditions in 50 years. This could be a useful marketing tool for the developers.

*1. Tree Removal*

The least number of trees (native and exotic) should be removed. Trees that are removed should be properly valued in monetary terms to ascertain their functional value to the environment and the (Melbourne City Council has a good template that could be used as a guide). This would give an indication of the need for and financial considerations of an offset.

The road layout of the development site may require a re-assessment to accommodate the retention of more trees.

*2. Sediment pollution during construction and long term*

During the construction phase, there should be no soil laden runoff allowed to enter Ploughmans Creek - as the creek is considered to be “bio-sensitive – possibly native fish breeding” just below the development site.

The proposed embankment could possibly be designed to act as a runoff- holding dam during construction. The earthworks for constructing the embankment should be one of the earliest earthworks to be carried out onsite. Council’s Technical Services should be consulted in order to develop the best method of proceeding with this embankment.

Future stormwater, from any hard surfaces, may be cleaned by using constructed wetlands in the future and possibly the use of residential raingardens.

*3. Riparian Zone*

The existing riparian zone – 20m on both sides of Ploughmans Creek- should be “retained, restored and enhanced”. This may be done with the establishment of the public open space.

This public open space should be open to the local neighbourhood and the general Orange community. It should not be closed off by residential construction backing onto the reserve – open akin to National Ave with houses fronting the road on the opposite side to the reserve.

I would support the construction of a road way immediately to the western edge of the open space reserve. This would require a revision to the subdivision roadway layout in order to achieve a better natural environmental outcome. It would allow for the planting of some larger native tree species in the reserve without impacting on the new homes in the area.

*4. Recycled water pipeline*

Council and the developers could possibly not include this recycled water feature in this subdivision, as the availability of treated water is not guaranteed (because of contractual arrangements). To overcome this, mandatory water storage tanks of a suitable size could be a condition of approval for houses within the subdivision.

The provision of rainwater tanks could save 50 to 70% of water use in households - if used for toilets, laundries and gardens. This would save the potable water production and lessening the need for another water storage dam for Orange – delaying infrastructure spend for Council.

*5. Climate Change and Green House Gases... move to a carbon neutral environment*

The provision of a natural gas pipeline should be revised as gas production creates greenhouse gases. Not including a gas pipeline in the subdivision would be a substantial cost saving for the developers.

Future homes should be all electric and possibly using solar generated electricity or a renewable source.

*6. Flood Risk*

I would express some concern at the possible increased flood risk in the local area, due to this development, particularly to the eastern side of Ploughmans Creek and roadway: increased runoff from the site, expected increased rain intensity and the cumulative streamflow from residential developments in the Ploughmans Creek upper catchment.

*7. A possible covenant (approval condition?) over the subdivision could state that new homes must be at least 6 star rated for energy efficiency.*

The approval of this subdivision should set the standard for future subdivisions in Orange.

Yours sincerely