



# **PLANNING & DEVELOPMENT COMMITTEE**

## **AGENDA**

**6 MAY 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, 6 May 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

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RECORD NUMBER: 2025/511

AUTHOR: Ben Hicks, Senior Planner

#### 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

<b>Reference:</b>	DA 52/2020(3)	<b>Determination Date:</b>	16 April 2025
<b>PR Number</b>	PR2631		
<b>Applicant/s:</b>	Mr D Farr		
<b>Owner/s:</b>	Mr RJ and Mrs DM Barnes		
<b>Location:</b>	Lot 6 DP 362829 - 148 Clergate Road, Orange		
<b>Proposal:</b>	Modification of development consent - dwelling house and depot (ancillary office (former dwelling) and industrial shed). The proposed modification involves relocating the new dwelling closer to the northern boundary and relocating the shed and driveway within the site.		
<b>Value:</b>	\$120,000		

2.1 Items Approved Under the Delegated Authority of Council

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**Reference:** DA 127/2022(3)      **Determination Date:** 29 March 2025  
**PR Number** PR29161  
**Applicant/s:** Designs@m  
**Owner/s:** Mr GJ and Mrs KL Stevenson  
**Location:** Lot 301 DP 1280002 - 145 Diamond Drive, Orange  
**Proposal:** Modification of development consent - dual occupancy (detached) and subdivision (two lot residential - Torrens title). The modification involves changing the front façade treatment of the two dwellings from brick cladding to Weathertex Primelok smooth boards with painted finish.  
**Value:** \$0

**Reference:** DA 629/2024(2)      **Determination Date:** 29 March 2025  
**PR Number** PR7950  
**Applicant/s:** Mollard Property Group Pty Ltd  
**Owner/s:** Sought After Investments Pty Ltd  
**Location:** Lots 6 and 7 DP 219984 - 141 and 143 Matthews Avenue, Orange  
**Proposal:** Modification of development consent - demolition (two x dwellings and ancillary structures), centre-based childcare facility, business identification signage and Category 1 remediation. The modification involves correcting an error in Condition (63) of the consent (the maximum number of childcare places should have been 105 as per Council's resolution, not 104).  
**Value:** \$0

**Reference:** DA 21/2025(1)      **Determination Date:** 9 April 2025  
**PR Number** PR12219  
**Applicant/s:** Apex Towing Orange Pty Ltd  
**Owner/s:** Mr AT and Mrs PJ Shepherd  
**Location:** Lot 2 DP 408903 - 9-11 Tynan Street, Orange  
**Proposal:** Transport depot (holding yard)  
**Value:** \$0

**Reference:** DA 56/2025(1)      **Determination Date:** 1 April 2025  
**PR Number** PR4101  
**Applicant/s:** Mr C Spedding  
**Owner/s:** Mr C and Mrs AA Spedding  
**Location:** Lot 21 DP 734885 - 758 Forest Road, Orange  
**Proposal:** Demolition and dwelling alterations and additions  
**Value:** \$203,000

2.1 Items Approved Under the Delegated Authority of Council

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**Reference:** DA 58/2025(1)                      **Determination Date:** 16 April 2025  
**PR Number** PR17638  
**Applicant/s:** Haderslev Pty Ltd  
**Owner/s:** Whirlow Pty Limited & Sobotta Pty Limited and Te Mara Pty Ltd  
**Location:** Lot 60 DP 882905 - 171 Edward Street, Orange  
**Proposal:** Medical Centre (change of use from health consulting rooms)  
**Value:** \$55,000

**Reference:** DA 61/2025(1)                      **Determination Date:** 24 March 2025  
**PR Number** PR7595  
**Applicant/s:** Saunders Property  
**Owner/s:** Mr AJ Saunders and Ms HT Chegwiddden  
**Location:** Lot 1 DP 508574 - 90 March Street  
**Proposal:** Dwelling alterations and garage addition (carport)  
**Value:** \$225,500

**Reference:** DA 115/2025(1)                      **Determination Date:** 7 April 2025  
**PR Number** PR12913  
**Applicant/s:** Bassman Drafting Services  
**Owner/s:** Mr JC and Ms SL Wilde  
**Location:** Lot 100 DP 255162 - 2 Yaraan Place, Orange  
**Proposal:** Demolition (pergola) and dwelling alterations and additions  
**Value:** \$439,349

<b>TOTAL NET* VALUE OF DEVELOPMENTS APPROVED BY THE CEO UNDER DELEGATED AUTHORITY IN THIS PERIOD:</b>	<b>\$934,849.00</b>
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*\* **Net** value relates to the value of modifications. If modifications are the same value as the original DA, then nil is added. If there is a plus/minus difference, this difference is added or taken out.*

Additionally, since the April 2025 meeting report period (18 March to 14 April 2025), another 19 development applications were determined under delegated authority by other Council staff with a combined value of \$3,258,065.



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

RECORD NUMBER: 2025/651

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 4,091m<sup>2</sup> 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 4,091m<sup>2</sup> 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.

Council at the PDC meeting held on 1 April 2025 resolved to defer consideration of this Development Application as to allow for a Councillor site inspection. The site inspection with Council staff was carried out at 4pm on Thursday, 10 April 2025. This report is now referred back to the PDC for 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 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.

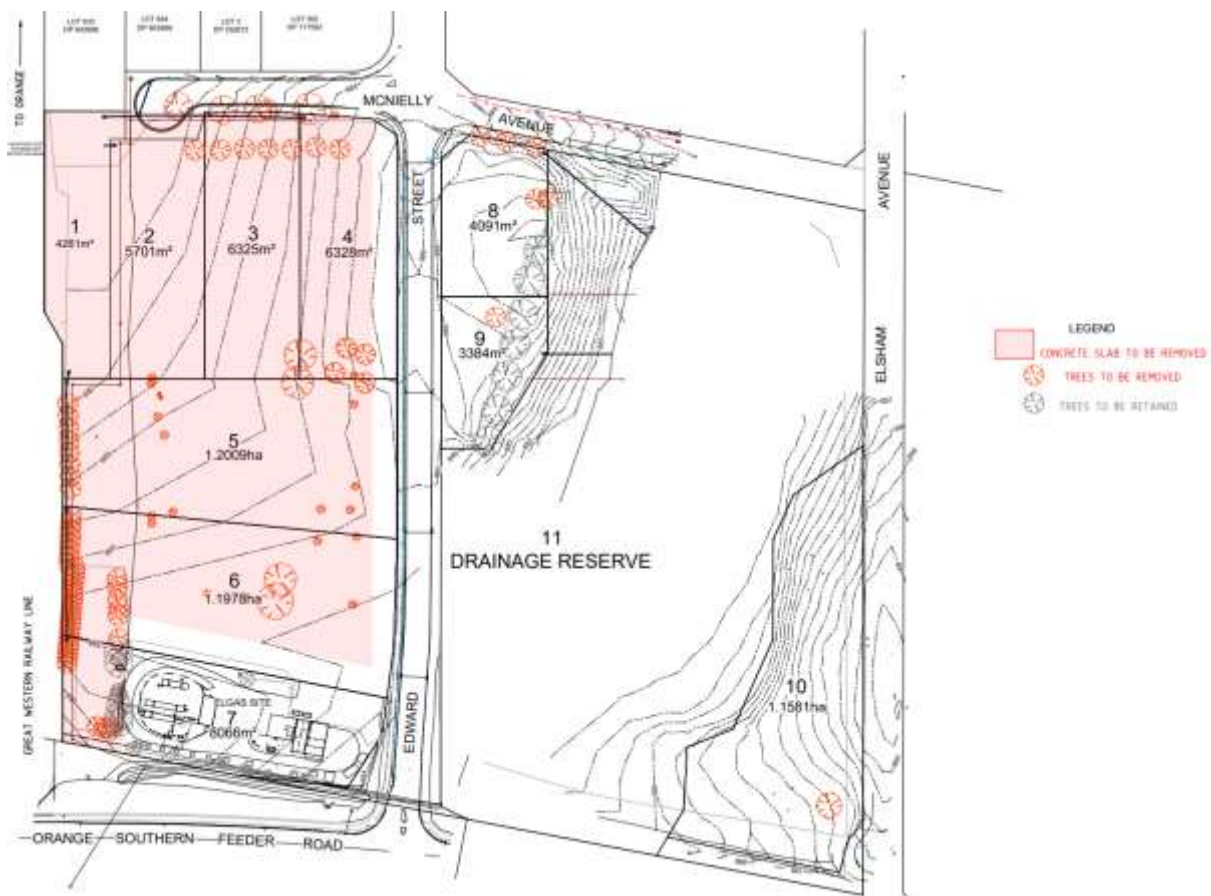


Figure 2 - site plan



**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 (ie the need for a BDAR to be submitted with a DA):

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

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

**Trigger 1**

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

**Trigger 2**

The minimum lot size applying to the land at 3,000m<sup>2</sup> is in the below 1ha category. This allows clearing of up to 2,500m<sup>2</sup> 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 <sup>2</sup>
Heritage Map:	Not a heritage item or conservation area
Height of Buildings Map:	No building height limit
Floor Space Ratio Map:	No floor space limit
Terrestrial Biodiversity Map:	No biodiversity sensitivity on the site
Groundwater Vulnerability Map:	Groundwater vulnerable
Drinking Water Catchment Map:	Not within the drinking water catchment
Watercourse Map:	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 3,000m<sup>2</sup> across the subject site. The smallest lot proposed by the application is 3,379m<sup>2</sup>. While a proposed detention basin for Lot 28 is 4,165m<sup>2</sup>.

**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.

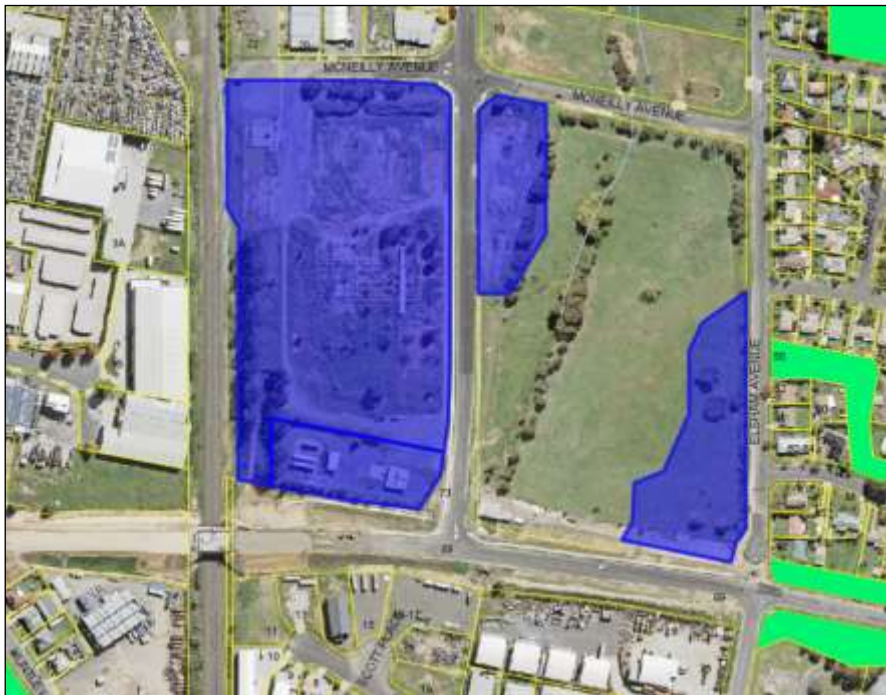
**DESIGNATED DEVELOPMENT**

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 3,379m<sup>2</sup> to 12,000m<sup>2</sup>. 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 3000m<sup>2</sup> 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 1000m<sup>2</sup>.*
- *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’s 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 x 10<sup>-6</sup> 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 ( $50 \times 10^{-6}$  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:

<span style="display:inline-block; width:20px; height:10px; background-color:black;"></span>	Industrial
<span style="display:inline-block; width:20px; height:10px; background-color:purple;"></span>	Sporting Complexes and active open space areas
<span style="display:inline-block; width:20px; height:10px; background-color:yellow;"></span>	Commercial developments
<span style="display:inline-block; width:20px; height:10px; background-color:red;"></span>	Residential developments
<span style="display:inline-block; width:20px; height:10px; background-color:lightgreen;"></span>	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	$50 \times 10^{-6}$	Individual fatality risk levels for industrial sites at levels of 50 in a million per year ( $50 \times 10^{-6}$ per year) should, as a target, be contained within the boundaries of the site.	Yes. The $50 \times 10^{-6}$ per year contour is contained with 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 ( $5 \times 10^{-6}$ 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 ( $1 \times 10^{-6}$ 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 ( $0.5 \times 10^{-6}$ 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  $4.7 \text{ kW/m}^2$  at a frequency of more than 50 chances in a million per year.

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

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  $50 \times 10^{-6}$  p.a. was not generated, indicating that the maximum risks for 7 kPa and 14 kPa were less than  $50 \times 10^{-6}$  p.a.



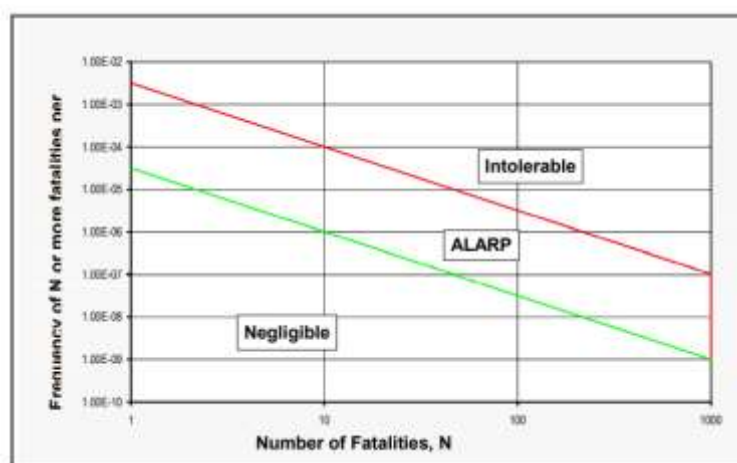


**Figure 11 - Fire Injury Risk (PHA by Arriscar)**

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**



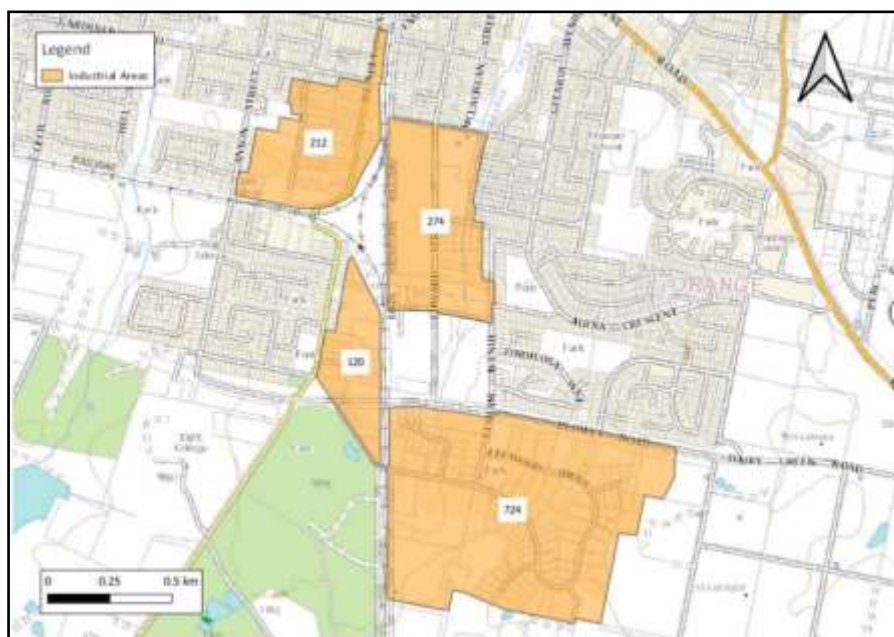
The indicative societal risk criteria reflect these regions as three societal risk bands: negligible, ALARP and intolerable. Below the negligible line, provided other individual criteria are met, societal risk is not considered significant. Above the intolerable level, an activity is considered undesirable, 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 with 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:

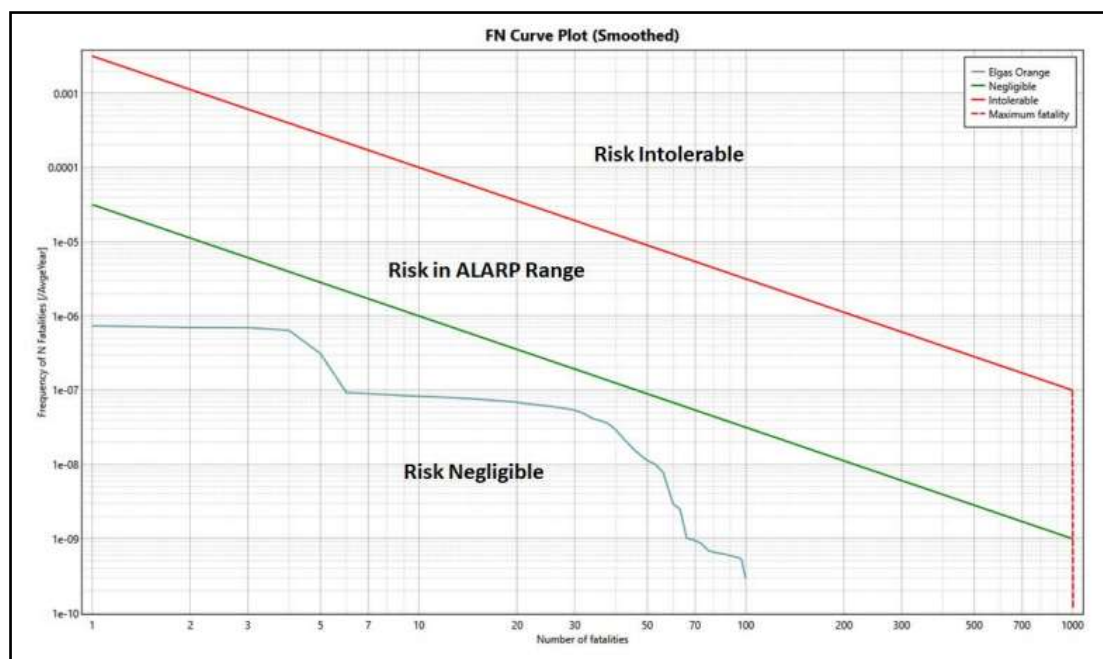


Figure 10 - Societal Risk Curve

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.	<p>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.</p> <p>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.</p>
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.
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.

Issue Category	Objection/Concern	Comment
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.
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 [↓](#)



	<b>ORANGE CITY COUNCIL</b>	
	Development Application No <b>DA 578/2024(1)</b>	
	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.**

**TfNSW 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)**

5

**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

DRAFT

**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 3000m<sup>2</sup>

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.

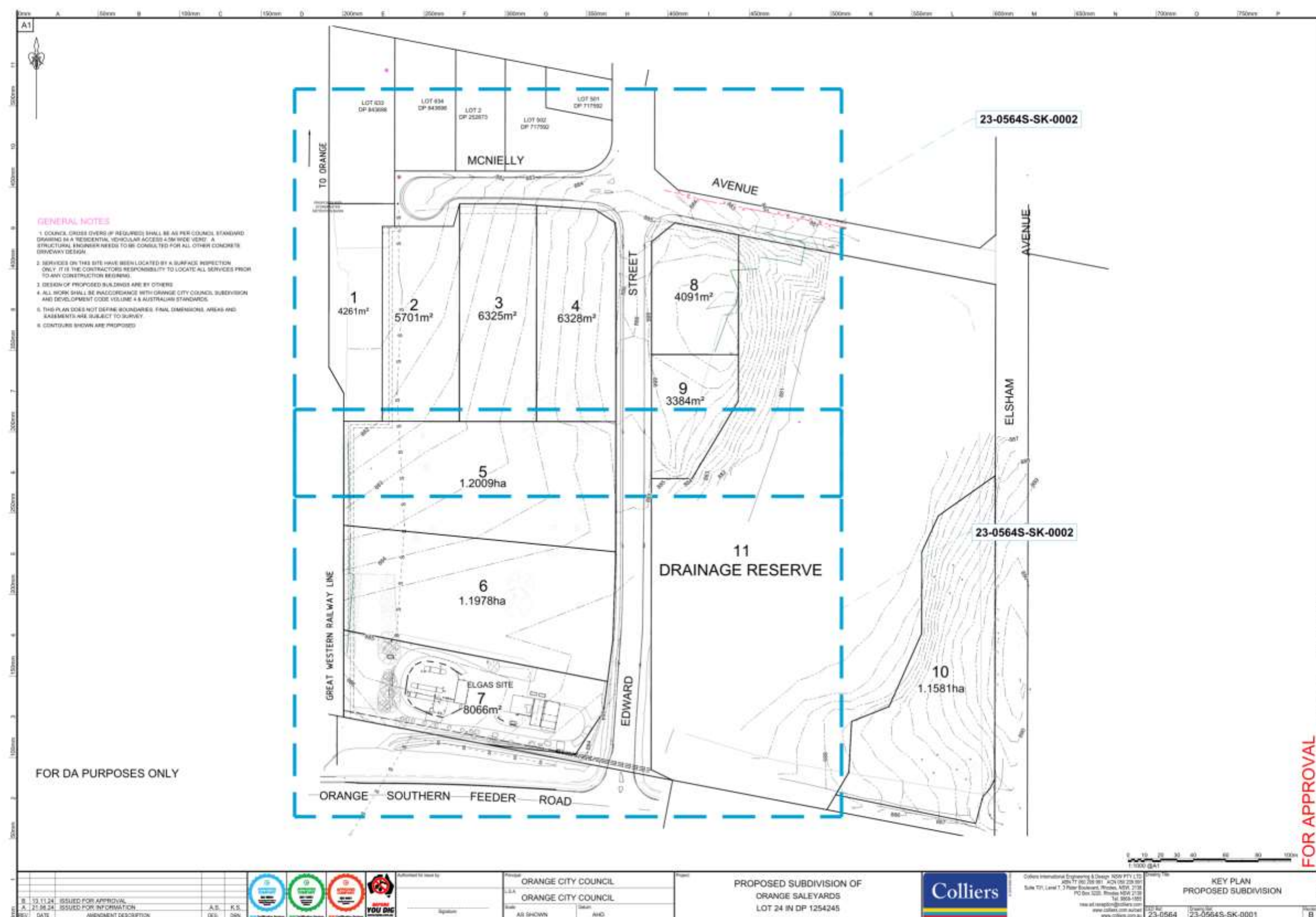
I have concluded that the assessment report has sought to address the relevant provisions of the Environmental Planning and Assessment Act; Orange Local Environment Plan 2011 and Orange Development Control Plan 2004. As part of the process, consultation occurred pursuant to Orange City Council's Community 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**

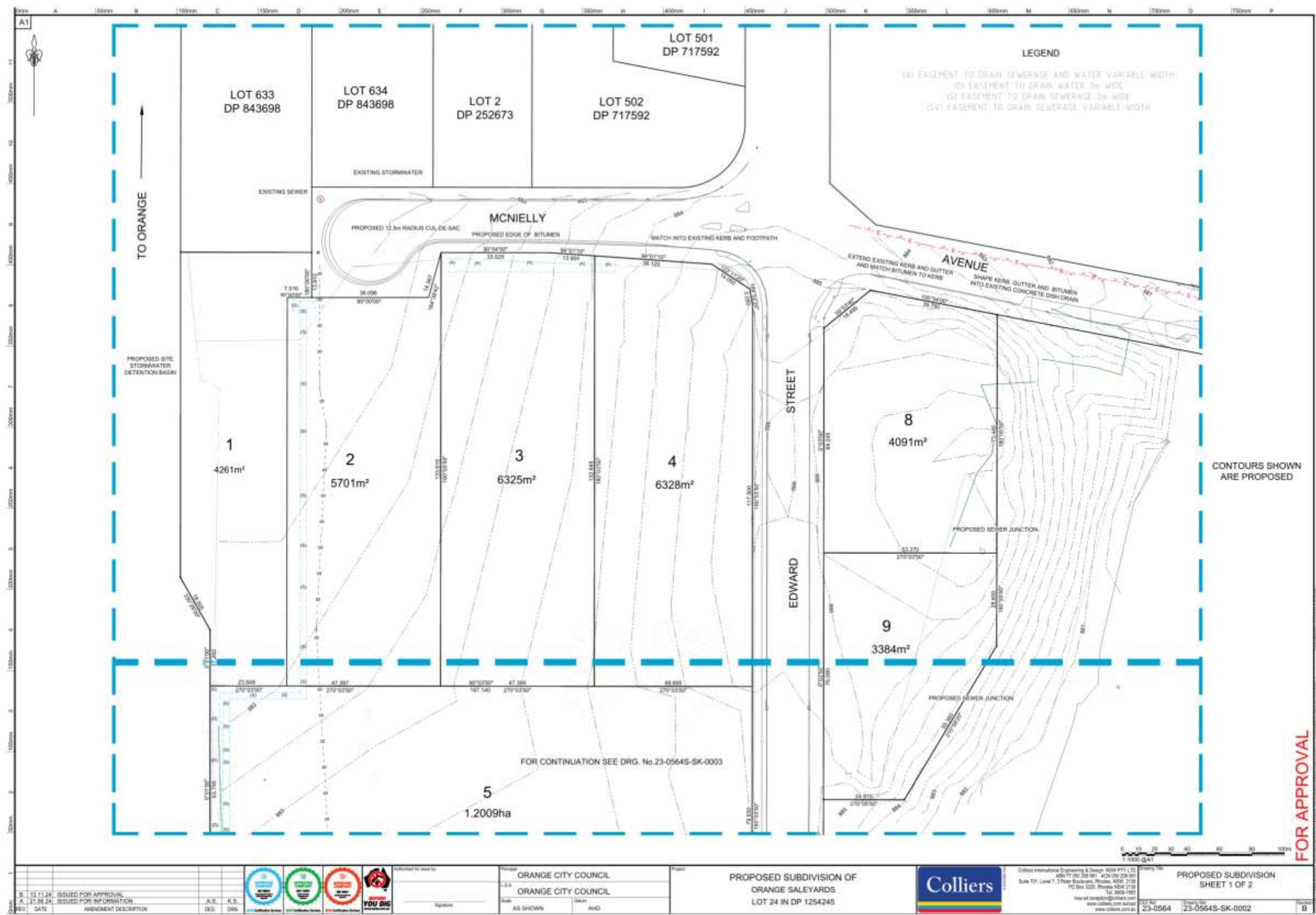
**Blayney Shire Council**

**18 March 2025**

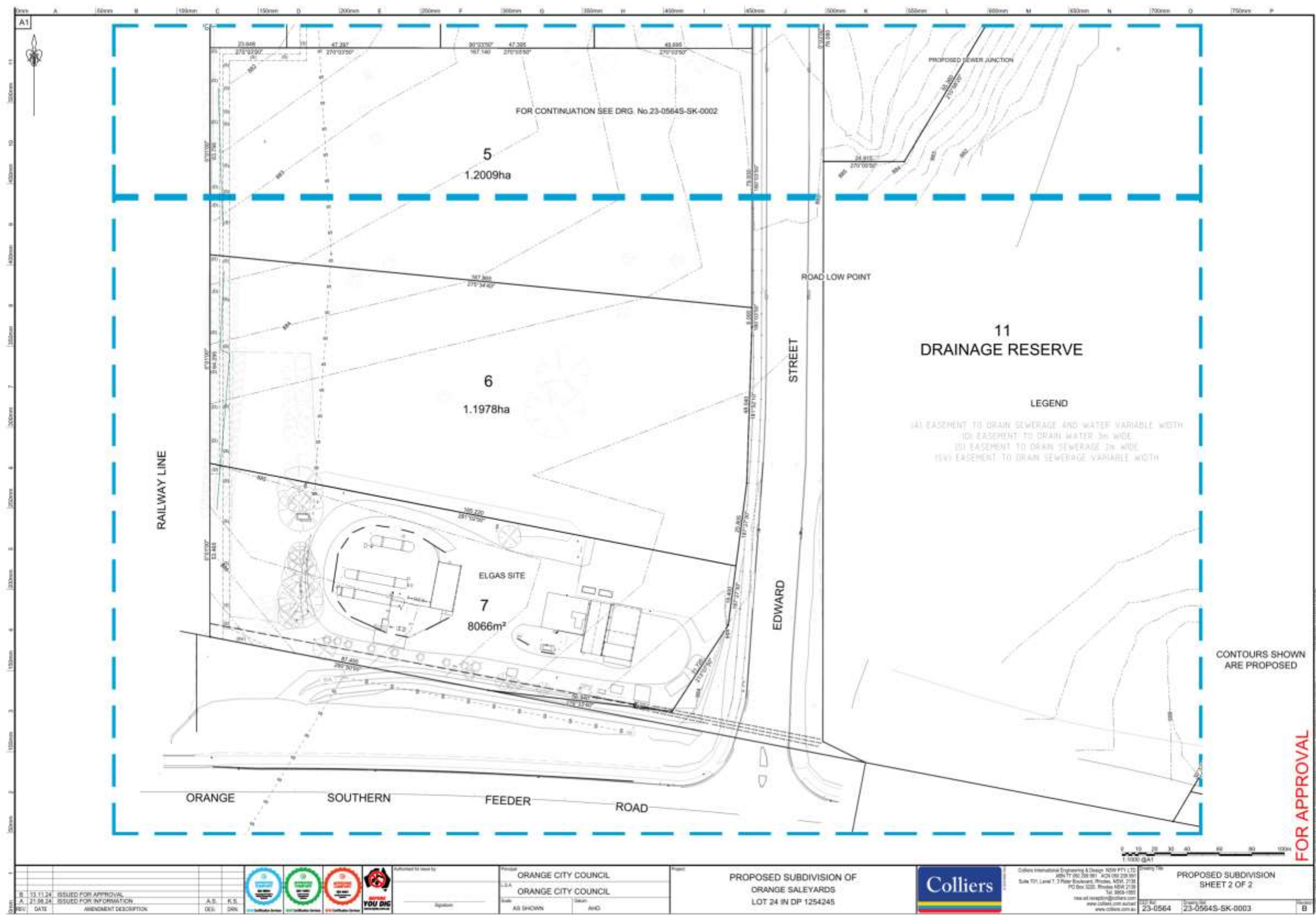
















Submission 1

**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 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

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

PASSED ON 17 FEBRUARY 1997

WATER

GENERAL MANAGER

1. EASEMENT FOR POWERLINE 11.6, 25 & VARIABLE WIDTH

2. ROAD WIDENING 418.8 m<sup>2</sup>

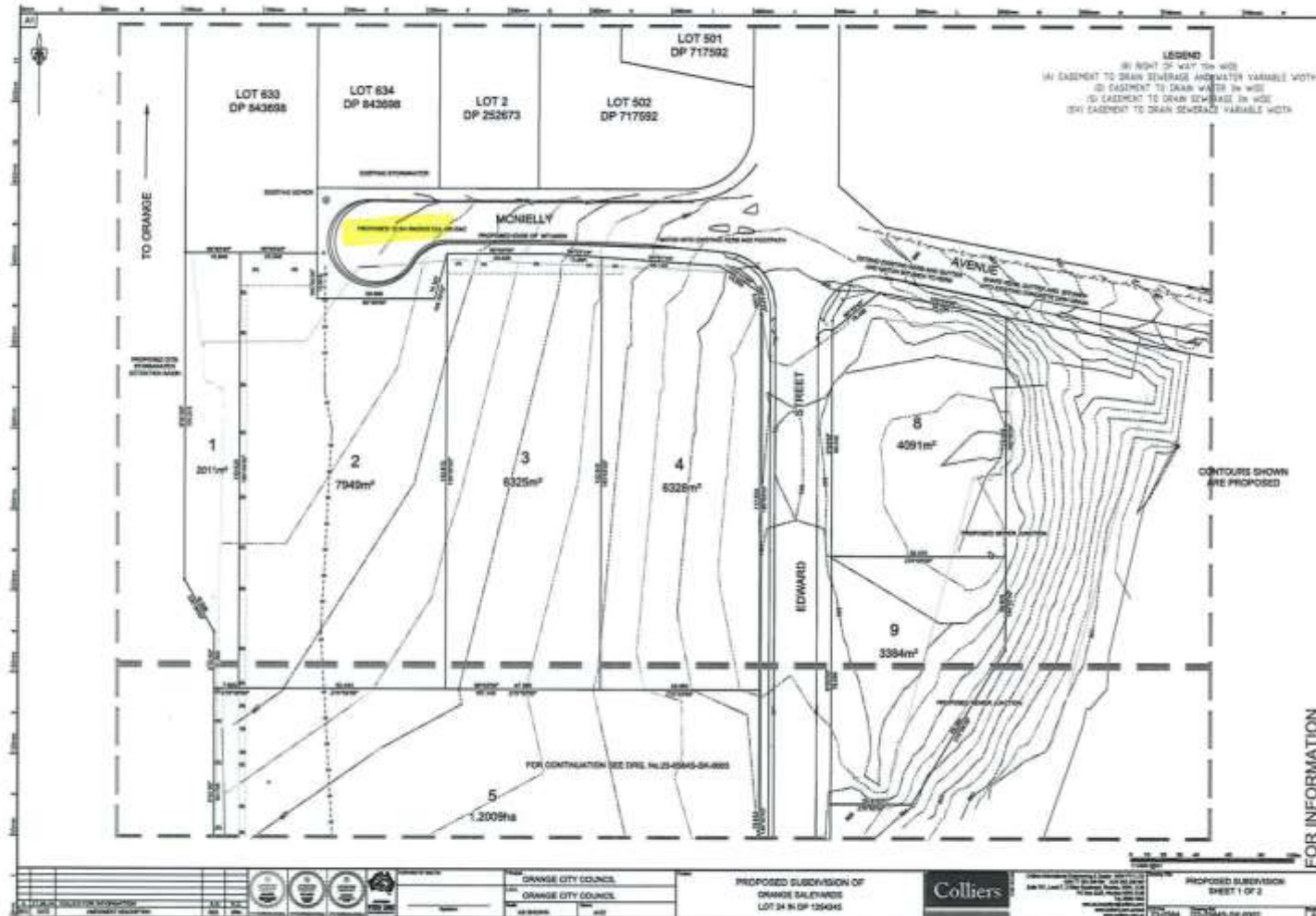
3. EASEMENT TO DRAIN WATER 3 WIDE

4. EASEMENT FOR WATER SUPPLY 3 WIDE

5. RESTRICTION AS TO USER

REFERENCE TABLE

NO.	BEARING	FROM	DIST	REF. PLAN
1	24°55'	SHAWING	3.245	
2	24°55'	SHAWING	3.315	
3	24°55'	SHAWING	3.415	
4	24°55'	SHAWING	3.515	
5	24°55'	SHAWING	3.615	
6	24°55'	SHAWING	3.715	
7	24°55'	SHAWING	3.815	
8	24°55'	SHAWING	3.915	
9	24°55'	SHAWING	4.015	
10	24°55'	SHAWING	4.115	
11	24°55'	SHAWING	4.215	
12	24°55'	SHAWING	4.315	
13	24°55'	SHAWING	4.415	
14	24°55'	SHAWING	4.515	
15	24°55'	SHAWING	4.615	
16	24°55'	SHAWING	4.715	
17	24°55'	SHAWING	4.815	
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26	24°55'	SHAWING	5.715	
27	24°55'	SHAWING	5.815	
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102	24°55'	SHAWING	13.315	
103	24°55'	SHAWING	13.415	
104	24°55'	SHAWING	13.515	
105	24°55'	SHAWING	13.615	
106	24°55'	SHAWING	13.715	
107	24°55'	SHAWING	13.815	
108	24°55'	SHAWING	13.915	
109	24°55'	SHAWING	14.015	
110	24°55'	SHAWING	14.115	
111	24°55'	SHAWING	14.215	
112	24°55'	SHAWING	14.315	
113	24°55'	SHAWING	14.415	
114	24°55'	SHAWING	14.515	
115	24°55'	SHAWING	14.615	
116	24°55'	SHAWING	14.715	
117	24°55'	SHAWING	14.815	
118	24°55'	SHAWING	14.915	
119	24°55'	SHAWING	15.015	
120	24°55'	SHAWING	15.115	
121	24°55'	SHAWING	15.215	
122	24°55'	SHAWING	15.315	
123	24°55'	SHAWING	15.415	
124	24°55'	SHAWING	15.515	
125	24°55'	SHAWING	15.615	
126	24°55'	SHAWING	15.715	
127	24°55'	SHAWING	15.815	
128	24°55'	SHAWING	15.915	
129	24°55'	SHAWING	16.015	
130	24°55'	SHAWING	16.115	
131	24°55'	SHAWING	16.215	
132	24°55'	SHAWING	16.315	
133	24°55'	SHAWING	16.415	
134	24°55'	SHAWING	16.515	
135	24°55'	SHAWING	16.615	
136	24°55'	SHAWING	16.715	
137	24°55'	SHAWING	16.815	
138	24°55'	SHAWING	16.915	
139	24°55'	SHAWING	17.015	
140	24°55'	SHAWING	17.115	
141	24°55'	SHAWING	17.215	
142	24°55'	SHAWING	17.315	
143	24°55'	SHAWING	17.415	
144	24°55'	SHAWING	17.515	
145	24°55'	SHAWING	17.615	
146	24°55'	SHAWING	17.715	
147	24°55'	SHAWING	17.815	
148	24°55'	SHAWING	17.915	
149	24°55'	SHAWING	18.015	
150	24°55'	SHAWING	18.115	
151	24°55'	SHAWING	18.215	
152	24°55'	SHAWING	18.315	
153	24°55'	SHAWING	18.415	
154	24°55'	SHAWING	18.515	
155	24°55'	SHAWING	18.615	
156	24°55'	SHAWING	18.715	
157	24°55'	SHAWING	18.815	
158	24°55'	SHAWING	18.915	
159	24°55'	SHAWING	19.015	
160	24°55'	SHAWING	19.115	
161	24°55'	SHAWING	19.215	
162	24°55'	SHAWING	19.315	
163	24°55'	SHAWING	19.415	
164	24°55'	SHAWING	19.515	
165	24°55'	SHAWING	19.615	
166	24°55'	SHAWING	19.715	
167	24°55'	SHAWING	19.815	
168	24°55'	SHAWING	19.915	
169	24°55'	SHAWING	20.015	
170	24°55'	SHAWING	20.115	
171	24°55'	SHAWING	20.215	
172	24°55'	SHAWING	20.315	
173	24°55'	SHAWING	20.415	
174	24°55'	SHAWING	20.515	
175	24°55'	SHAWING	20.615	
176	24°55'	SHAWING	20.715	
177	24°55'	SHAWING	20.815	
178	24°55'	SHAWING	20.915	
179	24°55'	SHAWING	21.015	
180	24°55'	SHAWING	21.115	
181	24°55'	SHAWING	21.215	
182	24°55'	SHAWING	21.315	
183	24°55'	SHAWING	21.415	
184	24°55'	SHAWING	21.515	
185	24°55'	SHAWING	21.615	
186	24°55'	SHAWING	21.715	
187	24°55'	SHAWING	21.815	
188	24°55'	SHAWING	21.915	
189	24°55'	SHAWING	22.015	
190	24°55'	SHAWING	22.115	
191	24°55'	SHAWING	22.215	
192	24°55'	SHAWING	22.315	
193	24°55'	SHAWING	22.415	
194	24°55'	SHAWING	22.515	
195	24°55'	SHAWING	22.615	
196	24°55'	SHAWING	22.715	
197	24°55'	SHAWING	22.815	
198	24°55'	SHAWING	22.915	
199	24°55'	SHAWING	23.015	
200	24°55'	SHAWING	23.115	
201	24°55'	SHAWING	23.215	
202	24°55'	SHAWING	23.315	
203	24°55'	SHAWING	23.415	
204	24°55'	SHAWING	23.515	
205	24°55'	SHAWING	23.615	
206	24°55'	SHAWING	23.715	
207	24°55'	SHAWING	23.815	
208	24°55'	SHAWING	23.915	
209	24°55'	SHAWING	24.015	
210	24°55'	SHAWING	24.115	
211	24°55'	SHAWING	24.215	
212	24°55'	SHAWING	24.315	
213	24°55'	SHAWING	24.415	
214	24°55'	SHAWING	24.515	
215	24°55'	SHAWING	24.615	
216	24°55'	SHAWING	24.715	
217	24°55'	SHAWING	24.815	
218	24°55'	SHAWING	24.915	
219	24°55'	SHAWING	25.015	
220	24°55'	SHAWING	25.115	
221	24°55'	SHAWING	25.215	
222	24°55'	SHAWING	25.315	
223	24°55'	SHAWING	25.415	
224	24°55'	SHAWING	25.515	
225	24°55'	SHAWING	25.615	
226	24°55'	SHAWING	25.715	
227	24°55'	SHAWING	25.815	
228	24°55'	SHAWING	25.915	
229	24°55'	SHAWING	26.015	
230				



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

9<sup>TH</sup> 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 is 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 thorough 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 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.

#### Finial Statement

Many of the assertion 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 a left forgotten in terms of redevelopment is a blessing and it needs to be seen in the context of wellbeing for the floral/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.

**2.3 DEVELOPMENT APPLICATION DA 669/2024(1) - 357 AND 361 PINNACLE ROAD**

RECORD NUMBER: 2025/567

AUTHOR: Dhawala Ananda, Town Planner

**EXECUTIVE SUMMARY**

<b>Application lodged</b>	21 October 2024 (108 stop days)
<b>Applicant/s</b>	Peter Basha Planning & Development Pty Ltd
<b>Owner/s</b>	Ryan Cantrill (scott@allmouldplastics.com.au)
<b>Land description</b>	56/-/DP867205 and 57/-/DP867205
<b>Proposed land use</b>	Proposed Urban Residential Subdivision (22 residential lots and public reserve); New Roads; Demolition; and Tree Removal
<b>Value of proposed development</b>	\$20,000

The development application seeks consent to create 22 residential lots, a public reserve, and new public roads. The proposal relates to land described as 357 and 361 Pinnacle Road, Orange (refer to Figure 1 below). The subdivision is proposed to be delivered in two stages. Stage 1 will involve the creation of three lots, excising the existing dwellings onto separate lots (Lots 1 and 9) and creating Lot 23 as a vacant englobo lot. Stage 2 will include the further subdivision of Lot 23 into vacant residential parcels Lots 2-8 and 10-22 along with the dedication of land as public reserve.

Additionally, the subdivision involves the construction of a new sealed road with concrete kerb and gutter, extending from Pinnacle Road to provide access to the proposed lots. Essential infrastructure works are also included in the application involving the extension of reticulated sewer and town water supply, installation of a stormwater drainage system designed to meet Council's standards, and provision of telecommunication and electricity services. General earthworks, civil works, and land shaping will also be undertaken as part of the subdivision.

The application will be assessed against relevant planning provisions, including zoning requirements, infrastructure capacity, environmental impacts, and compliance with Council's subdivision standards. Please note that the Applicant has sought a departure to the DCP concept layout where an alternate access connecting with Pinnacle Road is proposed for Council's consideration.

Development of these parcels are also subject to *Clause 4.6 - exceptions to development standards* of the Orange Local Environmental Plan 2011 (the LEP). The Applicant is requesting a variation to the Minimum Lot Size development standards contained within Orange LEP 2011 for certain lots within the proposal. These variations have been addressed in the body of this report.

The dedication of an area of public reserve to Orange City Council is subject to a Letter of Offer from the Applicant to enter into a Planning Agreement. The Letter of Offer proposes the dedication of the encumbered land free of charge to Orange City Council. The draft Notice of Determination contains conditions requiring the Applicant to prepare and implement a Planning Agreement in accordance with the Terms of Offer made in the letter to Council dated 16 April 2025. The Planning Agreement will require post-consent notification. The attached recommendation requests Council to authorise the CEO to finalise the Planning Agreement following the required exhibition period in the event of no submissions. Once the Planning Agreement is formally entered into the Applicant will be required to arrange for the Planning Agreement to be registered on the Title of Proposed Lot 23 prior to the registration of lots proposed in Stage 2. Dedication of the said land will occur in Stage 2 of the development.



## 2.3 Development Application DA 669/2024(1) - 357 and 361 Pinnacle Road

The proposed development was advertised and notified in accordance with the Orange Community Participation Plan 2019 and one submission was received. The matters raised in the submission must be considered in the determination of this application. The matters raised have been addressed in the body of this planning report

The proposal has been evaluated pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979* and is considered to be suitable. Approval of the application is recommended, subject to conditions of consent in the attached Notice of Determination.



Figure 1 - locality plan



Figure 2 - site context



**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 Development Application seeks consent to create 22 residential lots, a public reserve and new public roads. The proposal relates to land described as 357 and 361 Pinnacle Road, Orange (refer to Figure 1 below). The subdivision is proposed to be delivered in two stages. Stage 1 will involve the creation of three lots, excising the existing dwellings onto separate lots (Lots 1 and 9) and creating Lot 23 as a vacant englobo lot. Stage 2 will include the further subdivision of Lot 23 into vacant residential parcels Lots 2-8 and 10-22, along with the dedication of land as public reserve.

It is noted that the Applicant has sought a departure to the DCP concept layout where an alternate access connecting with Pinnacle Road is proposed for Council's consideration. The variation is considered to be acceptable in this case. Development of these parcels are also subject to *Clause 4.6 - exceptions to development standards* of the Orange Local Environmental Plan 2011 (the LEP). The Applicant is requesting a variation to the Minimum Lot Size development standards contained within Orange LEP 2011 for certain lots. These variations have been addressed in the body of this planning report.

The dedication of an area of public reserve to Orange City Council is subject to a Letter of Offer from the Applicant to enter into a Planning Agreement. The Letter of Offer proposes the dedication of the encumbered land free of charge to Orange City Council. This is a good deal for Orange City Council and will ensure that the extensive network of open space for the Shiralee residential release area is accommodated in a manner consistent with the DCP.

The proposed development was advertised and notified in accordance with the Orange Community Participation Plan 2019. One (1) submission received. The matters raised in the submission must be considered by Council in determining this application. The matters raised have been addressed in the body of this report.

The proposal has been evaluated by staff pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979* and is considered to be suitable. Approval of the application is recommended by staff, subject to conditions of consent in the attached 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**

The Applicant has submitted a Letter of Offer to enter into a Planning Agreement with Orange City Council which proposes the dedication of an area of Public Open Space free of charge to Orange City Council. The land is affected by easements for drainage and stormwater retention. The land provides the connection to existing open space along Blackmans Swamp Creek and will ensure that the network of open space is delivered in a manner consistent with the DCP with limited financial impact to Council

**POLICY AND GOVERNANCE IMPLICATIONS**

Nil

**RECOMMENDATION**

- 1 That Council consents to development application DA 669/2024(1) for *Subdivision (22 lot Torrens title), Demolition (tree removal) and New Roads* at Lots 56 and 57 DP 867205 - 357 and 361 Pinnacle Road, Orange pursuant to the conditions of consent in the attached Notice of Determination.**
- 2 That Council authorises the CEO to execute the Planning Agreement in a manner consistent with the Terms of Offer made in the letter to Orange City Council dated 16 April 2015 if public exhibition results in no public response.**

**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**

Council's consent is sought for urban residential subdivision of land at 357 and 361 Pinnacle Road. The proposal involves creation of 22 residential lots, a public reserve, and new public roads.

The proposed development is staged, where Stage 1 involves the following -

- Creation of three lots as depicted in Figure 3 below.
- Proposed Lot 1 and Lot 9 will excise the existing dwellings and retain their existing access and servicing arrangements.
- Proposed Lot 23 will be created as a vacant englobo lot.

The Applicant also requests that Council allow the servicing and access works for proposed Lot 23 to be deferred; and allow the Subdivision Certificate to be released under the following terms of Council Policy D16/10684 - *Subdivision in a Greenfield Urban Development Area*.

## 2.3 Development Application DA 669/2024(1) - 357 and 361 Pinnacle Road



Figure 3 - proposed subdivision Stage 1

Stage 2 of the proposed subdivision involves the following -

- The subdivision of approved Lot 23 to create Lots 1 to 22 as vacant residential parcels as depicted in Figure 4 below.
- Tree removal.
- Road and civil construction works.
- Dedication of the public reserve free of charge to Orange City Council consistent with the Letter of Offer received from the Applicant dated 15 April 2025 to enter into a Planning Agreement.



Figure 4 - proposed subdivision Stage 2

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

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

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

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

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

The subject land is not identified on the biodiversity values map under Clause 7.3 of the *Biodiversity Conservation Regulation 2017*.

The proposed development includes the removal of vegetation from the site, including an area of approximately 250m<sup>2</sup>. The proposed tree removal will not consist of native species, the clearing will not exceed the regulatory threshold of 0.25ha. As a result, the development does not trigger the Biodiversity Offset Scheme (BOS), and a Biodiversity Development Assessment Report (BDAR) is not required.

The proposal is not likely to have a significant effect on threatened species, nor impact endangered ecological communities:

- the site demonstrates a high degree of disturbance from its natural state due to historical agricultural practices
- the habitat value of the site is considered low to moderate
- due to the zoning provisions allowing urban residential expansion, the site does not have a realistic potential to regenerate into a habitat of significant ecological value
- the potential to attract less common native species is considered minimal.

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

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

**Planning for Bush Fire Protection - Clause 4.14 Environmental Planning and assessment Act 1979**

The subject lots are identified within vegetation Category 3 of the bush fire prone land map (refer to figure below). Subdivision on bushfire prone land is defined as integrated development under Section 100B of the Rural Fires Act 1997, requiring a Bush Fire Safety Authority (BFSa) from the NSW Rural Fire Service (RFS) prior to determination of an application

For the purposes of meeting the requirements under Chapter 5 of PBP for Subdivision, potential building areas are identified on any proposed residential lots not currently containing an existing dwelling.

The outcome of the Bushfire Assessment Report shows that all proposed lots will have adequate access and compliant Asset Protection Zone's (APZ's), not exposed to radiant heat levels exceeding 29kW/m<sup>2</sup> (BAL-29). The APZ recommendations highlighted in the Bushfire Assessment Report states that a 12m APZ on the northern boundary is required for proposed Lot 6 and for Lot 6 to be managed as an Inner Protection Area (IPA).

The Development Application was referred to the Rural Fire Service (RFS) and the General Terms of Approval was issued with conditions in relation to the APZ with managed Inner Protection Areas for the entirety of the proposed residential lots. In particular a Section 88B is required to be registered for the proposed Lot 6 to require the provision of a temporary APZ which has the effect of prohibiting the construction of buildings other than Class 10b structures within the lot for a distance of 12m measured from the northern site boundary, construction standards, Access - Public Roads, Water and Utility Services and Landscaping Assessment.

The conditions have been inserted with the attached Notice of Determination to ensure safe operational access and adequate protection for emergency services, support resident evacuation, minimise bush fire risk to structures, and maintain defensible space with reduced fuel loads to limit radiant heat and prevent direct flame contact.

#### **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,*
- (e) *to provide a range of housing choices in planned urban and rural locations to meet population growth,*

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

##### **Clause 1.6 - Consent Authority**

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

**Clause 1.7 - Mapping**

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

<b>Land Zoning Map:</b>	Land zoned R1 General Residential; R2 Low Density Residential and RE1 Public Recreation;
<b>Lot Size Map:</b>	Minimum Lot Size 2400m <sup>2</sup> , 2000m <sup>2</sup> , 700m <sup>2</sup> and 200m <sup>2</sup>
<b>Heritage Map:</b>	Not a Heritage Item or conservation area
<b>Height of Buildings Map:</b>	No building height limit
<b>Floor Space Ratio Map:</b>	No floor space limit
<b>Terrestrial Biodiversity Map:</b>	No biodiversity sensitivity on the site
<b>Groundwater Vulnerability Map:</b>	Groundwater vulnerable
<b>Drinking Water Catchment Map:</b>	Not within the drinking water catchment
<b>Watercourse Map:</b>	Near to a defined watercourse – Blackmans Swamp Creek
<b>Urban Release Area Map:</b>	Not within an urban release area
<b>Obstacle Limitation Surface Map:</b>	No restriction on building siting or construction
<b>Additional Permitted Uses Map:</b>	No additional permitted use applies
<b>Flood Planning Map:</b>	Not within a flood planning area
<b>Bush Fire Map:</b>	Within bushfire prone land

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.*

The subject land is affected by easements for drainage and stormwater detention. These areas largely match the area of open space that is now proposed to be dedicated to Orange City Council. Council staff are not aware of the title of the subject properties being affected by any of the remaining matters listed 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 sites are located within multiple zones, including R1 General Residential; R2 Low Density Residential and RE1 Public Recreation zone. The proposed development is defined as a 'subdivision of land' and 'demolition' under OLEP 2011.

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

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

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

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

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

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

**Clause 2.3** of LEP 2011 references the Land Use Table and Objectives for each zone in LEP 2011. These objectives for land zoned **R1 General Residential** are as follows:

**Objectives of zone R1 General Residential**

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

The proposed subdivision will not be contrary to the relevant R1 zone objectives; and will facilitate future development of the subject land consistent with the objectives.

**Objectives of zone R2 Low Density Residential**

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

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

**Objectives of zone RE1 Public Recreation**

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To ensure development is ordered in such a way as to maximise public transport patronage and encourage walking and cycling in close proximity to settlement.*
- *To ensure development along the Southern Link Road has alternative access.*

The proposed subdivision will not be contrary to the relevant RE1 zone objectives; and will facilitate future development of the subject land consistent with the objectives. An area of public open space is proposed in Stage 2 of the development. The Applicant has provided Council with a Letter of Offer to enter into a Planning Agreement which indicates that the open space in question would be dedicated to Council free of charge. Attached are Conditions of Consent that provide the preparation of the Planning Agreement, registration of such on Title and the dedication of land in Stage 2. The proposed open space is consistent with the intended open space network envisaged under the DCP.

**Clause 2.6 - Subdivision - Consent Requirements**

Clause 2.6 is applicable and states:

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

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

**Clause 2.7 - Demolition Requires Development Consent**

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 demolition and the Applicant is seeking the consent of Council. As indicated in the submitted plans, the existing shed within proposed Lot 2 will be removed. There is also a series of above ground rainwater tanks located at the rear of each existing dwelling that will be relocated within the respective allotment.

The proposal involves the removal of several pines/conifer species and other exotic species from within the subject land. In proposed Lot 13, an established Eucalypt tree will need to be removed, along with several smaller native trees that were planted as part of the general site landscaping. The proposed tree removal will allow for the construction of the new public roads as well as to enable each lot to accommodate a future dwelling with useable private open space and solar access. The trees to be removed from the site are primarily introduced species and do not represent habitat for threatened or endangered species, nor do they form an integral element of the streetscape or setting. The two large Eucalypt trees located within proposed Lot 10 are to be retained as part of the development.

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

**Part 3 - Exempt and Complying Development**

The application is not exempt or complying development.

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

This clause requires the subdivision of land to be equal to or greater than the size nominated for the land under the Minimum Lot Size Map.

In relation to this site, the map nominates three (3) separate minimum lot size (MLS) zones which are identified as follows:

- 2,400m<sup>2</sup> for the western section of the site (shaded red).
- 2,000m<sup>2</sup> for north-eastern section of the site (shaded red).
- 700m<sup>2</sup> in the central and southern section of the site (shaded brown).
- 200m<sup>2</sup> in the south-eastern corner (shaded light blue).



Figure 5 - Orange LEP 2011 Lot Size Map



Figure 6 - proposed subdivision overlay on Lot Size Map

With reference to Figures 5 and 6, the following deviations are proposed:

- Lot 2 does not satisfy the 2,400m<sup>2</sup> MLS.
- Lots 3 and 4 do not satisfy the 700m<sup>2</sup> MLS.
- Lot 5 does not satisfy the 700m<sup>2</sup> or 2,000m<sup>2</sup> MLS on its east fringe.
- Lot 6 satisfies the 700m<sup>2</sup> MLS but not the 2,000m<sup>2</sup> MLS on its east fringe.
- Lot 7 does not satisfy the 2,000m<sup>2</sup> MLS.
- Lot 14 satisfies the 700m<sup>2</sup> MLS but not the 2,000m<sup>2</sup> MLS on its north fringe.
- Lots 18 and 19 satisfy the 200m<sup>2</sup> MLS but the rear fringe of these lots is also affected by the 700m<sup>2</sup> MLS and technically do not satisfy it.

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

#### **Clause 4.6 - Exceptions to Development Standards**

Clause 4.6 exceptions to development standards of the Orange Local Environmental Plan 2011 provides flexibility in the application of certain development standards in particular circumstances, where compliance with a development standard is unreasonable and unnecessary. This provision applies to the current application due to proposed exceedances in the prescribed Minimum Lot Size standards.

In determining whether development consent may be granted, the Consent Authority must consider a written objection by the Applicant to the development standard. The written objection must demonstrate:

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

#### **Concurrence Requirement for Development Standards Variations**

Previously, Council could grant consent to contraventions of development standards only with the concurrence of the Planning Secretary. Under Section 55 of the Environmental Planning and Assessment Regulation 2021, Planning Circular PS 20-002 permitted the Secretary's concurrence to be assumed for exceptions to development standards under Clause 4.6 of the Standard Instrument Local Environmental Plan (SILEP) or similar provisions, in most cases.

Planning Circular PS 20-002 has since been repealed. The *Guide to Varying Development Standards* (November 2023) eliminates the formal concurrence requirement and replaces it with a monitoring and reporting framework managed through the NSW Planning Portal. This change formalises the previous practice, where the Secretary's concurrence was largely assumed.

The updated guidelines allow councils to grant consent under delegated authority for developments contravening a standard if the variation is 10% or less. Variations exceeding 10% must be determined by the relevant local planning panel in metropolitan areas, while in regional areas, the responsibility rests with the elected council. As the proposed variations exceed 10%, the matter will be determined by Council/PDC.

Proposed Variations to MLS Standards

The development standard for which the variation is sought relates to Clause 4.1 Minimum Subdivision Lot Size. The circumstances relating to the proposed variation are summarised in the table below:

Lot	MLS	MLS being varied	Proposed Lot Size
2	2,400m <sup>2</sup>	2,400m <sup>2</sup>	2,351m <sup>2</sup>
3	700m <sup>2</sup> and 2,400m <sup>2</sup>	700m <sup>2</sup> and 2,400m <sup>2</sup>	542m <sup>2</sup>
4	700m <sup>2</sup>	700m <sup>2</sup>	542m <sup>2</sup>
5	700m <sup>2</sup> and 2,000m <sup>2</sup>	700m <sup>2</sup> and 2,000m <sup>2</sup>	542m <sup>2</sup>
6	700m <sup>2</sup> and 2,000m <sup>2</sup>	2,000m <sup>2</sup>	1,320m <sup>2</sup>
7	2,000m <sup>2</sup>	2,000m <sup>2</sup>	1,740m <sup>2</sup>
14	700m <sup>2</sup> and 2,000m <sup>2</sup>	2,000m <sup>2</sup>	700m <sup>2</sup>
18	200m <sup>2</sup> , 700m <sup>2</sup> , and 2,000m <sup>2</sup>	2,000m <sup>2</sup> and 700m <sup>2</sup>	525m <sup>2</sup>
19	200m <sup>2</sup> and 700m <sup>2</sup>	700m <sup>2</sup>	505m <sup>2</sup>

The percentage variation of the development standard is listed in the table below:

Lot	MLS being varied	Proposed Lot Size	Percentage Variation
2	2,400m <sup>2</sup>	2,351m <sup>2</sup>	2%
3	700m <sup>2</sup> and 2,400m <sup>2</sup>	542m <sup>2</sup>	23% on 700m <sup>2</sup> 77% on 2,400m <sup>2</sup>
4	700m <sup>2</sup>	542m <sup>2</sup>	23%
5	700m <sup>2</sup> and 2,000m <sup>2</sup>	542m <sup>2</sup>	23% on 700m <sup>2</sup> 73% on 2,000m <sup>2</sup>
6	2,000m <sup>2</sup>	1,320m <sup>2</sup>	34%
7	2,000m <sup>2</sup>	1,740m <sup>2</sup>	13%
14	2,000m <sup>2</sup>	700m <sup>2</sup>	65%
18	2,000m <sup>2</sup> and 700m <sup>2</sup>	525m <sup>2</sup>	25% on 700m <sup>2</sup> 74% on 2,000m <sup>2</sup>
19	700m <sup>2</sup>	505m <sup>2</sup>	28%

The Applicant seeks a variation in the MLS of the above-listed lots due to discrepancies in MLS mapping compared to the actual site conditions.

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

- The submission states that the development standard is unreasonable or unnecessary in the circumstances and highlights the specific site constraints that make adherence to the standard impractical. With the given MLS, a standard subdivision layout of the lots is considered to be unachievable.
- It demonstrates that the intent of the control can still be achieved despite the variation.
- The proposal maintains that the variation allows the development to meet the objectives of the standard.
- It explains how the proposed development aligns with broader strategic planning goals within the Shiralee Area through provisions of orderly and economic development.
- The underlying objective of the development standard would not necessarily be compromised if compliance with the MLS were required. However, strict adherence to the nominated MLS could result in a subdivision that fails to provide a diverse range of lot sizes that align with the availability of services in the area, as encouraged by Objective (e) of Clause 4.1 of the LEP. In this regard, enforcing compliance with the MLS may, in fact, hinder the achievement of this objective.

Furthermore, the proposal is considered to align with the other objectives of the development standard, as outlined in Section 3.5.

- The proposal is described to maintain or enhance neighbourhood character, visual amenity, and privacy.
- Site-specific planning justifications to support the variation such as objectives of the R1 and R2 zones are satisfied, does not compromise the aims and principles of the OLEP 2011, proposed lot size is commensurate with the predominant and intended subdivision pattern along Pinnacle Road and addresses both the existing and future context of the streetscape and housing needs are provided.
- It outlines unique circumstances that warrant flexibility in the application of the development standard.
- The submission explains how the variation contributes to a better planning outcome compared to strict compliance where the pattern of the subdivision will otherwise result in inconsistent lots compared to the emerging character of the Shiralee Area.
- It argues that the development will contribute positively to the area by providing efficient use of the land and each lot is oriented in suitable configuration to enable future residential development to achieve the necessary planning outcomes such as solar access, privacy, private open space, overshadowing and residential amenity for future occupants whilst minimising impacts on neighbouring lots.
- The departure does not compromise the ability for future development to provide housing which meets or exceeds the outcomes in the Shiralee DCP.
- The proposed variation aligns with the planned and emerging development pattern for Shiralee, promoting a more efficient use of roads and utility services for public benefit.



It enables a sustainable lot yield without compromising amenity while enhancing housing diversity, affordability, and availability. No significant public disadvantages have been identified, and the development will have no material impact on the streetscape, character, built form, or surrounding properties. Clause 4.6(1) recognizes the need for flexibility, acknowledging that strict adherence to standards may not always serve the broader public interest.

The proposed subdivision will be in the public interest, as follows:

- The subdivision supports population growth in designated urban expansion areas, ensuring land is developed in a planned and sustainable manner.
- The proposal maximizes the use of existing roads, utility networks, and public services.
- The provision of varied lot sizes enables a mix of housing types, catering to different income levels and lifestyle needs within the community.
- The subdivision design incorporates appropriate setbacks, landscaping, and open space to maintain visual appeal and neighbourhood character.
- Allowing a variation to the MLS ensures the subdivision remains functional and adaptable to future community needs without compromising planning principles.
- The development will not create undue traffic congestion, strain on local services, or adverse impacts on existing residents.

The proposed departure from the nominated development standard is not likely to result in an unacceptable precedent for future development given the particular circumstances of the subject land.

Based on these considerations, the proposed non-compliance is deemed acceptable as there are sufficient environmental planning grounds to justify the deviation from the Minimum Lot Sizes for the subject sites.

### **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 lots are 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 dwellings for residential land use.

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 Applicant has suitably demonstrated that the variation sought in this case will continue to facilitate an adequate subdivision layout without adversely compromising the standard of residential amenity within the subject land and on adjoining land. The variation does not cause the development to contravene the relevant Planning Outcomes in *Shiralee DCP 2015*. It is considered that the future character of the locality can accommodate the proposed development without disrupting emerging and planned development form in the broader Shiralee area. It is considered that the proposed subdivision can satisfy the relevant aims, objectives, and planning outcomes of the LEP and DCP. The proposed lots are not incompatible with the desired future character of the locality.

**Criteria 3**

The underlying objective of the development standard would not necessarily be thwarted if compliance with the development standard 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**

Clause 4.6 provides a mechanism for the consideration of a variation of development standards where it can be demonstrated that the standard is unreasonable or unnecessary. The development standard cannot be said to be abandoned. The relevant planning provisions suggests that a departure from the standard may be warranted in some circumstances. In this regard the Shiralee DCP refers to the potential to vary lot sizes and types (Section 1.8 Exceptional Circumstances). If a variation to lot size and type can be justified under the DCP, it follows that a variation of the MLS in the LEP may also be contemplated. The proposal provides for a superior development outcome and is supported in this case.

**Criteria 5**

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

**Part 5 - Miscellaneous Provisions****5.10 - Heritage Conservation**

**Figure 7 - proposed development in the vicinity of the Heritage Items**

The subject site at 357 and 361 Pinnacle Road is located in the vicinity of the following Heritage Items, but the sites are not listed as a Heritage Item.

1. *Heritage Item 163 is to the west on the opposite side of Pinnacle Road - Towac Park Racecourse - timber grandstand, pavilion and entry avenue.*

The Heritage Item 163 is identified with local significance - *the racecourse retains the character established by the perimeter windbreak planting, the long driveway, the track and the brick and timber Victorian grandstand and ticket booth.* The history of the site marks one of the major recreational sites in the region, founded when horses were the major form of transport and racing was a primary recreation, business and gambling opportunity.

2. *Heritage Item I188 is to the north west on the opposite side of Pinnacle Road - House and shed.*

The Heritage Item I188 is identified with local significance - *A rare example of a double fronted house with hipped iron roof and bull nose verandah with cast iron decoration, retaining the distinctive character including the rendered banding and window surrounds and the large extended brick shed with iron roof to the rear of the residence.* The historical significance is that the building group marks the development of the Pinnacle area for intensive farming and agriculture.

3. *Heritage Item I58 is to north on the opposite side of the Orange-Broken Hill rail corridor -- CSR Readymix site - Bluestone Quarry.*

The Heritage Item I58 is identified with local significance *The major source of the town's building stone, especially for base course and trimming. It is the source for all the bluestone kerb and guttering within the city. It is of value as a source of bluestone for repair work and the site retains the dramatic landscape character.* The historical significance is that the site marks the extensive use in the region of bluestone as a building material for housing and curbs since the late 1850's.

Given the above heritage significance of the sites in the vicinity of the development, an assessment regarding any impact on the Heritage Items is carried out and below are the observations.

- The Heritage Items located to the west and northwest of the proposed development are separated by Pinnacle Road and a vegetation strip, providing a natural buffer. Additionally, the frontage of the proposed development will largely retain its existing setting, with the only change being the addition of a road, as anticipated in the Shiralee Area Master Plan. Furthermore, the Heritage Item located to the north of the proposed development is separated by approximately 108.5m, along with a railway line and a vegetation strip, further reinforcing the buffer. Given these factors, the subdivision is unlikely to have any significant impact on the Heritage Items.



Figure 8 - Heritage analysis



### 5.21 - Flood Planning

The eastern fringe of the subject land is within Blackmans Swamp Creek PMF 2021 LEP and FLD2019 Blackmans Swamp Creek flood planning area.

Flood planning matters are considered later in this report in Section 4.15 under Orange DCP.

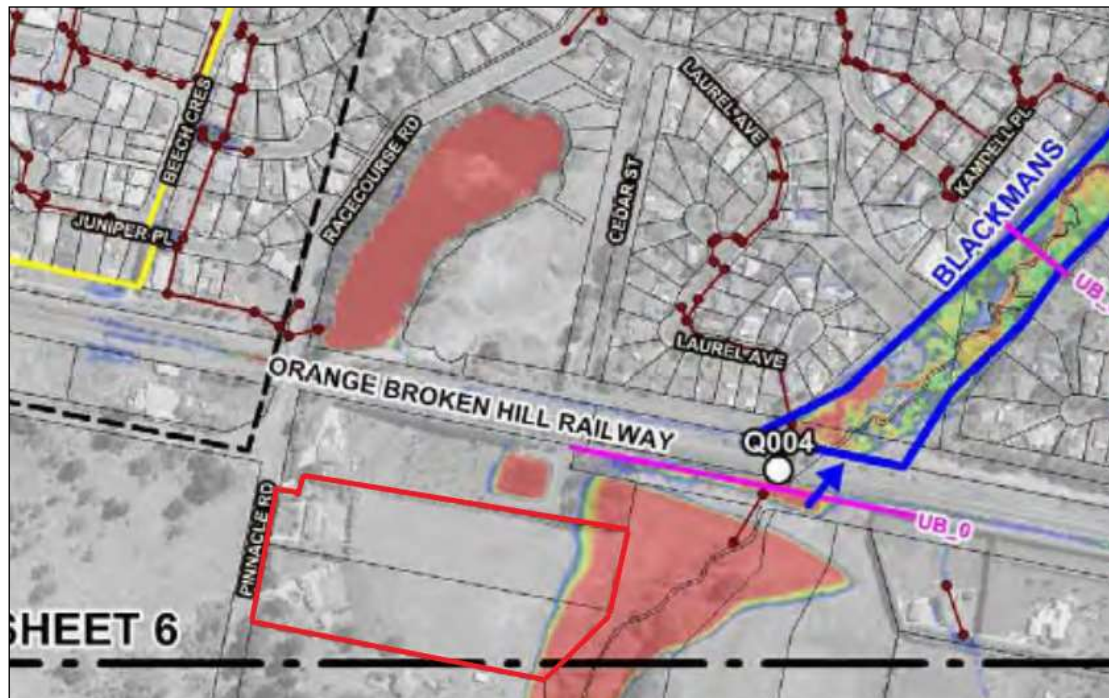
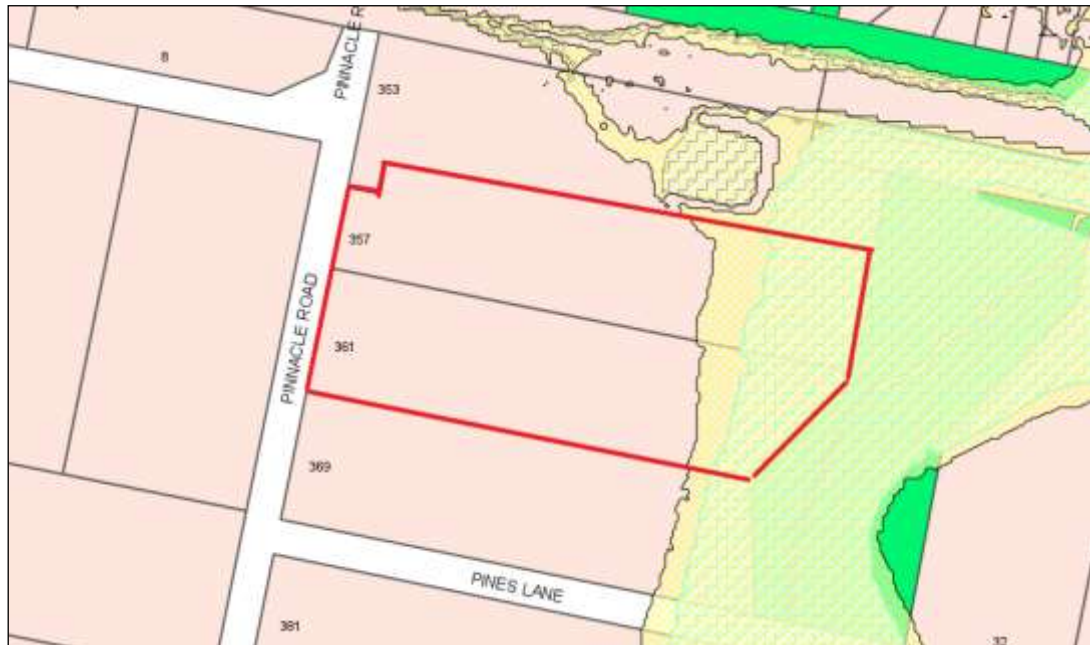


Figure 9 - proposed development site within flood planning area

### 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 subject land is in the vicinity of a sensitive watercourse, i.e., Blackmans Swamp Creek along the eastern boundary. The application was referred to the Department of Planning and Environment-Water under the Water Management Act 2000 s91 - controlled activity and the GTA has been attached to the Notice of Determination.

**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.*

Stormwater from the site is to be piped to the adjacent watercourse (Blackmans Swamp Creek), where it is to be discharged through a standard headwall with appropriate scour protection and energy dissipater. Engineering plans of this drainage system are to be approved by Orange City Council or by an Accredited Certifier (certifier - subdivision) and a licence from the Department of Planning Infrastructure and Natural Resources for work within 40m of the watercourse is to be submitted prior to the issue of a Subdivision Works Certificate.



### 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:

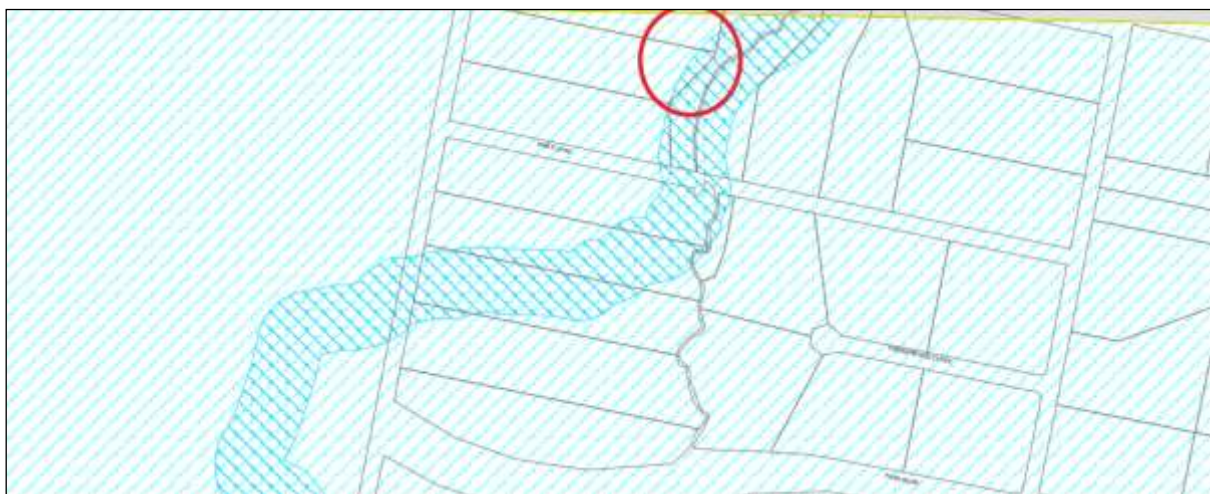
- (a) *is likely to have any adverse impact on the following:*
  - (i) *the water quality and flows within a watercourse*
  - (ii) *aquatic and riparian species, habitats and ecosystems of the watercourse*
  - (iii) *the stability of the bed and banks of the watercourse*
  - (iv) *the free passage of 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 buildings approximately 47.5m from the waterway. This provides a reasonable separation distance to manage the post-development runoff. Additionally, stormwater retention via off-site stormwater detention system may further reduces potential risk to the water course. This option has been conditioned on the consent.

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.



**Figure 10 - riparian zone located partially within one of the development sites**



Figure 11 - distance from riparian zone

An engineering assessment of flooding and stormwater management has also been completed by Council's Technical Services Department. Recommended Conditions of Consent have been included in the attached Notice of Determination to ensure that the future development of this site is acceptable for residential development and the adjoining creek system is suitably protected.

## 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:

- 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*
- 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:

- the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- if that impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that impact,*
- 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 on-site conservation,*
- (e) suitable road access.*

The attached Notice of Determination includes recommended conditions that will require the proposed lots to be serviced with town water, reticulated sewage, stormwater drainage and electricity. Suitable road access is provided via Pinnacle Road and the proposed new internal public road.

**STATE ENVIRONMENTAL PLANNING POLICIES**

The following SEPPs applicable to the proposed development:

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

**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**

In consideration of the requirements of SEPP (Resilience and Hazards) 2021, Chapter 4 - Remediation of Land, Clause 4.6, the subject land has been used for agriculture and may have been subject to potentially contaminating activities. A preliminary contamination Report was submitted in support of the proposal (Barnson, dated 11/09/2024). The investigation provided the following contamination conclusions and recommendations:

- *An inspection of the site was made on 27 August 2024. The investigation area comprises two paddocks which are part of two rural-residential lots. The paddocks were separated by fences and used for grazing of sheep and horses. A dam was located in the eastern section of the site.*
- *Vegetation cover across the site was generally 100% comprising pasture grasses and broadleaved weeds. Water tolerant vegetation was identified over areas of wet soil in the eastern section of the site. Scattered trees were located in the south western section of the site.*
- *Stockpiles of soil mixed with minor foreign materials and stockpiles comprising mainly foreign materials including concrete, timber, scrap metal, clothing, furniture, plastic and cardboard were identified in the eastern section of the site.*

- *One area of exposed soil comprising a burnt stockpile footprint was identified in the eastern section of the site. Burning of foreign material stockpiles was also identified in historical aerial photographs over the central section of the site.*
- *A vehicle was being stored in the western section of the site.*
- *Discrete soil samples were collected from the site on an approximate 27m grid pattern. Forty soil samples were collected from 0 to 100mm soil depth of the general site and analysed for contaminants of concern. Contaminants of concern included heavy metals and pesticides.*
- *The soil sampling program did not detect elevated levels of heavy metals or OCP in the soil samples analysed over the general site. The levels were below the adopted residential health and ecological thresholds.*
- *Eight samples were collected from potential areas of environmental concern including soil stockpile, foreign material stockpile, burnt stockpile footprint, three areas of historical stockpile footprints and the vehicle storage. Sediment from the existing dam was sampled to ensure all potentially affected media was assessed.*
- *Samples from potential areas of environmental concern were collected on a judgemental sampling pattern from the 50 to 150mm soil depth. The sample collected from the soil stockpile was collected from the 100mm to 300mm soil depth. Contaminants of concern within the potential areas of environmental concern are heavy metals, total recoverable hydrocarbons (TRH), benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN) and polycyclic aromatic hydrocarbons (PAH).*
- *Levels of heavy metals and hydrocarbons analysed were less than the adopted residential thresholds for human health and environment in all soil samples collected from the areas of environmental concern.*
- *Potential asbestos containing material including cement sheeting was not identified during the site inspection.*
- *The assessment results indicate the site is considered suitable for residential land use. Foreign material is an amenity issue and should be removed if no longer required. An unexpected finds procedure should be adopted for site development works.*

Council's Environmental Health Officer (EHO) reviewed the Preliminary Contamination Report prepared by Barnson and has raised no concerns with the findings and recommendations made. Council's EHO advised that a condition regarding *Unexpected Finds* is included in the attached Notice of Determination. The site is therefore considered to be suitable for the proposed residential use.

#### **STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021**

The proposal involves the removal of few non-native trees and various introduced species. Therefore Chapter 2 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 applies to the development proposal.

The Clause 2.6, 2.9 and 2.10 of Chapter 2 are relevant to the site. A permit from the Council is required for the clearing of native vegetation below the BOS threshold if that vegetation is identified in the Council's development control plan.



In consideration of the above:

The proposed trees to be removed are identified to be the following:

- T1 - Cypress pines
- T2 - Cypress pines
- T3 - Radiata pine (exempt from the TPO)



Figure 12 - proposed trees for removal

The DA was referred to Council's Manager City Presentation (MCP) for comments and no issues were raised in regards with the proposed tree removal. The tree removal proposed will be undertaken in conjunction with the planned subdivision works.

Site Visit Photos:



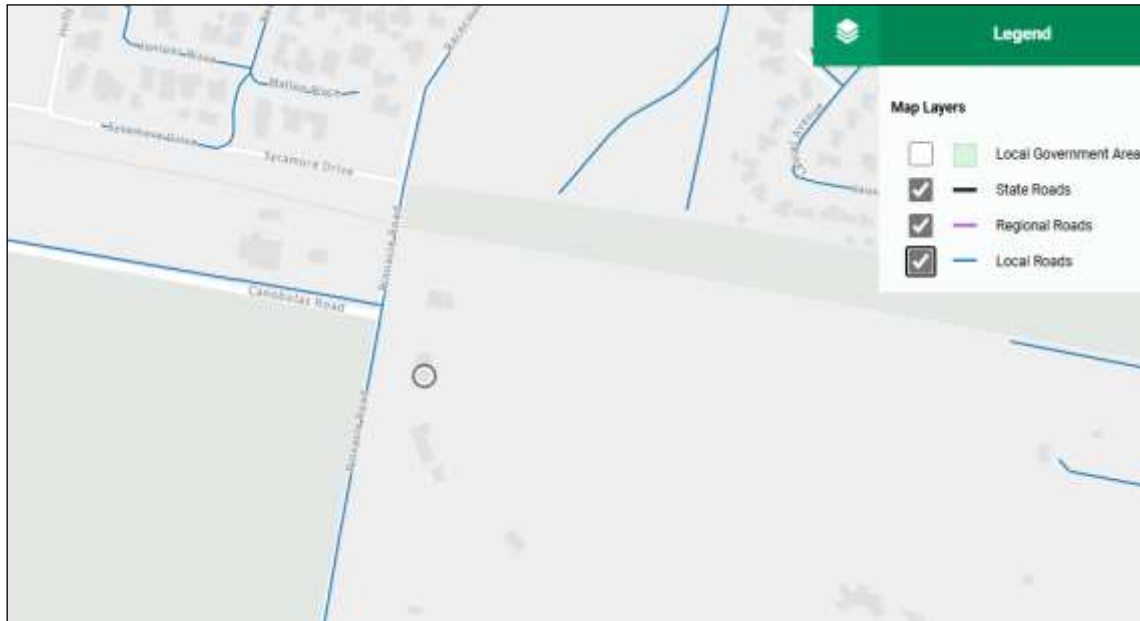
Figure 13 - proposed trees for removal



**STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021**

The subject land has frontage to Pinnacle Road, which is classified as a local road but is also considered a main road. Consequently, Pinnacle Road is designated as a classified road under the State Environmental Planning Policy (Transport and Infrastructure) 2021.

Accordingly, Section 2.119 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 is applicable.



**Figure 14 - proposed development with frontage to a classified road**

- (1) *The objectives of this section are -*
  - (a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
  - (b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*
- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that -*
  - (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
  - (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of -*
    - (i) *the design of the vehicular access to the land, or*
    - (ii) *the emission of smoke or dust from the development, or*
    - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land.*

In response to the matters raised in Section 2.119 please note the following:

- The proposed new vacant lots will not obtain access from Pinnacle Road.
- The existing dwellings on Lots 1 and 9 will retain their current access arrangements onto Pinnacle Road, ensuring no additional direct access points are introduced.

- The potential for the development to adversely impact the safety, efficiency, or ongoing operation of Pinnacle Road is considered minimal. Based on the creation of 20 additional lots, the completed development has the potential to generate an additional 151 daily vehicle trips and 16 to 17 weekday peak hour vehicle trips.
- The additional traffic generated by the proposed subdivision is relatively modest and is expected to integrate with the capacity of the existing and planned road network without unreasonable impact.
- The design ensures that no significant increase in vehicle movements or emissions (such as smoke or dust) will affect the classified road.
- The proposed lots and future residential development are not expected to be significantly affected by traffic noise or vehicle emissions.
- The existing dwellings fronting Pinnacle Road comply with the 15m building setback required under Shiralee DCP 2015, mitigating any potential noise or air quality concerns.

Council's Technical Services Department have determined that the access arrangements are acceptable and have provided recommended conditions of consent in relation to the proposed access arrangements. In summary, the proposed development aligns with the objectives of Section 2.119, ensuring safe and efficient road operations while minimizing impacts on future residents.

#### **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 development is classified as Integrated Development under the provisions of Clause 4.46(1) of the Environmental Planning and Assessment Act 1979 and is referred to as Nominated Integrated Development under the Environmental Planning and Assessment Regulation 2021. A Controlled Activity Approval under the provisions of Sections 89, 90 and 91 of the Water Management Act 2000 will be required from the NSW Department of Primary Industries - Water. The Water Authority has issued General Terms of Approval for the proposed development. Conditions have been included in the attached Notice of Determination.

The development is also classified as Integrated Development under the Division 4.8 of the Environmental Planning and Assessment Act 1979, and a Bush Fire safety Authority, under Section 100B of the Rural Fires Act 1997. A Bush Fire Safety Authority (BFSa) is required from the Rural Fire Service (RFS). The Bush Fire Safety Authority has been provided and the conditions have been included in the attached Notice of Determination.

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

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

- Chapter 0 - Transitional Provisions
- Chapter 10 - Special Uses and Road Zones

**Chapter 0 - Tree Preservation**

The DCP prescribes the following Interim Planning Outcomes for Tree Preservation:

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

The Applicant has sought approval for the removal of row of Cypress pines and a Radiata pine. The proposal was referred to Council's Manager City Presentation who raised no concerns with the proposed tree removal.

**Chapter 0 - Development along transport routes****PO 0.4-11 INTERIM PLANNING OUTCOMES - TRANSPORT ROUTES**

- 1 The development provides a high standard of visual appeal to motorists, cyclists and pedestrians as well as adjoining property owners.
- 2 The visual appearance of the development, including any signage, lighting or other ancillary element, must not generate a distraction to motorists.
- 3 Any signage must not be animated whether by movement or flashing lights.
- 4 Where land has more than one street frontage the street with the lower volume of traffic is to provide the principal access to the development, subject to safety considerations.
- 5 Where access is provided onto an arterial road, distributor road or major collector road, the access point must have appropriate safe sight distances for the prevailing speed limit and clear and unimpeded entrance/exit signage must be displayed.
- 6 Where on-site customer parking is provided that is not immediately visible from a public road clear and unimpeded directional signage must be displayed.
- 7 Where the proposal is residential, or another noise sensitive form, appropriate noise mitigation measures to limit the development from traffic noise must be demonstrated.

The proposed development aligns with the relevant planning outcomes in several key areas.

- Firstly, there are no visual impacts on Pinnacle Road as the proposal does not alter the setback or appearance of the existing dwellings along the corridor.
- The development does not include any elements that would distract motorists traveling along Pinnacle Road, ensuring road safety. No signage is proposed, making that particular planning outcome irrelevant.

- The access arrangements for the development have been considered, with existing dwellings on Lots 1 and 9 retaining their current access to Pinnacle Road, maintaining their driveway arrangements for forward ingress and egress. The remaining lots will be served by a new internal road network.
- The proposed intersection with Pinnacle Road has been reviewed by Council's Technical Services Department and deemed acceptable, given its distance from other intersections.
- The development does not require specific noise mitigation measures as it aligns with the existing residential land use pattern along the road, and both the existing and new dwellings are generously set back from Pinnacle Road, minimizing any potential noise impact.

## Chapter 10 - Special Uses and Road Zones

The DCP prescribes the following Planning Outcomes:

<b>PO 10.3-1 PLANNING OUTCOMES – DEVELOPMENT NEAR MAJOR ROADS</b>	
1	Development on land fronting and visible from a major road or distributor road provides for quality design on the highway and/or distributor road through landscaping, building setbacks façade design, external colours and materials and siting.
2	Residential buildings address potential noise impacts in design from adjacent main roads.
3	Direct access to major roads is limited and is constructed to the requirements of the relevant roads authority.
4	Residential lots are set back from planned distributor roads to provide a reasonable separation between future roads and residential land.
5	Where direct access to a main or arterial road is denied by the Roads Authority and comprises residential subdivision, any rear or side fences are set back and screened with dense landscaping.
6	Commercial buildings adjoining a distributor road are setback from the property boundary by at least 10m.
7	Lighting and signage visible from a distributor road is not animated and is designed so as not to distract motorists beyond glance recognition.

The proposed development aligns with the relevant planning outcomes.

The proposal is in alignment with the planning outcomes for development near major roads, as it does not adversely affect the existing infrastructure. A new access to Pinnacle Road is proposed. A detailed assessment of the suitability of the design has been assessed below under Consideration of Matters Pertaining to the DCP Masterplan for Shiralee.

The existing dwellings within Lots 1 and 9 already address Pinnacle Road, so no further modifications are needed to integrate the proposal into the existing transport framework. Overall, the proposal supports the planned transport routes while preserving the current functionality.

### Shiralee Development Control Plan 2015

Shiralee DCP is applicable to the proposal. The objectives of the DCP are:

- *to guide the urban expansion of Shiralee, south of the existing Orange urban area*
- *to promote a high quality urban environment with a diversity of housing and recreational opportunities*
- *to encourage alternative modes of transport and healthy lifestyles*
- *to reduce traffic congestion by providing for the day to day needs of residents within the precinct.*



As outlined in the following assessment of relevant controls, the proposed subdivision will reasonably satisfy the objectives of the Shiralee DCP. Part 1.8 *Exceptional Circumstances* allows some variation to the plan, provided that the proposal meets or exceeds the listed aims and principles. It is accepted that minor variations to the masterplan will result as development proceeds in the urban village.

## 2.4 Subdivision

Controls:

- *All subdivision applications are to be accompanied by a preliminary investigation to identify any past or present uses that have potential to contaminate the land and a preliminary assessment of any known contamination. If the results are positive, or if Council so directs, the application is to undertake a more detailed investigation.*

As outlined in the foregoing sections of this report, a preliminary contamination investigation was undertaken in support of the proposed subdivision. The investigation determined that the site is considered suitable for residential land-use. Council's EHO has included one relevant Condition of Consent related to *Unexpected Finds* as part of the subdivision works. The site is considered to be suitable for residential development.

- *Subdivision is to be consistent generally in accordance with the Masterplan design and intent per the DCP. Legislative requirements and DCP written controls take precedence over the Masterplan.*

The Shiralee Masterplan for the development sites is depicted below (refer Figure 15).



Figure 15 - Shiralee Masterplan



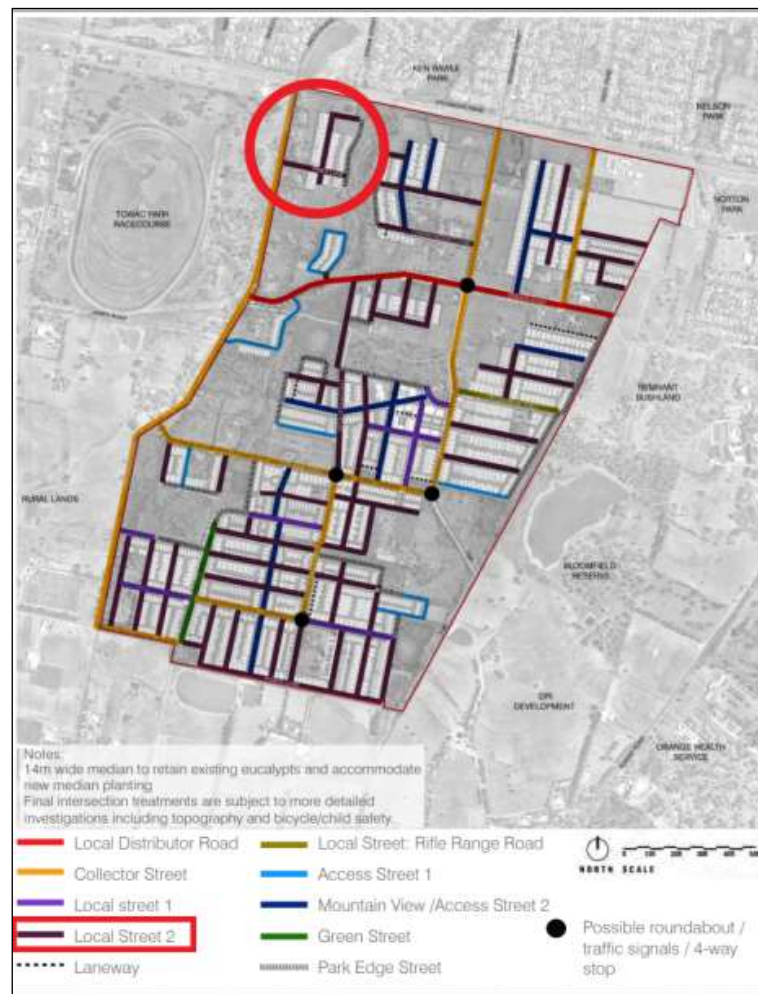
Figure 16 - proposed subdivision layout in relation to Masterplan layout

The proposed subdivision layout generally accords with the Masterplan in respect of lot size, shape and orientation. However, the proposal departs from the Masterplan as follows:

- The new road intersection with Pinnacle Road deviates from the location depicted in the DCP Masterplan. The proposed Subdivision Plan introduces a road network from Pinnacle Road, which differs slightly from the Masterplan. The proposed road is 19m wide and classified as a Local Street 2 under the Shiralee DCP (refer to Figure 17). The Masterplan envisions access from Pines Lane to provide a road network for the subdivision.

To align with this layout, the accessway would need to be constructed on 369 Pinnacle Road (Lot 55 DP 867205). However, this site is not included in the current application and no development is proposed for that lot at this time. To address this, the application instead proposes a road network from 357 and 361 Pinnacle Road (Lots 56 and 57 DP 867205). This alternative alignment is not expected to adversely impact the orderly and economic use of the site or compromise future planning intent for the area. The Technical Services Department has reviewed the proposal and raised no objections to the revised road network as sufficient separation distance will be provided between the existing Pinnacle and Canobolas Road intersection and is located within a 50km/hr speed zone.





**Figure 17 - proposed road identified as local Street 2**

- The proposed Lots 3, 4, 5 and 6 deviate marginally from the Masterplan layout which indicates only three lots in east-west orientation. The proposed subdivision layout provides for three lots with a north-south orientation and one lot with an east-west orientation. The variation is acceptable as proposed lots are well-sized and regularly shaped, with a suitable frontage-to-depth ratio ensuring adequate solar access and natural lighting. Also, the lots maintain sufficient width at the effective building line, allowing them to meet residential amenity requirements such as living space, privacy and parking.
- The subject land is designated for a mix of large (2,400m<sup>2</sup>), standard (min 700m<sup>2</sup>), and compact (200m<sup>2</sup>) lots, as per the DCP Structure Plan. The DCP Masterplan originally proposed four Large Lots, eleven Standard Lots, seven Compact Lots, and one Public Open Space Lot. Despite modifications to the subdivision pattern, the proposed subdivision remains consistent with the expected lot yield of 22 lots outlined in the DCP.
- *Lot sizes are to be consistent with or greater than the adopted minimum lot size for the land under the LEP zoning map.*

The proposed lot sizes largely align with the adopted MLS. However, the Applicant has submitted a Clause 4.6 request to address inconsistencies in the MLS mapping, ensuring a logical subdivision pattern that aligns with cadastral boundaries. Further details on this exception are provided in the Clause 4.6 section of the report.

## 2.3 Development Application DA 669/2024(1) - 357 and 361 Pinnacle Road

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

The proposed large lots comply with the prescribed minimum lot sizes on the LEP Lot Size Map. In this regard, building envelopes are not considered warranted, given the pattern of development in this locality and the overall general compliance with the Master Plan.

The proposed Lots 18 to 22 exceed the 200m<sup>2</sup> MLS, however, reducing their size would result in very narrow lots (around 7.5m wide). This would restrict residential development and compromise effective solar access and privacy to adjoining lots, thereby the departures are considered reasonable in this case.

- *Except for corner lots and where indicated otherwise on the Large Lot Classification Table, all residential lots are to have a width to depth ratio of between 1:4 and 1:2.75 with the shorter boundary being the street frontage.*

The width-to-depth ratio of the proposed lots is generally compliant, except for Lots 6 and 22, which do not meet the DCP requirements. The below table summarises the width-to-depth ratio.

Lot	Ratio	Compliance
1	Large Lot	N/A
2	Large Lot	N/A
3	1:2.12	Yes
4	1:2.12	Yes
5	Corner Lot	N/A
6	1:1.7	No
7	Corner Lot	N/A
8	Corner Lot	N/A
9	Large Lot	N/A
10	Large Lot	N/A
11	Corner Lot	N/A
12	1:2	Yes
13	1:2	Yes
14	1:2.1	Yes
15	1:2.1	Yes
16	1:2.1	Yes
17	1:2.1	Yes
18	1:2.5	Yes
19	1:2.4	Yes
20	1:2.1	Yes
21	1:2	Yes
22	1:1.18	No

**Table summarises the width-to-depth ratio**

The variation is supported by the following reasons:

- Proposed Lot 6 has been widened to include a 12m wide Asset Protection Zone, required due to the adjacent vegetation to the north.

- Proposed Lot 22 has been widened to better support a future dwelling, ensuring adequate privacy, private open space, and solar access. Compliance with the DCP would require a width of 10.8m, which is considered insufficient. The proposed width also allows the dwelling to align with Lots 18 to 21, maintaining a consistent streetscape along Park Edge Street (as proposed in Shiralee DCP).
- *Residential corner lots are to have greater width with a ratio of between 1:3.25 and 1:2.5 to allow more opportunity for the subsequent dwelling to address both frontages.*

A DCP Ratio Compliance Table was submitted in support of the proposal. The table demonstrates that the width to depth ratios of the proposed lots generally comply, with a few exceptions. While the lot layout/typologies proposed vary in some respects from the Masterplan and DCP, these variations are justified in the specific circumstances. The proposal maintains the DCP principals and objectives of the Masterplan by meeting the required lot shape objectives, particularly corner allotments where a larger size lot is needed to ensure future development can comply Section 5 *Residential Buildings* with respect to building streetscape presentation, solar access, shadowing, open space, and vehicular access. The intent of the width-to-depth ratio is thereby satisfied.

- *Roads identified for Bus Routes:*
  - *Intersections where the bus route turns are to be designed to accommodate full size coaches.*
  - *At nominated bus stop locations the road reserve is to be increased by an addition of 0.5m to allow for passenger congregation and future street furniture. The front building setbacks of affected lots may be reduced by 0.25m to help preserve the pattern and rhythm of development.*

Council's Development Engineer advises that the proposed road layout is satisfactory and generally in accordance with the Shiralee DCP.

## 2.5 Lot Typologies

Controls:

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

An extract of the Shiralee Structure Plan and Housing Densities Map is shown below (refer Figure 18). The Structure Plan provides for a mix of large, standard, medium and compact lots over the subject land, together with Public Open Space.



Figure 18 - Shiralee Structure Plan and Housing Densities

The proposed subdivision layout lot typologies are shown below -



Figure 19 - proposed subdivision lot typologies

The proposed subdivision layout is generally consistent with the structure plan, except variation as follows:

- Clause 4.6; and
- introduction of medium size lots where compact lots were designated.

As discussed above, the Clause 4.6 variation to the LEP minimum lot size and zoning map is provided to address the anomaly in the proposed lot boundaries and MLS maps. Furthermore, the introduction of medium sized lots for as is considered an appropriate design response to ensure future development can comply Section 5 *Residential Buildings* with respect to building streetscape presentation, solar access, shadowing, open space, and vehicular access. The medium sized lots are also considered an appropriate market response while satisfying the intent of the Shiralee Masterplan. Overall, the proposed modified lot typologies are considered a reasonable departure from the DCP.

- *Any subdivision which creates more than three lots must not have any oversized lots. Oversized lots are lots that do not fit within the designated categories.*

Oversized lots are not proposed under this application.

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

In assessing this variation request for Proposed Lot 2, it is noted that the DCP requires a 40m street frontage for Large Lots, while Lot 2 has a frontage of 35.94m. The Applicant has provided justification for this minor non-compliance, citing the following considerations:

- The western boundary of Lot 2 is constrained by the existing tennis court within Proposed Lot 1, limiting the ability to achieve the full 40m frontage.
- While a “dog-leg” adjustment to the common boundary with Lot 1 could technically achieve compliance, this is not a preferred outcome as it may create an irregular subdivision pattern.
- The proposed frontage of 35.94m is only slightly below the DCP requirement and still allows for an appropriate and attractive street presentation.

Given these factors, the proposed variation is considered minor and does not compromise the intent of the DCP control. The lot maintains a suitable frontage for residential development while respecting existing site constraints.

- *Where subdivision involves the creation of a lot greater than the maximum for the lot typology, a building envelope is to be established on the title of the new lot [consistent with prescribed dimensions].*

Building envelopes are not considered necessary - all lots are considered to be appropriately sized and dimensioned.

- *All lots must have a direct street frontage to ensure good access and property amenity.*

All proposed lots will have direct street frontage and access to an existing or proposed public road.

- *Corner lots are to achieve high quality street frontages on the primary and secondary street.*

The proposed subdivision layout is considered suitable to achieve high quality street frontage to primary and secondary boundaries.

- *All compact, medium and standard lots need to achieve a solar orientation where the long axis of the lot is:*
  - *for north-south oriented lots between 20° west of north of 30° east or north, or*
  - *for east-west oriented lots between 20° north of east or 30° south of east.*

The proposed lots will comply with the requirements for solar orientation.

### **3.0 Local Infrastructure**

#### **3.1 Infrastructure Provisions**

Controls:

- *Clause 7.11 of Orange LEP 2011 establishes that development is required to be provided with essential services...*
- *Provision of essential local infrastructure is at the developers cost and in line with the Shiralee Development Contributions Plan.*
- *The design and placement of local infrastructure is to be in accordance with the relevant authorities requirements.*
- *All power lines are to be located underground.*

As outlined in the foregoing assessment, utility services can be made available to the land and adequate for the proposed subdivision, subject to extension, augmentation, upgrading and payment of relevant developer contributions. Conditions are included on the attached Notice of Determination to satisfy the requirements of Part 3.1.

#### **3.2 Ground Levels and Excavation**

Controls:

- *Cut and fill is to be minimised with cut materials used onsite as either fill for buildings or used to even out landforms.*
- *Any cut is to be supported by a retaining wall or battered at a gradient of less than 1:4, provided that gradient is achievable entirely within the site boundaries.*
- *The design of any retaining wall greater than 600mm must be accompanied by a statement from an engineer attesting that the design is fit for purpose.*
- *Excavation for the purposes of development must not exceed a maximum depth measured from ground level (existing) of:*
  - *If located not more than 2m from any boundary: 1m*
  - *If located more than 2m from any boundary: 2m.*
- *Notwithstanding the above, excavation must not be more than 1m below ground level (existing) if the land is within 40m of a waterbody (natural)...*



- *Filling, for the purpose of erecting a dwelling must not exceed 1m above ground level (existing).*
- *All excavation and/or filling that exceeds 600mm in depth/height must be contained by either:*
  - *A retaining wall or other form of structural support that does not extend more than 1.5m from:*
    - *external walls of the dwelling house,*
    - *decking connected to the dwelling house, or*
    - *principal private open space of the dwelling house,*
    - *an unprotected sloping embankment or batter that does not extend from the dwelling house, decking or principal private open space by more than 3m, in which case the toe of the embankment or batter must be more than 1m away from a side or rear boundary.*
- *To facilitate assessment detailed engineering plans for retaining walls are to be supplied where the wall is intended to retain more than 600mm or more of material.*

*Note: for this clause "Principal Private Open Space" means courtyard space of up to 30m<sup>2</sup> that is located behind the main building alignment and is in close proximity to the living and entertaining spaces of the dwelling house.*

Earthworks will be required in conjunction with civil and construction works required to create the proposed lots and new and upgraded roads. The extent of excavation and filling will be determined at engineering design stage. Notwithstanding, it is considered that the required earthworks are unlikely to disrupt or have a detrimental effect on the existing drainage patterns and soil stability of the area, nor detrimentally affect a future use or redevelopment of the land, nor detrimentally affect the amenity of adjoining properties, nor or disturb any relics. Any further earthworks required at dwelling construction stage will be assessed as part of that application.

The Development Application was referred to the Department of Planning and Environment-Water under Section 4.46 of the Environmental Planning and Assessment Act 1979, as the proposed residential subdivision is on land within 40m from the Blackmans Swamp Creek and conditions are inserted in the notice of determination.

### 3.3 Public Domain

Controls:

- *Land identified for the RE1 Public Recreation Zone is to be dedicated to Council as public open space upon subdivision of the parent lot.*
- *Compensation for the dedicated land is to be in accordance with the relevant Section 7.11 Development Contribution Plan.*
- *Footpath dining in the Village Centre is encouraged, although access on the footpath must be maintained and consideration must be given to access for the vision impaired and those in wheelchairs.*
- *Outdoor dining furniture and signage must be approved by Orange City Council and provide a positive visual aesthetic to the streetscape.*
- *Ensure reasonable pedestrian/wheelchair/pram crossing ability is designed into the road and median to ensure access into the heart of the village.*

In relation to controls, Point 1 and 2 are relevant to this application. The remaining controls listed above are not relevant to this application.

The proposed development seeks to dedicate 4488m<sup>2</sup> of Public Open Space in Stage 2 of the development. A review of records indicates that the land to be dedicated (currently comprising part of Lots 56 and 57 DP 867205) is heavily constrained by easements, including:

1. An easement to drain water of variable width.
2. An easement to construct water storage of variable width.

Additionally, the area in question falls within the flood levels of Blackmans Swamp Creek and the 1-in-100-year Blackmans Swamp Creek PMF (2021), further limiting its potential for development.

Given the constraints on the land, which make it unsuitable for other forms of development, Council staff have requested that the Applicant consider entering into a Voluntary Planning Agreement (VPA) to dedicate the land to Council at no cost. Following negotiations the Applicant has submitted a Letter of Offer to enter into a Planning Agreement. The Letter of Offer proposes the dedication of the encumbered land free of charge to Orange City Council. The draft Notice of Determination contains conditions requiring the Applicant to prepare and implement a Planning Agreement in accordance with the Terms of Offer made in the letter to Council dated 16 April 2025.

The Planning Agreement will require post-consent notification. The attached recommendation requests Council to authorise the CEO to also finalise the Planning Agreement following the required exhibition period in the event of no submissions being received. Once the Planning Agreement is formally entered into the Applicant will be required to arrange for the Planning Agreement to be registered on the Title of Proposed Lot 23 prior to the registration of any lots proposed in Stage 2. Dedication of the said land will occur in Stage 2 of the development.

The area proposed to be dedicated to Council is consistent with the open space network planned for this area. The Shiralee DCP has identified this area for open space and Council therefore has an obligation to accept its dedication. The most appropriate approach to formalizing this arrangement is through a Planning Agreement, which is a relatively straightforward process in this case, as it involves only the dedication of land.

### 3.4 Staging

Controls:

- *The Rifle Range Exclusion Zone may not be subdivided or otherwise developed until the rifle range has been decommissioned...*
- *The Hawke Dam Lane exclusion zone may not be subdivided or otherwise developed until the dam has been decommissioned...*

The development site is not located within the Rifle Range or Hawke Dam Lane exclusion zones.

### 3.5 Lighting

Controls:

- *All lights are to use energy efficient LED luminaries or equivalent...*
- *Street lighting is to be designed to meet the current Australian Standards AS/NZS 1158 series.*

- *Enhanced levels of lighting are to be installed at major recreation pedestrian/cycle link crossings and at pedestrian crossings.*
- *Street trees and street lights are to be staggered so that footpaths maintain sufficient light levels.*

Conditions are included on the attached Notice of Determination to satisfy the above controls relating to lighting across the subdivision in Stage 2 of the development.

### **5.0 Residential Buildings**

Part 5 contains provisions for dwellings, including:

- *Building form and layout;*
- *Building typology, design and dwelling mix;*
- *Solar access;*
- *Reflectivity;*
- *Privacy; and*
- *Universal design.*

Matters in Part 5 of the DCP relate to building controls for future development and are not relevant in the determination of this subdivision application. Such provisions will apply to any development application that is lodged for residential development in the future.

### **6.0 Private Domain Landscape**

Controls:

- *Existing trees are to be incorporated within lots. Dwelling configurations and ground levels should ensure existing tree health and longevity.*
- *Fences that are not visually permeable, such as Colorbond, are not permitted on boundaries along open spaces or larger lots, or where visible from streets.*

The proposal involves the removal of a row of Cypress pines and one Radiata pine from the land, due to the subdivision layout and associated works. There are two rows of Cypress pines located at the frontage and along the side boundary of the subject land. The removal is necessary to facilitate the proposed road from Pinnacle Road and the one Radiata pine is required to be removed to support future development of proposed Lot 13.

### **7.0 Public Domain**

#### **7.1 Passive and Active Recreation Network**

Controls:

- *Open spaces and streets facing open spaces must be provided according to the Masterplan*

A Park Edge Street (proposed road) will be within the subdivision adjoining the Blackmans Swamp Creek Reserve. This road will provide effective access to the creek system and broader open space network.

- *Where a property adjoins a park or other public space that is not a street or road, any residential development of that property:*
  - *must provide at least two windows from habitable rooms to face the public space. The windows are to be a minimum 2.5m<sup>2</sup> in size.*

- *may not place the side or rear walls of sheds and outbuildings any closer than 2.5m from the boundary with the public space.*
- *Properties adjoining a public park or other public space are encouraged to include a pedestrian gate along the boundary.*

The proposed subdivision does not include any lot/s that directly adjoin the Blackmans Swamp Creek Reserve.

## 7.2 Landscape

Controls:

- *Eco link streets are to have an understory planting layer of native species including shrubs, groundcovers and grasses of maximum mature height of 1.5m with planting plans to be submitted for approval by Council.*
- *Streets with medians are to have an understory planting layer of species responding to the tree planting within the median, including shrubs, groundcovers and grasses of generally maximum mature height of 1.5m and of 1m within 5m of an intersection.*
- *Footpath verges within residential areas are to be planted with cool climate turf species, as approved by Council.*
- *Footpath verges and tree planting zones within the village centre, may be planted with robust groundcover and grass species in keeping with a high quality street environment and as approved by Council.*
- *A developer shall construct all footpaths, turf all verges and provide all road infrastructure planting prior to sale of building blocks.*
- *Orange City Council will plant all street trees.*
- *Maximum verge cross-fall from property boundary to kerb is to be 2%.*
- *Longitudinal gradient of verge is to match the gradient of the adjacent kerb. Retaining walls are to be provided along property boundaries accordingly.*

See below discussions in relation to landscaping requirements.

## 7.4 Street Tree Strategy

Controls:

- *A minimum of one tree per lot for compact lots, two trees for standard lots and three trees for larger lots, at even spacings along the street.*
- *Street tree plantings are to be consistent with the Street Tree Strategy Diagram, Species List and Planting Detail and as approved by Council.*
- *Residential street verges are to be turfed with Council approved species except where Council requires groundcover planting.*

A street Landscaping Plan was not provided in support of the proposed subdivision. A condition has been recommended that will require the Applicant to submit a detailed Landscape Plan and species list for street plantings. The final plan is to be determined in consultation with Council's City Presentation Manager with such landscaping being required to be established prior to the issue of a Subdivision Certificate in Stage 2.

## 8.0 Environmental Management

### 8.3 Stormwater and Water Sensitive Urban Design (WSUD)

Controls:

- *A comprehensive site-wide WSUD strategy is implemented for Shiralee.*
- *Streets and public spaces incorporate best practice WSUD elements including swales, rain gardens and detention/retention basins.*
- *WSUD elements are to incorporate native planting.*

Conditions are included on the attached notice of determination to satisfy the requirements of Part 8.3.

## 9.0 Movement Networks

### 9.2 Pedestrian and Bicycle Network and Associated Facilities

Controls:

- *A comprehensive site-wide WSUD strategy is implemented for Shiralee.*
- *A cycle network is to be implemented in accordance with Figure 64. Cycle Network and be designed in accordance with Austroads Standards and RMS Guidelines.*
- *Footpaths to be provided on both sides of the street consistent with the street sections in Appendix C.*
- *Safe road crossings (e.g. marked crossings) are to be provided according to 9.4 Street Network Access Controls. Also refer indicative intersection treatments, Figures 75 and 76.*
- *Universal access to be provided throughout the precinct in accordance to AS.1428.1.*
- *On-road cycle routes are to be clearly line marked and sign posted.*
- *Any development that is assessed as requiring an onsite parking area or at least five (5) spaces shall also be required to provide bicycle parking.*
- *Bicycle parking is to be provided at the ratio of one (1) bicycle space per 15 car parking spaces (or part thereof).*
- *All bicycle spaces are to be provided with a fixed rack or other feature to facilitate chain locking the bicycle.*
- *Bicycle spaces are to be positioned so as to avoid conflict with car and service vehicle circulation.*
- *Bicycle spaces are to be clearly delineated from other parking areas by means of lane marking and/or signage.*

Conditions are included on the attached to satisfy the requirements of Part 9.2.

### 9.3 Public Transport Network

Controls:

- *Bus routes and stops are to be positioned in accordance with Figure 67 - Bus Network.*
- *All bus stops must have a shelter that includes: seating with arm rests and lighting.*
- *Bus shelters are to be positioned on either side of the street at all stops indicated on Figure 67 - Bus Network.*

- *Pedestrian crossings must be provided within 30m of all stops.*
- *Continuous accessible paving must be provided from the shelter to pedestrian crossing.<sup>21</sup>*

Pinnacle Road is identified as a primary bus route in the Shiralee DCP and Masterplan. No bus stops have been identified within the subject land on the Masterplan, however, all proposed lots will be within 400m radius of a bus stop. Council's Development Engineer has included conditions of consent requiring the provision of footpaths and marked crossings as per the DCP footpath network plan.

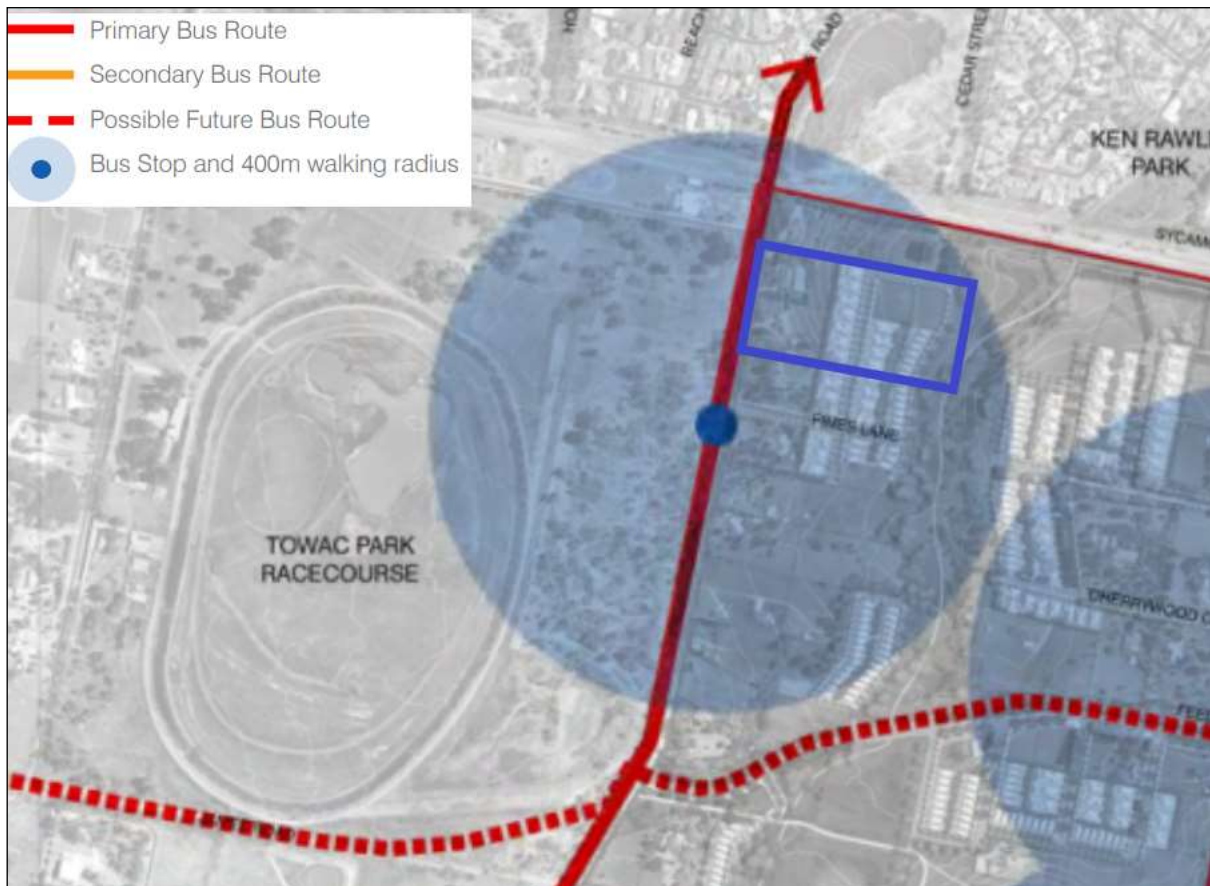


Figure 20 - bus network (Shiralee DCP)

#### 9.4 Street Network and Access

Controls:

- *Other than where specified in the Masterplan there are to be no cul-de-sacs or no-thru roads.*
- *Where new roads are aligned along existing property boundaries the first property to develop is to include Stage 1 of the shared road including any central median reserve.*
- *All streets indicated on the Masterplan are to be designed and constructed in accordance with the relevant street typology diagram.*
- *Intersections are to be designed to maximise ease of movement for pedestrians and cyclists and to slow vehicular traffic. Indicative intersection treatments for four way and 'T' intersections are shown in Figures 75 and 76. Indicative Intersection Treatments.*



- *Traffic calming measures will be implemented in suitable locations to reduce vehicle speeds. Traffic calming measures include passive measures such as intersection narrowing, minimising width of road pavements, designation of slow speed streets and use of rumble strips at pedestrian crossing points and intersections.*
- *The principles of water sensitive urban design are to be incorporated in the road network for any new streets.*
- *Driveway crossovers are to be a maximum of 3m wide and are not to be constructed within 6m of an intersection. Crossover pavement is to match the adjacent footpath material.*
- *Garages and carports on corner lots are to be accessed from the longer street frontage and the crossover is to be aligned adjacent to the boundary furthest from the intersection.*
- *Marked Crossings, Refuge Islands and/or traffic signals are to be provided at street intersections on:*
  - *collector streets*
  - *the Southern Feeder Road, and*
  - *intersections of the 'off road shared cycle and pedestrian path'.*
- *Two stage roads:*
  - *On development of the first stage of a two stage road, the design shall include a buffer strip alongside the neighbours existing boundary. This strip is to be created as a Torrens lot and vested with Council to ensure Council can maintain control over access arrangements.*
  - *On development of the second stage of a two stage road, Council will convert the buffer strip from a lot to a road reserve to enable the construction of turning bays as part of the development.*

The following comments are provided in consideration of the proposed street network across the subdivision:

- The proposed road layout is satisfactory and is generally in accordance with the Shiralee DCP, however, some lots require adjoining land to be developed to enable full width road construction.
- PINNACLE ROAD INTERSECTION: The Applicant will be required to construct a new road (providing access from Pinnacle Road) 19m wide with kerb and gutter, concrete footpaths and bitumen sealed parking lane for the full frontage of the development to suit the existing pavement. Outside the frontage the road pavement shall transition to the existing pavement width and alignment.

The Applicant will be required to reconstruct Pinnacle Road for the full width and length of the BAR intersection / urban treatment where the 19.0m wide road connects to Pinnacle Road. Pinnacle Road frontage to be constructed to Orange City Council Development and Subdivision Code urban collector road standard.

- INTERNAL ROADS: The proposed road layout is considered satisfactory, is generally in accordance with the Shiralee DCP and doesn't prevent adjoining properties from being developed. All proposed roads are to be constructed full width, including the 15.5m wide road adjacent to the drainage easement burdened lot (noted as 'public reserve' on DA plans).

- BIKE PATH AND FOOTPATHS: The Applicant will be required to build bike paths and footpaths in accordance with the Shiralee DCP and Council requirements.
- The proposed subdivision road layout does not comprise cul-de-sacs.
- Driveway crossovers and positioning of garages and carports will be considered at development application stage for their respective dwellings.
- Conditions are included on the attached Notice of Determination to satisfy the requirements of Part 9.4 with respect to water sensitive urban design, street typologies, traffic calming measures, marked crossings, islands etc.

### 9.5 Traffic Management

Controls:

- *Key intersections shown on the management plan are to be designed to Council's requirements.*
- *Intersections along nominated bus routes are to be designed to accommodate the turning arc of coach buses.*
- *Marked crossings, refuge islands and/or traffic signals are to be provided at street intersections on: Collector streets, the Southern Feeder Road and intersections of the off road shared cycle and pedestrian path. This will improve pedestrian and bicycle safety.*
- *All streets except for Collectors and the Southern Feeder Road are to have a maximum 40km per hour speed limit.*
- *All street kerbs are to be upright not roll kerbs. Broken upright kerbs should be used where required for WSUD function.*

Conditions are included on the attached notice of determination to satisfy the design requirements of Part 9.5.

### SECTION 7.11 - DEVELOPMENT CONTRIBUTIONS

In accordance with Section 7.11 of the *Environmental Planning and Assessment Act 1979* and Orange Development Contributions Plan 2024 (Shiralee Urban Release Area), 1 March 2025 to 31 May 2025, a contribution towards the provision of the following public facilities is required:

Open Space and Recreation	@ \$792.01 x 20 additional lots	15,840.20
Community and Cultural	@ \$229.68 x 20 additional lots	4,593.60
Roads and Traffic Management	@ \$1,045.43 x 20 additional lots	20,908.60
Local Area Facilities	@ \$17,760.90 x 20 additional lots	35,5218.00
Plan Preparation & Administration	@ \$171.98 x 20 additional lots	3,439.60
<b>TOTAL</b>		<b>\$400,000.00</b>

The contribution will be indexed quarterly in accordance with the Orange Development Contributions Plan 2024 (Shiralee Urban Release Area), 1 March 2025 to 31 May 2025. The contribution has been based on applying 1 credit per parent lot.

A condition is included on the attached Notice of Determination requiring payment of the contributions prior to issue of a Subdivision Certificate.

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

Section 64 water and sewer headworks charges are also applicable to the proposal. The Applicants will be required to contribute:

- i. Water supply headworks for 20 lots; and
- ii. Sewerage headworks for 22 lots.

Such charges are calculated at the time of release of a Subdivision Certificate for the development. Conditions are included on the attached Notice of Determination to this effect.

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

The proposal does not involve the demolition of a building.

**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.

**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 subject land is located in an emerging urban residential locality which has been zoned for residential purposes for many years. The proposed subdivision is expected to alter the character and amenity of the area by increasing the population density, upgrading and providing new residential roads, and altering the landscape with the provision of new dwellings with ancillary structures; however this renewed character and amenity is to be expected in this area as originally planned for in the adopted controls contained within the DCP. Overall, the development is consistent with the expectant development pattern of the area, is in keeping with recent urbanisation and is not incongruous with the expected context of the area.

**Visual impacts**

The loss of existing trees on the site may have some visual impact on the locality; however, the condition in the Notice of Determination to improve street tree planting will negate these impacts in years to come and will create a landscape that is visually consistent with the recently approved and developing urban residential development in the locality. The anticipated visual impact is to be expected in this area in light of the adopted controls contained within the DCP for this precinct.

**Traffic and Transport Impacts**

Access to the proposed lots will be via an intersection with Pinnacle Road through the construction of a new access road and an internal road.

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

**Environmental Impacts**

The development site has a land use history of grazing. Grassland is the dominant community as result, the site having been extensively modified for agricultural purposes. A preliminary study undertaken for the proposed development recommends the site as being suitable for residential development, however, a condition of unexpected finds will be inserted. Subject to the conditions of consent, the proposal is unlikely to result in any adverse environmental impacts.

**Air and Microclimate**

Subdivision works may generate some impacts in the immediate locality including the emissions of dust and odour/fumes from earthmoving equipment, construction vehicles entering and existing the site and so on. However, these impacts will be short-term and only for the duration of subdivision construction works. The proposal is not expected to have any long-term discernible impact on air quality or on the microclimate of the locality. Conditions of consent are recommended for dust suppression during subdivision works to protect the air and microclimate.

**Economic Impacts**

The proposed development is consistent with Council's long-term land use strategy identifying the Shiralee area as a residential growth area. The proposed subdivision will promote the growth and investment in residential development in a serviceable area of Orange and thus is expected to have positive economic stimulus to the construction and building sector of Orange.

**Cumulative Impacts**

There is an noticeable cumulative impact arising from the ongoing urbanisation of the locality as the remaining stocks of rural land are subdivided and developed for residential purposes. However, the proposed subdivision is considered to be largely consistent with the expected development pattern contained within the Shiralee DCP and acts as a natural continuation of future residential further south. The cumulative impacts of the proposed development have been considered throughout the foregoing report and are considered to be acceptable.

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

The foregoing assessment demonstrates that the subject land is suitable for the proposed development:

- The development site is contained within the developing Shiralee urban release area.
- The proposed subdivision is a permitted land use in the zones.

- The proposed lots are of appropriate area and dimensions for future residential development, generally consistent with the Shiralee DCP and Masterplan. Variations to the DCP conceptual layout and minimum allotment size requirements have been assessed throughout the report and were determined to be acceptable
- All utility services are available and adequate subject to augmentation, extension and upgrading.
- The local road network is suitable subject to upgrading of existing roads and new roads.
- The land is not subject to known natural hazards.
- The contamination status of the land is below adopted residential land use thresholds, excepting two sites to be remediated prior to release.
- The site has no particular environmental values.

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

The development is classified as Integrated Development under the provisions of Clause 4.46(1) of the Environmental Planning and Assessment Act 1979 and is referred to as Nominated Integrated Development under the Environmental Planning and Assessment Regulation 2021. A Controlled Activity Approval under the provisions of Sections 89, 90 and 91 of the Water Management Act 2000 will be required from the NSW Department of Primary Industries - Water.

The proposed development was advertised and notified to adjoining landowners for a period of 28 days under the provisions of the Orange Community Participation Plan 2019. One submission was received at the closure of the exhibition period.

The submission is summarised as follows:

The objection to DA 669/2024(1) for 357 and 361 Pinnacle Road, Orange, raises concerns about inconsistencies of the development with the Shiralee DCP, infrastructure conflicts, and environmental impacts. Key points include:

1. **Non-compliance with the Shiralee DCP** - The proposed subdivision layout, road connections, and lot size mapping do not align with the approved masterplan. The application also fails to address Clause 4.1C of the LEP.
2. **Infrastructure Concerns** - The proposed 18.6m-wide carriageway to Pinnacle Road conflicts with the DCP's designated access via Pines Lane. This could lead to surplus land requiring Council management. Additionally, the new carriageway crosses over existing sewage infrastructure, posing further issues.
3. **Negative Impact on Adjoining Properties** - The proposal could block access for future developments at 369 and 381 Pinnacle Road, creating landlocked lots. Multiple carriageways in close proximity may also lead to traffic and maintenance issues.
4. **Design Flaws** - The proposed 19m carriageway running north-south does not align with the DCP's vision, fails to consider adjoining land contours, and does not match the approved future lot development.
5. **Environmental Concerns** - The development may significantly impact local wildlife, including vulnerable species such as the Superb Parrot. The application does not meet Biodiversity Conservation Act requirements.

The Applicant was afforded the opportunity to formally respond to the matters raised. In response to the above points, the Applicant has provided the following for Council's consideration:

- ❖ *It is acknowledged that the DA is not consistent with the Shiralee DCP. The submitted DA seeks to vary the DCP and provides justification. In summary:*
  - a) *The variation to the DCP layout relates primarily to the proposed new internal road that leads from Pinnacle Road.*
  - b) *The remainder of the internal road layout is generally consistent with the DCP layout. However, the central road that runs north south has been shifted slightly further to the east to prevent conflict with the pool and dwelling on the neighbouring property to the south. If the DCP layout was to be strictly adopted, this road would run directly through the pool and a corner of the dwelling (refer image below - the DCP layout is in red line).*



- ❖ *The number of lots does not exceed what is shown on the DCP Layout. In this regard, the DCP suggests a yield of 22 lots. The proposed subdivision shows 22 lots. The variation in the layout is due largely to the need to recognise local site conditions while at the same time ensure that a sensible lot yield is achieved. In this regard, the proposal facilitates a more efficient use of resources and infrastructure as follows:*
  - *Maintenance of a sensible lot yield as proposed will result in a more efficient use of roads and utility services that are required to serve other lots in the immediate vicinity.*
  - *The lot yield will increase the level of monetary contributions that can be collected to assist with the funding of infrastructure and facilities for the Shiralee release area.*
  - *The need to make efficient use of infrastructure and services is entirely consistent with the strategic planning principles reflected in the Section 9.1 Ministerial Directions (Focus Area 6 Housing) and the objects specified in Section 1.3 of the EPA Act.*
- ❖ *The new internal road from Pinnacle Road will be widened to 19m to comply with the DCP. The fact that it will go over sewer or water infrastructure is a matter readily addressed by appropriate engineering design.*
- ❖ *The proposed subdivision does not land lock other lots or compromise their development potential. The proposed layout provides the same connections to adjacent land as the DCP layout.*



- ❖ The objection states that the Statement of Environmental Effects *has not addressed Clause 4.1C of the LEP (split zones)*. The correct clause is Clause 4.1D and it is not applicable. In this regard, Clause 4.1D(3) states:

3) Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if—

- a) one of the resulting lots comprises all of the land in the original lot that is not in a relevant zone, and
- b) each other resulting lot comprises only land in 1 relevant zone.

- ❖ Pursuant to Clause 4.1D(7), relevant zone means Zone RU5 Village, Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone R5 Large Lot Residential. Clause 4.1D would only apply if one of the lots was not within a relevant zone. The proposed subdivision involves the creation of lots that are all in a relevant zone (either R1 General Residential or R2 Low Density Residential).
- ❖ The potential impacts on biodiversity have been addressed in the SoEE. In summary:
  - (a) The subject land is not identified on the Biodiversity Values Map published under Clause 7.3 of the Biodiversity Conservation Regulation 2017.
  - (b) The Biodiversity Conservation Regulation 2017 sets out threshold levels for when the Biodiversity Offset Scheme will be triggered. For land that is subject to a minimum lot size of less than 1 hectare, the threshold for clearing of native vegetation is 0.25 hectare (2,500m<sup>2</sup>). In this regard:
    - The Biodiversity Offset Scheme does not apply to non-native trees or vegetation. Many of the trees that are to be removed are prescribed in Orange Development Control Plan 2004. The removal of the non-native trees or vegetation have been addressed in Section 4.3 of the SEE.
- ❖ The natural state of the site and surrounding area has been highly modified historical agricultural practices; rural residential land use; and the emerging urban development pattern. The habitat value of the site is considered low to moderate, and due to the zoning provisions, that permit urban residential expansion of the City:
  - It does not have realistic potential to re-establish into providing a habitat of value.
  - The potential to attract less common native species is considered minimal.
  - As such, the proposal is not likely to have an adverse effect on a threatened species; endangered ecological community; or a critically endangered ecological community or their habitat.

The matters raised by the submitter are important considerations in the determination of this application. The proposal does involve a departure to the conceptual DCP layout. These matters have been addressed in the various sections of this planning assessment report. Council in determining this matter is required to consider the suitability of the proposed changes to the overall layout having regard to the commentary provided above.

Council's Technical Services Department have indicated no objections to the planned changes to the layout in terms of its impact on existing and planned infrastructure requirements. Council staff requested the Applicant to reposition the central road that runs north south so as to prevent direct conflict with the pool and dwelling on the neighbouring property to the south. If the DCP layout was to be strictly adopted, this road would run directly through the pool and a corner of the dwelling. It is considered that the proposed layout does not adversely restrict the owner of the adjoining property to also develop the property in a manner consistent with the DCP. The adjoining property owner is encouraged to keep an open dialogue with Council staff to determine future development opportunities moving forward.

**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 for the Shiralee residential locality. A Section 4.15 assessment of the development indicates that the development is acceptable in this instance. The departures to the DCP and LEP minimum allotment provisions are considered to be acceptable in this case. Attached is a draft Notice of Determination 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 Determination.

**ATTACHMENTS**

- 1 Draft Notice of Determination, D25/43194 [↓](#)
- 2 Plans, D25/37835 [↓](#)
- 3 Submission (redacted), D25/37836 [↓](#)
- 4 Letter of Offer (redacted), D25/42839 [↓](#)
- 5 Clause 4.6 Variation Request (pdf for Info Council), D25/43383 [↓](#)



### NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

Application number	DA 669/2024(1) PAN-476868
Applicant	DEVELOPED C/- PETER BASHA PLANNING AND DEVELOPMENT PTY LTD PO BOX 1827 ORANGE NSW 2800
Description of development	Proposed Urban Residential Subdivision (22 Residential Lots and Public Reserve); New Roads; Demolition; and Tree Removal
Property	357 PINNACLE ROAD ORANGE 2800 57/-/DP867205  361 PINNACLE ROAD ORANGE 2800 56/-/DP867205
Determination	Approved Consent Authority - Council
Date of determination	16/04/25
Date from which the consent operates	16/04/25
Date on which the consent lapses	16/04/30
Approval bodies that have	Council

**given general terms of approval**

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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 Dhawala Ananda / Senior 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	<p><b>Approved plans and supporting documentation</b></p> <p>Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.</p> <p><b>Proposed subdivision plans, reference number 23046DA; Drawing numbers 01 – 11 (16 sheets); Drawn by Peter Basha Planning &amp; Development; Dated 26.02.2025</b></p> <p>In the event of any inconsistency between the approved plans and documents, the approved <b>Plans / Documents</b> prevail.</p> <p>In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.</p> <p><b>Condition reason:</b> To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.</p>
2	<p><b>Development and subdivision works requirements</b></p> <p>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.</p> <p><b>Condition reason:</b> To comply with Council's Development and Subdivision Code.</p>
4	<p><b>Department of Planning and Environment - Water</b></p> <p>A. The General Terms of Approval (GTA) issued by the Department of Planning and Environment – Water apply only to the proposed controlled activity described in the plans and associated documents listed in Schedule 1 of the GTA, which relate to Development Application DA 669/2024(1) as provided by Council to the Department of Planning and Environment – Water.</p>



	B. Any amendments or modifications to the proposed controlled activity may render the GTA invalid. If the proposed controlled activity is amended or modified, Department of Planning and Environment-Water, must be notified in writing to determine if any variations to the GTA will be required.
	<b>Condition reason:</b> To comply with relevant statutory requirements.

### Land Subdivision

#### Before issue of a subdivision certificate

5	<b>All services contained within lots and Statement of Compliance</b>
	All services are to be contained within the allotment of proposed Lots 1, 9 and 23. A Statement of Compliance and digital works as executed plans for all services, from a Registered Surveyor, are to be submitted to Orange City Council prior to the issue of a Subdivision Certificate for proposed Lots 1, 9 and 23.
	<b>Condition reason:</b> To comply with Council's Development and Subdivision Code.
6	<b>Apply for Subdivision Certificate</b>
	Application shall be made for a Subdivision Certificate under Section 6.3(1)(d) of the Act for proposed Lots 1, 9 and 23.
	<b>Condition reason:</b> To ensure compliance with relevant statutory requirements.
7	<b>Essential Energy certification</b>
	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 for proposed Lots 1, 9 and 23.
	<b>Condition reason:</b> To comply with Council's Development and Subdivision Code.
8	<b>NBN certification</b>
	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 for proposed Lots 1, 9 and 23.
	<b>Condition reason:</b> To comply with Council's Development and Subdivision Code.

9	<p><b>Provision of services and works on public land</b></p> <p>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.</p> <p><b>Condition reason:</b> To comply with Council's Development and Subdivision Code.</p>
10	<p><b>Section 88B restriction on title - proposed Lot 23</b></p> <p>A Restriction-as-to-User under section 88B of the <i>NSW Conveyancing Act</i> is to be created on the title of proposed Lot 23 in favour of Orange City Council which states that:</p> <p>Proposed Lot 23 may not be subdivided or further developed and may not be used for residential purposes unless the following works are carried out to the satisfaction of Orange City Council:</p> <ul style="list-style-type: none"> <li>• All infrastructure services (water, sewer, stormwater drainage, stormwater detention, gas, electricity, phone lines) as required by the Orange City Council Development and Subdivision Code are provided to Lot 23; and</li> <li>• The developer of proposed Lot 23 is responsible for gaining access over adjoining land for services as necessary. Easements are to be created about all service mains within and outside the lots they serve; and</li> <li>• Contributions are paid as required by the development contributions plan applicable at the time of development and Water and Sewer charges as required by Orange City Council in accordance with Division 5 of Part 2 of Chapter 6 of the Water Management act 2000; and</li> <li>• Pinnacle Road frontage is constructed in accordance with the Orange City Council Development and Subdivision Code as half road width including kerb and gutter on the development side of the road.</li> </ul> <p><b>Condition reason:</b> To comply with Orange City Council Development and Subdivision Code</p>
11	<p><b>Section 88B restriction on title - proposed Lots 1 and 9</b></p> <p>A Restriction-as-to-User under section 88B of the <i>NSW Conveyancing Act</i> is to be created on the title of proposed Lots 1 and 9 in favour of Orange City Council which states that:</p>

	<p>Proposed Lots 1 and 9 may not be subdivided or further developed unless the following works are carried out to the satisfaction of Orange City Council:</p> <ul style="list-style-type: none"> <li>• All infrastructure services (water, sewer, stormwater drainage, stormwater detention, gas, electricity, phone lines) as required by the Orange City Council Development and Subdivision Code are provided to proposed Lots 1 and 9; and</li> <li>• The developer of proposed Lots 1 and 9 is responsible for gaining access over adjoining land for services as necessary. Easements are to be created about all service mains within and outside the lots they serve; and</li> <li>• Contributions are paid as required by the development contributions plan applicable at the time of development and Water and Sewer charges as required by Orange City Council in accordance with Division 5 of Part 2 of Chapter 6 of the Water Management act 2000; and</li> <li>• Pinnacle Road frontage is constructed in accordance with the Orange City Council Development and Subdivision Code as half road width including kerb and gutter on the development side of the road.</li> </ul>
	<p><b>Condition reason:</b> To comply with Orange City Council Development and Subdivision Code</p>
12	<p><b>Section 88B restriction on title - proposed Lots 1 and 9 – septic tank absorption trenches</b></p> <p>An easement shall be established over any existing septic tank absorption trench including an appropriate buffer to ensure full containment of the effluent disposal area where not fully located within the proposed lot.</p> <p><b>Condition reason:</b> To comply with Councils Development and Subdivision Code.</p>

### Subdivision Work

### Before issue of a subdivision works certificate

13	<p><b>Access over adjoining land</b></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>
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	<b>Condition reason:</b> To ensure compliance with relevant statutory requirements.
14	<b>Dust management plan</b>
	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.
	<b>Condition reason:</b> To comply with Council's Development and Subdivision Code.
15	<b>Engineering plan design and construction requirements</b>
	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 for proposed Lots 2 to 8 and 10 to 22.
	<b>Condition reason:</b> To comply with Council's Development and Subdivision Code.
16	<b>Road construction requirements</b>
	All roads shall be constructed and designed in accordance with Council's Development and Subdivision Code, Shiralee DCP and Council's Shiralee Road-type master plan. Road construction shall include paved thresholds and intersection blisters in accordance with Orange City Council's Shiralee DCP, standard drawings and Shiralee Typical Intersection details (dwg No TP00040-E as amended).
	The proposed 19m wide and 15.5m wide internal roads shall be constructed to full width urban standard within the development.
	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.
	<b>Condition reason:</b> To comply with Council's Development and Subdivision Code.
17	<b>Road naming application</b>
	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 - including future road extensions.
	<b>Condition reason:</b> To comply with Council's Development and Subdivision Code.
18	<b>Sewer main construction</b>
	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.

	<b>Condition reason:</b> To comply with Council's Development and Subdivision Code.
19	<b>Soil and Water Management Plan</b>  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.  <b>Condition reason:</b> To comply with Council's Development and Subdivision Code.
20	<b>Stormwater - interlot stormwater system</b>  Proposed lots are to be provided with interlot stormwater drainage, including those lots abutting public land, where the surface of the entire lot cannot be drained to the kerb and gutter at the lot frontage. A grated stormwater pit is to be constructed within each lot provided with interlot stormwater drainage. Engineering plans for this drainage system are to be approved by Orange City Council or an Accredited Certifier (certifier – subdivision) prior to the issue of a Subdivision Works Certificate.  <b>Condition reason:</b> To comply with Council's Development and Subdivision Code.
21	<b>Stormwater treatment</b>  Stormwater from the site shall be piped to the adjacent watercourse (Blackmans Swamp Creek), where stormwater shall be discharged through a stormwater treatment system providing a sediment and litter arrestor, settling basin and appropriate scour protection before entering the watercourse. The selected stormwater treatment system shall be from a range of existing Council approved systems. The stormwater treatment system design shall include sealed all-weather service vehicle access. Prior to a Subdivision Works Certificate being issued engineering plans for this stormwater system are to be submitted to and approved by Orange City Council. A licence from the NSW Office of Water shall be obtained for work within 40 metres of any watercourse.  <b>Condition reason:</b> To comply with Council's Development and Subdivision Code.
22	<b>Water reticulation analysis</b>  A water reticulation analysis is to be carried out by Orange City Council on any proposed water reticulation system for the development.  The existing watermain, and any upgraded watermain located in Pinnacle Road shall be located behind the proposed kerb and gutter for the full frontage of the development.  Engineering plans are to be submitted to and approved by Orange City Council prior to the issue of a construction certificate.  <b>Condition reason:</b> To comply with Council's Development and Subdivision Code.

23	<p><b>Relocate sewer rising main in Pinnacle Road reserve</b></p> <p>The existing sewer pressure main and all associated infrastructure located in Pinnacle Road shall be located behind the proposed kerb and gutter for the full frontage of the development.</p> <p>Engineering plans are to be submitted to and approved by Orange City Council prior to the issue of a Construction Certificate.</p> <p><b>Condition reason:</b> To comply with Councils Development and Subdivision Code.</p>
24	<p><b>Pinnacle Road intersection construction requirements</b></p> <p>Engineering plans are to be submitted to and approved by Orange City Council prior to the issue of a Subdivision Works Certificate detailing the following intersection improvements for the proposed 19.0m wide road and Pinnacle Road:</p> <ul style="list-style-type: none"> <li>• A bitumen-sealed rural Basic Right turn treatment (BAR) in accordance with Figure 7.5 of Austroads Guide to Road Design Part 4 on the western side of Pinnacle Road, AND</li> <li>• The intersection works are to be designed and constructed for the posted speed limit at this location and be able to accommodate up to a 19m articulated heavy vehicle.</li> <li>• Details of any ancillary works are to be provided including (but not limited to) pavement design, line marking, intersection and road name signage, drainage transitions, batter slopes, vegetation removal, services relocation, piped stormwater, kerb and gutter and road reserve widening acquisition.</li> <li>• Safe Intersection Sight Distance (SISD) requirements as outlined in Austroads Guide to Road Design Part 4A is to be provided in both directions at the intersection,</li> <li>• Pinnacle Road shall be upgraded to an urban collector road standard for the full frontage of proposed Lots 1 and 9 and shall tie into the existing intersection with Canobolas Road. The works shall include kerb and gutter, underground stormwater pipes, parking and travel lanes, and a 1.5m wide concrete footpath on the development side of the road.</li> <li>• Road pavement construction shall extend full road width for the frontage of proposed Lots 1 and 9.</li> </ul> <p>The new works shall tie into the existing road pavement and all construction works made safe for road users</p> <p><b>Condition reason:</b> To comply with Councils Development and Subdivision Code.</p>
25	<p><b>Street Tree and Public Domain Plan</b></p> <p>A detailed Street Tree and Public Domain plan with tree and plant species must be submitted with an application for a subdivision works certificate and must be submitted to, and approved by Council's Manager Development Assessments prior to the issue of a subdivision works certificate.</p> <p><b>Condition reason:</b> To ensure a quality urban design for the development which complements the surrounding environment.</p>



26	<b>Lighting Plan</b>
	Street lighting Plan must be submitted with an application for a subdivision works certificate. The plan must be designed to meet the current Australian Standards AS/NZS 1158 series and street trees and street lights are to be staggered so that footpaths maintain sufficient light levels.
	<b>Condition reason:</b> To ensure a quality urban design for the development which complements the surrounding environment.

**Before subdivision work commences**

27	<b>Apply for Subdivision Works Certificate</b>
	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.
	<b>Condition reason:</b> To ensure compliance with relevant statutory requirements.
28	<b>Soil and Water Management Plan</b>
	The approved Soil and Water Management Plan (SWMP) shall be implemented prior to construction works commencing.
	<b>Condition reason:</b> To ensure compliance with relevant statutory requirements.
29	<b>Department of Planning and Environment - Water</b>
	Before commencing any proposed controlled activity on waterfront land, an application must be submitted to Department of Planning and Environment-Water, and obtained, for a controlled activity approval under the Water Management Act 2000.
	<b>Condition reason:</b> To comply with relevant statutory requirements.
30	<b>Department of Planning and Environment - Water</b>
	A. The application for a controlled activity approval must include the following plan(s): <ul style="list-style-type: none"> <li>• Site plans - indicating the demarcation of waterfront land, designated riparian corridors, and identifying any areas of encroachments and offsets.</li> <li>• Detailed civil construction plans</li> <li>• Erosion and sediment control plans - for works on waterfront land.</li> <li>• Vegetation management plan - for Blackmans Swamp Creek riparian corridor.</li> <li>• Riparian offset plan - for Blackmans Swamp Creek riparian corridor.</li> <li>• Itemised VMP Costings - for Blackmans Swamp Creek riparian corridor.</li> <li>• Construction Cut and Fill Cross Sections and Plan View Details of Site - for works on waterfront land.</li> </ul>

	<ul style="list-style-type: none"> <li>Construction detailed bulk earthworks plans - for works on waterfront land.</li> </ul> <p>B. The plan(s) must be prepared in accordance with Department of Planning and Environment-Water's guidelines located on the website - <a href="https://www.dpie.nsw.gov.au/water/licensing-and-trade/approvals/controlled-activity-approvals/what/guidelines">https://www.dpie.nsw.gov.au/water/licensing-and-trade/approvals/controlled-activity-approvals/what/guidelines</a></p> <p><b>Condition reason:</b> To comply with relevant statutory requirements.</p>
31	<p><b>Department of Planning and Environment - Water</b></p> <p>A. A security deposit must be provided, if required by Department of Planning and Environment-Water.</p> <p>B. The deposit must be:</p> <ul style="list-style-type: none"> <li>a bank guarantee, cash deposit or equivalent, and</li> <li>equal to the amount required by Department of Planning and Environment-Water for that controlled activity approval.</li> </ul> <p><b>Condition reason:</b> To comply with relevant statutory requirements.</p>

**During subdivision work**

32	<p><b>Tree protection during work</b></p> <p>While site work is being carried out, all required tree protection measures must be maintained in good condition in accordance with the relevant requirements of AS 4970 – Protection of Trees on Development Sites. This includes maintaining adequate soil grades and ensuring all machinery, builders' refuse, spoil, and materials remain outside the Tree Protection Zones.</p> <p>In particular, trees located along the north-eastern boundary must be protected throughout the duration of the works.</p> <p><b>Condition reason:</b> To protect trees during the carrying out of site work.</p>
33	<p><b>Adjustments to utility services</b></p> <p>Any adjustments to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer.</p> <p><b>Condition reason:</b> To comply with Council's Development and Subdivision Code.</p>
34	<p><b>All services contained within lots</b></p> <p>All services are to be contained within the allotment that they serve.</p>

	<b>Condition reason:</b> To comply with Council's Development and Subdivision Code.
35	<b>Concrete footpaths and cycleways</b>
	Footpaths and cycleways are to be constructed in accordance with the Shiralee DCP.
	Construction work is to be to the requirements and standards of the Orange City Council Development and Subdivision Code.
	<b>Condition reason:</b> To comply with Council's Development and Subdivision Code.
36	<b>Lots adjacent to waterway</b>
	All proposed residential lots adjacent to the waterway, (Blackmans Swamp Creek), are to be a minimum of 500mm above the 1% AEP flood level.
	<b>Condition reason:</b> To comply with Council's Development and Subdivision Code.
37	<b>Provision of services</b>
	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.
	<b>Condition reason:</b> To comply with Council's Development and Subdivision Code.
38	<b>Provision of water service and sewer junction</b>
	A water service and sewer junction is to be provided to every lot in the proposed residential subdivision in accordance with the Orange City Council Development and Subdivision Code.
	<b>Condition reason:</b> To comply with Council's Development and Subdivision Code.
39	<b>Full width road construction for 15.5m wide road</b>
	The proposed 15.5m wide road adjoining the stormwater easement (noted on plans as a public reserve) shall be constructed to full road width at the full cost of the developer. This work is to include road pavement and pavement surfacing, with kerb and gutter construction and earth-formed footpath on both sides of the road.
	<b>Condition reason:</b> To comply with Council's Development and Subdivision Code.

**Before issue of a subdivision certificate**

40	<p><b>All services contained within lots, Statement of Compliance and WAE plans</b></p> <p>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.</p> <p>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.</p> <p><b>Condition reason:</b> To comply with Council's Development and Subdivision Code.</p>
41	<p><b>Apply for Subdivision Certificate</b></p> <p>Application shall be made for a Subdivision Certificate under Section 6.3(1)(d) of the Act for proposed Lots 2 to 8 and 10 to 22.</p> <p><b>Condition reason:</b> To ensure compliance with relevant statutory requirements.</p>
42	<p><b>Connection of existing dwelling to sewer and disposal of septic tank</b></p> <p>The existing dwellings on proposed Lots 1 and 9 shall be connected to the proposed reticulated sewer. The existing tanks are to be accurately located and indicated on the submitted engineering plans. The septic tanks shall be excavated and disposed of at a licensed landfill and the absorption trench is to be drained and the voids limed and backfilled with clean compacted material.</p> <p>Evidence of such work is to be provided to the Principal Certifying Authority prior to the issue of a Subdivision Certificate.</p> <p><b>Condition reason:</b> To comply with Council's Development and Subdivision Code.</p>
43	<p><b>Contributions - water and sewer headworks charges</b></p> <p>Payment of contributions for water, sewer and drainage works is required to be made at the contribution rate applicable at the time that the payment is made. The contributions are based on 20 ETs for water supply headworks and 22 ETs for sewerage headworks. A Certificate of Compliance, from Orange City Council in accordance with the <i>Water Management Act 2000</i>, will be issued upon payment of the contributions.</p> <p>This Certificate of Compliance is to be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate.</p> <p><b>Condition reason:</b> To ensure compliance with relevant statutory requirements.</p>
44	<p><b>Easement for sewer mains</b></p>

	<p>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.</p> <p><b>Condition reason:</b> To comply with Council's Development and Subdivision Code.</p>
45	<p><b>Essential Energy certification</b></p> <p>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.</p> <p><b>Condition reason:</b> To comply with Council's Development and Subdivision Code.</p>
46	<p><b>Filling of lots</b></p> <p>Evidence from a registered NATA laboratory is to be submitted prior to the issue of a Subdivision Certificate stating that the filling of all low-lying areas and/or dams has been carried out in accordance with Australian Standard 3798-2007.</p> <p>The existing farm dam located on the proposed public reserve shall be filled to natural ground levels in accordance with Australian Standard 3798-2007.</p> <p><b>Condition reason:</b> To comply with Council's Development and Subdivision Code.</p>
47	<p><b>Maintenance security deposit</b></p> <p>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.</p> <p>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.</p> <p><b>Condition reason:</b> To comply with Council's Development and Subdivision Code.</p>
48	<p><b>NBN certification</b></p> <p>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.</p> <p><b>Condition reason:</b> To comply with Council's Development and Subdivision Code.</p>
49	<p><b>Provision of services and works on public land</b></p>

	<p>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.</p> <p><b>Condition reason:</b> To comply with Council's Development and Subdivision Code.</p>													
50	<p><b>Provision of services for staged subdivision release</b></p> <p>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/dwellings are to be completed prior to the issue of a Subdivision Certificate.</p> <p><b>Condition reason:</b> To ensure compliance with relevant statutory requirements.</p>													
51	<p><b>Restriction-as-to-User - stormwater easements</b></p> <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><b>Condition reason:</b> To comply with Council's Development and Subdivision Code.</p>													
52	<p><b>Existing drainage easement</b></p> <p>Prior to the issue of a Subdivision Certificate the proposed allotment encumbered by existing stormwater and water storage easements in favour of Orange City Council shall be dedicated to Council as a drainage reserve at no cost to Council.</p> <p><b>Condition reason:</b> To comply with Council's Development and Subdivision Code.</p>													
53	<p><b>Contributions - payment of development contributions</b></p> <p>The payment of <b>\$400,000.00</b> must be made to Council in accordance with Section 7.11 of the Act and Orange Development Contributions Plan 2024 (Shiralee Urban Release Area) toward the provision of the following public facilities:</p> <table border="1"> <tr> <td>Open Space and Recreation</td><td>@ \$792.01 x 20 additional lots</td><td>15,840.20</td></tr> <tr> <td>Community and Cultural</td><td>@ \$229.68 x 20 additional lots</td><td>4,593.60</td></tr> <tr> <td>Roads and Traffic Management</td><td>@ \$1,045.43 x 20 additional lots</td><td>20,908.60</td></tr> <tr> <td>Local Area Facilities</td><td>@ \$17,760.90 x 20 additional lots</td><td>35,5218.00</td></tr> </table>		Open Space and Recreation	@ \$792.01 x 20 additional lots	15,840.20	Community and Cultural	@ \$229.68 x 20 additional lots	4,593.60	Roads and Traffic Management	@ \$1,045.43 x 20 additional lots	20,908.60	Local Area Facilities	@ \$17,760.90 x 20 additional lots	35,5218.00
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Roads and Traffic Management	@ \$1,045.43 x 20 additional lots	20,908.60												
Local Area Facilities	@ \$17,760.90 x 20 additional lots	35,5218.00												



Plan Preparation & Administration	@ \$171.98 x 20 additional lots	3,439.60
<b>TOTAL</b>		<b>\$400,000.00</b>
The contribution will be indexed quarterly in accordance with Orange Development Contributions Plan 2024 (Shiralee Urban Release Area) 1 March 2025 to 31 May 2025, which may be inspected at the Orange Civic Centre, Byng Street, Orange.		
<b>Condition reason:</b> Because the development will require the provision of, or increase the demand for public amenities and services.		
<b>54 Rural Fire Service - Asset Protection Zones</b>		
<p>1. At the issue of a subdivision certificate, and in perpetuity to ensure ongoing protection from the impact of bush fires, the entirety of the proposed residential lots must be managed as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019. When establishing and maintaining an IPA the following requirements apply:</p> <ul style="list-style-type: none"> <li>• tree canopy cover should be less than 15% at maturity;</li> <li>• trees at maturity should not touch or overhang the building;</li> <li>• lower limbs should be removed up to a height of 2 metres above the ground;</li> <li>• tree canopies should be separated by 2 to 5 metres;</li> <li>• preference should be given to smooth barked and evergreen trees;</li> <li>• large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;</li> <li>• shrubs should not be located under trees;</li> <li>• shrubs should not form more than 10% ground cover; and</li> <li>• clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation.</li> <li>• grass should be kept mown (as a guide grass should be kept to no more than 100mm in height); and</li> <li>• leaves and vegetation debris should be removed.</li> </ul>		
<b>Condition reason:</b> The intent of measures is to provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels at the dwellings are below critical limits and prevent direct flame contact.		
<b>55 Rural Fire Service - Construction Standards</b>		
<p>At the issue of the subdivision certificate, the existing dwellings on proposed Lots 1 and 9 must be upgraded to improve ember protection by enclosing all openings (excluding roof tile spaces) or covering openings with a noncorrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any subfloor areas, openable windows, vents, weep holes and eaves. External doors are to be fitted with draft excluders.</p>		
<b>Condition reason:</b> The intent of Infill measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting		

	firefighting activities.
56	<p><b>Rural Fire Service - Access - Public Roads</b></p> <p>1. Proposed access roads must comply with the following requirements of Table 5.3b of Planning for Bush Fire Protection 2019:</p> <ul style="list-style-type: none"> <li>• perimeter road along the public reserve is two-way sealed road with minimum 8 metre carriageway width kerb to kerb;</li> <li>• remaining public roads are two-way sealed roads with minimum 5.5 metre carriageway width kerb to kerb;</li> <li>• a minimum vertical clearance of 4 metre to any overhanging obstructions, including tree branches, is provided.</li> <li>• parking is provided outside of the carriageway width;</li> <li>• are through roads, and these are linked to the internal road system at an interval of no greater than 500 metre;</li> <li>• curves of roads have a minimum inner radius of 6 metre;</li> <li>• the maximum grade road is 15 degrees and average grade of not more than 10 degrees;</li> <li>• the road crossfall does not exceed 3 degrees;</li> <li>• traffic management devices are constructed to not prohibit access by emergency services vehicles;</li> <li>• dead end roads are not recommended, but if unavoidable, are not more than 200 metres in length, incorporate a minimum 12 metres outer radius turning circle, and are clearly sign posted as a dead end;</li> <li>• the capacity of perimeter and non-perimeter road surfaces and any bridges/causeways is sufficient to carry fully loaded firefighting vehicles; bridges/causeways are to clearly indicate load rating;</li> <li>• hydrants are located outside of parking reserves and road carriageways to ensure accessibility to reticulated water for fire suppression; and</li> <li>• hydrants are provided in accordance with the relevant clauses of AS 2419.1:2005 - Fire hydrant installations System design, installation and commissioning.</li> </ul> <p>2. Temporary turning heads must be provided to temporary dead end roads incorporating either a minimum 12 metre radius turning circle or turning heads compliant with A3.3. Vehicle turning head requirements of Planning for Bush Fire Protection 2019. Temporary turning heads are to be clearly sign posted as a 'No Through' road. The turning areas may be removed upon opening of future proposed through roads.</p> <p><b>Condition reason:</b> The intent of measures is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area.</p>
57	<p><b>Rural Fire Service - Water and Utility Services</b></p> <p>The provision of water, electricity and gas must comply with the following in accordance with Table 5.3c of Planning for Bush Fire Protection 2019:</p> <ul style="list-style-type: none"> <li>• reticulated water is to be provided to the development where available;</li> <li>• fire hydrant, spacing, design and sizing complies with the relevant clauses of</li> </ul>

	<p>Australian Standard AS 2419.1:2005;</p> <ul style="list-style-type: none"> <li>hydrants are not located within any road carriageway;</li> <li>reticulated water supply to urban subdivisions uses a ring main system for areas with perimeter roads;</li> <li>fire hydrant flows and pressures comply with the relevant clauses of AS 2419.1:2005;</li> <li>all above-ground water service pipes are metal, including and up to any taps;</li> <li>where practicable, electrical transmission lines are underground;</li> <li>where overhead, electrical transmission lines are proposed as follows: <ul style="list-style-type: none"> <li>a. lines are installed with short pole spacing (30 metres), unless crossing gullies, gorges or riparian areas; and</li> <li>b. no part of a tree is closer to a power line than the distance set out in accordance with the specifications in ISSC3 Guideline for Managing Vegetation Near Power Lines.</li> </ul> </li> <li>reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 and the requirements of relevant authorities, and metal piping is used;</li> <li>reticulated or bottled gas is installed and maintained in accordance with AS/NZS 1596:2014 - The storage and handling of LP Gas, the requirements of relevant authorities, and metal piping is used;</li> <li>all fixed gas cylinders are kept clear of all flammable materials to a distance of 10 metres and shielded on the hazard side;</li> <li>connections to and from gas cylinders are metal; polymer - sheathed flexible gas supply lines are not used; and</li> <li>above-ground gas service pipes are metal, including and up to any outlets.</li> </ul>
	<p><b>Condition reason:</b> The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.</p>
58	<p><b>Rural Fire Service - Landscaping Assessment</b></p> <p>Landscaping within the required asset protection zone must comply with Appendix 4 of Planning for Bush Fire Protection 2019. In this regard, the following principles are to be incorporated:</p> <ul style="list-style-type: none"> <li>A minimum 1 metre wide area (or to the property boundary where the setbacks are less than 1 metre),</li> <li>suitable for pedestrian traffic, must be provided around the immediate curtilage of the building;</li> <li>Planting is limited in the immediate vicinity of the building;</li> <li>Planting does not provide a continuous canopy to the building (i.e. trees or shrubs are isolated or located in small clusters);</li> <li>Landscape species are chosen to ensure tree canopy cover is less than 15% (IPA), and less than 30% (OPA) at maturity and trees do not touch or overhang buildings;</li> <li>Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies;</li> <li>Use smooth bark species of trees species which generally do not carry a fire up the bark into the crown;</li> <li>Avoid planting of deciduous species that may increase fuel at surface/ ground level (i.e. leaf litter);</li> <li>Avoid climbing species to walls and pergolas;</li> </ul>

	<ul style="list-style-type: none"> <li>• Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building;</li> <li>• Locate combustible structures such as garden sheds, pergolas and materials such as timber garden furniture away from the building; and</li> <li>• Low flammability vegetation species are used.</li> </ul>
	<p><b>Condition reason:</b> The intent of measures is to provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels at the dwellings are below critical limits and prevent direct flame contact.</p>
59	<p><b>Planning Agreement - Registration</b></p> <p>The applicant shall enter into a Planning Agreement with the Orange City Council in a manner that is consistent with the terms of offer made in the letter to Orange City Council dated 16th April 2025. The Planning Agreement shall be registered on the Title of proposed Lot 23 prior to the further subdivision of Lot 23 as proposed in Stage 2 of the development.</p> <p><b>Condition reason:</b> To ensure the public reserve is delivered as part of the development.</p>
60	<p><b>Dedication of Public Reserve - Lot 23</b></p> <p>Prior to the issue of a Subdivision Certificate for Stage 2 of the development, the land identified as Public Reserve (Lot 23) shall be dedicated to Orange City Council in accordance with the terms of the Planning Agreement.</p> <p><b>Condition reason:</b> To ensure the public reserve is delivered and dedicated to Council in accordance with the Planning Agreement.</p>
61	<p><b>Section 88B restriction on title - proposed Lot 6</b></p> <p>At the issue of a subdivision certificate, if the land immediately to the north of proposed Lot 6 has not been developed for residential purposes and the bush fire hazard removed, a suitably worded instrument(s) must be created pursuant to section 88 of the Conveyancing Act 1919 over the lot for provision of temporary asset protection zone (APZ) and prohibit the construction of buildings other than class 10b structures within the lot for a distance of 12 metres measured from the northern site boundary. The instrument may be lifted upon commencement of any future proposed development on the adjoining land, but only if the bush fire hazard is removed as part of the proposal. The name of authority empowered to release, vary or modify the instrument shall be Orange City Council.</p> <p><b>Condition reason:</b> The intent of measures is to provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels at the dwellings are below critical limits and prevent direct flame contact.</p>
62	<p><b>Street Tree and Public Domain - to be installed in accordance with approved plan</b></p> <p>Street Tree and Public Domain (landscaping) must be installed in accordance with the approved plans.</p> <p><b>Condition reason:</b> To ensure a quality urban design for the development which</p>

	complements the surrounding environment.
63	<b>Lighting</b>
	All street lighting must be installed in accordance with the approved plans.
	<b>Condition reason:</b> To ensure a quality urban design for the development which complements the surrounding environment.

**Ongoing use for subdivision work**

64	<b>General Advice</b>
	Development applications lodged on lots created within this subdivision may be subject to further bush fire assessment under the provisions of the NSW Environmental Planning & Assessment Act 1979. Future dwellings are required to address the requirements of Planning for Bush Fire Protection 2019.
	<b>Condition reason:</b> To comply with relevant statutory requirements.

**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.

**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.

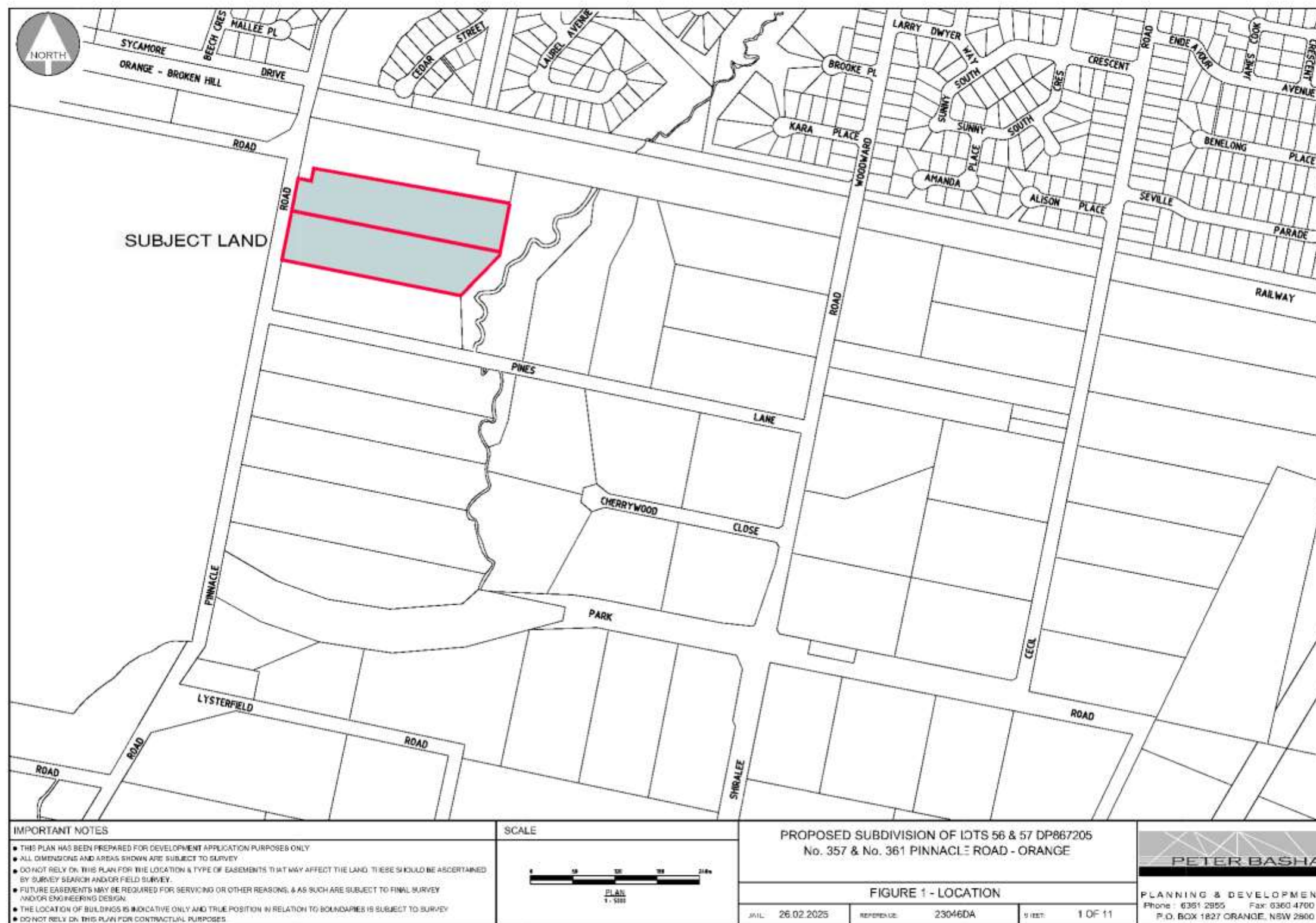
**Strata certificate** means a certificate in the approved form issued under Part 4 of the *Strata Schemes Development Act 2015* that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

**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.

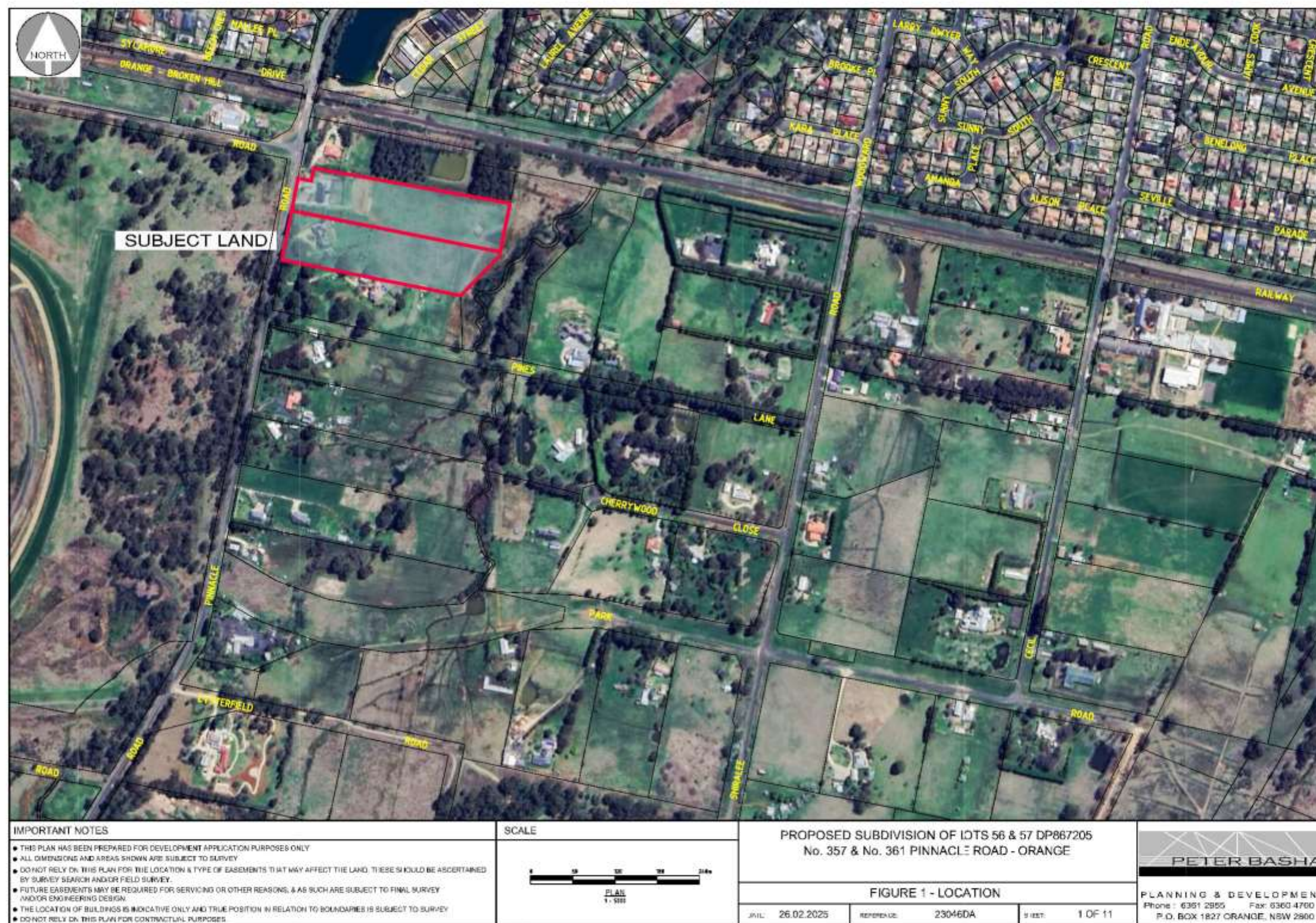
**Sydney district or regional planning panel** means Western Regional Planning Panel.







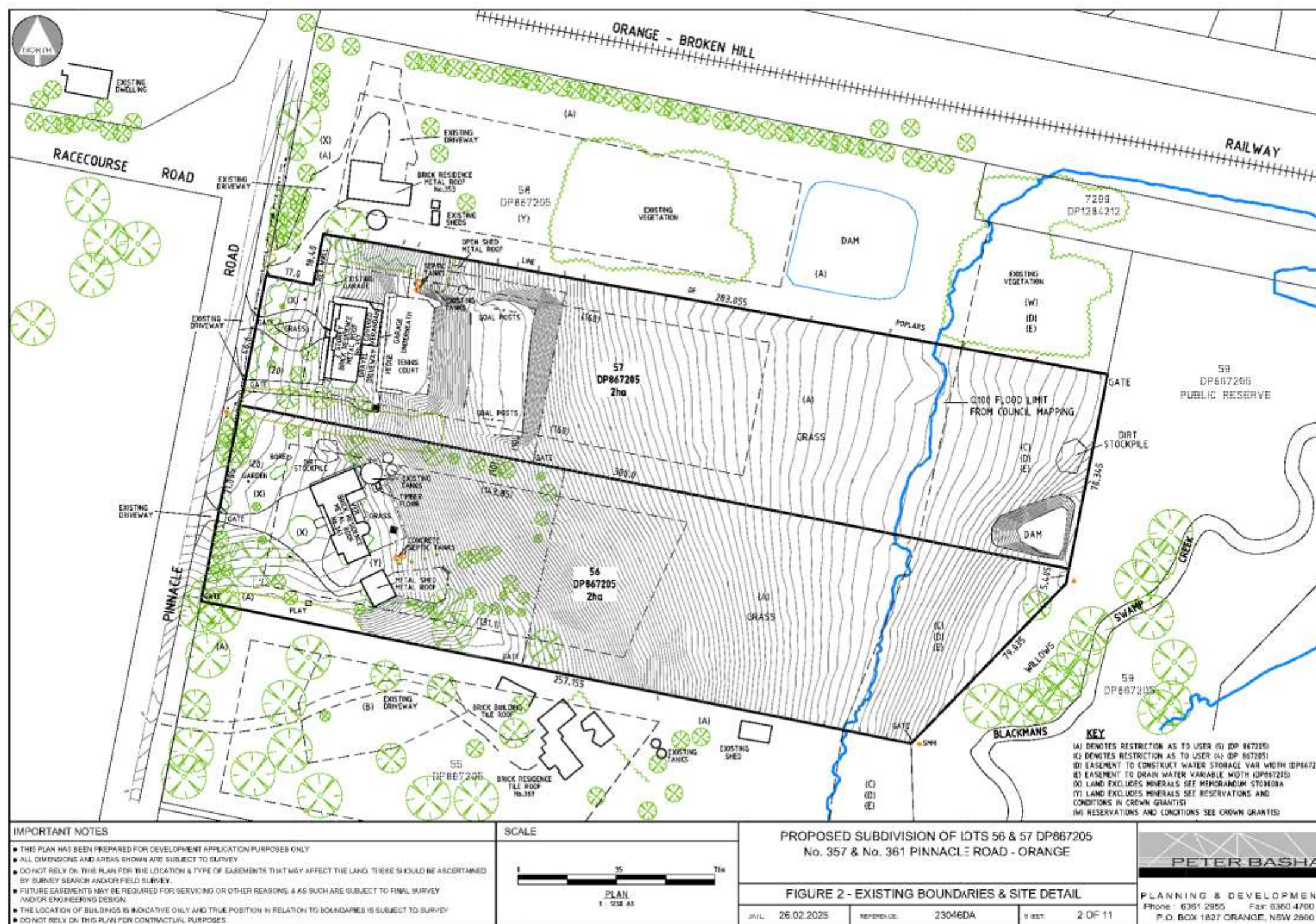












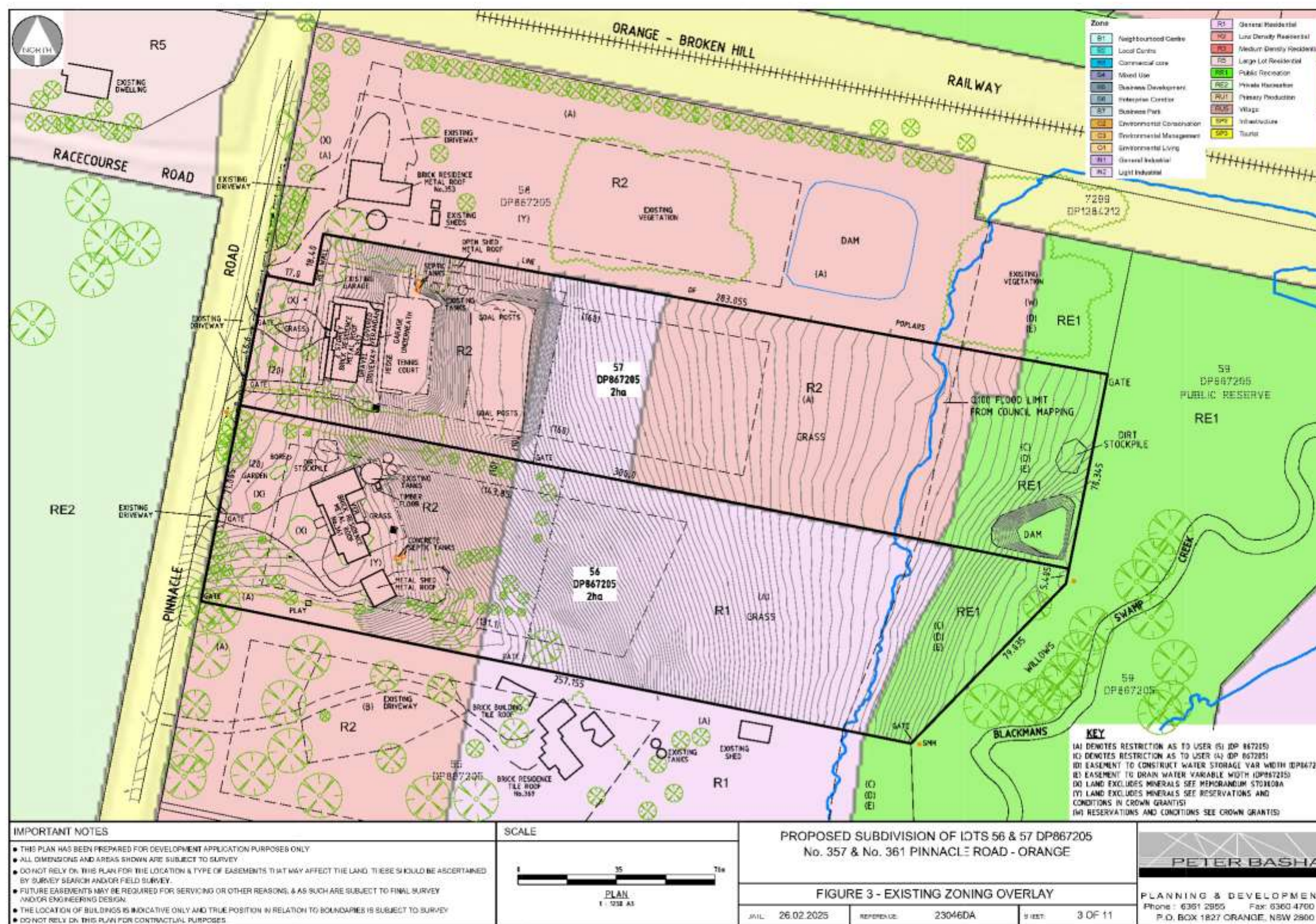






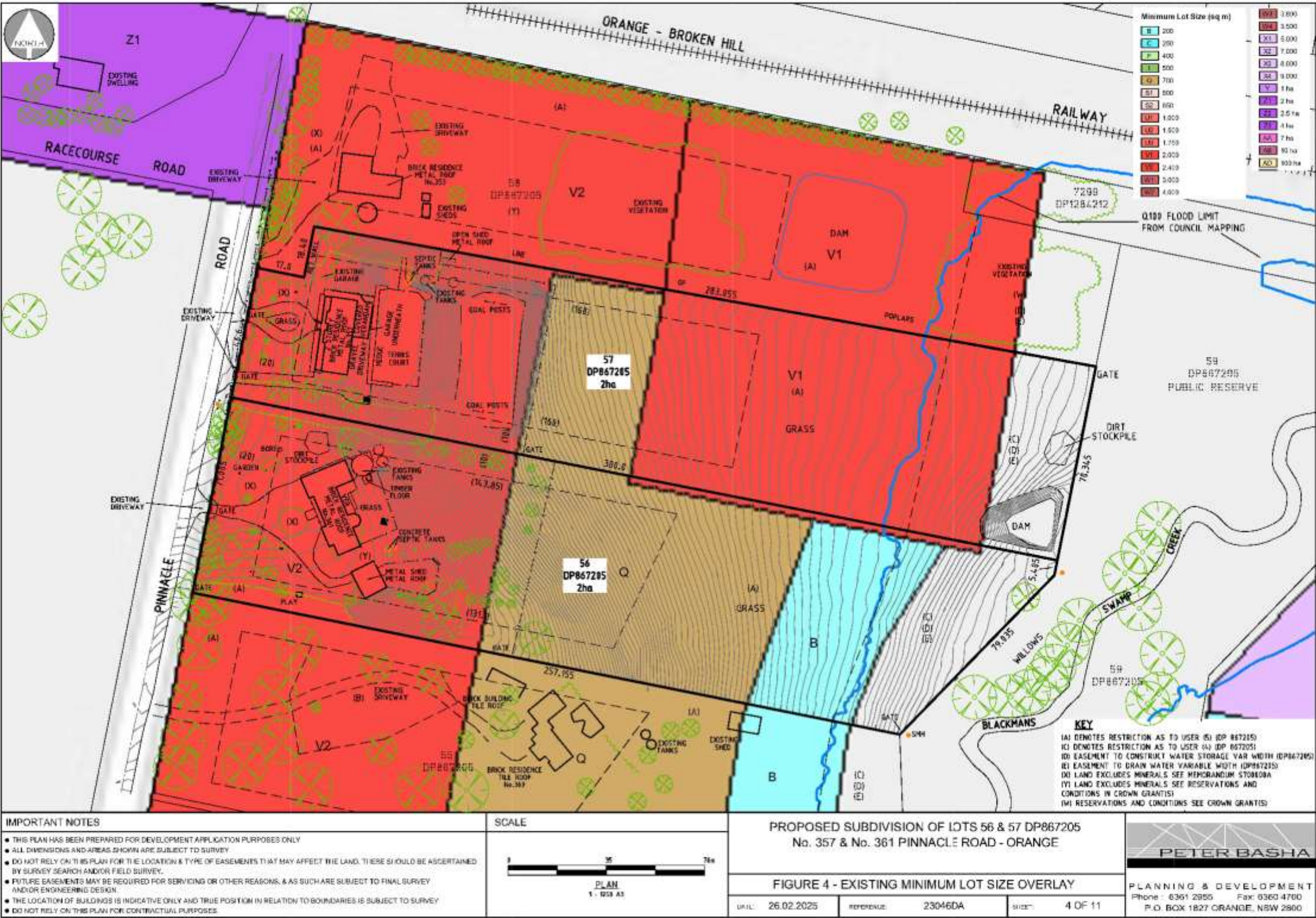












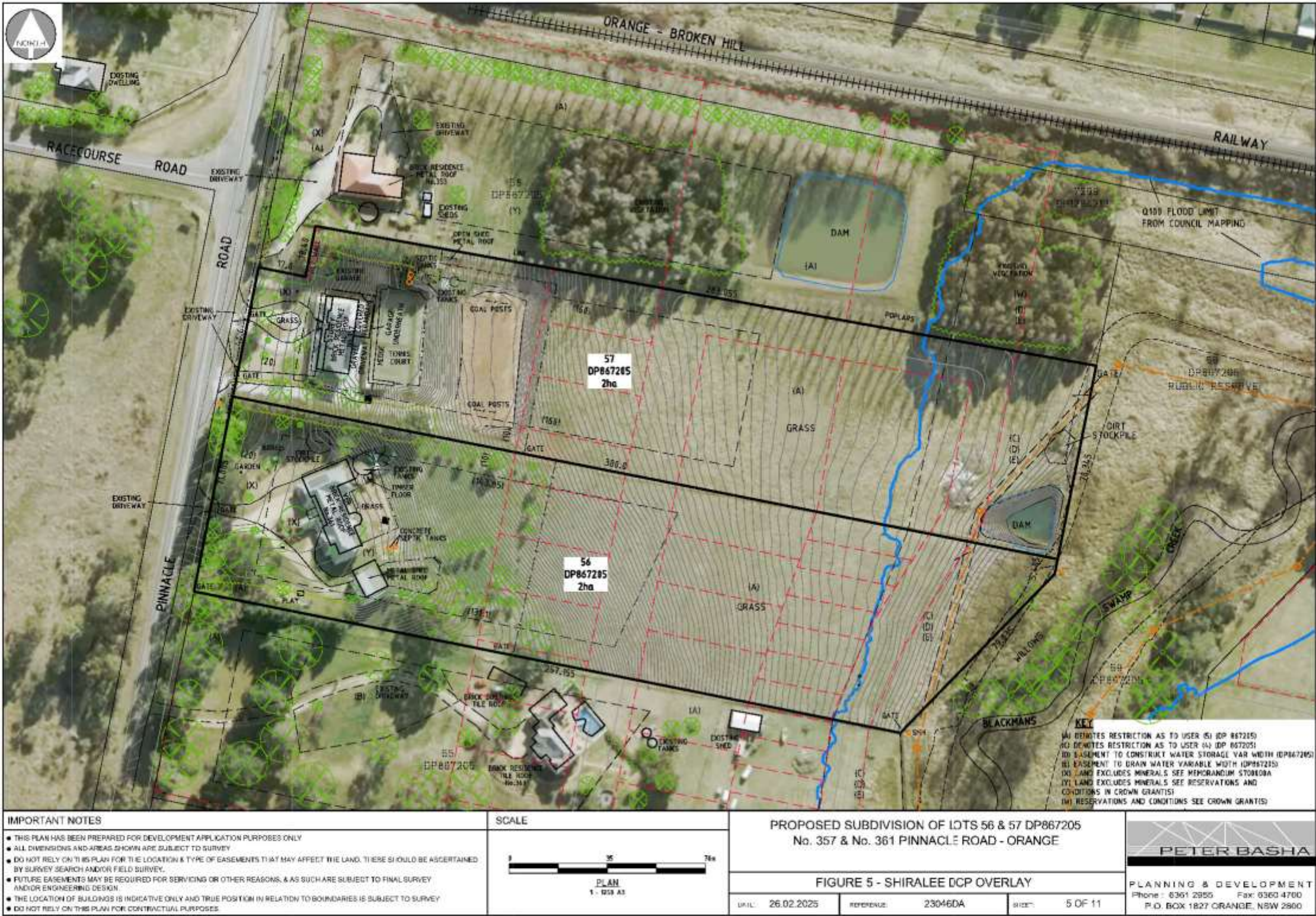






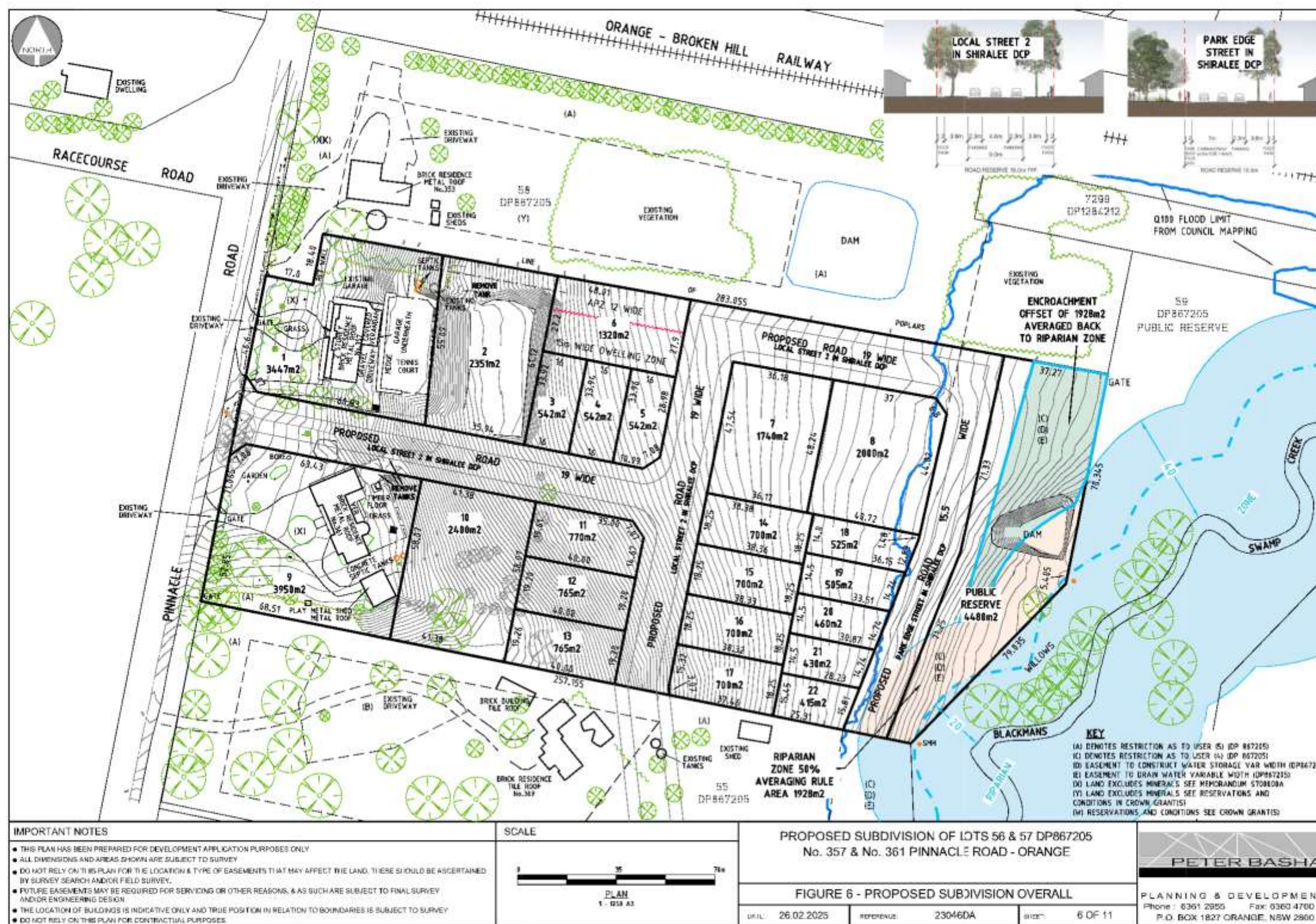






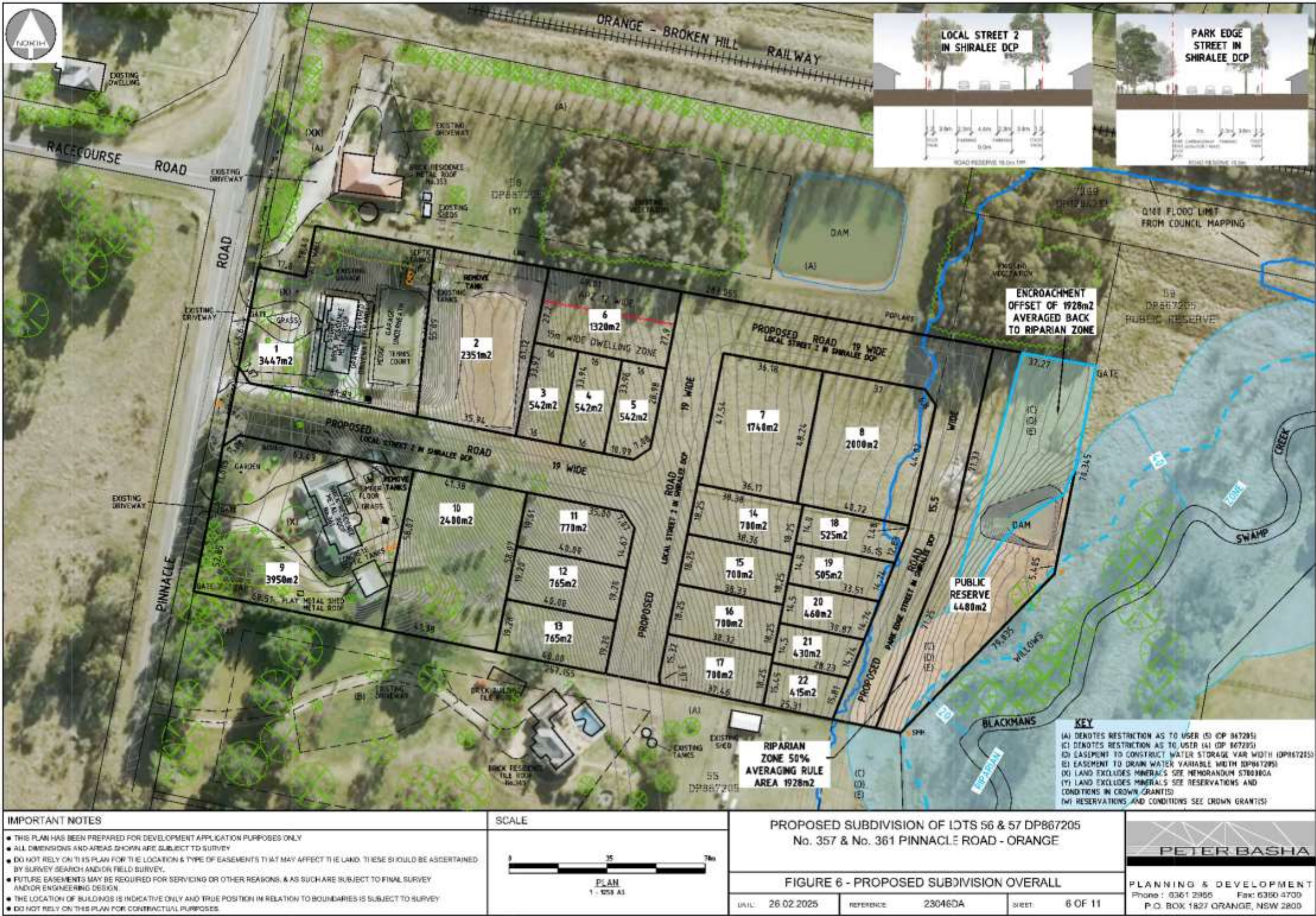








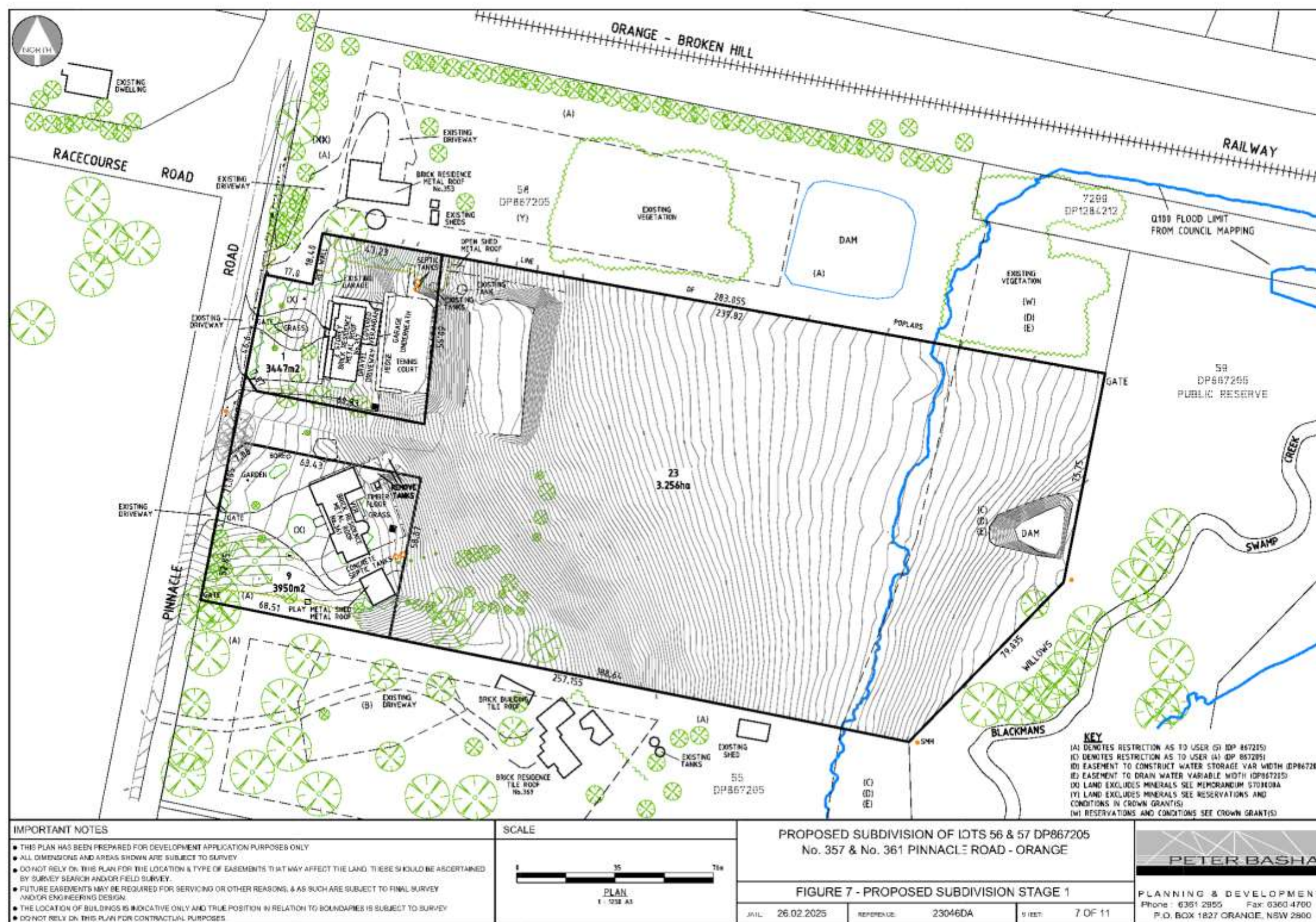






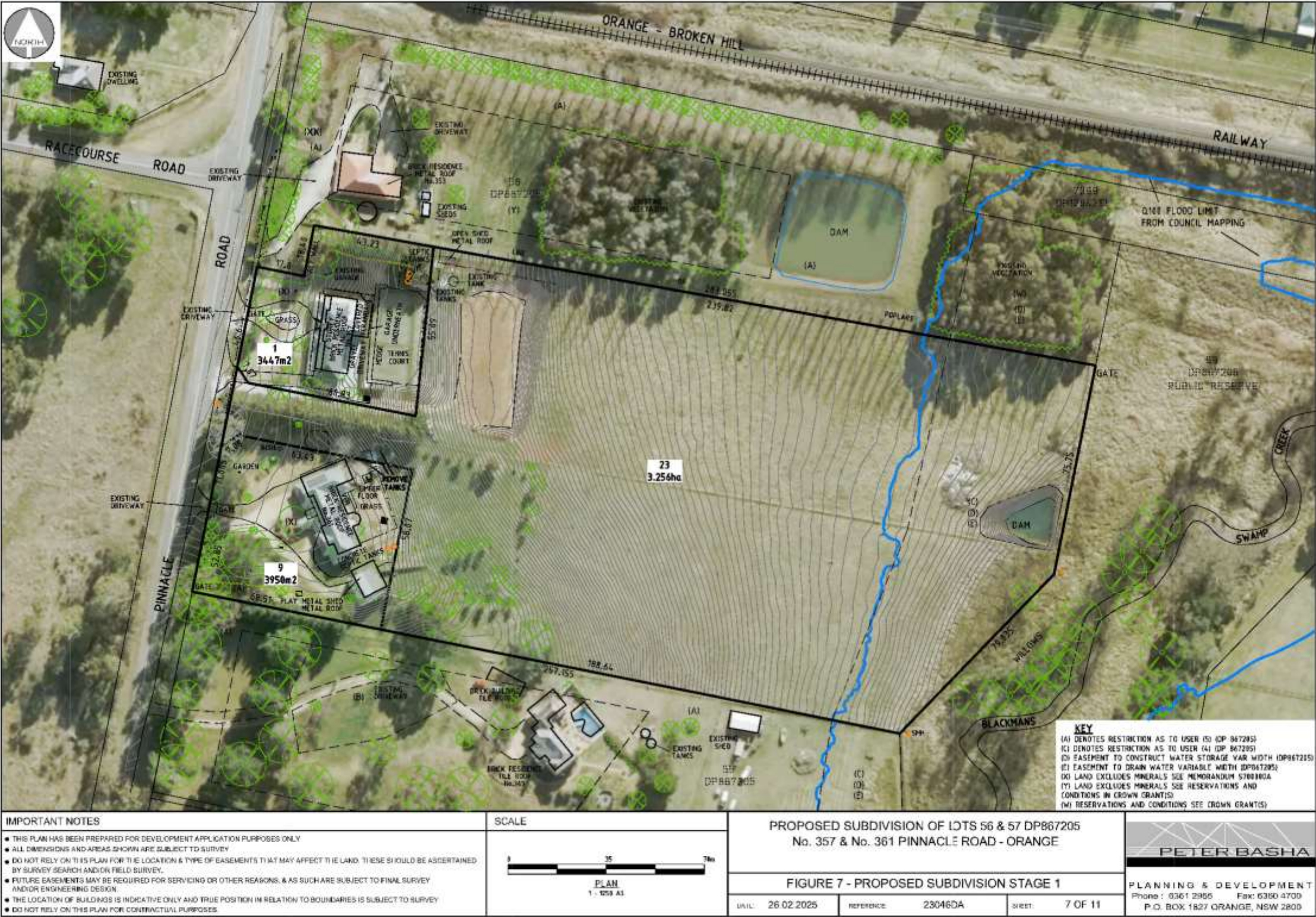




















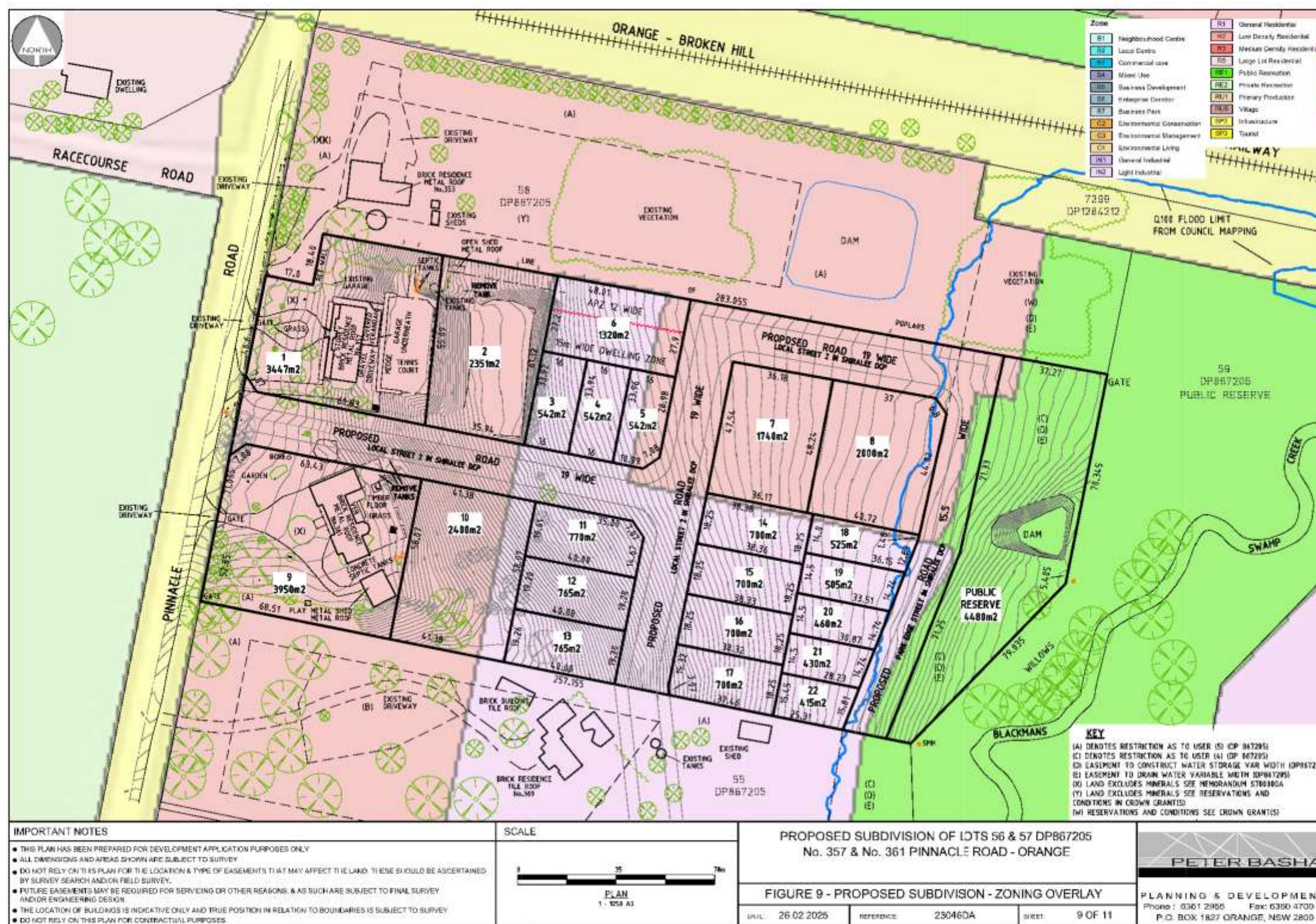






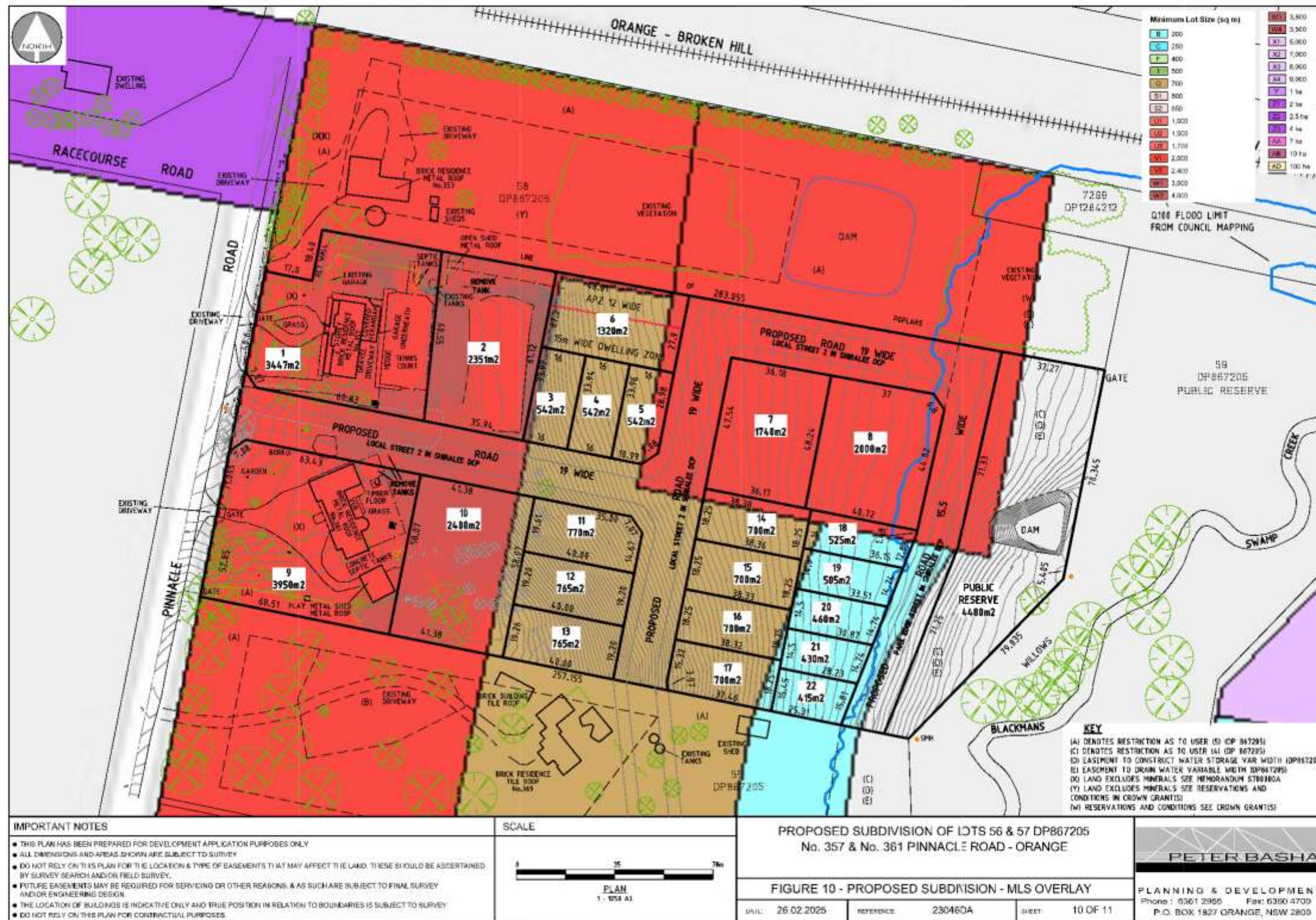






















Submission (1 of 1)

**The Manager of Development Assessments**  
**Mr Paul Johnston**  
**Orange City Council**  
**12.12.2024**

**Re: DA 669/2024(1)**

Dear Sir,

I would like to submit an objection to the proposed development currently on exhibition at Orange City Council's website listed as DA 669/2024(1) - 357 and 361 Pinnacle Road, Orange. Under its proposed design, I have assessed the following issues as forming a compelling case against the approval of the development in its current proposal.

1. DA application is not consistent with the overall Shiralee DCP:
  - The proposed subdivision layout is not consistent with the approved masterplan, land zoning or minimum lot size mapping, and the application has not addressed Clause 4.1C of the LEP (split zones)
  - Proposed 18.6 wide carriage way connecting to Pinnacle Road is not consistent with the Shiralee DCP.
  - The Shiralee DCP designated access to any proposed development of the existing lots is Pines Lane, only 150 metres further down from the proposed carriageway
  - Proposed 18.6 wide carriage way connecting to Pinnacle Road directly transverses directly over the new sewage access pit installed in 2024 by Council for future sewage and water infrastructure for 351 – 381 Pinnacle Road
  - The existing Pines Lane carriageway has recently been possessed by Council and infrastructure for water and sewage has been installed and an easement created for the benefit of all development within the DCP, not just one entity (Developer). Pines Lane is a gazetted road reserve, meaning, if not developed as proposed by the masterplan, it may become surplus land requiring ongoing Council management, at a cost to the community.
  - The DA proposal negatively impacts the proposed development of 369 and potentially 381 Pinnacle Road preventing access to future lot development by land locking potential lots
  - Multiple carriageways in close proximity to one another and the proposed Southern Distributor are not in the interest of both Council (Maintenance and upkeep) and over-all traffic flow to and from the distributor and Pinnacle Road.
  - The proposed 19m carriage way running north – south:
    - a. is not consistent with the overall Shiralee DCP position:
    - b. cannot form true alignment with the proposed future lot development at DP867205 ( 369 Pinnacle Road)
    - c. has not been designed in consideration of the existing ground (contour) levels of adjoining DP867205, noting that the Shiralee DCP site analysis maps identify the site as being steep lands (as opposed to the approved location of Pines Lane which is much less constrained)
  - Despite being completed in 1999, the location of the building (residence) at 369 Pinnacle Road contained within the original approved building envelope on the lot, has not been justly considered by the planners in relation to the Shiralee DCP:
  - The proposed DA 669/2024(1) will have a negative effect on the local native fauna that co-habit in the local trees and grounds at Lots 361 and 369. These include, but are not limited to, kookaburras, rosellas, lorikeets, white and black cockatoos, galahs, magpies, superb parrot, blue wrens and wily wagtails. The application has not adequately met the requirements of Biodiversity Conservation Act with respect to impacts to native species; a test of significance should have been provided as a minimum. The Superb Parrot is a vulnerable species under the NSW Biodiversity Conservation Act.

Regards



Mr Paul Johnston  
Manager - Development Assessments  
Orange City Council  
135 Byng Street, Orange NSW 2800

16<sup>th</sup> April 2025

Dear Paul,

RE: Letter of Offer - Planning Agreement | 357 and 361 Pinnacle Rd Orange DA

This letter is to confirm an offer to transfer the land identified as the Public Reserve below to the City of Orange at Nil cost and to enter into a planning agreement with Orange City Council in relation to the subdivision at 357 and 361 Pinnacle Rd Orange.

Description of the land proposed:

- Location is 357 and 361 Pinnacle Road, Orange NSW 2800 described as Lots 56 and 57 in DP 867205
- Development Application is sought to affect an urban residential subdivision to create
  - 22 residential lots,
  - A public reserve and,
  - New public roads.
- The Public Reserve area of 4,480m<sup>2</sup> is proposed to be assigned to Orange City Council at Nil cost at the completion of the land sub-division.



Developed Pty Ltd  
15 - 17 Barrabooka St, Clontarf, NSW, 2093  
[www.developed.net.au](http://www.developed.net.au) / ABN 50 145 963 248



Timing of the Agreement:

- The DA is proposed across 2 stages
- Stage 1 comprises the creation and registration of Lots 1,9 and 23
- Stage 2 comprise the creation of remainder of the Lots and the Public reserve
- The transfer of the Public Reserve to Council will occur at the registration of the Lots as part of Stage 2.

We trust this letter satisfies Council's requirements and we look forward to entering into a Planning Agreement with the Council to deliver this development to the Orange community.

Please do not hesitate to contact the undersigned if you have any further queries.  
Yours sincerely,

Director | Developed Pty Ltd

Developed Pty Ltd  
15 - 17 Barrabooka St, Clontarf, NSW, 2093  
[www.developed.net.au](http://www.developed.net.au) / ABN 50 145 963 248

## Annexure B

### CLAUSE 4.6 – EXCEPTIONS TO DEVELOPMENT STANDARDS

Address: 357 and 361 Pinnacle Road, Orange – Lots 56 and 57 DP 867205

Proposal: Proposed Urban Residential Subdivision (22 Residential Lots and Public Reserve); New Roads; Demolition; and Tree Removal

#### 1. INTRODUCTION

This is a written request pursuant to *Clause 4.6 – Exceptions to Development Standards* of the Orange Local Environmental Plan 2011 (the LEP), that requests a variation to the Minimum Lot Size development standard. The circumstances relating to the proposed variation are summarised in the table below:

Lot	MLS	MLS being varied	Proposed Lot Size
2	2,400m <sup>2</sup>	2,400m <sup>2</sup>	2,351m <sup>2</sup>
3	700m <sup>2</sup> and 2,400m <sup>2</sup>	700m <sup>2</sup> and 2,400m <sup>2</sup>	542m <sup>2</sup>
4	700m <sup>2</sup>	700m <sup>2</sup>	542m <sup>2</sup>
5	700m <sup>2</sup> and 2,000m <sup>2</sup>	700m <sup>2</sup> and 2,000m <sup>2</sup>	542m <sup>2</sup>
6	700m <sup>2</sup> and 2,000m <sup>2</sup>	2,000m <sup>2</sup>	1,320m <sup>2</sup>
7	2,000m <sup>2</sup>	2,000m <sup>2</sup>	1,740m <sup>2</sup>
14	700m <sup>2</sup> and 2,000m <sup>2</sup>	2,000m <sup>2</sup>	700m <sup>2</sup>
18	200m <sup>2</sup> , 700m <sup>2</sup> , and 2,000m <sup>2</sup>	2,000m <sup>2</sup> and 700m <sup>2</sup>	525m <sup>2</sup>
19	200m <sup>2</sup> and 700m <sup>2</sup>	700m <sup>2</sup>	505m <sup>2</sup>

The majority of the above lots rely on Clause 4.6 due to the discrepancies in the MLS mapping compared to the actual site conditions. It is reasonable to submit that these lots do cannot practically align with the MLS boundaries without creating an irregular subdivision pattern, representing an anomaly in the mapping. This is supported by Figure 10, which clearly illustrates that the MLS boundaries do not follow a logical subdivision pattern.

Lots 8, 18, and 19 are within a flood planning area due to their proximity to Blackmans Swamp Creek. It is necessary to arrange these lots to ensure they are positioned above the 1% Annual Exceedance Probability (AEP) flood event.

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This Clause 4.6 Report and Statement of Environmental Effects includes an assessment of the proposed works in terms of the matters for consideration listed under Section 4.15 of the Environmental Planning and Assessment Act, 1979.

The development standard for which the variation is sought relates to Clause 4.1 – Minimum Lot Size under the LEP.

This request 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.

## 2. DESCRIPTION OF PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

### 2.1 What is the name of the environmental planning instrument that applies to the land?

Orange Local Environmental Plan 2011.

### 2.2 What is the zoning of the land?

The land is zoned R1 General Residential, R2 Low Density Residential and RE1 Public Recreation.

### 2.3 What are the objectives of the zone?

#### R1 General Residential Zone

The objectives of the R1 General Residential zone are:

- To provide for the housing needs of the community.

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

R2 Low Density Residential Zone:

The objectives of the R2 Zone are:

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

RE1 Public Recreation Zone:

The objectives of the RE1 Public Recreation Zone are:

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

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- To ensure that development is ordered in such a way as to maximise public transport patronage and encouraging walking and cycling in close proximity to settlement.
- To ensure that development along the Southern Link Road has an alternative access.

#### **2.4 What is the development standard being varied?**

The development standard being varied is the Minimum lot size (MLS).

#### **2.5 Is the development standard a performance-based control?**

No. Clause 4.1 of the LEP represents a development standard and not a prohibition in respect of development.

#### **2.6 Under what clause is the development standard listed in the environmental planning instrument?**

The development standard is the MLS under Clause 4.1 of the LEP.

#### **2.7 What are the objectives of the development standard?**

The objectives of the Minimum Lot Size standard are:

- (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,

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- (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.

## 2.8 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the standard being varied is depicted in the table below:

Lot	MLS	MLS being varied
2	2,400m <sup>2</sup>	2,400m <sup>2</sup>
3	700m <sup>2</sup> and 2,400m <sup>2</sup>	700m <sup>2</sup> and 2,400m <sup>2</sup>
4	700m <sup>2</sup>	700m <sup>2</sup>
5	700m <sup>2</sup> and 2,000m <sup>2</sup>	700m <sup>2</sup> and 2,000m <sup>2</sup>
6	700m <sup>2</sup> and 2,000m <sup>2</sup>	2,000m <sup>2</sup>
7	2,000m <sup>2</sup>	2,000m <sup>2</sup>
14	700m <sup>2</sup> and 2,000m <sup>2</sup>	2,000m <sup>2</sup>
18	200m <sup>2</sup> , 700m <sup>2</sup> , and 2,000m <sup>2</sup>	2,000m <sup>2</sup> and 700m <sup>2</sup>
19	200m <sup>2</sup> and 700m <sup>2</sup>	700m <sup>2</sup>

## 2.9 What is the proposed numeric value of the development standard in the development application?

The numeric value of the development standard is:

Lot	MLS being varied	Proposed Lot Size
2	2,400m <sup>2</sup>	2,351m <sup>2</sup>
3	700m <sup>2</sup> and 2,400m <sup>2</sup>	542m <sup>2</sup>

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Lot	MLS being varied	Proposed Lot Size
4	700m <sup>2</sup>	542m <sup>2</sup>
5	700m <sup>2</sup> and 2,000m <sup>2</sup>	542m <sup>2</sup>
6	2,000m <sup>2</sup>	1,350m <sup>2</sup>
7	2,000m <sup>2</sup>	1,740m <sup>2</sup>
14	2,000m <sup>2</sup>	700m <sup>2</sup>
18	2,000m <sup>2</sup> and 700m <sup>2</sup>	525m <sup>2</sup>
19	700m <sup>2</sup>	505m <sup>2</sup>

#### 2.10 What is the percentage variation between the proposal and the environmental planning instrument?

The percentage variation to the MLS is depicted in the table below:

Lot	MLS being varied	Proposed Lot Size	Percentage Variation
2	2,400m <sup>2</sup>	2,351m <sup>2</sup>	2%
3	700m <sup>2</sup> and 2,400m <sup>2</sup>	542m <sup>2</sup>	23% on 700m <sup>2</sup> 77% on 2,400m <sup>2</sup>
4	700m <sup>2</sup>	542m <sup>2</sup>	23%
5	700m <sup>2</sup> and 2,000m <sup>2</sup>	542m <sup>2</sup>	23% on 700m <sup>2</sup> 73% on 2,000m <sup>2</sup>
6	2,000m <sup>2</sup>	1,320m <sup>2</sup>	34%
7	2,000m <sup>2</sup>	1,740m <sup>2</sup>	13%
14	2,000m <sup>2</sup>	700m <sup>2</sup>	65%
18	2,000m <sup>2</sup> and 700m <sup>2</sup>	525m <sup>2</sup>	25% on 700m <sup>2</sup> 74% on 2,000m <sup>2</sup>
19	700m <sup>2</sup>	505m <sup>2</sup>	28%

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### 3. ASSESSMENT OF THE PROPOSED VARIATION

#### 3.1 Overview

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

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- 5) In deciding whether to grant concurrence, the Secretary must consider:
- a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - b) the public benefit of maintaining the development standard, and
  - c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- 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 E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 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) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- 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,
  - ca) clause 6.1 or 6.2.

### 3.2 Response to Clause 4.6 Matters

*Clause 4.6 – Exceptions to development standards* establishes the framework for varying development standards applying under an LEP.

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For development consent to be granted, Council must be satisfied that the provisions of Clause 4.6(3)-(5) have been satisfied.

The proposed development has been assessed under these provisions, having regard to the application of the application of these provisions established by the NSW Land and Environment Court in:

- *Wehbe v Pittwater Council* [2007] NSW LEC 82;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3'); and
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

***In consideration of subclause (1):***

In consideration of Clause 4.6(1) and 4.6(2), a clear aim of Clause 4.6 is for flexibility in the application of a planning control where it can be demonstrated that strict compliance is unreasonable and unnecessary.

This proposal relies on such flexibility to have the development approved at the lot sizes proposed in the DA. Flexibility in this matter would result in a better outcome for and from the development for the reasons outlined in support of subclause (3) below.

***In consideration of subclause (2):***

In consideration of Clause 4.6(2), a variation to the Minimum Lot Size is a development standard that that may be considered within the realm and operation of this clause.

***In consideration of subclause (3):***

The matters contained in subclause (3)(a) and (b) are addressed in detail in Sections 3.3 and 3.4 below.

***In consideration of subclause (4):***

The information submitted in Sections 3.2 to 3.9 below provides reasonable justification to contravene the development standard.

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***In consideration of subclause (5):***

The matters contained in subclause (5)(a) to (c) are addressed in *Sections 3.5 to 3.9* below.

***In consideration of subclause (6):***

Subclause (6) is not relevant to the development.

***In consideration of subclause (7):***

The requirements of subclause (7) above are a matter for Council as the consent authority.

***In consideration of subclause (8):***

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

**3.3 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

Clause 4.6(3) stipulates that development consent will not be granted unless it can be demonstrated that compliance with MLS is unreasonable or unnecessary. 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 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 in *Shiralee DCP 2015*.

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- The variation to proposed Lot 2 is justifiable on the basis that its western boundary is constrained by the existing dwelling and tennis court in Lot 1. There is no opportunity to shift the boundary further west to achieve an additional 49m<sup>2</sup>. The variation of 2% is considered modest and acceptable in the circumstances.
- The variation to allow proposed Lots 3, 4 and 5 is justified as follows:
  - The variation of the 700m<sup>2</sup> MLS for Lots 3, 4 and 5 is only due to the recent identification of the subject land as bushfire prone.
  - When this DA was originally submitted, the land was not identified as bushfire prone and Lots 3, 4, 5 and 6 all satisfied the 700m<sup>2</sup> MLS.
  - While the DA was still in process, the land was identified as bushfire prone and a bushfire assessment was prepared in response. The assessment found that an APZ of 12 metres needs to be provided for proposed Lot 6.
  - To accommodate this APZ, it was necessary to enlarge Lot 6 but make proposed Lots 3, 4 and 5 smaller. It would seem unreasonable to reduce lot yield when circumstances changed during the processing of a DA that was lodged well before the coming into effect of the bushfire prone land mapping.
  - It should be noted that the higher variation percentage for proposed Lots 3 and 5 is attributed to the MLS mapping not aligning with the proposed/logical lot boundaries. In this regard, the western fringe of Lot 3 is affected by the 2,400m<sup>2</sup> MLS; while the eastern fringe of Lot 5 is affected by the 2,000m<sup>2</sup> MLS.
  - In any case, proposed Lots 3, 4 and 5 are demonstrated in the SoEE to be suitable in terms of residential amenity, solar access and streetscape appeal.
- The variation for proposed Lot 6 is attributed to the MLS mapping not aligning with the proposed/logical lot boundaries. In this regard, Lot 6 comfortably satisfies the 700m<sup>2</sup> MLS but the eastern fringe is affected by the 2,000m<sup>2</sup> MLS.
- The variation for proposed Lot 7 is attributed to the following:
  - The flood constraint that affects the eastern section of the subject land limits the potential to enlarge this lot further to the east.

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- The road layout limits the potential to enlarge this lot to the west.
- To enlarge Lot 7 to the south would cause Lots 14 to 17 to contravene the 700m<sup>2</sup> MLS.
- The variation for proposed Lot 14 is attributed to the MLS mapping not aligning with the proposed/logical lot boundaries. In this regard, Lot 14 comfortably satisfies the 700m<sup>2</sup> MLS but the northern fringe is affected by the 2,000m<sup>2</sup> MLS.
- The higher variation percentage for proposed Lot 18 is attributed to the MLS mapping not aligning with the proposed/logical lot boundaries. In this regard, Lot 18 comfortably complies with the 200m<sup>2</sup> MLS. However, its northern fringe is affected by the 2,000m<sup>2</sup> MLS; and the western fringe by the 700m<sup>2</sup> MLS.
- The higher variation percentage for proposed Lot 19 is attributed to the MLS mapping not aligning with the proposed/logical lot boundaries. In this regard, Lot 19 comfortably complies with the 200m<sup>2</sup> MLS. However, its western fringe by the 700m<sup>2</sup> MLS.

Preston CJ in *Wehbe v Pittwater Council* [2007] NSW LEC 827 outlined five criteria which may demonstrate that compliance with a development standard is "unreasonable or unnecessary".

The criteria are articulated as follows:

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.*

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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: The objectives of the standard are achieved notwithstanding non-compliance with the standard.**

The objectives of the standard are achieved (refer Section 3.5).

**Criteria 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.**

The underlying objective or purpose of the standard is actually relevant but is not contravened by the proposed variations of the MLS. In this regard:

- The variation ensures that a suitable subdivision layout can be achieved and not comprise the standard of residential amenity within the subject land and on adjoining land.
- The variation does not cause the development to contravene the relevant Planning Outcomes in *Shiralee DCP 2015*.
- The future character of the locality can accommodate the proposed development without disrupting emerging and planned development form in the broader Shiralee area.
- As demonstrated throughout the Statement of Environmental Effects, the proposed subdivision satisfies the relevant aims, objectives, and planning outcomes of the LEP and DCP.
- The proposed lots are not incompatible with the desired future character of the locality. It provides an appropriate planning outcome through addressing the constraints and opportunities of the site consistent with the provisions of orderly and economic development.

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- The proposed subdivision is unlikely to lead to the result in an undesirable precedent which could be used as a justification for other developments of this nature within the LGA on the basis it represents a legitimate project which is permissible under the planning framework; the proposed clause 4.6 variation simply provides for the more efficient delivery of the project objective.
- Strict compliance with the standard would result in an inflexible and unfair application of policy. It does not serve any purpose that is outweighed by the positive outcomes of the development.

**Criteria 3: Would the underlying objective or purpose be defeated or thwarted if compliance was required?**

The underlying objective of the development standard would not necessarily be thwarted if compliance with the MLS was required.

However, strict compliance with the nominated MLS would potentially result in a subdivision that does not *provide for a range of lot sizes reflecting the ability of services available to the area* as encouraged by objective (e) of Clause 4.1 of the LEP. In this sense, this objective of the development standard may be thwarted if compliance with the MLS was required.

The proposal is considered to be consistent with the other objectives of the development standard as explained below in *Section 3.5*.

**Criteria 4: Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?**

The development standard cannot be said to be abandoned.

However, the relevant planning provisions suggests that a departure from the standard may be warranted in some circumstances. In this regard:

- The MLS Map in the LEP is an established instrument controlling subdivision lot size.
- It is understood that the delineation of the various MLS zones has been largely informed by the Shiralee DCP. As such there is an inter-relationship between the DCP and the MLS provisions.

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- The Shiralee DCP refers to the potential to vary lot sizes and types (*Section 1.8 Exceptional Circumstances*). If a variation to lot size and type can be justified under the DCP, it follows that a variation of the MLS in the LEP may also be contemplated.

**Criteria 5: Is the zoning of the land unreasonable or inappropriate?**

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

**3.4 Are there sufficient environmental planning grounds to justify contravening the development standard?**

Clause 4.6(3)(b) requires sufficient environmental planning grounds to be demonstrated to justify a contravention of the development standard. In the circumstances of the case, there are sufficient environmental planning grounds to justify a variation of the development standard. These are as follows:

- The proposal satisfies the objectives of the R1 and R2 Residential zones and the objectives of the minimum lot size provisions.
- The proposal does not compromise the aims and principles of the Orange Local Environmental Plan 2011.
- The proposed lot size is commensurate with the predominant and intended subdivision pattern along Pinnacle Road and addresses both the existing and future context of the streetscape and housing needs.
- The proposal is not dissimilar in terms of lot sizes, orientation or rectilinear shape, nor inconsistent with the pattern of subdivision that is consistent with the emerging character of Shiralee.
- The non-compliance facilitates the provision of the orderly and efficient use of the land. Each lot is of suitable configuration to enable future residential development to achieve the necessary outcomes in respect of solar access, privacy, overshadowing and residential amenity for future occupants whilst minimising the impacts on neighbouring lots.
- The departure does not compromise the ability for future development to provide housing which meets or exceeds the outcomes in the *Shiralee DCP*.

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- A strictly compliant development in terms of MLS would result in poor lot shape and fail to maximise the most efficient and economic use of the land.
- The proposal does not introduce a lot size that cannot be found elsewhere in Shiralee.
- The proposal does not reduce the availability of public open space.
- The Statement of Environmental Effects demonstrates that non-compliance with the MLS development standard does not generate unacceptable impacts in the locality.

**3.5 Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?**

The objectives of the Minimum Lot Size standard are:

- (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.
- In consideration of (a), the proposed subdivision does not introduce lot sizes that cannot be found elsewhere in Shiralee.

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- In consideration of (b), the proposed variation of the MLS remains consistent with this objective. The orientation and configuration of the proposed lots is such that a future dwelling can be constructed without unreasonable constraint in respect of private open space, access, and servicing requirements.
- Objective (c) is not relevant as the subject land is not within a rural zone.
- Objective (d) is not relevant as the subject land is not within a rural zone.
- In consideration of (e), the proposed subdivision is consistent with this objective as the servicing arrangements for each of the proposed lots are readily available.
- There are no aspects of the proposed MLS variation that would be adverse to objective (f).

#### R1 General Residential Zone

The objectives of the R1 General Residential zone are:

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

The proposal is consistent with the zone objectives as follows:

- In response to the first and second objectives, the proposal would have a positive effect on the housing needs of the community by increasing the range and opportunity for a variety of residential accommodation.

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- In consideration of the third objective, there are no aspects of the proposed subdivision that would reduce the potential to provide facilities and services that meet the day to day needs of residents.
- In consideration of the fourth objective, the subject land is within an area that is serviced by public bus routes that are only expected to increase as the remainder of Shiralee develops.
- The fifth stated objective is not relevant to the proposal as the subject land does not have frontage to the Southern Feeder Road.

R2 Low Density Residential Zone:

The objectives of the R2 Zone are:

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

The proposal is generally consistent with the objectives of the zone as follows:

- The proposed subdivision is consistent with the first objective because it provides residential allotments that encourage a low-density residential environment.
- In consideration of the second stated objective, there are no aspects of the proposed subdivision that would reduce the potential to provide facilities and services that meet the day to day needs of residents.
- In consideration of the third objective, the subject land is within an area that is serviced by public bus routes that are only expected to increase as the remainder of Shiralee develops.

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- The fourth objective is not relevant to the proposal as the subject land does not have frontage to the Southern Feeder Road.

RE1 Public Recreation Zone:

The objectives of the RE1 Public Recreation Zone are:

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To ensure that development is ordered in such a way as to maximise public transport patronage and encouraging walking and cycling in close proximity to settlement.
- To ensure that development along the Southern Link Road has an alternative access.

In consideration of the objectives of the RE1 Public Recreation Zone:

- In consideration of the first objective, the area zoned RE1 will be dedicated to Council as a public reserve.
- The second objective is not relevant to the proposal as this application relates only to subdivision.
- The proposal is not adverse to the third objective which seeks to protect and enhance the environment for recreation purposes.
- In consideration of the fourth objective, the subject land is within an area that is serviced by public bus routes that are only expected to increase as the remainder of Shiralee develops.
- The fifth objective is not relevant to the proposal as the land does not have frontage to the Southern Feeder Road.

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**3.6 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning?**

The contravention of the development standard does not raise an issue of State or regional planning significance as it relates to local and contextual conditions.

**3.7 Is there public benefit in maintaining the development standard?**

There is public benefit in maintaining development standard; however, consistent with the objectives of Clause 4.6(1), there is also public benefit in maintaining flexibility in specific circumstances. The public benefits of the proposed development are as follows:

- It results in an outcome that is expected with the planned and emerging development pattern for Shiralee.
- The proposal results in a more efficient use of roads and utility services. The proper utilisation of public infrastructure is for the public benefit.
- The proposed variation allows a sustainable lot yield to be achieved without compromising amenity.
- Allowing a variation to the development standard would improve housing options, encouraging diversity in housing affordability and availability.
- There are no significant public disadvantages identified which would result from the proposed development.
- The proposed development will have no material impact on the streetscape, character of the area; built form; natural, cultural or special features; nor the residents of adjoining properties.
- The recognition of flexibility as part of Clause 4.6(1) acknowledges that there are instances where strict adherence to standards might not serve the greater public interest.

**3.8 How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act?**

The objects of Section 1.3 of the Act, are as follows:

- a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- c) to promote the orderly and economic use and development of land,
- d) to promote the delivery and maintenance of affordable housing,
- e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- g) to promote good design and amenity of the built environment,
- h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- j) to provide increased opportunity for community participation in environmental planning and assessment.

A development that strictly complies with the MLS may result in an inferior planning outcome due to the following:

- It would reduce the supply and choice of residential land on a site that can be demonstrated to sustain the proposed lot sizes and lot yield.
- Strict compliance with the standard would hinder the attainment of objectives (c) and (d) of the Act.

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Clause 4.6 Exceptions to Development Standards – Minimum Subdivision Lot Size (Clause 4.1 OLEP 2011)  
357 and 361 Pinnacle Road, Orange

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- It is submitted that the proposed variation is required to achieve an orderly and economic use of the subject land in accordance with the site's zoning and the underlying objectives of the Environmental Planning and Assessment Act 1979.
- It would prevent the more efficient utilisation of public roads and services.

The development as proposed would not hinder attainment of any other objects in Section 1.3 of the Act.

### 3.9 Is the objection well founded?

Based on the information outlined in this report, 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.

## 4. CONCLUSION

The proposed variation is based on the reasons within this formal request to vary Clause 4.1. This Clause 4.6 request adequately addressed the matters required to be demonstrated in Clause 4.6(3) in that:

- It demonstrates that compliance with the minimum lot size development standard is unreasonable or unnecessary in the circumstances of the case, and
- It demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development will be in the public interest because:

- It is consistent with the objectives of the development standard, as set out in Section 3.5 of this report, and
- It is consistent with the objectives of the Zones, as set out in Section 3.5 of this report.

A development that strictly complies with the development standard would not necessarily result in a better planning outcome.

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Clause 4.6 Exceptions to Development Standards – Minimum Subdivision Lot Size (Clause 4.1 OLEP 2011)  
357 and 361 Pinnacle Road, Orange

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The proposed departure from the nominated development standard is not likely to result in an unacceptable precedent for future development given the particular circumstances of the subject land.

The variation to the MLS will not result in unacceptable impacts upon the existing and future amenity of adjoining properties.

It is concluded that the variation to the MLS is well founded and that compliance with the standard is unnecessary and unreasonable in the circumstances of the case.

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**2.4 DEVELOPMENT APPLICATION - DA 770/2024(1) - 12 SHIRALEE ROAD**

RECORD NUMBER: 2025/756

AUTHOR: Craig Mortell, Senior Planner

**EXECUTIVE SUMMARY**

Application lodged	8 January 2025
Applicant/s	Orange Enterprises No.1 Pty Ltd
Owner/s	Orange Enterprises No.1 Pty Ltd
Land description	Lot A DP 381933, Lot 1 DP 630681 - 12 Shiralee Road, Orange
Proposed land use	Subdivision (47 lot Torrens title)
Value of proposed development	\$0

Council's consent is sought for the subdivision of land in the developing Shiralee urban village. The proposal relates to land described as 12 and 20 Shiralee Road, Orange (refer Figure 1 below). The proposal involves the subdivision of land into forty-seven Torrens Title Residential allotments comprising forty-five standard residential allotments, one (1) large lot allocated for future medium-density development, subject to separate approval and one (1) residual allotment reserved for future subdivision. The works package encompasses bulk earthworks, internal roads, upgrading of existing roads, provision of utility services and limited tree removal.

The subdivision design is generally consistent with the Shiralee Development Control Plan Masterplan and with the concept layout endorsed through Planning Proposal Amendment 37. The north-south street grid, perimeter block structure and lot sizes match the intended village pattern; minor departures (principally the realignment of an internal road and consolidation of a small pocket park) are supported by engineering constraints and tree-retention outcomes and do not undermine the strategic objectives of the Masterplan.

The ecological impacts of the broader development of the land were fully assessed in the Biodiversity Development Assessment Report accompanying DA 245/2022(1). That assessment covered the entire site footprints and established an offset obligation of eight ecosystem credits (Southern Tableland Creek-flat Ribbon Gum Grassy Woodland, PCT 3347) and three species credits for Superb Parrot habitat. Although the current layout preserves a number of trees previously allocated for removal and therefore reduces the actual impact, the proponent has elected to retire the full credit package already conditioned under DA 245/2022(1). No additional biodiversity issues arise and no further offset calculation or BDAR amendment is necessary; verification of credit retirement will be required before a subdivision works certificate is issued.

The land is subject to a registered Voluntary Planning Agreement linked to LEP Amendment 37. The VPA exempts forty-seven lots from Section 7.11 contributions in return for embellishment and dedication of Hilltop Park. Twenty-four of those exempt lots have already been approved under DA 501/2024(1) (Stage 1B) and DA 515/2024(1) (Stage 1C). The present application consumes the remaining twenty-three; contributions are therefore payable on the balance of twenty-three lots created by this stage. No contributions are payable for the residue lot.

It should be noted that the VPA requires park construction to start before the 102nd lot is released, reach practical completion before the 152nd, and be dedicated before the 197th. With Stage 2 the cumulative lot count will reach 111, meaning subdivision certificates for the last nine lots of this stage cannot be issued until Council is satisfied that park works have commenced.



The application also seeks a minor adjustment to the “Dedication Land” plan in Schedule 3 of the VPA. The small parcel of open space south of the dam will be relocated northward to adjoin the main Hilltop Park reserve, enabling retention of mature remnant trees. The proposed adjustment has no adverse impact on the public benefits originally secured by the VPA. The change will need to be formalised by a deed of variation, and executed before any subdivision certificate is issued; an appropriate condition is included. The applicant acknowledges this requirement.

The proposal is integrated development under the Rural Fires Act 1997. A Bush Fire Safety Authority was granted by the NSW Rural Fire Service on 28 March 2025, with conditions addressing asset protection, access, water supply and construction standards.

The proposal has been evaluated pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979* and is considered to be suitable. Approval of the application is recommended, subject to conditions of consent in the attached Notice of Determination.

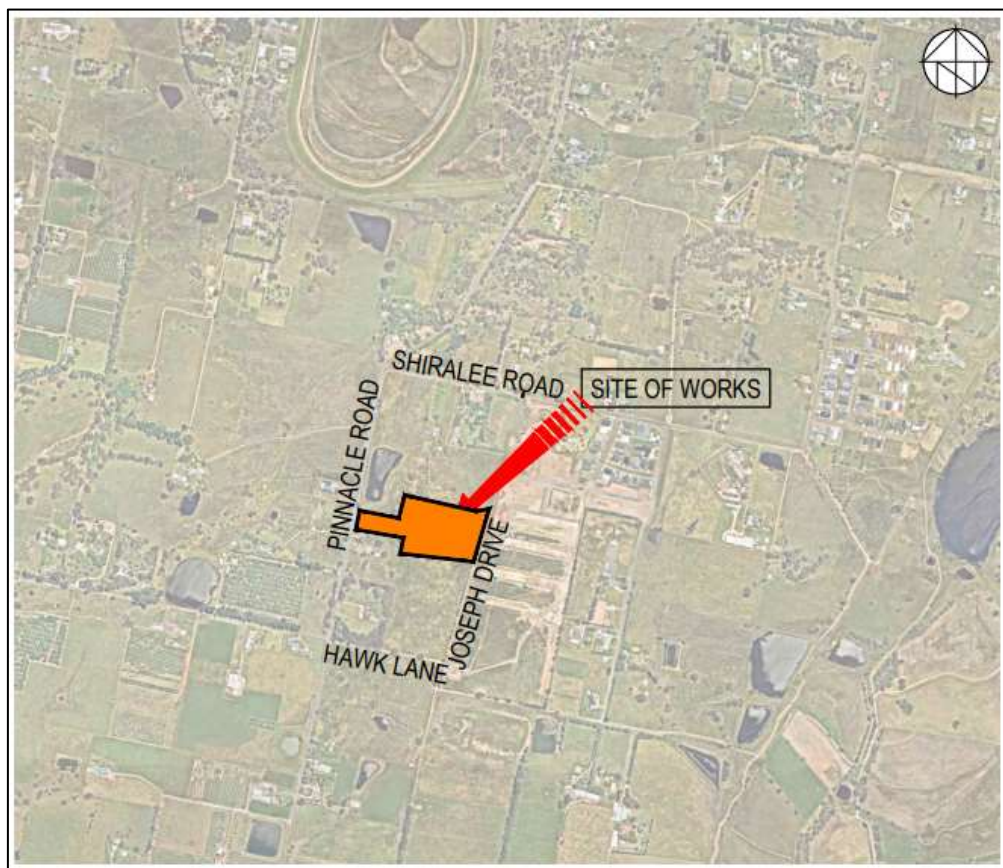


Figure 1 - locality plan

## 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 subdivision is for the continued development of the major south-western part of the Shiralee Estate that is currently under construction (called 'Alchemy' by the developers Oakstand). Good progress has occurred on the early stages of this project which shows the confidence in the Shiralee Estate.

This subdivision will create 45 new lots and one large development lot for a later medium density project. The proposal is generally consistent with the designs previously approved by Council, with minor changes made to retain more of the significant eucalyptus trees just off Pinnacle Road. Under the Shiralee Master Plan a road was proposed in this area. The developers have reviewed the previous approval and relocated the road network and lots slightly to retain more of these trees. This is a pleasing outcome. A minor change is also proposed to open space near the existing dam which is minor and would not adversely impact on Council or the community.

The existing Planning Agreement that Council entered into with the developer for the construction of the significant "Hilltop Park" remains, with minor tweaks to allow for the variance in the layout and dedication of land to Council.

This proposal also provides a better lot layout and servicing plan for roads, water and sewerage.

#### **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 770/2024(1) for Subdivision (47 lot Torrens title) at Lot A DP 381933, Lot 1 DP 630681 - 12 Shiralee Road, Orange pursuant to the conditions of consent in the attached Notice of Approval.**

## FURTHER CONSIDERATIONS

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

## SUPPORTING INFORMATION

### THE PROPOSAL

The proposal involves the subdivision of Lot 1 DP 630681 and Lot A DP 381933 at 12-20 Shiralee Road, Orange, into 47 Torrens Title residential allotments. The subdivision includes:

- 45 standard residential allotments.
- One (1) large lot (Lot 213, 3,599m<sup>2</sup>) earmarked for future medium-density development, subject to separate approval.
- One (1) residual allotment (Lot 247) reserved for future subdivision.
- Associated roadworks, earthworks and utility services



Figure 2 - site plan

## BACKGROUND INFORMATION

The subject land has been the subject of a Planning Proposal, and several Development Applications associated with the progressive subdivision and development of the broader site at 12 and 20 Shiralee Road. Key approvals are outlined below and illustrated in Figure 3.

**DA 245/2022(1)** – Granted consent for the initial stage of development, comprising the subdivision of land at the northern end of the site into 44 lots (including 43 residential lots and one residue lot), demolition of two dwellings and associated outbuildings, tree removal, bulk earthworks, and Category 1 Remediation. This is identified as Stage 1 in Figure 3. Importantly, this application was supported by a Biodiversity Development Assessment Report (BDAR) which covered the entire development site and established the biodiversity offset obligations for the broader subdivision of the land.

## 2.4 Development Application - DA 770/2024(1) - 12 Shiralee Road

**Planning Proposal (PP-2022-4088)** – A Planning Proposal was progressed to rezone parts of the site, reducing the area zoned RE1 Public Recreation and R2 Low Density Residential and increasing the area zoned R1 General Residential. The Planning Proposal also amended the minimum lot size provisions applying to the site. The proposal was finalised via Amendment No. 37 to the Orange LEP 2011.

**DA 501/2024(1)** – Approved the creation of 10 residential lots in the area identified as Stage 1B in Figure 3.

**DA 515/2024(1)** – Approved the subdivision of land adjacent to the northern boundary of Hilltop Park, comprising 14 Torrens title residential lots, one medium-density lot, and a residue lot encompassing the balance of the site. This is identified as Stage 1C in Figure 3, with the residue land forming the basis of Stage 2.

The current application, DA 770/2024(1), seeks consent for the next phase of subdivision within Stage 2. The remainder of Stage 2 will be delivered under a future development application. The subject area is shown in red in Figure 3 below.

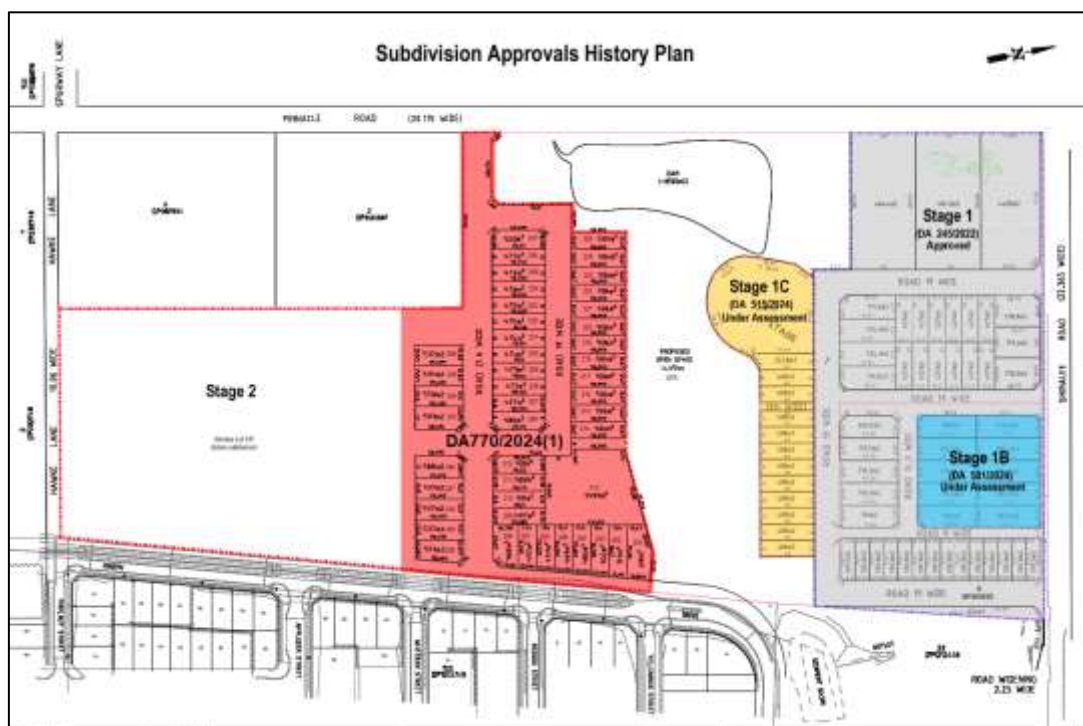


Figure 3 – development staging

## ENVIRONMENTAL PLANNING ASSESSMENT

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

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

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

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

The 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 is not mapped on the Biodiversity Values Map (OEH)

### **Trigger 2**

There is no clearing of native vegetation.

### **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.*



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2.4 Development Application - DA 770/2024(1) - 12 Shiralee Road

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The biodiversity impacts associated with development across the subject site were initially assessed under DA 245/2022(1), due to the original scope of works proposed at the time. Specifically, the applicant originally sought consent to undertake extensive bulk earthworks across both Stage 1 (northern portion) and Stage 2 (southern portion) of the broader Orange Enterprises site at 12 and 20 Shiralee Road. The purpose of proposing bulk earthworks across the entire development footprint was to facilitate a coordinated and efficient approach to site preparation.

During Council's assessment of DA 245/2022(1), concerns were raised regarding the extent and timing of these earthworks relative to the staged subdivision approach. Council staff identified uncertainties relating to detailed design outcomes for future stages, potential premature environmental impacts, and challenges managing and conditioning works occurring well in advance of subdivision proposals. A key issue was the proposed removal of significant remnant trees at the southwestern corner (Area 3) of Stage 2 (Figure 4). Although the Shiralee DCP Masterplan envisaged the removal of these trees and the BDAR accounted for this impact, Council staff expressed a preference to retain these significant trees and suggested that future road redesign could practically achieve this outcome. The applicant acknowledged Council's concerns and indicated their willingness to investigate alternative road alignments in subsequent stages to minimise or avoid impacts on these trees.

In response to these issues, the applicant amended DA 245/2022(1) to remove the Stage 2 bulk earthworks entirely, and the approved development under DA 245/2022(1) was explicitly limited by condition to Stage 1 works only. Additionally, a specific condition (Condition 4) was included to ensure the mature trees identified within Stage 2 would not be removed as part of the Stage 1 consent.

Despite the removal of Stage 2 bulk earthworks from the proposal, the biodiversity offset credit obligations calculated in the original BDAR were retained. This approach was agreed upon between Council, the NSW Department of Planning and Environment's Biodiversity Conservation and Science Directorate, and the applicant. Although the applicant had the option of amending the BDAR to reflect the reduced scope, they chose to proceed with retiring all biodiversity credits initially calculated for clearing the entire site. This decision, while potentially exceeding actual impacts resulting from the amended scope, provided certainty and simplicity, avoiding the need for further BDAR amendments.

Consequently, DA 245/2022(1) imposed conditions (Conditions 45 and 46) requiring the retirement of:

1. Eight ecosystem credits (relating to Southern Tableland Creekflat Ribbon Gum Grassy Woodland, PCT 3347); and
2. Three species credits (for habitat associated with the Superb Parrot).

The current application, DA 770/2024(1), directly relates to subdivision within the southern portion (Stage 2) of the site. Reflecting earlier discussions with Council, DA 770/2024(1) incorporates a revised road layout specifically designed to retain most of the previously identified mature trees. The proposed design avoids removal of Trees HBT 01, HBT 02, and HBT 03; however, engineering plans submitted with this DA indicate that removal of one tree (HBT 04) is unavoidable. Figure 5 below illustrates the previously adopted Shiralee DCP Masterplan and its impacts on trees, compared with the impacts resulting from the revised layout proposed under this application.

## 2.4 Development Application - DA 770/2024(1) - 12 Shiralee Road

Council staff acknowledge that the revised layout reduces overall lot yields, representing a less advantageous outcome from a development perspective. Nevertheless, the revisions deliver substantial environmental and amenity benefits by preserving key remnant vegetation and associated landscape values.

Despite the revised layout and tree retention, the applicant remains committed to retiring the full quantum of biodiversity offset credits calculated under DA 245/2022(1). Although this technically results in offsetting biodiversity impacts greater than those that will occur under the current proposal, this approach simplifies the reporting process for the applicant.

Therefore, no additional biodiversity assessments or recalculations of biodiversity credits are necessary for DA 770/2024(1). The biodiversity impacts associated with this proposal have already been fully assessed and offset through the original site-wide BDAR and established conditions of DA 245/2022(1). Conditions of consent will require verification of credit retirement for the area subject to DA 770/2024(1) prior to the issuance of a subdivision works certificate.

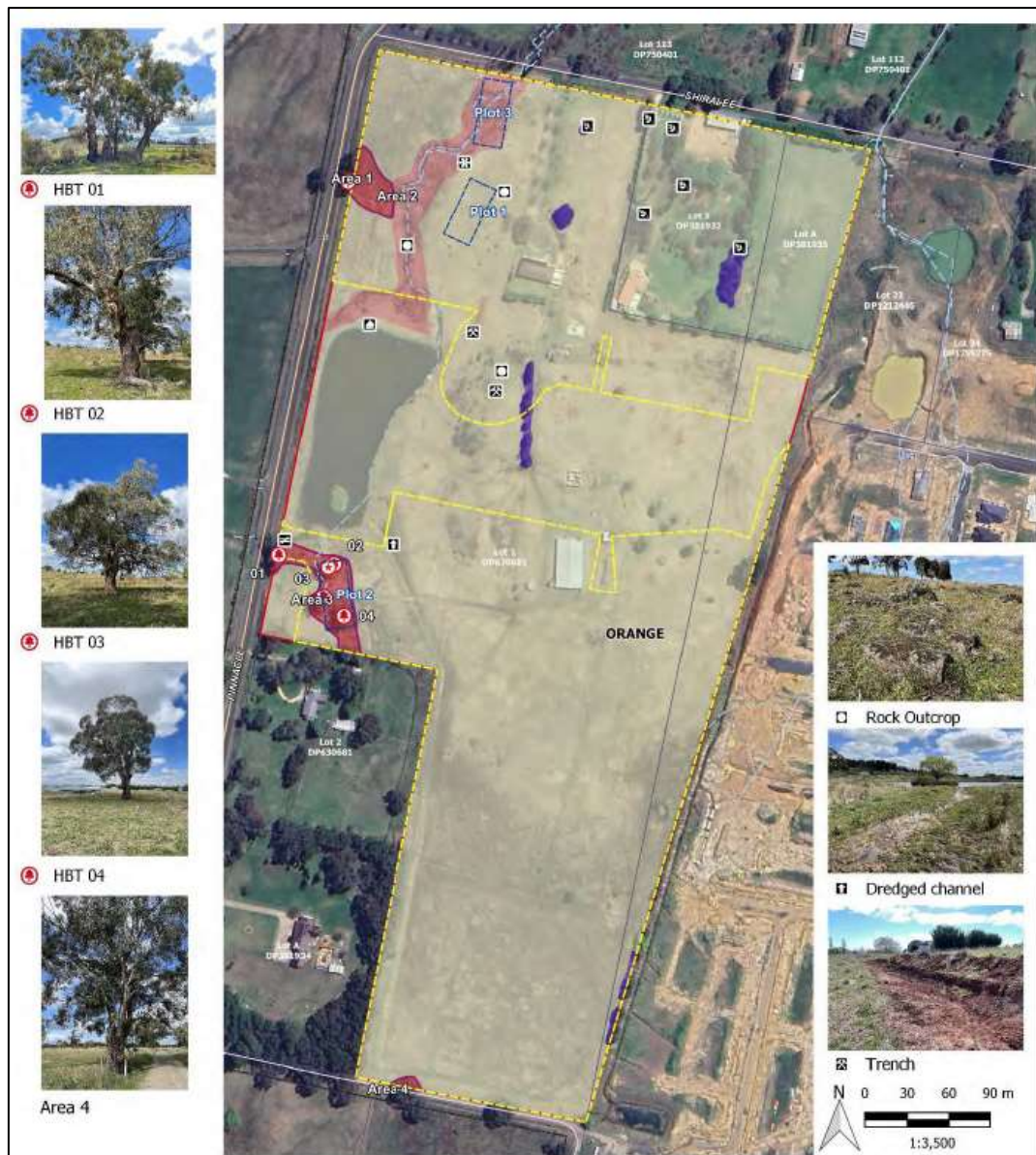


Figure 4 – Location of remnant trees at south-western corner (Area 3)



### Figure 5 – Comparison of tree impacts

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

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

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

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

*(e) to provide a range of housing choices in planned urban and rural locations to meet population growth,*

The application will provide 45 residential lots and 1 lot for multi-dwelling housing. This contributes to the housing supply and increases housing choices.

**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 a mix of R1 General Residential, RE1 Public Recreation and unzoned land
Lot Size Map:	Minimum Lot Size a mix of 200m <sup>2</sup> , 400m <sup>2</sup> , 500m <sup>2</sup> , 700m <sup>2</sup> and 3,800m <sup>2</sup>
Heritage Map:	Not a heritage item or conservation area
Height of Buildings Map:	No building height limit
Floor Space Ratio Map:	No floor space limit
Terrestrial Biodiversity Map:	No biodiversity sensitivity on the site
Groundwater Vulnerability Map:	Groundwater vulnerable
Drinking Water Catchment Map:	Not within the drinking water catchment
Watercourse Map:	Not within or affecting a defined watercourse
Urban Release Area Map:	Not within an urban release area
Obstacle Limitation Surface Map:	No restriction on building siting or construction
Additional Permitted Uses Map:	No additional permitted use applies
Flood Planning Map:	Within a flood planning area

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



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

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.*

The land is subject to a Planning Agreement under Subdivision 2 of Division 7.1 of the Environmental Planning and Assessment Act 1979. The agreement addresses development contributions, as well as the embellishment and dedication of public recreation land to Council. The current proposal is broadly consistent with the intent and objectives of the Planning Agreement; however, there are some aspects where it differs. A full overview of the Planning Agreement and its application to this development is provided later in this report.

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

The subject site is located within the R1 and RE1 zones. The proposed development is defined as a subdivision of land under OLEP 2011 and is permitted with consent for these zones. 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 R1 and RE1 are as follows:

**Objectives of zone R1 General Residential**

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

The proposed development seeks to create 47 lots, consisting of 45 residential lots and one large lot which will contribute to the supply of land for housing.

The design of houses and units on these lots will be determined by the market and their design assessed by future development applications. The large lot is intended for multi-dwelling housing such that this subdivision will provide for a variety of types and densities.



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2.4 Development Application - DA 770/2024(1) - 12 Shiralee Road

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The remaining residual lot will be subject to further development applications to establish subsequent stages of the estate, and this is expected to include creation and dedication of public parkland in the RE1 zone, which will provide for recreational facilities for the needs of residents.

The design of the subdivision, while differing from that presented during the Planning Proposal, is compatible with the broader framework established in Shiralee. This will ensure the road network in the area supports a range of transport options and modalities. The future park on the RE1 land will link with other RE1 lands to foster walking and cycling links towards the city.

The site is not connected to the Brabham Way (Southern Link Road).

**Objectives of zone RE1 Public Recreation**

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To ensure development is ordered in such a way as to maximise public transport patronage and encourage walking and cycling in close proximity to settlement.*
- *To ensure development along the Southern Link Road has alternative access.*

The proposed subdivision will create a series of residential lots that will adjoin RE1 land along the southern edge of "Hilltop Park". The future development of these lots for housing will be required to activate and present well to the public realm. This will maximise the utilisation and attraction of the park for the broader Shiralee community. The development is considered to be compatible with lands adjoining RE1 land.

**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.

**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.

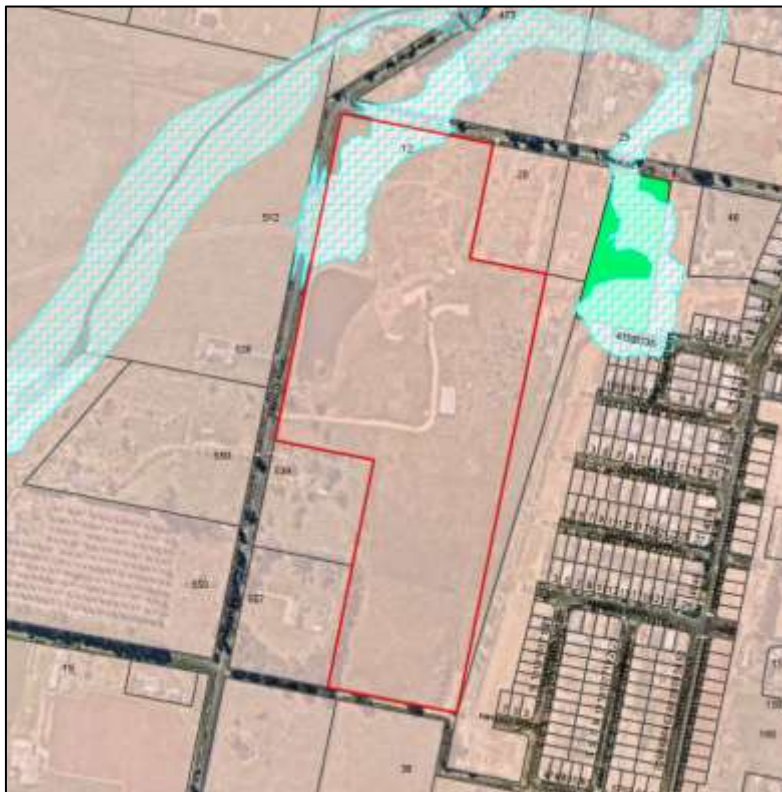
In relation to the current lot, the map nominates a minimum lot size of 200m<sup>2</sup>, 400m<sup>2</sup>, 500m<sup>2</sup>, 700m<sup>2</sup> and 3,800m<sup>2</sup>. The area within this lot where the residential lots are proposed nominates a minimum lot size of 200m<sup>2</sup>, 400m<sup>2</sup> and 500m<sup>2</sup>. The smallest lot proposed by the application is 473m<sup>2</sup> and all lots are compliant with the standard that applies to their mapped location.

**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 north-western corner of the site is affected by flooding associated with Blackman's Swamp Creek (Figure 6). The area proposed for subdivision lies entirely outside this area. Consequently, the subdivision lots are not affected by flooding and will not alter flood conveyance, evacuation routes or environmental values.



**Figure 6 – Blackmans Swamp Creek flooding extent**

**5.22 – Special flood considerations**

This clause applies to sensitive and hazardous development on land located between the flood planning area and the probable maximum flood. For other development, it applies to land that the consent authority determines, in the event of a flood, may:

- (i) pose a significant risk to life, or
- (ii) require the evacuation of people or involve other safety considerations.

Before any consent is issued, the consent authority must consider whether the proposed development will affect the safe occupation and efficient evacuation of people during a flood, incorporates appropriate measures to manage risks to life in the event of a flood, and causes any adverse environmental impacts during a flood.

In this instance, the proposal comprises residential subdivision, which is neither a “sensitive nor hazardous” use as defined by Section 5.22(5). Although the site falls within the Blackmans Swamp Creek PMF on the Flood Planning Map (Figure 7). Council’s Technical Services have not raised concerns that the subdivided allotments would present a particular risk to life or require evacuation or other special safety measures in a flood. Consequently, the criteria in clause 5.22 are not engaged by this development. As is typical for subdivisions of this nature, the required earthworks and stormwater infrastructure will be designed to overcome any flood hazard on the site.



**Figure 7 – Probable maximum flood extent**

**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).*

In consideration of the relevant matters within Clause 7.1:

- Earthworks will be required in associated with the provision of services and road construction.
- Conditional sediment and erosion controls will be installed and maintained.
- The proposed earthworks will facilitate residential subdivision.
- As far as practicable, any excavated material will be reused onsite, in accordance with engineering design. Conditions have been included to address the scenario in which additional fill may need to be brought to the site to comprise Virgin Excavated Natural Material (VENM).
- Conditions are included to maintain neighbourhood amenity including preparation and implementation of a dust management plan. Finished levels will provide suitable landform for congruous residential built form as demonstrated in supplied technical drawings.
- The site is not known to have European or Indigenous cultural values. However, a condition has been included to ensure that any unexpected cultural finds discovered during civil works are appropriately managed and protected.
- The subject land does not contain a waterway and is not within a mapped drinking water catchment.
- To minimise impacts upon environmentally sensitive areas on the subject land, appropriate measures will need to be implemented as follows:
  - installation of tree protection fencing/demarcation of areas with high-value vegetation as no-go zones to avoid disturbance
  - implementation of sediment control measures, including use of filter fabric, to prevent the spread of weeds or exotic seeds into the surrounding environment and dust suppression.

These measures will form part of the conditions of consent and are designed to preserve the integrity of vegetation.

**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 ensure stormwater runoff entering and leaving the site will be managed by sediment fencing in a manner that minimises soil erosion and contamination from discharge points to the public drainage system. A Stormwater Management Plan has been developed by Indesco which covers the entire site including past DA's for Stages 1A - 1C, the present site/stage and future stages on the residue lands.

It is therefore considered that the post-development runoff levels will not exceed the predevelopment levels.

Council's Engineer has recommended conditions to require the development contribute, through s7.11 contributions, to the provision of an off-site stormwater detention system. Stormwater discharge will require a Gross Pollutant Trap (GPT) and energy dissipator / scour protection at the outlet into the watercourse dam.

**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 site does not lie within the mapped Terrestrial Biodiversity area; however, the BDAR identifies a remnant pocket of trees associated with the Southern Tableland Creekflat Ribbon Gum Grassy Woodland in the southwestern corner. The subdivision layout has been configured to avoid these trees wherever practicable, though one mature tree will need to be removed. A biodiversity offset obligation, as established under DA 245/2022, continues to apply to this development.

### **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.*

In consideration of this clause, all utility services are or will be available to the land and adequate for the proposal. Council engineers have nominated appropriate conditions of consent to ensure the extension of services - including water, sewer and stormwater - occurs in an orderly manner.

**Clause 7.15 Development in Shiralee Hilltop Park Buffer Area**

*Development consent must not be granted to development unless the consent authority has considered the following:*

- (a) the urban design outcomes arising from the siting, design and orientation of the development,*
- (b) the opportunities for passive surveillance of the public park,*
- (c) interfaces between the development and the public park,*
- (d) fencing and borders between the development and the public park,*
- (e) whether the development is likely to adversely affect the design, visual character, operation or maintenance of the public park.*

This clause is primarily focussed on the design and construction of future dwellings on the proposed lots. Matters such as fencing and interfaces to the public park will be assessed during future development applications. In terms of subdivision the design largely maintains the concept provided during the Planning Proposal in the sense of being predominantly north-south oriented lots. Future dwellings on Lots 214-225 can address the street to the south and still provide a high-quality presentation to the parkland to the north.

The proposed design departs from the concept shown in the Planning Proposal in two ways. Firstly, it seeks to establish a larger lot for multi dwelling housing. Proposed Lot 213 is shown as 3,599m<sup>2</sup> and development of this lot will need to ensure a similar high-quality interface with the park.

Another departure from the Planning Proposal concept is that the proposed road servicing Lots 214-225 will now not connect through to Joseph Drive. It is likely this change was introduced in order to avoid tight staggered T intersections on Joseph Drive and that this will be beneficial in terms of traffic flow and management.

As a result, there will now be a series of lots (201-208) that will be oriented east-west fronting Joseph Drive with most then backing onto the multi dwelling housing site (Lot 213) described above. This means that development of Lot 201 will need to be designed similar to a corner lot, presenting both eastwards to Joseph Drive and northward to the public park.

While this differs from what was presented in the Planning Proposal concept layout there remains potential to achieve a quality outcome for the public realm.

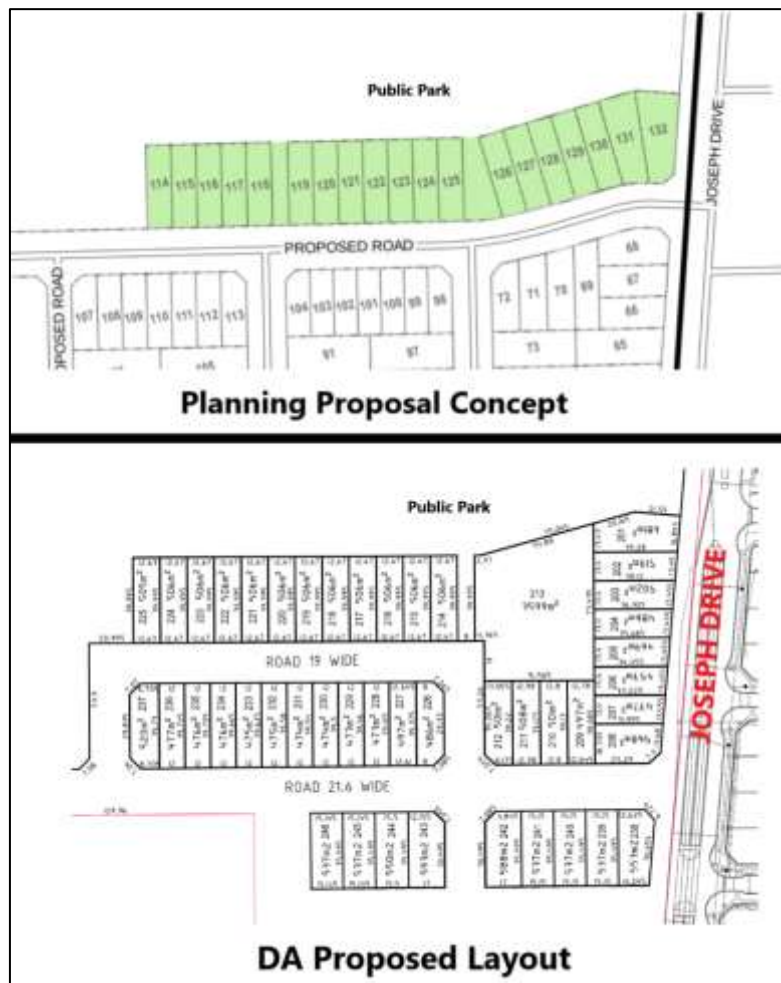


Figure 8 - comparison between Planning Proposal and DA designs

#### STATE ENVIRONMENTAL PLANNING POLICIES

The following SEPPs applicable to the proposed development:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*

**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).*

There is no evidence of contamination present on the site. The proponent engaged Barnson to undertake a Preliminary Site Investigation and a Remediation Action Plan across the broader site (encompassing earlier DA's, the current site and the residue land). Furthermore, an unexpected finds condition has been included to ensure any unforeseen or unidentified contamination found during works is dealt with appropriately.

**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 integrated development due to bushfire prone due to Category 3 “grasslands”. This requires approval from the NSW Rural Fire Service (RFS) under Section 100B of the Rural Fires Act 1997. The application was referred to the RFS for assessment and a Section 100B Bush Fire Safety Authority (BFSA) was granted on 28 March 2025.

The BFSA is subject to conditions relating to:

- Asset Protection Zones, including the management of the future park land to the north as an Inner Protection Area.
- Any new landscaping must comply with Planning for Bush Fire Protection 2019 (PFBP).
- Construction standards of new fences and retaining walls are also to comply with PFBP and use non-combustible materials only.
- Public Roads are to comply with PFBP
- water and utility services are also to comply with PFBP.

NSW RFS considered a suggested fire trail and determined that it is NOT required in this instance given the land further south is zoned for future urban development.

A notice of determination will support and enable the requirements of the BFSA.

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

While Orange Development Control Plan 2004 (“the DCP”) applies to the subject land as the site is within the Shiralee Master Planned area and the proposal is for the initial subdivision of land, the Shiralee DCP provides the relevant planning controls. Relevant matters are described below:

*Section 2.1 Shiralee Character*

The Shiralee Master Plan envisions a walkable, well-connected urban village with diverse housing options, public spaces, and sustainable infrastructure.

- The subdivision aligns with the intended residential character, providing a mix of standard and future medium-density lots.
- The street network and lot layout integrate with the broader Shiralee urban design, maintaining connectivity and accessibility.



### Section 2.4 Subdivision

The Shiralee DCP sets controls for land remediation and subdivision structure. While contamination and remediation are addressed later in this report, the proposal has demonstrated that the land is suitable for residential development.

For subdivision structure, the key requirements are:

- General consistency with the masterplan design and intent.
- Lot sizes meeting or exceeding LEP minimum lot size requirements.
- Suitable width-to-depth ratios to allow flexible dwelling designs.
- Roads designated for bus routes to meet appropriate design standards.

The proposed layout largely aligns with the masterplan, with some modifications:

- Adjustments to Hilltop Park dimensions, negotiated through Amendment 37.
- Refinements to Joseph Drive to avoid impractical staggered T-intersections.

All lots are appropriately sized and configured for future housing design flexibility. While the final bus route is dependent on a future development stage, the east-west road connection ensures bus accessibility between Joseph Drive and Pinnacle Road.

### Section 3.1 Infrastructure Provision

The DCP requires new development to support infrastructure delivery, ensuring adequate access to roads, utilities, and community services.

- The subdivision contributes to road and drainage infrastructure, with roads designed to meet Council's engineering standards.
- Essential services, including water, sewer, stormwater drainage, and electricity, are integrated into the development.

### Section 3.2 Ground Levels and Excavation

Section 3.2 of the Shiralee Development Control Plan (DCP) emphasizes that all developments should respond to the local topography, minimizing excessive cutting and filling of sites, reuse of cut material within the site, avoiding obstruction of site drainage and ensuring that future dwellings can achieve good solar access and view sharing.

This aspect is addressed in more detail later in the report under Likely Impacts of the Development (Earthworks as well as Stormwater and Drainage) but in simple terms the development is designed to appropriately minimise cut and fill and manage any residual impacts.

### Section 3.3 Public Domain

The DCP promotes high-quality open spaces, tree-lined streets, and green corridors to enhance urban amenity.

- The subdivision benefits from proximity to public parks and pathways, ensuring residents have access to recreation areas.
- Streetscape planting and landscaping will be implemented to enhance visual appeal and support biodiversity.

While no new public open spaces are required within the subdivision (Hilltop Park is retained within the residue lot for future stages) the VPA includes contributions towards public domain upgrades, green spaces, and pathway networks.

#### Section 3.4 Staging

This section of the Shiralee DCP serves to confirm that all development must be appropriately serviced, as required by Section 7.11 of the LEP, and to make clear that Council was not liable for extending services ahead of schedule. This was more significant in the early stages of Shiralee and is now more or less redundant. The site is able to be appropriately serviced and meet the requirements of Section 7.11 of the LEP.

#### Section 3.5 Lighting

This section establishes street lighting requirements and standards within Shiralee. Lighting details have not been provided in the DA but this matter can be readily conditioned on the consent.

#### Section 7.1 Passive and Active Recreation Network

Section 7.1 of the Shiralee DCP requires lots adjoining parks or other public spaces to observe some basic requirements to ensure that the public realm is not degraded by inappropriate interface treatments. This DA only relates to subdivision and as such future development of the resultant lots will need to address this section.

#### Section 7.4 Street Tree Strategy

The DA has not provided details on street tree plantings; however, this can be conditioned to comply with Section 7.4 of the Shiralee DCP. The section seeks to ensure appropriate planting densities and provides a list of appropriate species. The section also illustrates diagrammatically how each street tree is to be established to ensure a high rate of survival.

#### Chapter 8 Environmental Management

The DCP promotes sustainable stormwater management, erosion control, and biodiversity protection.

- The subdivision is supported by stormwater drainage infrastructure to manage runoff.
- A Construction Environmental Management Plan (CEMP) will be implemented to control soil erosion, dust, and noise during construction.

The stormwater and environmental controls outlined in the SEE align with best-practice standards, ensuring that potential environmental impacts are mitigated.

#### Chapter 9 Movement Networks

The DCP requires a well-connected street layout that promotes walkability and accessibility.

- The subdivision integrates with Shiralee Road and the broader local road network, ensuring seamless vehicle and pedestrian movement.
- Active transport links (walking and cycling paths) are incorporated into the broader development plan.

The Traffic Impact Assessment (TIA) confirms that the new roads support efficient traffic flow and align with Council's transport network planning.

Council's Engineer confirms the internal road layout is satisfactory and generally in accordance with the Shiralee DCP. Engineering has also recommended conditions to require the applicant to reconstruct Pinnacle Road for the full width and length of the BAL / BAR intersection treatment at the entrance to the development. Additionally, Engineers recommend the applicant be required to construct Joseph Drive half road width, including kerb and gutter, footpaths and bitumen sealed travel and parking lanes tied into the existing road formation.

#### Chapter 10 Vehicle Parking and Servicing

Each lot is designed to accommodate sufficient off-street parking, consistent with DCP requirements. The road layout ensures safe and convenient access for residents, visitors, and service vehicles.

The subdivision meets parking and servicing requirements, with adequate road widths and sufficient lot width to allow for driveway access points for future dwellings.

#### Chapter 11 Social Sustainability

The Shiralee DCP emphasizes the importance of creating a diverse, inclusive, and socially sustainable community. The subdivision contributes to the housing supply in Orange, offering a mix of standard residential lots and a future medium-density lot.

The subdivision supports housing diversity, helping to meet current and future demand in a planned, sustainable manner.

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

#### **Demolition of a Building (clause 61)**

The proposal does not involve the demolition of a building.

#### **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.

#### **BASIX Commitments (clause 75)**

BASIX is not applicable to the proposed development.

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

The SEE evaluates potential visual and amenity impacts, concluding that the proposed subdivision will not result in significant adverse effects.

While the construction phase will involve temporary visual changes, including earthworks and site disturbance, these impacts will be short-term and managed through appropriate site controls. The completed subdivision will integrate with the surrounding residential development in accordance with the Shiralee Master Plan. Additionally, measures such as security fencing and landscaping will help minimize visual impacts on nearby properties. Given that the site is not within a heritage area and has been planned for urban development, the SEE determines that the subdivision will not detract from the area's visual character or amenity. These conclusions are reasonable and supported.

*Access and Traffic*

The SEE considers access and traffic impacts, concluding that the proposed subdivision will not compromise the safety or function of the surrounding road network.

A Traffic Impact Assessment (TIA) by Stantec Australia has been conducted on 17 November 2022, confirming that the additional vehicle movements generated by the subdivision can be accommodated within the existing road infrastructure without causing congestion or safety issues. The SEE also states that any necessary roadworks will be undertaken in accordance with relevant standards, and a Construction Environmental Management Plan (CEMP) and Traffic Control Plan (TCP) will be implemented to manage traffic during construction. Based on this, the assessment determines that the subdivision will have minimal traffic impacts, and the proposed mitigation measures are appropriate. These conclusions are supported.

*Soil Erosion and Sedimentation (SEE)*

The SEE assesses the potential for soil erosion and sedimentation impacts and concludes that the proposed subdivision will not result in significant risks.

The site is characterized by gentle topography, and the subdivision design has been developed to minimize changes to the natural landform. The SEE confirms that appropriate erosion and sediment control measures, such as sediment fences, temporary sediment basins, and stabilisation of disturbed areas, will be implemented in accordance with best practice guidelines. Additionally, imported fill will be certified as virgin excavated natural material (VENM) to ensure soil quality is maintained. Given this, the SEE determines that soil erosion and sedimentation impacts will be effectively mitigated. These conclusions are supported.

*Earthworks*

The SEE assesses the potential impacts of earthworks and concludes that they will be appropriately managed to minimize environmental and amenity concerns.

The key considerations include soil stability, drainage patterns, erosion control, and potential impacts on neighbouring properties. The SEE confirms that only minor earthworks will be required for the 47-lot subdivision, as bulk earthworks for the broader Shiralee development have already been approved under a previous development consent.

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Potential issues associated with earthworks include the risk of soil erosion, sedimentation, and disruption to natural drainage patterns. To mitigate these, the proposal includes the implementation of a Construction Environmental Management Plan (CEMP), which will detail appropriate controls such as sediment fencing, temporary stockpile management, and stabilizing disturbed areas. Additionally, all excavated material will be reused onsite to reduce the need for imported fill, and any required fill will be sourced as virgin excavated natural material (VENM) to prevent contamination. This approach is reasonable and supported.

#### Roadworks

The SEE examines roadworks as part of the subdivision and identifies key considerations including traffic safety, connectivity, and compliance with engineering standards. The subdivision will introduce new roads to service the 47 lots, designed to integrate with the broader Shiralee development. The proposal includes roadworks such as access connections, internal road construction, and integration with existing infrastructure, ensuring safe and efficient movement of vehicles and pedestrians.

Potential concerns include construction-phase traffic disruptions, road safety, and ensuring sufficient capacity to accommodate future traffic demands. The SEE addresses these by confirming that roadworks will be designed and constructed in accordance with Austroads guidelines and Orange City Council's Engineering Standards. Additionally, a Traffic Impact Assessment (TIA) has been conducted, confirming that the new roads and intersections will function efficiently without causing congestion or safety risks.

During construction, a Traffic Control Plan (TCP) will be implemented to manage vehicle movements, ensuring safety for workers and the public. The SEE also outlines that upon completion, the roads will be dedicated to Council for ongoing maintenance. Given these factors, the proposal appropriately addresses potential roadwork-related impacts and ensures that the subdivision will be well-connected and accessible.

#### Stormwater and Drainage

The SEE evaluates potential surface water impacts and concludes that the proposed subdivision will not result in significant adverse effects.

The site is not located within a flood-prone area, and stormwater management has been designed to direct runoff to legal discharge points, preventing uncontrolled flow onto adjacent properties. The SEE also confirms that appropriate erosion and sediment control measures, including perimeter sediment fencing and adherence to best practice stormwater management guidelines, will be implemented during construction. Given the site's gentle topography and the mitigation strategies proposed, the SEE determines that surface water impacts will be minimal and effectively managed. These conclusions are reasonable and supported.

#### Groundwater

The SEE and associated Macquarie Geotech report considers potential groundwater impacts and concludes that the proposed subdivision will not have a significant effect on groundwater resources.



Borehole investigations conducted onsite revealed no presence of free groundwater, and the proposed earthworks are not expected to extend deep enough to encounter or disrupt groundwater. Additionally, no groundwater extraction or waste disposal onsite is proposed. The SEE outlines appropriate management measures, including restricting any necessary refuelling to a designated bunded area to prevent contamination. Based on this, the SEE determines that the development will not pose a risk to groundwater quality or hydrological function. These conclusions are supported.

#### Air Quality

The SEE assesses potential air quality impacts, concluding that the proposed subdivision will not generate significant air pollution.

The main concern identified is dust emissions during the construction phase, that can be managed through standard dust suppression measures such as watering exposed surfaces, minimizing ground disturbance, and ensuring prompt revegetation of disturbed areas. The SEE also confirms that the development does not involve activities that would generate odour or significant motor vehicle emissions.

#### Noise and Vibration

The SEE responds to potential noise and vibration impacts, concluding that the proposed subdivision works will not result in significant or adverse impacts.

The assessment notes that construction activities are expected to be confined to daytime hours, minimizing disruption to nearby residences. Noise and vibration impacts would be temporary and limited to the construction phase, with no blasting proposed as part of the works. Standard noise mitigation measures such as equipment maintenance, switching off idle machinery, and managing operations within prescribed construction hours are considered adequate.

#### Biodiversity

The SEE assesses biodiversity impacts of the proposed subdivision and concludes that the development will not have significant adverse effects on local flora and fauna.

A Biodiversity Development Assessment Report (BDAR) was prepared for the broader Shiralee development, confirming that no critically endangered species or ecological communities will be significantly impacted. While some native vegetation clearing has been approved under a previous development consent, the SEE states that no additional biodiversity impacts will result from this 47-lot subdivision.

Potential concerns include habitat loss, impacts on threatened species, and compliance with biodiversity offset requirements. These impacts are primarily related to the area involved with Stage 1A-1C and have been addressed through participation in the NSW Biodiversity Offset Scheme (BOS), which ensures that any necessary offsets are provided for native vegetation loss. The SEE also confirms that mitigation measures, such as landscaping and environmental management practices, will be implemented to minimize any residual impacts.

Given these considerations, the minimal impact on biodiversity values is considered to be acceptable.

Tree removal

The SEE confirms that no additional tree removal is required as part of this 47-lot subdivision, as native vegetation clearing for the broader development was previously approved under a separate development consent. The Biodiversity Development Assessment Report (BDAR) assessed vegetation across the entire site and determined that the impacts were not significant.

Heritage

The SEE finds that the proposed subdivision will have no adverse heritage impacts.

The site itself is not listed on the State Heritage Register, nor does it contain or adjoin any items of local heritage significance according to the Orange Local Environmental Plan 2011. Additionally, the site is not located within a designated Heritage Conservation Area. Given that the land has been identified as previously disturbed, an Aboriginal due diligence assessment was deemed unnecessary. Consequently, the SEE correctly determines that no further heritage approvals or assessments are required for the proposed development.

Social and Economic

The SEE assesses the social and economic implications of the proposed 47-lot subdivision, concluding that it will have positive effects on both the local community and the economy.

The subdivision is part of the broader Shiralee development, which aligns with strategic planning goals for housing growth in Orange and contributes to the creation of a well-planned residential community.

From a social perspective, the proposal will support population growth by providing additional housing opportunities in an area that has been planned for urban expansion. The subdivision design incorporates appropriate infrastructure, including roads, services, and open space, ensuring a high standard of amenity for future residents. The SEE also highlights that the subdivision will not result in adverse social impacts, as it has been designed in accordance with the Shiralee Master Plan and Development Control Plan (DCP).

Economically, the project will generate employment opportunities during the construction phase, supporting local trades and businesses. In the longer term, the subdivision will contribute to the local economy by increasing the residential population, which in turn supports local businesses, services, and infrastructure investment.

Given the above the project is expected to deliver positive social and economic benefits, contributing to housing supply, local employment, and long-term economic activity without introducing significant negative effects.

Safety and Security

The design of the proposed 47-lot subdivision is appropriate given the site's location and the natural and built characteristics of the surrounding area. It incorporates security measures consistent with Crime Prevention Through Environmental Design (CPTED) principles.

Cumulative Effect

The potential environmental impacts of the proposed 47-lot subdivision are detailed in relevant sections of the SEE. The proposal is not anticipated to significantly affect water or air quality, noise and amenity, safety, views, traffic, or parking. It is compatible with the site and surrounding area and will not result in significant cumulative impacts.

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

The proposed subdivision site at 12-20 Shiralee Road, Orange will be appropriately serviced with key infrastructure, much of which is already in place or planned to be provided as part of the subdivision. The site is located within an established urban growth area, ensuring access to essential services, and has been designed in accordance with Orange City Council's infrastructure requirements - which can be reinforced with appropriate conditions.

The SEE confirms that:

- Water and Sewer - The site is connected to Orange City Council's reticulated water supply and sewer network, ensuring adequate provision for future residential lots. The subdivision design includes new water and sewer connections to service each lot in line with standard engineering requirements.
- Electricity and Telecommunications - Existing electricity infrastructure is available near the site, and new underground connections will be installed as part of the subdivision. Telecommunications, including NBN infrastructure, ensuring connectivity for future residents.
- Stormwater Management - The site has been assessed for stormwater impacts, with drainage infrastructure designed to ensure that runoff is managed effectively. The subdivision will connect to the approved stormwater drainage network already planned for the Shiralee development, preventing flooding or uncontrolled water discharge onto surrounding properties.
- Road Access and Transport - The site benefits from direct access to Shiralee Road, an existing public road, and internal roads will be constructed to Council standards. A Traffic Impact Assessment has confirmed that the road network can accommodate additional vehicle movements without adverse impacts.

The availability of these essential services confirms that the site is suitable for residential subdivision, with no significant servicing constraints identified.

Hazards - Bushfire

The site has been assessed for bushfire risk, and the SEE confirms that it is suitable for residential development, subject to appropriate mitigation measures. The application was referred to the NSW Rural Fire Service as integrated development. On 28 March 2025 the RFS issued a s100B Bush Fire Safety Authority subject to conditions. This has been incorporated into the draft determination notice and is considered to be an appropriate response to the potential hazard arising from the bushfire risk.

*Hazards - Flooding*

The site has been assessed for flood risk, and the SEE confirms that it is suitable for residential development, with no significant flooding constraints.

A Flood Impact Assessment prepared by GRC Hydro provides a detailed evaluation of overland flow paths and potential flood hazards affecting the site. Key factors supporting the site's suitability include:

- *Flood Risk Assessment* - The Flood Impact Assessment confirms that the site is not subject to riverine flooding and does not lie within a designated flood-prone area under Orange City Council's Flood Planning Maps.
- *Overland Flow Management* - While minor overland flow paths exist within the site, the proposed subdivision design incorporates appropriate stormwater management measures to ensure that flow is controlled and directed away from residential lots.
- *Stormwater Drainage Infrastructure* - The site will be connected to a planned stormwater drainage network, ensuring that runoff is effectively managed and directed to legal discharge points without affecting neighbouring properties.
- *Finished Ground Levels* - The proposed subdivision includes minor earthworks to establish well-drained residential lots, ensuring that new homes are located above potential overland flow paths and will not be impacted by local runoff.
- *Compliance with Planning Controls* - The development complies with relevant flood planning provisions in the LEP, confirming that the site is suitable for residential use in terms of flood risk management.

Based on the above, the site is suitable for residential development, as there are no significant flood risks that would impact future dwellings, and the stormwater drainage design and elevated lot levels ensure that potential overland flow is properly managed.

*Hazards - Contamination*

The site has been assessed for potential contamination hazards, and the SEE confirms that it is suitable for residential development, with no contamination risks that would prevent the subdivision from proceeding.

A Preliminary Site Contamination Assessment prepared by Barnson has been undertaken to evaluate historical land use and potential contamination sources. Key factors supporting the site's suitability include:

- *Preliminary Contamination Assessment Findings* - The assessment did not identify any significant contamination risks that would pose a hazard to residential development. The site has been predominantly used for low-impact rural and residential purposes, with no history of industrial activities or land uses associated with contamination.
- *Soil Sampling and Testing* - The assessment included soil sampling and testing, confirming that the site does not contain contaminants at levels that would require remediation under NSW Contaminated Land Management Act 1997 guidelines.
- *Management of Minor Contamination Risks* - While no widespread contamination was identified, localised oil spills were observed in some existing shed areas. To address this, a Remediation Action Plan (RAP) has been prepared, detailing how minor contamination will be managed, including the removal of affected soil and proper disposal in accordance with EPA guidelines.

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- Compliance with Planning Controls - The site has been assessed in accordance with SEPP (Resilience and Hazards) 2021, which requires confirmation that land is suitable for its intended use. The findings demonstrate that the site does not pose a contamination risk to future residents and complies with all relevant planning controls.
- No Requirement for EPA Notification - The assessment concludes that no notification to the NSW Environment Protection Authority (EPA) is required, as the site does not meet the threshold for contamination requiring formal regulatory intervention.

Based on this the site is considered suitable for residential development, as all potential contamination risks have been assessed and appropriately managed.

Hazards - Public Safety During Construction

The site is suitable for development from a public safety perspective, with appropriate measures in place to protect the community and workers during construction.

The SEE outlines key safeguards that will be implemented to minimize risks to public safety and ensure compliance with relevant workplace health and safety regulations. Key safety considerations and mitigation measures include:

- Construction Environmental Management Plan (CEMP) - A CEMP will be implemented to manage environmental and safety risks, ensuring that construction activities are carried out in accordance with best practice guidelines and regulatory requirements.
- Site Security and Access Control - The site will be secured with fencing and restricted access, preventing unauthorized entry and ensuring that the public is kept safe from construction hazards. Clear signage will be installed to alert residents and passersby of potential risks.
- Traffic and Pedestrian Safety - A Traffic Control Plan (TCP) will be in place to manage vehicle movements, including the safe entry and exit of construction vehicles. Temporary traffic controls, such as signage, barriers, and speed restrictions, will be implemented where necessary to protect pedestrians and road users.
- Dust, Noise, and Vibration Controls - To protect public health, the construction team will implement dust suppression measures (such as watering exposed surfaces), restrict work to daytime hours to limit noise impacts, and ensure that vibration levels remain within safe limits.
- Safe Handling of Materials - Any potentially hazardous materials, including minor contaminants identified in existing sheds, will be safely removed and disposed of in accordance with EPA regulations to prevent risks to workers and the public.
- Emergency Preparedness - The site will have emergency response protocols in place, including fire safety measures, first aid stations, and evacuation plans, to ensure a rapid and effective response in the event of an incident.

The combination of site security, traffic management, dust and noise control, and emergency preparedness measures ensures that public safety will be effectively maintained throughout the construction process.

Open Space Networks

The site is well-suited for residential development in terms of open space networks, with the subdivision design integrating into the broader Shiralee Master Plan and aligning with Orange City Council's strategic planning for public open spaces.



The SEE confirms that the development will provide future residents with access to high-quality open space and recreational areas, supporting community well-being and liveability. Key factors supporting the site's suitability include:

- Proximity to Existing and Planned Open Spaces - The subdivision is part of the Shiralee urban village, which has been designed to incorporate a network of parks, green spaces, and pedestrian connections. Residents will benefit from nearby public open spaces that have been planned as part of the broader development.
- Integration with the Shiralee Development Control Plan (DCP) - The subdivision layout aligns with the Shiralee DCP 2015, ensuring that the development contributes to a well-connected urban environment with walkable streets, cycleways, and accessible public spaces.
- Green Corridors and Landscaping - While no new public open spaces are required within this stage of the subdivision, the proposal complements existing and planned green corridors, ensuring that residents have easy access to outdoor recreational opportunities. Landscaping within the subdivision will contribute to the visual amenity and environmental quality of the area.
- Pedestrian and Cycling Connectivity - The subdivision is designed to be pedestrian-friendly, with safe walking and cycling routes connecting to the wider Shiralee precinct. This supports active transport and promotes a well-connected, community-focused neighbourhood.
- Contribution to Community Infrastructure - The development is subject to planning contributions and a Voluntary Planning Agreement (VPA) with Orange City Council, ensuring that funding and infrastructure improvements are in place to support open space and recreational facilities in the area.

The site is therefore suitable for residential development in terms of open space networks.

Considering the above as well as serviceability, context and setting, environmental impact, and zoning permissibility, the site is suitable for the proposed development.

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

The proposed development is not defined as advertised development under the provisions of the Community Participation Plan, and as such no formal exhibition of the application was required. No submissions have been received in relation to this application.

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

The 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.

#### **VOLUNTARY PLANNING AGREEMENT (VPA)**

Amendment 37 to the LEP was accompanied by a Voluntary Planning Agreement primarily related to the embellishment and dedication of Hilltop Park. This Agreement was structured such that in exchange for the embellishment and dedication of the park (worth over \$2 million) that the 47 additional lots enabled by Amendment 37 would not be subject to contributions.

The previous consent DA 245/2022(1) for Stage 1a approved 42 additional lots - however these were approved prior to Amendment 37 and the associated VPA and were therefore conditioned to require Section 7.11 contributions.

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2.4 Development Application - DA 770/2024(1) - 12 Shiralee Road

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Stage 1b, approved under DA 501/2024(1) creates ten lots and DA 515/2024(1) for Stage 1c, creates 14 lots.

Accordingly, Section 7.11 contributions were not required for either DA 501/2024(1) or DA 515/2024(1) as the number of lots being created between the two applications totalled 24 lots and was within the scope of the 47 lots under the VPA. This left 23 lots under the VPA to be considered during assessment of subsequent applications for future stages.

The current application DA 770/2024(1) seeks to create a total of 47 lots comprised of 45 residential lots, one multi-dwelling housing lot and a residue lot for future stages.

Accordingly, this application will exhaust the remaining 23 lots allowed for under the VPA and normal Section 7.11 contributions will be required for the additional 23 residential lots, this excludes the residue lot which is to be subject to future DA's.

Related to this are the trigger points in the VPA for different stages of the park development and dedication. Under the VPA:

- works on the park are to commence on or before release of the 102nd lot,
- practical completion is required on or before release of the 152nd lot, and
- dedication to Council is to occur on or before 197th lot.

The combined total of Stages 1a, 1b and 1c is 65 lots and therefore does not reach any of the above triggers. The additional 46 residential lots of this application Stage 2 will bring the total to 111 and therefore works on the park are required to commence during this stage. At most Council can release Subdivision Certificates for 36 residential lots without such commencement.

The SEE acknowledges the VPA requirements and confirms a commitment to deliver the park infrastructure as per the agreed staging plan.

#### Planning Agreement Variation

DA 770/2024(1) proposes a minor adjustment to the "Dedication Land" identified in Schedule 3 of the registered Voluntary Planning Agreement (VPA). The open-space parcel that currently sits south of the dam is to be repositioned immediately north so that it becomes contiguous with the main Hilltop Park (refer to Figure 5). The relocation enables the retention of mature remnant trees while generally maintaining the full recreational function and area of public parkland originally secured by the VPA. The proposed adjustment has no adverse impact on the public benefits originally secured by the VPA, namely the embellishment of the recreational area, including its value, staging and timing of delivery.

Under clause 203 and 204 of the Environmental Planning and Assessment Regulation 2021, any amendment to a planning agreement must be effected through a deed of variation and placed on public exhibition. A condition of consent will therefore require the applicant to prepare a deed of variation for execution that updates the description and plan of the Dedication Land before any Subdivision Certificate is issued. The applicant has provided a letter confirming this adjustment and acknowledges that Council may impose conditions to give effect to this adjustment.

**DEVELOPMENT CONTRIBUTIONS****Section 7.11 Development Contributions and Section 64 Headworks Charges**

Development contributions are applicable to the proposed development, pursuant to Orange Development Contributions Plan 2024 (Shiralee). The contributions are based on 46 additional residential lots; however, **23 lots are excluded** by virtue of a Voluntary Planning Agreement (VPA) applying to the land. Contributions are therefore calculated on the remaining 23 additional residential lots.

Open Space and Recreation	23 additional residential lot @ 792.01	18,216.23
Community and Cultural	23 additional residential lot @ 229.68	5,282.64
Roads and Traffic Management	23 additional residential lot @ 1,045.43	24,044.89
Stormwater Drainage	-	-
Local Area Facilities	23 additional residential lot @ 17,760.90	408,500.70
Plan Preparation & Administration	23 additional residential lot @ 171.98	3,955.54
<b>TOTAL:</b>		<b>\$460,000.00</b>

With regard to section 64 Headworks Charges, councils' technical services have determined that the applicants will be required to contribute:

- Water supply headworks for 46 lots; and
- Sewerage headworks for 46 lots.

**RESIDUE LOT**

Council Engineers have sought a condition to require the residue (Lot 247) to have a s88B restriction imposed to prevent further development / subdivision until all necessary subdivision works have been undertaken. This is to allow for the orderly staged release of the land and the provision of services in an efficient manner.

**PARK COMMENCEMENT**

Assuming that all of Stage 1a, 1b and 1c are delivered, this application will take the total number of residential lots created to 111. According to the VPA works on the park are required to commence on or before release of the 102<sup>nd</sup> lot. This does not prevent works on Stage 2 of the estate (this application) from physically commencing, however, release of Subdivision Certificates for the lots beyond the 102<sup>nd</sup> lot will need to demonstrate that works associated with the public park have commenced.

In effect this means that all except the last nine lots in this stage can be released at any time as normal with the last nine lots withheld until the park has physically commenced as per the VPA.

A condition of consent to this effect is recommended so that both the Applicant and Council are aware of, and checking for, this matter when reviewing applications for Subdivision Certificates.

**SUMMARY**

The proposed development is permissible with the consent of Council. The proposed development complies with the relevant aims, objectives and provisions of Orange LEP 2011 (as amended), DCP 2004 and Shiralee DCP 2015. The site is also subject to a registered Voluntary Planning Agreement, and the proposal generally satisfies its requirements. The revision to the Dedication Land will need to be formalised by a Deed of Variation prior to any Subdivision Certificate.

A Section 4.15 assessment of the development indicates that the development is acceptable in this instance. Attached is a draft Notice of Determination outlining a range of conditions considered appropriate to ensure that the development proceeds in an acceptable manner.

**COMMENTS**

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

**ATTACHMENTS**

- 1 Draft Notice of Determination, D25/45920 [↓](#)
- 2 Plans, D25/42293 [↓](#)
- 3 Referral - Rural Fire Service - S100B Bush Fire Safety Authority, D25/42280 [↓](#)



### NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

<b>Application number</b>	DA 770/2024(1) PAN-499342
<b>Applicant</b>	Jon Hopkins Level 9, 503-505 Kent Street, Sydney
<b>Description of development</b>	Subdivision (47 Lot Torrens Title)
<b>Property</b>	12 SHIRALEE ROAD ORANGE 2800 A/-/DP381933 1/-/DP630681
<b>Determination</b>	Approved Consent Authority - Council
<b>Date of determination</b>	
<b>Date from which the consent operates</b>	15/04/25
<b>Date on which the consent lapses</b>	15/04/30
<b>Approval bodies that have given general terms of approval</b>	Rural Fire Service



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**

The proposed development will reasonably satisfy Local and State planning controls.

The proposed development will comply with the requirements of State approval authorities.

Impacts of the proposed development on the natural and built environment will be within acceptable limit, subject to mitigation conditions.

The proposed development will complement the existing or desired future character of the area.

The proposed development will be consistent with the Zone objectives and principal development standards.

The proposed development is permitted in the Zone.

Utility services are available and adequate.

Public exhibition of the application was undertaken in accordance with Council's Community Participation Plan or State legislation. No public submissions were received.

#### **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  
Manger Development Assessment  
Person on behalf of the consent authority

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	<b>Approved plans and supporting documentation</b>
	The development must be carried out in accordance with:
	<ul style="list-style-type: none"> <li>a. The approved stamped plans prepared by Carpenter, Collins, Craig Revision T and dated 13 December 2024 (2 Sheets)</li> <li>b. Statements of environmental effects or other similar associated documents that form part of the approval</li> </ul>
	as amended in accordance with any conditions of this consent.
	<b>Condition reason:</b> To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.
2	<b>Development and subdivision works requirements</b>
	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.
	<b>Condition reason:</b> To comply with Council's Development and Subdivision Code.
3	<b>Integrated Development - Bush Fire Safety Authority</b>
	The development is to comply at all times with the requirements and conditions of a Bush Fire Safety Authority issued by the NSW Rural Fire Service dated Friday 28 March 2025. RFS Reference DA20250214000586-Original-1
	<b>Condition reason:</b> To ensure compliance with the Integrated Development provisions of the Environmental Planning and Assessment Act 1979 and section 100B of the Rural Fires Act 1997

### Subdivision Work

**Before issue of a subdivision works certificate**

4	<p><b>Engineering plan design and construction requirements</b></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 issuing of a Subdivision Works Certificate.</p> <p><b>Condition reason:</b> To comply with Councils Development and Subdivision Code.</p>
5	<p><b>Soil and Water Management Plan</b></p> <p>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 issuing 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.</p> <p><b>Condition reason:</b> To comply with Councils Development and Subdivision Code.</p>
6	<p><b>Dust management plan</b></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><b>Condition reason:</b> To comply with Councils Development and Subdivision Code.</p>
7	<p><b>Inter allotment stormwater system</b></p> <p>Proposed lots are to be provided with interlot stormwater drainage, including those lots abutting public land, where the surface of the entire lot cannot be drained to the kerb and gutter at the lot frontage. A grated stormwater pit is to be constructed within each lot provided with interlot stormwater drainage. Engineering plans for this drainage system are to be approved by Orange City Council or an Accredited Certifier (certifier – subdivision) prior to the issuing of a Subdivision Works Certificate.</p> <p><b>Condition reason:</b> To comply with Councils Development and Subdivision Code.</p>
8	<p><b>Stormwater treatment</b></p> <p>Stormwater from the site shall be piped to the adjacent watercourse / dam, where stormwater shall be discharged through a stormwater treatment system providing a sediment and litter arrestor, settling basin and appropriate scour protection before entering the watercourse / dam. The selected stormwater treatment system shall be from a range of existing Council approved systems. The stormwater treatment system design</p>

	shall include a sealed / concrete service vehicle access. Prior to a Subdivision Works Certificate being issued engineering plans for this stormwater system are to be submitted to and approved by Orange City Council.
	<b>Condition reason:</b> To comply with Councils Development and Subdivision Code.
9	<b>Sewer main construction</b>
	Sewer mains are 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.
	<b>Condition reason:</b> To comply with Councils Development and Subdivision Code.
10	<b>Water reticulation analysis</b>
	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 Subdivision Works Certificate.
	<b>Condition reason:</b> To comply with Councils Development and Subdivision Code.
11	<b>Road naming application</b>
	Prior to the issuing of a Subdivision Works Certificate, a Road Naming Application form is to be completed and submitted to the Geographical Names Board with a plan of the whole development defining the stage being released - including future road extensions.
	<b>Condition reason:</b> To comply with Councils Development and Subdivision Code.
12	<b>Road construction requirements</b>
	All roads shall be constructed and designed in accordance with Councils Development and Subdivision Code, Shiralee DCP and Councils Shiralee road-type master plan. Road construction shall include paved thresholds and intersection blisters in accordance with Orange City Councils Shiralee DCP, standard drawings and Shiralee Typical Intersection details (dwg. No TP00040-E as amended).
	<ul style="list-style-type: none"> <li>The proposed 21.6m and 19.0m wide internal roads shall be constructed full road width within the development.</li> <li>Joseph Drive shall be constructed as half road width for the full frontage of the proposed development in accordance with Orange City Councils Shiralee DCP. This work shall include kerb and gutter, underground stormwater pipes, parking and travel lanes and an earth-formed footpath on the development side of the road. The new works shall tie into the existing road pavement and all construction works made safe for road users. The frontage construction shall extend to and include the intersection with Whitebox Street.</li> </ul>
	<b>Condition reason:</b> To comply with Councils Development and Subdivision Code.



13	<p><b>Pinnacle Road intersection construction requirements</b></p> <p>Engineering plans are to be submitted to and approved by Orange City Council prior to the issue of a Subdivision Works Certificate detailing the following intersection improvements for the proposed 21.6m wide road and Pinnacle Road:</p> <ul style="list-style-type: none"> <li>• a bitumen-sealed rural Basic Left-turn treatment (BAL) in accordance with Figure 8.2 of Austroads Guide to Road Design Part 4A,</li> <li>• a bitumen-sealed rural Basic Right-turn treatment (BAR) in accordance with Figure 7.5 of Austroads Guide to Road Design Part 4, AND</li> <li>• The intersection works are to be designed and constructed for the posted speed limit at this location and be able to accommodate up to a 19m articulated heavy vehicle.</li> <li>• Details of any ancillary works are to be provided including (but not limited to) pavement design, line marking, intersection and road name signage, drainage transitions, batter slopes, vegetation removal, services relocation, piped stormwater, kerb and gutter and road reserve widening acquisition.</li> <li>• Safe Intersection Sight Distance (SISD) requirements as outlined in Austroads Guide to Road Design Part 4A is to be provided in both directions at the intersection.</li> <li>• Road pavement construction shall extend full road width for the area of works.</li> </ul> <p>The new works shall tie into the existing road pavement and all construction works made safe for road users.</p> <p><b>Condition reason:</b> To ensure the safe and efficient operation of the local road network</p>
14	<p><b>Access over adjoining land</b></p> <p>If services and access is to be provided over adjoining properties, stormwater discharged onto adjoining land, land acquisition, or works are required to be undertaken on adjoining properties then, prior to the issue of a Construction Certificate, evidence of the registration of any required land, 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><b>Condition reason:</b> To ensure compliance with relevant statutory requirements.</p>
15	<p><b>Obtain Road Opening Permit</b></p> <p>A Road Opening Permit in Accordance with Section 138 of the Roads Act 1993 must be approved by Council prior to a Subdivision Works Certificate being issued or any intrusive works being carried out within a public road reserve.</p> <p><b>Condition reason:</b> To ensure compliance with relevant statutory requirements.</p>
16	<p><b>Street Tree and Public Domain Plan</b></p> <p>Prior to the issue of a Subdivision Works Certificate, a Street Tree and Public Domain Plan must be prepared and approved by Council's Manager Development Assessment. The plan must be consistent with Sections 7.2 (Landscape) and 7.4 (Street Tree Strategy) of the</p>

	Shiralee DCP, with tree species selected in consultation with the Manager City Presentation.
	<b>Condition reason:</b> To ensure appropriate landscaping and street tree planting in accordance with the Shiralee DCP.
17	<b>Biodiversity Offset Obligations</b>
	Prior to the issue of a Subdivision Works Certificate, the applicant must provide evidence to the consent authority of the retirement of the required biodiversity credits identified in the Biodiversity Development Assessment Report (BDAR) prepared for DA 245/2022 (1).
	<b>Condition reason:</b> To ensure compliance with relevant statutory requirements.

**Before subdivision work commences**

18	<b>Apply for a Subdivision Works certificate</b>
	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.
	<b>Condition reason:</b> To ensure compliance with relevant statutory requirements.
19	<b>Soil and water management plan</b>
	The approved Soil and Water Management Plan (SWMP) shall be implemented prior to construction works commencing.
	<b>Condition reason:</b> To ensure compliance with relevant statutory requirements.
20	<b>Tree Protection Measures</b>
	Prior to the commencement of any works, tree protection fencing must be installed around trees identified as HBT 01, HBT 02, and HBT 03 in the Biodiversity Development Assessment Report (The Environmental Factor, May 2023 – Figure 8 Survey). Fencing must comply with AS4970-2009 <i>Protection of Trees on Development Sites</i> , be a minimum of 1800mm high chain link, and include signage advising workers that the trees are to be retained and protected.
	No vehicles, machinery, equipment, or materials are to be stored or stockpiled within the exclusion zones. The area within the Tree Protection Zones must be mulched with a 100mm thick layer of woodchip/leaf mulch.
	No works are to commence on the site until such time Council's Manager City Presentation has inspected and approved the tree protection measures. Council's Manager City Presentation may direct the project arborist and project manager/foreman to make suitable adjustments to the tree protection measures where required. No modifications are to be made to the tree protection measures during works without the prior approval from Council's Manager City Presentation.
	<b>Condition reason:</b> To ensure the protection and retention of significant trees during site preparation and construction.

### During subdivision work

21	<b>Adjustments to utility services</b>
	Any adjustments to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer.
	<b>Condition reason:</b> To comply with Councils Development and Subdivision Code.
22	<b>Provision of services and works on public land</b>
	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.
23	<b>Lots adjacent to waterway</b>
	All proposed residential lots adjacent to stormwater flow paths, are to be a minimum of 500mm above the 1% AEP flood level.
	<b>Condition reason:</b> To comply with Councils Development and Subdivision Code.
24	<b>Provision of water service and sewer junction</b>
	A water service and sewer junction is to be provided to every lot in the proposed residential subdivision in accordance with the Orange City Council Development and Subdivision Code.
	<b>Condition reason:</b> To comply with Councils Development and Subdivision Code.
25	<b>All services to be provided by developer</b>
	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.
	<b>Condition reason:</b> To comply with Councils Development and Subdivision Code.
26	<b>Services within lot</b>
	All services are to be contained within the allotment that they serve.

	<b>Condition reason:</b> To comply with Councils Development and Subdivision Code.
27	<b>Concrete footpaths and cycleways</b>
	Footpaths and cycleways are to be constructed in accordance with the Shiralee DCP.
	Construction work is to be to the requirements and standards of the Orange City Council Development and Subdivision Code.
	<b>Condition reason:</b> To comply with Councils Development and Subdivision Code.
28	<b>Unexpected finds - contamination</b>
	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.
	<b>Condition reason:</b> To ensure any unexpected finds of contamination are notified to Council and managed appropriately.

**Before issue of a subdivision certificate**

29	<b>Apply for Subdivision Certificate</b>
	Application shall be made for a Subdivision Certificate under Section 6.3(1)(d) of the Act.
	<b>Condition reason:</b> To ensure compliance with relevant statutory requirements.
30	<b>Provision of services for staged subdivision release</b>
	Where staged release of the subdivision is proposed, all conditions of consent and contributions relative to the proposed staging of the development, and all engineering conditions of development consent as it relates to the servicing of the proposed lots are to be completed prior to the issuing of a Subdivision Certificate.
	<b>Condition reason:</b> To ensure compliance with relevant statutory requirements.
31	<b>Payment of water and sewer contributions</b>
	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 46 ETs for water supply headworks and 46 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.

	<p>This Certificate of Compliance is to be submitted to the Principal Certifying Authority prior to the issuing of a Subdivision Certificate.</p> <p><b>Condition reason:</b> To ensure compliance with relevant statutory requirements.</p>
32	<p><b>Filling of lots</b></p> <p>Evidence from a registered NATA laboratory is to be submitted prior to the issuing of a Subdivision Certificate stating that the filling of all low-lying areas and/or dams has been carried out in accordance with Australian Standard 3798-2007.</p> <p><b>Condition reason:</b> To comply with Councils Development and Subdivision Code.</p>
33	<p><b>NBN certification</b></p> <p>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.</p> <p><b>Condition reason:</b> To comply with Councils Development and Subdivision Code.</p>
34	<p><b>Essential Energy certification</b></p> <p>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.</p> <p><b>Condition reason:</b> To comply with Councils Development and Subdivision Code.</p>
35	<p><b>Easements for sewer mains</b></p> <p>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 issuing of a Subdivision Certificate.</p> <p><b>Condition reason:</b> To comply with Councils Development and Subdivision Code.</p>
36	<p><b>All services contained within lots and WAE plans</b></p> <p>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 issuing of a Subdivision Certificate.</p> <p><b>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.</b></p>



	<b>Condition reason:</b> To comply with Councils Development and Subdivision Code.
37	<p><b>Maintenance security deposit provided</b></p> <p>A Maintenance Security Deposit, in accordance with the provisions and requirements of the Orange City Council Development and Subdivision Code, is to be provided to Orange City Council prior to the issuing of a Subdivision Certificate.</p> <p>A Certificate of Compliance, from Orange City Council, certifying that the maintenance security deposit has been paid, is to be submitted to the Principal Certifying Authority prior to the issuing of a Subdivision Certificate.</p> <p><b>Condition reason:</b> To comply with Councils Development and Subdivision Code.</p>
38	<p><b>Stormwater easements</b></p> <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><b>Condition reason:</b> To comply with Councils Development and Subdivision Code.</p>
39	<p><b>Provision of services and works on public land</b></p> <p>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.</p> <p><b>Condition reason:</b> To comply with Councils Development and Subdivision Code.</p>
40	<p><b>S88B restriction – proposed Lot 247</b></p> <p>A Restriction-as-to-User under section 88B of the <i>NSW Conveyancing Act</i> is to be created on the title of proposed Lot 247 in favour of Orange City Council which states that:</p> <p>Proposed Lot 247 may not be subdivided or further developed and may not be used for residential purposes unless the following works are carried out to the satisfaction of Orange City Council:</p> <ul style="list-style-type: none"> <li>• All infrastructure services (water, sewer, stormwater drainage, stormwater detention,</li> </ul>

	<p>gas, electricity, phone lines) as required by the Orange City Council Development and Subdivision Code and Shiralee DCP are provided to Lot 247; and</p> <ul style="list-style-type: none"><li>• The developer of proposed Lot 247 is responsible for gaining access over adjoining land for services as necessary. Easements are to be created about all service mains within and outside the lots they serve; and</li><li>• Contributions are paid as required by the development contributions plan applicable at the time of development and Water and Sewer charges as required by Orange City Council in accordance with Division 5 of Part 2 of Chapter 6 of the Water Management act 2000; and</li><li>• Joseph Drive and Hawke Lane frontages are constructed in accordance with the Orange City Council Development and Subdivision Code and shiralee DCP.</li></ul>																					
	<b>Condition reason:</b> To comply with Councils Development and Subdivision Code.																					
41	<b>Contributions - payment of development contributions</b> <p>The payment of \$460,000.00 must be made to Council in accordance with Section 7.11 of the Act and Orange Development Contributions Plan 2024 (Shiralee) toward the provision of the following public facilities:</p> <table><tr><td>Open Space and Recreation</td><td>23 additional lots @ \$792.01</td><td>\$18,216.23</td></tr><tr><td>Community and Cultural</td><td>23 additional lots @ \$229.68</td><td>\$5,282.64</td></tr><tr><td>Roads and Traffic Management</td><td>23 additional lots @ \$1,045.43</td><td>\$24,044.89</td></tr><tr><td>Stormwater Drainage</td><td>-</td><td>-</td></tr><tr><td>Local Area Facilities</td><td>23 additional lots @ \$17,760.90</td><td>\$408,500.70</td></tr><tr><td>Plan Preparation &amp; Administration</td><td>23 additional lots @ \$171.98</td><td>\$3,955.54</td></tr><tr><td><b>TOTAL:</b></td><td></td><td><b>\$460,000.00</b></td></tr></table> <p>The contributions will be indexed quarterly in accordance with Orange Development Contributions Plan 2024 Orange Development Contributions Plan 2024 (Shiralee area), which may be inspected at the Orange Civic Centre, Byng Street, Orange</p> <b>Condition reason:</b> Because the development will require the provision of, or increase the demand for, public amenities and services.	Open Space and Recreation	23 additional lots @ \$792.01	\$18,216.23	Community and Cultural	23 additional lots @ \$229.68	\$5,282.64	Roads and Traffic Management	23 additional lots @ \$1,045.43	\$24,044.89	Stormwater Drainage	-	-	Local Area Facilities	23 additional lots @ \$17,760.90	\$408,500.70	Plan Preparation & Administration	23 additional lots @ \$171.98	\$3,955.54	<b>TOTAL:</b>		<b>\$460,000.00</b>
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<b>TOTAL:</b>		<b>\$460,000.00</b>																				
42	<b>Planning Agreement - Park Commencement</b> <p>The site of this development is subject to a Planning Agreement has been registered on the land in accordance with section 7.6 of the Environmental Planning and Assessment Act 1979. The agreement requires commencement of a public park prior to the release of the 102nd lot. Previous consents related to this agreement have approved 66 lots and this</p>																					

consent approves a further 46 as shown in the table.

Planning Agreement - Public Park Stage	Consent	Lots Approved	Running Total
1A	DA 245/2022(1)	42	42
1B	DA 501/2024(1)	10	52
1C	DA 515/2024(1)	14	66
2	DA 770/2024(1)	46	112

Accordingly, prior to the release of a subdivision certificate for the 36th or greater lot of this consent, the applicant is to provide evidence to the satisfaction of Councils Manager of Development Assessment to confirm the commencement of works in relation to the public park the subject of the Planning Agreement.

**Condition reason:** To ensure compliance with a Planning Agreement established and registered on the site.

43

**Planning Agreement – Variation Deed Execution**

Prior to the issue of a Subdivision Certificate a variation deed to the Planning Agreement between Orange City Council and Orange Enterprises No.1 Pty Ltd, that reflects the dedication land consistent with the development application, is publicly exhibited, executed, and registered on the title of the land.

**Condition reason:** To ensure land dedication aligns with the approved development and is secured in the Planning Agreement.

44

**Landscaping Completion**

Landscaping shall be completed in accordance with the approved *Street Tree and Public Domain* plan and maintained in good condition delivered as such prior to release of the Subdivision Certificate. Thereafter, landscaping is required to be maintained in good order during the construction period for buildings at all times by the future landowners and their builders.

**Condition reason:** To ensure landscaping is delivered as approved and remains in good condition throughout the construction period.

45

**Compliance with RFS Bushfire Safety Authority**

The applicant shall demonstrate to the certifier that the requirements of the section 100B as approved by the RFS, dated 28 March 2025 has been complied with.

**Condition reason:** To ensure the development complies with bushfire protection requirements approved by the RFS under Section 100B.

### Ongoing use for subdivision 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.

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.

**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:

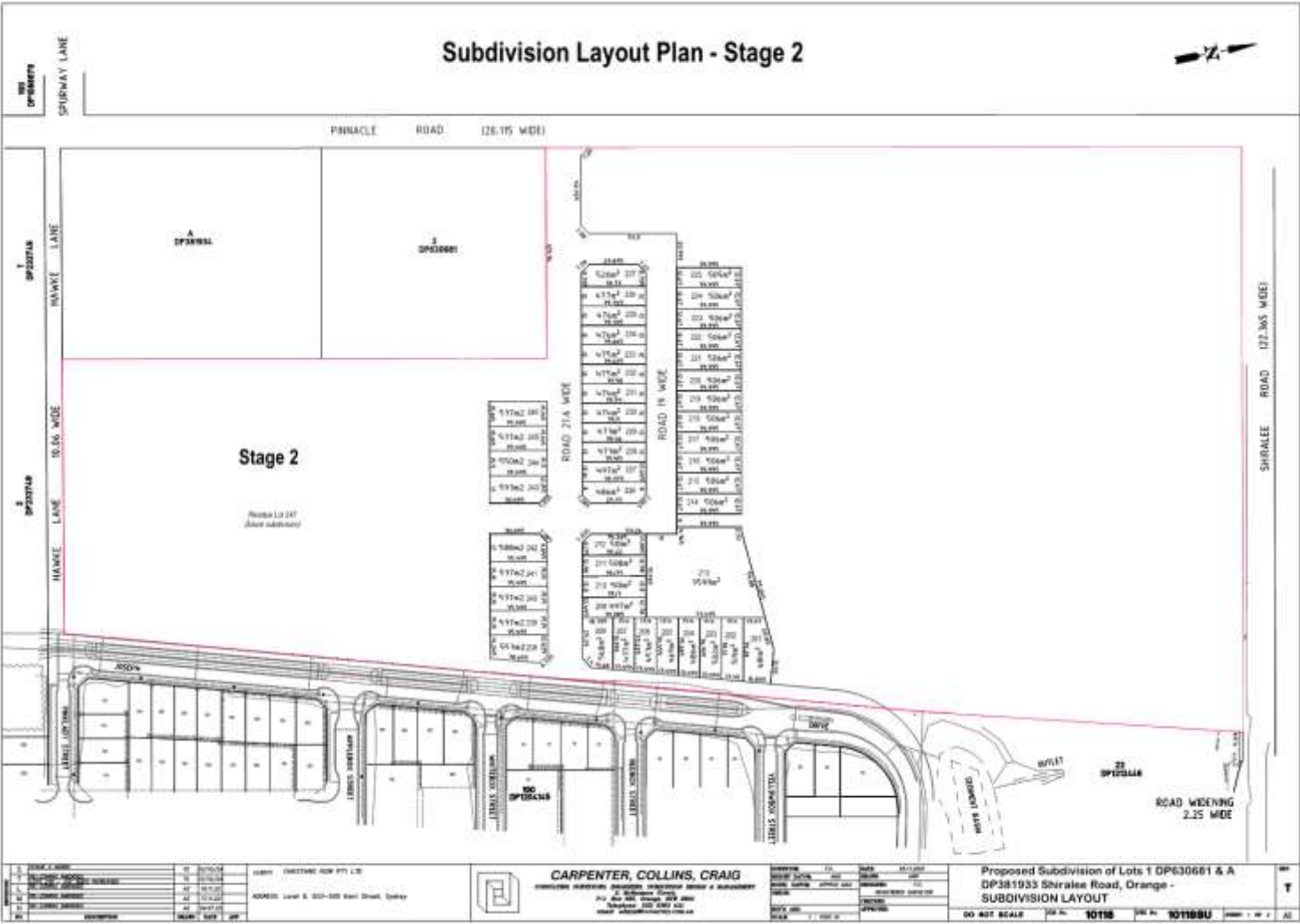
- the collection of stormwater,
- the reuse of stormwater,
- the detention of stormwater,
- the controlled release of stormwater, and
- connections to easements and public stormwater systems.

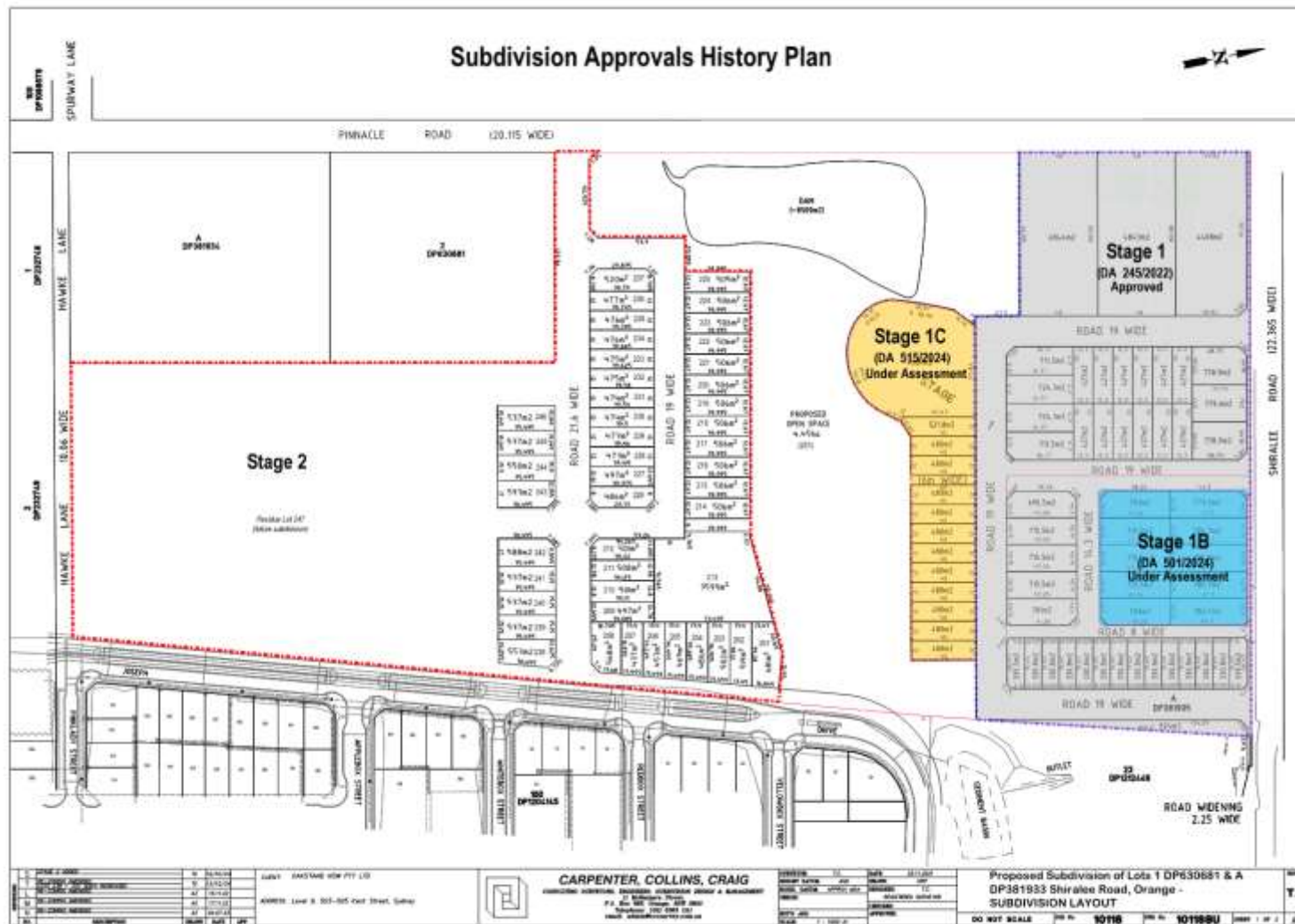
**Strata certificate** means a certificate in the approved form issued under Part 4 of the *Strata Schemes Development Act 2015* that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

**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.







Orange City Council  
PO Box 35  
ORANGE NSW 2800

Your reference: CNR-78914 DA 770/2024(1)  
Our reference: DA20250214000586-Original-1

**ATTENTION:** Craig Mortell

Date: Friday 28 March 2025

Dear Sir/Madam,

**Integrated Development Application**  
**s100B - Subdivision - Torrens Title Subdivision**  
**12 Shiralee Road Orange 2800, 1//DP630681, A//DP381933**

I refer to your correspondence dated 21/02/2025 seeking general terms of approval for the above Integrated Development Application.

The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted. General Terms of Approval, under Division 4.8 of the *Environmental Planning and Assessment Act 1979*, and a Bush Fire Safety Authority, under section 100B of the *Rural Fires Act 1997*, are now issued subject to the following conditions:

**Asset Protection Zones**

***Intent of measures: to provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels at the buildings are below critical limits and prevent direct flame contact.***

1. Prior to the issue of subdivision certificate and in perpetuity, the area denoted 'APZ Required' and 'APZ Provided' in Figure 10 of the bush fire report by Integrated Consulting, project no. 14081, rev. B, dated 18 December 2024 must be managed to the standards of an inner protection area (IPA) as outlined in Appendix 4 of *Planning for Bush Fire Protection 2019*:

- Tree canopy cover should be less than 15% at maturity;
- Trees at maturity should not touch or overhang the building;
- Lower limbs should be removed up to a height of 2 m above the ground;
- Tree canopies should be separated by 2 to 5 m;
- Preference should be given to smooth-barked and evergreen trees;
- Large discontinuities or gaps in the shrubs layer should be provided to slow down or break the progress of fire towards buildings;
- Shrubs should not be located under trees;
- Shrubs should not form more than 10% ground cover;
- Clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation;
- Grass should be kept mown (as a guide, grass should be kept to no more than 100mm in height); and
- Leaves and vegetation debris should be removed regularly.

1

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**Postal address**

NSW Rural Fire Service  
Locked Bag 17  
GRANVILLE NSW 2142

**Street address**

NSW Rural Fire Service  
4 Murray Rose Ave  
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555  
F (02) 8741 5550  
[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)







2 Any new landscaping (including the Open Space lot) must comply with Appendix 4 of *Planning for Bush Fire Protection 2019*. In this regard, the following principles are to be incorporated:

- A minimum 1 metre wide area (or to the property boundary where the setbacks are less than 1 metre), suitable for pedestrian traffic, must be provided around the immediate curtilage of the building;
- Planting is limited in the immediate vicinity of the building;
- Planting does not provide a continuous canopy to the building (i.e. trees or shrubs are isolated or located in small clusters);
- Landscape species are chosen to ensure tree canopy cover is less than 15% (IPA) at maturity and trees do not touch or overhang buildings;
- Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies;
- Use smooth bark species of trees species which generally do not spread fire up the bark into the crown;
- Avoid planting of deciduous species that may increase fuel at surface/ ground level (i.e. leaf litter);
- Avoid climbing species to walls and pergolas;
- Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building;
- Locate combustible structures such as garden sheds, pergolas and materials such as timber garden furniture away from the building; and
- Low flammability vegetation species are used.

#### Construction Standards

**Intent of measures:** to provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels at the buildings are below critical limits and prevent direct flame contact.

3. Any new fences and gates must comply with section 7.6 of *Planning for Bush Fire Protection 2019*.

4. Any new retaining walls must be constructed entirely from non-combustible materials only.

#### Access – Public Roads

**Intent of measures:** to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area.

5. The proposed roads must comply with the following requirements of Table 5.3b of *Planning for Bush Fire Protection 2019*:

- roads have a minimum 5.5m carriageway width kerb to kerb;
- parking is provided outside of the carriageway width;
- hydrants are located clear of parking areas;
- curves of roads have a minimum inner radius of 6m;
- the maximum grade road is 15 degrees and average grade of not more than 10 degrees or other gradient specified by road design standards, whichever is the lesser gradient;
- the road crossfall does not exceed 3 degrees;
- a minimum vertical clearance of 4m to any overhanging obstructions, including tree branches, is provided;
- traffic management devices are constructed to not prohibit access by emergency services vehicles;
- the capacity of road surfaces and any bridges/causeways is sufficient to carry fully loaded firefighting vehicles (up to 23 tonnes); bridges/causeways are to clearly indicate load rating;
- hydrants are located outside of parking reserves and road carriageways to ensure accessibility to reticulated water for fire suppression; and







- hydrants are provided in accordance with the relevant clauses of AS 2419.1.

**Water and Utility Services**

*Intent of measures: to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.*

6. The provision of water, electricity and gas must comply with Table 5.3c of *Planning for Bush Fire Protection 2019* and Section 9 of *Planning for Bush Fire Protection - Addendum 2022*.

**General Advice - Consent Authority to Note**

This Bush Fire Safety Authority is issued based on a Planning Agreement between the Council and developer to maintain the proposed Open Space lot to the standards of an Asset Protection Zone (Inner Protection Area), in the interim by the developer, until such time the Open Space is transferred to the Council who will then take over the responsibilities for ongoing management under a Plan of Management (or equivalent) conforming with section 3.2.6 of *Planning for Bush Fire Protection 2019*.

The proposed fire trail was considered not required in this instance by the NSW RFS given the land south of the trail is zoned for future urban development.

For any queries regarding this correspondence, please contact \_\_\_\_\_ on 1300 NSW RFS.

Yours sincerely,

**Manager Planning & Environment Services  
Built & Natural Environment**





## BUSH FIRE SAFETY AUTHORITY

Subdivision – Torrens Title Subdivision  
12 Shiralee Road Orange 2800, 1//DP630681, A//DP381933  
RFS Reference: DA20250214000586-Original-1  
Your Reference: CNR-78914 DA 770/2024(1)

This Bush Fire Safety Authority is issued on behalf of the Commissioner of the NSW Rural Fire Service under s100b of the Rural Fires Act (1997) subject to the attached General Terms of Approval.

This authority confirms that, subject to the General Terms of Approval being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under *s100b of the Rural Fires Act 1997*.

**Nika Fomin**

Manager Planning & Environment Services  
Built & Natural Environment

Friday 28 March 2025

