



# **EXTRAORDINARY COUNCIL MEETING**

# **AGENDA**

**25 MARCH 2022**

Notice is hereby given, in accordance with the provisions of the Local Government Act 1993 that an **EXTRAORDINARY MEETING of ORANGE CITY COUNCIL** will be held in the **COUNCIL CHAMBER, CIVIC CENTRE, BYNG STREET, ORANGE** on **Friday, 25 March 2022** commencing at **12.30PM**.

David Waddell  
**CHIEF EXECUTIVE OFFICER**

For apologies please contact Administration on 6393 8106.

## AGENDA

### EVACUATION PROCEDURE

In the event of an emergency, the building may be evacuated. You will be required to vacate the building by the rear entrance and gather at the breezeway between the Library and Art Gallery buildings. This is Council's designated emergency muster point.

Under no circumstances is anyone permitted to re-enter the building until the all clear has been given and the area deemed safe by authorised personnel.

In the event of an evacuation, a member of Council staff will assist any member of the public with a disability to vacate the building.

<b>1</b>	<b>INTRODUCTION.....</b>	<b>3</b>
1.1	Apologies and Leave of Absence .....	3
1.2	Livestreaming and Recording .....	3
1.3	Acknowledgement of Country .....	3
1.4	Declaration of pecuniary interests, significant non-pecuniary interests and less than significant non-pecuniary interests.....	3
	<b>COUNCIL MEETING ADJOURNS FOR THE CONDUCT OF THE OPEN FORUM .....</b>	<b>3</b>
	<b>COUNCIL MEETING RESUMES .....</b>	<b>3</b>
<b>2</b>	<b>GENERAL REPORTS .....</b>	<b>4</b>
2.1	Development Application DA 346/2021(1) - 4633 Mitchell Highway, Lucknow .....	4
2.2	Development Application DA 17/2022(1) - 13/5295 Mitchell Highway, Orange .....	19
2.3	Development Application - DA 306/2021(1) - 142-158 Lysterfield Road ....	53
2.4	Development Application DA 23/2022(1) - 21-25 Peisley Street.....	117

## **1 INTRODUCTION**

### **1.1 APOLOGIES AND LEAVE OF ABSENCE**

### **1.2 LIVESTREAMING AND RECORDING**

This Council Meeting is being livestreamed and recorded. By speaking at the Council Meeting you agree to being livestreamed and recorded. Please ensure that if and when you speak at this Council Meeting that you ensure you are respectful to others and use appropriate language at all times. Orange City Council accepts no liability for any defamatory or offensive remarks or gestures made during the course of this Council Meeting. A recording will be made for administrative purposes and will be available to Councillors.

### **1.3 ACKNOWLEDGEMENT OF COUNTRY**

I would like to acknowledge the Traditional Custodians of the land on which we meet today, the people of the Wiradjuri Nation. I pay my respects to Elders past and present, and extend those respects to Aboriginal Peoples of Orange and surrounds, and Aboriginal people here with us today.

### **1.4 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 Councillors now disclose any conflicts of interest in matters under consideration by the Council at this meeting.

## **COUNCIL MEETING ADJOURNS FOR THE CONDUCT OF THE OPEN FORUM**

## **COUNCIL MEETING RESUMES**

## 2 GENERAL REPORTS

### 2.1 DEVELOPMENT APPLICATION DA 346/2021(1) - 4633 MITCHELL HIGHWAY, LUCKNOW

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RECORD NUMBER: 2022/339

AUTHOR: Ben Hicks, Senior Planner

#### EXECUTIVE SUMMARY

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

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

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

The application is accompanied by a written statement by an arborist. The statement recommended removal of the tree. It is submitted that the subject tree has the potential for limb failure with potential damage to people and property. Furthermore, the written statement suggests that tree is causing damage to the buildings on the subject land and adjoining land as well as adjacent footpaths.

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

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

The applicant was provided the opportunity to respond to the issues raised by Council staff on multiple occasions; however, no formal response has been received in relation to these matters.

It is recommended the application be refused.





**Figure 1 – Locality and Site Context Plan**

## **DECISION FRAMEWORK**

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

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

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

## **DIRECTOR'S COMMENT**

The DA request the removal of an advanced *Pin Oak* (*Quercus palustris*) and is located in the front yard of the house at 4633 Mitchell Highway Lucknow, which adjoins the Lucknow Hall/Men's Shed to the west. Lucknow is a Heritage Conservation Area with a number of heritage items nearby. Lucknow has a very limited number of mature trees, therefore this tree makes a substantial contribution to the heritage streetscape, particularly when driving into Lucknow from Orange.

The removal of the tree is not supported by Council's Manager City Presentation (Qualified Horticulturalist, Arborist and Environmental Scientist); Council's Heritage Advisor and also development assessment staff. The application states that the tree is 12-15m high, is in excess of 300mm at chest height and is estimated to be 40 years old. Whilst the tree is close to the Council Hall/Men's Shed, it appears not to be causing any significant damage to the building that warrant removal of the tree.

The tree is also 9m from the applicant's house. Some minor cracking of a private footpath was identified and the presence of roots near the house was identified by the applicant's arborist. However, no evidence of further damage to the house or other assets was provided with the DA. There are options such as PVC root barriers that could be installed to protect the building into the future without removing the tree.

The tree has been identified as being in good health and not presenting a significant safety risk.

The applicant was requested to reconsider the proposal on a number of occasions. The applicant advised that they did not wish to withdraw the application during last contact. No changes have been forthcoming.

It is recommended that the application is refused.

#### **LINK TO DELIVERY/OPERATIONAL PLAN**

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

#### **FINANCIAL IMPLICATIONS**

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

#### **POLICY AND GOVERNANCE IMPLICATIONS**

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

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

**RECOMMENDATION**

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

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

**FURTHER CONSIDERATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

**Clause 1.6 - Consent Authority**

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

**Clause 1.7 - Mapping**

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

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

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

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

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

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

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

#### **Part 2 - Permitted or Prohibited Development**

##### **Clause 2.1 - Land Use Zones and Clause 2.3 - Zone Objectives and Land Use Table**

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

***Demolish**, in relation to a heritage item or an Aboriginal object, or a building, work, relic or tree within a heritage conservation area, means wholly or partly destroy, dismantle or deface the heritage item, Aboriginal object or building, work, relic or tree.*

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

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

##### **Objectives of the RU5 Village Zone**

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

The proposal is not contrary to the zone objectives.

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

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

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

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

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

Lucknow Village Conservation Area

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

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

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

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

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

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

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

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

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

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

### **7.6 - Groundwater Vulnerability**

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

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

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

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

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

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

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

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

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

#### **STATE ENVIRONMENTAL PLANNING POLICIES**

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

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

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

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

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

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

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



**DCP 2004-0 Tree Preservation**

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

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

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

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



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

- Damage to the concrete footpath from the front property boundary to the front patio is negligible and such damage doesn't warrant a trees removal as the concrete path can easily be repaired (image of concrete path attached).
- The Orange Men Shed (a Council property) is built on piers and tree roots will have no more than a very negligible effect on the brick piers.
- Statement that the root system has extended to the front patio and may impact house foundations is unsubstantiated. There is no evidence to show that tree roots have egressed beneath the patio or house foundations. If there is a concern of root egress a PVC root barrier installed along the building foundation will protect the foundations from root travel.

- Statement *"If the tree happens to fail and falls, splits, or loses any branches....."*  
No Arboricultural evidence has been submitted to substantiate that the tree has a structural weakness or that a failure may occur. The subject tree from a visual ground inspection was found to be structurally sound; it is some 9 metres from the closest point of the dwelling located on the subject property.

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

#### Visual Tree Assessment

	<p>The canopy has full foliage consistency. Branch structure to the extremes appears normal and healthy.</p>
	<p>The tree contributes significantly to the streetscape on the western approach to Lucknow.</p>

	<p>Damage to the concrete footpath is negligible</p>
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### DCP 2004-13 Heritage

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

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

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

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

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

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

#### Visual Impacts and Conservation Significance

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

**Environmental Impacts**

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

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

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

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

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

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

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

**SUMMARY**

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

**ATTACHMENTS**

- 1 Tree Report, D22/13491 [↓](#)
- 2 Notice of Refusal, D22/13493 [↓](#)

## Tree Inspection

Rural Tree Care

4633 Mitchell Highway,  
Luddenham NSW 2800

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


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

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

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

Owner/Arborist  
Rural Tree Care



	<b>ORANGE CITY COUNCIL</b>  Development Application No <b>DA 346/2021(1)</b>  NA22/122 <span style="float: right;">Container PR84</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: Mr NJ Johnson  
Applicant Address: 4633 Mitchell Highway  
LUCKNOW NSW 2800  
Land to Be Developed: Lot 1 DP171953, 4633 Mitchell Highway, Lucknow  
Proposed Development: Demolition (tree removal)

### Building Code of Australia Building Classification:

Not applicable

### Determination made under Section 4.16

Made On: 25 March 2022  
Determination: **APPLICATION REFUSED**

### Reason(s) for Refusal:

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

### Right of Appeal:

#### Applicant:

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

#### Objector:

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

### Signed:

On behalf of the consent authority:

### Signature:

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

**Date:** 26 March 2022

**2.2 DEVELOPMENT APPLICATION DA 17/2022(1) - 13/5295 MITCHELL HIGHWAY, ORANGE**

RECORD NUMBER: 2022/340  
AUTHOR: Ben Hicks, Senior Planner

**EXECUTIVE SUMMARY**

Application lodged	17 January 2021
Applicant/ Owner	Sentinel Homemaker (Open Ended) Pty Ltd
Land description	Lot 2 DP270204, 13/5295 Mitchell Highway, Orange
Proposed land use	Specialised Retail Premises (use and alterations and additions) and Business Identification Signage
Value of proposed development	\$5,336,889.00

Council's consent is sought for the redevelopment of the former Bunnings Warehouse building located within the Orange Homemaker Centre, Mitchell Highway. Specifically, the proposal involves dividing up the existing floor area to create four separate tenancies to be used for specialised retail purposes. The subject site is zoned 'B5 Business Development' with the proposed development and use being permissible with consent of Council.

Internal alterations and facade changes will be completed to form the new specialised retail tenancies which will include the removal of the 'Bunnings Box' façade, making the building more comparable with the existing precinct theme. The separate tenancies will have varied floor areas, however, sufficient to accommodate the future specialised retailers. The former outdoor garden section on the eastern side of the building will be converted to a parking area for staff.

The proponent advises that no tenants have been secured for the proposed development at this time, however, will comprise of speciality retailers that align with the land use definition as provided in the Orange Local Environmental Plan 2011. Any future tenants will need to comply with the requirements contained within the notice of determination attached to this report with respect to hours of operation, signage, deliveries etc.

The proposal has a capital investment value exceeding \$2.5 million (\$5.3m). Accordingly, the application has been tabled to an Ordinary Council Meeting (OCM) 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 has been prepared below and is assessed that the proposed development is consistent with the Orange Local Environmental Plan 2011, Orange Development Control Plan 2004 and all relevant State Environmental Planning Instruments. The assessment of the proposal concludes the development fits in the locality and there are no significant impacts on the site or on adjacent lands. All construction/fit out and operational aspects can be adequately managed/controlled as per the submitted Development Application (DA) information, or under recommended conditions of consent.



**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 COMMENT**

Council's consent is sought for the redevelopment of the former Bunnings Warehouse building located within the Orange Homemaker Centre, Mitchell Highway. The proposal involves dividing up the existing floor area to create four separate tenancies to be used for specialised retail purposes (which in simple terms allows for bulky goods type uses). The separate tenancies will have varied floor areas, however, sufficient to accommodate the future specialised retailers.

The former Bunnings building has remained vacant for a considerable amount of time.



The proposed redevelopment is consistent with the zoning provisions. 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 Preserve - 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 DA17/2022(1) for *Specialised Retail Premises (use and alterations and additions) and Business Identification Signage* at Lot 2 DP 270204, 13/5295 Mitchell Highway, 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.

#### **SUPPORTING INFORMATION**

Council's consent is sought for alterations/additions to an existing commercial building being the former Bunnings Warehouse within the Orange Homemaker Centre to form four tenancies (one into four) including a new awning, shopfront glazing and new signage zones. The proponent is also seeking consent to use the newly formed tenancies for specialised retail premises. The applicant advises that tenants are yet to be confirmed. Notwithstanding, overarching conditions of consent have been included in the draft notice which will control hours of operation, signage, deliveries etc.

The existing building and associated timber yard and outdoor nursery areas comprises a gross floor area of 7,838m<sup>2</sup>. The existing building is of steel frame and concrete tilt panel construction. The proposed additions/additions to the external appearance of the building (Figures 2-4) will involve providing a continuous steel framed awning along the shopfronts, and providing powder coated aluminium framed shopfront glazing and doors to each new tenancy. New doors will be provided to the rear of each tenancy to permit loading and unloading. A neutral colour tone will be applied to the building façade which is consistent with the approved colour scheme for the Homemaker Centre.

A slight re-arrangement of the car parking is proposed to permit the new awning and separate tenancy access. However, this will not result in any deficiencies in parking at the site for the proposed development. Additional parking comprising 29 spaces will be provided to the eastern side of the building in the former nursery section.

The internal changes proposed are considered relatively modest and will only involve new partition walls to create the separate tenancies including staff and back of house storage areas (Figure 5).



Figure 2 – proposed frontage elevation detail

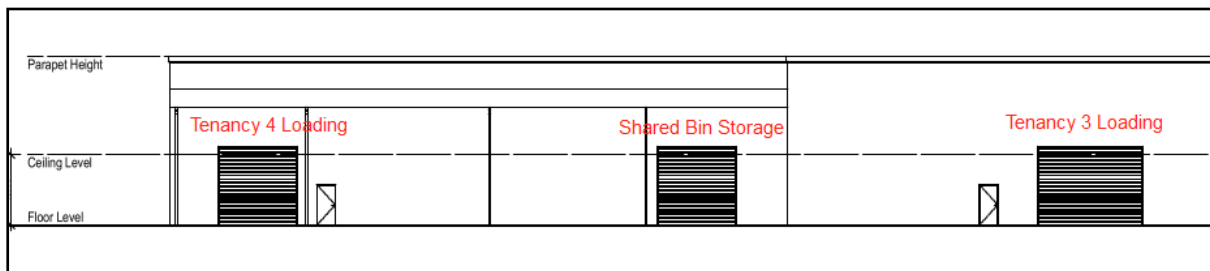


Figure 3 – proposed rear elevation detail (western end).  
Neutral colour to be applied to façade as per frontage.

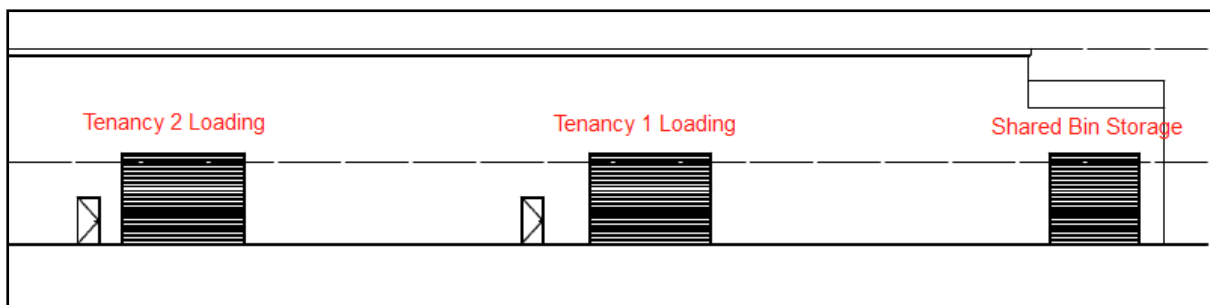


Figure 3 – proposed rear elevation detail (eastern end).  
Neutral colour to be applied to façade as per frontage.

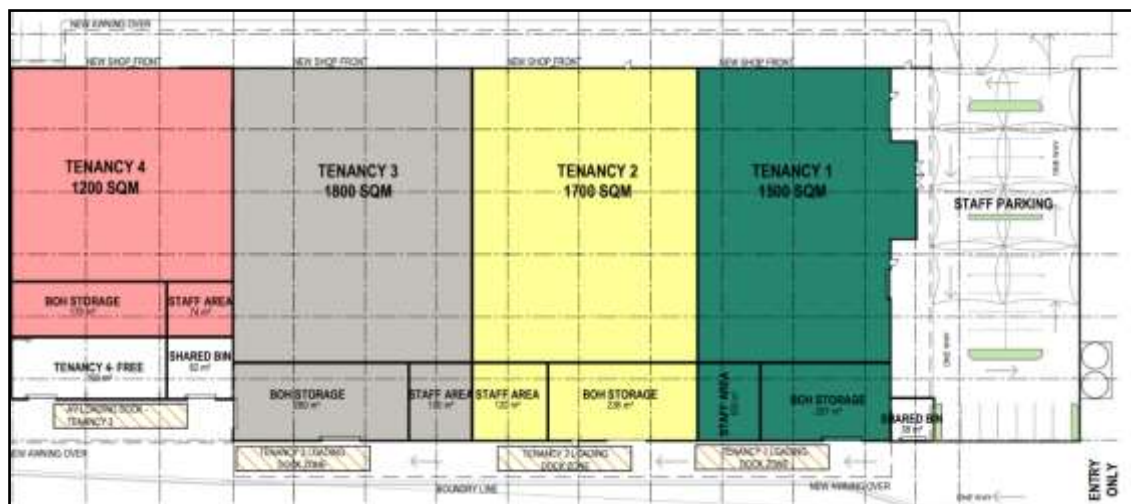


Figure 5 – proposed tenancy layout

**BACKGROUND/HISTORY**

The subject land is part of an overall parcel of land zoned to allow for what used to be called 'bulk retail', collectively known as the Eastern Gateway Development. A number of outlets including Harvey Norman, Spotlight, Fantastic Furniture, SuperCheap Auto, BCF, Sheridan, Early Settler and Eureka Street Furniture have already established as part of a community title development.

Consent was granted for Bunnings Warehouse at the site on 4 March 1999 which operated up until the opening of the new Bunnings Warehouse on the Northern Distributor Road in 2016. Since then, the site has remained vacant, however, has been used for temporary events on some occasions.

Council granted consent for a *Vehicle Sales or Hire Premises* at the site in 2020. It is understood that that the consent for the *Vehicle Sales or Hire Premises* has not been acted upon. It therefore may be appropriate for Council to seek the surrender of the earlier consent pursuant to the Section 4.17 of the Environmental Planning and Assessment Act 1979 especially as the previous consent and the proposed development cannot work together.

**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 1979 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 (OEI) (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.

In consideration of these matters, the land is not mapped high biodiversity values, nor is the land high biodiversity sensitivity land under Council's LEP. The development is located in a highly disturbed urban environment and as such, the development will not have a negative impact on any endangered ecological communities, threatened species or habitat. In this regard, no further assessment with respect to biodiversity matters is considered warranted.

**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,*

The application is considered to be consistent with aims (a) and (b) as listed above.

**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:

<b>Land Zoning Map:</b>	<b>B5 Business Development</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
<b>Groundwater Vulnerability Map:</b>	<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:

- (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.

Notwithstanding the above, the subject land is burdened by a number of easements; an easement for electricity purposes is located along the southern boundary of the lot; two rights of carriageways are located where the eastern boundary adjoins Redmond Place.

The existing car park on Lot 2 is currently subject to an easement for car parking in favour of the Homemaker Centre, to formalise the situation where a customer of the former Bunnings would park on the Bunnings site and then walk to other businesses in the Centre. This arrangement will remain in place as part of this development.

**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 B5 Business Development zone. The proposed development is characterised as *Specialised Retail Premises* and *Business Identification Signage* under OLEP 2011. Pursuant to OLEP 2011 *Specialised Retail Premises* is defined below:

***specialised retail premises*** means a building or place the principal purpose of which is the sale, hire or display of goods that are of a size, weight or quantity, that requires -

- (a) a large area for handling, display or storage, or
- (b) direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire,

but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale, hire or display of other goods referred to in this definition.

**Note -**

Examples of goods that may be sold at specialised retail premises include automotive parts and accessories, household appliances and fittings, furniture, homewares, office equipment, outdoor and recreation equipment, pet supplies and party supplies.

While no tenants have been finalised, the development as described in this application is considered to satisfy the above definition, particularly as the development will provide tenancies with a large open floor area which will enable occupation by those retailers stocking a high quantity of goods or goods of a particular size or weight that requires a large area for sale, hire, handling, and display. Furthermore, the site layout will provide for direct vehicular access to each tenancy for the loading and unloading of such goods. Conditions of consent will require any future tenants to be consistent with the above definition.

Pursuant to OLEP 2011 *Business Identification Signage* is defined below:

***business identification sign*** means a sign -

- (a) *that indicates -*
  - (i) *the name of the person or business, and*
  - (ii) *the nature of the business carried on by the person at the premises or place at which the sign is displayed, and*
- (b) *that may include the address of the premises or place and a logo or other symbol that identifies the business,*  
*but that does not contain any advertising relating to a person who does not carry-on business at the premises or place.*

The proponent has provided signage zones. Conditions will require the sign content to be consistent with the above definition.

### **1 - Objectives of the B5 Business Development Zone**

- *To enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*

The development is not averse to the above listed objects of the B5 Business Development Zone.

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

- **Clause 7.6 Groundwater Vulnerability** – This clause seeks to protect hydrological functions of groundwater systems and protect resources from both depletion and contamination. Orange has a high-water table and large areas of the LGA, including the subject site, are identified with “Groundwater Vulnerability” on the Groundwater Vulnerability Map. 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 development is considered satisfactory in this regard.
- **Clause 7.7 Drinking water catchments** - This clause is to protect drinking water catchments by minimising the adverse impacts of development on the quality and quantity of water entering drinking water storages. The site is partially covered by this overlay. 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** – This clause stipulates that development consent must not be granted to development unless the consent authority is satisfied that any services (water, sewer, electricity, stormwater and road access) that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required. It is considered that all necessary utility services are available to the land and can be adequate for 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 potential for contamination of the site is considered low. The subject land is well-established for commercial 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 the proposed development.

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

#### Clause 2.118 - Development with Frontage to Classified Road

The primary objective of this clause is to ensure that new development does not compromise the effective and ongoing operation and function of classified roads. The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

- (a) *where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
  - (i) *the design of the vehicular access to the land, or*
  - (ii) *the emission of smoke or dust from the development, or*
  - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

In consideration of the above matters:

- The Mitchell Highway adjoins the site to the east. The road is classified as a state road and is under the control of TfNSW. The site has two existing public access points to the highway and an additional service/delivery vehicle access for the former Bunnings building. These will be utilised for the proposed development.
- Council's Technical Services advises that the existing intersection treatments into the site from the Mitchell Highway were designed to accommodate traffic associated with the ultimate realisation of the Homemaker Centre as envisaged throughout the master planning process and thus the proposed development will not necessitate the upgrading of existing intersections.
- The development is not of a type that is sensitive to traffic noise or vehicle emissions.

#### 2.121 - Traffic-Generating Development

This section applies to development specified in Column 1 of the Table to Schedule 3 that involves -

- (a) new premises of the relevant size or capacity, or
- (b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.

The proposed development does not meet the criteria/thresholds listed in Schedule 3 requiring referral to TfNSW. The proposal will utilise an existing vacant commercial building and will not involve the enlargement or extension of the floor area. Furthermore, whilst the building has been vacant for some years now, the site has a certain level of traffic already attributed to it due to its past use by Bunnings Warehouse. The proposed development is not expected to exceed traffic movements that would have been associated with its previous use.

#### **State Environmental Planning Policy (Industry and Employment) 2021**

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes. Whilst no specific signage detail is known at this time, signage panels for future signage have been identified at this stage. Conditions of consent are recommended to address the location and future messaging of all future signs.

Chapter 3 of the SEPP require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 5. In accordance with the provisions stipulated under Schedule 5 of the SEPP, the assessment below is provided.



Matters for Consideration	Comment	Complies
<p><b>1. Character of the area</b></p> <p>Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</p> <p>Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?</p>	<p>The area is characterised as a commercial precinct located on the high-profile eastern entrance to the City. Signage within the area is mixed, but the predominant theme is wall, awning signage, window signage and a freestanding pylon signage (multi-tenancy pylon sign for the Orange Grove Homemakers Centre and car yard signage opposite the site). The proposed development provides new signage zones attached to/flush with the parapet of the building, above each of the proposed tenancies.</p>	<p>Yes</p>
<p><b>2. Special areas</b></p> <p>Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?</p>	<p>The development is not located within a special area. The development is consistent with this requirement.</p>	<p>Yes</p>
<p><b>3. Views and vistas</b></p> <p>Does the proposal obscure or compromise important views?</p> <p>Does the proposal dominate the skyline and reduce the quality of vistas?</p> <p>Does the proposal respect the viewing rights of other advertisers?</p>	<p>All of the proposed signage is attached to the façade of the subject tenancies. The proposal will not impact on any views within the area, nor will it dominate the skyline as the signage is proposed to be contained wholly within the envelope of the structure. No viewing rights of other advertisers will be affected by the proposed signage.</p>	<p>Yes</p>

Matters for Consideration	Comment	Complies
<p><b>4. Streetscape, setting or landscape</b></p> <p>Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?</p> <p>Does the proposal contribute to the visual interest of the streetscape, setting or landscape?</p> <p>Does the proposal reduce clutter by rationalising and simplifying existing advertising?</p> <p>Does the proposal screen unsightliness?</p> <p>Does the proposal protrude above buildings, structures or tree canopies in the area or locality?</p>	<p>The signage zones will need to be reduced to 25% of the façade of each tenancy to comply with DCP requirements. The new signage for each tenancy may only comprise <i>business identification signage</i> and as such is expected to be compatible with the approved signage in the Homemaker Centre. Furthermore, business identification signage by its very nature is generally simple in design and detailing and thus expected to have minimal impact on the streetscape/setting/landscape.</p> <p>The home maker centre is of a high design quality and therefore there is no unsightliness to be screened.</p> <p>The proposed new signage will be of an appropriate scale for the area and buildings, subject to compliance with conditions of consent.</p>	<p>Yes</p>
<p><b>5. Site and building</b></p> <p>Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?</p> <p>Does the proposal respect important features of the site or building, or both?</p> <p>Does the proposal show innovation and imagination in its relationship to the site or building, or both?</p>	<p>The signage proposed to be installed on the upper element of the architectural features and relates appropriately to the scale of the building, and respects and maintains the architectural features of the building.</p>	<p>Yes</p>
<p><b>6. Associated devices and logos with advertisement and advertisement structures</b></p> <p>Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?</p>	<p>The proposed signage will have the appropriate platform to allow the structure to be placed on. The proposed parapet signage will be connected to electricity.</p>	<p>Yes</p>

Matters for Consideration	Comment	Complies
<b>7. Illumination</b> Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation? Can the intensity of the illumination be adjusted, if necessary? Is the illumination subject to a curfew?	The signage is not proposed to be illuminated.	Yes
<b>8. Safety</b> Would the proposal reduce the safety for any public road, pedestrians, or bicyclists? Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage will not reduce safety for vehicles, pedestrians, and cyclists due to setback of the building from Mitchell Highway.	Yes

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

The proposed development is not contrary to any matter contained within Draft Amendments currently on exhibition.

**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)**

**Development Control Plan 2004**

Development Control Plan 2004 ("the DCP") applies to the subject land (*Part 8.4 Eastern Gateway Development*). An assessment of the proposed development against the relevant Planning Outcomes will be undertaken below.

**Part 8.4 – Eastern Gateway Development**

- *Applications clearly demonstrate that the development will not detract from the role of the CBD as a regional centre.*

The proposed development will utilise an existing vacant commercial building purposely designed for large format/bulk retailing. The site has remained vacant since 2016 and the proposed development will facilitate the use of the space for specialised/bulk retail opportunities within an appropriate employment and retail precinct. This type of retailing at this location has been supported by a retail development strategy prepared by Leyshon Consulting in 1997 and is consistent with the overall masterplan for this area. The proposed specialised retail tenancies are unlikely to detract from the role of the Central Business District as the main business centre in the city. The establishment of such premises

within the CBD is somewhat constrained by the lack of large sites that can provide sufficient floor area for stock and display, parking adjacent to the premises and satisfactory arrangements for delivery/service vehicles.

- *Adequate onsite parking, manoeuvring and loading facilities are provided.*

Car parking for this type of use is calculated at one space per 50m<sup>2</sup> gross floor area. The building has a gross floor area of 4960m<sup>2</sup>, requiring 99.2 car parking spaces. The site currently has in excess of 200 parking spaces. The parking spaces located along the frontage of the building comprising 24 spaces are proposed to be removed to facilitate the proposed new shopfronts and awning. An additional 29 parking spaces will be provided to the eastern side of the building (former nursery). Loading will be undertaken at the rear of the site, as per existing access arrangements.

- *Buildings have a high level of architectural design, with particular attention given to highway setbacks, façade features, external materials, colour schemes and advertising.*

Detailed consideration was given to the desired design and presentation of the precinct through the preparation of the DCP and masterplan. This included requiring development within the precinct to have consistent architectural features such as towers, recessed wall panels, awnings and building finishes (neutral colour tones) to ensure a cohesive complex. The design of the former Bunnings building somewhat departs from these principals through its architectural features and colours. The re-development of the site will, however, ensure that consistency with the remainder of the precinct is achieved. The proposed alterations/additions to the external appearance of the building will involve providing a continuous steel framed awning along the shopfronts, and providing powder coated aluminium framed shopfront glazing and doors to each new tenancy. A neutral colour tone will be applied to the building façade which is consistent with the approved colour scheme for the Homemaker Centre.

- *Building height, façade features and colour schemes are consistent with the existing stages of development (i.e., the Orange Homemaker Centre buildings approved prior to the date of this Plan).*

There will be no change to the overall height, bulk or scale of the existing building. The proposed materials and finishes as discussed above will complement the other buildings within the precinct.

- *Access to Mitchell Highway is limited to those entrances established prior to this Plan coming into effect.*

The proposed development will utilise the existing vehicle accesses into the site.

- *Advertising is limited to flush-wall signs wholly contained within the elevation of the building, with signage comprising up to 25% of the façade area. There are no additional pole signs fronting the Mitchell Highway.*

The proposed signage comprises above awning signage panels which will be wholly contained within the building elevation above each tenancy. The signage is considered to be 'flush wall signs' and are consistent with signage approvals granted for other premises within the homemaker centre. The signage will need to comprise less than 25% of the façade area of each tenancy. Conditions will be included in the consent to this affect.

The buildings architectural features will not be affected as well as viewing rights of adjoining tenancies signage. There are no additional pole signs proposed fronting the Mitchell Highway.

- *Appropriate measures are taken to protect the adjacent water-supply catchment from pollution.*

The proposed development will not adversely impact upon the water supply catchment as it does not introduce additional impacts upon water quality within the drinking water catchment. The development will retain the existing stormwater drainage currently servicing the site. The potential for the development to impact upon water quality is considered minimal.

- *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 3.5m 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.*

Landscaping of the site currently relies upon landscaped beds to the east, north and west of the site, with established landscaping on the adjoining Lot 1 along the eastern boundary of the site, which softens the view of the site from the highway which is generally in good condition. Internally, a number of small garden beds have been provided in and around car parking areas, however, these landscaping areas and plantings within have either severely declined or died due to the lack of maintenance associated with the vacancy of the building.

In this respect, it is considered appropriate that a landscaping plan and maintenance strategy be prepared and implemented as part of any consent granted to reinstate these areas to an appropriate standard as well as ensure these areas are maintained in perpetuity.

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

The development is not inconsistent with the provisions prescribed by the regulations.

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

##### **Context and Setting**

The proposal is located within an existing bulky goods centre. It is considered that the proposal is appropriate for the location and will continue to contribute to the neighbourhood character of this sector of the city.

##### **Visual Impacts**

The proposed alterations to the building will be a significant improvement by comparison to the current façade, which has been neglected of the past five years. The alterations/additions contribute positively to the Gateway Precinct by means of contemporary architectural design with simple square lines, extensive commercial glazing, awning and neutral colour tone. Roof mounted mechanical plant will be set within

architectural parapet. The 'back of house' elements will not be easily viewed from public areas. The proposed signage is not expected to detract from the existing development in the locality given it relates to business identification signage only.

Additional and retained landscaping of the site, as previously discussed, will create an appropriate standard of visual amenity commensurate with the site's high-profile location.

The visual impacts of the proposed development are considered acceptable.

### **Access, Parking and Traffic**

The potential for traffic impacts relates mainly to the capacity of the road network to accommodate the increase in traffic levels; and the ability for vehicles to enter, exit and use the site without disruption to traffic flow along the Mitchell Highway.

The Mitchell Highway is a classified road under the control of TfNSW and represents the principal route to and from the Orange Grove Homemakers Centre. Primary public access to the Orange Grove Homemakers Centre is provided at two locations along the Mitchell Highway frontage. These access points provide protected right hand turns into the site; right turns out of the site; and a slip lane for a left turn into the site at the southern entrance of the development along the Highway. Secondary entrances to the site are located on Lone Pine Avenue comprising a roundabout and service-vehicle entry. An additional access point is available for the former Bunnings building via Redmond Place which provides the premises with a dedicated access for deliveries and loading/unloading.

The proposed development does not result in changes to vehicle access or intersection layout or represents traffic generating development thus referral to transport for NSW has not been necessary.

Council's Technical Services Division advises that the adjoining the road network, particularly the Mitchell Highway and existing intersection treatments into the site were designed to accommodate traffic associated with the ultimate realisation of the Homemaker Centre, as envisaged through the master planning process.

Furthermore, the performance of the existing bulky goods retailers within this particular Centre reveals traffic generation is significantly less than figures reported in the earlier version of *Guide to Traffic Generating Developments* by the RTA (now TfNSW) which was used in the planning of this precinct.

Sufficient off-street parking will be provided, and the site layout allows vehicles to enter and exit the site in a forward direction at all times. A separate delivery/loading and unloading zone is provided at the rear of the site via Redmond Place which minimises the interface between customer areas and service areas. Given there is an increase in tenancies at this particular site and associated loading/unloading zones, a Vehicle Management Plan has been devised at the request of Council's Technical Services to ensure the efficient operation of the loading facilities and to ensure safety of employees, suppliers and customer can be managed to minimise risk. The VMP will need to be provided and agreed to by each tenant as part of the lease agreement of the individual tenancies.

In consideration of the above, the proposed development is unlikely to compromise the effective and ongoing operation and function of the highway or significantly impact parking or loading facilities and vehicle manoeuvring areas.

**Environmental Impacts**

The subject site is a highly modified site of a long-established commercial centre. The proposed development will not disrupt any significant vegetation or Endangered Ecological Communities in the locality.

**Economic Impacts**

The proposed development may generate positive economic effects associated with construction, employment, local business expansion and the contribution of the city as a major regional business centre.

**Construction Impacts**

The proposed development has the potential to create short-term impacts associated with noise, parking of construction worker vehicles; deliveries to site etc. These impacts are unavoidable for a construction of this size in an urban environment, but whilst they are unavoidable, they are only short-term for the duration of the construction phase. Notwithstanding this, given the context and setting of the development site, the construction impacts need to be carefully managed and as such the conditions of consent will address matters hours of work, dust, noise, waste etc. to ensure minimal impact on surrounding uses during this period.

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

The development is considered to be suitable for the site. The subject land does not present any known physical attributes which may constrain the development. The subject site does not contain remnant vegetation or significant landscape features. It is considered that the development will relate appropriately to the landform. The land is not subject to known technological or natural hazards.

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

The proposed development is not defined as advertised or notified 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, and guidelines etc. that have been considered in this assessment.

**INTERNAL REFERRAL ADVICE**

The application was not required to be referred to Council's Building Surveyor and Development Engineer. Requirements of the Building Surveyor and the Development Engineer has been included in Notice of Determination.

**SUMMARY**


The proposed development is permissible with the consent of Council. The proposed development generally 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 subject to certain conditions. 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, D22/15629 [↓](#)
- 2 Plans, D22/14496 [↓](#)



	<p style="text-align: center;"><b>ORANGE CITY COUNCIL</b></p> <p style="text-align: center;">Development Application No <b>DA 17/2022(1)</b></p> <p>NA22/162 <span style="float: right;">Container PR17469</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: Sentinel Homemaker (Open Ended) Pty Ltd  
 Applicant Address: PO Box 2270  
 DANGAR NSW 2309  
 Owner's Name: Sentinel Homemaker (Open Ended) Pty Ltd  
 Land to Be Developed: Lot 2 DP 270204 - 13/5295 Mitchell Highway, Orange  
 Proposed Development: Specialised Retail Premises (use and alterations and additions) and  
 Business Identification Signage

### Building Code of Australia building classification:

Class to be determined by Certifier

### Determination made under Section 4.16

Made On: 25 March 2022  
 Determination: **CONSENT GRANTED SUBJECT TO CONDITIONS DESCRIBED BELOW:**

**Consent to Operate From:** 26 March 2022  
**Consent to Lapse On:** 26 March 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) The approved stamped plans prepared by Curious Us Pty Ltd (4 sheets)
  - (b) The approved stamped plans prepared by Inscape Project Group (2 sheets)
  - (c) Statements of environmental effects or other similar associated documents that form part of the approval, including vehicle movement plan.

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

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 17/2022(1)**

2

**Conditions (cont)**

**PRESCRIBED CONDITIONS**

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

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

- (4) Prior to the issue of a Construction Certificate, Development Consent No. DA347/2019 for *Vehicle Sales or Hire Premises (change of use, alterations and additions to existing building) and Business Identification Signage* shall be surrendered in accordance with Section 67 of the Environmental Planning and Assessment Regulation 2021.
- (5) Full details of external colours and finishes of external materials are to be submitted to and approved by Council's Manager Development Assessment prior to the issue of a Construction Certificate.
- (6) A detailed landscaping plan shall be prepared by a suitability qualified landscape architect and be submitted to and approved by Council's Manager Development Assessment prior to issuing of a Construction Certificate. The landscape plan shall include the following provisions:
  - (a) Retention of the two London Plane trees at the point of the existing access to the car park. The western car parking space adjacent to the most western tree shall be converted to a garden bed.
  - (b) Landscaping within the landscaping strip along the northern and western boundaries of the carpark and within the centre of the car park area of Lot 2 shall be reinstated. A small tree to a minimum height of 5m shall be planted within each garden splay area. Plants species shall be appropriate for the location and the Orange climate.
  - (c) The individual trees located in the centre of the car park area that are of poor quality shall be removed and replaced with appropriate species.The landscape plan shall be supported by a *landscape maintenance strategy* for the landowner to administer following the planting of landscaping. The strategy is to address maintenance issues such as, but not limited to tree and shrub survival, irrigation, soil testing, staking, fertilizing and mulching. The maintenance strategy shall also include an inspection regime/monitoring program.
- (7) Prior to the issue of a Construction Certificate, the signage zones shown on the architectural plans by *Curious Us Pty Ltd* shall be reduced to 25% of the façade area of each tenancy in accordance with the requirements of the Orange City Council Development Control Plan 2004. The revised plan is to be approved by Council's Manager Development Assessment.
- (8) Prior to the issue of a Construction Certificate plans of the staff carpark adjoining tenancy 1 shall be submitted to the Principal Certifying Authority for approval. All parking spaces and access aisle dimensions shall be in accordance with AS 2890.1 (Off-street car parking). Signage and pavement arrows shall be installed to regulate traffic flow through the carpark.
- (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.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 17/2022(1)**

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3

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

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- (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.

**Prior to works commencing (cont)**

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- (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**

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- (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) All construction/demolition work on the site is to be carried out between the hours of 7am and 6pm Monday to Friday inclusive, 7am to 5pm Saturdays and 8am to 5pm Sundays and Public Holidays. Written approval must be obtained from the General Manager of Orange City Council to vary these hours.
- (15) 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.
- (16) 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.
- (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.

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

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- (18) Landscaping shall be installed in accordance with the approved plans.
- (19) Prior to the issue of an Occupation Certificate all works identified in the Vehicle Movement Plan prepared by Monteath and Powys (Revision 2 dated 23 February 2022) and plan (reference number 21/0439 dated 11 November 2021 Revision 2) shall be completed.
- (20) 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.
- (21) 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.
- (22) 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.
- (23) 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

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 17/2022(1)**

4

**Conditions (cont)**

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**

- (24) Following commencement of occupation, each tenancy shall operate only between the times stated as follows:

Monday to Friday	9am to 6pm, except Thursday's where trading to 7pm is permitted
Saturday	9am to 5pm
Sunday	10am to 4pm

Other internal operations such as cleaning, preparation, and office administration may be undertaken outside of the above hours provided no disturbance to the amenity of the neighbourhood occurs. Any variation to these hours is to be subject to the prior consent of Council.

- (25) Outdoor lighting must be in accordance with Australian Standard AS 4282-1997 - Control of the obtrusive effects of outdoor lighting.  
Any ancillary light fittings fitted to the exterior of the building are to be shielded or mounted in a position to minimise glare to adjoining properties and motorists.
- (26) All tenancies shall be used in accordance with the Orange Local Environmental Plan 2011 Dictionary definition of "specialised retail premises". Separate consent will be required for any alternative land uses not permitted as exempt or complying development.
- (27) Outdoor storage of materials including garbage bins, stock, plant or equipment must not occur within the service delivery area located along the southern side of the building. The service delivery areas shall be maintained in a clean and tidy manner at all times.
- (28) All deliveries and pick-up of goods and materials to and from the site shall be in accordance with the Vehicle Movement Plan prepared by Monteath and Powys (revision 2 dated 23/02/2022). The boom gates and signage identified in plan (ref no. 21/0439 dated 11/11/2021 rev 2) shall be maintained in full working order.
- (29) Arrangements shall be made for the regular removal and disposal of waste materials.
- (30) Landscaping in accordance with the approved plans must be maintained in a healthy state, and in perpetuity by the existing or future owners and occupiers of the property.
- (31) All signage must only occur within the approved signage zones and must comprise *business identification signage* only. 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.
- (32) 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*.

**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

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 17/2022(1)**

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5

**Conditions (cont)**

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**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 17/2022(1)**

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6

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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:**

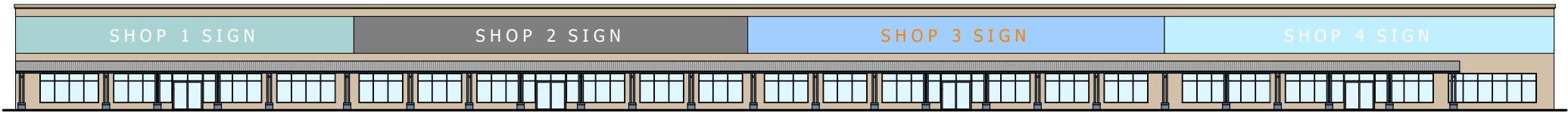
**PAUL JOHNSTON - MANAGER DEVELOPMENT ASSESSMENTS**

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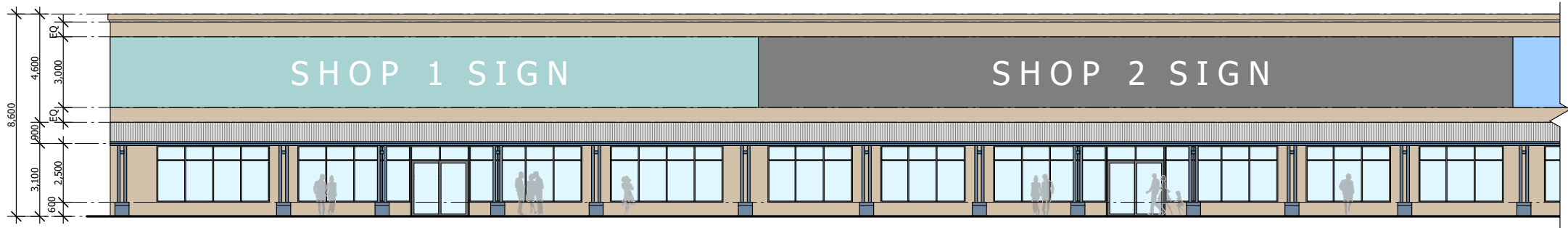
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26 March 2022

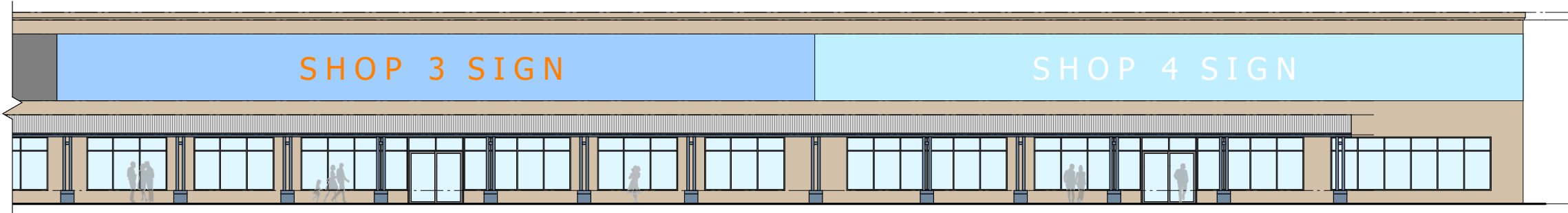
**NOTE:**  
01. EXISTING SITE CONDITIONS TO BE CONFIRMED ON SITE  
PRIOR TO COMMENCEMENT OF ANY WORKS.  
02. REFER TO CONSULTANTS DOCUMENTATIONS &  
SPECIFICATIONS FOR PROPOSED BUILDING WORKS  
INCLUDING AWNING & COLUMN DETAILS.



01 OVERALL ELEVATION  
EXISTING BUNNINGS BUILDING  
NORTH 1:400



02 ELEVATION  
EXISTING BUNNINGS BUILDING  
NORTH 1:200



PRELIMINARY  
NOT FOR CONSTRUCTION



PROPOSED SHOPFRONT UPGRADE

PROJECT NO:3551    DRAWING NO:3551-SK001    REV:A    DATE:01.12.2021    SCALE AT A3:AS SHOWN

ORANGE HMC

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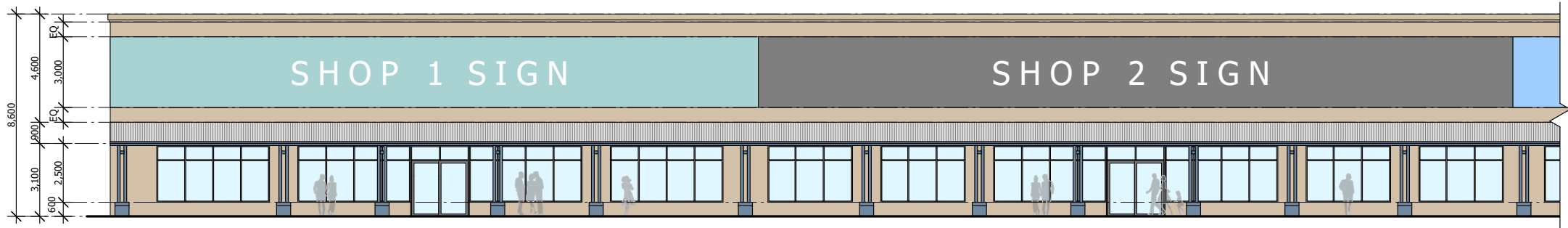




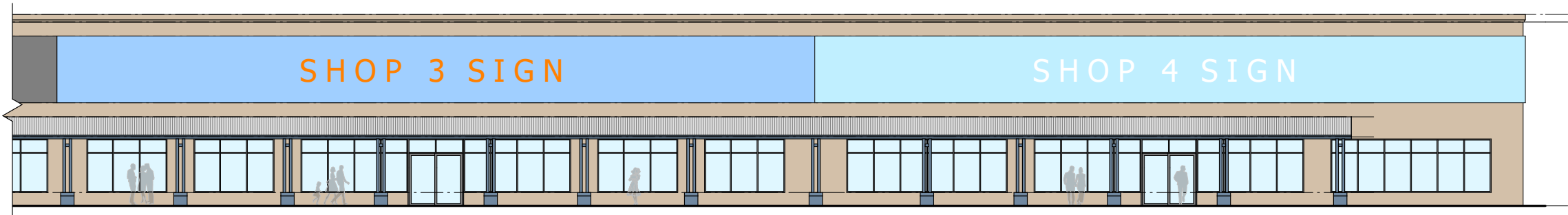
**NOTE:**  
01. EXISTING SITE CONDITIONS TO BE CONFIRMED ON SITE  
PRIOR TO COMMENCEMENT OF ANY WORKS.  
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01 OVERALL ELEVATION  
EXISTING BUNNINGS BUILDING  
NORTH 1:400



02 ELEVATION  
EXISTING BUNNINGS BUILDING  
NORTH 1:200



**PRELIMINARY**  
NOT FOR CONSTRUCTION



PROPOSED SHOPFRONT UPGRADE - SHEET 1

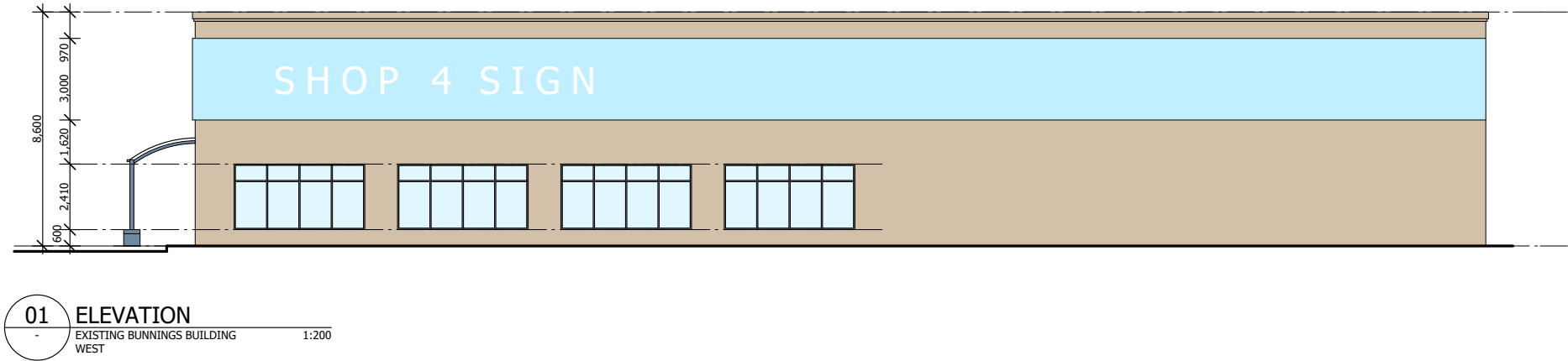
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ORANGE HMC

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- NOTE:**
- 01. EXISTING SITE CONDITIONS TO BE CONFIRMED ON SITE PRIOR TO COMMENCEMENT OF ANY WORKS.
  - 02. REFER TO CONSULTANTS DOCUMENTATIONS & SPECIFICATIONS FOR PROPOSED BUILDING WORKS INCLUDING AWNING & COLUMN DETAILS.



PRELIMINARY  
NOT FOR CONSTRUCTION

PROPOSED SHOPFRONT UPGRADE - SHEET 2

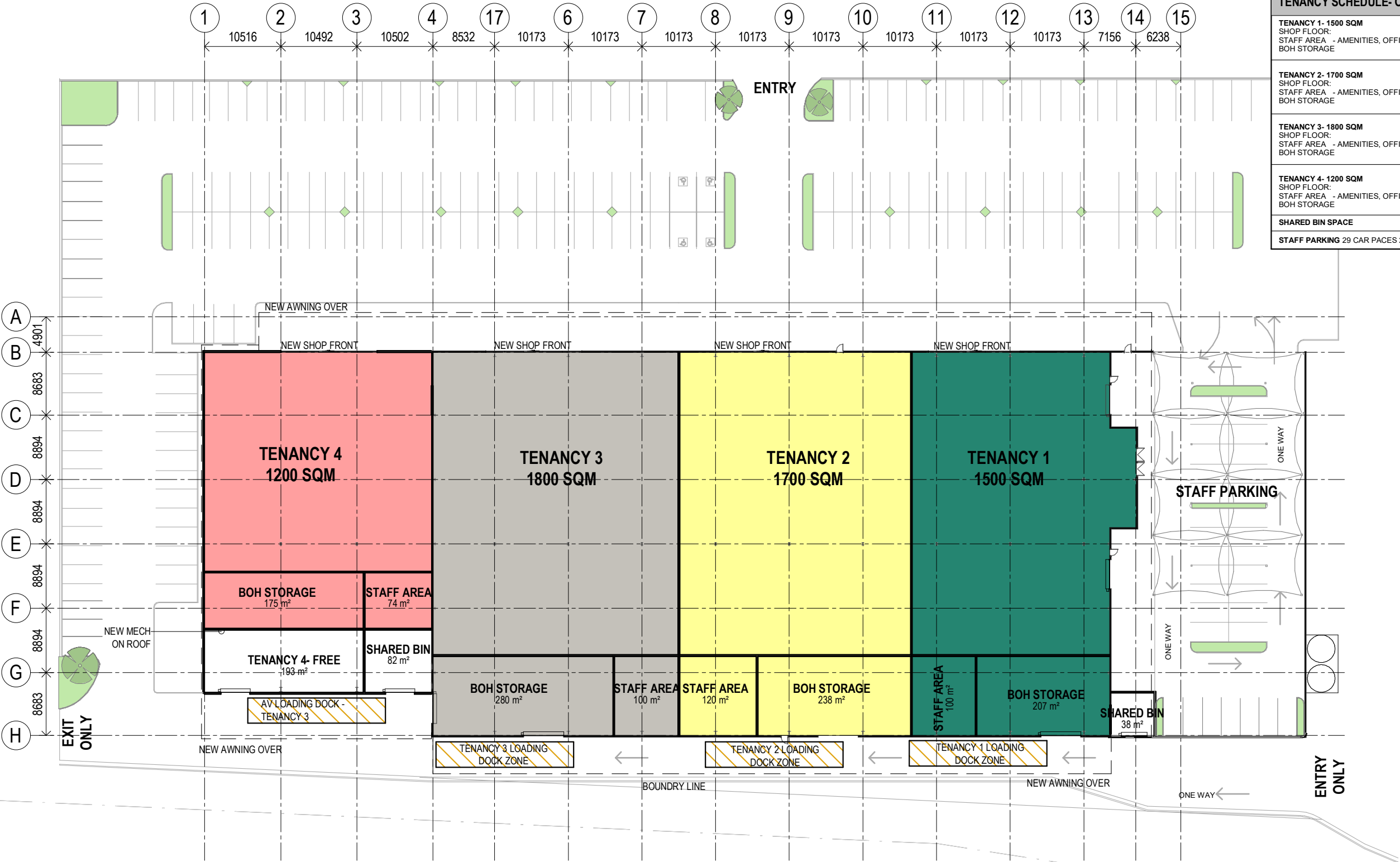
PROJECT NO:3551    DRAWING NO:3551-SK002    REV:B    DATE:07.12.2021    SCALE AT A3:AS SHOWN

ORANGE HMC



HOMEMAKERS CENTRE- ORANGE

TENANCY SCHEDULE- OPTION 2	
TENANCY 1- 1500 SQM	
SHOP FLOOR:	1195 SQM
STAFF AREA - AMENITIES, OFFICE + KITCHEN	100 SQM
BOH STORAGE	205 SQM
TENANCY 2- 1700 SQM	
SHOP FLOOR:	1340 SQM
STAFF AREA - AMENITIES, OFFICE + KITCHEN	120 SQM
BOH STORAGE	240 SQM
TENANCY 3- 1800 SQM	
SHOP FLOOR:	1420 SQM
STAFF AREA - AMENITIES, OFFICE + KITCHEN	100 SQM
BOH STORAGE	280 SQM
TENANCY 4- 1200 SQM	
SHOP FLOOR:	950 SQM
STAFF AREA - AMENITIES, OFFICE + KITCHEN	75 SQM
BOH STORAGE	175 SQM
SHARED BIN SPACE	120 SQM
STAFF PARKING	29 CAR PACES 2 DISABLED CAR SPACES



TENANCY LAYOUT - OPTION 2  
1 : 500 @ A3

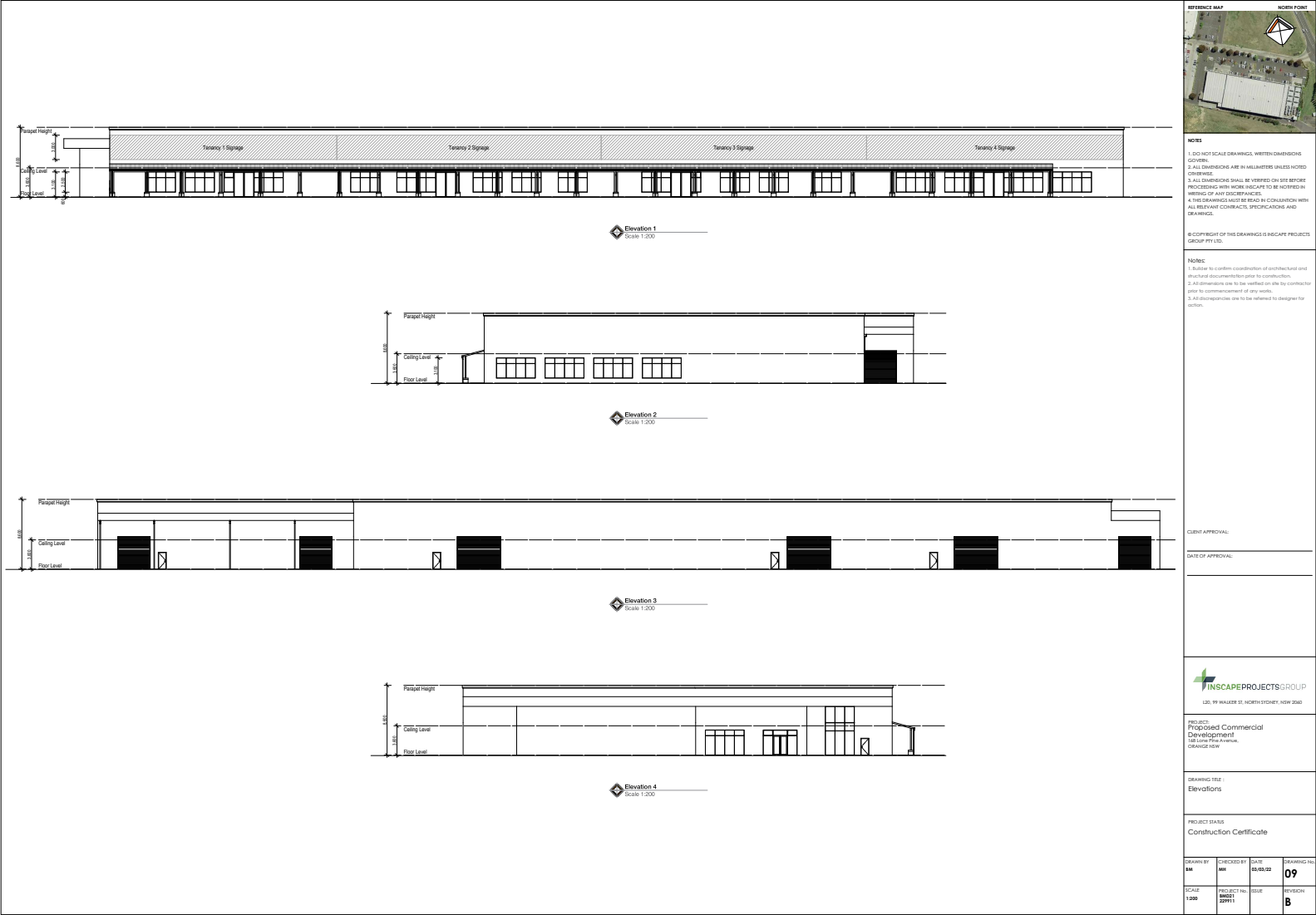
CONCEPT DESIGN ■

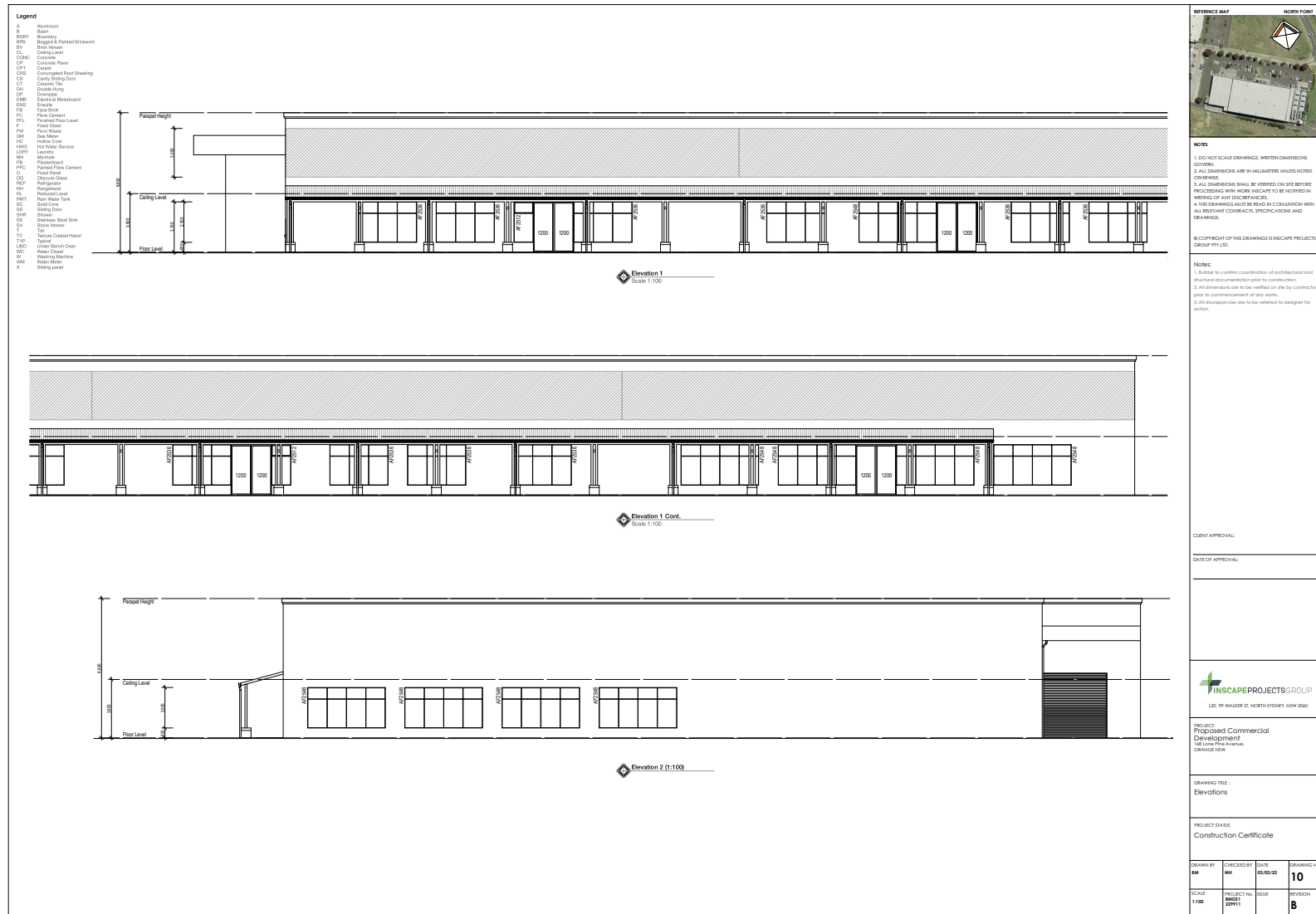
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SENTINEL GROUP











**2.3 DEVELOPMENT APPLICATION - DA 306/2021(1) - 142-158 LYSTERFIELD ROAD**

RECORD NUMBER: 2022/161

AUTHOR: Summer Commins, Senior Planner

**EXECUTIVE SUMMARY**

Application lodged	13 July 2021 Amended plans submitted 17 November 2021
Applicant/s	Mr T Miers
Owner/s	Mr WR and Mrs LM McDonell Mr DM and Mrs JM Brus
Land description	Lot 184 DP 750401 – 142 Lysterfield Road Lot 1 DP 130391 – 142 Lysterfield Road Lot 188 DP 750401 – 158 Lysterfield Road
Proposed land use	Subdivision (Stage 1 - three residential lots and two development lots; Stage 2 - 84 residential lots, one public reserve lot and five roads; Stage 3 - nine residential lots) and Demolition (outbuildings and dwellings).
Value of proposed development	Not applicable

Council's consent is sought for urban residential subdivision of land in the developing Shiralee urban village. The proposal relates to three existing rural-residential parcels known as 142-158 Lysterfield Road (see locality at Figure 1 below, NB: 154, 158 & 160 are collectively known as one parcel of land known as 158 Lysterfield Rd).



Figure 1 – locality

The proposal involves staged residential subdivision of the existing parcels as follows:

- Stage 1: subdivision to excise three (3) existing dwellings on three separate lots and create two development lots
- Stage 2: subdivision of the two (2) development lots to create 84 residential lots, one (1) public reserve lot and five roads
- Stage 3: subdivision of two residential lots created in Stage 1 to create nine (9) residential lots.

The completed subdivision is shown below.



**Figure 2 – proposed subdivision**

The following notable planning matters are considered in this assessment report:

- The land is partly subject to a minimum lot size of 700m<sup>2</sup> pursuant to Orange Local Environmental Plan (LEP) 2011. Several proposed lots will depart the prescribed minimum area. Council's consent is sought to vary the minimum lot size development standard in accordance with Clause 4.6 Exceptions to Development Standards. It is assessed that the proposed subdivision will substantially depart from the mixed residential density and lot sizes intended in the LEP. Notwithstanding, the proposed lots will not be incongruous in the developing residential neighbourhood.
- The proposed subdivision will also deviate from the Shiralee Development Control Plan (DCP) 2015 and Shiralee Masterplan in relation to lot typologies, lot sizes and road alignments. The proposed subdivision will be broadly consistent with the DCP and Masterplan. It is accepted that variations to the Masterplan will result as development proceeds in the urban village.
- It is proposed to realign internal roads within the proposed subdivision in order to retain outbuildings associated with existing dwellings on the parent parcels. The proposed road realignment will compromise the intersection of Lysterfield Road and proposed Apple Box Street, and road connections to the adjoining eastern parcel. After lengthy negotiations between the proponent and Council staff, Technical Services Division have agreed to a staggered T-intersection and retention of the impacted outbuildings.

- Stage 3 of the subdivision involves re-subdivision of parent parcels and demolition of all improvements, including the impacted outbuildings, above. It is considered unreasonable to realign Apple Box Street contrary to the intended Shiralee Masterplan when realignment will not be required at the completion of the subdivision.
- The proposed subdivision will result in various outbuildings having frontage to future public roads. In order to protect the developing residential streetscapes, Conditions are included requiring demolition or alteration of improvements to achieve a front setback consistent with the prescribed setback for the lot typology.
- The subdivision was latterly amended to include Stage 3 involving re-subdivision of two (2) of the large residential lots created in Stage 1. The later amendment has resulted in a conflict in relation to the proposed alignment of Apple Box Street. Furthermore, contamination investigation has not extended to proposed Lots 91-99, which are currently rural residential parcels. It is considered reasonable to deduce that Stage 3 will also be suitable for residential land use, based on the findings of the submitted contamination investigation for Stages 1 and 2. However, contamination clearance will be required for Stage 3 lots prior to subdivision release.
- 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. Stage 2 involves the creation of public reserve Lot 90 with site area of 4,068m<sup>2</sup>. The proposed public reserve is consistent with the planned public reserve contained in the Shiralee Masterplan Area H. The public reserve is partly subject to PMF flooding associated with Blackman's Swamp Creek. It is estimated that 1,300m<sup>2</sup> of the public reserve lot is unencumbered land (subject to survey and clarification of definition). The matter pertaining to compensation for the provision of public open space has been addressed via planning agreement that has been negotiated with the applicant. Detailed discussion provided within the report.

The proposed development comprises advertised development in accordance with Council's Community Participation Plan 2019. At the completion of the exhibition period, no submissions had been received.

The proposed subdivision will facilitate ongoing development of the Shiralee urban village. The development will depart in some respects from the operative planning controls, however, will not be incongruous in the emerging residential neighbourhood. Approval of the application is recommended, subject to conditions to mitigate and manage arising impacts.

### **DECISION FRAMEWORK**

Development in Orange is governed by two key documents, the 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 provide some assessment criteria in specific circumstances.

Uses are either permissible or not. The objectives of each zoning and indeed the aims of the LEP itself are also to be considered and can be used to guide decision making around appropriateness of development.

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

#### **DIRECTOR'S COMMENT**

This application would provide 94 new lots in the southern portion of the Shiralee estate. In terms of being able to achieve full compliance with the subdivision layout identified in the Shiralee Master Plan, this site is somewhat challenging due to the existing houses on the properties. The result is that the proposal would provide for 13 less allotments than planned for. Overall, there are no planning issues with the proposal. It is unreasonable to expect the developer to be able to achieve provision of all the lots. The loss of 13 lots in the overall yield will have an impact on the overall developer contributions collected to provide public services and assets. In order to minimise the impact of this loss, negotiations have been had with the developer, who has certainly been amenable to assisting Council.

The applicant has indicated their willingness to enter into a Planning Agreement to transfer the open space land identified within this subdivision directly to Council in lieu of charging an open space contribution amount applicable per lot. The value of the contributions and that of the land in question is of almost equal value, so this Planning Agreement to transfer the parkland is simply an administrative process that will provide the community the Open Space designed for in the Master Plan of this subdivision. This approach provides an outcome for the applicant and a good outcome for Council.

The recommendation of approval is supported.

#### **LINK TO DELIVERY/OPERATIONAL PLAN**

The recommendation in this report relates to the Delivery/Operational Plan strategy “10.1 Preserve - 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 306/2021(1) for *Subdivision (Stage 1 – three (3) residential lots and two (2) development lots; Stage 2 - 84 residential lots, one (1) public reserve lot and five (5) roads; Stage 3 – nine (9) residential lots) and Demolition (outbuildings and dwellings) at Lot 184 DP 750401 and Lot 1 DP 130391 – 142 Lysterfield Road, and Lot 188 DP 750401 – 158 Lysterfield Road, 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 urban residential subdivision of land at 142-158 Lysterfield Road. The proposal involves staged subdivision of three existing parcels to create 94 residential lots, one (1) open space lot and five (5) new roads.

**Stage 1 – three (3) residential lots and two (2) development lots**

The existing dwellings and associated outbuildings will be excised on separate lots, and two (2) development lots will be created. Stage 1 will create the following parcels:

Lot	Site Area	Improvements
85	3,930m <sup>2</sup>	Dwelling house and outbuildings
86	2,397m <sup>2</sup>	Dwelling house and outbuildings
87	2.739ha	Development lot
88	3.780ha	Development lot
89	5689m <sup>2</sup>	Dwelling house and outbuildings

Urban services and upgraded access to the proposed lots will be deferred pending further subdivision in Stages 2 and 3.

Stage 1 subdivision is depicted below (see Figure 3).

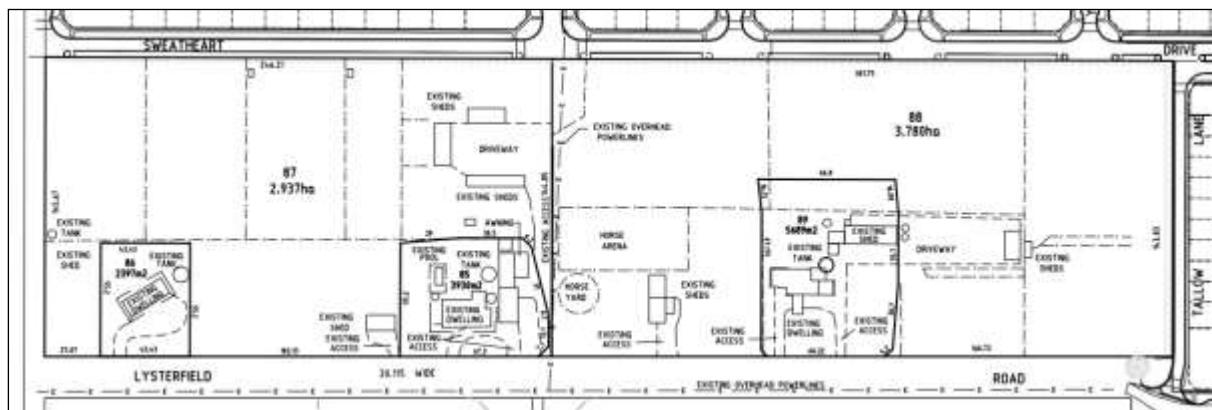


Figure 3 – proposed Stage 1 subdivision

### Stage 2 – 84 residential lots, one (1) public reserve lot and five (5) new roads

The development lots created in Stage 1 will be further subdivided to create 84 residential lots. The proposed lots will range in area between 351m<sup>2</sup> and 714m<sup>2</sup> and comprise a mix of Standard, Medium and Compact Lots as defined in the Shiralee DCP 2015. The lots will be fully serviced to a residential standard.

Lysterfield Road and Sweetheart Drive will be upgraded at the site frontages to full or half road construction. Five (5) new internal local streets will be constructed to service the proposed lots. Each lot will have direct frontage and access to an existing or proposed public road.

A public reserve lot will be created in the northern extent, and comprise site area of 4,068m<sup>2</sup>. Various outbuildings on the development lots will be demolished in conjunction with subdivision civil works.

The proposed Stage 2 subdivision is depicted below (see Figure 4).



Figure 4 – proposed Stage 2 subdivision

### Stage 3 – nine (9) residential lots

Proposed Lots 85 and 86 created in Stage 1 will be further subdivided to create nine residential lots. The proposed lots will range in area 599m<sup>2</sup> and 937m<sup>2</sup> and comprise Compact and Standards lots as defined in the Shiralee DCP 2015.

Existing improvements on the proposed lots (dwellings, water tanks, sheds and swimming pool) will be demolished. The proposed lots will be serviced to an urban standard and have frontage and access to public roads created in Stage 2.

The proposed Stage 3 subdivision is depicted below (see Figure 5).



Figure 5 – proposed Stage 3 subdivision

## MATTERS FOR CONSIDERATION UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

### Section 1.7 Application of Part 7 of the *Biodiversity Conservation Act 2016* and Part 7A of the *Fisheries Management Act 1994*

Pursuant to Clause 1.7:

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

In consideration of this section, the development is not likely to impact terrestrial and aquatic environments. In this regard:

- The subject and adjoining lands are not identified as biodiversity sensitive on the Orange LEP 2011 Terrestrial Biodiversity Map.
- The proposal does not involve removal of native vegetation. Clearing thresholds prescribed by regulation are not relevant to the application.
- 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 are introduced (non-native) species
  - the development does not involve removal of natural or built features that would provide habitat for native fauna.

Based on the foregoing consideration, a Biodiversity Assessment Report is not required, and the proposal suitably satisfies the relevant matters at Section 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 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,*
- (c) to conserve and enhance the water resources on which Orange depends, particularly water supply catchments,*
- (d) to manage rural land as an environmental resource that provides economic and social benefits for Orange,*
- (e) to provide a range of housing choices in planned urban and rural locations to meet population growth,*
- (f) to recognise and manage valued environmental heritage, landscape, and scenic features of Orange.*

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

**Clause 1.6 Consent Authority**

Clause 1.6 is applicable and states:

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

**Clause 1.7 Mapping**

The subject site is identified on the LEP maps as follows:

Land Zoning Map:	Land zoned R1 General Residential and RE1 Public Recreation
Lot Size Map:	Minimum Lot Size: 200m <sup>2</sup> , 400m <sup>2</sup> and 700m <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
Flood Planning Map:	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**

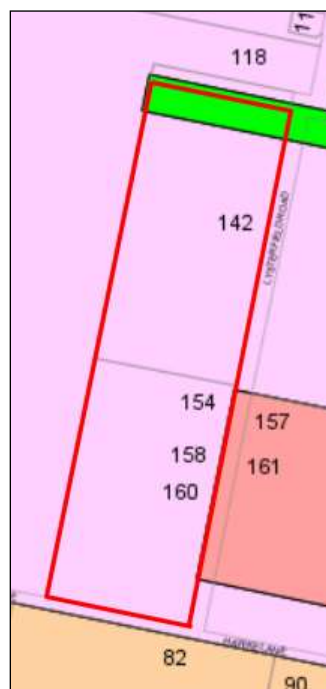
Clause 1.9A is applicable and states in part:

- (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 a relevant agreement, covenant, etc.

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

The subject land is zoned part R1 General residential and part RE1 Public Recreation (see Figure 6).



**Figure 6 - Zoning Map - Orange LEP 2011**

The proposed development is defined as “subdivision” 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**

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 proposed development will be consistent with the relevant R1 zone objectives. The proposal involves the release of residential lots to accommodate housing needs.

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 land uses.*
- *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 proposal will satisfy the RE1 zone objectives. That part of the land zoned RE1 will comprise a public reserve lot for use as public open space or recreational purposes.

**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 Torrens subdivision of the subject land in accordance with this clause.

**Clause 2.7 Demolition Requires Development Consent**

Clause 2.7 applies and states:

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

The proposal involves staged demolition of improvements over the development site 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.*

Pursuant to the Lot Size Map (refer below), the development site is subject to three minimum lot sizes:

- 200m<sup>2</sup> in areas shaded blue
- 400m<sup>2</sup> in areas shaded brown
- 700m<sup>2</sup> in areas shaded pink



Figure 7 - Minimum Lot Size Map - Orange LEP 2011

A total of 34 lots in Stages 2 and 3 will depart from the prescribed minimum lot size of 700m<sup>2</sup>: Lots 1-14, 20-23, 34-41, 46-49, 83-84 and Lots 98-99 (see Figure 8).



Figure 8 – proposed subdivision and overlay MLS map

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

Other lots in the proposed subdivision will comply with the prescribed minimum lot sizes of 200m<sup>2</sup> and 400m<sup>2</sup>.

#### 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 Clause 4.6(2), 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 700m<sup>2</sup> for part of the land (refer Figure 7 above).

A total of 34 lots in Stages 2 and 3 will depart from the prescribed minimum lot size of 700m<sup>2</sup>. Therefore, 36.5% of all proposed lots will not comply with the LEP development standard. The greatest variation to the development standard relates to Lots 7-10, each having proposed site area of 423.7m<sup>2</sup>. The percentage variation to the development standard is approximately 40%.

The proposal is supported by a written request pursuant to Clause 4.6(3). 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:

- Other lots within the proposed subdivision will substantially exceed the prescribed minimum lot sizes:
  - o Lots with a prescribed minimum lot size of 200m<sup>2</sup> will range in area between 470-500m<sup>2</sup>.
  - o Lots with a prescribed minimum lot size of 400m<sup>2</sup> will range in area between 480-520m<sup>2</sup>.
- Overall lot yield for the development site will not exceed the Shiralee Masterplan. The Masterplan provides for 107 lots, and a maximum of 94 lots will be provided at the completion of Stage 3.
- Retention of the existing dwellings and residential curtilages (at Stages 1 and 2) has impacted the master-planned subdivision layout, orientation of lots and proposed lot sizes.

- 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 Shiralee Masterplan.

Pursuant to Clause 4.6(4)(1), the written request to vary the minimum lot size development standard has considered the matters in Clause 4.6(3). The reasons to vary are acknowledged and accepted.

Notwithstanding, it is assessed that the proposed subdivision will be a substantial departure from the mixed residential density and lot sizes intended in the LEP. The proposed subdivision layout has had little regard to the prescribed minimum lot sizes across the subdivision; indeed, the proposed subdivision will involve a mean lot size of some 500m<sup>2</sup> and will not include lots with minimum areas of 200m<sup>2</sup> and 400m<sup>2</sup> as permitted. Furthermore, more than one-third of the proposed lots will depart the LEP development standard; and the largest percentage variation on the development standard will be some 40%.

In consideration of Clause 4.6(4)(b), 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. Should it be deemed suitable to vary the development standard, the proposal could be in the public interest as follows:

- 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 the Shiralee estate; 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 proposal will not be averse to the objectives of the R1 General Residential zone, albeit a variety of housing types and densities will not be created for this proposal.
- The proposed subdivision layout will reasonably integrate with the emerging Shiralee estate, notwithstanding some variation to the Shiralee Masterplan and development controls contained in the Shiralee DCP 2015 (see following sections of this report).
- The proposal will not result in unacceptable impacts on the natural or built environment.

## **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. 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,*

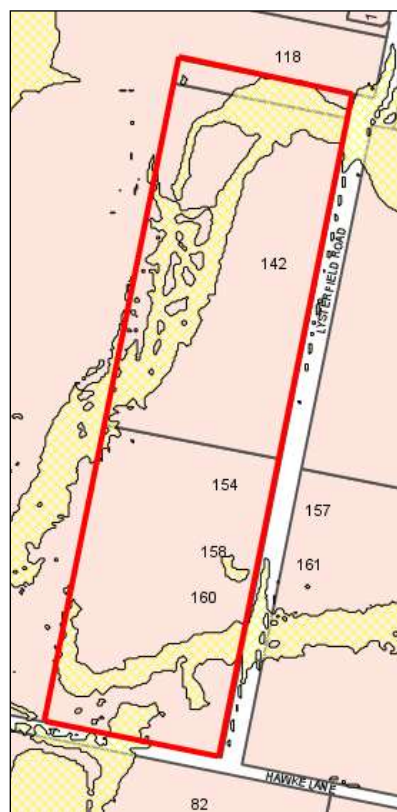
- (c) *the quality of the fill or the soil to be excavated, or both,*
- (d) *the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) *the source of any fill material and the destination of any excavated material,*
- (f) *the likelihood of disturbing relics,*
- (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 during civil construction works.
- The proposed earthworks will facilitate the proposed development.
- The site is not known to have particular cultural values. Conditions are included to manage and protect unexpected Indigenous or European finds during civil construction works.
- The subject land is not within a drinking water catchment; nor identified as an environmentally sensitive area.

#### **Clause 7.2A Floodplain Risk Management**

The land is affected by Probable Maximum Flood (PMF) associated with Blackman's Swamp Creek (see Figure 9).



**Figure 9 – PMF hatched yellow**

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 advises that constructed stormwater infrastructure for the subdivision will overcome the flood hazard. Stormwater will be dispersed to adjoining lands and will not be concentrated onsite. There are no aspects of the proposal that will affect the safe occupation of, or 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. Stormwater design for the subdivision will comply with Council's Development and Subdivision Code and Shiralee DCP 2015.

### **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 subject lands will be serviced by reticulated sewer.



**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 Policy 55 Remediation of Land**

SEPP 55 is applicable and states in part:

*7(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 the requirements of SEPP 55, a Preliminary Contamination Investigation was submitted in support of subdivision Stages 1 and 2 (Envirowest Consulting July 2021).

The investigation provides the following contamination conclusions and recommendations:

- The historical land use is agriculture (grazing) with the current land use being rural-residential.
- Soil samples were collected across the site on a systematic grid pattern and from potential contamination areas. The soil samples were evaluated for selected analytes including metals, pesticides, and hydrocarbons.
- No evidence of orchards, mines, sheep dips, mixing sheds or contaminating industrial activities are known to have been located on the site from the review of site history or site walkover. The use of agricultural pesticides over the area is expected to have occurred in the past.
- The soil sampling programs did not detect elevated levels of metals, pesticides, or hydrocarbons. The levels of all substances evaluated were below the adopted thresholds for residential land use with access to soil.

- The areas investigated are suitable for proposed residential land use. Additional sampling is recommended after removal of sheds, slabs etc.
- An unexpected finds protocol is recommended to be implemented during site development works to manage potential hazards.
- Onsite wastewater systems (associated with the existing dwellings) will require decommissioning.

Based on the findings of the contamination investigation, the land is suitable for proposed Stages 1 and 2 subdivisions. Consistent with the recommendations, Conditions are including requiring soil sampling post-outbuilding demolition, implementation of unexpected finds protocol, and decommissioning of wastewater systems.

The application was latterly amended to include Stage 3. This stage involves further subdivision of Lots 85 and 86 to create nine additional residential lots. The contamination investigation did not extend to proposed residential Lots 85, 86 or 89. Notwithstanding, soil sampling in the vicinity of the proposed lots was extensive. The parcels have longstanding residential use, and the proposal will intensify that use. It is considered reasonable to deduce that lots in Stage 3 will also be suitable for the residential land use, pursuant to Section 7. Contamination testing and clearance will be required for proposed Lots 91-99 in Stage 3, prior to Subdivision Certificate release.

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

SEPP (Vegetation in Non-Rural Areas) 2017 applies and states in part:

#### **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.*

#### **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.*

In consideration of the above Sections, tree removal is required across the development site to facilitate the proposed subdivision. The trees are variously prescribed trees pursuant to Orange DCP 2004-0 (see following section of this report), and approval is required for removal.

Council's Manager City Presentation advises that *'tree loss appears to be cultural plantings that have occurred in the past 15-30 years and offer no significant habitat or biodiversity value.'* No objection is raised to tree removal. Conditional street tree planting in accordance with the Shiralee DCP 2015 will offset vegetation loss.

As a matter arising, it is noted that a large remnant Eucalypt is located within the road reserve to the east of proposed public reserve Lot 90 (see Figure 10). Conditions are included requiring protection and retention of the remnant native.



Figure 10 – aerial photo depicted trees over the development site; remnant native circled in red

## State Environmental Planning Policy (Infrastructure) 2007

### Division 5 Electricity Transmission or Distribution

The subject land contains and adjoins existing overhead exposed electricity powerlines. Furthermore, the proposal involves replacing the east-west overhead line through the site with underground powerlines. Section 45 of SEPP Infrastructure 2007 is applicable and states in part:

- (1) *This clause applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following -*
  - (b) *development carried out -*
    - (iii) *within 5m of an exposed overhead electricity power line,*
  - (d) *development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.*
- (2) *Before determining a development application (or an application for modification of a consent) for development to which this clause applies, the consent authority must -*
  - (a) *give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*
  - (b) *take into consideration any response to the notice that is received within 21 days after the notice is given.*

In accordance with this Section, the proposed development was referred to Essential Energy for consideration and comment. Essential Energy *'had no comments to make as to potential safety risks arising from the proposed development.'* The electricity authority recommended general conditions of consent, which are included on the attached Notice of Approval.

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

There are no draft EPIs on public exhibition.

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

**Development Control Plan 2004**

DCP 2004 applies to the subject land. Parts of the DCP relevant to the proposed subdivision include:

- Part 2 - Natural Resource Management
- Part 3 - General Considerations
- Part 4 - Special Environmental Considerations
- Part 5 - General Considerations for Zones and Development.

The relevant matters were considered in the foregoing assessment under Orange LEP 2011. 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 not be contrary to 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 variations to the Masterplan will result as development proceeds in the urban village.

**2.0 Desired Future Character**

**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, preliminary contamination investigation was undertaken in support of the proposed subdivision. The investigation determined the land in Stages 1 and 2 is suitable for residential land use. The contamination investigation did not extend to Stage 3, which involves existing dwellings on proposed lots. Conditions are included requiring soil testing and contamination clearance for proposed Lots 91-99 in Stage 3, prior to issue of a Subdivision Certificate.

- *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 and proposed Stage 3 subdivision layout are depicted below (refer Figure 11).



Figure 11 - Shiralee Masterplan Area H -v- proposed subdivision



As demonstrated, the proposed subdivision will accord with the Masterplan as follows:

- a public reserve will be sited in the northern extent
- the subdivision layout will be comprised of three (3) x east-west parcel groups and two (2) x north-south parcel groups
- internal roads will provide connections to adjoining lands
- lots will have frontages to perimeter roads (Lysterfield Road and Sweetheart Drive) and internal roads
- lot orientation and shape will predominantly accord
- the subdivision layout will comprise a mix of Standard and Medium Lots.

The proposed subdivision will depart from the Masterplan in the following ways:

- The subdivision does not involve Compact Lots (see Lot Typologies below). With one or two exceptions, the proposed lots will comprise Medium or Standard Lots only.
- Internal east-west roads will not have a straight alignment, nor connect to the adjoining eastern lands in the locations intended.

Realignment of the roads is required in order to retain existing improvements (outbuildings and bore) on Lot 85, and to a lesser extent Lot 89, in Stage 2 of the subdivision (see Figure 12).

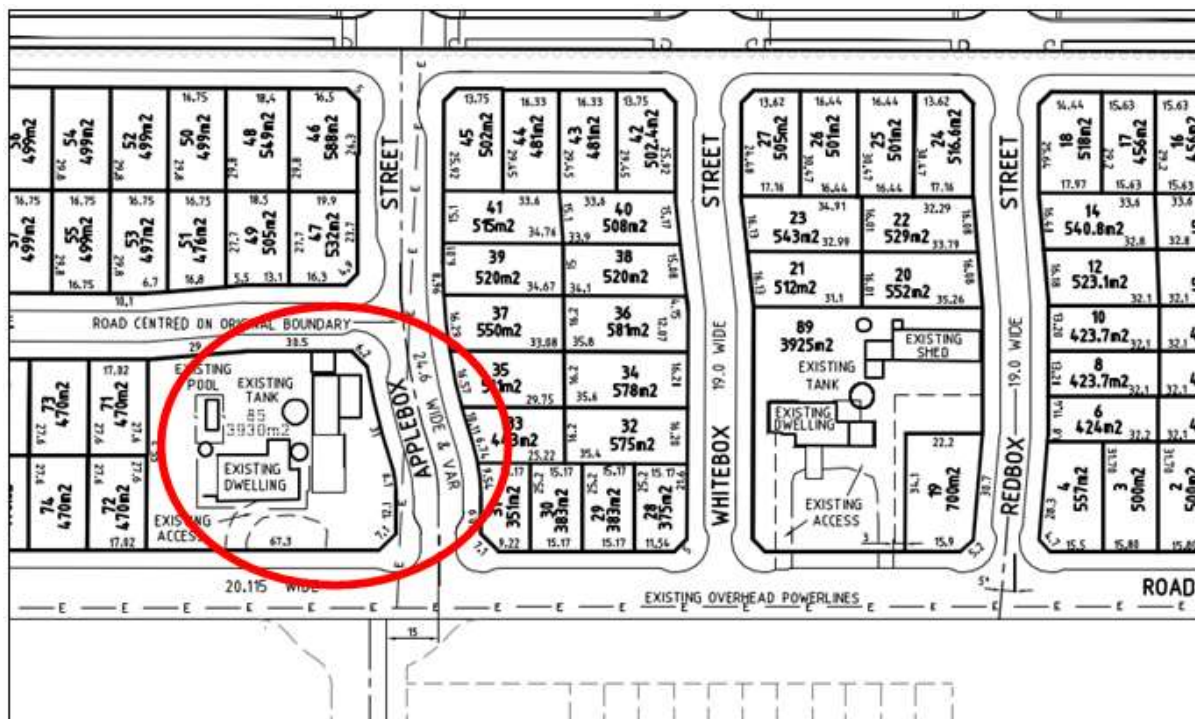


Figure 12 – Apple Box Street realigned clear of improvements on proposed Lot 85

The realignment of Apple Box Street will compromise the future roundabout at the intersection of Apple Box Street and Lysterfield Road, and the road connection to the adjoining subdivision to the east (DA 403/2021(1)).

## 2.3 Development Application - DA 306/2021(1) - 142-158 Lysterfield Road

After much negotiation with the proponent, Council's Technical Services Division have accepted the revised road alignment and staggered T-intersection on Lysterfield Road as depicted above (see Figure 13).

As a matter arising, it is noted that Stage 3 involves further subdivision of Lot 85 to create five (5) residential lots, including demolition of all improvements (see Figure 13).



Figure 13 – Stage 3 resubdivision of Lot 85

To this end, it is considered unreasonable to realign Apple Box Street contrary to the intended Shiralee Masterplan, when realignment will not be required at the completion of the subdivision. It is assessed that internal roads should accord with the Masterplan, and the affected improvements on Lot 85 should be demolished at Stage 2. Should Council support this assessment, Conditions can be included to effect same.

- *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 three minimum lot sizes: 200m<sup>2</sup>, 400m<sup>2</sup> and 700m<sup>2</sup>. A number of lots will depart from the prescribed minimum lot size of 700m<sup>2</sup>. The proposal seeks consent to vary the minimum lot size development standard pursuant to Clause 4.6 Orange LEP 2011. Other lots in the proposed subdivision will comply with the prescribed minimum lot sizes of 200m<sup>2</sup> and 400m<sup>2</sup>.

- *Where an oversized lot is proposed (substantially greater than the adopted minimum lot size), plans are to nominate a building envelope.*
- *Building envelopes on oversized lots are to be positioned in a manner that clearly enables future subdivision of the lot to a pattern consistent with the masterplan layout and adopted minimum lot size for the land.*

Oversize lots in the subdivision (Lots 86, 86 and 89 at Stage 2; and Lot 89 at Stage 3) contain existing dwellings. Building envelopes will not be required.

- *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.*

The proposed allotment layout will achieve a north-south or east-west long orientation which will maximise solar design opportunities. Furthermore, the proposed lots will allow appropriate presentation of future dwellings on the lots to public roads. The intent of the width-to-depth ratio is thereby satisfied.

- *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.*

Lysterfield Road is identified as a secondary bus route in the Shiralee DCP and Masterplan, and a bus stop is included in the development site. Council's Assistant Development Engineer is satisfied with the proposed road layout. Conditions are included on the attached Notice of Approval in relation to upgrading of Lysterfield Road at the frontage of the development site.

## **2.5 Lot Typologies**

Controls:

- *Lot typologies and minimum sizes are to be consistent with the Masterplan, DCP and LEP zoning maps.*

An extract of the Shiralee Structure Plan and Housing Densities Map is shown below (refer Figure 14). The structure plan provides for a mix of Standard Lots (700-850m<sup>2</sup>), Medium Lots (400-550m<sup>2</sup>) and Compact Lots (200-350m<sup>2</sup>) over the development site.





**Figure 14 - Shiralee Structure Plan and Housing Densities**

The proposed subdivision departs from the intended Masterplan lot typologies, as outlined in the following table.

<b>Lot Typology</b>	<b>Masterplan</b>	<b>Proposed Subdivision Stage 3</b>
Large	0	1
Standard	38	7
Medium	12	86
Compact	57	0
<b>TOTAL</b>	<b>107</b>	<b>94</b>

As demonstrated, the proposed subdivision is largely comprised of Medium Lots. While contrary to the intended Masterplan, the subdivision will not be incongruous in the broader Shiralee context. Indeed, variations to the intended Masterplan layout and lot typologies are occurring as development in Shiralee proceeds.

- 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.

Proposed Lots 85, 86 and 89 will comprise oversized lots at Stages 1 and 2 of the subdivision. These lots contain existing dwelling houses and associated residential curtilages.



Figure 15 – Stage 2 oversized lots

Lots 85 and 86 will be subsequently subdivided to Medium and Standard Lots at Stage 3, with Lot 89 to be retained as an oversized lot.



Figure 16 – Stage 3 oversized lot

The oversized lots will be reflective of the longstanding rural residential use of the land and will reasonably integrate in the setting. Indeed, oversized lots are intended across the Shiralee estate generally, albeit not planned for this site.

Notwithstanding, existing outbuildings on oversized Lots 85 and 89 will abut proposed boundaries public roads and have unsuitable visual bulk encroachments impacts on future residential streetscapes. Conditions are included requiring outbuildings on Lots 85-89 be demolished or altered to achieve a minimum setback of 4m to future public road boundaries at Stage 1 of the subdivision works.

- Specific requirements for large lots within the Precinct are to be consistent with Large Lot Classification Diagram and Large Lot Classification Table.

As outlined previously, the proposed subdivision does not include an oversized lot on the Large Lot Classification Diagram.

- *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 will not be required on the proposed lots. Development controls for residential development on Standard and Medium Lot typologies are contained in the Shiralee DCP 2015 (Appendix B).

- *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 is considered suitable 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 of 30° east or 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. Notwithstanding the masterplan departures in relation to lot sizes and typology mix, the proposed orientation of the lots will be usually consistent with the Masterplan layout.

### **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 authorities' requirements.*
- *All power lines are to be located underground.*

As outlined in the foregoing assessment, utility services are available to the land and adequate for the proposed subdivision, subject to extension, augmentation, upgrading and developer contributions. Conditions are included on the attached Notice of Approval 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. The extent of excavation and filling will be determined at engineering design stage. Notwithstanding, 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.

### 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.*

Proposed open space Lot 90 will be dedicated to Council at registration of the parent parcel, with appropriate compensation consistent with the Land Acquisition (Just Terms Compensation) Act 1991.

- *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.*
- *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, and the above controls are not applicable.

### 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 streetlights are to be staggered so that footpaths maintain sufficient light levels.*

Conditions are included on the attached Notice of Approval 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*
- *universal design.*

The proposal does not involve new residential buildings.

## 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.*

The proposed subdivision layout includes an open space lot (Lot 90) in the northern extent, consistent with the Shiralee DCP and Masterplan.

- *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.*

The proposed subdivision does not involve the creation of residential lots adjoining a park or other public space.

### 7.2 Landscape

Controls:

- *Open spaces and streets facing open spaces must be provided according to the Masterplan.*
- *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 not submitted in support of the proposed subdivision. Conditions are included on the attached Notice of Approval requiring preparation and implementation of a landscaping plan at Stages 2 and 3, consistent with the 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 not submitted in support of the proposed development. Conditions are included on the attached Notice of Approval requiring preparation and implementation of a landscaping plan incorporating street trees at Stages 2 and 3, consistent with the requirements of Part 7.4.

As a matter arising, and as outlined above, the existing remnant Eucalypt in the road reserve to the east of Lot 90 public reserve shall be retained and protected via Conditions.

### **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.*

The proposed subdivision may be designed to comply with the above controls. Conditions are included on the attached Notice of Approval to satisfy the requirements of Part 8.3.

## 8.4 Environmental Hazards

Controls:

- *Bushfire, flooding and other environmental hazards are to be assessed for each development site to ensure safety and compliance with all relevant codes, regulations and laws.*

The development site is partly affected by Blackmans Swamp Creek Probable Maximum Flood (PMF) (see Figure 9 above). Council's Assistant Development Engineer advises that constructed stormwater infrastructure for the subdivision will overcome the flood hazard. Stormwater will be dispersed to adjoining lands and will not be concentrated onsite.

The site is not subject to other environmental hazards.

## 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 on-site 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 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.*

The development site contains a Cycle Route and On-Road Cycle Way pursuant to the Shiralee DCP and Masterplan. Conditions are included requiring road and cycleway construction 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>*

Lysterfield Road is identified as a secondary bus route in the Shiralee DCP and Masterplan, and a bus stop is included in the development site. Council's Assistant Development Engineer is satisfied with the proposed road layout. Conditions are included on the attached Notice of Approval in relation to upgrading of Lysterfield Road at the frontage of the development site.

### 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 will be generally in accordance with the Shiralee Masterplan.
- The proposed subdivision road layout will not comprise cul-de-sacs or no-thru roads.
- The proposal involves shared roads on the site perimeters to Sweetheart Drive and Lysterfield Road. Lots on the perimeters will require adjoining land to be developed to enable full road construction. Interim traffic measures are possible to provide adequate short-term access for the affected lots. Conditions are included requiring Sweetheart Drive be constructed half-road width; and Lysterfield Road be constructed full-road width north of Apple Box Street, and half-road width south of Apple Box Street.
- The internal east-west roads will be realigned in order to retain existing improvements (outbuildings and bore) on proposed Lot 85, and to a lesser extent Lot 89 in Stage 2 of the subdivision. The realignment of Apple Box Street will compromise the future roundabout at the intersection of Apple Box Street and Lysterfield Road, and the road connection to the adjoining subdivision to the east (DA 403/2021(1)). After much negotiation with the proponent, Council's Technical Services Division have accepted the revised road alignment and staggered T-intersection on Lysterfield Road.

Notwithstanding, the realigned road layout is not considered an optimum planning outcome. The improvements necessitating the realignment will be demolished in Stage 3 of the subdivision. It is assessed that internal roads should accord with the Masterplan, and the affected improvements on Lot 85 should be demolished at Stage 2. Should Council support this assessment, Conditions can be included to effect same.

- Conditions are included to satisfy the road design and construction requirements of Part 9.4.

## 9.5 Traffic Management

Controls:

- *Other than where specified in the Masterplan there are to be no cul-de-sacs or no-thru roads.*
- *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.*

As outlined in the foregoing sections of this report, Council's Development Engineer advises that 'the proposed road layout is satisfactory and generally in accordance with the Shiralee DCP.' Conditions are included to satisfy the design requirements of Part 9.5.

### SECTION 7.11 - DEVELOPMENT CONTRIBUTIONS

In accordance with Section 7.11 and Orange Development Contributions Plan 2017 (Shiralee Release Area), development contributions are applicable as follows:

#### Stage 1 – 3 residential lots and 2 development lots

Open Space and Recreation	Two additional lots at 792.01	1,584.02
Community and Cultural	Two additional lots at 229.68	459.36
Roads and Traffic Management	Two additional lots at 1,045.43	2,090.86
Local Area Facilities	Two additional lots at 17,760.90	35,521.80
Plan Preparation & Administration	Two additional lots at 171.98	343.96
<b>TOTAL</b>		<b>\$40,000</b>

#### Stage 2 – 84 residential lots and 1 public reserve lot

Open Space and Recreation	84 additional lots at 792.01 less two lots at 792.01 created in Stage 1	64,944.82
Community and Cultural	84 additional lots at 229.68 less two lots at 229.68 created in Stage 1	18,833.76
Roads and Traffic Management	84 additional lots at 1,045.43 less two lots at 1,045.43 created in Stage 1	85,725.26
Local Area Facilities	84 additional lots at 17,760.90 less two lots at 17,760.90 created in Stage 1	1,456,394.00
Plan Preparation & Administration	84 additional lots at 171.98 less two lots at 171.98 created in Stage 1	14,102.36
<b>TOTAL</b>		<b>\$1,640,000.00</b>

**Stage 3 – 9 residential lots**

Open Space and Recreation	Nine additional lots at 792.01	7,128.09
Community and Cultural	Nine additional lots at 229.68	2,067.12
Roads and Traffic Management	Nine additional lots at 1,045.43	9,408.87
Local Area Facilities	Nine additional lots at 17,760.90	159,848.10
Plan Preparation & Administration	Nine additional lots at 171.98	1,547.82
<b>TOTAL</b>		<b>\$180,000</b>

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 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. Stage 2 involves the creation of public reserve Lot 90 with site area of 4,068m<sup>2</sup>. The proposed public reserve is consistent with the planned public reserve contained in the Shiralee Masterplan Area H. The public reserve is partly subject to PMF flooding associated with Blackman's Swamp Creek. It is estimated that 1,300m<sup>2</sup> of the public reserve lot is unencumbered land (subject to survey and clarification of definition).

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.

Council staff have negotiated an outcome with the applicant for Council's consideration. Council's CEO has received a letter from the applicant containing the terms of an offer made with respect to this matter. In this case the offer provides for the dedication of the proposed open space to Council following the registration of the plan at the Land and Property Information Centre in Stage 2 on the basis that the contributions per lot within each stage of the subdivision as identified in the tables above for open space and recreation are not charged. The contribution value contained within the above schedule of payments relating to Open Space and Recreation and the value of the land in question is considered to be of equal value. It is recommended on this basis that Council agrees with the terms of the offer made (see attached) with respect to this matter as the offer is in the benefit of both Council and the applicant to progress this way. Attached are recommended conditions of consent that amend the schedule of payments required under the contributions plans and requires the applicant to prepare and implement the Planning Agreement consistent with the terms of the offer in a manner consistent with the requirements of the Environmental Planning and Assessment Act.

The planning agreement relates only to the open space and recreation component of the development contributions. All other components: community and cultural, roads and traffic management, local area facilities, and plan preparation and administration will be unaffected by the planning agreement and remain in place as per the contributions plan.

#### **SECTION 64 (LOCAL GOVERNMENTT ACT) - WATER AND SEWER HEADWORKS CHARGES**

Section 64 water and sewer headworks charges are also applicable to the proposal, as follows:

##### **Stage 1 – three (3) residential lots and two (2) development lots**

The contributions are based on 5.0 ETs for water supply headworks and 5.0 ETs for sewerage headworks.

##### **Stage 2 – 84 residential lots and one (1) public reserve lot**

The contributions are based on 89 ETs for water supply headworks and 89 ETs for sewerage headworks (a credit of 5 ETs for both water and sewer shall be made at the time of payment to account for proposed lots 85, 86, 87, 88 and 89 released in Stage 1).

##### **Stage 3 – nine (9) residential lots**

The contributions are based on 9 ETs for water supply headworks and 9 ETs for sewerage headworks (a credit of two ETs for both water and sewer shall be made at the time of payment to account for proposed lots 85 and 86 released in Stage 1).

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

##### **Demolition of a Building (clause 92)**

The proposal involves various demolition works at each stage of the proposed subdivision. Conditions are included in relation to waste management and demolition works in accordance with applicable standards.

##### **Fire Safety Considerations (clause 93) and Buildings to be Upgraded (clause 94)**

Council's Building Certifier advises:

*The proposal can comply with the BCA. Details are to be provided with the Subdivision Certificate demonstrating that the existing buildings on Lots 86, 87 and 88 meet the setback requirements of the BCA from the proposed boundaries. Assuming the setbacks of existing buildings from boundaries are compliant with the BCA, no upgrade works should be required to the existing buildings.*

##### **BASIX Commitments (clause 97A)**

BASIX is not applicable to the proposed subdivision.

##### ***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**

- Shiralee Masterplan and DCP
- Developing urban release area and emerging neighbourhood character
- Arising positive social and economic impacts

**Traffic impacts**

- Network capacity
- Road and intersection upgrading
- Internal road layout
- Masterplan departures
- Cycleways and public transport

**Infrastructure**

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

**Environmental Values**

- Compliance with biodiversity legislation
- Retention of remnant vegetation
- Dedication of public reserve

**Landscape Setting**

- Retention of native vegetation
- Landscaped avenues and street tree planting
- Dedication of public reserve

**Cultural Values**

- Unknown cultural values
- Conditional protection of unexpected find

**Visual Impacts**

- Civil and construction works typical of release area development
- Change of use from rural residential to general residential
- Vegetation removal and new landscaping
- Presentation of existing buildings to proposed public roads
- Developing residential streetscapes

**Amenity Impacts**

- Lot design for solar access
- Lot sizes for residential accommodation forms
- Retain and reinforce landscape setting
- Public reserve consistent with Masterplan

**Water Quality**

- Construction controls
- Stormwater infrastructure

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

***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 will be of suitable area and dimensions for future residential development, consistent with the Shiralee DCP and Masterplan (subject to further DA).
- Adjoining land use is residential or intended for future urban release areas.
- The broader and internal road network will accommodate traffic generation associated with the proposal.
- The site terrain does not present construction or servicing constraints.
- 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 PMF. Stormwater infrastructure will suitably overcome flood hazards.
- The contamination status of the land is below adopted residential land use thresholds.
- The site has no particular environmental values.
- 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 the Community Participation Plan 2019. The development was advertised in the prescribed manner. At the completion of the exhibition period, no submissions had been received.

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

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 has been assessed as suitable in the context of the operative planning controls. Approval of the application is recommended, subject to conditions to mitigate and manage arising impacts.

**COMMENTS**

This report and the attached Notice of Approval have been informed by:

- Assistant Development Engineer

Environmental Health and Building Inspector

**ATTACHMENTS**

- 1 Notice of Approval, D22/15635 [↓](#)
- 2 Plans, D22/8188 [↓](#)



	<p style="text-align: center;"><b>ORANGE CITY COUNCIL</b></p> <p style="text-align: center;">Development Application No <b>DA 306/2021(1)</b></p> <p>NA22/105 <span style="float: right;">Container PR14288</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: Mr T Miers  
 Applicant Address: 2/204-206 Lords Place  
 ORANGE NSW 2800  
 Owner's Name: Mr WR and Mrs LM McDonell  
 Land to Be Developed: Lot 184 DP 750401 - 142 Lysterfield Road  
 Lot 1 DP 130391 - 142 Lysterfield Road  
 Lot 188 DP 750401 - 158 Lysterfield Road  
 Proposed Development: Subdivision (Stage 1 - three residential lots and two development lots;  
 Stage 2 - 84 residential lots, one public reserve lot and five roads;  
 Stage 3 - nine residential lots) and Demolition (outbuildings and dwellings)

### Building Code of Australia building classification:

Not applicable

### Determination made under Section 4.16

Made On: 25 March 2022  
 Determination: **CONSENT GRANTED SUBJECT TO CONDITIONS DESCRIBED BELOW:**

**Consent to Operate From:** 26 March 2022  
**Consent to Lapse On:** 26 March 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: Drawings by Saunders & Staniforth- Figures 1-4, Ref BM01DA, dated 16 November 2021 (4 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 306/2021(1)**

2

**Conditions (cont)**

**PRESCRIBED CONDITIONS**

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

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

**STAGE 1 - THREE RESIDENTIAL LOTS AND TWO DEVELOPMENT LOTS**

**DURING CONSTRUCTION/SITEWORKS**

- (4) 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.
- (5) 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**

- (6) The payment of **\$38,415.98** 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:

Community and Cultural	Two additional lots at 229.68	459.36
Roads and Traffic Management	Two additional lots at 1,045.43	2,090.86
Local Area Facilities	Two additional lots at 17,760.90	35,521.80
Plan Preparation & Administration	Two additional lots at 171.98	343.96
<b>TOTAL</b>		<b>\$38,415.98</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.

- (7) Existing outbuildings on Lot 85 and Lot 89 with frontage to a future public road in Stage 2 shall be demolished or altered to achieve a minimum setback of 4m to the boundary to a future public road. Development consent will be required for demolition or alteration to outbuildings, unless the works are exempt development pursuant to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
- (8) 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 86, 87 and 88 comply in respect to the distances of walls from boundaries.
- (9) Application shall be made for a Subdivision Certificate under Section 6.3(1)(d) of the Act.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 306/2021(1)**

3

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

- (10) **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 5.0 ETs for water supply headworks and 5.0 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
- (11) 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.
- (12) 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.
- (13) 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.
- (14) An easement shall be established over the existing septic tank absorption trenches including an appropriate buffer to ensure full containment of the effluent disposal areas serving the existing dwellings located on proposed Lots 85, 86 and 89.
- (15) A Restriction-as-to-User under Section 88B of the *NSW Conveyancing Act* is to be created on the title of proposed Lots 85, 86 and 89 which states that:  
Proposed Lots 85, 86 and 89 may not be subdivided or further developed unless the following works are carried out to the satisfaction of Orange City Council:
- All infrastructure services (water, sewer, stormwater drainage, gas, electricity, phone lines) as required by the Orange City Council Development and Subdivision Code are provided to Lots 85, 86 and 89; and
  - The developer of proposed Lots 85, 86 and 89 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*; and
  - All public road frontages are constructed in accordance with the Orange City Council Development and Subdivision Code and Shiralee DCP including kerb and gutter on the development side of the road.
- (16) A Restriction-as-to-User under section 88B of the *NSW Conveyancing Act* is to be created on the title of the vacant development Lots 87 and 88 which states that:  
Proposed Lots 87 and 88 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 85, 86, 87, 88 and 89; and

(Condition (16) continued over page)

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 306/2021(1)**

4

**Conditions (cont)**

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

(16) (cont)

- The developer of proposed Lots 87 and 88 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; and
- Lysterfield Road frontage is constructed in accordance with the Orange City Council Development and Subdivision Code and Shiralee DCP as half road width including kerb and gutter on the development side of the road; and
- Hawke Lane frontage is constructed in accordance with the Orange City Council Development and Subdivision Code and Shiralee DCP as full road width including kerb and gutter; and
- Internal roads shall be constructed to full urban road standard in accordance with the Orange City Council Development and Subdivision Code and Shiralee DCP; and
- Road widening is provided on Lysterfield Road and Hawke Lane in accordance with the Orange City Council Development and Subdivision Code and Shiralee DCP at no cost to Council.

(17) 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.

(18) 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.

**STAGE 2 – 84 RESIDENTIAL LOTS, ONE PUBLIC RESERVE LOT AND FIVE ROADS**

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

(19) A detailed landscaping plan shall be submitted for approval of Council's Manager City Presentation prior to issue of a Construction Certificate. The landscaping plan shall be consistent with Part 7.2 Landscape and Part 7.4 Street Tree Strategy of Shiralee Development Control Plan 2015.

(20) 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.

(21) Prior to the issue of a Construction Certificate evidence shall be provided to the Principal Certifying Authority that proposed Lots 85 to 89 have been registered with NSW Land and Property Information.

(22) 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.

Hawke Lane (19m wide), the un-named 19.0m wide road, Applebox Street (24.6m wide), Whitebox Street (19m wide), Redbox Street (19m wide) and Yellowbox Street (19m wide) shall be constructed as full road width for the full frontage of the proposed development.

(Condition (22) continued over page)

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 306/2021(1)**

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5

**Conditions (cont)**

<b>Prior to the issue of a construction certificate (cont)</b>
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(22) (cont)

Sweatheart Drive (26m wide) shall be constructed as half road width for the full frontage of the proposed development in accordance with Orange City Councils Shiralee DCP.

The intersection of Applebox Street, Lysterfield Road and the adjoining subdivision to the east shall be constructed to levels, widths and alignments to suit a staggered four way intersection treatment to the satisfaction of Councils Director Technical Services.

Hawke Lane shall be widened to 19m for the full frontage of the development in accordance with Orange City Councils Shiralee DCP.

Lysterfield Road shall be widened by 2.243m from Applebox Street to Tallow Lane (to achieve a final road width of 24.6m with equal widening on both sides of the road) for the full frontage of the development in accordance with Orange City Councils Shiralee DCP.

Lysterfield Road south of Applebox Street shall be constructed as half road width for the full eastern frontage of the proposed development in accordance with Orange City Councils 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.

Lysterfield Road north of Applebox Street shall be constructed as part road width for the full frontage of the proposed development in accordance with Orange City Councils Shiralee DCP. This work shall include kerb and gutter, underground stormwater pipes, parking lane and an earth-formed footpath on the development side of the road to suit the future road levels. The road works shall tie into the proposed road formation at Tallow Lane and avoid the existing mature eucalypt located within the Lysterfield Road road reserve. 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.

All roads shall be constructed and designed in accordance with Councils Development and Subdivision Code, Shiralee DCP and Councils Shiralee road type master plan. Road construction shall include paved thresholds and intersection blisters in accordance with Orange City Councils Shiralee DCP, standard drawings and Shiralee Typical Intersection details (dwg. No TP00040-E as amended).

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;
- Thorn R2L2 lighting fixtures shall be used for street lighting within the Shiralee DCP area;
- 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.

(23) 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.

(24) 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 306/2021(1)**

6

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

- (25) 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 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.
- (26) Stormwater from the site shall be piped to the nearest stormwater detention basin identified on the Shiralee DCP, 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 / detention basin. 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 40 metres of any watercourse.
- (27) 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.
- All sewer lines shall be designed as a gravity system connecting to Councils existing network. Sewer pump station(s) shall not be approved. Where sewer lines are required to be constructed in adjoining properties the sewer main location shall align with the proposed lot layout noted in the Shiralee DCP.
- (28) 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.
- (29) 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.
- (30) 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.
- (31) The existing residences on proposed Lots 85, 86 and 89 shall be connected to the proposed reticulated sewer. The existing septic tanks and absorption trenches shall be accurately located and indicated on the submitted engineering plans.
- (32) 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**

- (33) A tree protection zone (TPZ) (protective fencing) shall be installed in accordance with *AS 4373-2009 – Protection of Trees on Development Sites*, for the remnant Eucalypt tree located in the road reserve to the east of Lot 90 (public reserve lot).

(Condition (33) continued over page)

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 306/2021(1)**

7

**Conditions (cont)****Prior to works commencing (cont)**

(33) (cont)

Protective fencing shall be installed prior to site works commencing and must remain intact until completion of all works. Fencing must not be altered or removed without approval of a project arborist.

If access is required or minor activities are to be undertaken within the TPZ, it must be approved by the project arborist. No routing of services, parking of vehicles, stacking of builder's materials / equipment, is to occur within the TPZ.

(34) 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.

(35) The approved Soil and Water Management Plan (SWMP) shall be implemented prior to construction work commencing.

**DURING CONSTRUCTION/SITEWORKS**

(36) 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.

(37) 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.

(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) 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.

(40) 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.

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

(42) 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.

(43) Concrete kerb and gutter laybacks and footpath crossings shall be constructed for proposed Lots 85, 86 and 89. The works are to be carried out to the requirements of the Orange City Council Development and Subdivision Code, Shiralee DCP and Road Opening Permit.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 306/2021(1)**

8

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

- (44) Concrete footpaths shall be constructed on all roads to the widths and standards stated in the Orange City Council Development and Subdivision Code and Shiralee DCP.
- (45) A water service and sewer junction be provided to every lot in the proposed residential subdivision including proposed Lots 85, 86 and 89 in accordance with the Orange City Council Development and Subdivision Code.
- (46) The contents of the existing septic tanks shall be removed by a licensed contractor for disposal into Council's sewer system. The septic tanks shall be excavated and disposed of at a licensed landfill and the absorption trenches shall be drained and the voids limed and backfilled with clean compacted material.
- Evidence of such work is to be provided to the Principal Certifying Authority prior to the issuing of a Subdivision Certificate.
- (47) 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.
- (48) All services are to be contained within the allotment that they serve.
- (49) 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.
- (50) 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 two way traffic flows.

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

- (51) The payment of **\$1,575,055.18** 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:

Community and Cultural	84 additional lots at 229.68 less two lots at 229.68 created in Stage 1	18,833.76
Roads and Traffic Management	84 additional lots at 1,045.43 less two lots at 1,045.43 created in Stage 1	85,725.26
Local Area Facilities	84 additional lots at 17,760.90 less two lots at 17,760.90 created in Stage 1	1,456,394.00
Plan Preparation & Administration	84 additional lots at 171.98 less two lots at 171.98 created in Stage 1	14,102.36
<b>TOTAL</b>		<b>\$1,575,055.18</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.

- (52) In lieu of the payment of Section 7.11 Contributions for Open Space and Recreation the applicant shall enter into a planning agreement under Part 7 of the *Environmental Planning and Assessment Act 1979* consistent with the terms of the offer made in correspondence to the CEO of Orange City Council dated 17 March 2022.
- (53) Landscaping shall be completed in accordance with the approved landscape 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 and their builders.



**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 306/2021(1)**

9

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

- (54) 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.
- (55) Application shall be made for a Subdivision Certificate under Section 6.3(1)(d) of the Act.
- (56) **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 89 ETs for water supply headworks and 89 ETs for sewerage headworks (a credit of five (5) ETs for both water and sewer shall be made at the time of payment to account for proposed Lots 85, 86, 87, 88 and 89 released in Stage 1). 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.
- (57) 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.
- (58) 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.
- (59) 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.
- (60) 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.
- (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) The existing dwellings on proposed Lots 85, 86 and 89 shall be connected to the sewer. Evidence of the satisfactory completion of such work by a licensed plumber shall be provided to the Principal Certifying Authority prior to the issue of a Subdivision Certificate.
- (64) Evidence of the disposal of the septic tanks and contents at an approved waste disposal facility and satisfactory remediation of the absorption trenches shall be provided to the Principal Certifying Authority prior to the issuing of a Subdivision Certificate.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 306/2021(1)**

10

**Conditions (cont)**

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

- (65) 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.
- (66) 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.
- (67) Prior to the issue of a Subdivision Certificate Lysterfield Road and Hawke Lane shall be widened and dedicated as Public Road at no cost to Council.
- (68) 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.
- (69) 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.

**STAGE 3 – NINE RESIDENTIAL LOTS AND DEMOLITION (OUTBUILDINGS AND DWELLINGS)**

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

- (70) A detailed landscaping plan shall be submitted for approval of Council's Manager City Presentation prior to issue of a Construction Certificate. The landscaping plan shall be consistent with Part 7.2 Landscape and Part 7.4 Street Tree Strategy of Shiralee Development Control Plan 2015.
- (71) 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.
- (72) Prior to the issue of a Construction Certificate evidence shall be provided to the Principal Certifying Authority that proposed Lots 1 to 90 have been registered with NSW Land and Property Information.
- (73) 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 (73) continued over page)

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 306/2021(1)**

11

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

- (73) (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;
  - 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.
- (74) 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.
- (75) 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.
- (76) 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 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.
- (77) 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.
- (78) A water service shall be supplied to each lot. Engineering plans are to be submitted to and approved by Orange City Council prior to the issue of a Construction Certificate.
- (79) 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.
- (80) 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.

**PRIOR TO WORKS COMMENCING**

- (81) 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**

- (82) 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.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 306/2021(1)**

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12

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

- (83) 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.
- (84) 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.
- (85) 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.
- (86) 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.
- (87) 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.
- (88) Any adjustments to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer.
- (89) 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.
- (90) 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.
- (91) All services are to be contained within the allotment that they serve.

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

- (92) 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.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 306/2021(1)**

13

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

- (93) The payment of **\$172,871.91** 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:

Community and Cultural	Nine additional lots at 229.68	2,067.12
Roads and Traffic Management	Nine additional lots at 1,045.43	9,408.87
Local Area Facilities	Nine additional lots at 17,760.90	159,848.10
Plan Preparation & Administration	Nine additional lots at 171.98	1,547.82
<b>TOTAL</b>		<b>\$172,871.91</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.

- (94) Application shall be made for a Subdivision Certificate under Section 6.3(1)(d) of the Act.
- (95) **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 nine ETs for water supply headworks and nine ETs for sewerage headworks (a credit of two ETs for both water and sewer shall be made at the time of payment to account for proposed Lots 85 and 86 released in Stage 1). 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.
- (96) 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.
- (97) 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.
- (98) 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.
- (99) 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.
- (100) 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.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 306/2021(1)**

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14

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

- (101) 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.
- (102) 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.
- (103) 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.
- (104) 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.

**CONDITIONS FROM ESSENTIAL ENERGY**

- (1) If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.
- (2) Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above properties should be complied with.
- (3) As part of the subdivision, easement/s are to be created for any existing electrical infrastructure, using Essential Energy's standard easement terms current at the time of registration of the plan of subdivision. Refer Essential Energy's Contestable Works Team for requirements via email [contestableworks@essentialenergy.com.au](mailto:contestableworks@essentialenergy.com.au).
- (4) Council should ensure that a Notification of Arrangement (confirming satisfactory arrangements have been made for the provision of power) is issued by Essential Energy with respect to all proposed lots which will form part of the subdivision, prior to Council releasing the Subdivision Certificate. It is the Applicant's responsibility to make the appropriate application with Essential Energy for the supply of electricity to the subdivision, which may include the payment of fees and contributions. Despite Essential Energy not having any safety concerns, there may be issues with respect to the subdivision layout, which will require Essential Energy's approval.
- (5) Prior to any demolition works commencing, any service line/s to the shed/s must be disconnected.
- (6) In addition, Essential Energy's records indicate there is electricity infrastructure located within the properties and within close proximity to the properties. Any activities within these locations must be undertaken in accordance with the latest industry guideline currently known as *ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure*. Approval may be required from Essential Energy should activities within the properties encroach on the electricity infrastructure.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 306/2021(1)**

15

**Conditions (cont)****Conditions from Essential Energy (cont)**

- (7) Prior to carrying out any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the *Electricity Supply Act 1995 (NSW)*.
- (8) Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW ([www.safework.nsw.gov.au](http://www.safework.nsw.gov.au)) has publications that provide guidance when working close to electricity infrastructure. These include the *Code of Practice – Work near Overhead Power Lines* and *Code of Practice – Work near Underground Assets*.

**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.

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

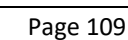
PAUL JOHNSTON - MANAGER DEVELOPMENT ASSESSMENTS

**Date:**

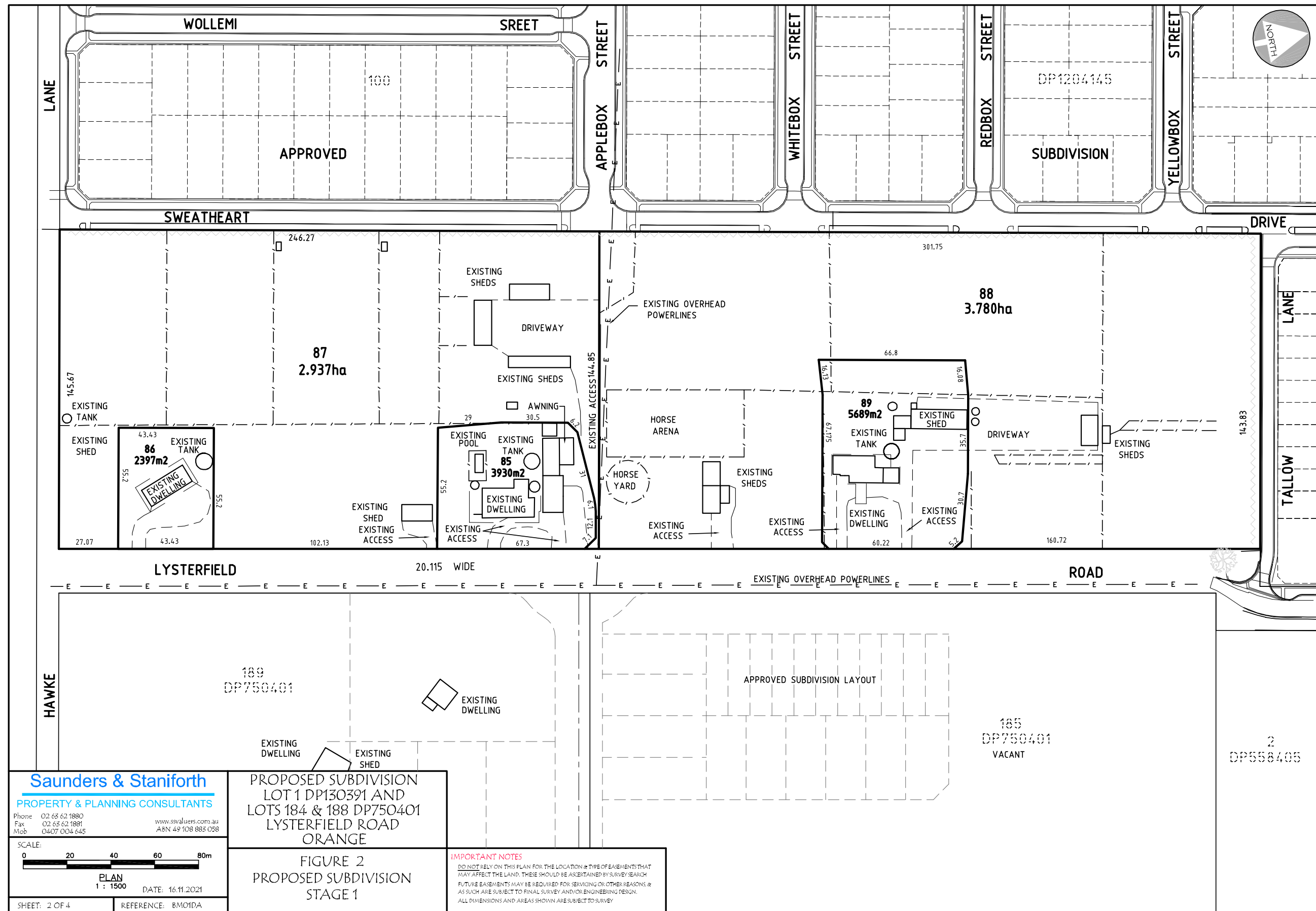
26 March 2022



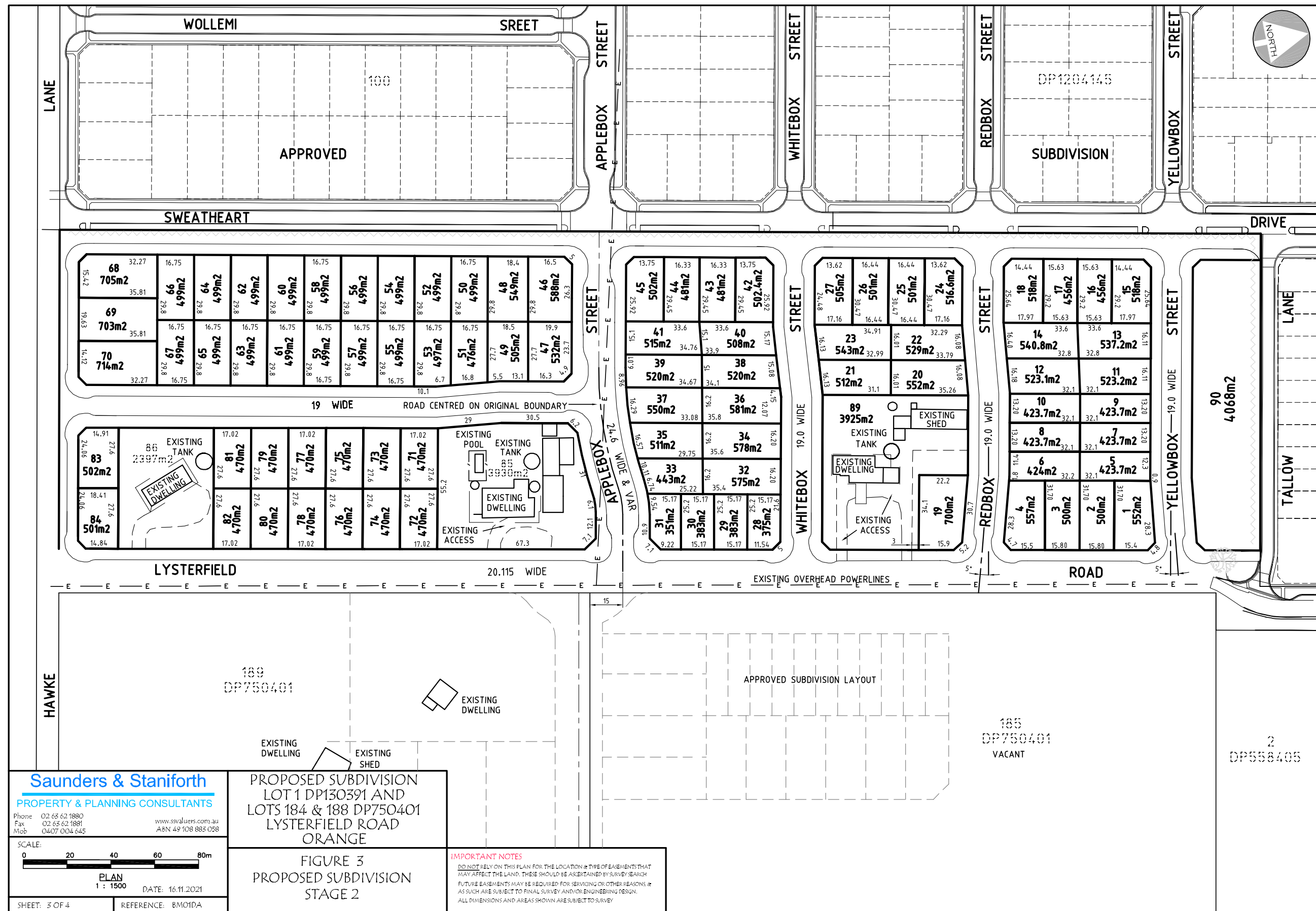




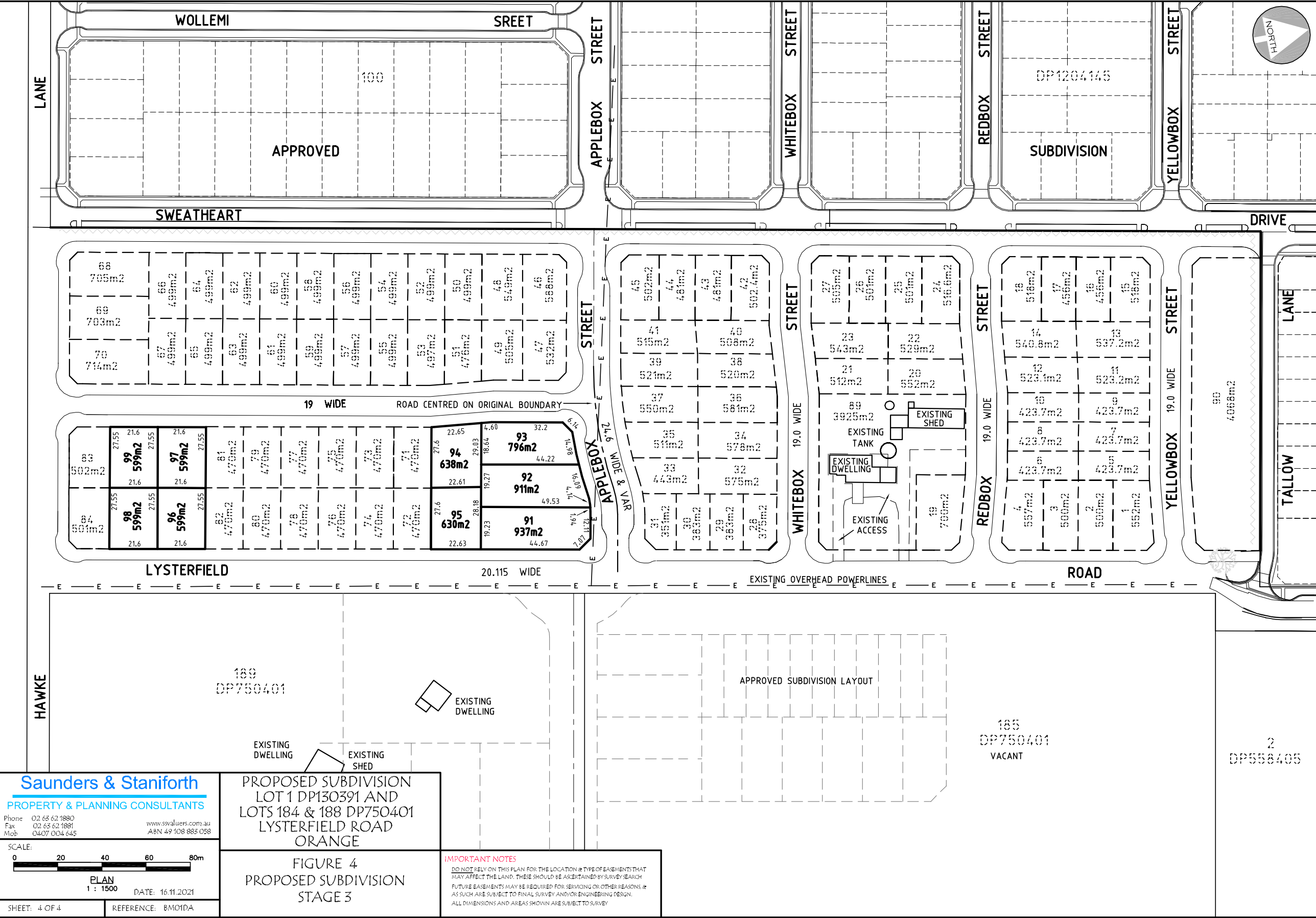
















## **2.4 DEVELOPMENT APPLICATION DA 23/2022(1) - 21-25 PEISLEY STREET**

RECORD NUMBER: 2022/384

AUTHOR: Sophie Currenti, Town Planner

### **EXECUTIVE SUMMARY**

Application lodged	24 January 2022
Applicant/s	The Trustee for Akura Property Trust
Owner/s	Akura Properties Pty Ltd
Land description	Lot 100 PCE PT DP 1199583 - 21-25 Peisley Street, Orange
Proposed land use	Demolition (existing buildings), General Industry (industrial unit complex containing 13 units), and Associated Signage
Value of proposed development	\$3,800,000.00

Council's consent is sought for the erection of thirteen (13) individual industrial units at 21-25 Peisley Street, Orange – Lot 100 DP 1199583.

The proposed development involves the following:

- demolition of existing shed and ancillary office
- erection of thirteen (13) individual general industrial units ranging in various sizes from 173m<sup>2</sup> to 700m<sup>2</sup> - all tenancies will require a development application for first use and fit out as per the condition of consent.
- a combined Gross Floor Area (GFA) of 4291m<sup>2</sup>
- access via a proposed 12m wide driveway and construction of an internal road network/hardstand area that accommodates heavy rigid vehicles
- fifty-eight (58) carparking spaces including disabled and staff car parking
- an onsite detention located through the centre of the site - subject to engineering design. The proposed driveway design basin will reduce stormwater peak discharges and volumes so as to not impact downstream properties
- proposed pole signage including a free standing 6m pylon sign approx. 1200mm wide
- the application was amended on 16 March 2022 to remove a component of the application. The originally applied for development included a specialised retail premises, which is prohibited within the zone.

The Planning and Development Committee has delegated authority to approve the application, based on the cost of the development of more than \$2.5 million.

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 land use. 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 – existing streetscape

## 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 proposal relates to the construction of 13 industrial units. The design is of a modern style and would complement other buildings in the industrial strip of the south end of Peisley Street. This development is permissible in this zone, provides ample parking, is compliant and the overall design will add to the character and streetscape of the area. Approval of the development is recommended.

### **LINK TO DELIVERY/OPERATIONAL PLAN**

The recommendation in this report relates to the Delivery/Operational Plan strategy “10.1 Preserve - 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 23/2022(1) for *Demolition (existing buildings), General Industry (industrial unit complex containing 13 units)*, and Associated Signage at Lot 100 DP 1199583 - 21-25 Peisley 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 involves the erection of thirteen (13) individual industrial units at 21-25 Peisley Street.

The proposed development involves the following:

- demolition of existing shed and ancillary office
- erection of thirteen (13) individual general industrial units ranging in various sizes from 173m<sup>2</sup> to 700m<sup>2</sup> – all tenancies will require a development application for first use and fit out as per the condition of consent
- a combined Gross Floor Area (GFA) of 4291m<sup>2</sup>
- access via a proposed 12m wide driveway and construction of an internal road network/hardstand area that accommodates heavy rigid vehicles
- fifty-eight (58) carparking spaces including disabled and staff car parking
- an onsite detention located through the centre of the site – subject to engineering design. The proposed driveway design basin will reduce stormwater peak discharges and volumes so as to not impact downstream properties
- proposed pole signage including a free standing 6m pylon sign approx. 1200mm wide.

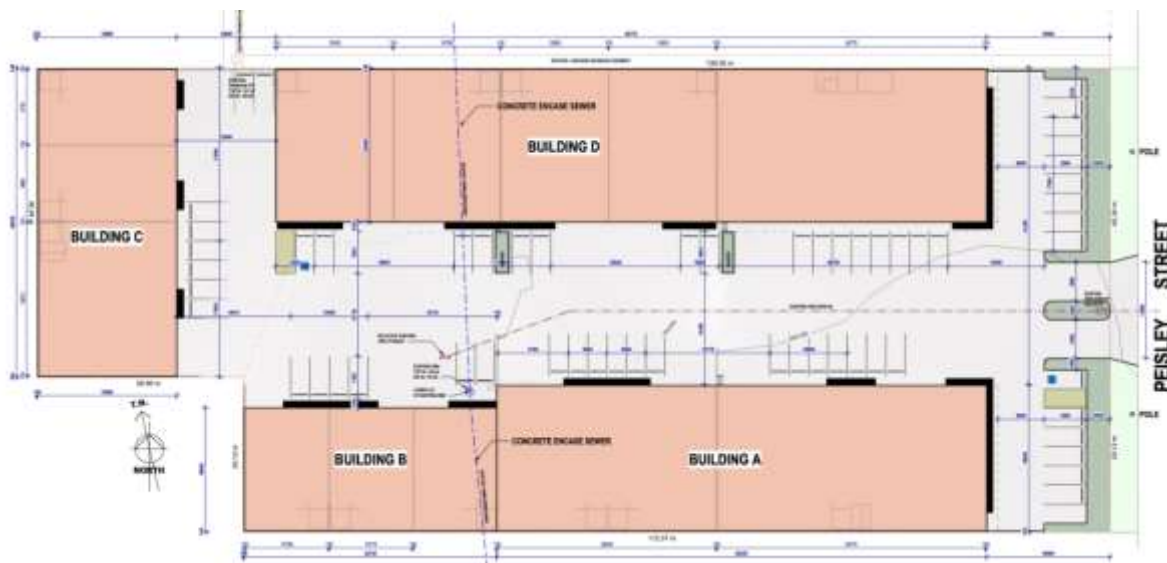


Figure 3 – proposed site plan

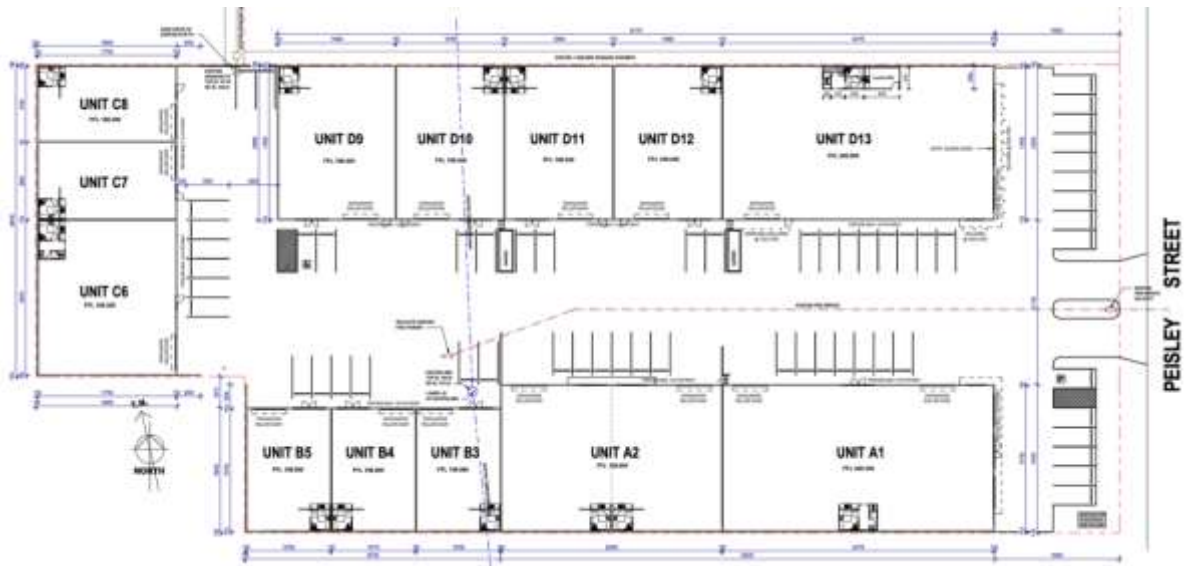


Figure 4 – proposed floor plan



Figure 5 – proposed streetscape elevation

## 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 (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 (OEI) (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:

- (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,*
- (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:	Land zoned IN1 General Industrial
Lot Size Map:	Minimum Lot Size 1000m <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
Flood Planning Map:	Minor PMF mapping

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. A sewer main exists on the land, relevant engineering conditions have been added to address any issues that may arise.

## 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 IN1 General Industrial zone. The proposed development is defined as *General Industry* and *Business Identification Signage* under OLEP 2011 and is permitted with consent for this zone. This application is seeking consent. The objectives for the land zoning are as follows:

## **1 - Objectives of the IN1 General Industrial Zone**

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To ensure development along the Southern Link Road has an alternative access.*

There are no aspects of the proposed development that are adverse to the zone objectives. In this regard:

- The proposal is permissible within the IN1 General Industrial Zone. As such, it enhances the range of land uses within this zone.
- The proposal is situated within an established industrial area and is thus unlikely to adversely affect other (more sensitive) land uses. As detailed throughout this report, there are no aspects of the proposed development that would adversely impact more sensitive land uses.
- The development of the site will have no impact upon the supply of industrial land within the locality as the proposal continues the use of industrial land for a use that is permissible within the IN1 General Industrial Zone.

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

The proposal involves demolition of the existing structures on the subject site 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 - 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 1000m<sup>2</sup>. No subdivision is proposed within this 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**

### **7.1 – Earthworks**

The earthworks that are to be undertaken for the proposed development include driveway/hardstand area construction; trenching for service installations; and significant land shaping. The disruption to the site drainage is considered minor and will not detrimentally affect adjoining properties or receiving waterways. The earthworks are not expected to affect the potential future use or redevelopment of the site. The site is not known to contain any Aboriginal, European, or Archaeological relics nor is it in proximity to any waterway, drinking water catchment or sensitive area. Sedimentation controls will be required throughout construction as a condition of consent.

### **7.2a – Flood Plain Risk Management**

This clause applies to land identified between the flood planning level and the level of the probable maximum flood. Before granting consent, Council must be satisfied that the proposal will not affect the safe occupation of, and evacuation from, the land in flood events (industrial development). The development is considered not to, in flood events exceeding the flood planning level, affect the safe occupation of and evacuation from, the changed mixed land use. The proposed development is unlikely to change flood planning regimes on or off the site and would be unlikely to cause or contribute to erosion, siltation or reduce riparian vegetation, and is therefore unlikely to create a cost burden on the community or neighbours.

### **7.3 – Stormwater Management**

This clause applies to all industrial, commercial and residential zones and requires that Council be satisfied that the proposal meets the relevant clauses. Stormwater will be disposed into Council's existing stormwater infrastructure located along the bitumen access road that services the development. Overland flow will be directed to the onsite detention basin located to the south-eastern corner of the development site and is subject to final engineering design. The proposed detention basin will reduce stormwater peak discharges and volumes so as to not impact the downstream properties.

### **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 therefore will not contribute to groundwater depletion.

### **7.11 – Essential Services**

In consideration of this clause, all utility services are available to the land and adequate for the proposal. The subject land is serviced by Council's reticulated water and sewerage network. The site has access to electricity and telecommunications. Stormwater will be disposed of at a legal point of discharge with any overland flow being directed into the proposed onsite stormwater detention system incorporated in the parking and driveway areas. This will be subject to civil design.

## **STATE ENVIRONMENTAL PLANNING POLICIES**

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

State Environmental Planning Policy Resilience and Hazards 2021 is applicable. Pursuant to that part of the SEPP relating to *Contamination and remediation Council is required to consider the following 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.*

Investigation of past use and visual site inspection of the property did not give rise to any concerns surrounding contamination. No underground tanks or stained soil/gravel is evident on site. A check of the NSW EPA Contaminated Land Record and List of NSW Contaminated Sites notified to the EPA did not identify any contaminated sites on or near the proposed development. Considering the proposed use and the site being sealed with buildings and driveway and parking areas, no further analysis is considered justified.

### **State Environmental Planning Policy (Infrastructure) 2007**

Clause 104 of the Infrastructure SEPP relates to traffic-generating development. The clause applies to development specified in Column 1 of the Table to Schedule 3 that involves new premises of the relevant size or capacity. Although the use of *industry* is listed, the clause is not applicable to the proposal at hand as the size/capacity is not exceeded in Column 2 of the Table to Schedule 3 (Clause 2(a)). As a result, formal referral to the Roads and Maritime Service is not required as the development is not deemed to be traffic generating development.

### **State Environmental Planning Policy – Industry and Employment SEPP**

*State Environmental Planning Policy Industry and Employment applies to the subject development. The controls that specifically relate to signage are provided below.*

#### **3 Aims, Objectives etc**

- (1) *This Policy aims:*
  - (a) *to ensure that signage (including advertising):*
    - (i) *is compatible with the desired amenity and visual character of an area, and*
    - (ii) *provides effective communication in suitable locations, and*
    - (iii) *is of high-quality design and finish, and*

## **(8) Granting of Consent to Signage**

*A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:*

- (a) that the signage is consistent with the objectives of this Policy as set out in Clause 3 (1) (a), and*
- (b) that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.*

The signage content is not known at this stage. The proposed signage includes a pylon sign at the frontage of the site together with signage panels on the building. An assessment of the proposed signage against Schedule 1 has been undertaken below.

### **1 - Character of the Area**

- Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?*
- Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?*

The proposed signage will be consistent with other signage along this industrial area of Peisley Street. A mix of attached wall signage and freestanding signs are common in the local area.

### **2 - Special Areas**

- Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes, or residential areas?*

The proposed signage and locality do not conflict with special areas relating to heritage, open space, waterways, residential areas or conservation precincts.

### **3 - Views and Vistas**

- Does the proposal obscure or compromise important views?*
- Does the proposal dominate the skyline and reduce the quality of vistas?*
- Does the proposal respect the viewing rights of other advertisers?*

The pylon sign will not dominate the skyline being of a vertical rather than wide structure. The level landform also ensures the signage does not dominate any longer vistas. The signage will not block signage exposure to other businesses, largely due to the wide land frontage onto Peisley Street.

### **4 - Streetscape, Setting or Landscape**

- Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?*
- Does the proposal contribute to the visual interest of the streetscape, setting or landscape?*
- Does the proposal reduce clutter by rationalising and simplifying existing advertising?*
- Does the proposal screen unsightliness?*

- *Does the proposal protrude above buildings, structures or tree canopies in the area or locality?*
- *Does the proposal require ongoing vegetation management?*

The proposed signage is considered within normal commercial expectations for the environment with a cluster of corporate images and design features common place in the locality. The size and scale of the signage locations are considered reasonable in comparison to the size and scale of buildings and their industrial theme. The free-standing sign will be set away from the proposed buildings therefore not critical in terms of protrusions against rooflines or nearby structures. The proposal does not require ongoing vegetation management.

## **5 - Site and Building**

- *Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?*
- *Does the proposal respect important features of the site or building, or both?*
- *Does the proposal show innovation and imagination in its relationship to the site or building, or both?*

The proposal is within scale and overall dimension relationship with the proposed height and width of the building.

## **6 - Associated Devices and Logos with Advertisements and Advertising Structures**

- *Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?*

There are currently no known tenancies at this stage.

## **7 - Illumination**

- *Would illumination result in unacceptable glare?*
- *Would illumination affect safety for pedestrians, vehicles or aircraft?*
- *Would illumination detract from the amenity of any residence or other form of accommodation?*
- *Can the intensity of the illumination be adjusted, if necessary?*
- *Is the illumination subject to a curfew?*

No illumination is proposed.

## **8 - Safety**

- *Would the proposal reduce the safety for any public road?*
- *Would the proposal reduce the safety for pedestrians or bicyclists?*
- *Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?*

The proposal is not considered to reduce the safety for any public road, pedestrians or cyclists. The proposal will not obscure sightlines from public areas.

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

There are no draft EPI's that relate to the proposed development or subject site.

**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)**

**Development Control Plan 2004**

The following parts of DCP 2004 are applicable to the proposed development:

- Part 2 – Natural Resource Management
- Part 3 – General Considerations
- Part 4 – Special Environmental Considerations
- Part 9 – Development in the Employment and Industrial Zone
- Part 14 – Advertisements
- Part 15 – Car Parking

The relevant matters in Parts 2, 3, 4 and 14 were considered in the foregoing assessment under Orange LEP 2011 and SEPP 64. An assessment of the relevant provisions within Part 9 and 15 have been undertaken below.

## 09 – Development in the Industry and Employment Zone

The DCP prescribes the following applicable planning outcomes for **Industrial Site Development**.

- *Buildings are set back a minimum of 10m from front boundaries (5m to a secondary boundary on a corner lot) for lots greater than 1,000m<sup>2</sup> or 5m for lots less than 1,000m<sup>2</sup> or otherwise to a setback consistent with existing setbacks in established areas.*

The subject land comprises an area greater than 1,000sqm, therefore requires a setback minimum of 10m from the boundary. The new buildings will be sited at least 16m from the Peisley Street frontage. This setback allows for a sufficient landscaping strip to be established between the building and its frontage to Peisley Street to soften visual bulk. Side setbacks will comply with the BCA as concrete walls.

- *Buildings cover up to 50% of the site area (excluding the area of accessways for battleaxe lots)*

Based on the site area being 7864sqm, and the proposed buildings footprint of 4291.9sqm, the site coverage of the development is 54.5%. Although this proposed site coverage exceeds the 50% maximum by less than a 10% variation, the proposal is considered to be satisfactory. Due to the large size of the site, and all other design criteria being satisfied, including setbacks, driveways, parking and landscaping, the greater site coverage is considered acceptable.

- *Landscaping is provided along boundaries fronting roads including trees with an expected mature height at least comparable to the height of buildings on the site. All sites contain an element of landscaping.*

Landscaping will be provided along the street frontage as a 3m wide landscaping bed. The proposed landscaping will incorporate plantings that are endemic to the area and commensurate with the height of the proposed building.

- *Architectural features are provided to the front building façade to provide relief using such elements as verandahs, display windows, indented walls, etc.*
- *External materials consist of non-reflective materials.*

The proposed finishes are provided in non-reflective finish as encouraged by the DCP. The proposed development will be constructed of painted fibre cement panels and painted concrete tilt panel being neutral in colour of dark and light grey or cream/Dulux dune or similar. The architectural design of the building includes awnings as well as a variation to the height of the roofline that will provide relief to the front façade.

- *Adequate parking and onsite manoeuvring is provided.*

An assessment of parking and manoeuvring has been completed under Chapter 15.

- *Advertising involves business identification signs within the front façade and/or by a pole sign comparable to the relative height to the main building on the site.*

The assessment under SEPP 64 provided in this report demonstrates that the proposed signage is satisfactory in terms of the above outcome.

- *Security fencing is located or designed in a manner that does not dominate the visual setting of the area.*

Security fencing is existing and is located around the perimeter of the site. The fencing does not dominate the visual setting of the area.

## 15 – Car Parking

<b>DEVELOPMENT USE</b>	<b>CAR PARKING REQUIREMENT</b>
<i>Industry/warehouse/depot</i>	<i>1 space per 100 m<sup>2</sup> gross floor area or 1 space per 2 employees, whichever is greater</i>
<i>Bulk retail or shops</i>	<i>1 space per 50 m<sup>2</sup></i>
<i>Research establishments</i>	<i>1 space per 50 m<sup>2</sup> or 1 space for every 2 employees whichever is greater</i>

The DCP requires on-site parking for industries to be provided at the rate of 1 space per 100sqm of gross floor area. Based on the DCP rate, the parking requirements for the development are calculated as 42.9 car parking spaces. The proposed development proposes a total of 58 car parking spaces including spaces for staff and disabled parking. The proposal is therefore compliant.

Ingress and egress to the site will occur on the centre of the eastern frontage. There is sufficient area for rigid vehicles to enter and exit the site in a forward direction without having to reverse onto or from a public road.

The sealed right of access at its intersection with Peisley Street provides a suitable sight distance. Peisley Street appears to be of a sufficient capacity to accommodate the additional traffic generated as a result of this development. No upgrades to Peisley Street are envisaged.

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

#### **Demolition of a Building (clause 92)**

The proposal involves the demolition of the existing structures on site. A condition is attached requiring the demolition to be carried out in accordance with *Australian Standard AS2601 - 2001: The Demolition of Structures* and the requirements of Safe Work NSW.

#### **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)**

BASIX is not applicable to the proposed development.

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

The subject site is located in an area characterised by industrial activities and service retail and it is therefore considered that the proposal is consistent with the development in the area and is not expected to create significant impacts on the context and setting of the area. The proposed development is permissible in the IN1 General Industrial zone and the development of the site is unlikely to generate any adverse environmental impacts within the vicinity of the development. The impacts of the industrial units are to be assessed under separate development applications prior to their first use and fit out.

Traffic levels are expected to be consistent with levels associated with industrial development. The development incorporates a hardstand area which also allows for a heavy rigid vehicle to enter and exit the site in a forward direction. The design also provides 58 car parking spaces for staff, customers, and disabled persons.

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

The overall bulk and scale of the development is not considered to be averse to the zone objectives and is consistent with the surrounding development in the locality. Development of the site will not create significant adverse impacts on the context and setting of the area.

It is considered the site is suitable for the proposal as the site is appropriately serviced and there are no known physical attributes, technological or natural hazards, which constrain the site.

#### **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 Plans, D22/11623 [↓](#)
- 2 Notice of Approval, D22/15640 [↓](#)



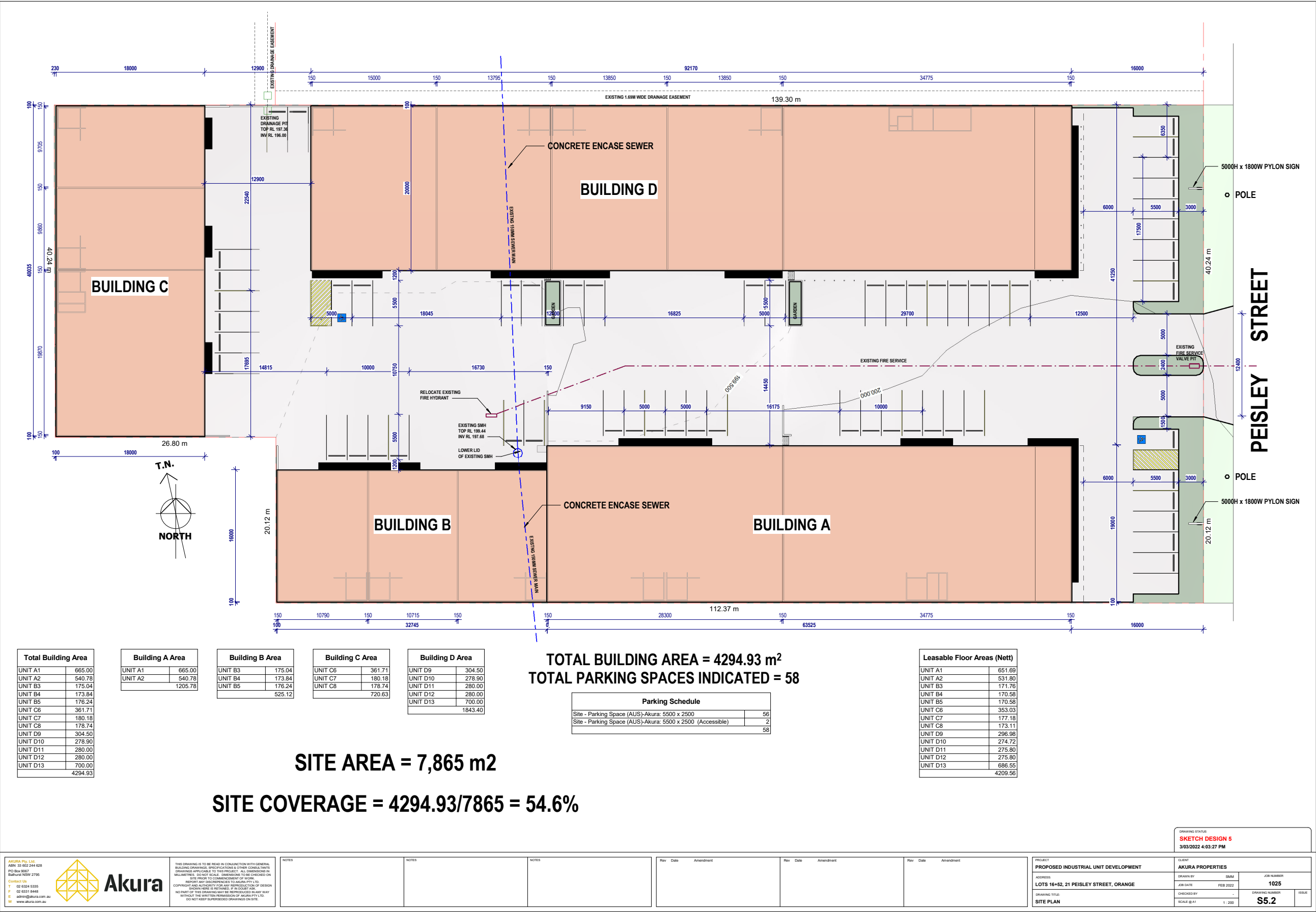


PROPOSED INDUSTRIAL UNIT DEVELOPMENT

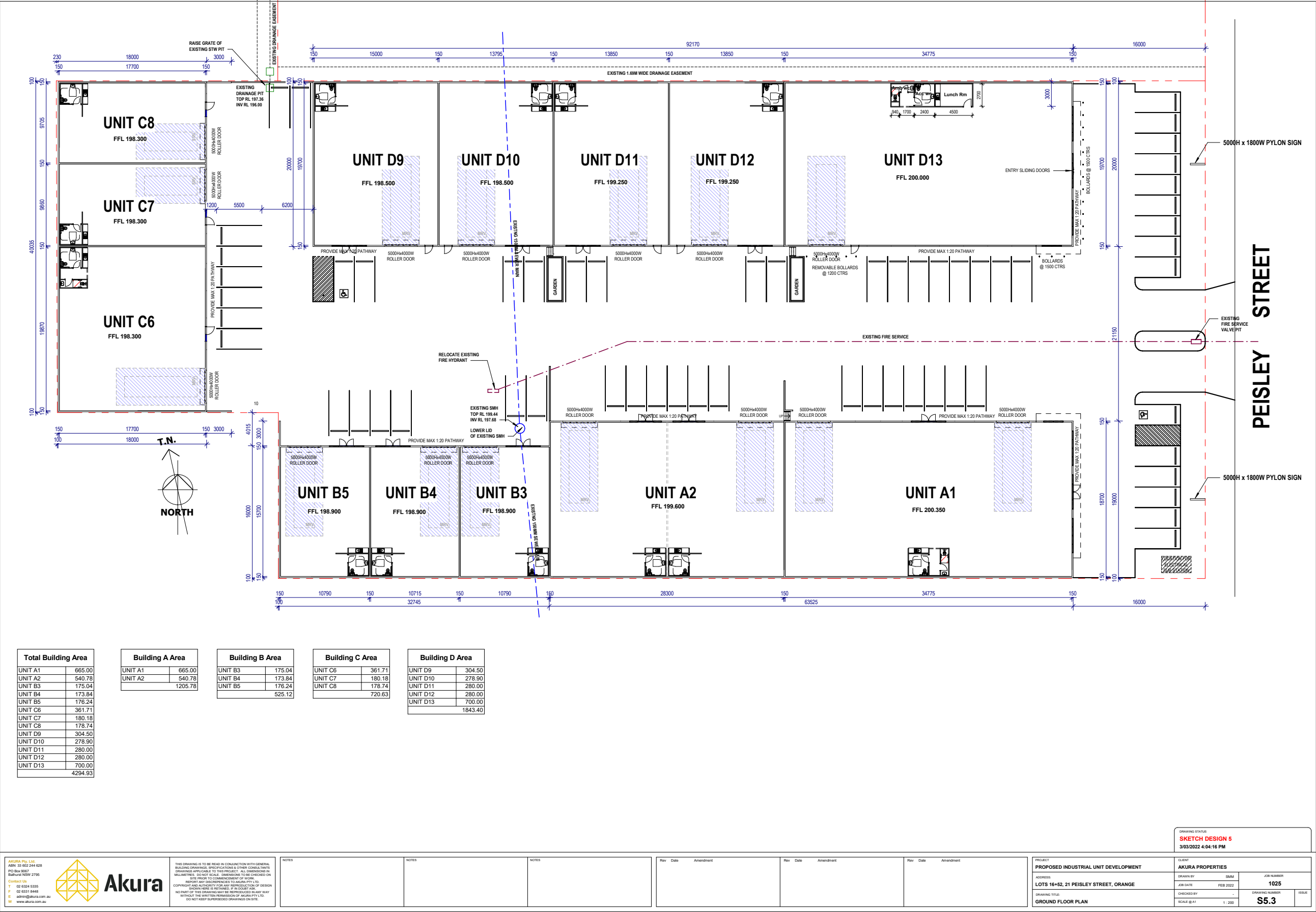


<div><div><div>Akura Pty Ltd</div><div>ABN 55 602 244 628</div><div>PO Box 9057</div><div>Bathurst NSW 2795</div><div>Contact Us</div><div>T 02 6324 5335</div><div>F 02 6331 8448</div><div>E admin@akura.com.au</div><div>W www.akura.com.au</div></div><div> <b>Akura</b></div><div><div>THIS DRAWING IS TO BE READ IN CONJUNCTION WITH GENERAL BUILDING DRAWINGS, SPECIFICATIONS &amp; OTHER CONSULTING DRAWINGS APPLICABLE TO THIS PROJECT. ALL DIMENSIONS IN MILLIMETRES, TO NOT SCALE. DIMENSIONS TO BE CHECKED ON SITE PRIOR TO COMMENCEMENT OF WORK.</div><div>REPORT ANY DISCREPANCIES TO AKURA PTY LTD IMMEDIATELY.</div><div>COPYRIGHT AND AUTHORITY FOR ANY REPRODUCTION OR DESIGN SHOWN HERE IS RETAINED BY IN COURT ASK.</div><div>NO PART OF THIS DRAWING MAY BE REPRODUCED IN ANY WAY WITHOUT THE WRITTEN PERMISSION OF AKURA PTY LTD.</div><div>DO NOT REPLY SUPERSEDED DRAWINGS ON SITE.</div></div></div>			NOTES	NOTES	NOTES	Rev	Date	Amendment	Rev	Date	Amendment	Rev	Date	Amendment	<div><div>PROJECT</div><div>PROPOSED INDUSTRIAL UNIT DEVELOPMENT</div><div>ADDRESS</div><div>LOTS 16+52, 21 PEISLEY STREET, ORANGE</div><div>DRAWING TITLE</div><div>COVER SHEET</div></div> <div><div>DRAWING STATUS</div><div>SKETCH DESIGN 5</div><div>3/03/2022 4:00:30 PM</div></div> <div><div>CLIENT</div><div>AKURA PROPERTIES</div><div>DRAWN BY</div><div>BBM</div><div>JOB DATE</div><div>FEB 2022</div><div>DRAWING NUMBER</div><div>1025</div><div>SCALE @A1</div><div>1:1</div><div>ISSUE</div><div>S5.1</div></div>
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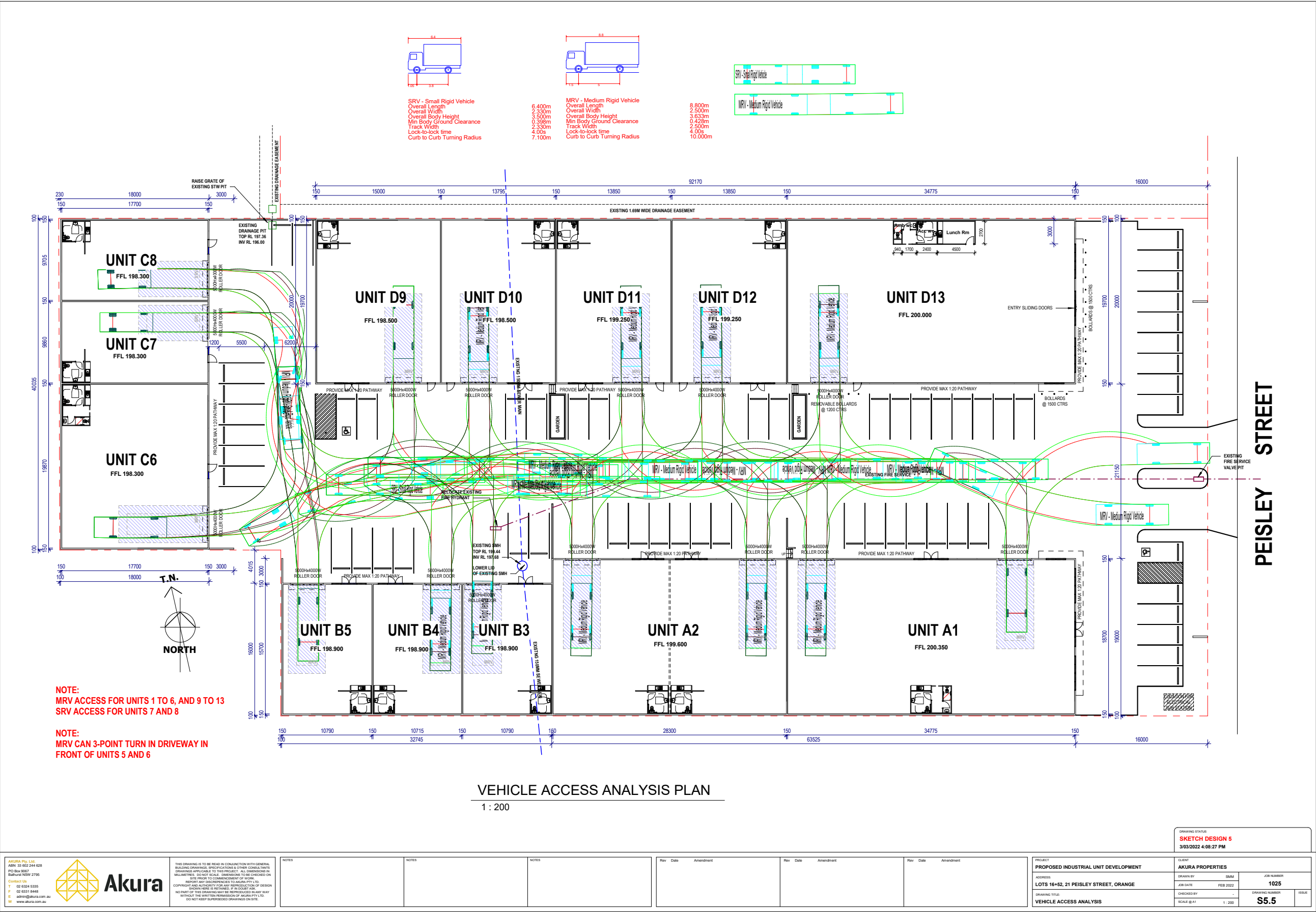















	<b>ORANGE CITY COUNCIL</b>  Development Application No <b>DA 23/2022(1)</b>  NA22/150 <span style="float: right;">Container PR26764</span>
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## NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

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

### Development Application

Applicant Name: The Trustee for Akura Property Trust  
Applicant Address: C/- 2/204-206 Lords Place  
ORANGE NSW 2800  
Owner's Name: Akura Properties Pty Ltd  
Land to Be Developed: Lot 100 DP 1199583 - 21-25 Peisley Street, Orange  
Proposed Development: Demolition (existing buildings), General Industry (industrial unit complex containing 13 units), Business Identification Signage

### Building Code of Australia building classification:

Class to be determined by Certifier

### Determination made under Section 4.16

Made On: 25 March 2022  
Determination: **CONSENT GRANTED SUBJECT TO CONDITIONS DESCRIBED BELOW:**

**Consent to Operate From:** 26 March 2022  
**Consent to Lapse On:** 26 March 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: Figures S5.1 - S5.5 by Akura dated February 2022 (5 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 23/2022(1)**

2

**Conditions (cont)**

**PRESCRIBED CONDITIONS**

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

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

- (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.

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

- (5) A detailed plan showing landscaping shall be submitted to and approved by Council's Manager Development Assessments **prior to the issue of a Construction Certificate**. It is noted that this consent does not approve the removal of any trees from the site, which may require separate consent, if not considered exempt development under the *Orange Development Control Plan 2004*.
- (6) 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.
- (7) 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.
- (8) Prior to the issue of a Construction Certificate plans of the carpark shall be submitted to the Principal Certifying Authority for approval. The carpark plans shall 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. Stormwater shall be collected in stormwater pits located within the carpark and piped to the proposed stormwater detention basin. All parking spaces and access aisle dimensions shall be in accordance with AS 2890.1 (Off-street car parking). 'Entry' and 'Exit' signage shall be installed on the property boundary facing Peisley Street, 'No Exit' sign installed within the carpark adjacent to the carpark entry. Entry signage shall clearly indicate a maximum permitted vehicle length of 8.8m (R6-33).
- (9) 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.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 23/2022(1)**

3

**Conditions (cont)**

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

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

The design of the detention storage is to be undertaken using the 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. Existing impervious areas shall be limited to approved buildings and concrete/bitumen sealed parking areas. The remainder of the site is considered pervious for the purposes of stormwater detention calculations.

- (11) 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 under or 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 ST009 (*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.

- (12) Prior to the issue of a Construction Certificate the applicant shall pay Orange City Council to undertake the following works:

- reline the existing 150mm diameter sewer line from boundary to boundary; and
- install a new sewer junction in the common driveway/vehicle manoeuvring area.

Evidence of payment for the above works will be required to be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate.

- (13) A 150mm-diameter sewer junction is to be constructed from Council's existing main to serve the proposed development. Prior to a Construction Certificate being issued engineering plans showing the location of the sewer junction are to be submitted to and approved by Orange City Council. The existing sewer junction shall be capped off.

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

- (14) A single common water service and meter shall be located in the common driveway area. Engineering plans of the meter location and size shall be submitted to Orange City Council for approval prior to the issuing of a Construction Certificate.

Internal water mains servicing the development from the common water meter shall be constructed as private water mains constructed to Australian Standard AS/NZS 3500.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 23/2022(1)**

4

**Conditions (cont)**

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

- (15) Plans detailing compliance with *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.
- (16) Prior to the issue of a Construction Certificate the plans shall be amended to show that:
- Units D9 to D13 shall have a floor level a minimum of 300mm higher than the adjacent natural ground level in the stormwater easement located on Lot 1 DP 863604; and
  - the finished floor levels of all units are a minimum of 300mm higher than the top water level of any on-site stormwater detention basin or overland flow path; and
  - the common driveway area is shaped to contain surface flows of stormwater.
- (17) 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.

**PRIOR TO WORKS COMMENCING**

- (18) 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.
- (19) 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.
- (20) Soil erosion control measures shall be implemented on the site.
- (21) 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, prior to demolition works commencing.

**DURING CONSTRUCTION/SITEWORKS**

- (22) Any adjustments to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer.
- (23) 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.
- (24) A heavy-duty concrete kerb and gutter layback and footpath crossing is to be constructed in the position shown on the plan submitted with the Construction Certificate application. The works are to be carried out to the requirements of the Orange City Council Development and Subdivision Code and Road Opening Permit.
- (25) Any existing kerb and gutter layback located on the Peisley Street frontage that is not proposed to be used is to be replaced with standard concrete kerb and gutter and the adjacent footpath area re-graded to the shape and level requirements of footpaths in the Orange City Council Development and Subdivision Code.
- (26) The existing 150mm diameter sewer main that crosses the site is to be accurately located. Where the main is positioned under any proposed building work, measures are to be taken in accordance with Orange City Council Policy - Building over and/or adjacent to sewers ST009.

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 23/2022(1)**

5

**Conditions (cont)**

**During construction/siteworks (cont)**

- (27) The existing water and sewerage services, where they are not proposed to be used as part of this development, are to be sealed off at their respective Council mains.

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

- (28) A total of 58 off-street car 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**.
- (29) Landscaping shall be installed in accordance with the approved plans and shall be permanently maintained to the satisfaction of Council's Manager Development Assessments.
- (30) 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.
- (31) 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.
- (32) 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.
- (33) A Certificate of Compliance, from a Qualified Engineer, stating that the stormwater detention basin complies with the approved engineering plans is to be submitted to the Principal Certifying Authority prior to the issuing of an Occupation Certificate.
- (34) 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 sewer main. Evidence that the easement has been registered is to be submitted to the Principal Certifying Authority prior to issuing of an Occupation Certificate.
- (35) 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.
- (36) 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.
- (37) 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**

- (38) Separate development applications shall be submitted to and approved by Council prior to the use and fitout of all general industrial units subject to this application.

- (39) 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.



**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 23/2022(1)**

7

**Conditions (cont)**

**Matters for the ongoing performance and operation of the development (cont)**

- (40) 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*.
- (41) The maximum sized delivery vehicle permitted to enter the site is an 8.8m length Medium Rigid Vehicle. Signage shall be prominently displayed at the property entrance.

**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.

**Signed:**

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

**Signature:**

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

**Date:** 26 March 2022