



PLANNING & DEVELOPMENT COMMITTEE

AGENDA

1 APRIL 2025

Notice is hereby given, in accordance with the provisions of the Local Government Act 1993 that a **PLANNING & DEVELOPMENT COMMITTEE MEETING of ORANGE CITY COUNCIL** will be held in the **COUNCIL CHAMBER, CIVIC CENTRE, BYNG STREET, ORANGE** on **Tuesday, 1 April 2025**.

David Waddell
CHIEF EXECUTIVE OFFICER

For apologies please contact Executive Support on 6393 8391.

AGENDA

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1 INTRODUCTION

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

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

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

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

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

RECOMMENDATION

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

2 GENERAL REPORTS

2.1 ITEMS APPROVED UNDER THE DELEGATED AUTHORITY OF COUNCIL

RECORD NUMBER: 2025/279

AUTHOR: Paul Johnston, Manager Development Assessments

EXECUTIVE SUMMARY

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

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan strategy “11.1. Ensure plans for growth and development are respectful of our heritage”.

FINANCIAL IMPLICATIONS

Nil

POLICY AND GOVERNANCE IMPLICATIONS

Nil

RECOMMENDATION

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

FURTHER CONSIDERATIONS

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

SUPPORTING INFORMATION

Reference:	DA 18/2012(3)	Determination Date:	4 March 2025
PR Number	PR15084		
Applicant/s:	Mr D Whitehead		
Owner/s:	Mr D Whitehead		
Location:	Lot 137 DP 750387, Lot B DP 346260, Lot 200 DP 750387 - Hiney Road, Spring Creek		
Proposal:	Modification of development consent - dwelling and detached shed. The modified proposal sought to move the location of the approved dwelling and shed approximately 35m to the east.		
Value:	\$0		

2.1 Items Approved Under the Delegated Authority of Council

Reference: DA 426/2015(5) **Determination Date:** 10 March 2025
PR Number PR15719
Applicant/s: Mr JS Pegum
Owner/s: Mr JS Pegum and Ms R Gradon
Location: Lots 3 and 4 Sec 5 DP 6662 - 106 and 106A Franklin Road, Orange
Proposal: Modification of development consent - demolition (part dwelling and sheds), dwelling alterations and additions, swimming pool with associated deck and fencing, secondary dwelling, pool house and carport. The modified proposal involved revised south (rear) alterations to the existing dwelling, revised swimming pool design with an associated pool house to be located south-east side of the subject site and also construction of a free-standing carport added to the existing garage.
Value: \$0

Reference: DA 82/2023(4) **Determination Date:** 3 March 2025
PR Number PR29121
Applicant/s: Mr PN Owens
Owner/s: Mr PN and Mrs JE Owens
Location: Lot 440 DP 1276227 - 3 Cherrywood Close, Orange
Proposal: Modification of development consent - subdivision (two lot Torrens title). The modified proposal sought approval for a power access handle passing through the proposed Lot 2. Essential Energy have provided confirmation that easements are no longer acceptable to establish power access handle, thereby this modification of the application is triggered.
Value: \$0

Reference: DA 110/2023(5) **Determination Date:** 14 March 2025
PR Number PR29360
Applicant/s: Orange Aboriginal Corporation Health Service
Owner/s: Orange Aboriginal Corporation Health Service
Location: Lot 35 DP 270446 - 16 Cameron Place, Orange
Proposal: Modification of development consent - community facility and business identification signage. The modified proposal sought to delete Conditions 21 and 24 in the Notice of Approval in relation to the proposed swimming pool. Two conditions will be replaced by one condition in regards to providing a child resistant barrier.
Value: \$0

2.1 Items Approved Under the Delegated Authority of Council

Reference: DA 286/2023(2) **Determination Date:** 26 February 2025
PR Number PR2645
Applicant/s: Mr TS Bassmann
Owner/s: Ms AF Lenard
Location: Lot 2 DP 507274 - 31 Clinton Street, Orange
Proposal: Modification of development consent - demolition, dwelling alterations and additions, and garage (detached). The modification involves changing the dual pavilion to a single pavilion extension linked by a glass link to the existing cottage, and replacement of a stand-alone garage at the western end of the driveway.
Value: \$0

Reference: DA 600/2024(1) **Determination Date:** 6 March 2025
PR Number PR12125
Applicant/s: Mr DH Elliott
Owner/s: Mr DH Elliott
Location: Lot 7 DP 749018 - 331 Canobolas Road, Canobolas
Proposal: Continued use of dwelling and existing shed
Value: \$144,950.31

Reference: DA 604/2024(3) **Determination Date:** 13 March 2025
PR Number PR25872
Applicant/s: Amica Orange Management Pty Ltd
Owner/s: Amica Property Group Pty Ltd
Location: Lot 100 DP 1178894 - 68-70 Peisley Street, Orange
Proposal: Modification of development consent - restaurant or Cafe (change of use of Unit 1 from office). The modified proposal sought to delete and amend specific conditions from the approved original consent as the applicant submitted that the conditions were included in error. The application stated the development involved serving of coffee, bottled drinks, pre-packaged cakes, snacks, confectionary and food. It has been confirmed that there will be no cooking or preparation onsite where all the items are to be pre-packaged and sourced externally.
Value: \$0

Reference: DA 721/2024(1) **Determination Date:** 4 March 2025
PR Number PR12316
Applicant/s: Mr PM Gibson
Owner/s: Mr PM Gibson
Location: Lot 1 DP 798412 - 42 Wallace Lane, Orange
Proposal: Cellar door premises
Value: \$0

2.1 Items Approved Under the Delegated Authority of Council

Reference: DA 724/2024(1) **Determination Date:** 28 February 2025
PR Number PR28032
Applicant/s: Source Architects Pty Ltd
Owner/s: Mr HD and Mrs EJ Robertson
Location: Lots 201-203 DP 1212418 - 60 Byng Street, Orange
Proposal: Demolition (internal) and dwelling alterations and additions
Value: \$704,000

Reference: DA 731/2024(1) **Determination Date:** 26 February 2025
PR Number PR18224
Applicant/s: Bassman Drafting Services
Owner/s: Ms PL Swain
Location: Lot 31 DP 1033487 - 28 Rosemary Lane, Orange
Proposal: Demolition (rear additions, front verandah infill sections and front fence), dwelling alterations and additions, reinstatement of verandah and new front fence
Value: \$177,200

Reference: DA 773/2024(1) **Determination Date:** 5 March 2025
PR Number PR18642
Applicant/s: Commins PLANVIEW P/L
Owner/s: Regional Community Support Limited
Location: Lot 30 DP 1023080 - 27 Sale Street, Orange
Proposal: Community facility (change of use and alterations) and business identification signage
Value: \$745,880

Reference: DA 29/2025(1) **Determination Date:** 14 March 2025
PR Number PR28634
Applicant/s: James Richmark Pty Ltd
Owner/s: James Richmark Pty Ltd
Location: Lot 4 DP 271257 - 1517-1539 Forest Road, Orange
Proposal: Neighbourhood supermarket and ancillary office
Value: \$975,000

Reference: DA 66/2025(1) **Determination Date:** 11 March 2025
PR Number PR2769
Applicant/s: Mr TS Bassmann
Owner/s: Mataley Pty Ltd
Location: Lot 25 DP 553424 - 66 Clinton Street, Orange
Proposal: Front fence
Value: \$10,000

2.1 Items Approved Under the Delegated Authority of Council

Reference: DA 74/2025(1) **Determination Date:** 10 March 2025
PR Number PR29042
Applicant/s: Eagle Direct Pty Ltd
Owner/s: Mrs GM Ryan
Location: Lot 2 SP 103491 - 2/231 McLachlan Street, Orange
Proposal: Warehouse or distribution centre (change of use)
Value: \$0

Reference: DA 80/2025(1) **Determination Date:** 14 March 2025
PR Number PR2642
Applicant/s: Commins PLANVIEW P/L
Owner/s: Mr TS Newman and Ms AJ Blake
Location: Lot 1 DP 1061322 - 25 Clinton Street, Orange
Proposal: Demolition (tree removal)
Value: \$5,000

Reference: DA 84/2025(1) **Determination Date:** 13 March 2025
PR Number PR22203
Applicant/s: Statspan Pty Ltd
Owner/s: Statspan Pty Ltd
Location: Lot 1 DP 1109351- 120-122 Summer Street, Orange
Proposal: Shop (liquor sales) and business identification signage (additional use)
Value: \$19,360

TOTAL NET* VALUE OF DEVELOPMENTS APPROVED BY THE CEO UNDER DELEGATED AUTHORITY IN THIS PERIOD:	\$2,781,390.00
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** **Net** value relates to the value of modifications. If modifications are the same value as the original DA, then nil is added. If there is a plus/minus difference, this difference is added or taken out.*

Additionally, since the March 2025 meeting report period (18 February to 17 March 2025), another 10 development applications were determined under delegated authority by other Council staff with a combined value of \$1,417,581.

2.2 DEVELOPMENT APPLICATION DA 2/2025(1) - 96 FRANKLIN ROAD

RECORD NUMBER: 2025/443

AUTHOR: Dhawala Ananda, Town Planner

EXECUTIVE SUMMARY

Application lodged	14 January 2025
Applicant/s	Ms S Cameron
Owner/s	Mr CS and Mrs S Cameron
Land description	Lot 36 DP 219312 - 96 Franklin Road Orange
Proposed land use	Demolition (tree removal)
Value of proposed development	\$1,500.00

Reference is made to Item 5.4 of the Council Agenda considered at the Council meeting held on 18 March 2025 in relation to the proposed tree removal (*Cedrus deodara (Himalayan Cedar)*) located in the front yard of the property at 96 Franklin Road, Orange. Council in their earlier deliberations on this application at that Council meeting resolved to approve the development application to allow removal of the subject tree.

Given that the Council's decision was contrary to the initial staff recommendation it is important procedurally that a Notice of Approval containing recommended standard conditions of consent to support that decision be tabled for Council's further consideration before the matter is uploaded to the NSW Planning Portal. Please see attached a Notice of Approval for the subject Development Application.

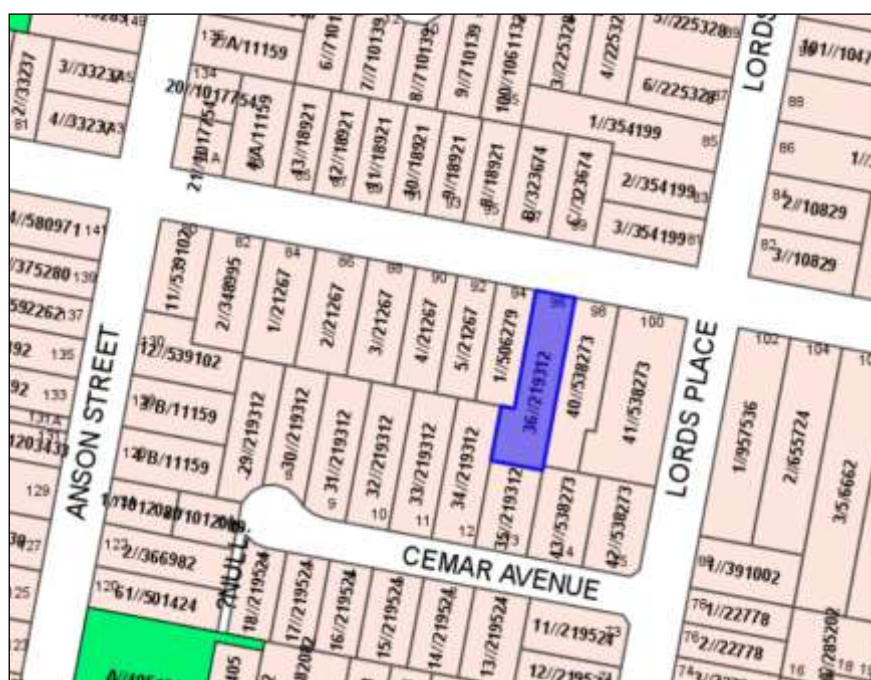


Figure 1 - locality plan

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan Strategy "11.1. Ensure plans for growth and development are respectful of our heritage".

FINANCIAL IMPLICATIONS

Nil

POLICY AND GOVERNANCE IMPLICATIONS

Nil

RECOMMENDATION

That Council confirms approval of development application DA 2/2025(1) for *Demolition (tree removal)* at Lot 36 DP 219312 - 96 Franklin 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.

DIRECTOR'S COMMENT

DA 2/2025(1) for the proposed *Demolition (tree removal)* at 96 Franklin Road was considered by Council at its meeting held on 18 March 2025 (Item 5.4).

This is not a report re-opening the debate on this application. This report simply provides the required Notice of Approval, with standard conditions of consent relevant for this type of development, as requested by Council at the previous meeting. Council is now required based on the receipt of an updated Draft Notice of Approval, to formally approve the development. It is not open to Council to change their position on the approval/refusal of the development.

SUPPORTING INFORMATION

Item 5.4 of the Council meeting held on 18 March 2025 considered a Development Application in relation to DA 2/2025(1) for the proposed *Demolition (tree removal)* at 96 Franklin Road. The initial Council planning report regarding the subject development recommended refusal of the application. Council in their deliberations on this matter resolved to approve the subject Development Application.

In accordance with the Council resolution, a Notice of Approval is attached for Council's consideration. The conditions of approval have been prepared based on standard conditions that would ordinarily apply to development of this type, and the views expressed by Councillors in the Council meeting held on 18 March 2025. .

ATTACHMENTS

- 1 Draft Notice of Approval, D25/31693[📄](#)
- 2 Plan, D25/26237[📄](#)



NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

Application number	DA 2/2025(1) PAN-500971
Applicant	Shara Cameron 96 FRANKLIN RD
Description of development	Removal of one tree
Property	96 FRANKLIN ROAD ORANGE 2800 36/-/DP219312
Determination	Approved Consent Authority - Council
Date of determination	18/03/25
Date from which the consent operates	18/03/25
Date on which the consent lapses	18/03/30

Under section 4.18(1) of the EP&A Act, notice is given that the above development application has been determined by the granting of consent using the power in section 4.16(1)(a) of the EP&A Act, subject to the conditions specified in this notice.

Reasons for approval

1. To ensure compliance with relevant statutory requirements.
2. To prevent the proposed development having a detrimental effect on adjoining land uses.
3. To comply with the Environmental Planning and Assessment Act 1979.
4. The proposal will reasonably satisfy local and state planning controls.
5. To ensure a quality urban design for the development which complements the surrounding environment.

Right of appeal / review of determination

If you are dissatisfied with this determination:

Request a review

You may request a review of the consent authority's decision under section 8.3(1) of the EP&A Act. The application must be made to the consent authority within 6 months from the date that you received the original determination notice provided that an appeal under section 8.7 of the EP&A Act has not been disposed of by the Court.

Rights to appeal

You have a right under section 8.7 of the EP&A Act to appeal to the Court within 6 months after the date on which the determination appealed against is notified or registered on the NSW planning portal.

The Dictionary at the end of this consent defines words and expressions for the purposes of this determination.

Paul Johnston
Manager Development Assessments
Person on behalf of the consent authority

For further information, please contact Dhawala Ananda / Senior Planner

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

General Conditions

1	Approved plans and supporting documentation
	Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.
	Drawing title: 96 Franklin Road, Garden Plan (1 sheet);
	In the event of any inconsistency between the approved plans and documents, the approved Plans / Documents prevail.
	In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.
	Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

Demolition Work

Before demolition work commences

2	Erosion and sediment controls in place
	Before any site work commences, erosion and sediment controls shall be in place. These controls must remain in place until any bare earth has been restabilised.
	Condition reason: To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways.

During demolition work

3	Hours of work - demolition
	All 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 Chief Executive Officer of Orange City Council to vary these hours.
	Condition reason: To ensure compliance with relevant statutory requirements.

On completion of demolition work

No additional conditions have been applied to this stage of development.

General advisory notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the [Conditions of development consent: advisory notes](#). The consent should be read together with the *Conditions of development consent: advisory notes* to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.

Dictionary

The following terms have the following meanings for the purpose of this determination (except where the context clearly indicates otherwise):

Approved plans and documents means the plans and documents endorsed by the consent authority, a copy of which is included in this notice of determination.

AS means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

Certifier means a council or a person that is registered to carry out certification work under the *Building and Development Certifiers Act 2018*.

Construction certificate means a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation and *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

Council means ORANGE CITY COUNCIL.

Court means the Land and Environment Court of NSW.

EPA means the NSW Environment Protection Authority.

EP&A Act means the *Environmental Planning and Assessment Act 1979*.

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Independent Planning Commission means Independent Planning Commission of New South Wales constituted by section 2.7 of the EP&A Act.

Occupation certificate means a certificate that authorises the occupation and use of a new building or a change of building use for an existing building in accordance with this consent.

Principal certifier means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

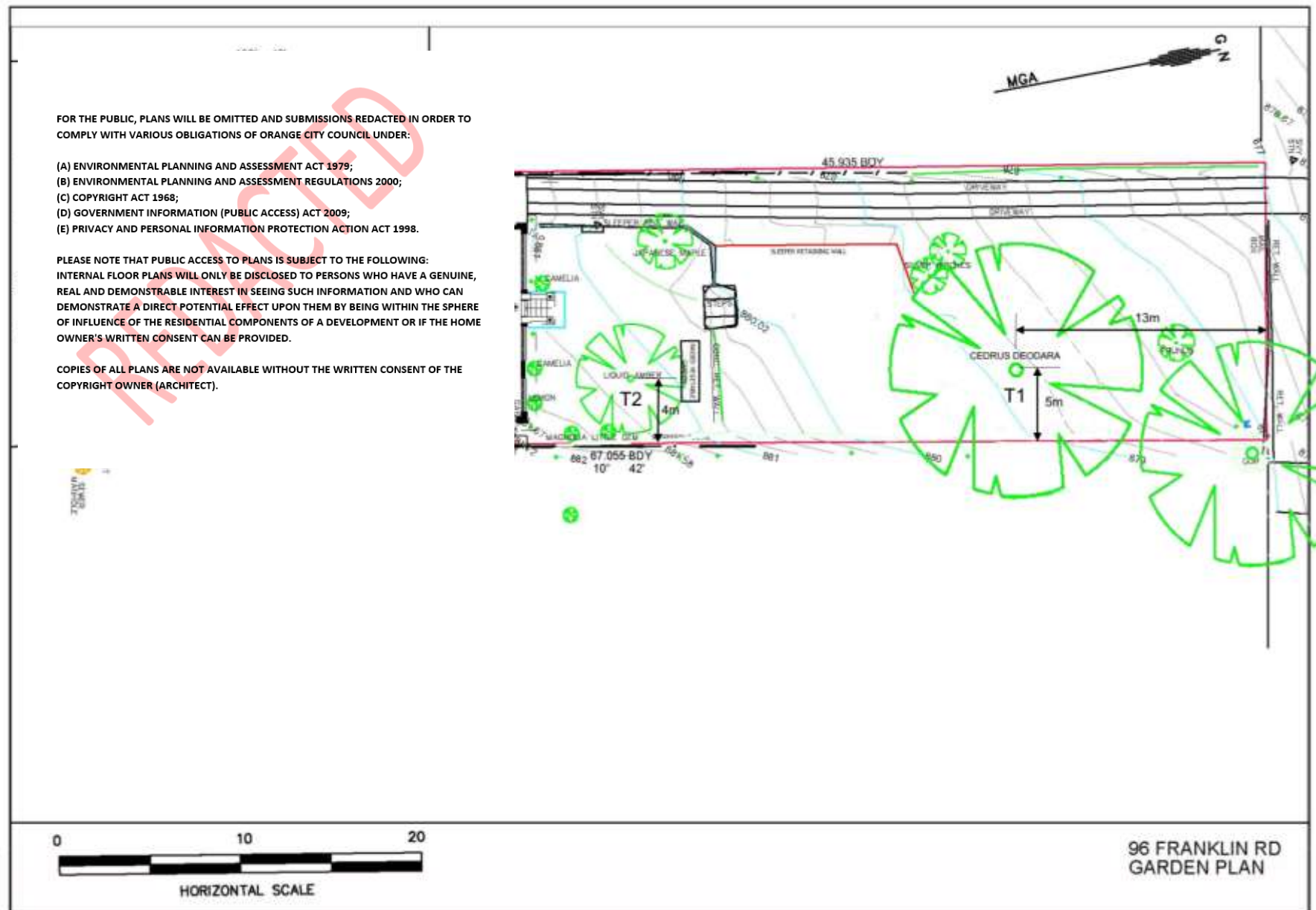
Site work means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

Stormwater drainage system means all works and facilities relating to:

- the collection of stormwater,
- the reuse of stormwater,
- the detention of stormwater,
- the controlled release of stormwater, and
- connections to easements and public stormwater systems.

Strata certificate means a certificate in the approved form issued under Part 4 of the *Strata Schemes Development Act 2015* that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

Sydney district or regional planning panel means Western Regional Planning Panel.



2.3 DEVELOPMENT APPLICATION DA 218/2015(5) - LOT 218 HAWKE LANE

RECORD NUMBER: 2025/435

AUTHOR: Ben Hicks, Senior Planner

EXECUTIVE SUMMARY

Application lodged	11 December 2024
Applicant/s	Michael Brown Planning Strategies Pty Ltd
Owner/s	Roy Mammone Developments Pty Ltd
Land description	Lot 218 DP 1305914 - Hawke Lane, Orange
Proposed land use	Subdivision (207 lot residential) and Demolition (existing dwelling and shed)
Value of proposed development	\$0

This application seeks to amend Consent to Development Application 218/2015(4) relating to the development approved by Council initially on 4 November 2015 and further amended on 16 March 2023.

This modification proposes changes to the approved plans specifically as it relates to the construction of road on the western fringe of the development (Joeseeph Drive). To this end the applicant seeks only half road construction to enable release of the Subdivision Certificate. The proposed modification would essentially result in the creation of a Stage 8 lot located between the road reserve and the adjoining property. This type of configuration is often alluded to in industry discussions as a 'ransom lot'. The application has been made under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

The road layout was initially designed in accordance with the Shiralee Development Control Plan (DCP), which required shared road construction between the subject site and the adjoining property. However, due to the adjoining landowner's decision not to proceed with their development at the time and considering the requirements for overland flooding in the event of a breach at Hawke Lane Dam, the applicant sought an amendment to the DCP layout in their initial Development Application (DA 218/2015(1)). This amendment adjusted the road layout by allocating a larger portion of road reserve to the applicant's property, thereby assuming responsibility for constructing the road in accordance with Council's requirements outlined in Condition 23 of the consent.

The applicant's actions in proceeding under the initial 2015 consent by submitting the required Subdivision Works Certificate (SWC) drawings, which were subsequently approved by Council, and by undertaking the works, albeit only partially, clearly demonstrate acceptance of the imposed conditions. The decision to request a modification at this advanced stage raises significant concern. Such a modification would effectively create a parcel that may serve as a strategic negotiation asset, potentially stifling further development and undermining both the established reliance interests and the integrity of the original consent. The applicant's conduct confirms their agreement to the terms of the original consent as granted by Council. This acceptance has generated reliance interests, which is particularly evident in the neighbouring developer's subsequent acquisition of the adjacent land based on the expectation that the development would proceed in accordance with the approved consent.

It should be noted that the proponent has previously asked Council if it would be prepared to accept a bond for the cost of the western part of the roads construction and has provided a quote for the cost of extending the services to the neighbouring land.

It is also understood that the neighbouring developer has corresponded with the proponent on several occasions offering access to their property for the purpose of undertaking works for which this modification is subject to.

The application was notified under the Orange Community Participation Plan 2023. Although notification of modifications under Section 4.55(1A) is ordinarily not required and is discretionary, Council staff exercised this power in view of the potential implications for the adjoining landowner. A submission was received from the adjoining landowner objecting to the proposal.

Council staff have assessed the proposed modification and determined that the development, as modified, is not acceptable due to its inconsistency with the requirements of the Shiralee Development Control Plan 2015 and the statutory objectives of the Environmental Planning and Assessment Act 1979, particularly those relating to the orderly and economic use and development of land, and public interest considerations. Accordingly, refusal is recommended.

The application has been referred to the Planning and Development Committee for determination following the staff recommendation for refusal and in accordance with Clause 4.10 of Orange City Council's Declaration of Planning and Development Assessment Procedures and Protocols (Version 5, 2019).



Figure 1 - locality plan

DECISION FRAMEWORK

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

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

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

DIRECTOR'S COMMENT

This application seeks to amend the consent for Development Application DA 218/2015(4) relating to a large subdivision development in the south of the Shiralee area, which was previously approved by Council on 4 November 2015.

The original Development Proposal that was approved by Council reflected the original intention for only half the required road to be located on this site, the developer however later obtained a modification approval to relocate the road fully on their land and not rely on their neighbour who at the time, was not progressing the development of their land.

As a result of this amendment, the applicant thereby assumed responsibility for construction of the road in accordance with Council's requirements outlined in Condition 23 of the consent. The applicant then also acted upon this consent, building much of the subdivision.

This modification proposes changes to the approved plans specifically as it relates to the construction of road on the western fringe of the development (Joseph Drive). The applicant seeks the subdivision release by Council of only part of the constructed road through the Subdivision Certificate process.

The proposed modification would essentially result in the creation of another lot between the road and neighbours, that therefore restrict access from the neighbouring land to the Council Road (Joseph Drive). This type of configuration is often referred to as a 'ransom lot'. Council's development controls require development of land in a manner that allows sharing of assets and efficient use of land.

The assessment report concludes that it is inappropriate for Council and the DA process to be drawn into a commercial argument between two neighbouring developers. Again, the developer obtained the original subdivision consent in 2015, then modified that consent on their own volition to be wholly responsible for the construction of the future road. The applicant then commenced work using that approval on this development (thereby accepting the conditions of the consent). The road is now completed.

The fact that the neighbouring developer has since commenced works does not alter the planning considerations for Council for this development. This is a commercial issue between neighbours. It is considered reasonable that others should be permitted to access this future public road. The refusal recommendation is supported.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan Strategy “11.1. Ensure plans for growth and development are respectful of our heritage”.

FINANCIAL IMPLICATIONS

Nil

POLICY AND GOVERNANCE IMPLICATIONS

Nil

RECOMMENDATION

That Council **REFUSES** consent to modify Development Application DA 218/2015(5) for *Subdivision (207 lot residential) and Demolition (existing dwelling and shed)* at Lot 218 DP 1305914, Hawke Lane, Orange for the following reasons:

1. The proposed development is inconsistent with the requirements of Section 9.4 (Street Network and Access) of the Shiralee Development Control Plan 2015.
2. The proposed modification is inconsistent with the objects of the Environmental Planning and Assessment Act 1979, specifically Section 1.3(c), to promote the orderly and economic use and development of land.
3. The proposed modification does not serve the public interest as required by Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

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

This application seeks to amend Condition 1(a) of approved Development Application DA 218/2015(4) by modifying the approved plans for the construction of the road on the western fringe of the development (Joseph Drive). The applicant is requesting that only half of the road be constructed to enable the release of the subdivision certificate. The proposed modification would effectively create a Stage 8 lot located between the road reserve and the adjoining property. This configuration would potentially establish a parcel that may confer significant strategic negotiation leverage. Figure 2 below illustrates this arrangement, with the red area identifying the resultant parcel and the yellow area representing the portion to be released as part of the modification.

The application is made under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.



Figure 2 - site plan

ENVIRONMENTAL PLANNING ASSESSMENT

Section 4.55 Modification of consents - generally

Section 4.55(1A) of the EP&A Act 1979 states that a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) *it is satisfied that the proposed modification is of minimal environmental impact,*

Comment: The proposed modification is of minimal environmental impact. The modification is confined to an adjustment in the road construction strategy along Joseph Drive, whereby only half of the road will be constructed to facilitate the release of the Subdivision Certificate. This change results in the creation of a Stage 8 lot without introducing significant additional land disturbance or environmental degradation beyond that already assessed in the original consent. The modification does not adversely affect the overall environmental outcomes of the approved development, and all impacts remain consistent with the prior environmental assessments and Council's planning policies.

(b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all).*

Comment: The development, as modified, would remain substantially the same as that for which the original consent was granted. The proposed changes are confined to the construction of the road on the western fringe (Joseph Drive) to facilitate the release of the Subdivision Certificate. This alteration does not affect the fundamental character, scale, or intended use of the development, and therefore the modified consent continues to relate to the same development as originally approved.

(c) *it has notified the application in accordance with:*

(i) *the regulations, if the regulations so require, or*

(ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

Comment: The modified development does not ordinarily comprise advertised or notified development pursuant to the Environmental Planning and Assessment Regulation or Orange Community Participation Plan 2023 and is discretionary only. Council staff exercised this power in view of the potential implications for the adjoining landowner.

(d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comment: A submission was received from the adjoining landowner objecting to the proposal. The submission has been considered under s4.15(1)(d) in this report

In addition to the above considerations, Section 4.55(3) of the EP&A Act 1979 provides that:

(3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in Section 4.15(1) as are of relevance to the development the subject of the application.*

Comment: The relevant matters under Section 4.15(1) have been addressed hereunder.

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.

Pursuant to Section 7.17 of the BC Act, applications for a modified consent are subject to biodiversity assessment and offsets as required under Part 7 of that Act. The BC Act requires the biodiversity offset scheme entry requirements to be applied to modification applications based on the 'as modified' project.

The Biodiversity Offset Scheme does not apply to the modified development. The applicable triggers will not be exceeded, or do not apply to the subject land or modified development.

Section 4.15 of the Environmental Planning and Assessment Act 1979

Section 4.15(1) of the EP&A Act 1979 provides that in determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

S4.15(1)(a)(i) Provisions of any environmental planning instrument

Orange Local Environmental Plan 2011

The initial development was approved under the provisions of Orange LEP 2011. The subject land is zoned R1 General Residential. The proposed development is defined as subdivision, consent for which is required under Clause 2.6. The applicant is seeking to modify the terms of the existing development consent. The development as modified would remain consistent with the aims of the plan and the objects of the zone.

The modified development does not alter the previous assessment under the LEP provisions.

State Environmental Planning Policies

A number of State Environmental Planning Policies (SEPPs) apply to the land; however, no SEPPs are specifically relevant to the assessment of this modification application. The modified development remains consistent with the previous assessment carried out.

s4.15(1)(a)(ii) provisions of any draft environmental planning instrument that has been placed on exhibition

The modified development is not contrary to any matter contained in the draft plans currently on exhibition.

s4.15(1)(a)(iii) provisions of any development control plan

The original development was assessed pursuant to the following:

- Development Control Plan 2004
- Shiralee Development Control Plan 2015

The proposed modified development remains generally consistent with the previous assessment under the relevant sections of each DCP. Except for the requirements provided in Shiralee DCP Section 9.4 Street Network and Access:

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

In the present proposal, the western half of the road reserve, which remains unbuilt, is intended to remain in private ownership rather than be vested with Council as prescribed and have the necessary works bonded. The proponent's proposal to retain the lot in private ownership effectively removes the mechanism intended to secure controlled access and promote the orderly and economic use and development of land. This arrangement may have the effect of stifling subsequent development at the adjoining property by creating a parcel with significant strategic negotiation leverage, a configuration that undermines the objects of the Environmental Planning and Assessment Act 1979 as well as public interest considerations.

It should be noted that while the developer previously inquired whether Council would be prepared to accept a bond to cover the cost of constructing the western portion of the road and provided a corresponding quote for extending services to the neighbouring land, the Developer has not proceeded with this arrangement.

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

The proposed modification is expected to have minimal additional environmental impacts as the changes are confined to an adjustment in the road construction strategy. However, the modification introduces significant planning and policy implications. Retaining the western half of the road reserve in private ownership deviates from the prescribed requirements and undermines the principles of orderly land development.

This proposed strategy may obstruct future development on adjoining properties by creating a parcel that confers strategic negotiation leverage. Furthermore, the modification may affect infrastructure planning and access arrangements, potentially resulting in substantial delays or additional costs in achieving integrated development outcomes in accordance with the Shiralee Masterplan.

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

The subject site is zoned for residential development and was deemed suitable for the approved subdivision under the Orange Local Environment Plan 2011, the Orange Development Control Plan 2004, and the Shiralee Development Control Plan 2015. The original consent was granted on the basis that the site met all relevant planning and environmental criteria or, where variations were sought, that such variations were acceptable. While the site remains fundamentally appropriate for the approved development, the proposed modification, by altering the road construction strategy, raises concerns regarding the integrated and orderly development of the site and adjacent properties.

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

The proposed development notified under the provisions of the Community Participation Plan. The application was advertised for the prescribed period of 14 days and at the end of that period received one (1) submission. The concerns raised in the submission are summarised below:

Submission 1

- Notes that the Applicant/Developer has not accepted repeated offers for property access to facilitate construction works.
- Identifies errors in the Statement of Environmental Effects (SEE), including:
 - Omission of cross-sectional road details.
 - Inaccurate allocation of the road reserve (26 m on Lot 218 versus 8.6 m on the adjoining property).
 - Markup in Annexure 1 illustrates the approved scope (south-bound lane, full central swale, and north-bound traffic lane on Lot 218; north-bound bicycle lane, parking lane, and footpath on the adjoining property).
- Disputes the claim that rejection of the modification would yield a financial windfall for the new developer of the adjoining property.
- States that certain approved infrastructure elements (e.g., swale completion and extensions for water, sewer, and stormwater services) remain incomplete.
- Raises concerns regarding the recent Planning Proposal for The Hawke Lane Park rezoning (PP-2023-45, LEP Amendment 36).
- Supports the bonding of the works to ensure completion of the remaining infrastructure.

Assessment Response: The relevant concerns raised have been addressed and considered in the body of the assessment report.

PUBLIC INTEREST s4.15(1)(e)

The modification is not in the public interest. Retaining half the road reserve in private ownership departs from established planning processes, undermining principles of orderly development, and the reliance interests generated by the original consent.

SUMMARY

The proposed modification to Development Application 218/2015(4) seeks to alter the construction strategy for the road on the western fringe of the development (Joseph Drive). The modification would essentially result in the creation of a Stage 8 lot situated between the road reserve and the adjoining property. Although the modification is of minimal environmental impact and the development remains substantially unchanged, the departure from the requirements of the Shiralee Development Control Plan, in particular the retention of the western road reserve in private ownership, undermines the principles of orderly land development and the protection of the public interest. In view of the reliance interests generated by the applicant's conduct and the potential to stifle subsequent development at the adjoining property, Council staff recommend that consent to modify the development be refused.

ATTACHMENTS

- 1 Draft Notice of Refusal, D25/33771 [↓](#)
- 2 Plans, D25/31597 [↓](#)
- 3 Statement of Environmental Effects, D25/31602 [↓](#)
- 4 Submission (redacted), D25/30705 [↓](#)

	<p style="text-align: center;">ORANGE CITY COUNCIL</p> <p style="text-align: center;">Development Application No DA 218/2015(5)</p> <p>NA25/102 Container PAN-490939</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: Michael Brown Planning Strategies Pty Ltd
Applicant Address: PO Box 295
 CAMDEN NSW 2570
Land to Be Developed: Lot 218 DP 1305914 - Hawke Lane, Orange
Proposed Development: Subdivision (207 lot residential) and Demolition (existing dwelling and shed)

Building Code of Australia Building Classification:

Class to be determined

Determination made under Section 4.16

Made On: 1 April 2025
 Determination: **APPLICATION REFUSED**

Reason(s) for Refusal:

1. The proposed development is inconsistent with the requirements of Section 9.4 (Street Network and Access) of the Shiralee Development Control Plan 2015.
2. The proposed modification is inconsistent with the objects of the Environmental Planning and Assessment Act 1979, specifically Section 1.3(c), to promote the orderly and economic use and development of land.
3. The proposed modification does not serve the public interest as required by Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

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:

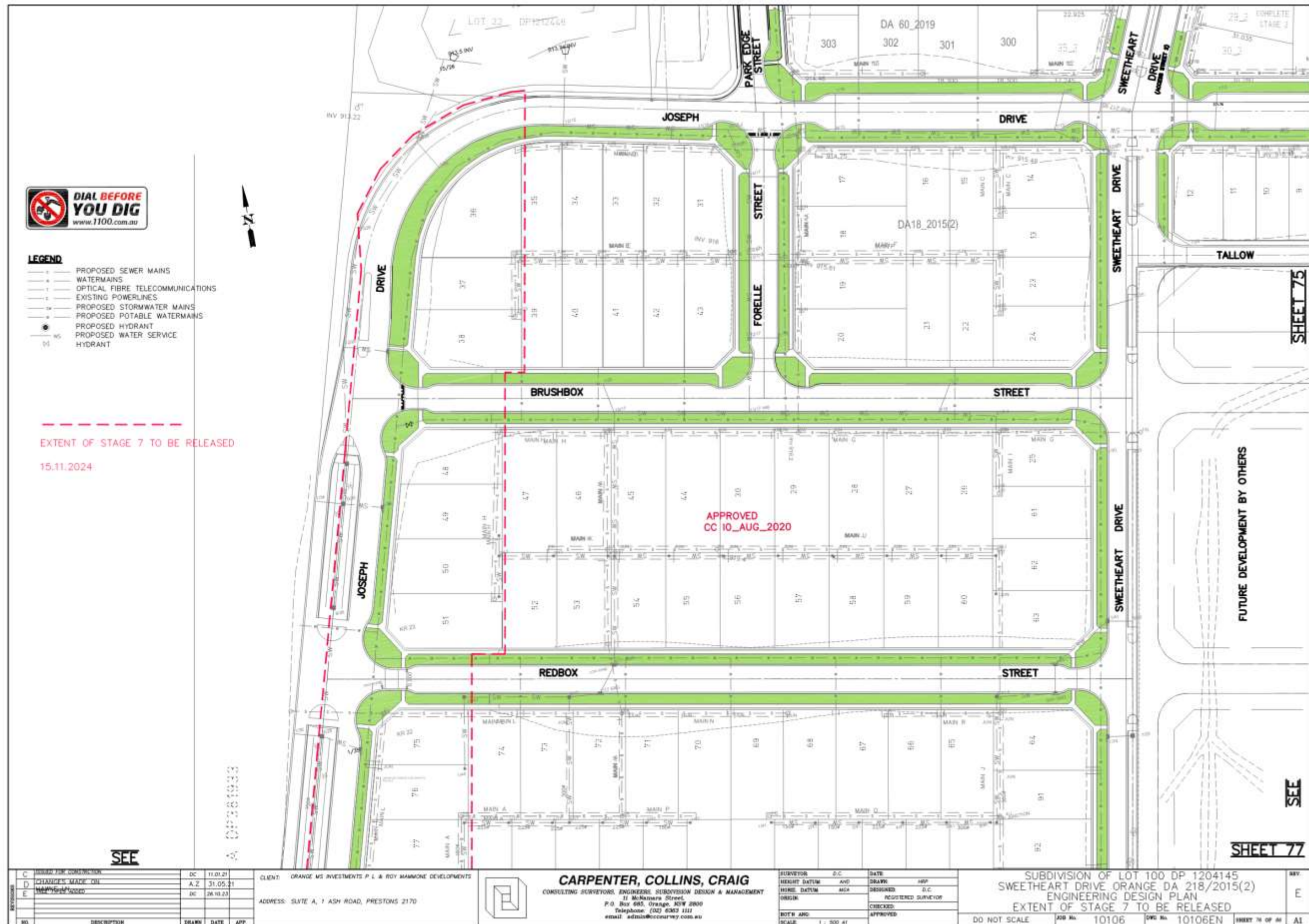
Name:

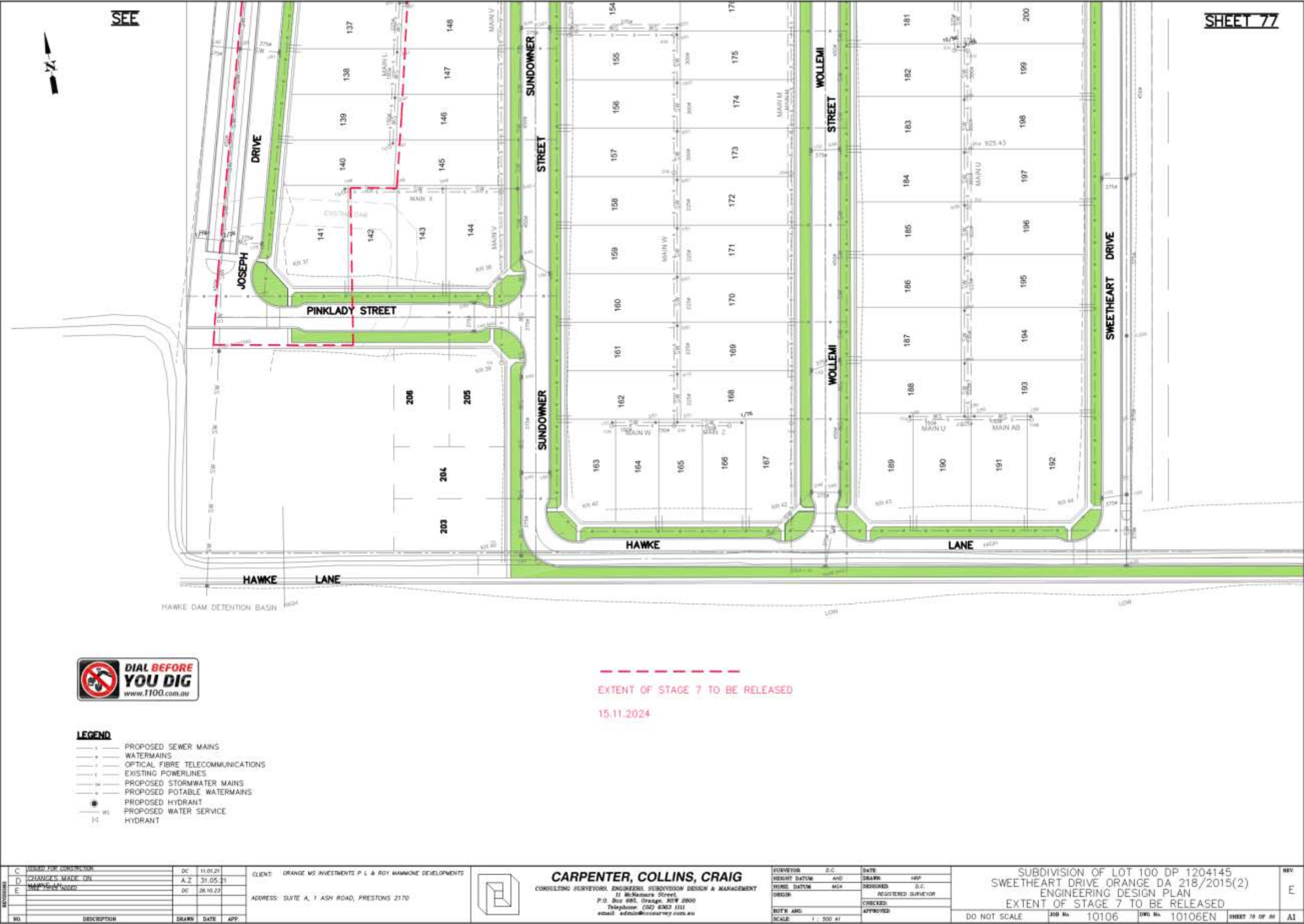
PAUL JOHNSTON - MANAGER DEVELOPMENT ASSESSMENTS

Date:

20 March 2025







**Statement of Environmental Effects to
Accompany a Section 4.55(1A) Application:
Subdivision (202 lot residential) and
Demolition (existing dwelling and shed)
(DA 218/2015(4)).**

**Lot 218 in DP 1305914 - Hawke Lane, ORANGE
(formerly Lot 90 in DP 1284877 - Sweetheart
Drive & Lot 100 DP 1204145 - 118 Lysterfield
Road, ORANGE)**

Prepared on behalf of:
Roy Mammone Developments Pty Ltd

Prepared By:



November 2024

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1 Introduction

1.1 GENERAL

On 4 November 2015, Orange City Council approved consent to Development Application 218/2015(4) for the subdivision (202 lot residential) and demolition (existing dwelling and shed), subject to a number of conditions. The consent was modified on 16 March 2023.

This report has been prepared by Michael Brown Planning Strategies Pty Ltd on behalf of Roy Mammone Developments Pty Ltd to accompany an application to modify Condition 1(a) of the Consent to Development Application DA 218/2015(4) on land described as Lot 218 in DP 1305914 - Hawke Lane, ORANGE (formerly Lot 90 in DP 1284877 - Sweetheart Drive & Lot 100 DP 1204145 - 118 Lysterfield Road, ORANGE), as described in Section 2.2.

This Section 4.55(1A) application does not change the approved development, but merely seeks to amend Condition 1(a) to amend the approved plans and to enable the Subdivision Certificate to be released. We are of the opinion that the modification is substantially the same as the approved development, as detailed in this report.

2 Description of the Development Consent Condition

2.1 THE CONDITION TO BE MODIFIED

This application seeks to amend Consent to Development Application 218/2015(4) relating to the development approved by Council on 4 November 2015 and further amended on 16 March 2023. The application involves amending Condition 1(a) of the consent, which reads as follows:

(1) The development must be carried out in accordance with:

(a) Plan/s numbered - Job reference number: F13269_DA:

DA_01 SITE PLAN dated 6/05/2015; DA_02 Rev A dated 21/10/2015;
DA_03 dated 20/05/2015; DA_04 dated 20/06/2015; DA_05 dated 20/06/2015;
DA_06 dated 16/06/2015; DA_07 dated 16/06/2015; DA_08A Rev A dated 21/10/2015;
DA_09 dated 20/05/2015; DA_10 dated 20/05/2015;
Draft Road Layout Rev A dated 21/10/2015

Amending Plans

Revision D of Drawings numbered 10106 REV B dated 25.3.19 and Staging Plan dated 19.3.2019 excluding Stage 8 (2 sheets)

Amending Plans - Carpenter Collins Craig 10106 Sheet 2 of 3 Rev G (1 sheet)

Amending Plans - Sheet 1 of 1, Job 10106, Rev K, Job No 10106, prepared by Carpenter, Collins, Craig, Dated 16 February 2023 (1 sheet)

The following Section 2.2 details the changes that have occurred.

2.2 DETAILS OF MODIFICATION 218/2015(4)

Reason for amendment: The reasons for seeking modification to the consent are described in the

following section of this report – History:

We refer to the first plan our client's wanted proposed, which we understand it had half the road on the neighbour's block and half on our client's. This plan was in accordance with the Council's Development Control Plan (DCP) 2015 for the Shiralee Estate and normal and logical town planning practice. This was also the approach also shown in the DCP for the perimeter boundary with the other neighbour and as agreed with Council, our client built (our¹) half of the road. However, the adjoining neighbour did not wish to subdivide and therefore our client was required to redesign the subdivision to move the DCP road entirely on their land.

Notwithstanding, the approved Shiralee DCP was not amended to accommodate the new subdivision layout, which should have occurred as normal practice under Division 3.6 – Development Control Plans – Sections 3.41-3.44 of the Environmental Planning & Assessment Act 1979 and under Division 2 – Development Control Plans – Sections 12-16 of the Environmental Planning and Assessment Regulation 2021. To date, the DCP remains as adopted by Council in 2015.

Unfortunately, our client was not aware of the requirements of the Act and Regulation to amend the DCP, and acting on good faith in order to have Development Application 2018/2015 approved to undertake the subdivision of the land amended the road layout to accommodate Council requests. Indeed, the subject application was not amended to effect the subdivision to construct half roads, which is now the subject of this Section 4.55(1A) application. The constructed roads, as per the agreement, shown on the following photos, with **Figure** .



¹ Refers to client proposal

Photo 1 – Applebox Street looking north at garden



Photo 2 – Applebox Street looking south



Photo 3 – Brushbox Street looking south



Photo 4 – Joseph Drive looking south



Photo 5 – Redbox Street looking north

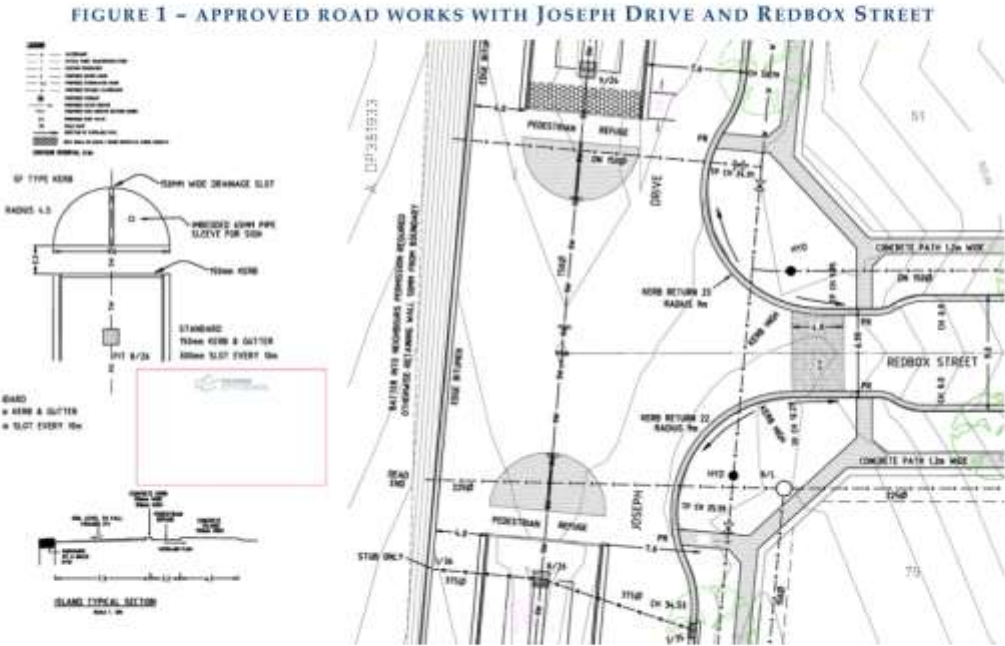




Photo 6 - Redbox Street looking south

The plans at **Appendix A** show the extent of works that were agreed to be undertaken to facilitate the one-way road system shown on **Figure 3**. This Section 4.55(1A) application seeks to modify the consent to approve the works that have been undertaken. It will be the requirement of the adjoining owner to undertake road works to finalise the roads that have been half built in accordance with the instructions of Council officers.



Photo 7 - Whitebox Street looking north

The subdivision certificate released had a one-way² system operating for a period and when that neighbour developed (still finishing off now) they would build the other half of the perimeter road. There were no issues with the operation of the one-way system during the interim period. This was in fact expected by the DCP because of the very generous constructed pavement widths, very low traffic generation and middle separation of road pavement and shown on the approved Construction Certificate plans at **Appendix A**.

However, in this matter the relevant neighbour at the time did not want development (subdivide) or even deal with our client. Accordingly, the Council officers requested that our development be amended and the road reserve moved completely onto our client's land not in accordance with the DCP shared between the two sites, as is normal practice. This would at least provide for, in the longer term, the land for the road being available and a one-way system in the interim. Our clients agreed to this amendment request by Council, despite it decreasing yield.

Our clients have constructed their half of the road to Council's standards, including the separation landscaping section in the middle, noting the two sides of the road pavement are not contiguous being separated in the centre by landscaping and drainage, reflecting the Council's original approach of each adjoining owner constructing their half of the road giving access to their properties.

² Refer to **Figure 3**

The modification sought is simply to technically put in place the development consent change to 'line up with' the agreement as to how this development could proceed and facilitate the release of the subdivision certificate. As Council would be aware the subdivision plans show the full road reserve on our client's land and when the subdivision certificate is registered, the land will be automatically dedicated as road reserve.

As the neighbour's site has now been sold, the registration of our client's subdivision certificate will allow for that developer to build the other half of the road on the reserve, including their detailed design of lot layouts, driveway crossings, necessary batters etc, which obviously our client cannot and will not do on land that they do not own.

Finally, as Council would be aware the agreement with Council officers was reached in good faith and approval of this application simply facilitates that so as to remove any arguable formal impediment to the issue of the subdivision certificate. Failure to approve it and release the subdivision certificate will obviously have a significant cost impost on our client, caused by the actions of Council, while giving an unjustifiable financial windfall to the new developer next door.

Failure to allow creation of the blocks with the issue of the subdivision certificate, this half road construction interim one-way system being apparently the only outstanding issue, is also denying a number of local families who have already purchased blocks (approximately 26) the ability to build their homes, along with the added disadvantages of rising building costs and personal disruption of their lives. As it currently stands, some of these purchasers have rescinded their contracts due to the ongoing non-resolution of the subdivision.

Therefore, the applicant seeks to stage the approval to enable the subdivision to proceed to enable the subdivision certificate to be released for the approved subdivision. This is shown on the approved plans at **Figure 1**. It was agreed with Council officers that half the road could be constructed with a one-way traffic system in place, as shown on **Figure 2**. This traffic management system is currently operational. The subject lots cannot be sold or settled, as the subdivision certificate is held up on the basis that the full road width be constructed. This decision is holding up settlement of a number of lots.

FIGURE 2 – APPROVED PLANS



FIGURE 3 – AGREED TRAFFIC MANAGEMENT PLANS



2.3 LAND AND ENVIRONMENT COURT DECISIONS

There have been a number of Court decisions regarding whether an application to modify a consent under Section 4.55 of the Act is “substantially the same” as that approved.

The planning merits of the modification are not relevant to the determination of the threshold question of whether the development to which the consent relates would be substantially the same development as the development for which the consent was originally granted.

In this regard, Council must apply the “substantially the same development test”. In respect of the subject Section 4.55(1A) application, there is no change to the proposed development being the subdivision (202 lot residential) and demolition (existing dwelling and shed).

The Court has found amended development not to be substantially the same where land use changes are proposed under the amended application (i.e. retail to residential). This is not the case under this amended application where the main features of the original approval are maintained, with the development staged to permit the subdivision to proceed.

The nature of Section 4.55 assumes that there is likely to be some change between an original proposed (and approved) development and a modified one. There are some changes, as detailed above in Section 2.2, but these changes do not change the approval issued by Council.

The decision of *North Sydney Council – v – Michael Standley & Associates Pty Ltd* (97 LGERA 433, 12 May 1998, Mason P), added to the understanding of the appropriateness of permitting a modification as follows:

“Parliament has therefore made it plain that a consent is not set in concrete – it has chosen to facilitate the modification of consents, conscious that such modifications may involve beneficial cost savings and/or improvements to amenity.”

In contemplating consent for a modification, it is the degree of change which determines whether the consent authority has the power to approve a modification or where there is no such power whether the application fails to pass the threshold test under Section 4.55(1A) of the Act. The subject amended application does not modify or delete an essential element of the approved development. The following provides details of cases cited in this regard:

- Toner Design Pty Ltd V Newcastle City Council (2013) 198 LEGRA 203; (2013) NSWCA 410;
- Arrange V Inner West Council (2019) NSWLEC 85;
- Hatch V Northern Beaches Council (2019) NSWLEC 1422;
- Beaini Projects Pty Ltd V Cumberland Council (2019) NSWLEC 1547;
- Tasman Property Holdings Pty Ltd V Canterbury-Bankstown Council (2020) NSWLEC 59;
- Progress East Pty Ltd v Randwick City Council (2019) NSWLEC 1029.

Case law in the Vacik matter stated that the test in the following terms:

“... ‘substantially when used in the section means essentially or materially or having the same essence’”

In respect of the subject Section 4.55(1A) application, there is no change to the proposed development, as detailed in Section 3.1.2.

The subject amended application does not modify or delete an essential element of the approved development.

We are of the opinion that the development is substantially the same and that Council has the authority to deal with the application under Section 4.55(1A) of the EP&A Act 1979 to enable the development to be staged.

3 Environmental Planning and Assessment Act 1979

3.1 CLAUSE 100 OF THE REGULATION 2021

Clause 100(1) of the Regulation 2021 sets out a series of matters that are required to be addressed in an application for modification of development consent.

These are addressed as follows:

3.1.1 NAME AND ADDRESS OF THE APPLICANT

The applicant for this modification is Roy Mammone Developments Pty Ltd.

3.1.2 A DESCRIPTION OF THE DEVELOPMENT TO BE CARRIED OUT UNDER THE CONSENT

The consent as approved is described as "Subdivision (202 lot residential) and Demolition (existing dwelling and shed)".

3.1.3 THE ADDRESS AND FORMAL PARTICULARS OF TITLE OF THE LAND ON WHICH THE DEVELOPMENT IS TO BE CARRIED OUT

The address of the property is described in Section 1.1 of this application.

3.1.4 A DESCRIPTION OF THE PROPOSED MODIFICATIONS TO THE DEVELOPMENT CONSENT

The proposed modification is described in Section 2.2 of this application.

3.1.5 A STATEMENT OF THE EFFECTS OF THE MODIFICATION

This report sets out and describes the likely effects of the proposed modification. It is considered that the modification is substantially the same, notwithstanding the proposed changes as detailed in this report.

3.1.6 A DESCRIPTION OF THE EXPECTED IMPACTS OF THE MODIFICATION

It is not expected that there will be a significant impact on the amenity of the area.

3.1.7 SCOPE OF THE DEVELOPMENT AS IT IS TO BE MODIFIED – SUBSTANTIALLY THE SAME

The development as it is proposed to be modified will remain substantially the same as the development that was originally approved, noting comments made above highlighting the changes in Section 2.2 involving staging the development.

3.1.8 BIODIVERSITY ASSESSMENT

The proposed development does not involve biodiversity credits.

3.1.9 OWNER CONSENT

A copy of the owner's consent for Michael Brown Planning Strategies Pty Ltd to lodge the application to modify the consent accompanies this Section 4.55(1A) application.

3.1.10 MAKING OF APPLICATION

This application is being made to the consent authority under Section 4.55(1A) of the Act.

3.1.11 BASIX

Not applicable.

3.2 PROPOSED DEVELOPMENT

As discussed above, there are no changes to the development and the application seeks to modify Condition 1(a) to enable the development to commence in a staged manner, as detailed in Section 2.1.

4 Modification of Consent to Development Application 218/2015(4)

The Environmental Planning and Assessment Act 1979 (NSW) establishes the system of planning, environmental impact assessment and development approvals in NSW. The ability to modify development consents is provided in Section 4.55 of the EP&A Act.

Section 4.55 confers three separate powers to modify a development consent:

- Modifications involving errors, misdescriptions or miscalculations - contained in s4.55(1).
- Modifications with minimal environmental impact - contained in s4.55(1A). Subs (1A) confers the power if the consent authority is satisfied, inter alia, that the proposed modification is of "minimal environmental impact".
- Other modifications- contained in s4.55(2). Subs (1A) confers the more general and widely based power. Pursuant to s4.55(2), the consent authority is granted a general power to grant a modification if it involves more than minimal environmental impact, provided the development is substantially the same development and provided other conditions are fulfilled as set out in s4.55(2) (c) and (d).

In each case above, it is relevant to note that the same wording is used, namely "to modify a development consent".

Subsection (1A) requires any such modification to be "substantially the same" development.

This application is to be dealt with by way of utilising the powers conferred under s4.55(1A). Subsections (1) and (1A) do not apply to such a modification.

The relevant response is provided below:

- a) It is satisfied that the proposed modification is of minimal environmental impact, and**

The modification seeks to amend Condition 1(a) of Consent to Development Application 218/2015(4), as detailed in this application.

- b) It is satisfied that the development to which the consent as modified is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) under this section, and

We are of the opinion that the modification sought is within the ambit of Section 4.55(1A) and that Council can modify the consent accordingly.

- c) It has notified the application in accordance with:

- i) The regulations, if the regulations so require, or

No notification is required pursuant to the regulations.

- ii) A Development Control Plan, if the consent authority is a Council that has made a Development Control Plan under section 3.42 that requires the notification or advertising of applications for modification of a development consent, and

We are not aware of submissions being received during the exhibition of the development application. The Council may wish to notify persons if there were submissions made to the original application and this is a matter for Council to determine.

- d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the Development Control Plan, as the case may be.

It is unlikely that if the Council notified the application that submissions would be received giving the extent of the amendment to the approved development. The Council will be required to assess any submissions received having regard to Section 4.15 of the EP&A Act 1979.

4.1 PROVISIONS OF SECTION 4.55(3) OF THE ACT

Section 4.55(3)(1) of the Act provides:

“(1) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application”.

The matters considered to be of relevance are discussed in the following sections; however, it is not proposed to undertake a detailed assessment given the proposed amendment and the fact that it only seeks to stage the development consent to enable the subdivision certificate to be released.

The proposed modification therefore satisfies the criteria listed under section 4.55(1A) of the EP & A Act 1979, which allows Council to modify the consent.

5 Assessment of Relevant Controls and Policies

5.1 APPLICABLE PLANNING INSTRUMENTS, CONTROLS AND POLICIES

The following documents are relevant to the proposed development:

- The Environmental Planning and Assessment Act, 1979, as amended.
- The Environmental Planning and Assessment Regulation 2021.
- Orange City Local Environmental Plan 2011.
- Shiralee Development Control Plan 2014.

5.2 LOCAL ENVIRONMENTAL PLAN 2011

Under the LEP the subject land is zoned R1 General Residential and the development is permissible, as approved by 218/2015(4). There are no matters which need to be addressed given the request to modify the consent.

5.3 SHIRALEE DEVELOPMENT CONTROL PLAN 2015

The subject Development Control Plan 2015 provides a compendium of development controls for the Orange City Local Government Area. There are no matters that require an assessment for compliance under the DCP.

6 Conclusion

6.1 DA 218/2015(4)

1. Consent to Development Application 218/2015(4) be amended as follows:

(1) The development must be carried out in accordance with:

(a) Plan/s numbered - Job reference number: F13269_DA:

DA_01 SITE PLAN dated 6/05/2015; DA_02 Rev A dated 21/10/2015;
DA_03 dated 20/05/2015; DA_04 dated 20/06/2015; DA_05 dated 20/06/2015;
DA_06 dated 16/06/2015; DA_07 dated 16/06/2015; DA_08A Rev A dated 21/10/2015;
DA_09 dated 20/05/2015; DA_10 dated 20/05/2015;
Draft Road Layout Rev A dated 21/10/2015

Amending Plans

Revision D of Drawings numbered 10106 REV B dated 25.3.19 and Staging Plan dated 19.3.2019 excluding Stage 8 (2 sheets)

Amending Plans - Carpenter Collins Craig 10106 Sheet 2 of 3 Rev G (1 sheet)

Amending Plans - Sheet 1 of 1, Job 10106, Rev K, Job No 10106, prepared by Carpenter, Collins, Craig, Dated 16 February 2023 (1 sheet)

Amending Plans - Sheet 76 of 86, Job 10106, Rev E, Stage 7 prepared Carpenter, Collins, Craig dated 26.10.23

Amending Plans - Sheet 77 of 86, Job 10106, Rev E, Stage 7 prepared Carpenter, Collins, Craig dated 26.10.23

Amending Plans - Sheet 78 of 86, Job 10106, Rev E, Stage 7 prepared Carpenter, Collins, Craig dated 26.10.23

Appendix "A"
Subdivision Plans

Submission 1

31 January 2025

Orange City Council
135 Byng Street
Orange NSW 2800
council@orange.nsw.gov.au

To whom this may concern,

DA2018/2015(5) – Lot 218 Hawke Lane, Orange- Submission

provides this submission in respect to the S4.55 modification to
DA2018/2015(5) for Lot 218 Hawke Lane, Orange.

is the at , Orange, having purchased the property in late 2021. We
note we have corresponded with the Applicant/Developer on several occasions offering access to our property for the
purpose of undertaking the works which this modification is subject to. Despite these offers to provide access to facilitate
the works, the Applicant¹ has not responded.

The Statement of Environmental Effects (SEE) prepared by Michael Brown Planning Strategies, contains a number of errors
and omissions which we summarize below;

1. Whilst Engineering drawings have been provided in markup, cross sections of the road have not been provided to
confirm the scope of what is to be constructed and what scope is proposed to be omitted.
2. The SEE falsely states on page 5 that "our client was required to redesign the subdivision to move the DCP road
entirely on their land". DA218/2015 did not approve the whole of the DCP road onto the Applicants land. The
required Road Reserve width is 34.6m in total, 26m of the road reserve has been approved on Lot 218 Hawke
Lane, with the remaining 8.6m of the road reserve on the adjoining property Shiralee Road.

Please refer to Annexure 1 – being Appendix C of the Shiralee DCP Figure 107 Green Street cross section, marked
up. The mark-up depicts the scope of work the Applicant committed to as approved under DA218/2015, being the
south bound lane, the whole of the central swale and the north bound traffic lane.

The north bound bicycle lane, parking lane and footpath were not moved onto the Applicant's land and will be
constructed by on Shiralee Road.

3. The Applicant states on page 12 that Council's failure to approve the modification will provide;

"an unjustifiable financial windfall to the new developer next door".

purchased Shiralee Road, on the basis of the approved DA218/2015, with the north bound
lane of Joseph Drive located on the Applicant's land with the construction of the same, the Applicant's
responsibility. refutes this claim of any financial windfall when the purchase of the property
was based upon the certainty of the approved Development Applicant DA218/2015.

While the Applicant willingly agreed to the construction of north bound traffic lane at the time of Development Application
Determination to achieve the approval and proceed with the development, it appears there may have been a number of
factors that necessitated this requirement, which were not limited to two way traffic flow.

We understand that the development of the Applicant's property was unable to proceed until the Hawke Lane Dam was
decommissioned and appropriate works were undertaken to address the flood risk to downstream properties. We note these
requirements were referenced in the Planning Report tabled to Council on 3 November 2015 as outlined below;

*"The majority of the proposed subdivision is affected by the Hawke Lane Dam exclusion zone.
Council's DCP for Shiralee specifies that lots within the subdivision may not be developed until such*

time that the dam has been decommissioned or appropriate works are undertaken to safely convey discharges from the dam into the downstream watercourse or drainage system in such a manner so as to ensure no adverse flood risk is presented to downstream properties."

"Surface stormwater flows will be required to be diverted towards the swale drain in "Green Street" to the west of the subdivision."

To that end, Development Consent Condition number 42 states:

"Prior to the issue of a subdivision certificate the stormwater diversion structure contained within the proposed Hawke Lane road widening and flow path along the Green Street shall be completed and approved by Orange City Council's Director of Technical Services" (our emphasis).

We understand as confirmed by the photographs in the Applicants SEE, the flow path and swale along the Green Street (now known as Joseph Drive) has not been completed by the Applicant, with only half of the swale having been constructed to date, as such the works have not been completed in accordance with the intent of condition 42.

We understand the approved plans under DA2018/2015 require the Applicants to extend water, sewer and stormwater to within the property boundary of Shiralee Road, to facilitate the coordinated and orderly development and servicing of the Shiralee Release area. We understand these works have not been completed in accordance with the Development Approval. Furthermore, the amended plans provided by the Applicant do not address these items in any detail.

The Developer is also the proponent of a Planning Proposal for The Hawke Lane Park rezoning - being PP-2023-45 - Amendment 36 to the Orange LEP. This planning proposal is currently being finalised having been endorsed by Council. We note our submission to this Planning Proposal dated 28 June 2024, outlining our concern about the approval of the PP prior to the completion of the swale and north bound lane to Joseph Drive, being undertaken by the Applicant to ensure this infrastructure and broader community benefit is delivered. Refer to Annexure 2 - PP2023-45 - LEP Amendment 36 Submission.

We note this modification to DA2018/2015 has been lodged after Council has endorsed the Planning Proposal, which will yield the applicant between 5 to 7 lots, for which there has been no Voluntary Planning Agreement entered into and no additional public benefit provided. Given the uplift afforded to the Developer, it would seem unreasonable that the Developer now seeks to remove the obligation to deliver the completion of Joseph Drive on their land as required under DA2018/2015.

objects to the Applicants' modification to remove the obligation to construct the north bound traffic lane and half of the central swale to Joseph Drive, as it is not in the public interest.

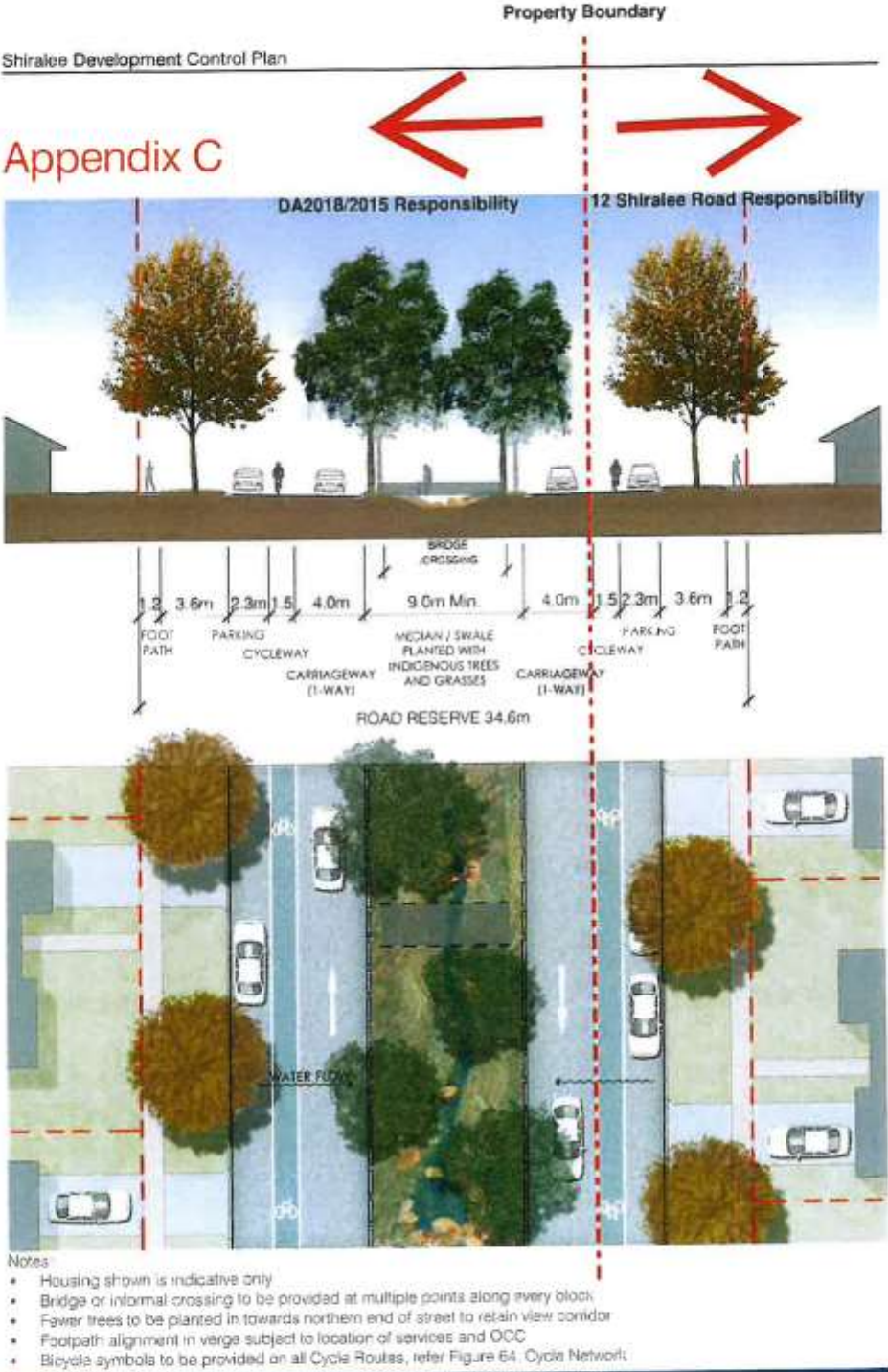
would be supportive of the bonding of the works, allowing the dedication of the road carriage way and bonding the value of the remaining works to ensure these works can be delivered by Council, consistent with the development approval and the DCP.

We would be pleased to discuss this matter further, and welcome the opportunity to speak at a Council meeting should the modification be determined by Council.

Should you have any queries relating to this letter please contact the undersigned on

Yours Sincerely,

Annexure 1 – being Appendix C of the Shirelee DCP Figure 107 Green Street cross section, marked up



Annexure 2 – PP2023-45 – LEP Amendment 36 Submission

28 June 2024

Senior Planner
Orange City Council
135 Byng Street
Orange NSW 2800

Dear Craig,

F4056 – LEP Amendment 36 - Submission

provide this submission as the to the property subject to LEP

Amendment 36.

We note that LEP Amendment 36, is not supported by any Voluntary Planning Agreement or Works In Kind Agreement that provides any additional public benefit in consideration for the rezoning of land currently zoned public recreation, beyond the payment of additional development contributions for the additional residential lots, despite the commercial benefit afforded to the applicant.

Whilst we do not object to the amendment, is only supportive on the basis that the infrastructure and associated public benefits the applicant is required to complete under the Development Approval DA218/2015 are completed, satisfying these existing obligations and delivering these community benefits, prior to additional lots subject to Amendment 36 being rezoned.

The public benefits specifically referred to are the completion of Joseph Drive and the central bioswale stormwater treatment which are approved under DA218/2015, and form part of the wider road network and stormwater infrastructure for the Shiralee Release area, as approved by Council.

We request Council withhold approval of LEP Amendment 36, to ensure this infrastructure and these public benefits are delivered for the benefit of the greater Shiralee release area and Orange City Council.

Should you have any queries relating to this letter please contact the undersigned on

Yours Sincerely,

2.4 DEVELOPMENT APPLICATION - DA 550/2024(1) - 12-16 ASH STREET

RECORD NUMBER: 2025/450

AUTHOR: Anugya Vishwakarma, Town Planner

EXECUTIVE SUMMARY

Application lodged	31 May 2024
Applicant/s	S Taberner Glass Co Pty Ltd
Owner/s	S Taberner Glass & Co Pty Limited
Land description	Lot 584 DP 749425 - 12-16 Ash Street, Orange
Proposed land use	Subdivision (five lot industrial) and New Road
Value of proposed development	Not applicable

This DA proposes a five-lot industrial subdivision on land known as 12-16 Ash Street, Orange - Lot 584 DP 749425 (Leewood Estate). The development will include the construction of a new public road within the crown road reserve adjoining the site so as to facilitate access. Council's Technical Services Manager has advised that the crown road will be transferred to Council's care and control once the road has been formally constructed in accordance with the recommended conditions of consent. Council's Manager of Technical Services has further advised that given Council is the roads authority there is no formal crown approval required for this application.

The development is proposed to be staged as follows:

Stage 1:

- Construction of the Stormwater Detention system within Proposed lot 100 and new road construction
- Proposed Lots 99 and 100

Stage 2:

- Proposed Lots 101 to 104

The land is zoned E4 General Industrial under Orange LEP 2011 and is permissible subject to receiving the development consent of Council. The proposed subdivision has a Minimum Lot size (MLS) requirement of 3000m². Proposed Lot 101 does not meet the 3,000m² MLS requirement which applies to the subject land. A variation of the MLS is sought via recourse to a Clause 4.6 - Variation of Development Standards contained within Orange Local Environmental Planning 2011.

The variation to the development standard pursuant to Clause 4.6 represents a 17.33% variation. Where a variation to a development standard exceeds 10% the decision must be made by the Council and not a delegated staff member. The applicant has submitted a written Clause 4.6 variation to this development standard for Council's consideration.

The subject site has been partially identified as Vegetation Buffer and Vegetation Category 1 and 3 on the City of Orange's draft Bushfire Prone Land Map. The applicant provided a Bushfire Risk Assessment Report prepared by a qualified consultant to address the specifications and requirements of *Planning for Bushfire Protection* (PBP). The matter has been addressed in Section 4.14 in this report.

The proposal was referred to Essential Energy due to the electrical substation/ electrical infrastructure which is close to the subject site. Essential Energy have indicated no concerns regarding the application. The standard requirements of Essential Energy have been conditioned in the recommended Notice of Determination.

The proposed development is notified development pursuant to Council's Community Participation Plan 2019 and Schedule 1 of the *Environmental Planning and Assessment Act 1979*. At the completion of the exhibition period, one submission had been received. This submission has raised concerns in relation to the adequacy of the existing stormwater system in this locality and the ability for that system to accommodate additional stormwater that would result of the development proceeding. This submission has been addressed in the body of this report.

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.

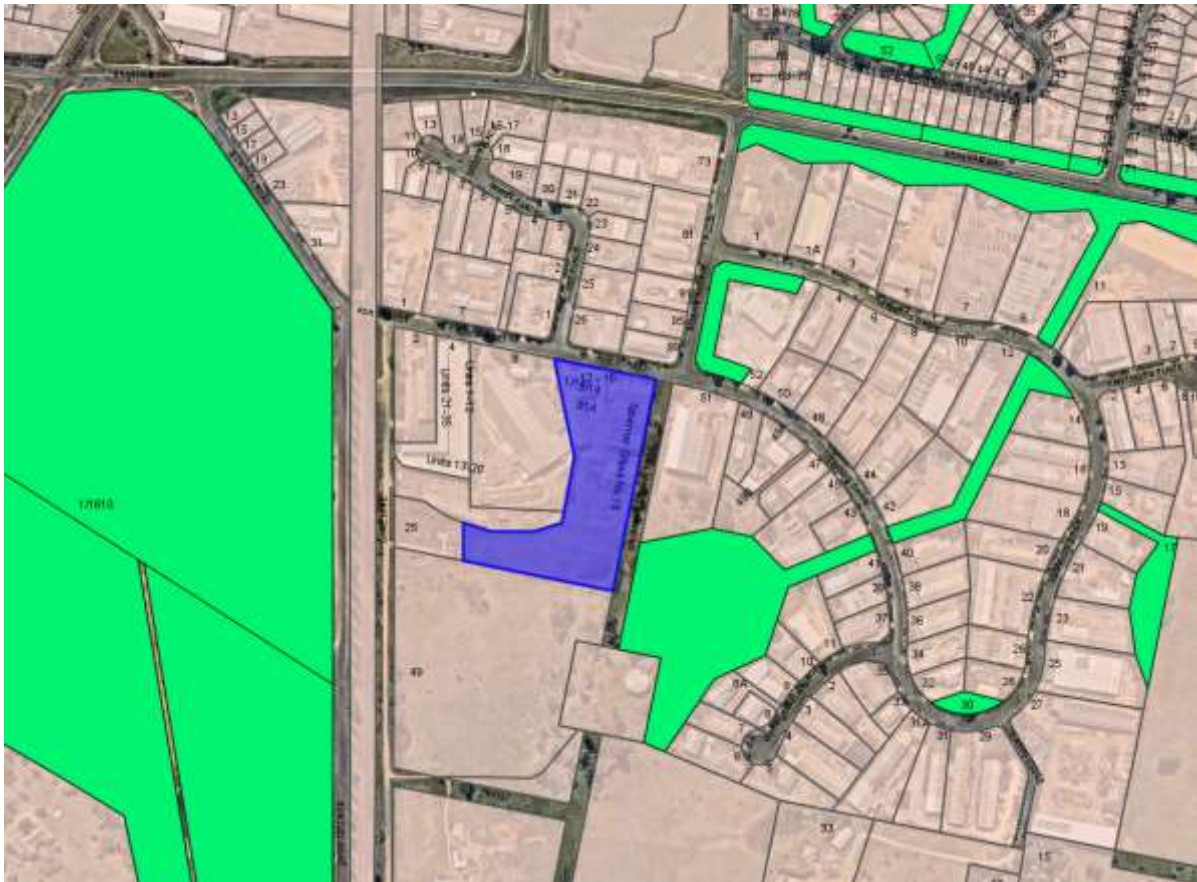


Figure 1 - locality plan

Site Description

The subject land is L-shaped with an area of 2.628 hectares. The surrounding development pattern is industrial. The front north half of the property is developed with three industrial buildings. It has a broad frontage to Ash Street. The slope is gradual falling from south to north.

To the southeast is an area of vegetation containing scattered trees and open grassland area and that is conservatively classed as woodland area. The southern area of the subject land is open area of unmanaged land assessed as grassland. In all other directions is land developed for industrial purposes.



Figure 2 - proposed new road area

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 a five -lot industrial subdivision in the Leewood Industrial Estate - 12-16 Ash Street, Orange. The development will include the construction of the subdivision infrastructure itself, including a new public road.

Key considerations in relation to the assessment of this application relate to the non-compliance of the development with the MLS size requirements permitted for proposed Lot 101, bushfire hazard assessment, onsite vegetation management and stormwater design issues.

The proposed subdivision has an MLS requirement of 3000m². Proposed Lot 101 (2,480m²) does not meet the 3,000m² MLS. A variation of the MLS is sought via recourse to Clause 4.6 - Variation of Development Standards contained within Orange Local Environmental Planning 2011.

The assessment carried out by staff concludes that the application of this standard in this particular case is unreasonable and unnecessary. Therefore the 4.6 Variation request for the smaller allotment is supported. As the variation exceeds the staff 10% delegation, this decision must be made by Council and not staff.

Matters in relation to other planning issues have been addressed through the assessment, including protection of vegetation onsite and bushfire protection.

One submission was received during the notification period of this DA. This submission has raised concerns in relation to stormwater management. This issue has been addressed in the assessment report.

It is recommended that Council supports the proposed development subject to adopting the attached recommended Notice of determination.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan Strategy "11.1. 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 550/2024(1) for *Subdivision (five lot industrial) and New Road* at Lot 584 DP 749425 - 12-16 Ash Street, Orange pursuant to the conditions of consent in the attached Notice of Approval.

FURTHER CONSIDERATIONS

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

SUPPORTING INFORMATION**THE PROPOSAL**

The proposal involves a five lot industrial subdivision including the construction of a new access road. The subdivision is proposed to be carried out in stages as follows:

Stage 1:

- Construction of the Stormwater Detention system and road construction.
- Proposed Lots 99 and 100.

Stage 2:

Proposed Lots 101 to 104

Lots	Area	Proposed use
100	11,980	Includes two existing industrial buildings and the required construction of the detention basin
101	2,480m ²	Vacant lot
102	3,000m ²	Vacant lot
103	4,820m ²	Vacant lot
104	3,050m ²	Vacant lot

Proposed Lot 100 will obtain access via its existing frontage to Ash Street. Access to proposed Lots 101 and 104 will be provided via the construction of a new road within the unformed road reserve that extends along the eastern boundary site. Council's Technical Services Manager has advised that the unformed road will be transferred to Council's care and control once the road has been formally constructed to Council's requirements. Council's Manager of Technical Services has further advised that given Council is the roads authority there is no formal crown approval required for this application. The new section of road will be constructed to a 10m wide formation with concrete kerb and gutter. Further, the road will serve the proposed lots along its western side (i.e. proposed Lots 101 to 104).



Figure 3 - existing site plan

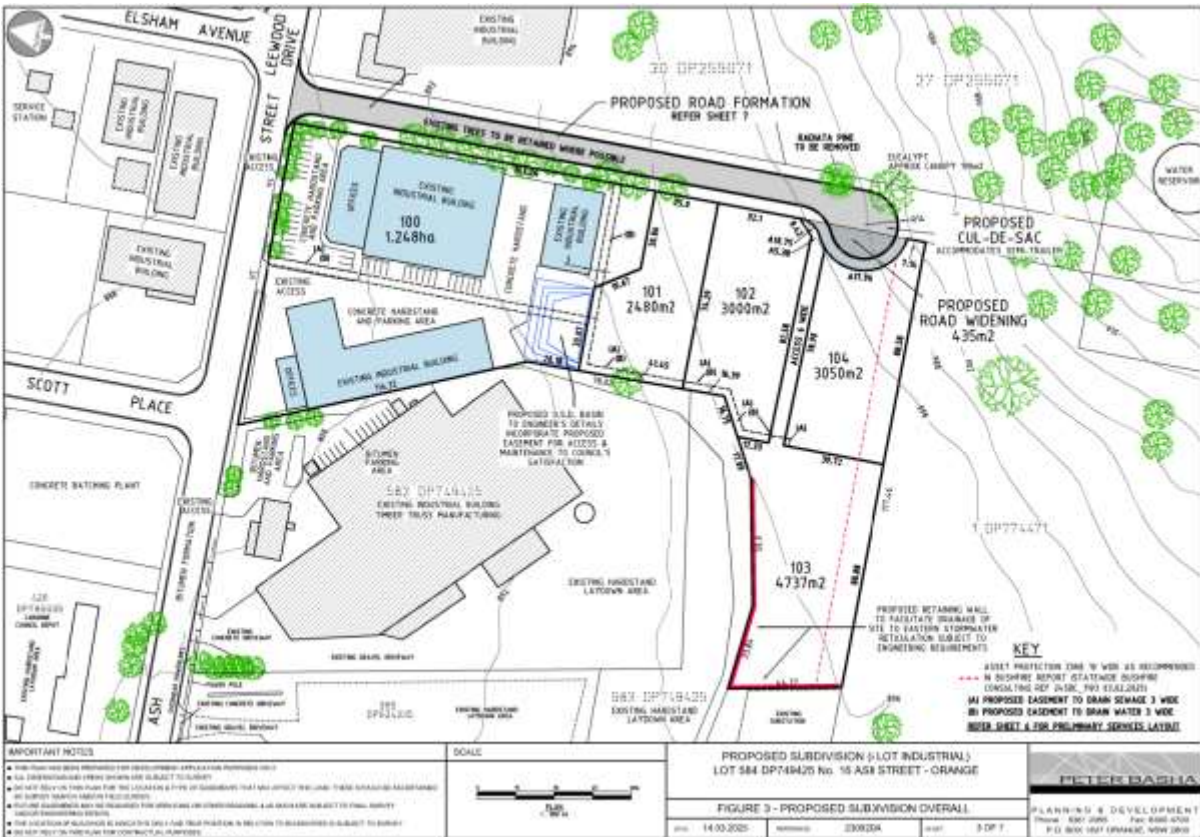


Figure 4 - proposed site plan

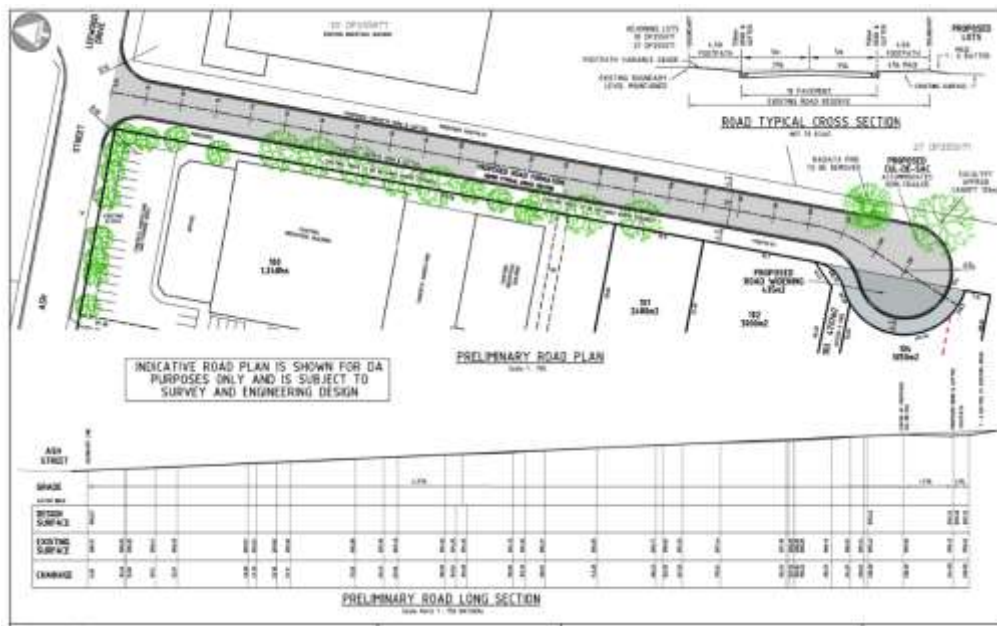


Figure 5 - new road construction

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 (OEH) (clause 7.1 of BC Regulation 2017);

The subject land is not identified on the Biodiversity Values Map published under clause 7.3 of the Biodiversity Conservation 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

As indicated in the submitted plans, the intention is to retain the trees within the road reserve. Conditions have been attached requiring the establishment of TPZ's. The proposed clearing described within this report will not exceed the threshold area of 0.25 hectare (allowed for a property that is subject to an MLS of less than 1 hectare).

- Trigger 3: development is otherwise likely to significantly affect threatened species (clauses 7.2 and 7.3 of BC Act 2016).

The natural state of the site has been highly modified by the existing industrial land use pattern and previous rural use. It is virtually devoid of native vegetation and has no habitat value, particularly for less common native species. As such, the proposal will not have an adverse effect on a threatened species; endangered ecological community; or a critically endangered ecological community or their habitat.

With regards to Trigger 4 (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.

Section 4.14 Consultation and development consent - certain Bushfire prone land

- (1) *Development consent cannot be granted for the carrying out of development for any purpose (other than a subdivision of land that could lawfully be used for residential or rural residential purposes or development for a special fire protection purpose) on Bushfire prone land (being land for the time being recorded as Bushfire prone land on a relevant map certified under Section 10.3(2)) unless the consent authority -*
- (a) *is satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bushfire Protection prepared by the NSW Rural Fire Service in co-operation with the Department (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document) that are relevant to the development (the relevant specifications and requirements), or*
 - (b) *has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in Bushfire risk assessment stating that the development conforms to the relevant specifications and requirements.*



Figure 5 - Bushfire Prone Land Map

The subject land is legally defined as Bushfire Prone Land and as such this clause is relevant in the determination of this application. The subject site partially comprises land identified as Vegetation Buffer, Vegetation Category 1 and 3 on the City of Orange's Bushfire Prone Land Map.

The applicant was requested to submit either a relevant certificate prepared in accordance with Section 4.14(1)(b) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), or otherwise a Bushfire Risk Assessment prepared by a person recognised by the NSW RFS as a qualified consultant and the Bushfire Risk Assessment should address the specifications and requirements of *Planning for Bushfire Protection* (PBP). In this instance, the applicant has provided a Bushfire Report prepared by an accredited practitioner being Statewide Bushfire Consulting, Job Reference No. 24SBC_1193 dated on 3 February 2025. Please see extract below from the bushfire report that provides a summary of the bushfire hazard.

Table 2: Bush fire hazard assessment

Transect	Vegetation formation	Effective Slope	Minimum APZ ¹	Available APZ	Comments
Proposed lots 100-104					
South-east	Woodland	Upslope	11m	25-75m	All lots have setbacks to achieve 29kW/m ²
South	Grassland	Upslope	10m	Proposed 10m APZ within Lot 103 and 104	All lots have setbacks to achieve 29kW/m ² Recommended 10m APZ on south boundary of Lot 103 and 104
East	Grassland	Upslope	10m	>18m provided by proposed access road	All lots have setbacks to achieve 29kW/m ²

¹PBP 2019 – Table A1.12.3 – Minimum distances for APZs – residential infill development, FFDI 80 areas (<29kW/m², 1090K)

Figure 6 - Bushfire Hazard Assessment (according to accredited practitioner)

To verify the findings contained within the report Council staff carried out a review of the bushfire assessment. Based on initial staff calculations clarification from the proponent was requested regarding Table 2 on Page 9 of the submitted Bushfire Assessment Report. Specifically, the report did not appear to provide the correct APZ calculations. Clarification was sought on the calculation of the 10m Asset Protection Zone (APZ) and whether it aligns with the objectives outlined in Section 8.3.1 of *Planning for Bushfire Protection (PBP)*.

Following clarification it was agreed that a 10m Asset Protection Zone (APZ) should be provided along the southern boundary of the development. At this stage of the assessment Council is only required to be satisfied that it can be adequately demonstrated that all proposed lots can accommodate a building footprint that meets a Bushfire Attack Level (BAL) of 29kW/sqm (BAL- 29). The BAL level and construction requirement will be assessed at the development application (DA) stage when a building is proposed.

In addition, the Bushfire Report recommendation was also referred to the Technical Services Department. As per their comments the recommendation provided within the report will not affect the subdivision servicing requirements.

In order to ensure future compliance with Planning for Bushfire Protection and to ensure that future property owners are aware of APZ requirements on the land, it is recommended that conditions are included that requires the applicant to establish a ***Restriction-as-to-User, under Section 88B NSW of the Conveyancing Act 1919***, on proposed Lots 101, 102, 103 and 104. This requires all future development to comply with the bushfire control recommendations outlined in the Bushfire Hazard Assessment Report prepared by Statewide Bushfire Consulting, and to specify that a 10m Asset Protection Zone be provided within proposed Lots 103 and 104 requiring the Asset Protection Zone (APZ) to be managed as an Inner Protection Area (IPA).

Overall, the Bushfire Assessment Report is considered to be correct and acceptable.

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,*
- (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 E4 General Industrial
Lot Size Map:	Minimum Lot Size 3000m²
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:	High 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 (PMF)

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 **E4 General Industrial**. The proposed development is defined as a **Subdivision (five lot industrial) and New Road** under OLEP 2011 and is permitted with consent of Council for this zone. This application is seeking consent.

Clause 2.3 of LEP 2011 references the Land Use Table and Objectives for each zone in LEP 2011. These objectives for land zoned **E4 General Industrial** are as follows:

Objectives of zone E4 General Industrial

The objectives of the E4 General Industrial Zone are as follows:

- To provide a range of industrial, warehouse, logistics and related land uses.*
- To ensure the efficient and viable use of land for industrial uses.*
- To minimise any adverse effect of industry on other land uses.*
- To encourage employment opportunities.*
- To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.*
- To ensure development along the Southern Link Road has an alternative access.*

It is considered that the proposed subdivision will suitably the objectives of the zone. In this regard please note the following:

- The proposal is for the subdivision which would provide separate sites that will be suitable for range of land uses.
- The proposal provides for the economic and efficient development of land.
- The proposed subdivision makes land available for a range of future land uses that are permissible in the E4 Zone. The subdivision itself does not adversely affect other land uses.
- The future development will generate employment opportunities.
- The proposal will provide land that may be used for limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.
- This proposal does not involve direct access to the Southern Link Road.

Clause 2.6 - Subdivision - Consent Requirements

This clause triggers the need for development consent for the subdivision of land. Additionally the clause prohibits subdivision of land on which a secondary dwelling is situated if the subdivision would result in the principal and secondary dwellings being located on separate lots if either of those lots are below the MLS (MLS) applying to the land.

The proposal does not involve a secondary dwelling.

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 an MLS of 3000m². The smallest lot proposed by the application is 2,480m². As such, this proposed lot does not satisfy the MLS of 3,000sqm. The percentage variation to the 3,000m² MLS for proposed Lot 101 is in the order of 17%

The applicant has submitted a Clause 4.6 *Exceptions to Development Standards* - variation to the MLS size for Lot 101 which has been addressed below.

Clause 4.6 Exceptions to development standard

The applicant seeks recourse via Clause 4.6 of the LEP to allow the 3,000m² MLS development standard to be varied to create proposed Lot 101. Clause 4.6 allows development consent to be granted for development even though the development would contravene a development standard. The objectives of this clause are as follows:

- (a) *To provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

A formal written request to vary the development standard was provided as a part of the application. Clause 4.6 allows development consent to be granted for development even though the development would contravene a development standard.

It is considered that the Clause 4.6 document submitted in support of the application has been prepared in accordance with:

- The relevant considerations in Clause 4.6 of the LEP.
- The matters in Appendix 3 of the NSW Department of Planning and Infrastructure publication Varying Development Standards: A Guide August 2011 (the Guidelines).
- The five-part test referred to in the Guidelines.

Clause 4.6 - Exceptions to development standards establishes the framework for varying development standards applying under an LEP. Clause 4.6 of the LEP provides as follows:

(1) The objectives of this clause are as follows—

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(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. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Note—

The *Environmental Planning and Assessment Regulation 2021* requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note.

When this Plan was made it did not include Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots or Zone RU6 Transition.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (~~caa~~) clause 5.5,
- (ca) clause 6.1 or 6.2,
- (cb) clause 7.14(1).

An address of the above criteria is provided below:

Subclause (1):

In relation to Clause 4.6(1) and 4.6(2), the aim of this Clause 4.6 is to provide for the flexibility in the application of a planning control where it can be demonstrated that strict compliance is unreasonable and unnecessary. The proposal relies on such to have the proposed lots approved at the lot sizes proposed in the application. The applicant submits that flexibility in this matter would result in a better planning outcome for the reasons outlined in Subclause (3) below.

Subclause (2):

A variation to the MLS is a development standard that may be considered within the land and operation of this clause.

Subclause (3):

Clause 4.6(3) stipulates that development consent will not be granted unless it can be demonstrated that compliance with the MLS control of 3,000m² is unreasonable or unnecessary. The applicant submits that the strict compliance with Clause 4.1(1) is unreasonable and unnecessary for the following reasons:

- The objectives of the LEP are achieved.
- The objectives of the E4 Zone are achieved.
- The objectives of Clause 4.1(1) are achieved.
- There are sufficient environmental planning grounds to support the proposed variation.
- The variation of the standard does not cause the development to contravene the relevant Planning Outcomes for industrial subdivision found in Orange Development Control Plan 2004 - 9 Development in the Industry and Employment Zone.

The applicant has requested that a variation of the 3,000m² MLS to create proposed Lot 101 be accepted for the following reasons:

- *The creation of this lot does not conflict with the planned industrial character for Leewood Industrial Estate. There are numerous existing lots within the Estate that are less than the 3,000 MLS. This is illustrated in the image below where, for example, such lots exist just to the east of the subject land.*
- *The ability to create this one additional lot will result in a more efficient use of the new road and utility services that are required to serve the proposed subdivision.*



It could be argued that there is sufficient land for all lots to satisfy the MLS. However, in this case the applicant submits that the proposed lot design represents a better outcome due to the following:

- *It is acknowledged that land at the rear of proposed Lot 100 could be included in proposed Lot 101 to satisfy the MLS. However, the land at the rear of proposed Lot 101 is a steep embankment and is not suitable for development. It is not sensible to include this constrained section of land in proposed Lot 101 simply to meet a numeric standard.*

- *It is acknowledged that additional land could be shuffled from proposed Lot 103 to proposed Lot 101 to satisfy the MLS. However, this is not preferred. As a battleaxe lot, it is more desirable to keep proposed Lot 103 as large as possible and to minimise the length of the access arm.*

It is agreed that there are sufficient environmental planning grounds to support the proposed variation. It is considered that the variation of the standard does not cause the development to contravene the relevant planning outcomes for industrial subdivisions found in the Orange Development Control plan 2004 - 9 Development in the industry and Employment zone. As can be seen from the figure above other lots in the surrounding area have an area of less than 3,000m². Proposed Lot 101 is considered to be of sufficient size and configuration to accommodate industrial scale buildings and vehicle areas.

Although all the proposed lots have adequate land to meet the requirements of the MLS, the proposed lot design as submitted provides a more optimal outcomes for the following reasons.

- Reducing the size of proposed Lot 103 by transferring land to Lot 101 would likely result in a longer access arm, which could make the lot less practicable for future use, development or access.
- As alluded to in Section 4.14 of this report, another important consideration is that proposed Lot 103 will have a 10m Asset Protection Zone (APZ), which further reduces the usable area onsite. Therefore maintaining the size of proposed Lot 103 is preferred as it helps mitigate the impact of the APZ on the site development potential.
- It is acknowledged that land at the rear of proposed Lot 100 could be included in proposed Lot 101 to satisfy the MLS, however, while it is technically possible to include the rear portion of proposed Lot 100 in proposed Lot 101 to meet the MLS requirement, doing so is not practical or beneficial because the land in question is a steep embankment and unsuitable for development.

The standard in this case is considered to be unreasonable in this particular circumstance.

Subclause (4):

The proposed development has been assessed under the provisions established by the NSW Land and Environmental Court. (see further assessment below - The Five Part Assessment). Based on the information outlined in the foregoing sections of this assessment, it is considered that the objection is well founded and that granting an exception to the development standard can be supported in the circumstances of the case.

Subclause (5):

(Repealed)

Subclause (6):

Subclause (6) is not relevant to the development. The development only results in one allotment below the standard

Subclause (7):

Repealed

Subclause (8):

The proposal does not involve any of the matters referred to in (a) to (c) above. As such, Subclause (8) above is not relevant.

The Five Part Test

The Five Part Test is anchored in the Land and Environment Court Planning Principles that provides guidance for Councils in determining these matters. The Department of Planning recommends that consent authorities apply the test in their assessment of Clause 4.6 variations.

The five-part test embodies the following criteria:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

An assessment of the above criteria in relation to the subject development is detailed below:

Criteria 1

Complies with the objective (4.1 Minimum subdivision lot size)

(1) *The objectives of this clause are as follows -*

- (a) *to ensure that new subdivisions reflect existing lot sizes and patterns in the surrounding locality,*
- (b) *to ensure that lot sizes have a practical and efficient layout to meet intended use,*
- (c) *to ensure that lot sizes do not undermine the land's capability to support rural development,*
- (d) *to prevent the fragmentation of rural lands,*
- (e) *to provide for a range of lot sizes reflecting the ability of services available to the area,*
- (f) *to encourage subdivision designs that promote a high level of pedestrian and cyclist connectivity and accommodate public transport vehicles.*

Response

Objective (a) - The proposed lot is less than the MLS. The proposed subdivision does not conflict with the planned and existing lot sizes, and it still reflects the existing lot sizes and patterns in the surrounding locality.

Objective (b) - The proposed lots are of a regular configuration and are considered satisfactory to accommodate the larger building footprints and vehicle turn paths that are typically associated with industrial development.

Objectives (c) and (d) - It does not involve rural land.

Objective (e) - The proposed lots are able to be serviced by existing services in the locality. The proposed subdivision is not adverse to *Objective (f)* which seeks to encourage connectivity for pedestrians and cyclists as well as accommodating public transport vehicles.

Criteria 2

The proposed variation will not comprise the performance or operation of proposed Lot 101 as an industrial site. The ability to create proposed Lot 101 results in a more efficient use of the land and the new road and services required to facilitate the development. The proposed subdivision satisfies the relevant aims, objectives, and planning outcomes of the LEP and DCP. The proposed Clause 4.6 variation does not create an undesirable precedent as there are other industrial lots of similar size nearby, reinforcing the appropriateness of the proposal within its context.

Criteria 3

The underlying objective of the development standard would not necessarily be thwarted if compliance with the 3,000 m² lot size was required. However, forcing strict compliance with the development standard would potentially result in a less than efficient use of land resources. Further, the proposal is considered to be consistent with the objectives of the development standard as explained earlier in this assessment.

Criteria 4

The development standard is not abandoned, but the Leewood Industrial Area contains many industrial lots below the MLS due to previous planning schemes.

Criteria 5

The zoning of the land is appropriate for the site and proposed development.

Part 5 - Miscellaneous Provisions

5.21 - Flood Planning

This clause applies to land identified on the Flood Planning Map as a Flood Planning Area and requires that, before any consent is issued, Council must be satisfied that the proposal:

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

The subject land is not within the flood planning area, it is partially flooded (PMF). However, the proposed development is unlikely to change flooding behaviour on or off the site and is unlikely to adversely affect the safe occupation and efficient evacuation of people from the site.

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**

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

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

The earthworks proposed in the application are limited to the extent of cutting and filling required for the proposed road work and detention basin. Matters in relation to stormwater drainage have been addressed through conditions of consent. The conditions of consent will require the construction of a stormwater retention basin within the development.

The site is not known to be contaminated, and conditions have been recommended to address an unexpected finds during construction. The earthworks will be appropriately supported onsite and the change in ground level is not considered to be substantial. Therefore, the effect on the amenity of adjoining properties is considered to be minor. The site is not known to contain any Aboriginal, European or Archaeological relics. Previous known uses of the site do not suggest that any relics are likely to be uncovered.

7.4 - Terrestrial Biodiversity

This clause seeks to maintain terrestrial biodiversity and requires that consent must not be issued unless the application demonstrates whether or not the proposal:

- (a) is likely to have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land*
- (b) is likely to have any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna*
- (c) has any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (d) is likely to have any adverse impact on the habitat elements providing connectivity on the land.*

Additionally this clause prevents consent being 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, or*
- (c) *if that impact cannot be minimised - the development will be managed to mitigate that impact.*

The Orange Local Environmental Plan 2011 – Terrestrial Biodiversity Map shows that a small area of high biodiversity sensitivity is identified just inside the south eastern corner of the subject land (refer LEP map extract below)



Figure 7 - Terrestrial Biodiversity

In consideration of this clause it should be noted the identified area of biodiversity within the property is small and is attributed to the native trees that exist on adjacent land to the southeast of the subject land. The proposal seeks to subdivide the land to create 5 industrial lots. The subdivision will require the construction of a new road within the crown road reserve. Careful consideration of road design requirements with a view to protecting sensitive vegetation was considered necessary in determining this matter. There is a single eucalypt, radiata pine tree and various non-native small trees and shrubs in the proposed cul-de-sac. The applicant submits that it may be possible to retain the eucalypt but the other non-native vegetation will require removal.

To address matters in relation to tree removal/removal/tree retention the application was referred to Council's Manager City Presentation. Please note the following comments:

Trees along the western side of the road reserve shall be retained and protected during the proposed subdivision development. No construction activity shall occur with 5m of the centre of the stem of the tree furthest to the east. This includes excavation for road construction and services (as outlined on plan showing servicing layout). The proposed water supply shall not be via open trench on the western side of the proposed new road and where the trees are located.

A Tree Protection Zone (TPZ) shall be established to protect trees along the western side of the road reserve. The TPZ fence shall be temporary construction zone fencing or similar, as applied in AS4970-2009 Protection of trees on development sites. Fencing shall be sign posted as TPZ no unauthorised person may enter; no parking of plant or vehicles and no storage of materials shall occur within the TPZ. Removal of the Radiata pine is supported.

Conditions relating to the Eucalyptus tree (Canopy 190m²) located towards the southeastern corner shall be implemented at the time of the proposed cul-de-sac construction and include that no excavation, trenching or fill shall be placed with 5m of the subject trees' trunk. This tree shall have TPZ fencing constructed at 5m in radius from the centre of the trees stem. The design shall ensure that the construction impact on the proposed trees is outside the TPZ.

The comments above were discussed with Council's Technical Services Department and based on those discussions it was agreed that amendments to the positioning of the road could be undertaken to protect the vegetation. Council's Technical Services Department further advised that consideration of alternative installation servicing methods would be required, such as re-routing the water supply line acknowledging that adjustments to the positioning of the road would also be necessary. Council's Technical Services engineer has indicated that consideration of all servicing arrangements to suit the design so as to protect the trees will be dealt with at construction stage of the development. Suitable conditions of consent have been included in the attached Notice of Determination to ensure compliance with technical requirements in terms of servicing whilst protecting the existing trees including the requirement for established TPZ's prior to construction work being undertaken.

Overall, management of the proposal can be conditioned to protect the environmental functions and values of the land. The proposal is not expected to disturb the biodiversity structure, ecological functions or composition of the land and does not reduce habitat connectivity with adjoining sensitive areas. As a result, the biodiversity report is not required.

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. The design and siting of the proposal avoids impacts on groundwater and is therefore considered acceptable.

Clause 7.11 - Essential Services

Clause 7.11 applies and states:

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

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

Relevant conditions of consent in relation to servicing of the development have been recommended from the Council's Technical Services Department. These recommendations have been included as conditions of consent in the attached Notice of Determination. Please note that the development will include the construction of a new public road within the crown road reserve adjoining the site so as to facilitate legal access. Council's Technical Services Manager has advised that the crown road will be transferred to Council's care and control once the road has been formally constructed to Council's requirements.

STATE ENVIRONMENTAL PLANNING POLICIES**STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021****Chapter 4 - Remediation of Land****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 terms of potential soil contamination, the subject land has remained vacant and not mapped as contaminated land. The northern half of the subject land is well established for industrial purposes as evidenced by the buildings, vehicle and laydown areas. The application was referred to Council's Environmental Health Officer (EHO) to address the contamination report. The EHO has advised that there are no concerns raised in relation to contamination matter. It was however recommended that an unexpected finds conditions be included within the Notice of Determination. On the basis of the above, it is considered that contamination status of the land is satisfactory and that Council will not require further assessment in regard to potential site contamination.

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 currently on exhibition that relate to the subject land or proposed development.

DESIGNATED DEVELOPMENT

The proposed development is not designated development.

INTEGRATED DEVELOPMENT

The proposed development is not integrated development.

PROVISIONS OF ANY DEVELOPMENT CONTROL PLAN s4.15(1)(a)(iii)**Orange Development Control Plan 2004**

Orange Development Control Plan 2004 - 9 Development in the Industry & Employment Zone.

PO 9.2-1 PLANNING OUTCOMES – INDUSTRIAL SUBDIVISION	
1	The subdivision provides for a range of lot sizes consistent with the existing or proposed character of the industrial locality (with reference to the above table).
2	Lots have a regular shape to facilitate the establishment of large, open industrial buildings.
3	The subdivision is designed and constructed according to the Development and Subdivision Code.
4	The land is adequately serviced for industrial development.

1. The proposal includes range of lot sizes that are considered to be consistent with the existing or proposed character of the industrial locality.
2. The configuration of each lot is considered to be of sufficient dimensions to accommodate larger building footprints and vehicle turn paths that are typically associated with industrial development.
3. For the proposal to meet the requirement of the Development and Subdivision code, the proposal was referred to Council's Technical Services Department for input. Recommended conditions of consent have been included in the draft Notice of Determination.
4. Recommended conditions of consent have been included in the draft Notice of Determination to address servicing requirements of the development.

PROVISIONS PRESCRIBED BY THE REGULATIONS s4.15(1)(a)(iv)**Demolition of a Building (clause 61)**

The proposal does not involve the demolition work.

Fire Safety Considerations (clause 62)

Not applicable. The proposal does not involve a change of building use for an existing building, where the applicant does not seek the rebuilding, alteration, enlargement or extension of a building.

Buildings to be Upgraded (clause 64)

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

BASIX Commitments (clause 75)

BASIX is not applicable to the proposed development.

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

The access to proposed Lots 101 to 104 will be provided via the construction of a new road. It is proposed that this new section of road will be constructed to a 10m wide formation with concrete kerb and gutter. A full size cul-de-sac will be provided to accommodate a semi-trailer turn path. The proposed new road will be suitable to accommodate typical industrial traffic associated with the proposed lots. The new road will join the existing public road network at a T-intersection that will be a *Give Way* controlled with Ash Street/Leewood Drive as the priority road. The proposed subdivision itself is unlikely to generate a marked traffic increase as it represents the creation of four additional lots. The potential traffic increase and impact on the border road network are matters to be considered at the time that future development is considered on each lot.

Biodiversity

The subject land is not identified on the Biodiversity Values Map published under Clause 7.3 of the Biodiversity Conservation Regulation 2016. In this case, the proposal includes removal of shrubs and two trees to facilitate the development. Other trees within the road reserve are not proposed to be removed. The proposal was referred to Council's City Presentation Manager. The recommendations from the City Presentations Manager have been addressed in this report under Section 1.7 of this report. Conditions have been recommended requiring the establishment of TPZ's to protect certain trees during construction. It will be necessary to require adjustment to the positioning of the road slightly to accommodate this vegetation. Special consideration will also be required when considering the servicing design to again protect this vegetation during construction. As such, the proposal will not have an adverse effect on a threatened species; endangered ecological community; or a critically endangered ecological community or their habitat.

Social and Economic Effect

The proposed subdivision is unlikely to generate negative social or economic effects. It is within a defined industrial zone and integrates entirely with the established industrial precinct.

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

There are no aspects of the sites that would suggest that it is not suitable for the proposed development.

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

With reference to Council's Planning and Development Community Participation Plan 2019 (the CPP) the proposal represents Advertised development because it involves development in relation to Clause 4.6 of the LEP, where the variation from a development standard exceeds more than 10%.

The proposed development is defined as "advertised development" under the provisions of the Community Participation Plan. The application was advertised for the prescribed period of 14 days and at the end of that period one submission was received.

Submitter: The submission raises concerns in relation to the adequacy of the stormwater system in this location and past flooding events that have occurred as a result within the adjoining property. The submitter is opposed to the above development application only on the basis of the current inadequate stormwater system that exists in taking stormwater away and resultant flooding impacts that exists on his property. The submitter remains concerned that further upstream development would only exacerbate downstream stormwater impacts given that the proposal appears to direct more stormwater into the existing storm water system which is currently not adequate.

The submitter has requested that the stormwater issue be addressed in the consideration of this application. If the stormwater matter is addressed so as to resolve issues, the submitter has indicated that they would be comfortable in removing the objection.

Response: - The application and submission received was referred to Council's Technical Services Department for assessment. Technical Services advised that the plans must include the construction of an onsite detention system to address stormwater issues in this locality and that the design of the basin would need to be accommodated within proposed lot 100.

The Technical Services Department also advised that access to the basin would need to be accessible from the public road for maintenance purposes. These matters were discussed with the applicant and amended plans were furnished to Council for consideration. The stormwater retention basin is proposed to be constructed within Stage 1 to address stormwater matters.

An engineering design of the proposed stormwater system consistent with Council's Development and Subdivision Code will be required to be submitted for approval prior to the issue of a Subdivision Works Certificate. The proposed basin will be required to be constructed as a part of Stage 1 of the development. Council's Technical Services Department have included recommended conditions of consent to address matters in relation to stormwater requirements for this development.

PUBLIC INTEREST s4.15(1)(e)

The proposal will not be inconsistent with any policy statement, planning study or guideline that has not been considered in this assessment. There are no aspects of the proposal that will be contrary to the welfare or well-being of the general public.

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 Draft Notice of Determination, D25/33359 [↓](#)
- 2 Plans, D25/31017 [↓](#)
- 3 Submission (redacted), D25/31287 [↓](#)



NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

Application number	DA 550/2024(1) PAN-437569
Applicant	S TABERNER GLASS CO AS ABOVE C/- PETER BASHA PLANNING & DEVELOPMENT PO BOX 1827 ORANGE 2800
Description of development	Subdivision (five lot industrial) and New Road
Property	16 ASH STREET ORANGE 2800 584/-/DP749425
Determination	Approved Consent Authority - Council
Date of determination	20/03/25
Date from which the consent operates	20/03/25
Date on which the consent lapses	20/03/30
Building Code of Australia building classification	To be determined as PCA

Under section 4.18(1) of the EP&A Act, notice is given that the above development application has been determined by the granting of consent using the power in section 4.16(1)(a) of the EP&A Act, subject to the conditions specified in this notice.

Reasons for approval

1. To ensure compliance with relevant statutory requirements.
2. To ensure the utility services are available to the site and adequate for the development.
3. To provide adequate public health and safety measures.
4. To prevent the proposed development having a detrimental effect on adjoining land uses.
5. To comply with the Environmental Planning and Assessment Act 1979.
6. The proposal will reasonably satisfy local and state planning controls.
7. The proposal development will be consistent with the zone objectives and principal development standards.
8. The proposal development will complement the existing or desired future character of the area.
9. To ensure a quality urban design for the development which complements the surrounding environment.

Right of appeal / review of determination

If you are dissatisfied with this determination:

Request a review

You may request a review of the consent authority's decision under section 8.3(1) of the EP&A Act. The application must be made to the consent authority within 6 months from the date that you received the original determination notice provided that an appeal under section 8.7 of the EP&A Act has not been disposed of by the Court.

Rights to appeal

You have a right under section 8.7 of the EP&A Act to appeal to the Court within 6 months after the date on which the determination appealed against is notified or registered on the NSW planning portal.

The Dictionary at the end of this consent defines words and expressions for the purposes of this determination.

Paul Johnston
Manager Development Assessment
Person on behalf of the consent authority

For further information, please contact Anugya Ratanchandra Vishwakarma / Town Planner

DRAFT

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

General Conditions

1	Approved plans and supporting documentation
	Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.
	Approved plans
	Sheet no 1, 2, 3, 4, 5, 6 and 7 Reference – 23092DA, drawn by Peter basha, dated on 14 March 2025.
	In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails. Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.
2	Development and subdivision works requirements
	All of the following 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 engineering work required by the following conditions is to be completed prior to the issue of an Occupation or Subdivision Certificate, unless stated otherwise.
	Condition reason: To comply with Council's Development and Subdivision Code.
3	National Construction Code
	All building work must be carried out in accordance with the provisions of the National Construction Code.
	Condition reason: To ensure compliance with relevant statutory requirements.

Subdivision Work

Before issue of a subdivision works certificate

4	<p>Access over adjoining land</p> <p>If services and access are to be provided over adjoining properties, stormwater discharged onto adjoining land, or works are required to be undertaken on adjoining properties then, prior to the issue of a Subdivision Works 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.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>
5	<p>Dust management plan</p> <p>A dust management plan is to be submitted to Orange City Council or an Accredited Certifier (certifier – subdivision) upon application for a Subdivision Works Certificate.</p> <p>Condition reason: To comply with Council's Development and Subdivision Code.</p>
6	<p>Engineering plan design and construction requirements</p> <p>Engineering plans, showing details of all proposed work and adhering to any engineering conditions of development consent and the Orange City Council Development and Subdivision Code, are to be submitted to, and approved by, Orange City Council or an Accredited Certifier (certifier - subdivision) prior to the issue of a Subdivision Works Certificate.</p> <p>Condition reason: To comply with Council's Development and Subdivision Code.</p>
7	<p>Road construction requirements</p> <p>The proposed 10.0m wide road shall be constructed to a full urban industrial standard for the full length of the road serving proposed Lots 101 to 104. This work is to include road pavement and pavement surfacing, kerb and gutter, piped stormwater drainage , cul-de-sac and earth-formed footpath reserves on both sides of the road.</p> <p>The existing road pavement in Ash Street shall be tied into the new works and all construction works made safe for road users.</p> <p>Engineering plans, showing details of all proposed work and adhering to any engineering conditions of development consent, are to be submitted to, and approved by, Orange City Council prior to the issue of a Subdivision Works Certificate.</p> <p>Condition reason: To comply with Council's Development and Subdivision Code.</p>

8	Road naming application
	Prior to the issue of a Subdivision Works Certificate, a Road Naming Application form is to be completed and submitted to the Geographical Names Board with a plan of the whole development defining the stage being released.
	Condition reason: To comply with Council's Development and Subdivision Code.
9	Sewer main construction
	A sewer main is to be constructed from Council's existing sewer network to serve the proposed lots. Prior to a Subdivision Works Certificate being issued engineering plans for this sewerage system are to be submitted to and approved by Orange City Council.
	Condition reason: To comply with Council's Development and Subdivision Code.
10	Soil and Water Management Plan
	A Soil and Water Management Plan (SWMP) is to be submitted to Orange City Council or an Accredited Certifier (certifier – subdivision) for approval prior to the issue of a Subdivision Works Certificate. The management 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.
	Condition reason: To comply with Council's Development and Subdivision Code.
11	Stormwater detention design
	The development's stormwater design is to include the incorporation of stormwater detention within the development, designed to limit peak outflows from the land to the pre-existing natural outflows up to a 1% AEP storm event, 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.
	<p>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) based on the most recent version of Australian Rainfall and Runoff calculations allowing for applicable climate change factor(s). 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:</p> <ul style="list-style-type: none"> catchment plan showing sub-catchments under existing and developed conditions; and

	<ul style="list-style-type: none"> • schematic diagram of the catchment model showing sub areas and linkages; and • 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, <p>are to be submitted to and approved by Orange City Council prior to the issue of a Subdivision Works Certificate.</p> <p>The design shall also detail vehicle access arrangements to the detention basin for the purposes of maintaining the basin.</p> <p>Condition reason: To comply with Council's Development and Subdivision Code.</p>
12	<p>Stormwater - interlot stormwater system</p> <p>Proposed lots 101 to 104 are to be provided with interlot stormwater drainage. A grated concrete stormwater pit is to be constructed within each lot provided with interlot stormwater drainage. Engineering plans for this drainage system are to be approved by Orange City Council or an Accredited Certifier (certifier – subdivision) prior to the issue of a Subdivision Works Certificate.</p> <p>Condition reason: To comply with Council's Development and Subdivision Code.</p>
13	<p>Relocate water mains in existing road reserve</p> <p>Prior to the issue of a Construction Certificate, plans shall be submitted to and approved by Orange City Council for the relocation of all watermains within the existing road reserve to the eastern footpath reserve. Watermains shall not be located beneath the proposed 10.0m wide road formation.</p> <p>Condition reason: To protect Councils water assets.</p>
14	<p>Structural engineers plans and details for retaining walls</p> <p>Prior to the issue of a Construction Certificate, structural engineering plans shall be prepared for the proposed retaining walls located on the property boundaries of proposed Lot 103.</p> <p>Condition reason: To comply with Orange City Councils Development and Subdivision Code</p>
15	<p>Water reticulation analysis</p> <p>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.</p>

	Condition reason: To comply with Council's Development and Subdivision Code.
16	<p>Amended plans</p> <p>The applicant shall submit amended engineering drawings showing the repositioning of the proposed road so as to achieve tree protection zones (TPZ) required by this consent. The plans shall show the establishment of a TPZ along the western side of the road reserve so as to retain and protect these trees during the proposed subdivision development. No construction activity is to be permitted within 5 metres of the centre of the stem of the tree furthest to the east. This includes excavation for road construction and services (as outlined on plan showing servicing layout). The proposed water supply shall not be via open trench on the western side of the proposed new road and where the trees are located.</p> <p>The Eucalyptus tree (Canopy 190m2) located towards the southeastern corner shall also be protected during construction of the proposed cul-de-sac. No excavation, trenching or fill shall be placed with 5 metres of the subject trees' trunk. The plans shall show the provision of a TPZ that provides for a 5m radius from the centre of the trees stem. The design shall ensure that the construction impact on the proposed trees is outside the TPZ.</p> <p>The Radiata Pine tree may be removed</p> <p>The amended plans must be reviewed and approved by Council's Technical Services Department and by the Council's Manager of City Presentation prior to any work commencing.</p> <p>Condition reason: These changes will ensure compliance with technical requirement while protecting the existing trees.</p>

Before subdivision work commences

17	<p>Apply for Subdivision Works Certificate</p> <p>An application for a Subdivision Works Certificate is required to be submitted to, and a Certificate issued by Orange City Council/Accredited Certifier prior to any excavation or works being carried out on-site.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>
18	<p>Soil and Water Management Plan</p> <p>The approved Soil and Water Management Plan (SWMP) shall be implemented prior to construction works commencing.</p>

	Condition reason: To ensure compliance with relevant statutory requirements.
19	Dial Before You Dig (Essential Energy) <p>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). 7. 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) 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.</p>
	Condition reason: To provide adequate public health and safety measures
20	Protection of Trees <p>Trees along the western side of the road reserve shall be retained and protected during the proposed subdivision development. No construction activity shall occur within 5 metres of the centre of the stem of the tree furthest to the east. This includes excavation for road construction and services (as outlined on plan showing servicing layout).</p> <p>A tree protection zone shall be established to protect trees along the western side of the road reserve. The TPZ fence shall be temporary construction zone fencing or similar, as applied in AS4970-2009 Protection of trees on development sites. Fencing shall be sign posted as TPZ no unauthorised person may enter; no parking of plant or vehicles and no storage of materials shall occur within the TPZ. Removal of the Radiata pine is supported.</p> <p>A tree protection zone (TPZ) for the Eucalyptus tree (Canopy 190m2) located towards the southeastern corner of the road reserve shall also be established prior to the construction of the cul-de-sac. No excavation, trenching or fill shall be placed within 5 metres of the subject trees' trunk. The TPZ fencing shall provide a 5 metre radius from the centre of the trees stem. The design shall ensure that the construction impact on the proposed trees is outside the TPZ.</p>
	Condition reason: These changes will ensure protection of the existing trees.

During subdivision work

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

	Condition reason: To comply with Council's Development and Subdivision Code.
22	All services contained within lots
	All services are to be contained within the allotment that they serve.
	Condition reason: To comply with Council's Development and Subdivision Code.
23	All services to be provided by developer
	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.
	Condition reason: To comply with Council's Development and Subdivision Code.
24	Provision of water service and sewer junction
	A sewer junction is to be provided to every lot in the proposed subdivision in accordance with the Orange City Council Development and Subdivision Code.
	Condition reason: To comply with Council's Development and Subdivision Code.
25	Single access battle-axe lot footpath crossing
	Proposed battle-axe lot 103 shall be provided with a heavy duty kerb layback and footpath crossing constructed to suit the turn path of a 19m articulated heavy vehicle, and to the requirements and standards of the Orange City Council Development and Subdivision Code.
	Condition reason: To comply with Council's Development and Subdivision Code.
26	Road signage installation
	'No Stopping' signs shall be installed for the full length of the eastern side of the proposed 10.0m wide road, including the cul-de-sac bowl.
	'Give Way' sign(s) and line marking shall be installed at the intersection with Ash Street.
	Condition reason: To ensure two-way traffic flow for commercial vehicles.
27	Kerb and gutter layback and footpath crossing
	A 3.0m wide heavy-duty concrete kerb and gutter layback and footpath crossing is to be constructed at the head of the cul-de-sac to provide access to Orange City Councils water reservoir. The works are to be carried out to the requirements of the Orange City Council Development and Subdivision Code.
	Condition reason: To comply with Council's Development and Subdivision Code.
28	Unexpected finds contamination
	In the event of an unexpected find during works such as (but not limited to) the presence of undocumented waste, odorous or stained soil, asbestos, structures such

	as underground storage tanks, slabs or any contaminated or suspect material, all work onsite must cease immediately. The beneficiary of the consent must discuss with Council the appropriate process that should be followed therein. Works onsite must not resume unless the express permission of Council's Director Development Services is obtained in writing.
	Condition reason: To ensure any unexpected finds of contamination are notified to Council and managed appropriately
29	Hours of work - construction
	All construction 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 Chief Executive Officer of Orange City Council to vary these hours.
	Condition reason: To ensure compliance with relevant statutory requirements.
30	Note to Applicant (Essential Energy)
	Essential Energy's records indicate there is electricity infrastructure located within close proximity to the property. Any activities within this location 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 property encroach on the electricity infrastructure.
	Condition reason: To provide adequate public health and safety measures

Before issue of a subdivision certificate

31	All services contained within lots, Statement of Compliance and WAE plans
	All services are to be contained within the allotment that they serve. A Statement of Compliance and digital works as executed plans (in both .pdf and .dwg formats) for all services, from a Registered Surveyor, is to be submitted to Orange City Council prior to the issue of a Subdivision Certificate.
	WAE plans shall include MGA co-ordinates and AHD levels with each of the services on a separate layer eg separate out water, sewer, storm water, gas, power, telecommunications to their own layers / drawing sheet.
	Condition reason: To comply with Council's Development and Subdivision Code.
32	Apply for Subdivision Certificate

	Application shall be made for a Subdivision Certificate under Section 6.3(1)(d) of the Act.
	Condition reason: To ensure compliance with relevant statutory requirements.
33	Contributions - water and sewer headworks charges
	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 4.0 ETs for water supply headworks and 4.0 ETs for sewerage headworks. A Certificate of Compliance, from Orange City Council in accordance with the <i>Water Management Act 2000</i> , will be issued upon payment of the contributions.
	This Certificate of Compliance is to be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate.
	Condition reason: To ensure compliance with relevant statutory requirements.
34	Easement for sewer mains
	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 all sewer mains. 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 issue of a Subdivision Certificate.
	Condition reason: To comply with Council's Development and Subdivision Code.
35	Essential Energy certification
	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.
	Condition reason: To comply with Council's Development and Subdivision Code.
36	Filling of lots
	Evidence from a registered NATA laboratory is to be submitted prior to the issue of a Subdivision Certificate stating that the filling of any allotments has been carried out in accordance with Australian Standard 3798-2007.
	Condition reason: To comply with Council's Development and Subdivision Code.
37	Maintenance security deposit
	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 issue 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 issue of a Subdivision Certificate.
	Condition reason: To comply with Council's Development and Subdivision Code.
38	NBN certification
	Application is to be made to 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.
	Condition reason: To comply with Council's Development and Subdivision Code.
39	Provision of services and works on public land
	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.
	Condition reason: To comply with Council's Development and Subdivision Code.
40	Provision of services for staged subdivision release
	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 issue of a Subdivision Certificate.
	Stage 1 (proposed Lots 99 and 100) requires the 10.0m wide road to be constructed for the full length of the frontage of proposed Lot 99 including the cul-de-sac, road widening and all associated works, construction of the stormwater detention basin on proposed Lot 100, filling proposed Lot 103 to achieve natural drainage to the detention basin, establishment of easements for sewer and stormwater services.
	Stage 2 (proposed Lots 101 to 104) requires completion of individual services for each proposed lot.
	Condition reason: To ensure compliance with relevant statutory requirements.
41	Restriction-as-to-User - stormwater easements

	<p>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 <i>NSW Conveyancing Act 1919</i> 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.</p> <p>Condition reason: To comply with Council's Development and Subdivision Code.</p>
42	<p>Stormwater detention certification</p> <p>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 issue of a Subdivision Certificate.</p> <p>Condition reason: To comply with Council's Development and Subdivision Code.</p>
43	<p>Stormwater easement for stormwater detention basin</p> <p>A Restriction-as-to-User under section 88B of the <i>NSW Conveyancing Act 1919</i> is to be created on the title of proposed Lot 100 requiring that no obstructions are to be placed on the site, or works carried out on the site, in a manner that affects the continued operation of the storm water detention basin. The volume of the basin and storm water release control shall be as per the approved engineering plans, and the basin shall be maintained in accordance with the Orange City Council Development and Subdivision Code.</p> <p>Condition reason: To comply with the Orange City Council Development and Subdivision Code.</p>
44	<p>Easement to be established for access to stormwater detention basin</p> <p>Prior to the issue of a Subdivision Certificate an easement for access and maintenance in favour of Orange City Council shall be established to permit vehicular access to the stormwater detention basin.</p> <p>Condition reason: To ensure that Orange City Council has ongoing access to the stormwater detention basin.</p>
45	<p>Bushfire Requirement</p> <p>Prior to the issue of Subdivision Certificate, a <i>Restriction as to user, under section 88B NSW of the Conveyancing Act 1919</i>, is to be created on proposed lots 101, 102, 103 and 104 requiring all the future development to comply with the bushfire control recommendation outlined in the Bushfire Hazard Assessment Report prepared by Statewide bushfire Consulting job reference no. 24SBC_1193 dated on 3rd February 2025.</p> <p>Condition reason: To comply with Council's Development and Subdivision Code.</p>
46	<p>Asset Protection Zone (APZ)</p> <p>A Restriction-as-to-User under section 88B of the <i>NSW Conveyancing Act 1919</i> is to be created on the proposed lots 103 and 104 requiring that 10m Asset Protection Zone (APZ) be established along the southern boundary each allotment. The restriction</p>

	must provide for the APZ to be established and managed as an Inner Protection Area (IPA) as outlined in Appendix 4 of Planning for Bushfire Protection PBP,(Figure 3).
	Condition reason: To comply with Council's Development and Subdivision Code.
47	Unknown Crown Road
	Prior the issue of Subdivision Certification, the creation of Crown Road to public road must be accordance with the requiremnt of NSW Crown Lands
	Condition reason: To comply with Council's Development
48	Distance of walls from boundaries
	Prior to the issue of a subdivision certificate, certificate is to be provided from a suitably qualified person stating that the building within the boundaries of proposed Lots 100 and 101 comply in respect to the distance of walls from boundries and the common wall/fire wall meets the requirement of the National Construction Code.
	Condition reason: To ensure compliance with relevant statutory requirements.
49	Potential safety risk (Essential Energy)
	If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.
	Condition reason: To provide adequate public health and safety measures
50	Electrical Infrastructure (Essential Energy)
	As part of the subdivision, an easement/s are/is created for any existing electrical infrastructure (located within the property or adjoining the property as required). The easement/s is/are to be created 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
	Condition reason: To provide adequate public health and safety measures

Ongoing use for subdivision work

No additional conditions have been applied to this stage of development.

Building Work

Before issue of a construction certificate

No additional conditions have been applied to this stage of development.

Before building work commences

No additional conditions have been applied to this stage of development.

During building work

No additional conditions have been applied to this stage of development.

Before issue of an occupation certificate

No additional conditions have been applied to this stage of development.

Occupation and ongoing use

No additional conditions have been applied to this stage of development.

General advisory notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the [Conditions of development consent: advisory notes](#). The consent should be read together with the *Conditions of development consent: advisory notes* to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a construction certificate or subdivision works certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.

Dictionary

The following terms have the following meanings for the purpose of this determination (except where the context clearly indicates otherwise):

Approved plans and documents means the plans and documents endorsed by the consent authority, a copy of which is included in this notice of determination.

AS means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

Building work means any physical activity involved in the erection of a building.

Certifier means a council or a person that is registered to carry out certification work under the *Building and Development Certifiers Act 2018*.

Construction certificate means a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation and *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

Council means ORANGE CITY COUNCIL.

Court means the Land and Environment Court of NSW.

EPA means the NSW Environment Protection Authority.

EP&A Act means the *Environmental Planning and Assessment Act 1979*.

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Independent Planning Commission means Independent Planning Commission of New South Wales constituted by section 2.7 of the EP&A Act.

Occupation certificate means a certificate that authorises the occupation and use of a new building or a change of building use for an existing building in accordance with this consent.

Principal certifier means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

Site work means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

Stormwater drainage system means all works and facilities relating to:

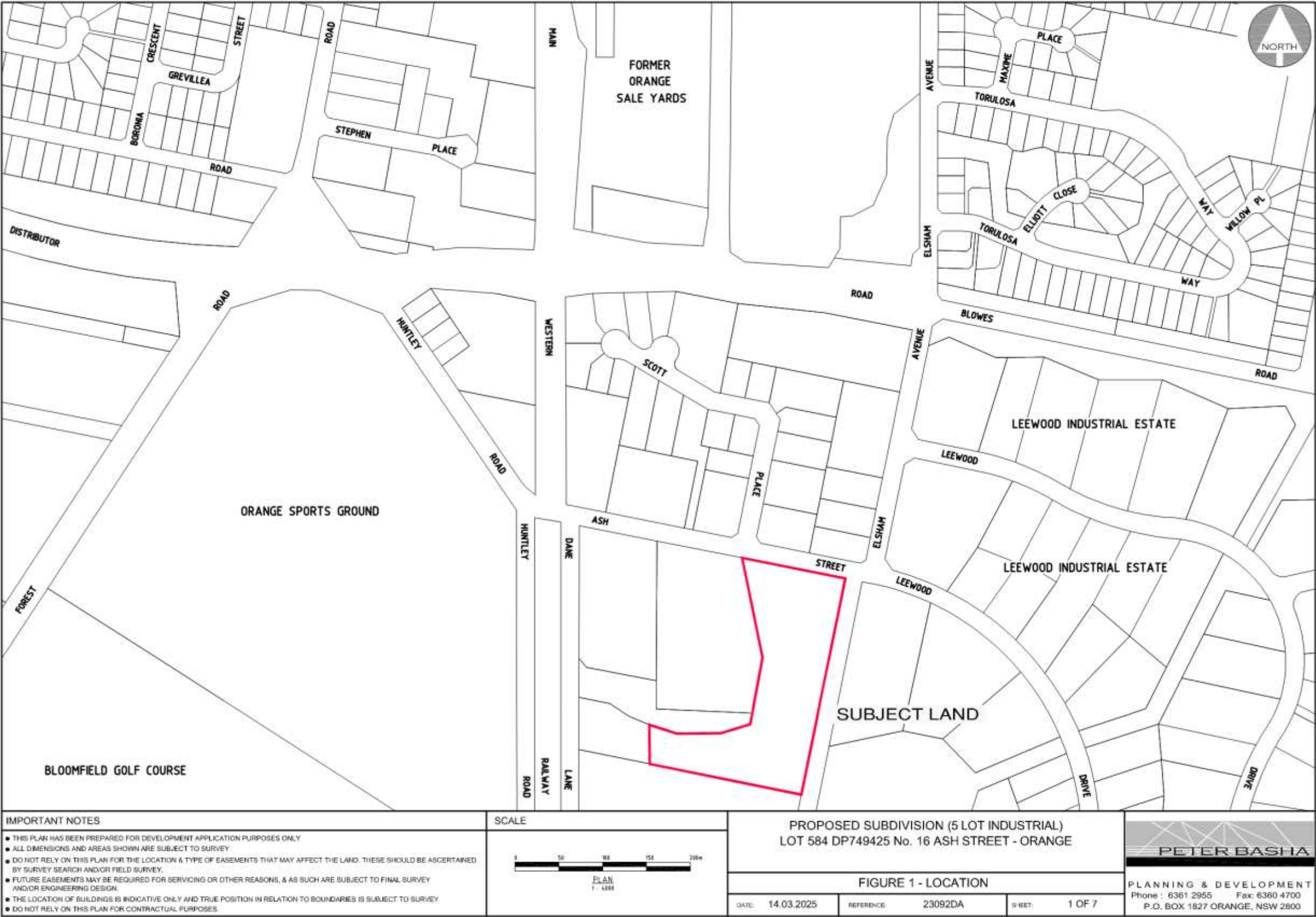
- the collection of stormwater,
- the reuse of stormwater,
- the detention of stormwater,
- the controlled release of stormwater, and
- connections to easements and public stormwater systems.

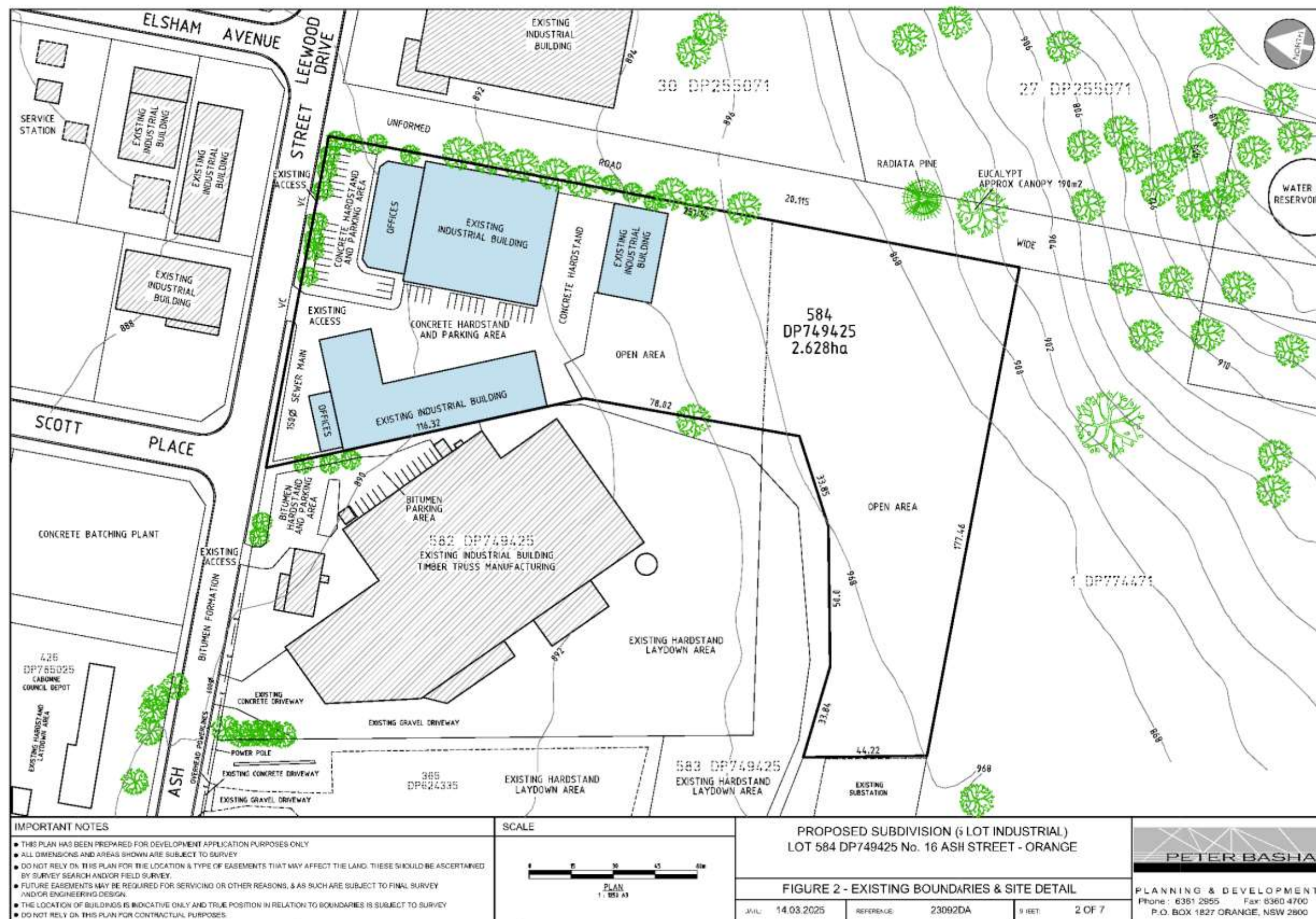
Strata certificate means a certificate in the approved form issued under Part 4 of the *Strata Schemes Development Act 2015* that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

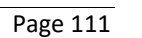
Subdivision certificate means a certificate that authorises the registration of a plan of subdivision under Part 23 of the *Conveyancing Act 1919*.

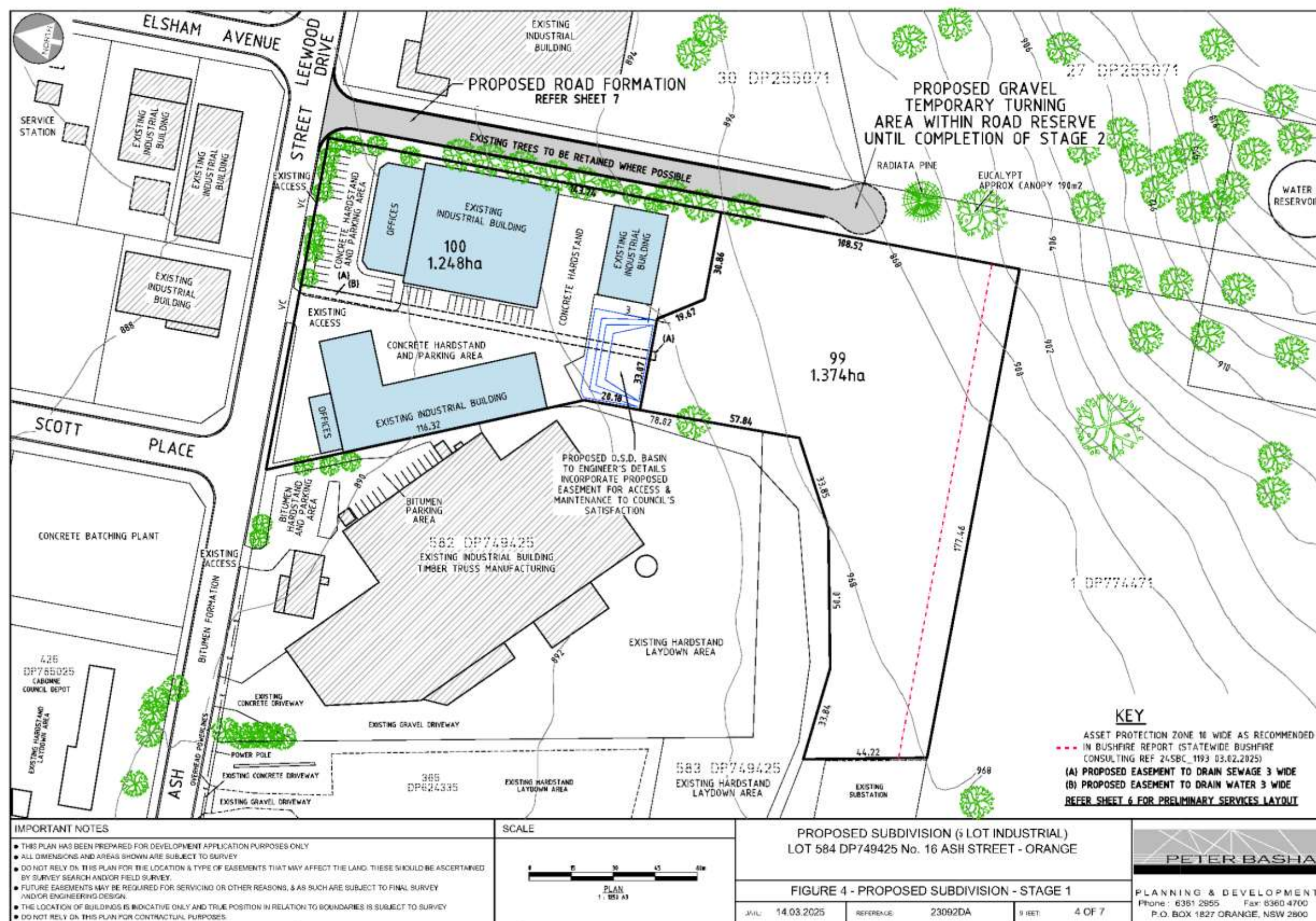
Subdivision work certificate means a certificate to the effect that subdivision work completed in accordance with specified plans and specifications will comply with the requirements of the EP&A Regulation.

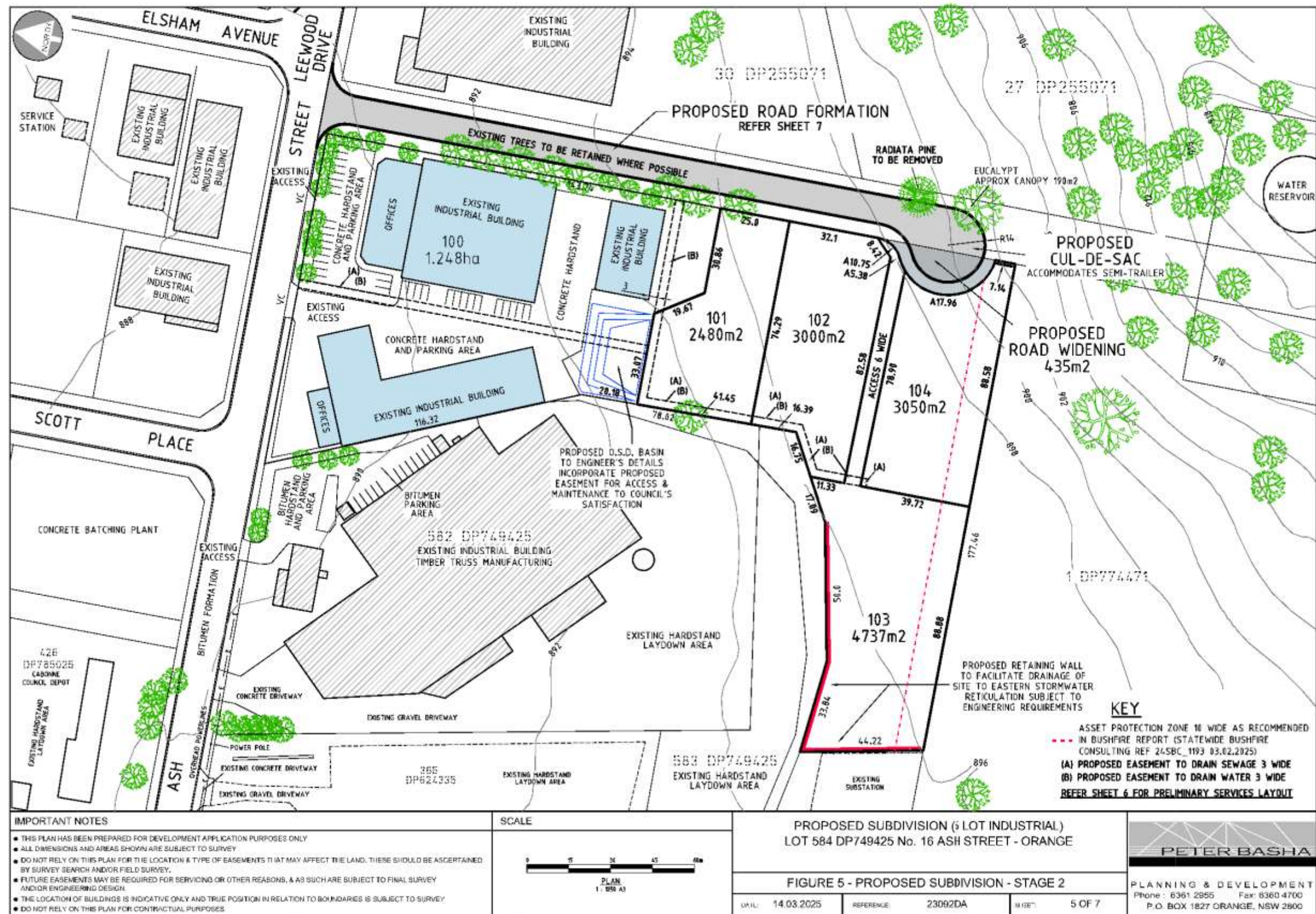
Sydney district or regional planning panel means Western Regional Planning Panel.

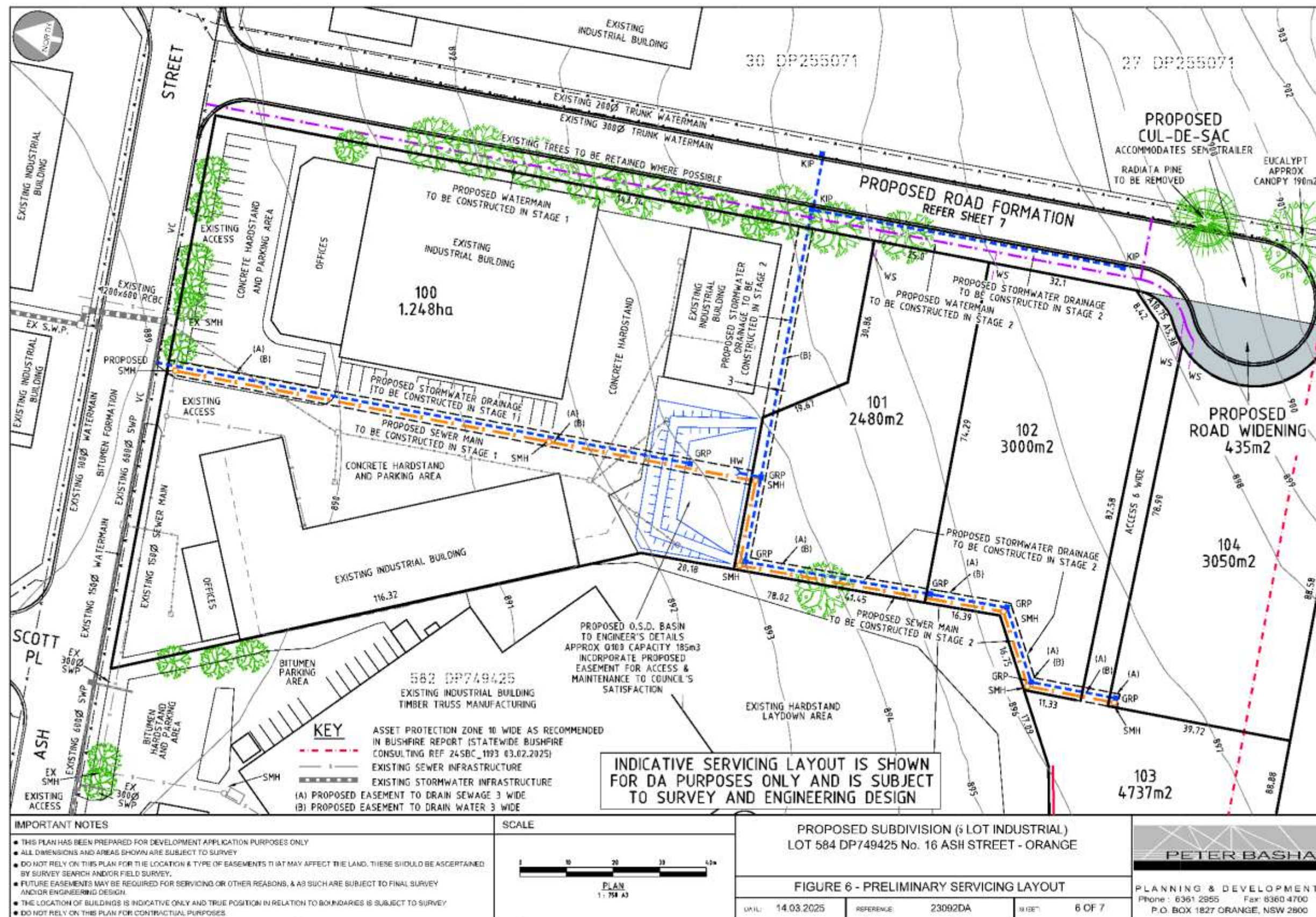


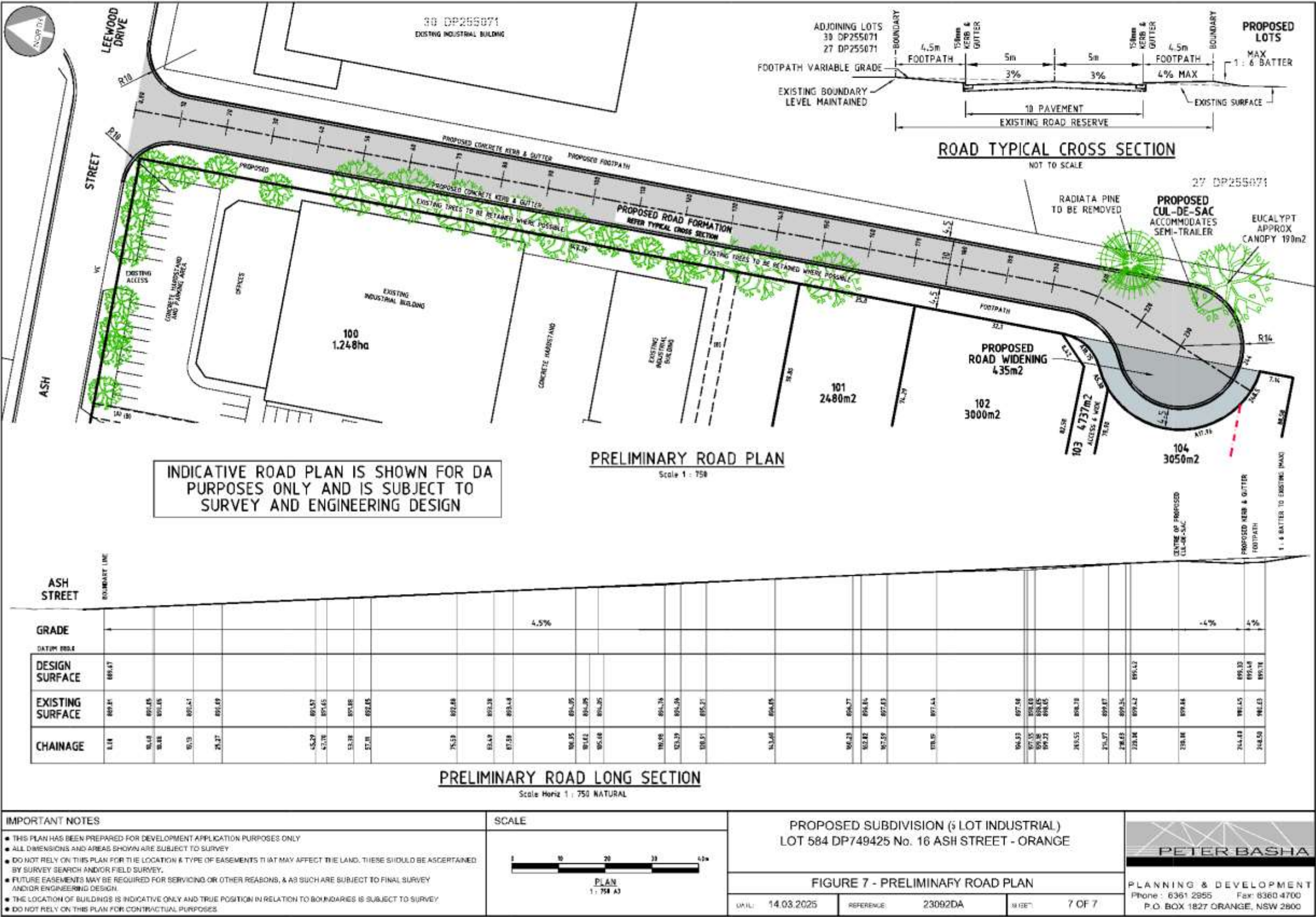












DA 550/2024(1)

Submission 1

PAN-437569

28 June 2024

C/O Orange City Council

135 Byng Street

ORANGE NSW 2800

Dear Mr Johnston

DEVELOPMENT APPLICATION DA 550/2024(1)

LOT 584 DP 749425 – 12-16 ASH STREET, ORANGE

SUPDIVISION (FIVE LOT INDUSTRIAL) AND NEW ROAD

I replying to the abovementioned application letter posted to me dated 12 June 2024 and received by mail on 20 June 2024 advising me of a development application as it is opposite land and a building I own at Orange. The letter asked if I have any concerns or objections to the development.

Firstly a little history to help you understand my concerns, I have owned the property since it was developed by Orange City Council in the early 1990's and on 21 February 2023 we had a storm and the land and building was flooded (pictures attached showing the water was approximately 200mm up the front door entrance to the building). I contacted Orange City Council to report that the Ash Street/Leewood Drive stormwater system was not adequate or the fact that the Southern Distributor which had recently been finalised had created a hold back issue for the stormwater to get away. I was advised by Orange City Council Staff that my building was build above the hundred year flood mark and the storm was better than a one in a hundred year flood.

Thirty days later, 23 March 2023 there was another storm and the storm water got to the front door again, my tenants had to put towels under the front door to stop the water from entering the building again. My tenants advised me that they could not go through another insurance claim with the interruption it caused to their business by the previous storm damage. I contacted the Orange City Council and advised that I could not have a building that since the early 1990's had never had storm water enter or reach the building but now was subject to a one in a hundred year flood every 30 days so I requested to meet on site with the relevant Orange City Council engineers to discuss the issue, to date there has been no onsite meeting.

So with my current and ongoing issue above with stormwater I am totally opposed to the above development application only on the basis of the current inadequate stormwater system that exists in taking the street water away, as I see the new development proposes to feed into the existing

storm water system which is currently not adequate for current application as well as the proposed road would only add more volume on the current system.

I see the existing stormwater system states it is a 1200x600 RCBC yet the street culvert at the front of my building has only a 300mm pipe to dump into the larger 1200x600 RCBC system, this itself seems to be a bottle neck and an upgrade in the size of the pipe that allows water to dump into the larger 1200x600 system at this point may assist to alleviate the current inadequate street culvert bottleneck. As the street culvert at [redacted] is at the lowest point in Ash Street, so it receives the excess stormwater from Ash Street & Leewood Drive when there is a storm.

So in conclusion, I hold Orange City Council responsible for the current stormwater issue and would not want to see any extra volume put into the current system unless Orange City Council can rectify the problem so [redacted] will not be subject to flooding in future years from heavy storms. Happy to discuss this issue further so my objection with the DA 550/2024(1) – PAN-437569 can be lifted and it can proceed with my support to help grow this beautiful city and the Leewood Industrial Estate present.

Attached photos show flood damage on 21 February 2025





2.5 DEVELOPMENT APPLICATION DA 578/2024(1) - LOTS 21, 23 AND 24 EDWARD STREET

RECORD NUMBER: 2025/438

AUTHOR: Ben Hicks, Senior Planner

EXECUTIVE SUMMARY

Application lodged	11 July 2024
Applicant/s	Orange City Council
Owner/s	Orange City Council
Land description	Lot 24 DP 1254245, Lot 21 DP 1198009, Lot 23 DP 1198009 - Edward Street, Orange
Proposed land use	Demolition (ancillary structures and tree removal), Subdivision (ten lot Torrens title) and Earthworks
Value of proposed development	\$1,095,424.00

Council's consent is sought for demolition of ancillary structures, concrete slabs and removal of numerous trees, as well as subdividing two industrial zoned lots totalling 8.79ha into 11 lots including a detention basin as proposed Lot 1. The proposed industrial lot sizes range from 4,091m² to 1.2ha. The site is split by a large residue lot that has been created as a drainage reserve (lot 21 DP 1198009).

The site ceased operations as the Orange Saleyards in/or around 2008, with the majority of infrastructure removed. The site has been used for stockpiling of soil from Council road construction projects associated with the Southern Feeder Road (SFR) and Edward Street extension in recent years.

Council's records indicate that the existing Elgas development does not have formal approval. The continuing use of the Elgas site for that particular purpose is the subject of ongoing discussions with the proponent for that development. The end outcome will be the subject of a separate Development Application which would be tabled for Council's consideration under separate cover if they were successful in acquiring the land. Given the nature of this particular use Council staff have provided an assessment within the body of this report to address concerns around what buffers ought to be implemented to ensure safety of future occupants of the site and its surrounds in the future in the event that Elgas was to be retained on the site. This assessment in no way authorises the ongoing use of that part of the site.

The proposed development is a Council related development, within the meaning of Clause 66A of the Environmental Planning and Assessment Regulation 2021 as Council is the owner of the land proposed to be developed. Council has adopted Strategic Policy ST26 "Council-Related Development Applications - Managing Conflict of Interest". Under this policy the application was required to be referred to Council's CEO to determine:

- (a) if a potential conflict of interest exists
- (b) identify the phase(s) of the development process at which the conflict arises
- (c) the level of risk involve at each phase
- (d) what (if any) management controls should be implemented
- (e) document the proposed management approach for the proposal in a statement that is published to the NSW Planning Portal.

Council's Chief Executive Officer (CEO), following an evaluation of the above criteria, determined that the staff assessment report and Notice of Determination should be peer reviewed by an independent party in this instance. Consistent with the CEO direction Council staff arranged for Blayney Shire Council to carry out the independent review of the staff assessment report. The peer review concluded that the assessment report addressed the relevant provisions of the Environmental Planning and Assessment Act; Orange Local Environment Plan 2011 and Orange Development Control Plan 2004 and indicated support for the recommendations made in the draft Notice of Determination. Please find attached a copy of the independent peer review for Council's consideration.

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 by Council is recommended.



Figure 1 - locality plan

DECISION FRAMEWORK

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

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

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

DIRECTOR'S COMMENT

The proposal involves the subdivision of the land to create 11 lots including a detention basin as proposed Lot 1. The proposed industrial lot sizes range from 4,091m² to 1.2ha. The site is split by a large residue lot that has been created as a drainage reserve (Lot 21 DP 1198009). Only minor boundary adjustments to the configuration of the drainage reserve are proposed.

The proposed subdivision to facilitate industrial development on the land is an appropriate reuse of the former Saleyards site. Key planning issues relating to the subdivision relate to flooding, stormwater management and contamination assessment.

The existing gas storage operation on part of the old saleyards site does not seem to have formal approval. This development has been operating from this site under lease with Council for many years. The continuing use of that portion of the site is the subject of ongoing discussions with the proponent for that development and is beyond the scope of this DA. To permit the finalisation of this application, Council staff have provided an assessment within the body of this report to address concerns around what buffers ought to be implemented around the gasworks to ensure safety of future occupants of the site and its surrounds. To be clear, however, this assessment in no way authorises the ongoing use of that part of the site.

In considering Council Strategic Policy ST26 "Council-Related Development Applications - Managing Conflict of Interest", to ensure transparency with the DA assessment, staff arranged for the draft assessment report and Notice of Determination to be peer reviewed by Blayney Shire Council. The peer review supports the staff assessment report and recommended Notice of Determination (see attached). It is recommended that Council supports the proposed subdivision.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan Strategy "11.1. 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 578/2024(1) for *Demolition (ancillary structures and tree removal), Subdivision (eleven lot Torrens title) and Earthworks* at Lot 24 DP 1254245, Lot 21 DP 1198009 and Lot 23 DP 1198009 - Edward Street Orange, pursuant to the conditions of consent in the attached Notice of Approval.

FURTHER CONSIDERATIONS

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

SUPPORTING INFORMATION / THE PROPOSAL

The proposal seeks subdivision of the site into 11 lots and includes associated works including; demolition of several existing structures and pavements, vegetation clearance, tree removal, detention basin decommissioning, and civil works to facilitate the subdivision.

Proposed Lot 1 will contain a new detention basin, proposed Lot 7 encompasses the existing Elgas depot and proposed Lot 11 will comprise a drainage reserve. All other proposed lots are intended to be available for further industrial development.

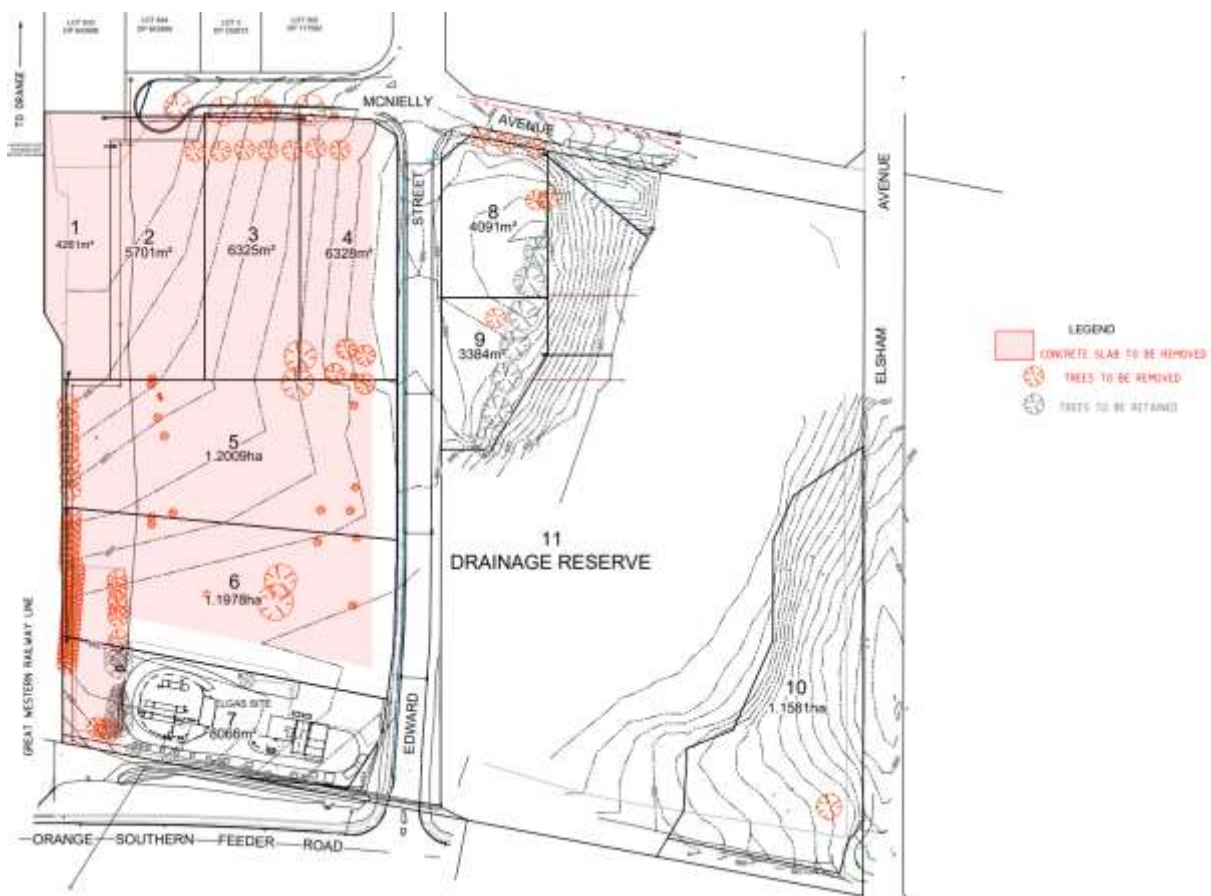


Figure 2 - site plan

MATTERS FOR CONSIDERATION**Section 1.7 - Application of Part 7 of the *Biodiversity Conservation Act 2016* and Part 7A of the *Fisheries Management Act 1994***

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

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

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

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

Trigger 1

The site does not comprise land mapped on the Biodiversity Values Map (OEH).

Trigger 2

The minimum lot size applying to the land at 3,000m² is in the below 1ha category. This allows clearing of up to 2,500m² across the site before the trigger would be met. Most of the trees to be removed are pines and would not be included in the calculation for area of native vegetation being removed. Accordingly, the area of native vegetation being removed is well below the trigger threshold.

Trigger 3

With regard to the third trigger, the test for determining whether proposed development is otherwise likely to significantly affect threatened species is listed in the BC Act 2016, under s7.3:

- (a) *in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,*
- (b) *in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:*
 - (i) *is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or*
 - (ii) *is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,*

- (c) *in relation to the habitat of a threatened species or ecological community:*
 - (i) *the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and*
 - (ii) *whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and*
 - (iii) *the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality,*
- (d) *whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly),*
- (e) *whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.*

The site is not mapped as having biodiversity sensitivity and is zoned E4 General Industrial. There is no known or likely habitat on or nearby the development footprint. The likelihood of wiping out a locally occurring ecological community or locally occurring habitat as a result of the development is negligible.

The development does not include any of the threat types listed in Schedule 4 of the Biodiversity Conservation Act (such as invasion of exotic species including garden plants; alteration to natural flow regimes of streams; bush rock removal; loss of hollow-bearing trees and dead wood/trees; loss or degradation of sites used for hill-topping by butterflies etc).

Additionally, Council's City Presentation Manager has reviewed the application and advised on conditions in relation to provision of suitable street trees. While primarily for social amenity and streetscape values the species selection can contribute towards urban ecological outcomes.

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 objectives as the proposed industrial lots will contribute to the local economy and job creation. The design of the subdivision has retained a large reserve over the existing waterway which will ensure stormwater runoff that ultimately feeds into Council's stormwater harvesting scheme is not subject to contamination and the proposal will not impact on existing environmental heritage, landscape or scenic features of Orange.

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 E4 General Industrial
Lot Size Map:	Minimum Lot Size 3000m ²
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:	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

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 E4 General Industrial zone. The proposed development is defined as a subdivision of land under OLEP 2011 and is permitted with consent for this zone. This application is seeking consent.

Clause 2.3 of LEP 2011 references the Land Use Table and Objectives for each zone in LEP 2011. The objectives for land zoned E4 General Industrial are as follows:

Objectives of zone E4 General Industrial

- *To provide a range of industrial, warehouse, logistics and related land uses.*
- *To ensure the efficient and viable use of land for industrial uses.*
- *To minimise any adverse effect of industry on other land uses.*
- *To encourage employment opportunities.*
- *To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.*
- *To ensure development along the Southern Link Road has an alternative access.*

The site is dissected by Edward Street which feeds directly onto the SFR, making it an ideal location for lots intended for industrial, warehouse, logistics or related uses. The direct connection to the SFR ensures the sites are accessible for both the workforce and service vehicles, and as the site is bounded by the SFR, Rail corridor, McNeilly Avenue and Elsham Avenue it provides a degree of separation from other land uses.

The most sensitive neighbouring land uses are residential to the east across Elsham Avenue. The recent SFR project has converted this section of Elsham Avenue into a cul-de-sac, thereby ensuring that the extent of heavy vehicle movements along this interface would be minimised. Other neighbours to the north, south and west are industrial developments and less sensitive to noise or traffic impacts.

The proximity of the site to other key locations within Orange make it easily accessible to commuting workers such that the development is likely to contribute positively to local employment opportunities.

Clause 2.6 - Subdivision - Consent Requirements

This clause triggers the need for development consent for the subdivision of land. Additionally, the clause prohibits subdivision of land on which a secondary dwelling is situated if the subdivision would result in the principal and secondary dwellings being located on separate lots if either of those lots are below the minimum lot size applying to the land.

The proposal is not residential and does not involve a secondary dwelling.

Clause 2.7 - Demolition Requires Development Consent

This clause triggers the need for development consent in relation to a building or work. This requirement does not apply to any demolition that is defined as exempt development.

The proposal involves minor demolition 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.

The minimum lot size map nominates a minimum lot size of 3,000m² across the subject site. The smallest lot proposed by the application is 3,379m². While a proposed detention basin for Lot 28 is 4,165m².

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

This clause applies to land identified on the Flood Planning Map as a Flood Planning Area and requires that, before any consent is issued, Council must be satisfied that the proposal:

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

Council's Assistant Development Engineer has advised that 'the site is subject to stormwater overland flows from the open drain located to the south'. During construction of the SFR rail overpass, the drain was enlarged, realigned and concrete lined to increase capacity. The applicant will be required to submit an engineering plan for consideration to address any impacts from minor flooding as a part of the Subdivision Works Certificate. Council's Technical Services team have indicated that filling of proposed Lot 7 may be deferred given the location of existing Elgas infrastructure located within this lot and the ongoing negotiations being undertaken with the proponents for that development. In order to address this matter Council's Technical Services Team have recommended a condition of consent that essentially places a Restriction-as-to-User under the NSW Conveyancing Act on the title of Proposed Lot 7 requiring the lot to be filled to 844.5m AHD in conjunction with the consideration of all future development.

The existing flood retention/detention system reserve (proposed Lot 11) will be maintained and subdivided from the main industrial allotments for Council's continued flood mitigation and stormwater management. To this end the proposed development is unlikely to change flooding behaviour on or off the site and is unlikely to adversely affect the safe occupation and efficient evacuation of people from the site. Further, the development is unlikely to cause or contribute to erosion, siltation or reduce riparian vegetation.

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**

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

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

The earthworks proposed in the application are limited to the extent of cutting and filling required for the subdivision, including road works and an associated detention basin. The site is subject to approx. 27,000 tonne of stockpiles of soil, sand, concrete, road excavations from various sources. To enable transportation of the material off-site an assessment for waste classification was carried out. The stockpiles have been categorised as Excavated Natural Material (ENM) or recovered aggregate. Excavated materials will be reused onsite where required and conditions have been imposed to require that surplus materials will be disposed of to an appropriate destination.

The extent of the earthworks will not materially affect the potential future use or redevelopment of the site that may occur at the end of the proposed development's lifespan. The earthworks will be appropriately supported onsite and the change in ground level is not substantial. Therefore, the effect on the amenity of adjoining properties is considered to be minor.

The site is in proximity to a waterway which runs through Lot 21 DP 1198009 between proposed Lots 8 and 9 on the corner of Edward Street and McNeilly Avenue on one side and proposed Lot 10 at the corner of Elsham Avenue and the SFR on the other side. The extent of disruption to the drainage of the site is considered to be minor and will not detrimentally affect adjoining properties or receiving waterways.

The site is not within any drinking water catchment or sensitive area. However, it should be noted that the waterway mentioned above ultimately flows through Council's Stormwater Harvesting Scheme on Blackmans Swamp Creek.

Lot 21 DP 1198009 is generously sized at ~5.2 ha providing considerable separation between the proposed industrial lots and the waterway itself. Lot 21 (described as Lot 11 in the attached plans) broadly aligns with anticipated flooding inundation as identified in Council's 2019 flood study. Therefore, while distance from the waterway provides some protection of the waterway, attached is a recommended condition to require a Sediment and Erosion Control Plan to be prepared prior to the commencement of any subdivision construction works to ensure that loose dirt and sediment does not escape the site boundaries during a high rainfall event.

The site is not known to contain any Aboriginal, European or Archaeological relics. Previous known uses of the site do not suggest that any relics are likely to be uncovered. However, conditions may be imposed to ensure that should site works uncover a potential relic or artefact, works will be halted to enable proper investigation by relevant authorities and the proponent required to seek relevant permits to either destroy or relocate the findings.

7.2A - Floodplain Risk Management

This clause applies to land identified between the flood planning level and the level of the probable maximum flood, but does not apply to land at or below the flood planning level and requires that, before any consent is issued, Council must be satisfied of the following:

- (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 -*
- (o) *industries,*

A search of Council's records indicates that proposed Lots 1, 2, 5 and 6 are affected by the probable maximum flood. As such, any application for industrial development on these lots will need to address Clause 7.2A. This does not preclude subdivision in the first instance and will need to be addressed by subsequent Development Applications for development of the affected lots. Development on these lots is anticipated to be able to demonstrate safe occupation and evacuation from the land either via McNeilly Avenue or Edward Street.

7.3 - Stormwater Management

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

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

The proposal has been designed to include onsite retention of stormwater through the use of detention basins. Construction of an onsite stormwater detention basin on Lot 1 will be designed to serve proposed Lots 2 to 7. Lots 8, 9 and 10 will discharge stormwater to the existing detention basin on adjoining Lot 21 (proposed Lot 11). Recommended conditions of consent from Council's Technical Services Team have been included on the attached Notice of Determination. Council's Technical Services Team advise that post-development runoff levels will not exceed the pre-development levels.

7.4 - Terrestrial Biodiversity

This clause seeks to maintain terrestrial biodiversity, however, the proposal is not located on land that has been identified on the Terrestrial Biodiversity Map and as such the clause is not applicable to the development.

7.5 - Riparian Land and Watercourses

This clause seeks to preserve both water quality and riparian ecological health. The clause applies to land identified as a “Sensitive Waterway” on the Watercourse Map. The subject land contains such a waterway and therefore Council must consider whether or not the proposal:

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

Additionally, consent may not be granted until 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, or*
- (c) *if that impact cannot be minimised - the development will be managed to mitigate that impact.*

While the subject site does contain a sensitive waterway, the proposal has been designed to site the proposed industrial lots a minimum of 30m from the waterway (Lot 9). When combined with anticipated setbacks of 3-5m this provides a reasonable separation distance to manage the post-development runoff. Additionally, for proposed lots west of Edward Street stormwater retention via a detention basin may further reduce potential risk to the water course.

Overall, while there will always remain a risk to the waterway under extreme circumstances such as record storms and the like, it is considered that the risk of adverse impact can be appropriately managed to an acceptable level of risk.

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 for subdivision of land and is not anticipated to involve the discharge of toxic or noxious substances and is therefore unlikely to contaminate the groundwater or related ecosystems. The proposal does not involve extraction of groundwater and will therefore not contribute to groundwater depletion. The design and siting of the proposal avoids impacts on groundwater and is therefore considered acceptable.

Future development of the resultant lots may require further analysis depending on the nature of the industrial activity to be proposed - this would be considered during assessment of any such development applications.

Clause 7.11 - Essential Services

Clause 7.11 applies and states:

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

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

In consideration of this clause, the following comments relate:

- Conditions have been included to require the provision of water, sewer and stormwater infrastructure to serve all allotments.
- Conditions have been included to require the construction of an onsite stormwater detention basin on Lot 1 to serve proposed Lots 2 to 7. Lots 8, 9 and 10 to discharge stormwater to the existing detention basin on adjoining Lot 21.
- Conditions have been recommended to require McNeilly Avenue and Elsham Avenue to be constructed as full width urban industrial standard with a 12.5m cul-de-sac.
- The existing 225mm trunk sewer is to be upgraded to a 375mm trunk main and alignment varied to match proposed boundaries.
- Existing 100mm watermain in McNeilly Ave to be upgraded to 150mm.
- Water and sewer headworks charges apply (7 ETs). One (1) credit applies for existing ElGas site.
- Electricity is available to the site.

It is considered that suitable arrangements will be in place to ensure that utility services are available to the land and adequate for the proposal. Recommended conditions in relation to servicing of the lots have been included in the attached Notice of Determination.

STATE ENVIRONMENTAL PLANNING POLICIES

The following SEPPs applicable to the proposed development:

- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- *State Environmental Planning Policy (Resilience and Hazards) 2021*

State Environmental Planning Policy (Transport and Infrastructure) 2021

Division 5 Electricity Transmission or Distribution

The subject land is within 5m of an exposed overhead electricity power line. Pursuant to (part) Clause 2.48 *Determination of development applications - other development*:

- (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 -*
 - (a) *the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*
 - (b) *development carried out:*
 - (i) *within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
 - (ii) *immediately adjacent to an electricity substation, or*
 - (iii) *within 5m of an exposed overhead electricity power line,*
- (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.*

The proposed development was referred to Essential Energy for consideration and comment. Essential Energy determined that the proposed works are acceptable subject to conditions which are included in the attached Notice of Determination.

Division 15 Railways

The subject development proposes a stormwater detention basin within 25m of a railway corridor. Accordingly, *Clause 2.98 Development Adjacent to Rail Corridors and Clause 2.99 Excavation In, Above, Below or Adjacent to Rail Corridors* applies to the assessment of this application.

Section 2.98 Development adjacent to rail corridors

- (1) *This section applies to development on land that is in or adjacent to a rail corridor, if the development -*
 - (a) *is likely to have an adverse effect on rail safety, or*

- (b) involves the placing of a metal finish on a structure and the rail corridor concerned is used by electric trains, or*
- (c) involves the use of a crane in air space above any rail corridor, or*
- (d) is located within 5m of an exposed overhead electricity power line that is used for the purpose of railways or rail infrastructure facilities.*

Note.

Section 2.48 also contains provisions relating to development that is within 5m of an exposed overhead electricity power line.

- (2) Before determining a development application for development to which this section applies, the consent authority must -*
 - (a) within 7 days after the application is made, give written notice of the application to the rail authority for the rail corridor, and*
 - (b) take into consideration -*
 - (i) any response to the notice that is received within 21 days after the notice is given, and*
 - (ii) any guidelines that are issued by the Planning Secretary for the purposes of this section and published in the Gazette.*
- (3) Despite Subsection (2), the consent authority is not required to comply with Subsection (2)(a) and (b)(i) if the Development Application is for development on land that is in/or adjacent to a rail corridor vested in or owned by ARTC or the subject of an ARTC arrangement.*
- (4) Land is adjacent to a rail corridor for the purpose of this section even if it is separated from the rail corridor by a road or road related area within the meaning of the Road Transport Act 2013.*

Clause 2.99 Excavation in, above, below or adjacent to rail corridors:

- (1) This clause applies to development that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land -*
 - (a) within, below or above a rail corridor, or*
 - (b) within 25m (measured horizontally) of a rail corridor, or*
 - (c) within 25m (measured horizontally) of the ground directly below a rail corridor, or*
 - (d) within 25m (measured horizontally) of the ground directly above an underground rail corridor.*
- (2) Before determining a Development Application for development to which this clause applies, the consent authority must -*
 - (a) within 7 days after the application is made, give written notice of the application to the rail authority for the rail corridor, and*
 - (b) take into consideration -*
 - (i) any response to the notice that is received within 21 days after the notice is given,*

Consistent with the above-described requirements the proposed development was referred to Transport for NSW (TfNSW) for consideration. TfNSW has reviewed the application and decided to grant its concurrence to the proposed work (DA 578/2024(1)), subject to the consent authority imposing the recommendations provided in the response. The requirements of TfNSW have been included in the attached Notice of Determination.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The proposal involves removal of all trees from the site, and SEPP (Biodiversity and Conservation) 2021 applies (*Part 2.3 Council permits for clearing of vegetation in non-rural areas*).

Pursuant to Clause 2.9 *Vegetation to which Part applies*:

- (1) *This Part applies to vegetation in any non-rural area of the State that is declared by a development control plan to be vegetation to which this Part applies.*
- (2) *A Development Control Plan (DCP) 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.*

In consideration of this clause, DCP 2004-0 Tree Preservation applies (see DCP 2004-0 below). By virtue of the size of the trees, the trees are subject to a Tree Preservation Order and approval is required.

Pursuant to Clause 2.10 *Council may issue permit for clearing of vegetation*:

- (1) *A council may issue a permit to a landholder to clear vegetation to which this Part applies in any non-rural area of the State.*
- (2) *A permit cannot be granted to clear native vegetation in any non-rural area of the State that exceeds the biodiversity offsets scheme threshold.*
- (3) *A permit under this Part cannot allow the clearing of vegetation -*
 - (a) *that is or forms part of a heritage item or that is within a heritage conservation area, or*
 - (b) *that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance,**unless the Council is satisfied that the proposed activity -*
 - (c) *is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area, and*
 - (d) *would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.*
- (4) *A permit may be granted under this Part subject to any conditions specified in the permit.*

Council's City Presentation Manager advises:

I have inspected the old sale yards site and there is little to no tree canopy worthy of retention. The site is bounded on the west (railway side) with Radiata Pine trees that have served their usefulness, scattered across the site are a mixture of Ash (Fraxinus Sp), Maple (Acer Sp) and a two Eucalyptus trees. I would also encourage the removal of the Yunnan Poplars (Populus yunnanensis) on the northern or McNeilly Avenue frontage of the site as these specimens are in average to poor condition, served their useful life expectancy and are problematic species of tree.

In essence I support the clearing of the site and conditioning that suitable tree planting to McNeilly and Endsleigh Avenue frontages being a Development Application condition, along with a Landscape Plan for the site that includes suitable greening to offset the urban heat island effect and provides aesthetics and habitat within the subdivision.

In consideration of this clause, the trees do not comprise native vegetation where the prescribed biodiversity threshold will be exceeded. The development site does not have any European or Aboriginal cultural significance, and clearing is supported by Council's expert.

Conditions are included requiring replacement tree planting prior to the issue of a Subdivision Certificate.

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 4 - Remediation of Land

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.*
- (2) *Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in Subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (3) *The applicant for development consent must carry out the investigation required by Subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) *The land concerned is:*
 - (a) *land that is within an investigation area,*
 - (b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*

- (c) *to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital -land:*
- (i) *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
- (ii) *on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

Under Clause 4.6 of the SEPP (Resilience and Hazards) Council must not consent to the carrying out of any development unless it has considered whether the land is contaminated. If the land is found to be contaminated Council must not consent to the development unless it is satisfied that the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose that development consent is sought.

Contamination investigations were submitted in support of the proposal (Environmental Earth Sciences (EES) dated 14 April 2021 and Envirowest Consulting (ref L13319enm)).

Localised areas of contamination were identified between 2007 and 2009 in associated with the historic use of the site for livestock sales, including the former sheep shower and sheep plunge dip. Arsenic contamination was identified in soils within these two areas and subsequently remediated and validated to the then current criteria.

The EES concluded in 2014 that the site was suitable for commercial/industrial land use. The EE report noted that since remediation and validation works were completed in 2009, stockpiles of uncertain origin were generally placed upon/around the former sheep and cattle yards in the west of the site. The stockpiles were reported to contain a mixture of reworked natural soils with inclusions of bitumen, aggregate and miscellaneous inert objects such as steel, PVC pipes, bitumen, and asbestos containing material.

As per the report from Envirowest Consulting (ref L13319enm), testing resulted in the classification of stockpiles as Excavated Natural Material (ENM) or recovered aggregate. Excavated materials will be reused onsite where required and conditions have been imposed to require that surplus materials will be disposed of to an appropriate destination.

Council's Environmental Health Officer (EHO) has reviewed the submitted investigation and concurs with the recommendations given:

A Soil Management Plan provided by Environmental Earth Sciences was reviewed and is thought to be adequate for the management of stockpiles and asbestos materials onsite. Condition included that requires compliance with that document.

Requirements of POEO in relation to water pollution specifically conditioned. Unexpected Finds condition included to cover for the identification of contaminated materials after works have commenced.

EHO conditions are included on the attached Notice of Determination.

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 currently on exhibition that relate to the subject land or proposed development.

DESIGNATED DEVELOPMENT

The proposed development is not designated development.

INTEGRATED DEVELOPMENT

The site is traversed by East Orange Creek within an existing drainage reserve. The Statement of Environmental Effects accompanying the application indicated that an approval from NSW Department of Natural Resources Access Regulator (NRAR) pursuant to Clause 90 of the Water Management Act 2000 would be required.

However, following an assessment of the requirements of the Water Management Act 2000 Council staff are of the view that Council being a public authority is exempt from requiring a Controlled Activity approval. Council is exempt from these requirements pursuant to Clause 41 of the Water Management (General) Regulation 2018 which indicates that a public Authority is exempt from needing approval in relation to all controlled activities that it carries out in/on/or under waterfront land. The proposal is not considered to be integrated development in this regard.

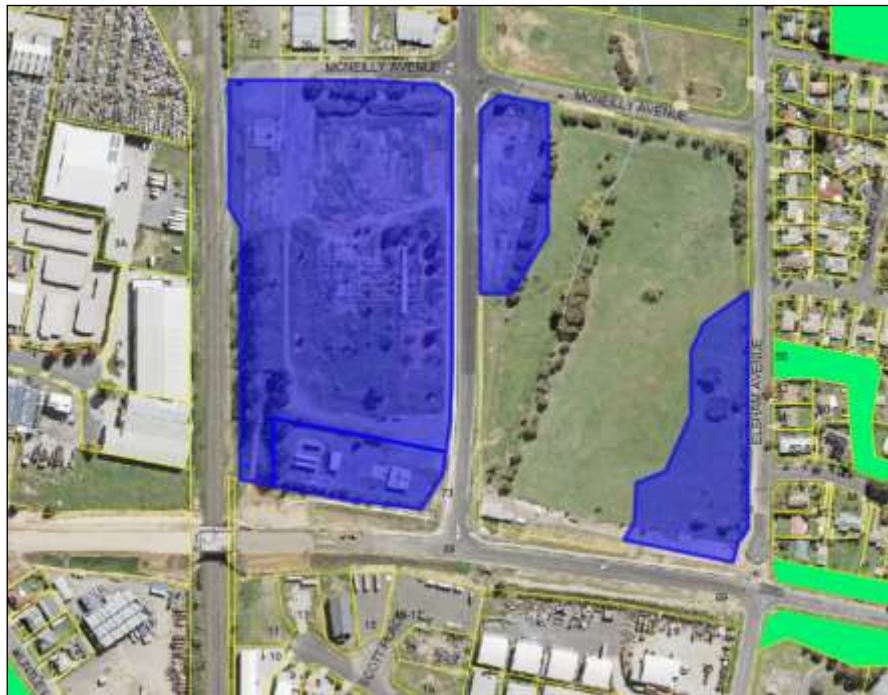


Figure 4 - location of creek

PROVISIONS OF ANY DEVELOPMENT CONTROL PLAN s4.15(1)(a)(iii)**Orange Development Control Plan 2004**

Orange 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.

Pursuant to Planning Outcome 0.2-1 Interim Planning Outcomes - Conversion of Zones:

- *Throughout this Plan, any reference to a zone in Orange LEP 2000 is to be taken to be a reference to the corresponding zone(s) in the zone conversion table.*

The corresponding zone to zone 4 Industry and Employment (Orange LEP 2000) is zone E4 General Industrial (Orange LEP 2011). As such, *Orange DCP 2004 - DCP 09 Development in the Industry and Employment Zone* is relevant to this proposal.

Matters in relation to the following parts of the DCP have been addressed in the various chapters of this assessment report. It is considered in general that the proposed development is not inconsistent with the requirements of the following parts of the DCP.

- Part 0.4-2 - Tree Preservation
- Part 0.4-10 - Residential Proximity
- Part 0.4-11 - Transport Routes
- Part 2 - Natural Resource Management
- Part 3 - General considerations
- Part 4 - Special Environmental Considerations

A detailed assessment of the proposed development against other relevant Planning Outcomes will be undertaken below.

PART 4A - FLOOD AFFECTED LAND

This chapter of the Development Control Plan (DCP) was prepared to provide specific development controls to guide development of flood affected land within Orange. The DCP incorporates the findings of the Blackmans Swamp and Ploughmans Creek Flood Study and the procedures set out in the NSW Floodplain Management Manual, 2005. An address of the relevant requirements of this part of the DCP is provided below.

- Part of the site is mapped as Floodway (main stream flooding) in Annexure 1 of the DCP.
- The development is defined as subdivision of land as per Annexure 2 of the DCP.
- The flood response level for the proposed development is categorised as 'unsuitable land use' for that part of the site affected by flooding.

The site is in proximity to a waterway, which largely traverses through what will be proposed Lot 11. There are no proposed works to occur within this drainage corridor. The extent of disruption to the drainage of the site is therefore considered to be relatively minor.

The recent construction of the Southern Feed Road (SFR) has certainly changed the floodway adjacent to proposed Lot 7. Technical Services advise that the models show some low level flooding on proposed Lot 7. As discussed elsewhere in this report it is recommended that a Restriction on the title of Lot 7 be required to ensure that ground levels are increased in conjunction with the consideration of new development on this lot. The proposed Restriction-as-to-User on this title at this time is considered to be an appropriate response in light of the ongoing discussions that Council is currently having with the proponents of the Elgas site.

In addition to the Restriction a condition of consent is recommended that will require the proponent for the subdivision to submit an engineering drawing for approval prior to the issue of a Subdivision Works Certificate. Finished ground levels addressing flooding and any interim arrangements will be addressed at that time.



Figure 5 - location of culvert

PART 9.2 - SUBDIVISION IN THE INDUSTRIAL ZONE

- *The subdivision provides for a range of lot sizes consistent with the existing or proposed character of the industrial locality (with reference to the minimum lot size table).*

The saleyards site is not listed in the table associated with Section 9.2 as it was not envisaged to be an industrial estate when DCP 2004 was drafted. However, the development creates ten industrial lots in a range of sizes from 3,379m² to 12,000m². The proposed lots are generally in a regular shape suitable for large industrial buildings, with appropriate setbacks and associated service vehicle circulation. The subdivision can be conditioned to comply with the subdivision code and there are adequate services and utilities for the proposed lots. A minimum lot size of 3000m² applies to the land, of which the proposed development complies with.

- *Lots have a regular shape to facilitate the establishment of large, open industrial buildings.*

Lots are regular in shape and provide adequate area for manoeuvring and parking onsite in conjunction with the siting of large industrial buildings.

- *The subdivision is designed and constructed according to the Development and Subdivision Code.*

A Condition of Consent is recommended to be imposed upon the development requiring compliance with the above.

- *The land is adequately serviced for industrial development.*

Servicing has been previously considered.

PART 8.7 - DESIGN CONSIDERATIONS FOR COMMERCIAL DEVELOPMENT IN THE VICINITY OF DISTRIBUTOR ROADS

Whilst development consent is sought for subdivision of the land only, the following parameters in Part 8.7 and 9.3 below have been used as a guide to determine whether or not the proposed lot sizes and shapes are suitable, to ensure future compliance of commercial/industrial development.

- *The land is adequately serviced for industrial development.*

- *Buildings are to be set back 10m from the distributor road and 3m from any side and rear boundaries.*
- *Loading and unloading docks are not located in the setback to any public road.*
- *Adequate parking and onsite manoeuvring is provided and all carparking areas are embellished with landscaping including shade trees.*
- *Development is designed to be accessed via approved local roads, in a safe and efficient manner, and incorporates any necessary upgrades of local intersections with the Distributor Road at the developers cost.*

PART 9.3 - DESIGN AND SITING OF INDUSTRIAL DEVELOPMENT

- *Buildings are set back a minimum 10m from front boundaries (5m to a secondary boundary on a corner lot) for lots greater than 1000m².*
- *Building coverage 50%.*
- *Landscaping is provided along boundaries fronting roads including trees with an expected mature height at least comparable to height of buildings.*
- *Adequate parking and onsite manoeuvring is provided.*
- *Security fencing does not dominate the visual setting.*

Comments

The proposed lots are considered to be of an adequate size to cater for the required 10m front setbacks, 10m setback from distributor roads and 3m side boundary setbacks. It is considered that each allotment will have a sufficient area to accommodate loading and unloading and car parking without interrupting the setback requirements. Each lot has a sufficient street frontage for landscaping. The proposed lot size and shape of allotments is considered to be acceptable in this regard.

Section 64 Water and Sewer Headworks Charges

Section 64 water and sewer headwork charges are applicable to the proposed development. The contributions for water, sewer and drainage works are based on eleven additional ETs for water supply headworks and eleven additional ETs for sewerage headworks. Conditions are recommended requiring payment of contributions prior to issue of a Subdivision Certificate.

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

Demolition of a Building (clause 61)

The proposal involves only minor demolition works associated with a covered walkway, removal of paved areas and removal of various trees. 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 62)

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

Buildings to be Upgraded (clause 64)

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

Council Related Development (clause 66A)

The proposed development is a Council related development, within the meaning of Clause 66A as Council is the owner of the land proposed to be developed. Clause 66A prevents Council determining the application unless Council considers the application under a conflict of interest policy that complies with the *Council-related Development Application Conflict of Interest Guidelines* published by the Department of Planning.

Council has adopted Strategic Policy ST26 "Council-Related Development Applications - Managing Conflict of Interest". Under this policy the application needs to be referred to the CEO to determine

- (f) if a potential conflict of interest exists
- (g) identify the phase(s) of the development process at which the conflict arises
- (h) the level of risk involve at each phase
- (i) what (if any) management controls should be implemented
- (j) document the proposed management approach for the proposal in a statement that is published to the NSW Planning Portal.

This aspect of the proposal was referred to the CEO who determined that the assessment report should be peer reviewed by an independent party. Consistent with the CEO direction Council staff arranged for Blayney Shire Council to carry out the independent review of the staff assessment report. Please find attached a copy of the independent peer review for Council's consideration.

BASIX Commitments (clause 75)

BASIX is not applicable to the proposed development.

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

The site is described as being primarily vacant industrial zoned land with an existing gas storage facility located on the southernmost proposed lot. The surrounding context comprises residential dwellings to the west, residential dwellings and industrial uses to the north. To the west is the railway corridor and to the south is the SFR overpass beyond which is further industrial land that has been largely developed for a range of industries.

The proposed development will not alter the physical appearance of the site beyond the construction of a cul-de-sac bulb at the western end of McNeilly Avenue and the demolition works and removal of pavements and trees. The development is unlikely to impact upon the surrounding context or setting.

Visual Impacts

The majority of works involve demolition of minor structures and removal of concrete pavements, removal of existing trees and construction of a new detention basin. The visual impact of the proposal will be minor, being largely derived from the tree removal. Future industrial units are expected to establish an appropriate employment lands streetscape and the large drainage reserve assists with pushing the built form away from the residences to the east. On balance it is considered that this will provide an adequate presentation to the public realm.

Traffic Impacts

The proposal does not involve alteration to the existing access and manoeuvring arrangements. Furthermore, the ingress/egress arrangements will not be impacted while the works are being undertaken. McNeilly Avenue will be upgraded to provide legal and practical access.

Heritage Impacts

The development does not involve any heritage items, is not within a heritage conservation area and there are no heritage items in the vicinity. The development will therefore not result in any unsatisfactory heritage impacts.

Environmental Impacts

The vegetation present onsite are primarily introduced exotic species and their removal is not expected to impact on ecological values. Removal of this vegetation is supported by Council's City Presentations Manager.

Socioeconomic Impacts

The proposal creates a number of industrial lots that can be further developed for a range of employment generating opportunities. The site is located in proximity to an area of lower socio-economic housing and the additional employment is likely to be welcomed in this area.

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

The proposed subdivision includes land with an existing LPG storage facility. A search of Council's records indicates that the use of the site for the purposes of the LPG storage facility has a long history dating back some 40 years. Whilst Council's records are incomplete from the early establishment phases of this facility at that time it has been established that it is likely to have operated without formal development consent. LPG is defined as a dangerous good, stored under pressure, that poses fire and explosion risks which must be carefully managed to ensure compatibility with surrounding land uses.

The subdivision was initially approved (DA 196/2020(1)) on the basis that the LPG facility would vacate the site for re-development. However, the operator has indicated a preference to remain on the land and have expressed an interest in purchasing part of the land following the completion of the proposed subdivision. The sale of land is to be considered under a separate process and will be reported under separate cover.

The subdivision has been revised accordingly. Although an application was submitted (DA 417/2020(1)) to regularise the LPG storage facility, that application was later withdrawn pending this subdivision proposal.

The accompanying information with the now withdrawn (DA 417/2020(1)) application, including the Preliminary Hazard Analysis (PHA), remains relevant in assessing the site's suitability. It should be noted that this subdivision does not authorise the continued operation of the LPG facility in any way and must not be construed as de facto approval. The operator is still required to obtain separate, explicit consent through the appropriate process. Nonetheless, the information provided by the operator Elgas gives some certainty that the Council subdivision can proceed.

The PHA included in DA 417/2021(1) was prepared in accordance with the Department's Hazardous Industry Planning Advisory Paper (HIPAP) No. 6 - Guidelines for Hazard Analysis.

The purpose of the PHA was to identify potential hazards, analyse consequences and the likelihood of occurrence, then estimate the resultant risk to surrounding land uses. The risks are then compared with the relevant land use safety risk criteria defined in the Department's HIPAP No. 4 - Risk Criteria for Land Use Safety Planning.

While some jurisdictions focus on worst case consequences in setting land use criteria, the NSW Department of Planning's HIPAP No. 4 - Risk Criteria for Land Use Safety Planning advises that the approach adopted in NSW is risk-based. The risk criteria is set with the understanding that no aspect of living can be risk free but that any imposed risk should be very small in the context of the generally accepted background risk. The two aspects of risk that need to be considered include:

1. **Individual risk**, which considers the acceptability of a particular level of risk to an exposed individual. Risk assessment results using this measure are based on risk 'contour' plots
2. **Societal risk**, which takes into account society's aversion to accidents which can result in multiple fatalities. Risk assessment results using this measure are often based on frequency-consequence (FN) graphs.

The following table as provided in HIPAP No. 4 outlines the risk assessment criteria suggested for the assessment of the safety of location of a proposed development of a potentially hazardous nature, or for land use planning in the vicinity of existing hazardous installations.

Land Use	Suggested Criteria (risk in a million per year)
Hospitals, schools, child-care facilities, old age housing	0.5
Residential, hotels, motels, tourist resorts	1
Commercial developments including retail centres, offices and entertainment centres	5
Sporting complexes and active open space	10
Industrial	50

Figure 9 - Individual Fatality Risk Criteria (HIPAP No. 4)

In setting the criteria HIPAP No. 4 has taken into account for variations in the duration of exposure to that risk at any particular point by any one individual. People's vulnerability to the hazard and their ability to take evasive action when exposed to the hazard also needs to be taken into account based on the land use.

The NSW Department of Planning has adopted a fatality risk level of one in a million per year (1×10^{-6} per year) as the limit for risk acceptability for residential area exposure. The one in a million criteria assumes that residents will be at their place of residence and exposed to the risk 24 hours a day and continuously day after day for the whole year. In practice this is not the case, and this criterion is therefore conservative.

People in hospitals, children at school or old-aged people are considered more vulnerable to hazards and less able to take evasive action, if need be, relative to the average residential population. A lower risk than the one in a million criteria (applicable for residential areas) is therefore more appropriate.

Land uses such as commercial and open space do not involve continuous occupancy by the same people. The individual's occupancy of these areas is on an intermittent basis and the people present are generally mobile. As such, a higher level of risk (relative to the permanent housing occupancy exposure) may be tolerated.

A higher level of risk still is generally considered acceptable in industrial areas. HIPAP No. 4 advises that the Individual fatality risk levels for industrial sites at levels of 50 in a million per year (50×10^{-6} per year) should, as a target, be contained within the boundaries of the site where applicable.

The individual risk from major incidents at the Elgas Orange Depot was analysed using the SAFETI 8.4 software package. The report advises that the software performs a risk summation for a large number of individual points on a grid pattern around the site. Individual risk contours are then drawn connecting all locations of equal risk. This contour is superimposed on a layout diagram of the site and surrounds (Figure 10). The contours represent the risk levels of 0.5, 1, 5, 10 and 50 chances per million per year (pmpy) for the land uses identified in Figure 9 above.

The contours represent the risk of fatality from fires and explosion.



Figure 10 - Risk Contours for Individual Risk of Fatality (PHA by Arriscar)

The above risk contours shown as engineering notations have been converted to the applicable land uses below for ease of interpretation:

	Industrial
	Sporting Complexes and active open space areas
	Commercial developments
	Residential developments
	Hospitals, schools, child care, aged care

The PHA compares the risk contour results (Figure 10) with the HIPAP No. 4 criteria which is summarised in the below table:

Category	Risk Levels (p.a)	Notes	Criteria Met?
Industrial Sites	50×10^{-6}	Individual fatality risk levels for industrial sites at levels of 50 in a million per year (50×10^{-6} per year) should, as a target, be contained within the boundaries of the site.	Yes. The 50×10^{-6} per year contour is contained within the site.
Commercial developments - offices, retail centres, warehouses with showrooms, restaurants and entertainment centres	$<5 \times 10^{-6}$	Should not be exposed to individual fatality risk levels in excess of five in a million per year (5×10^{-6} per year)	Yes. The risk contour lies entirely within the land zoned IN1.
Residential developments and places of continuous occupancy, such as hotels and tourist resorts	$<1 \times 10^{-6}$	Should not be exposed to individual fatality risk levels in excess of one in a million per year (1×10^{-6} per year). This criterion assumes that residents will be at their place of residence and exposed to the risk 100% of the time throughout the year.	Yes. No residences are impacted by this contour. The risk contour lies entirely within the IN1 zoned area, and no residential developments are permitted in this Zone.
Hospitals, schools, child-care facilities and old age housing development.	$<0.5 \times 10^{-6}$	Should not be exposed to individual fatality risk levels in excess of half in a million per year (0.5×10^{-6} per year)	Yes. The risk contour lies entirely within the IN1 zoned area and no sensitive uses (schools, hospitals or child-care facilities etc.) are permitted in this zone

Heat Radiation and Explosion Overpressure were assessed in the PHA in accordance with HIPAP No.4. HIPAP No.4 provides that incident heat flux radiation at residential and sensitive use areas should not exceed 4.7 kW/m^2 at a frequency of more than 50 chances in a million per year.

The risk contour for injury risk from thermal radiation (4.7 kW/m^2 thermal radiation intensity) at 50×10^{-6} p.a. is depicted in Figure 11 below. Risk levels at and above 50×10^{-6} p.a. are contained entirely within the site. The PHA also advises that a risk contour for 50×10^{-6} p.a. was not generated for incident heat flux of 23 kW/m^2 .

In terms of explosion overpressure, HIPAP No.4 outlines that incident explosion overpressure at residential and sensitive use areas should not exceed 7 kPa at frequencies of more than 50 chances in a million per year. The submitted PHA advises that the risk contour for injury risk from explosion overpressure (7 kPa overpressure) and property damage overpressure of 14 kPa at 50×10^{-6} p.a. was not generated, indicating that the maximum risks for 7 kPa and 14 kPa were less than 50×10^{-6} p.a.



Figure 11 - Fire Injury Risk (PHA by Arriscar)

As outlined above the second aspect of the risk analysis is the societal risk analysis. The Department of Planning has provisionally adopted indicative criteria as shown in Figure 12 for addressing societal concerns arising when there is a risk of multiple fatalities occurring in one event. These were developed through the use of so-called FN-curves (obtained by plotting the frequency at which such events might kill N or more people, against N). The technique provides a useful means of comparing the impact profiles of man-made accidents with the equivalent profiles for natural disasters with which society has to live.

HIPAP No.4 outlines that the criteria is broadly consistent with those adopted in a number of other jurisdictions and have been refined by consideration of the results from land use safety studies conducted by the Department of Planning in and around the industrial installations in the Port Botany and Botany/Randwick industrial areas.

The indicative societal risk criteria incorporate an ALARP (As Low As Reasonably Possible) approach.

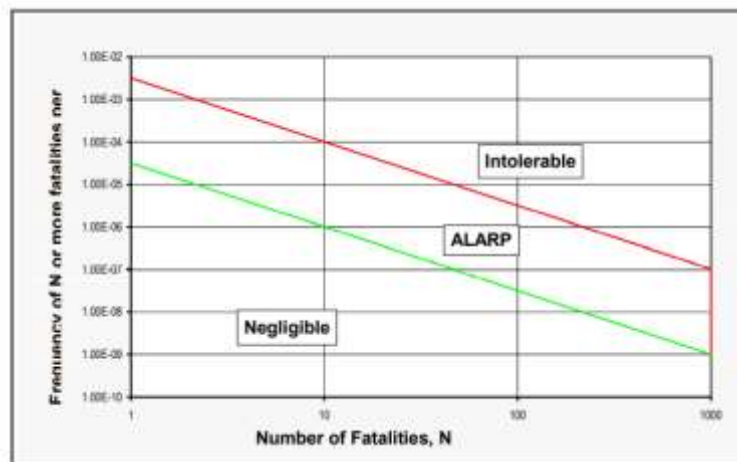


Figure 12 - Indicative Societal Risk Criteria HIPAP No.4

The indicative societal risk criteria reflect these regions as three societal risk bands: negligible, ALARP and intolerable. Below the negligible line, provided other individual criteria are met, societal risk is not considered significant. Above the intolerable level, an activity is considered undesirable, even if individual risk criteria are met. Within the ALARP region, the emphasis is on reducing risks as far as possible towards the negligible line.

With respect to this application, the societal risk analysis contained within the PHA outlines that an estimate of societal risk has been made assuming a population in the neighbouring developments. Three residential areas were identified in the vicinity of the depot. The areas, and the night-time population is shown below.



Figure 13 - Night-time Residential Population

Population present in industrial areas was based upon the number of people working in industrial occupations from the 2016 Census and the area zoned industrial in the Orange LGA. The estimated day-time industrial populations are shown in Figure 14.

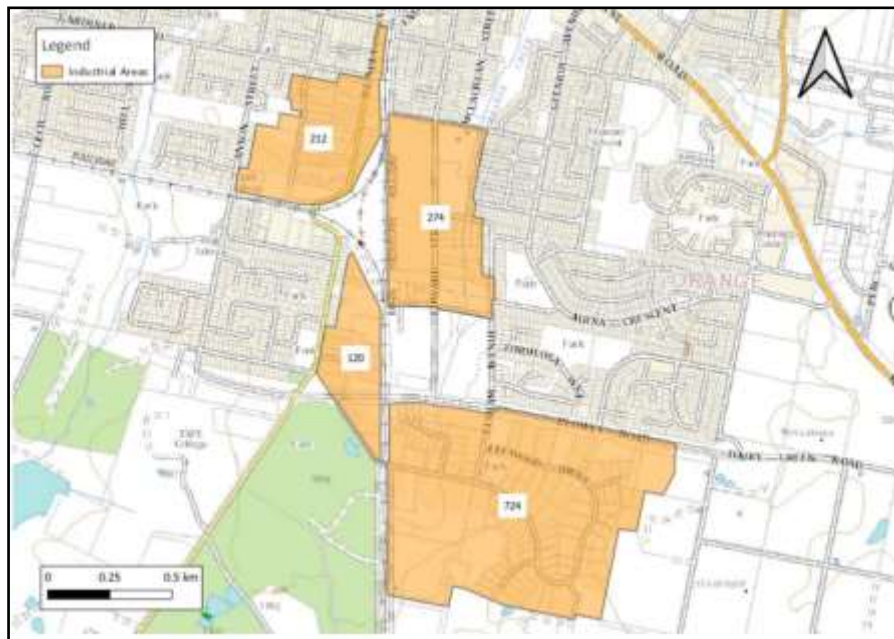


Figure 14 - Industrial Day-Time Population

As part of the assessment Council staff requested that the existing gas operator to update the risk profile factoring in potential future industrial population on the subdivided land, directly adjacent to the subject site. The PHA projected population on the subdivided land as follows:

Basis: 2016 Australian Census data (amount of land used for industrial activity and people employed in manufacturing / logistics in Orange City LGA)

Population density: 9.4 persons/ hectare. The population estimates for the area being subdivided is shown in the figure below.



Figure 15 - Population of Subdivided Region

The societal risk results of the Elgas facility are shown on the F-N curve below:

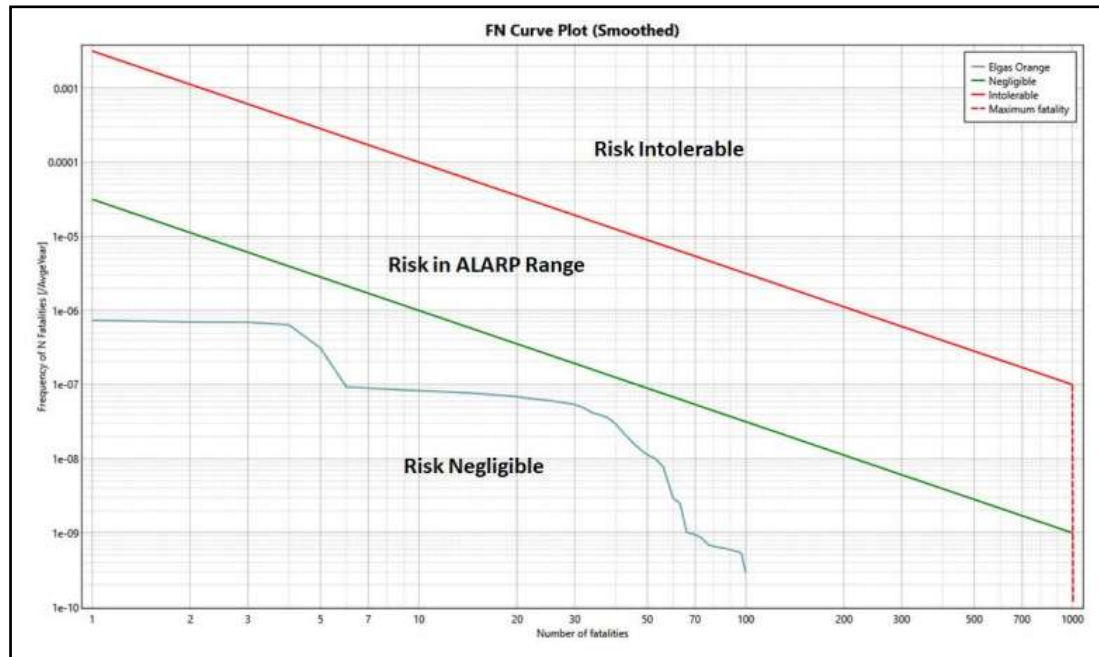


Figure 10 - Societal Risk Curve

The PHA provides the following conclusions relating to the risk results:

- The societal risk F-N curve falls in the 'Tolerable Risk' range and satisfies the risk criteria in HIPAP No.4.
- The F-N curve with the projected industrial population in the subdivided land is only marginally higher than the F-N curve in the PHA (original assessment), and the incremental risk is very low.
- The Elgas development will not adversely affect the population growth due to future industrial development on the subdivided land.

NSW Fire and Rescue along with Safework NSW were initially consulted in relation to the now withdrawn Elgas Development Application (DA 417/2021(1)). The recommendations provided by those organisations would have formed the basis of the planning assessment moving forward if that application remained live. Any development consent issued would have likely included those recommendations to ensure that adequate measures were place for the Elgas development to operate successfully without impact on adjoining parcels. Given that that application was withdrawn and the Elgas development remains in situ without formal consent at this particular point in time, it is recommended that Council attaches a Restriction-as-to-User on the Title of proposed Lots 5 and 6 (being the two lots that may potentially be affected) within the subdivision that advises any prospective purchasers of the presence of the Elgas depot within proposed Lot 7, and the potential hazard/risks that may arise from that operation.

It is not considered that the existing LPG operation restricts the further development of the remaining Council land, indeed using the PHA information submitted with the now withdrawn Elgas development application (DA 417/2021(1)) it can be reasonably concluded that restrictions are minimal for the new industrial sites. Council will as a separate matter require the gas operator, if they were to be successful with the purchase of this land, to obtain the necessary approvals for the continued use of proposed Lot 7.

If in the event they were not successful in purchasing the land they would be requested to vacate the site. To be clear if the LPG facility was to remain some restrictions could apply to a business on proposed Lots 5 and 6. This issue would in any event be managed at Development Application stage for the use of Lots 5 and 6

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

The proposed development is defined as "advertised development" under the provisions of the Community Participation Plan. The application was advertised for the prescribed period and at the end of that period five submissions had been received. The issues raised in submissions have been summarised in the table below.

Issue Category	Objection/Concern	Comment
Impact on Business Operations	Insufficient turning radius for B-Double trucks in the proposed cul-de-sac may negatively affect heavy vehicle repair businesses on McNeilly Ave.	The turning radius for any vehicle is related to the speed of the turn. According to <i>Austrroads Design Vehicles and Turning Path Templates</i> a B-Double truck travelling at 5km/h requires a 12.5m radius which matches the proposed radius of the cul-de-sac bulb. Parked vehicles within the bulb could impede this movement and in this regard Council's traffic committee could consider imposing a no parking restriction within the bulb. The potential impact on B-Double truck movements is therefore considered to be manageable and does not necessitate a redesign of the subdivision.
Traffic & Parking Issues	Proposed development does not account for the impact on existing parking and traffic for nearby businesses and future developments.	Subsequent development of the created lots will be subject to a traffic and parking analysis related to the scale and use of each lot. The size of the lots is intended to allow for appropriate off-street parking dependent upon the nature of each application.
Environmental Impact	Removal of trees, impacts on local fauna, especially frogs, birds, and other wildlife. The application downplays the biodiversity of the site.	Most trees on the site are non-indigenous pines. Council's City Presentation Manager has raised no issues with their removal and has nominated conditions in relation to the provision of mature street trees spaced 8m apart along McNeilly Avenue and Edward Street frontages. Species selection is to be determined but can take into account local ecological values.

Issue Category	Objection/Concern	Comment
Waterway Degradation	Concern over reducing the creek to a piped drainage network, impacting wildlife and local biodiversity.	The drainage reserve varies in width but is typically ~145m wide and is not intended to be piped.
Flood Risk Concerns	The land is historically prone to flooding, and locals had assumed this would prevent development.	Council's 2019 flood study identified the area of greatest concern and this has informed the position, size and configuration of the drainage reserve.
Social Impact & Wellbeing	Loss of a vital green space used for recreational and therapeutic purposes by local residents, particularly those with disabilities.	The subject land has been fenced off and unavailable to the public for many years. Public amenity benefits have therefore been limited. Leonie Healy Park, Torulosa Park and Reserve, Blowes Reserve, Edye Park, Jack Brabham Park and Sir Neville Howse Park are all within 400m of the site.
Heritage & Historical Significance	The land was historically a significant area, possibly connected to Aboriginal pathways and European stock routes. Part of the site was the former saleyards site. Concerns over erasing this history.	All land surrounding the site has been developed for urban purposes and any connection to stock routes has already been severed. The character of the former saleyards has already been compromised by the extension of Edward Street through the middle of the site. Having said this the site has a long history and was once used as a regional saleyards for stock. Whilst the site is not listed as a heritage item it is considered appropriate to recognise past history and require the preparation on an interpretation panel. The panel is to require photos and written explanation of the sites history.

Issue Category	Objection/Concern	Comment
Economic Impact	Concerns that the long-term social and recreational value of the space is being overlooked for short-term economic gains from industrial development.	The site has not been available to the public for active or passive recreational use and is not a meeting or socialising location.

PUBLIC INTEREST s4.15(1)(e)

The proposal will not be inconsistent with any policy statement, planning study or guideline that has not been considered in this assessment. There are no aspects of the proposal that will be contrary to the welfare or well-being of the general public.

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 Draft Notice of Determination, D25/31678 [↓](#)
- 2 Peer Review of Planning Assessment Report, D25/30480 [↓](#)
- 3 Plans, D25/30484 [↓](#)
- 4 Submissions (Redacted), D25/30567 [↓](#)

	ORANGE CITY COUNCIL
	Development Application No DA 578/2024(1)
	NA25/47 Container PAN-447275

**NOTICE OF DETERMINATION
OF A DEVELOPMENT APPLICATION**

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

Development Application	
Applicant Name:	Orange City Council
Applicant Address:	PO Box 35 ORANGE NSW 2800
Owner's Name:	Orange City Council
Land to Be Developed:	Lot 24 DP 1254245, Lot 21 DP 1198009, Lot 23 DP 1198009 - Edward Street, Orange
Proposed Development:	Demolition (ancillary structures and tree removal), Subdivision (eleven lot Torrens title) and Earthworks
Building Code of Australia building classification: Not applicable	
Determination made under Section 4.16	
Made On:	1 April 2025
Determination:	CONSENT GRANTED SUBJECT TO CONDITIONS DESCRIBED BELOW:
Consent to Operate From: 2 April 2025	
Consent to Lapse On: 2 April 2030	

Terms of Approval

The reasons for approval:

1. The proposed development will reasonably satisfy Local and State planning controls.
2. The proposed development will comply with the requirements of State approval authorities.
3. Impacts of the proposed development on the natural and built environment will be within acceptable limit, subject to mitigation conditions.
4. The proposed development will complement the existing or desired future character of the area.
5. The proposed development will be consistent with the zone objectives and principal development standards.
6. The proposed development is permitted in the zone.
7. Utility services are available and adequate.
8. Public exhibition of the application was undertaken in accordance with Council's Community Participation Plan or State legislation. No public submissions were received.
9. Public exhibition of the application was undertaken in accordance with Council's Community Participation Plan or State legislation. During the exhibition period five (5) submissions were received. Public submissions were considered. Mitigation conditions are included where considered necessary.

The reasons for the imposition of conditions:

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.

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 578/2024(1)

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Conditions

APPROVED PLANS AND DOCUMENTATION

- (1) The development must be carried out in accordance with:
- (a) **Plans prepared by Colliers, numbered 23-0564S-SK-0001, 23-0564S-SK-0002 and 23-0564S-SK-0003, revision B and dated 13 November 2024 (3 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.**

TNSW CONDITIONS AND ESSENTIAL ENERGY REQUIREMENTS

- (2) The development shall be carried out in accordance with the Conditions issued by Transport for NSW dated 19 December 2024 as listed in Annexure "A" attached to this consent.
- (3) The development shall be carried out in accordance with requirements of Essential Energy dated 26 August 2024 as listed in Annexure "B" attached to this consent.

PRESCRIBED CONDITIONS

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

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

- (5) If services and access are to be provided over adjoining properties, stormwater discharged onto adjoining land, or works are required to be undertaken on adjoining properties then, prior to the issue of a Subdivision Works 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.
- (6) A dust management plan is to be submitted to Orange City Council or an Accredited Certifier (certifier – subdivision) upon application for a Subdivision Works Certificate.
- (7) Engineering plans, showing details of all proposed work and adhering to any engineering conditions of development consent and the Orange City Council Development and Subdivision Code, are to be submitted to, and approved by, Orange City Council or an Accredited Certifier (certifier - subdivision) prior to the issue of a Subdivision Works Certificate.
- (8) McNeilly Avenue and Elsham Avenue shall be constructed to full urban industrial standard for the full frontage of the development. This work is to include road pavement and pavement surfacing to key into the existing road pavement, kerb and gutter, piped stormwater drainage and earth-formed footpath reserve on the development side of the road.

(Condition (8) continued over page)

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 578/2024(1)

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Prior to the issue of a construction certificate (cont)

(8) (cont)

Engineering plans, showing details of all proposed work and adhering to any engineering conditions of development consent, are to be submitted to, and approved by, Orange City Council prior to the issue of a Subdivision Works Certificate.

(9) Sewer mains are to be constructed from Council's existing sewer network to serve the proposed lots. The existing 225mm trunk sewer main shall be upgraded to a 375mm trunk sewer on an alignment that generally follows the proposed allotment boundaries. Prior to a Subdivision Works Certificate being issued engineering plans for this sewerage system are to be submitted to and approved by Orange City Council.

(10) A Soil and Water Management Plan (SWMP) is to be submitted to Orange City Council or an Accredited Certifier (certifier – subdivision) for approval prior to the issue of a Subdivision Works Certificate. The management 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.

(11) The development's stormwater design is to include the incorporation of stormwater detention within the development, designed to limit peak outflows from the land to the pre-existing natural outflows up to a 1% AEP storm event, 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) based on the most recent version of Australian Rainfall and Runoff calculations allowing for applicable climate change factor(s). 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; and
- schematic diagram of the catchment model showing sub areas and linkages; and
- 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 and approved by Orange City Council prior to the issue of a Subdivision Works Certificate.

Proposed Lots 2 to 8 shall discharge directly into the proposed stormwater detention basin on Lot 1. Proposed Lots 8, 9 and 10 shall be connected to the existing stormwater detention basin on Lot 21 DP 1198009.

(12) Proposed Lots 2-10 are to be provided with interlot stormwater drainage. Engineering plans for this drainage system are to be approved by orange city council or an accredited certifier (certifier - subdivision) prior to the issue of a Subdivision Works Certificate.

(13) A 150mm water main shall be constructed on both sides of McNeilly Avenue and the existing 100mm watermain shall be abandoned. 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.

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 578/2024(1)

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PRIOR TO WORKS COMMENCING

- (14) An application for a Subdivision Works Certificate is required to be submitted to, and a Certificate issued by Orange City Council/Accredited Certifier prior to any excavation or works being carried out on-site.
- (15) The approved Soil and Water Management Plan (SWMP) shall be implemented prior to construction works commencing.

DURING CONSTRUCTION/SITEWORKS

- (16) Any adjustments to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer.
- (17) All services are to be contained within the allotment that they serve.
- (18) 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.
- (19) A heavy-duty concrete kerb and gutter layback, footpath crossing and driveway is to be constructed to provide access to the stormwater detention basin. The works are to be carried out to the requirements of the Orange City Council Development and Subdivision Code.
- (20) All materials onsite or being delivered to the site are to be contained within the site. The requirements of the *Protection of the Environment Operations Act 1997* are to be complied with when placing/stockpiling loose material, or when disposing of waste products, or during any other activities likely to pollute drains or watercourses.
- (21) In the event of an unexpected find during works such as (but not limited to) the presence of undocumented waste, odorous or stained soil, asbestos, structures such as underground storage tanks, slabs, or any contaminated or suspect material, all work onsite must cease immediately. The beneficiary of the consent must discuss with Council the appropriate process that should be followed therein. Works onsite must not resume unless the express permission of Council's Director Development Services is obtained in writing.
- (22) A report confirming the site is free from asbestos waste is to be prepared by a suitably qualified person and submitted to Council prior to the issuing of a Construction Certificate.
- (23) A minimum of four (4) containerised trees in 200-litre containers shall be planted along the McNeilly Avenue frontage, and a minimum of thirty (30) containerised street trees in 100-litre containers shall be planted along the Edward Street frontage at centres of 8m. The species of all trees shall be determined by Council's Manager City Presentation.

PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

- (24) Application shall be made for a Subdivision Certificate under Section 6.3(1)(d) of the Act.
 - (25) 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 7 ETs for water supply headworks and 7 ETs for sewerage headworks. A Certificate of Compliance, from Orange City Council in accordance with the *Water Management Act 2000*, will be issued upon payment of the contributions.
- (Condition (25) continued over page)

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 578/2024(1)

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Prior to the issue of a construction certificate (cont)

(25) (cont)

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

(26) 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 all sewer mains. 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 issue of a Subdivision Certificate.

(27) 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.

(28) Evidence from a registered NATA laboratory is to be submitted prior to the issue of a Subdivision Certificate stating that the filling or reshaping of any allotment has been carried out in accordance with Australian Standard 3798-2007.

(29) 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 issue 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 issue of a Subdivision Certificate.

(30) Application is to be made to 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.

(31) 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.

(32) 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 issue of a Subdivision Certificate.

(33) 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.

(34) 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 issue of a Subdivision Certificate.

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 578/2024(1)

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Prior to the issue of a construction certificate (cont)

- (35) All services are to be contained within the allotment that they serve. A Statement of Compliance and digital works as executed plans (in both .pdf and .dwg formats) for all services, from a Registered Surveyor, is to be submitted to Orange City Council prior to the issue of a Subdivision Certificate.
- WAE plans shall include MGA co-ordinates and AHD levels with each of the services on a separate layer e.g. separate out water, sewer, storm water, gas, power, telecommunications to their own layers / drawing sheet.
- (36) A section 88B Restriction-as-to-user under the Conveyancing Act 1919 is to be placed on the title of proposed Lot 7 advising that the finished surface level of proposed Lot 7 shall be raised to a height of 884.5m AHD before any Subdivision Certificate on proposed Lot 7 being released.
- (37) A section 88B Restriction-as-to-user under the Conveyancing Act 1919 is to be placed on the title of proposed Lots 5 and 6 advising any prospective purchasers of the presence of the Elgas depot within proposed Lot 7 and the potential hazard/risks that may arise from that operation.
- (38) An interpretation panel is to be provided within Proposed Lot 11 adjacent to Edward Street and shall provide images and texts so as to explain the history of the former saleyards site. The final interpretation panel shall be submitted for approval of the Manager of Development Assessments prior to erection. The positioning of the interpretation panel shall be to the satisfaction of the Director of Development Services.
- (39) 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

Nil

ADVISORY NOTES

Nil

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.

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 578/2024(1)

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Disability Discrimination Act 1992:

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

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

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

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:

2 April 2025

Peer Review of Development Assessment Report and Draft Notice of Determination - DA 578/2024(1) – Proposed Demolition (ancillary structures and tree removal), Subdivision (eleven lot Torrens Title) and Earthworks – Lot 24 DP 1254245, Lot 21 DP 1198009, Lot 23 DP 1198009, Edward Street, Orange

Introduction

I have been requested by Orange City Council to carry out an independent peer review of the staff planning assessment report and draft notice of determination that has been prepared for the abovementioned development application where Orange City Council is the applicant, owner and consent authority.

In carrying out the review I have read and considered the assessment report and draft notice of determination. I have also read the application and accompanying documents and each submission provided by community members.

It should be noted that I have not carried out a complete assessment of the application. There has not been a legislative nor LEP/DCP provision compliance check. As requested, I have sought to review the work prepared by Orange City Council's Planning staff and provide an independent view on the assessment and recommendations to be provided to Council given Council's multi-faceted role in the matter.

My qualifications and experience

My qualifications and experience attesting to my competency to carry out this review are attached.

The Development Proposal

This development application seeks approval for the Demolition (ancillary structures and tree removal), Subdivision (eleven lot Torrens Title) and Earthworks – Lot 24 DP 1254245, Lot 21 DP 1198009, Lot 23 DP 1198009, Edward Street, Orange. The site is zoned E4 General Industrial with demolition and subdivision permissible pursuant to clauses 2.3, 2.6, 2.7 and 4.1 of Orange Local Environmental Plan 2011.

Key Observations of the Proposal

- The proposal for subdivision seeks approval for the following elements;
 - Demolition of existing structures and pavement;
 - Vegetation clearance, tree removal, and detention basin commissioning; and
 - Subdivision of the site into eleven (11) lots comprising:
 - eight (8) vacant industrial lots
 - one residue lot containing the existing Elgas site with a boundary adjustment
 - two (2) residue lots to contain stormwater detention and drainage reserve.
 - Civil works to facilitate the subdivision including sewer and water construction, construction of stormwater drainage and basin, stormwater run-off diversion swale, kerb and guttering and earthworks.
- Matters relating to potential future development and use of each of the allotments will be for consideration with any future development application.
- The two key Council Planning documents are Orange Local Environment Plan 2011 and Orange Development Control Plan 2004.
- Orange City Council's Community Participation Plan is relevant to the process.

- All subdivision works will be undertaken in accordance with Orange City Councils Development and Subdivision Code.
- Essential services including NBN, Essential Energy, water, stormwater, sewer and gas are all available for connection.
- The subject land is not located in a Heritage Conservation Area and does not immediately adjoin local heritage items. There are heritage items in the vicinity of the subject development site.
- The site is mapped as Groundwater Vulnerable.
- The site is not affected by Terrestrial Biodiversity mapping layers.
- The site is identified as a Flood Planning Area which is subject to stormwater overland flows from the open drain located to the south with the existing flood retention/detention system reserve continue to be used for both flood mitigation and stormwater management.
- McNeilly Avenue will be upgraded and be constructed to a full width urban industrial standard with a 12.5m cu-de-sac.
- Geotechnical assessments and site history identifies contamination matters, remediation and validation and site suitability for future industrial use.
- Demolition works and removal of onsite stockpiles ensures the site can be cleared appropriately and used for its intended purposes without risk or adverse impact.
- A previous subdivision was approved (vide DA 196/2020(1)) on the basis that the existing LPG facility would relocate elsewhere for the overall re-development of the site to take place. A change in circumstance has required a re-design of the sites subdivision to now include the LPG facility.
- The LPG facility will be the subject of a separate application to regularise its use.
- A Preliminary Hazard Analysis (PHA) was used to identify potential hazards and estimate the risk to surrounding land use. This analysis was used to provide some certainty that the proposed subdivision could proceed with minimal restrictions.
- Council are the Landowners, Applicant and Developer and the Consent Authority.

Matters Raised in Submissions

In total 5 submissions were received in relation to the invitation to provide comment on the development application. The issues raised in submissions relate to:

- Impact on business operations
- Traffic and parking issues
- Environmental impact
- Waterway degradation
- Flood risk
- Social impact and well being
- Heritage and historical significance
- Economic impact

Key Issues

The assessment of the development application must occur in accordance with the relevant provisions of the Environmental Planning and Assessment Act; relevant Environmental Planning Instruments (in this case, Orange Local Environmental Plan 2011) and Development Control Plan. Community Participation occurs pursuant to the Council's Community Participation Plan. The

key issues in this matter have been largely reflected through the community participation process.

Assessment Report

I have read the assessment report prepared by the relevant Planning Officer and would concur that it provides a proper assessment of the necessary matters for consideration, including due consideration and assessment of the proposal against the provisions of the LEP and DCP. As the key issues largely mirror the matters raised in submissions I have reviewed the comments in the assessment report seeking to address the matters raised and (where relevant) cross referenced where the matter is dealt with in draft conditions of development consent.

Impact on business operations in particular an insufficient turning radius for B-double vehicles and on street parking.

Comment: The proposed radius of the cul-de-sac has been designed to meet the requirements of the Austroads Design Vehicles and Turn Paths templates. Subsequent engineering design and plans will require both the road and bulb to be both designed and constructed to Austroads standards.

On street parking would be a further consideration of Councils Traffic Committee.

Future development of lots would be required to undertake a parking and traffic analysis for the provision of off street parking and traffic management. The Development engineer has not identified any significant deficiencies or safety concerns regarding parking and road design for the locality.

It is considered adequate assessment regarding these matters has been addresses in the report and appropriate conditions for engineering design included.

Traffic and parking issues and the impact upon existing operations with adverse traffic impacts resulting from future developments.

Comment: Onsite parking provisions will be considered with subsequent development applications in accordance with DCP requirements. Given the MLS of the subject lots being a minimum of 3000m²

McNeilly Avenue will be upgraded and be constructed to a full width urban industrial standard with a 12.5m cu-de-sac including concrete kerb and gutter. Ingress and egress arrangements will not be impacted during construction works.

Conditions are included to require road design to meet Councils Development and Subdivision Code.

The assessment has adequately addressed matters pertaining to road upgrades, access and parking arrangements for future industrial operations.

Environmental impact including the removal of vegetation, impacts on fauna with no acknowledgement of biodiversity on the site.

Comment: The assessment adequately addresses the relevant planning layers, legislation for Biodiversity Conservation and a referral from Councils Manager of City Presentation regarding the removal of trees based on the health and species of the trees.

The assessment also identifies the retention of Lot 21 (known as Proposed Lot 11) as a drainage reserve.

Draft Condition 23 addresses the requirements for the planting of new street trees along both frontages of McNeilly Avenue and Edward Street prior to the issue of a Subdivision Certificate.

Development of the future subdivided industrial lots will be required to provide landscaping on a per lot basis in accordance with DCP requirements.

Waterway degradation

Comment: The existing drainage corridor/ reserve is to remain in place. No development is to take place within this corridor. Proposed Lots 8, 9 and 10 shall be connected to the existing stormwater detention basin (now known as Proposed Lot 11) with Proposed Lots 2 to 8 to discharge to the stormwater detention basin on Proposed Lot 1. This matter has been adequately addressed in the assessment report and appropriate conditions have been applied.

Flood risk concerns

Comment: The assessment report has adequately addressed flood mapping of the site and flood risk for the proposed development. Furthermore, the report has assessed the development against the relevant LEP and DCP controls. The assessment clearly identifies the drainage corridor with no works occurring within this area. A condition is imposed to ensure the stormwater design meets the requirements using the DRAINS rainfall-runoff hydrological model.

Proposed Lot 7 is now impacted due to changes in the flow of flood water resulting from construction of the SFR. Appropriate conditions have been imposed to ensure ground levels are adequate on this site for future development or re-development.

Social Impact and wellbeing due to the loss of recreational area and green space

Comment: The land has a land use zone of E4 General Industrial. Part of the land is a drainage reserve which is being retained. None of land in this locality is reserved for recreational purposes with the area being fenced off. Public recreation areas are located within 400m of the site.

No specific conditions are required.

The assessment report adequately addresses the matters raised in the submission process.

Heritage and historical significance of the land and its connection to European stock routes and agriculture with potential for Aboriginal artefacts.

Comment: The assessment addresses the change in the locality since the cessation of the sale yards in 2008. It is acknowledged that the land has not formally been identified as a heritage item or area; however the site does have a long history associated with the use the land as regional sale yards.

A condition of consent has been included to acknowledge the history of the site through an interpretation panel. Draft condition 38 addresses this matter.

Economic impact

Comment: The assessment report acknowledges the concern raised by the submission however notes the area ceased operations in 2008. The site is not zoned or used as public reserves and is fenced off from the public for such uses. Nearby reserves are identified as more appropriate uses

for passive recreation. It is noted that the drainage reserve is to be retained and no development is to take place in this part of the site. Development has been designed appropriately based on the sites constraints. No additional conditions of consent are warranted to address this matter.

Several other matters pertinent to the proposal have also been considered and warrant discussion:

There is potential for conflict of interest associated with the Council-related development application and the Expression of Interest currently being sought for the sale of land.

Comment: Comments in the assessment report are noted in relation to the process and the reference to Strategic Policy ST 26 Council-Related Development Applications - Managing Conflict of Interest 2023. This independent peer review of the assessment report and draft notice of determination have been carried out in response to the policy.

Land Contamination

Comment: Geotechnical assessments and site history identifies contamination matters, remediation and validation and site suitability for future industrial use and are supported by the Soil Management Plan. The documentation facilitates appropriate management of soil materials onsite. Draft Conditions 6, 15, 21 & 22 addresses these matters.

The assessment report has adequately addressed matters pertaining to site contamination.

Draft Conditions

In addition to the conditions referred to above, I have perused the draft Notice of Determination and would concur that the proposed conditions appear to be reasonable and appropriate for the development.

Conclusion

I have carried out an independent peer review of the staff planning assessment report and draft notice of determination that has been prepared for the Demolition (ancillary structures and tree removal), Subdivision (eleven lot Torrens Title) and Earthworks – Lot 24 DP 1254245, Lot 21 DP 1198009, Lot 23 DP 1198009, Edward Street, Orange.

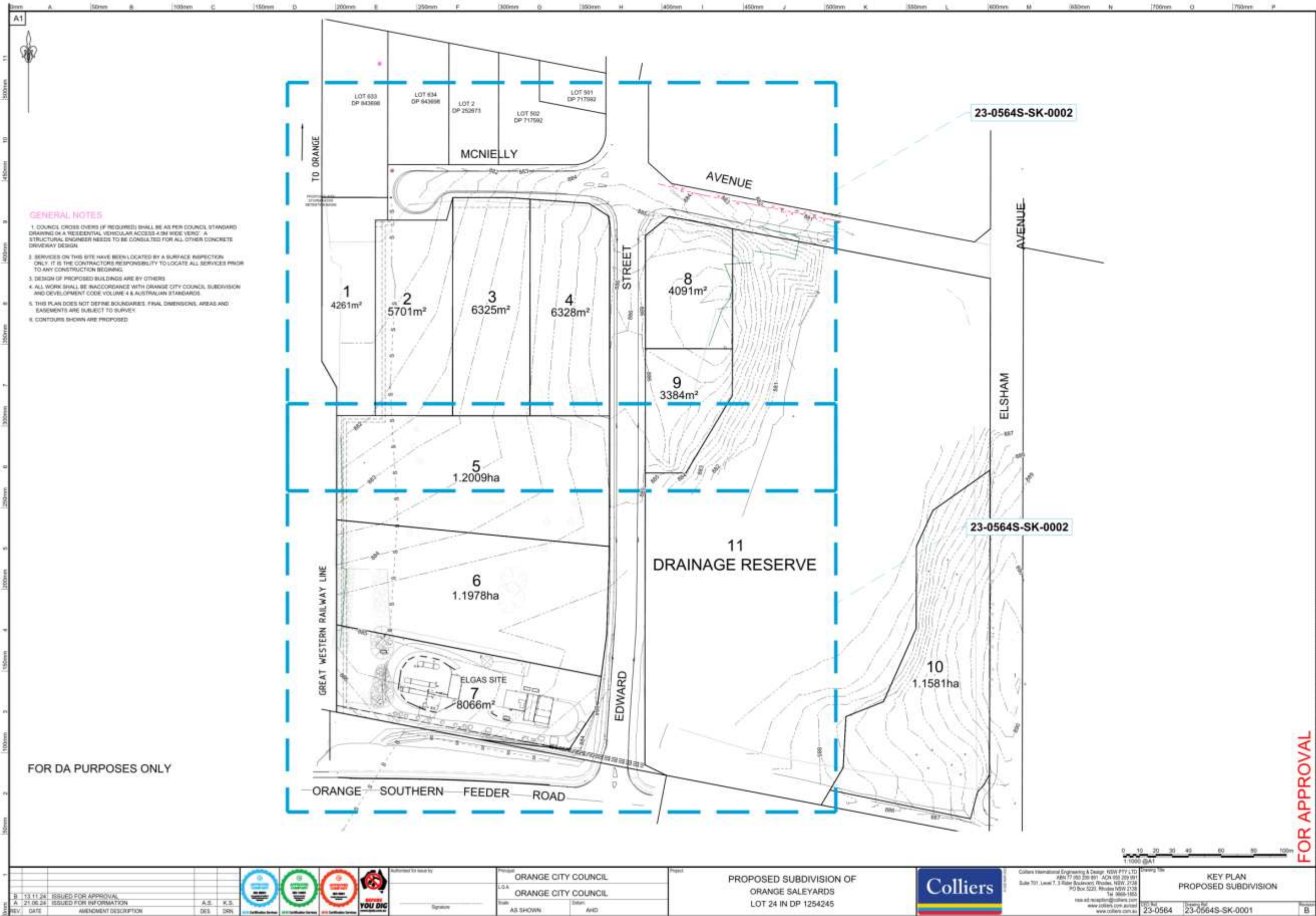
I have concluded that the assessment report has sought to address the relevant provisions of the Environmental Planning and Assessment Act; Orange Local Environment Plan 2011 and Orange Development Control Plan 2004. As part of the process, consultation occurred pursuant to Orange City Council's Community Participation Plan whereby a total of five (5) submissions were received. The matters raised in submissions were not unreasonable and were well articulated. The assessment sought to address the issues raised and most matters have been able to be accommodated through conditions of consent. I concur with the recommendations made in the draft notice of determination.

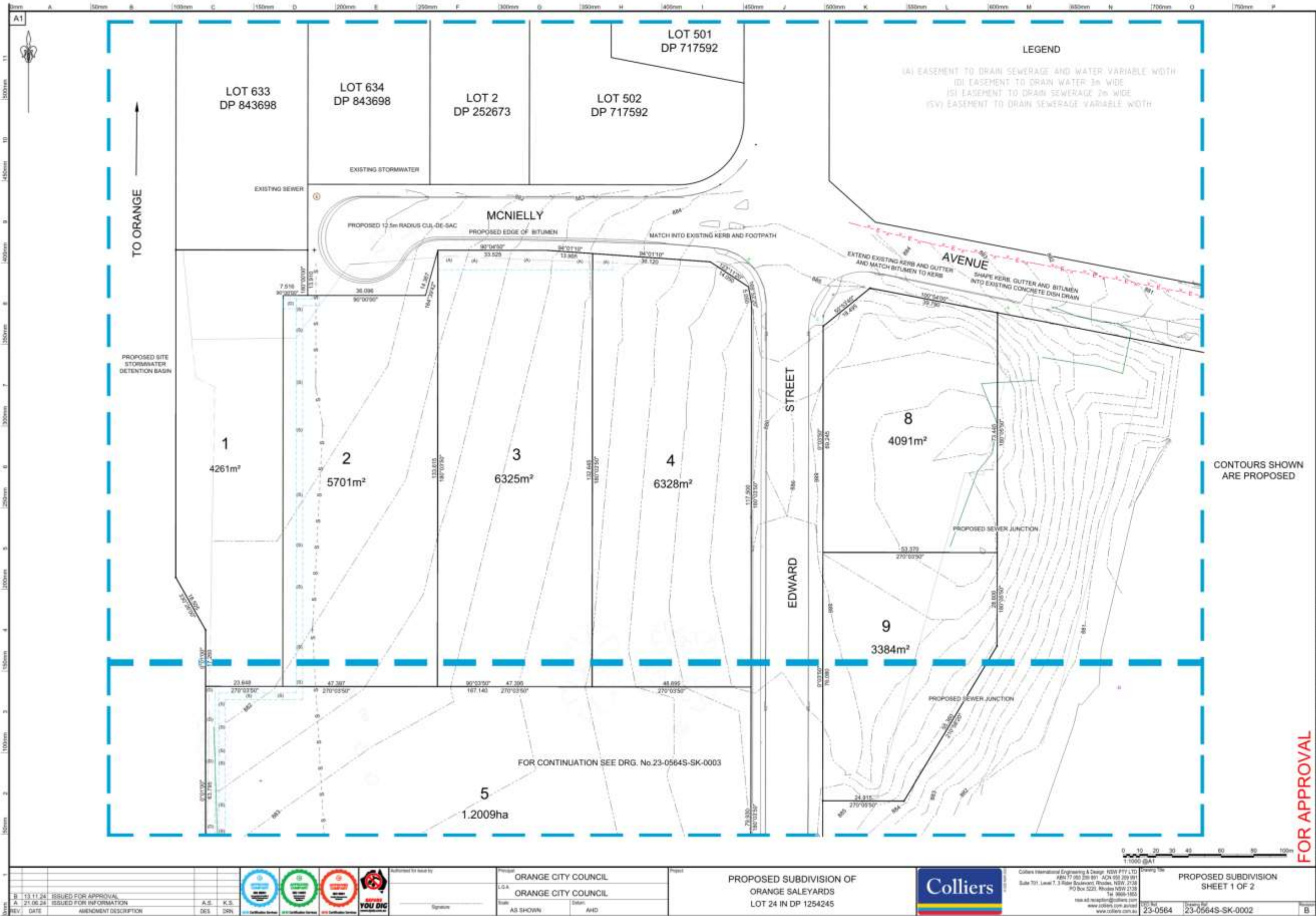
Amanda Rasmussen

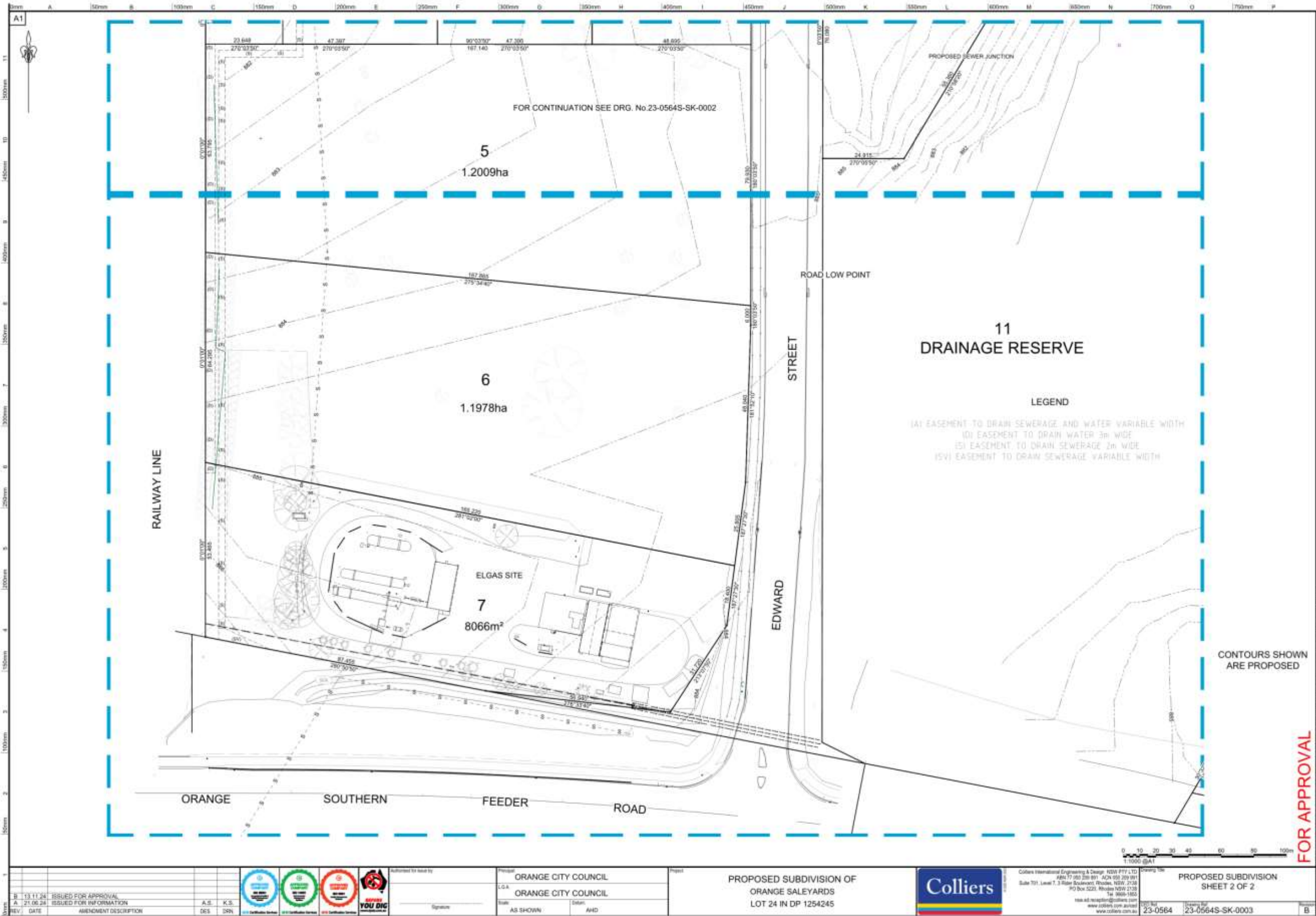
Manager Development Assessment

Blayney Shire Council

18 March 2025







Submission 1

From:
Sent: Wednesday, 28 August 2024 11:29 AM
To: Orange City Council
Cc:
Subject: DA Exhibition notice response - DA578/2024(1) CRM:0030343

Paul Johnston
Orange City Council
135 Byng Street
Orange NSW 2800

Attention: Paul Johnston

By email: council@orange.nsw.gov.au

Dear Mr. Johnston,

Re: Notice of Development Application (DA) Letter for DA 578/2024(1) – Industrial Land Subdivision
Land: Edward Street Orange NSW 2800 – Lot 24 DP 1254245 and Lots 21 & 23 DP 1198009

I refer to your email dated 08 August 2024 requesting UGL Regional Linx (**UGLRL**) for our comments on the Notification of Development Application.
Transport for NSW (**TfNSW**) is the rail authority of a Country Regional Network (**CRN**) across NSW. Transport Asset Holding Entity of New South Wales (**TAHE**) is a State-owned corporation that holds rail property assets and rail infrastructure, including the **CRN**. As of 29 January 2022, **UGLRL** has been appointed by **TfNSW** to operate and manage the **CRN** to ensure any potential impacts to rail corridors are considered and addressed.
UGLRL the Rail Infrastructure Manager (**RIM**) on behalf of **TfNSW** reviewed the Notification of Development Application and the relevant documents via the DA Tracker [Development Applications on Exhibition - Wednesday, 14 August to Wednesday, 11 September 2024 - Orange City Council \(nsw.gov.au\)](#).

The DA is seeking consent for the subdivision of industrial land which includes demolition works, vegetation clearance, tree removal and detention basin decommissioning, and civil works on Lot 24 DP 1254245 and Lots 21 & 23 DP 1198009 (delineated in **red** in **Annexure A**) which is immediately adjacent to CRN operational rail corridor from Taran to Orange Jct and Orange Jct to Dubbo (marked in **green** in **Annexure A**).

It is noted that the proposed subdivision is immediately adjacent to the CRN rail corridor and would trigger clause s2.98 (Development adjacent to rail corridors) of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (TISEPP). The council is requested to refer the modification DA via the NSW planning portal under the s2.98 referral to TfNSW.

The subdivision plans indicate that the residue Lot 1 (Stormwater Detention Basin purpose), and residue Lot (5, 6 and 7) (tree removal works) are immediately adjacent to the CRN rail corridors. Therefore, if these or any other proposed works involve penetration of ground to a depth of at least 2m below ground level with 25m of rail corridor, then it shall be referred under concurrence s2.99 (Excavation in, above, below or adjacent to rail corridors) along with clause s2.98.

Thank you again for reaching out to **UGLRL** on behalf of **TfNSW** for this Notice of Development Application. If you have any further questions, please contact the writer at your earliest convenience.

Yours faithfully,

UGL Regional Linx
Country Regional Network
Annexure A



Proposed Development Location (Source: UGLRL ArcGIS)

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Submission 2

29 August 2024

The Chief Executive Officer
Orange City Council
PO Box 35
ORANGE NSW 2800

Dear Sir/Madam,

Subject: Objection to Development Application DA 578/2024(1) – PAN-447275

We, the undersigned owners of _____ located on _____
Orange, where we operate our _____
_____ wish to address our concerns regarding Development Application DA
578/2024(1).

Since our establishment in 2006, following the acquisition of a business that has
been a _____, we have grown significantly.
Currently, on this site, we employ 15 staff members and manage daily deliveries
that necessitate a variety of vehicle types. Our business has expanded to include
branches in Bathurst and Mudgee, employing over 40 full-time staff. We are proud
to have been recognized twice as Top Dealer for the Australian/New Zealand
region, reflecting our management efforts and the dedication of our team.

Access to our site is crucial for our operations, and we are concerned about the
implications of the proposed development plan. We wish to raise two primary
points:

1. Turning Radius: The proposed plan indicates a turning radius of only 12.5
meters at the end of McNeilly Avenue. This insufficient radius will hinder B-Double
trucks and vehicles with trailers from navigating the area, which is essential for our
business operations. For comparison, we have provided a map of Corporation

Place in Bathurst, where our is located at . There, a 42.13-meter diameter allows for effective truck manoeuvring and adequate parking for staff and customers.

2. Street Parking: The proposed DA 578/2024(1) fails to account for street parking opportunities. We believe parking bays could be effectively added in front of Lots 3 and 4, enhancing accessibility for our business and other local enterprises. It appears that the town planner may not have fully considered the contributions of existing businesses along McNeilly Avenue.

We would be happy to discuss our objection in further detail via an on-site meeting at McNeilly Avenue. If this is an option, please use the contact information below, to arrange a date and time.

We appreciate your attention to these concerns and hope they will be taken into consideration in the review of the development application.

Thank you for your understanding.

Sincerely,

PLAN FORM 2

Plan Drawing only to appear in this space

* OFFICE USE ONLY

Signature, name and statements of intention to dedicate public roads or to create public reserves, drainage reserves, easements, restrictions on the use of land or positive covenants.

THE COMMON SEAL OF THE COUNCIL OF THE CITY OF BATHURST WAS HERETO AFFIXED IN PURSUANCE OF A RESOLUTION OF COUNCIL.

PASSED ON 19 FEBRUARY 1997

RATOS

GENERAL MANAGER

SSM 82199 FD. (CON)

PGS FD. R.M.S.I.P. FD. 88°58' 0.625 (D.P. 58661)

REFERENCE MARKS

No.	BEARING	FROM	DIST	REF PLAN
C	24°58'	DRAWING	3.265	
D	24°58'	DRAWING	3.355	
E	281°13'	SSM 10029	3.63	
F	278°44'	DRAWING	3.44	
G	98°42'	DRAWING	3.365	
H	98°58'	DRAWING	3.345	
J	225°22'	DRAWING	3.355	
K	203°02'	DRAWING	3.45	
L	151°48'	DRAWING FD.	3.78	DP855575
M	243°10'	DRAWING FD.	12.575	DP855575
N	285°24'30"	DRAWING FD.	3.335	DP855575

NEW REF

NEW REF

NEW SRC

1:5.G.

MITCHELL

HIGHWAY

IRVING DR

AVENUE

ROAD WIDENING 418.8 m²

EASEMENT FOR POWERLINE 11.6, 25 & VARIABLE WIDTH

EASEMENT TO DRAIN WATER 3 WIDE

EASEMENT FOR WATER SUPPLY 3 WIDE

1 295 m²

2 5418 m²

3 2025 m²

4 2025 m²

5 2025 m²

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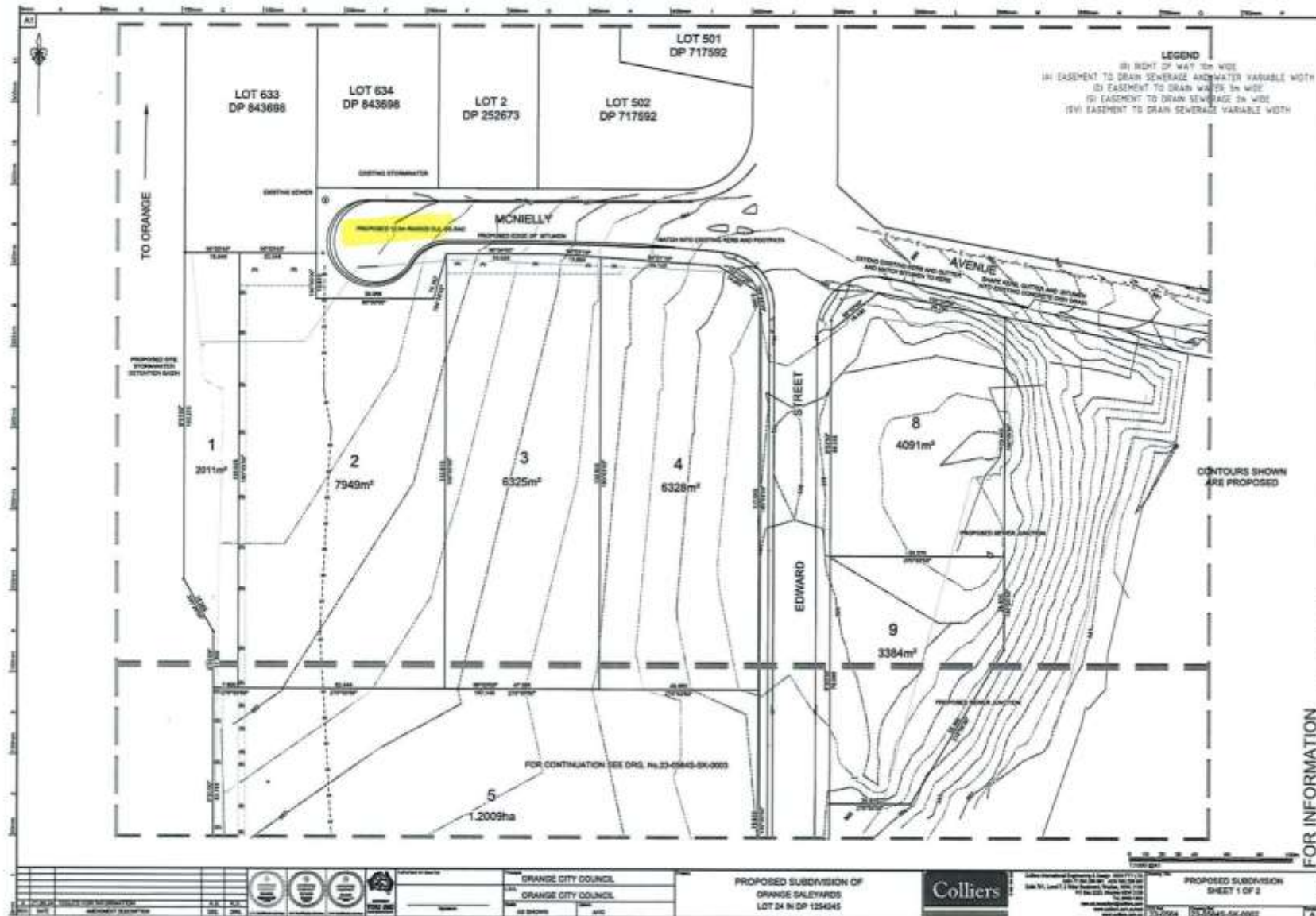
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Submission 3

From:
Sent: Monday, 9 September 2024 12:39 PM
To: Orange City Council
Subject: DA 578/2024(1) PAN-447275
Attachments: OCC D24.84813.pdf

Hi,

Please see attached letter regarding the above mentioned DA 578/2024(1) in Edward Street, Orange.

Regards,

Submission 3

9TH September 2024

ATTN: Chief Executive Officer
Orange City Council
PO Box 35
ORANGE NSW 2800

Dear Sir/Madam,

I write to you regarding DA 578/2024(1) relating to development of Lots 21 and 23 DP1198009 and Lot 24 DP1254245 in Edward Street Orange, which is in the vicinity of _____ where my _____ business operates a

We are concerned about the proposed radius of the cul-de-sac and southern side edge of bitumen, as well as parking, which may severely impact the day-to-day operation of my local business which has been operating at this location since it first began over 30 years ago.

The proposed turning radius of the cul-de-sac being of only 12.5m at the end of McNeilly Ave, I believe, is insufficient for B-Double trucks to manoeuvre with other vehicles in the street. This will impact very strongly the operation of our business, which at any given time have B-double, and/or multiple other varying sizes of trucks and trailers in the street, along with multiple other businesses who constantly use McNeilly Ave.

Where the DA currently proposes the kerb and gutter to follow the existing, newly built kerb and gutter, many of the vehicles we repair will not be able to access either driveway of our premises. These vehicles being unable to access the workshop for repair means we would cease to operate.

The above-mentioned proposed DA 578/2024(1) also fails to take into account street parking for the existing businesses, as well as those business who purchase land to develop. Widening, instead of matching the existing kerb and gutter at the intersection of McNeilly Ave and Edward St, would be a better solution to the street and make parking and accessibility viable for all.

I would be happy to discuss any details and further suggestions on-site at McNeilly Ave at your convenience. Please contact us to make these arrangements.

Thank you for taking the time to view my concerns, I look forward to hearing from you.

Regards,

Submission 4

Letter in response to the Development Application:

DA 578/2024(1) – Lots 21, 23 and 24 Edward Street, Orange

The subject site (the Site) is legally identified as Lot 24 DP 1254245 and Lots 21 & 23 DP 1198009, being located on Edward Street, Orange.

This parcel of land is bounded by Edward Street to the west, and Elsham Ave to the east. Rising to Elsham Ave in the east, some 30 houses are able to directly view this land, most pass by in travel and many use it for walking. Recreation land appears to be very limited in the Glenroi division, and in the last 18 months a new housing estate is being developed, further putting pressure on recreation land available to people living on the Glenroi estate. Within the old stockyards reserve are some mature gum trees native to the tablelands. The history of this site needs to be honoured and the opportunity for recreational and tourist facility must not be lost.

A Creek also begins near the southern distributor road and flows north before going into culverts and joining the Blackman's swamp basin under central Orange. This land should be set aside by council as a nature reserve and walking track, with flood mitigation gabions and associated reed plantings to promote water cleaning and wildlife restoration to the land. The Ploughman's creek basin in west Orange is an important example of what can be done to restore degraded grazing land to a native ecosystem, all the while giving local residents a recreation space in which to use. The residents of Glenroi surely are entitled to recreations lands as are the residents of west Orange. It would also join the recreational space at Jack Bradman park and allow the present corridor for birds, animals and people.

When viewing this area from Elsham Avenue the vista is iconically "Rural Australian". A creek with gum trees and birds. Currently, there are sheep with lambs. This is so rural Australian and was so normal 30 years ago that it was easy to take it for granted. However, it is this very quality that makes it absolutely necessary to readdress its need to be preserved. This view is fast coming non-existent for the average Australian to see. The change of agriculture and the urbanisation of areas means that this area is now a rarity. What an amazing opportunity to preserve an iconic view for the residents of Orange, and visitors who come here as tourists? Orange has become a tourist destination and if this area is preserved it could be added to guides as a green space that harks to the iconic Rural Australia of yesteryear, of cattle/sheep sales by hardy farmers of legendary character. The addition of tourist dollars needs to be assessed. As a local Italian family, 40 years ago we made our own wine and were ridiculed by people and never thought that wineries would become a major economic force in Orange as they are today. People coming here want things to see. The changing society means that this site needs to be reassessed in terms of this iconic rural history and its potential. All around the world people travel to visit historical and cultural sites that were taken for granted by locals. Let's not take the potential of this area be taken for granted and ruined.

Addressing specific points in the application.

7.1.1. Flora & Fauna Impacts on the natural environment from the proposal are anticipated to be minimal. All trees in the western parcel of Lot 24 DP 125424 are required to be removed. Correspondence from Council's arborist (dated 09/08/2024) confirmed that the existing trees on the Site provided a lack of tree canopy worthy of retention. Several tree species were described as being at the end of their useful life expectancy, ranging from average to poor in condition and constituting a problematic species of tree. The clearance of all trees on the western parcel of Lot 24 DP 125424 and 3 trees in the eastern parcel is not anticipated to have any major impacts to amenity, flora and fauna.

This is obviously not correct. This area is full of frogs, birds, small mammals and other wildlife. The trees required preservation and the site could be maintained and improved with planting of native species to augment biodiversity. The trees might be unremarkable but the site is as there are few sites like this in urban east orange.

7.2.3. Heritage The Site does not contain, nor is it near, a heritage item. No impacts to European or Aboriginal European heritage are anticipated.

The location of this parcel of land with its gumtrees and associated flora and fauna, is reminiscent of rural vista especially with Mt Canobolas/Gaanha Bula, in the background. It is the location that is a heritage and needs to be maintained to preserve its Historical and cultural associations and be a presence for present and future generations. The Orange District Historical Association has many photos of this Saleyards. All iconic and need a place in the real world for people to gain a sense of its past.

This area was associated with the Saleyards and while the land west of Edward Street had many facilities for the sale yards, it is degraded. The area east of Edward Street was a holding paddock and part of the sale yards, like the network of Stock routes that are present all through NSW. These Stock routes also followed aboriginal travelling paths. Therefore, it is a remaining parcel of land that is present in Orange for a location for a site to honour the whole phenomenon and history. Any webpage that discusses stock routes mentions a link with Aboriginal travelling routes, of the stock routes, of rural and agricultural regional networks and history.

This site has significant and unique historical significance for Orange and connecting areas and as an agricultural community. As it was the saleyards for the regional area every farming family had a connection with it. Also, any associated occupations, like agents, butchers, retail, also had a connection. It is my guess that all of Orange knew when it was sale day and where the saleyards were. As a person growing up in a rural area in Nashdale my father taking stock to the saleyards has many vivid memories. From phone calls with agents, trucking in stock and the news of prices achieved. The social and economic connection of this was tremendously important. This needs to be honoured in a real and substantial way. Not just a temporary exhibition, or Art work in the future.

A combined sheep and cattle sale at Orange saleyards in January 1962, saw 10,000 sheep and nearly 1000 cattle were cleared. The prosperity of Orange was dependant on this facility.

Max Dupain did a series of photographs of the sale yards now in the State Library of NSW. We need to preserve the site. Not just images.

A comment from John Kich a local historian and photographer.

"The saleyards were located in south Orange, just beyond where the Emmco factory was.

It had its own railway siding and even its own canteen.

A lot of stock was driven to the saleyards via designated stock routes, which included Woodward and Tynan streets.

Sale day was often the one day of the week that farmers came to town, and the sales took place rain, hail or shine."

A through assessment of the historical aboriginal and European importance needs to be done in this context.

A recreational path along the creek and additional circuit would provide a wonderful location for information/educational/tourist boards to alert and honour this historical site.

Biodiversity N/A – The Site is not mapped with a moderate or high biodiversity sensitivity.

Native Vegetation Protection N/A – The Site is not mapped as containing a native vegetation protection area.

Riparian Protection N/A – The Site is not mapped as containing a riparian protection area

A visit at any time of day will make it obvious that this site has a tremendous number and variation of biodiversity of birds, frogs, and other animals. There may not be a moderate or high sensitivity, but it is intact creek, that is a rarity in urban Orange.

It must not be covered by pipes and ruined. The green space must be maximised.

This is East Orange creek and a look on the map shows this creek is mostly piped and covered with cement. This is not a modern or appropriate development of a creek and its riparian zone. It is also so important for the citizens of Orange to have as much natural green space as possible. We have so few creeks in the urban areas. The council must not allow this to be covered with concrete. This area needs to be managed by a section of the council that will take a modern informed approach to allowing it to remain intact and be a green space for the recreation and wellbeing of the community.

Many residents used this area for walking and recreation. It needs to be made more available for this. Just as so many other wetlands in other parts of Orange that are adding to its quality of life and liveability of the city. Many other cities have rivers and they are so valuable for the city. It is important to preserve whatever waterways that remain to stop the destruction of such important features.

7.3. Social and Economic Impacts

The proposal will have positive social and economic impacts as it will facilitate the delivery of new warehouse buildings within a general industrial environment and thereby contribute to increasing employment opportunities in the City of Orange. Land use conflict is unlikely to result noting the proposed development is consistent with the zoning and existing development in the surrounds.

There is a conflict as the importance of this area in terms of historical and recreational/wellbeing/green space/tourist value needs to be asserted. Concreting this creek and this area will have strong negative social impacts on local and future residents. There is a conflict with the development as it will result in the loss of historical/cultural/tourist and educational potential.

Final Statement

Many of the assertions of this development application are flawed and also need to be reassessed in context of a bigger picture as discussed.

Council has a responsibility to address the importance of this site in terms of historical, cultural, recreation, green space, tourist potential. The importance of this area needs to be reassessed in terms of urban forests, green spaces and recreational, tourist and wellbeing for the residents of Orange. This requires independent environmental urban development specialists. The fact it was left forgotten in terms of redevelopment is a blessing and it needs to be seen in the context of wellbeing for the flora/fauna and people of Orange. It also needs to be identified that the local residential community due to its social background may not engage easily to assert their beliefs. A quick discussion with residents easily stirs up a strong sentiment that they want the green space to remain. The current residents deserve additional consideration, as well as future generations that may become part of this area.

Submission 5

Letter in response to the Development Application:

DA 578/2024(1) – Lots 21, 23 and 24
Edward Street, Orange

The subject site (the Site) is legally identified as Lot 24 DP 1254245 and Lots 21 & 23 DP 1198009, being located on Edward Street, Orange.

Submitted by _____ of _____
on behalf of his _____
who is remaining anonymous
for safeties sake, as discussed with _____
from Orange City Council
11.09.2024

The following document is in regards to the section of land between Edward Street, Elsham Avenue, Mcnielly Avenue and the Southern Feeder Road which is included in this Development Application.

Despite its current (and from what I can gather, recent) industrial zoning, this block of land is, and for the entirety of Oranges residential history has been, a green space. Twenty-six houses along Elsham avenue have direct visual access to it, and the birds, frogs and other animals can be heard from many more residences. Locals often walk around the perimeter, stopping to admire the scenery, interacting recreationally with the space. As a this is the only green space I regularly have contact with, and sitting out the front of my house, overlooking the block has been recommended for both my mental and physical recovery and maintenance by my GP and Psychologist. It is also incorporated into my therapy as a walk around this space is the most accessible option of ambulation available to me as recreational areas close by are inaccessibly steep, and car trips exacerbate my symptoms.

I would like to address some of the statements made in the report provided for the public in the exhibition of this application, and urge Orange City Council to rethink subdividing, and selling off this area, which is so iconic to the surrounding community.

In Regards to the Historical Significance of the site:

“7.2.3. Heritage The Site does not contain, nor is it near, a heritage item. No impacts to European or Aboriginal European heritage are anticipated.”

I do not believe this is an accurate statement.

It is well known by locals of the Central West that part of this area was the site of the Saleyards for a significant portion of Orange’s history. Stock routes- which very often directly followed Aboriginal pathways for crossing land this area was a “Market space” as discussed in the following quote from

<https://www.crownland.nsw.gov.au/about-us/crown-lands-explained/travelling-stock-reserves>

“The TSR (Traveling Stock Route) network was established more than 150 years ago to allow livestock to move to and from markets. It is believed that many of these routes followed pathways used traditionally by Aboriginal people to travel across country. Many are next to or follow tracks and rivers... While TSRs are still important for travelling and grazing stock, they are also widely recognised for playing a key role in landscape connectivity and biodiversity conservation across NSW. are also highly valued as important access points for recreational fishing and other social and recreational activities.”

This green space is one of the only remaining tributes in the area to this history of Crown Land pathways, and by subdividing it and selling it off for industrial development Orange City Council will be complicit in erasing this history, and the opportunities the area holds for the future in regards to a recreational area that pays historical tribute, that may provide education to locals and tourists about the character of Orange, our deep rooted agricultural, and Aboriginal history, which has played such a central role in the landscape, our towns structure,

and spirit. As well as the jobs that could have been created associated with its upkeep.

This area should become a recreational space, with information/information boards paired with historical photos for immersion, in situ with the view of **Gaanha Bula** (Mount Canobolas) behind. These points only touch on it's historical links, a thorough investigation in tandem with a group such as Orange District Historical society, the Orange Museum and other local historians should be undertaken to properly appraise the value and impact of the location. Along with ways to communicate this on site.

This site has already been featured in an exhibition at the Local Museum, I feel this is evidence enough to call into question the referenced statement in the Development application report. We have a lot of tributes to Oranges history as a gold town, however it is dual, and our agricultural history should not be taken for granted in regards to it's contributions to the stability, and character of Orange and requires highlighting.

There are numerous photos and articles that reinforce the importance of this location. Historically it has always been a greenspace valued by locals.

In regards to the waterway, and the habitat it creates:

“7.1.1. Flora & Fauna Impacts on the natural environment from the proposal are anticipated to be minimal. All trees in the western parcel of Lot 24 DP 125424 are required to be removed.

Correspondence from Council’s arborist (dated 09/08/2024) confirmed that the existing trees on the Site provided a lack of tree canopy worthy of retention. Several tree species were described as being at the end of their useful life expectancy, ranging from average to poor in condition and constituting a problematic species of tree. The clearance of all trees on the western parcel of Lot 24 DP 125424 and 3 trees in the eastern parcel is not anticipated to have any major impacts to amenity, flora and fauna.”

The references made in this quote seem cherry picked to paint a picture of a diseased, insignificant, unhealthy environment, which is at the end of its usefulness and lifespan, it is misleading and ignores much of the flourishing fauna present at this site as well as the overall effect the flora has. As discussed on the following webpage put together by Port Phillip and Westernport local council “Hearing frog calls reassures the community that waterways are healthy” (<https://healthywaterways.com.au/key-values/frogs>)

This report provided does not address how having a healthy waterway reduced to a “piped drainage network” could possibly maintain the habitat of the various frog species observable at the site, the native blue banded bees which also are observable and the many birds, whose visage and calls, bring such character, joy and charm to the neighbourhood. Nor does it address the impact of the subdivisions purpose in the “establishment of large, open industrial building” and the subsequent development of these buildings, disregarding any impact as an issue for future development applications as they arise. I believe this is an oversight, as Orange City Council will be dedicating this land to these buildings, and then when they occur, impacts will inevitably follow, that is not the futures

problem, this is being set up in this very DA, and I believe needs to be assessed by an independent party.

Locals cherish this space, and interact with it regularly. It sets the soundscape of the area, the chirping of small birds in the morning, kookaburras laughing in the afternoon, the calls of frogs at night and while this report would have you to believe the character of the neighbourhood is industrial, anyone referring to the area talks about proximity relative to the old sale yards. It's lovely, and precious.

If this goes ahead the demolition of this green space would speak to the residences of Glenroi of the councils disregard for their wellbeing, seeing how similar waterways are treated across town in the establishment of gorgeous, thoughtful wetlands, and recreational spaces, it would be hard not to draw comparison, and conclusions about how this Council views it's lower socio-economic regions and peoples.

In regards to effects on locals:

I had hoped to be able to get statements from neighbours in a more official capacity, however my chronic pain, and exhaustion have been a limiting factor in putting this submission together. Casual talks with neighbours have given me the understanding that there is extreme dissatisfaction at this proposal, a few saying that they're sure it was not industrially zoned when they purchased their properties, and that they'd been reassured that the flooding nature of the creek would protect it from development. Others approached me telling me not to worry, they had plans to fight it, and I hope to see their submissions alongside mine.

In conclusion, to take a space of historical significance, with an established, healthy waterway, that has cultural, and quality of life significance for locals, and reduce it to a drain, with plots for warehouses does not seem like a balanced, valuable development. I hope that Orange City Council reconsiders this Development Application along side the value of the space as it is, and the value of the space it could be with a little effort and care. To drain a creek is an expensive, old fashioned, arduous task, that would take a lot more effort and resources than restorative measures.