



ORDINARY MEETING OF COUNCIL

LATE ITEMS

19 AUGUST 2025

LATE ITEMS

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4 NOTICES OF MOTION/NOTICES OF RESCISSION**4.3 NOTICE OF MOTION - CORRECTION TO DEVELOPMENT APPLICATION DA 1/2025(1) - 2
CHERRYWOOD CLOSE**

RECORD NUMBER: 2025/1744

We, **CR TONY MILETO, CR MELANIE MCDONELL & CR JEFF WHITTON** wish to move the following Notice of Motion at the Council Meeting of 19 August 2025:

MOTION

That Council alter the resolution to include the correct and intended conditions of consent on DA1/2025 ("the DA") for demolition (tree removal and outbuildings) and Subdivision (ten lot Torrens Title and new road) at 22 Cherrywood Close as per the attached amended Notice of Determination.

BACKGROUND

This matter relates to a need to correct a resolution of Council to grant consent to Development Application DA 1/2025 ("the DA") for demolition (tree removal and outbuildings) and Subdivision (ten lot Torrens Title and new road) at 22 Cherrywood Close, Orange.

The subject resolution was adopted at the Planning and Development Committee Meeting held on 5 August 2025. The Council Officer's report on the DA contained an analysis which included the requirement to impose a condition under s.7.11 Environmental Planning and Assessment Act [EPA Act]. The required S7.11 Contribution was for the amount of \$180,000.

The recommendation contained in the report was for approval of the development "pursuant to the conditions of consent in the attached Notice of Determination".

Following the Council Meeting but prior to the issuing of the Notice of Determination it has been observed by staff that the required s. 7.11 contributions condition did not form part of the Notice of Determination referred to in the Resolution. The Notice of Determination has not since been issued, therefore the resolution not been enacted at this time.

Signed Cr Tony Mileto

Signed Cr Melanie McDonell

Cr Jeff Whitton

STAFF COMMENT

Following the Council Meeting but prior to the issuing of the Notice of Determination it was established that the required s.7.11 contributions condition did not form part of the Notice of Determination referred to in the Resolution. Once the identification of the error had been established in the Notice of Determination Council staff did not proceed with the issuing of the Notice of Determination. The resolution in this regard has not yet been acted upon.

Council staff have sought legal advice to confirm Council's ability to alter the resolution. The advice confirms that the ability to alter a resolution is available under the Local Government Act s.360 and s.372, by operation of the Local Government (General) Regulation s.232 and the Code of Meeting Practice (CoMP).

4.3 Notice of Motion - Correction to Development Application DA 1/2025(1) - 2 Cherrywood Close

The CoMP limits the manner in which a Council resolution may be altered or rescinded to occur by Notice of Motion signed by three Councillors where fewer than three months have passed since the adoption of the resolution. Council will be familiar with the process for a "rescission motion".

The process is the same for a proposed "alteration" to a resolution.

There is power also for a motion to alter or rescind a resolution to be moved on the report of a committee of the Council (CoMP clause 17.11).

It is recommended that Council adopts the Notice of Motion.

FINANCIAL/RESOURCING IMPLICATIONS

Inclusion of the condition ensures this consent complies with Council's 7.11 Contributions Plan.

POLICY AND GOVERNANCE IMPLICATIONS

Inclusion of the condition ensures this consent complies with Council's 7.11 Contributions Plan.

ATTACHMENTS

- 1 DA 1/2025(1) - Draft Notice Of Determination - 2 Cherrywood Close, Orange, D25/95712 [↓](#)
- 2 Copy of Report from PDC 5 August 2025 - DA 1/2025(1) - 2 Cherrywood Close, D25/96079 [↓](#)

**NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION**

Application number	DA 1/2025(1) PAN-500932
Applicant	DEVELOPED PTY LTD AS ABOVE C/-PETER BASHA PLANNING & DEVELOPMENT PO BOX 1827 ORANGE 2800
Description of development	Demolition (tree removal and outbuildings) Subdivision (ten lot Torrens title and new road) and Relocation of one existing shed
Property	2 CHERRYWOOD CLOSE ORANGE 2800 43/-/DP788920
Determination	Approved Consent Authority - Council
Date of determination	19/08/25
Date from which the consent operates	19/08/25
Date on which the consent lapses	19/08/30
Approval bodies that have given general terms of approval	Nil

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 Town Planner / Anugya Vishwakarma

DRAFT

Terms and Reasons for Conditions

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

General Conditions

1	Approved plans and supporting documentation
	Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.
	<div> <p>Approved plans</p> <p>Sheet no 1 to 13, Reference No 23028DA, prepared by Peter Basha, dated on 9 December 2024.</p> <p>(13 sheets)</p> </div>
	<p>In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.</p> <p>Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.</p>
2	National Construction Code
	<p>All building work must be carried out in accordance with the provisions of the National Construction Code.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>
3	Development and subdivision work requirements
	<p>All of the foregoing conditions are to be at the full cost of the developer and to the requirements and standards of the Orange City Council Development and Subdivision Code, unless specifically stated otherwise. All work required by the foregoing conditions is to be completed prior to the issuing of an Occupation or Subdivision Certificate, unless stated otherwise.</p>

	Condition reason: To comply with Councils Development and Subdivision Code.
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Building Work

Before issue of a construction certificate

4	Relocation and Re-establishment of Existing shed
	Prior to the issue of a Construction Certificate, the applicant must submit detailed plans for the relocation and re-establishment of the existing shed . The plans must clearly show the new location, setback and compliance with all applicable planning controls
	Condition reason: To ensure the shed is appropriately relocated in a manner that complies with planning controls

Before building work commences

5	Appoint PC
	Appoint Principal Certifier. The person having the benefit of the development consent and a construction certificate shall: <ul style="list-style-type: none"> (a) Appoint a Principal Certifier and notify Council of the appointment (if Council is not appointed) and, (b) Notify Council of their intension to commence the erection of the building (at least two (2) day's notice is required) <p>The Principal Certifier shall determine when inspections and compliance certificates are required.</p>
	Condition reason: To ensure compliance with relevant statutory requirements.
6	Construction certificate required
	A construction certificate must be obtained from Council or an accredited certifier at least two (2) days prior to any building or ancillary work commencing. Where the construction certificate is obtained from an accredited certifier, the determination and all appropriate documents must be notified to Council within seven (7) days of the date of determination.
	Condition reason: To ensure compliance with Section 6.7 of the Environmental Planning

	and Assessment Act 1979, and Part 3 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.
7	<p>No commencement until details received</p> <p>The construction works the subject of this development consent MUST NOT be commenced until:</p> <ul style="list-style-type: none"> (a) Detailed plans/specifications of the building have been endorsed with a construction certificate by: <ul style="list-style-type: none"> (i) the Council, or (ii) a registered certifier, and (b) The person having the benefit of the development consent: <ul style="list-style-type: none"> (i) has appointed a Principal Certifier, and (ii) has notified the Council of the appointment, and (c) The person having the benefit of the development consent has given at least two (2) day's notice to the Council of the person's intention to commence the erection of the building; and (d) Builder's name and licence number has been supplied to Council or the Principal Certifier; or (e) Owner Builder's permit issued by Department of Fair Trading to be supplied to Council or the Principal Certifier; and (f) Home Building Compensation Fund (HBCF) has been paid and a copy of the Certificate supplied to Council or the Principal Certifier; and (g) A sign has been erected onsite in a prominent position containing the information prescribed by Clause 98A(2) and (3) of the EP&A Regulations, being the name, address and telephone number of the Principal Certifier for the work, name of the principal contractor for the work and telephone number on which that person may be contacted outside working hours, and stating that unauthorised entry to the site is prohibited. This sign must be maintained onsite while work is being carried out and removed when the work has been completed. <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>

During building work

8	Asbestos material removal and disposal
	Any asbestos material must be removed and disposed of in accordance with the provisions of the <i>Work Health & Safety Act 2011</i> and any guidelines or Codes of Practice published by SafeWork NSW.
	Condition reason: To ensure asbestos materials are handled and disposed of in a safe manner.
9	Unexpected finds - contamination
	In the event of an unexpected find during works such as (but not limited to) the presence of undocumented waste, odorous or stained soil, asbestos, structures such as underground storage tanks, slabs, or any contaminated or suspect material, all work onsite must cease immediately. The beneficiary of the consent must discuss with Council the appropriate process that should be followed therein. Works onsite must not resume unless the express permission of Council's Director Development Services is obtained in writing.
	Condition reason: To ensure any unexpected finds of contamination are notified to Council and managed appropriately.
10	Protection of the Environment Operations Act - material delivery
	All materials onsite or being delivered to the site are to be contained within the site. The requirements of the <i>Protection of the Environment Operations Act 1997</i> 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.
	Condition reason: To protect waterways from pollution by stockpiled or placed construction materials.
11	Hours of work - construction
	All construction work on the site is to be carried out between the hours of 7am and 6pm Monday to Friday inclusive, 7am to 5pm Saturdays, and 8am to 5pm Sundays and Public Holidays. Written approval must be obtained from the Chief Executive Officer of Orange City Council to vary these hours.
	Condition reason: To ensure compliance with relevant statutory requirements.
12	No encroachment on easements
	No portion of the building or service to and from that building - including footings, eaves, overhang and service pipes - shall encroach into any easement.
	Condition reason: To prevent the proposed development having a detrimental effect on

	adjoining land uses.
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Before issue of an occupation certificate

13	No use or occupation without occupation certificate
	No person is to use or occupy the building or alteration that is the subject of this approval with the prior issuing of an occupation certificate.
	Condition reason: To ensure compliance with the Building Code of Australia.

Occupation and ongoing use

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

Subdivision Work

Before issue of a subdivision works certificate

14	Engineering plan design and construction requirements
	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.
	Condition reason: To comply with Councils Development and Subdivision Code.
15	Soil and Water Management Plan
	A Soil and Water Management Plan (SWMP) is to be submitted to Orange City Council or an Accredited Certifier (certifier – subdivision) for approval prior to the 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.
	Condition reason: To comply with Councils Development and Subdivision Code.
16	Dust management plan
	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.

	Condition reason: To comply with Councils Development and Subdivision Code.
17	Inter allotment stormwater system 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. Condition reason: To comply with Councils Development and Subdivision Code.
18	Stormwater discharge Stormwater from the site is to be piped to the adjacent watercourse, 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 40 metres of the watercourse is to be submitted prior to the issuing of a Subdivision Works Certificate. Condition reason: To comply with Councils Development and Subdivision Code.
19	Sewer main construction A sewer main is to be constructed from Council's existing sewer network to serve the proposed lot(s). Prior to a Subdivision Works Certificate being issued engineering plans for this sewerage system are to be submitted to and approved by Orange City Council. Condition reason: To comply with Councils Development and Subdivision Code.
20	Water reticulation analysis 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. Condition reason: To comply with Councils Development and Subdivision Code.
21	Road naming application 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. Condition reason: To comply with Councils Development and Subdivision Code.
22	Road construction requirements

Attachment 1 DA 1/2025(1) - Draft Notice Of Determination - 2 Cherrywood Close, Orange

	<p>Cherrywood Close shall be constructed as a 19m wide urban standard road (Local Street 2 under Shiralee DCP) for the full frontage of proposed Lots 101 to 105. 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. The existing road pavement on the opposite side of the development shall be tied into the new works and all construction works made safe for road users.</p> <p>The proposed unnamed road shall be constructed as a 17m wide urban cul-de-sac as per Councils Subdivision and Development Code.</p> <p>Engineering plans, showing details of all proposed work and adhering to any engineering conditions of development consent, are to be submitted to, and approved by, Orange City Council prior to the issuing of a Subdivision Works Certificate.</p> <p>Note: Any alteration to the lot sizes to accomodate road widening shall ensure that each resultant lot must satisfy the minimum lot size (MLS) requirement, except for lots 102 and 110 which are allowed an exception.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
23	<p>Access over adjoining land</p> <p>If services and access is to be provided over adjoining properties, stormwater discharged onto adjoining land, or works are required to be undertaken on adjoining properties then, prior to the issue of a Subdivision Works Certificate, evidence of the registration of any required easements and rights of way over adjoining properties for the provision of services and access, and legal agreements for the undertaking of work shall be provided to the Principal Certifier.</p> <p>Stormwater and sewer mains servicing the development shall not be located within the Southern Feeder Road / Brabham Way road reserve.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>
24	<p>Obtain Road Opening Permit</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 the public road or footpath reserve.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>

Before subdivision work commences

25	<p>Apply for a Subdivision Works certificate</p> <p>An application for a Subdivision Works Certificate is required to be submitted to, and a</p>
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	Certificate issued by Orange City Council / Accredited Certifier prior to any excavation or works being carried out on site.
	Condition reason: To ensure compliance with relevant statutory requirements.
26	Soil and water management plan
	The approved Soil and Water Management Plan (SWMP) shall be implemented prior to construction works commencing.
	Condition reason: To ensure compliance with relevant statutory requirements.
27	Dial Before You Dig (Essential Energy)
	Prior to carrying out any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the Electricity Supply Act 1995 (NSW);
	Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the Code of Practice – Work near Overhead Power Lines and Code of Practice – Work near Underground Assets.
	Condition reason: To provide adequate public health and safety measures
28	Protection of Trees
	Street trees to be planted in front of each lot, the species to be determine by the Manager City Presentation but likely to be Eucalyptus crenulata to the Cherrywood Close frontage to replace the lost biodiversity and amenity of one of these trees.
	Condition reason: These changes will ensure protection of the existing trees.

During subdivision work

29	Adjustments to utility services
	Any adjustments to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer.
	Condition reason: To comply with Councils Development and Subdivision Code.
30	Provision of services and works on public land
	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

	<p>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.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
31	<p>Construction of half road width</p> <p>Half road width is to be constructed for the full frontage of the proposed development. This work is to include road pavement and pavement surfacing to the centreline, kerb and gutter construction and earth-formed footpath on the development side of the road.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
32	<p>Single access battle-axe lot footpath crossing</p> <p>For all single access battle-axe blocks, a concrete driveway, kerb layback and footpath crossing is to be constructed to a minimum width of 4.0 metres and to the requirements and standards of the Orange City Council Development and Subdivision Code.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
33	<p>Kerb and gutter layback and footpath crossing</p> <p>A concrete kerb and gutter layback and footpath crossing is to be constructed for proposed Lot 101. The works are to be carried out to the requirements of the Orange City Council Development and Subdivision Code and Road Opening Permit.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
34	<p>Provision of water service and sewer junction</p> <p>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.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
35	<p>Services within lot</p> <p>All services are to be contained within the allotment that they serve.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
36	<p>Concrete footpaths and cycleways</p> <p>Footpaths and cycleways are to be constructed in accordance with the Shiralee DCP.</p> <p>Construction work is to be to the requirements and standards of the Orange City Council Development and Subdivision Code.</p>

	Condition reason: To comply with Councils Development and Subdivision Code.
37	Note to Applicant (Essential Energy)
	Essential Energy's records indicate there is electricity infrastructure located within close proximity to the property. Any activities within this location must be undertaken in accordance with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure. Approval may be required from Essential Energy should activities within the property encroach on the electricity infrastructure.
	Condition reason: To provide adequate public health and safety measures

Before issue of a subdivision certificate

3	Apply for Subdivision Certificate
8	Application shall be made for a Subdivision Certificate under Section 6.3(1)(d) of the Act.
	Condition reason: To ensure compliance with relevant statutory requirements.
3	Provision of services for staged subdivision release
9	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 issuing of a Subdivision Certificate.
	Condition reason: To ensure compliance with relevant statutory requirements.
4	Obtain a section 307 Certificate of Compliance.
0	Submit an application to Council under section 305 of the <i>Water Management Act 2000</i> to obtain a section 307 Certificate of Compliance. The <i>Application for a 307 Certificate under section 305 Water Management Act 2000</i> form can be found on Councils website.
	A section 307 Certificate must be obtained prior to the issue of a Subdivision Certificate.
	Condition reason: To comply with relevant statutory requirements.
4	Filling of lots
1	Evidence from a registered NATA laboratory is to be submitted prior to the issuing of a Subdivision Certificate stating that any filling of low-lying areas and/or dams has been carried out in accordance with Australian Standard 3798-2007.
	Condition reason: To comply with Councils Development and Subdivision Code.
4	NBN certification

Attachment 1 DA 1/2025(1) - Draft Notice Of Determination - 2 Cherrywood Close, Orange

2	Application is to be made to NBN for infrastructure to be made available to each individual lot within the development. Either a Telecommunications Infrastructure Provisioning Confirmation or Certificate of Practical Completion is to be submitted to the Principal Certifying Authority confirming that the specified lots have been declared ready for service prior to the issue of a Subdivision Certificate.
	Condition reason: To comply with Councils Development and Subdivision Code.
4	Essential Energy certification
3	A Notice of Arrangement from Essential Energy stating arrangements have been made for the provision of electricity supply to the development, is to be submitted to the Principal Certifying Authority prior to the issue of a Subdivision Certificate.
	Condition reason: To comply with Councils Development and Subdivision Code.
4	Restriction of vehicular access to road
4	A Restriction-as-to-User under section 88B of the <i>NSW Conveyancing Act</i> is to be registered on the Deed of Title on proposed Lots 106, 107, 108 and 109 where vehicular access is to be denied to Brabham Way.
	Condition reason: To comply with Councils Development and Subdivision Code.
4	Easements for sewer mains
5	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.
	Condition reason: To comply with Councils Development and Subdivision Code.
4	All services contained within lots and WAE plans
6	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.
	WAE plans shall include MGA co-ordinates and AHD levels with each of the services on a separate layer eg separate out water, sewer, storm water, gas, power, telecommunications to their own layers / drawing sheet.
	Condition reason: To comply with Councils Development and Subdivision Code.
4	Maintenance security deposit provided
7	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

Attachment 1 DA 1/2025(1) - Draft Notice Of Determination - 2 Cherrywood Close, Orange

	<p>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>Condition reason: To comply with Councils Development and Subdivision Code.</p>
48	<p>Connection of existing dwelling to sewer and disposal of septic tank</p> <p>The existing residence is to be connected to the proposed reticulated sewer. The existing tank is to be accurately located and indicated on the submitted engineering plans. The septic tank is to be excavated and disposed of at a licensed landfill and the absorption trench is to be drained and the voids limed and backfilled with clean compacted material.</p> <p>Evidence of such work is to be provided to the Principal Certifying Authority prior to the issuing of a Subdivision Certificate.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
49	<p>Stormwater easements</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>Condition reason: To comply with Councils Development and Subdivision Code.</p>
50	<p>Provision of services and works on public land</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>Condition reason: To comply with Councils Development and Subdivision Code.</p>
51	<p>Section 88B restriction on title - proposed Lot 100 – Stage 1</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 100 in favour of Orange City Council which states that:</p> <p>Proposed Lot 100 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</p>

Attachment 1 DA 1/2025(1) - Draft Notice Of Determination - 2 Cherrywood Close, Orange

	<p>Council:</p> <ul style="list-style-type: none"> • 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 100; and • The developer of proposed Lot 100 is responsible for gaining access over adjoining land for services as necessary. Easements are to be created about all service mains within and outside the lots they serve; and • Contributions are paid as required by the development contributions plan applicable at the time of development and Water and Sewer charges as required by Orange City Council in accordance with Division 5 of Part 2 of Chapter 6 of the Water Management act 2000; and • Cherrywood Close 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, including proposed Lot 101 frontage.
	<p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
5 2	<p>Section 88B restriction on title - proposed Lot 101 – Stage 1</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 101 in favour of Orange City Council which states that:</p> <p>Proposed Lot 101 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"> • 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 Lot 101; and • The developer of proposed Lot 101 is responsible for gaining access over adjoining land for services as necessary. Easements are to be created about all service mains within and outside the lots they serve; and • Contributions are paid as required by the development contributions plan applicable at the time of development and Water and Sewer charges as required by Orange City Council in accordance with Division 5 of Part 2 of Chapter 6 of the Water Management act 2000; and • Cherrywood Close 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.
	<p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
5 3	<p>Potential safety risk (Essential Energy)</p>
	<p>If the proposed development changes, there may be potential safety risks and it is recommended</p>

	that Essential Energy is consulted for further comment.
	Any existing encumbrances in favour of EssenOal Energy (or its predecessors) noted on the title of the above property should be complied with; All Torrens lots must have access and frontage to a public road as per Service and Installation rules this is to allow for the provision of power/services to the new development, a right of carriageway can not to be used for the provision of power/services to any part of the new development.
	Condition reason: To provide adequate public health and safety measures
5	Electrical Infrastructure (Essential Energy)
4	As part of the subdivision, an easement/s are/is created for any existing electrical infrastructure (located within the property or adjoining the property as required). The easement/s is/are to be created using Essential Energy's standard easement terms current at the time of registration of the plan of subdivision.
	Condition reason: To provide adequate public health and safety measures
5	Asset Protection Zone (APZ)
5	At the issue of a subdivision certificate, if the land immediately to the west of proposed Lot 109, 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 Lot 109, which prohibit the construction of buildings other than class 10b structures, for a distance of 11 metres, of the western 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.
	As the proposed subdivision is to be undertaken in three (3) distinct stages, each stage as yet undeveloped (with future housing constructed) must be maintained as an IPA PBP 2019 compliant standard, until such time as it is developed.
	Condition reason: To comply with Council's Development and Subdivision Code.
5	RFS - Asset Protection Zones
6	At the issue of a subdivision certificate and in perpetuity, to ensure ongoing protection from the impact of bush fires, the entire site, 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:
	<ul style="list-style-type: none"> • 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 2m above the ground;

	<ul style="list-style-type: none"> • tree canopies should be separated by 2 to 5m; • preference should be given to smooth barked and evergreen trees; • large discontinuities or gaps in vegetation 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; and • 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. <p>Condition reason: 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>
5	RFS - Access - Internal Roads
7	<p>Non-perimeter roads, (central road accessing proposed Lots 106, 107, 108, 109 & 110) must, comply with the following general requirements of Table 6.8b of Planning for Bush Fire Protection 2019:</p> <ul style="list-style-type: none"> • 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; • the road crossfall does not exceed 3 degrees; • the proposed road and cul-de-sac, must be constructed prior to the development of future housing on proposed Lots 106 to 110 inclusive, to facilitate both vehicular and pedestrian access; and, • a minimum vertical clearance of 4m to any overhanging obstructions, including tree branches, is provided. <p>Proposed cul-de-sac turning head, must be provided to the dead end road, incorporating either a</p>

	<p>minimum 12 metre radius turning circle or turning heads compliant with A3.3. Vehicle turning head requirements of Planning for Bush Fire Protection 2019.</p> <p>Condition reason: The intent of measures is to provide safe operational access for emergency services personnel in suppressing a bush fire while residents are accessing or egressing an area</p>
5 8	<p>RFS - Water and Utility Services</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"> • reticulated water is to be provided to the development where available; • fire hydrant, spacing, design and sizing complies with the relevant clauses of Australian Standard AS 2419.1:2005; • hydrants are and not located within any road carriageway; • reticulated water supply to urban subdivisions uses a ring main system for areas with perimeter roads; • fire hydrant flows and pressures comply with the relevant clauses of AS 2419.1:2005; • all above-ground water service pipes are metal, including and up to any taps; • where practicable, electrical transmission lines are underground; • where overhead, electrical transmission lines are proposed as follows: a) lines are installed with short pole spacing (30m), unless crossing gullies, gorges or riparian areas; and 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. • 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; • 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; • all fixed gas cylinders are kept clear of all flammable materials to a distance of 10m and shielded on the hazard side; • connections to and from gas cylinders are metal; polymer sheathed flexible gas supply lines are not - used; and • above-ground gas service pipes are metal, including and up to any outlets

	<p>Condition reason: 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.</p>
59	<p>RFS - Landscaping Assessment</p> <p>Landscaping within the required asset protection zone on proposed Lot 101 (existing dwelling being retained), must comply with Appendix 4 of Planning for Bush Fire Protection 2019. In this regard, the following principles are to be incorporated: 3</p> <ul style="list-style-type: none"> • A minimum 1 metre wide area, 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), and less than 30% (OPA) 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 carry a 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 <p>Condition reason: Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities</p>
60	<p>RFS - Property Access</p> <p>Property access (driveway) to access proposed Lot 109 (battle axe driveway), must comply with the following general requirements of Table 5.3b of Planning for Bush Fire Protection</p>

Attachment 1 DA 1/2025(1) - Draft Notice Of Determination - 2 Cherrywood Close, Orange

	<p>2019:</p> <ul style="list-style-type: none"> • property access roads are two-wheel drive, all-weather roads; • minimum 4m carriageway width; • a minimum vertical clearance of 4m to any overhanging obstructions, including tree branches; • provide a suitable turning area in accordance with Appendix 3 Planning for Bush Fire Protection 2019; and, • Some short constrictions in the access may be accepted where they are not less than 3.5m wide, extend for no more than 30m and where the obstruction cannot be reasonably avoided or removed. <p>Condition reason: 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>
<p>6 1</p>	<p>RFS - Construction Standards</p> <p>At the issue of the subdivision certificate, the existing dwelling being retained on proposed Lot 101, must be upgraded to improve ember protection by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive 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> <p>Condition reason: 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</p>
<p>6 2</p>	<p>Protection of Trees</p> <p>Street trees to be planted in front of each lot, the species to be determine by the Manager City Presentation but likely to be Eucalyptus crenulata to the Cherrywood Close frontage to replace the lost biodiversity and amenity of one of these trees.</p> <p>Condition reason: These changes will ensure protection of the existing trees</p>
<p>6 3</p>	<p>Distance of walls from boundaries</p> <p>Prior to the issue of a subdivision certificate, certification is to be provided from a suitably qualified person stating the buildings within the boundaries of proposed Lot/s 101 comply in respect to the distance of walls from boundaries and the common wall/fire wall meets the requirements of the National Construction Code.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements</p>
<p>6</p>	<p>Contributions - payment of development contributions</p>

4

Development contributions are applicable to the proposed development, pursuant to *Orange Development Contributions Plan 2024 Summary 1 June 2025 - 31 August 2025* (Development in Shiralee urban release area) as follows:

Open Space and Recreation	Nine additional lots @ \$792.01	7,128.09
Community and Cultural	Nine additional lots @ \$229.68	2,067.12
Roads and Traffic Management	Nine additional lots @ \$1,045.43	9,408.87
Stormwater Drainage	-	-
Local Area Facilities	Nine additional lots @ \$17,760.90	159,848.1
Plan Preparation & Administration	Nine additional lots @ \$171.98	1,547.82
TOTAL:		\$180,000

Condition reason: Because the development will require the provision of, or increase the demand for public amenities and services

Ongoing use for subdivision work

65	<p>RFS - General Advice</p> <p>This approval is for the subdivision of the land only. Any further development application for class 1,2 & 3 buildings as identified by the National Construction Code of Australia may be subject to separate application under section 4.14 of the EP & A Act and address the requirements of Planning for Bush Fire Protection 2019.</p> <p>Condition reason: To comply with RFS requirement</p>
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Demolition Work

Before demolition work commences

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

During demolition work

66	<p>Demolition - in accordance with AS 2601:2001</p>
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	Building demolition is to be carried out in accordance with Australian Standard 2601:2001 - The Demolition of Structures and the requirements of SafeWork NSW.
	Condition reason: To ensure compliance with relevant statutory requirements.
67	Hours of work - demolition
	All demolition work on the site is to be carried out between the hours of 7am and 6pm Monday to Friday inclusive, 7am to 5pm Saturdays, and 8am to 5pm Sundays and Public Holidays. Written approval must be obtained from the Chief Executive Officer of Orange City Council to vary these hours.
	Condition reason: To ensure compliance with relevant statutory requirements.
68	Protection of the Environment Operations Act - material delivery
	All materials onsite or being delivered to the site are to be contained within the site. The requirements of the <i>Protection of the Environment Operations Act 1997</i> 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.
	Condition reason: To protect waterways from pollution by stockpiled or placed construction materials.

On completion of demolition work

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

General advisory notes

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

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

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.

DRAFT

Dictionary

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

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

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

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

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

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

Council means ORANGE CITY COUNCIL.

Court means the Land and Environment Court of NSW.

EPA means the NSW Environment Protection Authority.

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

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

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

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

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

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

Stormwater drainage system means all works and facilities relating to:

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

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

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

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

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

PLANNING & DEVELOPMENT COMMITTEE
5 AUGUST 2025
2.4 DEVELOPMENT APPLICATION DA 1/2025(1) - 2 CHERRYWOOD CLOSE

RECORD NUMBER: 2025/1477

AUTHOR: Anugya Vishwakarma, Town Planner

EXECUTIVE SUMMARY

Application lodged	24 January 2025
Applicant/s	Developed Pty Ltd
Owner/s	Mr R and Mrs T Bariesheff
Land description	Lot 43 DP 788920 - 2 Cherrywood Close, Orange
Proposed land use	Demolition (tree removal and outbuildings) and Subdivision (ten lot Torrens title and new road)
Value of proposed development	\$18,700

Council's consent is sought for the proposed subdivision of Lot 43 DP 788920 commonly known as 2 Cherrywood Close, Orange to create ten lots and a new public road. The proposed subdivision will also require the demolition of existing outbuildings and structures, removal of certain trees, and the relocation of one existing shed to facilitate the creation of the proposed lots.

The proposed lots are vacant with exception to proposed Lot 101 which contains an existing dwelling. The proposed lots are intended to be used for future residential development. The application is supported with a Clause 4.6 - Variation of Development Standards - request for a variation to the minimum allotment size requirements that apply with respect to proposed lot 102 and 110. A summary of the proposed lot sizes is shown in the table below:

LOT	AREA	PROPOSED USE
101	2400m ²	Includes one existing building and relocation of existing shed
102	465m ²	Vacant lot (Clause 4.6 variation) (does not meet the Minimum lot size (MLS) requirement)
103	478m ²	Vacant lot
104	475m ²	Vacant lot
105	470m ²	Vacant lot
106	2400m ²	Vacant lot
107	2400m ²	Vacant lot
108	2570m ²	Vacant lot
109	2750m ²	Vacant lot
110	2060m ²	Vacant lot (Clause 4.6 variation) (does not meet the Minimum Lot Size (MLS) requirement)

PLANNING & DEVELOPMENT COMMITTEE
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2.4 Development Application DA 1/2025(1) - 2 Cherrywood Close

The proposed development will be carried out in stages:

Stage	Action	Proposed Lots Created	Purpose
1	Initial subdivision	Lot 101 Lot 100 (englobo)	Lot 101 - excise existing dwelling Lot 100 - large englobo lot for future subdivision
2	Subdivision of Lot 100	Lots 102 to 105 Lot 106 (englobo)	Lots 102-105 - separate residential lots Lot 106 - englobo lot for further subdivision
3	Subdivision of Lot 106	Lots 107 to 110	Individual residential lots

The majority of the subject land is zoned R2 low density residential and is subject to a Minimum Lot Size (MLS) of 2400m². A small section in the north-western corner of the property is zoned R1 General residential and is subject to a MLS of 400m². Proposed Lot 102 comprises land subject to both 400m² and 2400m² MLS requirements. Pursuant to Clause 4.6 of the Local Environmental Plan (LEP), a variation to the 2400m² is required to allow this lot to be created with an area of 465m², representing a variation of 80.6%.

Similarly, proposed Lot 110 does not comply with the 2400m² MLS, and a Clause 4.6 variation is required to permit its creation with an area of 2060m², resulting in a 14.2% variation. The development is subject to the provisions of the Shirlee Development Control Plan 2015, and a variation to the Shirlee Master Layout for Area B is required to support the proposal.

The application was discussed with Council's Manager City Presentation who confirmed that the trees proposed for removal are not considered significant. A condition will be included requiring street trees to be planted in front of each lot. The tree species will be chosen by the Manager City Presentation and will likely be *Eucalyptus Crenulata* along the Cherrywood Close frontage to help replace the biodiversity and amenity lost from removing one of the existing trees.

The subject land is identified as bushfire prone land. The proposal represents integrated development pursuant to Section 100B of the Rural Fires Act 1997. The applicant provided a Bushfire Risk Assessment Report prepared by a qualified consultant to address the specifications and requirements of *Planning for Bushfire Protection* (PBP). Rural Fires Service (RFS) have issued General Terms of Approval and a Bushfire Safety Authority for this development. The requirements from RFS have been incorporated into the attached Notice of Determination

The proposed development is advertised development pursuant to Council's Community Participation Plan 2019 and Schedule 1 of the *Environmental Planning and Assessment Act 1979*. At the completion of the exhibition period no submissions had been received.

As outlined in this report the proposed development is considered to reasonably satisfy the Local and State planning controls that apply to the subject land and particular land use. Impacts of the development will be within acceptable limit, subject to mitigation conditions. Approval of the application is recommended subject to the adoption of the attached Notice of Determination.

PLANNING & DEVELOPMENT COMMITTEE

5 AUGUST 2025

2.4 Development Application DA 1/2025(1) - 2 Cherrywood Close



Figure 1 - locality plan

Site Description

The subject land is regular in shape and has a 107.48m frontage to Cherrywood Close which forms the northern boundary. Access is provided from Cherrywood Close via a recessed entrance and gravel driveway in the north-eastern corner of the subject land. The existing dwelling is located near the north-eastern corner and a series of outbuildings and landscaping beds occupy the area just to the south of the dwelling.

Landscaping has been established in the surrounding area of the existing dwelling and includes a lawn area, trees, shrubs and garden beds. The property is fenced along all boundaries with rural style fencing. The predominant vegetative cover is grass.

A mix of mostly introduced deciduous and evergreen tree species are located in the vicinity of the dwelling and along the northern and eastern boundaries and within the road reserve.



PLANNING & DEVELOPMENT COMMITTEE**5 AUGUST 2025****2.4 Development Application DA 1/2025(1) - 2 Cherrywood Close**

**Figure 2 - site photos****DECISION FRAMEWORK**

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

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

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

DIRECTOR'S COMMENTS

This application proposes subdivision of 2 Cherrywood Close, which is in the northern part of Shiralee, to create ten residential lots. The proposed subdivision will also require the demolition of existing outbuildings and structures, removal of some trees and the relocation of one existing shed to facilitate the creation of the proposed lots.

The existing dwelling on Lot 101 will be retained. The application is supported with a Clause 4.6 - Variation of Development Standards - request for a variation to the minimum allotment size requirements that apply with respect to proposed Lots 102 and 110. The staff assessment report has considered this variation and conclude that it is reasonable.

PLANNING & DEVELOPMENT COMMITTEE**5 AUGUST 2025****2.4 Development Application DA 1/2025(1) - 2 Cherrywood Close**

The subject land is identified as bushfire prone land and delays due to this have been significant for the applicant. The applicant provided a Bushfire Risk Assessment Report prepared by a qualified consultant that addresses the requirements of *Planning for Bushfire Protection* (PBP). The Rural Fires Service (RFS) have issued a General Terms of Approval and a Bushfire Safety Authority for this development.

It is recommended that Council supports the subject development subject to the adoption of the attached Notice of Determination.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan Strategy "11.1 Encourage and facilitate inward investment to grow the number of new inbound businesses to the city".

FINANCIAL IMPLICATIONS

Nil

POLICY AND GOVERNANCE IMPLICATIONS

Nil

RECOMMENDATION

That Council consents to development application DA 1/2025(1) for *Demolition (tree removal and outbuildings) and Subdivision (ten lot Torrens title and new road)* at Lot 43 DP 788920 - 2 Cherrywood Close, Orange pursuant to the conditions of consent in the attached Notice of Determination.

FURTHER CONSIDERATIONS

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

SUPPORTING INFORMATION / THE PROPOSAL



Council's consent is sought for the proposed subdivision of Lot 43 DP 788920 commonly known as 2 Cherrywood Close, Orange to create ten lots and a new public road. The proposed subdivision will also require the demolition of existing outbuildings and structures, removal of certain trees, and the relocation of one existing shed to facilitate the creation of the proposed lots.

The proposed lots are vacant with exception to proposed Lot 101 which contains an existing dwelling. The proposed lots are intended to be used for future residential development. The application is supported with a Clause 4.6 - Variation of Development Standards - request for a variation to the minimum allotment size requirements that apply with respect to proposed Lots 102 and 110. A summary of the proposed lot sizes is shown in the table below:

Servicing of all lots with town water, reticulated sewer, inter-allotment stormwater drainage, electricity and telecommunications will be required.

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2.4 Development Application DA 1/2025(1) - 2 Cherrywood Close

The development will be carried out in stages as follows:

Stage	
<p>Stage 1</p>	<p>Stage 1 will involve the creation of proposed Lot 101 which will excise the existing dwelling and proposed Lot 100 will be created as an englobo lot for future development. The servicing and access works for proposed Lots 100 and 101 are proposed to be deferred.</p> 
<p>Stage 2</p>	<p>Involves the subdivision of englobo Lot 100 to create proposed Lots 102 to 105 as separate residential lots; and proposed Lot 106 as an englobo lot. Proposed Lots 102, 103, 104 and 105 will be created as vacant residential parcels based on an MLS of 400m².</p> <p>Proposed Lot 106 will be created as an englobo site for future subdivision to create proposed Lots 106 to 110).</p> 
<p>Stage 3</p>	<p>Involves the subdivision of englobo Lot 106 to create proposed Lots 106 to 110 as vacant residential lots based on a MLS of 2,400m².</p> <p>A new road will be constructed to serve proposed Lots 106 to 110. The new road is a cul-de-sac and will form a T-intersection with Cherrywood Close.</p>

PLANNING & DEVELOPMENT COMMITTEE

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2.4 Development Application DA 1/2025(1) - 2 Cherrywood Close



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 (OEI) (clause 7.1 of BC Regulation 2017);
- Trigger 2: development involves clearing/disturbance of native vegetation above a certain area threshold (clauses 7.1 and 7.2 of BC Regulation 2017); or
- Trigger 3: development is otherwise likely to significantly affect threatened species (clauses 7.2 and 7.3 of BC Act 2016).

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

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2.4 Development Application DA 1/2025(1) - 2 Cherrywood Close



Figure 3 - Biodiversity Value Map

The subject land is not identified on the Biodiversity Values Map published under Clause 7.3 of the Biodiversity Conservation Regulation 2017 (as shown above).



Figure 4 - Terrestrial Biodiversity

According to the Terrestrial Biodiversity 2020 mapping dataset (show in Figure 4 above), the terrestrial biodiversity is not close to the subject lot.

PLANNING & DEVELOPMENT COMMITTEE**5 AUGUST 2025****2.4 Development Application DA 1/2025(1) - 2 Cherrywood Close**

At this stage the proposal is related to demolition (tree removal and outbuildings) and the subdivision (ten lot Torrens title and new road). To address matters in relation to tree removal the application was referred to the Manager City Presentation. The Manager City Presentation has indicated that the trees proposed for removal are not considered significant and is therefore supported. A condition will be included requiring street trees to be planted in front of each lot. The tree species will be chosen by the Manager City Presentation and will likely be *Eucalyptus Crenulata* along the Cherrywood Close frontage to help replace the biodiversity and amenity lost from removing one of the existing trees.

The proposal involves clearance of native trees which are not significant. As such, the proposal is not likely to have an adverse effect on threatened species; endangered ecological community; or a critically endangered ecological community or their habitat.

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

Section 4.14 Consultation and development consent - certain bushfire prone land

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

PLANNING & DEVELOPMENT COMMITTEE

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2.4 Development Application DA 1/2025(1) - 2 Cherrywood Close



Figure 5 - Bushfire Prone Land Map

The subject land is currently defined as Bushfire Prone Land. Please note that the subject site comprises land identified as Vegetation Category 3 on the City of Orange's Bush Fire Prone Land Map.

The subject proposal represents integrated development pursuant to Section 100B of the Rural Fires Act 1997. Given the nature of the proposal being subdivision the requirements of Clause 4.14 do not apply in this case. Assessment of bushfire related matters in this case are required to be assessed under Clause 4.15 of the Environmental Planning and Assessment Act 1979 (see below assessment - Integrated Development for details).

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,

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- (d) *to manage rural land as an environmental resource that provides economic and social benefits for Orange,*
- (e) *to provide a range of housing choices in planned urban and rural locations to meet population growth,*

The application is considered to be consistent with the applicable aims of the plan.

Clause 1.6 - Consent Authority

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

Clause 1.7 - Mapping

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

Land Zoning Map:	Land zoned R1 General Residential and R2 Low density Residential
Lot Size Map:	Minimum Lot Size for R1 zone is 400m² and R2 zone is 2400m²
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:	Not 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.*

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[illegible]

With reference to the above clause Council staff can confirm that there are no specific Covenants, Agreements and Instruments registered on Title that apply to the subject development.

Council's Technical Services Department have recommended conditions of consent that requires the registration of a Section 88B Restriction on Title on proposed Lot 100, Stage 1 where proposed Lots 100 and 101 may not be subdivided or further developed, and may not be used for residential purposes unless all infrastructure services and contributions on the Cherrywood Close frontage are carried out in favour of Orange City Council. A further restriction on title for proposed Lots 106, 107, 108 and 109 preventing secondary vehicular access from Brabham Way.

Part 2 - Permitted or Prohibited Development

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

The subject site is located within the **R1 General Residential and R2 Low Density Residential**. The proposed development is defined as a **Demolition (tree removal and outbuildings) and Subdivision (ten lot Torrens title and new road)** 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. These objectives for land zoned **R1 General Residential** and **R2 Low Density Residential** are as follows:

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Objectives of zone R1 General Residential

- (1) To provide for the housing needs of the community.*
- (2) To provide for a variety of housing types and densities.*
- (3) To enable other land uses that provide facilities or services to meet the day-to-day needs of residents.*
- (4) 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.*
- (5) To ensure that development along the Southern Link Road has an alternative access.*
 - In relation to the first and second objective, the proposed subdivision will provide for the housing needs of the community by increasing the range and opportunity for residential accommodation.
 - In relation to the third objective, the proposed subdivision does not reduce the potential to provide facilities and services that meet the day-to-day needs of residents.
 - In relation to the fourth objective, the subject land is within an emerging residential area that is expected to be serviced by public bus routes, especially as the Shirlee Estate develops.
 - None of the proposed lots will obtain access via the Southern Link Road (Brabham Way).

Objectives of zone R2 Low Density Residential

- (1) To provide for the housing needs of the community within a low density residential environment.*
- (2) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- (3) 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.*
- (4) To ensure that development along the Southern Link Road has an alternative access.*
 - The proposed subdivision is consistent with the first objective because the proposed lot sizes in this part of the site are reflective of a low-density residential environment.
 - In relation to the second objective, the proposed subdivision does not reduce the potential to provide facilities and services that meet the day-to-day needs of residents.
 - In relation to the third objective, the subject land is within an emerging residential area that is expected to be serviced by public bus routes, especially as the Shiralee Estate develops.
 - None of the proposed lots will obtain access via the Southern Link Road (Brabham Way).

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.

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The proposal involves demolition of existing outbuilding and tree removal. These works may only be carried out with development consent 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 (MLS) Map.

In relation to this site, the map nominates a MLS of 2,400m² for the majority of the subject site (shaded in red) and 400m² in the north-western corner of the site (shaded in green).

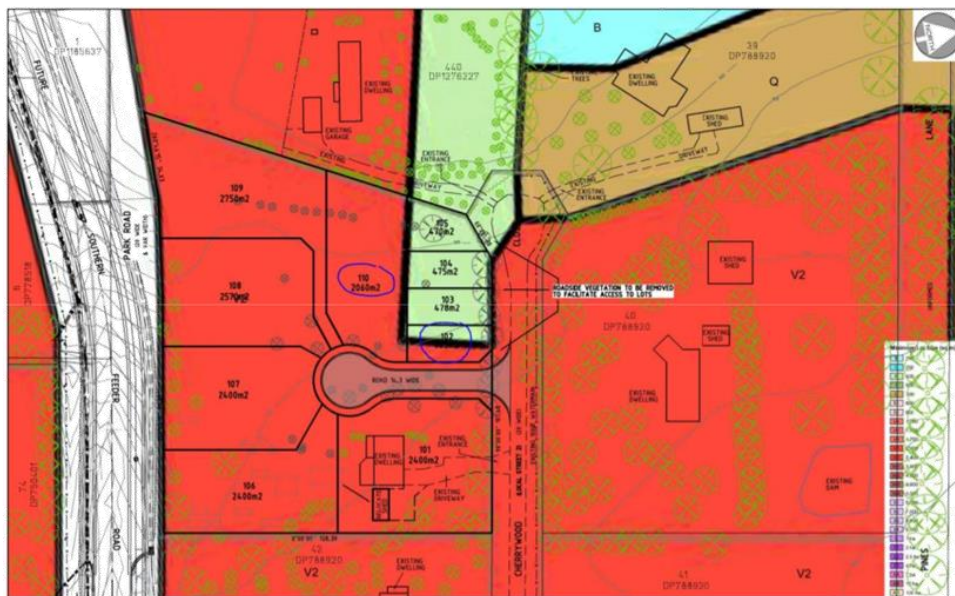


Figure 6 - Clause 4.6 exemptions to development standards

Proposed Lot 102 comprises land subject to both 400m² and 2400m² MLS requirement. Pursuant to Clause 4.6 of the Local Environmental Plan (LEP), a variation to the 2400m² is required to allow this lot to be created with an area of 465m² (see Figure 6 above).

Proposed Lot 110 does not comply with the 2400m² MLS, and a Clause 4.6 is required to permit its creation with an area of 2060m².

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Clause 4.6 exceptions to development standard

Council is in receipt of a written request pursuant to Clause 4.6 of the Orange LEP 2011 requesting a variation to the Minimum Lot Size development standard. Clause 4.6 allows development consent to be granted for development even though the development would contravene a development standard. The circumstances relating to the proposed variation are summarised as follows:

- The subject land is zoned R1 General Residential and R2 Low Density Residential under Orange Local Environmental Plan 2011 (the LEP).
- The land zoned R1 General Residential is subject to a Minimum Lot Size (MLS) of 400m². The land zoned R2 Low Density Residential is subject to a MLS of 2,400m². The majority of the proposed lots comply with the relevant MLS; however:
 - Proposed Lot 102 straddles the 400m² and 2,400m² MLS zones. Pursuant to Clause 4.6 of the LEP, a variation of the 2,400m² MLS is sought to allow this lot to be created with an area of 465m².
 - Proposed Lot 110 does not comply with the 2,400m² MLS. Pursuant to Clause 4.6 of the LEP, a variation of the 2,400m² MLS is sought to allow this lot to be created with an area of 2,060m².

The written request prepared by the applicant has been prepared in accordance with:

- i. The relevant considerations in Clause 4.6 of the LEP.
- ii. 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 (**addressed in Subclass 3**).

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:

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

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

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

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

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

Note—

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

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

(5) (Repealed)

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

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

Note.

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

(7) (Repealed)

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

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

An address of the above criteria is provided below:

Subclause (1) and Subclass (2):

Clause 4.6 provides for flexibility in the application of a planning controls 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. The proposed variation to the MLS is considered to be justified in this instance. Flexibility in this matter will result in a better outcome for and from the development for the reasons outlined in support of Subclause (3) below.

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Subclause (3)

Clause 4.6(3) stipulates that development consent will not be granted unless it can be demonstrated that compliance with MLS control of 2,400m² is unreasonable or unnecessary. The applicants submit that strict compliance with Clause 4.1(1) is unreasonable and unnecessary in this case for the following reasons:

- *The objectives of the LEP are achieved.*
- *The objectives of the R1 and R2 zones are achieved. Objective of MLS addressed in five-part tests section)*
- *The objectives of Clause 4.1(1) are achieved. (Objective of MLS addressed in five-part tests section)*
- *There are sufficient environmental planning grounds to support the proposed variation.*
- *The development is largely acceptable in terms of the provision of Shiralee DCP 2015. (matter has been addressed in Shiralee DCP section)*

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:

Criteria 1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*

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

Criteria 3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*

Criteria 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.*

Criteria 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.*

Criteria 6: *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*

An assessment of each of the above criteria is addressed below:

Criteria 1 - Objectives of the Minimum Lot Size 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,*

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- (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.

Objective (a), the proposed lot sizes generally meet the existing lot sizes and patterns in the surrounding locality.

Objective (b), the proposed lot size and configuration meet their intended use. Each proposed lot provides sufficient potential for a future dwelling to be constructed without unreasonable constraint in respect of private open space, solar access and generally low-density residential amenity.

Objective (c) and (d) are not relevant to the subject land.

Objective (e), the proposed variation to the MLS allows for a reasonable number of lots while making better use of existing infrastructure and services.

Objective (f), the variation sought is consistent with the intent of objective f and does not result in any adverse impacts.

Objectives of R1 and R2 are addressed in the section under Clause 2.1 - Land Use Zones.

Overall, it is considered that the objectives of the standard are achieved despite Lots 102 and 110 not complying with the MLS.

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 considered to be contravened by the proposed variation of the MLS.

Criteria 3: *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*

The main goal of the MLS standard is not necessarily being undermined by the proposed variation. In fact, requiring strict compliance with the 2400m² MLS could lead to a subdivision that does not offer a variety of lot sizes reflecting the ability of services available to the area as encouraged by Objective (e) of Clause 4.1. It is considered that the proposal will remain consistent with the other objectives of the standard.

Criteria 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.*

The development standard cannot be said to be abandoned, however, the planning rules show that in some situations it may be appropriate to allow exceptions to this rule.

- The MLS in the LEP is the main control for subdivision lot sizes. The MLS controls were largely informed by the DCP controls. As such, there is an inter-relationship between the DCP and the MLS provisions.
- 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 may also be contemplated.

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

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

Subclause (3) - 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 considered to be sufficient environmental planning grounds to justify a variation of the development standard in this instance. Please note the following assessment.

- The proposal will satisfy the objectives of the R1 and R2 Residential zones.
- The proposal will satisfy the objectives of the Minimum lot size standard (MLS).
- Despite the proposed variation it is considered that the proposed lots are generally consistent with the Shiralee Masterplan and its application to this site. The proposal confines the 400m² MLS lots to the north-western section with only a minor variation sought where proposed Lot 102 straddles the 400m² and 2,400m² MLS boundary. It is to be expected that minor adjustments such as this are required from time to time, given that many of the zone and MLS boundaries in Shiralee have been drawn at a macro DCP concept level, with only limited assessment of the actual site conditions with issues only being picked up when a development application is lodged. The remainder of the proposed lots will satisfy the 2400m² MLS with only proposed Lot 110 seeking a variation of this development standard.
- The variation in relation to lot layout and lot size is considered to be relatively minor and can be accommodated without disrupting the emerging and planned development pattern in the broader Shiralee area. In this regard, proposed Lot 102 generally matches with the desired future character of Cherrywood Close. The creation of this lot will enhance the small cluster of medium lots that are intended to address this street. Despite being slightly less than the 2,400m² MLS, proposed Lot 110 is consistent with the attributes listed in the Large Lot Classification Table in the Shiralee DCP, in terms of dimensions, layout and development potential, ensuring consistency with the surrounding subdivision pattern.
- The variation is affected by the fact that direct access onto Park Road is not desired or easily achieved. Park Road is planned as the Southern Feeder Road. Direct access onto the Southern Feeder Road (Brabham Way) is discouraged by the objectives of the R2 Low Density Residential Zoning, Section 2.119 of State Environmental Planning Policy (Transport and Infrastructure) 2021, the Transitional Provisions - Transport Routes and Special Uses and Road Zone controls contained within Orange DCP 2004.
- Having regard to the above point, it is necessary to extend a new road south from Cherrywood Close to provide access to proposed Lots 106 to 110. In doing so, it is also important to recognise local site conditions while at the same time ensure that a sensible lot yield is achieved. Rather than simply include excess land in fewer lots, there is some opportunity to create one or two extra lots that are appropriate in the overall pattern. In this regard, it is accepted that the proposal will facilitate a more efficient use of resources and infrastructure.

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- There is some opportunity to create one or two extra lots that are appropriate in the overall pattern. In this regard, the proposal facilitates a more efficient use of resources and infrastructure. The SEE submitted in support of the development has suitably demonstrated that non-compliance with the MLS development standard does not give rise to unacceptable impacts in the locality.

Subclause (4)

Response to Clause 4.6 matters and the objection is well founded and that granting an exception to the development standard can be supported in the circumstance of the case.

Subclause (5)

The matter contained in Subclause 5 (a) and (b) are addressed under Subclause 3.

Subclause (6) is not relevant to the development.

Subclause (7) above is a matter for Council as the consent authority.

Subclause (7) The proposal does not involve any of the matters referred to in (a) to (c) above.

Subclause (8) above is not relevant.

Summary

The Clause 4.6 request to vary the MLS standards contained within the LEP has adequately addressed the matters required to be demonstrated in Clause 4.6(3). It has been suitably demonstrated by the applicant in the SEE lodged in support of the development application that compliance with the minimum lot size development standard is unreasonable or unnecessary in the circumstances of the case. The proposal demonstrates that there are sufficient environmental planning grounds to justify a variation of the development standard.

A development that strictly complies with the development standard would not necessarily result in a better planning outcome. The proposed departure from the development standard is not likely to result in an unacceptable precedent for future development given the particular circumstances of the subject land. Given that the extent of the variation exceeds 10% the decision to support a variation to the development standard is vested with the Council and sits outside delegated authority of staff.

Part 5 - Miscellaneous Provisions**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*

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- (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 Item (a), an erosion and sediment control plan will be required to be prepared prior to works commencing and will include measures to minimise potential impacts upon drainage patterns and soil stability.

In consideration of Item (b) the proposed earthworks are to facilitate the proposed use of the land for the proposed development. The intention is to provide appropriate site surface levels for the proposed residential development and to ensure proper function and drainage.

In consideration of Item (c) the cut and fill earthworks will be subject to final geotechnical testing prior to completion. Conditions of consent have been recommended in this regard.

In consideration of Item (d) the potential impacts of the earthworks on adjoining properties can be addressed via appropriate worksite management practices; and the implementation of appropriate dust and sediment control measures. Conditions are recommended.

In consideration of Item (e) the applicant proposes to reuse as much as possible of the excavated material on site. Final quantities will be subject to detailed civil and structural engineering design. Conditions recommended.

In consideration of Item (f) the site is not identified as having heritage value and therefore the potential to disturb relics is considered minimal. The site is not known to have Aboriginal archaeological. In the event that previously unrecorded Aboriginal relics are uncovered during development, work should immediately stop, and both the NSW National Parks and Wildlife Service and the Local Aboriginal Land Council be notified. Condition recommended.

In consideration of Item (g), the site of the proposed earthworks does not affect waterfront land; a drinking water catchment; or an environmentally sensitive area.

In consideration of Item (h) an erosion and sediment control plan will be required to be prepared to outline measures to maintain water quality.

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.*

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Stormwater from the site is to be connected to Council's urban stormwater drainage system in accordance with Council's normal requirements. The application was referred to Council's Technical Services Department. The 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 condition has been imposed in relation to a grated stormwater pit which needs to be constructed within each lot provided with interlot stormwater drainage.

In relation to stormwater discharge, the stormwater from the site is to be piped to the adjacent watercourse, where it is to be discharged through a standard headwall with appropriate scour protection and energy dissipater. A condition has been imposed to provide engineering plans of this drainage system to be approved by Orange City Council.

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,*

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- (c) *the disposal and management of sewage,*
- (d) *storm water drainage or on-site conservation,*
- (e) *suitable road access.*

Technical Services conditions have been added to the Notice of Determination which will require the proposed lots be serviced with town water, reticulated sewage, stormwater drainage and electricity. Suitable road access can be provided via Cherrywood Close and the proposed new road.

STATE ENVIRONMENTAL PLANNING POLICIES

The following SEPPs applicable to the proposed development:

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.*

A preliminary contamination investigation has been undertaken which included a site inspection, identification of past potentially contaminating activities, identification of potential types of contamination, a discussion on the site conditions, a preliminary assessment of site contamination and assessment of the need for further investigation to determine suitability for residential land-use.

The report and its findings were evaluated by Council's Environmental Health Officer (EHO). The EHO advised that a contamination assessment is to be undertaken following the demolition or removal of any structures on the land that addresses the data gaps identified in the report prepared by Envirowest Consulting (ref: R15744C), dated 4 July 2023, and a copy of the new assessment report provided to Council. Where this report recommends remedial works to render the land suitable for the proposed residential use, these works will be required to be completed prior to the issuing of a Subdivision Certificate.

Additional conditions relating to asbestos material removal and disposal, unexpected finds, and septic tank removal has also been added to the Notice of Determination. Decommissioning of the septic tank and effluent trench in accordance with NSW Health Advisory Note 3 is required.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

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

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The aims of Chapter 2 are:

- (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

According to Section 2.6 of the SEPP:

- A person must not clear native vegetation in a non-rural area of the State without a permit or approval from Council (Subsection (1)).
- A person must not clear native vegetation in a non-rural area of the State if it exceeds the biodiversity offsets scheme threshold without an approval granted by the Native Vegetation Panel (Subsection (2)).

According to Sections 2.9 and 2.10 a permit from Council is required for the clearing of native vegetation below the BOS threshold if that vegetation is identified in Council's Development Control Plan (DCP).

In consideration of the above:

- The subject land has a minimum lot size of less than 1 hectare. Under the Biodiversity Conservation Regulation 2017, the BOS threshold for clearing of native vegetation is 0.25 hectares (2,500m²).
- The native vegetation required to be removed as part of the proposed development is located in the road reserve. The area to be cleared is approximately 400m² to 600m² and considerably less than the BOS threshold of 2,500m². The development will not trigger the BOS.
- The Biodiversity Offset Scheme does not apply to non-native trees or vegetation.
- The biodiversity impacts of the native vegetation removal is considered later in this report.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Park Road is zoned SP2 Classified Road (Southern Feeder Road). Section 2.119 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* applies as follows:

- (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

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- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:
 - (i) the design of the vehicular access to the land, or
 - (ii) the emission of smoke or dust from the development, or
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

The following is provided in response to the matters raised in Section 2.119(2):

- Subsection 2(a) - The proposed lots will not obtain direct access via Park Road.
- Subsection 2(b) - The potential for the development to adversely affect the safety, efficiency and ongoing operation of Park Road is considered minimal due to the following:
 - The proposed lots do not have direct access via this road.
 - The residential use of the proposed lots typically would not involve any activities that would generate smoke or dust at a level that would adversely affect Park Road.
- Subsection 2(c) - The proposed lots and future residential development therein is not expected to be unduly affected by road traffic noise or vehicle emissions. In this regard, proposed Lots 106 to 109 are of sufficient configuration to accommodate the 15m building setback from Park Road as required under *Shiralee DCP 2015*.

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 subject land is 'Bushfire prone land' as determined by Council's bushfire prone land mapping that was prepared under Section 146 of the Environmental Planning and Assessment Act (EP&A) 1979.

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Figure 7 - Bushfire Prone Land Map

Subdivision on bushfire prone land is termed 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). The applicant has provided a Bushfire Report by an accredited practitioner - Statewide Bushfire Consulting - Job Reference No. 24SBC_1144 Version 2, dated 3 January 2025 which was referred to the Rural Fire Service (RFS).

Chapter 2 of the Bushfire Safety report includes a site assessment to suitably determine relevant Asset Protection Zones (APZ) and Bushfire Attack levels (BAL) consistent with the requirements of Appendix 1 of Planning for Bushfire Protection (PBP). The methodology in determining such included an assessment of the following:

- Vegetation - Determine vegetation formations according to Keith (2004) in all directions around the proposed development to 140m.
- Effective Slope - Determine the effective slope of the land from a building for a distance of 100m.
- Fire weather - Determine the relevant Fire Area having a Fire Danger Index (FFDI) for the council area. (FFDI 80 for Orange).
- Separation distance and Available APZ - Determine the separation distance from the unmanaged vegetation to the closest external wall of a future building.
- Bushfire attack level (BAL) - The Bushfire attack level (BAL) is used as the basis for establishing the construction requirements for development of Class 1, 2, 3 and 4 (part) buildings in NSW in bushfire prone areas.

For the purposes of meeting the requirements under Chapter 5 of Planning for Bushfire Protection (PBP) for Subdivision, potential building areas were identified by the applicant's consultant on the proposed residential lots not currently containing an existing dwelling. The outcome of that assessment 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/m² (BAL-29).

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Table 2: Bush fire hazard assessment

Transect	Vegetation formation	Effective Slope	Minimum APZ ¹	Available APZ	Comments
Proposed lots 101-110					
West	Grassland	Downslope > 0-5°	11m	≥11 - 50m	<p>All lots have setbacks to achieve 29kW/m² over the entire area.</p> <p>Proposed Lot 109 to maintain a 11m APZ on western boundary to achieve minimum APZ., allowing compliant Building Envelope of approximately 1000m² (Figure 3)</p>

Figure 8 - Bushfire Hazard Assessment (according to the accredited practitioner)

As can be seen in the above extract from the consultants Bushfire Assessment Report a 11m Asset Protection Zone (APZ) is proposed on Lot 109 along the western boundary. This assessment shows that any future dwelling on all proposed lots can provide a building footprint not exposed to radiant heat levels exceeding 29 kW/m² (BAL-29) and is therefore in compliance with Planning for Bushfire Protection.

As alluded to above, the report was referred to the Rural Fires Service. Initially RFS in a letter dated 12 May 2025 requested the applicant to further address certain matters before determining whether or not to issue General Terms of Approval and a Section 100B Approval under the Rural Fires Act which are detailed below.

- *An updated Bushfire Protection Assessment will need to be provided in order for further assessment of the proposal to be undertaken and which identifies the extent to which, the proposed development, conforms with or deviates from the relevant provisions of Planning for Bushfire Protection 2019, specifically related to the current proposed subdivision and Section 5.3.2 Access;*
- *The Acceptable Solutions for Access (General Requirements) under Table 5.3b of Planning for Bushfire Protection 2019, requires perimeter roads and more than one access and egress point for subdivision of more than three allotments: and,*
- *Where the consultant varies from the Acceptable Solutions, they must adequately address the Performance Criteria to support the proposal.*

The applicant subsequently provided an addendum to that report (letter) addressing matters with regards to an acceptable solution for access (General Requirements) under Table 5.3b of Planning for Bushfire Protection 2019. The applicants response was provided to the RFS on 30 June 2025. The RFS have subsequently issued a Bushfire Safety Authority (BFSA) Certificate for the development. The requirements from NSW Rural Fire Service have been included in the attached Notice of Determination.

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PROVISIONS OF ANY DEVELOPMENT CONTROL PLAN s4.15(1)(a)(iii)**Orange Development Control Plan 2004****4.3.1 Orange Development Control Plan 2004 – 00 Transitional Provisions – Tree Preservation**

The Transitional Provisions for tree preservation are relevant as the proposed development requires the removal of certain trees within the site.

The Planning Outcomes for tree preservation provide as follows:

Planning Outcome 1 An application for the Council's approval must be accompanied by an appropriately qualified specialist (i.e., Arborist) report outlining the following information:

- The location, size, species and condition (i.e., diseased, healthy, etc).
- A statement that details any anticipated impacts on vegetation that may have derived from endangered ecological communities and/or that may be habitat for threatened species.
- The purpose of removal and whether the pruning of the tree would be a more practical and desirable alternative.
- Whether a replacement tree or trees should be planted.
- The location, size and species of any trees proposed to replace those intended for removal.
- The owner's consent to the application being lodged.
- Any other relevant information regarding the tree to be removed.

In response to the above Planning Outcome please note the following assessment:

- The trees to be removed are located primarily in the road reserve. Only a limited number of native trees and shrubs are located in the road reserve. The majority of the vegetation to be removed comprises introduced and coniferous species. The applicant has requested that Council not require advice from an arborist on the basis that there is no debate concerning the health or condition of the trees and reasonable justification is provided for their removal.

Council's City Presentations Manager has evaluated the proposal and has agreed that an arborist report is not required in this case and has indicated no objections to the proposed tree removal. A street tree planting requirement will be required by condition of consent which will assist in offsetting the impact of the proposed tree removal.

- Retention of the roadside vegetation is not possible due to the development layout. In effect, it obstructs legal and practical access to the proposed lots.
- The site demonstrates a high degree of disturbance from its natural state. Other than isolated paddock trees and exotic plantings surrounding the dwelling, there is limited remaining native vegetation within the subject land itself.
- The applicants submit that Council in adopting the Masterplan for Shiralee, recognised that tree removal would inevitably form part of the future development of the site.

4.3.2 Orange Development Control Plan 2004 - 00 Transitional Provisions - Transport Routes

The Transitional Provisions for Transport Routes are relevant in the consideration of this application.

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The Planning Outcomes for tree preservation provide as follows:

Planning Outcome 1 - The development provides a high standard of visual appeal to motorists, cyclists and pedestrians as well as adjoining property owners

The proposal does not involve any works that would generate visual impacts upon this road corridor. Park Road (future Southern Feeder Road) is a collector road. Proposed Lots 106 to 109 are of sufficient configuration to accommodate the 15m building setback from the Southern Feeder Road as required under the Shiralee DCP 2015. Potential visual impacts of future development are a matter for assessment at the time that such development is proposed.

Planning Outcome 2 - The visual appearance of the development, including any signage, lighting or other ancillary element, must not generate a distraction to motorists.

Potential visual impacts of future development are a matter for assessment at the time that such development is proposed.

Planning Outcome 3 - Any signage must not be animated whether by movement or flashing lights.

This Planning Outcome is not relevant as there is no signage proposed by this Development Application.

Planning Outcome 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.

The proposal is not adverse to this Planning Outcome as it does not involve any such elements that would distract motorists along Park Road.

Planning Outcome 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.

All of the proposed lots will obtain access via Cherrywood Close and the proposed new road that will intersect with Cherrywood Close.

Planning Outcome 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.

Planning Outcome 6 is not applicable to this development.

Planning Outcome 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.

A dwelling can be sited in proposed Lots 106 to 109 to comply with the minimum 15m setback requirement for lots facing the Southern Feeder Road. The proposal is consistent with the existing and planned residential land use pattern along Park Road. Additional noise matters may be considered when new residential development is proposed on each lot.

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4.3.3 Orange Development Control Plan 2004 - 10 Special Uses and Road Zones

Park Road is zoned SP2 Classified Road under Orange LEP 2011. As such the proposal represents development near a major road. *DCP 2004 - 10 Special Uses and Road Zones* sets certain Planning Outcomes in regard to development near major roads which are considered below.

Planning Outcome 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.

The proposal is not adverse to this Planning Outcome, as it does not involve any works that would generate visual impacts upon the Park Road corridor. Such matters are more relevant at the time that future development is proposed within proposed Lots 106 to 109.

Planning Outcome 2 - Residential buildings address potential noise impacts in design from adjacent main roads.

The proposed development is satisfactory in terms of this Planning Outcome. Specific noise mitigation measures seem unnecessary due to the following:

- The proposal is consistent with the existing and planned residential land use pattern along Park Road.
- A dwelling can be sited in proposed Lots 106 to 109 to comply with the minimum 15m setback requirement for lots facing the Southern Feeder Road.

Planning Outcome 3 - Direct access to major roads is limited and is constructed to the requirements of the relevant roads authority.

This Planning Outcome is not relevant as none of the proposed lots will obtain direct access via Park Road (future Southern Feeder Road). A condition of consent that requires a Restriction as to user to be registered on those lots having rear presentation to the road will be required by Condition of consent.

Planning Outcome 4 - Residential lots are set back from planned distributor roads to provide a reasonable separation between future roads and residential land.

Proposed Lots 106 to 109 are of sufficient configuration to accommodate the required 15m building setback from Park Road as required under *Shiralee DCP 2015*.

Planning Outcome 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.

Open style rural fencing is proposed for Lots 106 to 109 along the Park Road boundary. It would be open for Council to require dense landscaping along this road boundary as part of this subdivision. However, given the need for maintenance of such in the interim it would be reasonable for such to be deferred so that future residents could establish landscaping to improve visual amenity and privacy in relation to Park Road in the future.

Planning Outcome 6 - Commercial buildings adjoining a distributor road are setback from the property boundary by at least 10m.

This Planning Outcome is not applicable to the proposed development.

Planning Outcome 7 - Lighting and signage visible from a distributor road is not animated and is designed so as not to distract motorists beyond glance recognition.

This Planning Outcome is not applicable to the proposed development.

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4.3.4 Shiralee Development Control Plan 2015

Shiralee Development Control Plan 2015 is applicable and sets certain provisions in relation to the proposed development. These are considered below.

The objectives of the Shiralee Development Control Plan 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 recreation 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.*

In relation to the 1st objective, the proposed Subdivision Plan does not strictly align with the Shirlee DCP but is nonetheless generally consistent with the minimum allotment size controls envisaged under the LEP for this precinct. Further justification of the proposed design will be provided throughout the proceeding parts of this assessment.

In relation to the 2nd objective, the proposed lots will provide potential for future development to contribute to the quality of the eventual urban residential environment and the diversity of housing opportunities in the area.

In relation to the 3rd objective, there are no aspects of the proposal that would violate this objective which seeks to encourage alternative modes of transport and healthy lifestyles.

The fourth objective relates to services and facilities that would provide for the day-to-day needs of residents in the area, not directly relevant to this proposal.

Desired Future Character
2.2 Design Principles

Shiralee will be developed in accordance with the following Design Principles which underpin the Master Plan:

Create a sense of arrival into a distinct and identifiable community

- Ensure the development feels separates to existing residential suburban areas north of the site
- Protect steep, visually exposed and constrained lands
- Conserve remnant vegetation
- Maintain a rural edge along Pinnacle Road
- Create a village heart with a mix of active uses
- Utilise existing road reserves
- Provide housing choice and a diversity of lot sizes as shown on the Master Plan
- Locate housing density where amenity is highest
- Develop east-west and north-south open space network through the site to link to existing and future open spaces
- Provide green streets that minimise road pavement widths and maximise green verges and trees

- Encourage walking by providing footpaths on all streets and mid-block links where shown on the Master Plan and minimise requirement for roundabouts
- Provide a connected network of public open spaces that links to existing open spaces
- Distribute public open spaces throughout the development and in varying topographic locations (hilltops and drainage lines)
- Safeguard future street links to Forest Road
- Develop Shiralee consistent with the Master Plan and this Development Control Plan
- Provide continuous awnings to retail and commercial buildings in the Village Centre
- Development must achieve and satisfy the outcomes expressed in the character statement and supporting principles
- Ensure that buildings respond to and reveal the topography by stepping with the slope
- Encourage cafes and restaurants in neighbourhood nodes to enliven the street with outdoor dining where footpath width permits.

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In response to the above design principals described above please note the following assessment:

- The proposal maintains the Design Principal. Despite the proposed variations to the subdivision layout/lot sizes, the proposed subdivision will remain largely consistent with the key elements of the DCP Masterplan. The proposed variations are reasonably localised to a particular property and would not reduce the potential to achieve the desired future character or the border shiralee area.
- The subject land is not considered to be steep, visually exposed or unreasonably constrained.
- Matters in relation to tree removal have been previously addressed elsewhere within this assessment report.
- The existing dwellings will be excised on larger lots to maintain a rural edge along Pinnacle Road.
- The proposal makes use of Cherrywood Close and a new road to avoid direct access onto Park Road (Southern Feeder Road).
- For the subject land, the DCP Masterplan calls for a cluster of medium lots (with a MLS of 400m²) in the north-western section; and larger lots (MLS of 2,400m²) for the remainder of the land. Notwithstanding the minor variation sought for two of the proposed lots, the subdivision is generally in accordance with the DCP Masterplan.
- The proposal generally follows the density contemplated by the DCP Masterplan.
- The DCP Masterplan does not include land within the subject lot that is identified for future open space.
- The proposed new road and the upgrade of Cherrywood Close is consistent with the DCP outcomes.
- Providing retail and commercial building is not relevant to the proposal.
- The proposal is not adverse to the character statement and supporting principals for this precinct.
- There are no new buildings proposed within the lots at this time. Future applications for residential development will need to address relevant assessment criteria.
- Encouragement of a café related to Design Principal is not relevant to the proposal.

Subdivision

The DCP sets certain controls in regard to subdivision. See extract below from the DCP that addresses matters in relation to contamination:

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2.4 Subdivision

The subdivision of Shiralee is to be consistent with the layout provided in the Masterplan. The alignment of the road network in the structure plan ensures good solar access opportunities for the majority of building lots. The adoption of a grid based form ensures ease of navigation as well as enhanced pedestrian and cyclist mobility.

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

Controls:

SEPP 55 – Remediation of Land

- 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.
- Subdivisions that are required to prepare a detailed investigation are to include soil analysis results for each proposed lot. If the results indicate a need to remediate the land prior to development then the application is to include an indicative remedial action plan (RAP) to demonstrate how the contamination will be quantified and remediated to a residential standard.

In response to the above described please note the following assessment:

- The applicant has submitted a preliminary investigation for the site. Matters in relation to contamination have been addressed above under the heading SEPP Section 4.6 *Contamination and Remediation to be Considered in Determining Development Application*.

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.

- For the subject land, the DCP Masterplan calls for a cluster of medium lots (with a MLS of 400m²) in the north-western section; and larger lots (MLS of 2,400m²) for the remainder of the land. Notwithstanding, the minor variation sought for two of the proposed lots, the subdivision is generally in accordance with the DCP Masterplan.

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The DCP allows variations to be considered. In this regard, Section 1.8 (Page 6) of the DCP states:

Proposals must demonstrate a diversity of lot sizes and types that will support different lifestyles, housing styles and affordabilities. Lot sizes and types should also take into consideration the following factors: lot orientation; amenity (e.g., what the lot overlooks and how far it is located from the village centre); existing property and boundary alignments; and the proposed design quality of new housing.

In exceptional circumstances Council may consider some variation in lot sizes and types to what is shown the Masterplan and DCP), particularly on larger development sites, such as sites where a number of existing properties are amalgamated. The decision to consider changes to the Masterplan will be considered by Council on a case by case basis and subject to Council's satisfaction that the proposal meets or exceeds the Masterplan and DCP aims and principles.

The proposed subdivision demonstrates a diversity of lot sizes and represents a large development site. Despite the variation, the proposed lots are generally consistent with the Shiralee Masterplan. The proposal confines the 400m² MLS lots to the north-western section with only a minor variation sought where proposed Lot 102 straddles the 400m² and 2,400m² MLS boundary. It is inevitable that minor adjustments such as this are required given that many of the zone and MLS boundaries in Shiralee were developed at a high level with little ground truthing until the DA stage. The remainder of the proposed lots satisfy the 2,400m² MLS with only proposed Lot 110 seeking a variation of this development standard.

The variation in relation to lot layout and lot size is relatively minor and can be accommodated without disrupting the emerging and planned development pattern in the broader Shiralee area.

The applicants submit that the variation is largely driven by the fact that direct access onto Park Road is not desired or easily achieved and direct access onto the Southern Feeder Road is discouraged by:

- The objectives of the R2 Low Density Residential Zone,
- Section 2.119 of State Environmental Planning Policy (Transport and Infrastructure) 2021,
- The relevant Planning Outcome in Orange DCP 2004 - 00 Transitional Provisions, and
- Transport Routes. - The relevant Planning Outcome in Orange DCP 2004 - 10 Special Uses and Road Zones which are explained in detail under Subclass 3 - 4.6 Variation Section.

Subdivision Structure Controls

Lot sizes are to be consistent with or greater than the adopted minimum lot size for the land under the LEP zoning map.

Pursuant to Clause 4.6 of the LEP, a variation of the relevant MLS is required to enable the creation of proposed Lots 102 and 110. An assessment of the suitability of such has been provided within this assessment report.

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Where an oversized lot is proposed (substantially greater than the adopted minimum lot size), plans are to nominate a building envelope.

This control is not relevant to the development.

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.

This control is not relevant to the development.

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.

This control applies to proposed Lots 102 to 105. Proposed Lots 101 and 106 to 110 are identified on the Large Lot Classification Table and are subject to separate controls. Proposed Lots 102 to 104 have a width to depth ratio of 1:2.28; while Lot 105 has a width to depth ratio of 1:1.89. It is requested that Council allow a variation of this control due to the following:

- The depth of these lots is set by the position of the 400m² MLS boundary based on an average depth of 33m. To comply these lots would need to have a width between 8.25m and 12m to comply
 - (1) Width = Depth x Ratio
 - i. = 33 x 0.25
 - ii. = 8.25
 - (2) Width = Depth x Ratio
 - i. = 33 x 0.36
 - ii. = 12

In this case, a width of 8.25 to 12m is considered less than ideal. The applicant has requested that Council allow a departure of this control due to the following:

- The wider lots as proposed facilitate a better streetscape where garage doors are less likely to dominate the frontage of each lot; and greater opportunity is provided for landscaping.
- The publication Guidelines for Solar Efficient Residential Subdivision in NSW encourages lots on the south side of a street to be as wide as possible to achieve effective solar access. As proposed, these lots would achieve a 4-star rating (5-star is the highest). If the width to depth ration of the DCP was strictly enforced the solar access rating would drop to 1-star for the 8.25m width; and 2-star for the 12m width.
- The wider lots as proposed facilitate a better streetscape where garage doors are less likely to dominate the frontage of each lot; and greater opportunity is provided for landscaping.

In regard to proposed Lots 106 to 110, the Large Lot Classification Table requires the following:

- A minimum frontage of 40m to Park Road (Southern Feeder Road) or 30m if the lots are accessed from the side or rear.
- A depth of at least 60m. Given that all of these lots are not accessed from the Southern Feeder Road, the minimum width that applies is 30m. The proposed lots satisfy this requirement.

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Given that all of the proposed lots are not accessed from Southern Feeder Road, the minimum width that applies is 30m. The proposed lots satisfy this requirement. In terms of depth, only Lot 108 does not satisfy the minimum depth of 60m. It is requested that Council allow this variation on the basis that at 58m it is only marginally short of 60m requirement. The departure proposed represents a 3.33% variation. The proposed lot configuration will still allow for a 15m building setback from the Southern Feeder Road, in accordance with the DCP. As such, the functional layout and intent of the DCP are maintained, and the variation is considered reasonable.

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.

Proposed Lot 102 has a width to depth ratio of 1:2.28 which is marginally less than the minimum requirement of 1:2.5. The applicant requests that Council accept this departure on the basis that a 14.5m wide lot offers reasonable opportunity for a dwelling to address both frontages.

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 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.

The planning outcome is not relevant as the subject land does not create any new public roads that intersect with any bus route.

Lot Typologies

The DCP sets certain controls in regard to lot typologies within the area. These are considered below.

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

Proposed Lots 102 to 105 are reasonably commensurate with the *Medium Lot - 12.5m Wide* typology. The DCP diagram shows such lots with a 12.5m typical width and a 35m typical depth. Proposed Lots 102 to 105 are in the order of 14.5m wide and 33m deep.

Proposed Lots 106 to 110 are generally reflective of the attributes encouraged for this precinct on the Large Lot Classification Table (minimum lot size of 2,400m² and minimum width requirement of 30m).

The proposed lots more or less accord with the MLS zones on the LEP, expect that proposed Lots 102 and 106 require a variation of the relevant development standard pursuant to Clause 4.6 of the LEP.

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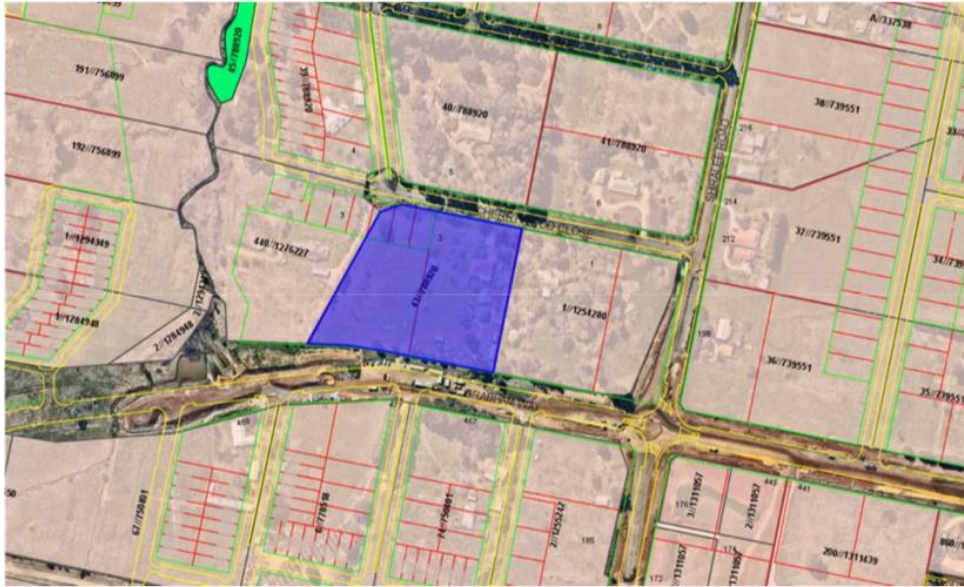


Figure 8 - LEP map (future development)

The lot typologies and minimum sizes aligns somewhat by with the LEP future development mapping (as shown above). While the site has been further subdivided, the resulting lot patterns maintain a level of consistency with the Shirlee Masterplan and the LEP future development.

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.

The proposed subdivision does not involve the creation of any oversized lots.

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

In regard to proposed Lots 106 to 110, the Large Lot Classification Table requires the following:

- A minimum frontage of 40m to Park Road (Southern Feeder Road) or 30m if the lots are accessed from the side or rear.
- A depth of at least 60m. Given that all of these lots will not be accessed from the Southern Feeder Road, the minimum width that applies is 30m. The proposed lots satisfy this requirement. In terms of depth, only Lot 108 does not satisfy the minimum depth of 60m. It is requested that Council allow this variation on the basis that at 58m it is only marginally short of 60m. Further, in future this lot can easily accommodate the minimum 15m setback from the Southern Feeder Road as required by the DCP.

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. The dimensions of the building envelope are to be no greater than:

- Compact Lots: the width of the lot minus 1.2m (to provide for 0.6m side setbacks) by the depth of the lot minus the front and rear setbacks.

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- Medium Lots: the width of the lot minus 2m (to provide for 1.1m side setbacks) by the depth of the lot minus the front and rear setbacks.
- The building envelope is to be positioned consistent with the front and rear setbacks otherwise specified for the lot typology in this DCP.

This control is not relevant to the development.

Site coverage ratio is the ratio between the overall site area and the combined footprint of all buildings on the property. The maximum site coverage ratio allowed for each type of lot is:

- 60% for compact lots
- 45% for medium lots
- 35% for standard lots
- 25% for large lots

This control is only relevant at the time that future buildings are proposed within each of the new lots.

All lots must have a direct street frontage to ensure good access and property amenity. Lots 3,000m² and larger are exempted.

All of the proposed lots will have direct street access to be provided in accordance with Council's normal requirements.

Lots without a street frontage are to have a minimum size of 3000m² providing that boundary landscaping is provided with any new development.

Not relevant to the development at this stage.

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

Not relevant to the development.

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 degrees west of north or 30 degrees east of north, or
- For east-west oriented lots between 20 degrees north of east or 30 degrees south of east.

Proposed Lots 102 to 105 are within the acceptable orientation range for east-west orientated lots.

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DEVELOPMENT CONTRIBUTIONS
Section 7.11 Development Contributions

Development contributions are applicable to the proposed development, pursuant to *Orange Development Contributions Plan 2024 Summary 1 June 2025 - 31 August 2025* (Development in Shiralee urban release area) as follows:

Open Space and Recreation	Nine additional lots @ \$792.01	7,128.09
Community and Cultural	Nine additional lots @ \$229.68	2,067.12
Roads and Traffic Management	Nine additional lots @ \$1,045.43	9,408.87
Stormwater Drainage	-	-
Local Area Facilities	Nine additional lots @ \$17,760.90	159,848.1
Plan Preparation & Administration	Nine additional lots @ \$171.98	1,547.82
TOTAL:		\$180,000

Section 64 Headworks Charges

The contributions are based on water supply headworks for nine lots (existing dwelling has a water meter and ten lots for sewerage headworks).

INFILL GUIDELINES

The development is not within heritage conservation area nor a heritage item.

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

The proposal involves the demolition of existing sheds and relocation of one shed closer to the existing dwelling. 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.

BASIX Commitments (clause 75)

Not applicable.

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

The proposed subdivision itself will alter the visual amenity of the area due to the construction of the new road and alterations to landform. However, in the context of the City's expanding urban footprint, such impacts are considered reasonable. Changes to the landform are expected to be modest given the nature of the site.

Future dwellings or buildings within the proposed lots will be required to either comply with the provisions of State Environmental Planning Policy (Exempt and Complying Development) or the Shiralee Development Control Plan 2015 and relevant planning outcomes of Orange Development Control Plan 2004 - 7 Development in Residential Areas.

The proposed development will not have an adverse visual impact on the locality.

Traffic Impacts

The applicant has referred to the *Guide to Transport Impact Assessment (TFNSW 2024)* as being the tool to assess traffic related impacts from the development. It is anticipated that a low density urban residential allotment in a regional city is likely to generate 7.53 daily weekday vehicle trips and 0.83am and 0.84pm peak hour weekday vehicle trips.

Based on the proposed additional nine lots, the completed development has the potential to generate an additional 67.8 daily vehicle trips and 7 to 8 weekday peak hour vehicle trips. The estimated total daily traffic generated by the development would not be concentrated.

Capacity of Road Network

Park Road is planned as a Distributor Road (the Southern Feeder Road). The proposed lots will not have direct access to this road. The proposed lots will be served by Cherrywood Close and the proposed new road.

Formal traffic counts have not been undertaken by the applicant, but it is unlikely that the modest traffic associated with this proposed subdivision, in conjunction with existing traffic, would generate peak hour volumes along Cherrywood Close that would not cause unacceptable traffic impacts. The proximity of the subject land to the Southern Feeder Road provides an opportunity for future residential development to connect to other parts of the city via an efficient transport link and therefore minimise traffic increases in local streets.

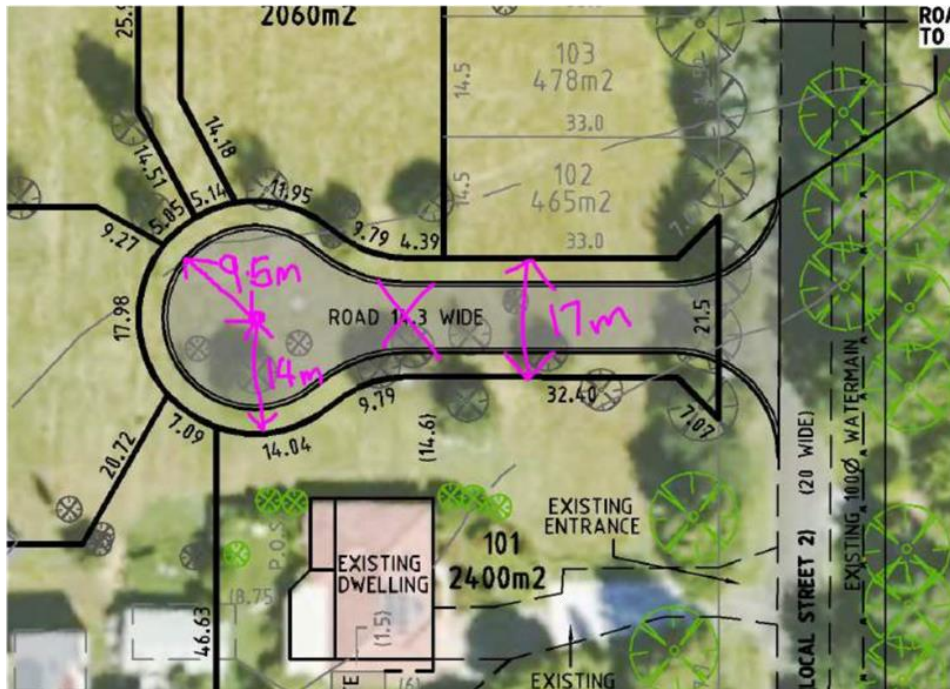
A new road will be constructed to serve proposed Lots 106 to 110. The new road is a cul-de-sac and will form a T-intersection with Cherrywood Close. A 14.3m road reserve width has been proposed in the submitted drawings which is not acceptable to Council's Technical Services Department and they advise that the proposed cul-de-sac width is unsatisfactory. The proposed 14.3m wide road needs to be a minimum width of 17.0m and the cul-de-sac bowl dimensions as per the sketch below (to comply with Orange City Council's Subdivision & Development Code). To address the shortfall a recommended condition has been imposed in the Notice of Determination.

The condition will require the submission of an amended plan to be submitted addressing the *Prior to the issue of a Subdivision Works Certificate* condition. The adjustment of boundaries to accommodate the increased road width will need to ensure that the allotment size of 2,400m² is satisfied. There are no concerns with respect to the Clause 4.6 variations for proposed for Lots 102 and 110 as these will not be affected by the road width adjustment.

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Access

Proposed Lots 101 to 105 will have direct access to Cherrywood Close. As is the case for other residential developments in Shiralee, Lots 102 to 105 will require reverse exit from the garages and driveways to the street. Due to the size and configuration of proposed Lot 101, vehicles will be able to enter and exit in a forward direction. Proposed Lots 106 to 110 will obtain access via the proposed new road. Due to the size and configuration of these lots, vehicles will be able to enter and exit in a forward direction.

Water Quality

Prior to any works commencing, an erosion and sediment control plan should be prepared. The plan is to cover all aspects of erosion and sediment control during the demolition, construction and post-construction phases of the proposal. A recommended condition of consent is included in the attached Notice of Determination.

Social and Economic Effect

The proposal will have a beneficial social and economic effect by increasing the range and supply of residential land. Providing a range of lot sizes which complements and enhances the existing and developing pattern of Shiralee which eventually increases expenditure and economic activity in Orange during the subdivision construction period. The proposed lot yield will generate additional developer contributions that will fund the provisions of services and public amenities for Shiralee. It will also provide land for future housing which when under construction will increase expenditure and economic activity in Orange.

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Cultural Values

The archaeological value of the site is considered minimal. It has been highly modified for several years from its original state due to previous and present land use. If unrecorded Aboriginal relics are uncovered during development, work will be required to immediately stop, and both the NSW Heritage Office and the Local Aboriginal Land Council be notified.

The European Heritage of Orange is recognised in Schedule 5 of Orange Local Environmental Plan 2011 which lists items of environmental heritage that are to be protected and conserved in accordance with the relevant provisions of the LEP. With reference to Schedule 5 and the LEP mapping, there are no identified items within proximity to the site.

Bushfire

The subject land is identified as bushfire prone. As such, the proposal represents integrated development pursuant to Section 100B of the *Rural Fires Act 1997*. A bushfire assessment has been prepared for the proposed subdivision. The application was referred to the Rural Fire Service. Rural Fire Service have issued General Terms of Approval and a Bushfire Safety Authority for the development. A more detailed assessment of bushfire planning related matters has been provided above.

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

The development is appropriate for the site as it aligns with the zoning, site condition and surrounding land use. There are no aspects of the sites that would suggest that it is not suitable for the proposed development. The NSW Fires Services has issued a *General Terms of Approval* for a Section 100B approval indicating that they are satisfied that the design has adequately responded to the bushfire planning related matters. Recommended Conditions of Consent have been attached to the Notice of Determination.

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 no submissions were received.

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 Determination outlining a range of conditions considered appropriate to ensure that the development proceeds in an acceptable manner.

Attachment 2 Copy of Report from PDC 5 August 2025 - DA 1/2025(1) - 2 Cherrywood Close

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COMMENTS

The requirements of Council Environmental Health, Manager City Presentation, Building Surveyor and the Engineering Development Section are included in the attached Notice of Determination.

The application was further referred to external stakeholder Rural Fire Service and Essential Energy and their conditions are also included in the attached notice of Determination. Essential Energy raised no concerns or comments regarding any potential safety risks from the proposed development.

ATTACHMENTS

- 1 Draft Notice of Determination, D25/85837
- 2 Plans, D25/84591
- 3 RFS Letter, D25/82500