



## **PLANNING AND DEVELOPMENT COMMITTEE**

# **AGENDA**

**6 SEPTEMBER 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, 6 September 2022.**

David Waddell

**CHIEF EXECUTIVE OFFICER**

For apologies please contact Administration on 6393 8106.

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## AGENDA

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## **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

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RECORD NUMBER: 2022/1482

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 “7.1. Engage with the community to develop plans for growth and development that value the local environment”.

#### FINANCIAL IMPLICATIONS

Nil

#### POLICY AND GOVERNANCE IMPLICATIONS

Nil

#### RECOMMENDATION

**That Council resolves 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.

**Reference:** DA 117/2020(3)

**Determination Date:** 28 July 2022

**PR Number** PR19435

**Applicant/s:** MLPL Investments Pty Ltd

**Owner/s:** MLPL Investments Pty Ltd

**Location:** Lot 106 DP 1067744 - 1 Ralston Drive, Orange

**Proposal:** Modification of development consent - self-storage units. The modified proposal involves minor reconfiguration to site layout and building design, including deletion of the office and reception; widening internal vehicle manoeuvring areas; providing three (3) additional storage units; and altering the sizes of units.

**Value:** \$0

2.1 Items Approved Under the Delegated Authority of Council

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**Reference:** DA 186/2020(2)      **Determination Date:** 25 August 2022  
**PR Number** PR25868  
**Applicant/s:** Mr A N Wannan  
**Owner/s:** Mr N J Wannan  
**Location:** Lot 35 DP 1179161 - 6 Eliza Place, Orange  
**Proposal:** Dwelling house, attached garage and rainwater tank  
**Value:** N/A

**Reference:** DA 201/2021(2)      **Determination Date:** 24 August 2022  
**PR Number** PR25872  
**Applicant/s:** The Trustee for Amica Property Trust  
**Owner/s:** Amica Property Group Pty Ltd  
**Location:** Lot 100 DP1178894 - 68-70 Peisley Street, Orange  
**Proposal:** Modification of development consent - office premises (four offices) and serviced apartments (22 apartments). The application sought to add a roof over the ramp that leads into the basement parking area due to concerns relating to access during a snow event. The application also sought consent to add two (2) 3m high boundary blade walls at the perimeter of the southern carparking spaces.  
**Value:** N/A

**Reference:** DA 492/2021(1)      **Determination Date:** 8 August 2022  
**PR Number** PR17765  
**Applicant/s:** Brownrite Building Group Pty Ltd  
**Owner/s:** Anson Street School  
**Location:** Lot 61 DP 635440 - 43-47 Lords Place, Orange  
**Proposal:** School (ancillary storage shed)  
**Value:** \$99,946

**Reference:** DA 517/2021(2)      **Determination Date:** 26 July 2022  
**PR Number** PR18874  
**Applicant/s:** Orange Local Aboriginal Land Council  
**Owner/s:** Orange Local Aboriginal Land Council  
**Location:** Lot 1 DP 1271135 - 120 Byng Street, Orange  
**Proposal:** Modification of development consent - mixed use development (office premises, community facility, takeaway food and drink premises) and additions and alterations. The modification application was made to correct a miscalculation of onsite car parking requirements. The applicant has requested Condition 23 be altered to reflect the proposed car parking being provided onsite.  
**Value:** N/A

2.1 Items Approved Under the Delegated Authority of Council

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**Reference:** DA 59/2022(2)                      **Determination Date:** 8 August 2022  
**PR Number** PR11496  
**Applicant/s:** IA and ER Maclean  
**Owner/s:** Mr IA and Mrs ER MacLean  
**Location:** Lot 570 DP 791244 - 169 Summer Street, Orange  
**Proposal:** Modification of development consent - commercial premises (additions and alterations to repair fire damage). The modification proposed to modify the consent by amending the floor plan on the approved plans. Specifically, it is sought to remove the internal walls between the stairs and staff room on the ground floor.  
**Value:** N/A

**Reference:** DA 75/2022(1)                      **Determination Date:** 8 August 2022  
**PR Number** PR28840  
**Applicant/s:** Divlist Pty Ltd and Mikell Investments Pty Ltd  
**Owner/s:** Mr DL and Mrs BL Kent  
**Location:** Lot 317 DP 1268612 - 11 Parklands Way, Orange  
**Proposal:** Dwelling, attached garage and retaining walls  
**Value:** \$716,820

**Reference:** DA 79/2022(1)                      **Determination Date:** 8 August 2022  
**PR Number** PR29156  
**Applicant/s:** Saunders & Staniforth  
**Owner/s:** Akura Properties Pty Ltd  
**Location:** Lot 2 DP 1279738, 6 McNeilly Avenue, Orange  
**Proposal:** Light industry (new industrial building)  
**Value:** \$1,770,000.00

**Reference:** DA 84/2022(2)                      **Determination Date:** 10 August 2022  
**PR Number** PR1215  
**Applicant/s:** Sandran Pty Limited  
**Owner/s:** Sandran Pty Limited  
**Location:** Lot 814 DP 813348 - 159-179 Kite Street, Orange  
**Proposal:** Modification of development consent - public administration building (internal alterations). The modified proposal sought to remove the external works component of the development. The applicant advised that the removal of this part of the development is sought as a future application is to be submitted to address overall external building works, landscaping, and external painting.  
**Value:** N/A

**Reference:** DA 89/2022(1)                      **Determination Date:** 26 July 2022  
**PR Number** PR28634  
**Applicant/s:** James Richmark Pty Ltd  
**Owner/s:** James Richmark Pty Ltd  
**Location:** Lot 4 DP 271257 - 1517-1539 Forest Road, Orange  
**Proposal:** Subdivision (five lot Community title)  
**Value:** N/A

2.1 Items Approved Under the Delegated Authority of Council

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**Reference:** DA 150/2022(1)      **Determination Date:** 8 August 2022  
**PR Number** PR28322  
**Applicant/s:** Mr JM McDonell  
**Owner/s:** Mr JM McDonell  
**Location:** Lot 401 DP 1250048 - 46 Stevenson Way, Orange  
**Proposal:** Demolition (shed, water tank, tree removal), subdivision (three lot residential) and carport  
**Value:** \$10,000

**Reference:** DA 164/2022(1)      **Determination Date:** 24 August 2022  
**PR Number** PR14941  
**Applicant/s:** Ms AL Bennett  
**Owner/s:** Ms AL Bennett  
**Location:** Lot D DP 38528 and Lot 4 DP23811  
3 Byng Street and 176 Woodward Street, Orange  
**Proposal:** Subdivision (two lot Torrens title)  
**Value:** N/A

**Reference:** DA 185/2022(1)      **Determination Date:** 10 August 2022  
**PR Number** PR6188  
**Applicant/s:** Mr J Barrington  
**Owner/s:** Mr JM and Mrs RA Barrington  
**Location:** Lot B DP 150727 - 15 Kite Street, Orange  
**Proposal:** Dwelling alterations and additions, and carport  
**Value:** \$450,000

**Reference:** DA 222/2022(1)      **Determination Date:** 28 July 2022  
**PR Number** PR17579  
**Applicant/s:** Hudsons Circus Pty Ltd  
**Owner/s:** Hudsons Circus Pty Ltd  
**Location:** Lots 14, 15, 16 and 17 Section 29 DP 5600 - Leeds Parade, Orange  
**Proposal:** Entertainment facility (circus)  
**Value:** N/A

<b>TOTAL NET* VALUE OF DEVELOPMENTS APPROVED BY THE CEO UNDER DELEGATED AUTHORITY IN THIS PERIOD:</b>	<b>\$3,046,766.00</b>
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*\* **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 August 2022 meeting report period (19 July to 23 August 2022), another 43 development applications were determined under delegated authority by other Council staff with a combined value of \$9,272,169.

**2.2 DEVELOPMENT APPLICATION DA 154/2022(1) - 61B MOULDER STREET**

RECORD NUMBER: 2022/1544

AUTHOR: Summer Commins, Senior Planner

**EXECUTIVE SUMMARY**

Application lodged	9 May 2022
Applicant/s	Source Architects
Owner/s	Mr DG and Mrs CG Isles
Land description	Lot 15 DP 1273424 - 61B Moulder Street, Orange
Proposed land use	Dwelling Alterations and Additions (two storey)
Value of proposed development	\$737,000

Council's consent is sought for proposed dwelling additions at 61B Moulder Street, Orange (see locality at Figure 1).



**Figure 1 - locality**

The proposal involves alterations and additions to the existing single-storey dwelling house to reconfigure spaces at ground level and provide a new upper-level addition. The completed dwelling will comprise three (3) bedrooms, two (2) bathrooms and attached double garage.

Notable planning matters considered in this assessment include:

- The proposed first floor addition will depart the prescribed visual bulk envelope plane prescribed in Orange Development Control Plan (DCP) 2004. The departure from the DCP will not result in unacceptable impacts for adjoining dwellings in relation to visual bulk, privacy or solar access. The proposal will accord with case law from the Land and Environment Court and the DCP Visual Bulk Planning Outcomes.
- The development site is contained in the Dalton Heritage Conservation Area and nearby to several heritage items. The proposal will satisfy assessment criteria contained in Council's Infill Guidelines and Community Based Heritage Study. Council's Heritage Advisor raised no objection to the proposal. It is considered that the proposed development will not adversely impact on conservation values.

- The application was Notified Development in accordance with Council's Community Participation Plan 2019. Three (3) public submissions were received. The issues raised in the submission relate to privacy, visual encroachment and impacts on the heritage setting.

It is assessed that the proposal will satisfy Local and State planning controls applicable to the subject land and residential landuse. Off-site arising impacts will be negligible and within acceptable limit for the residential setting. Mitigation conditions are included. Approval of the application is recommended.

### 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 proposal involves alterations and additions to the existing single-storey dwelling house to reconfigure spaces at ground level and provide a new upper-level addition. Council refused a DA in 2017 for similar works on this site. Since that time, a change in lot size has undertaken which has increased some of the separation to neighbours.

The works proposed by this application would result in a more appropriate dwelling design and layout. The current house has a limited design and the works proposed would improve this. Three (3) submissions were received from neighbours.

Heritage, privacy, view sharing, bulk and scale are the key planning matters for this application. In terms of heritage, advice from Council's Heritage Advisor was obtained. The advisor has no objection to the proposal. Assessment by staff equally conclude that the works would not adversely impact on either nearby heritage items, nor the HCA itself.

The proposed first floor does exceed the guidelines of the DCP, however, when assessed against the planning outcomes of the DCP and Land and Environment Case Law, it is concluded that qualitatively the exceedance does not result in adverse impacts on privacy, overshadowing, view loss nor does the proposed development adversely impact on the character of the area.

The architectural design of these additions has given appropriate consideration to the constraints of the existing site, history of the previous proposal, submissions from neighbours, the significance of the site's surrounds and Council's planning controls.

The result is a building that is assessed as appropriate for the site. Just because a building is visible from the neighbour, does not simply make it unacceptable. Consideration has to be given to what the tangible impacts of the proposal are. These issues have appropriately been assessed throughout this planning report. I agree with the staff assessment that concludes, the proposed development would not adversely impact on the surrounding environment and achieves compliance with Council's planning controls, particularly having regard to the Planning Outcomes of the DCP.

The recommendation that this Development Application be approved, subject to conditions is supported.

#### **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 154/2022(1) for *Dwelling Alterations and Additions (two storey)* at Lot 15 DP 1273424 - 61B Moulder Street, 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 / THE PROPOSAL**

The proposal involves alterations and additions to the existing dwelling house. Proposed works include:

- Internal reconfiguration of spaces at ground level. Accommodation at ground level will comprise master bedroom with ensuite and robe; open-plan living/dining/ kitchen area; lift and stair; and attached double garage (existing).
- Construction of a rear pergola adjacent to the proposed sitting room, and chimney.
- A first-floor addition containing two (2) bedrooms, one (1) bathroom, study, store and void space.

- General internal and external refurbishment. The completed dwelling will comprise three (3) bedrooms, two (2) bathrooms and attached double garage. External finishes will comprise rendered and painted walls, Colorbond roof, aluminium windows and timber awnings and pergola. Colours will be muted, natural tones.

Plans of the proposal are depicted below.



Figure 2 - proposed site plan

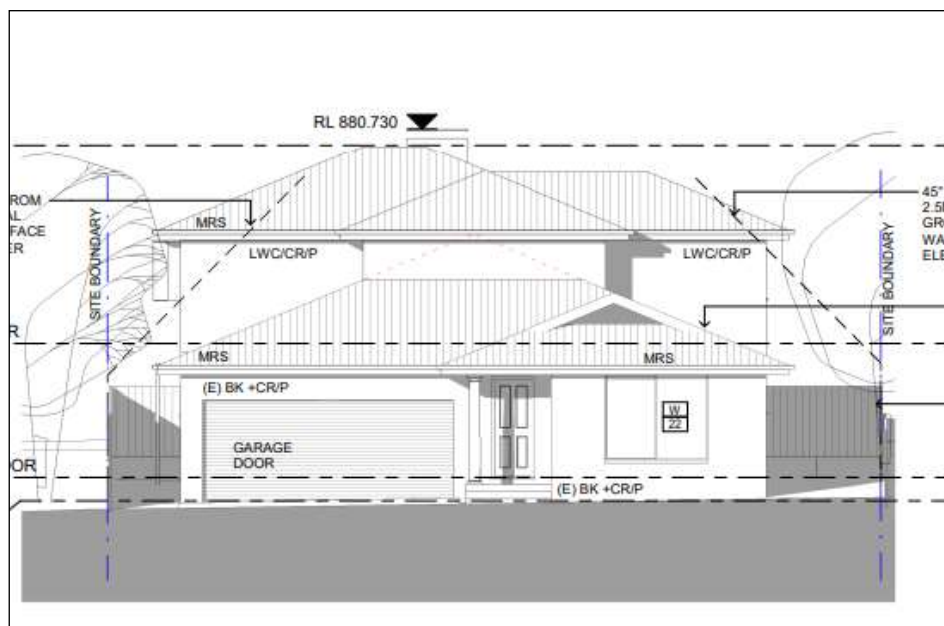


Figure 3 - proposed front (south) elevation



Figure 4 - photomontage of proposal from Moulder Street

## 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, the proposed development is not likely to significantly affect a threatened species:

- 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](#).
- The proposal does not involve removal of native vegetation. Clearing thresholds prescribed by regulation are not applicable.
- The site is contained within an established urban residential area and has been highly modified by the urban landuse pattern. The subject land does not contain known threatened species or ecological communities.

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

#### 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,*
- (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 application will be consistent with the above-listed Aims, as outlined in this report. Relevantly, the proposal will increase housing choices in a planned urban area, without adversely impacting on heritage values.

#### **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 R1 General Residential
Lot Size Map:	No Minimum Lot Size
Heritage Map:	Within the Dalton Heritage Conservation Area and nearby to heritage items
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:	Groundwater vulnerable
Drinking Water Catchment Map:	Not within the drinking water catchment
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:	Not within a flood planning area

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

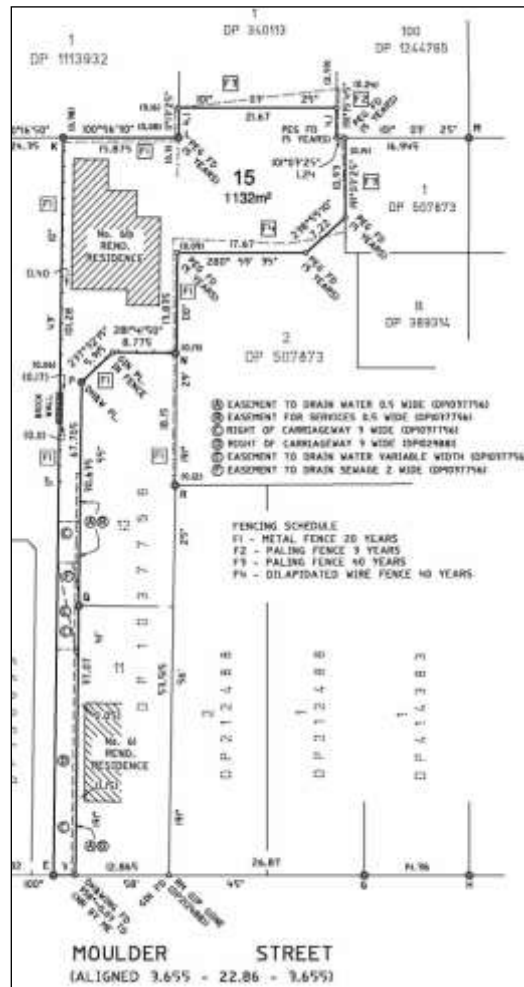
#### **Clause 1.9A Suspension of Covenants, Agreements and Instruments**

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

As a matter arising, the access handle via Moulder Street is subject to various easements pursuant to DP 1273424, including easements to drain water and sewer, easement for services, and rights of carriageway. The proposed development will have nil impact on the operation of the easements. An extract of the DP is shown here (see Figure 5).



**Figure 5 - extract DP 1273424**

## Part 2 - Permitted or Prohibited Development

## Clause 2.1 Land Use Zones

The subject land is zoned R1 General Residential.

The proposal is defined as a *dwelling house* (alterations and additions).

The proposal is permitted with consent in the R1 zone.

### Clause 2.3 Zone Objectives

The objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*

- 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 development will not be contrary to the relevant zone objectives.

### 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.*

Consent is sought for minor demolition work (internal walls, new openings) in accordance with this clause.

### Part 3 - Exempt and Complying Development

The application is not exempt or complying development.

### Part 4 - Principal Development Standards

The Part 4 Standards do not relate to the subject land or proposed development.

### Part 5 - Miscellaneous Provisions

#### Clause 5.10 Heritage Conservation

The subject land is located in the Dalton Heritage Conservation Area (HCA) and nearby to various heritage items (see Figure 6), including State-listed “Mena” at 50 Kite Street, and Local-listed “Dwelling - Cutler’s Cottage” at 52 Kite Street (see Figure 6).



Figure 6 - HCA (red hatching) and heritage items (tan shading)

Clause 5.10 is applicable and states in part:

*(4) Effect of Proposed Development on Heritage Significance*

*The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.*

In consideration of this clause, it is assessed that the proposed development will not have adverse impact on the significance of the conservation area or nearby heritage items:

- Council's Heritage Advisor(HA) raised no objection to the proposal in relation to scale, massing, colours or materiality.
- The proposed will satisfy the Assessment Criteria contained in Council's Infill Guidelines:

*Character:* The existing dwelling is a contemporary dwelling (circa 1990) and considered a neutral building in the heritage conservation area. The Moulder Street streetscape is residential in character and function, with a mix of contemporary infill dwellings and historic dwellings that date from key periods of development. The proposed development will not alter the existing landform; vegetation; street, building and lot patterns; the fabric of neighbouring listed buildings and their curtilage; the subject curtilage; or setbacks from the boundaries or the street.

*Scale:* The proposed two-storey addition will complement the adjoining two-storey dwelling at 59A Moulder Street to the west. The proposed upper level addition will not dominate the existing building based on recessed elevations and recessive colours.

*Form:* The proposed addition will complement the existing dwelling in roof pitch and profile, external colours and finishes, wall height, fenestration and window proportions.

*Siting:* The land is a battleaxe parcel and the proposal will not interrupt a streetscape building line. Existing boundary setbacks will not be altered. Sufficient separation will be provided between the proposed development and adjoining dwellings to prevent visual encroachment.

*Materials and colour:* External colours and materials will comprise muted natural tones. Recessive colours will not dominate in the heritage setting.

*Detailing:* The detailing to the proposed addition will complement the existing dwelling. Fenestration and chimney will relate to adjoining dwellings. Existing landscaping will be retained, and additional plantings provided.

- The subject dwelling is considered a 'neutral' building within the Conservation area, pursuant to Council's Community Based Heritage Study (2012). The Heritage Study contains the following development controls for neutral buildings:

**Controls**

- ☐ Individual buildings as 'neutral' are to be retained and enhanced unless it can be demonstrated that their removal will not compromise the significance of the area;
- ☐ Where retention is proposed the original form of the building is to be respected. Alterations and additions are not to dominate the original building form, but enhance it;
- ☐ Where demolition is proposed, justification for the removal of the building is to be demonstrated in accordance with standard submission requirements for Demolition.

The proposed development will satisfy the above controls. The existing building will be retained. The proposed addition will complement the existing dwelling in design, detailing and materiality. The first floor addition will take a smaller scale than the ground level footprint and be recessed from building lines. Colours will assist to reduce visual prominence. The proposed work will enhance the existing dwelling and complement the original built form.

Several 'heritage items' and 'contributory items' adjoin the development site. The building design, separation and landscaped setting in the intervening spaces will not alter the heritage values of the nearby items.

- The development site is a battleaxe parcel. The proposal will have nil impact on the streetscape view corridor or built form and will be imperceptible in the public domain.
- The proposal will not alter the existing landscape setting. Additional canopy plantings will reinforce the landscape setting.

The proposal was referred to Council's HA for consideration and comment. The HA considers that the proposed development will not have adverse impact on the significance of the heritage setting. The HA advises that *'the use of traditional details would assist to improve the fit in this setting and reduce the visual impact of windows.'* The following design amendments may be considered:

- Traditional double hung windows to the first floor.
- Window film to the lower sash of double hung windows on the first floor.
- Sun-shading awnings or extended eave to first floor windows.

The following comments are provided in relation to the suggested design amendments:

- The existing dwelling does not contain double hung windows. Consistency in openings at ground and first floors is considered an improved design outcome and will satisfy development controls for 'neutral' buildings in the conservation area (ie. to respect original details). The subject dwelling is a contemporary dwelling (circa 1990) with non-traditional design and detailing.
- The proposal will not result in overlooking. Privacy screens will be installed to first floor openings on the west elevation, to prevent overlooking of the opposing private open space and pool at adjoining 59A Moulder Street. It is noted that western openings will be associated with non-active living spaces.

Privacy screens will not be required to first floor openings on the east elevation. The proposal will be suitably separated from adjoining dwellings on Hill Street (a minimum distance of 42m); existing and proposed plantings in the intervening area will restrict views; and eastern first floor openings will be associated with non-active living spaces (stair and study).

- A compliant BASIX Certificate was submitted in support. Sun-shading devices will not be required to ensure compliance with thermal energy controls.

The HA suggested design amendments are included as Advisory Notes on the attached Notice.

Overall, it is considered that the proposal will have negligible impacts on the heritage values of the Conservation Area and nearby listed buildings.

### **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 7.3 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.*

In consideration of Clause 7.3, the proposal will not alter the existing stormwater drainage arrangements that service the subject land.

#### **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, there are no aspects of the proposal will not impact on groundwater and related ecosystems.

**STATE ENVIRONMENTAL PLANNING POLICIES****State Environmental Planning Policy (Resilience and Hazards) 2021**

In consideration of Section 4.6, the potential for contamination of the site is considered low. The subject and adjoining lands are well-established for residential use. The site is not located within an investigation area and is not known to have been used for a Table 1 purpose to the contaminated land planning guidelines. Further contamination investigation as a precursor to potential site remediation is considered unnecessary for ongoing residential landuse.

**State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The proposal comprises BASIX-affected development pursuant to Section 6. A compliant BASIX Certificate was submitted in support of the proposal (Basix Certificate No. A457339 dated 3 May 2022).

**State Environmental Planning Policy (Transport and Infrastructure) 2021**

An exposed overhead electricity power line is located at the site frontage in the Moulder Street road reserve. The proposed development will be removed from the overhead powerline by more than the prescribed distance (>5m). There will be no works within the footpath crossing and access driveway. Referral to Essential Energy was not required, pursuant to Section 2.48.

***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****DCP 2004-7 Development in Residential Areas**

The proposed development will reasonably satisfy the relevant planning outcomes in Part 7 as outlined in the following assessment.

**Neighbourhood Character**

<b>PO 7.7-1 PLANNING OUTCOMES - NEIGHBOURHOOD CHARACTER</b>	
<b>1</b>	Site layout and building design enables the: <ul style="list-style-type: none"> <li>- creation of attractive residential environments with clear character and identity;</li> <li>- use of site features such as views, aspect, existing vegetation and landmarks.</li> </ul>
<b>2</b>	Buildings are designed to complement the relevant features and built form that are identified as part of the desired neighbourhood character.
<b>3</b>	The streetscape is designed to encourage pedestrian access and use.

The existing dwelling is a contemporary dwelling (circa 1990) and considered a neutral building in the heritage conservation area. The Moulder Street streetscape is residential in character and function, with a mix of contemporary infill dwellings and historic dwellings that date from key periods of development.

The proposed development will not alter the existing landform; vegetation; street, building and lot patterns; the fabric of neighbouring listed buildings and their curtilage; the subject curtilage; or setbacks from the boundaries or the street.

The development site is a battleaxe parcel. The proposed works will have nil impact on the streetscape view corridor or built form and will be imperceptible in the public domain. The proposal does not involve vegetation removal, and new canopy trees will be planted. The existing landscape setting will be retained and reinforced.

The proposed alterations and additions will complement the existing contemporary dwelling in terms of design and detailing. Similarly, the design of the extended dwelling will not be averse to adjoining contemporary and neutral buildings at 59 and 61 Moulder Street. Contemporary infill on battleaxe parcels is a feature of this neighbourhood (see multi dwelling housing circa 2010 at nearby 51 Moulder Street). The existing dwelling and proposed upgrading will complement this pattern.

Two-storey massing will not be incongruous in this setting, noting the two-storey dwellings on the adjoining land at 59A Moulder Street and 48 Kite Street (see Figure 7).

The proposal will maintain pedestrian access at the site frontage.



Figure 7 - two-storey dwellings on adjoining land at 59A Moulder Street (l) and 48 Kite Street (r)

### Building Appearance

PO 7.7-2 PLANNING OUTCOMES – BUILDING APPEARANCE	
1	The building design, detailing and finishes relate to the desired neighbourhood character, complement the residential scale of the area and add visual interest to the street.
2	The frontage of buildings and their entries address the street.
3	Garages and car parks are sited and designed so that they do not dominate the street frontage.

As considered above, the proposed development will be imperceptible at the Moulder Street site frontage. However, the proposal is considered suitable in relation to scale, massing, colours and materiality. The existing attached double garage does not have a streetscape presence.

## Setbacks

<b>PO 7.7-4 PLANNING OUTCOMES – SETBACKS</b>	
1	Street setbacks contribute to the desired neighbourhood character, assist with integration of new development and make efficient use of the site.
2	Street setbacks create an appropriate scale for the street considering all other streetscape components.

Development on the battleaxe parcel will have nil impact on street setbacks. Similarly, the existing setbacks to other boundaries for the existing dwelling will not be altered.

## Fences and Walls

<b>PO 7.7-5 PLANNING OUTCOMES – FENCES AND WALLS</b>	
1	<p>Front fences and walls:</p> <ul style="list-style-type: none"> <li>- assist in highlighting entrances and creating a sense of identity within the streetscape.</li> <li>- are constructed of materials compatible with associated housing and with fences visible from the site that positively contribute to the streetscape</li> <li>- provide for facilities in the street frontage area such as mail boxes.</li> </ul>

The proposal does not involve a front fence to Moulder Street.

## Energy Efficiency

Council's *Energy Smart Homes Code* is deemed to form part of this DCP. The *Energy Smart Homes Code* endeavours to optimise naturally comfortable housing with reduced energy consumption. This approach maximises environmental benefits and minimises energy costs for residents.

A compliant BASIX certificates was submitted in support of the proposal. The proposed dwelling alterations will satisfy Council's Energy Smart Homes Code.

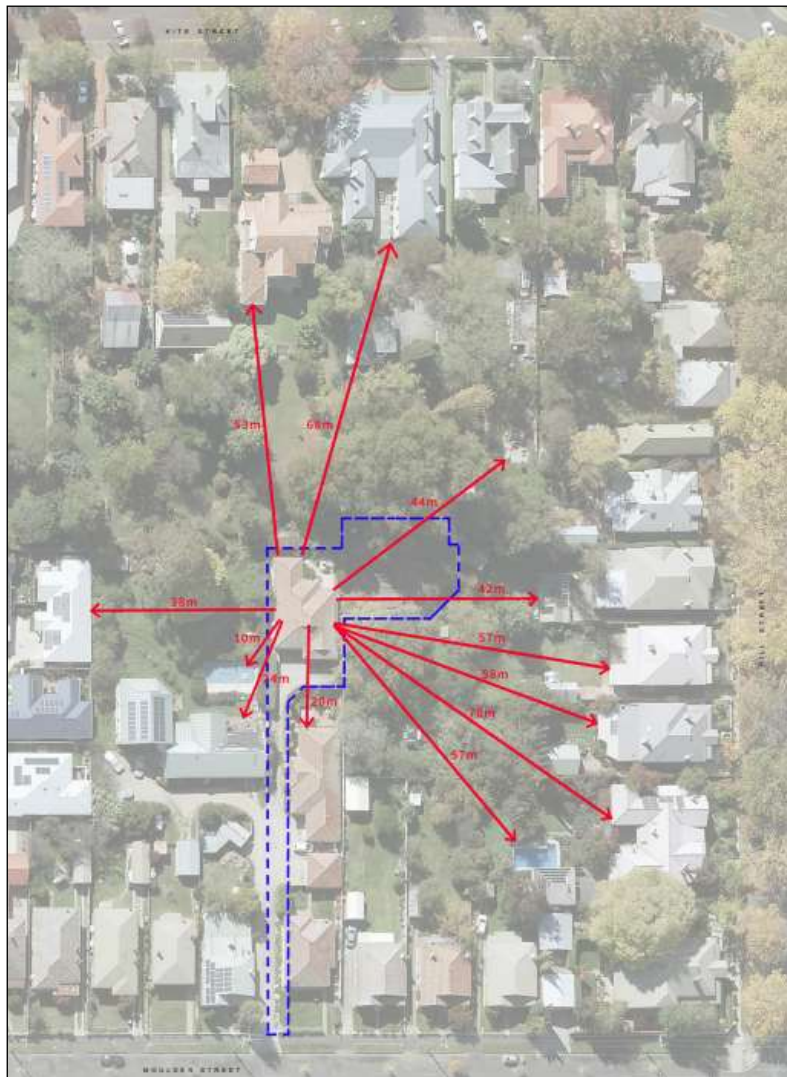
## Visual Bulk

<b>PO 7.7-6 PLANNING OUTCOMES – VISUAL BULK</b>	
1	<p>Built form accords with the desired neighbourhood character of the area with:</p> <ul style="list-style-type: none"> <li>- side and rear setbacks progressively increased to reduce bulk and overshadowing;</li> <li>- site coverage that retains the relatively low-density, landscaped character of residential areas;</li> <li>- building form and siting that relates to land form, with minimal land shaping (cut and fill);</li> <li>- building height at the street frontage that maintains a comparable scale with the predominant adjacent development form;</li> <li>- building to the boundary where appropriate.</li> </ul>

The proposed development will have acceptable visual bulk within the site and setting as considered below:

- The proposal involves a two-storey addition. Two-storey massing will not be incongruous in this setting, nothing the two-storey dwellings on the adjoining parcels at 48 Kite Street and 59A Moulder Street (refer Figure 7 above).
- The proposed building design will assist to minimise visual bulk. The first floor addition will utilise the existing roof form to recess the upper level. The first floor will be setback behind the front and part-side building lines of the existing dwelling. A dark recessive roof colour and neutral wall colour will reduce visual prominence.

- Existing mature plantings on the development site and adjoining lands will provide screening and softening of the proposed built form. Additional canopy trees will be planted on the eastern boundary. The existing landscape character will be retained and reinforced.
- Proposed site coverage will be 19.9% (based on building footprint of 185m<sup>2</sup> and site area excluding the access handle of 929m<sup>2</sup>). Site coverage will be well-below the maximum permitted coverage of 60%.
- Site topography is level, with nil earthworks required. Existing finished ground levels will not be altered.
- The proposal will not alter existing setbacks from site boundaries.
- The proposed alterations and additions will not result in offsite visual bulk encroachment impacts. The proposed works will not directly oppose another dwelling or associated principal open space on adjoining lands (see Figure 8). The nearest opposing dwellings at 35 Hill Street and 59A Moulder Street will be sited 42m and 24m respectively from the proposed works. The separation is generous in an urban residential neighbourhood (see Figure 9).

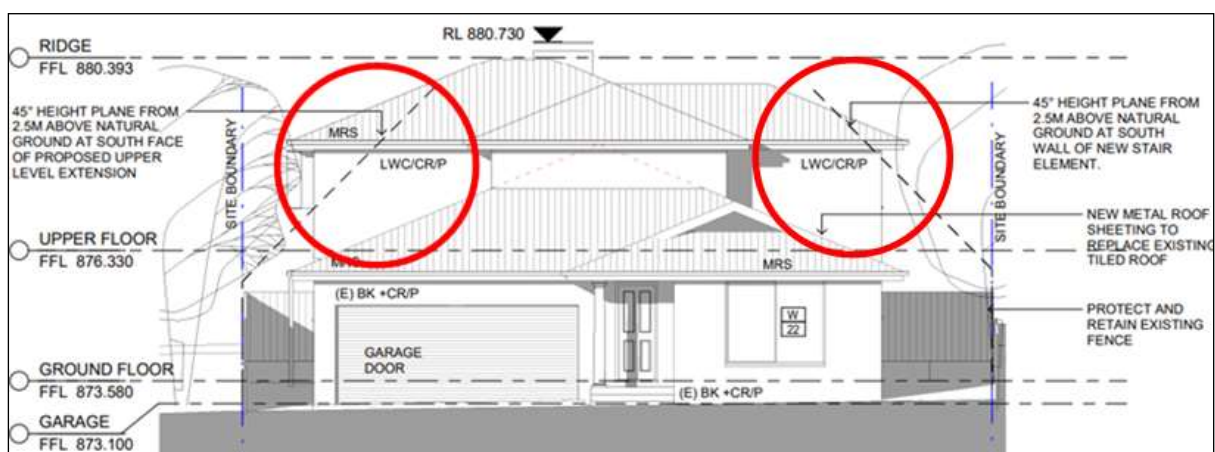


**Figure 8 - separation between the development and adjoining dwellings**



**Figure 9 - separation to the opposing dwelling at 35 Hill Street from east façade**

- The proposed two-storey addition will encroach the prescribed visual bulk envelope plane when projected from the western and eastern side boundaries (see Figure 10). The encroachment on the western elevation will take a height 1.4-1.6m for a distance of 11.5m; and on the eastern elevation, a height of 1.6m for a distance of 2.35m.



**Figure 10 - VBE encroachments**

The NSW Land and Environment Court decision of *Veloshin v Randwick Council* [2007] NSWLEC 428 sets out planning principles for height and bulk which can be applied to this development.

In that decision, Senior Commissioner Dr John Roseth states *“the appropriateness of a proposal’s height and bulk is most usefully assessed against planning controls related to these attributes, such as maximum height, floor space ratio, site coverage and setbacks. The questions to be asked [where planning controls apply] are:*

- *are the impacts consistent with impacts that may be reasonably expected under the controls?*
- *how does the proposal’s height and bulk relate to the height and bulk desired under the relevant controls?*
- *does the area have a predominant existing character and are the planning controls likely to maintain it?*
- *does the proposal fit into the existing character of the area?”*

With reference to the above questions, visual bulk impacts will not be unreasonable despite the encroachment as follows:

- The encroachment on the eastern elevation is minor, with the eastern open space area on the subject land providing a generous separation between the development and adjoining dwellings on Hill Street.
- There will be generous separation between the proposal and adjoining dwellings as depicted in Figure 8 above. The encroaching upper level boundary walls will not directly oppose a dwelling or associated principal open space on adjoining lands. The western parcel at 59A Moulder Street will be most impacted by the VBE encroachment, however, the encroaching addition will oppose mature trees on the adjoining land.
- The proposal will not adversely impact on solar access to adjoining dwellings or associated principal open space areas. Sunlight will be maintained for adjoining dwellings in accordance with the DCP Guidelines (as outlined in the following sections of this report).
- The proposal will not result in overlooking, as variously considered in this report.
- The upper level building design, utilising the existing roof structure, recessed elevations and recessive colours will assist to minimise visual bulk.
- Two-storey dwelling are considered generally suitable in the conservation area, and indeed several are located in the vicinity.

In the circumstances, the bulk and scale of the proposal are considered acceptable in the context of case law and the DCP Visual Bulk Planning Outcomes. Offsite arising impacts associated with the VBE encroachment will be negligible.

### Walls and Boundaries

PO 7.7-7 PLANNING OUTCOMES - WALLS AND BOUNDARIES	
1	<p>Building to the boundary is undertaken to provide for efficient use of the site taking, into account:</p> <ul style="list-style-type: none"> <li>- the privacy of neighbouring dwellings and private open space;</li> <li>- the access to daylight reaching adjoining properties;</li> <li>- the impact of boundary walls on neighbours.</li> </ul>

The proposal does not involve building to any boundary. As outlined in this report, the site layout and building design will not adversely impact on adjoining dwellings in respect of privacy, solar access or visual bulk.

### Daylight and Sunlight

<b>PO 7.7-8 PLANNING OUTCOMES - DAYLIGHT AND SUNLIGHT</b>	
<b>1</b>	Buildings are sited and designed to ensure: <ul style="list-style-type: none"> <li>- daylight to habitable rooms in adjacent dwellings is not significantly reduced;</li> <li>- overshadowing of neighbouring secluded open spaces or main living-area windows is not significantly increased;</li> <li>- consideration of Council's Energy Efficiency Code.</li> </ul>

Shadow diagrams were submitted in support of the proposal. The diagrams demonstrate that internal and external solar access will be provided to the extended dwelling and dwellings on adjoining lands in accordance with the DCP Guidelines.

The submitted shadow diagrams show the first floor addition will overshadow 59A Moulder Street between 9am and 10.30am; and 29 Hill Street from 3pm. Shadows will not impact the dwellings' openings or principal open spaces. Solar access will be maintained in accordance with the DCP controls.

### Views

<b>PO 7.7-9 PLANNING OUTCOMES - VIEWS</b>	
<b>1</b>	Building form and design allow for residents from adjacent properties to share prominent views where possible.
<b>2</b>	Views including vistas of heritage items or landmarks, are not substantially affected by the bulk and scale of new development.

The Moulder Street view corridor will not be altered by the proposed development on a battleaxe lot.

Intermittent views of the dwelling will be available across the rear yards of adjoining parcels. The design and detailing of the proposed additions will complement the existing dwelling and will relate to the mixed architectural forms in the residential setting. Two-storey built form will not be incongruous, noting two-storey improvements on adjoining lands. The built form will not protrude above the dominant tree canopy on the development site and adjoining parcels. Residential alterations and additions are an expected visual element in a residential neighbourhood.

The proposed works will be suitable removed from adjoining heritage items so to not impact on view corridors of the items.

### Visual Privacy

<b>PO 7.7-10 PLANNING OUTCOMES – VISUAL PRIVACY</b>	
<b>1</b>	Direct overlooking of principal living areas and private open spaces of other dwellings is minimised firstly by: <ul style="list-style-type: none"> <li>- building siting and layout;</li> <li>- location of windows and balconies;</li> </ul> and secondly by: <ul style="list-style-type: none"> <li>- design of windows or use of screening devices and landscaping.</li> </ul>

The proposed site layout and building design will provide acceptable visual privacy for the subject and adjoining dwellings.

Privacy will be achieved within the development as follows:

- Ground level living room openings will be directed to the rear private open space area.
- Living room openings will not directly oppose principal habitable spaces on adjoining parcels.
- The private open space area is enclosed by fencing.

Privacy for dwellings on adjoining parcels will be maintained as follows:

- Existing perimeter fencing will be retained.
- First floor openings in the proposed addition on the western elevation will have fixed privacy screens installed.
- First floor openings in the proposed addition on the eastern elevation will be non-active spaces, and well-removed from adjoining dwellings and associated open spaces. It is noted that the DCP requires window screening or similar where the separation is 9m or less. A minimum 42m will be provided to the nearest eastern dwelling at 35 Hill Street (see Figure 8 above) and some 25m to the eastern boundary.
- The proposal does not involve new openings on the front (south) façade of the extended dwelling. The existing interface between the proposed development and adjoining 61A Moulder Street will not be altered.
- The proposal will not alter existing arrangements relating to opposing private open spaces.

#### Acoustic Privacy

PO 7.7-11 PLANNING OUTCOMES - ACOUSTIC PRIVACY	
1	Site layout and building design: <ul style="list-style-type: none"> <li>- protect habitable rooms from excessively high levels of external noise;</li> <li>- minimise the entry of external noise to private open space for dwellings close to major noise sources;</li> <li>- minimise transmission of sound through a building to affect other dwellings.</li> </ul>

The subject land is contained in a residential area, where ambient noise levels are low. The proposal will not alter the existing acoustic environment for the subject and adjoining dwellings.

#### Security

PO 7.7-12 PLANNING OUTCOMES – SECURITY	
1	The site layout enhances personal safety and minimises the potential for crime, vandalism and fear.
2	The design of dwellings enables residents to survey streets, communal areas and approaches to dwelling entrances.

The proposal is considered acceptable in regard to safety and security as follows:

- Openings in the dwelling will provide for surveillance of Moulder Street, the driveway and rear yard.
- The landscape design will not restrict sight lines.

- The dwelling will have internal access via the garage.
- Side boundary fencing will be maintained.

### Circulation Design

<b>PO 7.7-14 PLANNING OUTCOMES – CIRCULATION DESIGN</b>	
1	Accessways and parking areas are designed to manage stormwater.
2	Accessways, driveways and open parking areas are suitably landscaped to enhance amenity while providing security and accessibility to residents and visitors.
3	The site layout allows people with a disability to travel to and within the site between car parks, buildings and communal open space.

Existing site access and manoeuvring arrangements will not be altered. The proposal will not generate additional traffic volumes above the existing situation.

### Car Parking

<b>PO 7.7-15 PLANNING OUTCOMES - CAR PARKING</b>	
1	Parking facilities are provided, designed and located to: <ul style="list-style-type: none"> <li>- enable the efficient and convenient use of car spaces and accessways within the site;</li> <li>- reduce the visual dominance of car-parking areas and accessways.</li> </ul>
2	Car parking is provided with regard to the: <ul style="list-style-type: none"> <li>- number and size of proposed dwellings;</li> <li>- requirements of people with limited mobility or disabilities.</li> </ul>

Pursuant to DCP 2004, onsite parking is required for 3+ bedroom dwellings at a rate of 1.5 spaces per dwelling. An attached double garage (existing) will be provided for the extended dwelling in compliance with the DCP.

### Private Open Space

<b>PO 7.7-16 PLANNING OUTCOMES – PRIVATE OPEN SPACE</b>	
1	Private open space is clearly defined for private use.
2	Private open space areas are of a size, shape and slope to suit the reasonable requirements of residents, including some outdoor recreational needs and service functions.
3	Private open space is: <ul style="list-style-type: none"> <li>- capable of being an extension of the dwelling for outdoor living, entertainment and recreation;</li> <li>- accessible from a living area of the dwelling;</li> <li>- located to take advantage of outlooks and to reduce adverse impacts of overshadowing or privacy from adjoining buildings;</li> <li>- orientated to optimise year-round use.</li> </ul>

Private open space for the proposed extended dwelling will comply with the DCP Guidelines in relation to minimum area, dimension, orientation, solar access and connectivity.

### Open Space and Landscaping

<b>PO 7.7-17 PLANNING OUTCOMES – OPEN SPACE AND LANDSCAPING</b>	
1	The site layout provides open space and landscaped areas which : <ul style="list-style-type: none"> <li>- contribute to the character of the development by providing buildings in a landscaped setting;</li> <li>- provide for a range of uses and activities including stormwater management;</li> <li>- allow cost-effective management.</li> </ul>
2	The landscape design specifies landscape themes consistent with the desired neighbourhood character and vegetation types and location, paving and lighting are provided for access and security.
3	Major existing trees are retained and protected in a viable condition whenever practicable through appropriate siting of buildings, accessways and parking areas.
4	Paving is applied sparingly and integrated in the landscape design.

Existing site landscaping will be retained. The drawings indicate new canopy trees to be planted along the common boundary with 35 Hill Street and 29 Hill Street (see Figure 11). Additional canopy trees will reinforce the landscape setting and assist to provide integration of the built form. A Condition is included requiring planting prior to Occupation Certificate.

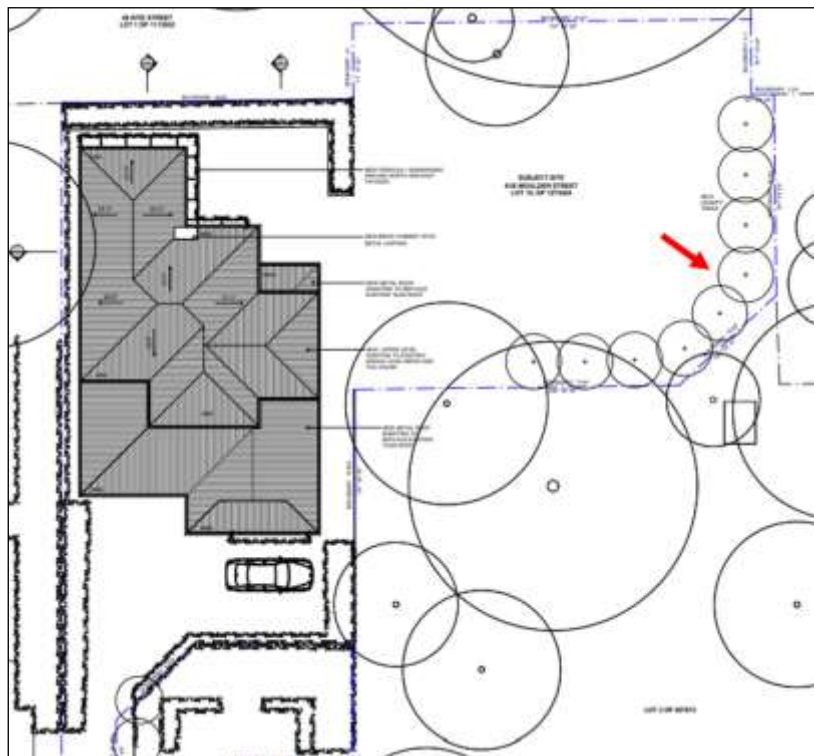


Figure 11 - new canopy trees on east boundary (denoted to arrow)

### Stormwater

<b>PO 7.7-18 PLANNING OUTCOMES - STORMWATER</b>	
1	On-site drainage systems are designed to consider: <ul style="list-style-type: none"> <li>- downstream capacity and the need for on-site stormwater retention, detention and re-use;</li> <li>- scope for on-site infiltration of water;</li> <li>- safety and convenience of pedestrians and vehicles;</li> <li>- overland-flow paths.</li> </ul>
2	Provision is made for on-site drainage which does not cause damage or nuisance flows to adjoining properties.

Existing arrangements for stormwater drainage will be maintained. The proposal does not involve additional roof area or hard landscaping.

### **Erosion and Sedimentation**

<b>PO 7.7-19 PLANNING OUTCOMES - EROSION AND SEDIMENT CONTROL</b>	
1	Measures implemented during construction to ensure that the landform is stabilised and erosion is controlled.

Conditional sediment and erosion controls will be installed and maintained during construction works.

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

The proposal will not be inconsistent with any matter prescribed by Regulation.

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

The impacts of the proposed development have been considered in the foregoing sections of this report and include:

- Setting, context and neighbourhood character.
- Conservation values.
- Visual impacts (streetscape presentation, building design and detailing, bulk and scale, visual bulk, landscaping).
- Traffic matters (site access, car parking and manoeuvring, traffic generation).
- Residential amenity (onsite and on adjoining lands, solar access, acoustic and visual privacy, outdoor spaces, visual bulk).
- Crime prevention.
- Environmental impacts (biodiversity, groundwater, stormwater management, sediment control).

The impacts of the development are considered to be within reasonable limit. Conditions are included on the attached Notice of approval to mitigate and managing arising impacts.

### ***The Suitability Of The Site S4.15(1)(C)***

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

- The proposal is permitted on the subject land.
- Utility services are available and adequate.
- The land has suitable access to Moulder Street.
- The local road network is of sufficient capacity.
- The land is not subject to known technological or natural hazards.
- The site has no particular environmental values.
- The nearby conservation setting will not affect the proposed development.

***Any Submissions Made In Accordance With The Act S4.15(1)(D)***

The proposal is a notified development pursuant to Council's Community Participation Plan 2019. At the completion of the notification period, three (3) submissions had been received in relation to the application. The issues raised in the submissions are considered below.

**The proposed development is the same as DA 4/2016(1) which was refused by Council**

Comment: The site is the subject of a former development application for proposed dwelling alterations and additions. That proposal was recommended for approval by Council's Senior Planner. The recommendation was overturned by the Planning and Development Committee in May 2017. Reasons for refusal related to adverse impacts on heritage value, neighbourhood character and residential amenity.

It is noted that the subject land has recently been consolidated with an adjoining land portion to the east. DA 4/2016(1) related to the former smaller parcel, known as Lot 13 DP 1037756, as depicted below (see Figure 12). See Figure 11 above to see new allotment boundaries.

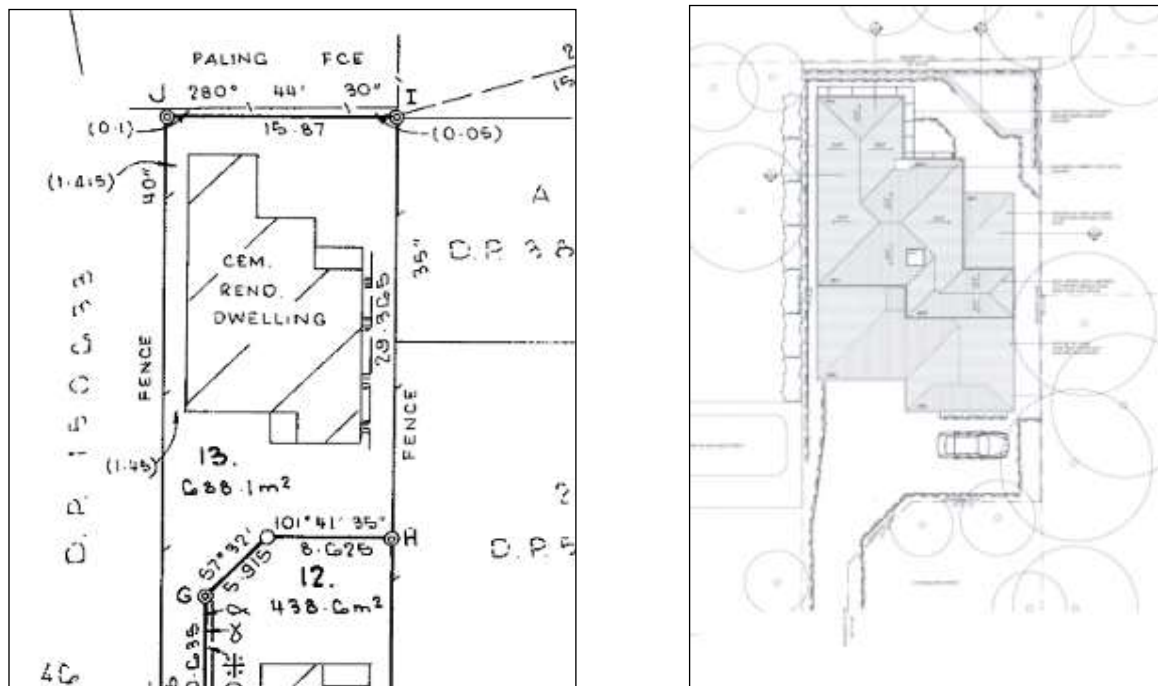


Figure 12 - DA 4/2016(1) on former Lot 13 DP 1037756

**The proposal will have adverse impact on the heritage conservation area and adjoining heritage items**

Comment: As outlined in this report, it is assessed that the proposed development will not adversely impact on the heritage values of the setting.

**The proposal will have unacceptable privacy impacts; privacy impacts have not been addressed**

Comment: As outlined in this report, the proposed development will not result in unreasonable overlooking of adjoining lands. The development will satisfy or exceed the Privacy Planning Outcomes and Guidelines contained in DCP 2004.

**Bulk and scale will not comply with planning controls**

Comment: As noted in this report, the proposed development will partly encroach within the prescribed visual bulk envelope plane when projected from the side (east and west) boundaries. The DCP departure will not result in unreasonable impacts for adjoining dwellings associated with visual bulk, solar access or privacy. Compliance with the DCP Visual Bulk Planning Outcome will be achieved.

**This DA is a “deceitful resubmission of DA 4/2016(1)”**

Comment: The development application is not in contravention of State or Local legislation.

**The second storey addition will result in overlooking and overshadowing**

Comment: As outlined in this report, overlooking and overshadowing will be within reasonable limit, and comply with the development controls contained in DCP 2004.

**Existing deciduous vegetation will not provide screening of the proposed development**

Comment: Existing landscaping and new canopy trees on the development site will provide intermittent screening of the proposed development. Residential built form is an expected visual element in a residential area. Views of the proposal from adjoining lands are not unreasonable. Design, detailing and massing will be suitable in this setting.

**The addition of a second level is “unprecedented in this block”**

Comment: The adjoining dwelling at 59A Moulder Street is a partly two-storey dwelling. The DCP prescribes that *in areas of predominately single-storey houses, buildings within 15m of the street frontage, are or appear as single storey*. The Moulder Street built form is comprised of single storey dwellings. The subject dwelling is setback 80m from Moulder Street on a battleaxe parcel.

**The proposal does not involve additional accommodation; the dwelling will remain a three (3) bedroom dwelling**

Comment: Noted. The proposed alterations and additions will improve amenity and functionality for the existing dwelling.

**There will be unsuitable separation between the proposed development and gardens/open space at 35 Hill Street, resulting in privacy loss**

Comment: the proposed addition will be sited some 25m from the east boundary, being the common boundary with 35 Hill Street. This is a generous separation in a residential neighbourhood. Privacy impacts to the east will be negligible, as outlined in this report. New canopy planting on the common boundary will assist to provide a physical barrier between opposing properties.

The development will block the “long-enjoyed natural visual corridor” to the west from 35 Hill Street (see Figure 13).



**Figure 13 - view of the proposal from rear 35 Hill Street**

Comment: The precinct is not a public open space area. Residential built form is an expected visual element in a residential neighbourhood. Residential alterations and additions are a typical and complementary development form for residential land. Design, detailing and massing will be suitable in this setting. Existing landscaping and new canopy trees on the development site will provide intermittent screening of the proposed development from adjoining rear yards. Views of the proposal from adjoining lands will not be unreasonable.

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


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

**SUMMARY**

The proposed development is permitted with consent. The development will contribute to the diversity of housing forms in the precinct in a manner that is consistent with the neighbourhood character and heritage setting. The proposal will provide and maintain a high standard of residential amenity for the proposed extended dwelling and those on adjoining lands. Offsite arising impacts will be within reasonable limit. Approval of the application is recommended.

**ATTACHMENTS**

- 1 Notice of Approval, D22/52844 [↗](#)
- 2 Plans, D22/47140 [↗](#)
- 3 Submissions, D22/47252 [↗](#)

	<b>ORANGE CITY COUNCIL</b>  Development Application No <b>DA 154/2022(1)</b>  NA22/566 <span style="float: right;">Container PR29020</span>
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## NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

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

### Development Application

Applicant Name: Source Architects  
Applicant Address: PO Box 144  
ORANGE NSW 2800  
Owner's Name: Mr DG and Mrs CG Isles  
Land to Be Developed: Lot 15 DP 1273424 - 61B Moulder Street, Orange  
Proposed Development: Dwelling Alterations and Additions (two storey)

### Building Code of Australia building classification:

To be determined by Certifier

### Determination made under Section 4.16

Made On: 6 September 2022  
Determination: **CONSENT GRANTED SUBJECT TO CONDITIONS DESCRIBED BELOW:**

**Consent to Operate From:** 7 September 2022  
**Consent to Lapse On:** 7 September 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 ensure the utility services are available to the site and adequate for the development.
- (5) 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 Source Architects, Project No. 22090, Drawings Nos. DA00 - DA09 Rev A dated 29.04.22 (9 sheets)**  
**Basix Certificate No. A457339**
    - (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 154/2022(1)**

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**Conditions (cont)**

<b>PRESCRIBED CONDITIONS</b>
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- (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.

- (4) In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of the Act, evidence that such a contract of insurance is in force is to be provided to the Principal Certifying Authority before any building work authorised to be carried out by the consent commences.
- (5) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- (a) in the case of work for which a principal contractor is required to be appointed:
    - (i) the name and the licence number of the principal contractor, and
    - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
  - (b) in the case of work to be done by an owner-builder:
    - (i) the name of the owner-builder, and
    - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information under this condition becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

- (6) Where any excavation work on the site extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (a) protect and support the adjoining premises from possible damage from the excavation, and
  - (b) where necessary, underpin the adjoining premises to prevent any such damage.

Note: This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to this condition not applying.

<b>PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE</b>
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- (7) An approval under Section 68 of the *Local Government Act* is to be sought from Orange City Council, as the Water and Sewer Authority, for alterations to water and sewer. No plumbing and drainage is to commence until approval is granted.
- (8) A Road Opening Permit in accordance with Section 138 of the *Roads Act 1993* must be approved by Council prior to **a Construction Certificate being issued or any intrusive works** being carried out within the public road or footpath reserve.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 154/2022(1)**

---

3

**Conditions (cont)****PRIOR TO WORKS COMMENCING**

- (9) A temporary onsite toilet is to be provided and must remain throughout the project or until an alternative facility meeting Council's requirements is available onsite.
- (10) The location and depth of the sewer junction/connection to Council's sewerage system is to be determined to ensure that adequate fall to the sewer is available.
- (11) Soil erosion control measures shall be implemented on the site.
- (12) A Construction Certificate application is required to be submitted to, and issued by Council/Accredited Certifier prior to any excavation or building works being carried out onsite.

**DURING CONSTRUCTION/SITEWORKS**

- (13) 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.
- (14) A Registered Surveyor's certificate identifying the location of the building on the site must be submitted to the Principal Certifying Authority.
- (15) All construction works are to be strictly in accordance with the Reduced Levels (RLs) as shown on the approved plans.
- (16) All materials on site 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.
- (17) 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.
- (18) No portion of the building - including footings, eaves, overhang and service pipes - shall encroach into any easement.
- (19) All services (water, sewer and stormwater) shall be laid outside the easement unless there is a direct connection to the main within that easement.
- (20) All stormwater is to be disposed of in a manner suitable to the site.

**PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

- (21) No person is to use or occupy the building or alteration that is the subject of this approval without the prior issuing of an Occupation Certificate.
- (22) Finished ground levels are to be graded away from the buildings and adjoining properties and must achieve natural drainage. The concentrated flows are to be dispersed down slope or collected and discharged to the stormwater drainage system.
- (23) Where Orange City Council is not the Principal Certifying Authority, a final inspection of water connection, sewer and stormwater drainage shall be undertaken by Orange City Council and a Final Notice of Inspection issued, prior to the issue of either an interim or a final Occupation Certificate.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 154/2022(1)**

---

4

**Conditions (cont)****Prior to the issue of an occupation certificate (cont)**

- (24) The cut and fill is to be retained and/or adequately battered and stabilised (within the allotment) prior to the issue of an Occupation Certificate.
- (25) A Road Opening Permit Certificate of Compliance is to be issued for the works by Council prior to any Occupation/Final Certificate being issued for the development.
- (26) Canopy trees shall be planted on the eastern side boundary in accordance with the approved plans, prior to issue of an Occupation Certificate.

**ADVISORY NOTES**

- (27) Council's Heritage Advisor has suggested the following design amendments:
- Traditional double hung windows to the first floor.
  - Window film to the lower sash of double hung windows on the first floor.
  - Sun-shading awnings or extended eave to first floor windows.

---

**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.

Nil

---

**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.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 154/2022(1)**

5

**Signed:** \_\_\_\_\_ On behalf of the consent authority **ORANGE CITY COUNCIL**

**Signature:**

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

**Date:** \_\_\_\_\_ 7 September 2022

DEVELOPMENT APPLICATION

ALTERATIONS AND ADDITIONS

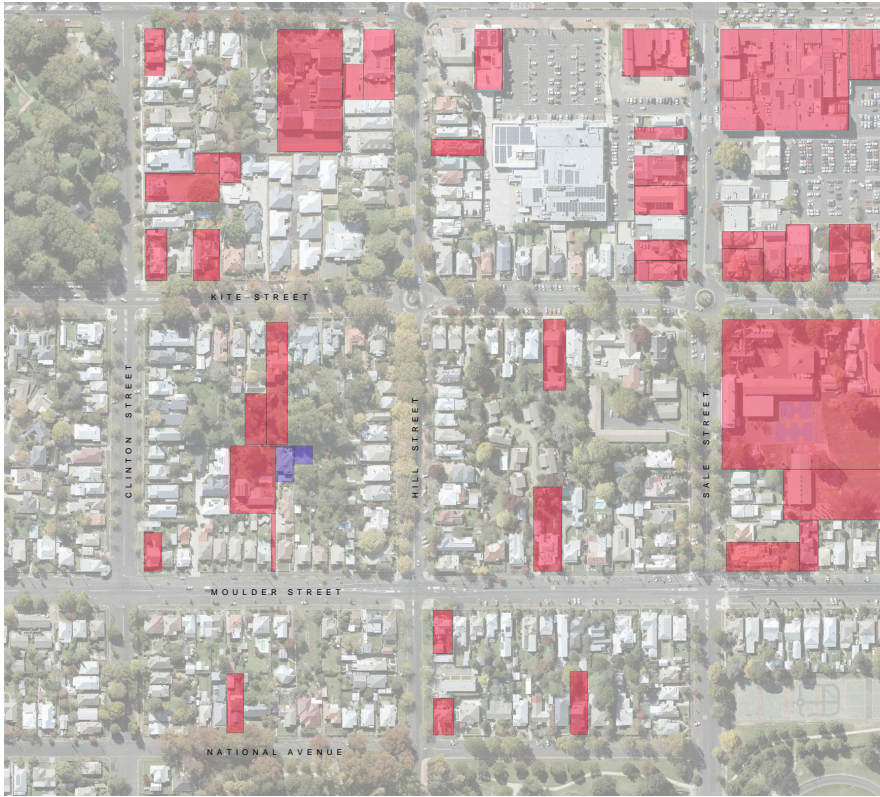
ISLES HOUSE

61B MOLDER STREET, ORANGE, NSW

DRAWING SCHEDULE

DRAWING NO.	DRAWING NAME	REV
DA00	COVER	A
DA01	SITE / LOCALITY ANALYSIS	A
DA02	SITE PLAN	A
DA03	ROOF PLAN	A
DA04	GROUND FLOOR PLAN	A
DA05	FIRST FLOOR PLAN	A
DA06	ELEVATIONS	A
DA07	SECTIONS	A
DA08	SHADOW DIAGRAMS	A
DA09	PHOTOMONTAGES	A

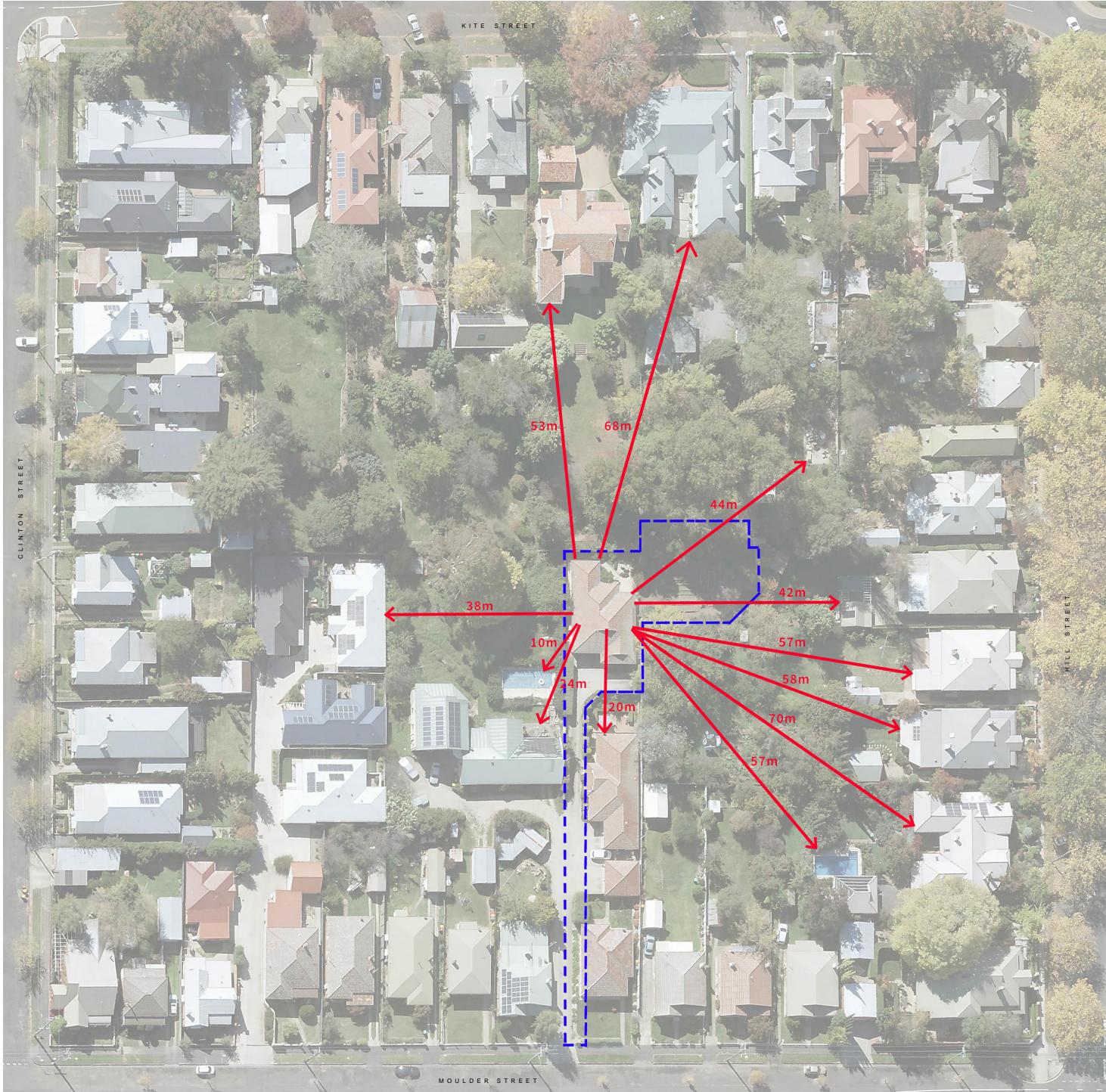




TWO LEVEL STRUCTURES NEAR SUBJECT SITE    (NOT TO SCALE)



LOCAL HERITAGE LISTED STRUCTURES NEAR SUBJECT SITE    (NOT TO SCALE)



DISTANCE TO NEIGHBOURING BUILDINGS FROM PROPOSED ADDITION    (NOT TO SCALE)  
(DISTANCES ARE SHOWN IN METERS)




REV	DATE	DESCRIPTION
A	29.04.22	Issue for DA

Architect

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ABN 75 162 290 066

Project Name	Project No.	
ISLES HOUSE	22090	
DEVELOPMENT APPLICATION	61B MOLDER STREET, ORANGE, NSW	
FOR Catherine and Dudley Isles		
No.	Drawing Title	Scale
DA01	SITE / LOCALITY ANALYSIS	@A1

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1 SITE PLAN  
1:500



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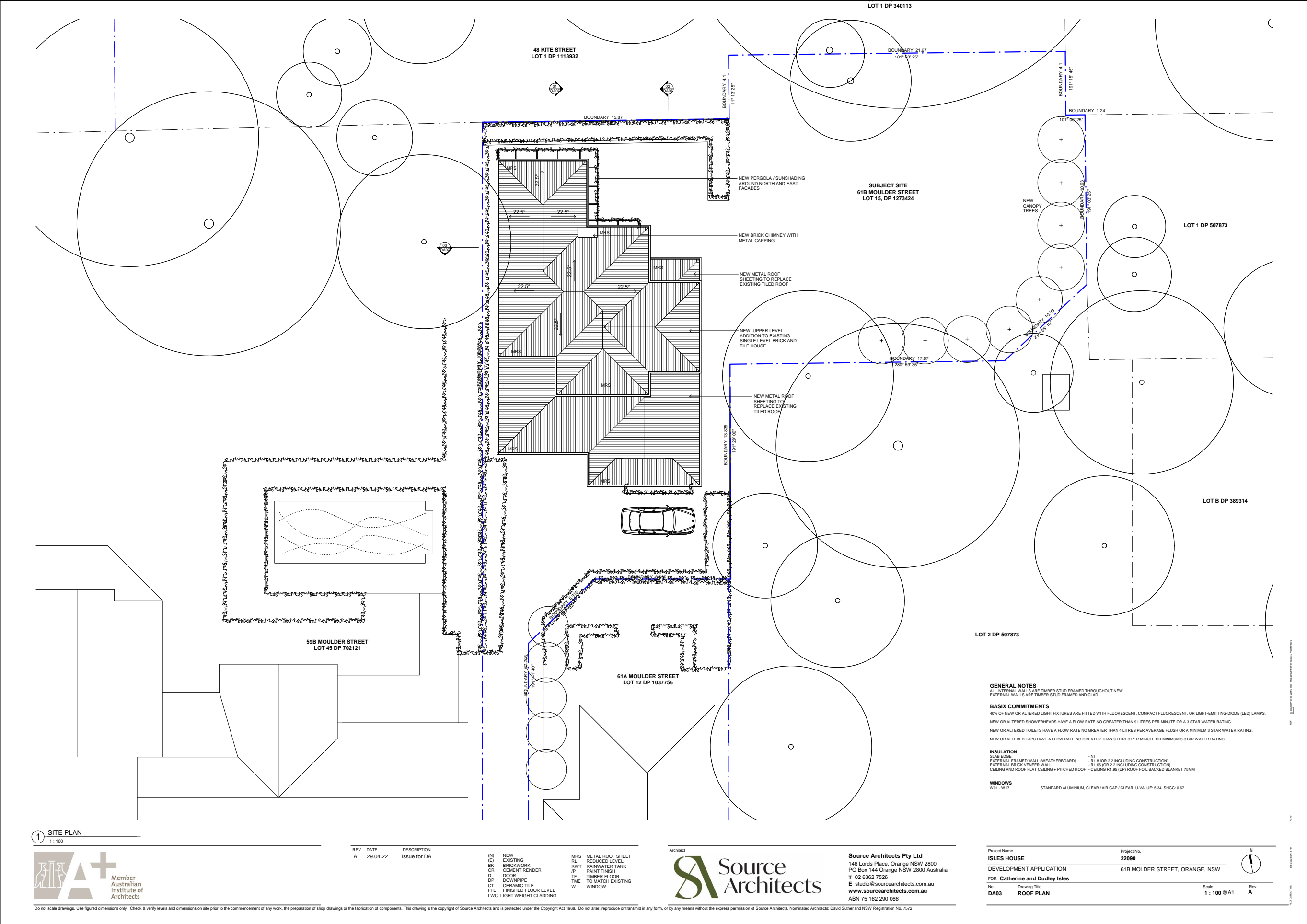
REV	DATE	DESCRIPTION
A	29.04.22	Issue for DA



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Project Name	Project No.
ISLES HOUSE	22090
DEVELOPMENT APPLICATION	61B MOLDER STREET, ORANGE, NSW
FOR Catherine and Dudley Isles	
No.	Drawing Title
DA002	SITE PLAN
	Scale
	1 : 50





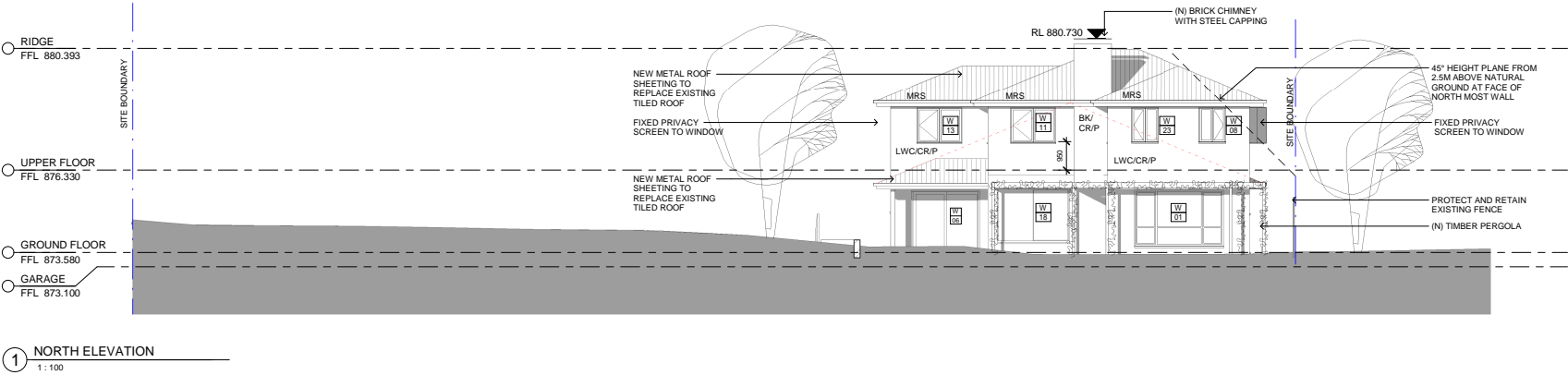




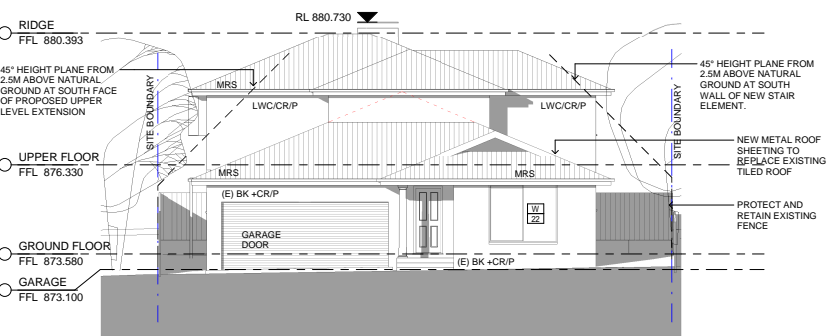




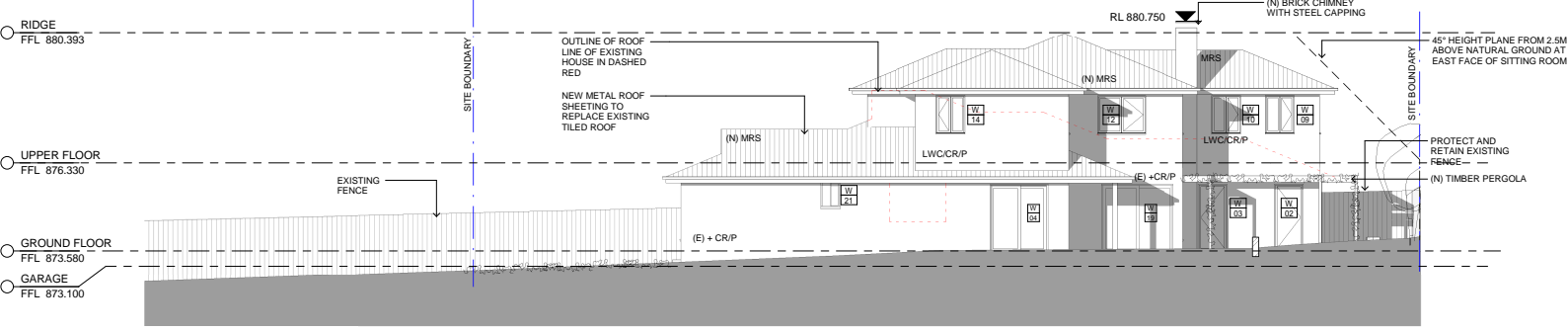




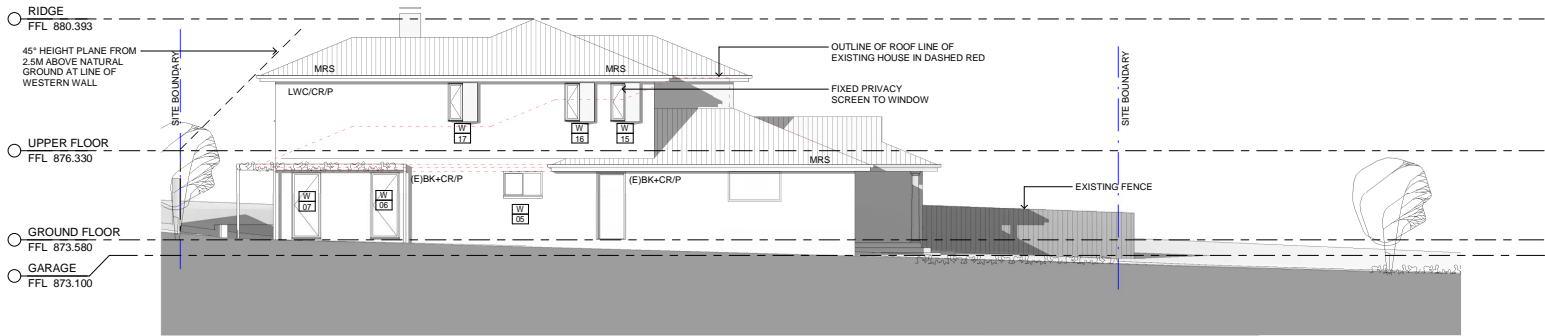
1 NORTH ELEVATION  
1:100



2 SOUTH ELEVATION  
1:100



3 EAST ELEVATION  
1:100



4 WEST ELEVATION  
1:100



BRICK VENEER WALL  
EXISTING WALL  
NEW LIGHTWEIGHT WALL  
DEMOLISHED

REV DATE DESCRIPTION  
A 29.04.22 Issue for DA

(N) NEW  
(E) EXISTING  
BK BRICKWORK  
CR CEMENT RENDER  
D DOOR  
DP DOWNPIPE  
CT CERAMIC TILE  
FLL FINISHED FLOOR LEVEL  
LWC LIGHT WEIGHT CLADDING

MRS METAL ROOF SHEET  
RL REDUCED LEVEL  
RWT RAINWATER TANK  
P PAINT FINISH  
TF TIMBER FLOOR  
TME TIME TO MATCH EXISTING  
W WINDOW

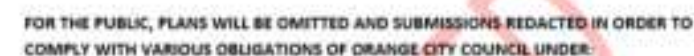


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Project Name  
ISLES HOUSE  
DEVELOPMENT APPLICATION  
FOR Catherine and Dudley Isles  
Project No.  
22090  
61B MOLDER STREET, ORANGE, NSW  
Scale  
1:100 @ A1  
Rev  
A

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DEMONSTRATE A DIRECT POTENTIAL EFFECT UPON THEM BY BEING WITHIN THE SPHERE  
OF INFLUENCE OF THE RESIDENTIAL COMPONENTS OF A DEVELOPMENT OR IF THE HOME  
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**A+** Member Audit in full compliance of

Legend:  
Solid black line: NEW COMPLIANT WALL  
Dashed line: EXISTING WALL  
Dotted line: NEW LIGHTWEIGHT WALL  
Thin solid line: DEMO-WALL

NO.	DATE	DESCRIPTION	DEBIT	CREDIT	BALANCE
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2	2014.01.05	Income		1000000	2000000
3	2014.01.10	Expense	1000000		1000000
4	2014.01.15	Income		1000000	2000000
5	2014.01.20	Expense	1000000		1000000
6	2014.01.25	Income		1000000	2000000
7	2014.02.01	Expense	1000000		1000000
8	2014.02.05	Income		1000000	2000000
9	2014.02.10	Expense	1000000		1000000
10	2014.02.15	Income		1000000	2000000
11	2014.02.20	Expense	1000000		1000000
12	2014.02.25	Income		1000000	2000000
13	2014.03.01	Expense	1000000		1000000
14	2014.03.05	Income		1000000	2000000
15	2014.03.10	Expense	1000000		1000000
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17	2014.03.20	Expense	1000000		1000000
18	2014.03.25	Income		1000000	2000000
19	2014.04.01	Expense	1000000		1000000
20	2014.04.05	Income		1000000	2000000
21	2014.04.10	Expense	1000000		1000000
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23	2014.04.20	Expense	1000000		1000000
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28	2014.05.15	Income		1000000	2000000
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96	2015.04.25	Income		1000000	2000000
97	2015.05.01	Expense	1000000		1000000
98	2015.05.05	Income		1000000	2000000
99	2015.05.10	Expense	1000000		1000000
100	2015.05.15	Income		1000000	2000000



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[www.brownarchitects.com.au](http://www.brownarchitects.com.au)  
0800 75 163 260 560

Project Name <b>WILCO HOUSE</b>	Project No. <b>22290</b>	
DEVELOPMENT APPLICATION <b>FOR: Carports and Outlay lots</b>		
Site: <b>616 MOLISEN STREET, ORANGE, NSW</b>		
Site: <b>Section 101</b>	Scale: <b>1 : 100 (A1)</b>	Sheet: <b>A</b>





REV	DATE	DESCRIPTION
A	29.04.22	Issue for DA

Architect

**SA** Source Architects

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ABN 75 162 290 066

Project Name		Project No.
<b>ISLES HOUSE</b>		<b>22090</b>
DEVELOPMENT APPLICATION		61B MOLDER STREET, ORANGE, NSW
FOR <b>Catherine and Dudley Isles</b>		
No.	Drawing Title	Scale
<b>DA08</b>	<b>SHADOW DIAGRAMS</b>	<b>1 : 250 @</b>





Existing View from Moulder Street (Photo by Source Architects)



Photomontage of proposed from Moulder Street (Photo by Source Architects, Montage by Source Architects)



Existing View from backyard of 35 Hill Street (Photo by owner of 35 Hill Street submitted to Council as part of previous application)



Photomontage of proposed from the backyard of 35 Hill Street (Photo by owner of 35 Hill Street submitted to Council as part of previous application, Montage by Source Architects)



**Submission 1**

General Manager  
Orange City Council  
Byng St  
Orange NSW 2800

30<sup>th</sup> May 2022

Re: Reference DA 154/2022(1)- PR29020 for 61B Moulder St

Dear Sir or Madam,

I wish to register my protest for the development application DA 154/2022(1) for 61B Moulder St for the following reasons. This DA has all the same features of the hotly debated and lost DA 4/2016(1) in 2017 which the owner lost and OCC refused his DA. I refer to the letter of refusal from Mark Hodges dated 3<sup>rd</sup> of May 2017 sent from Orange city Council reference: D2228974

- a) This proposal does not satisfy the aims and objective of Orange LEP 2011
- b) The proposal adversely affects the overall heritage value and appeal of the locality
- c) The proposal will compromise the long term integrity of Orange's central heritage precinct
- d) The proposal will have seriously adverse effects on visual amenity and heritage considerations
- e) The proposal fails to address bulk , scale or visual interests

- 1) However, I wish to object on defacing the beauty and heritage value of the central part of Orange, particularly as it can be seen from such heritage listed home like Mena on Kite street.
- 2) The proposal does not address privacy issues with this second storey looking into and multiple other backyards. I can understand if a two storey dwelling went up on the street scape of Moulder street but not at the northern rear of 61 Moulder with the house looking into all surrounding backyards
- 3) Bulk and Scale is in excess of that allowable for the size if the land

This is a deceitful resubmission of the 2017 DA which was thoroughly scutinised and lost in the democratic process of Orange City Council. I object to this DA 154/2022(1)

Yours Sincerely,

**Submission 2**

31 May 2022

Summer Commins  
Orange City Council

**Re: DA 154/2022(1) - PR29020**

I oppose the proposed development DA 154/2022(1) at 61B Moulder St, Orange Lot 15 DP 1273424.

This proposal is very similar, if not the same as the development proposal in 2017 which was rejected by council. I opposed the development proposal in 2017 and I continue to oppose the development for the following reasons;

- 1 This is a second story addition to home on an infill site on a small block and this will impact the privacy of which my family and I use for recreation purposes.
- 2 The addition of a second story will add shadow to .
- 3 Although it is noted that there is vegetation to screen the second story, this is deciduous vegetation which does not give any screening in winter and furthermore, due to the small size of the block , all screening would need to be on , using valuable space resources of my own and not shared by the owner of 61B Moulder St.
- 4 The addition of a second level is unprecedented in this block and granting permission for it would provide opportunities for other owners to add a second level, which will diminish the charm of this inner city area, well known for its heritage values.
- 5 The overall heritage value in the area and the unique neighbourhood will be undermined by the proposed development.
- 6 Despite adding another level to this dwelling, there will be no additional accommodation provided as it is currently a 3 bedroom house and after the addition will remain a 3 bedroom house, so no more people will be accommodated.

7  
Please accept my rejection of this development,

Kind Regards

**Submission 3****DA 154/2022(1) - PR29020****Our Submission****INTRODUCTION**

We wish to register and have recorded our protest against this repeated proposed development at 61B Moulder Street. The impact on our property, defined as a Heritage Area 'integral component' and 'contributory item', will be as great, or greater than, on any other in this Dalton Central Heritage Conservation Area (HCA). We submit that the planned changes should be rejected because they:

1. Contradict Council's previous decision of 2017 against this development and
2. Ignore established and accepted requirements to protect the amenity of neighbouring properties with particular regard to visual bulk, privacy and views.

**POINTS OF PROTEST: DISCUSSION****Council's decision in 2017 was against this same proposal**

That 2017 legal and binding decision is being undermined by the proponents of this DA with innuendo and false suggestions that there was widespread unpleasantness in the proceedings with the word *adversarial* being used by them more than once. As spectators and participants in the proceedings of that year, we refute this blanket judgement and assert that, even though deeply felt objection was the aim, almost without exception all arguments were presented objectively. The only obvious 'adversarial' attitude in 2022 is in this DA itself. For all the affected neighbours today, the same facts presented then are still true. Why then is this adversarial proposal being repeated?

**Failure of proposal to protect the amenity of neighbouring properties**

'Visual bulk', 'loss of privacy' and 'loss of views' are unarguable adverse impacts on the amenity of our property.

**Visual Bulk**

61B Moulder Street is defined as a 'neutral' Heritage Area item and 'the original form of neutral buildings is to be respected with ALTERATIONS AND ADDITIONS NOT TO DOMINATE THE ORIGINAL BUILDING FORM. (OCC Community Based Heritage Study of March 2012)

This proposal itself admits that the existing building on 61B Moulder Street *already impacts on the heritage value of this area* and the proposed dwelling is *not contained within the DCP prescribed visual bulk envelope plane with encroachments on the eastern and western elevations.*

Spurious attempts to say none of this matters follow these statements.

**A second storey of any size let alone one of this bulk will matter.**

### Our Privacy

The overall planned height and design will impact on our privacy.

For over 40 years we have developed our back garden for ongoing private enjoyment with family and friends.

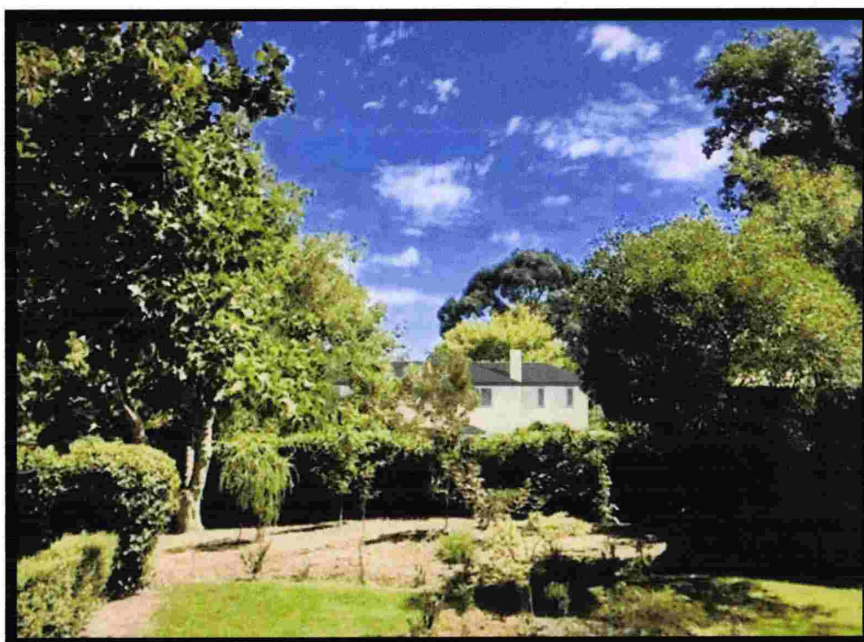
The statement made in the proposal that *'The subject site cannot be viewed as part of a view of a contributory heritage item and so there is no impact on contributory heritage items and will not compromise the heritage values of the area'*, is an inverted argument given that our objections come precisely from the fact that ours is a contributory heritage item. The photomontage included on the last page of the document itself shows the blatant disregard for facts in the above statement.

**Even harsher and more intrusive would be that high level of impact on our garden privacy.** The Site/Locality Analysis diagram highlights distances from neighbouring dwellings which in themselves are also close but the much reduced distance from the proposed two-storey windows into our garden is never mentioned!

### Impact On Our Views

The two-point summary in the proposal asserting that this development will have no detrimental affect on Our Views is demonstrably false.

Firstly, it is stated that *'none of the surrounding properties enjoy significant or 'iconic' views'*. Those two descriptive words beg the question: who decides what makes a significant or iconic view? Is it architects wanting to promote their latest design rather than every member of the neighbouring affected homes? The towering ages-old eucalypt and its enfolded partnering beauty, backed by glorious sunsets, wins that argument convincingly for anyone who looks.



Secondly, following the admission that *the proposal will be visible from the outdoor private space* of our home (as well as of our neighbours), it is stated, presumably as an attempt at justification, that *the second level addition will sit wholly and significantly under the tree canopy*.

In point of fact, this 'over development' would be surrounded by a magnificent tree canopy but **it would most certainly not 'sit under it', as though hidden! Rather, It would block our long-enjoyed natural visual corridor.**

Study of the above photomontage shows clearly the intrusive effect on our way of life. We would see this sight all the way from our front door, passing down our hallway, walking into our back sunroom and then relaxing in our previously private garden.



**2.3 DEVELOPMENT APPLICATION DA 448/2021(1) - 60 WITTON PLACE**

RECORD NUMBER: 2022/1503

AUTHOR: Summer Commins, Senior Planner

**EXECUTIVE SUMMARY**

Application lodged	15 October 2021 DA amended 26 May 2022
Applicant/s	UPG 238 Pty Ltd
Owner/s	UPG 238 Pty Ltd
Land description	Lot 10 DP 1045677 - 60 Witton Place, Orange
Proposed land use	Subdivision (11 residential lots and two new roads) and Demolition (existing dwelling and tree removal)
Value of proposed development	\$519,958

Council's consent is sought for residential subdivision of land at 60 Witton Place, Orange (see locality plan below).

The proposal involves Torrens subdivision of the land to create eleven (11) residential lots, an extension to Bowman Avenue and one (1) new road (cul-de-sac). The existing dwelling house, swimming pool and shed will be demolished, and trees will be removed across the site.

The following notable planning matters considered in this report include:

- The land is located within Area 4 Ploughmans Valley. The proposed subdivision layout will be generally consistent with the Conceptual Subdivision Layout for the site, contained in Orange Development Control Plan (DCP) 2004. The proposed subdivision layout will depart the Masterplan, however, by extension of Bowman Avenue to the western boundary.
- The adjoining land to the west has been identified as a candidate urban release area, known as the Witton Place Candidate Area, in the Orange Local Housing Strategy (LHS) (2022). The LHS noted the potential of the development site to provide an additional east-west link to the Witton Place Candidate Area. The proposed subdivision layout will incorporate this link via the extension of Bowman Avenue.
- As a consequence of the Bowman Avenue extension, three (3) lots within the proposed subdivision will depart the minimum lot size of 1,500m<sup>2</sup> prescribed under Orange Local Environmental Plan (LEP) 2011. The proposed development seeks to vary the minimum lot size development standard, pursuant to Clause 4.6 of the LEP. It is considered that there are sufficient environmental planning grounds to justify the variation to the development standard.
- Trees will be removed across the development site. Pursuant to a supporting Tree Survey (*Arborsaw* August 2021), the trees to be removed largely comprise pine and fruit trees and introduced species. Some of the trees are covered by Tree Preservation Order (TPO) under Orange DCP 2004 and approval is required for removal. Council's Manager City Presentation raised no objection to tree removal, subject to Conditional retention and protection of some existing perimeter plantings.
- A significant *Eucalyptus blakelyi* (Blakely's red gum) is located on the development site in the southern extent.

The tree has high landscape significance, however, is subject to various defects. The supporting Tree Survey recommends the tree be pruned as a Habitat stag tree. Council's Manager City Presentation concurs and has recommended Conditions.

- Other significant native vegetation exists on the adjoining southern parcel, nearby to the southern boundary of the development site. Conditions are included requiring tree protection zones be established on the development site to protect the adjoining trees during subdivision civil works.
- The site has frontage to the operational rail corridor between Orange and Broken Hill. The proposal was referred to Transport for New South Wales. No objection was raised to the proposal, subject to Conditions in relation to construction impacts and access to railway land.
- The site is considered suitable for residential landuse from a contamination perspective.
- The proposal comprises advertised development. At the completion of the exhibition period, three (3) submissions were received. The submissions generally express concerns in relation to the extension of Bowman Avenue to provide access to the Witton Place Candidate urban release area. It is acknowledged that the road link to the west will alter existing traffic amenity, and was also not intended under the Ploughmans Valley Area 4 Masterplan. Detailed traffic assessment will be undertaken in conjunction with a future Planning Proposal for rezoning of the western land for urban release.

As outlined 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 1 - locality 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 COMMENTS**

The proposed subdivision will be generally consistent with the DCP Masterplan for the site-excepting the proposed extension of Bowman Avenue to the western boundary. The Local Housing Strategy noted the potential of the subject land to provide an additional east-west link to the Witton Place Candidate Area, adjoining to the west. Such a link is considered to provide an important alternative access into the lands to the west and represents a positive planning outcome for the city.

The proposal comprised advertised development. At the completion of the exhibition period three (3) submissions were received. The submissions generally express concerns in relation to the extension of Bowman Avenue to provide access to the Witton Place Candidate urban release area. It is considered that the extension is appropriate and indeed the applicant was encouraged to provide this in the interest of providing good vehicular and pedestrian connectivity of the future residential estate.

The proposed development seeks to vary the minimum lot size development standard, pursuant to Clause 4.6 of the LEP. It is considered that there are sufficient environmental planning grounds to justify the variation to the development standard in this instance.

Approval of the application is recommended.

**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 448/2021(1) for *Subdivision (11 residential lots and two new roads) and Demolition (existing dwelling and tree removal)* at Lot 10 DP 1045677 - 60 Witton Place, 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****THE PROPOSAL**

The proposal involves residential subdivision of land at 60 Witton Place.

The existing dwelling house, swimming pool and outbuildings will be demolished.

The land will be subdivided to create eleven (11) residential lots ranging in area between 1,240m<sup>2</sup> and 1,656.1m<sup>2</sup>. Two (2) new roads will be constructed to service the lots, including an extension to Bowman Avenue in a westerly direction, connecting to a cul-de-sac with a northern orientation.

The subdivision layout will comprise ten (10) standard lots with frontage to the new roads; and one (1) battleaxe lot with frontage to Witton Place. The proposed lots will be of regular shape and configuration. The lots will be vacant and are intended for future residential development.

The proposed lots will be serviced to full urban standard. Trees will be removed from the site perimeters and curtilage of the existing dwelling house.

The proposed subdivision plan is depicted below (see Figure 2).



Figure 2 - proposed subdivision

### 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***

Vegetation will be removed from the site, generally from the curtilage of the existing dwelling to be demolished (see Figure 3). Pursuant to the supporting Tree Survey (*Arborsaw* August 2021), the trees to be removed largely comprise pine and fruit trees and introduced (non-native) species. Clearing of native vegetation will be nil-negligible and will not exceed the clearing threshold 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 proposal is not likely to have a significant effect on threatened species, nor impact endangered ecological communities:

- The site demonstrates a high degree of disturbance from its natural state.
- The proposal does not involve clearing of native vegetation. Trees to be removed comprise pine and fruit trees and introduced (non-native) species.
- The development does not involve removal of natural or built features that would provide habitat for native fauna.
- Large Eucalypts in the southern extent and on the adjoining railway land to the south shall be retained and protected by Conditions.
- A significant *Eucalyptus blakelyi* (Blakely’s red gum) is located on the development site in the southern extent. The tree is subject to various defects, though does contain an active nesting canopy for native fauna. Conditions are included requiring the tree be pruned as a Habitat stag tree, consistent with the recommendations of the supporting Tree Survey (*Arborsaw* August 2021) and Manager City Presentation (see following sections of this report).

**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,*

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
Lot Size Map:	Minimum Lot Size 1,500m <sup>2</sup>
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 biodiversity sensitivity on the site
Groundwater Vulnerability Map:	Groundwater vulnerable
Drinking Water Catchment Map:	Not within the drinking water catchment
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

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.*

Council staff are not aware of the title of the subject land being affected by an agreement, covenant or similar instrument.

**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' and 'demolition.'

Pursuant to Section 6.2 of the *Environmental Planning and Assessment Act 1979*:

*Subdivision of land means the division of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition.*

Subdivision of land is permitted with consent pursuant to Clause 2.6 (refer below).

Pursuant to Section 1.5 of the EPAA 1979, development includes:

- (e) *the demolition of a building or work.*

Demolition is permitted with consent pursuant to Clause 2.7 (refer 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 a dwelling house, swimming pool and outbuilding in accordance with this clause.

**Part 3 Exempt and Complying Development**

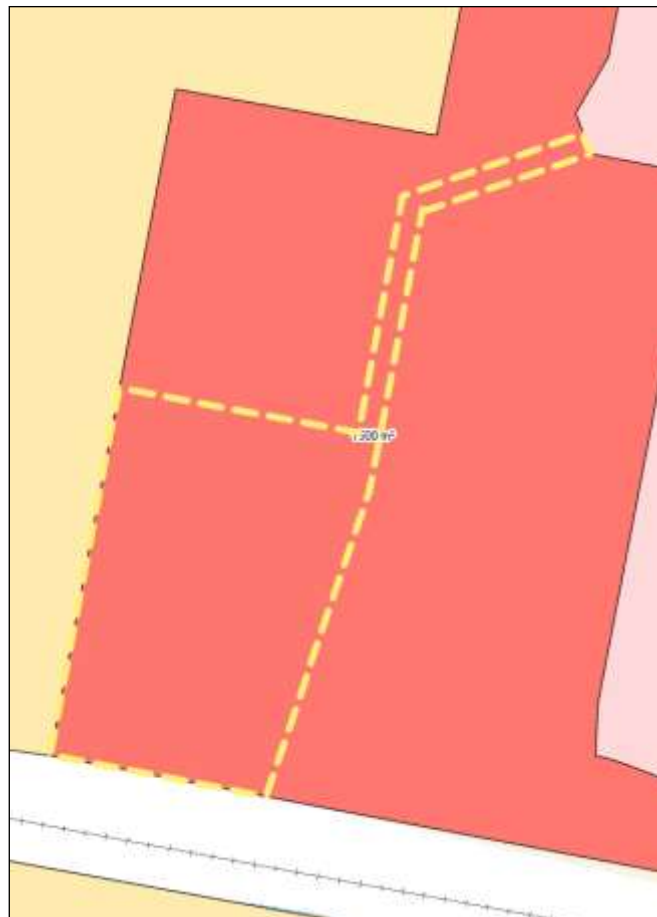
The application is not exempt or complying development.

**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 1,500m<sup>2</sup> for the development site (see Figure 3).



**Figure 3 - Orange LEP 2011 Lot Size Map**

Proposed Lots 1-3 and 7-11 will exceed the minimum lot size.

Proposed Lots 4-6 will comprise site area of approximately 1,241m<sup>2</sup> and depart the prescribed lot size.

The proposal seeks consent to vary the minimum lot size development standard in Clause 4.1 (see Clause 4.6 below).

#### **Clause 4.6 Exception to Development Standards**

Clause 4.6 applies and states in part:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument...*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating -*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless -*
  - (a) *the consent authority is satisfied that -*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by Subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Planning Secretary has been obtained.*

In consideration of this clause:

- The development standard for which the variation is sought relates to Clause 4.1 Minimum Subdivision Lot Size. The Lot Size Map prescribes a minimum lot size of 1,500m<sup>2</sup> for part of the land (refer Figure 4 above). Three (3) lots will depart from the prescribed minimum lot size of 1,500m<sup>2</sup>. Proposed Lots 4, 5 and 6 will comprise site area of approximately 1240m<sup>2</sup>. The percentage variation of the development standard is approximately 17%:

Lot No	Proposed Area	Deviation from 1500m <sup>2</sup>
4	1241.1	258.9m <sup>2</sup> (17.26%)
5	1240.1	259.9m <sup>2</sup> (17.32%)
6	1240.0	260.0m <sup>2</sup> (17.33%)

- The proposal is supported by a written request to vary the development standard. It is submitted that compliance with the development standard is unreasonable or unnecessary; and there are sufficient environmental planning grounds to justify the departure. The proponent's submission to vary the development standard provides as follows:

*The adjoining land to the west of the development site has recently been identified as a candidate site for short term urban release in Council's Local Housing Strategy 2022. A development that fully complied with the Ploughmans Valley Masterplan and prescribed minimum lot size would not support an extension of Bowman Avenue. A compliant application does not accord with Council's current strategic direction for this part of the city. A minor variation to Lots 4, 5 and 6 is required to facilitate the strategic direction of Council. The facilitation of the Local Housing Strategy provides sufficient environmental planning grounds to justify the departure from the minimum lot size development standard.*

- Council's Strategic Planner advises as follows in relation to the proposed allotment layout which will necessitate a Clause 4.6 variation:

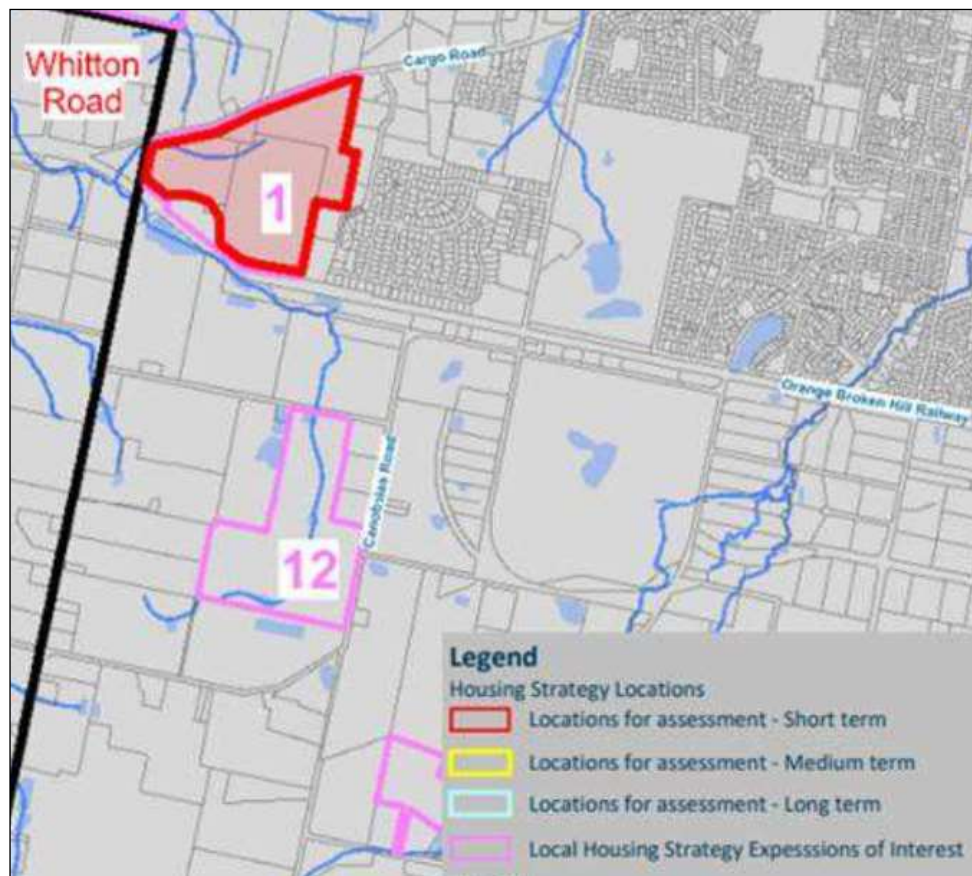
*"The current minimum lot size of 1,500m<sup>2</sup> for the site was established to reflect the Ploughmans Valley Masterplan which was prepared circa 2004. At that time, it was envisaged that Ploughmans Valley was to form the western edge of Orange's urban footprint. As such the figure of 1,500m<sup>2</sup> reflected a transition between the urban and rural lands to the west of the subject site. This was also reflected in the concept layout of the Ploughmans Valley Masterplan which anticipated that the subject site would consist of the western end of Bowman Avenue and turning north and terminating in a cul-de-sac with no road connection to the west.*

*Subsequently, growth in Orange has been consistently strong and together with the passage of time this has resulted in Council preparing a new Orange Local Housing Strategy (OLHS) to guide the growth and development of the city out to 2041.*

*Drafting of the OLHS has been constrained by a limited range of suitable land that is relatively free of constraints. One site that has been identified is the land to the immediate west of the subject site being a roughly triangular area, bounded by the rail line to the south, Cargo Road to the north and this site to the east (see Figure 4).*

*The strategy has noted the potential of the development site to provide an additional east-west linkage by extending Bowman Avenue to the boundary. Such a link is considered to provide an important alternative access into the lands to the west and represents a positive planning outcome for the city. Additionally, now that the lands to the west have been identified for urban expansion this removes the need for this site to provide the "transition" between urban and rural land uses that had previously been anticipated.*

*For these reasons Council's strategic land use planning section do not oppose the variation being sought on the basis that it will allow for the extension of Bowman Avenue to the western boundary of the site. Furthermore, the reduction in lot size to 1,240m<sup>2</sup> is still considered to be reasonably comparable to the compliant lots as to present a cohesive character to the subdivision."*



**Figure 4 - Orange Local Housing Strategy 2022**

- The proposed subdivision will be in the public interest, as follows:
  - The proposal will provide a road connection to the Witton Place candidate urban expansion area to the west, identified in the LHS. Such a link is considered to provide an important alternative access into the lands to the west and represents a positive planning outcome for the city.
  - The proposal will be consistent with the objectives of Clause 4.1 Minimum Subdivision Lot Size. The subdivision layout will reflect emerging lot sizes and patterns in Ploughmans Valley Area 4; the lots will have a practical and efficient layout to meet intended use; and the lots may be fully serviced to an urban residential standard.
  - 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.
  - The proposal will not result in unacceptable impacts on the natural or built environment.
  - Overall lot yield for the development site will not exceed the Ploughmans Valley Masterplan.
  - The proposed lots sizes will not compromise the orientation or location of internal streets within the subdivision.
  - The proposed subdivision layout will be generally in accordance with the intended layout in the Ploughmans Valley Masterplan.

- The elected Council may assume the concurrence of the planning secretary in varying the development standard, pursuant to Planning Circular PS 20-002 dated 5 May 2020.

**Part 5 Miscellaneous Provisions**

The provisions at Part 5 are not applicable.

**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 associated with subdivision civil works. 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 subdivision and dwelling houses.
- 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).
- Conditions are included to maintain neighbourhood amenity including preparation and implementation of a dust management plan. Finished levels will provide suitable landform for congruous residential built form.
- 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.
- The subject land does not contain a waterway and is not within a mapped drinking water catchment or environmentally sensitive area.

**Clause 7.2A Floodplain Risk Management**

The land is partly subject to probable maximum flood (PMF) in the south-east extent (see Figure 5).



**Figure 5 - 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*

Council's Assistant Development Engineer had no comments or concerns in relation to partial flooding of the development site. PMF will affect part of the rear yard for proposed Lot 1. Flood response development controls will not apply to a future dwelling on this lot. 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 management will be subject to detailed engineering design and approval at Construction Certificate stage.

#### **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 onsite effluent system for the demolished dwelling to 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 site investigation (PSI) was submitted in support of the proposal (Geotesta, 1 December 2021). The PCI concludes as follows:

- The soil sampling and analysis program conducted indicates a low risk of soil and groundwater contamination.*
- All the analytes concentration were found to be below the Site Assessment Criteria.*
- Additional sampling is required after demolition of the existing buildings to address the data gap due to limited access to the dwelling and shed at the time of the investigation.*
- Waste classification needs to be undertaken for any materials requiring disposal offsite (eg. the dwelling), and all waste disposed to a licensed land facility by an accredited contractor.*
- The site is suitable for the proposed landuse [residential subdivision] following the results of the data gap investigation.*

Council's Environment Health Officer has reviewed the submitted PCI and supports the findings and recommendations. Notwithstanding, it is considered that further contamination investigation post- dwelling demolition will *not* be required. Contaminants were not found elsewhere on the site, and the contamination risk is considered low. A Condition is included requiring an unexpected finds protocol be implemented during construction. This is considered suitable to address the 'data gap.'

**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.*

The proposal involves vegetation removal generally within the existing dwelling curtilage and on the site perimeters. A Tree Survey was submitted in support of the proposal (Arborsaw August 2021). Trees to be removed are either subject to tree preservation order (TPO) under DCP 2004 Part 0.4-2, or exempt from TPO as follows:



**Figure 6 - tree survey (Source: Arborsaw, August 2021)**

**Exempt from TPO**

- Trees 1-10 and 12 - *Pyrus calleryana* (Callery Pear)
- Trees 39, 40 and 44 - *Cupressocyparis leylandii* (Leyland Cypress) hedge.
- Tree 36 - fruit tree group

**Subject to TPO**

- Trees 11-45 - house paddock trees including *Acer buergerianum* (Trident maple) and *Betula pendula* (Birch).



**Figure 7 - house paddock trees**

Pursuant to the submitted Tree Survey, *‘the house paddock trees are of low landscape significance. The trees generally have good health and structure and long life expectancies. The trees are all semi-mature of a small size that are easily replaceable in the short term. Wherever possible, trees in the house paddock should be protected...’*

Council’s Manager City Presentation raises no objection to tree removal in the house paddock, subject to Conditional retention and protection of Trees 25, 28, 30, 33 and 34 on the northern boundary of proposed Lots 8 and 9.

- Tree 48 - *Eucalyptus blakelyi* (Blakely’s red gum) on the southern boundary.



**Figure 8 - Tree 48 Blakely’s red gum**

Pursuant to the submitted Tree Survey, *'the tree has high landscape significance. The tree is observed to have defects including a major stem wound with decay, severe trunk swelling, below ground cavity, active nesting cavity at 8m major union and stem splits... The tree has a high probability of failure from ground level or cracking point... The tree is recommended to be pruned as a Habitat stag to 10m in height.'*

Council's Manager City Presentation concurs with this assessment. Conditions are included requiring tree pruning to a Habitat stag and fauna relocation.

The proposed removal of trees subject to TPO 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 to be removed are of low landscape significance, immature specimens or subject to defects.
- Tree retention is not possible due to the proposed subdivision layout, which is generally in accordance with the DCP Masterplan for the site.
- Tree removal is an anticipated outcome in conjunction with the release of urban residential lots.
- Some perimeter plantings will be retained via Conditions.

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

As a matter arising, the adjoining railway land to the south contains native vegetation as follows:



Figure 9 - vegetation on adjoining southern parcel (red line is the common boundary)

Council's Manager City Presentation has included Conditions to protect and retain Tree 46 *Eucalyptus blakelyi* (Blakely's red gum) and Trees 49, 50 and 51 *Eucalyptus macrorhyncha* (Red Stringy Bark). Tree protection fencing shall be established within the development site around the subject trees.

**SEPP (Infrastructure) 2007**

SEPP (Infrastructure) 2007 has been repealed by SEPP (Transport and Infrastructure) 2021. The repealed SEPP was in force at the lodgement date. The applicable sections are considered here.

***Division 15 Railways - Section 85 Development adjacent to rail corridors***

- (1) This clause applies to development on land that is in or adjacent to a rail corridor, if the development -*
  - (a) is likely to have an adverse effect on rail safety, or*
  - (b) involves the placing of a metal finish on a structure and the rail corridor concerned is used by electric trains, or*
  - (c) involves the use of a crane in air space above any rail corridor, or*
  - (d) is located within 5m of an exposed overhead electricity power line that is used for the purpose of railways or rail infrastructure facilities.*
- (2) Before determining a development application for development to which this clause applies, the consent authority must -*
  - (a) within 7 days after the application is made, give written notice of the application to the rail authority for the rail corridor, and*
  - (b) take into consideration -*
    - (i) any response to the notice that is received within 21 days after the notice is given...*

The development site is adjacent to the operational rail corridor from Orange Junction to Broken Hill. The proposal was referred to Transport for NSW for consideration and comment. No objection was raised to the proposal, subject to Conditions in relation to construction impacts, excavation adjacent to the rail corridor and access to rail land.

***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)

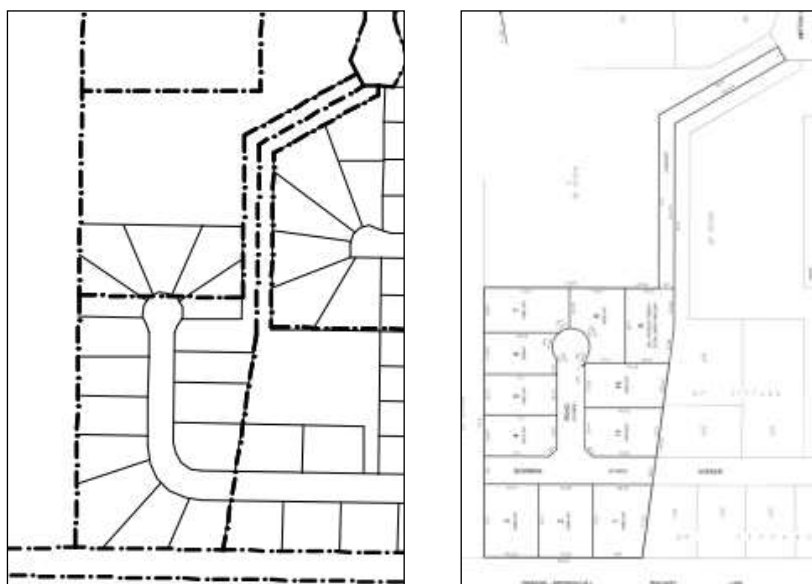
As outlined above, the proposal involves removal of trees subject to TPO under this part. Tree removal is considered to be acceptable.

**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 4 Conceptual Subdivision Layout and proposed subdivision layout are depicted here (see Figure 10).



**Figure 10 - Masterplan (left) - v - proposed subdivision (right)**

- As demonstrated, the proposed layout will accord with the Area 4 Masterplan as follows:
  - The proposed lots will be serviced by an extension to Bowman Avenue.
  - A cul-de-sac will be provided in the northern extent.
  - Lot yield will be consistent.
  - The proposed lots will be of regular configuration.
  - The lots will be standard lots, excepting one (1) battleaxe lot via Witton Place.

The proposal will depart the Masterplan by providing a road connection to the adjoining western parcel. As outlined above (see Clause 4.6), this departure is a consequence of the recommendations of the Local Housing Strategy 2022 and is an acceptable strategic planning outcome.

- *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 Area 4, lots adjoining the railway line have a minimum area of 1,500m<sup>2</sup>*

Proposed Lots 1-3 will adjoin the rail corridor to the south, and each have site area of 1,656.1m<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*

Tree removal across the subdivision has been considered above. The development site does not have other significant landscape features.

- *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 road layout will accord with the Conceptual Subdivision layout, excepting the road connection to the adjoining western parcel. Conditions are included in relation to road design and constructed footpaths.

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 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.

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

The proposed subdivision will connect with the adjoining residential subdivision to the east via an extension to Bowman Avenue, as intended in the Masterplan. Bowman Avenue will be extended to the western boundary of the development site to provide alternative access to a future release area to the west.

- *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 proposed extension to Bowman Avenue will accord with the Area 4 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 roads (Lots 1-9, 10-11) or Witton Place (Lot 9).

- *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.

- *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 is not provided within the proposed subdivision, consistent with the Conceptual Subdivision Layout.

- *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 ten (10) additional residential lots, that is eleven (11) proposed lots less one (1) existing lot. The following development contributions will therefore apply to the proposed subdivision:

Open Space and Recreation	Ten additional lots at 3,989.24	39,892.40
Community and Cultural	Ten additional lots at 1,156.85	11,568.50
Roads and Traffic Management	Ten additional lots at 5,265.65	52,656.50
Local Area Facilities	Ten additional lots at 9,005.73	90,057.30
Plan Preparation and Administration	Ten additional lots at 582.53	5,825.30
<b>TOTAL:</b>		<b>\$200,000</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 ten (10) ETs for water supply headworks (the existing dwelling is connected to reticulated water) and 11 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 will not be inconsistent with any matter prescribed by Regulation.

Conditions are included in relation to demolition activities and waste disposal (Section 61).

#### ***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
- Orange Local Housing Strategy 2022
- Adjoining landuses
- Availability of residential lots and dwellings
- Adjacent to rail corridor

#### **Traffic impacts**

- Traffic generation and network capacity
- Internal road layout
- Road connections

#### **Infrastructure**

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

**Environmental Values**

- Compliance with legislation
- Vegetation retention and removal

**Landscape Setting**

- Tree removal
- Altered landscape character
- Conditional tree retention and protection

**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

**Amenity Impacts**

- Lot design for solar access
- Construction impacts

**Water Quality**

- Construction controls
- Stormwater management
- Contamination clearance and clean fill

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 4 Ploughmans Valley Masterplan.
- The site adjoins an identified urban expansion area.
- 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 terrain does not present construction or servicing constraints.
- The site is suitable for residential landuse from a contamination perspective.
- The subject land does not have known cultural values.

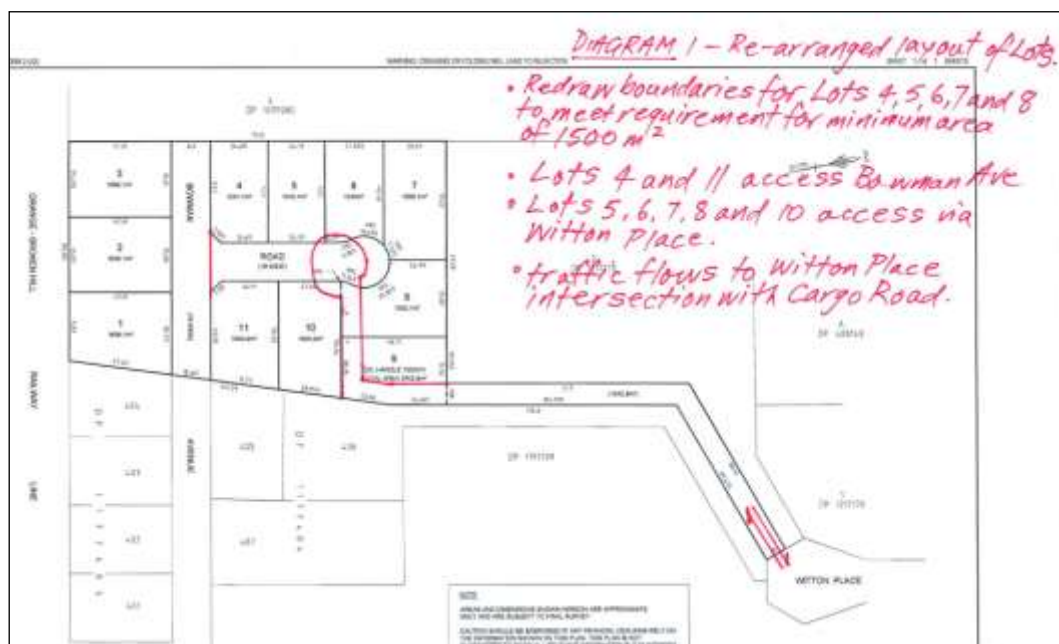
***Any Submissions Made in Accordance with The Act S4.15(1)(D)***

The proposed development is defined as advertised development pursuant to Council's Community Participation Plan 2019. The application was exhibited in the prescribed manner. At the completion of the exhibition period, three (3) submissions were received. The issues raised in the submissions are considered below.

**The prescribed minimum lot size of 1,500m<sup>2</sup> should not be varied, in order to maintain the low density character of the Witton Place Candidate Area, nominated in the Orange Local Housing Strategy 2022.**

The departure to the prescribed minimum lot size relates to three (3) lots only and is required to provide a road connection to the Witton Place Candidate Area, as nominated in the Housing Strategy. Additionally, now that the lands to the west have been identified for urban expansion this removes the need for this site to provide the "transition" between urban and rural land uses that was previously anticipated. The reduction in lot size to 1,240m<sup>2</sup> will not be incongruous in the existing and future residential neighbourhoods; a cohesive subdivision character will be achieved.

**The subdivision should be redesigned to direct traffic to Witton Place, as depicted below (see Figure 11).**



**Figure 11 - alternative subdivision plan provided via public submission**

The alternative subdivision layout cannot be supported as follows:

- The configuration of the access handle is unsuitable for a public road.
- The subdivision would depart the Conceptual Subdivision Layout for Area 4 Ploughmans Valley.
- The access handle to Witton Place is partly contained within Lot 406 DP 1177404 - 62 Witton Place. The development site and Lot 406 have reciprocal rights of access over the common driveway. The consent of the landowner of Lot 406 would be required.
- Development consent has not been sought for this arrangement. Council is required to assess a DA as submitted.

**Council should develop a street plan for the Witton Place candidate area to ‘focus the flow of entry and exit traffic’ on the indicative intersection at Cargo Road, Witton Place and Neals Lane**

An indicative plan of subdivision for the Witton Place Candidate urban release area will be included in a future planning proposal for rezoning of the land for urban release. The planning proposal will incorporate a traffic study with consideration to be given to traffic generation, internal road design, intersection design and network capacity.

**The spelling of Whitton/Witton Place should be standardised across all Council documents and uses.**

Noted.

**Bowman Avenue is unsuitable to provide access to the Witton Place Candidate Area**

The LHS noted the potential of the development site to provide an additional east-west link to the Witton Place Candidate Area. The proposed subdivision layout will incorporate this link via the extension of Bowman Avenue.

Bowman Avenue comprises an 18m wide *Urban Local Access Road*, as defined in Council’s Development and Subdivision Code. Council’s Assistant Development Engineer advises that the capacity of Bowman Avenue from its intersection with Taloumbi Place, is 50 dwellings/lots. Existing lots on Bowman Avenue and proposed lots in the development total 19 lots. As such, there is *potential* for Bowman Avenue to service an additional 30 dwellings/lots, based on the existing road design as an *Urban Local Access Road*. The future subdivision layout on the adjoining land is not known at this time.

**Bowman Avenue is presently a quiet residential street**

The proposed subdivision will generate additional traffic in Bowman Avenue, consistent with volumes contemplated in the Ploughmans Valley DCP.

The extension of Bowman Avenue to the western boundary will provide a connection to the Witton Place Candidate Area. Traffic volumes accessing the future release area via the Bowman Avenue extension are unknown. The planning proposal for the candidate area will be required to incorporate a traffic study with consideration to traffic generation, internal road design, intersection design and network capacity.

**Additional traffic in Bowman Avenue will adversely impact on property values**

This is not a matter for consideration in the assessment of a DA, pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979.

**Additional traffic in Bowman Avenue will create dangerous intersections in Area 4 Ploughmans Valley (Isaac Drive, Stirling Avenue)**

Consistent with Council policy and practice, incidents will be monitored, and traffic control devices employed as need be.

**Bowman Avenue has not been designed as a feeder road.**

Bowman Avenue is not intended as a feeder road. The capacity of the road will be determined by its road status as a *Urban Local Access Road*.

**Replacement fencing should be provided on the common boundary between the development site and 58 Witton Place.**

A condition is included to this effect.

**All construction access should be via Bowman Avenue and not the shared battleaxe driveway via Witton Place.**

A condition is included to this effect.

***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 4 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 will provide a road connection to a future urban expansion area to the west, identified in the Orange Local Housing Strategy 2022. Such a link is considered to provide an important alternative access into the lands to the west and represents a positive planning outcome for the city.

**SUMMARY**

The proposal involves residential subdivision in Area 4 Ploughmans Valley. The proposed subdivision will be generally consistent with the DCP Masterplan for the site- excepting the proposed extension of Bowman Avenue to the western boundary. The Local Housing Strategy noted the potential of the subject land to provide an additional east-west link to the Witton Place Candidate Area, adjoining to the west. Traffic impacts associated with the release area will be considered in a future Planning Proposal. The proposed subdivision will satisfy applicable Local and State Planning controls. Approval is recommended.

**ATTACHMENTS**

- 1 Notice of Approval, D22/52766 [↓](#)
- 2 Plans, D22/45520 [↓](#)
- 3 Submissions, D22/45604 [↓](#)

	<p style="text-align: center;"><b>ORANGE CITY COUNCIL</b></p> <p style="text-align: center;">Development Application No <b>DA 448/2021(1)</b></p> <p>NA22/481 <span style="float: right;">Container PR18634</span></p>
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## NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

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

### Development Application

Applicant Name:	UPG 238 Pty Ltd
Applicant Address:	Attention Mr V Nawathe 13 Gilba Road GIRRAWEE NSW 2145
Owner's Name:	UPG 238 Pty Ltd
Land to Be Developed:	Lot 10 DP 1045677 - 60 Witton Place, Orange
Proposed Development:	Subdivision (11 residential lots and two new roads) and Demolition (existing dwelling) and tree removal

### Building Code of Australia building classification:

Not applicable

### Determination made under Section 4.16

Made On:	6 September 2022
Determination:	<b>CONSENT GRANTED SUBJECT TO CONDITIONS DESCRIBED BELOW:</b>

### Consent to Operate From:

7 September 2022

### Consent to Lapse On:

7 September 2027

## Terms of Approval

The reasons for the imposition of conditions are:

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

## Conditions

- (1) The development must be carried out in accordance with:
  - (a) **DA Version Subdivision Plan by Andrew Usher, Ref. 8605 dated 26-05-2022 (1 sheet)**
  - (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 448/2021(1)**

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2

**Conditions (cont)****PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

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- (2) Prior to the issuing of a Subdivision Works 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.
- (3) The applicant is to submit a waste management plan that describes the nature of wastes to be removed, the wastes to be recycled and the destination of all wastes. All wastes from the demolition and construction phases of this project are to be deposited at a licensed or approved waste disposal site.
- (4) 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).
- (5) 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.
  - (6) 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.
  - (7) The existing residence shall have the septic tank removed and absorption trenches rehabilitated. The existing septic tank and any absorption trenches shall be accurately located and indicated on the submitted engineering plans.
  - (8) 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.
  - (9) 150mm-diameter sewer mains shall be constructed from Council's existing gravity 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.
  - (10) 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 448/2021(1)**

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3

**Conditions (cont)****Prior to the Issue of a Construction Certificate (cont.)**

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- (11) The alignment of the sewer through proposed Lot 1, 2 and 3 shall be removed from the southern boundary to a point outside a tree protection zone for Trees 46, 50 and 51. The minimum distance of the tree protection zone shall be 14.4m in radius from the centre of the trunk of Tree 51.

**PRIOR TO WORKS COMMENCING**

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- (12) 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.
- (13) The approved Soil and Water Management Plan (SWMP) shall be implemented prior to construction work commencing.
- (14) Soil erosion control measures shall be implemented on the site.
- (15) A southern boundary fence shall be erected for the purpose of establishing a tree protection zone to protect native vegetation (Trees 46, 50 and 51) on the adjoining railway corridor land to the south.
- (16) Tree protection zone fencing, in accordance with AS4970-2009, shall be established for Trees 25, 28, 30, 33 and 34 on the northern boundary. Fencing shall be retained for the duration of construction works.

**DURING CONSTRUCTION/SITEWORKS**

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- (17) 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.
- (18) All construction access shall be via Bowman Avenue and not the Witton Place common driveway.
- (19) Any additional fill to be brought to the site shall comprise Virgin Excavated Natural Material (VENM).
- (20) All materials on site 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.
- (21) 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.
- (22) 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.
- (23) 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.
- (24) Any adjustments to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 448/2021(1)**

4

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

- (25) 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.
- (26) Bowman Avenue and the 18m road shall be constructed to an urban standard for the full frontage of the proposed development. This work is to include road pavement and pavement surfacing, kerb and gutter construction and earth-formed footpath on each side of the road.
- (27) Dual water and sewerage reticulation is to be provided to every lot in the proposed residential subdivision in accordance with the Orange City Council Development and Subdivision Code.
- (28) All services are to be contained within the allotment that they serve.
- (29) A concrete footpath, a minimum of 1.2m wide, is to be constructed on the south side of Bowman Avenue.
- Construction work is to be to the requirements and standards of the Orange City Council Development and Subdivision Code.
- (30) The contents of the existing septic tank(s) shall be removed by a licensed contractor for disposal into Council's sewer system. The septic tank(s) shall be excavated and disposed of at a licensed landfill and the absorption trenches/disposal area shall be drained and the voids limed and backfilled with clean compacted material.
- (31) 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.
- (32) 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 on site must cease immediately. The beneficiary of the consent must discuss with Council the appropriate process that should be followed therein. Works on site must not resume unless the express permission of the Director Development Services is obtained in writing.

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

- (33) The payment of **\$200,000** 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	10 additional lots at 3,989.24	39,892.40
Community and Cultural	10 additional lots at 1,156.85	11,568.50
Roads and Traffic Management	10 additional lots at 5,265.65	52,656.50
Local Area Facilities	10 additional lots at 9,005.73	90,057.30
Plan Preparation and Administration	10 additional lots at 582.53	5,825.30
<b>TOTAL:</b>		<b>\$200,000</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.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 448/2021(1)**

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**Conditions (cont)**

<b>Prior to the issue of a subdivision certificate (cont)</b>
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- (34) Soil sampling for analysing chemical residue is to be carried out within the proposed Lots in a manner and frequency as determined by an appropriately qualified and experienced consultant giving consideration to previous specific uses and on-site characteristics of the site. A NATA registered laboratory is to carry out such testing. Reference is to be made to the *Contaminated Land Management Act 1997* and State Environmental Planning Policy No 55 - "Remediation of Land". The results of the testing are to be provided to the Principal Certifying Authority and are to demonstrate that the land is suitable for residential use, to enable a Subdivision Certificate to be issued.
- (35) Tree 48 (*Eucalyptus blakelyi*) shall be inspected by a licenced wildlife career/ecologist and any protected fauna occupying the hollows relocated through appropriate animal ethics or if otherwise an introduced species appropriately euthanized in accordance with animal ethics.
- The canopy shall be removed to a branch structure of 300mm in diameter above the branch union containing the major hollows to create a habitat stag, then the trunk and retained limbs shall be lowered to the ground ensuring that the stag remaining complete (ie not shatter or split on impact with the ground).
- The habitat stag shall then be relocated (if approval is gained by Transport for NSW) to the railway corridor and placed horizontally on the subject land. Should Transport for NSW not approve the relocation to the corridor on railway land the stag shall be relocated to the Ploughmans Wetland and re-stood, at a location to be determined by the Manager City Presentation, as a habitat stag tree.
- (36) Trees 25, 28, 30, 33 and 34 shall be retained.
- (37) Fencing shall be erected on the northern boundary of proposed Lots 7, 8 and 9. The fence shall be solid to a height of 1.8m and be of consistent material and colour for the full distance of the fence line.
- (38) Application shall be made for a Subdivision Certificate under Section 6.3(1)(d) of the Act.
- (39) **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 10 ETs for water supply headworks and 11 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.
- (40) 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.
- (41) 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.
- (42) 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.
- (43) 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.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 448/2021(1)**

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

- (44) 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.
- (45) 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.
- (46) Evidence of the disposal of the septic tank(s) and contents at an approved waste disposal facility and satisfactory remediation of the absorption trenches/irrigation area shall be provided to the Principal Certifying Authority prior to the issuing of a Subdivision Certificate.
- (47) 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 1979* 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.
- (48) 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.
- (49) 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.

**CONDITIONS FROM TRANSPORT NSW****Construction Impacts**

- a. Prior to commencing the works described in the Proposal, the applicant must provide John Holland Rail (JHR) with a Risk Assessment/Management Plan and detailed Safe Work Method Statements for its review and comment. The Applicant is advised to contact JHR, Joanne Cheoung at Joanne.Cheoung@jhg.com.au for review.

**Reason for condition**

The DA includes a proposal to install a sewer main and a new manhole within proposed Lots 1, 2 and 3 which are located adjacent to the boundaries of the rail corridor. It is important for JHR to be satisfied that the Proposal does not have any adverse impacts on the rail corridor during construction.

**Excavation in, above, below or adjacent to rail corridors**

- b. In the event of works described in the Proposal involving penetration of ground to a depth of at least 2m below ground level (existing) and within 25m measured horizontally from the relevant rail corridor boundaries, the Applicant must consult with and obtain written approval from JHR and TfNSW regarding such works, prior to commencing any works on the Land. The Applicant is advised to contact JHR, Joanne Cheoung at Joanne.Cheoung@jhg.com.au for review.

(conditions from Transport NSW continued over page)

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 448/2021(1)**

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7

**Conditions (cont)**

<b>Conditions from Transport NSW (cont)</b>
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**Reason for condition**

The proposed works in this DA include installation of the sewer main and construction of a new manhole within Proposed Lots 1, 2 and 3 in accordance with Engineering's drawings. Although the depths of excavation for such work are not provided in the Statement of Environmental Effects, they appear to be located within 25m of the rail corridor boundary. As such, it is necessary to ensure that the proposed excavation does not cause any adverse impact on the operational rail corridor and its rail infrastructure.

**Cranes and Equipment**

- c. The applicant must submit an application to John Holland Rail for approval of TAHE prior to any use of cranes and equipment in the air space over the rail corridor. The Applicant is advised to contact JHR's Third party works team via CRN.3rdpartyworks@jhg.com.au for more information; and
- d. The use of cranes and equipment must be in accordance with the AS 2550 series of Australian Standards, Cranes, Hoist and Winches, including AS2550 15-1994 Cranes – Safe Use - Concrete Placing Equipment.

**Reason for condition**

Should cranes and equipment be required to be used in the air space over the rail corridor at any time, the applicant must submit an application to JHR for its endorsement and TAHE's approval in advance.

**Access to the rail land**

- e. The Applicant must not and must ensure its employees and all other persons do not, enter any parts of the rail land during construction and operation unless otherwise permitted in writing in advance.

**Reason for condition**

It is necessary to ensure the safety of the rail corridor and its operation.

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**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.

Nil

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**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.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 448/2021(1)**

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***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.

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**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.

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**Signed:**

On behalf of the consent authority **ORANGE CITY COUNCIL**

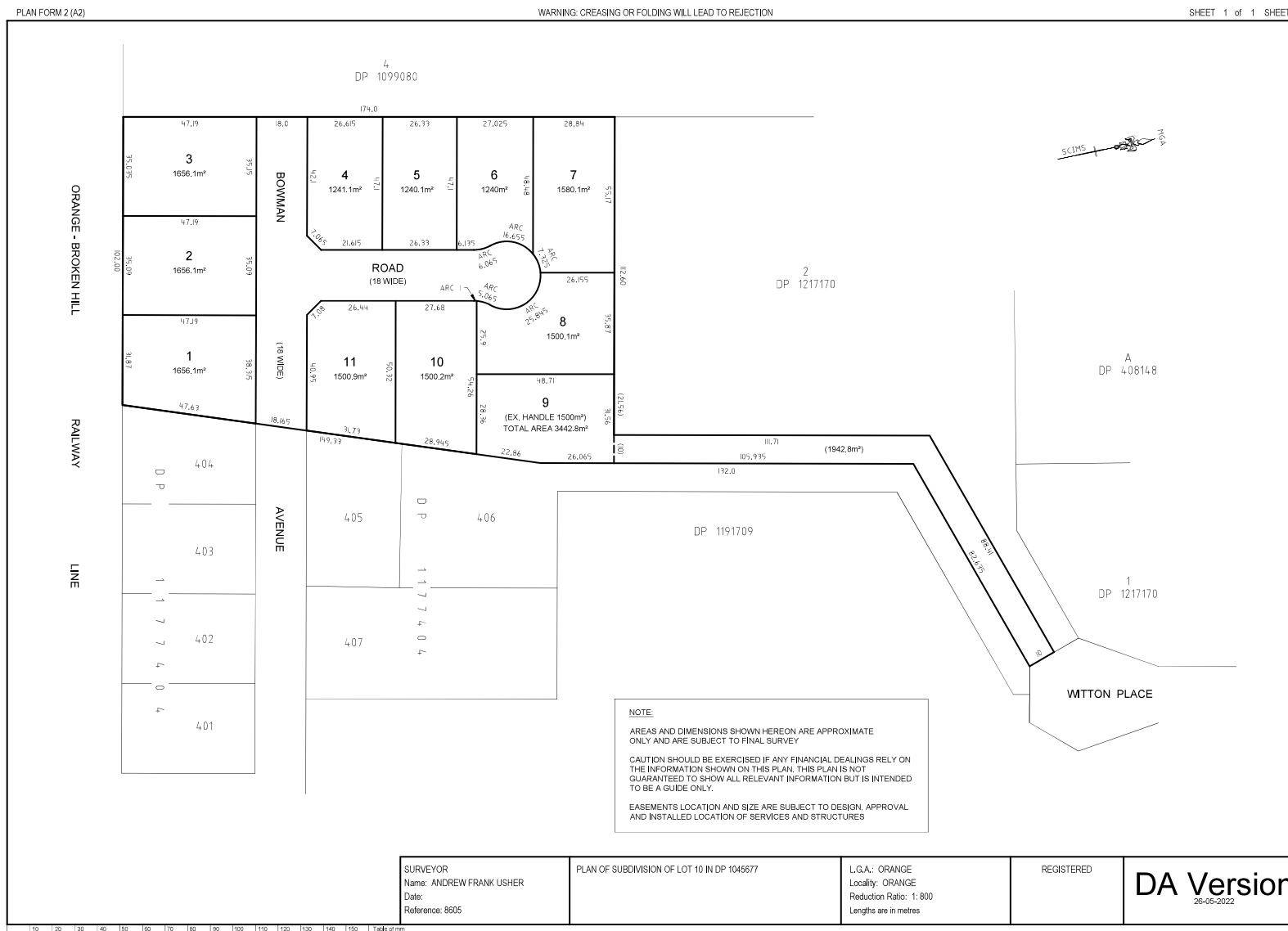
**Signature:****Name:**

PAUL JOHNSTON - MANAGER DEVELOPMENT ASSESSMENTS

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**Date:**

7 September 2022



**Submission 1**

Orange. 2800

22 June 2022

The General Manager

Orange City Council

135 Byng Street, Orange, 2800.

Dear General Manager,

I wish to lodge a submission in relation to **Development Proposal** Environmental Planning and Assessment Act 1979, **Development Application** (Not being designated development) **DA 448/2021(1) – 60 Witton Place, Orange.**

In relation to this proposal for approval of a subdivision consisting of 11 residential lots and two new roads, I submit that:

1. The minimum size of the lots in the 60 Witton Place Development Application should not be varied from the prescribed Minimum Lot Size of 1500 square metres under the Orange Local Environment Plan 20011.

**Explanation**

The 60 Witton Place DA proposal needs to be considered in conjunction with, and within the context of the Orange City Council Housing Strategy 2022. The Housing Strategy identifies a large area immediately to the west of the 60 Witton Place DA area, which will be developed within 5 years – please refer to map at page 86 of the Housing Strategy which shows the Witton Place Candidate Area.

In Figure 8.4 Witton Place Structure Plan at pages 86-89 of the Housing Strategy, it is proposed to zone the Witton Place Candidate Area as R2 Low density Residential / R5 Large Lot Residential, with a Lot size of 8 dwellings per hectare. This zoning will create the “character” of the broader Witton Place Candidate Area, which is adjacent to the 60 Witton Place DA area.

The prescribed minimum Lot size of 1500 square metres under the Orange Local Environment Plan should be maintained and applied to the lots in the 60 Witton Place DA proposal, to ensure the character of this area is consistent with that of the whole of the Witton Place Candidate Area as described in the Witton Place Structure Plan in the Housing Strategy.

2. The design of the proposed subdivision at 60 Witton Place should be re-arranged so as to direct resident traffic flows onto Witton Place. Please refer to the attached Diagram 1 – Re-arranged layout.

**Explanation**

To date, the Development Control Plan that will apply to the whole of the Witton Place Candidate Area has not been completed. Orange City Council has formulated a set of Attributes/Constraints that will inform the whole Witton Place Structure Plan (pp 86-89 Housing Plan 2022) and the

indicative road access and alignment shows that there will potentially be a significant increase in residential traffic directed back on to Bowman Avenue.

In addition, as the whole Witton Place Candidate Area is progressively developed, the increase in traffic flow on to Bowman Avenue will be cumulative, and have a multiplier effect in terms of congestion and noise affecting nearby residents in Bowman Avenue.

It is suggested that by re-arranging the plan of the 60 Witton Place DA (refer to attached Diagram 1) to direct resident traffic flow on to Witton Place, the potential effects of significantly increased traffic congestion and noise on residents of Bowman Avenue will be mitigated.

Further, this will efficiently utilise the capacity of Witton Place to accommodate higher traffic flows towards the indicative Witton Place Candidate Area entry/exit point at the upgraded intersection of Witton Place and Cargo Road.

3. In the short run, Orange City Council develops a street plan for the Witton Place Candidate Area that focuses the flow of entry and exit traffic on the indicative intersection at Cargo Road, the upgraded intersection at Witton Place/Cargo Road and an additional intersection at Neals Lane

#### Explanation

By developing an integrated, whole of Witton Place Candidate Area Street Plan in the short term, Orange City Council will be able to implement strategies to minimise the back flow of resident traffic from the Witton Place Candidate Area on to Bowman Avenue. Such a plan will enable Orange City Council to pro-actively manage traffic flow towards the planned and upgraded intersection at Witton Place, the indicative intersection at Cargo Road and additional intersection at Neals Lane.

In developing the integrated street plan, Orange City Council will be able to engage specialist road/street and traffic planning resources, and achieve the Attributes described in the Housing Plan (refer to pp 86-89 of Housing Plan).

An integrated, whole of Candidate Area Street Plan will inform and guide the future development of the whole Witton Place Candidate Area.

4. That the spelling of Whitton/Witton Place is standardised to Witton Place across all Orange City Council documents and uses.

#### Explanation

Whitton and Witton is used inconsistently and interchangeably in a number of Orange City council documents, including the Housing Plan 2022 and the current Development Application DA 448/2021(1). Standardising the spelling of this geographic term will promote consistency in documentation.

Thank you for considering this submission in relation to the **Development Application 448/2021(1) – 60 Witton Place, Orange.**

I confirm that we comply with section 10.4 of the Environmental Planning and Assessment Act, 1979.

Names of persons making this submission

Residential address

Email

Mobile

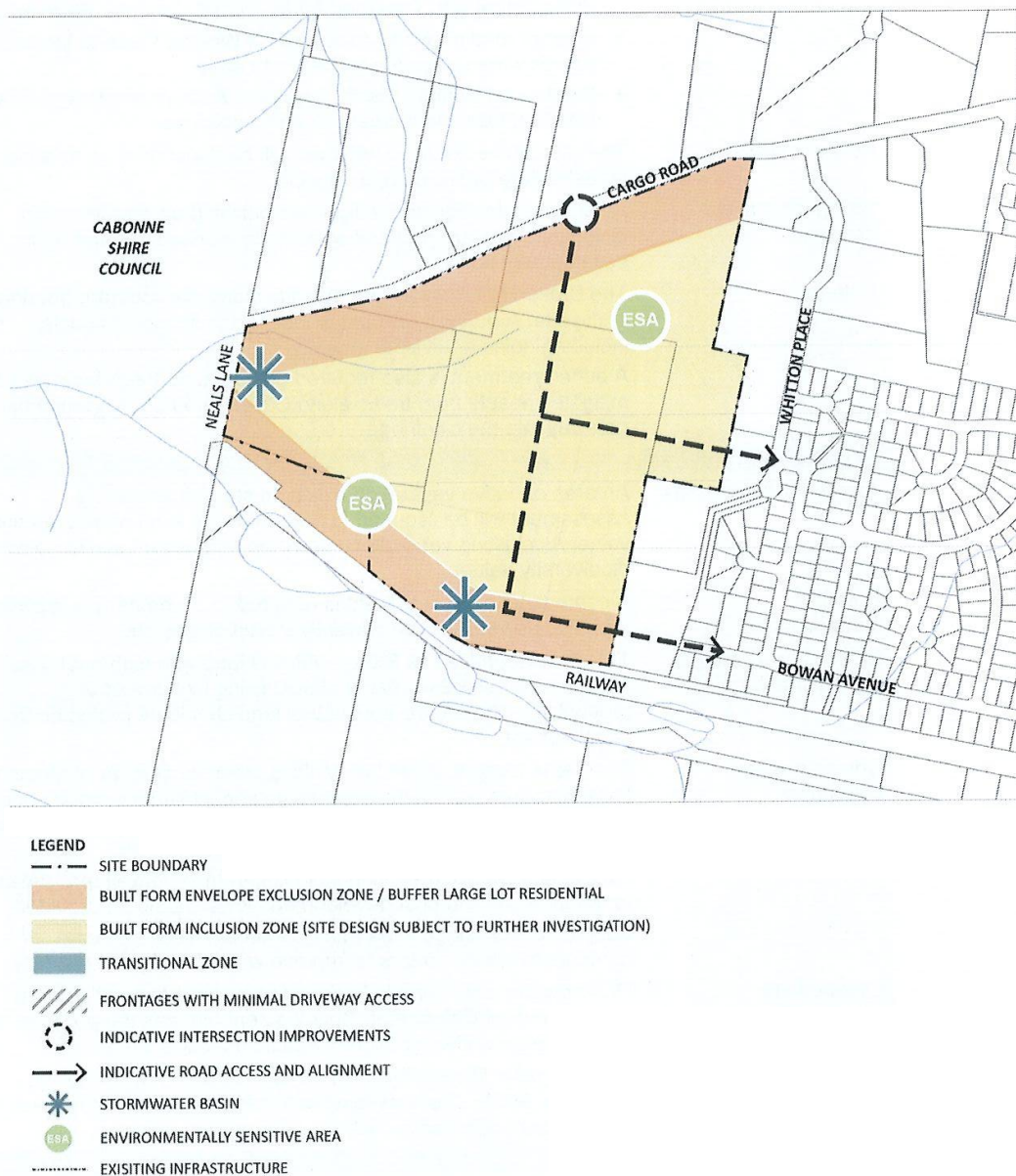
Yours faithfully,

Signatures

Date

#### 8.4.1.2 Whitton Place

The Witton Place Candidate Area is located slightly to the west of Witton Place (which effectively forms the eastern edge of the release area and comprises land north of the rail corridor, south of Cargo Road and east of Neals Lane.



**Figure 8-4 Witton Place Structure Plan**

Attribute/constraint	Details
Planning provisions for future housing development	
Proposed zone	R2 Low Density Residential / R5 Large Lot Residential
Lot size	Concept layout - 8 dwellings per ha
Infrastructure requirements	

Attribute/constraint	Details
Access and internal road network	<p>A Traffic Impact Assessment is to be submitted to Council outlining the following:</p> <ul style="list-style-type: none"> <li>Minimal access off Cargo Road will be permitted</li> <li>Consideration of a western connection to Neals Lane in consultation with Transport for NSW and Cabonne Shire council</li> <li>Internal road networks to extend off Whitton Place to the east and Bowmans Avenue to the south east</li> <li>Impacts on Whitton Place, Bowmans Avenue and Cargo Road resulting from the increase in traffic volumes</li> </ul>
Ability to service	The site can be serviced however will be dependent on existing infrastructure provision and capacity.
Stormwater and drainage	A servicing strategy will be required outlining on site detention including dams and wetland systems to manage pre and post development flows.
Buffers	<p>The Broken Hill Railway line extends along the southern boundary of the site. A buffer treatment is required to mitigate impacts including noise and visual amenity.</p> <p>A buffer treatment is also required along the northern boundary to mitigate impacts from traffic along Cargo Road and enhance the gateway into the city fringe.</p>
Environmental constraints	
Terrestrial biodiversity	An area of native vegetation exists on site. An ecological assessment will be required to determine the level of biodiversity value. All existing vegetation should be retained on site to preserve biodiversity values.
Potential contamination	A contamination assessment is required to accompany a rezoning proposal as vehicles are currently stored on the site.
Biophysical Strategic Agricultural Land	The site is identified as BSAL, which is land with high quality soil and water resources capable of sustaining high levels of productivity. Productive agricultural land should be protected from development.
Drinking water catchment	<p>The site is located within the drinking water catchment of Molong. Development that has the potential to impact surface water should not occur on the site. Water sensitive design and harvesting should be designed and placed in strategic locations on site.</p> <p>On site stormwater detention including dams and wetland systems to manage pre and post development flows should be provided.</p> <p>Supplement drainage lines with riparian plantings to create corridors to create buffers to improve water quality and quantity.</p>
Groundwater vulnerability	Groundwater is vulnerable to depletion and contamination from inappropriate development. Development that has the potential to impact the groundwater system should not occur on the site.
Naturally Occurring Asbestos (NOA)	The site has a low likelihood of containing Naturally Occurring Asbestos (NOA). A soil assessment may be required to confirm the lands are not affected by NOA.
Other considerations	
Scenic amenity	Gateway treatments are required at western end of site and entry into city along Cargo Road. Scenic amenity is required to be considered due to views toward the south.
Interface with adjoining development	The site interfaces with residential and agricultural land and residential development consisting of large residential lots to the east. Adjoining residential lots have a MLS of between 1000 m <sup>2</sup> and 2000 m <sup>2</sup> . Integration with existing adjoining residential development to the east.

### Development Control Plan Matters for the Witton Place Candidate Area.

In addition to a conceptual layout Council anticipates that the following matters will be reflected in the Development Control Plan required by section 6.3 of Orange LEP 2011.

- **Staging Plan**

Development of the urban release area is anticipated to release residential lots to the market across a number of stages. The approximate rate of release is shown below.

Time frame	0 – 5 years	5 – 10 years	10 – 20 years	20 – 30 years	Total
Anticipated lots	161	-	100	-	261

**Note:** Councils infrastructure and servicing plans, while flexible, are informed by this estimate, any accelerated release rate should be discussed with Council at an early stage.

- To progress from east to west

- **Transport and Movement Hierarchy / roads**

- Design to allow for potential future connections westwards to Neals Lane.
- Direct access to Cargo Road (maximum two intersections), design and location of intersections to be informed by traffic study.
- New intersection off Witton Place / Taloumbi Place
  - Note Lot 1 DP 1217170 is situated between the URA and western end of Taloumbi Place. The strategy supports extending Taloumbi Place through this lot to form a connection to the URA proper. Alternatively the southern end of Lot 6 DP 1045677 could be considered where it aligns with Wirringulla Place.
- Additional eastern connection to Bowman Avenue
  - Note: Lot 10 DP 1045677 is situated between the URA and the western extent of Bowman Avenue. The strategy supports extending Bowman Avenue through this lot to form a connection to the URA proper.
- Upgrade of Cargo Road along the extent of release area frontage, design to be informed by traffic study
- Upgrade of Witton Place, design to be informed by traffic study
- Upgrade Witton Place / Cargo Road intersection and Neals Lane Intersection, design to be informed by traffic study
- Extension of Bowman Avenue to provide connectivity to Witton release area, traffic study to model anticipated traffic volumes through Bowman Avenue to Ploughmans Lane

- **Landscaping Strategy**

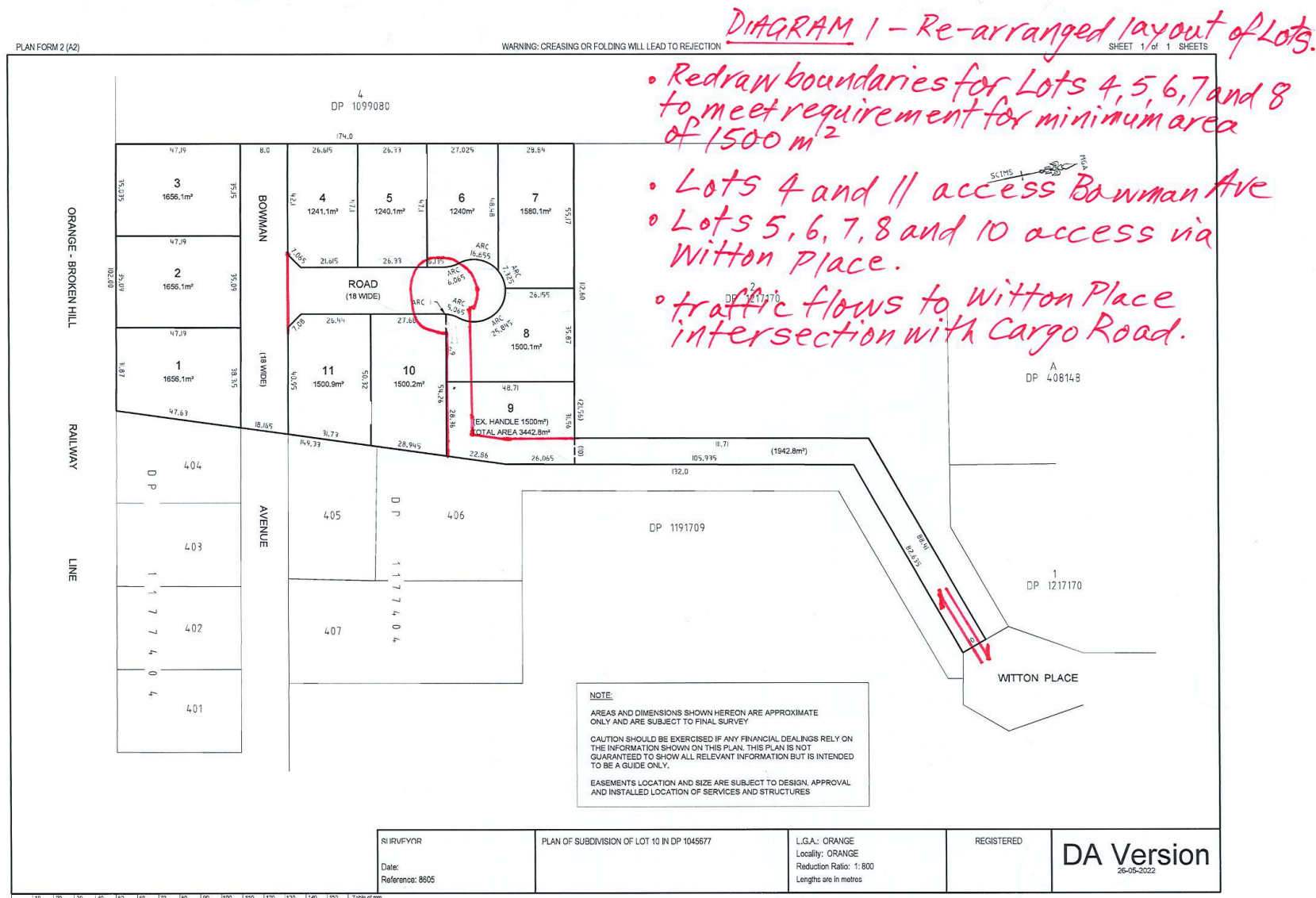
- Open space around existing native trees/remnant vegetation.
- Pedestrian / Cyclist connections to be off-road and provide linear vegetative linkages through area that connect to existing active transport routes.
- Environmentally Sensitive Areas (ESA) to be protected and enhanced
- Roadsides and cycleways connecting or proximate to ESA's to be landscaped consistent / compatible with ESA species.

- **Passive and Active Recreation Network**

- Provision of Cycleway / shared path connectivity to Ploughman's wetlands and existing footpaths at Yackkaboon.
- Extension of pathways along Cargo Road to provide additional pedestrian / cyclist links into the release area.
- Off-leash dog area to be identified / investigated as part of a review / update of the Orange recreational needs study

- **Stormwater and Water Quality Management**

- Flood study to accompany planning proposal and inform stormwater detention basin placement, sizing and design.
- Stormwater flows detained on site - indicative two detention basins
- Stormwater - pump to direct water into Ploughman's harvesting scheme
- **Natural Hazards**
  - Flood study to accompany planning proposal.
- **Urban Design and Significant Sites**
  - Lots along Cargo Road to incorporate building envelopes / exclusion zones to allow for landscaped city entry way / rest stop.
  - Lots fronting Cargo Road to preferably be accessed from within the release area. Lots requiring Cargo Road driveways to have minimum frontage width of 40m
  - Lots adjacent to the rail corridor to demonstrate sufficient depth for vibration buffers.
- **Higher Density Living**
  - Smaller lots to be located internally, i.e. not along Cargo Road frontage or rail corridor.
  - Smaller lots to be proximate to open space areas and cyclist corridors
- **Neighbourhood Commercial**
  - None envisaged and to be excluded along Cargo Road frontage.
- **Public Services and Facilities**
  - Playground - upgrade to the existing Stirling Ave equipment plus a new playground within Witton Place release area co-located around pedestrian / cyclist network.
  - Additionally a non-competitive recreation area to be included.



**Submission 2**

June 22, 2022

Chief Executive Officer

Orange City Council

Civic centre,

**ORANGE NSW 2800**

**DEVELOPMENT APPLICATION DA 448/2021(1) AND REQUEST TO VARY SAME ON 60 WITTON PL.,  
ORANGE LOT 10 DP1045677**

I wish to advise of my formal objection to the above-mentioned Development Application. Firstly, let me advise that I have no objection whatsoever to the original DA applying for a subdivision into 11 allotments having two cul de sac roads contained within the land plus an access for one block onto Witton Place. This was always understood to be happening sometime in the future when and if 60 Witton Place was sold.

My objection is to the variance for the original DA dated 25/5/22 reducing the size of the proposed 3 allotments (4, 5 & 6) down from the recommended minimum area of 1500 square metres in an R2 zone to 1240 square metres. This would create a precedent in the area for future subdivisions.

It is fairly obvious that the DA variation has been lodged at Council's request to allow for Bowman Ave to be extended into the adjoining Orange Housing Strategy area to the west 60 Witton Place to allow for the funnelling of some traffic flow back onto Bowman Ave. Bowman Ave. is just an ordinary 20m. wide residential road without formed footpaths which cannot cope with the extra traffic flow to be created in the adjoining A1 area which is due for development in the next 0-5 year period. I am advised that this A1 area is suitable for development of approx. 281 blocks without any presently published overall site plan so it is impossible to ascertain how many of these potential blocks would ingress/access from Bowman Ave. Council has the advantage of being able to limit the increased traffic flow to just the original subdivision road layout into two small cul de sacs leaving the new A1 area to be self-contained with an access out onto Cargo Road and a future access out onto the original part of Witton Place when the land along the western side of Witton Place is developed sometime in the future. **There doesn't appear to be any need to increase Traffic flow along Bowman Ave.**

The extra points I would make that having an extension of Bowman Ave. into the A1 area as a through road are:

1. Bowman Ave is presently a quiet residential street in which traffic flow is low and children play in the street especially in the existing dead end and nearby area.
2. The general area of Bowman Ave. is a popular well sought after expensive residential area and increased traffic flow along Bowman Ave. would reduce house values in the area not only along Bowman Ave. but in the nearby inner streets. The Ploughmans Estate has always been regarded as an upper price prestige area.
3. If increased traffic was directed along Bowman Ave. it would create a dangerous situation with the intersections of Bowman Ave. with Isaac Dr. and with Stirling Ave. which already have a restricted line of sight.

4. The curved section at the eastern end of Bowman Ave. is presently narrow and dangerous for passing traffic and the extra traffic flow would further exacerbate this.
5. Being a normal width residential street Bowman Ave. already suffers when two cars are parked at opposite sides of the street only allowing for one vehicle to pass between.
6. Part of a feeder road design is to have it of a wider width to allow for increased traffic flow given the examples of William Maker Drive, Hill St (at the northern end) and Diamond Dr. Bowman Ave. has not been designed for this use.

Yours faithfully,

**Submission 3**

**From:**  
**Sent:** Thursday, 30 June 2022 4:32 PM  
**To:** Orange City Council  
**Subject:** Comments on development DA448/2021 —PR18634

Good Afternoon

I would like to make comment on the above DA currently on display.

I have the to 60 Witton Place on the north side number

My concerns are minor but to me relevant as the development will have an impact on me and my children.

# The proposal wil have 3 building blocks backing on to which is currently fenced by Rural Fencing. As the blocks are sold off to potentially 3 different purchases I could have 3 different fence types replacing my existing fence.

I would like council to consider replacement fencing be common to the entire boundary.

# My drive way is located in the with a private Road leading to two dwellings at the end of the Road one of which is 60 Witton Place.

The development proposes two new roads one an extension to Bowman Avenue and the other a Cul de sac within the development, but access is still available to 60 Witton Place along the private Road.

During construction of the development heavy machinery and equipment will no doubt be needed and used, I realise that the equipment is necessary but I still have some concern.

I would ask council to consider not allowing machinery and equipment access to the construction site by way of the private Road of Witton Place.

Kind Regards

**2.4 DEVELOPMENT APPLICATION DA 218/2021(1) - 46 SHIRALEE ROAD**

RECORD NUMBER: 2022/950

AUTHOR: Ben Hicks, Senior Planner

**EXECUTIVE SUMMARY**

Application lodged	24 May 2021 Revised information submitted 19 May 2022
Applicant and Owner	Fusefen Pty Ltd
Land description	Lot 1 DP 778563, 46 Shiralee Road, Orange
Proposed land use	<i>Demolition (existing outbuildings and trees), multi dwelling housing (comprising 19 new dwellings plus alterations to the existing dwelling (20 dwellings in total)), Subdivision (21 lot Community Title)</i>
Value of proposed development	\$6,000,000.00

Council's consent is sought for residential development on land described as Lot 1 DP 778563, being 46 Shiralee Road, Orange. The subject land is within the South Orange Urban Release Area, known as Shiralee (Figure 1).

Specifically, the development will involve Demolition (existing outbuildings and trees), multi dwelling housing (comprising 19 new dwellings plus alterations to the existing dwelling (20 dwellings in total)), subdivision (21 lot Community Title) and associated ancillary works including earthworks, installation of services, landscaping, fencing and the like. The existing dwelling on the land will be retained as part of the proposal. The composition of the dwellings proposed within the complex comprise a mix of detached and attached single and double storey units each with three bedrooms, double garage, and private open space areas. It is also proposed to subdivide each dwelling under a Community Title Scheme.

The proposed development is permissible under the relevant provisions of Orange Local Environmental Plan 2011. The development is also subject to the provisions of the *Shiralee Development Control Plan 2015* (the DCP). The proposal is not entirely consistent with the DCP as it involves a form of residential development (multi dwelling housing) not contemplated by the Masterplan or DCP provisions. Notwithstanding, Council can consider some variation in lot sizes and development types to what is shown the Masterplan as outlined in Section 1.8 if the DCP. The proponent has been able to suitably demonstrate the proposal meets or exceeds the Masterplan and DCP aims and principles and for the reasons outlined in the report the proposal can be supported.

The proposal comprised advertised and notified development pursuant to Orange Community Participation Plan 2019. The application was initially advertised for the prescribed period of 14 days and at the end of that period three (3) submissions had been received. Following amendments made to the proposal, the application was re-notified for a period of 14 days, one (1) additional submission was received from a previous objector. The concerns raised in the submissions relate to density, outdoor/open space, sunlight access, stormwater, traffic issues and number of other issues that are not planning related matters. These matters have been addressed in the body of the assessment report.

The proposal has a capital investment value exceeding \$2.5 million (\$6m). Accordingly, the application has been tabled to the Planning Development Committee for determination, pursuant to Clause 4.10 Delegations of Orange City Council's *Declaration of Planning and Development Assessment Procedures and Protocols (Vers 5, 2019)*.

A Section 4.15 assessment demonstrates that the proposal is consistent with the planning regime that applies to the land, where residential development is permitted with consent in the R1 General Residential zone.

Impacts of the development are considered to be within reasonable limit, are consistent with applicable standards and policies, and can be addressed by appropriate conditions of consent. Approval of the application is recommended.



Figure 1 - Site Context and Locality 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 COMMENTS**

The proposed development is permissible under the relevant provisions of Orange Local Environmental Plan 2011. The development is also subject to the provisions of the *Shiralee Development Control Plan 2015* (the DCP). The proposal is not entirely consistent with the DCP as it involves a form of residential development (multi dwelling housing) not contemplated by the Masterplan or DCP provisions. The proposal certainly takes full advantage of an increased density, however amendments made to the proposal by the applicant during the assessment process, provide a development that is acceptable. The most significant and positive aspect in the amended design is that the proposal now provides units that front the street(s) in a manner not dissimilar to the neighbouring houses. The proponent has therefore been able to suitably demonstrate compliance with the DCP aims and principles and as such, the proposal can be supported. It is recommended that Council supports the proposal.

**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 DA218/2021(1) for *Demolition (existing outbuildings and trees), Multi Dwelling Housing (comprising 19 new dwellings plus alterations to the existing dwelling (20 dwellings in total)), Subdivision (21 lot Community Title)* at Lot 1 DP778563 - 46 Shiralee Road, Orange pursuant to the conditions of consent in the attached Notice of Determination.**

**FURTHER CONSIDERATIONS**

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

Council's consent is sought for residential development of the subject land, comprising demolition works (tree removal and outbuildings), multi dwelling housing (comprising 19 new dwellings plus alterations to the existing dwelling (20 dwellings in total)), Community Title subdivision, landscaping, and the like.

Proposed Dwellings 1-5 will have primary frontage and individual access to Shiralee Road, Dwellings 9, 17, 18, and 20 will have primary frontage and individual access to Tanika Street whilst Dwellings 6-8 and 10-16 will have access to Shiralee Road via a shared access arrangement to the street.

The dwelling composition is a mix of detached and attached, double storey and single storey units. The dwellings will be of contemporary design and detailing (Figures 2-3).

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2.4 Development Application DA 218/2021(1) - 46 Shiralee Road

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Each dwelling will contain three (3) bedrooms, two (2) bathrooms and attached double garage. External finishes will comprise a mix of face brick walls, rendered block, weatherboard cladding, Colorbond roof sheeting, panel lift garage doors, and aluminium framed glazing.

Site landscaping will be established, and perimeter and internal fencing installed (Figure 4).

The Community Title lots will range in size from 320m<sup>2</sup> to 470m<sup>2</sup>. Unit 19 (existing dwelling) will have a lot size of 650m<sup>2</sup>.

The proposed development will be generally carried as follows (may vary according to demand):

Stage 1

Stage 1 of the development will involve demolition works, Construction of Units 1 to 5; and creation of relevant Community Title Lots.

Stage 2

Stage 2 will involve Construction of Units 6 to 8 and 10 to 16 and creation of relevant Community Title Lots.

Stage 3

Stage 3 will involve Construction of Units 9, 17, 18 and 20, alterations and additions to existing dwelling (Unit 19) and creation of relevant Community Title Lots.



**Figure 2 - Shiralee streetscape - Dwellings 1-5**



**Figure 3 - internal perspective looking East - Units 12 and 13 on left and Unit 19 on right**



Figure 4 - development/landscape layout

## 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 Environmental Planning and Assessment 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 fourth trigger (development proposed to occur in an Area of Outstanding Biodiversity Value (clause 7.2 of BC Act 2016) is generally not applicable to the Orange LGA; as no such areas are known to occur in the LGA. No further comments will be made against the fourth trigger.

**Trigger 1**

The subject land is not identified as biodiversity sensitive on the Orange LEP 2011 Terrestrial Biodiversity Map.

**Trigger 2**

The prescribed clearing threshold for the site is 0.25ha (based on minimum lot size for the subject land of 700m<sup>2</sup> i.e., less than 1ha (Cl. 7.2 Biodiversity Conservation Regulation 2017). The BOS does not apply to non-native trees or vegetation. The land is predominantly comprising cleared managed grassland. A mix of introduced deciduous and evergreen tree species are located in the vicinity of the dwelling. A row of eucalypts (not remnant native vegetation) line a short section of the driveway near the property entrance (Figures 5-6). The applicant advises that the native trees have been planted as a landscape element adjacent to the property driveway on or after the time of construction of the existing dwelling (circa 1990s). This is clear given the uniformed nature of the trees and age of the vegetation. All vegetation is proposed to be removed from the site to facilitate the development. Calculations show that the total area of native vegetation to be cleared from the site is approximately 400m<sup>2</sup> which is significantly less than the prescribed threshold and thus a BDAR is not required.



**Figure 5 - site vegetation overview (Source: SoEE)**



**Figure 6 - location of non-remnant eucalypts (Source: SoEE)**

**Trigger 3**

The subject land is contained within a developing urban residential area and previously highly modified from historical agricultural practices. The development site does not contain or adjoin mapped biodiversity sensitive lands. A review of the Office of Environment and Heritage SEED and BioNet databases shows no recorded threatened species recorded on the site or immediately adjoining parcels. This is consistent with recent studies in the area from the rezoning and subdivision processes. On this basis and given the lack native vegetation and potential habitat, it is considered that the proposed development will not adversely affect a threatened species.

Based on the foregoing consideration, a BDAR is not required, and the proposal suitably satisfies the relevant matters at Clause 1.7 EPAA 1979.

**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 broad aims of the LEP are set out under Subclause 2. Those relevant to the application are as follows:

- (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 application is considered to be consistent with the above 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>Land zoned R1 General Residential</b>
Lot Size Map:	<b>200m<sup>2</sup> and 700m<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 biodiversity sensitivity on the site
Groundwater Vulnerability Map:	<b>Groundwater vulnerable</b>
Drinking Water Catchment Map:	Not within the drinking water catchment
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:

- covenants imposed or required by Council
- prescribed instruments under Section 183A of the *Crown Lands Act 1989*
- any conservation agreement under the *National Parks and Wildlife Act 1974*
- any trust agreement under the *Nature Conservation Trust Act 2001*
- any property vegetation plan under the *Native Vegetation Act 2003*
- any biobanking agreement under Part 7A of the *Threatened Species Conservation Act 1995*
- any planning agreement under Division 6 of Part 4 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 R1 General Residential Zone. The proposed development is defined as *demolition, multi dwelling housing and subdivision*. Multi dwelling housing is defined under OLEP 2011 as follows:

***Multi dwelling housing*** means three (3) or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

Pursuant to the EP&A Act, subdivision is defined as follows:

***Subdivision*** of land means the division of land into two (2) or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition.

Multi dwelling housing, subdivision and demolition works are permitted with consent in zone R1 General Residential. This application is seeking consent. The proposal is considered consistent with the land use terms.

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

The objectives for land zoned R1 General Residential are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *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 proposal is not contrary to the relevant R1 zone objectives:

- the proposed development will provide additional housing stock to accommodate the housing needs of the community
- the development will contribute to the variety of housing types and densities, and complement the developing neighbouring residential density
- the proposal involves residential land use only
- the residential area is serviced by public transport
- the site does not have frontage or access to the Southern Link Road.

### **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 a Community Title subdivision in accordance with this clause.

### **Clause 2.7 - Demolition Requires Development Consent**

The proposal involves demolition of existing outbuildings, and the applicant is seeking the consent of Council. The demolition works proposed will have no significant impact on adjoining lands, streetscape, or public realm. Conditions may be imposed in respect of hours of operation, dust suppression and the need to investigate for, and appropriately manage the presence of, any materials containing asbestos.

### **Part 3 - Exempt and Complying Development**

The application is not exempt or complying development.

**Part 4 - Principal Development Standards**

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.*
- (4) *This clause does not apply in relation to the subdivision of any land -*
  - (a) *by the registration of a strata plan or strata plan of subdivision under the Strata Schemes Development Act 2015, or*
  - (b) *by any kind of subdivision under the Community Land Development Act 1989.*

Pursuant to the Lot Size Map, the land is subject to minimum lot sizes of 200m<sup>2</sup> and 700m<sup>2</sup>. Notwithstanding, the proposal involves Community subdivision under the Community Land Development Act 2021, and this clause does not apply.

Pursuant to the Community Land development Act 2021, a community scheme is established by the registration of a plan of subdivision -

- (a) that is not part of a community parcel, precinct parcel, neighbourhood parcel or strata parcel, and
- (b) into two (2) or more community development lots and one (1) other lot that is community property, whether or not the plan includes land that, on registration of the plan, will be dedicated as a public road, public reserve, or drainage reserve.

In consideration of the above,

- (a) the proposal does not involve the subdivision of an existing community parcel, neighbourhood parcel or strata parcel and
- (b) the proposal will create 20 development lots and one (1) community property. The community property will relate to vehicle and pedestrian access, visitor parking, landscaped areas, bin storage areas etc. It would be expected that the unit share/contribution relating to the community property will vary given the arrangement of the dwellings.

**Clause 4.1B - Minimum Lot Sizes for Dual Occupancy, Multi Dwelling Housing and Residential Flat Buildings**

Clause 4.1B applies and states in part:

- (2) *Development consent may be granted to development on a lot in a zone shown in Column 2 of the Table to this clause for a purpose shown in Column 1 of the Table opposite that zone, if the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of the Table.*

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Multi dwelling housing</i>	<i>R1 General Residential</i>	<i>1250m<sup>2</sup></i>

In consideration of this clause, the proposed development is situated on land zoned R1 General Residential. The multi dwelling development lot will comprise a total site area of 10,335m<sup>2</sup>, and exceeds the minimum area of 1,250m<sup>2</sup> required for a multi dwelling housing.

**Part 7 - Additional Local Provisions****7.1 - Earthworks**

This clause establishes a range of matters that must be considered prior to granting development consent for any application involving earthworks, such as:

- (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).*

Earthworks will be required to create level building pads, practical open space areas, vehicle access/manoeuvring etc. Appropriate drainage infrastructure will be provided within the development to ensure earthworks and finished levels will not impact on adjoining properties or receiving waterways.

The site is not known to be contaminated, nor is the site known to contain any Aboriginal, European, or archaeological relics. The site is not in proximity to any waterway, drinking water catchment or sensitive area. Conditions are imposed that require sediment control measures to be implemented onsite prior to works commencing to ensure that loose dirt and sediment does not escape the site boundaries as well as the implemented unexpected finds protocol.

**7.3 - Stormwater Management**

This clause applies to all industrial, commercial, and residential zones and requires that Council be satisfied that the proposal:

- (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*
- (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.*

The development has been designed to maximise permeable surfaces with the total site coverage of built form comprising 34%. Further, Council's Technical Services Department have recommended conditions of consent concerning the provision of appropriate stormwater infrastructure to limit post development peak flows to that of pre-development peak flows which will ensure the drainage of stormwater from the development will be managed in an acceptable manner.

**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, there are no aspects of the proposed residential development that will impact on groundwater and related ecosystems.

**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 this clause, the listed utility services are available to the land (or can be provided) and made adequate for the proposal. Conditions are included on the attached Notice of Determination requiring connection to urban utility services to the standards required to service the proposed development. Council's sewer main running east-west along the frontage of the site will be required relocated clear of the development as part of the proposal.

**STATE ENVIRONMENTAL PLANNING POLICIES****State Environmental Planning Policy (Resilience and Hazards) 2021**

State Environmental Planning Policy (Resilience and Hazards) 2021 is applicable. Pursuant to Clause 4.6 *Contamination and remediation to be considered in determining development application:*

- (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 clause, the proponent has submitted a preliminary contamination investigation to determine the soil contamination status and suitability of the site for residential land-use. The study identified that the site is in a rural area undergoing development for residential land use and appears to have been used for grazing or vacant land within an orchard based on historical aerial photographs.

The report further identifies that the dwelling was constructed in the 1990's or early 2000 and appears to have been used for residential purposes since that time. Wastewater on the site is managed by a septic tank and absorption trench expected to be located west of the dwelling. The report advises that the septic tank will require decommissioning in accordance with NSW Health Advisory Note 3 and that the absorption trench should be decommissioned by cultivation and incorporation of lime.

Surface cover comprised improved pastures with broad leaved weeds, deciduous trees, and eucalypts. Ornamental species have been planted across the site. An area of bare soil was identified in the north-western section of the site. The area is expected to be bare due to previous stockpiling of vegetation or gravel. The sample collected from the stockpile footprint contained potential contaminants at levels less than adopted thresholds.

No surface staining or 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 site history or site walkover. The use of agricultural pesticides over the area in the past is expected to be low.

The soil sampling program did not detect elevated levels of the potential contaminants of concern 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.

Overall, the report concludes that the site is suitable for ongoing residential land use.

Council's Environmental Health Officer has reviewed the report and concurs with the assessment undertaken and recommendations therein. Council's standard condition have been included in relation to unexpected finds and septic tank and absorption trench decommissioning.

#### **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.

#### **DESIGNATED AND INTEGRATED DEVELOPMENT**

The proposed development is not designated, or integrated development as defined by the Act or Regulations.

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

##### **Shiralee Development Control Plan 2015**

Shiralee DCP 2015 is applicable to the proposal. The Controls applicable to the proposed development are considered below.

## Part 2 - Desired Future Character

The desired future character for the broader Shiralee area is informed by the Shiralee Master Plan underpinned by a thorough understanding of the area's natural attributes and special qualities, its contextual relationships to surrounding land uses within Orange and by the desire to create an inclusive village that enriches people's quality of life and provides housing, community services and jobs.

For this particular site, the DCP's Structure Plan and Housing Densities guide mainly envisaged development for standard housing on standard lots between 700-850m<sup>2</sup>. A row of Compact Lots (200-350m<sup>2</sup>) are identified along the western edge of the subject land (Figure 7).

However, the applicant is seeking to vary the development pattern contemplated in the plan by way of multi dwelling housing in lieu of standard residential subdivision for single dwelling development. The applicant advises that the proposal for multi dwelling will involve:

- Construction of single dwellings in a Community Title subdivision on lot sizes generally ranging from 320m<sup>2</sup> to 470m<sup>2</sup> (one lot is 650m<sup>2</sup>).
- Based on the whole site, there is one (1) dwelling per 517m<sup>2</sup>. As such the proposed development pattern is somewhat reflective of Medium Lots (400-550m<sup>2</sup>).

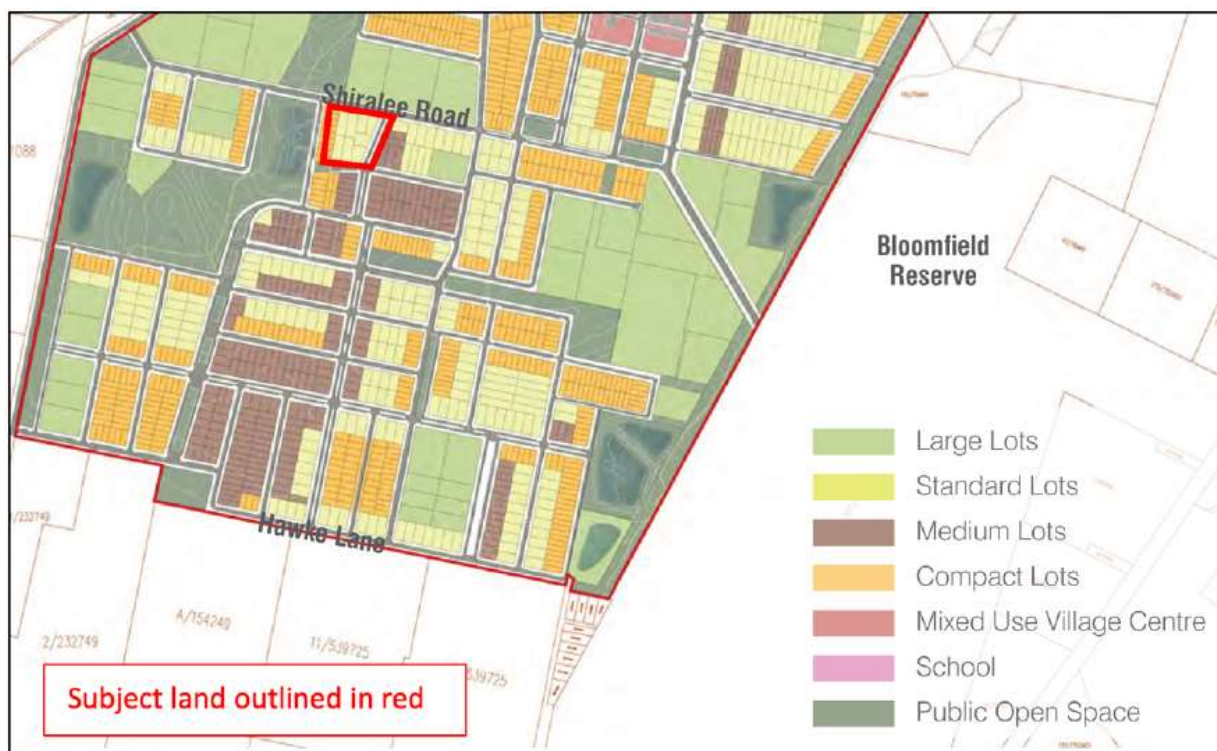


Figure 7 - Shiralee Structure Plan

In exceptional circumstances, Council can consider some variation in lot sizes and types to what is shown the Masterplan and DCP (Section 1.8) particularly on larger development sites, such as sites where a number of existing properties are amalgamated.

The decision to consider changes to the Masterplan is subject to Council's satisfaction that the proposal meets or exceeds the Masterplan and DCP aims and principles. In this regard, the proponent submits the following:

- *The subject land represents a "larger development site" that is located within proximity of the planned Shiralee Village Centre.*
- *There is the opportunity to create a distinct residential environment, with a defined character and identity. The future character of the locality can accommodate the proposed development without disrupting emerging and planned development form in the broader Shiralee area.*
- *The broad Shiralee Road and Tanika Street frontages of the site enable the creation of street facing dwellings that will encourage a sense of place with attractive street frontages and a cohesive streetscape that is consistent with the desired future character of the broader Shiralee Estate.*
- *The land is of suitable configuration and orientation to ensure that each of the proposed dwellings offer attractive residential amenity in terms of internal and external living spaces; solar access; privacy; site access and circulation; and visual/landscape amenity.*

Council staff generally concur with the justification provided by proponent. It is clear that the site is of a size and configuration that will reasonably accommodate a multi dwelling unit development and achieve appropriate levels of amenity as demonstrated by the DA documentation. The proposal also meets the minimum land size requirements under Clause 4.1b of LEP for multi dwelling proposals.

Further, it is acknowledged that the departure to the Masterplan is to partly to accommodate previous departures made to the plan by Council under preceding development applications for subdivisions in the area which ultimately prevent strict compliance with the DCP with any development of this allotment regardless.

Figure 8 below shows existing/approved subdivision pattern superimposed over the DCP Masterplan. The proposal is also consistent with the Planning Principle of *Karavallas v Sutherland Shire Council [2004] NSWLEC 251* concerning site isolation demonstrated by Figure 9 which shows the proposal will not burden the development potential of other lots within the precinct. Lastly, the development offers street facing dwellings along both site frontages (Shiralee Road and Tanika Street) consistent with the DCP for this site.



Figure 8 - Masterplan (colour) approved/registered subdivision pattern (black)



Figure 9 - subject site in relation to approved and future/potential subdivision layout south and west

### 2.3 - Residential Densities

Shiralee is intended to provide for a wide range of housing densities and lifestyles. Accordingly, the Masterplan has assigned various lot typologies in different locations. The DCP also provides that housing density should be located where amenity is highest.

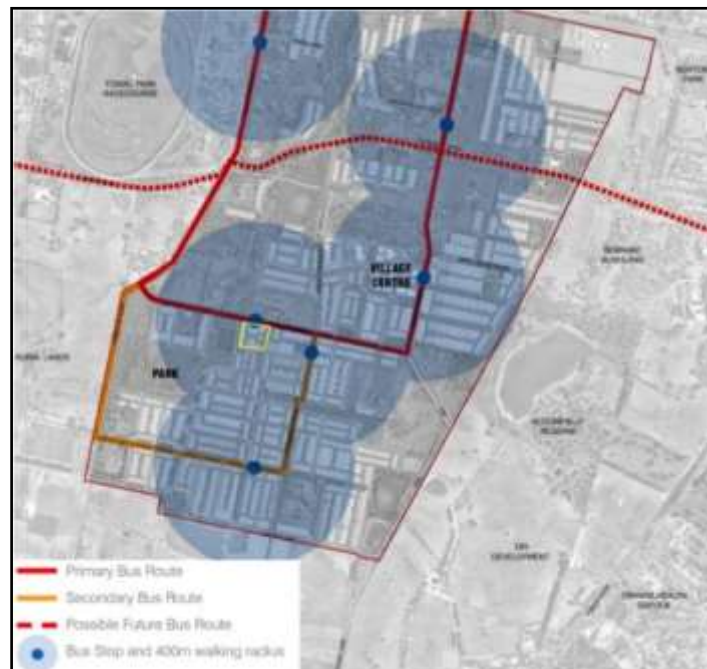
With reference to the Masterplan, the density envisaged at the site included nine (9) Compact Lots along the western edge of (noting only partially within) the subject land and eight (8) Standard Lots covering the remainder of the site.

Theoretically, the land would facilitate up to 17 lots under the plan. These lots would only be capable of accommodating single detached dwellings ranging from a small 2-3-bedroom dwelling on the compact lots and medium to large dwellings (4+ bedrooms) on the standard allotments.

This proposal seeks a slight increase in density at the site (20 lots) which will accommodate detached and attached unit dwelling types each comprising three (3) bedrooms. The development more or less provides for Medium Lots and Compact lots (with one Standard Lot) by reference to the DCP. The proposed dwelling mix responds to typical demand for this type of housing and is expected to meet a range of demographic demands, including singles, couples, new families, and older people compliant with the intent of the Shiralee Estate.

Further, it is important to note that the yields predicted in the Masterplan are indicative/concept only and are subject to site specific testing through accurate survey at the development application stage. It is not uncommon for lot yields to be greater than expected following this process as seen in recent proposals for general subdivisions in the surrounding area. In this regard, the increase in density is considered modest and a positive outcome with regard to Council's residential density targets for this precinct while assisting in improving housing supply issues across Orange in general, which is identified within the Community Strategic Plan as one of the key challenges facing the city over the next 10 years<sup>1</sup>.

In terms of the location, the site is in close proximity to the planned village centre (approx. 800m), public open space areas/networks as well as the existing Philip Shaw Cellar Door facility to the east. The site is also located along a primary bus route with a bus stop directly adjacent to the site (Figure 10) and thus the development is considered to be well located in terms of amenity.



**Figure 10 - public transport linkage and walkable catchments in relation to subject site**

<sup>1</sup> Housing supply, diversity, affordability, and resilience were identified as a top priority for the community representing 16.7% of all responses received during the consultation period/preparation of the Community Strategic Plan 2022-2032.

## 2.4 - Subdivision

The DCP provides that the subdivision of Shiralee is to be generally consistent with the Masterplan design and intent which was based on the grid iron/rectangular pattern urban structure. This is dictated by the alignment of the road network to ensure good solar access opportunities for the majority of building allotments. The adoption of a grid-based form also ensures ease of navigation as well as enhanced pedestrian and cyclist mobility.

Further due to the history of the Shiralee area being used for orchards and vineyards there is potential for the land to harbour concentrations of chemical sprays and other contaminants. Accordingly, the DCP requires appropriate investigations are required as part of any subdivision application.

The relevant controls are as follows:

- *All subdivision applications are to be accompanied by a preliminary investigation to identify any past or present uses that have potential to contaminate the land and a preliminary assessment of any known contamination. If the results are positive, or if Council so directs, the application is to undertake a more detailed investigation.*
- *Subdivision is to be consistent generally in accordance with the Masterplan design and intent per the DCP. Legislative requirements and DCP written controls take precedence over the Masterplan.*
- *Lot sizes are to be consistent with or greater than the adopted minimum lot size for the land under the LEP zoning map.*
- *Except for corner lots...all residential lots are to have a width to depth ratio of between 1:4 and 1:2.75 with the shorter boundary being the street frontage.*

The subject site is located within an established/planned urban structure which has been slightly altered due to past subdivisions in the area but still retains the grid iron/rectangular pattern urban structure as envisaged by the plan. Notwithstanding, this has created a large development lot needing a slightly different design/development response than what was initially planned for in the DCP.

The applicant has justified that the land is of a suitable configuration and orientation that can accommodate a multi-unit development whilst providing a reasonable amenity in terms of good solar access, landscaped and private open space areas as demonstrated in the submitted plans. The land can also accommodate the proposed development and associated Community Title subdivision without disrupting emerging and planned development form in the broader area as shown in Figure 9 above.

Lastly, the multi-unit development will be well located in terms of accessibility to walking and cycling opportunities and public transport linkages which will become established as the Shiralee urban village progresses. In this regard, the proposed development is considered to align with the design and intent of the DCP.

In terms of lot sizes, the development site is subject to two minimum lot sizes being 200m<sup>2</sup> and 700m<sup>2</sup> pursuant to the Orange LEP 2011 Lot Size Map which correspond to Compact and Standard Lots in the DCP. The proposed lots will be Community Lots and are excluded from minimum areas pursuant to Clause 4.1(4) of the LEP. The Community Title lots will range in size from 320m<sup>2</sup> to 650m<sup>2</sup> reflective of both compact, medium, and standard lots as defined by the DCP.

The modified lot sizes/typologies are considered an appropriate market response meeting the demand for smaller and more affordable housing and to meet the needs of changing demographics (e.g., smaller family sizes, aging population) which has been identified as an issue in the Local Housing Strategy as well as the Community Strategic Plan recently adopted by Council.

The proposal does not comply with the prescribed lot width to depth ratios. The applicant has requested Council to accept a variation on the basis that this development is essentially a multi dwelling housing development which is permissible under the LEP but does not necessarily match the single dwelling development form contemplated by the DCP on which the lot width to depth ratios is based on. The intent of the width-to-depth ratio provision was to ensure that an appropriate level of amenity is achieved for future development of the lots created with respect to solar access, private open space etc.

The submitted plans demonstrate that each lot/dwelling can achieve the required amount of sunlight access, reasonable private open space, and landscaped areas and in this regard the intent of the width-to-depth ratio is achieved.

Lastly, a preliminary contamination investigation was undertaken in support of the proposed development. The investigation determined that the site is suitable for residential development.

## 2.5 - Lot Typologies

The DCP categories residential lots on the basis of the total area of the lot. The categories include Large Lots (1,750m<sup>2</sup> plus), Standard Lots (700m<sup>2</sup> and 850m<sup>2</sup>), Medium Lots (400m<sup>2</sup> and 550m<sup>2</sup>) and Compact Lots (200m<sup>2</sup> and 350m<sup>2</sup>). The DCP provides that lot typologies and minimum sizes are to be consistent with the Masterplan, DCP and LEP zoning map. The proposal will create lots that range in size from 320m<sup>2</sup> to 650m<sup>2</sup> reflective of compact, medium, and standard lots as defined by the DCP. This is a variation to the Masterplan, however, is supported for reasons discussed above i.e., previous alterations to the Masterplan, market response and priorities identified in the LHS and CSP.

Further, site coverage ratio applies. The site coverage is the ratio between the overall site area and the combined footprint of all buildings on the property. The maximum site coverage ratio allowed for each type of lot is 60% for compact lots, 45% for medium lots, 35% for standard lots and 25% for large Lots. Compliance with the relevant site coverage ratio is summarised in the Table below:

Compliance Table: Lot Typology Site Coverage Ratio					
Unit and Footprint Area	Lot Number and Size	Lot Typology	Site Coverage Allowed	Site Coverage Proposed	Compliance
1 = 173.7m <sup>2</sup>	2 = 418m <sup>2</sup>	Medium	45%	41%	Yes
2 = 182.8m <sup>2</sup>	3 = 392.5m <sup>2</sup>	Medium	45%	46%	Minor Departure
3 = 176.3m <sup>2</sup>	4 = 391.2m <sup>2</sup>	Medium	45%	45%	Yes
4 = 168.5m <sup>2</sup>	5 = 392.5m <sup>2</sup>	Medium	45%	42%	Yes
5 = 175.5m <sup>2</sup>	6 = 441.8m <sup>2</sup>	Medium	45%	39%	Yes
6 = 173.9m <sup>2</sup>	7 = 381.5m <sup>2</sup>	Medium	45%	45%	Yes
7 = 174.4m <sup>2</sup>	8 = 356m <sup>2</sup>	Compact	60%	48%	Yes
8 = 169.8m <sup>2</sup>	9 = 367.2m <sup>2</sup>	Compact	60%	46%	Yes

Compliance Table: Lot Typology Site Coverage Ratio					
Unit and Footprint Area	Lot Number and Size	Lot Typology	Site Coverage Allowed	Site Coverage Proposed	Compliance
9 = 173.2m <sup>2</sup>	10 = 429.8m <sup>2</sup>	Compact	60%	40%	Yes
10 = 148.7m <sup>2</sup>	11 = 325.5m <sup>2</sup>	Compact	60%	45%	Yes
11 = 148.7m <sup>2</sup>	12 = 332m <sup>2</sup>	Compact	60%	44%	Yes
12 = 148.7m <sup>2</sup>	13 = 320.6m <sup>2</sup>	Compact	60%	46%	Yes
13 = 148.7m <sup>2</sup>	14 = 331.3m <sup>2</sup>	Compact	60%	44%	Yes
14 = 175.6m <sup>2</sup>	15 = 387.4m <sup>2</sup>	Medium	45%	45%	Yes
15 = 173.2m <sup>2</sup>	16 = 407.3m <sup>2</sup>	Medium	45%	42%	Yes
16 = 191.9m <sup>2</sup>	17 = 414.9m <sup>2</sup>	Medium	45%	46%	Minor Departure
17 = 172m <sup>2</sup>	18 = 467.1m <sup>2</sup>	Medium	45%	36%	Yes
18 = 191.4m <sup>2</sup>	19 = 466.5m <sup>2</sup>	Medium	45%	41%	Yes
19 = 241.4m <sup>2</sup>	20 = 650m <sup>2</sup>	Standard	35%	37%	Minor Departure
20 = 169.8m <sup>2</sup>	21 = 465.4m <sup>2</sup>	Medium	45%	36%	Yes

In total, the site coverage for the development as a whole is in the order of 34% which is acceptable for a development type as proposed.

### Part 5 - Residential Development

Part 5 of the Shiralee DCP provides the planning outcomes in relation to residential buildings. The following section will discuss compliance with the relevant controls:

#### 5.1 Building Form and Layout

##### Setbacks

- *Building setbacks including articulation zones are to be consistent with the housing typology diagrams in Appendix B.*
- *Upper floor side facades to be set back to achieve at least 2.4m between neighbouring houses at that upper level.*

The front setbacks specified for each of the lot typologies in Appendix B anticipates each lot/dwelling having direct frontage to a public road. The proposed development will only result in Dwellings 1 to 5 (Lots 2 to 6) and Dwellings 9, 17, 18 and 20 (Lots 10, 18, 19 and 21) facing a public road (Shiralee Road and Tanika Street) and all other dwellings relate internally to the site and do not have a public road frontage. In this respect, only dwellings with frontage to the public road can be assessed against the front setback requirements. Lots 2 to 6 are defined as Medium Lots.

In terms of the front setback requirements for these lots the DCP requires these lots to have a minimum front setback of 4m to the articulation zone. The articulation zone is a notional area projecting up to 2m forward of the building. The plans show that each of the dwellings with frontage to Shiralee Road will achieve a minimum setback of 4m to Shiralee Road from the articulation zone (based on the proposed widening of the road) and thus complies. Similarly, Lots 18, 19 and 21 facing Tanika Street are considered medium lots and have a minimum 4m setback to the articulation zone. A setback of 4.5m is provided to these dwellings. Lot 10 would be considered a compact lot and requires a 4m setback. 4.5m is provided.

In terms of the side and rear boundary setbacks for each of the dwellings within the complex, whilst not strictly adhering to the lot/housing typologies requirements given the arrangement of the allotments is quite different to what the DCP anticipates, the applicant has adequately shown that despite this, the allotments can achieve the minimum amount of private open space, reasonable solar access, and separation between dwellings required. The purpose of the building setbacks is therefore satisfied. Further, the second storey dwellings in this development exceed the 2.4m separation distance requirement between neighbouring adjoining dwellings.

### **Articulation Zone**

Where a dwelling has a front setback of 3m or greater an “articulation zone” shall be deemed to exist. The articulation zone is a notional area projecting up to 2m forward of the building. Relevant controls:

- *Articulation zones and setbacks are to be consistent with housing dwelling typologies in Appendix B.*
- *Up to 40% of the articulation zone, when viewed from above, may include articulation elements. Articulation elements may include, for example, bay windows.*
- *Verandahs, patios, and landscape trellises are encouraged. Whilst they must not project forward of the articulation zone, there is no limit to the percentage which they occupy within the articulation zone.*

All dwelling facades within the complex are generally well-modulated with a varied roof lines/forms and good window proportions. A mix of external building finishes and colours complements the development (Figures 2-3). As outlined above, proposed dwellings at the Shiralee Road and Tanika Street frontage all have articulation elements within the prescribed setback. The elements for each dwelling will comprise a verandah/porch, bay window or a combination of both. These elements do not exceed 40% of the articulation zone.

### **Garages and Carports**

The DCP aims to create quality streetscapes by setting controls on garages on housing lots. Single garages are encouraged on narrower lots but innovative responses to the controls may be considered. Alternatives that retain a high level of passive surveillance and activated street frontages are more likely to be deemed acceptable than those that seek to divorce the public and private realms. Relevant controls:

- *Garages and carports are to be set back in accordance with the building typology diagrams...*

- *Garages and carports adjoining rear access lanes are to ensure safe vehicle manoeuvring can be achieved.*
- *The maximum width of any garage or carport facing a public street is 6m, providing the combined garage or carport width is no greater than 40% of the lot frontage.*
- *Wider garages that are oriented side-on to the street may be considered only where the front wall is set back and designed to have a residential appearance.*
- *Driveways must be no greater than 3m in width at the boundary line.*
- *Driveways are to be positioned 1m from the side boundary to allow for driveway landscaping.*

In consideration of the listed Controls:

- All dwellings that are street facing are considered Medium Lots, excepting Lot 10 which is a compact lot. The Medium Lot typology suggests that the garage should be recessed 2m from the front building line and 6m from the front boundary. The same requirements apply to a compact lot.

The submitted plans show that the positioning of garages facing public streets generally comply with the DCP excepting Dwelling 2 which will have a garage setback of 5.5m from Shiralee Road considering proposed widening and Dwelling 18 which will have a garage setback of 5.8m.

Notwithstanding, the applicant has demonstrated that development will contribute to a high-quality streetscape along both street frontages. In particular, the use of varied garaged door treatments and positioning i.e., garages are located on alternative sides and some doors present as two (2) x singles, while others present as full double. The garage for each of the street facing units does not exceed the maximum allowed width of 6m. The modulated/stepped façade of each dwelling as well as the variation of external wall finishes from dwelling-to-dwelling utilising appropriate sections of rendered and painted brickwork; face brick work; weatherboards, and broad wall cladding also ensures an activated street frontage. In this regard, the minor non-compliance is acceptable.

- Garages for all other dwellings (internal) will not address any street, and setbacks are not applicable. These dwellings will be accessed via an internal private driveway. As demonstrated, sufficient manoeuvring area will be available to achieve functional ingress to and egress from garages. All vehicles will enter and exit the site in a forward direction.
- The shared driveway for the internal units will have a minimum width of 6m at the property boundary, consistent with Council's Development and Subdivision Code. The driveways for each of the dwellings with frontage a public road will have a width of 3m in compliance with the DCP.
- Landscaping will be provided to the driveway perimeters of all dwellings.

### ***Porches and entries***

The DCP provides that these features should create a clear and visible entry area which provides shelter for those entering the house. On corner lots an entry should be on the long side of the lot to avoid a blank face to that street.

These areas should form an integral part of the building. Relevant controls:

- *Provide a covered entry to the home at least 1.5m deep and clearly visible from the street.*

In consideration of this Control, all dwellings at the site frontage will each have a covered entry porch on the front dwelling façade, with a depth exceeding 1.5m.

#### ***Materiality and proportions***

The DCP provides that durability, detailing, appearance, and diversity should be considered when selecting materials to ensure a high-quality appearance over time. Variety and individuality are important, and considered materials selection creates a harmonious balance on the facades of the house. Well-balanced proportions are also important for improving the appearance of the dwelling, helping to relate various elements such as doors, windows, and entries. Well-proportioned elements on the facade of a house significantly improve its aesthetic value.

Several design variations have been made to the initial design since lodgement of the application to ensure compliance with the above. The final design shows a development that will achieve a varied and high-quality presentation both to the Shiralee Road as well as internal to the development. In particular:

- Roof lines have been varied with hipped profiles, full gables, and Dutch gables.
- The window fenestration from dwelling to dwelling now differs.
- The front façade of each dwelling has been modulated or stepped, so that one differs from the other.
- Varied porch/front entry treatments.
- Varied garaged door treatments, noting that garages are located on alternative sides, and that some doors present as two (2) x singles, while others present as full double.
- A variation of external wall finishes from dwelling-to-dwelling utilising appropriate sections of rendered and painted brickwork; face brick work; weatherboards, and broadwall cladding.
- Varied but complementary colour selections.

The perspective illustrations provided earlier in the report demonstrates the above diagrammatically and clearly shows that the development will achieve high quality residential amenity consistent with the emerging character of the area.

#### **5.2 Building typology, design, and dwelling mix**

The Shiralee Master Plan was designed to provide a wide mix of lot sizes to accommodate a mix of semi-detached and freestanding dwellings. Compact lots, standard lots and larger lots were intended to meet a range of demographic demands, including singles, couples, families, older people, and people with low and high incomes.

As discussed above, the proposed development is providing a multi dwelling complex which is considered adaptable to suit a range of residential needs including downsizers, retirees, and young couples starting families.

For example, the two storey dwellings allow retirees or downsizing couples to reside entirely on the ground floor (with kitchen/living zone, main bedroom, and ensuite all on one level). The first floor offers two (2) bedrooms and a bathroom for when children, family or visitors come to stay. Alternatively, these may suit a young family.

Further, a multi housing environment is a type of residential product that provides a different sense of community offering security, common facilities/areas, ongoing maintenance, and upkeep which is lacking in the Shiralee Estate/Masterplan. In this regard, the proposed development is considered to comply with the intent of the Shiralee Masterplan in terms of offering varied building typologies, design, and dwelling mix.

### 5.3 Solar access

The solar access provisions aim to promote high amenity residential development by ensuring dwellings are designed and sited to provide solar access to:

- Habitable rooms onsite and on adjoining sites.
- Private open spaces onsite and on adjacent sites.
- Adjacent public open spaces (where applicable).

For housing, the DCP provides the following relevant controls:

- *Optimise solar access by:*
  - *locating habitable rooms where light levels are best within dwellings;*
  - *controlling garage size and location where garages would block sunlight;*
  - *orienting and locating windows where sunlight would best access habitable rooms;*
  - *selecting roof pitch and forms that reduce shadow to neighbouring properties; and*
  - *use of skylights and high set windows to enhance natural lighting.*
- *Development sites and neighbouring dwellings less than 500m<sup>2</sup> or 10m wide are to achieve a minimum 2.5 hours of direct sunlight between 9am and 3pm on 21 June onto at least 1sqm of living area windows and at least 50% of the minimum amount of private open space*
- *Development must not create any additional overshadowing on existing housing where solar access is less than 2 hours between 9am and 3pm on 21 June. (This control does not apply to windows within 1.5m and facing a side boundary).*

In consideration of these controls:

- The proposed dwellings have been designed to ensure the kitchen, living and dining areas are north farcing. A reasonable amount of glazing has been provided on most northern elevations to ensure solar access/natural light to each new dwelling is achieved; notwithstanding, the proportion and size of living room glazing on some units in particular Units 6-9 and 14 and 15 is recommended to be increased to ensure adequate sunlight access. This can be achieved through increase proportion/size of existing windows, additional standard windows, or provision of hi-lite windows to these areas. A condition of consent will be included to this effect.

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- Garage location and siting for each dwelling will not obstruct sunlight to indoor or outdoor habitable spaces.
- The roof pitch and form of each dwelling will not adversely impact on solar access to the proposed dwellings or future dwellings on adjoining lands as demonstrated by the submitted shadow diagrams.
- The submitted shadow diagrams also demonstrate reasonable solar access to private open spaces for all dwellings in accordance with the applicable Control (i.e., 2.5 hours of direct sunlight between 9am and 3pm on 21 June onto at least 50% of the minimum amount of private open space) as follows:

Dwelling/ Unit	Internal Living (m <sup>2</sup> )	POS required (m <sup>2</sup> )	POS provided (m <sup>2</sup> )	Unshaded POS required (m <sup>2</sup> )	Solar access to POS min. 2.5hr period
D1	111.3m <sup>2</sup>	55m <sup>2</sup>	123m <sup>2</sup>	27.5m <sup>2</sup>	Total of 84.8m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D2	111.3m <sup>2</sup>	55m <sup>2</sup>	95.4m <sup>2</sup>	27.5m <sup>2</sup>	Total of 46.3m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D3	111.3m <sup>2</sup>	55m <sup>2</sup>	95.4m <sup>2</sup>	27.5m <sup>2</sup>	Total of 46.5m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D4	111.3m <sup>2</sup>	55m <sup>2</sup>	100.9m <sup>2</sup>	27.5m <sup>2</sup>	Total of 51m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D5	111.3m <sup>2</sup>	55m <sup>2</sup>	169.8m <sup>2</sup>	27.5m <sup>2</sup>	Total of 102.9m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D6	111.3m <sup>2</sup>	55m <sup>2</sup>	154.2m <sup>2</sup>	27.5m <sup>2</sup>	Total of 115.9m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D7	111.3m <sup>2</sup>	55m <sup>2</sup>	120.5m <sup>2</sup>	27.5m <sup>2</sup>	Total of 78.5m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D8	111.3m <sup>2</sup>	55m <sup>2</sup>	120.5m <sup>2</sup>	27.5m <sup>2</sup>	Total of 94.6m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D9	111.3m <sup>2</sup>	55m <sup>2</sup>	135.4m <sup>2</sup>	27.5m <sup>2</sup>	Total of 149m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D10	138.1m <sup>2</sup>	69m <sup>2</sup>	160.6m <sup>2</sup>	34m <sup>2</sup>	Total of 80.4m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D11	138.1m <sup>2</sup>	69m <sup>2</sup>	168m <sup>2</sup>	34m <sup>2</sup>	Total of 89.2m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D12	138.1m <sup>2</sup>	69m <sup>2</sup>	155.3m <sup>2</sup>	34m <sup>2</sup>	Total of 135.4m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D13	138.1m <sup>2</sup>	69m <sup>2</sup>	141.4m <sup>2</sup>	34m <sup>2</sup>	Total of 121.4m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D14	111.3m <sup>2</sup>	55m <sup>2</sup>	181.8m <sup>2</sup>	27m <sup>2</sup>	Total of 152.7m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D15	111.3m <sup>2</sup>	55m <sup>2</sup>	173.3m <sup>2</sup>	27m <sup>2</sup>	Total of 154.5m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D16	128.9m <sup>2</sup>	55m <sup>2</sup>	212.2m <sup>2</sup>	27m <sup>2</sup>	Total of 134.9m <sup>2</sup> of unshaded POS avail between 10am and 1pm

D17	114.1m <sup>2</sup>	69m <sup>2</sup>	234m <sup>2</sup>	34m <sup>2</sup>	Total of 154.9m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D18	127.8m <sup>2</sup>	69m <sup>2</sup>	261.5m <sup>2</sup>	34m <sup>2</sup>	Total of 178.7m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D19	223.1m <sup>2</sup>	111.5m <sup>2</sup>	283.9m <sup>2</sup>	55m <sup>2</sup>	Total of 210.8m <sup>2</sup> of unshaded POS avail between 10am and 1pm
D20	111.3m <sup>2</sup>	55m <sup>2</sup>	141.5m <sup>2</sup>	56m <sup>2</sup>	Total of 135.1m <sup>2</sup> of unshaded POS avail between 10am and 1pm

#### 5.4 Reflectivity

The reflectivity provisions aim to ensure that development does not interfere with residential amenity and driver safety by preventing glare. Controls:

- *Exterior walls, roofs and trims of all buildings, including tanks, sheds, carports and other outbuildings are to be constructed of low reflectivity materials.*
- *Zincalume is not to be used on any surface visible from a road, public place or neighbouring property.*

The material and colour palette submitted with the application indicates compliance with this control.

#### 5.5 Privacy

The objectives of the privacy provisions are:

- To minimise the potential for privacy conflicts in the urban environment.
- All residents (neighbours and future occupants of proposed developments) should be afforded reasonable protection from overlooking of habitable rooms and primary outdoor entertainment spaces.

Relevant controls:

- *Where practicable, upper floor windows of habitable rooms are to be aligned at intervals to the windows of habitable rooms in neighbouring properties.*
- *Where a potential privacy conflict may exist upper floor habitable room windows are to be designed to restrict views below the horizontal. This may be achieved by:*
  - *raised window sill heights*
  - *use of attached fixed slats angled to deny views below the horizontal*
  - *window boxes*
  - *any combination of the above.*
- *Frosted or obscure glazing is to be used for the windows of any upper floor bathroom, ensuite, laundry or WC.*
- *The primary private courtyard should not be positioned immediately adjacent to a neighbouring primary private courtyard area unless a solid masonry fence to 1.8m in height is provided between them.*

- *Air conditioning compressors and pool pumps are to be located so that noise measured at the property boundary does not exceed 5dB above ambient night-time background noise.*

In consideration of the above-listed DCP Controls:

- Units 10 to 13 comprise upper floor windows. The upper floor windows of these units relate to bedrooms, bathrooms, and stairwells. They do not relate to principal living rooms. Reasonable privacy is maintained as follows:
  - The windows have a reasonably raised sill height (i.e., they do not extend to floor level).
  - Bathroom windows will be frosted.
  - Stairwells are not regarded as a habitable room.
  - Whilst bedrooms are a habitable room, they are expected to generate less impacts in terms of privacy (compared to principal living rooms). Further, the separation distance between these rooms (over 10m) and expected window treatments will reduce any potential privacy conflict between the residences.
- There will be no overlooking into adjoining private open space areas:
  - None of the upper floor windows will directly oppose or overlook habitable room windows in dwellings outside the development site.
  - The remaining dwellings will be single storey and are unlikely to present issues in relation to visual privacy and/or overlooking due to the single storey design and orientation of the windows to the private open space areas of each dwelling. Floor levels will be commensurate with existing natural ground levels. Fencing will also be provided in between each dwelling/unit and around the perimeter of the allotment.
  - Site landscaping will be installed and contribute to visual privacy screens.

## **Part 6 - Private Domain Landscape**

### **6.1 Landscape and Private Open Space**

The DCP outlines that the design of private open space in combination with the streetscape is vital to the character of the neighbourhood. Attractive landscaped front gardens in combination with views of rear garden planting and street trees has the ability to define the street. The following controls are provided in this regard:

- *Lot landscaping is to be consistent with the lot typology diagrams in Appendix B and the controls within this Development Control Plan.*
- *For Larger Lots landscaping is to include a range of planting types including trees which provide good shade and partial screening of development.*
- *Existing trees are to be incorporated within lots. Dwelling configurations and ground levels should ensure existing tree health and longevity.*
- *In all cases private open space does not include any of the front setback.*
- *Private open spaces are to be consistent with Lot Typology diagrams in Appendix B.*

- *For larger and standard lots a usable area of at least 50% of the dwellings floor space is to be provided, with a minimum dimension of 6m.*
- *For all lots at least one area of minimum dimensions of 5m by 5m directly accessible to a living area and orientated to achieve at least 3 hours of solar access between 9am and 3pm on the winter solstice.*
- *Front and rear gardens must include at least one (1) tree, installed at 75L pot size.*
- *Bins should be concealed within a storage area so they are not visible from the street or an adjacent park.*

In consideration of the above:

- A Landscape Plan has been prepared by Harris Hobbs Landscape Architects in support of the proposal noting that the plan will need to be updated to reflect recent changes made to the dwelling arrangement. Notwithstanding, the submitted landscape plan demonstrates a reasonable range of plantings both internally and to the street frontage that will provide shading, screening, and privacy within the development. The landscaping includes species that are suitable to the Orange area with plantings that are of appropriate foliage and of intermediate and tall height to provide screening and aesthetic appeal. Landscape design will reasonably accord with the lot typology diagrams.
- The proposed site plan depicts certain trees that may be considered for retention within the development. However, the retention of these trees will be subject to final engineering and site levels and further investigation of the Tree Protection Zone and Structural Root Zone. It is recommended that an arboriculture impact assessment report be provided to Council that investigates tree retention values together with any construction methodology to retain as many established trees as possible as part of the detailed design for the complex.
- Private open space for each dwelling will accommodate an area of 5m x 5m, as prescribed by the DCP. Private open space for the dwellings will be located at the rear or side of the dwellings, and behind the front building line. As outlined previously, the solar access to each area of private open space on the winter solstice is considered satisfactory.
- The bins for each dwelling will be stored in their respective private open space area (i.e., out of sight from public or communal areas). Bin-bays for Dwellings 6-8, 10-16 and 19 will be provided within the access driveway/community property for use on garbage collection days only. At all other times, the bins will be stored within the boundaries of each dwelling site.

In recent correspondence received from Council's waste contractor JR Richards, they advise that their domestic waste collection fleet comprise only heavy rigid vehicles and will be unable to enter the site to service internal waste bins. JR Richards have advised that they can offer a commercial waste service to the internal dwellings providing a suitable indemnity is agreed to. The alternative to this arrangement would require the relocation of the internal bin bays to a suitable location within the complex to allow onsite collection of waste by contractors on a walk-in walk-out basis, provided bin storage area is within 20m of a public road.

It is recommended if the latter option is adopted that the bin storage area is positioned adjacent to Tanika Street along the proposed walkway. Conditions are recommended to formalise and facilitate either arrangement.

## 6.2 Fences

Fencing provides a delineation between public and private realms and an essential privacy device between private properties. Fencing helps to establish defensible space and is also one of the most prominent elements in the urban environment and a major contributor to streetscapes. The DCP provides the following relevant controls:

- *Front fencing (all fences forward of the building line) is to be a maximum of 1.2m in height and a minimum of 30% open.*
- *Secondary frontage fencing is to be a maximum of 1.5m in height and the portion above 1.2m in height is to be 30% open.*
- *Side and rear boundary fencing may be 1.8m in height.*
- *Fences that are not visually permeable, such as Colorbond, are not permitted on boundaries along open spaces or larger lots, or where visible from streets.*
- *Demarcation of boundaries through the use of hedges and tree planting is encouraged.*

There is no fencing proposed forward of the building line for the units which face the street frontages of Shiralee Road and Tanika Street. The applicant has proposed to delineate front boundaries with low landscaping which is also accepted by the DCP. Side and rear boundary fencing between the units will comprise Hampton style semi privacy and full privacy fencing as shown below. The full privacy fencing will be 1.8m in height and semi privacy up to 1.5m in height.



Figure 11 - proposed internal fencing style

## Part 10 - Vehicle Parking and Servicing

### 10.1 Vehicle Parking

- *Driveway crossovers are to be a maximum of 3m wide and are not to be constructed within 6m of an intersection. Crossover pavement is to match the adjacent footpath material.*

- *Garages and carports on corner lots are to be accessed from the longer street frontage and the crossover is to be aligned adjacent to the boundary furthest from the intersection.*

In consideration of the listed Controls:

- The shared driveway for the internal dwellings will have a minimum width of 6m at the property boundary, consistent with Council's Development and Subdivision Code. Internal driveway will range from 4.5-5.5m wide. As demonstrated, sufficient manoeuvring area will be available to achieve functional ingress to and egress from garages. All vehicles will enter and exit the site in a forward direction.
- Proposed Dwellings 1 and 5 and Dwellings 9, 17, 18 and 20 will have separate and direct access a public road (Shiralee Road and Tanika Street). These dwellings will have reserve egress to the public street, consistent with arrangements for single dwellings throughout the city.
- The DCP is silent in relation to parking requirements for dwellings on Medium and Compact Lots, however the lot typology diagrams nominate single attached garages. The proposed dwellings will each have an attached double garage providing 40 covered spaces. Three (3) Visitor parking spaces are also provided throughout the complex. In addition, tandem parking will be available within driveways of street facing dwellings. The parking proposed is considered appropriate.

## DEVELOPMENT CONTRIBUTIONS

The proposed development is subject to Section 7.11 Contributions (Shiralee Release Area) and Section 64 Headworks Charges. Contributions are based on 19 x 3-bedroom dwellings. One credit for the existing dwelling is available for Section 7.11 Contributions. Accordingly, the development contributions that are applicable to the development are as follows:

### Section 7.11 Development Contributions

Open Space and Recreation	@ 792.01 x 19 dwellings	15,048.19
Community and Cultural	@ 229.68 x 19 dwellings	4,363.92
Roads and Traffic Management	@ 1,045.43 x 19 dwellings	19,863.17
Local Area Facilities	@ 17,760.90 x 19 dwellings	337,457.10
Plan Preparation and Administration	@ 171.98 x 19 dwellings	3,267.62
<b>TOTAL:</b>		<b>\$380,000.00</b>

### Section 64 Headworks Charges

Headworks charges for water supply, sewerage and stormwater will also apply to the proposal. The contributions are based on 20 dwellings given the site is not currently connected to reticulated water or sewer services. Conditions are included on the attached Notice of Determination requiring payment of development contributions.

**PROVISIONS PRESCRIBED BY THE REGULATIONS s4.15(1)(a)(iv)****Demolition of a Building (clause 92)**

The proposal involves the demolition of ancillary structures. A condition is attached requiring the demolition to be carried out in accordance with *Australian Standard AS2601 - 1991: The Demolition of Structures*.

**Fire Safety Considerations (clause 93)**

The proposal does not involve a change of building use for an existing building.

**Buildings to be Upgraded (clause 94)**

The proposal does not involve the rebuilding, alteration, enlargement, or extension of an existing building.

**BASIX Commitments (clause 97A)**

Council' EHSB advises that satisfactory BASIX/NATHERS certificate has been submitted with the application.

**THE LIKELY IMPACTS OF THE DEVELOPMENT s4.15(1)(b)****Context and Setting**

The subject land is located in an emerging urban residential locality which has been zoned for residential purposes for many years. The development pattern occurring in this particular area predominately comprises single dwellings, with instances of two storey dwellings occurring.

The proposed development will provide for a continuation of residential land use, albeit in a more compact form. Notwithstanding, the proposal will provide and retain a reasonable standard of residential amenity as expected in the Shiralee Estate for the existing and proposed dwellings and those on adjoining lands in respect of visual, solar access, open space/landscaped areas, privacy etc as demonstrated in the foregoing sections in the report. This renewed character and amenity is to be expected in this locality as originally envisaged for this area of the City. Overall, the development is consistent with the expectant development pattern of the area, is in keeping with recent urbanisation and is not incompatible with the expected context of the area.

**Visual Impacts**

The loss of existing trees on the site, demolition works, and the construction of the development may have some visual impact on the locality; however, the development design proposed by this application is at least equivalent to the standard of residential development that has occurred across the Shiralee Estate to date. The proposal also involves an extensive landscaping and will be required to undertake street planting in accordance with the DCP will negate any visual impacts in years to come and will create a landscape that is visually consistent with the recently approved and developing urban residential development in the locality. The anticipated visual impact is to be expected in this area in light of the adopted controls contained within the DCP for this precinct.

**Traffic Impacts**

The proposal is considered to be satisfactory in terms of traffic impacts. Council's Technical Services Division advises that capacity of the local road network is sufficient to accommodate traffic generated by the development and will not exceed environmental goals for peak volumes on local streets. It should be noted that upgrading works to adjoining roads will be required as part of the proposal.

As outlined previously, site accesses and onsite manoeuvring areas are appropriate and will accommodate standard vehicles associated with the development. Onsite car parking will comply with the requirements of Council Subdivision and Development Code.

**Cumulative Impacts**

The proposed development involves a higher density residential development than prevails in the immediate neighbourhood. Notwithstanding, the development satisfies the R1 zone objectives to provide a variety of housing types and densities. The proposed density is permitted and complementary in the zone and setting.

The proposed dwellings will complement the neighbourhood built form in respect of bulk, form, design features and external finishes. The proposed development will not reduce the open space, solar access or privacy afforded to neighbouring properties.

Similarly, the site layout and building design will provide a reasonable standard of residential amenity for the proposed dwellings in terms of open space, solar access, and privacy. The development will contribute to the diversity of housing forms in the precinct in a manner that is consistent with the intent of the DCP and emerging neighbourhood character.

The proposal is considered to be satisfactory in terms of cumulative impact, and adverse impacts are unlikely.

**Economic and Social Impacts**

The proposed development is consistent with Council's long term land use strategy identifying the Shiralee area as a residential growth area. The proposed development will promote the growth and investment in residential development in a serviceable area of Orange and thus is expected to have positive economic stimulus to the construction and building sector of Orange. The development will also be providing additional residential accommodation in a market where supply and diversity is limited.

**Environmental Impacts**

The subject land is contained within an emerging residential precinct. Significant vegetation threatened species or ecological endangered communities, or their habitats are not present. The site is not in proximity to any waterway, drinking water catchment or sensitive area. Sediment control measures, as required by conditions, will prevent loose dirt and sediment escaping the site and polluting downstream waterways.

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

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

- the proposal is permitted on the subject land R1 General Residential zoning
- the site is of sufficient area and dimensions to accommodate multi dwelling housing and provide a suitable standard of residential amenity
- the site has direct frontage and access to a public street
- there is no known contamination on the land
- all utility services are available and can be made adequate
- the site is not subject to natural hazards
- the subject land has no biodiversity or habitat value
- the site is not in proximity to any waterway, drinking water catchment or sensitive area
- the site is not known to contain any Aboriginal, European, or archaeological relics.

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

The proposed development is defined as advertised and notified development under the provisions of the Community Participation Plan 2019. The application was initially advertised for the prescribed period of 14 days and at the end of that period three (3) submissions had been received. Following amendments made to the proposal, the application was re-notified for a period of 14 days, one (1) additional submission was received from a previous objector. A summary of the issues raised and a planning response to the submission received has been provided below:

**FIRST EXHIBITION PERIOD**

**Issue 1:** The proposal is not in keeping with the Shiralee Development Control Plan.

**Assessment Response:** As outlined in the above report, Council can consider some variation in lot sizes and development types to what is shown the Masterplan as outlined in Section 1.8 of the DCP. The proponent has been able to suitably demonstrate the proposal meets or exceeds the Masterplan and DCP aims and principles and for the reasons outlined in the report the proposal can be supported.

**Issue 2:** The proposed development is close to a watercourse.

**Assessment Response:** The Natural Resources Access Regulator Hydroline mapping of the subject land does not identify any significant watercourses or streams on the land. However, the Hydroline mapping does show that an un-named natural drainage system is located on the subject land to the west. The proposed development is well away from this drainage channel and appropriate measures will be required to be in place during construction relating to sediment control etc to ensure no impact occurs on receiving waters.

**Issue 3:** The intensity of development will result in minimal absorption of rainfall.

**Assessment Response:** The site coverage for the development as a whole is 34%. The development incorporates reasonable amount of permeable surfaces throughout the development as shown on the submitted landscape plan which will assist in stormwater management on the site.

Lastly the proposed development will be required to provide the appropriate stormwater infrastructure to manage stormwater runoff in accordance with Councils' normal requirements via conditions of development consent.

**Issue 4:** The proposed development will cause an increase in noise, stormwater erosion and pollution.

**Assessment Response:** Prior to the commencement of works or issue of a Construction Certificate (whichever occurs first), a Noise and Vibration Management Plan will be required to be prepared by a suitably qualified acoustic and vibration expert addressing the likely noise and vibration from excavation and construction of the proposed development. The Plan will be required to identify amelioration measures to ensure the noise and vibration levels will be compliant with the relevant Australian Standards: The proposal is for residential development and as such ongoing domestic noise would be expected. Erosion and pollution controls will be required to be in place during works as conditions of consent.

**Issue 5:** Traffic

**Assessment Response:** The development will result in additional traffic in the locality given the increases in residential density at the completion of the development, however, the existing surrounding street networks and proposed new roads will be capable of serving the additional traffic load once upgraded as part of this application. Council's Development Engineer has included conditions in relation to road upgrading, construction standards etc.

**Issue 6:** The proliferation of Colorbond fencing is not in keeping with the Shiralee Development Control Plan.

**Assessment Response:** No Colorbond fencing is proposed. Hampton style semi privacy and full privacy fencing is proposed which is appropriate for internal fencing.

**Issue 7:** The proposed development is not green and open.

**Assessment Response:** The proposal incorporates a reasonable amount of private open space for each dwelling which complies with the DCP. Refer to Table 2 in the report. Site landscaping meets the provisions of the DCP.

**Issue 8:** Unaware that a unit development could be built in the area.

**Assessment Response:** The development satisfies the R1 zone objectives to provide a variety of housing types and densities. The proposed density is permitted and complementary in the zone and setting.

**Issue 9:** Unit developments due to their density cannot be considered complementary to the semi-rural and natural qualities of the Shiralee Estate.

**Assessment Response:** While the locality may appear to be semi-rural at the moment, the area has been master planned and zoned to permit such developments for some years now. The development is consistent with the expectant development pattern of the area, is in keeping with recent urbanisation of adjoining allotments and is not incongruous with the expected context/setting of the area.

**Issue 10:** Blocks on Shiralee Road should be a minimum size of 700sqm as stated in the Orange Local Environment Plan (2011).

**Assessment Response:** The proposal involves Community Subdivision under the Community Land Development Act 2021, and this minimum Lot Size clause under the LEP does not apply.

**Issue 11:** A unit complex in Shiralee will be isolated from key services such as a suitable public transport service, doctors, chemists.

**Assessment Response:** The provision of key services and amenities is guided by the Shiralee Development Control Plan 2015. Transport links, open space, and village centre (which could host medical and chemist services) have been identified and land suitability zoned and thus as the urban village becomes established overtime it will be expected the site and development will be well located in terms of access to services.

**Issue 12:** The proposed development can drastically change selling prices.

**Assessment Response:** There is no evidence to suggest that this type of development would have any impacts on property values in the area.

**Issue 13:** Shiralee should be focused more towards becoming family friendly and these units will likely create unwilling behaviour which will create a housing density that is not complementary to the character of an area in a rural aspect. These density issues create the following challenges:

1. Lack of outdoor yard space for domestic pets such as dogs, cats, chickens etc. including issues with loud music and bored pets causing environmental issues such as noise and constant barking of dogs due to inconsiderate pet owners.
2. The issue of second-hand cigarette smoke to be a potential environmental concern if dwellings are built close together and neighbours choose to smoke cigarettes on the property boundary.
3. The proposal of double storey dwellings may reduce the effectiveness of Solar Panels as well as the issue of possible loss of privacy and views at residences.

**Assessment Response:** The site and surrounding land is zoned for urban residential purposes thus is not considered rural environment. The proposed dwellings are adaptable to suit a range of residential needs and can accommodate downsizers, retirees, and young couples starting families. All dwellings within the complex achieve the minimum private open space area required (some even exceed).

The concerns relating to noise pollution from loud music and barking dogs are not matters for consideration under the Environmental Planning and Assessment Act 1979 as part of a development application. These issues are matters for Council's Regulatory/Compliance unit or Police to investigate through reporting of such incidents if and when they occur. Similarly, cigarette smoke is not a matter for consideration under the DA process. Lastly, all upper storey dwellings within the complex are well separated from adjoining properties and will not result in any overshadowing of PV panels or reduce current privacy levels enjoyed by adjoining properties.

**SECOND EXHIBITION PERIOD**

**Issue 1:** Increasing of the number of dwellings to 20 is only going to exacerbate the issues discussed in previous submission (Issue 13 above). Further, the reasoning for the reduction in lot sizes does not consider the need for adequate outdoor space for domestic pets, second hand cigarette smoke and reduced opportunity/access to private recreational areas.

**Assessment Response:** All proposed dwellings generally comply with the DCP controls in terms of private open space, site coverage, landscape areas, sunlight access excepting some minor variations as discussed in the body of the report. These minor departures do not warrant refusal of the application and it is considered that a reasonable amount of amenity will be achieved despite these variations. The issues relating to domestic pets and cigarette smoke are not matters to consider in the DA process.

**Issue 2:** The proposal is contrary to the Shiralee Development Control Plan as the change in frontage of four (4) units to access Tanika Street will greatly increase traffic congestion by providing for the day to day needs of residents within the precinct. It is possible that the four (4) dwellings fronting Tanika Street could house up to and beyond twelve (12) cars not including visitors accessing these properties, with the proposed lot sizes on the other side of Tanika Street having small street frontages this may cause congestion issues on Tanika Street that would be better addressed by having traffic sent to the arterial road that provided access in the original proposal, Shiralee Road.

**Assessment Response:** Shiralee DCP anticipated three (3) dwellings fronting Tanika Street. The applicant has proposed to increase the number of dwellings facing Tanika Street by one (1). This is considered modest increase and not expected to result in traffic congestion. Parking also exceeds DCP requirements as discussed in the body of the report.

Further, while the development will result in additional traffic in the locality given the increases in residential density at the completion of the subdivision/dwelling construction, this was generally anticipated and calculated for in the master planning for the area. Further, Council's Technical Services advise that the street network (existing and proposed) will be capable of serving the additional traffic load associated with the proposed lots/dwellings.

It is important to note that the yields predicted in the Masterplan are indicative/concept only and is subject to site specific testing through accurate survey at the development application stage; therefore, it is not uncommon for such variations to occur.

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

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

**INTERNAL REFERRAL ADVICE**


The requirements of the Environmental Health and Building Surveyor and the Engineering Development Section are included in the attached Notice of Determination.

**SUMMARY**

The proposed development is permissible with the consent of Council. The proposed development complies with the relevant aims, objectives, and provisions of Orange LEP 2011 (as amended), DCP 2004 and Shiralee DCP 2015. A Section 4.15 assessment of the development indicates that the development is acceptable in this instance. Attached is a draft Notice of Determination outlining a range of conditions considered appropriate to ensure that the development proceeds in an acceptable manner.

**ATTACHMENTS**

- 1 Notice of Approval, D22/52702 [↓](#)
- 2 Plans, D22/30817 [↓](#)
- 3 Submissions - First and Second Exhibition Periods, D22/30502 [↓](#)

	<p style="text-align: center;"><b>ORANGE CITY COUNCIL</b></p> <p style="text-align: center;">Development Application No <b>DA 218/2021(1)</b></p> <p>NA22/322 <span style="float: right;">Container PR12750</span></p>
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## NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

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

### Development Application

Applicant Name:	Fusefen Pty Ltd
Applicant Address:	C/- Peter Basha Planning & Development PO Box 1827 ORANGE NSW 2800
Owner's Name:	Fusefen Pty Ltd
Land to Be Developed:	Lot 1 DP778563 - 46 Shiralee Road, Orange
Proposed Development:	Demolition (existing outbuildings and trees), multi dwelling housing (comprising 19 new dwellings plus alterations to the existing dwelling (20 dwellings in total)), Subdivision (21 lot Community Title)

### Building Code of Australia building classification:

Class to be determined by Certifier

### Determination made under Section 4.16

Made On:	6 September 2022
Determination:	<b>CONSENT GRANTED SUBJECT TO CONDITIONS DESCRIBED BELOW:</b>

<b>Consent to Operate From:</b>	7 September 2022
<b>Consent to Lapse On:</b>	7 September 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) Because the development will require the provision of, or increase the demand for, public amenities and services.
- (5) To ensure the utility services are available to the site and adequate for the development.
- (6) 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) The approved stamped architectural plans prepared by McKinnon Design (13 sheets)
  - (b) The approved stamped landscape plans prepared by Harris Hobbs Landscapes (3 sheets)
  - (c) The approved stamped plans prepared by Peter Basha Planning and Development, dated 11 July 2022 (11 sheets)
  - (d) 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 218/2021(1)**

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**Conditions (cont)**

- (2) Where staging of the development is proposed, all conditions of consent and contributions relative to the proposed staging of the development, and all engineering conditions of development consent as it relates to the servicing of the proposed development are to be satisfied.

<b>PRESCRIBED CONDITIONS</b>
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- (3) All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- (4) 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.

- (5) In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of the Act, evidence that such a contract of insurance is in force is to be provided to the Principal Certifying Authority before any building work authorised to be carried out by the consent commences.
- (6) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- (a) in the case of work for which a principal contractor is required to be appointed:
    - (i) the name and the licence number of the principal contractor, and
    - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
  - (b) in the case of work to be done by an owner-builder:
    - (i) the name of the owner-builder, and
    - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information under this condition becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

- (7) Where any excavation work on the site extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (a) protect and support the adjoining premises from possible damage from the excavation, and
  - (b) where necessary, underpin the adjoining premises to prevent any such damage.

Note: This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to this condition not applying.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 218/2021(1)**

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**Conditions (cont)****PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

- (8) Revised plans shall be provided to the Principal Certifier with an application for a Construction Certificate for Dwellings 6-9 and 14 and 15 in accordance with the following:
- (a) The size and proportion of north facing living room glazing is to be increased to receive a minimum 2.5 hours direct sunlight onto at least 1sqm of the windows between the hours of 9am and 3pm on 21 June. This may be achieved by providing additional standard windows, hi-lite windows, or a combination of both. The revised plans shall be supported by a solar access analysis showing on the horizontal plane of the buildings how compliance is achieved.
- (9) Prior to the issue of a Construction Certificate, a *Street Tree and Public Domain* plan shall be provided to and approved by Council's Manager Development Assessment. The plan is to be in accordance with the Street Tree Strategy for Shiralee Road and Tanika Street as outlined within the Shiralee Development Control Plan 2015. Species, quantities, and positioning shall be identified in consultation with the Manager City Presentation.
- (10) Prior to the issue of a Construction Certificate, an *Arboricultural Impact Assessment* report shall be prepared by an AQF Level 5 consulting arborist. The report shall investigate the retention of established trees on the property together with any construction methodology to retain as many established trees as possible. The assessment shall be carried out in consultation with Council's Manager City Presentation and provided to Council's Manager Development Assessment for approval.
- (11) Prior to the issue of a Construction Certificate, a revised landscape plan prepared by a suitably qualified landscape architect is to be submitted to and approved by Council's Manager Development Assessment. The revised landscape plan shall:
- a) reflect the re-orientation of the southern residential units;
  - b) provide landscaping detail for all dwellings with frontage to Tanika Street and new areas of community property within the complex. The plan shall include appropriate selection of trees and a mix of shrubs and hedges, accent plants, grasses/groundcovers. All species shall be suitable to the Orange climate; and
  - c) Incorporate any trees to be retained as identified in the *Arboricultural Impact Assessment* as required by Condition 10 above.
- (12) Prior to the issue of a Construction Certificate, details of the waste management arrangement associated with dwellings 6-8, 10-16 and 19 shall be submitted to and approved by Council's Manager Development Assessment. The waste management arrangement for the internal dwellings shall comprise either:
- a) a commercial waste service for each waste stream (general waste, green waste, and recyclables) to be collected from bin bays within the site. Suitable indemnity will need to be agreed to with Council's waste contractor; or alternatively
  - b) a walk in/walk out service arrangement where bins are within 20m of a public road. This arrangement will require bin bays to be relocated adjacent to the walkway to Tanika Street. Notwithstanding, a sufficient level of screening and landscaping shall be maintained in this area. A revised site plan shall be submitted to Council demonstrating compliance.
- In determining the most appropriate arrangement, the proponent shall consult with Council's waste management contractor JR Richards.
- (13) Prior to the commencement of works or issue of a Construction Certificate (whichever occurs first), a Noise and Vibration Management Plan is to be prepared by a suitably qualified acoustic and vibration expert addressing the likely noise and vibration from excavation and construction of the proposed development and provided to Council for approval. The Plan is to identify amelioration measures to ensure the noise and vibration levels will be compliant with the relevant Australian Standards and Assessing Vibration: A technical guideline (available [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)).

(Condition (13) continued over page)

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 218/2021(1)**

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**Conditions (cont)****Prior to the issue of a construction certificate (cont)****(13) (cont)**

The report shall be prepared in consultation with any geotechnical report that itemises equipment to be used for excavation works. The Plan shall address, but not be limited to, the following matters:

- (a) Identification of activities carried out and associated noise sources.
- (b) Identification of potentially affected sensitive receivers, including residences, churches, commercial premises, schools and properties containing noise sensitive equipment.
- (c) Determination of appropriate noise and vibration objectives for each identified sensitive receiver.
- (d) Noise and vibration monitoring, reporting and response procedures.
- (e) Assessment of potential noise and vibration from the proposed excavation and construction activities, including noise from construction vehicles.
- (f) Description of specific mitigation treatments, management methods and procedures to be implemented to control noise and vibration during construction.
- (g) Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods and frequency (consistent with conditions of this consent).
- (h) Procedures for notifying residents of construction activities likely to affect their amenity through noise and vibration.
- (i) Contingency plans to be implemented in the event of non-compliances and/or noise complaints.

- (14) A water and soil erosion control plan 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.

- (15) Engineering plans providing complete details of the proposed water, sewer and stormwater services are to be submitted to Orange City Council or an Accredited Certifier (Categories B1, C3, C4, C6) upon application for a Construction Certificate.

Internal sewer lines servicing each dwelling from the existing sewer junction shall be constructed as private sewer mains constructed to Australian Standard AS/NZS 3500.

The existing septic tank and absorption trenches shall be indicated on the engineering plans. The contents of the existing septic tank are to be removed by a licensed contractor for disposal into Council's sewer system. The septic tank is to be excavated and disposed of at a licensed landfill and the absorption trench is to be drained and the voids limed and backfilled with clean compacted material.

A single water meter and fire service shall be located in the common property driveway. Internal water mains servicing each dwelling from the common water meter shall be constructed as private water mains constructed to Australian Standard AS/NZS 3500. The size of the common water meter and fire service shall be determined by a practicing engineer.

Proposed Dwellings 1 to 20 and the common property Lot shall be provided with interlot stormwater drainage. A grated concrete stormwater pit is to be constructed within each lot. Internal stormwater lines servicing the development from the existing stormwater pit shall be constructed as private stormwater mains constructed to Australian Standard AS/NZS 3500.

- (16) Shiralee Road shall be widened 2.245m and constructed to full urban standard for the full frontage of Lot 1 DP 778569. This work is to include part road construction consisting of an earth-formed footpath reserve, concrete kerb and gutter, piped stormwater drainage, full depth road pavement and pavement surfacing to and including the parking lane on Shiralee Road. The road works shall key into the existing road pavement and be designed to suit future road levels as per Orange City Councils roadworks design for Shiralee Road. All services (water, electricity, gas and telecommunications) shall be installed underground for the full frontage of the development.

(Condition (16) continued over page)

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 218/2021(1)**

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

(16) (cont)

Tanika Street shall be constructed as half road width for the full frontage of the proposed development. This work is to include road pavement and pavement surfacing to the centreline, kerb and gutter construction and earth-formed footpath on the development side of the road.

All work shall be in accordance with the Orange City Council Development and Subdivision Code, the Shiralee DCP, Councils roadworks plans for Shiralee Road upgrade and Council drawing TP00040 (as amended).

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 prior to the issuing of a Construction Certificate.

- (17) Plans detailing compliance with *Fire and Rescue NSW - Fire Hydrants for Minor Residential Development* and *Fire and Rescue NSW - Access for Fire Brigade Vehicles and Firefighters* is to be submitted to the Principal Certifying Authority for approval prior to the issuing of a Construction Certificate.
- (18) Prior to the issue of a Construction Certificate the existing 150mm diameter sewer main that crosses the site is to be accurately located and noted on the site plan. Where the main is located adjacent to any proposed building work, measures are to be taken in accordance with Orange City Council Policy - Building over and/or adjacent to sewers ST130 (*the Policy*). Details of compliance with Clause 4 of the Policy shall be provided to the Principal Certifying Authority. Any works in the vicinity of the sewer main are to be designed and certified by a structural engineer.
- (19) The finished floor level of proposed Units 6 and 7 shall be a minimum of 300mm above the finished natural ground levels between the two (2) dwellings. The ground levels between the dwellings shall be shaped to accommodate overland stormwater flows originating from the stormwater system located at the rear of 6 Sweetheart Drive.
- (20) The existing water main located in the Shiralee Road reserve shall be extended for the full frontage of 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.
- (21) The payment of **\$380,000.00** 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 (Shiralee Release Area) towards the provision of the following public facilities:

Open Space and Recreation	@ 792.01 x 19 dwellings	15,048.19
Community and Cultural	@ 229.68 x 19 dwellings	4,363.92
Roads and Traffic Management	@ 1,045.43 x 19 dwellings	19,863.17
Local Area Facilities	@ 17,760.90 x 19 dwellings	337,457.10
Plan Preparation and Administration	@ 171.98 x 19 dwellings	3,267.62
<b>TOTAL:</b>		<b>\$380,000.00</b>

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

- (22) **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 20 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.

(Condition (22) continued over page)

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 218/2021(1)**

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

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(22) (cont)

This Certificate of Compliance is to be submitted to the Principal Certifying Authority prior to the issuing of a Construction Certificate.

(23) Engineering plans providing complete details of the proposed driveway and car-parking areas is to be submitted to Orange City Council or an Accredited Certifier (Categories B1, C3, C4, C6) upon application for a Construction Certificate. These plans are to provide details of levels, cross falls of all pavements, proposed sealing materials and proposed drainage works and be in accordance with the Orange City Council Development and Subdivision Code.

(24) A Road Opening Permit in accordance with Section 138 of the *Roads Act 1993* must be approved by Council prior to **a Construction Certificate being issued or any intrusive works** being carried out within the public road or footpath reserve.

(25) An approval under Section 68 of the *Local Government Act* is to be sought from Orange City Council, as the Water and Sewer Authority, for alterations to water and sewer. No plumbing and drainage is to commence until approval is granted.

(26) The applicant is to submit a waste management plan that describes the nature of wastes to be removed, the wastes to be recycled and the destination of all wastes. All wastes from the demolition and construction phases of this project are to be deposited at a licensed or approved waste disposal site.

**PRIOR TO WORKS COMMENCING**

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(27) A Construction Certificate application is required to be submitted to and issued by Council/Accredited Certifier prior to any excavation or building works being carried out onsite.

(28) A temporary onsite toilet is to be provided and must remain throughout the project or until an alternative facility meeting Council's requirements is available onsite.

(29) The location and depth of the sewer junction/connection to Council's sewerage system is to be determined to ensure that adequate fall to the sewer is available.

(30) Prior to the commencement of any works and where the *Arboricultural Impact Assessment* report has identified any trees to be retained, tree protection fencing shall be established at the locations identified within the report. Fencing must be in accordance with Australian Standard AS4970-2009 Protection of trees on development sites and be kept in place until the completion of works. The fencing must be a minimum of 1800mm high chain link fencing and be appropriately signposted notifying site workers that the trees are to be retained and protected. The storage of vehicles, machinery, equipment, or the storage or stockpiling of materials is strictly prohibited in these exclusion zones.

**DURING CONSTRUCTION/SITEWORKS**

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(31) Any adjustments to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer.

(32) 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.

(Condition (32) continued over page)

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 218/2021(1)**

7

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

(32) (cont)

The developer is to be entirely responsible for the provision of water, sewerage and drainage facilities capable of servicing the development 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.

(33) All driveway and parking areas within the development shall be sealed with bitumen, hot mix or concrete and are to be designed for all expected loading conditions (provided, however, that the minimum pavement depth for gravel and flush seal roadways is 200mm) and be in accordance with the Orange City Council Development and Subdivision Code.

(34) The combined vehicle entry/exit located on Shiralee Road shall be constructed as a 6.0m wide heavy-duty concrete kerb and gutter layback and footpath crossing to suit design levels and alignment of the future Shiralee Road construction. The works are to be carried out to the requirements of the Orange City Council Development and Subdivision Code and Road Opening Permit.

Dwellings 1 to 5 shall have a concrete kerb and gutter layback and footpath crossing constructed to suit design levels and alignment of the future Shiralee Road construction. Dwellings 9, 17, 18 and 20 shall have a concrete kerb and gutter layback and footpath crossing constructed on Tanika Street. The works are to be carried out to the requirements of the Orange City Council Development and Subdivision Code.

(35) A concrete footpath shall be constructed for the full frontage of Shiralee Road and Tanika Street to the widths and standards stated in the Shiralee Development Control Plan and Orange City Council's *Shiralee Engineering Requirements and Additional Information* (D15/40462).

Construction work shall suit design levels and alignment of the future Shiralee Road widening and is to be to the requirements and standards of the Orange City Council Development and Subdivision Code.

(36) The existing 150mm diameter sewer main that crosses the site is to be accurately located. Where the main is positioned adjacent to any proposed building work, measures are to be taken in accordance with Orange City Council Policy - Building over and/or adjacent to sewers ST130.

(37) The contents of the existing septic tank are to be removed by a licensed contractor for disposal into Council's sewer system. The septic tank is to be excavated and disposed of at a licensed landfill and the absorption trench is to be drained and the voids limed and backfilled with clean compacted material.

(38) All construction/demolition work on the site is to be carried out between the hours of 7.00 am and 6.00 pm Monday to Friday inclusive, 7.00 am to 5.00 pm Saturdays and 8.00 am to 5.00 pm Sundays and Public Holidays. Written approval must be obtained from the General Manager of Orange City Council to vary these hours.

(39) A Registered Surveyor's certificate identifying the location of the building on the site must be submitted to the Principal Certifying Authority.

(40) All materials on site 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.

(41) 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.

(42) No portion of the building - including footings, eaves, overhang and service pipes - shall encroach into any easement.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 218/2021(1)**

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8

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

- (43) 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 on site must cease immediately. The beneficiary of the consent must discuss with Council the appropriate process that should be followed therein. Works on site must not resume unless the express permission of the Director Development Services is obtained in writing.
- (44) 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.

**PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

- (45) No person is to use or occupy the building or alteration that is the subject of this approval without the prior issuing of an Occupation Certificate.
- (46) Landscaping shall be installed in accordance with the approved plans and shall be permanently maintained to the satisfaction of Council's Manager Development Assessment.
- (47) Street tree planting shall be completed in accordance with the approved *Street Tree and Public Domain* plan and maintained in good condition delivered as such prior to release of the Subdivision Certificate. Thereafter, landscaping is required to be maintained in good order during the construction period for buildings at all times by the future landowners.
- (48) Fencing shall be provided around the perimeter of the development (excluding the Shiralee and Tanika frontage) and between each unit in accordance with the approved stamped landscape plan by Harris Hobbs Landscapes dated March 2022, except where amended by any other condition of consent.
- (49) The proponent shall make suitable arrangements with Council's waste contractor for the collection of general, recycling, and organic waste associated with dwellings 6-8, 10-16 and 19 having regard to the requirements of Condition 12 above. Details of the service agreement shall be provided to Council prior to issue of an Occupation Certificate. Dwellings facing the public roads (Shiralee and Tanika) shall have waste collected at their respective frontages.
- (50) Certification from Orange City Council is required to be submitted to the Principal Certifying Authority prior to the issue of an Occupation 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.
- (51) A Road Opening Permit Certificate of Compliance is to be issued for the works by Council prior to any Occupation/Final Certificate being issued for the development.
- (52) Prior to the issue of an Occupation Certificate Shiralee Road is to be widened 2.245m and dedicated as Public Road at no cost to Council.
- (53) The existing septic tank is to be excavated and disposed of at a licensed landfill and the absorption trench is to be drained and the voids limed and backfilled with clean compacted material. Evidence of the satisfactory completion of such work shall be provided to the Principal Certifying Authority prior to the issuing of an Occupation Certificate.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 218/2021(1)**

9

**Conditions (cont)****Prior to the issue of an occupation certificate (cont)**

- (54) Where Orange City Council is not the Principal Certifying Authority, a final inspection of water connection, sewer and stormwater drainage shall be undertaken by Orange City Council and a Final Notice of Inspection issued, prior to the issue of either an interim or a final Occupation Certificate.
- (55) The cut and fill is to be retained and/or adequately battered and stabilised (within the allotment) prior to the issue of an Occupation Certificate.

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

- (56) Application shall be made for a Subdivision Certificate under Section 6.3(1)(d) of the Act.
- (57) Prior to the issuing of the Community Title Subdivision Certificate the service agreement with Council's waste contractor for the collection of garbage, recycling, and organic waste associated with the approved units/dwellings shall be incorporated into the Community Management Statement. The waste management arrangements shall be consistent with Condition 47. The waste service agreement shall not be amended or deleted without the agreement of Orange City Council.
- (58) Prior to the issue of a Subdivision Certificate evidence shall be provided of the payment of water and sewer headworks charges and s7.11 contributions for the multi dwelling development.
- (59) 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.
- (60) 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.
- (61) 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.
- (62) 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.
- (63) 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.
- (64) Prior to the issue of a Subdivision Certificate Shiralee Road shall be widened 2.245m and dedicated as Public Road at no cost to Council.
- (65) Evidence of the disposal of the septic tank 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 218/2021(1)**

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10

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

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- (66) Prior to the issue of a Subdivision Certificate the following conditions 'a' to 'e' must be included in the Community Title Management statement:
- a) water and sewer mains constructed as private services by the developer must accord with at least the National Plumbing Code standards; and
  - b) Orange City Council makes no representation that the private water and sewer related services provided to the development are suitable; and
  - c) if a request is made at any time in the future by the developer or future owner to Orange City Council to extend the private services for any reason, then such extension shall be at Orange City Council standards including appropriate easements and must be constructed, funded, and transferred by the applicant; and
  - d) Orange City Council will not provide maintenance services to the private services; and
  - e) clauses a-e shall not be deleted, varied, or modified without the written consent of Orange City Council.
- (67) Prior to the issuing of the Subdivision Certificate, a landscape maintenance strategy shall be prepared by a competent person and included in the Community Title Management statement for the community association to administer following the planting of landscaping across all development lots and community property. The strategy is to address maintenance issues for all hard and soft landscape areas within the complex. Matters to be addressed include scheduling of general garden/landscaping maintenance such lawn mowing, tree and shrub survival, replacement plantings, irrigation, soil testing, staking, fertilizing, mulching, weed removal, pruning, clearing debris and blowing driveways. The strategy shall detail when these activities will be carried and by whom. The landscape maintenance strategy shall not be amended or deleted without the agreement of Orange City Council.
- (68) Prior to the issuing of the Subdivision Certificate, a service agreement with Council's waste contractor for the collection of garbage, recycling, and organic waste associated with the approved units shall be incorporated into the Community Management Statement. The waste service agreement shall not be amended or deleted without the agreement of Orange City Council.
- (69) 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.
- (70) 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 lot(s) comply in respect to the distances of walls from boundaries.
- (71) 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 an Occupation Certificate, unless stated otherwise.

**MATTERS FOR THE ONGOING PERFORMANCE AND OPERATION OF THE DEVELOPMENT**

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- (72) Waste bins for Dwellings 6-8, 10-16 and 19 shall be placed in the appropriate onsite waste storage facility on collection days only, for collection by Council's waste contractor. At other times, bins shall be stored with the respective dwellings. Kerbside placement of bins in Shiralee Road or Tanika Street for Dwellings 6-8, 10-16 and 19 is not permitted.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 218/2021(1)**

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11

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**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.

Nil

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**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.

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***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.

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**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.

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**Signed:**

On behalf of the consent authority **ORANGE CITY COUNCIL**

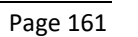
**Signature:****Name:**

**PAUL JOHNSTON - MANAGER DEVELOPMENT ASSESSMENTS**

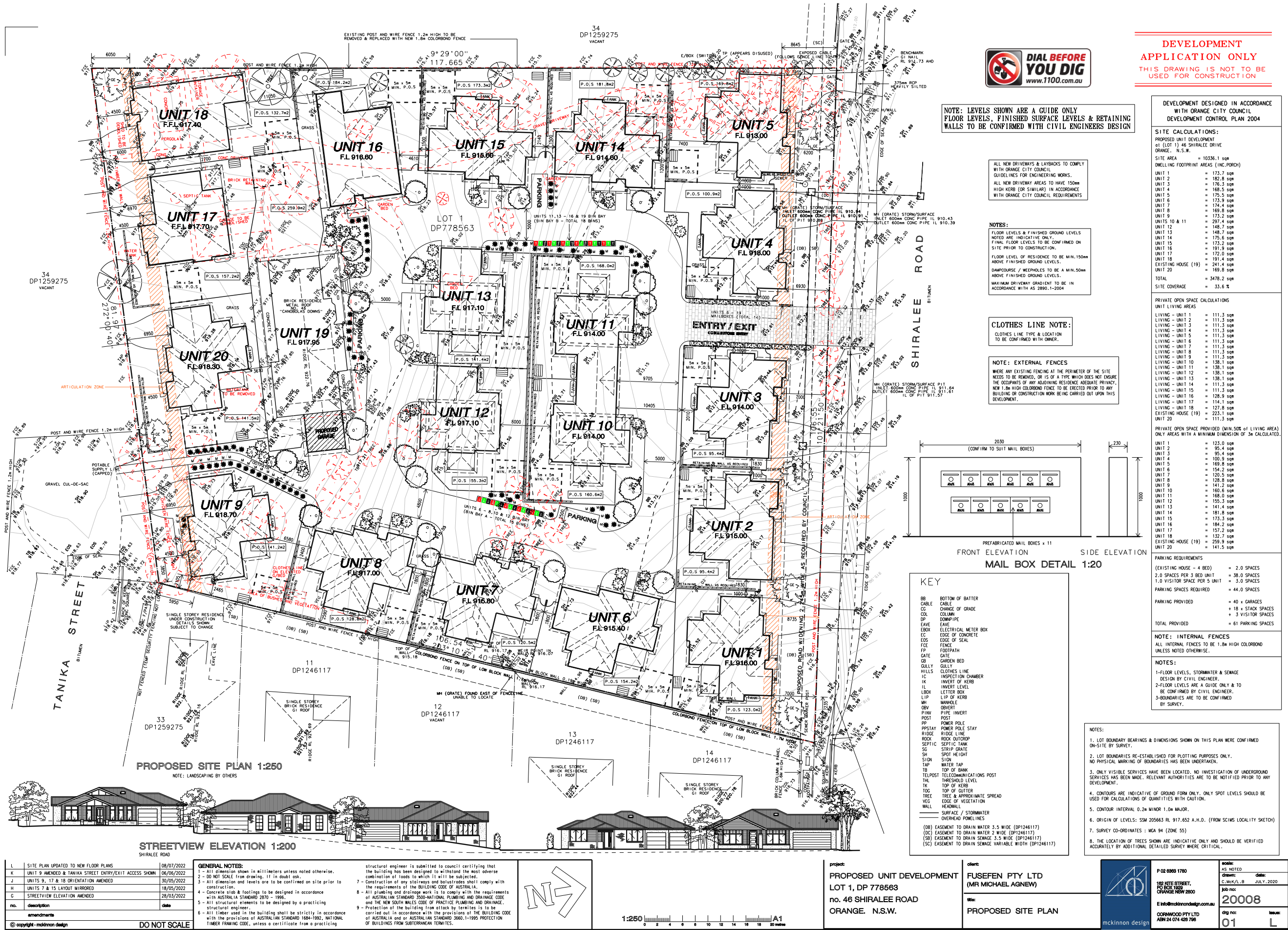
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7 September 2022

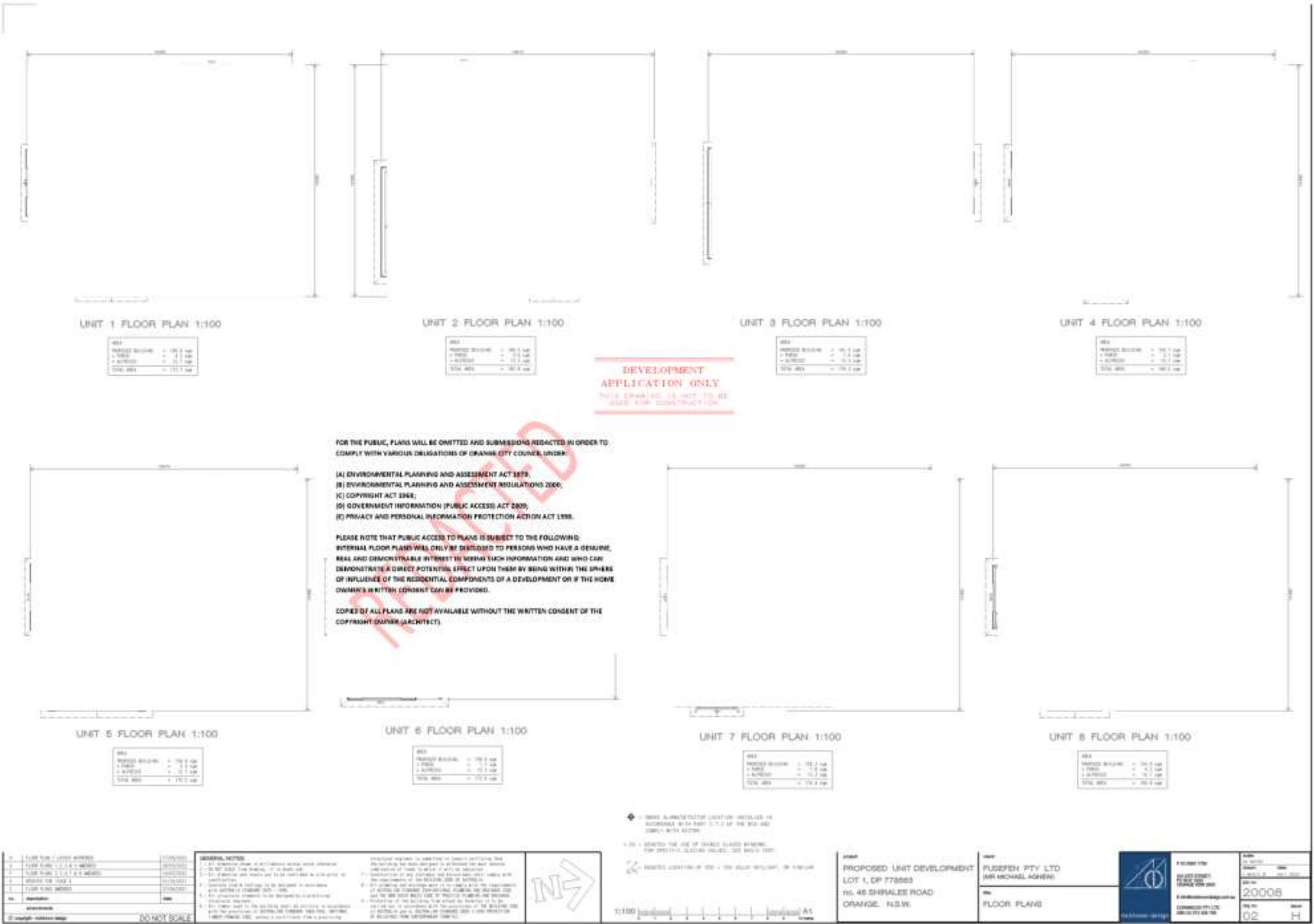
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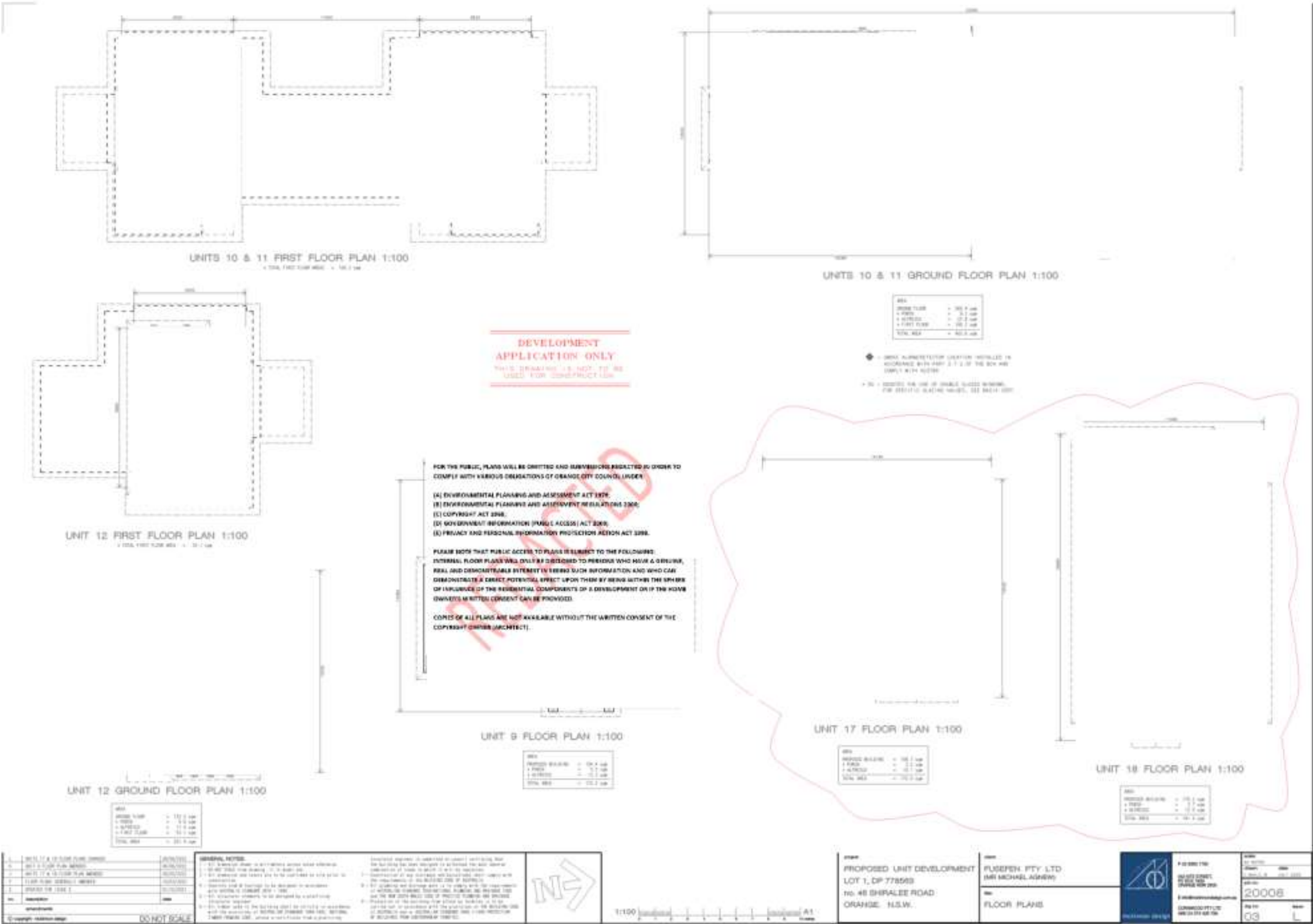








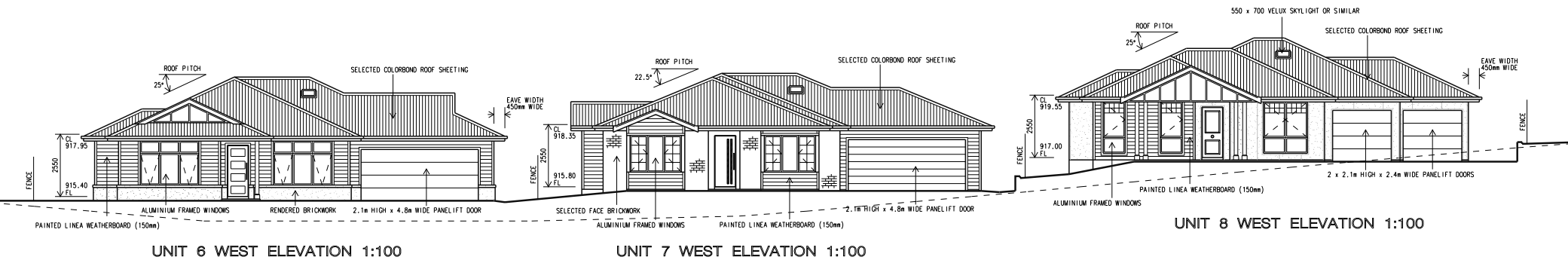
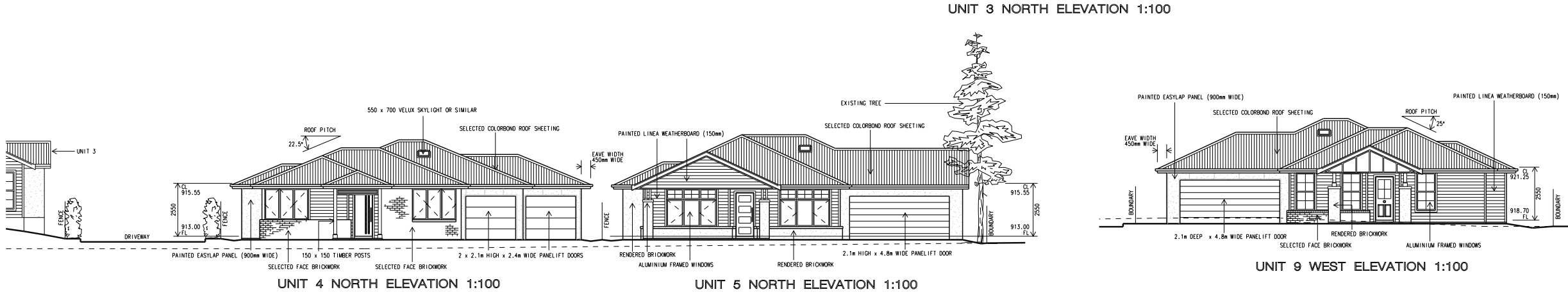
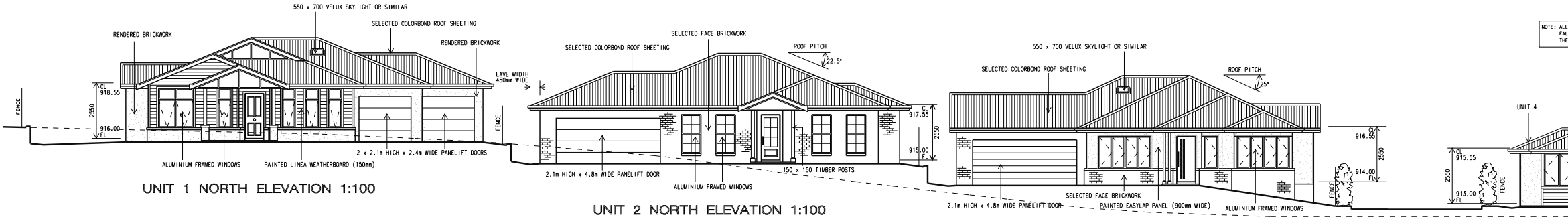












UNIT 6 WEST ELEVATION 1:100

UNIT 7 WEST ELEVATION 1:100

UNIT 8 WEST ELEVATION 1:100



UNIT 8 EAST ELEVATION 1:100

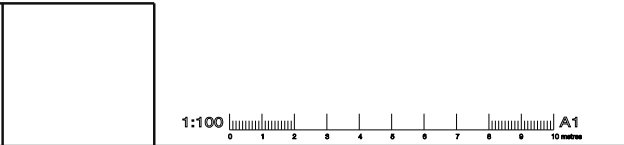
UNIT 7 EAST ELEVATION 1:100

UNIT 6 EAST ELEVATION 1:100

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APPLICATION ONLY  
THIS DRAWING IS NOT TO BE  
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J	UNIT 9 ELEVATION AMENDED	30/05/2022
H	UNIT 7 ELEVATION MIRRORED	18/05/2022
G	UNITS 1,2,3 & 5 AMENDED	28/03/2022
F	UNITS 2,3,4,7,8 & 9 AMENDED	10/03/2022
no.	description	date
amendments		
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GENERAL NOTES:  
1 - All dimension shown in millimeters unless noted otherwise.  
2 - DO NOT SCALE from drawing. If in doubt ask.  
3 - All dimension and levels are to be confirmed on site prior to construction.  
4 - Concrete slab & footings to be designed in accordance with AUSTRALIAN STANDARD 2870 - 1996.  
5 - All structural elements to be designed by a practicing structural engineer.  
6 - All timber used in the building shall be strictly in accordance with the provisions of AUSTRALIAN STANDARD 1684-1992, NATIONAL TIMBER FRAMING CODE, unless a certificate from a practicing structural engineer is submitted to council certifying that the building has been designed to withstand the most adverse combination of loads to which it will be subjected.  
7 - Construction of any stairways and balustrades shall comply with the requirements of the BUILDING CODE OF AUSTRALIA.  
8 - All plumbing and drainage work is to comply with the requirements of AUSTRALIAN STANDARD 3500-NATIONAL PLUMBING AND DRAINAGE CODE and the NEW SOUTH WALES CODE OF PRACTICE PLUMBING AND DRAINAGE.  
9 - Protection of the building from attack by termites is to be carried out in accordance with the provisions of the BUILDING CODE OF AUSTRALIA and or AUSTRALIAN STANDARD 3650.1-1995 PROTECTION OF BUILDINGS FROM SUBTERRANEAN TERMITES.



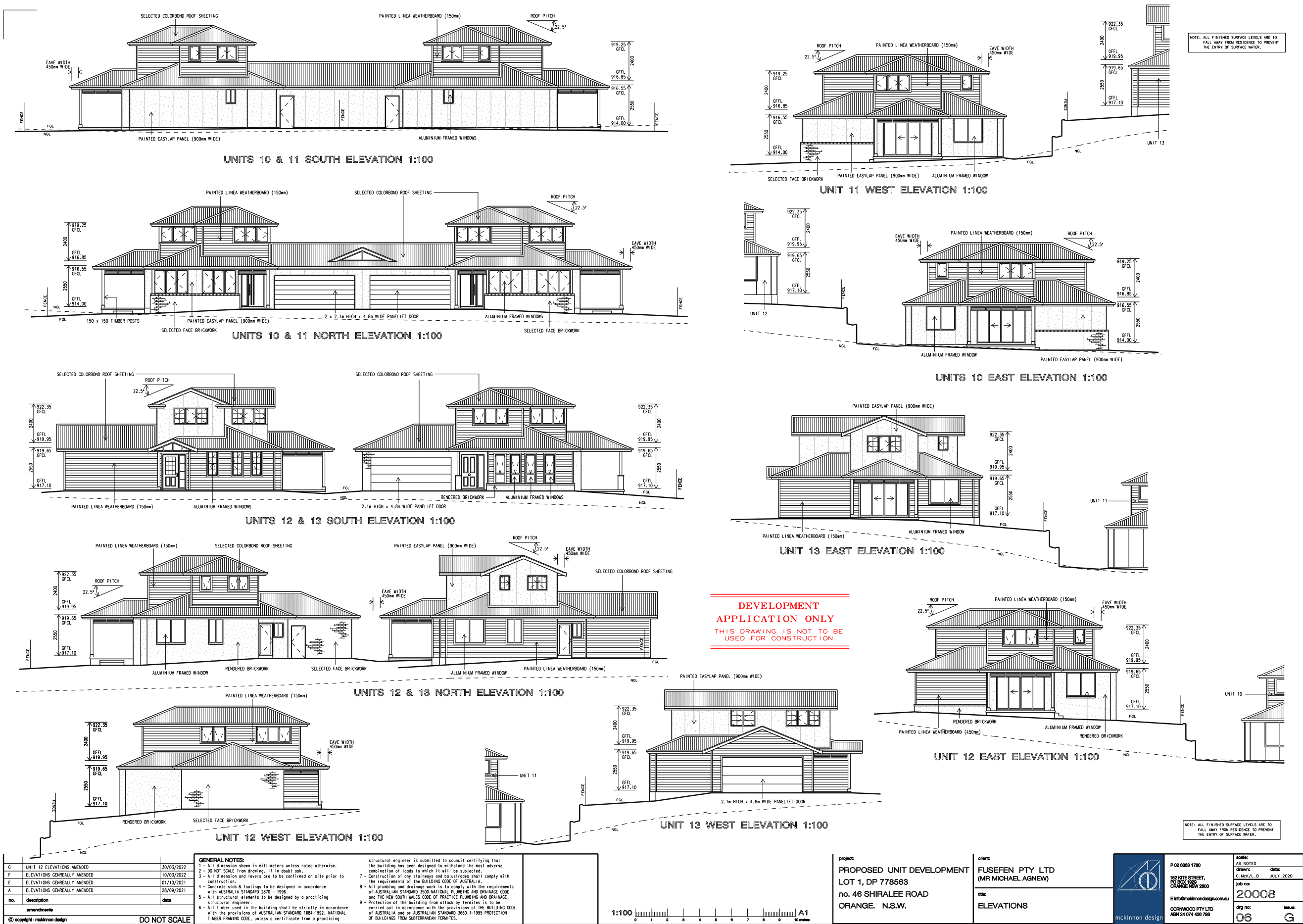
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PROPOSED UNIT DEVELOPMENT  
LOT 1, DP 778563  
no. 46 SHIRALEE ROAD  
ORANGE, N.S.W.

client:  
FUSEFEN PTY LTD  
(MR MICHAEL AGNEW)  
title:  
ELEVATIONS



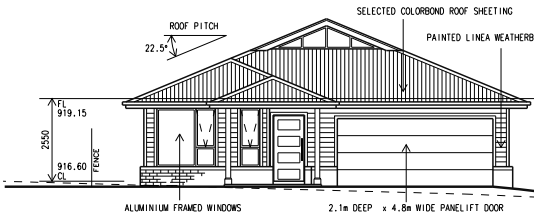
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CORNWOOD PTY LTD ABN 24 074 428 798	date: 05
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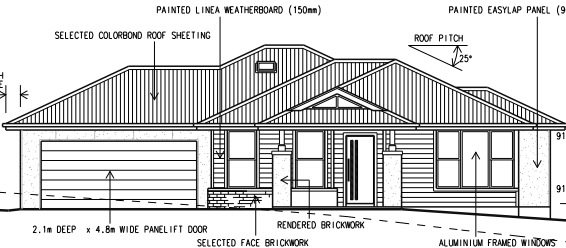




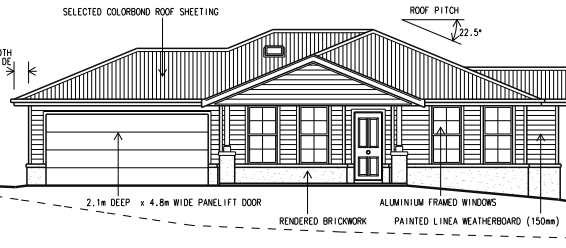
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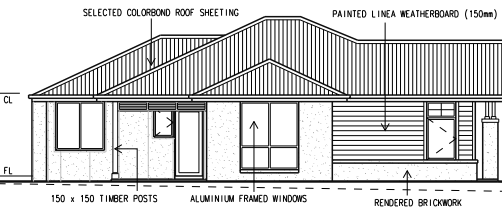
UNIT 16 EAST ELEVATION 1:100



UNIT 15 EAST ELEVATION 1:100

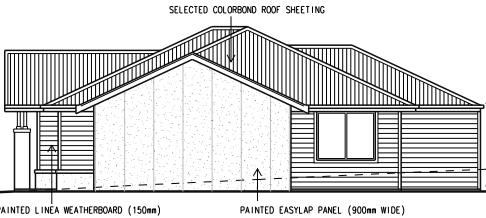


UNIT 14 EAST ELEVATION 1:100

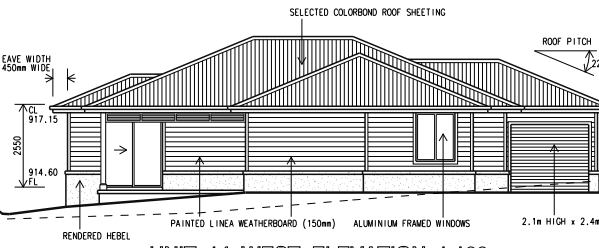


UNIT 5 EAST ELEVATION 1:100

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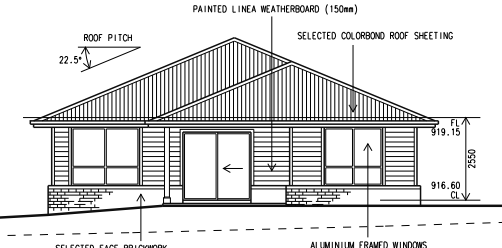
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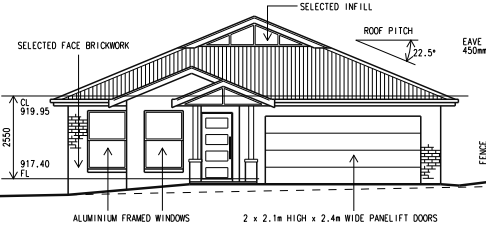
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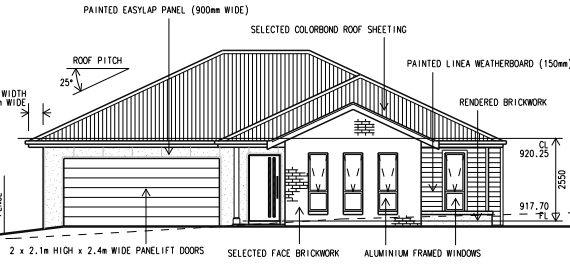
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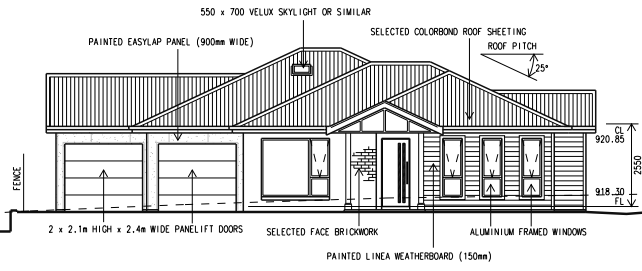
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UNIT 18 WEST ELEVATION 1:100



UNIT 17 WEST ELEVATION 1:100



UNIT 20 WEST ELEVATION 1:100



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H	UNIT 15 ELEVATION MIRRORED	18/05/2022
G	UNIT 14 AMENDED	28/03/2022
F	UNITS 15, 16, 17 & 18 ELEVATIONS AMENDED	10/03/2022
E	ELEVATIONS GENERALLY AMENDED	26/09/2021
no.	description	date
amendments		
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GENERAL NOTES:

- 1 - All dimension shown in millimeters unless noted otherwise.
- 2 - DO NOT SCALE from drawing. If in doubt ask.
- 3 - All dimension and levels are to be confirmed on site prior to construction.
- 4 - Concrete slab & footings to be designed in accordance with AUSTRALIAN STANDARD 2870 - 1996.
- 5 - All structural elements to be designed by a practicing structural engineer.
- 6 - All timber used in the building shall be strictly in accordance with the provisions of AUSTRALIAN STANDARD 1684-1992, NATIONAL TIMBER FRAMING CODE, unless a certificate from a practicing

structural engineer is submitted to council certifying that the building has been designed to withstand the most adverse combination of loads to which it will be subjected.

- 7 - Construction of any stairways and balconies shall comply with the requirements of the BUILDING CODE OF AUSTRALIA.
- 8 - All plumbing and drainage work is to comply with the requirements of AUSTRALIAN STANDARD 3500-NATIONAL PLUMBING AND DRAINAGE CODE and the NEW SOUTH WALES CODE OF PRACTICE PLUMBING AND DRAINAGE.
- 9 - Protection of the building from attack by termites is to be carried out in accordance with the provisions of the BUILDING CODE OF AUSTRALIA and or AUSTRALIAN STANDARD 3680.1-1995 PROTECTION OF BUILDINGS FROM SUBTERRANEAN TERMITES.

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project:  
PROPOSED UNIT DEVELOPMENT  
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E info@mckinnondesign.com.au  
CORNWOOD PTY LTD  
ABN 24 074 428 798

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job no:  
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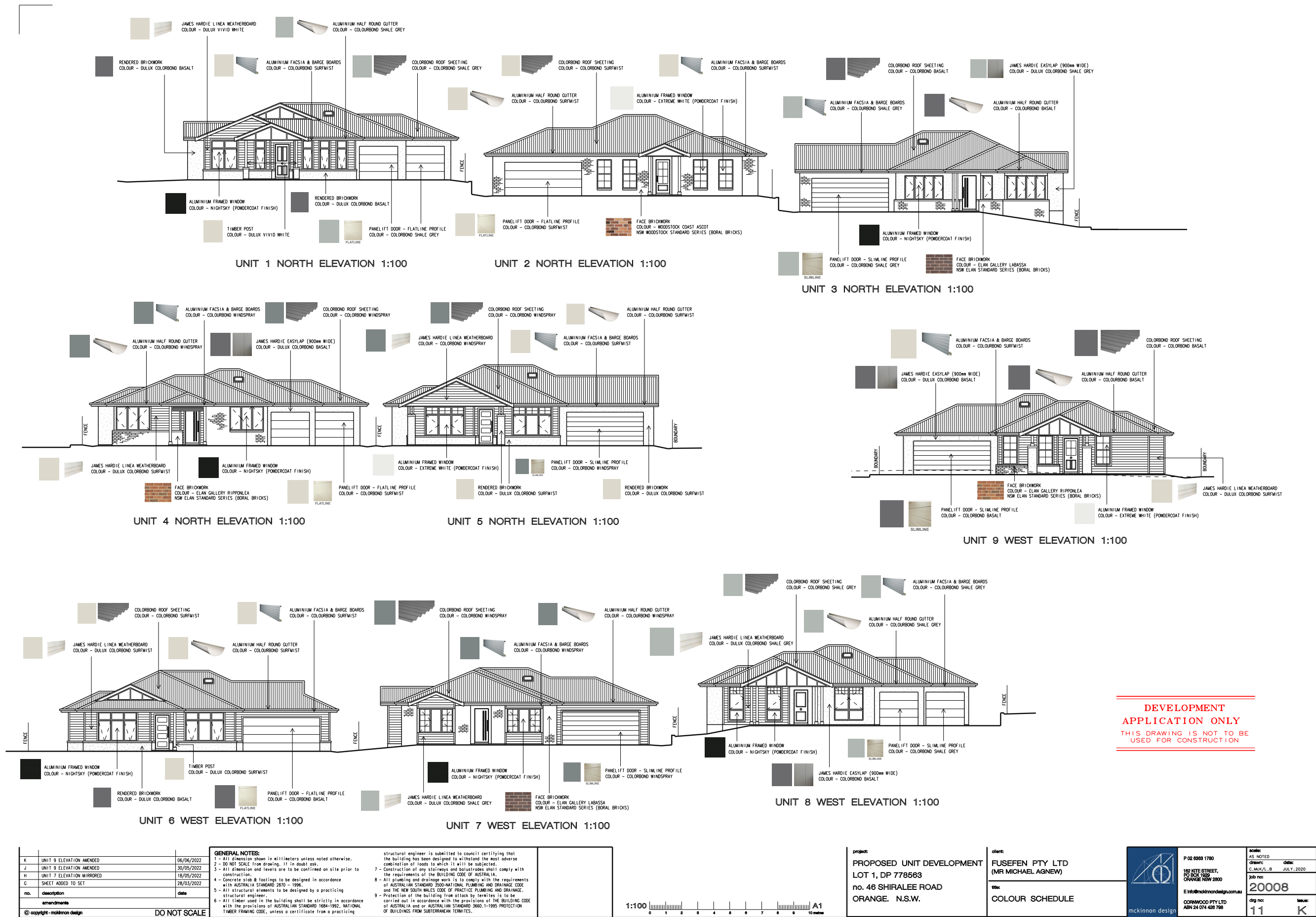




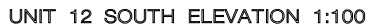






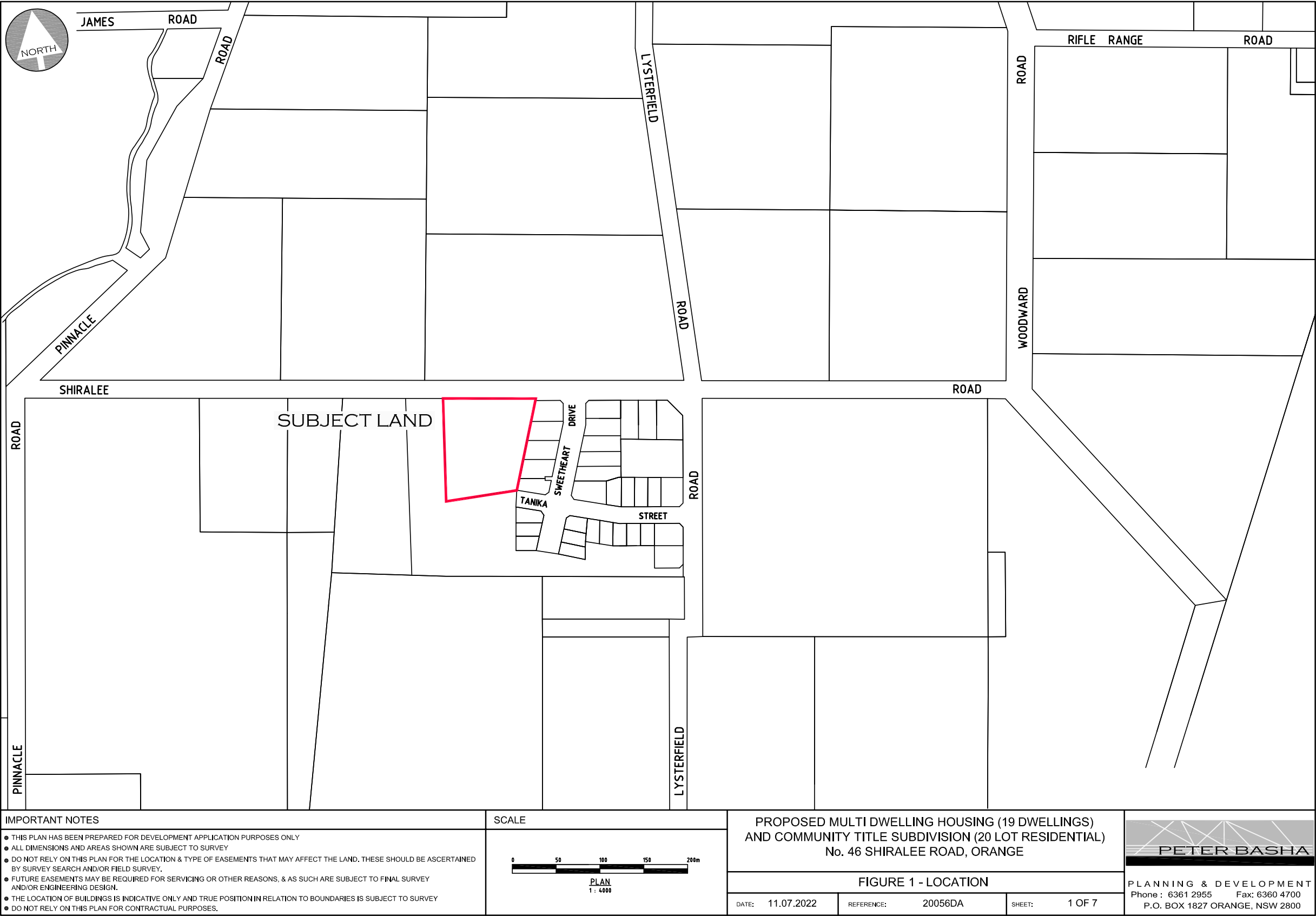






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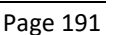




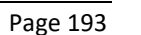




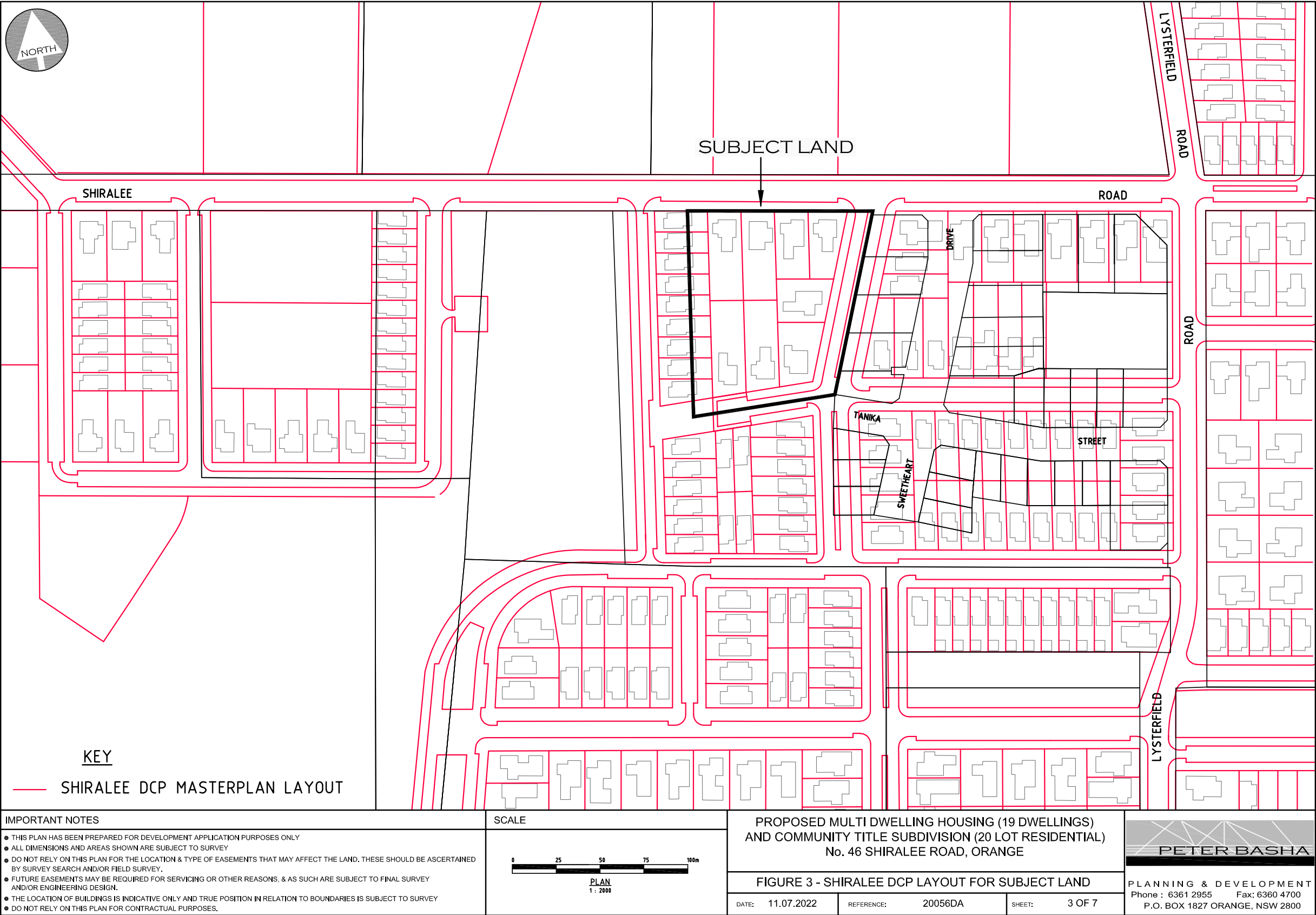




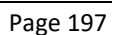




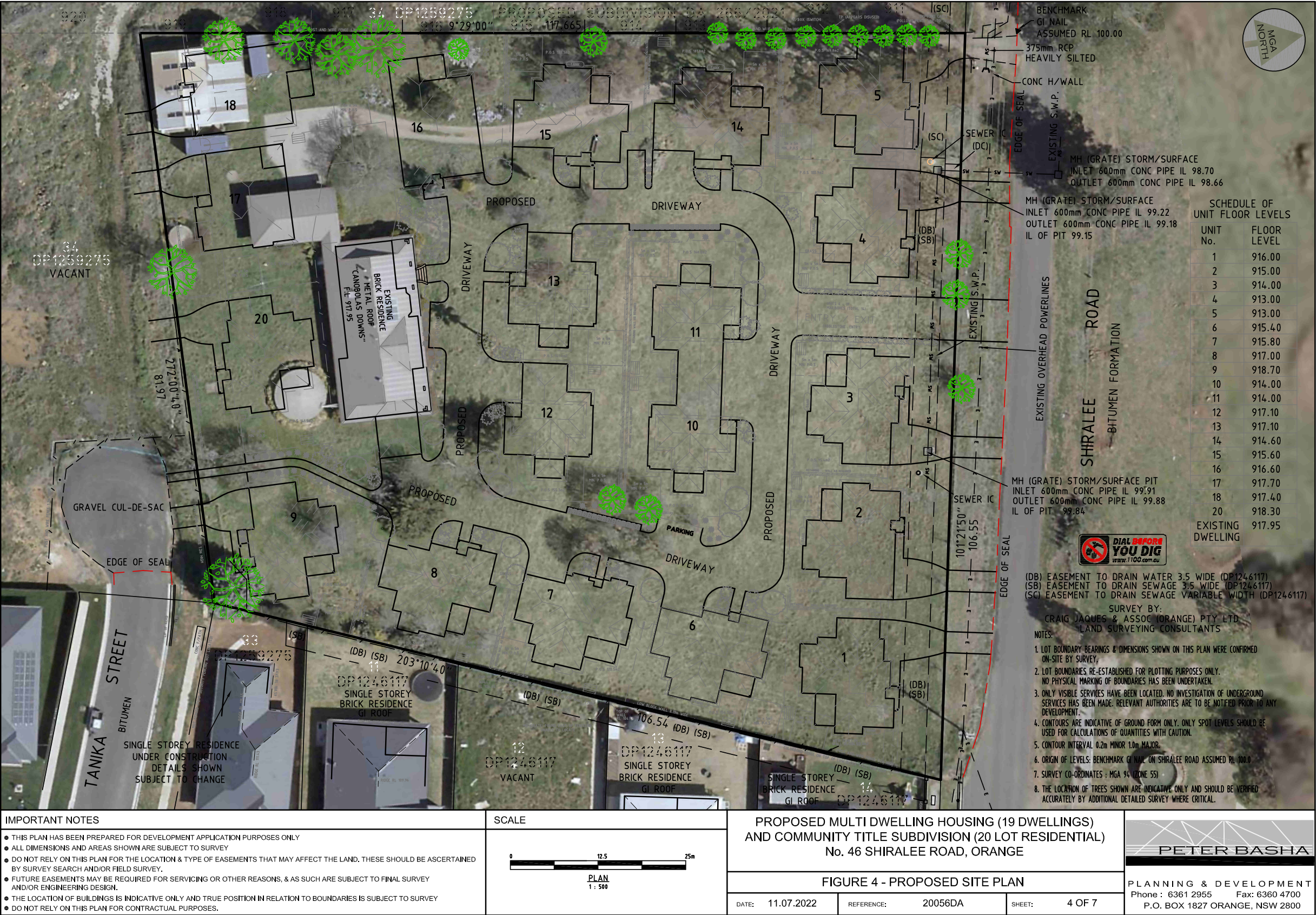




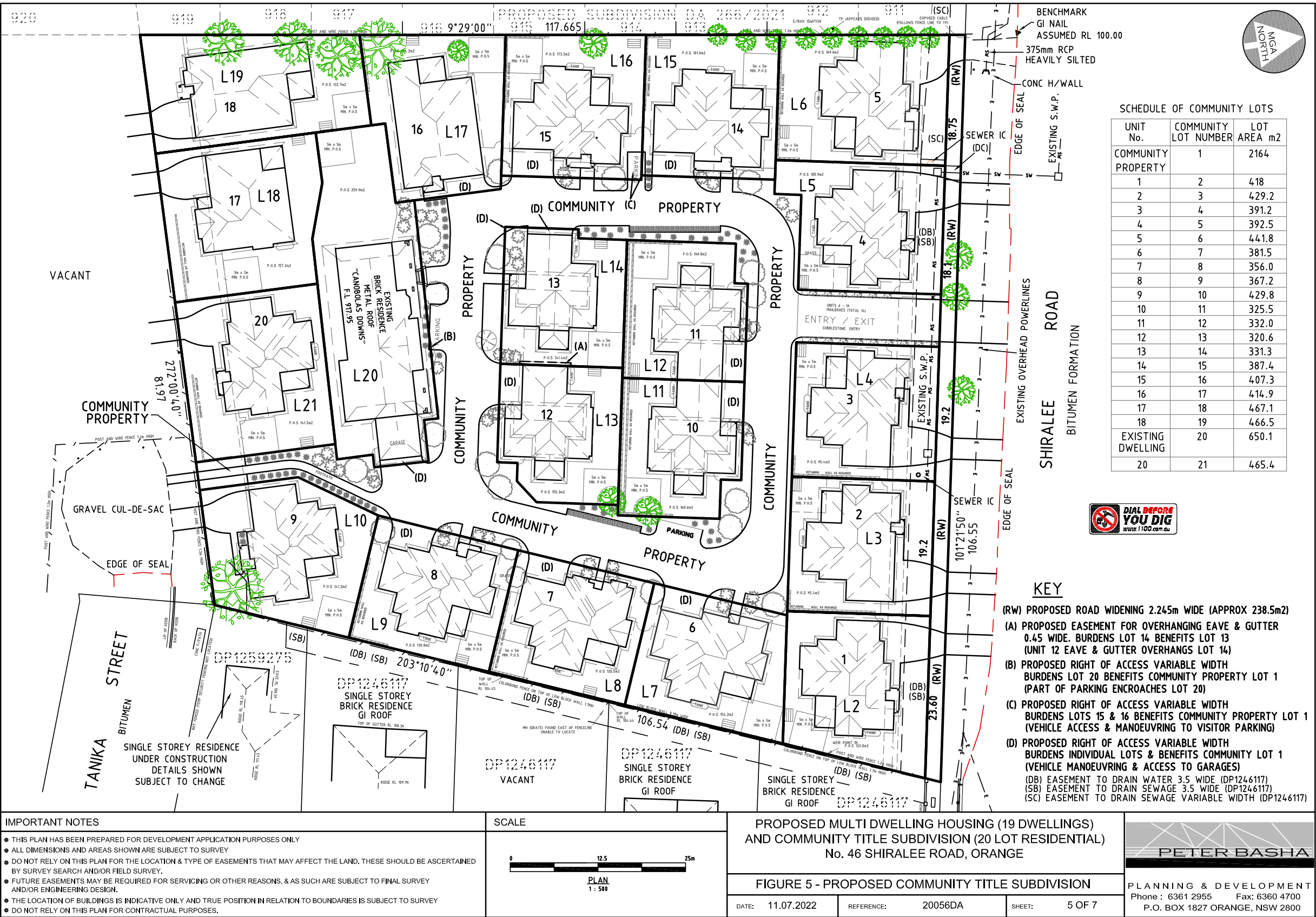




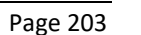




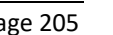




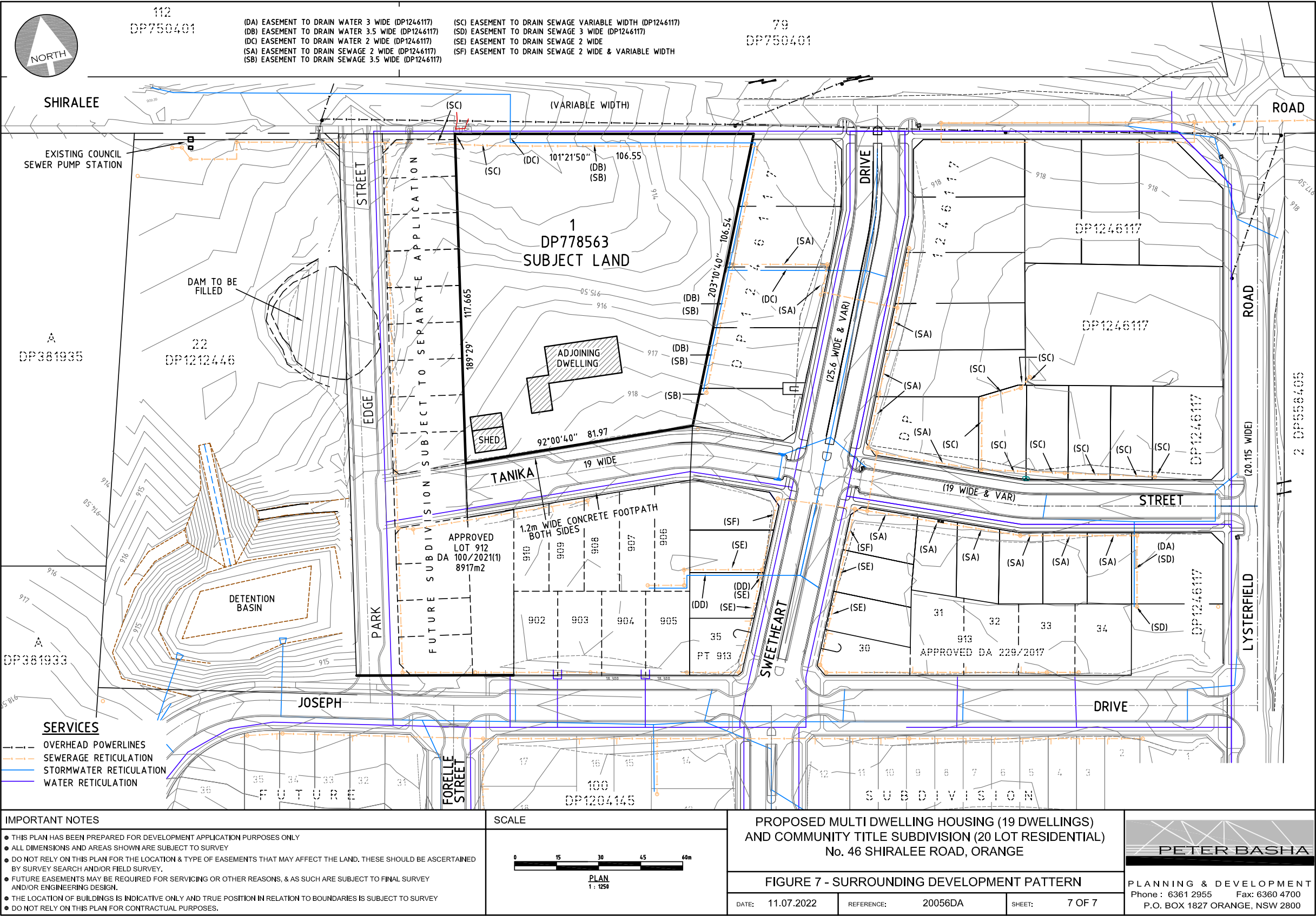
















LEGEND

- existing trees to be retained
- proposed trees
- shrubs
- hedge
- accent planting
- ground cover
- mulch bed
- grassing
- retaining wall
- mowing edge / where grassing adjoins planting bed
- Outback fencing - 'Full privacy panel'
- Outback fencing - 'Semi privacy panel'

PLANT SCHEDULE

TREES			
SYM	NAME	SIZE	QTY
APA	Acer palmatum	75L	7
AJV	Acer japonicum 'Vitifolium'	75L	7
AROG	Acer rubrum 'October Glory'	75L	5
BPE	Betula pendula	75L	16
LIFB	Lagerstroemia indica x fauriei 'Biloxi'	75L	3
LIFN	Lagerstroemia indica x fauriei 'Natchez'	75L	2
MSP	Malus spectabilis 'Plena'	75L	1
PPE	Parrotia persica	75L	1
SJA	Sophora Japonica	75L	2
SHRUBS			
SYM	NAME	SIZE	QTY
Agn	Abelia grandiflora 'Nana'	200mm	54
Cja	Camellia japonica	200mm	30
Csh	Camellia sasanqua 'Hirayu'	200mm	36
Csa	Camellia sasanqua	200mm	29
Css	Camellia sasanqua 'Setsugekka'	200mm	38
Aam	Azalea 'Alba Magna'	200mm	21
Cwa	Callistemon citrinus 'White Anzac'	200mm	16
Epp	Escallonia 'Pink Pdx'	200mm	85
Dgr	Deutzia gracilis	200mm	22
Rsm	Rhaphiolepis indica 'Snow Maiden'	200mm	119
Cij	Callistemon viminalis 'Little John'	200mm	56
Cgl	Correa glabra	200mm	80
Ro	Rosmarinus officinalis	200mm	18
Lsp	Lavandula spica	200mm	38
Wwg	Westringia fruticosa x eremicola 'Wynabbie Gem'	200mm	100
Vt	Viburnum tinus	200mm	91
Lbu	Leptospermum morisonii 'Burgundy'	200mm	12
Mfi	Michelia figo	200mm	20
Sca	Spirea cantoniensis	200mm	18
ACCENT PLANTING			
SYM	NAME	SIZE	QTY
Lta	Lomandra longifolia 'Tanika'	200mm	10
Nd	Nandina domestica	200mm	50
GROUND COVERS			
SYM	NAME	SIZE	QTY
Cto	Cerastium tomentosum	200mm	66
Cma	Convolvulus mauretanicus	200mm	34
Emc	Erigeron mucronatus	200mm	36
Rpr	Rosmarinus officinalis 'Prostratus'	200mm	60
St	Stachys lanata	200mm	12
Ta	Trachelospermum asiaticum	200mm	126
Gla	Grevillea lanigera 'Mt Tamboritha'	200mm	46
Jpn	Juniperus procumbens 'Nana'	200mm	70

REV.	DESCRIPTION	DRAWN	APPROVED	DATE
A	FOR REVIEW	DF	NH	30MAR22
B	FOR APPROVAL	DF	NH	31MAR22
-	-	-	-	-
-	-	-	-	-
-	-	-	-	-
-	-	-	-	-
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11	DP1246117
12	DP1246117
13	
33	DP1259275

HARRIS HOBBS LANDSCAPES Landscape Architect  
16 ROBE STREET DEAKIN ACT 2600  
p +61 2 6273 4661 e hhl@hhl.com.au w www.hhl.com.au

SCALE @ A1 1:200  
DATE MAR 2022  
CLIENT -  
PROJECT 46 SHIRALEE RD, ORANGE  
DRAWING TITLE LANDSCAPE PLAN  
STATUS FOR REVIEW  
JOB 22079  
REV B  
DWG 301



TREES

TREES



Acer palmatum	Acer japonicum 'Vitifolium'	Acer 'October Glory'	Betula pendula	Lagerstroemia indica x fauriei 'Biloxi'	Lagerstroemia indica x fauriei 'Natchez'	Malus spectabilis 'Plena'	Parrotia persica	Sophora japonica
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## SHRUBS



Abelia grandiflora 'Nana'	Camellia japonica	Camellia sasanqua 'Hiryu'	Camellia sasanqua	Camellia sasanqua 'Settsugekka'	Azalea 'Alba Magna'	Callistemon citrinus 'White Anzac'	Escallonia 'Pink Pixie'	Deutzia gracilis	Rhaphiolepis indica 'Snow Maiden'	Callistemon viminalis 'Little John'
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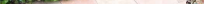



## ACCENT PLANTS



Lomandra 'tanika'      Nandina domestica

## GROUND COVERS



							
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[illegible]



FENCING IMAGES



OUTBACK FENCING 'FULL PRIVACY PANEL'



OUTBACK FENCING 'SEMI PRIVACY PANEL'

REV.	DESCRIPTION	DRAWN	APPROVED	DATE			DATE	PROJECT
A	FOR REVIEW	DF	NH	30MAR22	<div><div>HARRIS HOBBS</div><div>LANDSCAPES</div><div><small>Harris Hobbs Landscapes acknowledges the Ngurrumawal people, the traditional custodians of the land on which we live, work, rest and play.</small></div></div>	<div><div>Landscape Architect</div><div><small>16 ROBE STREET DEAKIN ACT 3600 p: +61 3 8273 4661 e: hhl@hhl.com.au w: www.hhl.com.au</small></div></div>	MAR 2022	46 SHIRALEE RD, ORANGE
-	-	-	-	-			CLIENT	DRAWING TITLE
-	-	-	-	-			-	FENCING IMAGES
-	-	-	-	-			STATUS FOR REVIEW	
-	-	-	-	-			N	
-	-	-	-	-			JOB 22079	
-	-	-	-	-			REV A	DWG 401



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

## Submission 1

**Sent:** Sunday, 20 June 2021 5:42 PM  
**To:** Orange City Council  
**Cc:**  
**Subject:** Development Application DA 218/2021(1) - PR12750 Lot 1 DP 778563 - 46 Shiralee Road Orange

This application for development should not be approved for the following reasons-

- \*It is not in keeping with the SHIRALEE DCP
- \*It is close to a watercourse
- \*With such an intensive development there will be minimal absorption of rainfall
- \*The proposed development will cause an increase in noise, stormwater erosion and pollution onto our property
- \*20 units in such a small area will create a large increase in traffic
- \*The proliferation of colourbond (which is already on the eastern side of this property) fencing is not in keeping with the Orange City Councils own SHIRALEE DCP
- \*It is not green and open

The Orange City Council as the consent authority has been unwilling or unable to control the increase of noise, stormwater silt and detritus already being directed onto our property with the current developments.

**Submission 2**

My name is: I've just moved here to 7 months ago. I knew that a lot of houses were going to be built around me, but I never thought they would build units at the back of me, if I had known I certainly wouldn't have gone ahead with my purchase. I thought this might be a great area for family homes and I really hope this application is rejected

## Submission 3

**Sent:** Friday, 2 July 2021 11:05 AM  
**To:** Orange City Council  
**Subject:** DA 218/2021 (1) – PR12750

DA 218/2021 (1) – PR12750  
Dear Chief Executive Officer

I am writing to oppose the development lodged for 46 Shiralee Road. Many residents, like me, have purchased in Shiralee to get away from developments like this and live around free standing Torren's title blocks, I previously lived in                      next to a duplex complex and one of the reasons for choosing Shiralee Estate was it was being developed to complement the semi-rural and natural qualities of the area. Unfortunately, unit developments, due to their density can not be considered complementary to the semi-rural and natural qualities of the Shiralee Estate.

Shiralee road should be minimised from congestion as much as possible as it will be highly used after the Southern Feeder Road is built. We believe that blocks on shiralee road should be a minimum size of 700sqm as stated in the Orange Local environment plan (2011) [6150 COM LSZ 008B 010 20190723.pdf \(nsw.gov.au\)](#) and would like to continue seeing larger blocks for this area in quiet streets. A unit complex in Shiralee is a terrible idea due to its isolation from key services such as a suitable public transport service, doctors, chemists and it just feels wrong with rural blocks within the vicinity which can drastically change selling prices.

Shiralee should be focused more towards becoming family friendly and these units will likely create unwilling behaviour which will create a housing density that is not complementary to the character of an area in a rural aspect. It would be nice to have spaces in between houses to allow for growth of trees to ensure that Shiralee is able to develop into an area like Westlea. It is noted that a number of established native trees are being removed to facilitate this development. If a more suitable use was approved for this land these trees could remain in place.

Please do not create the density issues that have afflicted North Orange and many Western Sydney Suburbs in the Shiralee Estate. These density issues create the following challenges:

1. Lack of outdoor yard space for domestic pets such as dogs, cats, chickens etc. Having previously lived near duplex style dwellings I have experienced issues with loud music and bored pets causing environmental issues such as noise and constant barking of dogs due to inconsiderate pet owners.
2. The issue of second hand cigarette smoke to be a potential environmental concern if dwellings are built close together and neighbours choose to smoke cigarettes on the property boundary.
3. I am concerned about the proposal of double storey dwellings will be allowed in these lots. As the owner of a house with Solar Panels I have concerns that the effectiveness of my Solar Panels may be limited if double storey dwellings are allowed as well as the issue of possible loss of privacy and views at residences.

We are a regional city, yet we are feeling like a suburb of Sydney with each other building on top of one another. Larger blocks are needed to maintain the character and charm of the Colour City that is Orange.

Kind regards

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

## Submission 1

**From:**  
**Sent:** Thursday, 18 August 2022 5:00 PM  
**To:** Orange City Council  
**Subject:** DA 218/2021 (1) – PR12750

Dear Chief Executive Officer

It has now come to our attention that amendments to this development have been made to further exacerbate the challenges we identified in our original submission. Firstly the increasing of the number of dwellings to 20 is only going to exacerbate the issues we identified in our concerns below.

I note many development proposals are using the term “diversity of housing and recreation opportunities” to articulate the reasoning for a reduction in lot sizes. It is noted in this proposal and also DA 403/2021 (1) – PR15183 (157 Lysterfield Road) use this term without due consideration to environmental challenges such as:

- Lack of outdoor yard space for domestic pets.
- The issue of second hand cigarette smoke to be a potential environmental concern if dwellings are built close together and neighbours choose to smoke cigarettes on the property boundary.
- Reduced opportunity for private recreation within the comfort on a person’s property, which could be seen to reduce the access to recreation experienced by those residing in the area.

2 of these issues directly cause issues for Council staff with Environmental Officers and Rangers needed to be engaged to resolve issues that are caused due to extreme housing density.

As a resident that has frontage on Tanika Street in my circumstance this proposal actually is contrary to the Shiralee Development Control Plan as the change in frontage of 4 units to access Tanika street will greatly **increase** traffic congestion by providing for the day to day needs of residents within the precinct. It is possible that the 4 dwellings fronting Tanika Street could house up to and beyond 12 cars not including visitors accessing these properties, with the proposed lot sizes on the other side of Tanika street having small street frontages this may cause congestion issues on Tanika Street that would be better addressed by having traffic sent to the arterial road that provided access in the original proposal, Shiralee Road.

We are a regional city, yet we are feeling like a suburb of Sydney with each other building on top of one another. Larger blocks are needed to maintain the character and charm of the Colour City that is Orange.

Kind regards

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### Copy of Submission 3 from First Exhibition Period

**Sent:** Friday, 2 July 2021 11:05 AM  
**Subject:** DA 218/2021 (1) – PR12750  
 DA 218/2021 (1) – PR12750  
 Dear Chief Executive Officer

I am writing to oppose the development lodged for 46 Shiralee Road. Many residents, like me, have purchased in Shiralee to get away from developments like this and live around free standing Torren’s title blocks, I previously lived in Hereford Place next to a duplex complex and one of the reasons for choosing Shiralee Estate was it was being developed to complement the semi-rural and natural qualities of the area. Unfortunately, unit developments, due to their density can not be considered complementary to the semi-rural and natural qualities of the Shiralee Estate.

Shiralee road should be minimised from congestion as much as possible as it will be highly used after the Southern Feeder Road is built. We believe that blocks on shiralee road should be a minimum size of 700sqm as stated in the Orange Local environment plan (2011) [6150 COM LSZ 008B 010 20190723.pdf \(nsw.gov.au\)](#) and would like to continue seeing larger blocks for this area in quiet streets. A unit complex in Shiralee is a terrible idea due to its isolation from key services such as a suitable public transport service, doctors, chemists and it just feels wrong with rural blocks within the vicinity which can drastically change selling prices.

Shiralee should be focused more towards becoming family friendly and these units will likely create unwilling behaviour which will create a housing density that is not complementary to the character of an area in a rural aspect. It would be nice to have spaces in between houses to allow for growth of trees to ensure that Shiralee is able to develop into an area like Westlea. It is noted that a number of established native trees are being removed to facilitate this development. If a more suitable use was approved for this land these trees could remain in place. Please do not create the density issues that have afflicted North Orange and many Western Sydney Suburbs in the Shiralee Estate. These density issues create the following challenges:

1. Lack of outdoor yard space for domestic pets such as dogs, cats, chickens etc. Having previously lived near duplex style dwellings I have experienced issues with loud music and bored pets causing environmental issues such as noise and constant barking of dogs due to inconsiderate pet owners.
2. The issue of second hand cigarette smoke to be a potential environmental concern if dwellings are built close together and neighbours choose to smoke cigarettes on the property boundary.
3. I am concerned about the proposal of double storey dwellings will be allowed in these lots. As the owner of a house with Solar Panels I have concerns that the effectiveness of my Solar Panels may be limited if double storey dwellings are allowed as well as the issue of possible loss of privacy and views at residences.

We are a regional city, yet we are feeling like a suburb of Sydney with each other building on top of one another. Larger blocks are needed to maintain the character and charm of the Colour City that is Orange.

Kind regards



**2.5 DEVELOPMENT APPLICATION DA 65/2022(1) - 13 BORRODELL DRIVE**

RECORD NUMBER: 2022/1307

AUTHOR: Rishelle Kent, Senior Planner

**EXECUTIVE SUMMARY**

Application lodged	3 March 2022
Applicant and Owner	UPG 294 Pty Ltd
Land description	Lot 26 DP 791830 - 13 Borrodell Drive Orange
Proposed land use	Subdivision (17 lot Torrens title) and Demolition (tree removal, dwelling)
Value of proposed development	\$0

Council's consent is sought for demolition (dwelling, tree removal) and a 17 lot Torrens title, residential subdivision of 13 Borrodell Drive, Orange. The land is described as Lot 26 DP 791830.

The proposed subdivision seeks to depart from the DCP Masterplan by demolishing the existing dwelling, thereby increasing the lot yield by three (3) additional lots. The road layout will remain as per the Masterplan.

The development comprises 'advertised development' with five (5) submissions being received. These submissions relate to earthworks and drainage, the removal of trees, and the provision of services.

The proposal is considered suitable pursuant to 4.15 of the Act. Approval of the application is recommended, subject to the conditions of consent attached.



Figure 1 - locality 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 COMMENTS**

The proposal involves demolition (dwelling, tree removal) and a 17 lot Torrens title, residential subdivision of 13 Borrodell Drive, Orange. The proposed subdivision seeks to depart slightly from the DCP Masterplan that would see the demolition of the existing dwelling. The demolition would provide an additional three (3) lots. Road layout is proposed in accordance with the DCP Masterplan. Five (5) submissions were received during the exhibition of this application.

The fall of this land and its surrounds, and the presence of existing vegetation provide challenges for subdivision development in this area. The demolition of the existing house is not overly significant in the scheme of things and would not significantly impact on the environment. The removal of trees in this area is an ongoing battle with subdivisions in the area when compliance with the adopted DCP and Masterplan is achieved. In this case, it is accepted that the trees be removed, with the relocation of the main trees with hollows in them to the nearby wetlands. This will at least provide ongoing developed habitat for wildlife locally to this development site.

The need for detailed future master planning throughout the City of estates that gives more consideration to topography, future layout and servicing, and the location of existing vegetation is highlighted by this DA. The new Local Housing Strategy requires future rezonings include masterplans. The draft/new DCP that will come before Council at the end of the year and early next year will also include requirements for such detailed consideration. These strategies will guide development to consider existing natural features of the land more appropriately at the rezoning stages so that all parties (applicants and neighbours) have a good understanding of issues and expectations into the future.

It is recommended that Council supports the subject 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 65/2022(1) for *Subdivision (17 lot Torrens title) and Demolition (tree removal, dwelling)* at Lot 26 DP 791830 - 13 Borrodell Drive, 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**

Council's consent is sought for demolition of a dwelling and tree removal, in conjunction with a 17 lot residential subdivision of the subject site.

The subdivision design will create 14 lots of minimum size 850m<sup>2</sup> and three (3) lots above 1000m<sup>2</sup>, with three (3) new roads, as depicted in Figure 2 below.



**Figure 2 - subdivision plan**

**MATTERS FOR CONSIDERATION****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.

An *Ecological issues and Assessment report* was prepared by Gunninah (November 2021), and found the following:

- Several of the trees contained tree hollows, occupied by introduced honey bees and at least one of which appeared to be used by breeding Crimson Rosellas. A pair of wood ducks (which also breeds in tree hollows) was sighted on the land.
- Other than the hollow bearing trees, the subject land does not contain habitat or resources of potential significance for any threatened biota that could potentially occur on the land, or within the vicinity.
- There is no potential for any threatened plant species to be present on the subject land - given its history and the degree of disturbance and modification.
- The subject land is not affected by any ecological values which would constrain future development of the land.

Having regard to the relevant provisions and based on an inspection of the subject property, it is considered that the proposed development is unlikely to significantly affect a threatened species.

The site is not mapped on the Biodiversity Values Map or identified as biodiversity sensitive on the Orange LEP 2011 Terrestrial Biodiversity Map. The clearing threshold for native vegetation will not be exceeded.

Council's City Presentation Manager advises the hollow bearing trees would have a significant habitat role for the existence of native species that occupy and nest in hollows, even though they may be few in number and detached from contiguous native vegetation.

Although subdivision is considered to be a key threatening process, there are no known or threatened ecological communities on the land, nor is it likely to contain any habitat for such species or communities.

As discussed in further detail below, conditions have been imposed to have hollows and cavities checked for wildlife; canopies to be carefully dismantled using 'soft fell technique', and the remaining stag trees to be relocated to the Escort or Ploughmans wetlands where they are to be re-stood to provide habitat value.

A Biodiversity Development Assessment Report is not required and the proposal suitably satisfies the relevant matters at Clause 1.7 EPAA 1979.

**Section 4.15**

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****Clause 1.2 - Aims of Plan**

The broad aims of the LEP are set out under Subclause 2. Those relevant to the application are as follows:

- (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 application is considered to be consistent with the aims, as outlined in this report.

**Clause 1.7 - Mapping**

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

Land Zoning Map:	<b>Land zoned R2 Low Density Residential</b>
Lot Size Map:	<b>Minimum Lot Size 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 biodiversity sensitivity on the site
Groundwater Vulnerability Map:	<b>Groundwater vulnerable</b>
Drinking Water Catchment Map:	Not within the drinking water catchment
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:	<b>Ploughmans Creek PMF</b>

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 does not apply, with exceptions.

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

A submission has been received regarding a historical ROW over the subject land (burdening the lot to the north) with a request that this ROW be extinguished. Further discussion on this matter is included under Section 4.15(1)(d) of this report.

**Clause 2.1 - Land Use Zones and Clause 2.3 - Zone Objectives and Land Use Table**

The subject site is located within the R2 Low Density Residential zone.

The proposed development 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 of land is permissible with the consent of Council. This application is seeking consent.

The objectives for land zoned R2 are as follows:

- *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 development is considered to be consistent with the objectives of the R2 Low Density Residential zone, as follows:

The subdivision will provide for additional lots for dwelling stock to accommodate the housing needs of the community. The subject land is located between recently established residential developments and will integrate with the existing road and transport networks, including public transport services. The land is accessible to open space linkages for walking and cycling in the area. The proposed lot sizes and resulting pattern of development is generally consistent with that of the locality and surrounding residential development.

The development is not located adjacent to the Southern Link Road.

#### **Clause 2.6 - Subdivision - Consent Requirements**

This clause triggers the need for development consent for the subdivision of land. The application is seeking consent.

#### **Clause 2.7 - Demolition Requires Development Consent**

The demolition of the dwelling will have no significant impact on adjoining lands, streetscape or public realm. Conditions may be imposed in respect of hours of operation, dust suppression and the need to investigate for, and appropriately manage the presence of, any materials containing asbestos. A waste management plan is required before works commence, conditioned accordingly.

The demolition of trees is discussed under Chapter 0 of the DCP.

#### **Clause 4.1 - Minimum Subdivision Lot Size**

This clause requires the subdivision of land to be equal to or greater than the size nominated for the land under the Minimum Lot Size Map.

In relation to this site, the map nominates a minimum lot size of 850m<sup>2</sup>. All lots proposed are of minimum 850m<sup>2</sup>.

### 7.1 - Earthworks

This clause establishes a range of matters that must be considered prior to granting development consent for any application involving earthworks, such as:

- (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).*

Earthworks will be required in conjunction with civil and construction works required to create the proposed lots, new roads, installation of services etc. The excavation plans indicate filling of the neighbouring property to the north of approximately 2-2.5m, and cut to the eastern neighbouring property of approximately 500mm. Consent of adjoining landowners will be required at construction stage, and has been conditioned accordingly.

The extent of disruption to the drainage of the site is considered to be reasonable and steps will be taken to ensure the works will not detrimentally affect adjoining properties or receiving waterways. The extent of the earthworks will not materially affect the potential future use or redevelopment of the site that may occur at the end of the proposed development's lifespan. Appropriate sediment controls, including silt traps and other protective measures be required to protect adjoining lands during subdivision works as a condition of development consent.

The site is not known to be contaminated as demonstrated by the submitted preliminary contamination investigation. Notwithstanding this, in line with Council's standard procedures a precautionary condition is recommended in relation to an unexpected finds protocol. Excavated materials will be reused onsite as far as possible.

Steps will be undertaken to ensure that earthworks will be appropriately supported onsite, and the change in ground level is not substantial. Therefore the effect on the amenity of adjoining properties is considered to be within reasonable limit.

### 7.2 - Flood Planning

This clause applies to land identified on the Flood Planning Map as a Flood Planning Area and requires that, before any consent is issued, Council must be satisfied that the proposal:

- (a) *is compatible with the flood hazard of the land, and*
- (b) *is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *incorporates appropriate measures to manage risk to life from flood, and*

- (d) *is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

Council's Assistant Development Engineer provides the following assessment:

The existing stormwater network downstream appears to have limited capacity for additional stormwater loading (as identified by 2019 Flood Study). The applicant will be required to undertake an assessment of the downstream stormwater network to assess the capacity of the system and identify potential augmentation.

If the downstream network is unable to cope with the additional loading, and augmentation is not possible, the applicant will be required to provide onsite detention to limit post development peak flows to that of pre-development peak flows.

The developments drainage pit and pipe system (and downstream network) shall allow for all upstream 10% AEP post development flows shown within the catchment area. The developments overland flow paths shall accommodate all upstream 1% AEP post development flows shown within the DCP area.

The existing road culverts in Borrodell Drive shall be either connected to the subdivision stormwater network or piped to the existing system located at the intersection of Borrodell Drive and Carwoola Drive.

Suitable conditions of consent have been attached to this effect.

### **7.3 - Stormwater Management**

This clause applies to all industrial, commercial and residential zones and requires that Council be satisfied that the proposal:

- (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*
- (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.*

As per the comments above.

### **7.6 - Groundwater Vulnerability**

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. The design and siting of the proposal avoids impacts on groundwater and is therefore considered acceptable.

**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 this clause, the following comments are made:

With regard to the supply of water, the development will be required to connect to Council's existing reticulated dual water system located in Carwoola Drive/Brookefield Way. A water reticulation analysis will be required to ensure that the proposed water reticulation system meets Council's standard. Borrodell Drive potable water main is existing.

With regard to sewer, the development will be required to connect to Council's existing sewerage system located on adjoining properties to the east. Sewer mains are to be extended to the western boundary to allow adjoining property to be serviced at a later date.

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.

Borrodell Drive shall be constructed as half road width for the full frontage of the development, including road pavement and pavement surfacing to the centreline, kerb and gutter construction, piped stormwater drainage and earth-formed footpath on the development side of the road. The proposed 19m wide roads shall be constructed to full urban standards. All lots will have access to a public road.

Appropriate conditions have been attached.

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

This SEPP requires that a consent authority must not consent to the carrying out of development of land unless it has considered whether the land is contaminated, is satisfied that the land is suitable in its contaminated state for the development that is proposed, and if the land requires remediation to be made suitable for the proposed development it is satisfied that the land will be remediated before the land is used for that purpose.

Furthermore, SEPP 55 requires that before determining an application for consent to carry out development that would involve a change of use on any of the land specified in Subclause (4), the consent authority must consider a report specifying findings of a preliminary investigation of the land concerned.

A preliminary site investigation was prepared by Geotesta (report NE1101 dated 22 November 2021) to determine the soil contamination status and suitability of the site for residential land-use. The report provides that:

- Based on the historical background review, site investigation and analysis program, the site is considered to have a low risk of soil and groundwater contamination.
- Additional sampling is required after demolition of the existing buildings and sheds to address the data gap due to limited access to the dwellings and sheds at the time of investigation.
- It is recommended to assess the location of sample Di14 (found to have TRH exceedance) to ensure the contamination is a single spot.
- No asbestos noted onsite and in the soils tested for asbestos.
- The soil sampling and analysis program indicated a low risk of widespread soil contamination.... (and) is suitable for the proposed land use.

The report was discussed with Council's Environmental Health and Building Surveyor, who advises:

The results of the contamination assessment indicated that the site is suitable for residential use, provided the following condition is attached:

*Prior to issue of a Subdivision Certificate, additional soil testing is to be carried out in the location of the demolished buildings and sheds, as well as at the sample location Di14 to address the data gap identified in Preliminary Site Investigation report (reference NE1101 dated 22 November 2021) prepared by Geotesta Pty Ltd. A copy of the test results is to be provided to Council and is to demonstrate that the land is either suitable for residential use or a remediation action plan is to be submitted for Council approval.*

This condition has been attached, in conjunction with standard conditions relating to unexpected finds and removal of waste materials.

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

Development Control Plan 2004 ("the DCP") applies to the subject land. The relevant chapters are:

- **Part 0.4-1 - Scenic Areas**
- **Part 0.4 - 2 Tree Preservation**
- **Part 7 - Development in Residential Areas**

#### **Part 0.4-1 Interim Planning Outcomes - Scenic Area**

- *Development blends into the landscape through the use of appropriate siting, design, external materials and colours, retention of trees including remnant vegetation, establishing of new trees, and enhancing the skyline when viewed either from the urban area of Orange or from public places in the vicinity of the land.*



**Figure 3 - scenic protection overlay**

The site is located within the Scenic Protection Area as identified in Figure 4 above. Before granting consent for development of land within a scenic area, Council is required to be satisfied that the proposed development will:

- blend into the landscape through the use of appropriate siting and design, external materials and colours, and
- retain existing trees including remnant vegetation, and
- enhance the skyline when viewed either from the urban area of Orange or from public places in the vicinity of the land.

The proposed subdivision proposes to increase the density in this area, which is expected to impact upon the scenic qualities of the area. While Council may have the opportunity to consider the design of any future residential development upon this development site, any Complying Development Certificates for single dwellings will effectively bypass this consideration. As such, it is Council's practice to place restrictions on the titles of the lots to require:

- (a) buildings to present to their respective roads as single storey in height to prevent sky lining of buildings along the ridgeline;
- (b) a maximum site coverage of 35% of the lot size to increase the opportunity for landscaping of the site; and
- (c) the provision of a landscape plan approved by Council prior to the construction of any structure (dwelling or outbuilding) indicating species selection with a mature height greater than the height of any structures proposed, and able to screen a minimum 50% of the width of the front and rear of all proposed structures.

It is considered that these requirements will protect the importance of the western ridgeline scenic values. Conditions have been attached to this effect.

**Part 0.4-2 Tree Preservation**

The following Interim Planning Outcomes for Tree Preservation applies:

- 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.*

The Statement of Environmental Effects conveys:

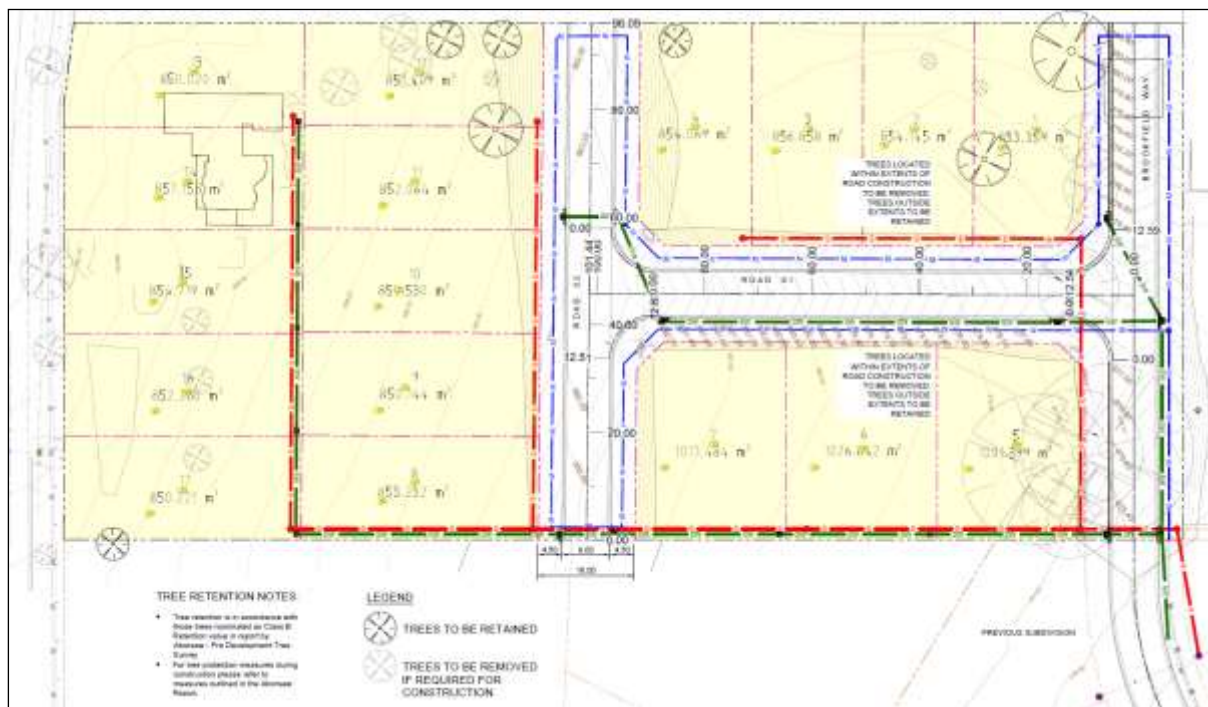
"Trees have been retained where significant and viable to do so in terms of tree health and allowing reasonable development opportunities for future landowners. The trees are proposed to be retained and will be managed in accordance with the Arborist recommendations."

The Arborsaw arborist report (October 2021) submitted with the application identified 79 trees upon the site, comprising ten (10) trees as B retention value, and 69 trees as C retention value. The report states:

*"Trees near the house are all trees of low landscape significance and should not be treated as a constraint on development. Tree numbers 18, 20, 21, 22 and 24 are B retention value trees near the western boundary and should be able to be included in the subdivision. Trees 27-36 are large Eucalypts along the northern boundary. Trees 29, 30, 31, 32, 34 and 35 have poor structural conditions due to numerous identifiable defects.*

*The entire site is proposed for development. If the proposed concept plan for the land is to proceed, then it is likely that the majority of the trees identified in this report will require removal. Soft felling techniques with ecologist supervision is required for the removal of Trees 29, 30, 31, 32, 34 and 35. Replacement tree plantings should be provided for within the proposed subdivision.*

*In order to minimise the impact of the proposal and to ensure any trees nominate for retention remain viable during and post construction, tree protection measures must be incorporated into the works".*



**Figure 4 - tree management plan**

Council's City Presentation Manager makes the following comment:

*Firstly, I would comment that any arborists/ecologists report should include tree numbering on a site survey and not aerial imagery. On an aerial image the numbering is ambiguous and may be misinterpreted, especially without proposed subdivision layout overlain.*

*I have reviewed both the Gunninah Ecological Issues and Assessment Report and the Arborsaw Pre Development Tree Survey and whilst in general agreeance with the discussion and conclusions in both documents, the hollow bearing trees would have a significant habitat role for the existence of native species that occupy and nest in hollows even though they may be few in number and detached from contiguous native vegetation.*

*Recent observations within the City's public open space network has demonstrated that clusters of hollow bearing remnant native vegetation, where it has been historically retained and appropriately protected onsite, has the potential to be occupied by species listed as Vulnerable under the BC Act. Significant to this point is that it may take upwards of 100 to 150 years for a hollow to form to a stage where it can be occupied by native fauna. A clear example of this is the retention of remnant vegetation from the old Clover Hill property which now is occupied by the Orange Botanic Gardens; in the order of a dozen remnant trees retained from the original rural property and over time supplementary planting has enabled Squirrel Gliders (vulnerable species under the BC Act) to colonise the site. Retained hollow bearing remnant vegetation with support from ornamental gardens offers native species habitat that they can adapt to with an outcome of reducing the likelihood of localised extinctions.*

*It would be a fantastic outcome if the subject trees were all identified as occurring on a parcel of land that could become public open space; collectively retaining over 900 years of growth and habitat.*

*It is incorrect to place a life expectancy term ie "15-25 years" on remnant native vegetation. Life expectancy for these remnant species is not constrained to an exact number of years. Native species are prone to the elements (lightning strikes, wind storm branch throw etc), a critical component in hollow formation. Following these natural events, they grow new canopies and have an infinite period of life through this renewal process. This is the reason why in our natural world we have trees that are estimated at 400 to 600 years of age. Living trees with hollows. It is demonstrated on this site as Tree 31 has had its crown removed via a natural event but the tree continues to prosper.*

*Where possible the first rule with regards to remnant vegetation on peri-urban sites should be retention where possible (avoid). The design of infrastructure (roads, utilities) should be in accordance with AS4970-2009 and seek retention of remnant trees; building envelopes should be clearly marked enabling the viable retention of these significant habitat resources.*

*The ability to retain Tree 27, 28 and 33 in a structurally sound and viable condition on a future residential parcel must be deliberated following review of the design of proposed utility services. Tree 28 is located close to the northern boundary of the proposed Lot 1 and likewise Tree 33 is located near the northern boundary of Lot 5.*

*Will these trees TPZ be affected by the installation of utility services (Water, sewer, gas, communications and power) that are likely to occur in the road reserve? The standard tree protection zone for these trees would be in the order of 13 to 14.5m in radius from the centre of the tree's stem. The proposed Lot 1 width in a north-south direction is 21m. Retaining Trees 27 and 28 with overlapping TPZ would result in little to no potential to develop the subject Lot. Similarly, that of Tree 33, a structurally sound example, it is located centrally along a 37m boundary of Lot 5 with an 8.4m TPZ radius from the centre of the stem.*

*It is clear that the DCP did not quantify and qualify the proposed road network nor subdivision down to residential lot sizes to see what trees remnant and/or exotic trees could be retained and protected.*

*As stated in the Arborsaw survey and Ecological report each tree numbered Tree 27 through to Tree 35 have habitat potential, and as such a condition of consent shall be:*

- 1. Trees 27 to 35 inclusive (as numbered in the Arborsaw Pre Development Tree Survey) shall, prior to undertaking arboriculture activities, have hollows and cavities checked for wildlife by an approved Ecological consultant/wildlife rescue carer suitably trained and licensed in the handling of native wildlife.*
- 2. Trees shall have their canopy carefully dismantled using 'soft fell' techniques eg. crane removal to ensure all hollows are inspected without impact of limbs from height onto the ground. Canopy dismantling shall only reduce limbs to 300mm in diameter, then the whole of stag tree shall be safely lowered to the ground using soft fall techniques to enable the tree barrel and main branch structure to be loaded onto a suitable low-loader trailer platform or similar and transported to either the Escort or Ploughmans Wetlands.*

*A minimum six (6) of the nine (9) trees shall then have the stag re-stood at locations approved by Council's Manager City Presentation.*

*It is disheartening to see the continued loss of remnant live standing hollow bearing trees across the Orange LGA landscape due to residential subdivision of the landscape. If retained in situ on public open space which is then rehabilitated with species specific and supporting native mid and understory vegetation, a decline in local extinction of arboreal species could be achieved.*

*I unfortunately cannot support the neighbour's desire to see Trees 27 and 28 retained in this instance as they would significantly compromise the development potential of Lots 1 and 2 of the proposed subdivision. Tree protection zones would be too large, overlapping and encompassing on the Lots restricting the available building envelope for dwelling construction.*

*Trees identified in the Arborsaw Pre Development Survey with a 'B' retention value (excluding Trees 27,28 and 33 and two Cedrus Deodara 21 and 22) shall be retained and fenced prior to earthworks commencing with fencing in accordance with AS4970-2009 Protection of trees on development sites. Once erected the fencing shall be signed off by the project arborist, inspected routinely by the project arborist and signed off at the completion of subdivision works to say that it remained in situ and as erected prior to earthworks commencing.*

Considerable thought and discussion was undertaken to determine if any of the Eucalyptus of significance could be saved. Consideration was given to increasing the lot area of Lots 1 and 5 to allow adequate TPZ's and building envelopes within these lots, without reducing the lots to below the minimum allotment size. However, it was concluded that given the adoption of the DCP Masterplan's approved road network, and approved development applications reinforcing this layout, it is not viable to alter the road layout at this stage, and therefore the tree retention plan is supported as submitted.

Conditions have been attached, as discussed.

#### **Part 7 - Development in Residential Areas**

- *The allotment layout is generally in accordance with the Conceptual Subdivision Layout at Appendix 16.7.*

The subdivision pattern is not strictly in accordance with the relevant Conceptual Subdivision Layout for the Ploughman's Valley Area 3 (Figure 5, below). The proposed subdivision design increases the lot yield by three (3) additional allotments, however, the road design and lot orientation is generally in accordance with the DCP.

The principal objectives of the Masterplan were to provide 850m<sup>2</sup> lots with regular frontages to allow for landscaped front yards and consistent building setbacks. The proposed subdivision design will achieve these objectives.



**Figure 5 - proposed subdivision vs DCP Masterplan**

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

Relevant conditions are attached in this regard.

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

The proposed lots range in area between 850m<sup>2</sup> and 1038m<sup>2</sup>. The proposed allotment layout is expected to achieve a high standard of residential amenity.

- *Lots are oriented to maximise energy-efficiency principles. Where practicable, lots are rectangular rather than splay shaped and oriented to provide the long axis within the range N200W to N300E or E200N to E300S.*

The lots are orientated such that solar access principles for future residential development is achievable.

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

The removal of trees has been discussed previously.

- *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 road layout is satisfactory, will allow adjoining land to be developed, and is generally in accordance with the DCP.

- *Lots have direct frontage or access to a public road.*
- *Stormwater runoff from the site is consistent with pre-development stormwater patterns.*
- *All utility services are provided to the proposed lots.*

The provision of services has been previously addressed under the LEP.

- *Public open-space linkages are provided across the subdivision. Approximately 1ha of public open spaces for each development area is provided in the form of local parks, drainage paths and creek corridors. Public open space provides opportunities for passive and active recreation.*

The DCP for this locality provides for separate areas of open space within the valley and does not require the physical provision of open space within the subject land. As such, a development contribution towards the provision of open space will be required in accordance with Council's 7.11 Contribution Plan. Attached is a condition of consent to this effect.

#### **DEVELOPMENT CONTRIBUTIONS PLAN 2017**

Development contributions are applicable to the proposed subdivision (one additional dwelling), pursuant to Orange Development Contributions Plan 2017 (Ploughmans Valley), as follows:

Open Space and Recreation	3,989.24 x 16 additional lots	63,827.84
Community and Cultural	1,156.85 x 16 additional lots	18,509.60
Roads and Traffic Management	5,265.65 x 16 additional lots	84,250.40
Local Area Facilities	9,005.73 x 16 additional lots	144,091.68
Plan Preparation and Administration	582.53 x 16 additional lots	9,320.48
<b>TOTAL:</b>		<b>\$320,000.00</b>

Conditions are recommended requiring payment of contributions prior to issue of a Subdivision Certificate.

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

The Regulations have been considered, with conditions attached where relevant.

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

##### **Context and Setting**

The site is located in an urban residential locality and has been zoned for residential purposes for many years. The proposed subdivision is expected to alter the character and amenity of the area by increasing the population density, providing new roads, and altering the landscape with the removal of trees and the subsequent construction of seventeen new dwellings. However; this renewed character and amenity is a reasonable expectation of this locality, given the zoning and master planning undertaken for this site.

The subject land is located within the designated Scenic Protection Area, and will require appropriate design considerations to maintain the landscaped character of the western ridgeline. Conditions have been attached to this effect.

##### **Traffic and Access**

The proposal is considered to be satisfactory in regard to traffic impacts. The proposed lots will have appropriate connectivity to the existing and proposed road network. The development will result in additional traffic in the locality given the increases in residential density at the completion of the subdivision; however, the street network (existing and proposed) will be capable of serving the additional load.

**Air and Microclimate**

Subdivision works may generate some impacts in the immediate locality including the emissions of dust from earthmoving equipment, construction vehicles entering and existing the site and so on. However, these impacts will be short term and only for the duration of subdivision construction works. The proposal is not expected to have any long-term discernible impact on air quality or on the microclimate of the locality. Conditions of consent are recommended for dust suppression during subdivision works to protect the air and microclimate.

**Economic Impacts**

The proposed development is consistent with Council's long term land use strategy identifying the Ploughman's Valley as a residential growth area. The proposed subdivision will promote the growth and investment in residential development in a serviceable area of Orange and thus is expected to have positive economic stimulus for the construction and building sector of Orange.

**Cumulative Impacts**

The proposed subdivision is considered to be largely consistent with the intended development pattern and acts as a natural continuation of residential land to the west. The cumulative impacts of the proposed development have been considered throughout the foregoing report and are considered acceptable.

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

The proposed development is located in the R2 Low Density Residential zone and is permissible with the consent of Council. The subject land is considered to be suitable to undertake the proposed development due to the following:

- The development is permissible and compliant with the relevant provisions of the LEP.
- The development is considered to be satisfactory in regard to Section 4.15 of the Environmental Planning and Assessment Act 1979.
- The potential impacts of the development can be managed appropriately through the conditions of consent.
- The development of the site will not create significant adverse impacts on the context and setting of the area.
- The development of the site will not detrimentally affect adjoining land and is unlikely to lead to land use conflicts.
- All utility services are or can be made available, including suitable road access.
- The subject land has no significant biodiversity or habitat value.

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

The proposed development is defined as "advertised development" under the provisions of the Community Participation Plan (for three (3) or more additional lots than planned for). The application was advertised for the prescribed period of 14 days and at the end of that period, five (5) submissions were received.

A summary of concerns follows:

- *The low-lying area subject to the new road will require filling. The neighbour has no objection to the filling of low points into their land, provided they have the opportunity to agree to engineering plans prior to the Construction Certificate stage.*

Council's Assistant Development Engineer advises:

Any works involving adjoining land requires agreement from adjoining land owners. This will be obtained at the Construction Certificate stage.

- *Retention of Trees 27 and 28.*
- *Removal of significant and substantial Eucalyptus trees along the northern boundary.*
- *The native trees to be converted to stags and relocated and stood within Ploughmans Valley wetlands to enhance the ecological attributes of the wetlands.*

Council's City Presentation Manager advises:

"I unfortunately cannot support the desire to see Trees 27 and 28 retained in this instance as they would significantly compromise the development potential of Lots 1 and 2 of the proposed subdivision. Tree protection zones would be too large, overlapping and encompassing on the Lots restricting the available building envelope for dwelling construction.

Trees 27 to 35 inclusive (as numbered in the Arborsaw Pre Development Tree Survey) shall, prior to undertaking arboriculture activities, have hollows and cavities checked for wildlife by an approved ecological consultant/wildlife rescue carer suitably training and licensed in the handling of native wildlife.

Trees shall have their canopy carefully dismantled using 'soft fell' techniques eg. crane removal to ensure all hollows are inspected without impact of limbs from height onto the ground. Canopy dismantling shall only reduce limbs to 300mm in diameter, then the whole of *stag tree* shall be safely lowered to the ground using soft fall techniques to enable the tree barrel and main branch structure to be loaded onto a suitable low-loader trailer platform or similar and transported to either the Escort or Ploughmans Wetlands. A minimum six (6) of the nine(9) trees shall then have the stag re-stood at locations approved by Council's Manager City Presentation."

Conditions have been attached to this effect.

- *Dilapidation surveys for the neighbouring 'Casmalia' house and shed at 7 Eliza Place, and any damage as a result of subdivision, be at the full cost of the developer.*

Council's Coordinator Building Services recommends a condition of consent be imposed upon the development to this effect.

- *Removal of old concrete pads in the subject land in a manner that does not impact upon neighbouring land.*

A condition will be attached to this effect.

- *Access to the subject land being limited to 11 Carwoola Drive or Borrodell Drive.*

Council's Assistant Development Engineer advises:

Access is permitted from a public road or adjoining land owned by the developer or with agreement from adjoining land owners. Access will not be permitted through Lot 5 DP 1063903 (refer to next point). A condition has been attached to this effect.

- *Removal of all redundant restrictions burdening Lot 5 DP 1063903 (including ROW and right of footway).*

A search of DP 1063903 (Figure 6, below) identifies a ROW burdening Lot 5 DP 1063903 to the north, providing a ROW and footway to the subject site. Given the subject site has public road access to Borrodell Drive, this ROW is now considered extraneous, and thus shall be extinguished prior to the issue of the Subdivision Certificate. A condition has been attached to this effect.

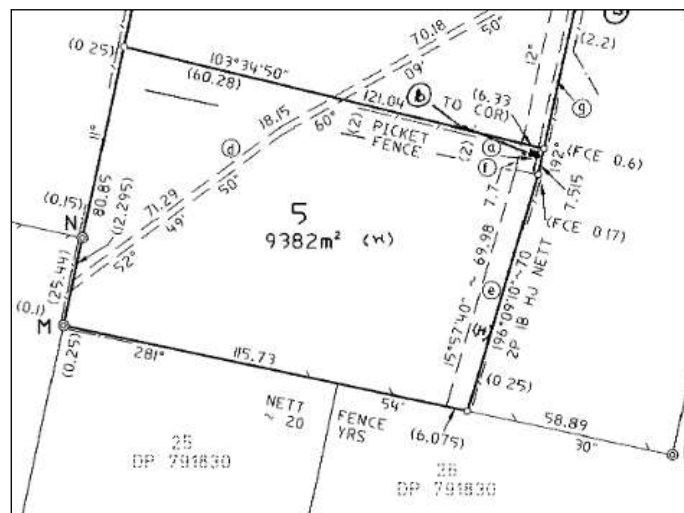


Figure 6 - DP 1063903

- *Objection to the proposed roads running parallel to Borrodell Road; the replacement of this road with a cul-de-sac.*

The road design is in accordance with the DCP Masterplan, and provides for future development of this neighbourhood. The eastern end of the road between Lots 7 and 8 will be terminated as a cul-de-sac as adjoining land to the east is fully developed.

The proposed road design is supported.

- *The subdivision plans do not show any proposed roadworks, kerb and gutter, or service upgrading along the frontages to Lots 13-17.*
- *Internal services such as sewer and stormwater drainage are not shown as being extended to the western neighbour, to provide for future development.*
- *Dual water lines appear to stop at the eastern boundary, and should run to the western neighbour, with suitable easements.*

Council's Assistant Development Engineer advises:

All lots are to be fully serviced to an urban standard as required by Councils Development and Subdivision Code. This includes extension of water, sewer, stormwater to adjoining property boundaries where required to permit adjoining properties to be serviced.

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

The proposed development is considered to be of minor interest to the wider public due to the relatively localised nature of potential impacts. The proposal is not inconsistent with any relevant policy statements, planning studies, guidelines etc that have not been considered in this assessment.


**COMMENTS**

The requirements of the following staff are included in the attached Notice of Approval:

- Assistant Development Engineer
- City Presentation Manager
- Coordinator Building Services
- Environmental Health Officer

**ATTACHMENTS**

- 1 Notice of Approval, D22/52633 [↓](#)
- 2 Plans, D22/50833 [↓](#)
- 3 Submissions, D22/41556 [↓](#)

	<b>ORANGE CITY COUNCIL</b> Development Application No <b>DA 65/2022(1)</b> NA22/571 Container PR1665
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## NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

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

### Development Application

Applicant Name: UPG 294 Pty Ltd  
Applicant Address: 137 Gilba Road  
GIRRAWEE NSW 2145  
Owner's Name: UPG 294 Pty Ltd  
Land to Be Developed: Lot 26 DP 791830 - 13 Borrodell Drive, Orange  
Proposed Development: Subdivision (17 lot Torrens title) and Demolition (tree removal)

### Building Code of Australia building classification:

Not applicable

### Determination made under Section 4.16

Made On: 6 September 2022  
Determination: **CONSENT GRANTED SUBJECT TO CONDITIONS DESCRIBED BELOW:**

**Consent to Operate From:** 7 September 2022  
**Consent to Lapse On:** 7 September 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.
- (8) To minimise the impact of development on the environment.

### Conditions

- (1) The development must be carried out in accordance with:
  - (a) **Plans numbered: Calare Civil Job 2021.0664, Sheets G02B, VEG B (2 sheets)**
  - (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 65/2022(1)**

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**Conditions (cont)****PREScribed CONDITIONS**

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- (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**

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- (4) The applicant is to submit a waste management plan that describes the nature of wastes to be removed, the wastes to be recycled and the destination of all wastes. All wastes from the demolition and construction phases of this project are to be deposited at a licensed or approved waste disposal site.
- (5) 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;
  - 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 +20% for climate change factor.
  - The proposed 19m wide road adjacent to proposed Lots 7 and 8 shall be terminated with a cul-de-sac fully contained within Lot 26 DP 791830.
  - The existing pipe culverts in Borrodell Drive shall be either connected to the stormwater system within the subdivision or piped to the existing stormwater system located at the intersection of Borrodell Drive and Carwoola Drive.
- (6) 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.
- (7) 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.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 65/2022(1)**

3

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

- (8) The development's stormwater design shall include an assessment of the post development stormwater discharge on the existing downstream stormwater network from the point of connection to the existing network to the outlet at the Escort Way/NDR intersection. Where the additional storm water load exceeds the capacity of the existing storm water network the design shall include augmentation works to increase network capacity or provide onsite detention within the development site.

Where storm water detention is proposed within the development site, the system shall be 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 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; and
- 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.

Stormwater lines in the 19m wide roads shall be extended to the common boundary with Lot 25 DP 791830.

- (9) 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.
- (10) 150mm-diameter sewer mains are 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. A gravity sewer main shall be extended to the common boundary with Lot 25 DP 791830.
- (11) 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. Water mains shall be extended to the boundary of Lot 25 DP 791830.
- 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.
- (12) If services and access is to be provided over adjoining properties or works are required to be undertaken on adjoining properties then, prior to the issue of a Construction certificate, evidence of the registration of any required easements and rights of way over adjoining properties for the provision of services and access, and legal agreements for the undertaking of work shall be provided to the Principal Certifier.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 65/2022(1)**

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4

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

- (13) The existing septic tank is to be accurately located and indicated on the submitted engineering plans. The contents of the existing septic tank are to be removed by a licensed contractor for disposal into Council's sewer system. The septic tank is to be excavated and disposed of at a licensed landfill and the absorption trench is to be drained and the voids limed and backfilled with clean compacted material.
- (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.

**PRIOR TO WORKS COMMENCING**

- (15) A dilapidation report prepared by a suitably qualified engineer is to be submitted to Council addressing the current condition of the buildings that are adjoining the development site at 7 Eliza Place.
- (16) Trees identified in the Arborsaw Pre Development Survey with a 'B' retention value (excluding Trees 27,28 and 33 and two Cedrus Deodara 21 and 22) shall be retained and fenced prior to earthworks commencing with fencing in accordance with AS4970-2009 Protection of trees on development sites. Once erected the fencing shall be signed off by the project arborist, inspected routinely by the project arborist and signed off at the completion of subdivision works to say that it remained in situ and as erected prior to earthworks commencing.
- (17) A temporary onsite toilet is to be provided and must remain throughout the project or until an alternative facility meeting Council's requirements is available onsite.
- (18) Soil erosion control measures shall be implemented on the site.
- (19) 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.

**DURING CONSTRUCTION/SITEWORKS**

- (20) Trees 27 to 35 inclusive (as numbered in the Arborsaw Pre Development Tree Survey) shall, prior to undertaking arboriculture activities, have hollows and cavities checked for wildlife by an approved Ecological consultant/wildlife rescue carer suitably trained and licensed in the handling of native wildlife.  
  
Trees shall have their canopy carefully dismantled using 'soft fell' techniques eg. crane removal to ensure all hollows are inspected without impact of limbs from height onto the ground. Canopy dismantling shall only reduce limbs to 300mm in diameter, then the whole of stag tree shall be safely lowered to the ground using soft fall techniques to enable the tree barrel and main branch structure to be loaded onto a suitable low-loader trailer platform or similar and transported to either the Escort or Ploughmans Wetlands. A minimum six (6) of the nine (9) trees shall then have the stag re-stood at locations approved by Council's Manager City Presentation.
- (21) Removal of concrete pads from the subject site shall be undertaken in a manner that does not impact upon neighbouring land.
- (22) Access to the site is permitted from a public road or with agreement from adjoining landowners. Access is not permitted through Lot 5 DP 1063903.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 65/2022(1)**

5

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

- (23) 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 on site 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.
- (24) Any receiver of waste material must be properly licensed by the NSW Environment Protection Authority to receive that waste. If a non-licensed premises is intended to receive waste from the site then an approved notice within the meaning of Section 143(4) of the Protection of the Environment Operations Act 1997 (Section 143 Notice) must be supplied prior to the removal of the material from the remediation site. Details of material removed including volume, mass, classification, destination, and any Section 143 Notices are to be included in the validation report.
- (25) 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.
- (26) All materials on site 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.
- (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) Borrodell Drive shall be constructed as half road width for the full frontage of the development. This work is to include road pavement and pavement surfacing to the centreline, kerb and gutter construction, piped stormwater drainage and earth-formed footpath on the development side of the road. Borrodell Drive shall be constructed as a 20m wide urban road. The existing road pavement on the opposite side of the development shall be tied into the new works and all construction works made safe for road users.
- The proposed 19m wide roads shall be constructed to full urban standard.
- (32) Dual water and sewerage reticulation is to be provided to every lot in the proposed residential subdivision in accordance with the Orange City Council Development and Subdivision Code.
- (33) All services are to be contained within the allotment that they serve.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 65/2022(1)**

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

- (34) Concrete footpaths, a minimum of 1.2 metres wide, are to be constructed on the one side of all 19m roads and the full frontage to Borrodell Drive.
- Construction work is to be to the requirements and standards of the Orange City Council Development and Subdivision Code.
- (35) 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 on site 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.
- (36) Any receiver of waste material must be properly licensed by the NSW Environment Protection Authority to receive that waste. If a non-licensed premises is intended to receive waste from the site then an approved notice within the meaning of Section 143(4) of the Protection of the Environment Operations Act 1997 (Section 143 Notice) must be supplied prior to the removal of the material from the remediation site. Details of material removed including volume, mass, classification, destination, and any Section 143 Notices are to be included in the validation report.

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

- (37) The payment of **\$320,000.00** is to be made to Council in accordance with section 7.11 of the Act and the Orange Development Contributions Plan 2017 (Ploughmans Valley) towards the provision of the following public facilities:

Open Space and Recreation	3,989.24 x 16 additional lots	63,827.84
Community and Cultural	1,156.85 x 16 additional lots	18,509.60
Roads and Traffic Management	5,265.65 x 16 additional lots	84,250.40
Local Area Facilities	9,005.73 x 16 additional lots	144,091.68
Plan Preparation and Administration	582.53 x 16 additional lots	9,320.48
<b>TOTAL:</b>		<b>\$320,000.00</b>

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

- (38) The ROW on the subject land which burdens Lot 5 DP 1063903 shall be extinguished from the title of the land prior to the issue of the Subdivision Certificate, with appropriate evidence submitted to Council.
- (39) A Restriction as to User under Section 88B of the *NSW Conveyancing Act* shall be created on the title of each lot requiring:
- Buildings (including all dwellings and outbuildings) shall comprise single storey height limit only.
  - A maximum building site coverage of 35% for each lot.
  - The provision of a landscape plan approved by Council prior to the construction of any structure (dwelling or outbuilding) indicating species selection with a mature height greater than the height of any structures proposed, and to screen a minimum 50% of the width of the front and rear of all proposed structures. Full implementation of the approved landscaping is required prior to the issue of an Occupation Certificate, and retention and maintenance of such landscaping required thereafter.

Buildings shall be constructed using predominantly non-reflective external materials that reflect the darker recessive natural colours of the setting i.e. shades of natural green and brown predominating over brighter colours. Zincalume roof surfaces are not permitted.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 65/2022(1)**

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7

**Conditions (cont)**

<b>Prior to the issue of a subdivision certificate (cont)</b>
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- (40) Prior to issue of a Subdivision Certificate, additional soil testing is to be carried out in the location of the demolished buildings and sheds, as well as at the sample location Di14 to address the data gap identified in Preliminary Site Investigation report (reference NE1101 dated 22 November 2021) prepared by Geotesta Pty Ltd. A copy of the test results is to be provided to Council and is to demonstrate that the land is either suitable for residential use or a remediation action plan is to be submitted for Council approval.
- (41) Application shall be made for a Subdivision Certificate under Section 6.3(1)(d) of the Act.
- (42) **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 16 ETs for water supply headworks and 17 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.
- (43) 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.
- (44) 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.
- (45) 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.
- (46) An easement to drain sewage and to provide Council access for maintenance of sewerage works a minimum of 2.0 metres 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.
- (47) 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.
- (48) A Certificate of Compliance, from a Qualified Engineer, stating that the stormwater detention basin (where installed) complies with the approved engineering plans is to be submitted to the Principal Certifying Authority prior to the issuing of a Subdivision Certificate.
- (49) 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.
- (50) Evidence of the disposal of the septic tank 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 65/2022(1)**

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8

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

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- (51) 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.
- (52) Prior to the issue of a Subdivision Certificate redundant rights of ways and easements on adjoining land benefiting Lot 26 DP 791830 shall be extinguished.
- (53) 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.
- (54) Prior to issue of a Subdivision Certificate, additional soil testing is to be carried out in the location of the demolished buildings and sheds, as well as at the sample location Di14 to address the data gap identified in Preliminary Site Investigation report (reference NE1101 dated 22 November 2021) prepared by Geotesta Pty Ltd. A copy of the test results is to be provided to Council and is to demonstrate that the land is either suitable for residential use or a remediation action plan is to be submitted for Council approval.
- (55) 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.

**ADVISORY NOTES**

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- (1) Separate development consent will be required in the event that earthworks are required to be carried out on adjoining lands to facilitate the subdivision.

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**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.  
Nil

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**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.

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**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 65/2022(1)**

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***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.

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**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.

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**Signed:**

On behalf of the consent authority **ORANGE CITY COUNCIL**

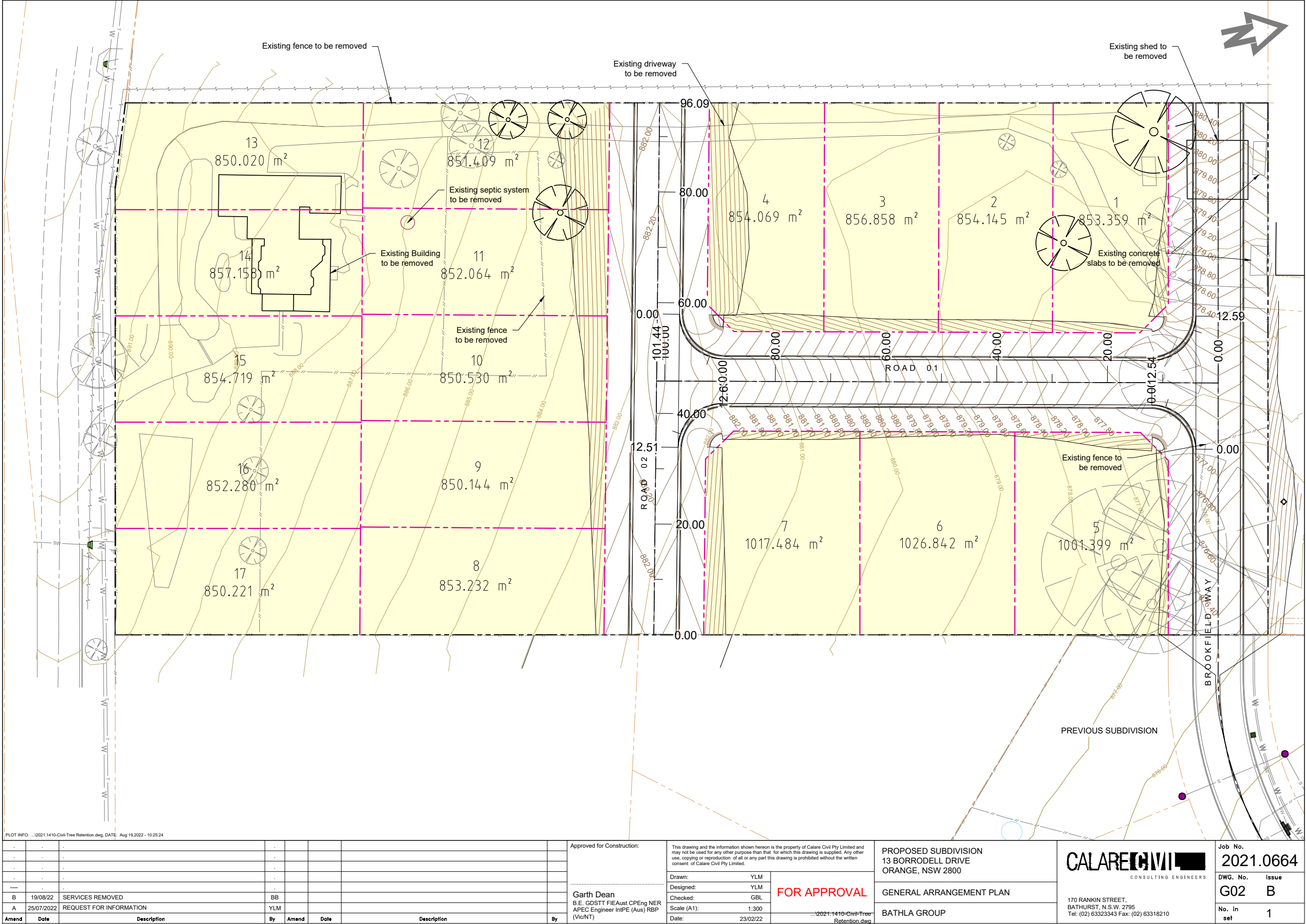
**Signature:****Name:**

PAUL JOHNSTON - MANAGER DEVELOPMENT ASSESSMENTS

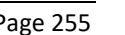
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**Date:**

7 September 2022









## Submission 1

**From:**  
**Sent:** Sunday, 10 April 2022 6:37 PM  
**To:** Orange City Council  
**Subject:** DA 65/2022(1). - 13 Borrodell Drive, Orange

Reference is made to Development Application DA 65/2022(1) - 13 Borrodell Drive, Orange for the subdivision of 17 residential lots.

We request Council's careful consideration to the following issues when assessing the DA:

- The removal of a number of significant and substantial eucalyptus trees along the northern boundary;
- The need for a "through road" from the eastern to the western boundary adjacent to Lots 8-12. It is our understanding that the adjoining owners to the east have either no further subdivision potential, or intention to subdivide. It would be more appropriate for the connecting road east be removed and/or replaced with a cul-de-sac to service Lots 7,8 and 9;
- The subdivision plans do not show any proposed roadworks, kerb and gutter, or service upgrading along the frontages to Lots 13-17; and
- Internal services, such as sewer and stormwater drainage, have not been extended to the western boundary of the subject land to provide for the future development of the adjoining owner to the west.

We respectfully request your attention to the abovementioned matters.

Yours sincerely

## Submission 2

**From:**  
**Sent:** Monday, 11 April 2022 3:12 PM  
**To:** Orange City Council  
**Subject:** Submission DA 65/2022(1) – 13 Borrodell Drive, Orange

Dear Council,

I am writing to make a submission concerning the following:

**DA 65/2022(1) – 13 Borrodell Drive, Orange**

I live                      and welcome the DA.

However, I do have a few concerns:

- The plan appears to allow storm water lines to fall short of reaching my boundary at three points (along both of the proposed new roads, and across the back of the South-Western block near Borrodell Drive).

If that is maintained, it will cause issues for us and council in the future.

An easement also needs to be allowed over the paths of those pipes.

- A similar situation appears to exist for sewer lines in roughly the same area indicated above for the stormwater extension. However, those sewer lines run across block boundaries, rather than the roads. Those sewer lines need to run to my boundary, with suitable easements created.
- Dual water lines appear to stop at the Eastern boundary of the proposed sub-division. That infrastructure needs to continue West along the front of the proposed roadway blocks until they reach my boundary.

Thank you for giving the opportunity to contribute to the discussion.

Regards,

## Submission 3

**From:**  
**Sent:** Monday, 11 April 2022 6:32 PM  
**To:** Orange City Council  
**Subject:** Submission on DA 65-2022(1) PR1665 13 Borrodell Drive, Orange

Thank you for the opportunity to comment on DA 65/2022(1) regarding a 17 lot subdivision at 13 Borrodell Drive.

I have mostly lived in the area since 1997 and I am the owner of                      comprising                      . The subject land adjoins my

I am not opposed to the subdivision creating 17 lots. I have no objection to the removal of native trees in the vicinity of my land to allow the subdivision to proceed. I note that the arborist and ecological reports propose measures to offset the removal of trees. I agree to the relocation of trees with hollows and retention of native trees as indicated in these reports.

I note that the proposed road on the subject land that adjoins my boundary is to drain to the east as an extension of Brookfield Drive. The road will require filling in the low lying area which formerly included a farm dam that traversed the boundary between my land at                      and the subject land at 13 Borrodell Drive. That dam has been effectively drained through the stormwater system to the north. It is understood that the effective construction of the road will need filling of the former low point and to avoid the alternative of retention walls on the boundary I have no objection to the filling of this area extending into my land as part of the subdivision works for practical and cost effective purposes provided that I am given the opportunity to agree to engineering plans prior to the issue of a construction certificate and that works are at the cost of the proponent for this subdivision. The filling of the low lying land would need to include suitable and approved materials, including subsoil and topsoil and must provide for adequate drainage and be compacted to a stable landform for subsequent residential development.

I do not intend to subdivide my land in accordance with Orange DCP 2004 for the Ploughmans Valley Area 3 concept layout at this time. Instead, I am trying to progress construction of the house subject to development approval on my land.

Please consider the above in assessment of the development application and in conditions for any approval for this subdivision.

Regards

Submission 4

**From:**  
**Sent:** Monday, 11 April 2022 6:00 PM  
**To:** Orange City Council  
**Subject:** Submission DA 65-2022(1) PR1665 13 Borrodell Drive  
**Attachments:** Submission on DA 65-2022 subdivision at 13 Borrodell Drive.pdf

Please consider the attached submission on DA 65-2022.

The submission is not an objection but requests consideration of various matters in the planning assessment and consent conditions where the application is approved.

Regards

9 April 2022

Chief Executive Officer  
Orange City Council  
PO Box 35  
ORANGE NSW 2800

**Reference: DA 65/2022(1) - PR1665. 13 Borrodell Drive, Orange  
Subdivision (17 lot Torrens title) and Demolition (tree removal)**

As the owners of land at \_\_\_\_\_ since 1997 which \_\_\_\_\_ the subject land we wish to make the following comments regarding the proposed subdivision subject to DA 65/2022(1) with reference made to the Statement of Environmental effects (SEE) and associated documents submitted with the development application (DA).

For context, our land shares a common boundary for approximately 37m with the subject land.

**Development proposal and land suitability**

- It is noted that the application provides for 17 standard urban residential lots which exceeds the nominal number of 14 lots as indicated in DCP 2004 for Ploughmans Valley Area 3<sup>1</sup>. It is noted that additional lots are proposed mainly in conjunction with the demolition of the existing dwelling. We have no objection to the proposed subdivision concept which maintains the road layout as proposed in DCP 2004 and the increase of lots to 17.
- We acknowledge the former use of orchards on the subject land had ceased prior to 1982 and that only low and acceptable levels (according to scientific standards) of residual organochlorines were identified in preliminary site investigations consistent with the land's former use.

**Ecological and landscape considerations**

- Tree surveys submitted with the application recognised the ecological values and integrity of trees. We support recommendations indicated in the Ecologist report prepared by Gunninah Pty Ltd and Arborist Report prepared by Arborsaw. The SEE states that it is to be read in conjunction with these and other documents submitted with the DA. The DA does not fully commit to retention of trees where the reports only suggest these as considerations of reasonable attempts to retain. The trees indicated in the Gunninah report's "Photographic Essay" form a backdrop to our land as indicated below:

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<sup>1</sup> It is noted that the SEE includes some incorrect references to "Ploughmans Valley Area 4" relating to DCP 2004.



Figure 1 View of native habitat trees and trees 27 and 28 from the rear of the house at

- The Gunninah report states that “9 native trees to be removed should be replaced – either on the subject land or (preferably) in local public reserves. In addition, the tree-hollows on the subject land should be salvaged (where possible) and re-deployed in larger trees within nature reserves in the vicinity or locality.”
- The Arborsaw Report reiterates the assessment of the Gunninah report and recommends in respect to trees identified as 27 and 28 that these and other trees nominated as having “B Retention Value” that:

*Reasonable attempts should be made to retain the trees through the project as they has (sic) the ability to be a continuing component of the landscape in the medium term. If trees in the category are nominated to be retained, they must be protected as per the guidance in this report.*

- Section 4.6 of the SEE states that:

- 

*Trees have been retained where significant and viable to do so in terms of tree health and allowing reasonable development opportunities for future landowners. The trees are proposed to be retained and will be managed in accordance with the Arborist recommendations.*

- While not clearly identified in Figure 3 of the SEE, Trees numbered 27 and 28 in the Arborsaw report appear to be located within proposed lot 1 near side and street boundaries of the lot. The retention of these trees will not materially affect an appropriately designed dwelling house on this lot. Council should specifically and clearly require these trees be retained as a condition of consent and include the recommended management measures. Adequate measures should be required by Council to ensure that these trees continue to be retained and managed after the subdivision certificate is issued for the approved subdivision.

- We have noticed that the other native trees in the vicinity of the northern boundary of the subject land have shed limbs or indicated signs of die-back in recent years and as such the recommendations to relocate these trees as stags is supported. We agree that they are not appropriate for retention. It is requested that the habitat tree stags be relocated to the Ploughmans wetlands. We agree that the hollows have been used by various native birds and animals over the years.

#### Construction, infrastructure and servicing

The mair house is believed to have been initially constructed in circa 1906 and extended and altered over many years by various owners.

Our shed at the rear of is understood to have originally been built as a machinery shed in or about the 1920s. This shed has been converted over time to a garage and an extension of the dwelling house consistent with the transition from orcharding and farming through rural residential subdivisions to urban residential land uses. shed is located approximately 1.5m from the common boundary with the subject land. A concrete pad extends across the boundary from the shed on

into the subject land will need to be removed for a 4.5m wide road verge consistent with Council standards without damaging the shed (within the red circle in Figure 2 below.) Other concrete pads may extend across the common boundary with towards the north-western corner of the subject land (such as the pads in the orange circle in Figures 2 and 3 below.) It is understood the concrete pads were formed when the machinery shed and former packing shed on the subject land were used together as, part of the larger orchard activities which preceded the rural residential subdivision of the 1980s and 90s.

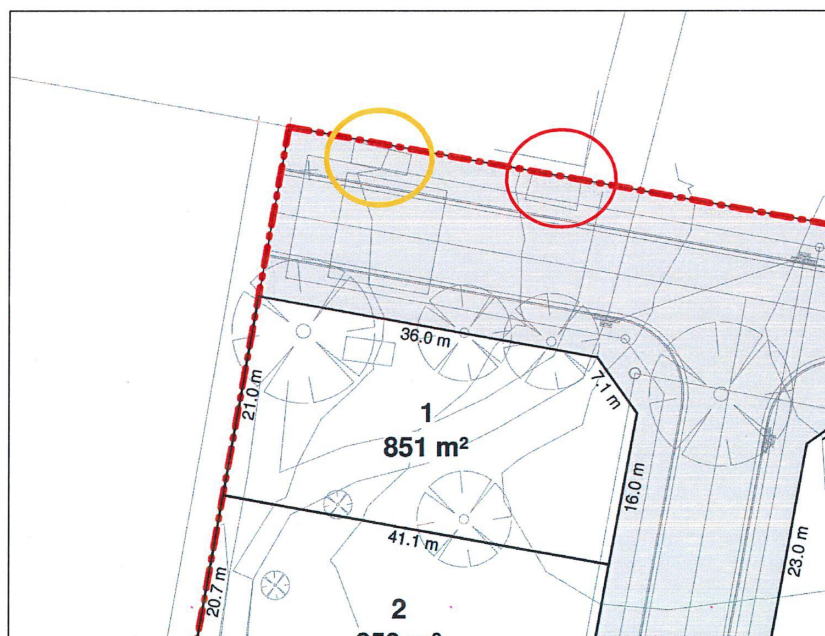


Figure 2 location of concrete pads which extend to or across the boundary at 7 Eliza Place



Figure 3 - Concrete slab extending across boundary between the subject land and land at 7 Eliza Place understood to be the slab of the former orchard packing shed.

Roadworks and installation of infrastructure such as stormwater drainage will be required to be undertaken within 6 metres of the shed on [redacted] The main house is located within 40m of the proposed roads.

The proximity of the buildings at [redacted] to the proposed road has potential for damage from construction activities including damage from excavation and compaction of earthworks associated with utilities and roads.

We request that council require that the proponent undertakes a dilapidation survey of the House and former machinery shed prior to the commencement of construction and that a commitment is made for appropriate measures be taken to repair any damage caused by subdivision construction to the satisfaction of the owners of [redacted] at the proponent's cost.

It is understood that the subject land adjoins 11 Carwoola Drive land which is also owned by the developer - The Bathla Group. A condition should be imposed for all construction machinery and vehicles being accessed directly from Borrodell Drive or land at 11 Carwoola Drive currently comprising Lot 100 DP1121143.

The subject land was created following a series of transitional subdivisions pending the construction of roads in Ploughmans Valley between The Escort Way (formerly Forbes Road) and Cargo Road. Those transitional subdivisions required a number of rights of way and easements which are now redundant.

We are aware that an early DCP for the area provided for transitional rural residential development in the 1980s through rights of ways and servicing easement pending the subsequent staging of roads which have since been established. In order to facilitate development consistent with the current DCP where lots are required to have direct access to roads created consistent with DCP 2004 the redundant

easements and rights of way on our land applicable to lot 26 DP 791830 must be removed by the proponent at or prior to the issue of the subdivision certificate.

This relates to:

- Easement for right of footway and carriageway variable width (DP516213)
- Right of carriageway variable width (DP711343)
- Right of access variable width (DP1063903)

The proposed road along our southern boundary wholly within the subject land provides appropriate access to all proposed lots consistent with the DCP 2004 layout and development principles for Ploughmans Valley Area 3. All stormwater and sewer services are proposed to connect with the proponent's land at 11 Carwoola Drive so there will be no need for services to traverse our land.

#### **Conclusions and recommendations**

The proposed subdivision of land at 13 Borrodell Drive (lot 26 DP791830) for 17 residential lots is considered to be an appropriate development consistent with the local planning regulations and plans subject to the following:

- Retention of trees 27 and 28 in accordance with the management recommendations of Arborsaw submitted with the development application.
- The native trees to be removed along the northern portion of the subject land (excluding trees 27 and 28) being converted to stags and relocated and stood within Ploughmans Valley Wetlands off Cargo Road to enhance the ecological attributes of the wetlands.
- Dilapidation surveys being undertaken for the                      house and main shed at                      by, and at the full costs of the developer prior to issue of a construction certificate for subdivision works and any damage attributed to subdivision works being repaired at the developer's cost to the satisfaction of the owners of
- Removal of old concrete pads in the subject land in conjunction with the subdivision which traverse the common boundaries of the subject land being removed in a manner which does not disturb the shed or garden on our land.
- Access to the subject land by earthworks machinery and associated vehicles being limited to 11 Carwoola Drive or Borrodell Drive prior to and during subdivision works.
- Removal of all redundant restrictions burdening our land (lot 5 DP1063903) which were imposed prior to alternative roads and services being put in place in the area including but not limited to:
  - Easement for right of footway and carriageway variable width (DP516213)
  - Right of carriageway variable width (DP711343 and DP1063903)

Thank you for the opportunity to make comment on the subject development application and we trust that Council gives full consideration and support to the matters raised in this submission.

Yours sincerely

NOTE: We have not made any reportable political donations as referenced in section 10.4 of the Environmental Planning and Assessment Act 1979.

Submission 5

**From:**  
**Sent:** Tuesday, 12 April 2022 1:39 PM  
**To:** Orange City Council  
**Subject:** Objection to DA65/2022(1), 13 Borrodell Drive.

Good Afternoon,

DA65/2022 (1) ,13 Borrodell Drive , Orange.

We are writing in relation to the above mentioned subdivision that is currently with Council for their assessment.

As we have no intention to subdivide our property, we object to the proposed roads running parallel to Borrodell Rd.

We are aware that our neighbour has no intention to divide their property either.

Can you please advise if you require anything further.



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**2.6 DEVELOPMENT APPLICATION DA 387/2021(1) - 26 LYSTERFIELD ROAD**

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RECORD NUMBER: 2022/1528

AUTHOR: Ben Hicks, Senior Planner

**EXECUTIVE SUMMARY**

Council's consent is sought for the subdivision of land in the developing Shiralee urban village. The proposal relates to land described as Lot 76 DP750401, 26 Lysterfield Road, Orange (refer Figure 1 below).

The proposal involves:

- Fourteen (14) residential lots (Lots 1 to 14) wholly located within that portion of the Land zoned as R1 General Residential under the LEP and the Shiralee Development Control Plan;
- One (1) public recreation lot (Lot 17) wholly located within that portion of the Land zoned as RE1 Public Recreation under the LEP; and
- Two (2) investigation lots (Lots 15 and 16) located within the remaining portion(s) of the Land.

The residential lots will range in size from 328m<sup>2</sup> to 341m<sup>2</sup>. Proposed Lots 1-14 will be consistent with the adopted DCP Masterplan for the Shiralee locality and will be fully serviced to a residential standard with sewer, water, stormwater drainage, electricity, gas and telecommunications. Two new roads will be constructed.

Council staff in assessing the proposal have identified an anomaly within the tables contained within the Council's contributions plan for Shiralee locality whereby the area of land proposed for open space under this application and required to be provided by Council's DCP has been omitted. The proposal involves the dedication of proposed Lot 17 (2.74 hectares) and the possibility of a further 3,106m<sup>2</sup> being the area contained within proposed Lots 15 and 16.

In order to properly address the matter pertaining to compensation under this circumstance for that part of the land identified for future open space within the proposal and progress the matter in the absence of an amendment to the Contributions plan, it is appropriate to negotiate a mutually agreeable outcome with the applicant via a Planning Agreement. Planning Agreements are used widely in the planning system as a tool for delivering innovative or complex infrastructure and public benefit outcomes in connection with planning proposals and development applications. They provide a way for planning authorities and developers to negotiate flexible outcomes in respect of development contributions and enable the NSW planning system to deliver sustainable development while achieving key economic, social, and environmental objectives.

Section 7 of the Environmental Planning and Assessment Act 1979 provides that a consent authority may require a Planning Agreement to be entered into as a condition of a development consent, but only if it requires a Planning Agreement that is in the terms of an offer made by the developer in connection with the development application. The applicant has made an offer to Council's CEO to enter into a Planning Agreement (see attached) to address matters pertaining to compensation for open space. A draft Planning Agreement and explanatory note (copy attached) containing the terms of an offer made with respect to this matter has been negotiated, prepared and placed on public exhibition.

Specifically, the proposed Planning Agreement in this case has been designed to facilitate the dedication of public parkland to Orange City Council (Lot 17) following the registration of the plan at the Land and Property Information Centre. The dedication of land will be made at no cost to Council with partial exclusion of the application of Section 7.11 of the Act relating to contributions only to the extent of contributions that would apply to open space and recreation.

The agreement also seeks to facilitate an opportunity for the landowner of proposed Lots 15 and 16 to submit to Council for consideration a separate planning proposal that seeks to rezone that portion of the land located within proposed Lots 15 and 16 shown in the plan contained in Schedule 3 of the draft Planning Agreement to Zone R2 Low Density Residential under the LEP. The Planning Agreement will require, in the event that a future planning proposal is unsuccessful, that the land known as Lots 15 and 16 is further dedicated to Orange City Council at no cost.

In accordance with Section 7.5 of the *Environmental Planning and Assessment Act, 1979*, the draft version of the proposed Planning Agreement together with an explanatory note was placed on public inspection for a period of 28 days. At the end of the exhibition period Council's records indicate that one submissions was received in relation to the development application and Planning Agreement. The submission in part noted that a large area of public open space would be gifted to Council under this proposal.

It is recommended on this that Council agrees with the terms of the draft Planning Agreement with respect to this matter as the agreement is in the benefit of both Council and the applicant to progress this way. Attached is a recommended "Deferred Commencement" consent (copy attached) that would require the applicant to register the Planning Agreement to the title of the subject land before the consent would become operational.

Proposed Lots 15 and 16 will be created as development lots at this stage meaning that the requirement for servicing will be deferred until such time that the outcome of the planning proposal alluded to above is known.

The proposal has been evaluated pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979* and is considered to be suitable. It is recommended that Council adopt the attached "deferred commencement" consent to ensure that the requirements of the Planning Agreement are implemented and registered on the title prior to the consent becoming operative.



**Figure 1 - Site Context and Locality Map**

**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 proposal seeks consent for the subdivision of land at 26 Lysterfield Road. The proposal is largely consistent with the requirements of Council's DCP.

The development site includes an area of land that would provide important connectivity between open space areas within Shiralee. The purchase of this additional land is beyond the scope of the Contributions Plan for the area. The proponent understands this and has therefore offered to enter into a Planning Agreement with Council to provide the land for public open space at no cost to Council.

The Planning Agreement will provide for improved public space, whilst providing the opportunity for the application to make application to rezone other with less value as parkland that would provide a small number of additional residential lots.

The Planning Agreement will require in the event that a future planning proposal is unsuccessful that the land known as Lots 15 and 16 is further dedicated to Orange City Council.

The terms of the Planning Agreement are considered to be a good deal for both Council and the proponent given that no funding is available to compensate the property owner for the open space required to be dedicated under the DCP.

It is recommended that Council supports the Planning Agreement and resolves to issue a "Deferred Commencement Consent" for the subject development to ensure that the outcomes of the Planning Agreement are registered on the title of the subject land.

**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:

- 1 To formally enter into the terms of the draft Planning Agreement as exhibited in relation to this matter.**
- 2 To issue a “Deferred Commencement” consent in relation development application DA 387/2021(1) for *Subdivision (14 lot Torrens title and 3 Open Space Lots)* at Lot 76 DP750401, 26 Lysterfield Road, Orange pursuant to the conditions outlined in the attached Notice of Determination.**

**FURTHER CONSIDERATIONS**

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

**SUPPORTING INFORMATION**

Council's consent is sought for the subdivision of land in the developing Shiralee urban village. The proposal relates to land described as Lot 76 DP750401, 26 Lysterfield Road, Orange (refer Figure 1 below).

The proposal involves:

- Fourteen (14) residential lots (Lots 1 to 14) wholly located within that portion of the Land zoned as R1 General Residential under the LEP and the Shiralee Development Control Plan;
- One (1) public recreation lot (Lot 17) wholly located within that portion of the Land zoned as RE1 Public Recreation under the LEP; and
- Two (2) investigation lots (Lots 15 and 16) located within the remaining portion(s) of the Land.

The proposed residential lots will comprise entirely compact lots as intended in the Shiralee DCP.

The residential lots will range in area between 328m<sup>2</sup> to 341m<sup>2</sup>. The lots will be fully serviced to a residential standard with sewer, water, stormwater drainage, electricity, gas and telecommunications. Road works include a park edge road around the perimeter of the new lots and half road construction of Road 2 in the adjoining subdivision at 76 Lysterfield Road.

## 2.6 Development Application DA 387/2021(1) - 26 Lysterfield Road

Each proposed lot will have direct frontage and access to an existing or proposed public road. Proposed Lots 15 and 16 will be created only for the purposes of facilitating future investigation into the suitability of such for residential development. Contributions and servicing of these two lots will be deferred at this time. Proposed The proposed subdivision layout is depicted below (refer Figure 3).

Table 1: Proposed Subdivision Details	
	Development Statistics
Total Number of Lots (14)	Varying lot size from 328m <sup>2</sup> to 341m <sup>2</sup>
Dedication of Road (2 Roads)	Roads 1 15.50m, Roads 2 19.0m (half)

Figure 2 – development statistics

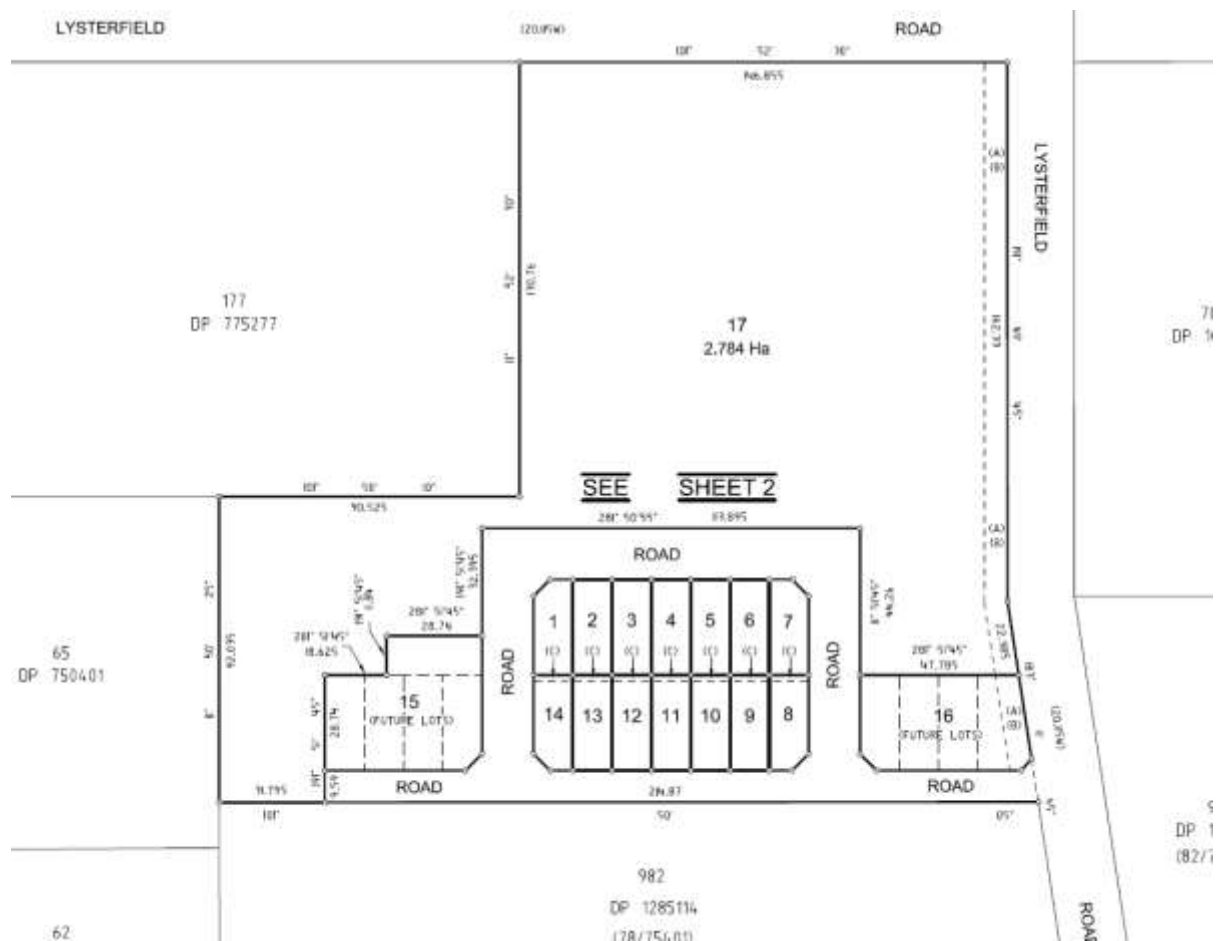


Figure 3 - plan of subdivision

The applicant has made an offer to Council's CEO to enter into a Planning Agreement to address matters pertaining to compensation for open space.

**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 (i.e., 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 fourth trigger (development proposed to occur in an Area of Outstanding Biodiversity Value (clause 7.2 of BC Act 2016) is generally not applicable to the Orange LGA; as no such areas are known to occur in the LGA. No further comments will be made against the fourth trigger.

**Trigger 1**

The subject land is not identified as biodiversity sensitive on the Orange LEP 2011 Terrestrial Biodiversity Map or mapped on the Biodiversity Values Map.

**Trigger 2**

The prescribed clearing threshold for the site is 0.25ha (based on minimum lot size for the subject land of less than 1ha (Cl. 7.2 Biodiversity Conservation Regulation 2017). The site contains pasture grasses and weeds; with a few small non-native shrubs as outlined Ecological and Riparian Assessment Report prepared by Gunninah. In this regard, the proposal will not trigger/exceed any clearing thresholds.

**Trigger 3**

The development application is supported by Ecological and Riparian Assessment prepared by Gunninah. The report advises that virtually all of the subject site has long been cleared of native vegetation and has been used intensively for an array of agricultural and rural purposes in the past. The report outlines that a visual inspection the vegetation present on the subject site identified that the land consists of pasture grasses and weeds; with a few small non-native shrubs. The report concludes that the development site does not contain any threatened vegetation species or potential habitat for any threatened fauna species. Council's Manager City Presentation concurs.

Based on the foregoing consideration and supporting Preliminary Flora and Fauna Assessment Report, a BDAR is not required, and the proposal suitably satisfies the relevant matters at Clause 1.7 EPAA 1979.

**Riparian Assessment**

The Ecological and Riparian Assessment Report prepared by Gunninah provides that a small highly degraded and modified drainage channel traverses the western part of the subject land flowing to the north. This watercourse is mapped in the NRAR Hydroline mapping of the subject land as a 1st Order Stream. It is also noted that the natural watercourse is protected as a Key Fish Habitat.

The natural drainage system is located entirely on the land zoned for RE1 Public Recreation. The proposed subdivision and future development of the subject site is not affected by any riparian constraints. It is considered that an adequate riparian buffer zone between the development and the watercourse will remain - approximately 60-70m and thus works are not expected to have a significant impact on the system and does not trigger referral to NRAR. Conditions of consent will require suitable erosion controls, exclusion zones etc. to be in place during works to reduce the likelihood of any significant impact.

Notwithstanding, works/disturbance within the riparian zone may be required for stormwater disposal (to be determined during detailed design). Where stormwater is proposed to be discharged to the watercourse, the stormwater designs/outlets will need to meet acceptable design standards to minimise erosion and ensures water quality in receiving waters. The applicant did not elect to have the Development Application treated as Integrated Development, and in this regard, the beneficiary of the consent will be required to seek the relevant approvals directly from the relevant agencies (NRAR and Fisheries) should stormwater be proposed to be diverted to the creek system. Approval from the relevant agencies will be required prior to any works commencing. Conditions have been included in the consent to this effect.

**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****Clause 1.2 - Aims of Plan**

The broad aims of the LEP are set out under Subclause 2. Those relevant to the application are as follows:

- (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 application is considered to be consistent with the aims, 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>R1 General Residential &amp; RE1 Public Recreation</b>
Lot Size Map:	<b>Minimum Lot Size 200m<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 biodiversity sensitivity on the site
Groundwater Vulnerability Map:	<b>Groundwater vulnerable</b>
Drinking Water Catchment Map:	Not within the drinking water catchment
Watercourse Map:	Not within or affecting a defined watercourse
Urban Release Area Map:	Not within an urban release area
Land Reservation Acquisition:	Nil
Obstacle Limitation Surface Map:	No restriction on building siting or construction
Additional Permitted Uses Map:	No additional permitted use applies
Flood Planning Map:	<b>Within a flood planning area</b>

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 foregoing covenants, instruments, agreements or plans.

**Part 2 - Permitted or Prohibited Development****Clause 2.1 - Landuse Zones**

The subject site is zoned R1 General Residential and RE1 Public Recreation (refer Figure 5).



**Figure 5 - Zoning**

The proposed development is defined as “subdivision”

Pursuant to Section 6.2 of the *Environmental Planning and Assessment Act 1979*:

*Subdivision of land means the division of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition.*

Subdivision of land is permitted with consent pursuant to Clause 2.6 (refer below).

**Clause 2.3 - Zone Objectives**

The objectives for land zoned **R1 General Residential** are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other landuses 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 development is considered to be consistent with the objectives of the R1 General Residential zone. The subdivision will provide for additional lots for dwelling stock to accommodate the housing needs of the community. Transport links and open space for the Shiralee urban release area has been guided by the Shiralee Development Control Plan 2015 and Masterplan and thus it is expected the land to be developed will be accessible to walking and cycling opportunities and public transport linkages as the urban village becomes established.

The objectives for land zoned **RE1 Public Recreation** are:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible landuses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *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 development along the Southern Link Road has alternative access.*

The proposed subdivision involves the creation of three (3) open space lots within land zoned RE1 noting that two lots (15 and 16) will be created as investigation lots for future residential development subject to a satisfactory outcome of a planning proposal. The development will provide land for open space or recreational purposes, consistent with the RE1 zone 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 subdivision of the subject land in accordance with this clause.

#### **Clause 4.1 - Minimum Subdivision Lot Size**

This clause requires the subdivision of land to be equal to or greater than the size nominated for the land under the Minimum Lot Size Map. Pursuant to the Lot Size Map the development site is subject to a minimum lot size of 200m<sup>2</sup>. The lots proposed in the subdivision comply with the prescribed minimum lot sizes in Clause 4.1.

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

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).*

Earthworks are required to facilitate the use of the land for residential development. The earthworks will involve cutting and filling across the entire site to achieve appropriate site surface levels for future residential allotments including filling of the existing dam. Earthworks will also extend to the installation of sewer, water and utility services. Conditions included to address such matters.

The extent of disruption to the drainage of the site is considered to be reasonable. Overland/natural stormwater flows will be redirected to underground stormwater infrastructure and managed through Council's stormwater network. Therefore, the disruption to natural overland flow paths are not expected detrimentally affect adjoining properties or receiving waterways. Easements will be required over adjoining properties for the extension of services. These matters will need to be determined in conjunction with a future construction certificate for subdivision.

The site is not known to contain any Aboriginal, European or Archaeological relics. Previous known uses of the site do not suggest that any relics are likely to be uncovered. Notwithstanding, a condition will be imposed to ensure appropriate procedures are followed in the event that unexpected heritage items are uncovered during subdivision works.

Overall, the extent of the earthworks are not expected to materially affect the potential future use or redevelopment of the site that may occur at the end of the proposed development's lifespan and appropriate sediment controls, including silt traps and other protective measures will be required to protect adjoining lands during subdivision works as a condition of development consent.

#### **Clause 7.2A - Flood Planning**

Clause 7.2 is applicable as the site has been identified on the flood planning map as being within the Blackmans Swamp Creek Catchment.

This clause states that development consent must not be granted to specific development/landuses including residential development 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.

The Blackmans Swamp Creek Catchment flood area is generally contained to the western portion of the site with some contact with three of the proposed northern allotments. The PMF level also affects some of the proposed lots on the western side of the site. The civil design for the development will be required to take into account the flood levels as well as Australian Rainfall and Runoff calculations allowing +20% for climate change factor. Council's development engineer has included conditions of consent addressing these matters. In this regard, the flooding is not expected to impact on the future development and occupation of the land.

#### **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.*

Quantities of surface runoff (as opposed to soakage into permeable surfaces) can be expected in a subdivision development given rise to the installation of hard surfaces like roads. Council's Development Engineer advises that the applicant will be required to contribute to the provision of an off-site stormwater detention system for the development (through Section 7.11 contributions). Stormwater will need to be piped to existing natural watercourses subject to NRAR and Fisheries approval (or to future detention basins). Where stormwater is proposed to be directed to the adjoining natural watercourse, flow rates into the creek system will need to be controlled to within certain acceptable limits to avoid events such as flash flooding during peak events. Easements over adjoining lands may be required. With regard to water quality, collection and increase in particulate content and nutrients is likely for a residential subdivision, although contamination from toxic or dangerous chemicals is considered minimal. Nutrient and particulate control is recommended under Water Sensitive Urban Design principals (WSUD) and can be worked into the detailed stormwater plans that are required in the conditions of this consent.

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

The subject land is identified as Groundwater Vulnerable on the Groundwater Vulnerability Map and 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*

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 subject lands will be serviced by reticulated sewer, as required by conditions of consent.

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

Clause 7.11 is applicable. This clause 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.*

All utility services will be augmented to the land and made adequate for the proposal. The development will be required to connect to Council's reticulated water system and gravity sewerage system. Suitable public road access will be provided to the new allotments. Electricity will be provided as per the relevant authority's requirements. Appropriate stormwater management infrastructure will be provided to the required allotments and the proponent will be required to contribute to the provision of off-site stormwater detention through Section 7.11 Contributions. A separate condition of consent will address matters in relation to the deferred timing for contributions and servicing of proposed Lots 15 and 16.

#### STATE ENVIRONMENTAL PLANNING POLICIES

- SEPP (Housing) 2021
- SEPP (Primary Production) 2021
- SEPP (Resources and Energy) 2021
- **SEPP (Resilience and Hazards) 2021**
- SEPP (Industry and Employment) 2021
- SEPP (Transport and Infrastructure) 2021
- SEPP (Biodiversity and Conservation) 2021
- SEPP (Planning Systems) 2021
- SEPP 65 - Design Quality of Residential Flat Development
- SEPP (Building Sustainability Index: BASIX) 2004

The following SEPPs are specifically relevant to the assessment of the proposed development:

**SEPP (Resilience and Hazards) 2021** - State Environmental Planning Policy (Resilience and Hazards) 2021 requires that a consent authority must not consent to the carrying out of development of land unless it has considered whether the land is contaminated, is satisfied that the land is suitable in its contaminated state for the development that is proposed, and if the land requires remediation to be made suitable for the proposed development it is satisfied that the land will be remediated before the land is used for that purpose. Furthermore, the SEPP requires that before determining an application for consent to carry out development that would involve a change of use on any of the land specified in Subclause (4), the consent authority must consider a report specifying findings of a preliminary investigation of the land concerned.

In consideration of the requirements of the SEPP, the subject land has been used for a Table 1 purpose (i.e., agriculture/rural purposes) pursuant to the Contaminated Land Planning Guidelines. A *Perimammory Site Investigation* Report was submitted in support of the proposal (Egotist NE957 31 August 2021). The investigation provides the following contamination conclusions:

- Soil sampling was performed in 11 locations. The results of the site inspection and sampling found the following:
  - Concentration of all soil heavy metal analytes were below the Site Assessment Criteria.
  - Concentrations of Organochlorine Pesticides/Organophosphorus Pesticides (OCP/OPP) were below the laboratory reporting limit and the Site Assessment Criteria.

- Concentrations of PAH, TRH and BTEX analytes were below the laboratory reporting limit and the Site Assessment Criteria.
- No asbestos noted on site and in the soils tested for asbestos.

Council's EHO has reviewed the *Preliminary Site Investigation* report by Geotesta and raised no concerns with the findings.

**PROVISIONS OF ANY DRAFT ENVIRONMENTAL PLANNING INSTRUMENT THAT HAS BEEN PLACED ON EXHIBITION - s4.15(1)(a)(ii)**

The proposed development is not contrary to any matter contained within Draft Amendments currently on exhibition.

**ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4 - s4.15(1)(a)(iia)**

The proposed development and/or subject site is not known to have an existing planning agreement entered into under Section 7.4 of the Act. However, the applicant has made an offer to Council's Chief Executive Officer to enter into a Planning Agreement to address matters relating to the compensation of the land identified for future open space.

Council's Strategic Policy relating to Planning Agreements (ST124) adopted on 23 October 2014 enable the use of such agreements under the provisions of Section 7.4 of the Environmental Planning and Assessment Act 1979. As outlined in the policy, Council may consider negotiating a Planning Agreement with a developer to:

- (a) *compensate for the loss of, or damage to, a public amenity, service, resource, or asset caused by the development through its replacement, substitution, repair or regeneration,*
- (b) *meet the demands created by the development for new public infrastructure, amenities, and services,*
- (c) *address a deficiency in the existing provision of public facilities in the Council's area,*
- (d) *achieve recurrent funding in respect of public facilities,*
- (e) *prescribe inclusions in the development that meet specific planning objectives of the Council,*
- (f) *monitor the planning impacts of development,*
- (g) *secure planning benefits for the wider community,*
- (h) *enable items listed in the works schedule of any contributions plan made by the Council under the Act to be brought forward.*

In accordance with Council's policy, the draft Planning Agreement containing the terms of the offer made with respect to compensation for open space has been negotiated and prepared under the guidance of Council's principal negotiator and legal representatives. It is considered that the draft Planning Agreement satisfies the requirements of Section 7.4 of the Act.

The planning rationale and potential public benefit of the proposal is the provision of infrastructure in a cost-effective manner that will provide a public benefit in terms of improving access to public open space in and around the Land.

The proposed Planning Agreement in this case has been designed to facilitate the dedication of public parkland to Orange City Council (Lot 17) following the registration of the plan with the NSW Land Registry Services. The dedication of land will be made at no cost to Council with partial exclusion of the application of Section 7.11 of the Act relating to contributions only to the extent of contributions that would apply to open space and recreation.

The agreement also seeks to facilitate an opportunity for the landowner of proposed Lots 15 and 16 to submit to Council for consideration a separate planning proposal that seeks to rezone that portion of the land located within proposed Lots 15 and 16 shown in the plan contained in Schedule 3 of the draft Planning Agreement to Zone R2 Low Density Residential under the LEP. The Planning Agreement will require, in the event that a future planning proposal is unsuccessful, that the land known as Lots 15 and 16 is further dedicated to Orange City Council at no cost.

In accordance with Section 7.5 of the *Environmental Planning and Assessment Act, 1979*, the draft version of the proposed Planning Agreement together with an explanatory note was placed on public inspection for a period of 28 days. At the end of the exhibition period Council's records indicate that one submissions was received in relation to the development application and Planning Agreement. The submission in part noted that a large area of public open space would be gifted to Council under this proposal. It is recommended on this basis that Council agrees with the terms of the draft Planning Agreement with respect to this matter as the agreement is in the benefit of both Council and the applicant to progress this way.

#### **DESIGNATED AND INTEGRATED DEVELOPMENT**

The proposed development is not designated or integrated development noting that additional approvals from NRAR or Fisheries may be necessary in relation to any disturbance to the creek system for stormwater disposal. The proponent will need to seek these additional approvals separately if needed. A condition is included on the consent addressing this matter.

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

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

Orange DCP 2004 applies to the subject land. Chapters of the DCP relevant to the proposed subdivision include:

- Chapter 2 - Natural Resource Management
- Chapter 3 - General Considerations
- Chapter 4 - Special Environmental Considerations
- Chapter 5 - General Considerations for Zones and Development.

The relevant matters contained within Chapters 2-5 were considered in the foregoing assessment under Orange LEP 2011 and Section 1.7. The proposal will satisfy the relevant planning outcomes and guidelines contained in DCP 2004.

**Shiralee Development Control Plan 2015**

Shiralee DCP is applicable to the proposal. The objectives of the DCP are:

- *to guide the urban expansion of Shiralee, south of the existing Orange urban area*
- *to promote a high-quality urban environment with a diversity of housing and recreational opportunities*
- *to encourage alternative modes of transport and healthy lifestyles*
- *to reduce traffic congestion by providing for the day to day needs of residents within the precinct.*

As outlined in the following assessment of relevant controls, the proposed subdivision will reasonably satisfy the objectives of the Shiralee DCP. Part 1.8 *Exceptional Circumstances* allows some variation to the plan, provided that the proposal meets or exceeds the listed aims and principles. It is accepted that minor variations to the Masterplan will result as development proceeds in the urban village.

**2.4 Subdivision**

Controls:

- *All subdivision applications are to be accompanied by a preliminary investigation to identify any past or present uses that have potential to contaminate the land and a preliminary assessment of any known contamination. If the results are positive, or if Council so directs, the application is to undertake a more detailed investigation.*

As outlined in the foregoing sections of this report, a preliminary contamination investigation was undertaken in support of the proposed subdivision. The investigation determined that substances detected were below the adopted residential landuse thresholds and no further work is necessary. Council's EHO concurs.

- *Subdivision is to be consistent generally in accordance with the Masterplan design and intent per the DCP. Legislative requirements and DCP written controls take precedence over the Masterplan.*

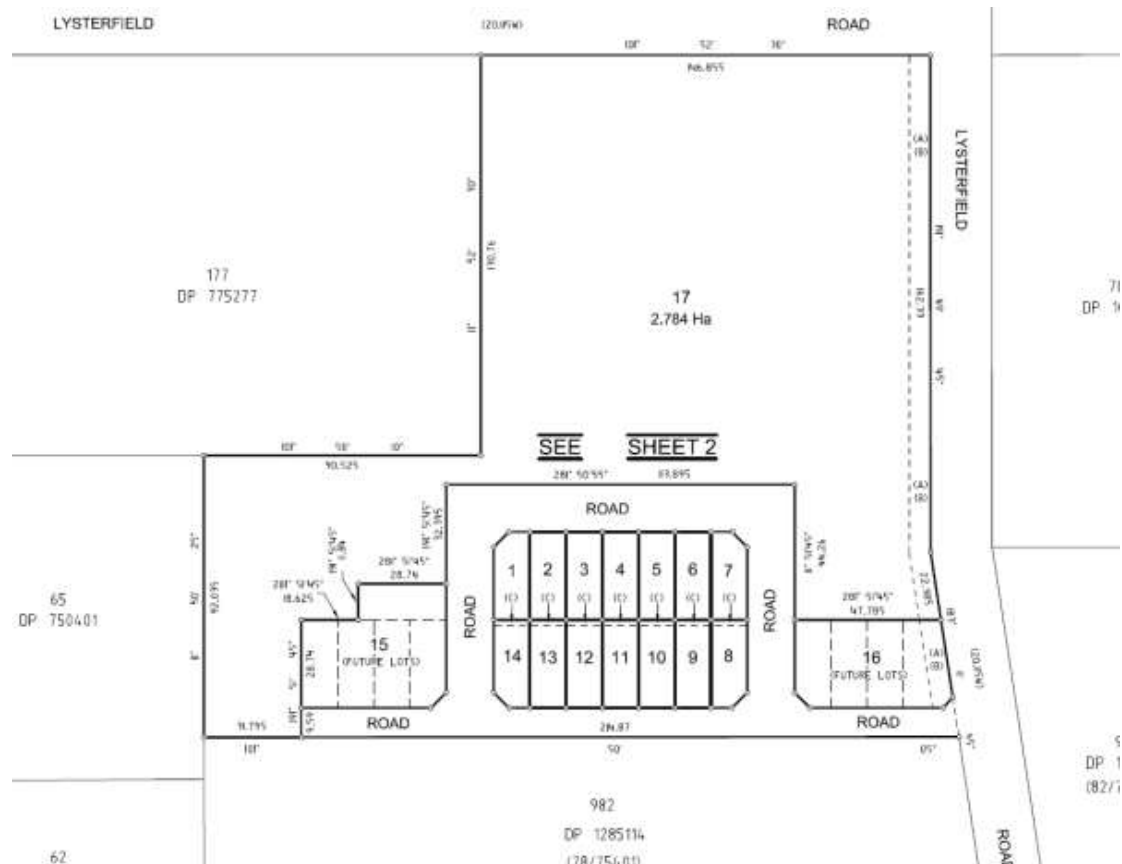
The Shiralee Masterplan for the development sites is depicted below (refer Figure 7)



**Figure 7 - Shiralee Masterplan Area E**

## 2.6 Development Application DA 387/2021(1) - 26 Lysterfield Road

The proposed subdivision layout in relation to the Masterplan is shown below (refer Figure 8).



**Figure 8 - proposed subdivision layout in relation to Masterplan layout**

The proposed subdivision layout is entirely consistent with the Masterplan with the exception of lots proposed Lots 15 and 16. Lots 15 and 16 are being created so as to facilitate the terms of the Planning Agreement that accompanies the application which ultimately allows Lot 17 to be dedicated to Council for open space purposes and facilitate an opportunity for the applicant to submit a planning proposal to Council investigating possible future residential development within each lot.

*Lot sizes are to be consistent with or greater than the adopted minimum lot size for the land under the LEP zoning map.*

As outlined in the foregoing sections of this report, the development site is subject to a minimum lot size of 200m<sup>2</sup>. The proposed lots comply with the prescribed minimum lot sizes on the LEP Lot Size Map.

- *Where an oversized lot is proposed (substantially greater than the adopted minimum lot size), plans are to nominate a building envelope.*

The proposed lots comply with the prescribed minimum lot sizes on the LEP Lot Size Map and are considered to be appropriately dimensioned. In this regard, building envelopes are not considered warranted in this case given the pattern of development in this locality and the overall general compliance with the Master Plan.

- *Except for corner lots, and where indicated otherwise on the Large Lot Classification Table, all residential lots are to have a width to depth ratio of between 1:4 and 1:2.75 with the shorter boundary being the street frontage.*
- *Residential corner lots are to have greater width with a ratio of between 1:3.25 and 1:2.5 to allow more opportunity for the subsequent dwelling to address both frontages.*

A DCP Ratio Compliance Table was submitted in support of the proposal.

- *Roads identified for Bus Routes:*
  - *Intersections where the bus route turns are to be designed to accommodate full size coaches.*
  - *At nominated bus stop locations the road reserve is to be increased by an addition of 0.5m to allow for passenger congregation and future street furniture. The front building setbacks of affected lots may be reduced by 0.25m to help preserve the pattern and rhythm of development.*

Council's Development Engineer advises that the proposed road layout is satisfactory and generally in accordance with the Shiralee DCP.

## 2.5 Lot Typologies

Controls:

- *Lot typologies and minimum sizes are to be consistent with the Masterplan, DCP and LEP zoning maps.*

The structure plan provides for Compact Lots only over the subject land, together with Public Open Space. All proposed lots are Compact lots in accordance with the DCP.

- *Any subdivision which creates more than three lots must not have any oversized lots. Oversized lots are lots that do not fit within the designated categories.*

Oversized lots are not proposed under this application.

- *Where subdivision involves the creation of a lot greater than the maximum for the lot typology, a building envelope is to be established on the title of the new lot [consistent with prescribed dimensions].*

Building envelopes are not considered necessary - all lots are considered to be appropriately sized and dimensioned.

- *All lots must have a direct street frontage to ensure good access and property amenity.*

All proposed lots will have direct street frontage and access to an existing or proposed public road.

- *Corner lots are to achieve high quality street frontages on the primary and secondary street.*

The proposed subdivision layout will enable the future development to achieve high quality street frontage to primary and secondary boundaries.

- *All compact, medium and standard lots need to achieve a solar orientation where the long axis of the lot is:*
  - *for north-south oriented lots between 20° west of north or 30° east of north, or*
  - *for east-west oriented lots between 20° north of east or 30° south of east.*

The proposed lots will comply with the requirements for solar orientation.

### **3.0 Local Infrastructure**

#### **3.1 Infrastructure Provisions**

Controls:

- *Clause 7.11 of Orange LEP 2011 establishes that development is required to be provided with essential services...*
- *Provision of essential local infrastructure is at the developers cost and in line with the Shiralee Development Contributions Plan.*
- *The design and placement of local infrastructure is to be in accordance with the relevant authority's requirements.*
- *All power lines are to be located underground.*

As outlined in the foregoing assessment, utility services can be made available to the land and adequate for the proposed subdivision, subject to extension, augmentation, upgrading and payment of relevant developer contributions. A Planning Agreement dealing with open space compensation has been submitted in support of the development. Conditions are included on the attached notice of determination to satisfy the requirements of Part 3.1.

#### **3.2 Ground Levels and Excavation**

Controls:

- *Cut and fill is to be minimised with cut materials used onsite as either fill for buildings or used to even out landforms.*
- *Any cut is to be supported by a retaining wall or battered at a gradient of less than 1:4, provided that gradient is achievable entirely within the site boundaries.*
- *The design of any retaining wall greater than 600mm must be accompanied by a statement from an engineer attesting that the design is fit for purpose.*
- *Excavation for the purposes of development must not exceed a maximum depth measured from ground level (existing) of:*
  - *If located not more than 2m from any boundary: 1m*
  - *If located more than 2m from any boundary: 2m.*
- *Notwithstanding the above, excavation must not be more than 1m below ground level (existing) if the land is within 40m of a waterbody (natural)...*
- *Filling, for the purpose of erecting a dwelling must not exceed 1m above ground level (existing).*
- *All excavation and/or filling that exceeds 600mm in depth/height must be contained by either:*

- *A retaining wall or other form of structural support that does not extend more than 1.5m from:*
  - *external walls of the dwelling house,*
  - *decking connected to the dwelling house, or*
  - *principal private open space of the dwelling house,*
  - *an unprotected sloping embankment or batter that does not extend from the dwelling house, decking or principal private open space by more than 3m, in which case the toe of the embankment or batter must be more than 1m away from a side or rear boundary.*
- *To facilitate assessment detailed engineering plans for retaining walls are to be supplied where the wall is intended to retain more than 600mm or more of material.*

*Note: for this clause "Principal Private Open Space" means courtyard space of up to 30m<sup>2</sup> that is located behind the main building alignment and is in close proximity to the living and entertaining spaces of the dwelling house.*

Earthworks will be required in conjunction with civil and construction works required to create the proposed lots and new and upgraded roads. It is considered that the required earthworks are unlikely to disrupt or have a detrimental effect on the existing drainage patterns and soil stability of the area, nor detrimentally affect a future use or redevelopment of the land, nor detrimentally affect the amenity of adjoining properties, nor or disturb any relics. Any further earthworks required at dwelling construction stage will be assessed as part of that application.

### **3.3 Public Domain**

Controls:

- *Land identified for the RE1 Public Recreation Zone is to be dedicated to Council as public open space upon subdivision of the parent lot.*
- *Compensation for the dedicated land is to be in accordance with the relevant Section 94 Development Contribution Plan.*

Areas of proposed open space will be dedicated to Council at registration of the subdivision, with appropriate compensation consistent with the Shiralee Development Contributions Plan.

- *Footpath dining in the Village Centre is encouraged, although access on the footpath must be maintained and consideration must be given to access for the vision impaired and those in wheelchairs.*
- *Outdoor dining furniture and signage must be approved by Orange City Council and provide a positive visual aesthetic to the streetscape.*

The proposed subdivision does not relate to built form within a Village Centre, and the above controls are not applicable.

- *Ensure reasonable pedestrian/wheelchair/pram crossing ability is designed into the road and median to ensure access into the heart of the village.*

The proposed subdivision does not relate to built form within a Village Centre. Bike paths and footpaths will be provided across the subdivision. Council's Development Engineer is satisfied with the proposed road layout.

### 3.4 Staging

Controls:

- *The Rifle Range Exclusion Zone may not be subdivided or otherwise developed until the rifle range has been decommissioned...*
- *The Hawke Dam Lane exclusion zone may not be subdivided or otherwise developed until the dam has been decommissioned...*

The development site is not located within the Rifle Range or Hawke Dam Lane exclusion zones.

### 3.5 Lighting

Controls:

- *All lights are to use energy efficient LED luminaries or equivalent...*
- *Street lighting is to be designed to meet the current Australian Standards AS/NZS 1158 series.*
- *Enhanced levels of lighting are to be installed at major recreation pedestrian/cycle link crossings and at pedestrian crossings.*
- *Street trees and street lights are to be staggered so that footpaths maintain sufficient light levels.*

Conditions are included on the attached Notice of Determination to satisfy the above controls relating to lighting across the subdivision.

### 5.0 Residential Buildings

Part 5 contains provisions for dwellings, including:

- *Building form and layout;*
- *Building typology, design and dwelling mix;*
- *Solar access;*
- *Reflectivity;*
- *Privacy; and*
- *Universal design.*

Matters in Part 5 of the DCP relate to building controls for future development and are not relevant in the determination of this subdivision application. Such provisions will apply to any development application that is lodged for residential development in the future.

## 6.0 Private Domain Landscape

Controls:

- *Existing trees are to be incorporated within lots. Dwelling configurations and ground levels should ensure existing tree health and longevity.*
- *Fences that are not visually permeable, such as Colorbond, are not permitted on boundaries along open spaces or larger lots, or where visible from streets.*

The proposal does not involve the removal of trees from the land.

## 7.0 Public Domain

### 7.1 Passive and Active Recreation Network

Controls:

- *Open spaces and streets facing open spaces must be provided according to the Masterplan*

A park edge road will be within the subdivision adjoining the land zoned RE1 Public Recreation.

- *Where a property adjoins a park or other public space that is not a street or road, any residential development of that property:*
  - *must provide at least two windows from habitable rooms to face the public space. The windows are to be a minimum 2.5m<sup>2</sup> in size.*
  - *may not place the side or rear walls of sheds and outbuildings any closer than 2.5m from the boundary with the public space.*
- *Properties adjoining a public park or other public space are encouraged to include a pedestrian gate along the boundary.*

Proposed Lots 1-7 will adjoin open space to the north. Compliance with the above controls will be considered at development application stage for their respective dwellings.

### 7.2 Landscape

Controls:

- *Eco link streets are to have an understory planting layer of native species including shrubs, groundcovers and grasses of maximum mature height of 1.5m with planting plans to be submitted for approval by Council.*
- *Streets with medians are to have an understory planting layer of species responding to the tree planting within the median, including shrubs, groundcovers and grasses of generally maximum mature height of 1.5m and of 1m within 5m of an intersection.*
- *Footpath verges within residential areas are to be planted with cool climate turf species, as approved by Council.*
- *Footpath verges and tree planting zones within the village centre, may be planted with robust groundcover and grass species in keeping with a high quality street environment and as approved by Council.*

- *A developer shall construct all footpaths, turf all verges and provide all road infrastructure planting prior to sale of building blocks.*
- *Orange City Council will plant all street trees.*
- *Maximum verge cross-fall from property boundary to kerb is to be 2%.*
- *Longitudinal gradient of verge is to match the gradient of the adjacent kerb. Retaining walls are to be provided along property boundaries accordingly.*

A landscaping plan was submitted in support of the proposed subdivision. The plan meets the requirements for the Shiralee DCP, with the intended layout and proposed theme of deciduous and native trees in the streetscape. Species are to be determined in consultation with Council. Conditions are included on the attached Notice of Determination outlining the above requirements of Part 7.2.

#### **7.4 Street Tree Strategy**

Controls:

- *A minimum of one tree per lot for compact lots, two trees for standard lots and three trees for larger lots, at even spacings along the street.*
- *Street tree plantings are to be consistent with the Street Tree Strategy Diagram, Species List and Planting Detail and as approved by Council.*
- *Residential street verges are to be turfed with Council approved species except where Council requires groundcover planting.*

A landscaping plan was submitted in support of the proposed development meets the requirements of the DCP. Conditions are included on the attached Notice of Determination requiring implementation of the landscaping plan consistent with the requirements of Part 7.4

### **8.0 Environmental Management**

#### **8.3 Stormwater and Water Sensitive Urban Design (WSUD)**

Controls:

- *A comprehensive site-wide WSUD strategy is implemented for Shiralee.*
- *Streets and public spaces incorporate best practice WSUD elements including swales, rain gardens and detention/retention basins.*
- *WSUD elements are to incorporate native planting.*

Conditions are included on the attached notice of determination to satisfy the requirements of Part 8.3.

### **9.0 Movement Networks**

#### **9.2 Pedestrian and Bicycle Network and Associated Facilities**

Controls:

- *A comprehensive site-wide WSUD strategy is implemented for Shiralee.*
- *A cycle network is to be implemented in accordance with Figure 64. Cycle Network and be designed in accordance with Austroads Standards and RMS Guidelines.*

- *Footpaths to be provided on both sides of the street consistent with the street sections in Appendix C.*
- *Safe road crossings (e.g. marked crossings) are to be provided according to 9.4 Street Network Access Controls. Also refer indicative intersection treatments, Figures 75 and 76.*
- *Universal access to be provided throughout the precinct in accordance to AS.1428.1.*
- *On-road cycle routes are to be clearly line marked and sign posted.*
- *Any development that is assessed as requiring an onsite parking area or at least five (5) spaces shall also be required to provide bicycle parking.*
- *Bicycle parking is to be provided at the ratio of one (1) bicycle space per 15 car parking spaces (or part thereof).*
- *All bicycle spaces are to be provided with a fixed rack or other feature to facilitate chain locking the bicycle.*
- *Bicycle spaces are to be positioned so as to avoid conflict with car and service vehicle circulation.*
- *Bicycle spaces are to be clearly delineated from other parking areas by means of lane marking and/or signage.*

Conditions are included on the attached to satisfy the requirements of Part 9.2.

### **9.3 Public Transport Network**

Controls:

- *Bus routes and stops are to be positioned in accordance with Figure 67 - Bus Network.*
- *All bus stops must have a shelter that includes seating with arm rests and lighting.*
- *Bus shelters are to be positioned on either side of the street at all stops indicated on Figure 67 - Bus Network.*
- *Pedestrian crossings must be provided within 30m of all stops.*
- *Continuous accessible paving must be provided from the shelter to pedestrian crossing.<sup>21</sup>*

Shiralee Road is identified as a primary bus route in the Shiralee DCP and Masterplan while part of Lysterfield Road is identified as a secondary bus route. No bus stops have been identified within the subject land on the Masterplan; however, all proposed lots will be within 400m radius of a bus stop. Council's Development Engineer has included conditions of consent requiring the provision of footpaths and marked crossings as per the DCP footpath network plan.

### **9.4 Street Network and Access**

Controls:

- *Other than where specified in the Masterplan there are to be no cul-de-sacs or no-thru roads.*

- *Where new roads are aligned along existing property boundaries the first property to develop is to include stage one of the shared road including any central median reserve.*
- *All streets indicated on the Masterplan are to be designed and constructed in accordance with the relevant street typology diagram.*
- *Intersections are to be designed to maximise ease of movement for pedestrians and cyclists and to slow vehicular traffic. Indicative intersection treatments for four way and 'T' intersections are shown in Figures 75 and 76. Indicative Intersection Treatments.*
- *Traffic calming measures will be implemented in suitable locations to reduce vehicle speeds. Traffic calming measures include passive measures such as intersection narrowing, minimising width of road pavements, designation of slow speed streets and use of rumble strips at pedestrian crossing points and intersections.*
- *The principles of water sensitive urban design are to be incorporated in the road network for any new streets.*
- *Driveway crossovers are to be a maximum of 3m wide and are not to be constructed within 6m of an intersection. Crossover pavement is to match the adjacent footpath material.*
- *Garages and carports on corner lots are to be accessed from the longer street frontage and the crossover is to be aligned adjacent to the boundary furthest from the intersection.*
- *Marked Crossings, Refuge Islands and/or traffic signals are to be provided at street intersections on:*
  - *collector streets*
  - *the Southern Feeder Road, and*
  - *intersections of the 'off road shared cycle and pedestrian path'.*
- *Two stage roads:*
  - *On development of the first stage of a two-stage road, the design shall include a buffer strip alongside the neighbours existing boundary. This strip is to be created as a Torrens lot and vested with Council to ensure Council can maintain control over access arrangements.*
  - *On development of the second stage of a two-stage road, Council will convert the buffer strip from a lot to a road reserve to enable the construction of turning bays as part of the development.*

The following comments are provided in consideration of the proposed street network across the subdivision:

- The proposed road layout is satisfactory and is entirely in accordance with the Shiralee DCP, however, some lots require adjoining land to be developed to enable full width road construction i.e., 76 Lysterfield Road. Interim traffic measures are possible to provide adequate short-term access for the affected lots.

- The applicant will be required to construct Lysterfield Rd half width with kerb and gutter, footpaths and bitumen sealed travel and parking lanes for the full frontage of the development (to Lysterfield Reserve).
- The proposed subdivision road layout does not comprise cul-de-sacs.
- The applicant will be required to build bike paths and footpaths in accordance with the Shiralee DCP and Council requirements.
- Driveway crossovers and positioning of garages and carports will be considered at development application stage for their respective dwellings.
- Conditions are included on the attached notice of determination to satisfy the requirements of Part 9.4 with respect to water sensitive urban design, street typologies, traffic calming measures, marked crossings, islands etc.

### 9.5 Traffic Management

Controls:

- *Key intersections shown on the management plan are to be designed to Council's requirements.*
- *Intersections along nominated bus routes are to be designed to accommodate the turning arc of coach buses.*
- *Marked crossings, refuge islands and/or traffic signals are to be provided at street intersections on: Collector streets, the Southern Feeder Road and intersections of the off-road shared cycle and pedestrian path. This will improve pedestrian and bicycle safety.*
- *All streets except for Collectors and the Southern Feeder Road are to have a maximum 40km per hour speed limit.*
- *All street kerbs are to be upright not roll kerbs. Broken upright kerbs should be used where required for WSUD function.*

Conditions are included on the attached notice of determination to satisfy the design requirements of Part 9.5.

### SECTION 7.11 - DEVELOPMENT CONTRIBUTIONS

The Contributions Plan makes provision for acquisition of and compensation for public open space in the Shiralee urban release area. Compensation allowance is made in the Plan for a maximum of 9.79ha of public open space. Compensation rates vary for unencumbered land, encumbered land, and land within a riparian corridor or flood planning area. Council staff in assessing the proposal have, however, identified an anomaly within the tables contained within the Council's contributions plan for the Shiralee locality whereby the area of land proposed for open space under this application and required to be provided by Council's DCP has been omitted. The proposal involves the dedication of proposed Lot 17 (2.74 hectares) and the possibility of a further 3,106m<sup>2</sup> being the area contained within proposed Lots 15 and 16 depending upon the outcome of a planning proposal alluded to in the Planning Agreement which will be further discussed below.

The proposed public reserve is consistent with the planned public reserve contained in the Shiralee Masterplan with the exception of the areas contained within Lots 15 and 16 at this time.

Council's mapping indicates that 19,685.4m<sup>2</sup> will comprise Riparian Land/Flood zone which based on rate of \$12 per m<sup>2</sup> for encumbered land would equate to \$236,224.80 of compensation. The remaining area of the required open space would be defined as unencumbered land and comprise an area of 12,063.3m<sup>2</sup>. Based on the rate \$30 per m<sup>2</sup> for unencumbered land this would equate to further compensation of \$361,899.00. The combined estimated value of the open space would be approximately \$598,123.80.

In order to properly address the matter pertaining to compensation under this circumstance for that part of the land identified for future open space within the proposal and progress the matter in the absence of an amendment to the Contributions plan, it is appropriate to negotiate a mutually agreeable outcome with the applicant via a Planning Agreement. Section 7 of the Environmental Planning and Assessment Act 1979 provides that a consent authority may require a Planning Agreement to be entered into as a condition of a development consent, but only if it requires a Planning Agreement that is in the terms of an offer made by the developer in connection with the development application.

The applicant has made an offer to Council's CEO to enter into a Planning Agreement (see attached) to address matters pertaining to compensation for open space. A draft Planning Agreement and Explanatory Note (copy attached) containing the terms of an offer made with respect to this matter has been negotiated, prepared and placed on public exhibition. Specifically, the proposed Planning Agreement in this case has been designed to facilitate the dedication of public parkland to Orange City Council (Lot 17) following the registration of the plan at the Land and Property Information Centre. The dedication of land will be made at no cost to Council with partial exclusion of the application of Section 7.11 of the Act relating to contributions only to the extent of contributions that would apply to open space and recreation.

The agreement also seeks to facilitate an opportunity for the landowner of proposed Lots 15 and 16 to submit to Council at a later date for consideration a separate planning proposal that seeks to rezone that portion of the land located within proposed Lots 15 and 16 shown in the plan contained in Schedule 3 of the draft Planning Agreement to Zone R2 Low Density Residential under the LEP. The Planning Agreement will require in the event that a future planning proposal is unsuccessful that the land known as Lots 15 and 16 is further dedicated to Orange City Council at no cost.

In accordance with Section 7.5 of the *Environmental Planning and Assessment Act, 1979*, the draft version of the proposed Planning Agreement together with an explanatory note was placed on public inspection for a period of 28 days. At the end of the exhibition period Council's records indicate that one submissions was received in relation to the development application and Planning Agreement. The submission in part noted that a large area of public open space would be gifted to Council under this proposal. It is recommended that Council agrees with the terms of the draft Planning Agreement with respect to this matter as the agreement is in the benefit of both Council and the applicant to progress this way.

Attached is a recommended "Deferred Commencement" consent that would require the applicant to register the Planning Agreement to the title of the subject land before the consent would become operational. The consent also provides for an amended Schedule of Payments required under the contributions plan in relation to open space and recreation. The table will now omit the contribution relating to Open space and Recreation (792.01 x 13 lots = 10,296.13) as per the Planning Agreement.

In accordance with Section 7.11 of the *Environmental Planning and Assessment Act 1979* and Orange Development Contributions Plan 2017 (Shiralee Release Area) a contribution towards the provision of the following public facilities for each lot is required. A credit is applied for the existing lot. Contributions will not apply to proposed Lots 15 and 16 at this time as they are being created only for the purposes of future investigation.

On this basis, the following contributions (Shiralee Release Area) have been levied for the subject development and are attached as a condition of consent:

Open Space and Recreation	@ Nil (as per Planning Agreement)	
Community and Cultural	@ \$229.68 x 13 additional lots	2,985.84
Roads and Traffic Management	@ \$1,045.43 x 13 additional lots	13,590.59
Local Area Facilities	@ \$17,760.90 x 13 additional lots	230,891.70
Plan Preparation & Administration	@ \$171.98 x 13 additional lots	2,235.74
<b>TOTAL</b>		<b>\$249,703.87</b>

The contribution will be indexed quarterly in accordance with the Orange Development Contributions Plan 2017 (Shiralee Release Area). The contribution has been based on applying one credit to the parent lot.

A condition is included on the attached Notice of Determination requiring payment of the contributions prior to issue of a Subdivision Certificate.

Also of note, the Contributions Plan shows that the park edge road around the perimeter of the proposed lots adjacent to area zoned RE1 Public recreation is listed as being partly funded (half road construction) under the 7.11 Contributions Plan. The applicant will be required to negotiate timing and value of works in this regard with Council's Technical Services Team during the planning of the construction certificate for this development.

#### **SECTION 64 (LOCAL GOVERNMENT ACT) - WATER AND SEWER HEADWORKS CHARGES**

Section 64 water and sewer headworks charges are also applicable to the proposal. Such charges are calculated at the time of release of a Subdivision Certificate for the development. Conditions are included on the attached Notice of Determination to this effect.

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

##### **Demolition of a Building (clause 92)**

The proposal does not include the demolition of any structures.

##### **Fire Safety Considerations (clause 93)**

The proposed lots are adequately dimensioned to facilitate compliance with the BCA's setbacks from boundaries requirements.

##### **Buildings to be Upgraded (clause 94)**

The proposal does not involve the rebuilding, alteration, enlargement, or extension of an existing building.

##### **BASIX Commitments (clause 97A)**

BASIX is not applicable to the proposed development.

**THE LIKELY IMPACTS OF THE DEVELOPMENT s4.15(1)(b)****Context and Setting**

The subject land is located in an emerging urban residential locality which has been zoned for residential purposes for many years. The proposed subdivision is expected to alter the character and amenity of the area by increasing the population density, upgrading and providing new residential roads, and altering the landscape with the provision of new dwellings with ancillary structures; however, this renewed character and amenity is to be expected in this area as originally planned for in the adopted controls contained within the DCP. Overall, the development is consistent with the expectant development pattern of the area, is in keeping with recent urbanisation and is not incompatible with the expected context of the area.

**Visual impacts**

The proposed development is not expected to have a significant visual impact in the locality. The proposal involves an extensive street tree planting program which will negate any impacts in years to come and will create a landscape that is visually consistent with the recently approved and developing urban residential development in the locality. The anticipated visual impact is to be expected in this area in light of the adopted controls contained within the DCP for this precinct.

**Traffic and Transport Impacts**

Access to the proposed lots will be via Shiralee Road, Lysterfield Road, and the construction of a new park edge road.

The development will result in additional traffic in the locality given the increases in residential density at the completion of the subdivision, however, the existing surrounding street networks proposed new roads will be capable of serving the additional traffic load once upgraded as part of this application and future applications. Council's Development Engineer has included conditions in relation to road upgrading, construction, and intersection treatments.

**Environmental Impacts**

The development site has a land use history of agricultural/rural purposes. Grassland is the dominant community as result of the site having been extensively modified for agricultural purposes. Studies undertaken for the proposed development recommends the site as being suitable for residential development.

Subject to the conditions of consent and preventative measures undertaken during the construction phase of the development, the proposal is unlikely to result in any adverse environmental impacts.

**Air and Microclimate**

Subdivision works may generate some impacts in the immediate locality including the emissions of dust and odour/fumes from earthmoving equipment, construction vehicles entering and existing the site and so on. However, these impacts will be short term and only for the duration of subdivision construction works.

The proposal is not expected to have any long-term discernible impact on air quality or on the microclimate of the locality. Conditions of consent are recommended for dust suppression during subdivision works to protect the air and microclimate.

### **Economic Impacts**

The proposed development is consistent with Council's long term land use strategy identifying the Shiralee area as a residential growth area. The proposed subdivision will promote the growth and investment in residential development in a serviceable area of Orange and thus is expected to have positive economic stimulus to the construction and building sector of Orange.

### **Cumulative Impacts**

There is an obvious cumulative impact arising from the ongoing urbanisation of the locality as the remaining stocks of rural land are subdivided and developed for residential purposes. However, the proposed subdivision is considered to be largely consistent with the expected development pattern and is continuation of residential land from the south and east as identified in the Masterplan for the area. The cumulative impacts of the proposed development have been considered throughout the foregoing report and are considered to be acceptable.

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

The foregoing assessment demonstrates that the subject land is suitable for the proposed development:

- The development site is contained within the developing Shiralee urban village.
- The proposed subdivision is a permitted land use in the zones.
- The proposed lots are of appropriate area and dimensions for future residential development, consistent with the Shiralee DCP and Masterplan (subject to further Development Applications).
- All utility services are available and adequate subject to augmentation, extension and upgrading.
- The local road network is suitable subject to upgrading of existing roads and new roads.
- The land is identified within the Blackmans Swamp Creek Catchment and flood levels will need to be taken into account in the civil design for the subdivision.
- The contamination status of the land is below adopted residential land use thresholds.

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

The proposed development was not required to be advertised and notified to adjoining landowners under the provisions of the Orange Community Participation Plan 2019. However, in accordance with Section 7.5 of the *Environmental Planning and Assessment Act, 1979*, the draft version of the proposed Planning Agreement together with an explanatory note which accompanied the development application was required to be placed on public inspection for a period of 28 days.

At the completion of the exhibition of both the development application and the draft Planning Agreement Council's records indicate that one (1) submission was made in relation to this proposal. A summary of the issues raised and a planning response to the submission received has been provided below:

**Issue 1:** The adjoining property owner to the north has expressed concerns about the future location of both stormwater and sewer infrastructure.

**Assessment Response:** The provisions and requirements of the Orange City Council Development and Subdivision Code are to be applied to this proposal 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 will 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 service. The submitter has noted that a large area of public open space would be gifted to Council under this proposal and that there were other options that should also be considered when determining the future location of service mains for this land. The negotiation of any easement is a civil matter between property owners and the submission writer is encouraged to seek independent legal, planning or engineering advice on the matter.

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

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

#### **INTERNAL REFERRAL ADVICE**


The requirements of the Environmental Health and Building Surveyor and the Engineering Development Section are included in the attached Notice of Determination.

#### **SUMMARY**

The proposed development is permissible with the consent of Council. The proposed development complies with the relevant aims, objectives and provisions of Orange LEP 2011 (as amended), DCP 2004 and Shiralee DCP 2015. A Section 4.15 assessment of the development indicates that the development is acceptable in this instance. Attached is a draft Deferred Commencement - Notice of Approval outlining a range of conditions considered appropriate to ensure that the development proceeds in an acceptable manner.

#### **ATTACHMENTS**

- 1 Notice of Approval, D22/52774 [↓](#)
- 2 Plans, D22/49022 [↓](#)
- 3 Explanatory Note and Planning Agreement, D22/49035 [↓](#)
- 4 Letter of offer to OCC Voluntary Planning Agreement, D22/51664 [↓](#)
- 5 Submission, D22/50875 [↓](#)

	<p style="text-align: center;"><b>ORANGE CITY COUNCIL</b></p> <p style="text-align: center;">Development Application No <b>DA 387/2021(1)</b></p> <p>NA22/113 <span style="float: right;">Container PR7192</span></p>
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## NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

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

## DEFERRED COMMENCEMENT CONSENT

issued under the *Environmental Planning and Assessment Act 1979*  
Section 4.16(3)

### Development Application

Applicant Name:	UPG 99 Pty Ltd
Applicant Address:	137 Gilba Road GIRRAWEE NSW 2145
Owner's Name:	Mr GJ Fisher
Land to Be Developed:	Lot 76 DP 750401, 26 Lysterfield Road, Orange
Proposed Development:	Subdivision (14 lot Torrens title and three (3) open space lots)

### Building Code of Australia building classification:

Not applicable

### Determination made under Section 4.16

Made On:	6 September 2022
Determination:	<b>DEFERRED COMMENCEMENT CONSENT GRANTED SUBJECT TO CONDITIONS DESCRIBED BELOW</b>

Consent to Operate From:	<b>DEFERRED COMMENCEMENT CONSENT GRANTED SUBJECT TO CONDITION (A) DESCRIBED BELOW BEING SATISFIED WITHIN TWELVE (12) MONTHS OF THIS CONSENT</b>
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Consent to Lapse On:	<b>FIVE (5) YEARS FROM THE DATE DEFERRED COMMENCEMENT CONDITION (A) DESCRIBED BELOW BEING SATISFIED</b>
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### 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.
- (8) To minimise the impact of development on the environment.

### PART A - DEFERRED COMMENCEMENT CONDITIONS

This is a deferred commencement Consent pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*. This consent does not become operative until Condition (A) below has been satisfied. All deferred commencement conditions shall be satisfactorily resolved within a period of 12 months from the determination date as shown on this consent.

- (A) **Voluntary planning agreement** - The applicant must enter into a voluntary planning agreement (as defined in Section 7.4 of *Environmental Planning and Assessment Act 1979 (NSW)*) with Orange City Council for the delivery of the public benefits described in the letter of offer from *The Batha Group* dated 24 June 2022 and accepted by Council on 6 September 2022 in respect of that offer.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 387/2021(1)**

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**(Conditions)****PART B – OPERATIVE CONDITIONS****APPROVED PLANS AND DOCUMENTATION**

- (1) The development must be carried out in accordance with:
- (a) Plans prepared by the Bathla Group, numbered DA01-DA04 and dated March 2021 (4 sheets)
  - (b) Plans prepared by Andrew Frank Usher dated 6 June 2022 (2 sheets)
  - (c) Plans prepared by Calare Civil, numbered G01-G02 and dated 25 August 2021 (2 sheets)
  - (d) 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.**

**PRESCRIBED CONDITIONS**

- (2) All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- (3) Where any excavation work on the site extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (a) protect and support the adjoining premises from possible damage from the excavation, and
  - (b) where necessary, underpin the adjoining premises to prevent any such damage.
- Note: This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to this condition not applying.

**LIMITS OF CONSENT**

- (4) This approval does not authorise the carrying out of works within the adjacent watercourse and riparian zones. It is the responsibility of the beneficiary of this consent to obtain any such approval/license the *Water Management Act 2000* and the *Fisheries Management Act 1994* prior to works commencing (if required).

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

- (5) Prior to the issue of a Construction Certificate for any of the works on the site, the applicant shall seek all necessary permits/ approvals under the *Water Management Act 2000* and the *Fisheries Management Act 1994*, and provide copies of such permits to Council and/or the PCA. Alternatively, in the event that such approvals are not required, the applicant shall provide written confirmation from Natural Resources Access Regulator (NRAR) and the Fisheries unit of the Department of Primary Industries to that effect.
- (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;

(Condition (6) continued over page)

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 387/2021(1)**

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

- (6) (cont)
- 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;
  - Thorn R2L2 lighting fixtures shall be used for street lighting within the Shiralee DCP area;
  - All roads shall be designed in accordance with Figure 74 *Street Hierarchy* and Appendix C *Street Typologies* of the Shiralee DCP
  - Intersection treatment shall be in accordance with Section 9.4 *Street Network and Access* of the Shiralee DCP;
  - 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 +20% for climate change factor.
- (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) 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.
- (9) 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.
- (10) Stormwater from the site shall be piped to the adjacent watercourse (Blackmans Swamp Creek catchment), 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.
- (11) Sewer mains shall be constructed from Council's existing gravity sewer network in Park Road 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.
- (12) 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.
- (13) All services and access shall be wholly within the Land to be developed. If services and access is to be provided over adjoining properties then, prior to the issue of a Construction Certificate, evidence of the registration of any required easements and rights of way over adjoining properties for the provision of services and access shall be provided to the Principal Certifier.
- (14) Prior to the issuing of a Construction Certificate, a Road Naming Application form is to be completed and submitted with a plan of the whole development defining the stage being released - including future road extensions.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 387/2021(1)**

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**(Conditions)****PRIOR TO WORKS COMMENCING**

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- (15) Soil erosion control measures shall be implemented on the site.
- (16) 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.
- (17) The approved Soil and Water Management Plan (SWMP) shall be implemented prior to construction work commencing.

**DURING CONSTRUCTION/SITEWORKS**

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- (18) All materials on site 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.
- (19) 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 on site must cease immediately. The beneficiary of the consent must discuss with Council the appropriate process that should be followed therein. Works on site must not resume unless the express permission of the Director Development Services is obtained in writing.
- (20) Any adjustments to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer.
- (21) 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.
- (22) The 15.5m wide road shall be constructed as full road width for the full frontage of the proposed development.

The 19m wide road shall be constructed as half road width for the full length of the southern boundary in accordance with Orange City Council's Shiralee DCP.

Lysterfield Road shall be constructed as half road width for the full eastern frontage of the proposed development to Lysterfield Reserve in accordance with Orange City Council's Shiralee DCP. This work is to include road pavement and pavement surfacing to the centreline, underground stormwater pipes, kerb and gutter construction and earth-formed footpath on the development side of the road. Boxing out and pavement construction of the roadway on the opposite side of the development shall also be carried out and all construction works made safe for road users.

All roads shall be constructed and designed in accordance with Council's Shiralee DCP road types master plan. Road construction shall include paved thresholds and intersection blisters in accordance with Orange City Council's Shiralee DCP, standard drawings and Shiralee Typical Intersection details (dwg. No TP00040-E as amended).
- (23) Concrete footpaths are to be constructed to the widths and standards stated in the Orange City Council Development and Subdivision Code, the Shiralee DCP and Council drawing TP00040 (as amended).

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 387/2021(1)**

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

- (24) A water service and sewer junction shall be provided to every lot in the proposed residential subdivision in accordance with the Orange City Council Development and Subdivision Code.
- (25) 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.
- (26) Council requires elastic rebound deflection testing carried out on road base material and test results submitted to Council for approval prior to the placement of any asphalt. Maximum deflection shall be determined in accordance with RMS Test Method T160 utilising the Benkelman Beam or equivalent.
- (27) A temporary compacted gravel pavement turning circle shall be provided at the termination of each stage of the subdivision (where staged release occurs). Where part width roads are constructed 'No Stopping' signage shall be installed to permit 2-way traffic flows.

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

- (28) Application shall be made for a Subdivision Certificate under Section 6.3(1)(d) of the Act.
- (29) **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 14 ETs for water supply headworks and 14 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.
- (30) The payment of **\$249,703.87** 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* (Shiralee Release Area) towards the provision of the following public facilities:

Open Space and Recreation	@ Nil (as per Planning Agreement)	-
Community and Cultural	@ \$229.68 x 13 additional lots	2,985.84
Roads and Traffic Management	@ \$1,045.43 x 13 additional lots	13,590.59
Local Area Facilities	@ \$17,760.90 x 13 additional lots	230,891.70
Plan Preparation & Administration	@ \$171.98 x 13 additional lots	2,235.74
<b>TOTAL</b>		<b>\$249,703.87</b>

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

- (31) 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.
- (32) 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.
- (33) 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.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 387/2021(1)**

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

- (34) An easement to drain sewage and to provide Council access for maintenance of sewerage works a minimum of 2.0 metres 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.
- (35) 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.
- (36) 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.
- (37) 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 lots 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.
- (38) Where staged release of the subdivision is proposed, all conditions of consent and contributions relative to the proposed staging of the development, and all engineering conditions of development consent as it relates to the servicing of the proposed lots are to be completed prior to the issuing of a Subdivision Certificate.
- (39) A Restriction-as-to-User under Section 88B of the *NSW Conveyancing Act 1919* is to be created on the title of proposed Lots 15 and 16 in favour of Orange City Council which states that:
- Proposed Lots 15 and 16 may not be subdivided or further developed and may not be used for residential purposes unless the following works are carried out to the satisfaction of Orange City Council:
- All infrastructure services (water, sewer, stormwater drainage, stormwater detention, gas, electricity, phone lines) as required by the Orange City Council Development and Subdivision Code are provided to Lots 15 and 16; and
  - The developer of proposed Lots 15 and 16 is responsible for gaining access over adjoining land for services as necessary. Easements are to be created about all service mains within and outside the lots they serve; and
  - Contributions are paid as required by the development contributions plan applicable at the time of development and Water and Sewer charges as required by Orange City Council in accordance with Division 5 of Part 2 of Chapter 6 of the Water Management act 2000.
- (40) 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.
- (41) 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 an Occupation Certificate, unless stated otherwise.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 387/2021(1)**

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**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.

Nil

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**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.

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***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.

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**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.

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**Signed:**

On behalf of the consent authority **ORANGE CITY COUNCIL**

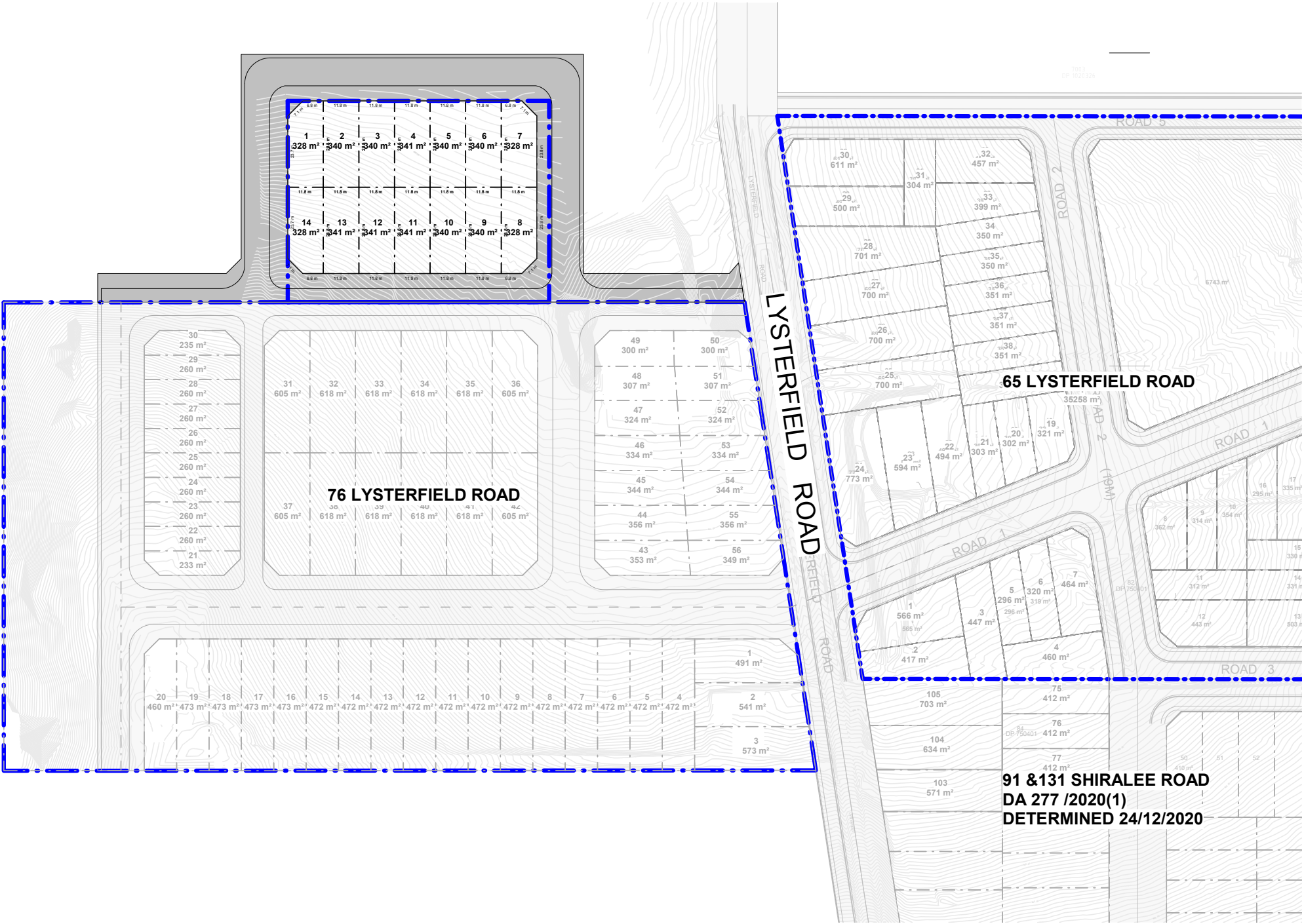
**Signature:****Name:**

**PAUL JOHNSTON MANAGER DEVELOPMENT ASSESSMENTS**

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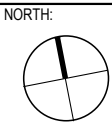
**Date:**

7 September 2022



1 SITE PLAN  
DA01 1 : 1000

ISSUE	DATE	REVISION	BY



137 Gilba Road, Girraween Sydney NSW - 2145  
PO Box 270, Wentworthville NSW 2145  
T: 02 9636 2465 | F: 02 9688 4762  
info@bathla.com.au | www.bathla.com.au

PROJECT:  
**26 Lysterfield Road  
Orange**

DRAWING TITLE:  
**SITE PLAN**

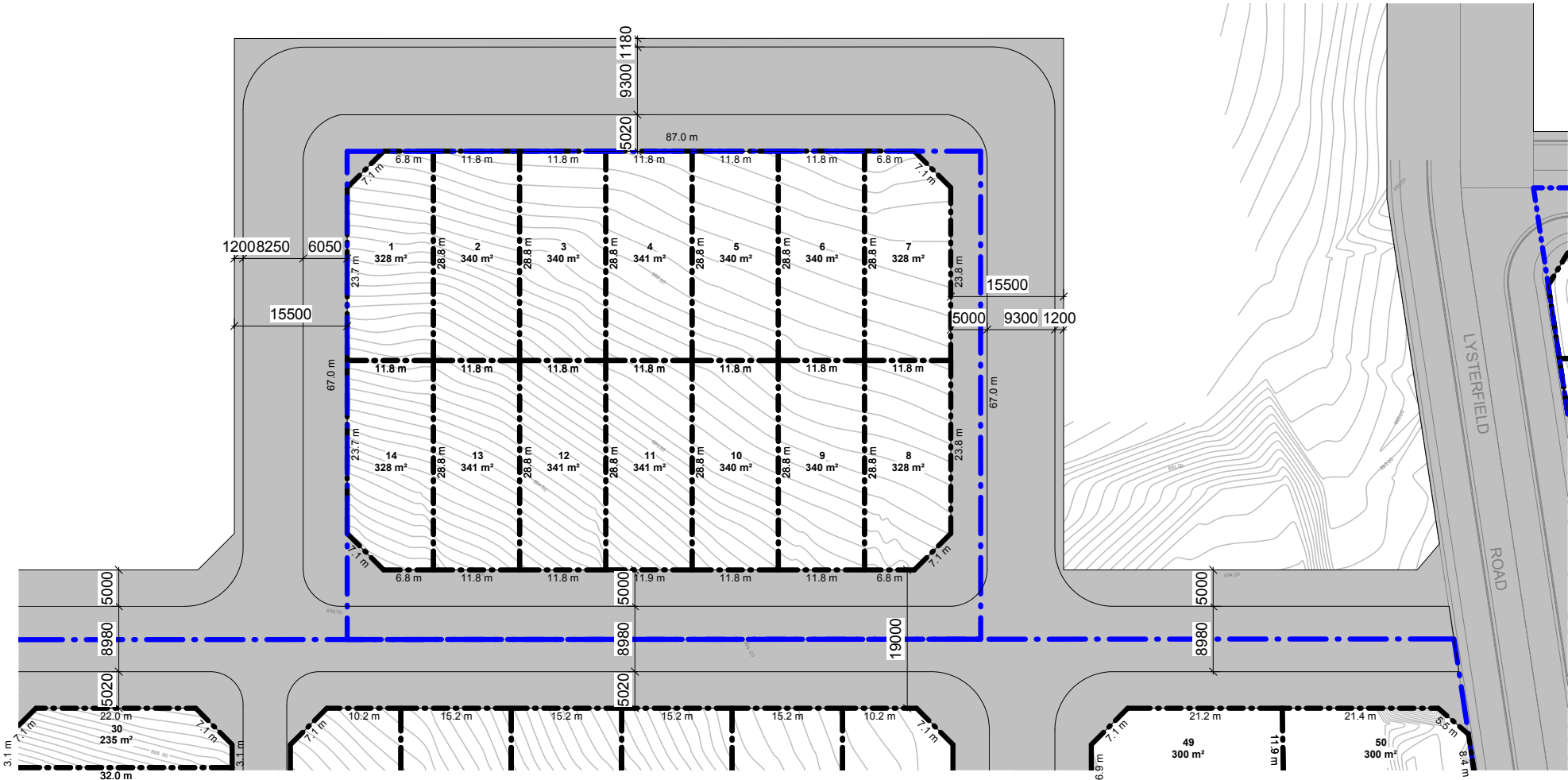
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DRAWN BY: VN	SCALE: 1 : 1000		
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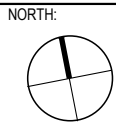
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1 SUBDIVISION PLAN  
DA02 1 : 500

ISSUE	DATE	REVISION	BY



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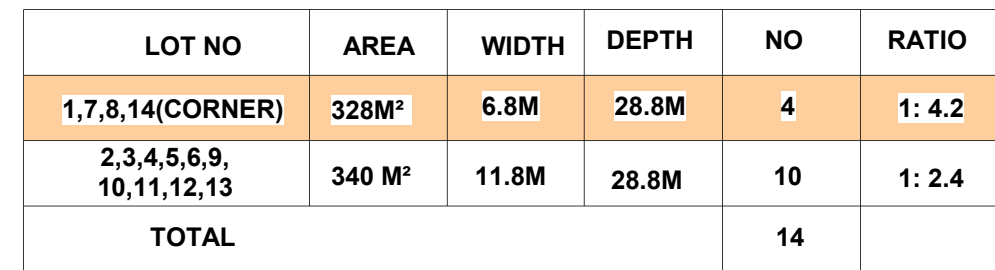
PROJECT:  
**26 Lysterfield Road  
Orange**

DRAWING TITLE:  
**SUBDIVISION PLAN**

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DRAWN BY: VN	SCALE: 1 : 500		
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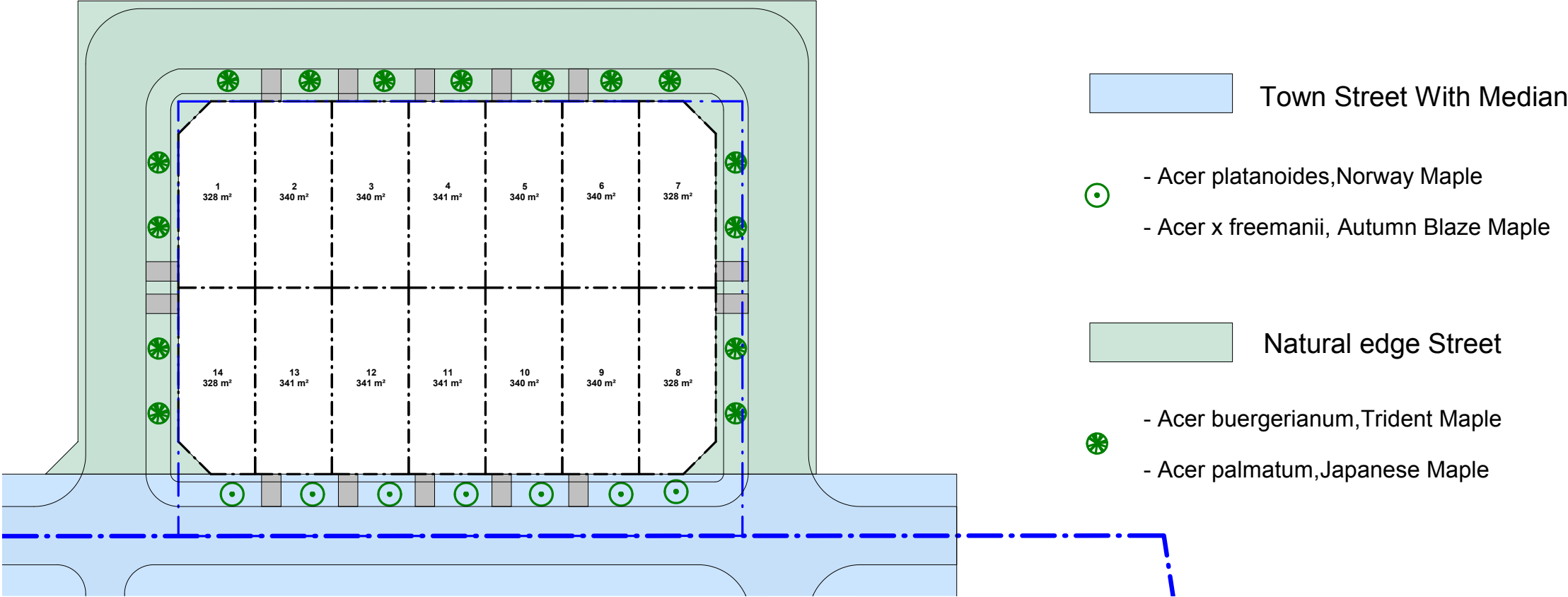
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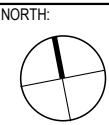
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				 <div style="display: flex; align-items: center;">  <div style="margin-left: 10px;"> <p>137 Gilboa Road, Girraween Sydney NSW - 2145 PO Box 270, Wentworthville NSW 2145 T: 02 9636 2465   F: 02 9688 4762 info@bathla.com.au   www.bathla.com.au</p> </div> </div>	<b>26 Lysterfield Road Orange</b>		<b>SUBDIVISION PLAN WIDTH TO DEPTH RATIO</b>		PROJECT No.	DATE: MAR 2021	DRAWING No:	REV:	
DA03													
DRAWN BY: VN	SCALE: As indicated												
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ISSUE	DATE	REVISION	BY										





1 SUBDIVISION PLAN  
DA04 1 : 500

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1	21.10.2020	ARBORIST REPORT	VN					DRAWN BY: VN	SCALE: 1 : 500		
ISSUE	DATE	REVISION	BY					Z:\Projects- Current\Lysterfield Road 26 Orange\02 SKETCH\REVIT\Lysterfield Road 26 Orange-R02.rvt			



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PO Box 270, Wentworthville NSW 2145  
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info@bathla.com.au | www.bathla.com.au

PROJECT:  
**26 Lysterfield Road  
Orange**

DRAWING TITLE:  
**TREE RETENTION**

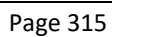
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A2



PLAN FORM 2 (A2)

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION





**WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION**





OVERHEAD POWER LINES IN VICINITY OF WORKS.

ENSURE ALL POWER LINES ARE  
CLEARLY MARKED WITH ORANGE  
WEATHERPROOF TAPE OR RIBBON

ALL WORKS ARE TO BE CARRIED OUT  
IN ACCORDANCE WITH THE NSW  
WORK COVER 'WORK NEAR  
OVERHEAD POWER LINES CODE OF  
PRACTICE 2006'

<http://www.workcover.nsw.gov.au/health-and-safety/industry-safety/electrical-and-power/power-lines/publications/work-near-overhead-power-lines-code-of-practice-2006>

**FOR  
BATHLA GROUP  
ORANGE CITY COUNCIL**

THERE MAY BE EXISTING SERVICES  
WITHIN THE WORKS AREA THAT ARE  
NOT SHOWN ON THESE PLANS.  
THE CONTRACTOR IS TO LOCATE  
ALL SERVICES PRIOR TO THE  
COMMENCEMENT OF WORKS.



DRAWING INDEX	
Dwg No.	Title
G01	COVERSHEET
G02	GENERAL ARRANGEMENT PLAN



LOCALITY PLAN  
N.T.S.

	PRINCIPAL RP BOUNDARY
	ABUTTING BOUNDARY
	EASEMENT BOUNDARY
	CONTOUR
	TREE
	TREE - TO BE PROTECTED
	STORMWATER LINE
	STORMWATER SWALE / TABLE DRAIN
	STORMWATER PIT
	STORMWATER FIELD INLET
	STORMWATER MANHOLE
	STORMWATER HEADWALL
	SEWER LINE
	SEWER MAINTENANCE HOLE
	WATER LINE
	VALVE
	HYDRANT
	TELECOMMUNICATION LINE
	FIBRE OPTIC LINE
	TELECOMMUNICATION PIT
	TELECOMMUNICATION PLINTH
	ELECTRICITY LINE OVERHEAD
	ELECTRICITY LINE UNDERGROUND
	ELECTRICITY POLE
	STREET LIGHT
	GAS LINE
	GAS VALVE
	BANK / BATTER
	FENCE
	EDGE OF SEAL / BITUMEN
	EDGE OF GRAVEL

	RP BOUNDARY EASEMENT BOUNDARY
	CONTOUR LIMIT OF WORKS
	TREE
	STORMWATER LINE
	STORMWATER SWALE / TABLE DRAIN
	STORMWATER PIT
	STORMWATER FIELD INLET
	STORMWATER MANHOLE
	STORMWATER HEADWALL
	SEWER LINE
	SEWER MAINTENANCE HOLE
	WATER LINE
	VALVE
	HYDRANT
	BANK / BATTER
	ROCK WALL
	BLOCK WALL
	TIMBER WALL
	FENCE
	EDGE OF SEAL / BITUMEN
	EDGE OF GRAVEL
	BUILDING
	BUILDING OVER
	ALLOTMENT
	SEAL / BITUMEN
	CONCRETE
	GRASSED / LANDSCAPED

PLOT INFO: ...\\2021.0913-Civil-P1.dwg, DATE: Aug 27, 2021 - 14:44:25

[illegible]

Approved for Construction:
----------------------------

Garth Dean  
B.E. GDSTT FIEAust CPEng NER  
APEC Engineer IntPE (Aus) RBP  
(Vic/NT)

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Designed:	BB	
Checked:	...	
Scale (A1):	AS SHOWN	
Date:	25/08/21	...2021.0913-Civil-P1.d

PRELIMINARY  
FOR DA

...\\2021.0913-Civil-P1.dwg

PROPOSED SUBDIVISION  
26 Lysterfield Road  
Orange, NSW 2800

COVER SHEET

BATHLA GROUP



170 RANKIN STREET,  
BATHURST, N.S.W. 2795  
Tel: (02) 63323343 Fax: (02) 63318210

Job No.	
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2021.0913

DWG. No.	Issue
G01	P1

No. in	2
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## EXPLANATORY NOTE

### Planning Agreement

*Environmental Planning and Assessment Regulation 2000 (clause 25E)*

Certificate of title folio identifier 76 / 750401 and known as 26 Lysterfield Road, Orange, NSW

## 1 Introduction

The purpose of this Explanatory Note is to provide a summary to support the notification of a draft Planning Agreement (**Planning Agreement**) under section 7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*, prepared in connection with Development Application DA 387 / 2021 (1) (**Development Application**).

This Explanatory Note has been prepared jointly by the parties to the Planning Agreement as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000 (Regulation)*.

Contributions under sections 7.11 of the Act are partially excluded under the Planning Agreement.

In this Explanatory Note, capitalised terms have the meaning given to those terms in the Planning Agreement unless otherwise defined.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

## 2 Parties to the Planning Agreement

The parties to the Planning Agreement are:

- (a) **Orange City Council** ABN 85 985 402 386 (**Council**); and
- (b) **UPG 99 Pty Limited** ACN 636 004 727 (**Owner**).

## 3 Description of the Land

The Planning Agreement applies to Lot 76 in Deposited Plan 750401 and known as 26 Lysterfield Road, Orange, NSW being the land comprised in certificate of title folio identifier 76 / 750401 (**Land**).

## 4 Description of the Proposed Development

The Landowner seeks to carry out development on the Land in accordance with the Development Applications involving the subdivision of the Land to create:

- (a) Fourteen (14) residential lots (lots 1 to 14) wholly located within that portion of the Land zoned as R1 General Residential under the LEP and the Shiralee Development Control Plan;
- (b) One (1) public recreation lot (lot 17) wholly located within that portion of the Land zoned as RE1 Public Recreation under the LEP; and
- (c) Two (2) investigation lots (lots 15 and 16) located within the remaining portion(s) of the Land,

(described in this Explanatory Note as the **Development**).

## 5 Description of Development Contributions

The Planning Agreement requires:

- (a) dedication, or transfer, to the Council of Dedication Land (Lot 17); de
- (b) dedication, or transfer, to the Council of Dedication Land (Lots 15 and 16); and
- (c) payment of contribution under section 7.11 of the Act subject to the partial exclusion of those contribution under the Planning Agreement.

## 6 Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement is a planning agreement under section 7.4 of the Act. The Planning Agreement is a voluntary agreement under which Contributions are made by the Landowner for public purposes (as defined in section 7.3 of the Act).

The objective of the Planning Agreement is to require the dedication, or transfer, to the Council for the purposes of public open space Dedication Land (Lot 17) plus Dedication Land (Lots 15 and 16) (together **Contributions**).

The Planning Agreement:

- (a) relates to the carrying out by the Landowner of development on the Land;
- (b) partially excludes the application of section 7.11 of the Act to the Development;
- (c) must be registered on the title to the Land;
- (d) provides for dispute resolution methods (including expert determination); and
- (e) secures the delivery of the Contributions by the dedication, or transfer, to the Council occurring when subdivision creating the land to be dedicated occurs.

## 7 Assessment of the merits of the Planning Agreement

### 7.1 How the Planning Agreement promotes the public interest and one or more of the objects of the Act

The Planning Agreement requires the dedication, or transfer, to the Council of the Dedication Land (Lot 17).

The Planning Agreement also requires the transfer of Dedication Land (Lots 15 and 16) to the Council (at no cost) if the Planning Proposal (to rezone from RE1 Public Recreation to R2 Low Density Residential) does not proceed because of a Gateway determination adverse to the proposed rezoning.

The public open space will service the residential development on the Land and will provide open space for the wider community.

The Planning Agreement:

- (a) promotes the orderly and economic use and development of land to which the agreement applies;
- (b) promotes the social and economic welfare of the community;

- (c) provides and coordinates the provision of public infrastructure and facilities in connection with the Development; and
- (d) provides increased opportunity for public involvement and participation in the environmental planning and assessment of the Development.

The Planning Agreement promotes the public interest by promote the object of the Act (as sect out section 1.3 of the Act).

The delivery of the Contributions under the Planning Agreement will be in the public interest because they will result in the provision of public infrastructure.

## **7.2 How the Planning Agreement promotes the objects of the Local Government Act 1993 (LG Act) and the elements of the Council's charter**

The Planning Agreement promotes the exercise by Council of its functions in accordance with the guiding principles set out in Chapter 3 of the *Local Government Act 1993 (NSW) (LG Act)* because it will assist Council to provide infrastructure and public spaces for the benefit of the community in the area of the Development.

The Planning Agreement promotes the Council's charter by ensuring the delivery of the public benefits under the Planning Agreement which in turn satisfy the following aspects of Council's charter under the LG Act:

- (a) Councils should plan strategically for the provision of effective and efficient services and regulation to meet the diverse needs of the local community (section 8A(1)(c));
- (b) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way (section 8A(1)(g); and
- (c) Council should work with others to secure the appropriate services for local community needs (section 8A(1)(g)).

## **7.3 The impact of the Planning Agreement on the public or any section of the public.**

The scope of the Planning Agreement will benefit the local and wider community as it will improve the public domain by providing new public open space.

## **7.4 Whether the Planning Agreement conforms with Council's capital works program**

The scope of the Planning Agreement is consistent with Council's capital works program.

## **7.5 The planning purpose or purposes of the Planning Agreement**

The public purpose of the Planning Agreement is the provision of infrastructure that will provide a public benefit in terms of improving public open space in and around the Land.

The Contributions to be delivered under the Planning Agreement will ensure that there is sufficient infrastructure for the Development, producing a good planning outcome from the Development of the Land. As it would be difficult to obtain these public benefits through other statutory means, the Planning Agreement is the most suitable means of achieving that purpose.

## **7.6 Compliance of certain requirements**

The Contributions under the Planning Agreement must be provided in accordance with the timing provisions as set out in Schedule 2 of the Planning Agreement.



# Planning agreement

Premises: 26 Lysterfield Road, Orange, NSW

[Date]

Orange City Council  
ABN 85 985 402 386

and

UPG 99 Pty Limited  
ACN 636 004 727

# Planning agreement

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## Planning agreement

### Date

### Parties

#### First party

Name Orange City Council (**Council**)  
ABN 85 985 402 386  
Contact General Manager  
Telephone 02 6393 8000

#### Second party

Name UPG 99 Pty Limited (**Landowner**)  
ACN 636 004 727  
Contact Bhart Bhushan  
Telephone 02 9636 2465

### Background

- A As at the date of this agreement, the Landowner is the owner of the Land.
- B Development application DA 387 / 2021 (1) (**Development Application**) has been lodged with the Council for Development Consent to carry out the Development on the Land.
- C The Development Application was accompanied by an offer by the Landowner to enter into this agreement to make contributions for public purposes if Development Consent is granted.

## 1 Planning Agreement under the Act

### 1.1 Planning Agreement

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 4 of this agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this agreement addresses those requirements.

## 2 Definitions and interpretation

### 2.1 Definitions

In this agreement, unless the context indicates a contrary intention:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**Agreement** means this document and includes all Schedules, Annexures and other documents or instruments forming part of it.

**Approval** means any approvals, consents, certificates, permits, endorsements, licences, conditions, permissions or requirements (and any modifications or variations to them) which may be required by Law or by any Authority for the commencement and carrying out of any works required under this agreement or the Development and includes a Development Consent or other approval under the Act.

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person, agency or entity and includes a certifier accredited under the *Building and Development Certifiers Act 2018* (NSW).

**Business Day** means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays.

**Claim** means any claim, loss, liability, damage, proceeding, order, judgment or expense;

**Contribution Item** means an item listed in the Contributions Schedule.

**Contributions** means the provision of public benefits (by way of dedication of land, payment of monetary contributions or other means under this agreement) required under this agreement, the nature and extent of which are set out in the Contributions Schedule.

**Contributions Schedule** means the table contained in Schedule 2.

**CPI** means the All-Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

**Damages** means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties.

**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

**Development** is described in the Reference Schedule.

**Development Application** has the same meaning as in the Act and the application described in paragraph B of the background to this agreement.

**Development Consent** has the same meaning as in the Act and includes any Development Consent as modified.

**Explanatory note** means the explanatory note relating to and publicly notified with this agreement, as required by clause 25E of the Regulation.

**GST** has the same meaning as in the GST Law.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition of or administration of the GST.

**Insolvent** means, in relation to a party:

- | that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- | a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;
- | a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;
- | an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or re amalgamation, is presented and not withdrawn or dismissed within [21] days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;
- | any shareholder or director of that party convenes a meeting for the purpose of considering or passing any resolution for the winding up or administration of that party;
- | that is an individual, a creditor's petition or a debtor's petition is presented to the Official Receiver or analogous authority in relation to that party;
- | an execution or analogous process is levied or enforced against the property of that party;
- | that party ceases or suspends, or threatens to cease or suspend, the conduct of all or a substantial part of its business;
- | that party disposes of, or threatens to dispose of, a substantial part of its assets;
- | that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
- | that party is unable to pay the party's debts as and when they become due and payable.

**Interest Rate** means the rate charged from time to time on overdraft facilities of more than \$100,000 by the Council's principal bank plus a margin of 2% per annum;

**Land** means the land described at Item 2 of the Reference Schedule;

**Law** means:

- | any law applicable including legislation, rules, ordinances, codes, regulations, proclamations or by-laws and other subordinate legislation;
- | any Approval, including any condition or requirement under it; and
- | any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

**LEP** means the *Orange Local Environmental Plan 2011*.

**Modification Application** means any application to modify the Development Consent under section 4.55 of the Act.

**Planning Proposal** means the proposal described at Item 3 of the Reference Schedule.

**Reference Schedule** means the table contained in Schedule 1;

**Register** means the Torrens title register maintained under the *Real Property Act 1900* (NSW).

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*.

**Schedule** means a schedule to this agreement.

## 2.2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) a requirement to do anything includes a requirement to cause that thing to be done, and a requirement not to do anything includes a requirement to prevent that thing being done;
- (h) including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) a word that is derived from a defined word has a corresponding meaning;
- (j) the singular includes the plural and vice-versa;
- (k) words importing one gender include all other genders;

- (l) a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in, Australia, even if the obligation is to be performed elsewhere;
- (p) an agreement, representation, covenant, right or obligation:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally;
- (q) a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) a reference to dollars or \$ is to Australian currency;
- (t) a reference to a month is a reference to a calendar month;
- (u) a reference to a year is a reference to twelve consecutive calendar months; and
- (v) terms and expressions defined in a Schedule have the same meaning when used in the clauses 1 to 16 of this agreement.

### 3 Application of this agreement

#### 3.1 Application

This agreement applies to:

- (a) the Development, and
- (b) the Land.

#### 3.2 Operation

This agreement commences on and from the date it is executed by all parties.

## 4 Contributions to be made under this agreement

### 4.1 Contributions

- (a) The Developer must deliver the Contributions to the Council at the time and in the manner set out in the Contributions Schedule.
- (b) The parties acknowledge and agree that the Contributions serve the public purposes set out in the Contributions Schedule.

### 4.2 Application of s 7.11, s 7.12 and s 7.24 of the Act

- (a) This agreement excludes the application of sections 7.11, 7.12 and 7.24 of the Act to the Development to the extent set out in Items 4, 5 and 6 of the Reference Schedule.
- (b) Any Contributions made under this agreement are not to be considered when determining any development contribution under section 7.11 of the Act.

## 5 Registration of this agreement

### 5.1 Interest

The Landowner represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Land.

### 5.2 Registration of this agreement

- (a) The Landowner agrees to promptly do all things that are necessary to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Landowner at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
  - (i) the consent of each person who:
    - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
    - (B) is seized or possessed of an estate or interest in the Land: and
  - (ii) the execution of any documents,to enable the registration of this agreement in accordance with clause 5.2.
- (c) The Landowner, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
  - (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 10 Business Days after that date; and

- (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.

### **5.3 Removal from Register**

- (a) Once Council is satisfied the Landowner has satisfied all of its obligations under this agreement, the Council must within 20 Business Days of being requested to do so by the Landowner:
  - (i) provide a full release and discharge of this agreement with respect to the whole of the Land and documentation required to remove the notation of this agreement on title to the Land;
  - (ii) should the Council not already have done so, sign such documentation as is necessary to remove any caveat lodged by the Council in relation to the Land pursuant to clause 5.4 of this agreement.
- (b) Despite clause 5.3(a), from time to time, the Landowner may request a release and discharge of this Deed so that the Landowner may remove the notation of this Deed from the Register for a part of the Land, and the Council must provide a release and discharge within 20 Business Days, provided that:
  - (i) all obligations under clause 4 of this agreement have been met for the relevant part of the Land;
  - (ii) the Landowner has provided Council with all Security required in accordance with clause 8.2 and any defects liability security required under the Construction Terms; and
  - (iii) the Landowner is not otherwise in default of any of its obligations under this agreement, as determined by the Council (acting reasonably) at the time of the Landowner's request.
- (c) For the avoidance of doubt, a release under clause 5.3 does not operate as a release from any outstanding obligation under this agreement and is intended only to allow removal of the notation of this agreement from the Register for the relevant part of the Land.

### **5.4 Caveat**

- (a) The Landowner acknowledges and agrees that:
  - (i) when this agreement is executed, the Council is deemed to have acquired and the Landowner is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
  - (ii) the Council may lodge a caveat restricting transfer of the Land to protect its rights under this agreement and the Landowner will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council, provided the

caveat does not prevent registration of any dealing or plan other than a transfer.

- (b) The Council must, at the Landowner's cost, register a withdrawal of any caveat in respect of the Land within five Business Days after the Landowner complies with clause 5.2.

## 6 Review of this agreement

### 6.1 Review

- (a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing, exhibited in accordance with the Regulation and signed by the parties to this agreement.
- (c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or because of, a review.

## 7 Dispute Resolution

### 7.1 Reference to Dispute

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

### 7.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

### 7.3 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within 15 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
  - (i) resolve the dispute during that meeting,

- (ii) agree that further material or expert determination in accordance with clause 7.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
- (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

#### 7.4 Further Notice if Not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 7.5 or by expert determination under clause 7.6.

#### 7.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) the parties must agree to the terms of reference of the mediation within 10 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) the mediator will be agreed between the parties, or failing agreement within 10 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) the mediator appointed pursuant to this clause 7.5 must:
  - (i) have reasonable qualifications and practical experience in the dispute; and
  - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) the mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) the parties must within 10 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
- (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) in relation to costs and expenses:

- (i) each party will bear its own professional and expert costs incurred in connection with the mediation; and
- (ii) the costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

#### 7.6 Expert determination

If the dispute is not resolved under clause 7.3 or clause 7.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) the dispute must be determined by an independent expert in the relevant field:
  - (i) agreed upon and appointed jointly by the parties; and
  - (ii) if no agreement is reached, or no appointment is made within 10 Business Days of the agreement, to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) the expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) the determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
  - (i) within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
  - (ii) the determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

#### 7.7 Litigation

If the dispute is not *finally* resolved in accordance with this clause 7, then either party is at liberty to litigate the dispute.

### 7.8 No suspension of contractual obligations

Subject to any interlocutory order obtained under clause 7.1, the referral to or undertaking of a dispute resolution process under this clause 7 does not suspend the parties' obligations under this agreement.

## 8 Enforcement

### 8.1 Default

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time, not being less than 10 Business Days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice, it may refer the dispute to dispute resolution under clause 7 of this agreement.
- (d) If the Landowner fails to comply with a Default Notice, the Council may perform the obligations the Developer has failed to fulfil in accordance with the Default Notice and do anything which the Landowner should have done under this agreement in relation to the Landowner's obligations the subject of the Default Notice.
- (e) Without limiting clause 8.1(d), the Landowner agrees that the Council, its employees, agents and contractors, may when exercising its rights under that clause, enter onto the Land and do whatever is necessary to remedy the default, in the absolute discretion of the Council, subject to compliance with the reasonable directions of the Landowner relating to work, health and safety and compliance with all Laws.
- (f) The Landowner indemnifies and will keep the Council indemnified from and against all Claims and Damages reasonably incurred by the Council or which the Council may become liable in the exercise or purported exercise of the rights of the Council under this clause 8.1, except to the extent that such Claim or Damage is caused by Council's negligence or default, and Council may call on any Security provided to it under clause 8.2 to satisfy any Claim under this clause 8.1.

### 8.2 Not used

### 8.3 Compulsory Acquisition

- (a) If the Landowner does not transfer or grant to the Council the interests in land as required by this agreement (including dedication or transfer of any part of the Land and registration of any public access easement over part of the Land), the Council may compulsorily acquire the relevant interest in the land, in which case the Landowner consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition

procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* and may call upon any applicable Security provided under clause 8.2 to cover any costs, including legal costs, incurred by the Council on acquisition of the land.

- (b) If Council compulsorily acquires the relevant interests land, clause 8.3(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) The Landowner approves, in accordance with section 188 of the *Local Government Act 1993*, of the acquisition of any land or interest in land as required by this agreement for the purposes of re-sale by the Council.
- (d) Except as otherwise agreed between the parties, the Landowner must ensure the any land or interest to be acquired by the Council is freed and discharged from all encumbrances and affectations (including any charge or liability for rates, taxes, strata levies and charges), on the date of acquisition.
- (e) The Landowner indemnifies and keeps indemnified the Council against all Claims made against the Council because of any acquisition by the Council of the whole or any part of the relevant land or interest in land under clause 8.3(a).
- (f) The Landowner must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land or any interest in land under clause 8.3(a) that are not or cannot be recovered by calling on a Security.

#### 8.4 Restriction on the issue of Certificates

If the Contributions Schedule specifies that a Contribution Item must be delivered prior to the issue of a Certificate, in accordance with provisions of any Law (including the Act or the Regulation or both), the relevant Certificate must not be issued unless that Contribution Item has been delivered.

- (a) If a Default Notice has been issued by Council under clause 8.1 and the Landowner has failed to rectify the default, a Certificate must not be issued for any part of the Development until the default has been rectified to the satisfaction of Council or any dispute about the Default Notice has been finally resolved.

#### 8.5 General Enforcement

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
  - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
  - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

## 8.6 Overdue Payments

- (a) The Landowner agrees to pay interest to Council on any amount payable by it under this agreement from when the amount becomes due for payment, during the period it remains unpaid, on demand or at times determined by Council, calculated on daily balances and applying the Interest Rate.
- (b) Interest which is not paid when due for payment may be capitalised by Council at intervals which Council determines from time to time or, if no determination is made, then on the first day of each month.
- (c) Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 8.6.
- (d) If a liability under this agreement becomes merged in a judgment or order, then the Developer agrees to pay interest to Council on the amount of that liability as an independent obligation.
- (e) Interest payable under clause 8.6(d) accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the Interest Rate.
- (f) For the avoidance of doubt, if a liability under this agreement becomes merged in a judgment or order then the Landowner will only be required to pay either interest payable under the judgment or order or interest calculated in accordance with this clause 8.6, but not both.

## 9 Assignment and Dealings

### 9.1 Assignment

- (a) The Landowner must not assign or deal with any right under this agreement without the prior written consent of the Council.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) is taken to be an assignment of this agreement for the purposes of this clause 9.1.
- (c) Any purported dealing in breach of this clause 9.1 is of no effect.

### 9.2 Transfer of Land

The Landowner may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:

- (a) the Landowner satisfies the Council that the proposed Transferee is financially capable of complying with the Developer's obligations under this agreement;
- (b) the Landowner satisfies the Council that the rights of the Council will not be diminished or fettered in any way;

- (c) the Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Landowner under this agreement and to be bound by the terms and condition of this agreement as if the Transferee had executed this agreement;
- (d) any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine; and
- (e) the Landowner and the Transferee pay the Council's reasonable costs in relation to the assignment.

### **9.3 Mortgage arrangements**

- (a) The Landowner agree with the Council that if the Landowner mortgages the Land after this agreement is entered into it must use all reasonable efforts at that time to arrange a multiple party deed of agreement between the Council, the Landowner, and the proposed mortgagee under which the proposed mortgagee accepts that the responsibilities set out in this agreement are binding upon the proposed mortgagee if:
  - (i) the Landowner defaults under the proposed mortgage; and
  - (ii) the proposed mortgagee takes possession of the Land.
- (b) The terms of the adoption of the obligations of the Landowner by the mortgagee shall be as reasonably required by the Council. The agreement shall be prepared at the cost of the Landowner.

## **10 Approvals and consents**

### **10.1 Approvals**

- (a) Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in that party's absolute discretion and subject to any conditions determined by the party.
- (b) Subject to statutory requirements, a party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## **11 No fetter**

### **11.1 Discretion**

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to a Development Application, Planning Proposal or any other application for Approval (all referred to in this agreement as a “Discretion”).

### 11.2 No fetter

- (a) Nothing in this agreement is to be construed as requiring an Authority to do anything that would cause it to be in breach of any of its obligations at Law.
- (b) Nothing in this Deed is to be construed as limiting or fettering in any way the exercise of Discretion.
- (c) Nothing in this Deed imposes any obligation on an Authority to grant any Development Consent or exercise any function or power under the Act in relation to a change, or a proposed change to an environmental planning instrument.
- (d) If, contrary to the operation of this clause 11, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:
  - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
  - (ii) if clause 11.2(a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
  - (iii) to endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

### 11.3 Planning certificates

The Landowner acknowledges that Council may, at its discretion, include advice on any planning certificate issued under section 10.7(5) of the Act that this agreement affects the Land.

## 12 Release and indemnity

### 12.1 Release and Indemnity

- (a) The Landowner agrees that the obligation to provide the Contributions is at the risk of the Landowner.
- (b) The Landowner releases the Council from any Claim incurred in connection with the Landowner's obligation to provide the Contributions, except where arising and to the extent of any negligence or default of the Council.
- (c) The Landowner indemnifies the Council (to the extent that any Claim is made against it) against all Damages incurred, in connection with the Council reasonably enforcing the Landowner's obligation to provide the Contributions in accordance with this agreement and / or the Council reasonably exercising the Council's rights under or by virtue of this agreement.
- (d) The indemnity in clause 12.1(c) is a continuing obligation, independent of the Landowner's other obligations under this agreement and continues after this agreement ends.

- (e) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this clause 12.1.
- (f) A party must pay on demand any amount it must pay under an indemnity in this clause 12.1.

## 13 Confidentiality

### 13.1 Confidentiality

The parties agree that the terms of this agreement are not confidential, and this agreement may be treated as a public agreement and exhibited or reported without restriction by any party.

## 14 Costs, duty and GST

### 14.1 Legal expenses

Each party is responsible for their own costs and disbursements in connection with the drafting, negotiation, preparation, execution, carrying into effect, and registration of this agreement.

### 14.2 Duty

The Landowner must pay or reimburse the Council on demand for taxes and fees (including without limitation registration fees and stamp duty) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this agreement or a payment or receipt or any transaction contemplated by this agreement.

### 14.3 GST

- (a) Words and expressions which are not defined in this agreement, but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) The parties agree, in accordance with Class Ruling CR2013/13 published by the Commissioner, that Contributions required to be made under this agreement are exempt from GST.
- (d) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.
- (e) This clause 14.3 will not merge on completion or termination of this agreement.

## 15 Notices

### 15.1 Notices

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed and delivered to the intended recipient by hand, by prepaid post or by email at the address specified in this agreement, or at the address last notified by the intended recipient to the sender after the date of this agreement;
- (c) is taken to be given or made:
  - (i) in the case of hand delivery, when delivered;
  - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of email when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address or when the Notice is first opened or read by the recipient, whichever occurs first.
- (d) if under clause 15.1(c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

### 15.2 Change of address

If a party gives another party 3 Business Days' notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or emailed to the latest address or email address.

## 16 General

### 16.1 Relationship between parties

- (a) Nothing in this agreement:
  - (i) constitutes a partnership between the parties; or
  - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
  - (i) bind another party; or
  - (ii) contract in the name of another party.

- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

#### **16.2 Schedules and Annexures**

The parties agree that all the Schedules and Annexures form part of this agreement and to agree to comply with the provisions of those Schedules and Annexures.

#### **16.3 Time for doing acts**

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

#### **16.4 Further assurances**

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

#### **16.5 Variation**

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

#### **16.6 Counterparts**

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

#### **16.7 Entire agreement**

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

#### **16.8 Representations and warranties**

- (a) Each party individually represents and warrants that:
- (i) it has power to enter into this agreement and comply with its obligations under this agreement;
  - (ii) this agreement does not contravene its constituent documents (if any) or any law or obligations by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;

- (iii) it has in full force and effect the authorisations necessary for it to enter into this agreement, to comply with its obligations and to exercise its rights under this agreement and to allow this agreement to be enforced;
  - (iv) its obligations under this agreement are valid and binding and are enforceable against it in accordance with the terms of this agreement;
  - (v) it does not any immunity from the jurisdiction of a court or from legal process; and
  - (vi) it benefits by entering into this agreement to which it is a party.
- (b) Each party acknowledges that the other party has entered into this agreement in reliance on the representations and warranties in this clause.

#### **16.9 Severability**

- (a) If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (b) If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

#### **16.10 Invalidity**

- (a) A word or provision must be read down if:
  - (i) this agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.10(b) applies.

#### **16.11 Waiver**

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or

breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

#### **16.12 Governing law and jurisdiction**

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

#### **16.13 Electronic signature**

- (a) In this clause 16.13, **electronic signature** means a digital signature or other visual representation of a person's handwritten signature or mark placed or typed on a copy of this Agreement by electronic or mechanical means (including by using DocuSign or other electronic signing platform agreed between the parties) and **electronically signed** has a corresponding meaning.
- (b) The parties consent to this agreement being signed by or on behalf of a party by electronic signature.
- (c) Where this agreement is electronically signed by or on behalf of a party, the party warrants and agrees that the electronic signature has been used to identify the person signing and to indicate that the party intends to be bound by this agreement.
- (d) This agreement may be physically or electronically signed in any number of counterparts which together will constitute one document.
- (e) Each party consents to the exchange of counterparts of this agreement by delivery by email to the party or its legal representative or other electronic means of exchange as the parties may agree.
- (f) On request, each party must deliver a physical counterpart of this agreement with the handwritten signature or signatures of the party and any written evidence of the authority of a person signing on their behalf, but a failure to comply with this request will not affect the validity of this agreement.

## Planning agreement

### Signing page

Executed as an agreement

**EXECUTED** by **ORANGE CITY COUNCIL**  
**ACN 85 985 402 386** by its duly authorised  
officer in the presence of:

Signature of witness

Signature of authorised officer

Name of witness  
(please print)

Name of authorised officer (please print)

**EXECUTED** by **UPG 99 PTY LIMITED ACN**  
**636 004 727** in accordance with section 127 of  
the *Corporations Act 2001* (Cth) by being  
signed by the following officers:

Signature of sole director

Name of sole director (please print)

## Planning agreement

### Schedule 1 - Reference schedule

Item	Reference Information
<b>Item 1 - Development</b>	<p>The Development involves the subdivision of the Land (shown in the plan contained in Schedule 3) to create:</p> <ul style="list-style-type: none"> <li>(a) Fourteen (14) residential lots (lots 1 to 14) ) wholly located within that portion of the Land zoned as R1 General Residential under the LEP and the Shiralee Development Control Plan;</li> <li>(b) One (1) public recreation lot (lot 17) wholly located within that portion of the Land zoned as RE1 Public Recreation under the LEP; and</li> <li>(c) Two (2) investigation lots (lots 15 and 16) located within the remaining portion(s) of the Land.</li> </ul>
<b>Item 2 - Land</b>	<p>The land comprised in certificate of title folio identifier 76 / 750401 and known as 26 Lysterfield Road, Orange, NSW.</p>
<b>Item 3 - Planning Proposal</b>	<p>A planning proposal that seeks (amongst other things) amendments to the LEP for the rezoning of the Dedication Land (Lots 15 and 16) to residential R2.</p> <p>A planning proposal that seeks to rezone that portion of the Land located within proposed lots 15 and 16 shown in the plan contained in Schedule 3 to Zone R2 Low Density Residential under the LEP.</p>
<b>Item 4 - Exclusion of Section 7.11</b>	<p>This agreement (partially) excludes the application of section 7.11 of the Act to the Development of the Land only to the extent of contributions for open space and recreation.</p> <p>This agreement does not exclude the application of section 7.11 of the Act to the Development of the Land except to the extent stated above.</p>
<b>Item 5 - Exclusion of Section 7.12</b>	<p>This agreement does not exclude the application of section 7.12 of the Act to the Development.</p>
<b>Item 6 - Exclusion of Section 7.24</b>	<p>This agreement does not exclude the application of section 7.24 of the Act to the Development.</p>

## Planning agreement

### Schedule 2 - Contribution Schedule

Contribution Item	Public Purpose	Nature and Extent	Timing	Manner of Delivery	Not used	Not used
Dedication of Dedication Land (Lot 17)	Public open space	Dedication, or a freehold ownership transfer, to the Council of Dedication Land (Lot 17) described in Schedule 3, at no cost to the Council.	The dedication, or freehold ownership transfer, to the Council of the Dedication Land (Lot 17) must occur at the time stated in Schedule 3.	The dedication, or freehold ownership transfer, of the Dedication Land (Lot 17) to the Council must occur in accordance with in Schedule 3.	Not used	Not used
Dedication of Dedication Land (Lots 15 and 16)	Public open space	Dedication, or a freehold ownership transfer, to the Council of Dedication Land (Lots 15 and 16) described in Schedule 3, at no cost to the Council.	The dedication, or freehold ownership transfer, to the Council of the Dedication Land (Lots 15 and 16) must occur at the time stated in Schedule 3.	The dedication, or freehold ownership transfer, of the Dedication Land (Lots 15 and 16) to the Council must occur in accordance with in Schedule 3.	Not used	Not used

## Planning agreement

### Schedule 3 - Land Dedication

#### 1 Interpretation

For the purposes of this Schedule 3, the defined terms in clause 2.1 of this agreement and the Interpretation principles in clause 2.2 of this agreement will apply and, unless context indicates a contrary intention:

**Dedication Land (Lot 17)** means proposed lot 17 shown in the Plan required to be dedicated, or transferred, to the Council under this agreement.

**Dedication Land (Lots 15 and 16)** means proposed lots 15 and 16 shown in the Plan required to be dedicated, or transferred, to the Council under this agreement;

**Encumbrance** means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention;
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;
- (c) right that a person (other than the owner) has to remove something from land (known as a *profit-à-prendre*), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or to allow them to exist;

**Permitted Encumbrance** means each of:

- (a) easements benefiting statutory authorities authorised by Approvals;
- (b) environmental management requirements imposed under an Approval; and
- (c) an Encumbrance (other than a mortgage, charge, pledge, lien, security interest, title retention, contractual right of set-off, or any other security agreement or arrangement in favour of any person) the Council agrees in writing is a Permitted Encumbrance.

**Plan** means the sketch that appears in clause 4 of this described in Schedule 3.

#### 2 Plan

The Landowner must do all things necessary to cause the Plan to be registered as a plan of subdivision that creates separate freehold lots for each of the lots shown in the Plan (including the Dedication Land (Lots 15 and 16) and Dedication Land (Lot 17).

### 3 Dedication Land (Lot 17)

- (a) The Landowner must dedicate, or cause freehold ownership to be transferred, to the Council, at no cost to the Council, the Dedication Land (Lot 17):
  - (i) freed and discharged from all Encumbrances, taxes, rates or charges except Permitted Encumbrances; and
  - (ii) at the time of registration of the plan of subdivision that creates the Dedication Land (Lot 17) as a separate freehold lot.
- (b) The Landowner's obligations under clause 3(a) of this described in Schedule 3 will be taken to have been satisfied when:
  - (i) the Dedication Land (Lot 17) is dedicated to the Council as a public reserve by operation of the registration of a plan of subdivision in accordance with section 49 of the *Local Government Act 1993*; and
  - (ii) a eCT for Dedication Land (Lot 17) is issued by NSW Land Registry Services for the whole of the Dedication Land (Lot 17) identifying the Council as the registered proprietor of that land.

### 4 Dedication Land (Lots 15 and 16)

- (a) The Landowner must prepare and submit the Planning Proposal to the Council no later than 12 months after the date on which the Plan is registered as a plan of subdivision that creates separate freehold lots for each of the lots shown in the Plan (including the Dedication Land (Lots 15 and 16) and Dedication Land (Lot 17).
- (b) The Council must:
  - (i) consider the Planning Proposal; and
  - (ii) if the Council determines to support the Planning Proposal, cooperate with the Landowner for the prosecution of the Planning Proposal such that the amendments to the LEP described in the Planning Proposal are effected.
- (c) If a determination is made under section 3.34 of the Act (Gateway determination) that the Planning Proposal should not proceed, the Landowner must cause to be transferred, to the Council, at no cost to the Council:
  - (i) freehold ownership of the Dedication Land (Lots 15 and 16) freed and discharged from all Encumbrances, taxes, rates or charges except Permitted Encumbrances; and
  - (ii) no later than the earlier to occur of:
    - (A) 24 months after the date on which the Plan is registered as a plan of subdivision that creates separate freehold lots for each of the lots shown in the Plan (including the Dedication Land (Lots 15 and 16) and Dedication Land (Lot 17)); or

- (B) 10 Business Days after the date on which a determination is made under section 3.34 of the Act (Gateway determination) that the Planning Proposal should not proceed.
- (d) The Landowner agrees that a determination is taken to have been made under section 3.34 of the Act (Gateway determination) that the Planning Proposal should not proceed if no determination under section 3.34 of the Act (Gateway determination) has been made on or before the date being 24 months after the date on which the Plan is registered as a plan of subdivision that creates separate freehold lots for each of the lots shown in the Plan (including the Dedication Land (Lots 15 and 16) and Dedication Land (Lot 17).
- (e) For the avoidance of doubt the parties acknowledge and agree that there is no obligation to transfer freehold ownership of the Dedication Land (Lots 15 and 16) if there is a determination made under section 3.34 of the Act (Gateway determination) that the Planning Proposal should proceed.
- (f) The obligation to transfer freehold ownership of the Dedication Land (Lots 15 and 16) will be taken to have been satisfied when an eCT for Dedication Land (Lots 15 and 16) is issued by NSW Land Registry Services for the whole of the Dedication Land (Lots 15 and 16) identifying the Council as the registered proprietor of that land.

## 5 Plan

The Plan appears below





## Schedule 4 - Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<b>Planning instrument and/or Development Application</b> – Section 7.4(1)	
The <b>Landowner</b> has:	
(a) Sought a change to an environmental planning instrument	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
(b) Made, or propose to make a Development Application	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Description of the land to which the planning Agreement applies</b> – Section 7.4(3)(a)	Refer to Schedule 1
<b>A description of the change to the environmental planning instrument and / or development to which the Planning Agreement applies</b> – Section 7.4(3)(b)	Refer to Schedule 1
<b>The scope, timing and manner of delivery of contribution required by the Planning Agreement</b> – Section 7.4(3)(c)	Refer to Schedule 2
<b>Applicability of section 7.11 of the Act</b> – Section 7.4(3)(d)	Refer to Schedule 1
<b>Applicability of section 7.12 of the Act</b> – Section 7.4(3)(d)	Refer to Schedule 1
<b>Applicability of section 7.24 of the Act</b> – Section 7.4(3)(d)	Refer to Schedule 1
<b>Whether benefits are to be taken into consideration when determination development contributions</b> – Section 7.4(3)(e)	Refer to clause 4
<b>Mechanism for dispute resolution</b> – Section 7.4(3)(f)	Refer to clause 7
<b>Enforcement of the Planning Agreement</b> – Section 7.4(3)(g)	Refer to clause 8
<b>Registration of the Planning Agreement</b> – Section 7.4(3)(g)	Refer to clause 5
<b>No obligation to grant consent or exercise functions</b> – Section 7.4(9)	Refer to clause 11 (no fetter)



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**Confidential**

24<sup>th</sup> June 2022

Our ref: 26 Lysterfield Road Orange - GA

General Manager  
Orange City Council  
PO Box 35  
ORANGE NSW 2800

Dear Sir,

**Proposed Voluntary Planning Agreement – between:**

**UPG 99 Pty Limited & Orange City Council**

**Development – Residential Subdivision 26 Lysterfield Road Orange – DA 387/2021(1)**

Universal Property Group Pty Limited (**UPG**) is acting on behalf of the owner of the above property (**UPG 99 Pty Limited**) in relation to Development Application DA 387/2021(1) (**DA**) presently under consideration by Orange City Council (**Council**).

Following discussion with Council UPG seeks to enter into a VPA to facilitate the dedication of proposed Lot 17 being zoned RE1 and containing an area of 2.784 hectares.

The following details are provided in accordance with the relevant sections of the following Checklist

**1. Details of the land** subject to the Planning Agreement, including:

- **Ownership details**

UPG 77 Pty Limited (ABN 56636004727) are the owners of the property known as No 26 Lysterfield Road Orange NSW

- **Current Lot & DP reference(s)**

Lot 76 DP750401

- **Details of any possible land transfers which may occur prior to the Planning Agreement being registered on title.**

None that are known.



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<p>2. A full list of the proposed parties to the Planning Agreement, including:</p> <p>(i) Contact details (and contact details of legal representatives where applicable)</p> <p>Graeme Allen on behalf of UPG 99 Pty Limited Applicant &amp; Owner</p> <p>Judy Adamson – Sydney West Conveyancing Legal Representative</p> <p>(ii) A brief explanation of each parties' involvement with the development or Planning Agreement.</p> <p>Graeme Allen – Applicant's/Owners representative Judy Adamson – Legal Representative</p> <p>(iii) A brief explanation involvement with the development (e.g. owner, person who has lodged the Development Application)</p> <p>Graeme Allen Planning Director of Bathla Group (owners of UPG 99 Pty Limited). Responsible for preparation lodgement and negotiation of DA with Orange City Council.</p> <p>(iv) If a corporation, whether they are entering into the Planning Agreement as a trustee. If so, please provide details of the Trust Deed.</p> <p>Entering VPA as the Principal Company – No trust involved.</p> <p>(v) Relevant letters of authority/consent for persons to act on behalf of parties.</p> <ul style="list-style-type: none"> <li>Whether the landowners are to be parties to the planning agreement. The land owner will be the party to the VPA.</li> <li>Whether the landowners consent to a planning agreement to be entered into in connection with their land and whether the landowners consent to a planning agreement being registered on the title of their land. VPA will be registered immediately upon execution.</li> <li>Whether the landowners grant authority for the developer to act on their behalf. Owner's authority is attached.</li> </ul>
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<p>3. Full details of the level and nature of the contributions to be secured by the Planning Agreement, including whether these are:</p> <ul style="list-style-type: none"> <li>monetary contributions, Nil</li> <li>the dedication of land, or</li> </ul> <p>Proposed lot 17 is proposed to be dedicated at no cost to Council upon registration of the proposed subdivision. Lots 15 &amp; 16 will also be dedicated if a planning proposal to residential R2 zone proves unsuccessful</p>
<p>4. Timeframes and milestones for the provision of the contributions, including the development triggers for when infrastructure is required to be provided by.</p> <p>Dedication of proposed Lot 17 under the VPA would be completed upon registration of the subdivision at no cost to Council. Lots 15 &amp; 16 will be dedicated if a Planning Proposal is not successful.</p>
<p>5. Whether the Planning Agreement is to exclude the application of section 7.11, 7.11A and 7.11EF to the development.</p> <p>The benefits of the VPA are to be excluded in determining Section 7.11 Contributions except in relation to the payment of open space and reserves contributions for Lots 1 to 16 including any future subdivision of Lots 15 &amp; 16 following a successful planning proposal application</p> <p>The benefits under the Planning Agreement are to be taken into consideration in determining a contribution under Section 7.11.</p>
<p>6. Copies of relevant documents required in order to gain a comprehensive understanding of the matter or which will form an annexure to the Planning Agreement.</p> <p>Copies of DA plans which form part of DA 387/2021(1) can be used in the preparation of the formal agreement.</p>
<p>7. Security to be provided under the Planning Agreement, including a title search of the subject land and any letters of authority that may be required to commence the Planning Agreement.</p> <p>UPG 99 Pty Limited will provide security to underpin the VPA at any point requested by Council.</p>



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This letter of offer does not exclude the operation of Section 7.11 contributions and the benefits under this agreement are to be taken into consideration in determining a development contribution under Section 7.11 of the *Environmental Planning and Assessment Act 1979*.

It is understood that if a VPA is required, then the terms of these arrangements will be formally documented in a Voluntary Planning Agreement pursuant to s.7.71(3) of the *Environmental Planning and Assessment Act 1979*.

Yours sincerely,

Graeme Allen  
Planning Director  
UNIVERSAL PROPERTY GROUP PTY LTD  
For and on behalf of UPG 99 Pty Limited

**Submission 1**

Orange NSW 2800

**Response to:D22/44257**

**PR7192**

**DEVELOPMENT APPLICATION DA 387/2021(1)**

**Lot 76 DP 750401-26 LISTERFIELD ROAD ORANGE**

**SUBDIVISION (14 LOT TORRENS TITLE AND 1 OPEN SPACE LOT)**

Universal Property Group 99 Pty Ltd (UPG 99 Pty Ltd) who has lodged this application for development is currently seeking to put an easement for Sewerage and Storm water. This would service this development, through my property at [REDACTED] Orange that is

[REDACTED] to this Development Application. The attached topographical map indicates that the fall of the land that would sustain the Sewerage and Storm Water Easement on their land (lot and DP). Due to long and negative negotiations for purchase of a portion of [REDACTED] for Easement purpose, it would be preferable that UPG 99 Pty Ltd use their own land for the Sewerage and Strom Water Easement. Attached is an alternative route. I have also attached the negotiations letter that he has sent to me, each ending with the threat to take me to Supreme Court if I do not sell the Easement land to UPG 99 Pty Ltd.

It is my understanding that UPG 99 Pty Ltd has gifted Orange City Council a large portion of land in this development. This is very generous of the UPG 99 Pty Ltd especially when they are offering me [REDACTED] for a 12 meter Easement through the middle of my property

which will have a huge impact on my business, my grazing and ability to sustain my 8 horses.

I am not against this Development but would like the Sewerage and Storm Water Easement not to pass through I wish for negotiations with UPG 99 Pty Ltd to cease. As there is an alternative option through this land that they are looking to develop.

Kind Regards



**2.7 DEVELOPMENT APPLICATION DA 231/2022(1) - 12 AND 13 CAMERON PLACE**

RECORD NUMBER: 2022/1553

AUTHOR: Sophie Currenti, Town Planner

**EXECUTIVE SUMMARY**

Application lodged	19 July 2022
Applicant/s	Structor Projects Pty Ltd
Owner/s	Mr BE Turner
Land description	Lots 10 and 11 DP 270446 12 and 13 Cameron Place, Orange
Proposed land use	Mixed Use Development (office premises, warehouse or distribution centre and self-storage units) and Subdivision (2 x 12 Strata lots)
Value of proposed development	\$4,310,000.00

Council's consent is sought for a mixed use development at 12-13 Cameron Place, Orange. The proposal involves the construction of a commercial complex of 22 units. Each unit is assigned a nominated first use as follows:

- Office Premises - Units 1, 6, 15 and 18
- Warehouse or Distribution Centre - Units 2, 3, 4, 5, 19, 20, 21 and 22
- Self-Storage Unit - Units 7, 8, 9, 10, 11, 12, 13, 14, 16 and 17

It is also proposed to Strata subdivide the complex, to excise each unit on a strata lot and include the external areas of the site as Common Property. The subdivision will be completed as two (2) separate Strata schemes.

As outlined in this report, the proposed development is considered to reasonably satisfy the Local and State planning controls that apply to the subject land and particular landuse. Impacts of the development will be within acceptable limit, subject to mitigation conditions. Approval of the application is recommended.



**Figure 1 - locality plan**



Figure 2 - site photo

### 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

This application is referred to the PDC for determination simply because of the capital investment value of \$4.31 exceeding the delegated authority of staff.

Council's consent is sought for a mixed use development at 12-13 Cameron Place, Orange. The proposal involves the construction of a commercial complex of 22 units storage/warehouse/distribution and associated offices that are not dissimilar to other industrial unit developments within the City. There are no significant planning concerns in relation to this application. Approval of the application is recommended.

**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 231/2022(1) for *Mixed Use Development (office premises, warehouse or distribution centre and self-storage units) and Subdivision (two x 12 Strata lots)* at Lots 10 and 11 DP 270446 - 12 and 13 Cameron Place, 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.

**THE PROPOSAL**

This Development Application seeks approval for a mixed-use development. The proposal involves the construction of a commercial complex of 22 units. Each unit is assigned a nominated first use as follows:

- Office Premises - Units 1, 6, 15 and 18
- Warehouse or Distribution Centre - Units 2, 3, 4, 5, 19, 20, 21 and 22
- Self-Storage Unit - Units 7, 8, 9, 10, 11, 12, 13, 14, 16 and 17

It is proposed to Strata subdivide the complex, to excise each unit on a Strata lot and include the external areas of the site as Common Property. The subdivision will be completed as two (2) separate Strata schemes.

**Staging**

The development is proposed to proceed in stages as follows:

- Stage 1 - Construction of the buildings, all external areas and landscaping
- Stage 2 - Strata subdivision

**Proposed Buildings**

The proposed complex is of concrete tilt panel construction and adopts a design and finish commensurate with modern commercial buildings. The site arrangement includes:

- a building along the western boundary of the site comprising Units 1 to 5
- a building along the eastern boundary of the site comprising Units 18 to 22
- a central building comprising Units 6 to 17.

The units range in size from 63m<sup>2</sup> to 137m<sup>2</sup>. Each of the street facing units (Units 1, 6, 15 and 18) will comprise relatively generous shopfront glazing and entry doors set below an awning. All units will be provided with roller shutters and a PA door.

The external finishes are as follows:

- concrete tilt panel walls painted in Colorbond Shale Grey - Dulux with highlight sections of metal wall cladding in Colorbond Basalt
- aluminium window and door frames in Colorbond Night Sky - Dulux
- roller Shutters in Colorbond Monument
- gutters and awning facias in Colorbond Monument.

Two accessible WCs are provided for common use within the complex (one in the northeast corner of Unit 5 and another in the northwest corner of Unit 22). An accessible WC is proposed within each of Units 1 to 4, and 18 to 21. A capped sewer and town water connection will be provided within each of Units 5, 10, 11, 16, 17 and 22 to enable future users to install WC facilities and kitchenette if required.

### **Site Works**

The buildings along the eastern and western sides of the site will have a front boundary setback of 10.4m. The central building will have a front setback of 15.12m. The front setback area will comprise generous landscaping along the street boundary and along the eastern and western side boundary return to the front building line.

Two access points will be created onto Cameron Place. The internal driveway will circulate around the site to provide access to each unit. The driveway allows two-way vehicle movement and has been designed to accommodate a 12.5m truck (HRV). All vehicle areas will be established with a concrete surface. Off street car parking will be provided in the front setback area (between the landscape bed and the building) and along the rear boundary.

To achieve the proposed finished floor and driveway levels, the rise in the natural ground at the rear of the site will be addressed by a retaining wall along the northern side of the driveway/parking area; plus use of the northern walls of the buildings as a retaining structure.

### **Proposed Uses**

The uses are assigned to the proposed units as follows:

Nominated First Use for Units 1 to 22 at 12/13 Cameron Place, Orange		
Unit	Area m <sup>2</sup> (GFA)	First Use
1	127m <sup>2</sup>	Office Premises
2	115m <sup>2</sup>	Warehouse or Distribution Centre
3	115m <sup>2</sup>	Warehouse or Distribution Centre
4	115m <sup>2</sup>	Warehouse or Distribution Centre
5	137m <sup>2</sup>	Warehouse or Distribution Centre
6	63m <sup>2</sup>	Office Premises
7	63m <sup>2</sup>	Self-storage Unit
8	63m <sup>2</sup>	Self-storage Unit
9	63m <sup>2</sup>	Self-storage Unit
10	100m <sup>2</sup>	Self-storage Unit
11	100m <sup>2</sup>	Self-storage Unit
12	63m <sup>2</sup>	Self-storage Unit
13	63m <sup>2</sup>	Self-storage Unit
14	63m <sup>2</sup>	Self-storage Unit
15	63m <sup>2</sup>	Office Premises
16	100m <sup>2</sup>	Self-storage Unit
17	100m <sup>2</sup>	Self-storage Unit
18	113m <sup>2</sup>	Office Premises
19	115m <sup>2</sup>	Warehouse or Distribution Centre
20	115m <sup>2</sup>	Warehouse or Distribution Centre
21	115m <sup>2</sup>	Warehouse or Distribution Centre
22	137m <sup>2</sup>	Warehouse or Distribution Centre

The rationale for the proposed first uses is as follows:

- Units 1, 6, 15 and 18 occupy the front of the building and are provided with commercial shopfront glazing and exposure to the street. These attributes indicate the suitability of those units for *office premises*.
- Units 2 to 5 and 19 to 22 are the larger units and are considered suitable for use as a *warehouse or distribution centre* for smaller retail businesses and distribution businesses.
- Units 7 to 14 and 16 to 17 are the smaller units and are nominated as self-storage units that can be used for private people who require greater storage space in a single unit than is offered at typical self-storage complexes. Given that the complex is to be subdivided under strata subdivision, it offers people the opportunity to own their storage unit, rather than rent them like typical self-storage unit operations.

It is noted that it is possible for any of the units to change to other uses that are permitted in the B6 Zone. Any change in use to the above proposed uses would be subject to further approval and assessment via the Exempt or Complying Development process or the Development Application process.



Figure 3 - proposed site plan (with proposed uses)

### Proposed Strata Subdivision

With reference to Figure 4, it is proposed to effect a strata subdivision of the complex. The subdivision will be completed as two separate strata schemes as follows:

- 12 Cameron Place (being Lot 10 DP 270446) will be subdivided to excise Units 1 to 10 and 17 on Strata Lots 1 to 11. The external areas including driveway and parking will be included as Common Property.
- 13 Cameron Place (being Lot 11 DP 270446) will be subdivided to excise Units 11 to 16 and 18 to 22 on Strata Lots 1 to 11. The external areas including driveway and parking will be included as Common Property.
- Reciprocal rights of way and parking will be created over the Common Property in each Strata scheme to facilitate access, circulation and parking across the entire complex.

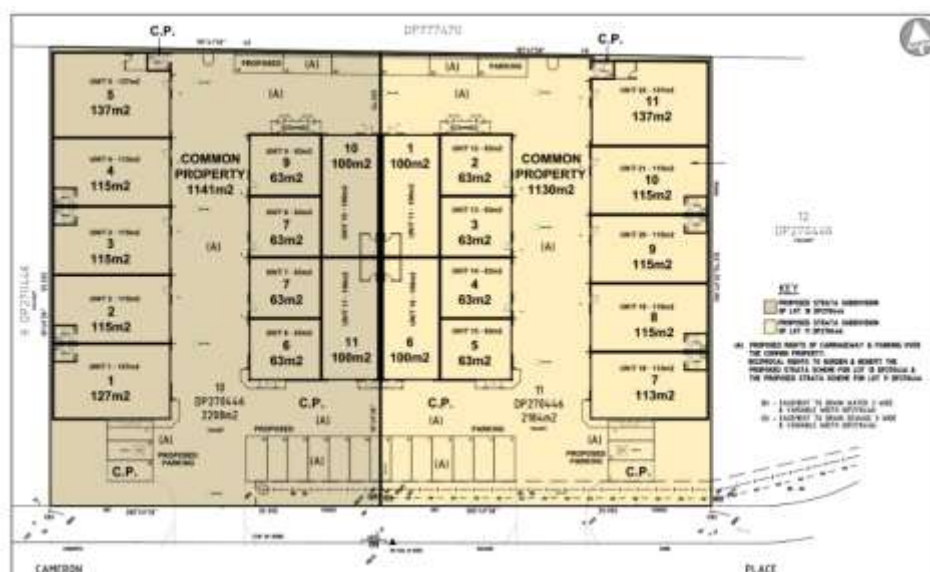


Figure 4 - proposed Strata subdivision

**MATTERS FOR CONSIDERATION****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 fourth trigger (development proposed to occur in an Area of Outstanding Biodiversity Value (clause 7.2 of BC Act 2016) is generally not applicable to the Orange LGA; as no such areas are known to occur in the LGA. No further comments will be made against the fourth trigger.

**Summary**

The site does not occur within land mapped on the Biodiversity Values Map and no clearing/disturbance is proposed. As the proposal does not trigger any of the four requirements for insertion into the BOS, a Biodiversity Development Assessment Report is not required to be lodged with the application for development consent. No other comments are warranted under this section.

**Section 4.15**

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 broad aims of the LEP are set out under Subclause 2. Those relevant to the application are as follows:

- 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,*
- 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,*

- (c) *to conserve and enhance the water resources on which Orange depends, particularly water supply catchments,*
- (f) *to recognise and manage valued environmental heritage, landscape and scenic features of Orange.*

The application is considered to be consistent with the applicable aims of the plan.

#### **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>Land zoned B6 Enterprise Corridor</b>
Lot Size Map:	No Minimum Lot Size
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 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 B6 Enterprise Corridor zone. The proposed development is defined as a *mixed-use development (office premises; warehouse or distribution centre; self-storage units)* and *strata subdivision* under OLEP 2011 and is permitted with consent for this zone. This application is seeking consent. The proposed land use definitions are as follows:

**mixed use development** means a building or place comprising 2 or more different land uses.

**office premises** means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

**warehouse or distribution centre** means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made, but does not include local distribution premises.

**self-storage units** means premises that consist of individual enclosed compartments for storing goods or materials (other than hazardous or offensive goods or materials).

**Clause 2.3** of LEP 2011 references the Land Use Table and Objectives for each zone in LEP 2011. These objectives for land zoned B6 Enterprise Corridor are as follows:

**1 - Objectives of the B6 Enterprise Corridor Zone**

- *To promote businesses along main roads and to encourage a mix of compatible uses.*
- *To provide a range of employment uses (including business, office, retail and light industrial uses).*
- *To maintain the economic strength of centres by limiting retailing activity.*
- *To provide for residential uses, but only as part of a mixed use development.*

The proposal is considered to be consistent with the objectives of the B6 zone. The subject land is not located along a main road. The proposal has the potential to generate additional employment opportunities. The proposal does not involve any retailing activity and therefore does not threaten the retail role and function of other business centres in the City. The proposal does not involve a residential use.

**Clause 2.6 - Subdivision - Consent Requirements**

Clause 2.6 subdivision of the OLEP 2011 states that the subdivision of land may be permitted, but only with development consent. As such, the applicant has applied for development consent via this development application.

**Part 3 - Exempt and Complying Development**

The application is not exempt or complying development.

**Part 4 - Principal Development Standards**

Not relevant to the application.

**Part 5 - Miscellaneous Provisions**

Not relevant to the application.

**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**

The following provisions of the Part 7 have been especially considered in the assessment of the proposal:

- **Clause 7.1 - Earthworks** - This clause establishes a range of matters that must be considered prior to granting development consent for any application involving earthworks. The earthworks proposed in the application are limited to the extent of cutting and filling required for the proposed buildings, with a retaining wall of maximum 1.7m height proposed on the northern boundary. The extent of disruption to the drainage of the site is considered to be minor and will not detrimentally affect adjoining properties or receiving waterways. The site is not known to be contaminated nor is it known to contain any Aboriginal, European or Archaeological relics. The earthworks will be appropriately supported onsite and the change in ground level is not substantial. The effect on the amenity of adjoining properties is considered to be minor. The site is not in proximity to any waterway or sensitive area. Conditions may be imposed to require a sediment control plan, including silt traps and other protective measures, to ensure that loose dirt and sediment does not escape the site boundaries.
- **Clause 7.3 - Stormwater Management** - The objective of this clause is to minimise the impacts of urban stormwater on the land to which the development applies and on adjoining downstream properties, native bushland and receiving waters. This clause applies to all industrial, commercial and residential zones. In consideration of this clause, the proposed stormwater drainage measures will satisfy Council's normal requirements. Conditions have been included to address stormwater management issues.
- **Clause 7.6 - Groundwater Vulnerability** - The site has been mapped as being groundwater vulnerable. 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.
- **Clause 7.7 - Drinking Water Catchments** - The Drinking Water Catchment Map shows that the subject land is within the City's drinking water catchment. 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. The proposed development does not introduce additional impacts upon water quality within the drinking water catchment. The potential for the development to impact upon water quality is considered minimal.

- **Clause 7.11 - Essential Services** - Based on the proposed servicing arrangements outlined in the foregoing report, the proposed subdivision will satisfy this clause. Council's normal consent conditions for subdivision will require each of the proposed lots to be serviced with town water, reticulated sewage, stormwater drainage, electricity, and suitable access in accordance with Council requirements.

#### **STATE ENVIRONMENTAL PLANNING POLICIES**

- **SEPP (Resilience and Hazards) 2021** - Pursuant to Clause 4.6, a consent authority must consider the contamination potential of the land, and if the land is contaminated, it is satisfied that the land is suitable for the development in its contaminated state, or that appropriate arrangements have been made to remediate the site prior to the development being carried out.

The subject land is presently vacant and is not known to have been used for a purpose listed in Table 1 of Managing Land Contamination Planning Guidelines SEPP 55 - Remediation of Land.

Whilst properties within the surrounding area were used for orchards prior to urban development, this particular lot and its surrounds were not used for such purposes, particularly within the last 30 years.

In any event, the subject land was developed as part of the Gateway Business Park subdivision and is likely to have been subject to earth disturbances due to land shaping and civil works associated with that project. The land has remained vacant since the first stage of this subdivision which was completed around 2003. Matters in relation to contamination were previously addressed with the creation of the subject land by way of subdivision. On the basis of this preliminary information, no additional soil testing or further investigation is required.

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

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

#### **DESIGNATED DEVELOPMENT**

The proposed development is not designated development.

#### **INTEGRATED DEVELOPMENT**

The proposed development is not integrated development.

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

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

The relevant chapters of the DCP 2004 that apply to the subject land have been assessed below.

Chapter 8 - Development in Business Zones - Business Service Areas**PO 8.2-1 PLANNING OUTCOMES - BUSINESS SERVICES AREAS**

- 1 Applications clearly demonstrate that the development will not detract from the role of the CBD as a regional centre.
- 2 Provision of adequate fire-safety measures and facilities for disabled persons (according to the BCA) is addressed at the application stage (relevant for all development but particularly important where converting residential buildings for business use).
- 3 Heritage streetscapes are conserved and enhanced through adaptive reuse of heritage buildings, restrained advertising and landscaped gardens.
- 4 Areas on the main roads into and out of Orange (such as Molong Road and Bathurst Road) provide a high level of architectural design to enhance the visual character of the City entrances.
- 5 All sites contain an element of landscaping. Landscaping provided is of a bulk, scale and height relative to buildings nearest the front property boundary so as to provide beautification and visual relief to the built form proposed or existing on the site. The depth of the landscape bed at the site frontage is sufficient to accommodate the spread of plantings that meet the abovementioned outcomes but, where practicable, a minimum depth of 3m is provided. Plantings are designed to provide shade for parking areas, to break up large areas of bitumen, to enhance building preservation and to screen against noise.

1. The proposal will not detract from the role of the CBD as a regional centre. Given the shortage of suitable sites located within the CBD and the area requirements in terms of floor space, parking, and vehicle manoeuvring, the proposed development is not of a type that is easily located within the CBD. Self-storage units and warehouse uses are not typical of the CBD role. The modest amount of office space proposed by this application is not considered to pose a threat to the existing supply of such space within the CBD.
2. The provision of fire safety measures; accessible facilities; and other matters pertaining to compliance with the Building Code of Australia will be suitably assessed by the appointed Certifying Authority prior to the issuing of a Construction Certificate.
3. Not applicable - not within a heritage conservation area or located in close proximity to a heritage item.
4. Although the proposed development is not necessarily located on a main road, the proposed buildings are considered to provide a high level of architectural design as articulated within this report, satisfying this planning outcome.
5. As identified on the submitted site plan, the proposal is considered to satisfy this outcome with landscaping provided along the Cameron Place frontage within a 3m wide bed. The proposed landscaping incorporates plantings that are commensurate with the height of the proposed buildings as well as plantings that soften views onto the carpark in the front setback area.

Chapter 8 - Development in Business Zones - Gateway Site Development**PO 8.5-1 PLANNING OUTCOMES – GATEWAY SITE DEVELOPMENT**

- 1 Buildings cover up to 50% of the site area.
- 2 Buildings are designed in a manner commensurate with the high profile of the site. Architectural features are provided to the front building façade to provide relief using such elements as verandahs, display windows, indented walls, etc.
- 3 External materials consist of non-reflective building materials.
- 4 Adequate parking and on-site manoeuvring is provided.
- 5 Advertising involves Business Identification signs within the front façade and/or by a pole sign comparable with the relative height of the main building site.
- 6 Security fencing is located or designed in a manner that does not dominate the visual setting of the area.
- 7 Buildings achieve the setback described in the DCP provisions.
- 8 Applications are accompanied by a detailed landscape plan.
- 9 Development of the land is to provide for the integrated and effective management of stormwater runoff.

1. The proposed buildings have a footprint area of 2,215m<sup>2</sup>. Based on the site area of 4,392m<sup>2</sup>, this represents a site coverage of 50.4%. The 0.4% exceedance represents 19m<sup>2</sup> of building area. Given that the proposal is demonstrated to be satisfactory in terms of other areas of the DCP (being building design, visual impact (landscaping), parking and vehicle manoeuvring), it is considered that the minor exceedance of 0.4% is acceptable in this case.
2. The building design recognises the need to present attractive facades to the street. The proposed building provides glazed shopfronts, awning treatments and external finishes that are commensurate with modern commercial development. The proposed buildings are of appropriate bulk and scale, being single storey with well-modulated front elevations, and not so large as to dominate the site frontage. The frontage of the site is proposed to be landscaped extensively to assist in softening the visual impact of the building and to contribute to the appearance of the site in general.
3. The proposed external materials will consist of non-reflective building materials and the proposed colour scheme comprises relatively subdued urban tones.
4. The site was originally designed to accommodate an 8.8m truck (MRV) but after consultation with Councils Technical Services Department, the site has now been shown to accommodate a 12.5m truck (being the largest likely to be associated with the development). A carparking assessment is undertaken below under Chapter 15.
5. Not applicable - no signage proposed by this application.
6. There is no fencing proposed at the street frontage, and as the proposed buildings are more or less set on the side and part of the rear boundaries, no fencing is required in these locations. The open rear boundary (between the buildings) will be fenced with a 2.1m chainwire security fencing. The fencing as proposed is considered acceptable.
7. In accordance with the DCP, the subject land, with an area of more than 2,000m<sup>2</sup> is required to provide a minimum setback of 15m from Cameron Place. The central building satisfies this requirement with a front setback of 15.12m. However, the buildings along the eastern and western sides of the site have a setback of only 10.4m. The applicant has requested that Council accept a variation of this DCP requirement on the following basis:

- *The generous landscaping of the site frontage would ameliorate any visual impact attributed to the reduced setback of the eastern and western buildings. The landscape effect is enhanced by the wider landscape bed that extends along the eastern and western side boundary returns between the front boundary and the respective building.*
- *The street elevation of the eastern and western buildings has a maximum building height of 6m sloping down to 5.24m. This reasonable building height in conjunction with the skillion profile ensures that the buildings will not be too tall or imposing on the streetscape providing a relatively modest bulk and scale. The eastern and western building each has a width of 14.5m. Combined, they represent approximately only one third of the site frontage.*
- *The buildings present appropriately to the street with commercial shopfront glazing and an awning over the main entry. The DCP states that Council may permit the development of office space closer than the setbacks specified above where such space is an integral part of the proposal, is intended to be used in conjunction with the approved activity and is to be constructed with selected brick. The intent here is to ensure that any buildings that are within the setback zone are less of an industrial style and have a more commercial character. Whilst the eastern wing does not comprise "face brick construction", it is considered that this element is consistent with outcomes that are sought by this aspect of the DCP.*
- *The proposed setback would not be out of character with development that has occurred elsewhere within the Gateway business precinct. It is noted that other buildings are sited closer than 15m to their front boundary, without adverse impact on the streetscape quality.*

The justification provided by the applicant is considered to be acceptable in this case.

8. A sufficient detailed Landscape Plan has been provided as part of this application.
9. The development will be connected to the existing stormwater drainage arrangements that serve the subject land and the Gateway estate.

#### Chapter 15 - Car Parking

In terms of parking rates for the proposed uses:

- The DCP requires parking for warehouses to be provided at the rate of 1 space per 100m<sup>2</sup> Gross Floor Area (GFA) or one (1) space for every two (2) employees (whichever is the greater). Given that employee numbers are not known, the parking rate is calculated on GFA.
- The DCP requires parking for office premises to be provided at the rate of one (1) space per 40m<sup>2</sup> GFA.
- The DCP does not set a parking rate for self-storage units. For the purpose of this assessment, the DCP rate for warehouses is adopted (i.e. one (1) space per 100m<sup>2</sup> GFA). Notwithstanding, it is considered that this rate is too high based on the typical function of a self-storage unit.

Based on the above rates, the development would generate parking as follows:

Parking Calculation First Use for Units 1 to 22 at 12/13 Cameron Place, Orange			
Unit	Area m <sup>2</sup> (GFA)	First Use	Parking Requirement
1	127m <sup>2</sup>	Office Premises	3.12 spaces
2	115m <sup>2</sup>	Warehouse/Distribution Centre	1.15 spaces
3	115m <sup>2</sup>	Warehouse/Distribution Centre	1.15 spaces
4	115m <sup>2</sup>	Warehouse/Distribution Centre	1.15 spaces
5	137m <sup>2</sup>	Warehouse/Distribution Centre	1.37 spaces
6	63m <sup>2</sup>	Office Premises	1.58 spaces
7	63m <sup>2</sup>	Self-storage Unit	0.63 spaces
8	63m <sup>2</sup>	Self-storage Unit	0.63 spaces
9	63m <sup>2</sup>	Self-storage Unit	0.63 spaces
10	100m <sup>2</sup>	Self-storage Unit	1.00 spaces
11	100m <sup>2</sup>	Self-storage Unit	1.00 spaces
12	63m <sup>2</sup>	Self-storage Unit	0.63 spaces
13	63m <sup>2</sup>	Self-storage Unit	0.63 spaces
14	63m <sup>2</sup>	Self-storage Unit	0.63 spaces
15	63m <sup>2</sup>	Office Premises	1.58 spaces
16	100m <sup>2</sup>	Self-storage Unit	1.00 spaces
17	100m <sup>2</sup>	Self-storage Unit	1.00 spaces
18	113m <sup>2</sup>	Office Premises	2.83 spaces
19	115m <sup>2</sup>	Warehouse/Distribution Centre	1.15 spaces
20	115m <sup>2</sup>	Warehouse/Distribution Centre	1.15 spaces
21	115m <sup>2</sup>	Warehouse/Distribution Centre	1.15 spaces
22	137m <sup>2</sup>	Warehouse/Distribution Centre	1.37 spaces
<b>TOTAL</b>			<b>26.53 spaces</b>

The proposed development provides a total of 23 off-street parking spaces including two disabled spaces. Based on the above calculation the parking shortfall is 3.53 (4) spaces. The proposed parking situation is considered acceptable based on the following:

- The proposed offices generate a parking requirement of 9.11 (10) spaces. There are ten (10) spaces available at the front of the site that would satisfy this parking need.
- The proposed warehouse/distribution centre units generate a parking requirement of 9.64 (10) spaces. There are five (5) spaces available at the front of the site and five (5) spaces available at the rear that would satisfy this parking need.
- Using the same rate as warehouse/distribution centres, the proposed self-storage units would generate the need for 7.78 (8) spaces. The applicant has requested that Council consider a departure to the DCP parking controls for the ten (10) self-storage units arguing that the required parking is excessive due to the following:
  - *By their very nature, self-storage units do not generate regular or constant parking demand. In other self-storage unit complexes, Council has allowed for a lesser number of parking spaces for complexes comprising more than 100 units. Whilst this proposal is not a "traditional" self-storage complex, it is reasonable to understand that such a use does not generate a great demand for parking.*

- *Based on full utilisation of parking by the office premises and warehouse distribution centre, there are two (2) spaces at the front of the site and one (1) space at the rear that are available to service the self-storage units. However, as is the case in most self-storage complexes, tenants tend to park in front of their roller door to unload or collect items, with the proposed design of these units allowing for a tenant to drive to their respective unit.*

Based on the above justification it is considered reasonable to adopt a lower car parking rate given the traditional manner in which parking has operated for storage units throughout the City. It is considered reasonable to accept the proposed off-street parking resources, despite the minor shortfall in spaces. Conditions have been included in the attached consent to allocate spaces to individual units once subdivided.

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

##### **Demolition of a Building (clause 92)**

The proposal does not involve the demolition of a building.

##### **Fire Safety Considerations (clause 93)**

The proposal can comply with the BCA. Fire walls will be required due to the proximity of the buildings to boundaries. Conditions of consent have been included in the attached Notice to address fire safety.

##### **Buildings to be Upgraded (clause 94)**

The proposal does not involve the rebuilding, alteration, enlargement or extension of an existing building.

##### **BASIX Commitments (clause 97A)**

BASIX is not applicable to the proposed development.

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

##### **Traffic Impact**

The potential traffic impacts of the development relate to traffic generation; capacity of the road system; access arrangements; internal layout and servicing; and parking provision.

Based on the proposed uses and the relatively modest floor area of each unit, it is expected that typical vehicles associated with the complex will comprise utilities, commercial vans, medium to large rigid vehicles and cars. The potential traffic increase as a result of the development is expected to be minor. The proposal will generate a modest increase in local traffic with estimate traffic numbers provided by the applicant being of an acceptable rate.

The access points to the development offer clear driver sight lines along Cameron Place and Gateway Crescent. The access points are wide enough to allow two-way vehicle movement and they will accommodate the turn path of a 12.5m truck (HRV) (the largest that is expected to be associated with the development). All vehicles associated with the site can enter and exit via the public road network in a forward direction. The parking layout accommodates associated vehicle manoeuvring into and out of the spaces.

**Visual Impact**

The visual impact of the development is considered satisfactory. The building design recognises the need to present attractive facades to the street. As assessed under the DCP, the proposed development provides glazed shopfronts, awning treatments and external finishes that are commensurate with modern commercial development. The external finishes are non-reflective, and the proposed colour scheme comprises relatively subdued urban tones. The buildings are of appropriate bulk and scale. They are single storey and the front elevations are well modulated and not so large as to dominate the site frontage. Whilst the development is non-compliant with regards to setbacks, the frontage of the site is proposed to be landscaped extensively to assist in softening the visual impact of the buildings and to contribute to the appearance of the site in general. No external storage will be permitted.

**Noise**

The noise impacts of the proposed development are considered acceptable. The ambient noise levels within and around the site are expected to be typical of a highway-side business precinct. The dominant source of noise is likely to be from traffic movement along the road network and noise associated with this emerging business precinct. The proposed uses are not typically regarded as noise generating activities.

There is a generous separation and intervening business development between the boundary of the site and the nearest dwellings and residential neighbourhoods. The majority of the roller shutter openings face into the site. There are only two openings that face outward from the site but given the nature of the proposed uses, these are not expected to cause unacceptable noise impacts upon the dwellings to the north (which are located 120m to 130m away).

The entry and exit of vehicles associated with the site would not generate unreasonable noise and would not be out of character with other activities that occur in the broader precinct, with the core operating hours are during the daytime period when background noise levels are typically higher. If required, new mechanical plant can be sited and/or acoustically screened so as to minimise potential noise impacts.

**Water Quality**

The proposed uses do not involve any activities that would threaten surface or groundwater quality. The development will be connected to the estate's stormwater system in accordance with Council's normal requirements.

**Air Quality**

The proposed development does not involve any processes or activities that would affect the neighbourhood in terms of dust, odour or other atmospheric discharges in the long term. The active vehicle areas will be sealed (concrete surface) thus removing any potential for raised dust.

**Waste Management**

Due to the nature of the proposed uses, it is expected that the generation of garbage and recycling will be modest.

In any case, there is sufficient space provided within each unit to store a mobile garbage bin and recycling bin. Council's Waste Services Manager has recommended a condition be included that requires the provision of a 240 litre waste and 240 litre recycling mobile garbage bin to each of the Office and Warehouse or Distribution Centres as shown on the plans and that requires their occupants to retain the bins within their premises and place them on the footpath for servicing on the nominated service day. There is sufficient space within the footpath along the site frontage for the bins to stand awaiting collection.

### **Lighting**

Lighting is to be installed in a manner that provides effective illumination of the buildings and site without causing light scatter or disturbance to neighbours or the adjacent public streets.

### **Social and Economic Impacts**

The proposed development has the potential to generate positive social and economic effects. The proposed development provides a new premises that has the potential to contribute to economic activity in the city. It also has the potential to increase expenditure in Orange due to operational spending, construction spending and then may create additional employment opportunities.

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

The site is considered suitable for the following reasons:

- The proposal is permitted on the subject land zoning.
- The site has direct frontage and access to a public road.
- The site topography will not constrain the proposal.
- The local road network has sufficient capacity to accommodate additional traffic volumes associated with one additional residential lot.
- There is no known contamination on the land.
- All utility services are or can be available and adequate.
- The site is not subject to natural hazards.
- The land has no particular environmental and conservation values.

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

The proposed development is not defined as advertised development under the provisions of the CPP, and as such no formal exhibition of the application was required. No submissions have been received in relation to this application.

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

The proposed development is considered to be of minor interest to the wider public due to the relatively localised nature of potential impacts. The proposal is not inconsistent with any relevant policy statements, planning studies, guidelines etc that have not been considered in this assessment.

**SUMMARY**

The proposed development is permissible with the consent of Council. The proposed development complies with the relevant aims, objectives and provisions of Orange LEP 2011 (as amended) and DCP 2004. A Section 4.15 assessment of the development indicates that the development is acceptable in this instance. Attached is a draft Notice of Approval outlining a range of conditions considered appropriate to ensure that the development proceeds in an acceptable manner.

**COMMENTS**

The requirements of the Environmental Health and Building Surveyor and the Engineering Development Section are included in the attached Notice of Approval.

**ATTACHMENTS**

- 1 Notice of Approval, D22/52788 [↓](#)
- 2 Plans, D22/50336 [↓](#)

	<b>ORANGE CITY COUNCIL</b> Development Application No <b>DA 231/2022(1)</b> NA22/577 Container PR20395
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## NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

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

### Development Application

Applicant Name: Structor Projects Pty Ltd  
Applicant Address: C/- Peter Basha Planning & Development  
PO Box 1827  
Orange NSW 2800  
Owner's Name: Mr BE Turner  
Land to Be Developed: Lots 10 and 11 DP 270446 - 12 and 13 Cameron Place, Orange  
Proposed Development: Mixed Use Development (office premises, warehouse or distribution centre and self-storage units) and Subdivision (2 x 12 Strata lots)

### Building Code of Australia building classification:

Class to be determined by Certifier

### Determination made under Section 4.16

Made On: 6 September 2022  
Determination: **CONSENT GRANTED SUBJECT TO CONDITIONS DESCRIBED BELOW:**

**Consent to Operate From:** 7 September 2022  
**Consent to Lapse On:** 7 September 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) To ensure the utility services are available to the site and adequate for the development.
- (6) To prevent the proposed development having a detrimental effect on adjoining land uses.
- (7) To minimise the impact of development on the environment.

### Conditions

- (1) The development must be carried out in accordance with:
  - (a) **Plans numbered 1-5 by Peter Basha Planning & Development dated 7.07.2022, Plans A001, A100, A200 dated 12.08.2022 (8 sheets)**
  - (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 DA231/2022(1)**

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**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.
- (4) Where any excavation work on the site extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (a) protect and support the adjoining premises from possible damage from the excavation, and
  - (b) where necessary, underpin the adjoining premises to prevent any such damage.
- Note: This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to this condition not applying.

**STAGE 1 - CONSTRUCTION OF BUILDINGS****PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**

- (5) Engineering plans providing complete details of the proposed driveway and car parking areas are to be submitted to the principal certifier for approval upon application for a Construction Certificate. These plans are to provide details of levels, cross falls of all pavements, proposed sealing materials and proposed drainage works and are to be in accordance with Orange City Council Development and Subdivision Code.
- (6) All stormwater from the site is to be collected and piped to the existing interlot drainage pit on site. The principal certifier is to approve engineering plans for this drainage system.
- (7) A water and soil erosion control plan is to be submitted to the principal certifier 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) A Road Opening Permit in accordance with Section 138 of the *Roads Act 1993* must be approved by Council prior to **a Construction Certificate being issued or any intrusive works** being carried out within the public road or footpath reserve.
- (9) An approval under Section 68 of the *Local Government Act* is to be sought from Orange City Council, as the Water and Sewer Authority, for alterations to water and sewer. No plumbing and drainage is to commence until approval is granted.

**PRIOR TO WORKS COMMENCING**

- (10) A Construction Certificate application is required to be submitted to, and issued by Council/Accredited Certifier prior to any excavation or building works being carried out onsite.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA231/2022(1)**

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**Conditions (cont)****Prior to works commencing (cont)**

- (11) A temporary onsite toilet is to be provided and must remain throughout the project or until an alternative facility meeting Council's requirements is available onsite.
- (12) Soil erosion control measures shall be implemented on the site.

**DURING CONSTRUCTION/SITEWORKS**

- (13) Any adjustments to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer.
- (14) 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 the development 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.

Water, sewer and stormwater services for Lots 10 and 11 DP 270446 shall be contained within their respective Lot.
- (15) All driveway and parking areas are to be sealed with bitumen, hot mix or concrete and are to be designed for all expected loading conditions (provided however that the minimum pavement depth for gravel and flush seal roadways is 200mm) and be in accordance with the Orange City Council Development and Subdivision Code.
- (16) Heavy-duty concrete kerb and gutter laybacks and footpath crossings shall be constructed in the position shown on the approved plans for both Lots 10 and 11 DP 270446. The works are to be carried out to the requirements of the Orange City Council Development and Subdivision Code and Road Opening Permit.
- (17) All services are to be contained within the allotment that they serve.
- (18) 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.
- (19) A Registered Surveyor's certificate identifying the location of the building on the site must be submitted to the Principal Certifying Authority.
- (20) All materials on site 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.

**PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

- (21) Prior to the issue of an Occupation Certificate, reciprocal rights of way shall be established over the proposed common driveways and parking areas for both lots 10 and 11 DP 270446.
- (22) Certification from Orange City Council is required to be submitted to the Principal Certifying Authority prior to the issue of an Occupation 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.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA231/2022(1)**

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**Conditions (cont)****Prior to the issue of an occupation certificate (cont)**

- (23) A Road Opening Permit Certificate of Compliance is to be issued for the works by Council prior to any Occupation/Final Certificate being issued for the development.
- (24) Landscaping shall be installed in accordance with the approved plans and shall be permanently maintained to the satisfaction of Council's Manager Development Assessments.
- (25) A total of 23 off-street carparking spaces (inclusive of 2 disabled parking spaces) shall be provided upon the site in accordance with the approved plans, the provisions of Development Control Plan 2004, and be constructed in accordance with the requirements of Council's Development and Subdivision Code **prior to the issue of an Occupation Certificate**.
- (26) A 2.1m chain wire security fence is to be provided along the open rear (northern) boundary (between the buildings) and shall be installed to the satisfaction of Council's Manager Development Assessments.
- (27) No person is to use or occupy the building or alteration that is the subject of this approval without the prior issuing of an Occupation Certificate.
- (28) The owner of the building/s must cause the Council to be given a Final Fire Safety Certificate on completion of the building in relation to essential fire or other safety measures included in the schedule attached to this approval.
- (29) Where Orange City Council is not the Principal Certifying Authority, a final inspection of water connection, sewer and stormwater drainage shall be undertaken by Orange City Council and a Final Notice of Inspection issued, prior to the issue of either an interim or a final Occupation Certificate.
- (30) 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 an Occupation or Subdivision Certificate, unless stated otherwise.

**MATTERS FOR THE ONGOING PERFORMANCE AND OPERATION OF THE DEVELOPMENT**

- (31) A separate Development Application shall be submitted to and approved by Council prior to the erection of any advertising structures or signs of a type that do not meet the exempt development provisions of Orange Local Environmental Plan 2011 (amended) and Development Control Plan 2004.
- (32) Any outdoor lighting must be in accordance with the *Australian Standard 4282-1997 Control of the obtrusive effects of outdoor lighting*. Any ancillary light fittings fitted to the exterior of the buildings are to be shielded or mounted in a position to minimise light spill and glare to adjoining properties.
- (33) Outdoor storage is not permitted.
- (34) No commercial use is to be made of the individual self-storage units.
- (35) The owner is required to provide to Council and to the NSW Fire Commissioner an Annual Fire Safety Statement in respect of the fire-safety measures, as required by Clause 177 of the *Environmental Planning and Assessment Regulation 2000*.
- (36) The development requires the provision of a 240-litre waste and 240 litre recycling mobile garbage bin to each of the Office and Warehouse or Distribution Centres as shown on the plans. Occupants are to retain the bins within their premises and place on the footpath for servicing on the nominated service day. The site shall be maintained in a clean and tidy state at all times at all times.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA231/2022(1)**

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**Conditions (cont)****STAGE 2 - STRATA SUBDIVISION****DURING CONSTRUCTION/SITEWORKS**

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- (37) Any adjustments to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer.

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

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- (38) Application shall be made for a Subdivision Certificate under Section 6.3(1)(d) of the Act.
- (39) 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.
- (40) 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.
- (41) 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.
- (42) Prior to the issue of a Subdivision Certificate, reciprocal rights of way shall be established over the proposed common driveways and parking areas for both lots 10 and 11 DP 270446.
- (43) 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.
- (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 comply in respect to the distances of walls from boundaries.
- (45) The Strata Management Scheme for each title shall provide for the approved waste management arrangements required by Condition 36 of this consent and the equitable sharing of car parking spaces between tenancies. Final arrangements shall be submitted for approval of the Manager Development Assessments prior to the issue of the subdivision certificate.
- (45) 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 an Subdivision Certificate, unless stated otherwise.

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**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.  
Nil
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**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA231/2022(1)**

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**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.

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**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.

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**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.

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**Signed:**

On behalf of the consent authority **ORANGE CITY COUNCIL**

**Signature:****Name:**

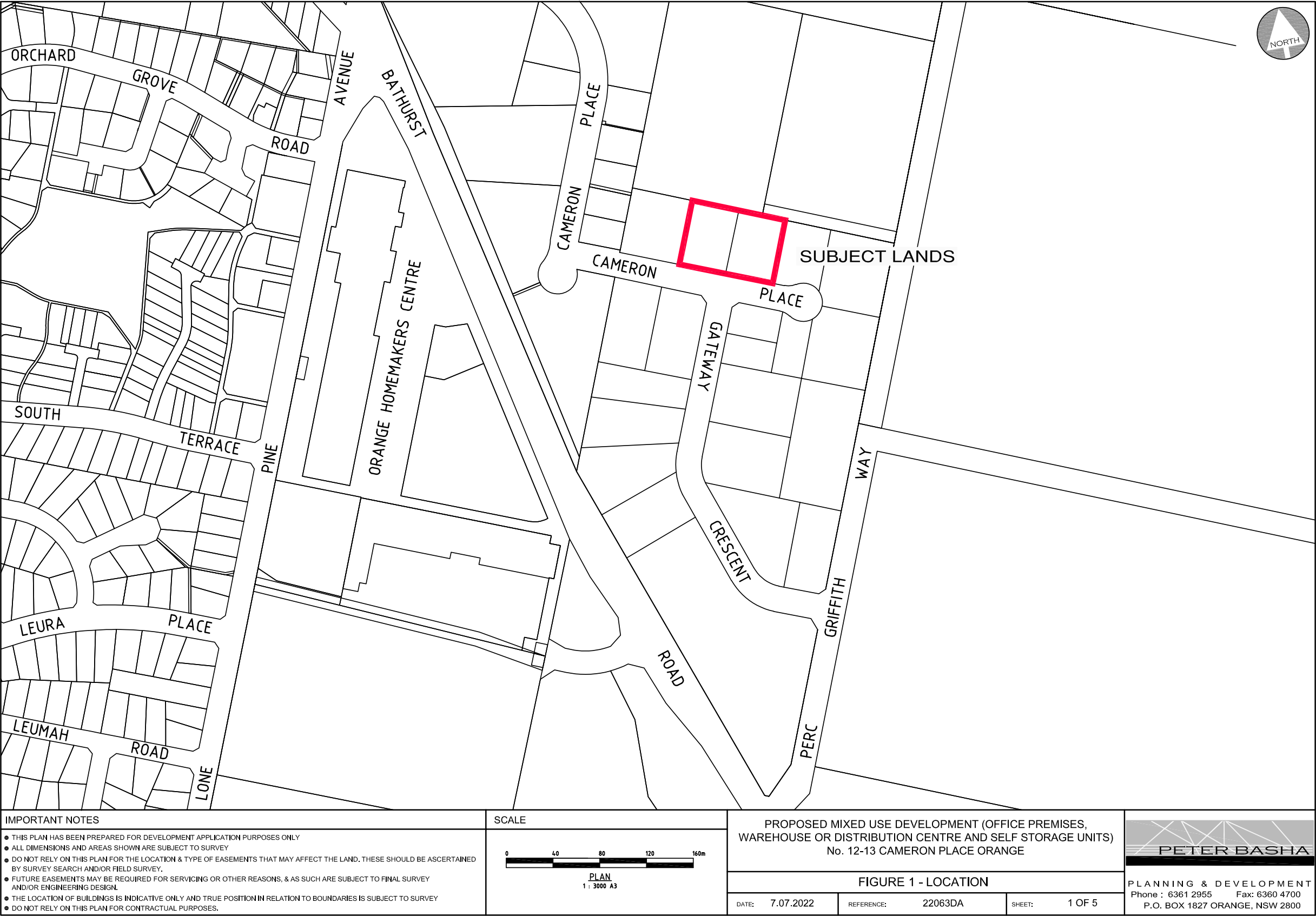
PAUL JOHNSTON - MANAGER DEVELOPMENT ASSESSMENTS

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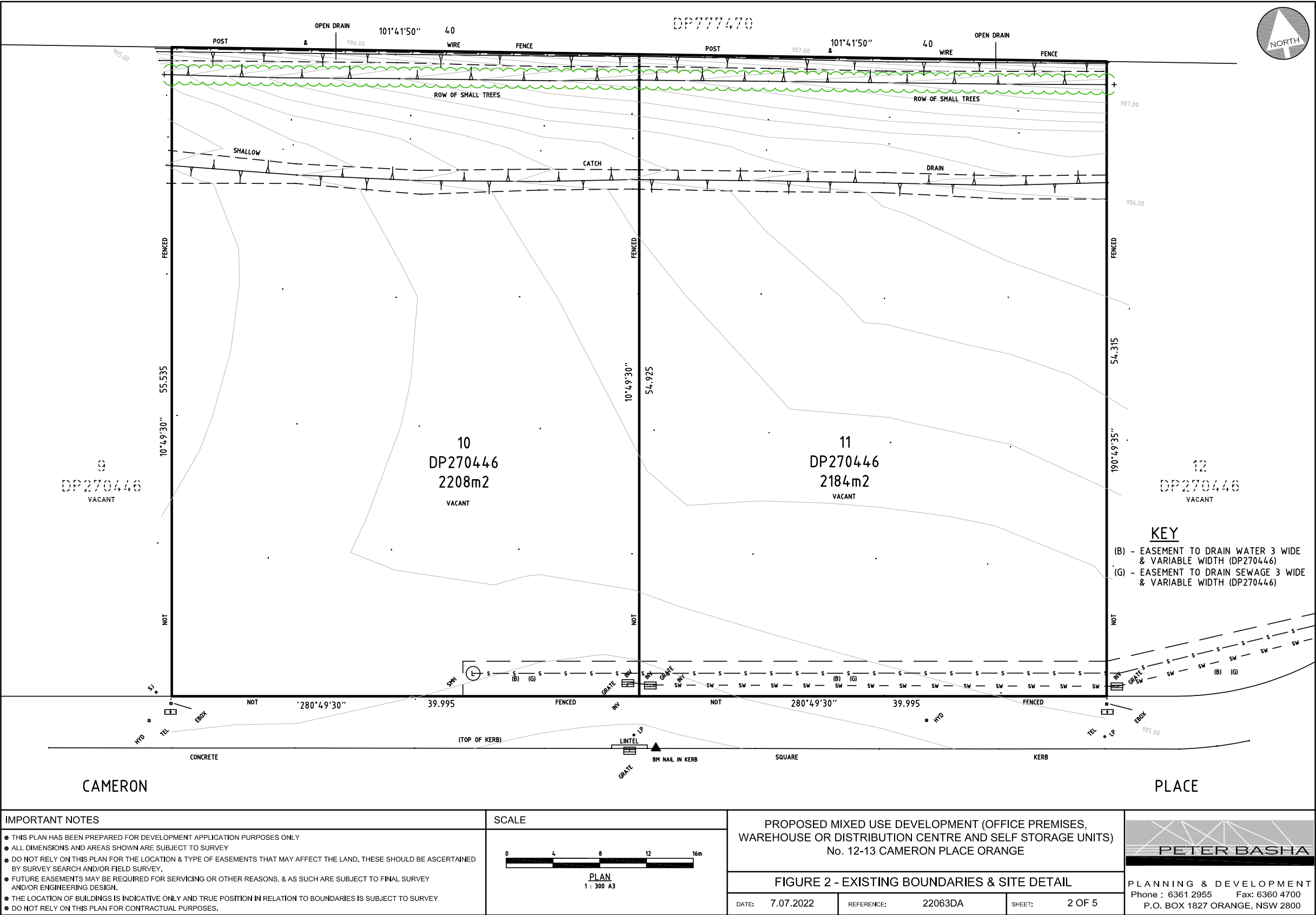
**Date:**

7 September 2022

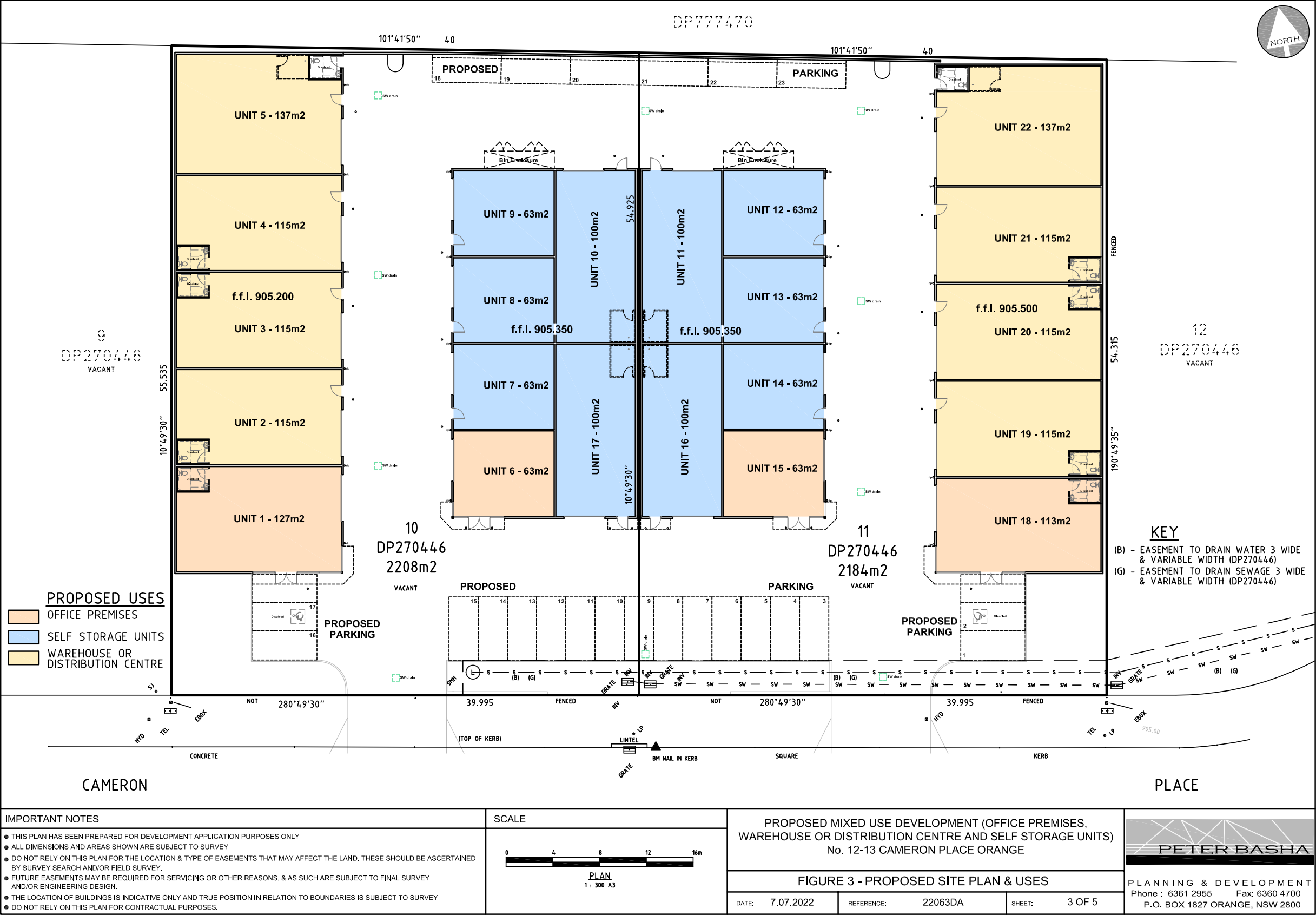




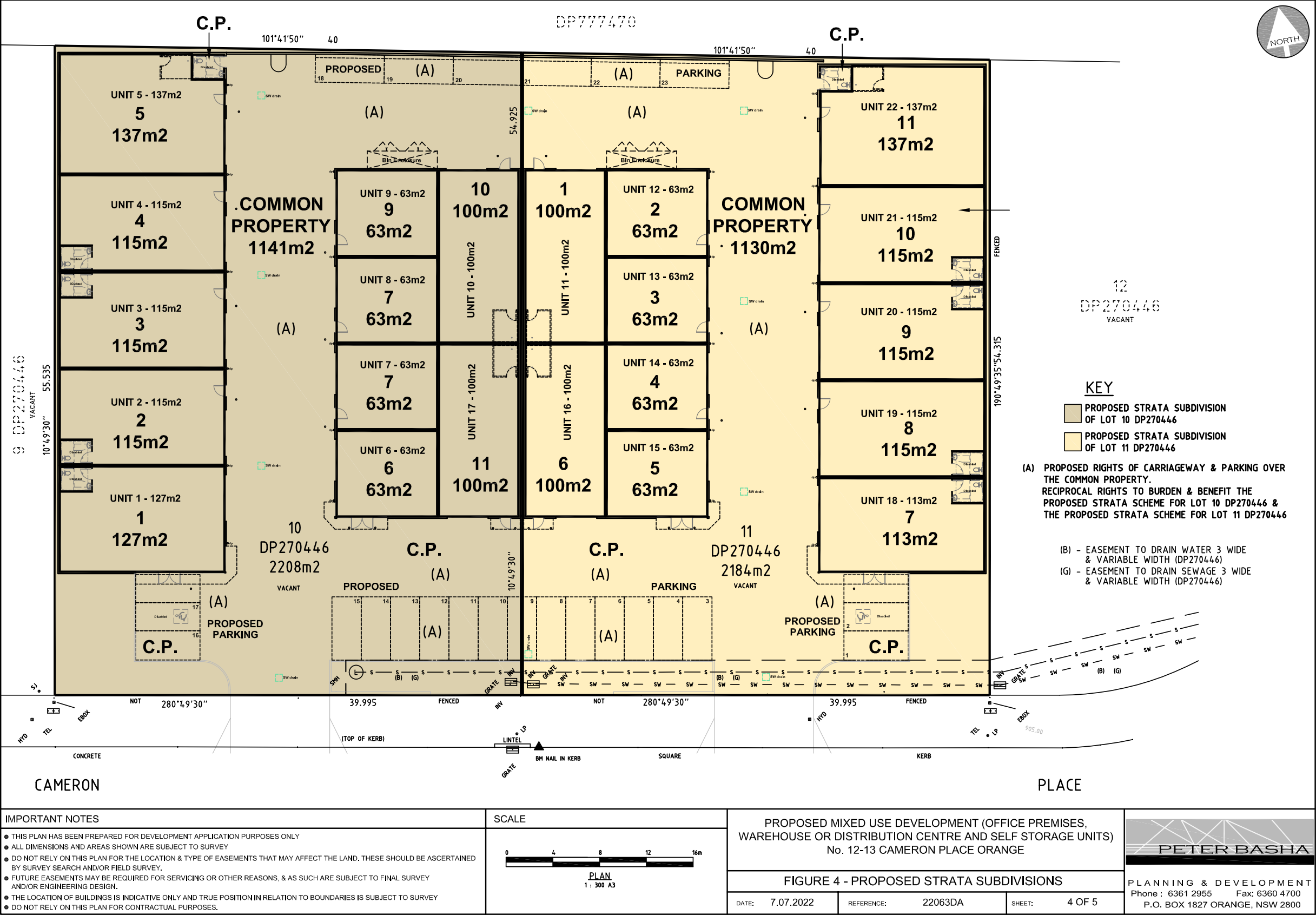




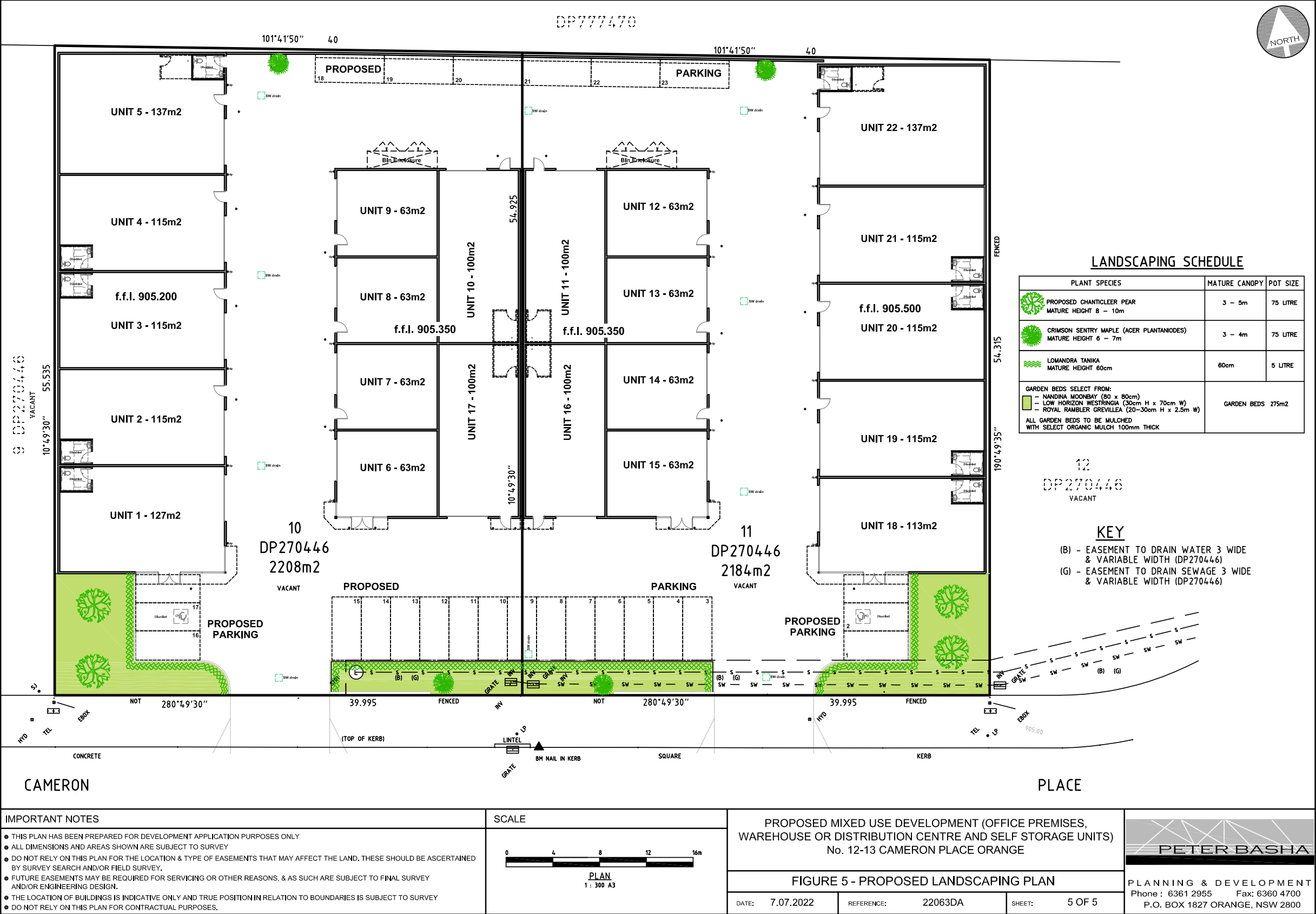




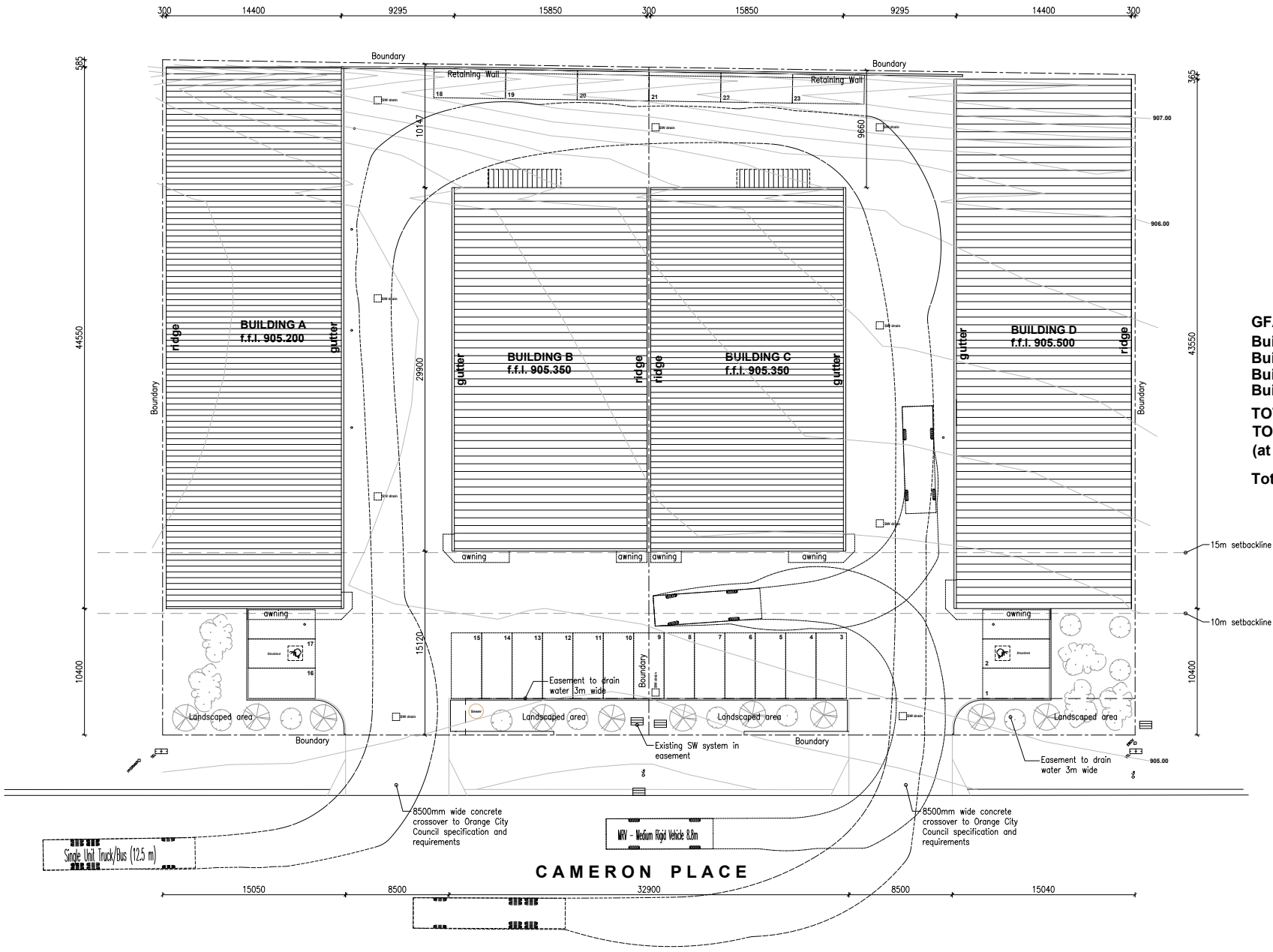













GFA - LEP defined  
Building A = 624m2  
Building B = 460m2  
Building C = 460m2  
Building D = 608m2  
TOTAL 2,152m2  
TOTAL 22 car parks required  
(at 100m2/space)  
Total Building Area = 2,215m2

SITE PLAN - BOTH LOTS 10 &11 INDICATED



P.O. Box 9053, Bathurst, NSW, 2795  
Ph: 02 6331 5426  
E: admin@strutorprojects.com.au  
W: www.strutorprojects.com.au

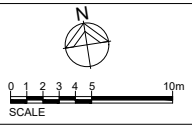
ISSUE	REV	AMMENDMENTS	CHKD. BY:	DATE:
12-08-22	A	12.5m truck (HRV) circulation indicated		

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PROJECT:

PROPOSED COMMERCIAL DEVELOPMENT  
12-13 CAMERON PLACE, ORANGE NSW 2800



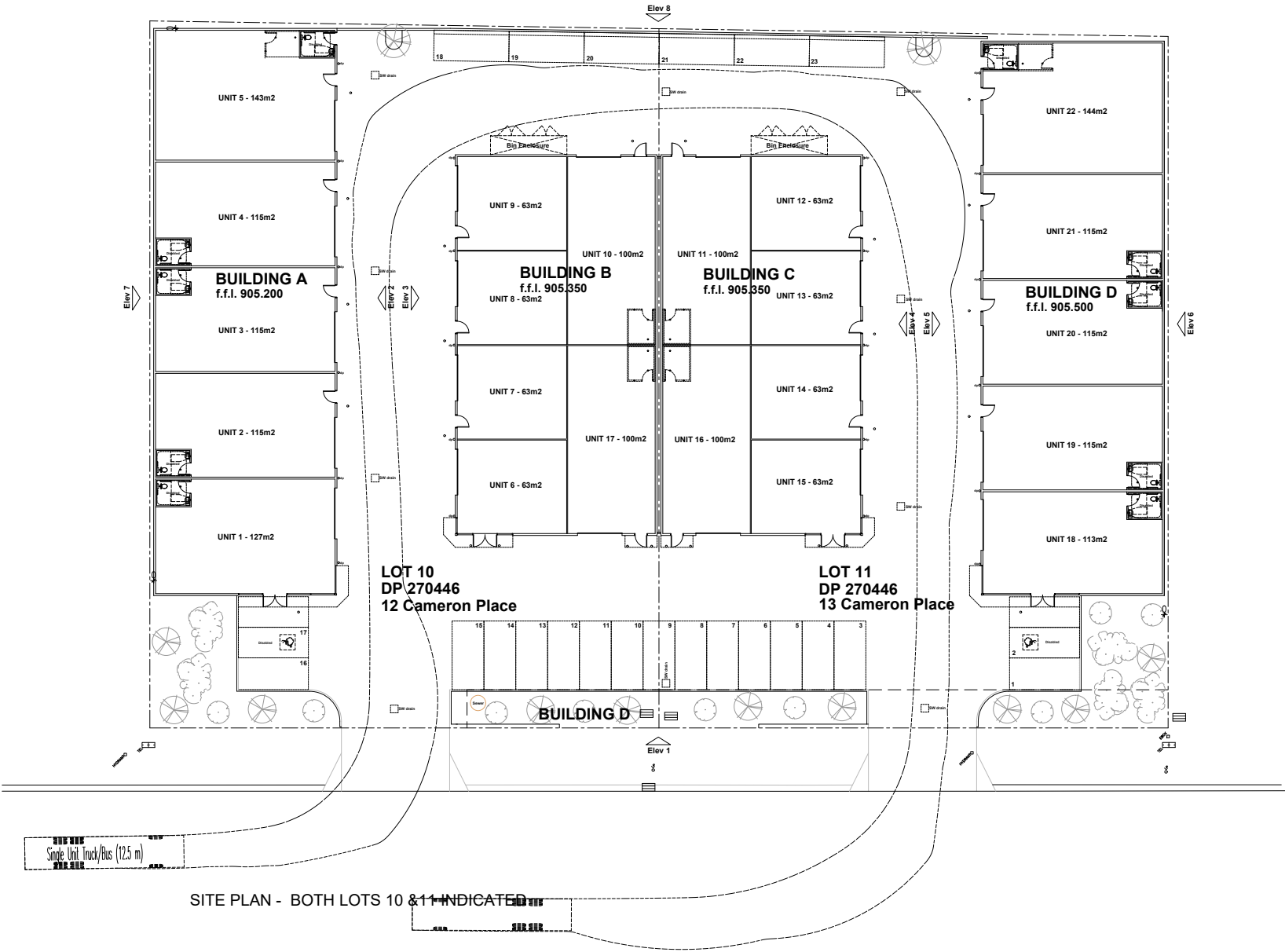
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MWB	---	---	DA	A1 1:200


Project No:	Drawing Title:
0979	SITE PLAN

Sheet:	Revision No:
A001	A





SITE PLAN - BOTH LOTS 10 & 11 INDICATED



P.O. Box 9053, Bathurst, NSW, 2795  
Ph: 02 6331 5426  
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W: www.stuctorprojects.com.au

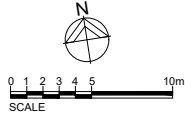
ISSUE	REV	AMMENDMENTS	CHKD. BY:	DATE:
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**PROJECT:**

PROPOSED COMMERCIAL DEVELOPMENT  
12-13 CAMERON PLACE, ORANGE NSW 2800



0 1 2 3 4 5 10m  
SCALE

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MWB	—	—	DA	A1 1:200	A100

Project No:	Drawing Title:	Revision No:
0979	FLOOR PLAN	A



