



PLANNING & DEVELOPMENT COMMITTEE

AGENDA

5 AUGUST 2025

Notice is hereby given, in accordance with the provisions of the Local Government Act 1993 that a **PLANNING & DEVELOPMENT COMMITTEE MEETING of ORANGE CITY COUNCIL** will be held in the **COUNCIL CHAMBER, CIVIC CENTRE, BYNG STREET, ORANGE** on **Tuesday, 5 August 2025**.

David Waddell
CHIEF EXECUTIVE OFFICER

For apologies please contact Executive Support on 6393 8391.

AGENDA

1	INTRODUCTION	3
1.1	Declaration of pecuniary interests, significant non-pecuniary interests and less than significant non-pecuniary interests.....	3
2	GENERAL REPORTS	5
2.1	Items Approved Under the Delegated Authority of Council	5
2.2	Development Application DA 19/1995(2) - Lot 4 Ophir Road.....	9
2.3	Development Application DA 149/2007(2) - 1040 Pinnacle Road	83
2.4	Development Application DA 1/2025(1) - 2 Cherrywood Close.....	221
2.5	Development Application DA 100/2025(1) - 59-67 Bathurst Road - KWS	333
2.6	Post-exhibition Report - Amendment to Orange Development Control Plan 2004 - 277 Cargo Road Site-Specific Development Control Plan	405
2.7	Amendment to Orange Development Control Plan 2004 - Site-Specific Development Control Plan - 274 Leeds Parade.....	429
2.8	Planning Proposal - Rural Land Boundary Adjustment Clause.....	441
2.9	Planning Proposal - Orange LEP 2011 Administrative Amendment (Housekeeping Amendment)	463

1 INTRODUCTION

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

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

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

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

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

RECOMMENDATION

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

2 GENERAL REPORTS

2.1 ITEMS APPROVED UNDER THE DELEGATED AUTHORITY OF COUNCIL

RECORD NUMBER: 2025/798

AUTHOR: Paul Johnston, Manager Development Assessments

EXECUTIVE SUMMARY

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

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan strategy “11.1 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 resolves to acknowledge the information provided in the report by the Manager Development Assessments on Items Approved Under the Delegated Authority of Council.

FURTHER CONSIDERATIONS

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

SUPPORTING INFORMATION

Reference:	DA 551/2021(4)	Determination Date:	23 July 2025
PR Number	PR30331		
Applicant/s:	Anglican Schools Corporation		
Owner/s:	Anglican Schools Corporation		
Location:	Lot 300 DP 1312878 - 7 Murphy Lane, Orange		
Proposal:	Educational establishment (demolition, new building and 750 students). The modification proposed to increase the sill and head height of the windows by 300mm on both the lower and upper floor levels, with no increase in window glass area.		
Value:	Not applicable		

2.1 Items Approved Under the Delegated Authority of Council

Reference: DA 115/2023(3) **Determination Date:** 30 June 2025
PR Number PR27678
Applicant/s: Trysori Pty Ltd
Owner/s: Dyfodol Pty Ltd
Location: Lot 10 DP 1228543 - 246 Anson Street, Orange
Proposal: Modification of development consent - pub (alterations and additions). The modification involved minor amendments to the approved plans due to inconsistencies identified between the development approval plans and the construction certificate plans.
Value: Not applicable

Reference: DA 229/2023(4) **Determination Date:** 30 June 2025
PR Number PR612
Applicant/s: Uniting Church in Australia Property Trust NSW
Owner/s: Uniting Church in Australia
Location: Lot 1 DP 996128 - 215-221 Anson Street, Orange
Proposal: Modification of development consent - boarding house (change of use and alterations and additions to existing building). The modification involved minor internal and external works.
Value: Not applicable

Reference: DA 664/2024(1) **Determination Date:** 17 June 2025
PR Number PR21314
Applicant/s: Mr D and Mrs KE MacLennan
Owner/s: Mr DF and Mrs KE MacLennan
Location: Lot 201 DP 1101736 - 501 Canobolas Road, Orange
Proposal: Subdivision (two lot Torrens title), intensive plant agriculture and dual occupancy (alterations and additions to manager's quarters)
Value: \$141,574

Reference: DA 60/2025(1) **Determination Date:** 15 July 2025
PR Number PR13691
Applicant/s: D J Honeysett and J T Honeysett
Owner/s: The State of New South Wales (Crown Lands NSW)
Land and Property Management Authority
Location: Lot 52 DP 750406 - Whiley Road, Spring Hill (recreation ground)
Proposal: Recreation facility (outdoor) (paint-ball centre)
Value: \$5,000

2.1 Items Approved Under the Delegated Authority of Council

Reference: DA 105/2025(1) **Determination Date:** 16 July 2025
PR Number PR26805
Applicant/s: Mr A Caladine
Owner/s: 162-164 Summer Street Orange Pty Ltd
Location: Lot 30 DP 1202583 - 162-164 Summer Street Orange
Proposal: Business identification signage and painting of front shopfront (chemist warehouse)
Value: \$17,750

Reference: DA 140/2025(1) **Determination Date:** 30 June 2025
PR Number PR19467
Applicant/s: The Regional New South Wales Islamic Centre Incorp
Owner/s: Regional NSW Islamic Centre Inc
Location: Lot 51 DP 1066967 - 344a Peisley Street, Orange
Proposal: Place of public worship (alterations and additions)
Value: \$44,000

Reference: DA 153/2025(1) **Determination Date:** 16 July 2025
PR Number PR22
Applicant/s: Mr AM Xuereb
Owner/s: Mr AM and Mrs EM Xuereb
Location: Lot 18 DP 574798 - 2 Beasley Road, Lucknow
Proposal: Specialised retail premises (kitchen showroom and ancillary offices - change of use from dwelling), business identification signage and demolition (internal, shed, ancillary structures and tree removal)
Value: \$49,500

Reference: DA 160/2025(1) **Determination Date:** 30 June 2025
PR Number PR5835
Applicant/s: Granny Flat Solutions
Owner/s: Aboriginal Housing Office
Location: Lot 127 DP 250936 - 4 Katoa Place, Orange
Proposal: Secondary dwelling (moveable dwelling)
Value: \$340,000

Reference: DA 217/2025(1) **Determination Date:** 24 July 2025
PR Number PR15700
Applicant/s: Bapcor Limited
Owner/s: Mr AB and Mrs JA and Mr PA Honeyman
Location: Lot 8 DP 844802 - 1 Colliers Avenue, Orange
Proposal: Warehouse or distribution centre (change of use and alterations and additions to existing building) and business identification signage
Value: \$60,500

2.1 Items Approved Under the Delegated Authority of Council

TOTAL NET* VALUE OF DEVELOPMENTS APPROVED BY THE CEO UNDER DELEGATED AUTHORITY IN THIS PERIOD:	\$511,750.00
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** **Net** value relates to the value of modifications. If modifications are the same value as the original DA, then nil is added. If there is a plus/minus difference, this difference is added or taken out.*

Additionally, since the July 2025 meeting report period (17 June to 21 July 2025), another 20 development applications were determined under delegated authority by other Council staff with a combined value of \$3,904,129.

2.2 DEVELOPMENT APPLICATION DA 19/1995(2) - LOT 4 OPHIR ROAD

RECORD NUMBER: 2025/1470

AUTHOR: Benjamin Hayter, Town Planner

EXECUTIVE SUMMARY

Application lodged	25 March 2025
Applicant/s	Maxus Group Pty Ltd
Owner/s	Maxus Group Pty Ltd
Land description	Lot 4 DP 1274221 - Ophir Road, Orange
Proposed land use	Rural Residential Subdivision
Value of proposed development	Not applicable

Council deferred consideration of this application at the last PDC meeting so as to allow for a Councillor site inspection. The site inspection was carried out on Friday 18 July 2025. The assessment of this application to modify the old/original Clifton Grove Estate subdivision to progress development of this residual land remains unchanged and is considered complete. The Recommendation of approval remains as previously reported.

Application has been made to modify development consent DA 19/1995(1) pursuant to Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 [EPAA]. The modified proposal seeks to amend the site access, lot layout, size and number of the lots proposed to the South West of Summer Hill Creek on land known as Lot 4 DP1274221. The development as modified seeks to respond to various conditions that were imposed by Council in 1995 that were designed to protect the operation of the Resource Recovery centre and address significant flooding issues in the event of a dam failure.

A further modification is proposed to the DA to allow for domestic wastewater disposal to take place on each individual lot. To this end it is proposed to delete Conditions (f) and (g), which relate to the provision of funding to the Council for the provision of a connection to the Wastewater Treatment Plant (which would no longer be required).

A Section 4.15 assessment of the development indicates that the development as modified is acceptable. Attached is an amended Notice of Approval for Council's consideration.

It is recommended that Council supports the subject proposal.

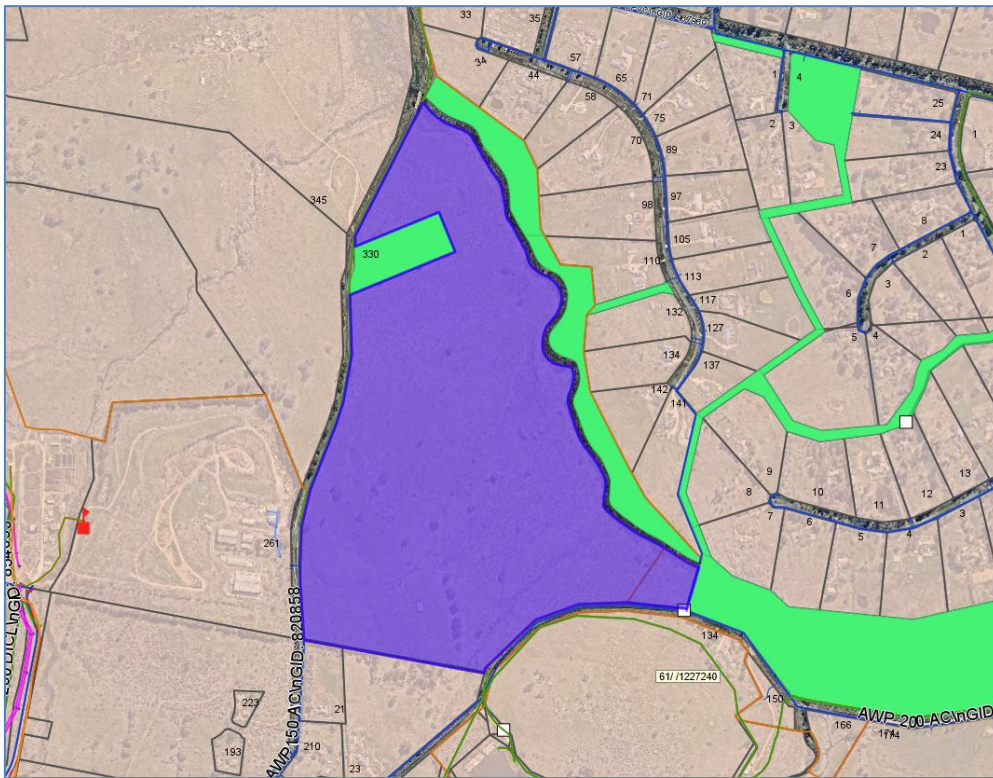


Figure 1 - locality plan

DECISION FRAMEWORK

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

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

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

DIRECTOR'S COMMENTS

Application has been made to modify development consent DA 19/1995(1) pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* [EPAA]. The proposed modification to previously approved DA 19/1995(1) consists of modifications to: site access, lot layout, size and number of the lots and effluent disposal arrangements.

The development as modified seeks to respond to various conditions that were imposed by Council in 1995 that were designed to protect the operation of the Resource Recovery Centre and address significant flooding issues in the event of a dam failure.

Council in determining this matter is required to be satisfied that development as modified is 'substantially the same' as what was previously approved. The staff planning assessment has formed the view that the development as modified directly responds to the conditions that were placed on the original consent and the character of the development would remain the same as a large lot residential subdivision.

The proposed development is defined as "advertised development" under the provisions of the Community Participation Plan. The application was advertised for the prescribed period of 14 days and at the end of that period nine submissions (including one from the Orange and District Historical Society (ODHS)) were received. The matters raised in the submissions including matters in relation to heritage impact on Banjo Patterson Park, water resources, access, lot density, buffers, building envelopes and vegetation features have been addressed under various sections of this report.

Despite nine of the proposed lots being below 2ha, their median size is still greater than the lot sizes previously approved and all would exceed 1ha. Therefore, large lots would be retained on site, one of which would be 44ha, allowing for the site to retain its rural character.

It is recommended that Council supports the development as modified. Attached is an amended Notice of Determination for Council's consideration.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan strategy "7.3 Plan for growth and development that balances liveability with valuing the local environment".

FINANCIAL IMPLICATIONS

Nil

POLICY AND GOVERNANCE IMPLICATIONS

Nil

RECOMMENDATION

That Council consents to modified development application DA 19/1995(2) for *Rural Residential Subdivision* at Lot 4 DP 1274221 - Ophir Road, Orange pursuant to the conditions of consent in the attached Notice of Approval.

FURTHER CONSIDERATIONS

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

SUPPORTING INFORMATION**THE PROPOSAL**

The original consent (DA 19/1995(1), which was granted in April 1996, has been part implemented. The previously approved lot plan is indicated below (Figure 2) below. The lots shaded yellow (to the North East of Summer Hill Creek) have been constructed and are occupied by residential dwellings for a number of years, the lots shaded blue have not yet been developed. Work commenced to build the lots shaded yellow within the 5 year statutory time limit and therefore the consent for the whole development, including the lots shaded blue (to the South West of Summer Hill Creek) has not lapsed and remains valid.

The applicant states that the reason why the area of the site to the South West of Summer Hill Creek has as yet not been developed is due to the restrictive conditions that Council placed on the original consent, which meant it was difficult to implement the approved lot layout. These restrictive conditions were designed to protect the operation of the Resource Recovery centre and address significant flooding issues in the event of a dam failure. The subject conditions are 1, 2, and 3 which prevent the building of the lots located within the fuse gate flood zone, Condition 5 which restricts the number of lots that can be provided on the subject site and Condition 7 which prevents development from occurring within 400m of the nearby Resource Recovery Centre. The conditions read as follows:

Condition 1: A restriction as to user shall be placed upon the title of each affected lot to prohibit any building development from occurring within the Summer Hill Creek Probable Maximum Flood Area.

Condition 2: That development may be permitted within the defined concrete arch dam failure area as outlined in the Water Manager's report dated 29 March 1995, subject to:

- (a) appropriate Saddle Dam alteration being carried out by Council; and
- (b) adoption and implementation of a Flood Emergency Plan applicable to land downstream of Suma Park Dam.

Condition 3: That no building development shall be permitted to occur within the Saddle Dam area, as outlined in the Water Manager's report dated 29 March 1995, (assuming appropriate Saddle Dam alterations have taken place) until such time as the main concrete arch dam has been upgraded to full Probable Maximum Flood standards according to current Dam Safety Committee Guidelines.

Condition 5: That the number of lots permissible on the south-western side of Summer Hill Creek shall not exceed the number of lots that are possible to be achieved in the area outside the open space at a lot size of 2ha.

Condition 7: No development shall occur upon the subject land with 400m of the Orange Garbage Depot site until such time as the garbage disposal activities cease upon the site or until such time that the activities at the Garbage Depot change such that the 400m buffer area is, in Council's opinion, no longer required. Separate application will be required for the development of land within the 400m buffer area at that time.

The effect of the above conditions, as was acknowledged on Page 6 of the report that was presented to the Council Committee in April 1996, was to reduce the number of lots that could be built out South West of Summer Hill Creek from 40 to 20 and to as low as 12 if the works described in Conditions 2 and 3 are not carried out.

2.2 Development Application DA 19/1995(2) - Lot 4 Ophir Road

This modification application relates to the lots shaded blue on Figure 2, and seeks approval pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979 [EPAA] to modify the lot number, layout and access as well as effluent disposal arrangements, and are in response to the conditions set out above that were placed on the original consent.

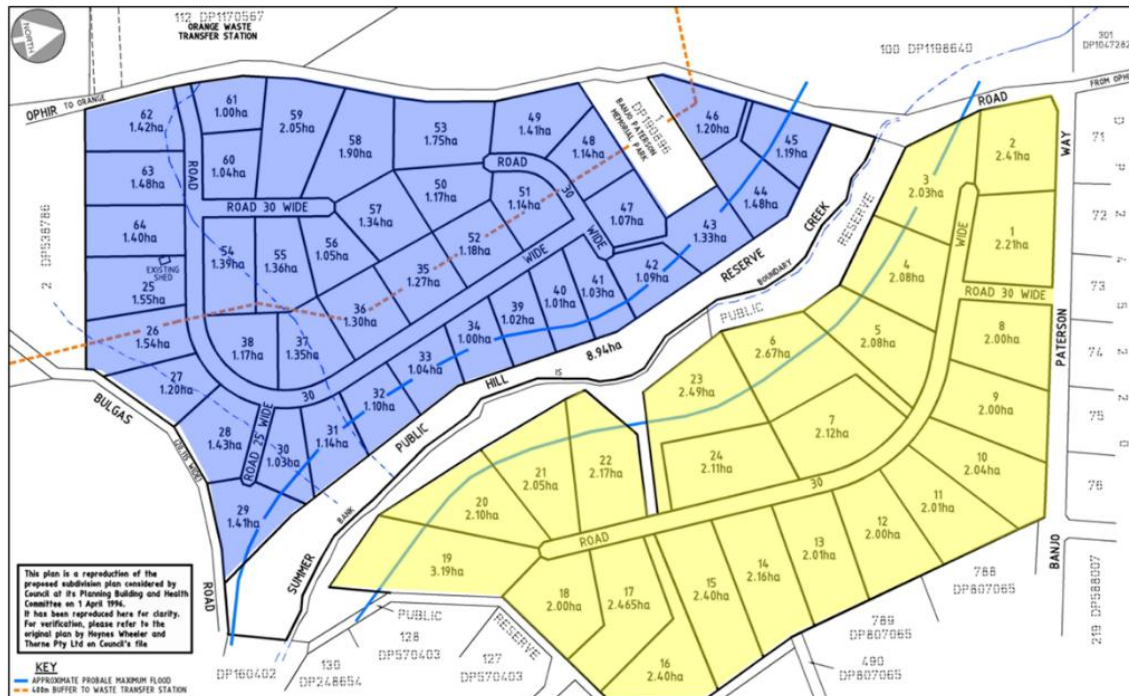


Figure 2 - approved lot plan

It is proposed to amend the lot layout plan to reduce the number of lots South West of Summer Hill Creek from 40 to 12, amend the lot sizes and to move the access from Ophir Road further to the North (see Figure 3 below).

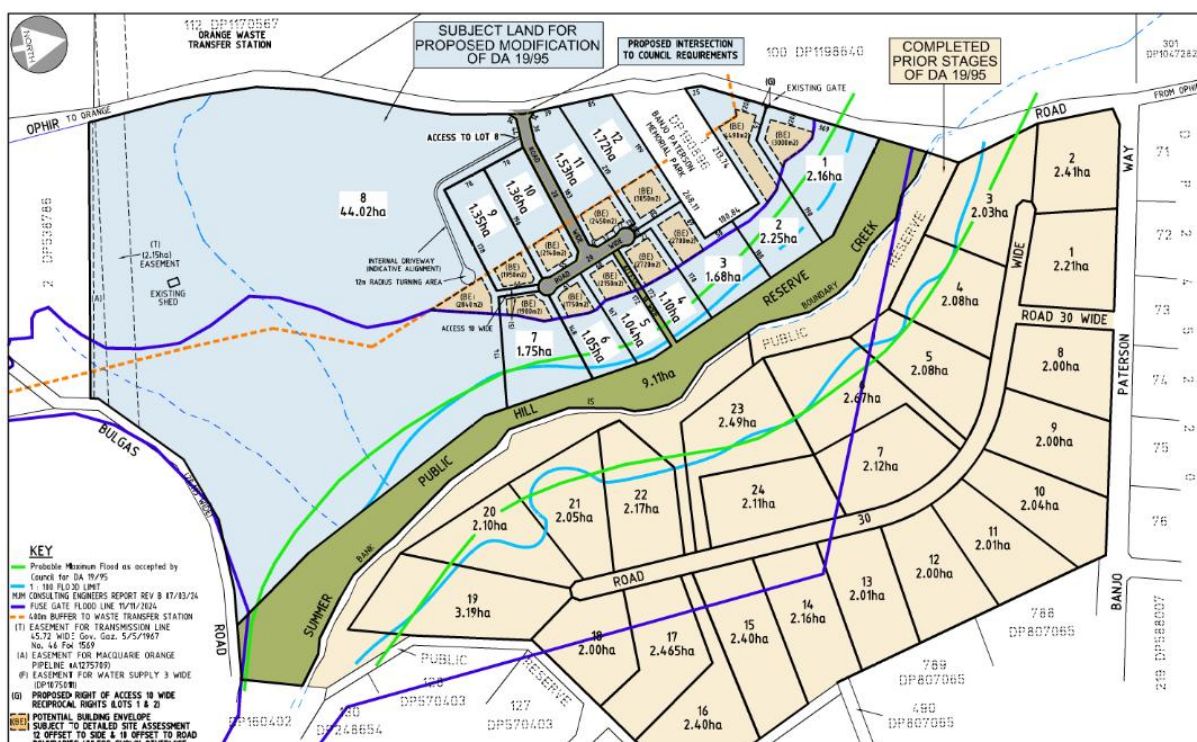


Figure 3 - proposed lot plan

As can be seen in Figure 3 above, the proposed lot plan includes the maximum potential building envelope for each lot which is in response to the conditions placed on the original consents as set out above.

Proposed lot sizes and indicated maximum potential building envelope:

Proposed lot number	Proposed lot Size (ha)	Maximum potential building area (ha)
1	2.16	0.3
2	2.25	0.45
3	1.68	0.27
4	1.10	0.27
5	1.04	0.22
6	1.05	0.175
7	1.75	0.19
8	44.02	0.28
9	1.35	0.195
10	1.36	0.2
11	1.53	0.25
12	1.72	0.3

The median proposed lot size is: 1.52ha, the median approved lot size for the site is: 1.2ha.

Domestic Wastewater Management Modification

It is further proposed to amend the wastewater management arrangements. It was previously approved that the subdivision would link up to Council's wastewater treatment plant. Under this application it is proposed that each individual lot has its own onsite waste management system. The applicant has provided an onsite effluent management study for each individual lot in support of the proposal. To reflect the proposed modified effluent management arrangements it is proposed to delete Conditions (f) and (g), which read as follows:

- (f) That, in view of the increase in demand caused by the development proceeding, the payment of \$15,000 shall be made to Council towards the provision of the effluent drainage line and pump station within Council's Waste Disposal Depot to convey common effluent drainage to the Wastewater Treatment Plant.
- (g) A contribution of 50% of the normal Headworks charge of \$1,166 shall be made to Council prior to the release of subdivision plans for that land on the south-western side of Summer Hill Creek towards Sewerage Headworks.

Modifications to Conditions Wording

To reflect the proposed amended plans, the applicant proposes the following amendments to the relevant conditions:

Condition 21

A caveat shall be registered on the Deed of Title of Lots 26, 27, 28 and 29 to deny vehicular access to these lots from Bulgas Road.

Given the proposed amendments to lot layout and numbering, it is proposed to remove reference to Lots 26, 27, 28 and 29 and instead refer to 'Lot 8'.

Condition 24

Building envelopes shall be established on Lots 35, 36, 51 and 52 to the satisfaction of the Manager - Planning Approvals to locate dwellings generally outside the 400m buffer area. Such building envelopes shall be shown on the subdivision plan and a Section 88b Instrument.

Given the proposed amendments to lot layout and numbering, it is proposed to remove reference to Lots 35, 36, 51 and 52 and instead refer to Lots: 2, 8, 9, 10, 11 and 12.

Condition 29(d)

Stages 3 and 4 - Connection of approximately 22 lots of 1ha minimum area, west of Summer Hill Creek.

- *Standard Water Headworks Charge \$1,212 per lot*
- *Contribution for water*

Main in Phillip Street (from Jilba Street to Ophir Road) \$1,062 per lot

It is proposed to remove reference to 22 lots and refer to 12 lots instead, to reflect the proposed reduction in number of lots.

MATTERS FOR CONSIDERATION**Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 [EPAA] - Modification of consents - Other Modifications**

This modification application is made pursuant to Section 4.55 (2) of the EPAA, which states that a consent authority may, on application being made by the applicant modify the consent if -

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and
- (c) it has notified the application in accordance with -
 - (i) the regulations, if the regulations so require, or
 - (ii) a Development Control Plan, if the consent authority is a council that has made a Development Control Plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

In relation to (a) - Whether the development is 'substantially' the same as the development for which consent was previously granted please note the following:

There is no statutory definition of what constitutes 'substantially the same' as the development for which consent was previously granted, however case law provides a guide for decision makers.

Scrap Realty Pty Ltd v Botany Bay City Council [2008] provides that in determining whether the approved and proposed development are substantially the same, a comparison exercise between the approved and proposed developments is required.

Arrage v Inner West Council [2019] provides that an assessment as to whether the approved and proposed development are substantially the same can not only require an assessment as to whether the two consents are in essence the same, but also a comparison of the consequences of the development can be required.

Quantitative and Qualitative Assessment

The original approval provided for a large lot subdivision, this does not change under the current proposal. However, the proposed modification would provide significantly fewer lots on the South Western side of Summer Hill Creek than was indicated on the approved plans (12 as opposed to 40), would provide an amended lot layout, lot sizes and access road location. Nevertheless, the applicant states that the proposed modifications to the original consent are in direct response to the restrictive conditions that the Council put on this consent.

These restrictive conditions are: Conditions 1, 2, and 3 which prevent the construction of the lots located within the fuse gate flood zone, Condition 5 which restricts the number of lots that can be provided on the subject site and Condition 7 which prevents development from occurring within 400m of the nearby Resource Recovery Centre. The impact of these conditions is that despite the original lot layout technically being approved, the conditions prevented the applicant from constructing the lots as indicated on the approved plans, and only permitted development on a narrow strip of land as indicated on the plan that the applicant has provided (see Figure 6 below):

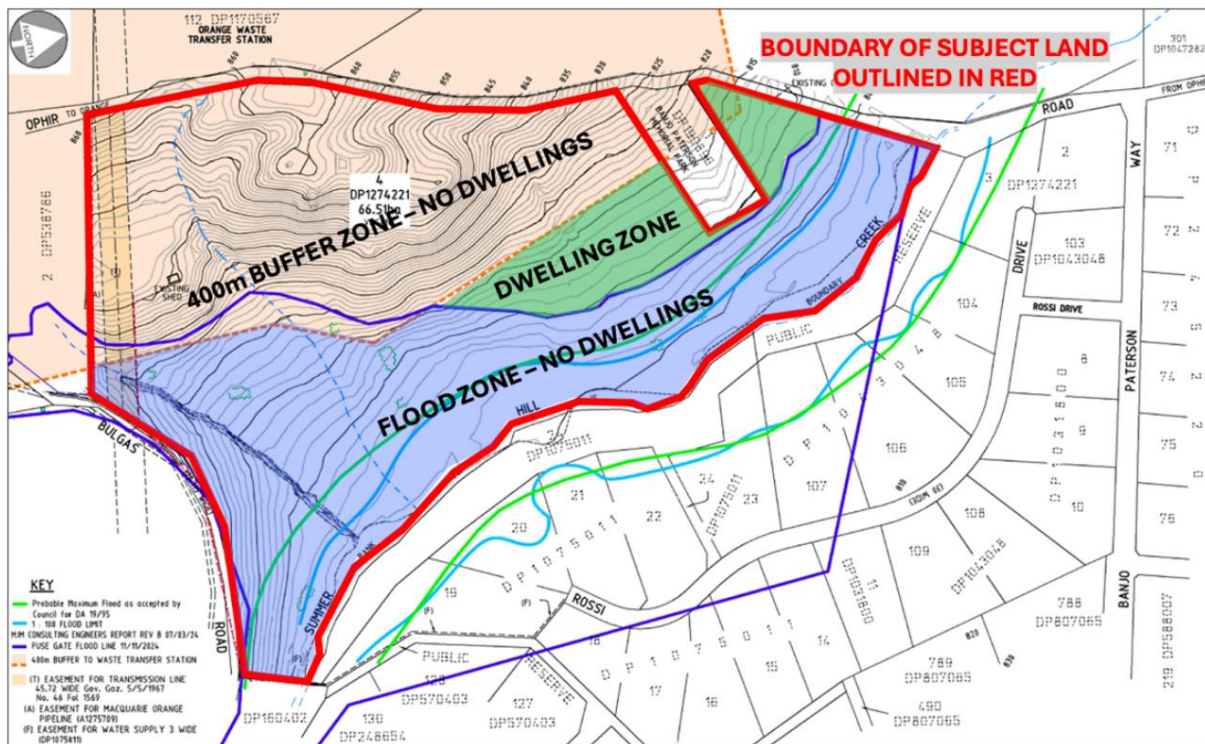


Figure 4 - site constraints

Despite the layout of the modified development proposal appearing noticeably different to the previously approved plan, the modified proposal is in direct response to the conditions placed on the original consent.

Due to the restrictive conditions, the original consent in essence only provided consent to construct dwellings in the area where the current proposed plan indicates that they would be placed. Furthermore, the key characteristics of the development remain the same as was approved in terms of it providing a large lot subdivision with access from Ophir Road. Given the above, Council staff are satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.

In relation to (b) - please note that this clause is not relevant. Notwithstanding, it is worth noting that the site is in proximity to a waterway: Summer Hill Creek, as such the application was referred to the Department of Planning and Environment-Water [the Department] for comment. The Departments General Terms of Approval includes a condition requiring an application be made to them for any controlled activity on waterfront land which would include the submission of site plans, construction plans, sediment and erosion plans, drainage plans and construction stormwater drainage outlet plans. Subject to condition therefore it is considered that the development as modified would have an acceptable impact on the neighbouring waterway.

In relation to (c) - please note that arrangements were made for the application to be formally advertised for a period of 14 days consistent with the requirements of Council's *Community Participation Plan 2019* and the requirements of the Environmental Planning and Assessment Act and associated Regulations.

In relation to (d) - please note that the application was advertised for the prescribed period of 14 days and at the end of that period nine submissions (including one from the Orange and District Historical Society (ODHS)) were received. Each of the submissions raised have been addressed under the heading "*Any Submissions made in accordance with the Act*".

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

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

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

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

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

Trigger 1

No part of the site is contained within land mapped on the Biodiversity Value Map, and therefore Trigger 1 would not apply.

Trigger 2

The existing site is covered in vegetation in the form of grasses and shrubs, and as per the findings of the submitted Preliminary Contamination Investigation, the majority of existing vegetation on the site is non-native. Clause 7.2 of BC Regulation 2017 states that on land with lot sizes of between 1 and 40ha, if an area of over 0.5ha is cleared, the provisions of the BC Act 2017 are triggered. The development would not involve the clearing of more than 0.5ha of vegetation, and therefore Trigger 2 does not apply.

Further to the above, as the DA is a modification application, Clause 7.17 (c) of the BC Act 2016 states that a further assessment report is not required to be submitted with the application for modification if - the authority or person determining the application for modification is satisfied that the modification will not increase the impact on biodiversity values. The proposed modification would reduce the area of land to be developed, with the area occupied by the proposed access road significantly reduced. It is therefore clear that the modified proposal would significantly decrease the impact on biodiversity values at the site and therefore a further assessment report is not required.

Trigger 3

For the reasons noted above, it is not considered that the proposed modification would have any greater potential impact on threatened species given that the scale of the development would be reduced as compared to what was previously approved and noting that the land is not located on the Biodiversity Value Map.

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*

The application is considered to be consistent with Objectives (a) and (b) as outlined in this report. Residential lots have been previously approved on this site which is zoned for large lot residential. The proposed amended lots would be of a size and siting that would accord with the open character of the area and would provide additional housing contributing to the local economy in accordance with the above objectives.

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 R5 Large Lot Residential
Lot Size Map:	Minimum Lot Size 2ha
Heritage Map:	Not a heritage item or conservation area
Height of Buildings Map:	No building height limit
Floor Space Ratio Map:	No floor space limit
Terrestrial Biodiversity Map:	High biodiversity sensitivity on the site
Groundwater Vulnerability Map:	Groundwater vulnerable
Drinking Water Catchment Map:	Not within the drinking water catchment
Watercourse Map:	Within or affecting a defined watercourse
Urban Release Area Map:	Not within an urban release area
Obstacle Limitation Surface Map:	No restriction on building siting or construction
Additional Permitted Uses Map:	No additional permitted use applies
Flood Planning Map:	Not within a flood planning area

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

Clause 1.9A - Suspension of Covenants, Agreements and Instruments

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

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

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

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

The Original development was authorised under former Environmental Planning Instrument in 1996. The provisions at that time provided for the averaging of allotment sizes based on 1 lot per 2 hectares. The subject site is located within the R5 Large Lot Residential zone as defined under Orange LEP 2011. The proposed development is defined as a subdivision under OLEP 2011 and subdivision remains permissible with consent for this zone. This application is seeking consent to modify the terms of the 1995 development 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 large lot residential are as follows:

Objectives of zone R5 Large Lot Residential

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To provide for student housing in close proximity to the Charles Sturt University.*
- *To ensure development is ordered in such a way as to maximise public transport patronage, and encourage walking and cycling, in close proximity to settlement.*
- *To ensure development along the Southern Link Road has an alternative access.*

Comment on above objectives

- The proposed modification would reduce the number of lots whilst increasing the median lot size, which would not have an additional impact on scenic quality and would not impact on environmentally sensitive locations.
- The subject site zoned for large lot residential and is located away from the Orange urban area, thus not hindering its development.
- The modification would not increase the number of lots on the subject site from what was previously allowed (taking into account the garbage depot and flood zone buffer limitations), thus not causing any potential additional demand on public services and facilities. Twelve (12) lots is a relatively small number, which it is not considered would produce a significant number of additional residents which would have an impact on local services.
- The proposed modification indicates that no development would be constructed within the 400m buffer to the Council Resource Recovery Centre, which subject to Condition 24 of the consent would not result in a conflict of land uses. The land is zoned for large lot residential, and the proposed modification would provide such a land use.
- The subject site is located in a rural setting with limited sustainable transport options, this remains the same as the previous approval and is considered appropriate in the context.

Clause 2.6 - Subdivision - Consent Requirements

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

The proposal does not involve a secondary dwelling.

Part 3 - Exempt and Complying Development

The application is not exempt or complying development.

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

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

The objectives of this clause are as follows:

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

In relation to this site, the map nominates a minimum lot size of 2ha. The smallest lot proposed by this application is 1.05ha, which is below the minimum lot size requirements. However, as noted above, the proposed lot sizes previously approved on the subject site are all below 2ha, apart from one. The proposed modification involves a lot size and layout that is consistent with requirements of Condition 5 of the current consent.

On Pages 6 and 7 of the report that went to committee on 1 April 1996 in regards to the original consent, it was explained that the reason for allowing lots of less than 2ha in area was based on averaging provisions that applied at the time and was to also compensate for the reduction in site area that can be developed due to the requirement for there to be a 400m buffer to the Resource Recovery Centre and the requirement not to build on the flood zone.

As lot sizes below the 2ha LEP requirement have previously been approved, it is not permissible under Clause 4.55 of the EPAA to re-open an assessment of that decision. Nevertheless, as noted in the description of development section of this report; as compared to the previously approved lot plan, the median size of the lots would increase from 1.2ha to 1.52ha, and the number of lots exceeding 2ha would increase from 1 to 3, which brings the median lot sizes closer to the LEP requirements. Furthermore, the lot sizes proposed are still substantial (all lots would exceed the area of a football field) and would therefore reflect the general pattern of the locality, which is characterised by large semi-rural lots.

Clause 4.3 - Height of Buildings

This clause is not relevant to the modified development proposal.

Clause 4.4 - Floor Space Ratio

This clause is not relevant to the modified development proposal.

Part 5 - Miscellaneous Provisions**5.10 - Heritage Conservation****(1) Objectives**

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of Orange,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

(4) Effect of Proposed Development on Heritage Significance

Adjacent to the proposed subdivision is Banjo Paterson Memorial Park, which contains the Locally listed heritage items: Banjo Paterson Memorial and Templer's Mill ruins. The park as a whole is integral to the setting of these heritage items and the impact on the setting of the park as a whole therefore forms part of the heritage impact assessment. Banjo Paterson Memorial Park also has significance as being where it is believed that the 'Narrambla' homestead was located, where Banjo Paterson was born. However, as is noted in the Conservation Management Plan (2004) by Ian Jack Heritage Consulting Pty Ltd for the park, the precise location of 'Narrambla' is not known and could be outside the confines of the park and within the subject site.

As noted under proceeding sections of this report, six residential lots were previously approved adjacent to Banjo Paterson Park, and therefore the principal of allowing such lots in this location has previously been approved under the original application and cannot be revisited under this application. It should further be noted that four of these previously approved lots adjacent to the park could be built out in accordance the extant permission (taking into account the restrictions of the conditions placed on the original consent) without any further DA approval from the Council.

Despite the above, it is noted that the previously approved lot layout had lots that were orientated such that the dwellings would most likely back onto the park, with a reasonably large separation distance between the built form and the park boundary. The proposed modified lot layout, however, would provide for three dwellings that would likely be 'side on' to the park and may be at closer proximity to the park boundary than what would have occurred under the previously approved lot layout, thereby having a greater impact on the setting of the park. To address these concerns in relation to the amended lot layout, it is considered necessary to impose an additional condition requiring a 20m wide buffer zone between the park boundary and any built form to be constructed. This would reduce the potential impact on the setting of the park whilst allowing for the development of dwellings to continue to be achievable.

Furthermore, the original consent for the subdivision of the site did not include any archaeological conditions. Following the granting of the original consent in 1996, the Conservation Management Plan for the park was published in 2004, which highlighted the potential for there to be archaeological remains outside the confines of the park and within the application site itself.

In light of this additional information that has come to light following the granting of the original consent, it is considered necessary to impose a new condition requiring archaeological investigations to be carried out if any potential archaeological items are discovered during excavation works.

Overall, subject to the additional conditions outlined above, it is not considered that the proposed modification to the original consent would have any additional adverse impact on the heritage significance of neighbouring heritage items.

5.16 - Subdivision of, or Dwellings on, Land in Certain Rural, Residential or Conservation Zones

The following matters are to be taken into account:

- (a) the existing uses and approved uses of land in the vicinity of the development,*
- (b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*
- (c) whether or not the development is likely to be incompatible with a use referred to in Paragraph (a) or (b),*
- (d) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in Paragraph (c).*

As stated in other sections of this report, the subdivision of the land has previously been approved, and the land is zoned as large lot residential (which the approved and proposes amended subdivision would provide). The principle of the acceptability of the use of the land for large lot residential is therefore well established.

The Orange Waste Disposal Facility lies to the west of the subject land on the opposite side of Ophir Road. Council has previously applied a 400 metre buffer zone around this facility to minimise the potential for land use conflict. The development as modified complies with the 400 metre buffer zone. The proposed dwelling envelopes are located outside the buffer. Compared to the current approval, there would be no dwellings within the 400 metre buffer (noting that under the current consent, Council does allow approved Lot 48 in the current DA to have a dwelling within this buffer area).

5.21 - Flood Planning

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

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

The subject site is not identified on the Flood Planning Map as being within a Flood Planning Area, however, the site is susceptible to flooding from Summer Hill Creek and if the nearby dam fuse gate were to fail. The provisions of Clause 5.21 are therefore relevant in the determination of the application.

The proposed building envelopes as indicated on the proposed modified lot layout plan indicates that all dwellings would be located outside the probable maximum flood level of the creek and the fuse gate flood line, in accordance with the conditions placed on the original consent. These building envelopes can be secured via recommended amended Condition 24 and would ensure that construction on the site would not be located on flood prone land, avoiding any impact on the flood function of the land and the river environment. Evacuation routes would be provided in the form of the access road to the subdivision leading to Ophir Road.

5.22 - Special Flood Considerations

As per above, the development as modified responds to the flooding constraints on the land. The proposed modification plans for dwellings to be located outside the Fuse Gate flood zone and above the 1% AEP. Evacuation to nearby flood free land is available via the proposed public road. The modification significantly reduces the number of lots to be approved from 28 to 12 lots.

It is considered that the development as modified incorporates appropriate measures to manage risk to life in the event of a flood. This is addressed by existing Conditions in DA 19/95 and also by the exclusion of dwellings from the Fuse Gate flood zone. Council's Technical Services Department have reviewed the modified proposal and have determined that the modified layout is acceptable to address flooding related issues.

The modification will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses. In this regard, future works will be located well away from the Summer Hill Creek riparian zone and the unnamed non-perennial watercourse in the southern section of the site.

Part 7 - Additional Local Provisions

7.1 - Earthworks

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

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

The earthworks proposed in the application are limited to the extent of cutting and filling required for the proposed bitumen sealed access road to the subdivision. Given the limited excavation required to construct the access road, the extent of disruption to the drainage of the site is considered to be minor and will not detrimentally affect adjoining properties or receiving waterways.

The extent of the earthworks is necessary to facilitate the future development of the land for dwellings.

The submitted contamination report indicates that the site has no known contamination (with the exception of an area of asbestos away from proposed building envelopes) and is suitable for residential development. Council staff concur with its findings subject to the imposition of an 'unexpected finds' contamination condition to ensure that in the unlikely event that contamination is found, that it is dealt with appropriately.

The proposed access road is located a significant distance from neighbouring properties and therefore no impact associated with the earthworks is anticipated to neighbouring properties.

As noted in previous sections of this report, it is possible that archaeological remains from the Narrambla homestead could be located within the subject site. Therefore, a condition is recommended to ensure that should site works uncover a potential relic or artefact, works will be halted to enable proper investigation by relevant authorities and the proponent required to seek relevant permits to either destroy or relocate the findings.

The site is in proximity to a waterway: Summer Hill Creek, as such the application was referred to the Department of Planning and Environment-Water [the Department] for comment. The Departments General Terms of Approval includes a condition requiring an application be made to them for any controlled activity on waterfront land which would include the submission of site plans, construction plans, sediment and erosion plans, drainage plans and construction stormwater drainage outlet plans. Subject to condition therefore it is considered that the proposal would have an acceptable impact on the neighbouring waterway.

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.*

No modification to the previously approved stormwater drainage arrangements is proposed. Stormwater would be piped to the neighbouring creek, as per the requirements of Condition 16 of the approved development.

7.5 - Riparian Land and Watercourses

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

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

Additionally, consent may not be granted until Council is satisfied that:

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

The proposed modified lot layout would reduce the number of lots previously approved and the proposed built envelopes would maintain a distance of at least 145m to the watercourse. Furthermore, the previously approved public reserve would be provided which would provide a further buffer between the development and the watercourse. Given the above, it is not considered that the development as modified would have any additional impact on riparian land and watercourses.

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 development as modified proposes the disposal of domestic wastewater onsite rather than the previously approved proposal to link with the Council's pumping station. The applicant has submitted onsite effluent management studies for each individual previously approved lot, which indicate that onsite effluent management would be achievable without any impact on groundwater. Further approval would be required under a Section 68 application to install the onsite effluent management systems. Council's Environmental Health Officer (EHO) has reviewed the onsite effluent management plans and has raised no concerns. No other aspects of the modified proposal would have any additional impact on groundwater.

Clause 7.11 - Essential Services

Clause 7.11 applies and states:

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

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

Council staff are satisfied that it has been demonstrated that individual lot management of sewage is achievable on the development. A relocated access road to serve the development is now proposed. The road access to the lots has been reviewed by the Council's Development Engineer. Following a requested amendment to its location to improve site lines; the dimensions and location of the access road is considered to be appropriate. Proposed Lots 1 and 2 would be accessed directly from Ophir Road, which is considered suitable as well.

All other arrangements in relation to access to essential services would remain unchanged from the original consent.

STATE ENVIRONMENTAL PLANNING POLICIES**STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021****Chapter 4 - Remediation of Land****4.6 - Contamination and Remediation to be Considered in Determining Development Application**

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
- (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

In response to Condition 23 of the original consent, the applicant has provided a contamination investigation report for the site. This report indicates that the site is suitable for residential use as there are no known contaminants of the site, with the exception of the potential for naturally occurring Asbestos in the Northern section of the site. To address the potential for naturally occurring Asbestos, the applicant has submitted a management plan which details measures to reduce ground disturbance and the capping of the access road with bitumen seal. Separate asbestos management plans would be required for each individual dwelling when the time comes. Council's EHO has reviewed the submitted reports and raises no further issues subject to the addition of a condition requiring further investigation if unexpected contamination is found during construction works.

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 site is located on land identified as being bushfire prone and contains a watercourse. The proposal would ordinarily be categorised as Integrated development due the bushfire classification of the land and the proximity of the development to a watercourse and any works within 40m of the watercourse would require Controlled Activity approval under the Water Management Act 2000.

However, as the application relates to a modification, the proposal does not require general terms of approval under Section 100B of the Rural Fires Act 1997. Notwithstanding the above, the proposal was referred to both agencies and formal responses have been received which have been addressed in the report and recommended conditions of consent in the amended Notice of determination.

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

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

- Chapter 6 - Rural Development
- Chapter 13 - Heritage
- Chapter 4A - Flood Affected Land

CHAPTER 6 - RURAL DEVELOPMENT

Section 6.6-1 outlines planning outcomes for rural residential subdivision The relevant planning outcomes are addressed below:

1. *Subdivision layout addresses topography, heritage, water resources and vegetation features.*
2. *Subdivision layout complies with bushfire-planning principles.*
3. *Large lots created in planned estates such as Clifton Grove and Ammerdown are retained to provide for a range of lot sizes.*
4. *A suitable area for buildings and sewage management systems is identified on subdivision plans as a “building envelope”, with such area located for privacy and separation between dwellings on other sites and other rural activities in the locality.*
5. *Lots less than 2ha are:*
 - *capable of containing buildings set back from boundaries an adequate distance to maintain the low-density rural residential character of the locality, as identified in building envelopes;*
 - *suitable for onsite sewage management systems.*
6. *Lots in Zone 1(c) are serviced by an appropriate onsite sewage management system.*
7. *Development does not increase the number of entrances to a main road (land prior to development is deemed to have a single opening onto a main road).*
8. *Driveways accessing a lot have sufficient sight distance at the entrance to a public road.*
9. *Development is constructed to the standard required under the Development and Subdivision Code.*
10. *Boundaries to agricultural land are adequately fenced*

Issues regarding heritage, water resources and vegetation features have been addressed under previous sections of this report. It is considered that the proposed access road and lot layout responds well to the moderate sloped topography of the site. No additional heritage impact would be caused to the setting of the adjacent park subject to archaeological condition and the provision of a buffer zone. No development is proposed within the direct vicinity of the riparian corridor and no additional impact on vegetation features is anticipated as compared to the original consent.

A Bushfire Safety Assessment has been submitted, and is assessed under proceeding sections of this report.

Despite nine of the proposed lots being below 2ha, their median size is still greater than the lot sizes previously approved and all would exceed 1ha. Therefore, large lots would be retained on site, one of which would be 44ha, allowing for the site to retain its rural character.

The submitted subdivision plans indicate building envelopes ranging from 1,750m² to 4,490m². The submitted onsite effluent management studies indicate that each lot would be able to accommodate onsite effluent disposal with a sub-surface irrigation area ranging from 555m² to 663m². The building envelopes proposed are therefore sufficient to accommodate buildings and sewage management systems. The building envelopes would be set back from the lot boundaries by at least 10m, which is considered sufficient to allow for adequate privacy. A condition is required to ensure at least a 20m setback from Banjo Paterson Park to ensure adequate separation.

The modified lot layout involves an entrance to the main road from the proposed access road and a separate entrance to Lots 1 and 2, this is the same number of entrances as was previously approved and is therefore acceptable. Following an amendment to the location of the access road, Council's Development Engineer is satisfied that the proposed access road provides adequate sightlines.

The external fencing around the subject site would be retained. The relevant procedures would ensure compliance with the Development and Subdivision Code.

6.5 General Rural Planning Issues

RURAL FIRE MANAGEMENT AND CONTROL

Where development, including subdivision, is proposed for land identified as being bush fire prone, the development must comply with the provisions of the Planning for Bushfire Protection Guide. Furthermore, part 6.5 states that such developments may need to be referred to the RFS as integrated development.

The subject site is located on land identified as being bushfire prone. However, as the application being considered is a modification, it is not required to be referred to the RFS under Section 100B of the Rural Fires Act 1997. Nevertheless, the RFS were consulted on the application, and their recommendations are included in the attached draft notice of determination. Bush fire impact is assessed below under the 'LIKELY IMPACTS OF THE DEVELOPMENT' section of this report.

Chapter 13 - Heritage

Sections 13.1-13.06 of Chapter 13 - Heritage of the DCP address heritage matters in detail, including heritage objectives, heritage items and heritage conservation areas, heritage consideration for development, development in the vicinity of heritage items, heritage proposals as advertised development, and incentives for heritage conservation.

Heritage matters have previously been addressed in detail under the heading "Clause 5.10 - Heritage Conservation". It is considered that the requirements of the DCP have been adequately addressed.

Chapter 4A - Flood Affected Land

Section 1.2 of this chapter of the DCP sets out the aims of this section of the DCP, which seeks to minimise the potential impact of development on ecological value of waterways and control development so that the potential risk to human life and damage to property caused by floods is reduced.

Issues relating to flooding have been addressed previously in detail under the headings: “Clause 5.21 Flood planning” and “Clause 5.22 Special Flood Considerations” of this report.

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

The proposal does not involve the demolition of a building.

Fire Safety Considerations (clause 62)

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

Buildings to be Upgraded (clause 64)

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

BASIX Commitments (clause 75)

BASIX is not applicable to the proposed development.

THE LIKELY IMPACTS OF THE DEVELOPMENT s4.15(1)(b)**Bush fire prone land**

The identification of bushfire prone lands (BPL Map) in NSW is required under Section 10.3 of the Environment Planning and Assessment Act 1979 (EP&A Act). Section 4.14 of the EP&A Act requires developments to comply with NSW Rural Fire Service, Planning for Bushfire Protection (PBP 2019) if any part of a development site is affected by a bush fire hazard as indicated within the BPL Map.

As it currently stands, the subject site falls within the Vegetation Category 3 zone on the Orange City Bushfire Prone Land Map which triggers development assessment provisions under 4.14 of the EP&A Act and compliance with PBP 2019.

The original application was approved in 1996. At the time of the original approval the site was not located on land considered to be bushfire prone, and therefore planning for bushfire protection was not included in the assessment of the original application. As a result, the previously approved subdivision does not comply with the PBP requirements. For example, the PBP requires dead end access roads to not exceed 200m, and the previously approved access road is a dead-end road that significantly exceeds this length. As the original consent is still valid, the applicant could (as discussed previously) build out the previously approved PBP non-compliant access road and lots without requiring any further consent from Council. This modification application therefore offers an opportunity to increase the bushfire resilience of the proposed subdivision, in accordance with the requirements of the PBP 2019.

Given that this application is for a modification of a previous approval, comments from the Rural Fire Service (RFS) are advisory only. The RFS has provided an advisory letter which recommends a condition requiring adequate fire-fighting access to the subdivision and general advice in regards to providing Asset Protection Zones and adequate water supply. This recommended condition and general advice has been incorporated into conditions included on the attached draft notice of determination. It is the assessment of Council staff that the proposed modified development is able to comply with the condition recommended by the RFS. However, Council staff have modified the condition wording slightly to reflect that a through route for firefighting vehicles would be provided via the internal driveway of Lot 8.

The proposed modified subdivision would be located in a potential grassland hazard area. The PBP states that subdivisions in such areas must be provided with: Asset Protection Zones (APZs), adequate access, adequate provision of and protection of services. The applicant has submitted a Bush Fire Assessment Report, which seeks to address these requirements, and is assessed below:

APZs

The PBP states that APZs should be provided around buildings to provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels at the buildings are below critical limits and prevent direct flame contact.

The submitted Bushfire Assessment Report recommends that APZs be provided to all proposed residential lots, with widths of at least 10m, to be managed as an Inner Protection Area. The proposed APZs would meet the requirements of the PBP and are therefore acceptable and can be secured by condition.

Access

The PBP states that adequate access should be provided to provide safe operational access to structures and water supply for emergency services while residents are seeking to evacuate from an area. Table 5.3b of the PBP states that this intent may be achieved where: firefighting vehicles are provided with safe, all-weather access to structures. Acceptable solutions to this intent are set out in the PBP and comment on how the proposal would comply with these are set out as follows:

1. *Property access roads are two-wheel drive, all-weather roads;*

Comment: The applicant has indicated that future properties would be accessed via an all-weather sealed road, this would need to be secured via condition and would meet the requirements of provision 1.

2. *Perimeter roads are provided for residential subdivisions of three or more allotments;*

Comment: The originally approved subdivision did not include a perimeter road, nor does the proposed modified proposal. In their advice to Council, the RFS do not state that a perimeter road would be required. It is considered that the RFS recommended condition requiring adequate fire fighting vehicle access and provision of the Asset Protection Zones recommended by the submitted Bushfire Assessment Report would provide sufficient firefighting access to satisfy the requirements of the PBP.

3. *Subdivisions of three or more allotments have more than one access in and out of the development;*

Comment: The subdivision would be accessed via a dead-end road. However, Lot 8 would have two accesses: one via an internal driveway leading from the entrance to the proposed subdivision road and the other between Lots 7 and 9. The applicant states that in an emergency this would provide a direct route to link up with the main driveway, thus providing an additional access to the lots for firefighting purposes, and could be secured via condition. The originally approved subdivision included a dead-end road with a much greater length (refer to figure 2) that did not include a through access, and therefore the proposed modification would improve access for firefighting vehicles.

4. *Traffic management devices are constructed to not prohibit access by emergency services vehicles;*

Comment: This can be secured via condition.

5. *Maximum grades for sealed roads do not exceed 15 degrees and an average grade of not more than 10 degrees or other gradient specified by road design standards, whichever is the lesser gradient;*

Comment: Proposed road would not exceed this gradient, and can be ensured via condition.

6. *All roads are through roads;*

Comment: Lot 8 would have two accesses: one via an internal driveway leading from the entrance to the proposed subdivision road and the other between Lots 7 and 9, which would provide a direct route to link up with the main driveway, thus providing an additional access to the lots.

7. *Dead end roads are not recommended, but if unavoidable, are not more than 200m in length, incorporate a minimum 12m outer radius turning circle, and are clearly sign posted as a dead end;*

Comment: A dead-end road is proposed that would exceed 200m in length, however, this would be linked to the driveway to Lot 8, which would provide a circular route through the site. There would be one dead end section, but this would only be 61m in length and would include more than 12m outer radius turning circles. The proposal therefore complies with Provision 7.

8. *Where kerb and guttering is provided on perimeter roads, roll top kerbing should be used to the hazard side of the road;*

Comment: Perimeter road would not be provided, and therefore provision 8 would not apply.

9. *Where access/egress can only be achieved through forest, woodland and heath vegetation, secondary access shall be provided to an alternate point on the existing public road system; and*

Comment: The access would be provided through pasture, and therefore an alternative access onto the public road is not required.

2.2 Development Application DA 19/1995(2) - Lot 4 Ophir Road

10. *One way only public access roads are no less than 3.5m wide and have designated parking bays with hydrants located outside of these areas to ensure accessibility to reticulated water for fire suppression.*

Comment: The access road would be two way and 20 metres wide.

11. *The capacity of perimeter and non-perimeter road surfaces and any bridges/causeways is sufficient to carry fully loaded firefighting vehicles (up to 23 tonnes); bridges/ causeways are to clearly indicate load rating.*

Comment: The applicant has indicated that the proposed road surfaces would have sufficient capacity for vehicles up to 23T and would be ensured by way of condition.

12. *Hydrants are located outside of parking reserves and road carriageways to ensure accessibility to reticulated water for fire suppression;*

Comment: The applicant has indicated that the development would comply with the above, and can be secured via condition.

13. *Hydrants are provided in accordance with the relevant clauses of AS 2419.1:2005 - Fire hydrant installations System design, installation and commissioning; and*

Comment: The applicant has indicated that the development would comply with the above and can be secured via condition.

14. *There is suitable access for a Category 1 fire appliance to within 4m of the static water supply where no reticulated supply is available.*

Comment: The applicant has indicated that the development would comply with the above.

Water supply

1. *Reticulated water is to be provided to the development where available;*

Comment: Static water supply would be provided.

2. *A static water and hydrant supply is provided for non-reticulated developments or where reticulated water supply cannot be guaranteed; and*

Comment: Each lot would be provided with a 20,000 litre water tank.

3. *Static water supplies shall comply with Table 5.3d.*

Comment: A 20,000 litre water tank would meet the requirements for each lot, all of which exceed 10,000sqm.

4. *Fire hydrant, spacing, design and sizing complies with the relevant clauses of Australian Standard AS 2419.1:2005;*

Comment: A condition would ensure fire hydrants would comply with the relevant clauses.

5. *Hydrants are not located within any road carriageway; and*

Comment: A condition would ensure fire hydrants would comply with the relevant clauses.

6. *Reticulated water supply to urban subdivisions uses a ring main system for areas with perimeter roads.*

Comment: Not applicable to proposed development.

7. *Fire hydrant flows and pressures comply with the relevant clauses of AS 2419.1:2005.*

Comment: A condition would ensure fire hydrants would comply with the relevant clauses.

8. *All above-ground water service pipes are metal, including and up to any taps; and*

Comment: The applicant states that the service pipes would comply with these requirements.

9. *Above-ground water storage tanks shall be of concrete or metal.*

Comment: The applicant states that the storage tanks would comply with these requirements.

Electricity services

1. *Where practicable, electrical transmission lines are underground;*

2. *Where overhead, electrical transmission lines are proposed as follows:*

- *lines are installed with short pole spacing of 30m, unless crossing gullies, gorges or riparian areas; and*
- *no part of a tree is closer to a power line than the distance set out in ISSC3 Guideline for Managing Vegetation Near Power Lines.*

Comment: The submitted bushfire assessment report states that the development would comply with the above requirements.

Gas services

1. *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;*
2. *All fixed gas cylinders are kept clear of all flammable materials to a distance of 10m and shielded on the hazard side;*
3. *Connections to and from gas cylinders are metal;*
4. *Polymer-sheathed flexible gas supply lines are not used; and*
5. *Above-ground gas service pipes are metal, including and up to any outlets.*

Comment: The submitted bushfire assessment report states that the development would comply with the above requirements.

Overall Bushfire Assessment conclusion

The above measures can be secured by way of recommended conditions, and are considered to be sufficient to ensure compliance with PBP 2019 and comply with the advice of the RFS.

Traffic

The proposed modification to the approved subdivision would not increase the number of lots over what was previously consented, and there would therefore not be any potential increase in vehicular traffic associated with the proposed development. Furthermore, the provision of 12 residential dwellings is not a significant number and would therefore not have any notable impact on road network capacity.

Following amendments, the proposed intersection from Ophir Road is considered to provide adequate site lines and is deemed appropriate by Council's Development Engineer.

Conditions 14, 15 and 19 of the extant consent would ensure that the development would accord with Council's Development Code in regards to internal roads, accessways and intersections.

Social and Economic Impacts

No change to the social impact of the development proposal as modified is anticipated. The development would provide employment opportunities during construction works.

Construction Impacts

The proposed development may result in short-term impacts typically associated with construction activities, including noise, dust, construction worker parking, and site deliveries.

Given the rural setting and distance from neighbouring properties, and adverse impact is likely to be limited, and they are temporary and limited to the construction phase.

Environmental Impacts

As stated previously, the site does not comprise significant amounts of native vegetation and development would be a sufficient distance from the adjacent water course to avoid any adverse environmental impact.

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

The subject land is considered to be suitable to undertake the proposed modified development proposal due to the following:

- The development is permissible and compliant with the relevant provisions of the LEP.
- The development is considered to be satisfactory in regard to Section 4.15 of the Environmental Planning and Assessment Act 1979.
- The potential additional impacts of the modified development can be managed appropriately through the conditions of consent.
- The development as modified responds to the restrictions placed on the development of the land by the conditions placed on the original consent including no development allowed within the 400m buffer attributed to the Orange Waste Disposal facility and no development allowed within the Fuse gate flood zone.
- The proposed amended lots are considered to be as suitable for onsite effluent disposal as per the onsite effluent management studies.

Therefore the site is considered suitable for the development as modified.

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 of 14 days and at the end of that period nine submissions (including one from the Orange and District Historical Society (ODHS)) were received.

The details of the submissions are outlined below, along with Council's planning assessment and response:

Issue 1: Heritage impact

Several submissions have raised concerns regarding the impact of the proposed subdivision on the setting of Banjo Paterson Memorial Park. Furthermore, submissions have raised concerns that due to the uncertainty around the precise location of the homestead of 'Narrambla' (where Banjo Paterson was born), the proposed modified development may damage archaeological evidence and prevent the potential future discovery of the location of 'Narrambla'. The Orange and District Historical Society have recommended the following measures to reduce this impact:

1. For Lot 2, increase the 10m limit on the building envelope to 50m from the joint boundary fence in an attempt to provide greater protection for possible archaeological evidence of the homestead and its surrounding buildings on Lot 2.
2. Require a strip of land 8-10m wide, centred on the joint boundary between Lots 2 and 3 (below the north-eastern boundary of the park), be set aside to provide contiguous access to the creek, the *raison-d'être* for the mill, and the public reserve already declared. This would improve the locational relevance of the park.
3. We ask that vegetation height limits be a condition of approval on all boundary fences between Lot 2 and the park and the north-eastern boundary between Lot 3 and the park. The exception to this condition is the common boundary between the park and the lots along the requested pathway from the park to the Creek Reserve. Twin lines of vegetation there would direct the attention of park visitors to the pathway and emphasise the ties between the park and the creek.
4. In relation to the height limits along joint boundaries we suggest the limit at the fence lines be less than 2m, increasing to natural heights ie. 60m from the boundary. Obviously, this request applies particularly to Lot 2. The south-eastern joint boundaries between the park and Lots 3 and 12 are of less concern to us in this respect.
5. With reference to Point 1, ODHS requests that a non-invasive archaeological survey be conducted on Lot 2 to search for evidence that 'Narrambla' homestead and its outbuildings may have been built in that area, as has long been suggested. Techniques such as ground penetrating radar and electro-magnetic conductance will be less costly than the standard technique of digging survey trenches which may easily miss artefacts. With both techniques, absence of evidence is not proof that there were no buildings. All it indicates is that evidence was not found.
6. Using ODHS' recently gained expertise and experience with early mapping of the Orange district, we will continue to search for 'Narrambla' homestead by examining maps of the period for any indication of buildings on the park and on Lot 2.

Assessment Response: *It should be emphasised that more lots have previously been approved under an existing consent surrounding Banjo Paterson Memorial Park than are proposed under this modification application, and therefore Council does not have the ability to object to such development when it has previously been approved.*

It is considered that the amount of development and therefore the level of impact on the landscape would be lower than the submitted subdivision plan may suggest. The submitted proposed subdivision plan indicates maximum proposed building envelopes for each lot, but the actual footprint of houses built on each lot would be much smaller than is indicated (and would be subject to separate applications for each dwelling).

For instance, the maximum proposed building envelope for Lot 2 as indicated on the submitted plan is 4490m², whereas the average area of an Australian home is approximately 240m², and therefore the actual area of Lot 2 that would be developed would likely be a fraction of the area of the built envelope indicated on the submitted plan.

Furthermore, included on the draft notice is a condition requiring compliance with the building envelopes indicated on the submitted plans, this would prevent the construction of any buildings between the park and Summer Hill Creek. In addition, included on the draft Notice of Determination is a condition requiring a 20m buffer zone between any built development and the boundary with Banjo Paterson Memorial Park. This is to reduce any potential additional impact to the setting of the park given that it is considered that the modified lot orientation could result in built form closer to the park than was previously approved.

Given that the subdivision was previously approved without any archaeological conditions attached it is not possible for Council to require archaeological investigation conditions as part of the proposed modification to the consent. However, an 'unexpected finds' archaeological condition is considered appropriate to ensure that if an archaeological artifacts are discovered during construction works, that adequate protections are in place.

As the original consent does not include a provision for a public access from the park to the creek, it is not possible to make this a requirement of this proposal to modify this consent.

Vegetation height limits was not a requirement of the original consent, and therefore it is not possible to require such a restriction under this modification application. Furthermore, it is not considered that such a condition would be readily enforceable due to the difficulties involved in measuring vegetation heights in private property.

Issue 2: Traffic Impact on Ophir Road

Concerns have been raised that the proposed development would increase traffic volume on Ophir Road, which in turn would increase road noise.

Assessment response: *Residential lots of have previously been approved on this site, and there would therefore be no increase in traffic generation over what was previously approved at the site. The development as modified results in a reduced number of allotments being proposed within this precinct when compared to the original proposal.*

Issue 3: Proximity to Ophir Road Resource Recovery Centre

The following concerns have been raised in relation to the proposed development:

- Increasing the frequency of garbage collection services, adding more heavy vehicle traffic and associated noise.
- Compounding existing noise pollution, particularly during early morning hours.

Assessment response: *As stated above, residential lots have previously been approved on this site, and it is therefore not considered that a cumulative noise impact would be any greater than was previously approved. Furthermore, noise associated with garbage collection from residential properties is infrequent and would unlikely cause any greater disturbance than is the case as existing in relation to the collection of garbage from existing properties in the area.*

Issue 4: Light Pollution and Loss of Rural Character

Concerns have been raised that the proposed development would cause the following adverse effects:

- Introducing numerous new streetlights, porch lights, and internal house lighting, much of which will be visible from our property at night.
- Disrupting natural darkness.
- Contributing to the suburbanisation of a semi-rural area, counter to the appeal that originally drew many residents here.

Assessment response: *As stated above, residential lots have previously been approved on this site (which is zoned for large lot residential) and it is not considered that the proposed modification would increase light pollution or have a greater impact on rural character than was previously approved. The development as modified would allow up to 12 residential dwellings within this area. The addition of only 12 dwellings would not have a significant impact on light pollution particularly when considered in the existing residential area (Clifton Grove) in which they would form a part.*

The lots proposed are large (at least 1ha) and the largest lot would be 44ha. In addition, the building envelopes proposed provide for a separation distance of at least 20m between dwelling houses. It is therefore considered that the modified proposal would retain the open character of the site and given that the majority of the site area would remain undeveloped, the semi-rural character of the area would be maintained.

Issue 5: Loss of Property Value

Concerns have been raised that the expected increase in noise, traffic, light pollution, and loss of privacy is likely to negatively influence neighbouring properties marketability and resale value.

Assessment response: *Loss of property value is not a matter that can be taken into account when assessing Development applications.*

The issues raised in regard to noise, traffic and light pollution have been addressed above.

The proposed building envelopes would be located a significant distance (at least 260m) from any neighbouring existing dwelling. And accounting for existing vegetation, it is considered highly unlikely that any future dwellings would have any notable adverse privacy impact.

Issue 6: Noise and Disruption During Construction

Concerns that construction works would cause the following:

- High noise levels from heavy machinery, earthworks, and daily vehicle movements.
- Dust, vibration, and potential property damage, especially given the proximity of our home to the construction boundary.
- Loss of amenity and peaceful enjoyment of our home, both indoors and outdoors, for an extended period.

Assessment response: *The proposed development may result in short-term impacts typically associated with construction activities, including noise, dust, construction worker parking, and site deliveries.*

Given the rural setting and distance from neighbouring properties, an adverse impact is likely to be limited, and they are temporary and limited to the construction phase.

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.

INTERNAL REFERRAL COMMENTS

The requirements of the Environmental Health and the Engineering Development Section are included in this report.

SUMMARY

Application has been made to modify development consent DA 19/1995(1) pursuant to Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 [EPAA]. The proposed modification to previously approved DA 19/1995(1) consisting of modifications to: site access, lot layout, size and number of the lots and effluent disposal arrangements is considered to result in a development that would be 'substantial the same' as what was previously approved, in accordance with Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 [EPAA]. This is because the proposed modification directly responds to restrictive conditions placed on the original consent and the character of the development would remain the same as a large lot residential subdivision.

A Section 4.15 assessment of the development indicates that subject to conditions requiring compliance with the proposed building envelopes and the provision of a 20m buffer to Banjo Paterson Memorial Park, the proposed modification to the previously approved subdivision would not result in any additional adverse environmental impacts. The development as modified is therefore considered acceptable.

It is therefore recommended that Council supports the subject proposal.

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

ATTACHMENTS

- 1 Draft Notice of Determination, D25/87840 [📄](#)
- 2 Plans, D25/64998 [📄](#)
- 3 Submissions (redacted), D25/52664 [📄](#)

	<p style="text-align: center;">ORANGE CITY COUNCIL</p> <p style="text-align: center;">Development Application No DA 19/1995(2)</p> <p>D25/32752 Container PR29017</p>
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**NOTICE OF DETERMINATION
OF A DEVELOPMENT APPLICATION
(AS MODIFIED)**

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

Development Application

Applicant Name:	Maxus Group
Applicant Address:	C/- Peter Basha Planning & Development PO Box 1827 ORANGE NSW 2800
Owner's Name:	Maxus Group Pty Ltd
Land to Be Developed:	Lot 4 DP 1274221 - Ophir Road, Orange (previously Lot 1 DP 781111 - Ophir Road, Orange)
Proposed Development:	Rural Residential Subdivision

**Building Code of Australia
building classification:**

Not Applicable

**Determination made under
Section 4.16**

Made On:	5 August 2025
Determination:	CONSENT GRANTED SUBJECT TO CONDITIONS DESCRIBED BELOW:

**Consent to Operate From:
Consent to Lapse On:**

2 April 1996
2 April 2001

Terms of Approval

The reasons for approval:

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

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 19/1995(2)

2

Conditions

The development be carried out in accordance with:

- (a) **Amended Plan numbers: Figure 1 - LOCATION, Figure 2 - APPROVED SUBDIVISION DA 19/95, Figure 3 - PROPOSED MODIFICATION OF DA 19/95, Figure 4 - SITE DETAIL & CONSTRAINTS WEST SIDE OF SUMMER HILL CREEK, Figure 5 - PROPOSED SUBDIVISION FOR WESTERN SIDE OF SUMMER HILL CREEK by Peter Basha REFERENCE: 22080DA DATE: 13.05.2025,**
- (b) **Submitted reports: Naturally occurring asbestos management plan by Envirowest Consulting dated: 6/2/2023 report number: R14687amp, Preliminary contamination investigation by Envirowest Consulting dated: 06/02/2023 Report number: R14687c, Bush Fire Assessment Report by Statewide Bushfire Consulting dated: 14/02/2025 Ref: 24SBC_1162**

as amended in accordance with any conditions of this consent.

- (1) A restriction as to user shall be placed upon the title of each affected lot to prohibit any building development from occurring within the Summer Hill Creek Probable Maximum Flood Area.
- (2) That development may be permitted within the defined concrete arch dam failure area as outlined in the Water Manager's report dated 29 March 1995, subject to:
 - (a) appropriate Saddle Dam alteration being carried out by Council; and
 - (b) adoption and implementation of a Flood Emergency Plan applicable to land downstream of Suma Park Dam.
- (3) That no building development shall be permitted to occur within the Saddle Dam area, as outlined in the Water Manager's report dated the 29th March 1995, (assuming appropriate Saddle Dam alterations have taken place) until such time as the main concrete arch dam has been upgraded to full Probable Maximum Flood standards according to current Dam Safety Committee Guidelines.
- (4) A film plan of subdivision and three (3) copies shall be submitted for the approval of the General Manager.
- (5) That the number of lots permissible on the south-western side of Summer Hill Creek shall not exceed the number of lots that are possible to be achieved in the area outside the open space at a lot size of 2 hectares.
- (6) In view of the significant effect of the Probable Maximum Flood area upon Lot 23, this lot shall be deleted. Notwithstanding this, the area of this lot may be incorporated into other lots provided that adequate area for the erection of a dwelling and associated outbuildings can be satisfactorily provided.
- (7) No development shall occur upon the subject land with 400m of the Orange Garbage Depot site until such time as the garbage disposal activities cease upon the site or until such time that the activities at the Garbage Depot change such that the 400m buffer area is, in Council's opinion, no longer required. Separate application will be required for the development of land within the 400 metre buffer area at that time.
- (8) The land within the 400 metre buffer area shall be densely planted with trees and shrubs that will effectively provide for noise attenuation, litter screening, dust screening and odour attenuation prior to the release of Stage 1. A plan detailing such planting shall be submitted for the approval of the Manager-Planning Approvals.
- (9) No tree upon the subject land shall be removed without the written consent of the Manager-Planning Approvals.
- (10) The existing GI shed upon the proposed Lot 2 shall be removed at the commencement of construction of Stage 3.
- (11) The area of open space adjacent to Summer Hill Creek shall be dedicated as public open space in accordance with Section 94 of the Act and the Orange City Contributions Plan 1993.

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 19/1995(2)

3

- (12) That, in view of the increase in demand for public facilities likely to be caused by this development proceeding, the payment of \$1,277.66 per lot shall be made to Council in accordance with Section 94 of the Act, and Council's Contributions Plan 1993, towards the provision of the following facilities prior to the release of the final plan of subdivision for each stage:

Sportsgrounds	\$464.62 per lot
Distributor Roads	\$619.50 per lot
Childcare Centres	\$38.67 per lot
Neighbourhood Centres	\$154.87 per lot

The contribution shall be indexed at the 1st January each year according to the Australian Bureau of Statistics Consumer Price Index for Sydney, current at that time.

- (13) Any adjustments to existing utility services which are made necessary by this development proceeding, shall be at the full cost of the developer.
- (14) The provisions and requirements of the Orange City Council Subdivision Code shall be applied to this application and all work constructed within the subdivision shall be in accordance with that Code.
- (15) Engineering plans showing details of all proposed work shall be submitted to Council for the approval of the Director - Technical Services.
- (16) Stormwater from the site shall be piped to the existing watercourse where it shall be discharged through a standard headwall with appropriate scour protection.
- (17) All proposed battle-axe lots shall be provided with a gravel driveway a minimum of 3m wide from the public road to the main body of the lot. The construction of the gravel driveway shall be to the satisfaction of the Director - Technical Services.
- (18) All existing dams on the subject land shall be filled and compacted to the satisfaction of the Director - Technical Services. The filling of all dams and low lying areas shall be carried out in accordance with the recommendations contained in a geotechnical report to be obtained from a registered N.A.T.A. Laboratory, which shall be submitted to Council for approval in accordance with Council's Subdivision Code Sec. 2.1.5, as amended 15 August 1991.
- (19) The intersections of Banjo Paterson Way and Proposed Road No. 4 and Ophir Road and Proposed Road No. 1 shall be designed in accordance with Policies, Guidelines and Procedures for Traffic Generating Developments, Part B, Guidelines for the Assessment of the Traffic Impacts of Developments. This will require the construction of slip lanes, acceleration and deceleration lanes in Ophir Road and Banjo Paterson Way. Engineering plans showing details of this required work shall be submitted for the approval of the Director - Technical Services.
- (20) A caveat shall be registered on the Deed of Title of Lots 1, 2, 8, 9 and 10 to deny vehicular access to these lots from Banjo Paterson Way.
- (21) **As amended as part of DA 19/1995(2)**
A caveat shall be registered on the Deed of Title of Lot 8 to deny vehicular access to this lot from Bulgas Road.
- (22) A soil erosion management control plan approved by the Department of Conservation and Land Management (Soil Conservation) is to be submitted for approval by Manager - Corporate Planning, for implementation with the subdivision construction phases.
- (23) To determine whether the subject land is suitable for residential development, a soil contamination study shall be carried out over the whole of the subject land by suitably qualified consultants in accordance with Council's policy.

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 19/1995(2)

4

(24) As amended as part of DA 19/1995(2)

Building envelopes shall be established on Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 to the satisfaction of Manager – Planning Approvals to locate dwellings outside the 400 metre buffer area to the Waste transfer station, outside the fuse gate flood line (as indicated on submitted drawing: Figure 5 – PROPOSED SUBDIVISION FOR WESTERN SIDE OF SUMMER HILL CREEK DATED: 13.05.2025) and outside a 20 metre buffer area to the boundary with Banjo Paterson Memorial Park. Such building envelopes shall be shown on the subdivision plan and a Section 88b Instrument.

- (25) Section 88b Instruments shall be applied to all allotments stating that, prior to the erection of buildings, a geotechnical investigation shall be carried out by a NATA Registered Laboratory in order to classify each allotment in accordance with AS 2870 - Residential Slabs and Footings Code.
- (26) To ensure that the building regulations are observed, a building application shall be submitted conforming to the requirements of the Local Government (Approvals) Regulations, 1993 for all buildings to be erected on the site.
- (27) To ensure that the requirements of the Local Government (Approvals) Regulations are observed, an application shall be submitted for approval of the proposed method of disposal of liquid wastes from the buildings in accordance with the requirements of the Local Government (Approvals) Regulations, 1993 and AS 1546 - Small Septic Tanks.
- (28) To ensure that the building and the waste water disposal area is sited in the most appropriate position, the siting of the buildings on the allotments shall be agreed to by the owner and the building surveyor.
- (29) All of the following conditions shall be at the full cost of the Developer and to the satisfaction of Council.

NOTE: In accordance with Section 64 of the Local Government Act 1993 and Section 27 of the Water Supply Authorities Act 1987 Notice be given that:

- (a) The developer is responsible for the construction of all water works to serve the development at no cost to Council.
- (b) Stage 1 - Connection of 11 lots, east of Summer Hill Creek, from the existing Clifton Grove Water Supply.
- Standard Water Headworks Charge \$1,212 per lot
 - Contribution for water main in Phillip Street (from Jilba Street to Ophir Road) \$1,062 per lot
- (c) Stage 2 - Connection of the remaining 12 lots, east of Summer Hill Creek, to the Clifton Grove Water Supply.
- Standard Water Headworks Charge \$1,212 per lot
 - Contribution for water main in Phillip Street (from Jilba Street to Ophir Road) \$1,062 per lot
 - Upgrading Works (0.646m of additional 100mm diameter water main - The Overflow) - estimate only \$60,000
- (d) **As amended as part of DA 19/1995(2)**
- Stages 3 and 4 - Connection of approximately 12 lots of 1 hectare minimum area, west of Summer Hill Creek.
- Standard Water Headworks Charge \$1,212 per lot
 - Contribution for water main in Phillip Street (from Jilba Street to Ophir Road) \$1,062 per lot
- (e) The upgrading works proposed in Stage 2 will not alleviate the need for a further contribution in Stages 3 and 4. The 45 lot subdivision increases the demand on the entire Clifton Grove water supply system. The entire 45 lots should therefore contribute to any capital improvements required as a result of the subdivision occurring.

Condition (29) continued over the page

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 19/1995(2)

5

(29) (cont)

(f) **Deleted as part of DA 19/1995(2)**

~~That, in view of the increase in demand caused by the development proceeding, the payment of \$15,000 shall be made to Council towards the provision of the effluent drainage line and pump station within Council's Waste Disposal Depot to convey common effluent drainage to the Wastewater Treatment Plant.~~

(g) **Deleted as part of DA 19/1995(2)**

~~A contribution of 50% of the normal Headworks charge of \$1,166 shall be made to Council prior to the release of subdivision plans for that land on the south-western side of Summer Hill Creek towards Sewerage Headworks.~~

(h) The contributions shall be indexed at the 1st January each year according to the Australian Bureau of Statistics Consumer Price Index for Sydney, current at that time.

(i) The water main for the proposed subdivision shall be constructed from the existing water main at the intersection of Bulgas Road and Ophir Road. Connections to the existing water mains in Clifton Grove and Bulgas Road are not available.

(30) **New condition as part of DA 19/1995(2)**

If Aboriginal objects, relics, or other historical items or the like are located during development works, all works in the area of the identified object, relic or item must cease; and the NSW Office of Environment and Heritage (OEH), and representatives from the Orange Local Aboriginal Land Council must be notified. Where required, further archaeological investigation must be undertaken. Development works in the area of the find(s) may recommence if and when outlined by the management strategy developed in consultation with and approved by the OEH.

(31) **New condition as part of DA 19/1995(2)**

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.

(32) **New condition as part of DA 19/1995(2)**

Asset Protection Zone

At the commencement of building works and in perpetuity asset protection zones shall be established on each lot in accordance with the zones identified in the submitted Bush Fire Assessment Report prepared by State Wide Bushfire Consulting (Subdivision-Western Side of Summer Hill Creek) dated 14 February 2025.

Building envelopes shall be maintained as an inner protection area (IPA) as outlined within Appendix 4 of Planning for Bush Fire Protection 2019 and the NSW RFS document Standards for Asset Protection Zones to a distance of:

- o Lot 1: 11m IPA on north-east and eastern sides of proposed Building Envelopes
- o Lots 2-7: 11m IPA on east side of proposed Building Envelopes
- o Lot 8: 11m IPA on east and south sides, and 10m on western side of proposed Building Envelope
- o Lots 9-12: 10m area on the western side of proposed Building Envelopes

(33) **New condition as part of DA 19/1995(2)**

Management of asset protection zones (APZ).

During ongoing use of the site, APZ must be managed in accordance with, Planning for Bushfire Protection 2019 and NSW Rural Service's Standards for Asset Protection Zones.

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 19/1995(2)

6

(34) New condition as part of DA 19/1995(2)

The access serving Lots 1 to 12 located along the western side of Summer Hill Creek must comply with the general requirements of Table 5.3b of Planning for Bush Fire Protection 2019 and the following:

- is a two-way sealed roads with minimum 5.5m carriageway width kerb to kerb;
- parking is provided outside of the carriageway width;
- hydrants are located clear of parking areas;
- unincumbered emergency vehicular access is provided linking the communal access road to the internal driveway serving Lot 8.
- curves of the access road has a minimum inner radius of 6m;
- the road crossfall does not exceed 3 degrees; and
- a minimum vertical clearance of 4m to any overhanging obstructions, including tree branches, is provided.
- the maximum grade road is 15 degrees and average grade of not more than 10 degrees;
- the road crossfall does not exceed 3 degrees;
- traffic management devices are constructed to not prohibit access by emergency services vehicles;
- dead-end parts of the access road incorporate a minimum 12m outer radius turning circle, and are clearly sign posted as a dead end;
- the capacity of road surfaces is sufficient to carry fully loaded firefighting vehicles;
- hydrants are located outside of parking reserves and road carriageways to ensure accessibility to reticulated water for fire suppression; and
- hydrants are provided in accordance with the relevant clauses of AS 2419.1:2005 - Fire hydrant installations System design, installation and commissioning.

(35) New condition as part of DA 19/1995(2)

A right-of-way under Section 88B of the NSW Conveyancing Act is to be registered on the Deed of Title on Lot 8 (As indicated on approved plan titled: Figure 3-Proposed Modification of DA 19/95) to allow for direct emergency vehicular access (between Lots 7 and 9) linking the public subdivision access road to the internal driveway of Lot 8. This right-of-way shall only apply in terms of a bushfire emergency.

Department of Planning and Environment-Water condition

(36) New condition as part of DA 19/1995(2)

Before commencing any proposed controlled activity on waterfront land, an application must be submitted to Department of Planning and Environment-Water, and obtained, for a controlled activity approval under the Water Management Act 2000. The application shall address the Departments requirements set out in its letter dated 16th May 2025 (Annexure A)

Other Approvals

- (1) *Local Government Act 1993* approvals granted under Section 68.
- Nil
- (2) General terms of other approvals integrated as part of this consent.
- Department of Planning and Environment-Water

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 19/1995(2)

7

Right of Appeal

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

Disability Discrimination Act 1992:

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

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

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

Disclaimer - S88B of the Conveyancing Act 1919 - Restrictions on the Use of Land:

The applicant should note that there could be covenants in favour of persons other than Council restricting what may be built or done upon the subject land. The applicant is advised to check the position before commencing any work.

Signed:

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

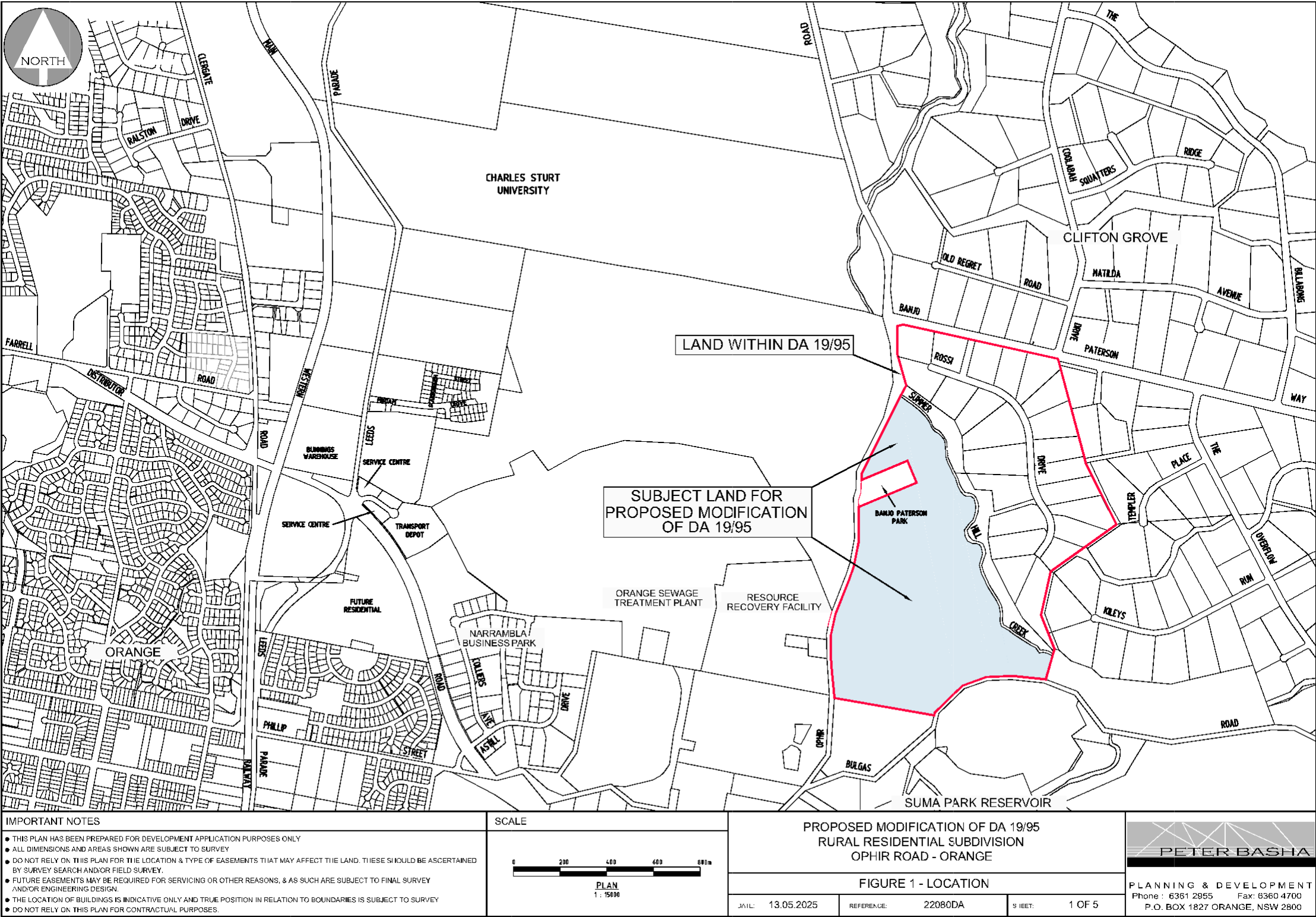
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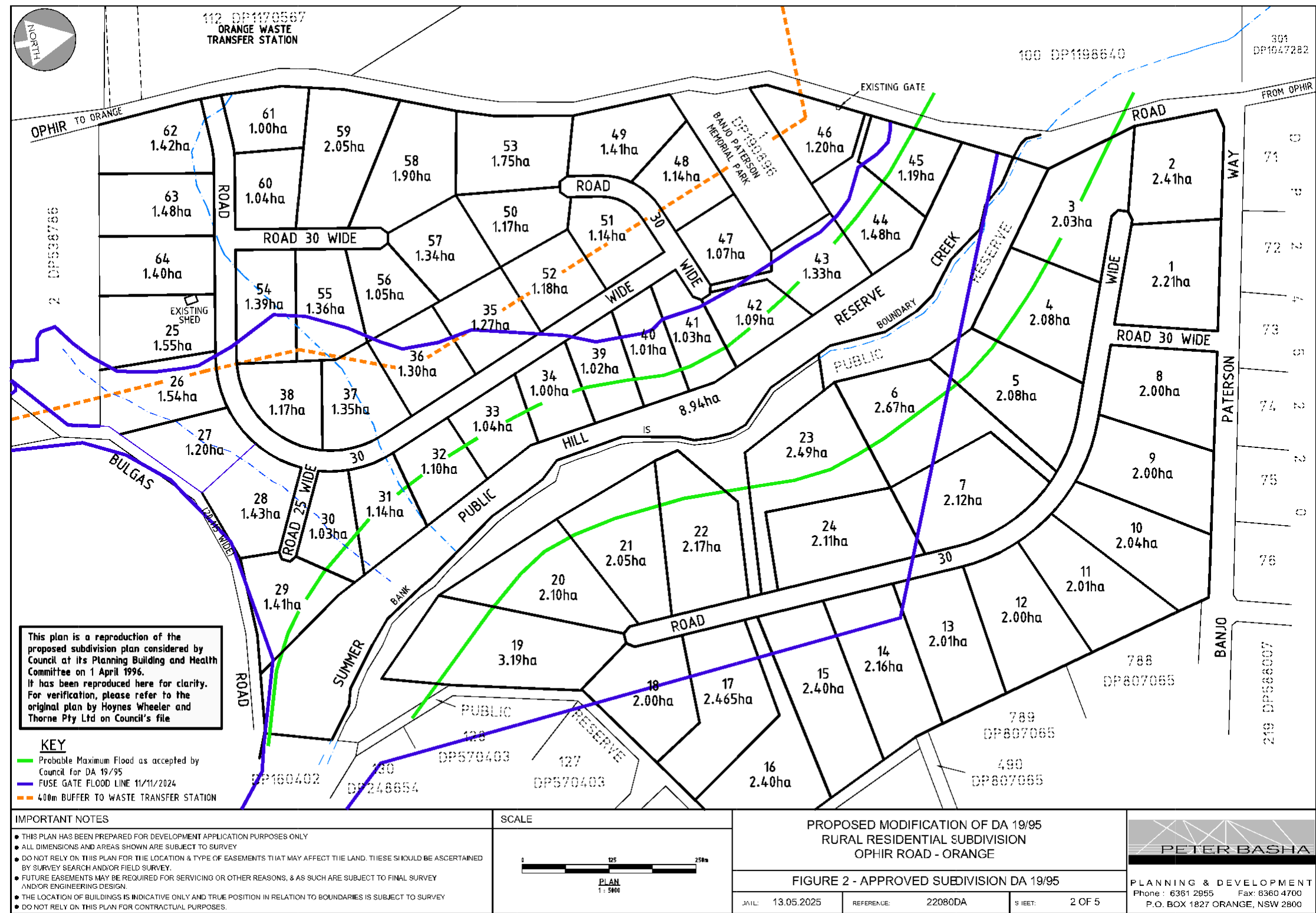
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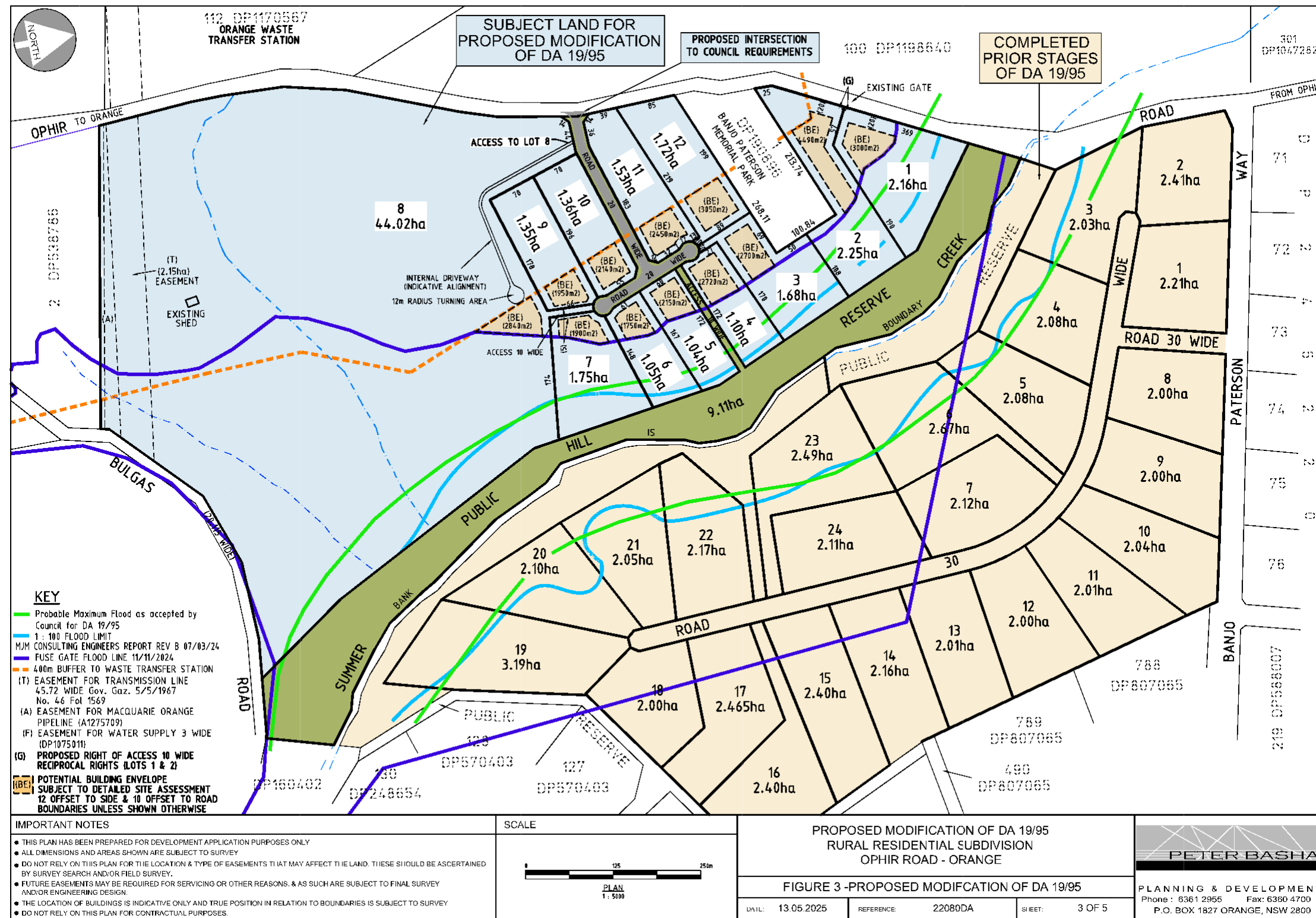
PAUL JOHNSTON - MANAGER DEVELOPMENT ASSESSMENTS

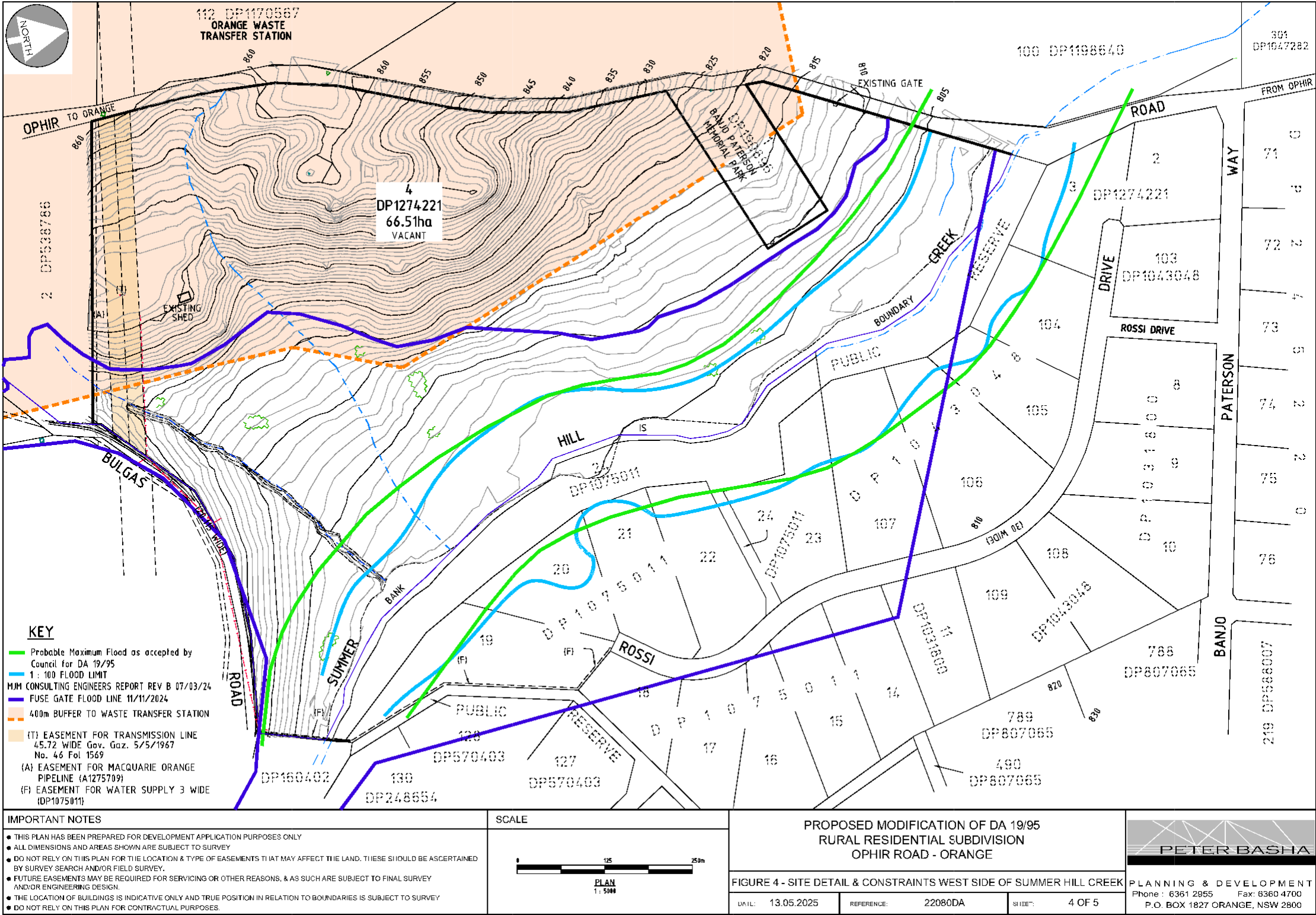
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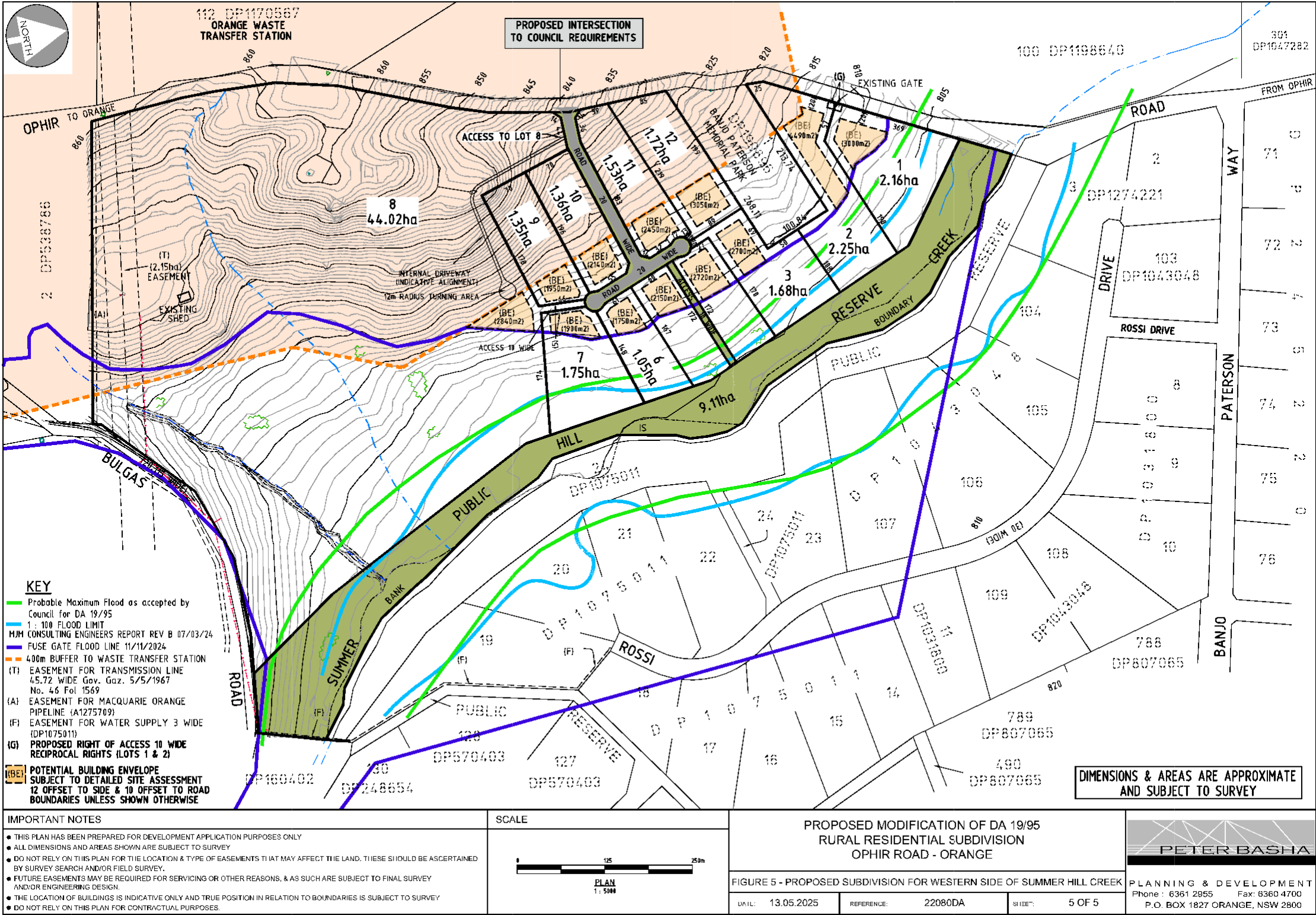
6 August 2025











Submission 1

To: Orange City Council

Re: Objection to Proposed Residential Development – Lot 4 Ophir Road, Orange

Reference number: DA19/1995(2)- PAN-521936

Dear Council Members,

We are writing to formally object to the proposed development of 12 residential dwellings on the land bordering our property along Ophir Road.

Our home at _____, Orange, shares its full western boundary with Ophir Road, which is planned to serve as the sole access route for both construction vehicles and all future residents of this development. Our entire northern boundary shares a border with the proposed development. As such, we are directly and significantly impacted by this proposal. We have attached an annotated map of our property and the proposed development to show the proximity clearly.

We acknowledge and appreciate that the number of dwellings has been reduced from the original concept. However, even at the reduced scale, the proposed development poses serious concerns around traffic safety, environmental disruption, and loss of amenity for directly affected residents—particularly those whose properties adjoin the road.

We are a young family raising our _____ at this address, and we are currently _____. This home is not only our place of residence—it is a place where we are nurturing our children through their earliest years. The peace, safety, and quiet rural character of this area were central to why we chose to build our life here.

As two healthcare professionals _____ we work irregular and often unpredictable shifts, including nights and early mornings. Quiet rest and recovery between shifts is essential to our wellbeing and our ability to provide safe care to our patients. The introduction of construction noise over several years as well as permanently increased traffic, and light pollution will significantly disrupt our quality of life, ability to rest and also enjoy the semi-rural lifestyle that we chose.

We understand that a 24-lot subdivision has already been approved directly adjacent to this proposed 12-lot development. Crucially, Ophir Road will serve as the primary access route for both developments—first for construction vehicles and later for all residential and service traffic.

This means our home, which sits directly bordering Ophir Road as well as the border of the development boundary, will bear the entire brunt of construction activity and long-term traffic volume not just from this current proposal, but also from the already approved 24-lot project.

Estimated Traffic Impact on Ophir Road

Based on standard planning estimates of 7–10 vehicle movements per household per day (as per Transport for NSW):

- The 24 approved dwellings are expected to add **168–240 daily vehicle movements**.
- The additional 12 proposed dwellings would bring a further **84–120 daily vehicle movements**.
- This would result in a total increase of **252–360 additional vehicles per day** on Ophir Road.

According to Transport for NSW's Traffic Volume Viewer, the current average daily traffic volume on Ophir Road is approximately **1,200 vehicles**. The proposed development would increase this by over **20%**.

As a property owner whose residence directly borders a large length of Ophir Road, this projected increase in traffic volume is of significant concern to us. Higher traffic volumes are directly associated with increased road noise. This is especially problematic during early morning or evening hours when ambient noise is otherwise low. Given the proximity of my home to the road, we would be disproportionately impacted by the elevated and more frequent traffic noise, which will reduce the amenity of my property, its monetary value and will adversely affect sleep, wellbeing, and overall quality of life for our family.

Proximity to Ophir Road Resource Recovery Centre

Our property is already affected by noise and traffic associated with the Ophir Road Resource Recovery Centre, located at 261 Ophir Road. This facility operates daily and brings regular heavy vehicle movements and operational noise.

The proposed development would exacerbate these issues by:

- Increasing the frequency of garbage collection services, adding more heavy vehicle traffic and associated noise.
- Compounding existing noise pollution, particularly during early morning hours.
- Elevating the cumulative impact on our household due to the combined effects of waste facility operations and new residential demands.

Light Pollution and Loss of Rural Character

One of the primary reasons we chose to live in this location was its rural-like atmosphere, quiet surroundings, and low levels of artificial light. The proposed development risks fundamentally changing this character by:

- Introducing numerous new streetlights, porch lights, and internal house lighting, much of which will be visible from our property at night.
- Disrupting natural darkness, affecting not only our family's enjoyment of the night sky and outdoor areas, but also local wildlife and habitat.
- Contributing to the suburbanisation of a semi-rural area, counter to the appeal that originally drew many residents here.

Loss of Property Value

We are also concerned about the impact this development will have on the value of our property. Homes that directly border high-density residential developments—especially along busy access roads—are often viewed less favorably by prospective buyers. The expected increase in noise, traffic, light pollution, and loss of privacy is likely to negatively influence our property's marketability and resale value. This is an unfair financial burden on long-standing residents who invested in this area for its space, peace, and rural character.

Noise and Disruption During Construction

We are also deeply concerned about the long-term disruption from the construction phase, which is likely to last 24 months or longer. During this time, we anticipate:

- High noise levels from heavy machinery, earthworks, and daily vehicle movements.
- Dust, vibration, and potential property damage, especially given the proximity of our home to the construction boundary.
- Loss of amenity and peaceful enjoyment of our home, both indoors and outdoors, for an extended period.

Typical construction equipment generates large amounts of noise levels that exceed the EPA's recommended residential noise limits (normally 55 dBA for daytime periods), meaning the noise from construction will be clearly audible and intrusive from within our home and outdoor areas—particularly given the proximity of our property line to the development site and Ophir Road, which will carry most construction traffic.

Construction hours (typically starting at 7am on weekdays) will impact our family's ability to rest, work from home, or use our outdoor space peacefully with children.

Dust, vibration, and heavy vehicle movement add to the overall environmental disruption, affecting both health and amenity.

Given that the entire length of our property runs alongside the main access point (Ophir Road), we will be subject to daily construction traffic noise, including trucks, tradespeople's utes, and machinery deliveries. This is a high level of prolonged environmental noise for a residential property, and it warrants serious consideration and mitigation.

Request for Mitigation Measures

Given the disproportionate and ongoing impact on our property, If this project is approved we respectfully request the following conditions be applied to the developer:

1. Developer-funded acoustic fencing:

- Along the entire boundary of our property fronting Ophir Road, to mitigate increased traffic (from new residents as well as construction vehicles during the development phase) and construction noise.
- Along the shared boundary between our property and the development site, to protect our privacy and reduce construction noise and dust
- This fencing should be of high acoustic performance and appropriate height.

2. Preparation and implementation of a Construction Management Plan, which includes:

- Clear working hour restrictions
- Dust and vibration mitigation
- Noise control measures
- Traffic management protocols

3. Public release of a Traffic Impact Study, including:

- Baseline traffic data
- Peak traffic projections
- Road safety impact assessments
- Community consultation

4. Consideration of lighting plans:

We request a limit on streetlight installation or requirements for low-impact, downward-directed lighting to reduce light spill into neighbouring properties and maintain the rural character of the area.

We accept that some level of development is inevitable. However, the approval of one large subdivision already places significant strain on this area. The addition of another development immediately adjacent, relying on the same regional access road, feels excessive and unsustainable. It is especially concerning for directly affected families like ours, who will be living with constant construction disruption, increased traffic noise, and lasting impacts to our home environment and wellbeing.

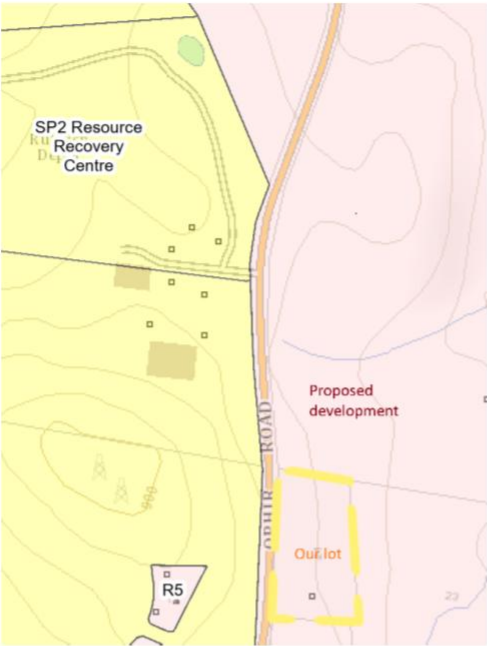
We urge Orange City Council to consider the cumulative and long-lasting impact this development will have on directly affected residents, including our family. While the smaller scale is noted, the proximity, traffic impact, and environmental disruption still represent a significant shift for the local area.

We are not opposed to growth but believe that it must be balanced, respectful of existing residents, and mitigated where impacts are unavoidable. We ask that Council hold the developer accountable for meaningful mitigations and transparent communication throughout the planning and construction process.

Thank you for your time and consideration.

Yours sincerely,

Appendix 1- Location of our property and only access point- Ophir road. relative to proposed development site



Submission 2

From:
Sent: Monday, 14 April 2025 3:26 PM
To: Orange City Council
Subject: Objection to a DA submission 19/1995 (2)

Follow Up Flag: Follow up
Flag Status: Completed

DA 19/1995 (2) Lot 4 Ophir Road. Orange .

Dear Council,
My postal address and contact details are shown below.

I am writing to comment on this DA application which should be REJECTED.
The DA proposes to build houses on each side of the Banjo Paterson Memorial Park.

1. Tourism. The land on which this DA proposes to build 12 houses is of significant tourism value to Orange. I drive past it twice a day and it is rare for there not to be Visitors there admiring the scenery and learning about Banjo Paterson. Council spent a significant amount of money renovating the Banjo Patterson Memorial park, adding in information boards and toilet facilities, to commemorate Australia's most famous poet. Visitors come from all around the country to this special place, enjoying the Banjo Paterson festival and other events . Building houses on every side of the park completely alters the ambience of this park and therefore takes away a tourism asset for Orange.
2. Heritage. This area of Ophir Road is of significant historical value, not just to Orange but to Australia. Council have a responsibility to care for it. Archaeological surveys should be done and this will not be possible if the land has housing built on it. We have already lost the Narrambla Mill. Council should not allow development of any of the land adjacent to the Banjo Peterson Memorial Park .
3. Ambience. The Banjo Paterson memorial park is not only a special site of heritage commemoration, but holds a memorial to a recently deceased person. It hosts weddings, community and commemorative events. Building houses on every side of the park within metres of the boundary is inappropriate and insensitive.
4. The building blocks proposed are squeezed in so that, on the plans, they appear to be bordering the flood zone. However, building houses to within a metre of the flood zone is dangerous . We only have to look at flood events in the Central West in the last 3 years to see how unpredictable water is, and our changing climate makes these flood events more likely.
5. The plans proposed are very unsympathetic to the area. Since the potential building area has been reduced, the developer has attempted to squeeze maximum houses into a minimum space. So these are can not be generous lifestyle blocks to complement the existing Clifton Grove development. Although the plots are a generous size, the building area is very cramped.

Squashing houses into this heritage area is short sighted on heritage, tourism, environmental and safety grounds . The DA should be rejected.

Thank you for your consideration,

Submission 3

The Chief Executive Officer
Orange City Council
P O Box 35
Orange
NSW 2800

14th April 2025

Dear Sir

Reference
DA19/1995 (2)
Lot 2 Ophir Road

I wish to object to this proposal based on safety, heritage and overall building conditions. The section of Ophir Road that this proposal faces is extremely dangerous due to its slow bend and steep climb. Vehicles heading towards Orange from outlying areas have not slowed down and are usually exceeding the speed limit, this is most prevalent when workers are running late for work.

In the years I lived in Clifton Grove I witnessed where at least 5 vehicles had left the road and ran into the property now under consideration for development. If the development is approved, turning lanes will have to be installed and the speed will have to be reduced.

Banjo Paterson Park is a Heritage Item in Orange, the birthplace of one of Australia's leading poets, the foundation of Orange, and there is no consideration of protecting this beautiful area from a raggedy subdivision.

The subdivision seems to be a mish-mash thrown together to get as much out of the site as possible with as little as possible spent.

Proclaimed bush fire area, one narrow entry to the development in case of fire, how do the residents vacate the area in a hurry?

Sewage disposal should be pumped off-site on all lots, every lot slopes to the creek and all moisture will eventually gravitate to the creek and pollute the waterway.

The pipeline from the river to Suma Park Dam, how will it be affected with the road entry being constructed over it?

The lot restrictions should be in place as follows:

All cottages adjacent to Banjo Paterson Park should be sympathetic to the heritage nature of the park.

No multi-story construction.

No sheet metal fencing.

On lots adjacent to the park, there be a restriction that there be no outbuildings, animal or bird structures within 10 metres of the boundary with the park.

That any work carried out within 10 metres of the park boundary be approved before work commences and the Friends of Banjo Paterson Park group be consulted.

I am totally against this development in its present form it will be a lot of units squashed together without thought for the surroundings.

Using the original development of this site as a guide now 10 years on with the standard of usage and mess I feel council should reject the development in the present form

Yours Sincerely

Submission 4

14th April, 2025

The Manager of Planning
Orange City Council
Byng Street,
Orange, 2800

To whom it may concern,

It is with some concern that I noticed an application to develop and sell land lots around the Banjo Paterson Memorial Park precinct. The
wish to lodge an objection.

The have been working with Orange City Council for some 4 years now to preserve and promote the park as a local and tourist destination. The aim is to have the park listed as a State site of historical significance.

The Banjo Paterson Memorial Park is a unique location within Orange's history and development. Not only was it the birthplace of Banjo but the site of many of original events within the history of Orange. The land was acquired by a deal made between Governor Lachlan Macquarie and Simon Lord.

The first horse racing, ploughing completions, the first show was also held on the flood plains near the creek and it was the first industrial area for Orange. There was a blacksmith, cheese factory, brewery, wheelwright as well as the flour mill and wheat fields.

Apart from the Heritage issues we have other concerns:

1. The amount of traffic that drives up and down Ophir Road at speed during the day, particularly in the mornings and afternoons as people from Clifton Grove and further out go to work and home again. The speed limit might need to be extended to ensure the safe turning into the new estate.

2. The lower end of lot 1,2,3,4,5,6, and 7 are in identified flood zones. It doesn't take much rain to soak the lower eastern end of the park, let alone how the second and fourth crossing on Ophir Road goes under water. Also there apparently is a water course under most of the area and that is why John Templar had two wells near the old mill.

3. If there are to be buildings on the lots, is there a restriction on the height of

these buildings and locations within the lots? They could spoil some of the parks vista. Concern also has been expressed about the type of fences around the park borders. Modern fences, mainly colour bond, would enclose the whole park, spoiling the openness and flow of the park.

4. At this point, I must also point out that before the toilets and shelters in the park could be constructed, investigations into the amount of asbestos in the ground had to be tested and reported on. As I understand it there is a naturally occurring asbestos build up in the soil in the prescribed area for development.

5. According to some local oral reports, it is believed that the Templar's homestead may have been located just outside of the parks boundaries on lot 2. This will require further investigation at a later date.

At this point, May I draw your attention to the Conservation Management Report by Professor Ian Jack and some of his comments.

Curtilage

If curtilage is defined as the area within which development needs to be controlled so as to conserve the significance of the place, the curtilage for the Paterson Memorial Park should extend considerably beyond the present boundary of the reserve. In the vicinity of the present Park are some other elements of interest such as views between the Park and Summer Hill Creek to the east and to the twin hills to the south, which were important aspects of the significance of the place and attempts should continue to be made in future to retain these connections. The 1964 aerial photo also indicates a structure in the paddock adjacent to the south of the Park.

Bearing in mind these wider considerations, however, the existing Park as defined by its gazettal by the Department of Lands in 1952 is the area under the direct control of the local Council as Trustees and is therefore the primary curtilage. Any proposals for development in the sensitive areas within the historic sight-lines from the Park should be closely scrutinised by the Orange City Council and the heritage values of the Park should be an important consideration in the assessment of any Development Application.

Obligations and Constraints

In developing a Conservation Policy for Banjo Paterson Park, a major input is the consideration of the heritage values—or cultural significance—of the place. The Assessment of Cultural Significance (section 6.0), particularly as summarised in the Statement of Significance, provides this information, and is based on a thorough assessment of the history and use of the site.

The cultural significance provides several obligations that must be addressed in the Conservation Policy (section 7.0). In summary, these are:

- Most of these obligations relate to the evolving development of the site from the Templer purchase in 1847 to the present;
- Most relate to the overall development of the landscape;
- Some are isolated and relate to individual items (especially hard landscape features, such as the 1947 Paterson Monument); and
- Obligations vary for each component (i.e. site boundaries and overall layout, archaeological remains, remnant garden structure, trees, and structures).

The translation of the Statement of Cultural Significance into tangible opportunities and constraints which include the following:

- Recognition of the high cultural significance as a major determinant in future development of the place;
- Recognition that the remnant garden is the only surviving visible evidence for a dwelling, possibly Narrambla Homestead, near the former mill;
- Acknowledgment that future developments outside the Park, particularly a rural residential subdivision approved in 1993, may jeopardize the cultural significance of the place, and these developments should be scrutinized and where necessary controls put in place to minimise adverse impacts; and
- Acknowledgment that rankings of significance will form the basis for any conservation actions or future developments.

7.5 SETTING, LANDSCAPE and structures: policies and recommendations

Policy 7.5.1

The present boundaries of the Paterson Memorial Park should be maintained. The older, larger boundaries of the Narrambla property may be appropriately interpreted.

Recommendations:

Maintain view lines to Summer Hill Creek from the Park and maintain the clumps of trees, remnant of the former estate, in future and development of the adjacent subdivision. Do not allow any large structures to be constructed between the Park and Summer Hill Creek. It may be appropriate to indicate, through fencing or the use of boundary posts, the former boundaries of the outer paddock and of the larger property.

Regards

Submission 5

From:
Sent: Wednesday, 16 April 2025 12:15 PM
To: Orange City Council
Subject: DA19/1995(2) LOT 4 Ophir Rd

Dear Council,

We are residents of Clifton Grove residing at , and we would like to make an objection to the development planned for Lot 4 Ophir Rd Orange DA 19/1995 on two grounds. The first is that Banjo Paterson Park which will be surrounded by this development has significant historic value not just for our region but for Australians in general. As a revered poet's birthplace Orange council has promoted this site in which the park features events such as poetry readings and even has a week of events dedicated to AB Paterson.

As a resident I see how often this park is utilised by the public and tourists who seek it out because of its location in relation to Paterson's birthplace and for the tributes the council itself have installed in the park. Council has actively developed and promoted this park as a historical attraction. The present plan will disrupt the charm and appeal of the current location ruining a valued historical site, replacing a rural vista with backyards and fences. Once the park is surrounded by houses noise levels for poetry readings will not be able to be controlled and the visual appeal of the park will be lost.

The second is that Clifton Grove is one of the first planned residential estates in NSW of 2 to 5 hectare residential lots. I note that the address of the DA is Orange but the character of Clifton Grove begins as you cross the roundabout on the Northern distributor. The plan for 12 lots although on large lots only two are 2 hectares or over, in order to keep the spirit and feel of the original plan for Clifton Grove which has been in place since 1970's, if this plan must go ahead it should have the same requirements as the rest of Clifton Grove. Clifton Grove is a unique and historic part of the Orange community. Its character should not be ruined by encroaching suburban sprawl which is not bound by the same regulations as the rest of the suburb.

Thank you for your consideration,

Submission 6

From:
Sent: Monday, 21 April 2025 6:44 PM
To: Orange City Council
Subject: Letter of Objection - DA 19/1995 (2) Lot 4 Ophir Road, Orange
NSW 2800

council@orange.nsw.gov.au

21st April 2025

Monday

DA 19/1995 (2) Lot 4 Ophir Road, Orange

To Orange City Council and Councillors,

I am writing to object to DA19/1995 (2) Lot 4 Ophir Road, Orange; for which an extension for objection has been granted until 22nd April 2025.

The development of 12 houses takes over the slope uphill and down hill of the small Banjo Paterson Park commemorating the birthplace of Banjo Paterson. The Banjo Paterson Park and surrounds is a site of great historical and cultural significance to Orange and the nation. Visitors come from all over Australia to enjoy the site and take in the open hills and beautiful view in such a peaceful place. To build any homes along Ophir Road on that stretch of road will destroy the ambience and reverence associated with Banjo Paterson, his memory and the many cultural festivities and annual local Festival surrounding his life. The land would be best dedicated to honouring Banjo Paterson and his legacy as a national treasure, for future generations.

The city of Orange has invested so much in attracting visitors to the Banjo Paterson Festival and for commemorating the memory of A B Paterson, developing a block of homes on 3 sides of the hillside either side of the park, is to make a mockery of honouring this great poet, journalist, solicitor, war correspondent and soldier. Why not acquire the land for enlarging this significant cultural precinct into a substantial park and gardens? It will be enjoyed for generations to come.

The plans before council are unsympathetic to the current 5-acre housing developments down the valley. Furthermore, the traffic into Orange on this busy road will be greatly affected and cause congestion along the 80km zone, impeding the already substantial traffic flow.

The development will detract from the heritage, environmental and cultural integrity of Orange and of our nation.
Please consider rejecting development DA19/1995 (2) Lot 4, Ophir Road, Orange.

Banjo Paterson Park and surrounds is a site of great significance and should be preserved for everyone to enjoy in perpetuity.

Thank you for your consideration,

Submission 7

From:
Sent: Monday, 21 April 2025 11:09 PM
To: Orange City Council
Subject: Submission to object to DA 19/1995 (2) Lot 4 Ophir road

I'm writing to object to the DA submission shown above. My details are shown at the bottom of this email.

I ask the Planning Committee to make a site visit to the Banjo Paterson Memorial Park to fully appreciate how much the proposed development will affect the area.

There are some glaring inaccuracies in the Review of Environmental factors included in the DA, and a site visit would allow the planning committee to see just how flawed, and out of date the application is. The development proposes 12 houses, which due to the flood zone on one side and the Waste/recycling centre exclusion zone on the other, would have to be built on a narrow strip of land, bordering the Banjo Paterson Memorial Park. While the gardens of these potential houses would stretch to the exclusion zone and the flood zone, the houses themselves would have to be built close adjacent to the park, surrounding it on 3 sides. This is completely inappropriate for such an important heritage site.

Listed below are some of the inaccurate statements in the Review of Environmental factors included in the DA.

1. "Public Interest" . The review states that the development is of "minor interest to the wider public due to the relatively localised nature of potential impacts". This statement is wildly inaccurate. The development is of interest not only to the residents of Orange but the rest of Australia! Its proposed to be built on the site of birthplace of Australia's most famous poet. Council has a responsibility for this piece of national heritage. Property developers should not be allowed to override national interest.
2. The D.A Review of Environmental factors claims " the proposal will not adversely affect the value of heritage, landscape and scenic features of the city". Wrong. It will affect the views from this beautiful park which Council has spent so much money upgrading. Visitors come from all over the country to see the historic site and to attend the Banjo Paterson events which are held there. Building houses all around the perimeter of the park fundamentally alters value of heritage, landscape and scenery.
3. The D.A Review of Environmental factors claims that the "proposed modification would not have adverse amenity impacts on neighbours" . Wrong. This beautiful area is used for events, weddings, celebrations and includes a commemorative space for a recently

deceased person . Building houses around the park perimeter spoils the views and ambience for everyone.

4. The D.A Review of Environmental factors claims that the development " does not propose changes which would cause increased impacts on the public domain" . You have to ask what planet the developers are on if they do not think that building 12 large houses right along the border of an important heritage, tourism and cultural space does not impact significantly onto the public domain .

When limited permission was granted 30 years ago, there was not the same appreciation of heritage, and Orange was not the tourism destination it is now. Reducing the number of houses applied for from 40 to 28 to 12 still does not make the proposed development an appropriate one. This site has national heritage and historic/archaeological significance and is a tourism asset for Orange. The DA should be rejected.

Submission 8

1

This page of the submission should be presented on letterhead

**Modification of Development Consent
DA19/95920 Rural Residential Subdivision
Ophir Road, Orange
Ref: PAN-521936**

Submission from
Prepared on behalf of the by , member[©]

did not learn of the above Development Application (DA) until the late afternoon of the Friday before submissions closed. Council's Planning and Development staff allowed us an extension of time for which we are most grateful. This response has been prepared at the direction, and with the assistance of, Committee particularly

Opening remarks

Our submission is in relation to the impact of the DA on the Banjo Paterson Memorial Park which is surrounded by the subject land.

In the perception of the wider community, the purpose of the park is to mark and commemorate the birthplace of Andrew Barton 'Banjo' Paterson, among the finest and greatest of Australian-born poets and writers. He was born in the homestead of the property 'Narrambla' on 17th February, 1864 (Jack, 2004, p.20).

Council commissioned Professor Ian Jack in 2004 to prepare a Conservation Management Plan for the park. The plan as submitted is of Jack's usual very thorough and considered nature. The report is central to an understanding of the heritage implications of Maxus Ltd's DA and the society suggests it be carefully studied by assessing staff.

Three conclusions can be drawn from the report:

Banjo Paterson WAS born in the homestead of 'Narrambla'

The exact site of the homestead is open to conjecture, it may or may not lie within the bounds of the park

The history of the flour mill built by John Arthur Templer¹ and opened on the 18th December, 1848, is as stated (p.14).

Despite the third point there is a consistent claim that there was an earlier horse-worked flour mill on the land when it was owned by Simeon Lord who sold the estate to Templer. It is also at odds with Jack's statement that it was highly unlikely there was any development on the property before it was purchased by Templer. In fact, Jack (p.15) dismisses this as

¹ Various spelled as TemplAR or TemplER in contemporary references.

‘certainly mistaken’. But it still has relevance to the site of the homestead as mentioned below.

The park and the homestead

By the side of Ophir Road, at the top of the park, a monument proclaims “his birthplace is 8 chains NE of” here. That places the site of the event in the middle of the Park, below the ruins of Templer’s flour mill. The second page (un-numbered) of Jack’s report presents a map showing two wells and ruins (number 5), identified as a possible house (note the question mark in the key beneath the map), exactly 8 chains (160 yards, 146 metres) from the Monument. This measurement was scaled from the stated scale on that map and from others. However, the source of the 8 chains figure is unknown. It may have been so-called common knowledge, by direct measurement from the monument to the pile of rubble genuinely believed to be the homestead or derived from an earlier-published source.

Over the years since the park was established there has been ongoing commentary that the homestead was not within the bounds of the park but on the grazing paddock to the left, i.e. north, which would place the homestead somewhere on the proposed Lot 2 of the subdivision. At least one other submission we are aware of has made the same comment.

When the property was offered for sale, it was described in the advertisement as having eight rooms, cellarage and numerous ancillary outbuildings which reads as quite a large structure. Two days ago, the author went out to the park to familiarise himself with its current state and was impressed with the presentation of the park by the Trustee, Orange City Council.

From the map mentioned above it was easy to identify the two wells shown and the ruins of the possible homestead. It was easy to identify verandas at presumably the front (facing the creek and the obvious remains of garden plantings) of the structure and on at least part of either side. To the amateur eye the remains were nowhere big enough to be the eight-room house described in ‘for sale’ notices around June 1877, which reinforced our view that the homestead was not within the park and more likely on the gently sloping ground of proposed Lot 2.

If not the homestead but still a dwelling, who else could have occupied it? Jack states (p.15) that engaged a ‘First-rate Miller’ one William Trappitt. Was it he who occupied the house? Accommodation would normally be expected to come with such a position. Trappitt later went on to build his own flour mill in Orange.

The homestead – A definitive answer?

The advertising of this DA has led to intense searching in the ODHS archives. This has just brought to light documented evidence which makes it look more likely than not that the ‘Narrambla’ homestead was indeed within the park at the site marked ‘house?’ on the frontispiece map in Jack’s report. Further research and corroboration are required before the definitive answer can be given. Council will be advised of the outcome.

Options for addressing the heritage threats

It is our position that the Maxus Group's proposed developments as amended poses a threat in the alienation of the historical, cultural and locational contexts of the park (as discussed above) where:

historical = the industrial history of a near-self-supporting agrarian community centred around an early industrial enterprise (flour milling) contributing to the growth and development of Orange;

cultural = potential loss of the actual birthplace of one of Australia's most famous and greatest literary talents;

locational = the overall rural setting of the park by a permanent creek for purely practical purposes, water.

Currently, the park can only be considered as part of the property on which Paterson was born. That event occurred in the homestead of 'Narrambla' which may or may not have stood within the bounds of the park.

To counter these threats we proffer the following **options**:

1. In Lot 2, increase the 10 metre limit on the building envelope to 50m from the joint boundary fence in an attempt to provide greater protection for possible archaeological evidence of the homestead and its surrounding buildings on Lot 2.
2. Require a strip of land 8-10 metres wide, centred on the joint boundary between Lots 2 and 3 (below the north-eastern boundary of the park), be set aside to provide contiguous access to the creek, the *raison-d'être* for the mill, and the public reserve already declared. This would improve the locational relevance of the park.
3. A complementary way of preserving locational relevance is through preserving and enhancing existing sightlines from the park, especially to the east right round to the north. Even though they will be living on large, semi-rural blocks, modern humans value their privacy, especially when next to a public park. A standard means of achieving privacy is through vegetative screening along fence lines. Because of this we ask that vegetation height limits be a condition of approval on all boundary fences between Lot 2 and the park and the north-eastern boundary between Lot 3 and the park. The exception to this condition is the common boundary between the park and the lots along the requested pathway from the park to the Creek Reserve. Twin lines of vegetation there would direct the attention of park visitors to the pathway and emphasise the ties between the park and the creek.
4. In relation to the height limits along joint boundaries we suggest the limit at the fence lines be less than 2 metres, increasing to natural heights say 60m from the boundary. Obviously, this request applies particularly to Lot 2. The south-eastern joint boundaries between the park and Lots 3 and 12 are of less concern to us in this respect
5. With reference to point 1, ODHS requests that a non-invasive archaeological survey be conducted on Lot 2 to search for evidence that 'Narrambla' homestead

4

and its outbuildings may have been built in that area, as has long been suggested. Techniques such as ground penetrating radar and electro-magnetic conductance will be less costly than the standard technique of digging survey trenches which may easily miss artefacts. With both techniques, absence of evidence is not proof that there were no buildings. All it indicates is that evidence was not found.

6. Using ODHS' recently gained expertise and experience with early mapping of the Orange district, we will continue to search for 'Narrambla' homestead by examining maps of the period for any indication of buildings on the park and on Lot 2.

Summary

This development application by Maxus Ltd. to modify an earlier DA in line with Councils' earlier conditions of consent pose threats to the historical, cultural and locational contexts of the Banjo Paterson Memorial Park. has summarised the significant heritage values of the park, the possible impacts the proposed development could have on those values and outlined ways in which these impacts could be avoided or minimised.

Basically, the question revolves around the location of the 'Narrambla' homestead at the time of the birth of Banjo Paterson (on 17th February, 1864) in the homestead. It is a question yet to be resolved.

21 April, 2025

Submission 9

Banjo Paterson park subdivision –

DA1995-2

For the greater part of my life in Orange and district my husband and I moved to Molong approximately three years ago to live. My life has always been associated closely with history from Colonial days involving both Orange and Molong.

Much has been involved with various historical groups and this includes Banjo Paterson Park. I have not heard of these plans before reading before seeing these and must say I'm extremely Surprised and taken back by the sheer closeness of the described blocks of land bordering on the park.

Just having a quick look I am shocked firstly as the plan does not Show any empathy, sensitivity or apparent consideration to the Potential owners. Could easily become a bit of a ghetto. I feel that I can speak freely as I have spent much time involved With the park and keeping its history. In fact I was the person at that time as Secretary of Orange Historical Society, who started the first Banjo Paterson Festival in the 1990's..

There is so much history associated here I'm shocked that Orange City Council has gone this far and hurrying it through now doubt t someone's or something's benefit. If some of previous Councillors Such as Reg Kidd and those so proud of our heritage and especially in that area this would not be getting raced through for such quick approval.

Banjo Paterson Park is a special place that has its own meaning In our heritage. It's there for generations to come and I can't see it remaining with the eloquence and Australiana othat this unique little area offers.
Sincerely,

13th April 2025

2.3 DEVELOPMENT APPLICATION DA 149/2007(2) - 1040 PINNACLE ROAD

RECORD NUMBER: 2025/1134

AUTHOR: Ben Hicks, Senior Planner

EXECUTIVE SUMMARY

Application lodged	6 January 2025
Applicant/s	Mr G Perry and Mrs R Perry
Owner/s	Mrs R Perry
Land description	Lot 101 DP1140615 - 1040 Pinnacle Road, Canobolas
Proposed land use	Subdivision (two lot rural)
Value of proposed development	Not applicable

The application seeks consent to modify development application DA 149/2007(1), originally granted for a two lot rural subdivision on land formerly identified as Lot 2 DP 500527, Lot 3 DP 554448 and Lot 1 DP 1042613, known as 24 Stairs Road and 139 Wallace Lane, Orange. The subject lands have historically operated as cherry and apple orchards.

The subdivision was initially approved under the former Orange Local Environmental Plan 2000 (LEP 2000). A Property Management Plan (PMP) was specifically developed for Lot 101 to demonstrate its capacity to support a viable agricultural enterprise and to justify the future establishment of a dwelling. Approval for a dwelling is contingent upon the expansion of orchard plantings and demonstration of ongoing agricultural viability. No application for a dwelling has been lodged to date.

The applicant has identified that the original PMP did not accurately document the orchard plantings established in the western portion of Lot 101, both before and after the grant of consent for the subdivision. Although the orchard use itself was permissible without development consent under the applicable planning controls, the applicant seeks to clarify the documentation to better reflect actual onsite conditions at the time. This amendment has partly arisen due to ongoing disputes raised by an adjoining neighbour regarding land management practices.

Additionally, the applicant seeks to update the PMP to reflect recent changes in orchard planting arrangements within Lot 101. Specifically, the orchard has shifted from older cherry varieties planted at wider spacing to newer varieties arranged in a more compact planting configuration. Although this change has reduced the total orchard area from approximately 10ha to around 6.5ha, the applicant has provided detailed production figures and business case comparisons that demonstrate that the property continues to operate well above the original productivity benchmarks established in the 2006 application, with projected yields per hectare far exceeding those from the previous planting model.

The application also seeks to adjust the location of the approved dwelling envelope within Lot 101.

The proposal was publicly notified in accordance with Schedule 1 of the Environmental Planning and Assessment Act 1979 for a period of 14 days. Upon completion of the notification period one submission was received. Additionally, a supplementary submission was received from the same party outside the formal exhibition period. The submissions raise a range of concerns primarily related to impacts associated with ongoing agricultural operations, including spraying, machinery use, seasonal noise and visual impacts.

2.3 Development Application DA 149/2007(2) - 1040 Pinnacle Road

These issues are characteristic of established agricultural activity in the locality and are to be reasonably expected by those residing in rural areas. Whilst these issues remain important to the submitter and may require further address through alternate legislation they are not considered to be issues that are of relevance to the determination of this modification application that relates to subdivision only under the Environmental Planning and Assessment Act 1979.

The original application was integrated development under the Rural Fires Act 1997. In accordance with Clause 109 of the Environmental Planning and Assessment Regulation 2021, notification of the proposed modification was provided to the NSW Rural Fire Service. Additionally, as the initial Property Management Plan was endorsed by the Department of Primary Industries, that agency was also invited to comment on the proposed modification. All comments and advice received have been considered in the assessment of this application.

The application is made pursuant to Section 4.55(2) of the Environmental Planning & Assessment Act, 1979.

The application has been assessed in accordance with the relevant planning instruments. Consideration has been given to the proposed amendments to the Property Management Plan, the adjustment to the dwelling envelope, submissions received during public notification and the advice provided by government agencies.

Based on the information provided, inspection of the site and the assessment contained within this report, it is considered that the proposed modification does not give rise to any significant adverse impacts and is consistent with the intent of the original approval. All relevant matters for consideration have been addressed.

It is therefore recommended that the application to modify development application DA 149/2007(1) be approved, subject to the amended conditions outlined in this report.



Figure 1 - locality plan

DECISION FRAMEWORK

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

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

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

DIRECTOR'S COMMENT

The application seeks consent to modify development application DA 149/2007(1), originally granted for a two-lot rural subdivision. The subject lands have historically operated as cherry and apple orchards. The subdivision was appropriate at the time, being approved under an old Local Environmental Plan 2000 (LEP 2000).

Specifically, the application seeks to:

- (1) Amend the Property Management Plan (PMP) to more accurately reflect orchard plantings.
- (2) Update the PMP to reflect changes in orchard planting arrangements due to technological advancements in horticulture that provide for newer cherry varieties planted in a more compact configuration.
- (3) Provide updated production details confirming the continued productive agricultural use of the land to support the reduced orchard areas.
- (4) Adjust the location of the approved dwelling envelope within Lot 101.

It is submitted that the PMP that was associated with the original subdivision had errors in it and is now out of date in terms of modern farming practices. The PMP issues in practical terms do not really change things, as back when this subdivision was approved, the orchard use itself were at the time of approval.

This orchard has a neighbour in very close proximity to the orchard operations. There are ongoing landuse conflicts between the neighbour and the orchard. This amendment has partly arisen due to ongoing disputes raised by an adjoining neighbour regarding land management practices. However, during assessment of this application, staff have concluded that the context of these complaints is beyond the scope of this existing subdivision and Council does not really have an ability through this DA to manage those ongoing complaints.

The complaints from the neighbours are both numerous and significant to both the neighbour and the orchard operations. As is often the case with neighbourhood disputes, they cross over a number of areas, legislation, and jurisdictions. I am keen for the applicants, the neighbours and Council planning staff to continue to meet and negotiate practical solutions that will protect farming operations without adverse impacts on neighbours. However, again, these matters are beyond what we can consider in this modification. The recommendation of Approval by staff is supported.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan Strategy “7.3 Plan for growth and development that balances liveability with valuing the local environment”.

FINANCIAL IMPLICATIONS

Nil

POLICY AND GOVERNANCE IMPLICATIONS

Nil

RECOMMENDATION

That Council consents to development application DA 149/2007(2) for *Subdivision (two lot rural)* at Lot 101 DP1140615 - 1040 Pinnacle Road Canobolas 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

The proposal involves a modification to development application DA 149/2007(1) for a two lot rural subdivision at Lot 101 DP 1140615, 1040 Pinnacle Road, Canobolas. Specifically, the application seeks to:

- (1) Amend the Property Management Plan (PMP) to more accurately document the extent of orchard plantings within Lot 101, particularly in the western portion of the allotment.
- (2) Update the PMP to reflect changes in orchard planting arrangements, including a transition from older, widely spaced cherry varieties to newer varieties planted in a more compact configuration;
- (3) Provide updated production details confirming the continued productive agricultural use of the land to support the reduced orchard areas.
- (4) Adjust the location of the approved dwelling envelope within Lot 101.

In relation to the identified drafting error, this is depicted as follows and is further supported by aerial imagery. The imagery supports the presence of orchard activities in this location at the relevant time and provides supplementary evidence in relation to the identified drafting error.

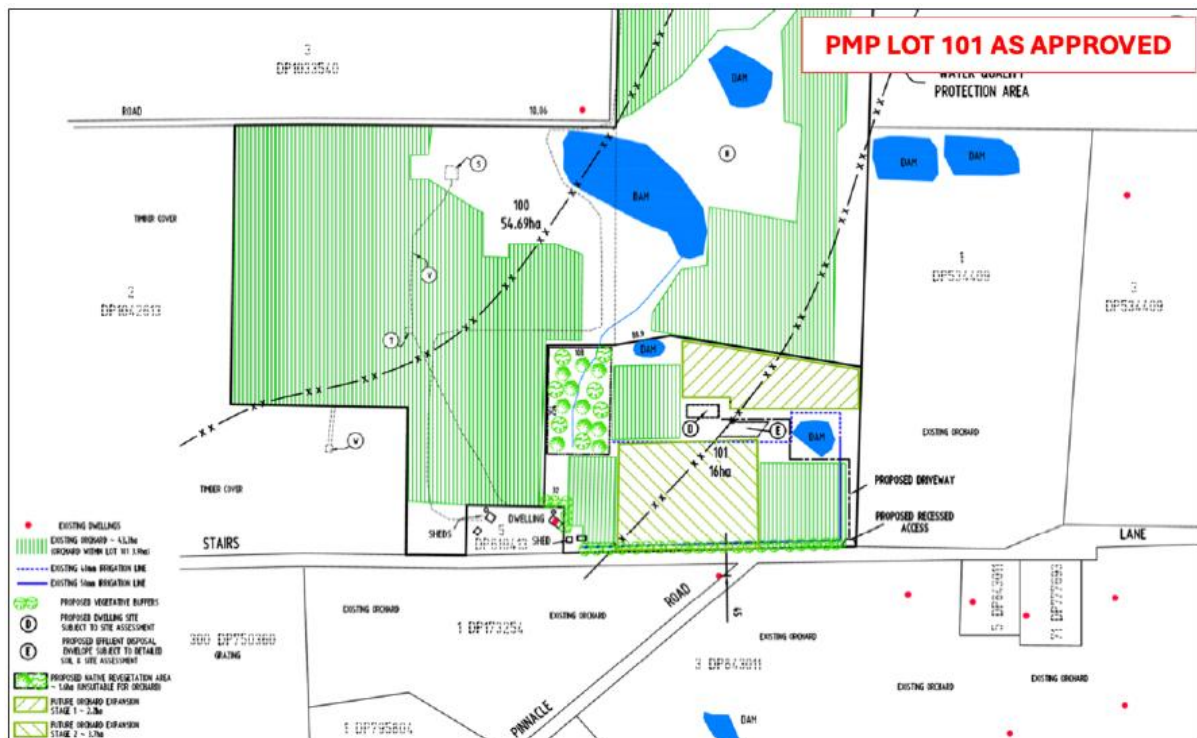


Figure 2 - PMP as approved

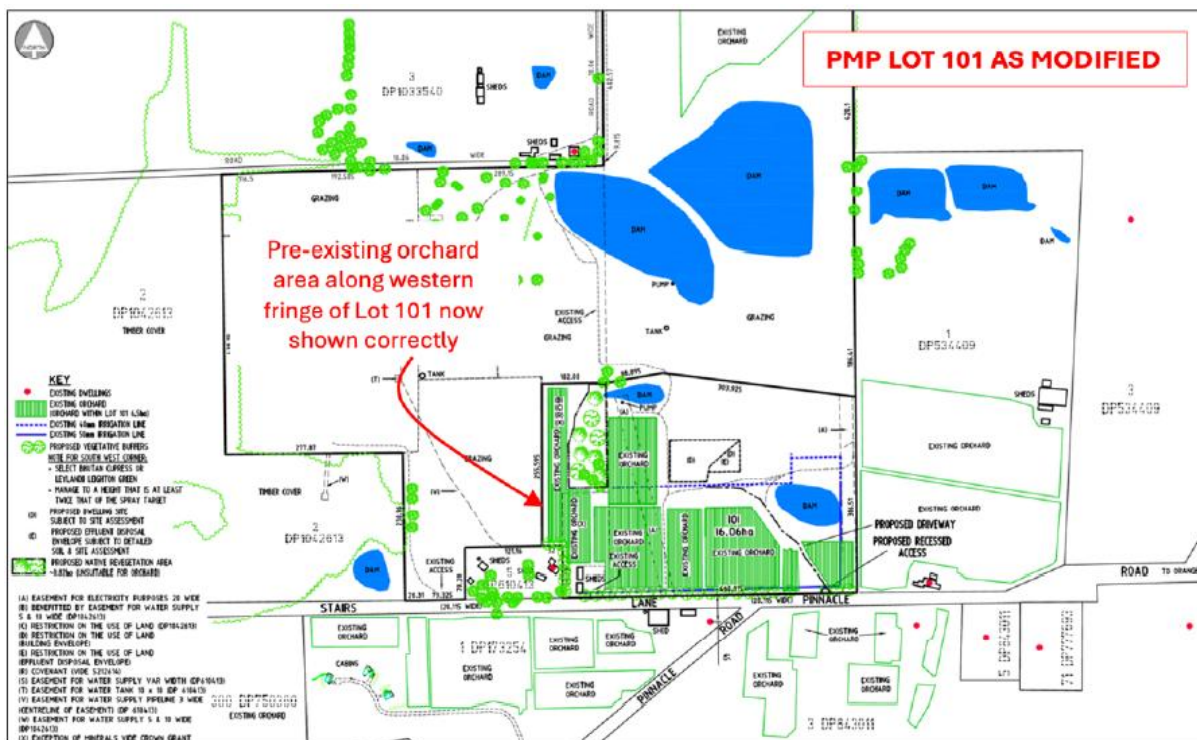


Figure 3 - PMP as modified



Figure 4 - Google Earth aerial imagery of the subject lands (September 2006) illustrating the extent of established orchard plantings within the eastern side of Lot 100, which now forms the western side of Lot 101



Figure 5 - Council's aerial imagery of the subject property (2007) illustrating established orchard infrastructure within the relevant area

The increase in the size of the dwelling envelope is minor. A comparison between the currently registered envelope (shown in red) and the proposed adjusted envelope (shown in black) is depicted below.

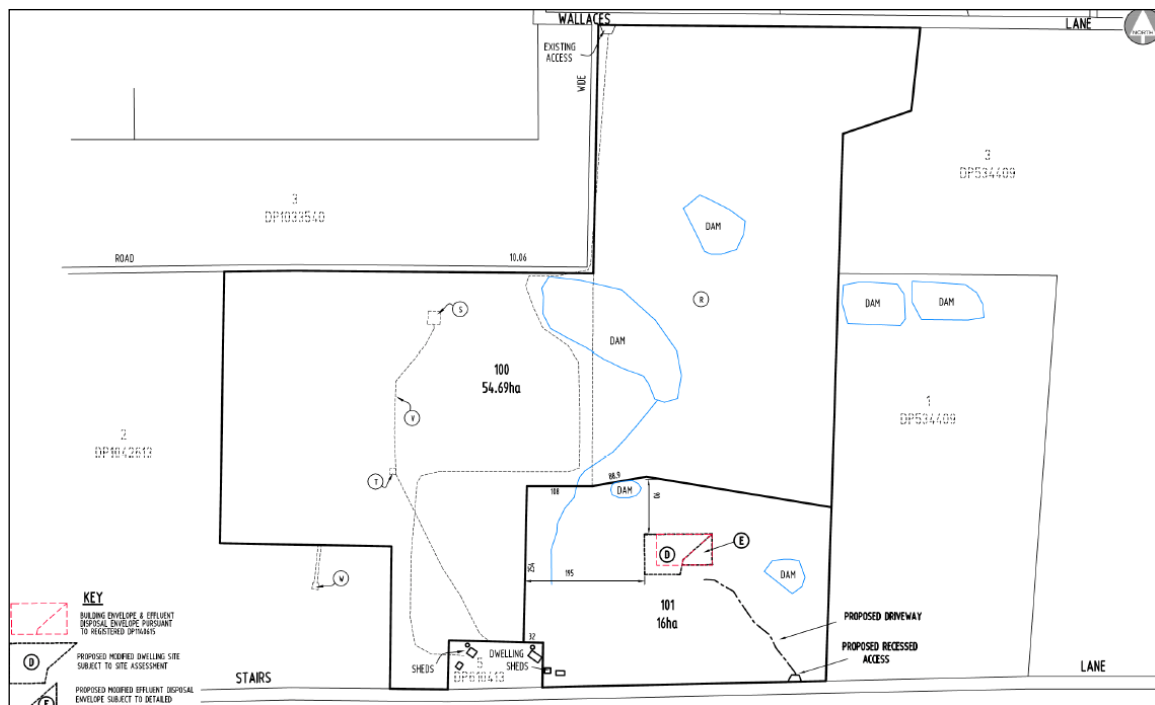


Figure 6 - proposed building envelope adjustment

ENVIRONMENTAL PLANNING ASSESSMENT

Section 4.55 Modification of consents - generally

Section 4.55(2) of the EP&A Act 1979 states that a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

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

Comment: The proposed modification does not alter the approved two lot subdivision in terms of the number of lots, configuration or boundaries. The original consent related solely to the subdivision of the land, with the Property Management Plan (PMP) submitted as supporting information to demonstrate the potential for ongoing productive agricultural use and to satisfy relevant planning objectives at the time.

The updated PMP seeks to correct a drafting error regarding the documentation of orchard areas within Lot 101. However, this amendment has no material effect on the consent itself, as orchard activities in this location were permissible without consent at the time and are not contingent upon the mapped PMP boundaries. Similarly, the reduction in the documented orchard area does not raise any planning concern in terms of meeting the previous objectives, as the proposed orchard size remains consistent with industry standards for commercial cherry orchards (see NSW DPI Cherry Industry Situational Analysis Report, 2021), which typically comprise less than 10ha. The proposed configuration will satisfy the threshold for commercial viability and the intent of the original consent.

For context, a 10ha orchard was not necessary to demonstrate compliance with the relevant planning objectives. Advice from the Department of Primary Industries at the time indicated that a minimum of 6.1ha of orchard was sufficient to support a sustainable commercial horticultural enterprise, which also represented the threshold at which a dwelling could be considered necessary to support management of the land.

Accordingly, the proposed modification does not alter the nature, scope, or intent of the original approval and is therefore considered to be substantially the same development as that for which consent was originally granted.

(b) it has consulted with the relevant Minister, public authority, or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent.

Comment: The original application was integrated development under the Rural Fires Act 1997. In accordance with Clause 109 of the Environmental Planning and Assessment Regulation 2021, notification of the proposed modification was provided to the NSW Rural Fire Service. The Rural Fire Service subsequently issued a Bush Fire Safety Authority under Section 100B of the Rural Fires Act 1997, confirming that the proposal complies with all applicable bushfire safety requirements. The authority was issued without conditions.

The Department of Primary Industries (DPI) was consulted as part of the assessment process, although not as a statutory referral authority for this modification. DPI previously had a formal role in endorsing the original Farm Plan as part of the initial development application; however, for the current modification its involvement is advisory only.

DPI's submission made the following key points for Council's consideration:

- DPI notes that the proposal seeks to reduce the required orchard area for a dwelling from 10ha to 6.5ha, and states there is no site-specific evidence provided to show improved outcomes for productivity or environmental management.
- DPI is concerned that approving the reduced orchard size, without demonstrated justification, increases the risk that the property will be used as a lifestyle lot, contrary to the original intent of the approval.
- DPI considers the modification could set an undesirable legal precedent for further fragmentation of productive agricultural land and enable future boundary adjustments or creation of undersized lots.
- DPI also questions the need for the significant increase in the dwelling envelope area, noting that no detailed justification has been supplied.
- Overall, DPI concludes that the application, without the approved 10ha orchard, would not be 'substantially the same development' as originally approved and does not support the modification on this basis.

In response to the above:

- The applicant has furnished documentary evidence, including recent yield data and business case information, demonstrating ongoing commercial orchard production. The submitted material provides that 5.5ha of the site are currently planted, with a proposed increase to 6.5ha, and the orchard is managed at a density of approximately 2,109 trees per hectare. This figure exceeds the density contemplated under the original approval, being 600 trees per hectare.
- Actual yield data for the years 2021-2023 confirm annual productivity in the range of 12,162 kg/ha to 15,231 kg/ha, which substantially exceeds the yield estimates provided in the 2006 business case for a 10ha orchard (6,375 kg/ha). The increased productivity is attributed to the adoption of modern orchard management practices.
- The information provided demonstrates that, on the evidence, the property is managed and operated as a genuine commercial horticultural enterprise. There is no material before Council to suggest any intention or likelihood of transition to a lifestyle lot.
- The modification does not propose, nor would it facilitate, additional subdivision or boundary adjustment. The dwelling entitlement remains explicitly linked to the establishment and maintenance of a viable horticultural operation.
- The original consent did not require a 10ha orchard as a pre-condition for a dwelling; the relevant threshold has always been 6.1ha, as documented in previous DPI advice dated 15 March 2007.
- The proposal aligns with industry practice, as outlined in the NSW DPI Cherry Industry Situational Analysis Report (2021), which confirms commercial viability is commonly achieved on orchards less than 10ha.
- The increase in the size of the dwelling envelope is minor (refer to Figure 6).
- On the material provided, Council staff are satisfied that the application maintains the intent and objectives of the original consent, supports ongoing productive use of the land and satisfies the requirements of Section 4.55 of the Act.

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

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

Comment: The application was not required to be notified under the Environmental Planning and Assessment Regulation 2021 or Council's Community Participation Plan 2023. However, notification was undertaken on a discretionary basis due to ongoing complaints raised by an adjoining neighbour. The application was publicly notified for a period of 14 days in accordance with Council's established notification procedures.

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

Comment: All submissions received during the public notification period, as well as a supplementary submission received outside the formal exhibition period, have been duly considered in the assessment of the proposed modification under the heading “Any submissions made in accordance with the Act s4.15”.

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

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

Comment: The relevant matters under Section 4.15(1) of the Environmental Planning and Assessment Act 1979 have been identified and addressed in this assessment report as they relate to the proposed modification.

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

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

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

The Biodiversity Offset Scheme does not apply to the modified development.

Section 4.15 of the Environmental Planning and Assessment Act 1979

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

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

Orange Local Environmental Plan 2011

The initial development was approved under the provisions of Orange Local Environmental Plan 2000. The subject lands were zoned Zone 7 (Water Supply Catchment zone), now C3 Environmental Management under the current planning framework. The proposed development is defined as subdivision, consent for which was permissible under Clause 73(1) of the former LEP. The applicant is seeking to modify the terms of the existing development consent. The development, as modified, remains consistent with the aims of the plan and the objectives of the zone, as well as the relevant considerations applied at the time of the original consent.

Section 4.55(4) of the Environmental Planning and Assessment Act 1979 provides that the modification of a development consent is not the granting of development consent. Accordingly, there are no provisions of Orange Local Environmental Plan 2011 that apply to this modification application. This includes all current clauses relating to the 'grant development consent' under Parts 4, 5 and 7 (ie those clauses triggered when the consent authority is asked to grant development consent, not to modify an existing consent).

State Environmental Planning Policies

A number of State Environmental Planning Policies (SEPPs) apply to the land; however, no SEPPs are specifically relevant to the assessment of this modification application.

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

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

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

The original application was assessed in accordance with Orange DCP 2004, which remains applicable to the subject land. Section 6.3 applies to horticulture lots between 16 and 40ha and sets out the following requirements:

1. *The land is used either for an existing horticultural/viticultural enterprise or arrangements have been made to the satisfaction of the Council to provide for the establishment of such an enterprise.*
2. *The development promotes sustainable agriculture.*
3. *The works have been carried out on vacant land in accordance with the approved Farm Plan prior to erection of any dwelling house.*
4. *Applications provide information demonstrating, to the satisfaction of Council, that the land is capable of sustaining horticulture or viticulture in accordance with a professionally prepared Farm Plan (Refer to Part 6.8).*
5. *Applications identify suitable house sites with adequate separation from agricultural activities or other primary industries (refer below for information on buffers).*
6. *Development applications demonstrate a house site or sites suitable for building, on-site sewage-management systems free from contamination and a clear distance from creeks, natural drainage depressions and flow lines.*
7. *Suitable access to a public road is provided.*
8. *The number of accesses to a main road are not increased*

Having regard to the requirements outlined above, the following observations are made in respect of the subject application.

The land continues to be used for commercial orchard production. The updated Property Management Plan (PMP) submitted in support of this modification demonstrates that the orchard operation has changed from the original broader planting pattern to a more compact configuration. Although the total area planted to orchard has reduced from the initially proposed 10ha to now 6.5ha (35% decrease), evidence submitted with the application demonstrates increased productivity per hectare and projected yields above those presented in the original business case. The applicant has adopted modern rootstocks, including Gisela and Krymsk, which are referenced in the NSW DPI Cherry Industry Situational Analysis Report (2021) as suited to this form of commercial orchard production. According to the application, yields under the previous 10ha model averaged around 6,375 kg/ha (total approximately 63,570 kg per annum), whereas recent seasons have reported yields of 12,162–15,231 kg/ha, with projections up to 18,527 kg/ha when plantings mature and completion of the planting program is achieved.

The reduction in orchard area does not give rise to any planning concern in terms of meeting the DCP objectives, as the proposed size remains consistent with industry standards for commercial cherry orchards (NSW DPI, 2021), which typically comprise less than 10ha. The proposed configuration meets the threshold for commercial viability. For context, a 10ha orchard was never required to demonstrate compliance with the planning objectives. Advice from the Department of Primary Industries at the time indicated that a minimum of 6.1ha, representing an additional 2.2ha above the existing 3.9ha, was sufficient to support a sustainable horticultural enterprise, which also represented the threshold for considering a dwelling necessary for ongoing management.

Ongoing investment in orchard infrastructure, including irrigation, protective netting and plant improvements, addresses the DCP's objectives for sustainable agriculture, meaning that the land remains in genuine, ongoing and economically viable horticultural use and, on this basis, there is no concern that the site will transition to a lifestyle lot. Additional plantings to achieve at least 6.1ha will need to be completed prior to consideration of any dwelling. At the subdivision stage, the application satisfies the relevant requirements, including the identification of a suitable house site and appropriate separation from environmental features. The previous assessment in relation to the building envelope and waste disposal area remains applicable, with the minor change to the building envelope not altering the original planning considerations or conclusions.

There are no changes to the approved subdivision layout. Suitable access to a public road is provided, and the number of accesses to the main road is not increased.

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

The impacts of the modified proposal are generally consistent with those considered for the original development.

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

Council has previously determined that the site is suitable for the proposed development. There are no aspects of the site to indicate that it would be unsuitable to accommodate the modified development.

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

The proposed development was notified under the provisions of the Community Participation Plan. The application was advertised for the prescribed period of 14 days. Upon completion of the notification period, one submission was received. Additionally, a supplementary submission was received from the same party outside the formal exhibition period. The issues raised in these submissions are outlined below, together with an assessment response.

Submission 1

Issue 1: That Orange City Council confirm that the high-density orchard plantings (ie non-traditional orchard) and thus all associated infrastructure, and activities implemented in relation to it on 1040 Pinnacle Road since 2010 were a prohibited development under the Orange Local Environmental Plan (LEP) 2000 in 2007.

Assessment Response: It is important to note at the outset that the original development consent did not seek approval for orchard operations but only for subdivision of the land. The consent authority's role was limited to ensuring that the resulting allotments could be used for agricultural purposes, comprising horticulture or viticulture, rather than assessing any specific horticultural enterprise. For clarity, orchards were defined as "agriculture" under the former LEP and, pursuant to Clause 71(2)(a) of Zone 7 (Water Supply Catchment) was a permitted use that did not require development consent at the relevant time.

The objection, however, proceeds on the erroneous premise that the original consent extended to orchard operations and that those operations should have been assessed against the Plan's "intensive horticulture" criteria. It suggests that the orchard would have been prohibited or subject to a more onerous approval pathway under the former LEP.

An examination of the Plan's definitions makes clear that "intensive horticulture" applies only to operations conducted in artificial or indoor environments such as hydroponic systems, greenhouses or other controlled-environment facilities and expressly excludes orchards and vineyards using traditional agricultural practices. In contrast, an orchard grown outdoors in soil remains fundamentally within the scope of a traditional orchard, even if it employs modern horticultural techniques.

Specifically, the former LEP defines "intensive horticulture" as *"a building or place used for the artificial propagation or growing of plants, other than orchards or vineyards using traditional agricultural practices, including (a) hydroponics or (b) indoor plant growing"*. This language clearly distinguishes genuinely "artificial" or "indoor" cultivation from soil-based, open-field production. The qualifier "traditional agricultural practices" must therefore be read expansively to encompass all soil-based, open-field techniques, regardless of their modern sophistication, so long as they do not involve enclosed or climate-controlled structures.

Techniques such as drip or micro-sprinkler irrigation, the use of dwarf rootstocks for canopy management, close-row planting to maximise land use efficiency and protective netting to guard against hail or birds etc are industry standard for outdoor orchards. These innovations merely refine the way trees are grown in natural soil under ambient conditions; they do not create the artificial propagation environments (for example, greenhouses or hydroponic benches) that the former LEP intended to capture as "intensive." Consequently, any outdoor orchard operations using these field-based methods remain firmly within the "orchards" exception and outside the scope of "intensive horticulture".

To be clear, the statutory interpretation of “*other than orchards or vineyards using traditional agricultural practices*” means that those types of operations are specifically excluded from the definition of “intensive horticulture.” In other words, the LEP carves out or makes an exception for soil based outdoor orchards and vineyards, even where they employ modern management techniques.

Protective netting or shade cloth, while capable of reducing external risks, does not enclose trees within a climate-controlled building or place. The orchard remains exposed to natural light, temperature fluctuations and wind, and tree roots remain in the earth rather than in a hydroponic medium or sealed substrate. The absence of structural enclosures, artificial lighting or nutrient baths distinguishes it unequivocally from greenhouse or indoor growing scenarios.

In summary, while the proponent has described the modified proposal as “high density”, this does not characterise it as “intensive horticulture” in the context of the former LEP. All of the techniques employed, outdoor planting in soil, modern irrigation, compact spacings, netting and canopy management, are consistent with evolving outdoor orchard agriculture and are specifically exempted by the former LEP definition. Accordingly, the clear statutory interpretation of the former LEP, read in its proper context and alongside established industry practice, confirms that the subject orchard did not qualify as “intensive horticulture” and was therefore a permissible without consent use under that Plan.

It bears emphasising that the original consent related solely to subdivision; no approval was ever sought or required for orchard operations. The consent authority’s only task was to confirm that the new lots could be used for agriculture, comprising horticulture or viticulture. Orchards were defined as “agriculture” under the former LEP and, by operation of Clause 71(2)(a) in Zone 7 (Water Supply Catchment), and were permitted without development consent.

Issue 2: That Orange City Council determine that the high-density orchard plantings (ie non-traditional orchard) and all associated infrastructure, and activities implemented in relation to it on 1040 Pinnacle Road since 2010 were not covered by the original DA approval in 2007 (DA 149/2007(1)) and are in fact unapproved.

Assessment Response: The consent for DA 149/2007(1) was granted solely for subdivision, with the consent authority’s statutory function confined to being satisfied that the resultant lots could be used for agriculture, comprising horticulture or viticulture, that appropriate arrangements were in place for the productive use of the land and that the subdivision would not diminish agricultural potential, pursuant to Clause 31(3) of the former Orange Local Environmental Plan 2000.

The definition of “agriculture” in the Orange Local Environmental Plan 2000 provides “*the cultivation of pasture or crops, including cereals, fruit and vegetables and flowers... for commercial purposes*”. On its ordinary and natural reading, the establishment and operation of an orchard for fruit production falls squarely within this definition. Associated activities such as planting, irrigation, spraying and supporting infrastructure (eg netting, trellising) are incidental to and part of the agricultural use.

The Property Management Plan (PMP) submitted in support of the application was submitted to demonstrate the suitability of the land for ongoing productive agricultural use and does not constitute, nor operate as, a separate instrument of statutory approval for activities otherwise permitted without consent under the planning controls. It should also be noted that the Restriction-as-to-User registered on the title referencing the Property Management Plan, imposed as a condition of consent, functions solely as an additional mechanism to secure that the land continues to be used for agricultural purposes, and not for non-agricultural uses such as lifestyle occupation. It does not confer, endorse, or condition the carrying out of particular activities otherwise permitted as agriculture within the meaning of the former LEP.

Issue 3: Determine that a new development application process is required to seek consent for the "intensive plant agriculture" implemented since 2010 without consent on 1040 Pinnacle Road.

Assessment Response: As established in the responses to Issues 1 and 2, the original consent pertained only to the subdivision of land. At the relevant time, the activities/use in question would have been properly characterised as agriculture within the meaning of the Orange Local Environmental Plan 2000, and did not require further consent unless they constituted "intensive horticulture," which has already been addressed and found not to apply.

It is acknowledged that, following the introduction of the current Orange Local Environmental Plan 2011 in 2012, agriculture involving orchard establishment may now require development consent as 'intensive agriculture' within the relevant zone. However, the objection must be assessed in accordance with the planning controls that were in force at the time the activities commenced. The lawfulness of those activities is determined by reference to the former LEP 2000. If the orchard activities were lawfully commenced under those controls, at a time when consent was not required, they are protected by continuing use rights pursuant to the Environmental Planning and Assessment Act 1979. The fact that consent may now be required for similar activities under the current LEP does not retrospectively render the earlier, lawfully established orchard operations unlawful.

Issue 4: Reject outright the concept of a "Drafting Error" existing in the current Property Management Plan maps

Assessment Response: It is accepted that the mapping in the original Property Management Plan (PMP) did not provide a complete or precise account of orchard-related land use in the western portion of Lot 101 at the relevant time (refer to Figures 4 and 5). The documentary and site evidence establishes that orchard activity did in fact occur in this area, notwithstanding any subsequent changes in planting or land management. The use of the area for orchard activities was entirely permissible under the planning controls in force and does not give rise to any breach, deficiency, or question of unlawfulness by reason of a mapping error in supporting documentation.

It must be emphasised that the purpose and effect of a PMP is to demonstrate the ongoing suitability of the land for productive agriculture under Clause 73(1) of the former LEP 2000. The PMP and its maps were not intended to serve as binding limitations on the location, form, or nature of orchard operations, nor do they fetter the lawful conduct of agriculture on the land which was permitted without consent at the relevant time. As such, the presence of a drafting error in the PMP mapping is not material to the planning assessment, and has no bearing on the continued lawful use of the property for agricultural purposes.

Issue 5: Determine that a new Property Management Plan (PMP) and associated maps need to be prepared to support the new development application for the change to High- density/non-traditional orcharding on 1040 Pinnacle Road.

Assessment Response: The purpose of the relevant LEP clauses at the time of subdivision was to ensure that new allotments were capable of ongoing, productive agricultural use in the form of horticulture or viticulture, and not merely created for lifestyle or non-productive purposes. The information submitted with this application, together with a recent inspection of the site, demonstrates that the property is being operated as a genuine horticultural enterprise.

Specifically, the updated documentation and detailed production figures provided by the applicant show that, although the total orchard area has reduced from 10ha to 6.5ha, the adoption of compact plantings, improved varieties and modern horticultural practices has resulted in significantly higher yields, earlier production, better fruit quality and improved economic viability. The current business operation is producing over double the yield per hectare compared to the original business case - an increase from 6,375 kg/ha to more than 15,000 kg/ha, with projections exceeding 18,000 kg/ha as the new plantings reach full productivity. This is a 191% increase from the original plan, demonstrating a substantial enhancement in productive capacity.

Furthermore, the level of capital investment in protective infrastructure, irrigation and orchard management confirms the ongoing commercial intent of the operation and the property's function as a genuine primary production enterprise, rather than a lifestyle holding. These facts directly address the statutory objective that the allotment support long-term, sustainable horticultural use. The economic performance and ongoing investment provide strong evidence that the planning objectives and requirements of the former LEP are fully satisfied.

Issue 6: Ensure that the approved orchard areas and vegetative buffers are designed in compliance with the RFS requirements documented in "Planning for Bush Fire Protection" 2019.

Assessment Response: Section A1.10 of Planning for Bush Fire Protection 2019 and AS 3959 specify that low-threat vegetation, including but not limited to orchards, cultivated crops and comparable horticultural uses, is expressly excluded from classification as bushfire hazard for the purposes of statutory bushfire assessment. It follows that orchard areas and any associated vegetative buffers do not attract additional bushfire protection requirements under PBP 2019.

In accordance with statutory requirements, proposals for subdivision on bushfire prone land must obtain a Bush Fire Safety Authority from the NSW Rural Fire Service. The matter was referred to the Rural Fire Service, which subsequently issued a Bush Fire Safety Authority under Section 100B of the Rural Fires Act 1997, confirming that the proposal complies with all applicable bushfire safety requirements. The authority is now issued without any conditions.

Issue 7: Reject the proposed design of the buffer and the use of Leyland Cypresses as the buffer species.

Assessment Response: It is recognised that the PMP includes a commitment to establish some buffer plantings as a measure to address potential amenity impacts. However, the objection to the design of the buffer and the use of Leyland Cypress is based on a misunderstanding of Section 6.5 of the Orange Development Control Plan (DCP) 2004. Properly construed, the DCP does not impose an obligation on agricultural land uses to provide vegetative buffers to existing dwellings on adjoining land, given that such uses did not require consent and therefore were not subject to DCP assessment. Rather, Section 6.5 addresses circumstances where new residential development is proposed adjacent to existing agricultural operations, placing the onus on residential developments to mitigate potential land use conflicts.

This interpretation is consistent with the policy intent which was clearly designed to protect agricultural operations from reverse amenity claims¹. Accordingly, the proposed buffer design and the selection of Leyland Cypress are not matters governed by the DCP, nor does the DCP preclude the use of particular species where buffer planting is provided voluntarily, as is the case here. No further statutory obligation arises under the DCP or any other planning instrument to require a different or additional buffer beyond that already committed to and detailed in the PMP.

It is also noted that significant trees have been removed from the objector's property in the north-eastern corner, which would have otherwise contributed to screening and amenity in this location.

Issue 8: That Orange City Council consider the validity of the house dwelling approval on 1040 Pinnacle Road.

Assessment Response: The approval granted under DA 149/2007(1) related exclusively to the subdivision of the land under Clause 31(3) of the former Orange LEP 2000. That approval identified a building envelope to facilitate a potential future dwelling, as contemplated by Clause 35(2)(b). Under these provisions, subdivision approval was contingent upon the consent authority being satisfied that the allotment would be used for productive and sustainable horticulture or viticulture. The grant of any future dwelling approval would require the consent authority to be satisfied that the land has been developed and is being used for sustainable horticultural or viticultural enterprises.

At the time the subdivision was considered, the Department of Primary Industries advised that a dwelling was not warranted until at least an additional 2.2ha of orchard area had been established, in addition to the existing 3.9ha (6.1ha in total). This orchard area requirement was imposed as a substantive precondition to any future dwelling consent, ensuring the land would be demonstrably developed and managed for genuine horticultural production. The purpose of this requirement was to maintain agriculture as the dominant land use, and to preclude the possibility of the land being subdivided and subsequently used as a lifestyle allotment without substantial and ongoing investment in primary production. The proponent has not yet made any application for a dwelling on the land. Council will need to assess at that time, whether the land is being used in accordance with the requirements of the planning controls then in force.

Furthermore, the introduction of the Orange Local Environmental Plan 2011 (commenced 24 February 2012) does not operate retrospectively and has no bearing on the permissibility of a dwelling arising from the original, lawfully granted subdivision. Clause 4.2A(3)(c) of the current LEP expressly preserves the right to seek consent for a dwelling where subdivision consent was granted prior to the commencement of the current Plan and a dwelling would have been permissible under the former controls. The reference to Clause 4.2B of the current LEP, which applies to rural subdivision for intensive plant agriculture under the current planning framework, does not apply in this context as the subject land was not created by, nor does it rely upon, subdivision consent under that clause.

For completeness, whether the existing agricultural activity would now fall within the definition of "intensive plant agriculture" under the current planning controls does not affect the permissibility of a dwelling on this land. The subdivision and any future dwelling application are governed by the requirements of the former LEP 2000 and the existing lawful use of the land.

¹ Situations where the encroachment of more sensitive land uses, such as housing, lifestyle lots etc, into the areas of established industries or agricultural activities results in objections to typical impacts like noise, dust, or odour, and may lead to unreasonable or commercially unviable constraints being imposed on the existing long-standing use.

Accordingly, the subdivision approval contemplated the potential for a future dwelling, subject to further application and satisfaction of the statutory requirements at the relevant time.

Issue 9: That the Council provides a statement of how it will enforce that the changes approved by this process are implemented by the applicant.

Assessment Response: No evidence has been presented to substantiate the claims of ongoing breach or failure to comply with conditions to date. Council retains all statutory enforcement powers under the Environmental Planning and Assessment Act 1979 to address any non-compliance if needed.

Issue 10: That Council confirms that it has policies in place to ensure that impacted rural residential neighbours in the future are included in any planning processes like this so that they are fully aware of their rights and don't go through what we have.

Assessment Response: Prospective purchasers are responsible for undertaking their own due diligence prior to acquiring land in rural areas, or any land in fact.

It is also relevant to note that the NSW Right to Farm Policy recognises the primacy of agricultural production in rural zones and establishes that persons residing or purchasing property in these areas are expected to accept the ordinary, reasonable impacts associated with legitimate agricultural activities. The policy explicitly seeks to protect agricultural enterprises from unreasonable complaints regarding normal farming operations, provided those operations are conducted lawfully.

As established in the preceding assessment, the activities undertaken on the subject land are lawful and were permissible without the need for development consent at the time they were commenced. These activities are further protected as continuing uses under the Environmental Planning and Assessment Act 1979. The present application relates solely to the subdivision of land and not to the approval of agricultural activities themselves. Concerns relating to matters such as noise, spray drift, or similar impacts are not planning considerations for the assessment of this application; these are dealt with, if necessary, under separate legislation by the appropriate regulatory authority.

However, such consequences are inherent and anticipated aspects of rural living and are reasonably to be expected in a zone where agricultural production is both permitted and encouraged. The proper expectation for rural residential neighbours, especially those on lifestyle lots, is to acknowledge and accept the realities of living within an active agricultural landscape.

Notwithstanding, it is noted that the Right to Farm Policy encourages adjoining landowners to communicate and develop an understanding of what it means to be a 'good neighbour', including discussing major proposed changes in land use, informing neighbours about the timing of occasional operations that could cause short-term amenity impacts etc. However, Council is not responsible for mediating private disputes or undertaking neighbour-to-neighbour communications. The proponent is, however, encouraged to establish a protocol that outlines the practices and engagement procedures that would be entered into with nearby neighbours that would genuinely be followed when the carrying out of farming activities in close proximity to dwellings.

Submission 2

Issue 1: Non-compliance with the General Terms of Approval and Restriction-as-to-User.

Assessment response: The general terms cited in the Notice of Determination such as ‘to prevent the proposed development having a detrimental effect on adjoining land uses’ do not impose standalone obligations or create new operational requirements beyond those established by the explicit conditions of consent. These terms articulate the objectives underpinning the imposition of conditions but do not, in themselves, operate as independent conditions or grounds for enforcement action.

The PMP and restriction on the title were imposed to ensure the land remains in genuine, productive agricultural use, consistent with the objectives of the original subdivision consent. Ongoing compliance is maintained so long as the land continues to be actively managed for horticulture.

Issue 2: The conversion of areas described in the original planning report and PMP as ‘grazing’ or ‘non-productive’ land to orchard use is inconsistent with the subdivision approval.

Assessment response: The references in the original planning report and PMP to ‘grazing’ or ‘non-productive’ land do not operate to prohibit the conversion of that area to orchard, nor do they indicate any intention to preclude agricultural use of those lands. The PMP is not a restrictive instrument; it serves to demonstrate the ongoing capacity for agricultural production but does not ‘sterilise’ specific areas from being brought into horticultural use.

Despite the statements in the original planning report, Figures 4 and 5 confirm that the area in question was in fact developed and used for orchard purposes. Throughout the relevant period, agricultural activities, including the establishment of new orchard plantings, were permitted without development consent. Accordingly, any part of the property not previously identified as orchard in the PMP could lawfully be brought into agricultural use without breaching the subdivision consent or the Orange LEP 2000. Notwithstanding the above, the proponent is seeking to rectify what is considered as a drafting error for completeness as part of this application.

Issue 3: Visual Impacts

Assessment Response: It is important to reiterate that the assessment and approval of DA 149/2007(1) pertained solely to the subdivision of the land. The planning report clearly states that *“the proposed subdivision itself will not generate an adverse visual impact”*. This finding applies specifically to the subdivision layout, not to any future agricultural use, which was permissible without consent and expected within the zone at the time and thus did not form part of the assessment.

Notwithstanding the above, the site is located within a zone where horticulture is a long-established and supported land use. Infrastructure such as netting, trellising, irrigation systems and sheds are common and necessary features of such operations. Their presence is not unusual, nor is it considered visually adverse within this context. The zone is not intended to provide a residential or lifestyle amenity. Those who choose to live in such locations must accept the visual reality of working farms.

Issue 4: Approval is for new areas to be planted but no replanting of existing orchard.

Assessment Response: There is no planning requirement that prevents replanting of existing orchard areas. In the event that additional plantings are now proposed the applicant would be obliged to obtain development consent under the current LEP controls.

Issue 5: The current operations area/farm office was meant to only be a single storage shed.

Assessment Response: The existence and use of multiple sheds on the subject land are ancillary to the primary purpose of horticulture. Their presence does not constitute a separate “rural industry” or otherwise trigger the need for additional development consent for use, as the use remains functionally and physically subordinate to the dominant horticultural use of the site. Any new farm sheds either constructed or proposed to be constructed would, however, need to either satisfy the relevant controls that apply to Exempt and Complying under the State Environmental Planning Policy or alternatively require a development application if those controls were not met.

Issue 6: Environmental impacts and water quality

Assessment Response: The concerns raised about effluent management, chemical runoff, staff facilities and clearing of riparian vegetation are noted but are not relevant to the assessment of this application to modify the subdivision consent.

Compliance with LEP Clause 72 (Water Quality Protection Area) was only a consideration for the subdivision, not for subsequent land management practices. The subdivision itself did not result in the destruction of native riparian vegetation.

While the PMP included a commitment to rehabilitation, this was not a requirement but rather a best practice recommendation.

Regarding the concern that a significant area of the identified rehabilitation zone is now under orchard, records (refer to Figures 4 and 5) confirm that the portion in question was, in fact, always used for orchard purposes.

Issue 7: The DCP should have been used by Council as the standard for the vegetative buffers described in the Property Plan and associated maps.

Assessment Response: This issue has already been addressed in response to Submission 1, Issue 7.

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 application has been assessed in accordance with Section 4.55(2) of the Environmental Planning and Assessment Act 1979. The site remains suitable for the proposed development, is not contrary to the public's interest and will not have a significant adverse social, heritage, environmental or economic impact. It is recommended that the modification application be approved, subject to the recommended modified conditions of consent.

ATTACHMENTS

- 1 Draft Modified Notice of Determination, D25/67839 [↓](#)
- 2 Plans, D25/66738 [↓](#)
- 3 Bush Fire Safety Authority, D25/67849 [↓](#)
- 4 DPI Advice, D25/67850 [↓](#)
- 5 Submissions (redacted), D25/66173 [↓](#)

	ORANGE CITY COUNCIL	
	Development Application No DA 149/2007(2)	
	NA25/222	Container PR18574

**NOTICE OF DETERMINATION
OF A DEVELOPMENT APPLICATION
(AS MODIFIED)**

issued under the *Environmental Planning and Assessment Act 1979*
Section 81(1)

Development Application

Applicant Name:	Mr G and Mrs R Perry
Applicant Address:	C/- Peter Basha Planning and Development PO Box 1827 ORANGE NSW 2800
Owner's Name:	Mrs R Perry
Land to Be Developed:	Lot 101 DP 1140615 - 1040 Pinnacle Road, Canobolas (previously Lot 2 DP 500527, Lot 3 DP 554448 and Lot 1 DP 1042613 - 24 Stairs Road and 139 Wallace Lane, Orange)
Proposed Development:	Subdivision (two lot rural)

**Building Code of Australia
building classification:**

Not applicable

Determination

Made On:	1 July 2025
Determination:	CONSENT GRANTED SUBJECT TO CONDITIONS DESCRIBED BELOW:

Consent to Operate From:

19 July 2007

Consent to Lapse On:

19 July 2012

Terms of Approval

The reasons for the imposition of conditions are:

- (1) To ensure compliance with relevant statutory requirements.
- (2) To prevent the proposed development having a detrimental effect on adjoining land uses.
- (3) To minimise the impact of development on the environment.

Conditions

- (1) The development is to be carried out generally in accordance with:
 - (a) **Plan/s numbered 05060DA figures 1-4 and Property Management Plan prepared by Peter Basha Planning and Development dated February 2007**
 - (b) statements of environmental effects or other similar associated documents that form part of the approval

BUT wherever amended by:

Plan/s numbered 05060DA MOD, Sheets 3 and 4, prepared by Peter Basha Planning and Development, dated 28 October 2024

or as otherwise amended by any condition of this consent.

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 149/2007(2)

2

Conditions (cont)

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

- (1) Application is to be made for a Construction Certificate for works associated with the proposed vehicle access. Engineering plans, showing details of the proposed location of the vehicle access and traffic management works, are to be submitted to Orange City Council or an Accredited Certifier upon application for a Construction Certificate.

DURING CONSTRUCTION/SITEWORKS

- (1) Any adjustments to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer.
- (2) 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.
- (3) A minimum 200mm thick gravel vehicular entrance incorporating a pipe culvert is to be constructed to provide access to proposed Lot 101.

The pipe culvert is to consist of minimum 375mm diameter stormwater pipes and 2 concrete headwalls and be a minimum 5 metres long. Where it is not possible to construct a pipe culvert, due to shallow depth of table drain or the entrance being located on a crest, a 6 metre long by 2 metre wide by 100mm deep concrete dish drain may replace the pipe culvert.

The location of this entrance and selection of pipe culvert or dish drain are to be as directed by Orange City Council. The entrance is to be constructed in accordance with the RTA Guidelines for Intersections at Grade "BAR & BAL" with an Indented Access. The construction is to be as per the requirements of the Orange City Council Development and Subdivision Code.

The indented access gate is to be a minimum of 22 metres north of the existing edge of bitumen seal.

The existing power pole and stay pole are to be located clear of the proposed access.

PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

- (1) Application shall be made for a Subdivision Certificate under Section 109(1)(d) of the Act.
- (2) The payment of \$755.37 is to be made to Council in accordance with section 94 of the Act and the Orange Contributions Plan 1999 towards the provision of the following public facilities:

Community Facility	@ \$297.61 x 1 additional lot	297.61
Sportsgrounds	@ \$308.00 x 1 additional lot	308.00
Waste Management	@ \$149.76 x 1 additional lot	149.76
TOTAL:		\$755.37

The contribution will be indexed at 1 January each year in accordance with the 1999 Development Contributions Plan. This Plan can be inspected at the Orange Civic Centre, Byng Street, Orange.

- (3) Soil sampling for analysing chemical residue is to be carried out within the proposed lots 100 and 101 in a manner and frequency as determined by an appropriately qualified and experienced consultant giving consideration to previous specific uses and onsite characteristics of the site. A NATA registered laboratory is to carry out such testing. Reference is to be made to the *Contaminated Land Management Act 1997* and State Environmental Planning Policy No 55 – "Remediation of Land". The results of the testing are to be provided to the Principal Certifying Authority and are to demonstrate that the land is suitable for residential use, to enable a Subdivision Certificate to be issued.

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 149/2007(2)

3

Conditions (cont)

Prior to the issue of a subdivision certificate (cont)

- (4) No assurance can be given by Council that an on-site sewage management system will be permitted on proposed Lots 100 and 101, until full details of the proposed system have been provided and examined. Assessment of the site and soil profile, recommended location and proposed method of on-site disposal of domestic wastes are to be carried out in accordance with the Environment and Health Protection Guidelines for On-Site Sewage Management for Single Households. All assessments are to be carried out within the proposed effluent disposal envelopes. This report is to be provided to the Principal Certifying Authority prior to the issuing of the Subdivision Certificate.
- (5) A geotechnical investigation is to be carried out within each proposed building envelope by a NATA-registered laboratory, in order to classify the soil of proposed Lots 100 and 101 in accordance with the Australian Standard 2870 - "Residential Slab and Footings Construction" Code. This report is to be provided to the Principal Certifying Authority prior to the issuing of the Subdivision Certificate.
- (6) A building envelope shall be identified within each of the proposed Lots 100 and 101 and these building envelopes shall be indicated on the film plan. The building envelope for lot 100 shall not be located inside the water quality protection area identified as being 200m measured from the centreline of the waterway.
- (7) An effluent disposal envelope shall be identified within the proposed Lots 100 and 101 and the effluent disposal envelopes shall be indicated on the film plan as a Restriction-as-to-User pursuant to section 88B of the NSW Conveyancing Act 1979. The effluent disposal envelopes, incorporating all components of the onsite sewage management system, shall not be located inside the water quality protection area identified as being 200m measured from the centreline of the waterway.
- (8) Certification from Country Energy, stating that electricity and street lighting systems comply with Country Energy's Networks Division Customer Connection Policy NP11.1, is to be submitted to the Principal Certifying Authority prior to the issuing of a Subdivision Certificate.
- (9) All of the foregoing conditions are to be at the full cost of the developer and to the requirements and standards of the Orange City Council Development and Subdivision Code, unless specifically stated otherwise. All work required by the foregoing conditions is to be completed prior to the issuing of a Subdivision Certificate, unless stated otherwise.

MATTERS FOR THE ONGOING PERFORMANCE AND OPERATION OF THE DEVELOPMENT

- (1) (amended)

A Restriction-as-to-User pursuant to section 88B of the NSW Conveyancing Act 1979 shall be placed on the titles of proposed Lots 100 and 101 requiring the land to be developed in accordance with the Property Management Plan prepared by Peter Basha Planning and Development dated 27 February 2007, as modified by plans numbered 05060DA MOD, Sheets 3 and 4, dated 28 October 2024.

Other Approvals

- (1) *Local Government Act 1993* approvals granted under section 68.
Nil
- (2) General terms of other approvals integrated as part of this consent.
Nil

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION NO DA 149/2007(2)

4

Conditions (cont)

Right of Appeal

If you are dissatisfied with this decision, section 97 of *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court within 12 months after the date on which you receive this notice.

** Section 97 of the Environmental Planning and Assessment Act 1979 does not apply to the determination of a development application for State significant development or local designated development that has been the subject of a Commission of Inquiry.*

Disability Discrimination Act 1992:

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

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

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

Disclaimer - S88B Restrictions on the Use of Land:

The applicant should note that there could be covenants in favour of persons other than Council restricting what may be built or done upon the subject land. The applicant is advised to check the position before commencing any work.

Signed:

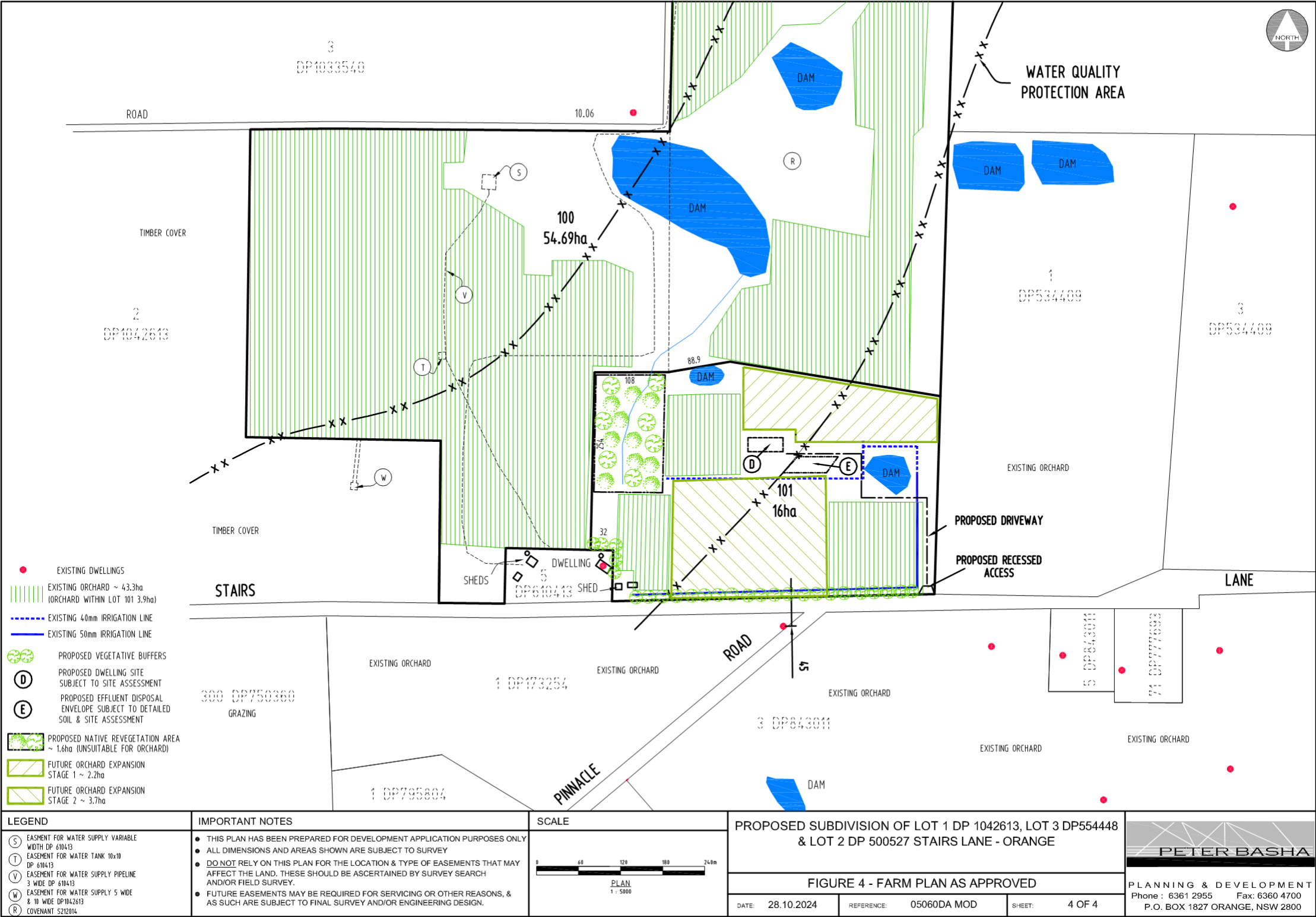
On behalf of the consent authority **ORANGE CITY COUNCIL**

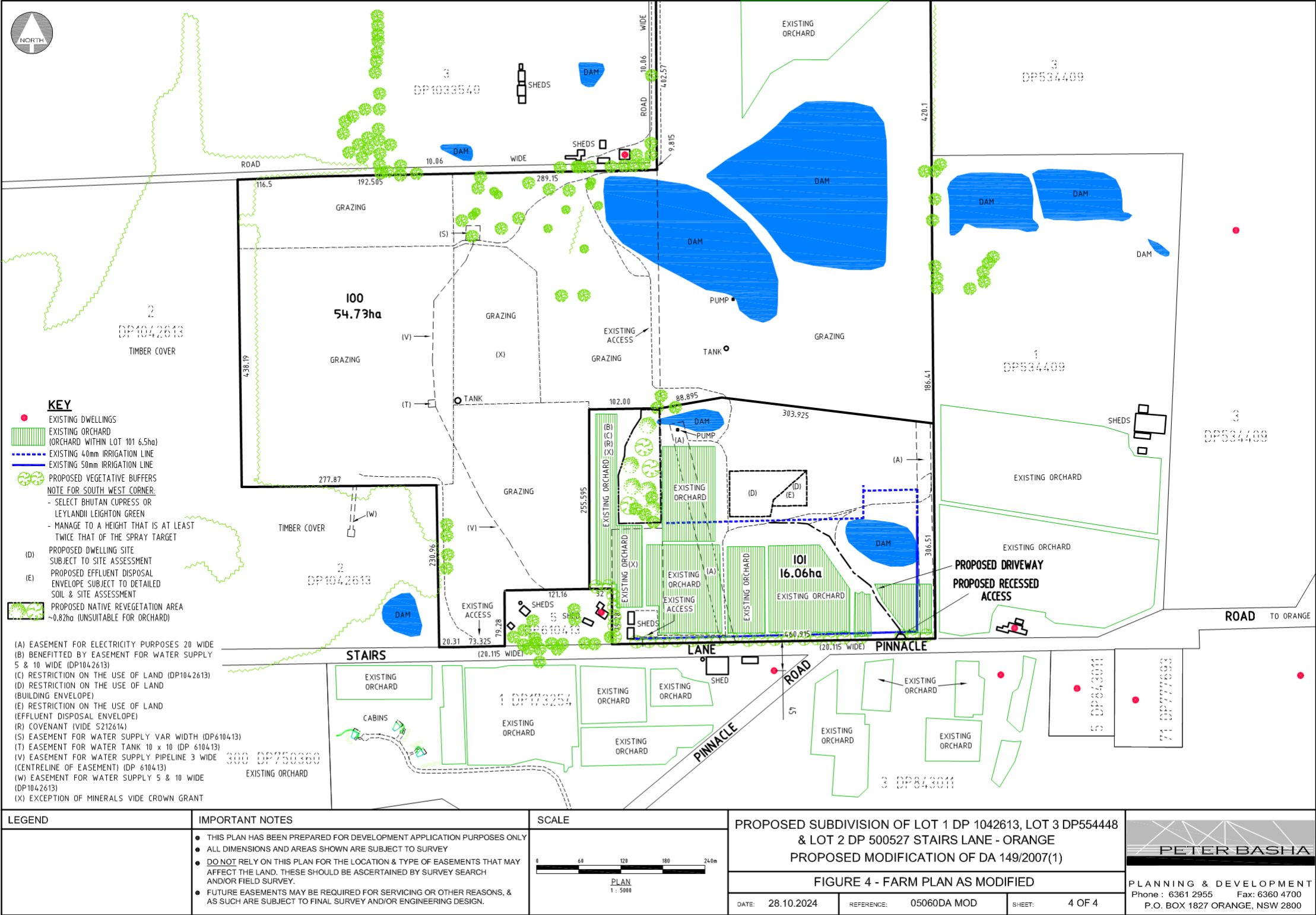
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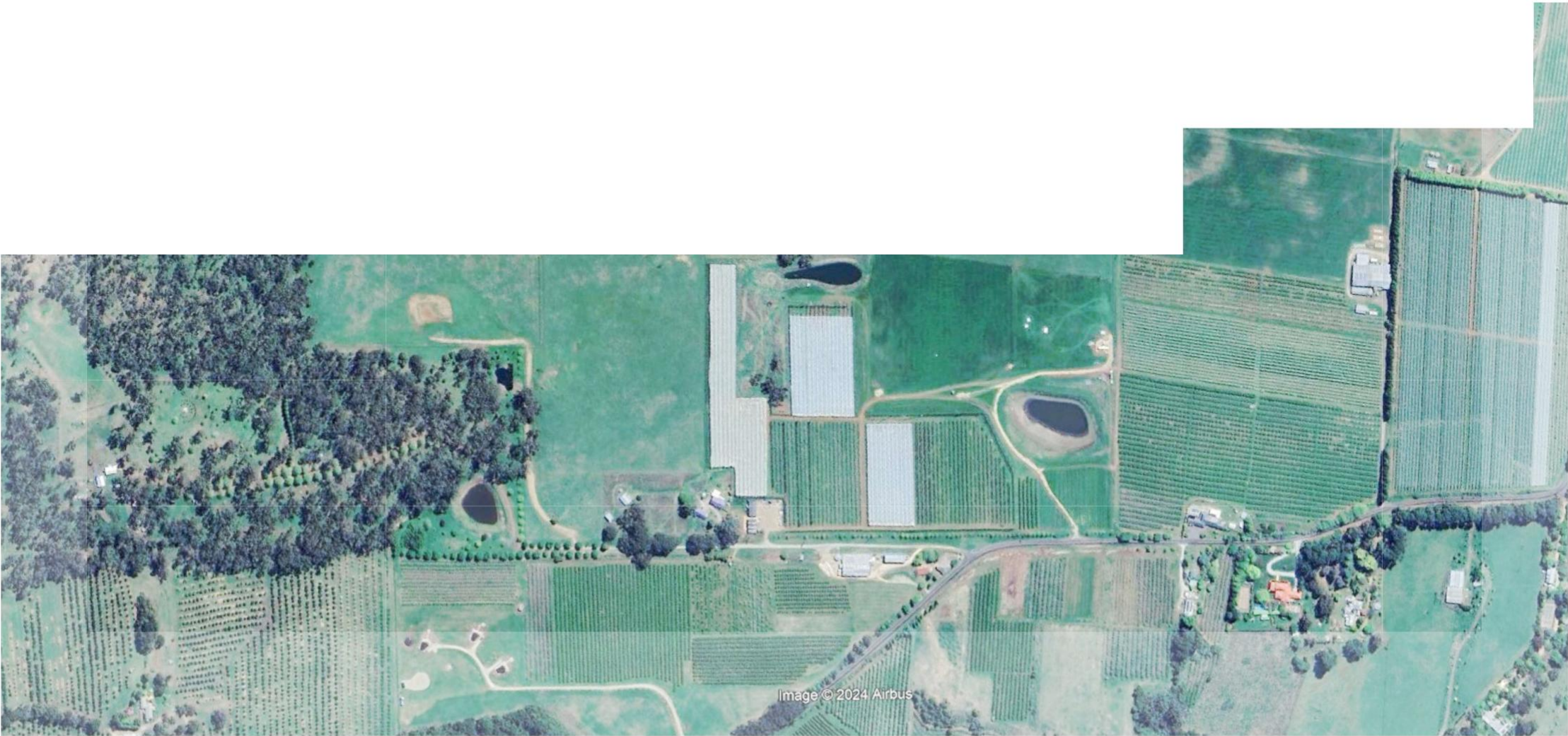
PAUL JOHNSTON - MANAGER DEVELOPMENT ASSESSMENTS

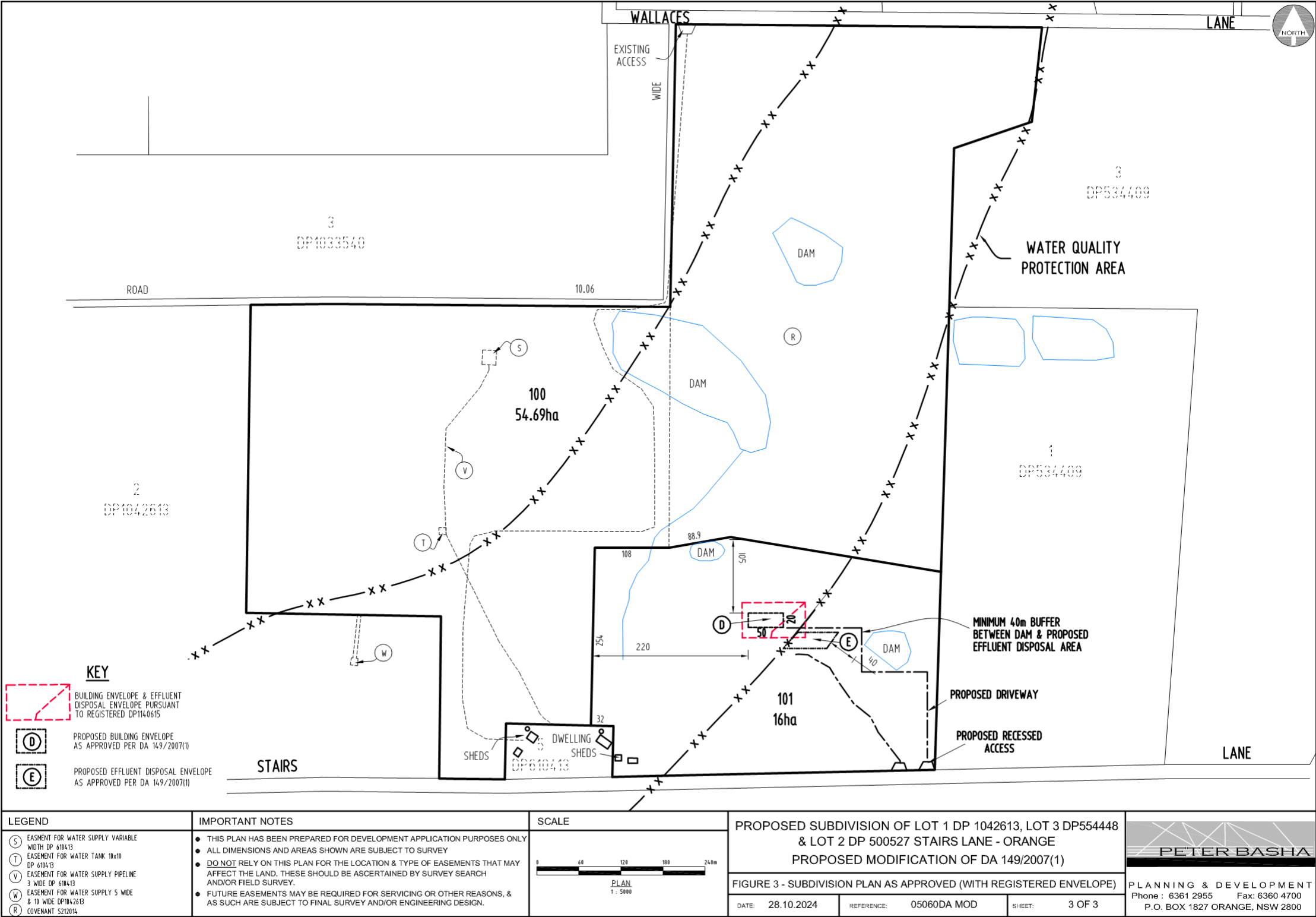
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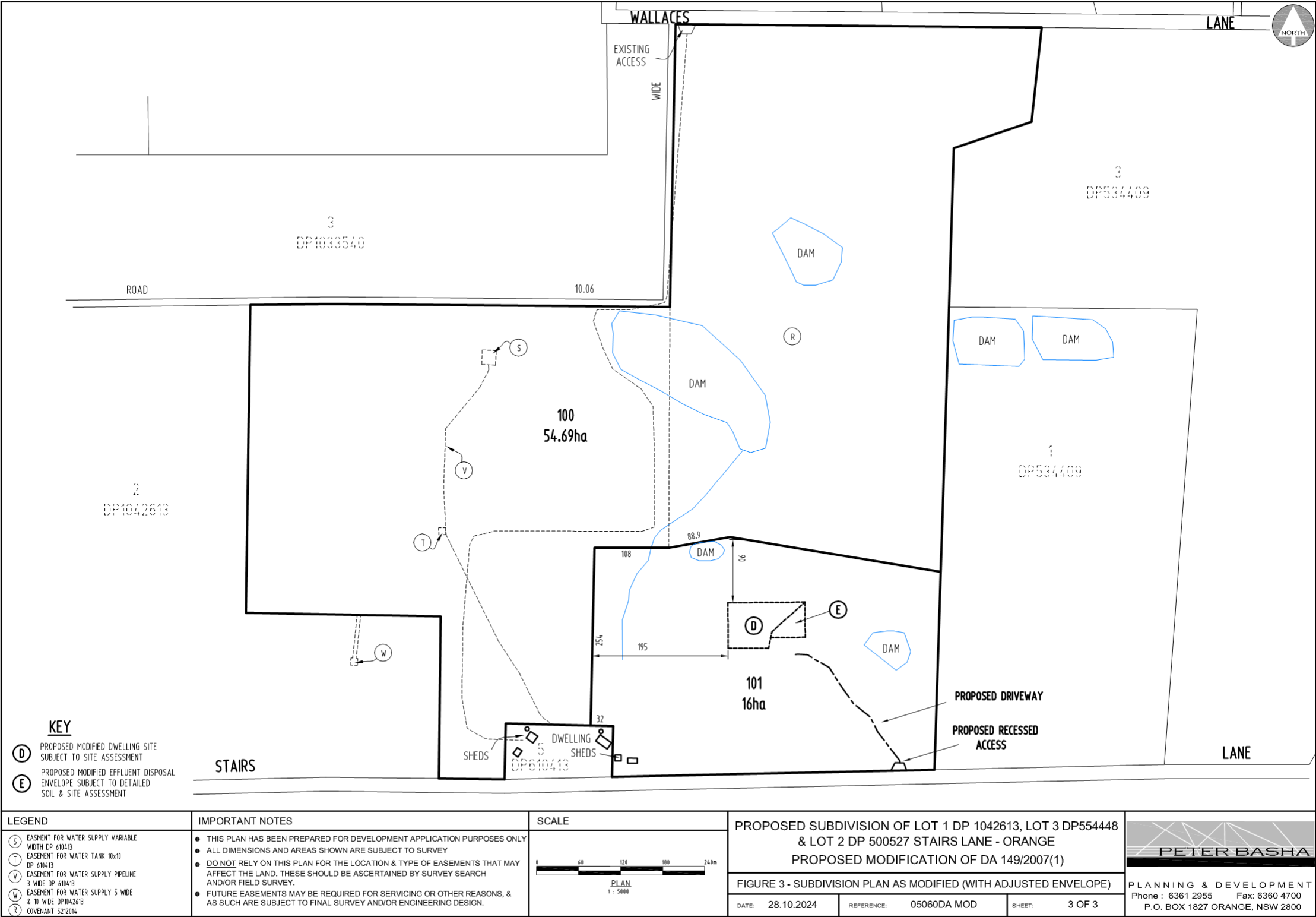
2 July 2025













Orange City Council
PO Box 35
ORANGE NSW 2800

Your reference: (CNR-80260) DA 149/2007(2)
Our reference: DA-2007-03253-S4.55-1

ATTENTION: Ben Hicks

Date: Monday 28 April 2025

Dear Sir/Madam,

Development Application
s100B – Subdivision – Torrens Title Subdivision
1040 Pinnacle Road Canobolas NSW 2800, 101//DP1140615, 1//DP1286855

I refer to your correspondence regarding the above proposal which was received by the NSW Rural Fire Service on 27/03/2025.

The NSW Rural Fire Service (RFS) has considered the information submitted. General Terms of Approval, under Division 4.8 of the *Environmental Planning and Assessment Act 1979*, and a Bush Fire Safety Authority, under Section 100B of the *Rural Fires Act 1997*, are now issued without any specific conditions.

This letter is in response to an assessment of the application based on the submitted information and supersedes our previous General Terms of Approval dated 6 July 2005.

This approval is for the subdivision of the land only. Any further development application for class 1,2 and 3 buildings as identified by the *National Construction Code* must be subject to separate application under section 4.14 of the *Environmental Planning and Assessment Act 1979* and address the requirements of *Planning for Bush Fire Protection 2019*.

Any future dwelling on Lot 101 DP 1140615 must consider the recommendations identified in the document titled Bush Fire Assessment Report prepared by Peter Basha dated November 2024

For any queries regarding this correspondence, please contact Danielle Woods on 1300 NSW RFS.

Yours sincerely,

Nika Fomin
Manager Planning & Environment Services
Built & Natural Environment

1

Postal address

NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

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NSW Rural Fire Service
4 Murray Rose Ave
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BUSH FIRE SAFETY AUTHORITY

Subdivision – Torrens Title Subdivision
1040 Pinnacle Road Canobolas NSW 2800, 101//DP1140615, 1//DP1286855
RFS Reference: DA-2007-03253-S4.55-1
Your Reference: (CNR-80260) DA 149/2007(2)

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

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

Nika Fomin

Manager Planning & Environment Services
Built & Natural Environment

Monday 28 April 2025



Department of Primary Industries
and Regional Development



OUT25/4541

The General Manager
Orange City Council
PO Box 35
Orange NSW 2800

C/o NSW Planning Portal

Attention: Ben Hicks

Proposed modification of consent concerning CNR 80260 DA 149/2007(2) 1040 Pinnacle Road,
Orange

Dear Mr Hicks

Thank you for the opportunity to comment on the proposed modification of consent concerning DA149/2007(2) as it applies to Lot 101 DP1140615 (the subject site).

The NSW Department of Primary Industries and Regional Development, Agriculture and Biosecurity (the Department) collaborates and partners with our stakeholders to protect and enhance the productive and sustainable use and resilience of agricultural resources and the environment.

We understand Council is seeking advice regarding matters that should be considered when determining the Development Application (DA). While the Department has no regulatory involvement, we have undertaken a review of the proposed modification consistent with our organisation's expertise and remit.

The subject site is in the Canobolas area on some of the rarest productive soils in Australia (Ferrosols) classed as Land and Soil Capability Class 3, Biophysical Strategic Agricultural Land and draft mapped State Significant Agricultural Land. Combined with favourable climate conditions the locality is suited to pome and stone fruit horticulture and is projected to remain so in the medium and longer-term future, according to [NARCLiM 2.0](#) data.

The proposal

We understand that a modification is sought to DA149/2007(2) concerning the Property Development Plan (PDP), where a 'drafting error' has been identified concerning the western edge of Lot 101. It is also proposed that the dwelling envelope be increased to approximately 0.4ha from 0.1ha in area.

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We note the former DPI Agriculture advice on this matter (15 March 2007), which confirmed the details of the DA approval where an undersized 16ha lot was permitted to be subdivided from the main holding for the purpose of a cherry orchard; following that when the stipulated 10ha orchard was established, a dwelling may be considered.

A PDP was submitted to this effect, indicating where the additional areas of cherry orchard were to be established and a dwelling envelope.

In the proposed modified DA, the inclusion of the ~0.70 ha of land on the western edge of Lot 101 is acknowledged, being established with an orchard as part of the main holding prior to subdivision. However, it is evident that the modification also seeks to amend the DA consent to not require a 10ha orchard as a pre-requisite for a dwelling, instead proposing a 6.5ha orchard.

Justification for the reduced orchard size

Information has been provided in support of a smaller scale orchard, where it is claimed that the nature of the enterprise is planted with newer varieties with a higher density. As such, this fruit has more *'early production, higher yields, better fruit quality, improved economic viability and long-term sustainability'*.

While this might be the case, there is no evidence provided of such improved outcomes or superior environmental management, as asserted. The generalised two-page list of references and research papers provided are not directly attributable to the subject site or production. It is also noted that the orchard had largely been established prior to 2013, with some additional planting in 2018, with little evidence of recent plantings on spatial imagery. Hence, the stated *'evolution'* and change of the orchard to a higher density production model with *'better agricultural production'* is not demonstrated against baseline data in this case.

The concept of improved technologies contributing to economies of scale and efficiencies in production are well understood. With favourable forward forecasts for high altitude horticulture as counter-seasonal exports, it is unclear why the entire site is not planted with orchard as described. The trends experienced in agriculture also apply to horticulture; that is, increased scale and intensity through amalgamation of property also bring increased resilience and economic sustainability. Thus, the rationale for a reduced orchard scale is not apparent in this application and further, if successful, creates an undesirable and unacceptable legal precedent.

Justification for the increased dwelling envelope

The dwelling envelope on Lot 101 is proposed to increase significantly, and a secondary access road to Stairs Lane will be formalised as part of the modification. It is noted that the proponents have had 18 years to establish the 10ha orchard and lodge a development application for a dwelling.

The configuration of the modified PDP indicates that there are to be no new plantings north of the dwelling envelope (known as Stage 2 on the approved PDP). Therefore, we believe there is a high risk of the site being used as a lifestyle property without the completed 10ha orchard. Other options may arise, such as the property being the subject of a boundary adjustment and ceding of the

dwelling envelope from Lot 101, resulting in another undersized, unrelated lifestyle dwelling in a highly productive agricultural area.

Mt Canobolas has a history of intense pressure for rural lifestyle use, which has displaced agricultural production and increased land use conflict by locating sensitive receivers throughout productive areas.

Section 4.55 modification

The development application is a '4.55 modification' made under Section 4.55 of the *Environmental Planning and Assessment Act 1979* (EPAA). This section is subtitled '**(1) Modifications involving minor error, misdescription or miscalculation**', with attendant case law and guidance on the application of section 4.55 requiring a determination being made as to whether a modification seeks to alter the fundamental elements of a development proposal to a material degree that the modified development '*is no longer substantially the same development*'. That is, development must remain substantially the same once amended as to that originally approved.

On this basis, the 'fundamental elements' of the subject modification are the dwelling envelope and potential dwelling being reliant on meeting a 10ha orchard establishment. It can be reasonably argued that the issues identified above with the proposed reduction of the orchard to 6.5ha from the approved 10ha and the increase in the dwelling envelope, in the absence of evidence other than 'drafting error' and statement of claims of better agricultural management, will raise untenable and undesirable outcomes for the site.

These outcomes could be risk of:

- Subdivision via 'boundary adjustment' of the non-planted area (Stage 2) on Lot 101 and the dwelling envelope, using the proposed 'recess' of the access to Stairs Lane as shown on the proposed layout to create a stand-alone undersized lifestyle lot.
- Lot 101 remaining with a smaller orchard than approved with a dwelling or dwellings, given dual occupancies (attached/detached) are permitted in the C3 Environmental Management zone, along with agritourism.
- The creation of an undesirable precedent which contributes to further pressure for lifestyle development on non-commercial sized agricultural lots.

It is suggested that Lot 101 being 16ha in area without the approved 10ha orchard would not be 'substantially the same' development as approved. The proposal sets an undesirable legal precedent and does not represent the orderly and economic development of highly productive agricultural land.

Other factors to consider include:

- The site is already heavily compromised by subdivision and rural lifestyle development adjacent and adjoining. There is no justification given for the threefold increase in area for the dwelling envelope, noting effluent disposal is separate. There are also ample

opportunities for the site to be managed from another location, as evidenced since approval in 2007.

- There is no requirement (appropriately) to meet a certain income threshold in the original DA consent, and further there is no guarantee that the orchard will be sustained in the current configuration. Hence, the information provided with the proposal on 'high density orchards' is regarded of interest only.

Should you require clarification on any of the information contained in this response, please do not hesitate to contact Nita Scott on 0487023845 or by email at landuse.ag@dpird.nsw.gov.au.

Sincerely

Lilian Parker
Manager, Agricultural Land Use Planning
Department of Primary Industries and Regional Development
Signed 17-4-2025

Submission 1
DA 149/2007(2)

10th February 2025

Orange City Council
Wiradjuri Country
PO Box 35
Orange NSW 2800

Application – “Modification of the Development Application DA 149/2007(2) - PAN-498317”

To the Chief Executive Officer,

We are writing in response to the submission “**Modification of the Development Application DA149/2007(2) - PAN-498317**”. This submission is related to 1040 Pinnacle Road (Lot 101 DP 1140615).

We do not support the changes outlined within the request to modify the existing development consent provided in 2007 under **DA149/2007**.

For clarity in our response, we call the original submission and approval from 2007 **DA149/2007(1)** and the 2025 request to modify that approval **DA149/2007(2)**.

Orange City Council must request a new development application process (rather than a modification) for what is clearly unapproved development. **DA149/2007(1)** could not approve the “intensive horticulture” implemented on 1040 Pinnacle Road, under the Orange Local Environmental Plan (LEP) 2000 ([LEP2000](#)) that was in force at the time.

In addition, the submission does not accurately represent the development that _____ has undertaken since 2007. We will demonstrate that most of the areas claimed to be “Existing Orchard” in 2007 and then again in the “corrected” 2025 version did not exist on site in the period 2003-2010 and have, apart from 2 small areas, been planted out with high density orchard since 2010. This can be seen in Appendix A – Google Earth Analysis” and is further supported by the Annexure “Timeline for Non-Traditional development on 1040 Pinnacle Road.

In addition, **DA149/2007(1)** doesn't appear to have sought approval for “rural industry” in the area adjacent to 30 Stairs Road or a helicopter landing site as required under the LEP2000.

Even if this lack of approval for the high-density orchard wasn't the case, _____ has been operating in contravention of the development approved in **DA149/2007(1)** in the areas adjacent to _____ since 2010. At this point he planted orchard in the area to the North of _____ and not implementing the required vegetative buffers in that area and to the east of the same dwelling.

As a result of this unapproved high-density orchard, associated development, and non-compliance we have been adversely impacted by _____ activities over the past years in many ways including but not exclusively:

- Regular spray drift over our property
- Rural industrial activities undertaken adjacent to our house

- Noise – both Offensive Noise (as per Environment Operations Act 1997) and ongoing operational noise
- Increased bushfire risk
- Unmaintained boundaries with long grass and weeds
- Loss of privacy
- Loss of visual amenity
- Helicopters flying within 2 metres of our boundary fence and 15m of our dwelling

Any new development application process must ensure that it removes the impacting activities well away from 30 Stairs Road. It must stop the land use conflicts that the applicant alone has caused through his unapproved orcharding practices on 1040 Pinnacle Road.

In this main document we have outlined the justification for each of the 10 actions that we require from the Council and

The supporting document "*Timeline for Non-traditional orchard plantings and other unapproved development on 1040 Pinnacle Road*" is a reference document that provides clear timing and photographic evidence of the unapproved activities carried out by | on 1040 Pinnacle Road. It is a key part of our submission and must be included in any assessment of the points we make in this main document.

With our hardcopy submission we have also provided a thumb drive with video evidence of some of activities from just the past 6 weeks or so. We hope this provides a better idea of what is going on than our words and some photographs.

Actions required from Orange City Council and in response to the submission
"Modification of the Development Application DA149/2007(2) - PAN-498317:

1. That Orange City Council confirm that the high-density orchard plantings (i.e. non-traditional orchard) and thus all associated infrastructure, and activities implemented in relation to it on 1040 Pinnacle Road since 2010 were a prohibited development under the Orange Local Environmental Plan (LEP) 2000 in 2007

DA149/2007(2) clearly communicates intention to obtain retrospective approval for his move to high-density/non-traditional orcharding since 2010 onwards.

He states in the submission that the orchard plantings now in place on 1040 Pinnacle are high density orchard. Furthermore, he describes the plantings originally proposed in DA149/2007(1) as the "traditional ...planting system". He is in effect describing the new orchard as "non-traditional" in design and practice.

Overview

This Farm Management Plan aims to justify the establishment of a 6.5-hectare high-density (HD) cherry orchard over the traditional 10-hectare planting system originally proposed in the 2007 Farm Management Plan. High-density planting offers numerous economic, environmental, and practical benefits that make it more sustainable and profitable, despite requiring less land.

Revised Orchard Area – Intensive Planting

It is proposed to modify the PMP to reflect the evolution of the orchard enterprise within approved Lot 101. In this regard, the cherry orchard has undergone change from an older variety and a broader planting pattern to a newer variety with a high density and more compact planting pattern that is consistent with modern orchard operations.

Documents 2 and 3 of DA149/2007(2)

At the time of the approval of DA149/2007(1) on 19/07/2007 the [Orange Local Environmental Plan \(LEP\) 2000 version 24/02/2006](#) (LEP2000 in this document) was in force.

LEP2000 Section 86 "Meanings of terms used to describe development" defined "intensive horticulture" as meaning

"a building or place used for the artificial propagation or growing of plants, other than orchards or vineyards using traditional agricultural practices".

S86 lists a couple of examples, but this cannot be seen as an exhaustive or complete list.

Intensive horticulture means a building or place used for the artificial propagation or growing of plants, other than orchards or vineyards using traditional agricultural practices, including:

- (a) hydroponics, or
- (b) indoor plant growing including crops, ornamental trees or shrubs, flowers, fruit, nuts or vegetables.

The LEP2000 definition explicitly includes non-traditional orchard practices, and this definition aligns with Mr Perry's definition of the development on his property in the submission for **DA149/2007(2)**.

The LEP2000 definition also aligns with what can be seen to be on site and the agricultural practices undertaken to support them.

As such the orchard on 1040 Pinnacle Road must be defined as "intensive horticulture" under the requirements of LEP2000.

However, in 2007 "Intensive Horticulture" was a prohibited activity within Zone 7 (Water Supply Catchments Zone) at the time of **DA149/2007(1)**'s approval:

- At that time 24 Stairs Road, 30 Stairs Road, 139 Wallace Lane and, 1040 Pinnacle Road where all classed as part of "Zone 7 (Water Supply Catchments Zone)" under LEP2000.
- Section 71 "**General controls for Zone 7 (Water Supply Catchments Zone)**" of LEP2000 outlines what is allowed within "Zone 7 (Water Supply Catchments Zone)".
 - "Intensive horticulture" is not listed as an allowed development activity (see Appendix B)
 - "Intensive horticulture" is listed for "Zone 1(a) General Farming Zone" so it would appear to have deliberately omitted for Zone 7
- Section 25 of LEP2000 outlines the definition of prohibited development.
 - At section 25.1c) it clearly states that development is prohibited if the development is not listed in the
 - "clause imposing general controls for the zone in which the land is situated, as development which may be carried out either with or without consent"
 - "Intensive horticulture" is a prohibited development in Zone 7

Only Traditional Orchard could be approved on 1040 Pinnacle Road as part of **DA149/2007(1)** in 2007.

As such Orange City Council could not have approved the high-density/non-traditional orchard and infrastructure described in new submission with **DA 149/2007(1)** in 2007.

2. That Orange City Council determine that the high-density orchard plantings (i.e. non-traditional orchard) and all associated infrastructure, and activities implemented in relation to it on 1040 Pinnacle Road since 2010 were not covered by the original DA approval in 2007 (DA149/2007(1)) and are in fact unapproved.

DA149/2007(2) is seeking retrospective approval for high-density orchard development since 2010 as a modification of DA149/2007(1).

clearly states in the submission that the orchard plantings in place on 1040 Pinnacle are not traditional plantings and instead are new high-density plantings and species.

We have shown in Appendix A that these high density/non-traditional orchard plantings started to be planted as early as 2010 which is only within 2 years of the ownership of the property. There is no time for, nor evidence that the traditional orcharding of DA149/2007(1) was even attempted.

We have shown at point 1 that high-density orchard, and related activities meet the definition of "Intensive horticulture" under the LEP2000 and that this was prohibited within the applicable Land Use Zone at the time of DA149/2007(1)'s approval.

As this would have been a prohibited development in 2007, activities since 2010 cannot be covered by DA149/2007(1).

As also shown in Appendix A, there only 2 small pieces of "existing areas" of orchard left on the property and they are managed in the same non-traditional way as the high-density plantings.

Given that there are no longer any areas left that could be shown to be managed via traditional agricultural i.e. orcharding practices that means the entire current orcharding enterprise is unapproved.

Given that DA149/2007(1)'s approval does not apply to the orchard in place on 1040 Pinnacle Road. It can also be extended that all consequent infrastructure (e.g. netting and trellising) and related management practices (intensive spraying etc) carried out are in effect unapproved development as well.

3. Determine that a new Development Application process is required to seek consent for the “intensive plant agriculture” implemented since 2010 without consent on 1040 Pinnacle Road

As demonstrated in point 1 and point 2:

- **DA149/2007(1)** could only have approved Traditional Orchard on 1040 Pinnacle Road as non-traditional orcharding was prohibited at the time of approval.
- As such in 2007 Orange City Council could not have approved the type of development planted/constructed by Mr Perry between 2010 and 2025.
- Given that **DA149/2007(1)**'s approval does not apply to the high-density plantings, infrastructure and activities carried out on 1040 Pinnacle Road are in effect unapproved development.

As the changes outlined in **DA149/2007(2)** in 2025 cannot be considered against the planning rules in place in 2007, they cannot be considered modification of **DA149/2007(1)**.

As a consequence, the assessment of unapproved development will require a new Development Application process undertaken to get consent.

This consent for the high-density/non-traditional orcharding described in **DA149/2007(2)** must be assessed against the current planning requirements outlined in Orange Local Environmental Plan 2011 (LEP2011). This version took effect on 29/11/2024 and remains the current version

Consent must be sought for the unapproved orchard and ancillary infrastructure as “intensive plant agriculture” as defined by under LEP2011.

As soon as removed the Traditional Plantings (as shown to be in place in Appendix A not the PMP) approved by DA149/2007(1), the approval provided by Council in 2007 would only apply if the replanted orchard remained traditional in agricultural practice i.e. “Like for Like”.

When replanted the existing orchard areas from 2010 onwards, they were clearly no longer traditional in practice:

- a. The trees were planted closer together and with closer row spacings than traditional orchards
- b. Large areas were planted and trained on trellising
- c. Intensive engineered infrastructure (hail netting and then rain netting) was constructed over all the orchard areas requiring extensive amounts of labour and equipment to be rolled out and up again each growing season
 - i. never had any netting
 - ii. only ever had broad scale apple netting and its use was ceased before 2006 (see Appendix A)
- d. Intensive chemical spraying regimes were implemented
 - i. Chemicals used include pesticides, herbicides, growth promoters and fertilisers including Serenade Opti, Merivon, Rovral, Parka, Pro Gibb, Bumper, Megafol, Calcium, Sweet
 1. Chemical list provided by and may be incomplete
 - ii. Between 30/08/24 and 20/11/24 (when he ceased notifications) notified us that he would spray on 21 days out of a total of 82.
 - iii. Between 25/11/24 and 9/12/24 he sprayed 13 times in 14 days

- e. intensive and intrusive practices like helicopter drying were also introduced
- f. The rain-netting installed since 2018 is new and experimental
 - i. It should have required a development application and engineering signoff
 - ii. It should not be allowed anywhere near a residential dwelling due to its noise, appearance and maintenance requirements
 - iii. <https://www.voencoveringsystems.com/> outlines the product installed
 - iv. It is environmentally disastrous as it is already disintegrating



4. Reject outright the concept of a “Drafting Error” existing in the current Property Management Plan maps

- a. As shown above the **DA149/2007(1)** and its supporting Property Management Plan (PMP) could only demonstrate the location of planned Traditional Orchard areas
- b. As shown in Appendix A most of the areas shown as existing in 2007 were not in fact existing from before 2003.
 - i. The area from 139 Wallace Lane was only ever apple orchard and that was removed in 2006.
- c. The traditional orchard described within the PMP maps was mostly removed by 2010 and replaced by intensive orchard and ancillary infrastructure
- d. The implemented high-density/non-traditional orchard is not covered by the **DA149/2007(1)** approval or any of the documents that supported it
- e. As a new DA and PMP are required the concept of a drafting error in the original 2007 submission maps is completely irrelevant to the process

5. Determine that a new Property Management Plan (PMP) and associated maps need to be prepared to support the new Development Application for the change to High-density/non-traditional orcharding on 1040 Pinnacle Road

- a. The current Orange Development Control Plan (DCP) was implemented in 2004 so was current for both DA149/2007(1) and the new 2025 DA process

<https://www.orange.nsw.gov.au/planning-directions-and-policies/development-control-plan/>

- b. As such it should have been reference in the conditions of approval of **DA149/2007(1)** to guide the design of the vegetative buffers required to protect from the negative impacts of orcharding activities.
- c. Chapter 6 "Rural Development" applies to the development approval required by

<https://www.orange.nsw.gov.au/wp-content/uploads/2021/02/DCP-2004-Chapter-06-Rural-Development.pdf>

- d. It outlines the requirement for a PMP and what it needs to do
 - i. A Farm Plan must demonstrate to Council how:
 - 1. the land as subdivided is capable of supporting productive and environmentally sustainable agriculture
 - 2. the land will be used according to accepted sustainable land-management practices
 - 3. natural resources are to be conserved (including water, soil and vegetation systems)
- e. A new PMP is required to reflect the vast differences in the factors impacting both financial viability and environmental sustainability of the high-density/non-traditional orcharding implemented on the property since 2010
- f. The PMP supplied as an annexure to **DA149/2007(1)** in 2007 only demonstrated the viability of a Traditional Orchard enterprise and didn't touch on environmental sustainability at all
 - i. It outlined that the PMP was prepared against the requirements of LEP2000.
 - ii. LEP2000 has already been shown to prohibit Intensive Horticulture on 1040 Pinnacle Road
 - iii. The PMP cannot cover the requested changes outlined in **DA149/2007(2)** as it was prohibited at the time.
- g. The 2007 PMP does not include any of the orcharding changes undertaken since 2010
 - i. The PMP only outlines the addition of 2.2ha of traditional orchard in 2010 and another 3.7ha in 2012
 - ii. It does not outline that, starting within the same timeframe as (i), the removal of the existing traditional orchard areas nor their replacement over time with intensive orchard plantings
 - iii. Under Section 2.8 Infrastructure there is no mention of hail or rain netting
 - 1. It only mentions irrigation and a new driveway (which was built in the wrong location)
 - iv. Under Section 2.9 petrol powered cherry-pickers are not identified as their use is minimal in traditional orcharding.
 - v. There is no accurate identification of the sheds on the maps and at no point are they identified as becoming the core for the maintenance, servicing, refuelling and storage of machinery
 - vi. There is no mention of the intensive chemical spraying regimes required by the non-traditional plantings
 - vii. The PMP still includes an alternative cashflow from hazelnuts
 - viii. The PMP does not include a commercial strawberry plot that has replaced some of the "existing orchard area" as well.

- h. As a result, the cashflow and accountancy figures supplied with the PMP are no longer valid
- i. The document supplied as "3. Supporting Letter" with DA149/2007(2) is inadequate in demonstrating the viability and sustainability of this new high-density/non-traditional orcharding style.
 - i. It provides no clear demonstration of the economic viability or environmental sustainability of the new intensive orcharding operations
 - ii. It doesn't consider the increased costs and inputs associated with the intensive practices in operation eg netting infrastructure, rain netting itself, increased spraying, labour, diesel
 - iii. There is also no recognition of the decrease in environmental sustainability related to the increase in intensity. This enterprise is dependent on high inputs of plastics, fossil fuels and chemical sprays
 - iv. It doesn't consider changes in fruit quality and impacts to saleability/price that may result from being grown fully under cover in humid shaded conditions.
 - v. It vastly underestimates the yields from Traditional Cherry Orchards.
 - 1. The yields listed for High-Density Yield at point 1 are also equivalent to what could be expected from traditional orchards
 - vi. The document ignores the commercial strawberry operation that replaced an area identified and still counted as "existing orchard" in the old and new maps. They are being promoted on website. They are currently out of season
 - 1. <https://www.altitudefarms.com.au/fruit-and-veg/>
- j. The supplied document "3. Supporting Letter" was incomplete and failed to provide any clear justification for the reduction in orchard size
 - i. It had no working hyperlinks to the reference documents "provided" as evidence to support their position
 - 1. A working version has not made available in a timely fashion to be assessed for this submission
 - ii. There is no way to verify the claims made in the document as no references are available to the reader

6. Ensure that the approved orchard areas and vegetative buffers are designed in compliance with the RFS requirements documented in "Planning for Bush Fire Protection" 2019

Both properties (and 1040 Pinnacle Road) are identified as being within a "designated bush fire prone area" (BFPL) on the RFS "[Check if you're in bush fire prone land](#)" webpage.

The orchard design provided and approved for 1040 Pinnacle Road must allow an Asset Protection Zone to be in place around the dwelling on in accordance with the Appendix 4 of "[Planning for bush fire protection 2019](#)" (PBP) as required by the NSW RFS.

Appendix 4 of the PBP outlines the requirements for assessing the Asset Protection Zone (APZ), access, water supply and other elements needed for the dwelling on . The rough sketch below gives an idea of what is required to ensure the safety of the occupants of .



The report supplied as "6-Bush-Fire-Assessment-Report" ignores the bushfire impacts to the dwelling on [redacted] and supports a proposal that puts that dwelling, its occupants and any emergency personnel at risk in the event of a bushfire or in the more likely scenario of a fire started on 1040 Pinnacle Road due to operational activities.

As such it should be resubmitted, or the Council seek independent advice from the RFS on what should be implemented to protect our dwelling.

Right now, there is no defensible space between the orchard in Area 2 and the dwelling on [redacted]

The existing orchard plantings in Area 2, and the unmaintained boundary area between that and [redacted] already prevents compliance with this objective and any new buffer adjacent to the dwelling on [redacted] will only worsen this situation.

Without doing a full assessment for our home, the "Bushfire Assessment report" supplied with DA149/2007(2) proposed a 50m buffer around [redacted] new dwelling.

So, it is reasonable to expect a 20-50m APZ around the [redacted] dwelling due to fire risk from the orchard and associated vegetative buffer planting that is yet to be effectively implemented.

There are also other issues also need addressing in the report such as lack of access, water supplies and safety of firefighting personnel.

7. Reject the proposed design of the buffer and the use of Leyland Cypress as the buffer species

A vegetative buffer between the orchard on 1040 Pinnacle Road and [redacted] has always been a requirement of **DA149/2007(1)**.

The original PMP outlines that buffers were required to limit land use conflict with [redacted]. It has never been implemented by [redacted] and land use conflict has occurred as a direct result.

We seek a buffer planted that meets the guidelines outlined in Section 6.5 of Orange Development Control Plan (DCP) 2004.

<https://www.orange.nsw.gov.au/planning-directions-and-policies/development-control-plan/>

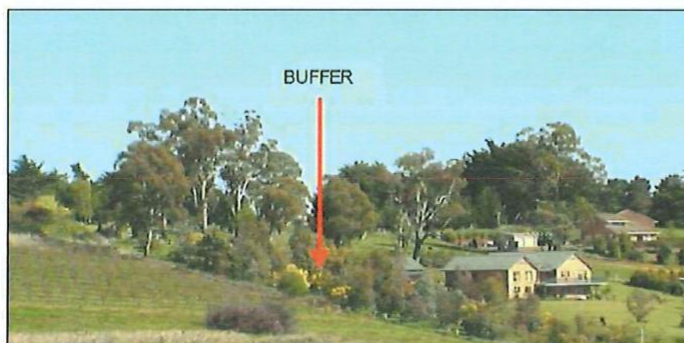
This should have been the basis (and may have been) of the buffer design submitted in 2007 as the DCP was in place at the time of the original approval.

Given [redacted] also then removed the approved existing Traditional orchard, when the replanting of intensive orchard was done in 2010 in Area 1 and 2 he could have easily and cheaply implemented effective buffers as required at that point of time.

We now expect that buffers are planted as follows:

- It must be located beyond the 20-50 APZ around the dwelling on
- Be a mixed native planting
- A minimum width of 30m
- Have a staggered height reaching a maximum height of around 15m
- With maximum height towards the orchard side
- Leaf coverage must extend to the ground
- It must be located outside of the 20-50 APZ around the dwelling on 30 Stairs Road
- It must be able to be easily maintained by [redacted] or his staff

The DCP also provides a clear photographic example of such a buffer. It shows the required scale and structure of a vegetative buffer set well away from the dwelling.



Photograph - Agricultural buffer in a rural residential area

The suggested buffer of a single row of Leyland Cypressess put forward in **DA149/2007(2)** is not of sufficient width or structure to meet the goal of protecting us from spray drift and the other adverse impacts of [redacted] orcharding activities.

The buffer location immediately on the boundary is also not in accordance with the requirements listed in Appendix 4 of "[Planning for bush fire protection 2019](#)" (PBP) as discussed in Point 5 above. There needs to be a clear asset protection zone of 20-50m from the dwelling to provide defensible space in case of a fire. A buffer of flammable cypresses 5m from the dwelling won't allow that.

The proposed plan also does not leave enough space around the suggested buffer and existing orchard to allow the intensive maintenance required to keep them to the size that is suggested. The current placement of the netting infrastructure (poles, netting and stays) and the orchard areas themselves, means that the buffer trees cannot be planted a reasonable distance off our boundary fence.

Leyland Cypressess are not listed in the DCP as a suitable plant for the buffer plantings nor are they suitable for a buffer because:

- they will form an "*impermeable*" *windbreak* which will block airflow
- they are too big to be planted that close to our fence and dwelling

- There is no room to allow for maintenance and without proper maintenance they can reach well over the suggested height and width (10m h and 3m w) to sizes approaching 40m high and 8m wide
- They will overshadow our house and yard making our house and yard dark, cold and unattractive
- They will constitute a significant fire risk within 10m of our dwelling
- They are a hazard to the foundations of our dwelling when planted that close to it

8. That Orange City Council consider the validity of the house dwelling approval on 1040 Pinnacle Road

We have also shown in Appendix A that these orchard plantings took place as early as 2010 which is only a year after the Perry's took ownership of the property in 2008.

Given the high-density planting commenced almost immediately after the property was purchased, it can be argued that [redacted] had no intention of ever running 1040 Pinnacle Road as a traditional orchard. That in fact right from the start of his ownership it was going to be run without consent as an "intensive horticulture" enterprise.

Given that and the following items, the council should reconsider if the dwelling approval should be retained on 1040 Pinnacle Road:

- The high-density plantings are unapproved
- There is no Property Management Plan in place that demonstrate the economic viability or environmental sustainability of the high-density planting's enterprise
- The enterprise has been run since 2008 without [redacted] living on site

Given the need for a new DA process to get consent for all the activities that didn't comply with LEP2000 it is worth seeing what is allowed under the current Orange Local Environmental Plan.

Under the current version of the [Orange Local Environmental Plan 2011 \(LEP2011\)](#), changes have been made since 2007 in relation to dwelling approvals on lots below the minimum size.

1040 Pinnacle Road is now classed as "Zone C3 Environmental Management".

A new section has been added in Part 4 Section 4.2B, that covers "Rural subdivision for intensive plant agriculture". This applies to Zone C3.

The relevant clause for the dwelling Envelope on the property is 4.2B.4c)

It that states that a dwelling should only be approved on a lot below minimum size if "*the dwelling house is required to support the carrying out of the proposed or existing intensive plant agriculture*".

Map in relation to that land.

(4) However, development consent must not be granted for the creation of such a lot if an existing or new dwelling house would, as a result of the subdivision, be situated on the lot unless the consent authority is satisfied that—

- (a) the lot has an area of not less than 25 hectares, and
- (b) the land is being or will be used for the purpose of intensive plant agriculture, and
- (c) the quality and area of the land is suitable for the commercial production of the proposed or existing intensive plant agriculture of the kind proposed, and
- (d) the dwelling house is required to support the carrying out of the proposed or existing intensive plant agriculture, and
- (e) the land—
 - (i) has an average annual rainfall, recorded over a minimum 5-year period, sufficient for the proposed use, or
 - (ii) is subject, or will be subject, to irrigation requiring a licence under the *Water Act 1912* or the *Water Management Act 2000* and the volume and entitlement of water available under that licence is or will be adequate for the purpose of intensive plant agriculture, and
- (f) services for the supply of electricity and other infrastructure to support the intensive plant agriculture are available or adequate arrangements have been made to make them available when required, and
- (g) the sustainable intensive plant agriculture activity will have commenced or been established before the subdivision is registered.

has demonstrated that there is no house required to manage this orcharding enterprise as he has run it since 2008 until 2025 without one. does not run the orchard day to day, his staff do, and he is rarely seen on site.

Under LEP2011 rules, the consent authority cannot be satisfied that the dwelling is required to support the intensive plant agriculture.

9. That the Council provides a statement of how it will enforce that the changes approved by this process are implemented by Mr Perry

The problems we are addressing now would not have happened if the conditions related to the approval of **DA149/2007(1)** had been monitored by Orange City Council staff.

has demonstrated time and again that he has no respect for Council and State planning regulations and policy.

We need the Council to outline how they will ensure compliance with whatever activities he is required to undertaken.

10. That the Council confirms that it has policies in place to ensure that impacted rural residential neighbours in the future are included in any planning processes like this so that they are fully aware of their rights and don't go through what we have.

We were never made aware of the PMP and conditions of approval for **DA149/2007(1)** when we purchased in 2010.

We were never told about them in 2016 when we called Orange City Council to complain about the construction of hail netting that trespassed into our property.

We only found out about them after things had got so bad we had to have Council come out on site in 2023. Even then it was a bit of a grey zone as to whether we should even be told about it.

There are items in there that were intended to protect us that we didn't even know about until it was too late. As a result, we are here in this DA process.

Where to from here?

As outlined above the request to retrospectively approve the high-density/non-traditional orcharding implemented on the property cannot not be done under the planning rules in place in 2007.

As such this new submission **DA149/2007(2)** must be rejected and a new DA process commenced to allow the unapproved development be assessed under current planning regulations.

The new Development Application that is supplied and eventually approved must include a new Property Management Plan and maps that show an orchard design that provides protection to from spray drift, noise, dust, bushfire and other serious impacts to health and amenity currently inflicted on us by the activities of

This will without doubt require the removal of some orchard areas and infrastructure but that was never approved. The removed areas can be moved to other parts of the remaining 9.5 hectares of the property with minimal impact.

The design must ensure the safety of the dwelling on from bushfire by allowing an adequate asset protection zone around the house including a commitment to maintaining this area on 1040 Pinnacle Road to the standard of that around the proposed new dwelling on that property.

The new Development Application should also include the removal of rural Industrial activities in the areas adjacent to the dwelling on (i.e. Area 3).

The Council should also consider the banning of rain netting from within 300m of any neighbouring dwelling. That will prevent the visual and aural impacts caused by it.

We have tried multiple times in the past to discuss the above issues with , but he becomes angry and states that he is a primary producer and as such he can do whatever he wants. He has made that same statement multiple times. He has never been open to a calm or rational discussion of our concerns even though his actions are the root cause of them.

We look forward to discussing our submission in detail with a representative of the Council's development assessment team in more detail. This should be on site in the first instance so that the Council can truly appreciate the negative impacts that this unapproved development has had and will continue to have on our property until rectified.

Please contact either of us if you require further information or clarification of anything in our response.

Please keep us informed and involved in this process.

Thank you for your consideration of our response.

Regards,

Appendix A – Google Earth Analysis

Analysis of DA149/2007(2) Map vs Historical Google Imagery to present day

Image 1: Showing areas of orchard that did exist in 2003-2006 before the DA was approved against the document provided with DA149/2007(2).

In the 2003 and 2006 Google Images there are only the same 4 zones of traditional orchard existing on the site in both 2003 and 2006.

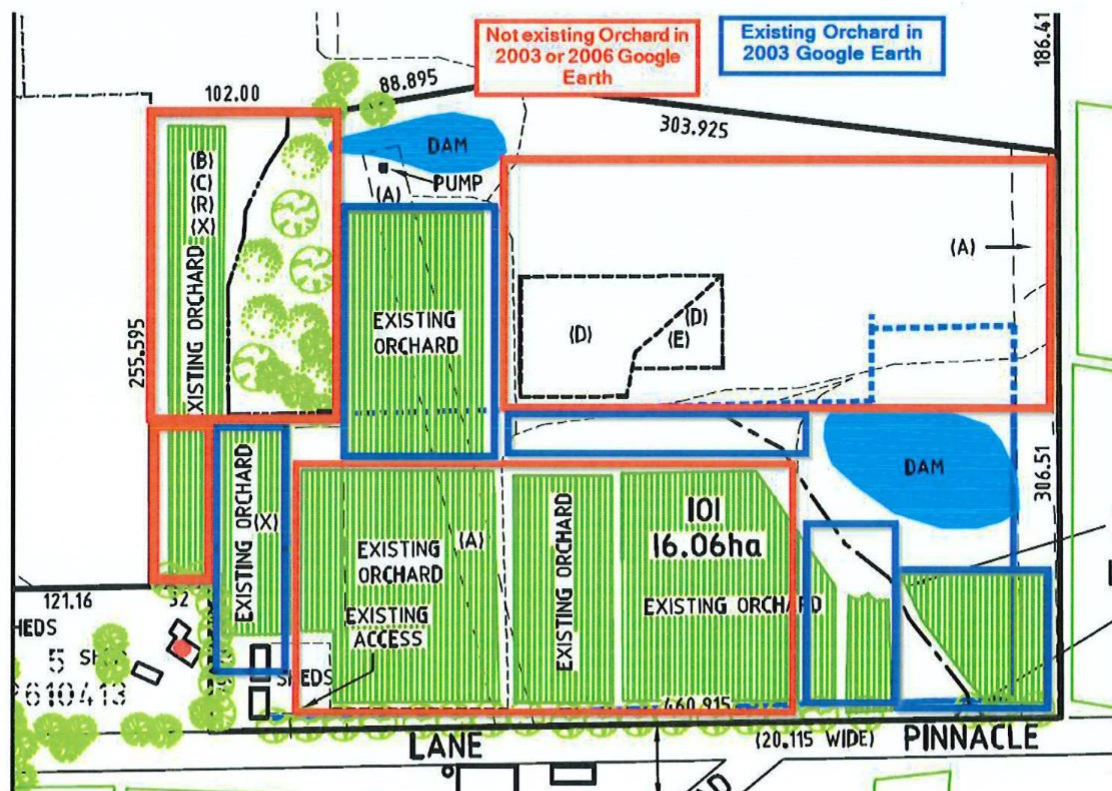


Image 2: Changes implemented since DA149/2007(1) was approved 2007

Using the Historical Imagery on Google Earth, our photographic archive and social media and website we can summarise the timeline of the orchard plantings on 1040 Pinnacle Road.

In Area 1 there was no orchard before the DA approval. Prior to 2006 this zone was part of an apple orchard. However, the strip now within 1040 Pinnacle Road was not planted out. This apple orchard was removed by Mr Ken Perry while it was still part of 139 Wallace Lane.

Area 2 was part of a small existing area of traditional orchard. There is a possibility that this was also planted to apples. This orchard area had been removed prior to replanting in 2010.

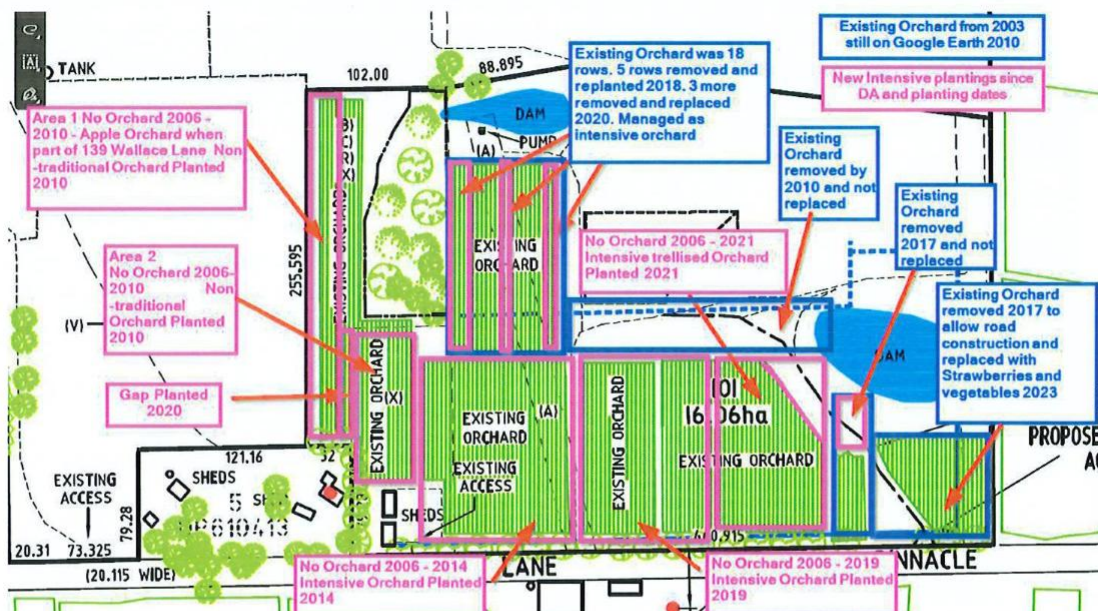
Area 1 and 2 were both planted out as non-traditional orchard in 2010. These are not covered by the original 2007 DA approval.

By 2010 only 3 areas of traditional orchard remained (blue areas).

- The long area in the centre of the property was removed by 2010
- The area in the southeast corner as existing orchard in 2025 was removed in 2017 and planted out with commercial strawberries in 2023.

Only the small remnants of traditional orchard are covered by the original DA approval.

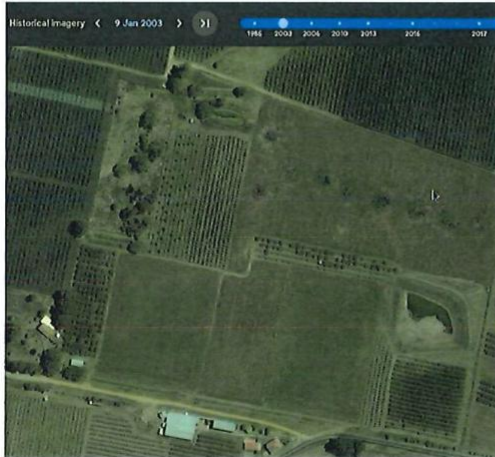
The remainder of the intensive orchard (in magenta) was planted between 2016 and 2021. These are not covered by the original DA approval.



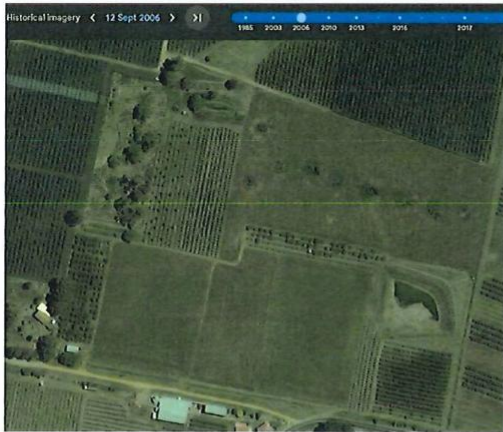
Google Earth

Imagery can be viewed at [1040 Pinnacle Road Google Earth](#)

2003 Google Earth Image – only 4 areas of traditional orchard exist on what becomes 1040 Pinnacle Road



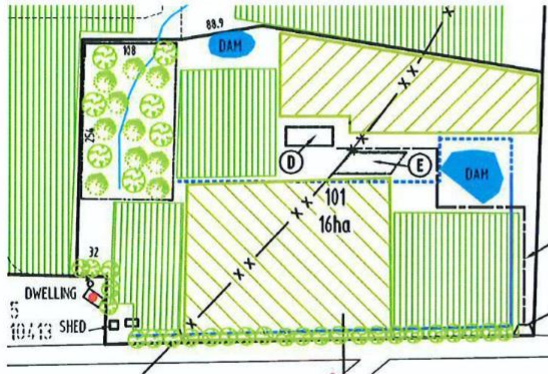
2006 Google Earth Image – Still only 4 areas of existing orchard on the block



Existing Areas as per DA149/2007(1)

Excerpt of Original PMP Annexure maps provided as part of DA149/2007(2) by existing Orchard Areas

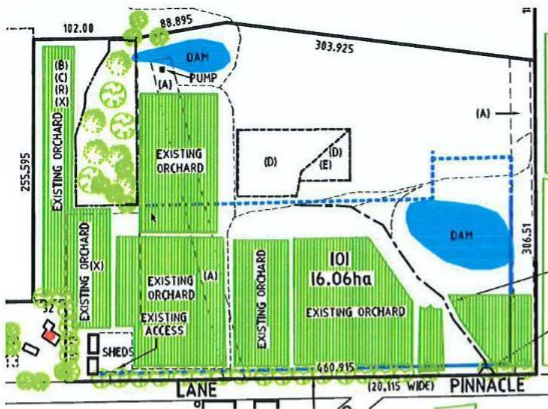
as showing



Existing Areas as per DA149/2007(2)

Excerpt of Proposed new PMP Annexure maps provided as part of DA149/2007(2) by showing existing Orchard Areas

as



Appendix B – Orange Local Environmental Plan (LEP) 2000 version 24/02/2006

<https://legislation.nsw.gov.au/view/html/repealed/2006-02-24/epi-2000-0196#sec.2>

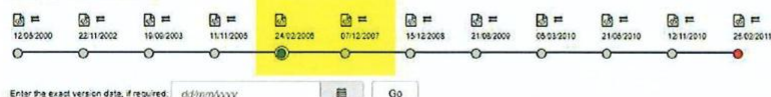
Section 25: Prohibited development

Orange Local Environmental Plan 2000

Historical version for 24 February 2006 to 5 December 2007 (accessed 5 February 2025 at 15:57)

Part 4 > Section 25

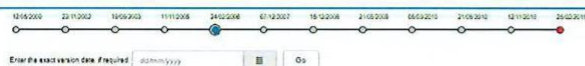
Point-in-time versions



25 Prohibited development

- (1) Development is prohibited on land to which this plan applies if it does NOT comprise:
 - (a) exempt development identified by clause 10, or
 - (b) other development identified by clause 21 as being allowed to be carried out without consent, or
 - (c) development listed in the clause imposing general controls for the zone in which the land is situated, as development which may be carried out either with or without consent.
- (2) For the purposes of clauses imposing general controls for zones, the use or construction of aircraft facilities or helicopter landing sites in conjunction with a dwelling are not development for the purpose of the dwelling.

Section 71: General controls for Zone 7 (Water Supply Catchments Zone)



71 General controls for Zone 7 (Water Supply Catchments Zone)

- (1) Zone objective The objective of Zone 7 is to manage development within those rural areas which comprise water supply catchments in a way that conserves and enhances the City's and district's water resources while maintaining the rural function and character of the area generated by productive primary industries and some living opportunities.

- (2) In Zone 7, the following:

- (a) is allowed without consent:

Development for the purpose of:
agriculture

- (b) is allowed only with consent:

Subdivision

Development for the purpose of:

advertisements associated with the use of the land

aircraft facilities

animal establishments

bed and breakfast accommodation

caravan parks serviced by public sewerage facilities

communication facilities

community facilities

commercial stores

dams

depots

distilleries

dwelling houses

energy generation

extractive industries

forestry

group homes

guest houses

helicopter landing sites

heliports

holiday accommodation

home businesses

intensive livestock industry for agriculture

land clearing

mines

offensive industries

offensive storage facilities

outbuildings

plant nurseries

recreation areas

recreation facilities

research facilities

restaurants

road transport terminals

roads

rural industries

sewerage

transport depots

utility installations

veterinary hospitals

Note—

Development indicated in bold in the above table may comprise complying development. An application may be made to the Council or an accredited officer for a complying development certificate.

Section 86 Meanings of terms used to describe development

Agriculture means:

- (a) the cultivation of pasture or crops, including cereals, fruit and vegetables and flowers, or
- (b) the keeping or breeding of livestock, bees, poultry or other birds,

or a combination of all or some of them, for commercial purposes, but does not include the use of *animal establishments*, or *intensive horticulture* or *intensive livestock industry*.

Helicopter landing site means a place not open to the public used for the taking off and landing of helicopters.

Intensive horticulture means a building or place used for the artificial propagation or growing of plants, other than orchards or vineyards using traditional agricultural practices, including:

- (a) hydroponics, or
- (b) indoor plant growing including crops, ornamental trees or shrubs, flowers, fruit, nuts or vegetables.

Rural industry means a business undertaking involving:

- (a) the handling, treating, processing or packing of primary products, or
- (b) regular servicing or repairing of plant or equipment used for the purpose of agriculture or a business referred to in paragraph (a).

Index of Videos of impacting activities on 1040 Pinnacle Road

Purpose

Attached to this page is a thumb drive containing several MP4 videos showing the activities that are carried out adjacent to 30 Stairs Road. Photos and text cannot provide the audio elements of these activities carried out within 2 metres of our boundary and 15m of our house.

A reminder that these activities are happening in areas where there is no approved high-density/intensive orchard.

Given concerns around computer security we are not happy to come in and play the videos on our own laptop if required.



20250209_120720.mp4 and 20250209_121051.mp4 Taken Sunday 9th February. Summary of current state of play in areas adjacent to

20250207_154211.mp4 Taken Friday 7th February. This shows how close the cherry-pickers are used to our property and how loud and constant their noise is. This is only one and there have been more than 3 working in here at times.

This single row took more than half the day and we have another 5-10 days of this before all the netting is rolled up around our house

20250129_120245.mp4: Taken 29th January 2024. Slashing activities in Area 1 and 2. Noise, dust and debris impacting dwelling

20250127_195039.mp4: Taken 27th January. Provides more visuals of the netting and boundary area issues

20241208_083837.mp4: Taken 8th December. Shows proximity of helicopters operating to including low altitude passes directly over the house

20241207_131406.mp4: 7th December. Spraying adjacent to with a strong Northerly

20241206_205212.mp4: 6th December 8:52pm. spraying at night in Area 1 after having sprayed during the day

Timeline for non-traditional orchard plantings and other unapproved development on 1040 Pinnacle Road

Purpose

This document is to be assessed as part of the Harrison-Street response to the submission submitted by for 1040 Pinnacle Road (DA149/2007(2)) in February 2025. Its relevance is not lessened by being supplied as a separate document.

The details below outline with photographic evidence the timing of various development related activities on 1040 Pinnacle Road.

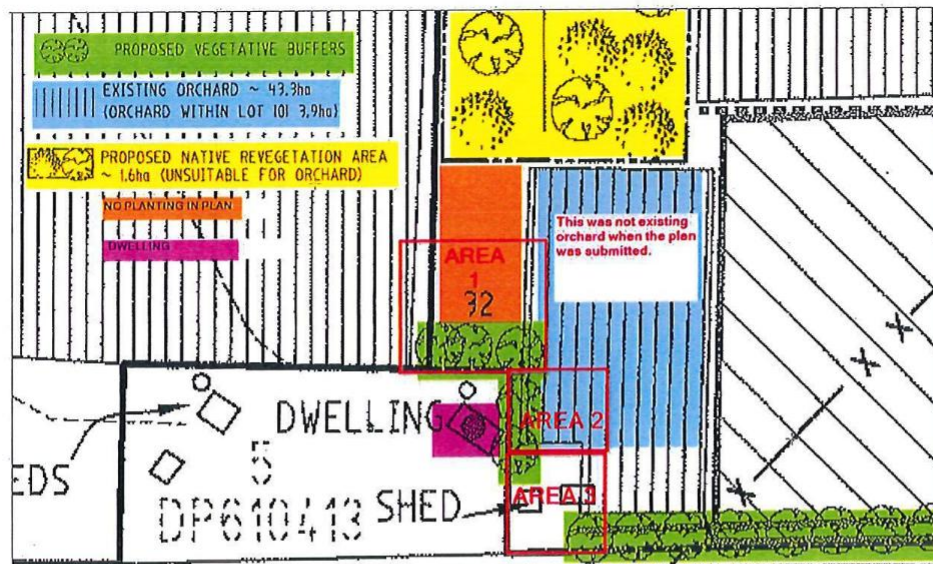
The original date stamped versions of our photographs can be supplied to Council if required.

2007 July – DA149/2007(1) Approved for traditional style orcharding activities. Intensive orcharding prohibited

These can be divided into 3 distinct areas as follows

Within what should be part of a Bushfire Asset Protection Zone

Area 3 – Sheds used for Rural Industries – Required consent under LEP2000 and still requires consent under LEP2011. Original plan was incorrect in this area. PMP outlines no activity in this area.

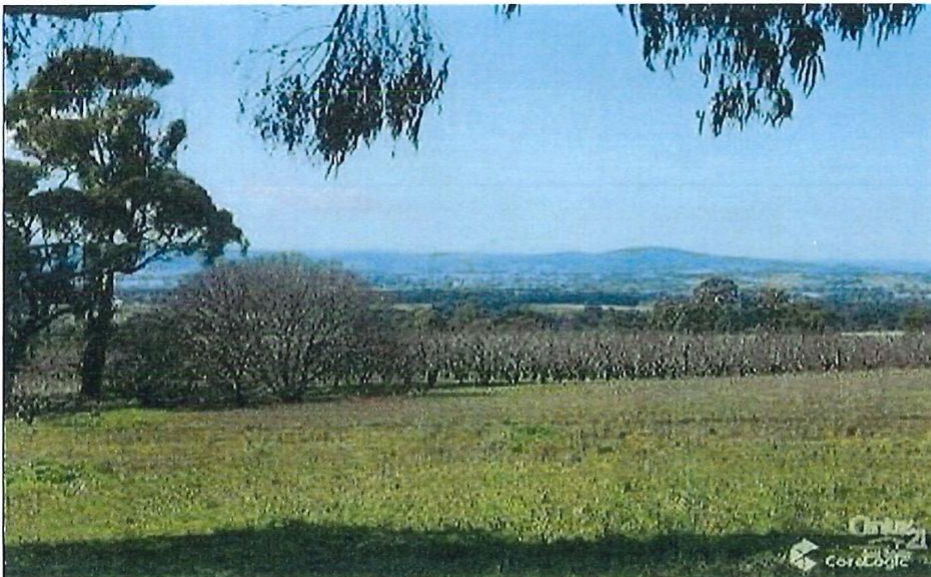


2

2008 May – 1040 Pinnacle Road purchase settles for

2009 Approx June (no leaves on deciduous tree) – Area 2: Photos from Century 21 Listing for

No orchard planting exists to the immediate North or East of Stairs Road. Existing traditional orchard visible in far distance



06/08/2010 – purchase settles for
afterwards until December 2012.

The property is leased out shortly

2010 August - Area 1 - No trees to the North of Stairs Road.

2010 August - Area 2 - Planting of semi-intensive (closely spaced) i.e. non-traditional orchard commences to the east of . This area was part of and to this point has not had netting infrastructure in its history.

2010 August – Area 2 - Planting rows ripped. No netting infrastructure



10/08/2010 – Area 2 - Trees planted in non-traditional density



10/08/2010 Area 1 – No cherry orchard visible to North of out at this stage based on later photos.

. It is assumed this area was also planted

The wide spaced derelict netting infrastructure is part of what was 139 Wallace Lane. This was apple orchard until it was removed in 2006 by Mr Ken Perry. This was apple orchard infrastructure and is not related to the cherry orchard that came later.



14/08/2010 Area 2 – Tree guards make the increased planting density clear in new orchard



September 2010 – December 2012 –

leased to tenant

2013 Google Earth Historic image – Orchard to east of 1040's sheds has not been replanted as yet



- NOTIFICATION OF MODIFICATION APPLICATION FOR DEVELOPMENT CONSENT
Application No DA 149/2007(2) - Lot/DP Lot 101 DP 1140615

2013 January – Area 2 – Trees are growing, no netting infrastructure.

No orchard beyond Area 2 (aligns with Google imagery)

27/01/2013



27/01/2013 – Gum tree claimed by to be part of his buffer planting clearly within



2013 May – Area 1 – Similar aged trees to Area 2 evident which corroborates that these trees were planted in 2010 at the same time as Area 2.

Note that only four rows were planted.

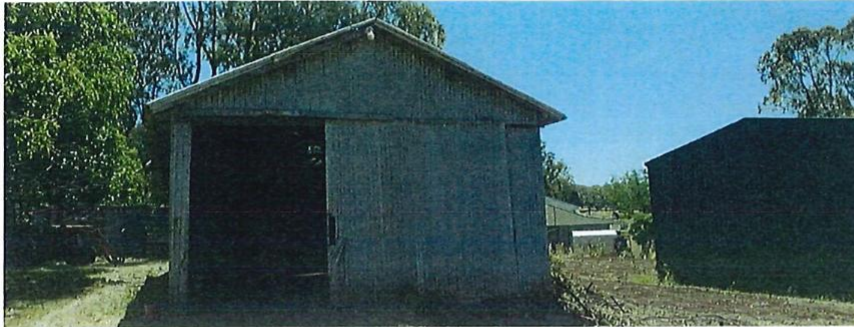
A large gap immediately in front of exists between Area 1 and 2 which was not planted out until **2020**.

Wide spaced derelict apple orchard netting infrastructure exists that is still linked physically with that from 139 Wallace Lane.



2014 – January – Old shed removed from 1040 Pinnacle Road. The replacement shed and the dirt floored shed adjacent to it are now used for Rural Industry activities which appears to have had no consent for.

Comment was never sought from owners of 30 Stairs Road regarding the use of these sheds for rural industry.



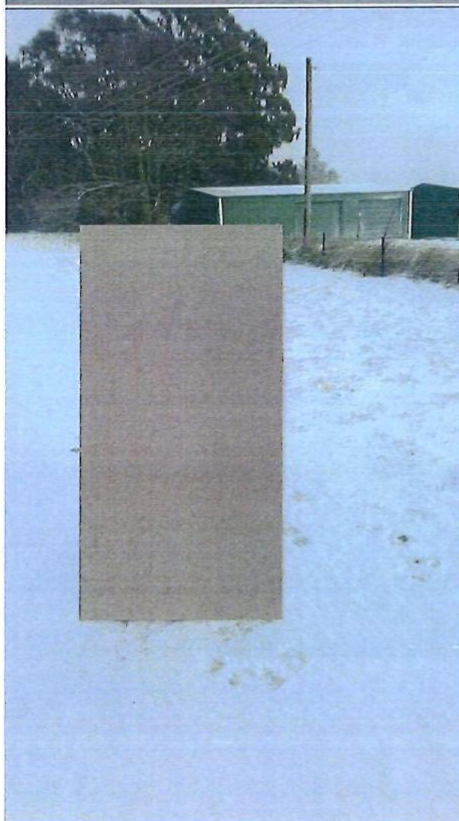
2014 – June – Area 1 - Wide spaced derelict netting infrastructure associated and linked physically with 139 Wallace Lane still in place.

Close non-traditional spacing evident. Only 4 rows planted.



2014 June – New intensive plantings visible to the east of the sheds.

The new replacement shed now clearly in place and close to 3 times the size of the one it replaced.



2015 January Area 1 and 2 - Removing old stump in

3 row gap is still visible between Area 1 and 2 plantings. No netting in Area 2 and old derelict 139 Wallace Lane apple infrastructure in place.

Also evident is the second gum tree in 1040 Pinnacle Road that told Council that we requested to be removed as it overshadowed our house. We didn't ask and it didn't shade our house at all.



2015 October – Area 2 – No netting infrastructure evident



2016 Mid-Year – Area 1 and Area 2

New hail (not rain) netting infrastructure commences to be installed by Mr Ken Perry and his netting company.

When asked why the netting was so close to our fence and the stays trespassing into our yard, Mr K Perry responded that *"I always said this house was in the wrong place"*. We now know that the orchard and netting was in the wrong place.

At this point we contacted the Orange City Council by phone and were told incorrectly that as it was a primary industry zone, and we just had to deal with it.

If we had known what was to come from we would have followed up with our complaint at this point. To our detriment we did not follow this up and find out about the Property Management Plan that would have protected us from what we have experienced since.

2016 December Area 2 – New hail (not rain) netting infrastructure is now in place.

This is transparent dark hail netting that allows visibility through it. There are only posts every 4 rows or so.

Consequently, the rolled-out netting and the rolled-up netting "sausages" are not as visually intrusive as the later opaque rain netting and its additional infrastructure.



17/12/2016 Area 1 – Netting has been installed.

Netting is not a typical part of traditional cherry orchards. Moreover, these are plantings and operations are not traditional in practice.

Netting is a new development for the property. There was no netting on . The infrastructure that existed in Area 1 was a remnant of the apple orcharding that that was removed from 139 Wallace Lane in 2006. It was only standing because it was still linked physically to the netting on 139 Wallace Lane.

In the photo below there is vertical netting along the boundary fence, so the transparency of this netting type is clear.

We also have our first close encounter with the concept of using a helicopter to dry off the cherries. This is to become a significant part of intensive cherry orcharding practices. This is within 25m of our dwelling and 2m off our boundary fence.

This is not Traditional Orchardng practice, and at this point we are **10 years** on from the approval of **DA149/2007(1)**.

These helicopters often landed on 1040 Pinnacle Road which never had and still has no approved "Helicopter Landing Site"/"Helipad".



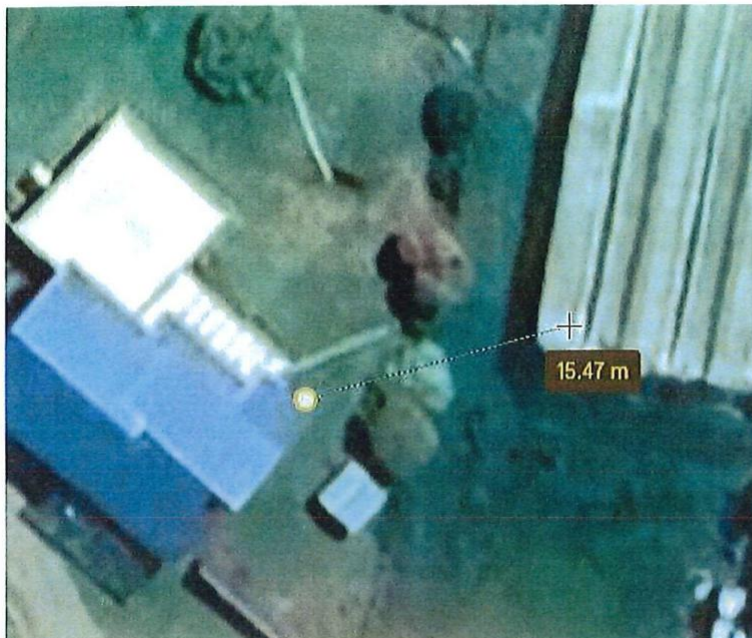
Helicopter location (below)



2016 17/12/2016 Area 2 – Netting in place and helicopter flying within 15m of dwelling and 2m off our boundary. on board (he waved). Taken from our Bathroom window which is halfway along our dwelling.

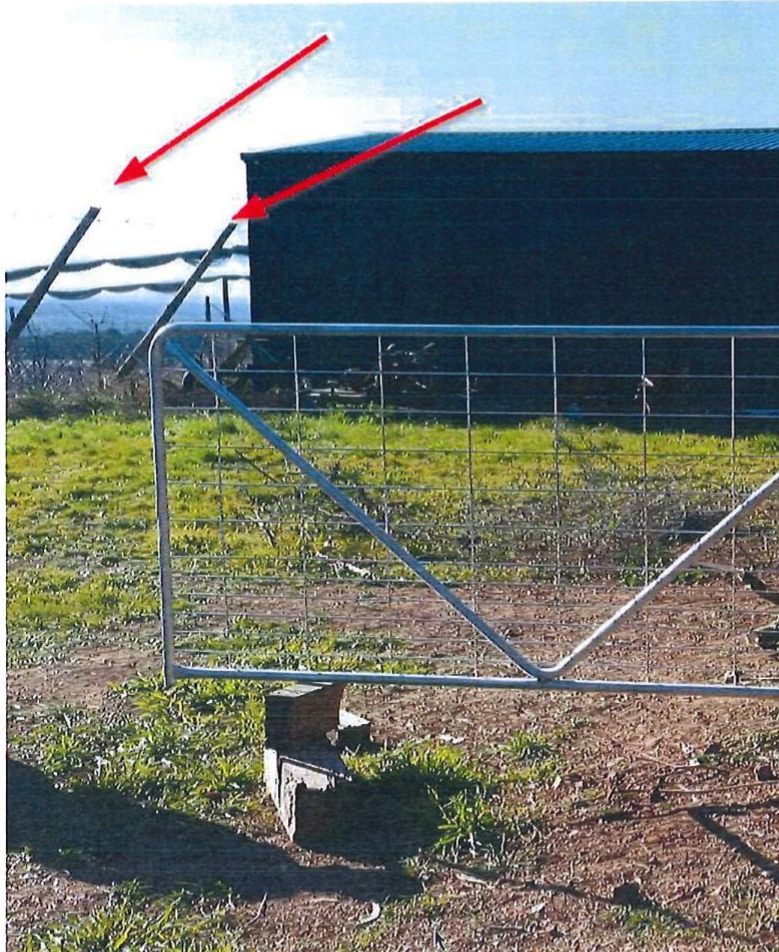


Helicopter location (below)



2017 June – Area 2 – Heavy duty infrastructure commences to be installed in preparation for installation of rain netting.

New boundary fence being constructed by Mr Harrison.



2017 July – Area 2 - Original black hail netting rolled up in widely spaced rows (1).

Area of white hail (not rain) netting visible to the left (2) covering the empty area not planted out until 2020.



2017 August – Area 1 – Removing dead tree from 1040 Pinnacle Road with permission of Mr Ken Perry.

Large gap in planting still visible (1) North of road dwelling.

White hail netting (rolled up) is only covering this empty area. This is not rain netting.



- NOTIFICATION OF MODIFICATION APPLICATION FOR DEVELOPMENT CONSENT
Application No DA 149/2007(2) - Lot/DP Lot 101 DP 1140615

2017 Late November (27th) – Area 1 – Wide spaced Hail Netting still in place. Can see through the netting to a large degree.

Helicopter operating as well.





2018 February – Area 2 – Hail netting still in place (1) . White hail netting visible over the gap between area 1 and 2 (2)



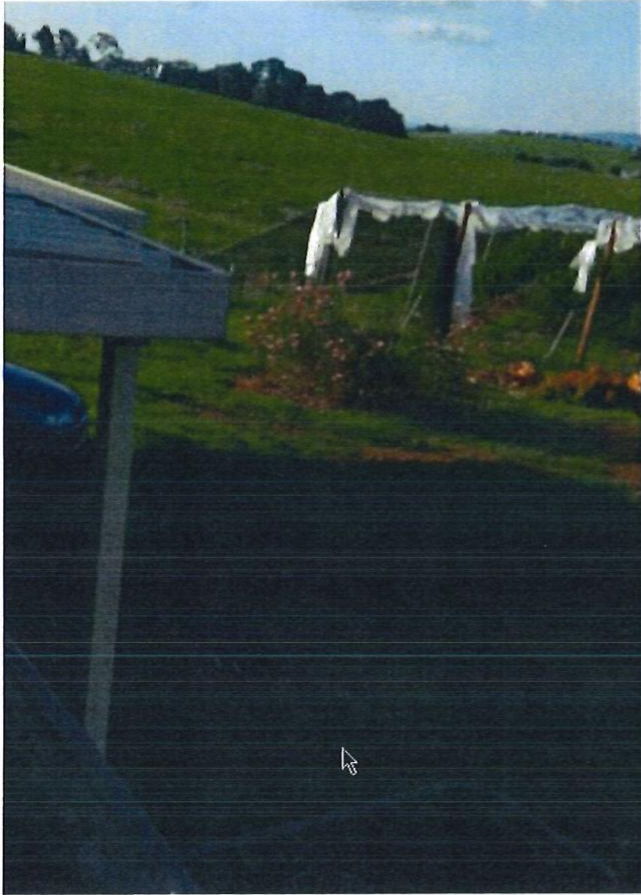
2018 Google Imagery –Area 1 - Gap in planting clear



2018 March – Area 2 – Rain Netting infrastructure installation complete. High density of rolled up netting “sausages” evident (1)



2018 October – Area 1 – Rain netting installation in place.

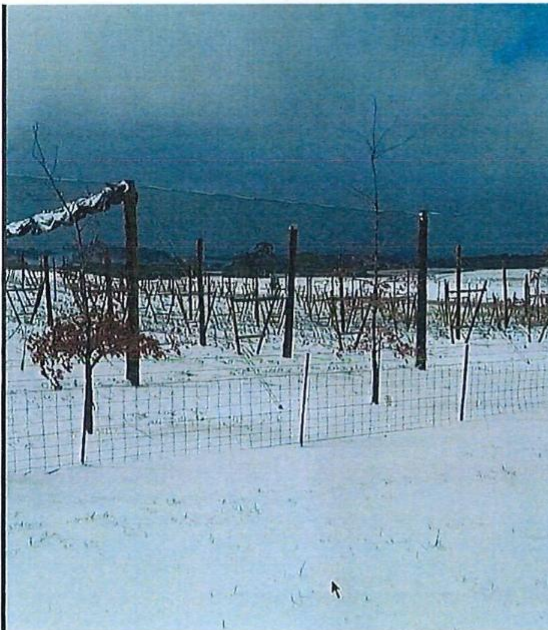
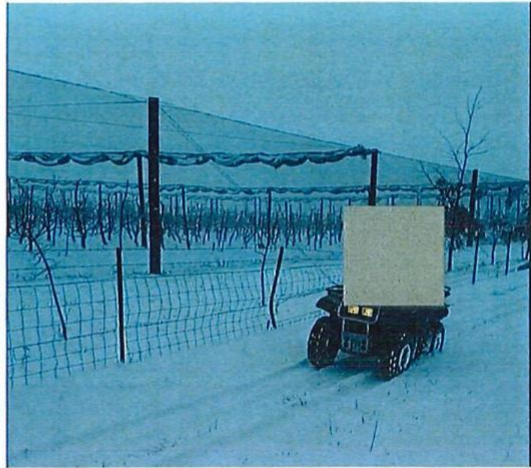


2018 October - Area 2 – Rain netting installation in place. Removal of the 2 gums organised by (receipts and email trail available if required). We just cut it up for firewood.



- NOTIFICATION OF MODIFICATION APPLICATION FOR DEVELOPMENT CONSENT
Application No DA 149/2007(2) - Lot/DP Lot 101 DP 1140615

2019 August – Unapproved high-density plantings and associated infrastructure visible along



2019 August “Existing Orchard” shown in DA149/2007(1) and amended DA149/2007(2) plans has been removed (not replaced as of 2025). The orchard in the background is on 1032 Pinnacle Road.

Note that the property access gates are also not in compliance with the DA149/2007(1) approval.



2018 Google Image – Confirms location of unapproved entry point and the removal of the traditional orchard from the corner area adjacent to 1032 Pinnacle Road. The circular feature is the bonfire for burning the removed cherry trees.

The orchard is still there in 2017 Google imagery, so it was removed in 2017-2018. Currently in 2025 it is a commercially advertised strawberry plot.



- NOTIFICATION OF MODIFICATION APPLICATION FOR DEVELOPMENT CONSENT
Application No DA 149/2007(2) - Lot/DP Lot 101 DP 1140615

Areas 1 and 2 – visually intrusive high-density, heavy-duty netting infrastructure along boundary with



Area 1 – White rain netting has been installed over the dark hail netting. We now have netting year-round in this area.



2019 October – Areas 1 and 2 – New rain netting rolled out and ends left dangling.



2020 January – Area 1

The new rain netting has been rolled out and ends left dangling. This is still like this today (05/02/25). After 5 years of requesting, still fails to maintain this netting and damage is already visible (1) within months of installation.

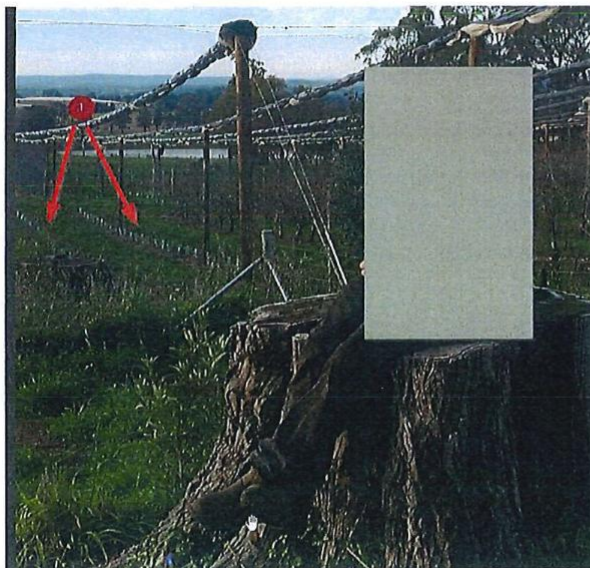
This netting is fully opaque. It is constructed of individual strips of tarpaulin-like plastic material designed to rise and fall in the wind.

In real life it destroys the amenity of our property completely. It is intrusive, unattractive and it is like a hundred tarps flapping continuously at any time of the day and night. At this point it had been out since October (4 months).

From this point onwards the intensity of spraying also increases, and spray drift occurs regularly onto



2020 August – The gap in Area 1 is planted out with high density orchard.



2020 December – Area 3

Helicopter lands on 1040 Pinnacle Road within 40 m of our property and metres from netting.

sheds and

There is no Helipad/Helicopter Landing site approved on this property.



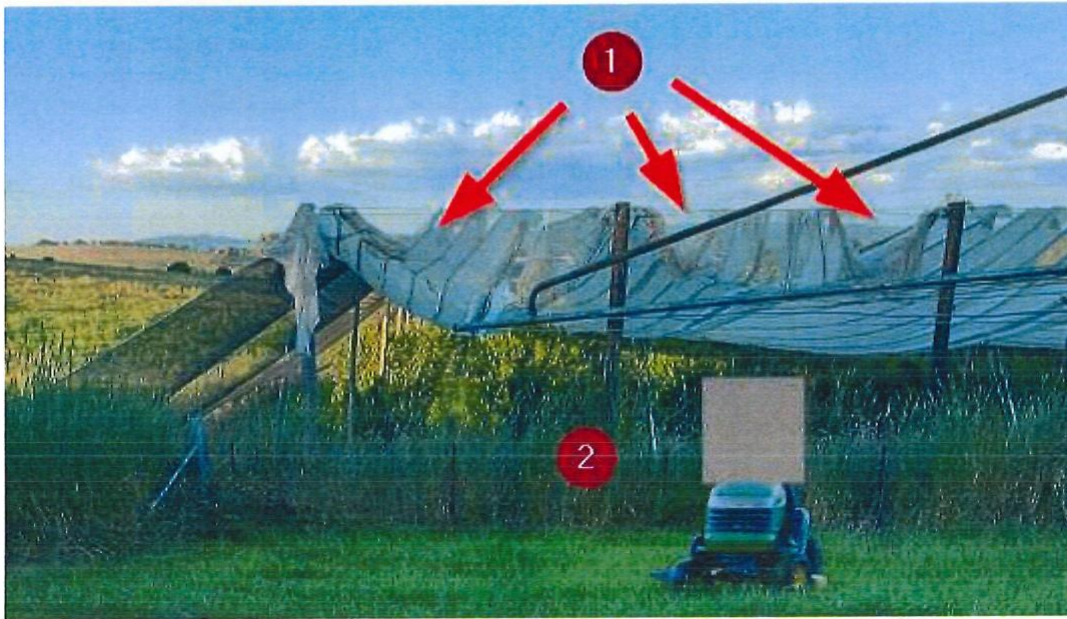
2021 October – Area 2 – The proximity of the orchard and netting (1) to our living areas is more impactful as the trees grow



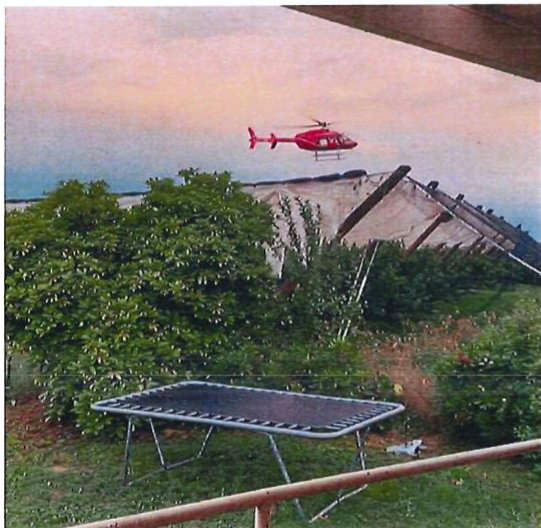
2021 December – Area 1

Another year with dangling, flapping and unmaintained rain netting (1)

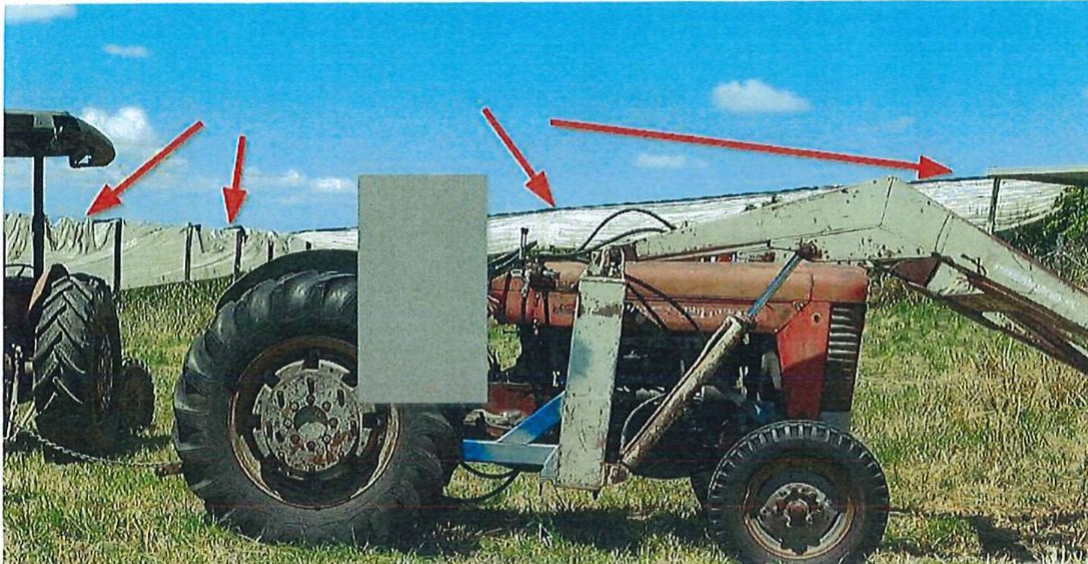
It is also evident that does not maintain the boundary areas (2) due to the netting infrastructure being so close to our fence. The netting stays in Area 1, Area 2 and along the boundary with 139 Pinnacle Road are all trespassing into the neighbouring properties.



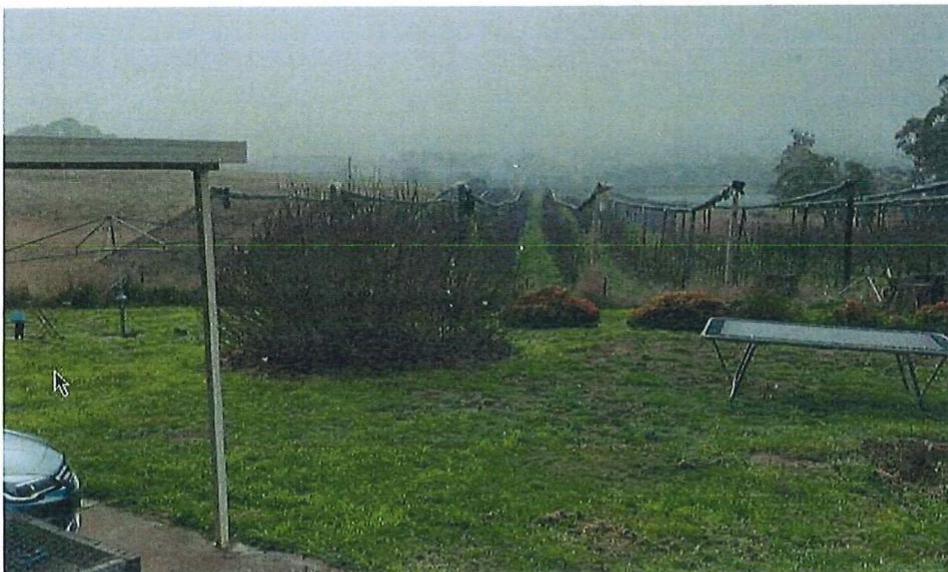
Now every time it rains a helicopter is sent out even though the rain netting should prevent the cherries being rain damaged.



2022 January – Area 2 – Rain netting is allowed to fall down and is not maintained



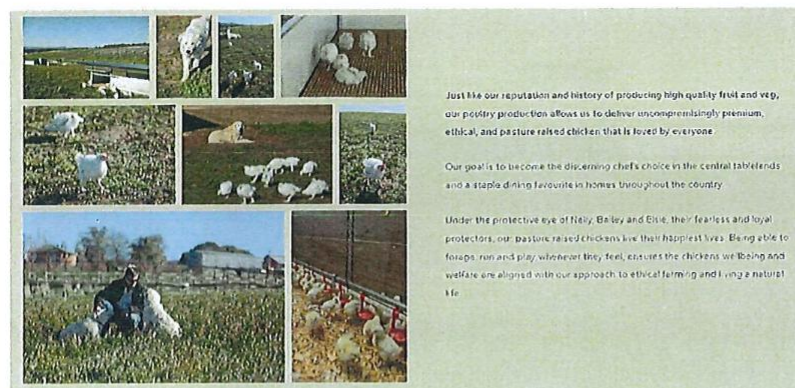
2022 July – Area 1 and 2 - Rain netting is stil visually intrusive when it's rolled up. They bounce up and down in the lightest breeze. The poles at the top of Area 1 are also starting to lean.





2023 January – claims on his website <https://www.altitudefarms.com.au/> that the poultry farm on 1040 Pinnacle Road commenced at the “beginning of 2023”. Photos on his website in 2025 still clearly identify the location and show the poultry activities. is visible in the photographs as well.

Poultry farming is a prohibited development in this land use zone. This was shut down after Council intervention by late 2023. Details regarding this can be confirmed with Mr Chris Brown and Mr Paul Johnston of OCC.



This Facebook post confirm that the poultry enterprise actually started in May 2023



We are thrilled to announce the start of our new poultry business!
Our company is dedicated to producing the highest quality and ethically raised poultry products

2023 – February areas 1 and 2 Rain netting is still not clipped up properly nor maintained for the 3rd season since being installed.



2023 May – Southeast corner adjacent to Pinnacle Road

Commercial strawberry farm is well established in the area defined as “Existing Orchard” and being promoted on Facebook. They are still advertised on his website.

Despite the high use of chemicals for his cherry orchard on the same property is promoting his vegetables as being “*organically grown*”.



2023 May – Area 3 staff trench immediately adjacent to our boundary fence and beneath of our power connection. Development below powerlines is not permitted by Essential Energy.

This trench has never been filled in. This may or may not have related to his poultry enterprise. It is likely given the timing with the start of the poultry enterprise in May.

Rural Industry (as per LEP2000 and LEP2011 definitions) activities are now fully concentrated in Area 3 despite lacking consent for this type of activity e.g. machinery servicing, maintenance, and refuelling.



2023 July – Area 3

Offensive noise complaint lodged with Orange City Council related to the installation of a refrigerated shipping container (1) adjacent to dwelling. The compressor on the container went off every 5 minutes day and night and was audible throughout our dwelling. Details regarding this can be confirmed with Council Officer Mr Greg Perry (i.e. not our neighbour).

According to the Council's website <https://www.orange.nsw.gov.au/planning-development/planning/> this shipping container and all others on the property also required consent from the Council.

intended this container to be part of the infrastructure to allow him to store and sell his frozen poultry.

The container was relocated after the noise complaint to Council.

At this stage also removed the fence between this area and Stairs Road seemingly with an intention to provide access to the refrigerated container to implement some type of farm produce selling or distribution point which would have also required development consent.

had by this time also installed a diesel tank (2) within 5m of our boundary fence and 15m of our dwelling without any of the required safety measures.

This tank placement introduced un-necessary safety and fire risks to our property and ensured that all farm machinery entered and ran for extended periods of time within 15m of our dwelling.

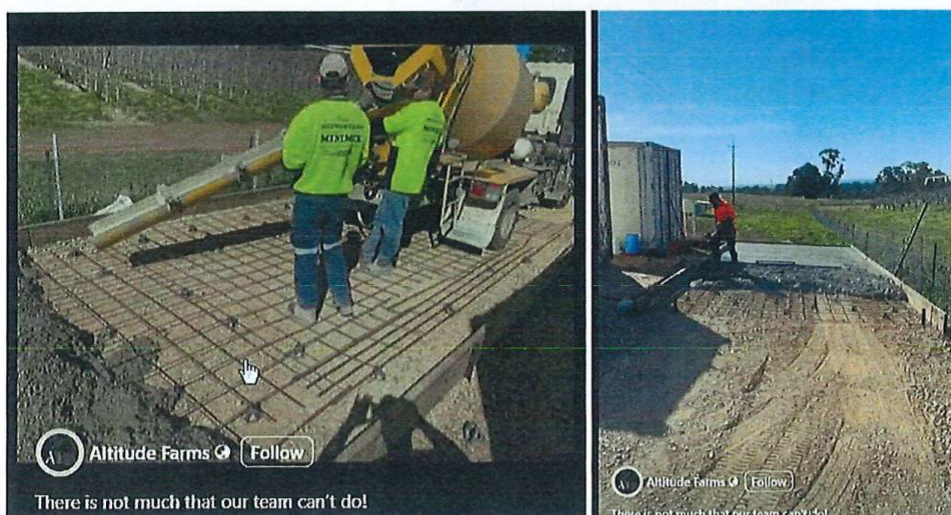
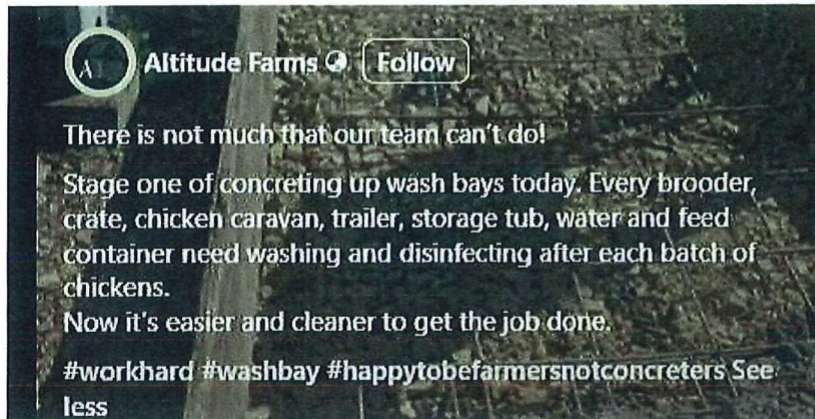
This tank was also relocated only after Council intervention. Details can be confirmed with Mr Chris Brown and/or Mr Paul Johnston of OCC.

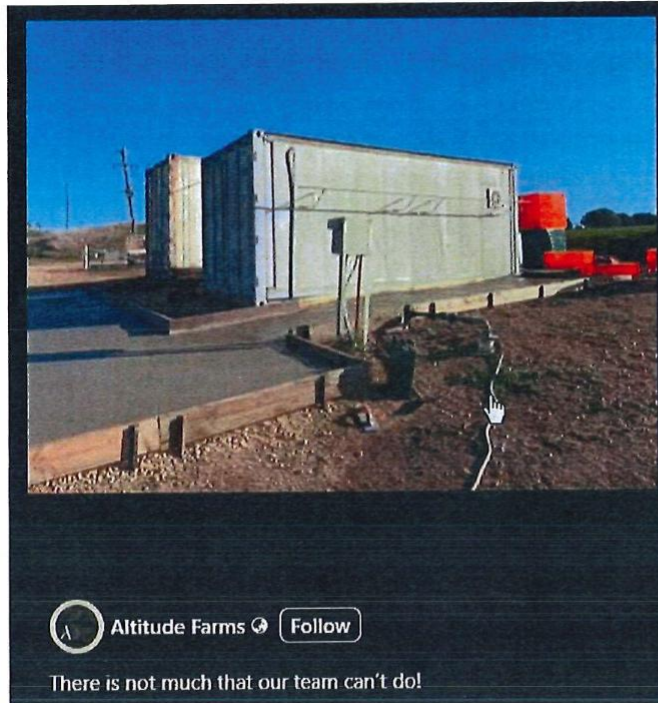


2023 August – North-eastern corner of 1040 Pinnacle Road

builds permanent structures to support the prohibited Poultry operation.

As seen on this Facebook post <https://www.facebook.com/reel/717867340173990> they were wash bays that were constructed hard against the boundary of and drain onto 1032 Pinnacle Road

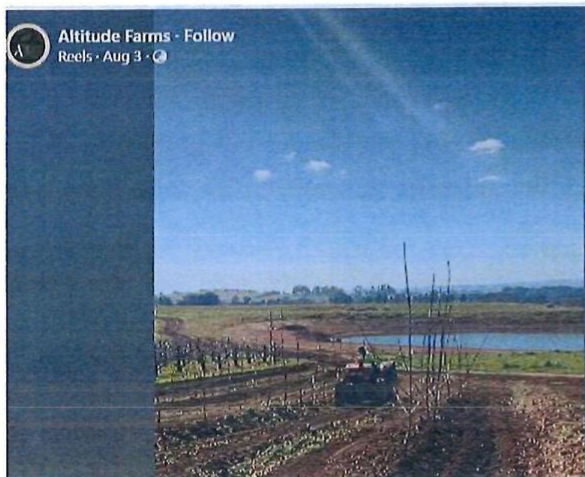




2023 August – Southeast corner adjacent to Pinnacle Road

New intensive orchard plantings within area mapped as Existing Orchard in 2007 that was cleared in 2017/18.

<https://www.facebook.com/reel/259995300121340>



2023 August – Areas 1 and 2 – Spray drift is an increasing problem as the new plantings mature and become commercially productive. This is a direct correlation with the increased spraying frequency we experience.

At this point, the vegetative buffers required by DA149/2007(1) have not been installed.

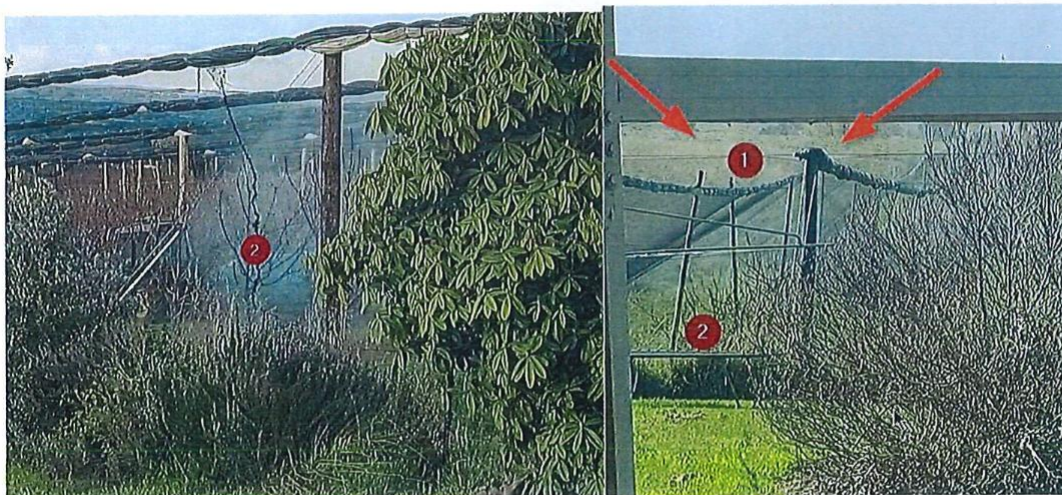
A tall wide buffer is required to prevent drift impacting our property. In the photos below (1) shows the height reached by visible droplets. (2) shows the proximity of spraying to our property. We have videos for all the instances shown in this document. The photos make it look better than it is.

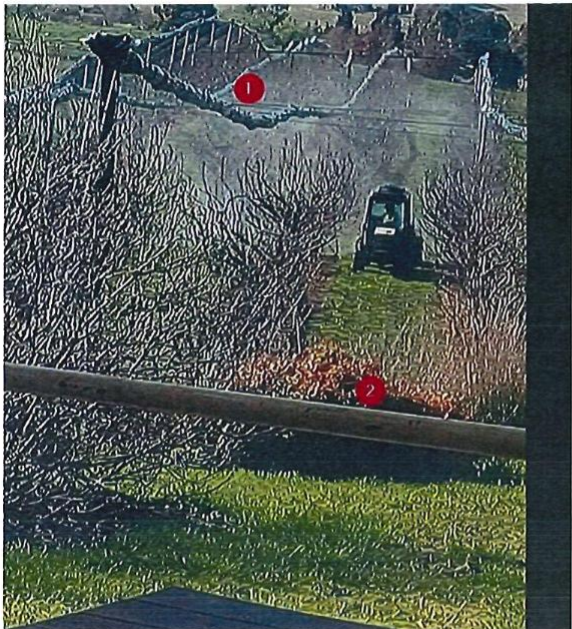
Spraying is also extremely noisy and intrudes regardless of where you are on our property. Inside or out.

21/08/2023



25/08/2023





17/09/2023

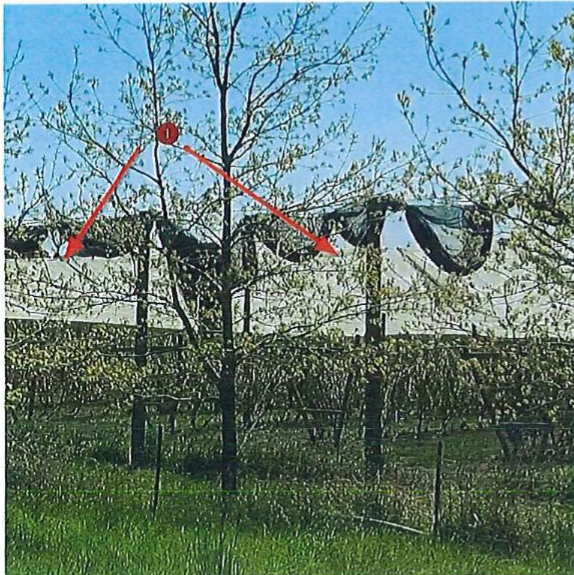


2023 September – Un-maintained grass along boundary due to netting location.

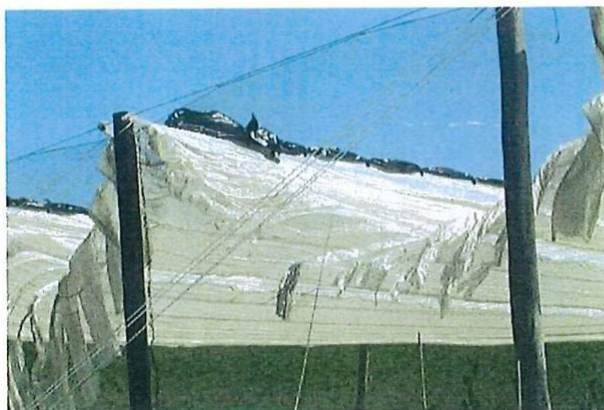
Netting is fully undone in Area 1 for the fourth year in a row



However, in the areas along Stairs Road this is never a problem. They are always correctly clipped up.



Area 1 - No netting clips are even evident at this point. No attempt is even being made to correctly install the netting in the areas adjacent to



- NOTIFICATION OF MODIFICATION APPLICATION FOR DEVELOPMENT CONSENT
Application No DA 149/2007(2) - Lot/DP Lot 101 DP 1140615

2023 October - Area 2

There is no room for a 3-metre-wide Leyland Cypress let alone one with room around it to allow it to be maintain to that width.

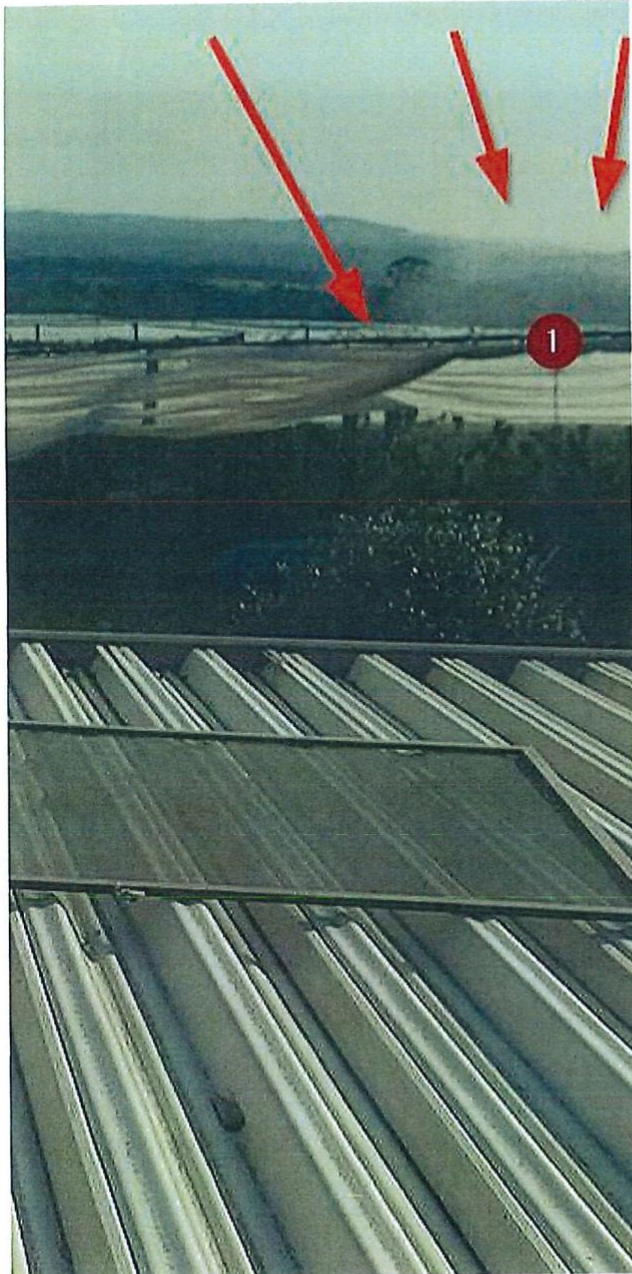
The netting and stays prevent even basic mowing in the proposed buffer zone.



2023 October Area 3 – Rural Industrial activities still concentrated behind the sheds as Diesel tank still in place.



2023 October Area 2 – The rain netting does not stop spray drift (1) as claimed in DA149/2007(2)



2023 October – Main Property

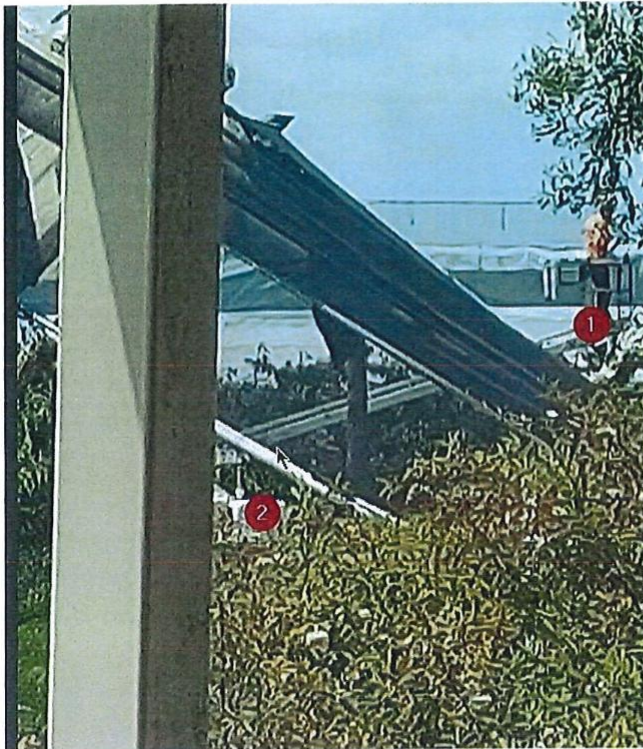
Intensive trellised plantings well advanced and rain netting has been installed.

Poultry farm infrastructure still in place.



2023 November – Area 2 - The rain netting requires constant adjustments so we can have one or more Afyon/cherry pickers running in adjacent to our house. There are 2 operators in this instance, but we have had up to 8 operating.

This is an invasion of our privacy, our enjoyment of our property and the machines meet the definition of offensive noise.



2023 November –Area 3 - installs a security camera (1) pointing directly at office in an un-acknowledged act of intimidation.

At this point the front fence between this site and Stairs Road verge that had removed in early 2023 has not been replaced and it isn't replaced until July 2024 (8 months later).

If he was worried about security and for example the theft of his diesel (2) etc the fence should have been his priority but it took him another 8 months to replace that.



2023 November – Area 1 -Spaying (1) occurring with a northerly wind (2), blowing chemicals straight into our yard and dwelling. This is common occurrence.

No buffer protects us as required in DA149/2007(1).

The EPA has confirmed that spray droplets can travel kilometres so it's not just the visible spray you need to be concerned about

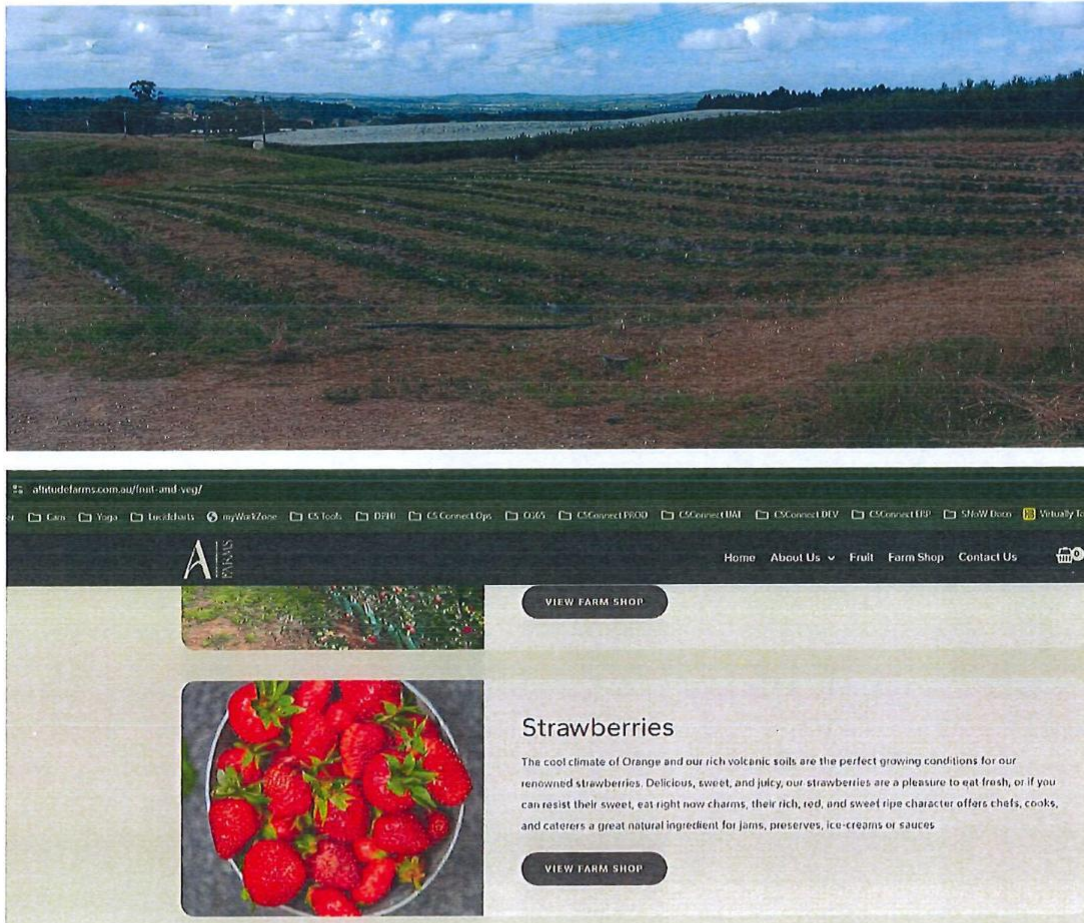


2024 February – Adjacent to 1032 Pinnacle Road and Pinnacle Road itself.

The commercial strawberry plot is visible in the area defined as Existing Orchard.

No consent requested or obtained. Its existence is ignored in the updated maps in DA149/2007(2).

As of February 2025, these are still being advertised for sale on website at
<https://www.altitudefarms.com.au/fruit-and-veg/>



2024 May – Area 2 – Spraying with an easterly with extensive spray drift. This was report to the EPA.

EPA has advised us to report all future instances that occur as their guidelines.

activities are not in compliance with

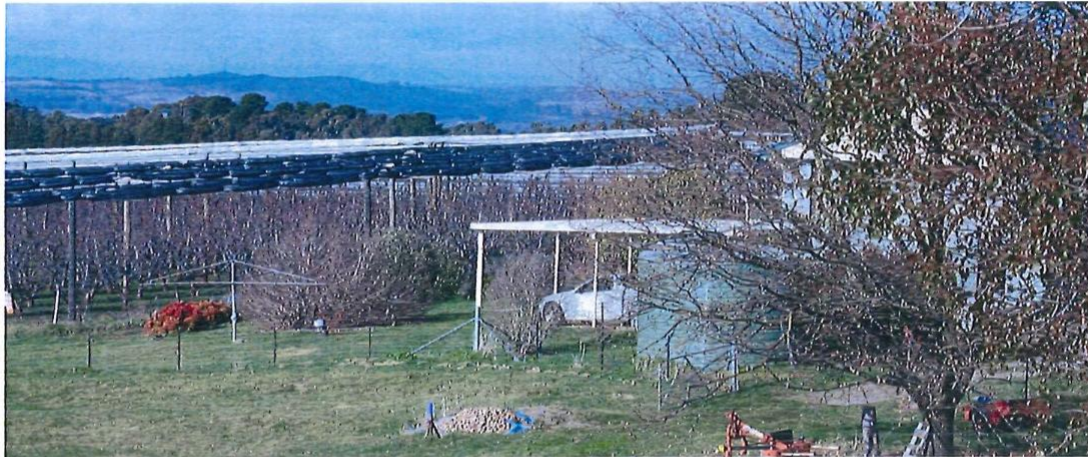


More spray drift



2024 July

Rain netting has now been installed over all of the orchard on 1040 Pinnacle Road



2024 August Areas 1 and 2– Deciduous Silver birches are planted without consultation as a vegetative buffer with an understorey of bottlebrushes.

As deciduous trees Birches won't protect us from winter spray drift. They are also planted against stays so will cause structure issues.

In Area 1 their placement and that of the netting now fully blocks machinery access to this boundary fence for maintenance.



2024 August – Rolling out the netting, starting at this point on the property.

So, for the 2024/25 season we have had this netting out around our dwelling from August until February so far. 5 months.

Roll out started on 26/08/24 and finished on 31/08/24 in Areas 1 and 2.

That is 5 days of 7+hours a day of multiple afrons/cherry-pickers going in these areas to support unapproved orchard and infrastructure. 5 days of Offensive Noise in unapproved high-density orchard.



2024 September –Area 1 and Area 2

More netting maintenance. 3 or more afrons running over a period of days.



Workers congregate at bottom Corner of at start of work day.



2024 September – Area 2 – More spray drift that a buffer of Silver Birches can't block as they are deciduous and that the rain netting has no impact upon.



2024 September – Areas 1 and 2

The trespassing stays are removed from Stairs Road after Council intervention



2024 October – Area 1 – No privacy with workers hard up against our boundary



2024 October – The “Buffer” is already overgrown due to poor maintenance and most of the bottlebrushes are dead, and the Birches are fading fast.



2024 November - December –Area 1 – Helicopters, spraying and failing rain netting.

Rain netting is expensive to buy, install and manage and from our experience appears to be unfit for its defined purpose.



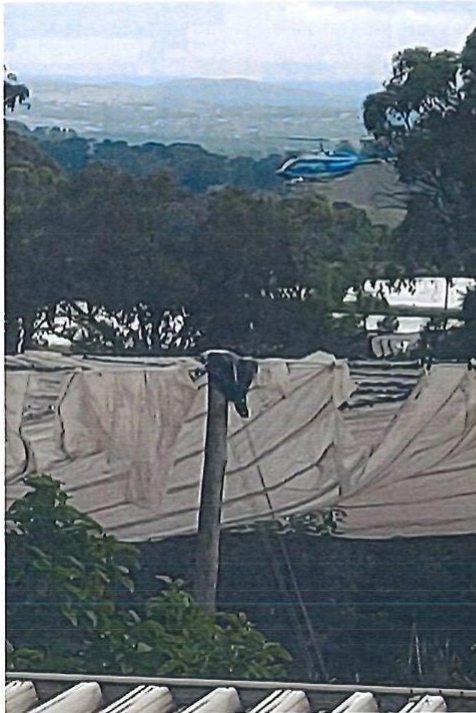
2024 December 4th – makes one of his rare appearances on site to supervise the addition of cypresses to the buffer areas. No weeding, whipper-snipping or any other maintenance work was undertaken then or until now (05/02/25).

The trees are planted straight into an unmaintained bed of weeds and grass less than a metre off the fence.



2024 December 7th – More spraying and helicopters. Netting in poor shape and failing in its purpose.

sprayed 4 times this day including after 11pm and had the helicopter out multiple times



2024 December 10th – Picking starts and continues on and off until after we go away on holiday.

Workers are within 15m of our house and we have no privacy from them.



2024 December 14th – Area 1 – After we requested that Mr Perry mow the grass along our boundary on the 2nd December with no response.

Mowing of the area is finally attempted for 2m adjacent to the boundary with 139 Wallace Lane but then ceased.

A bit more maintenance was attempted, apparently by stamping down the grass and then they just gave up.

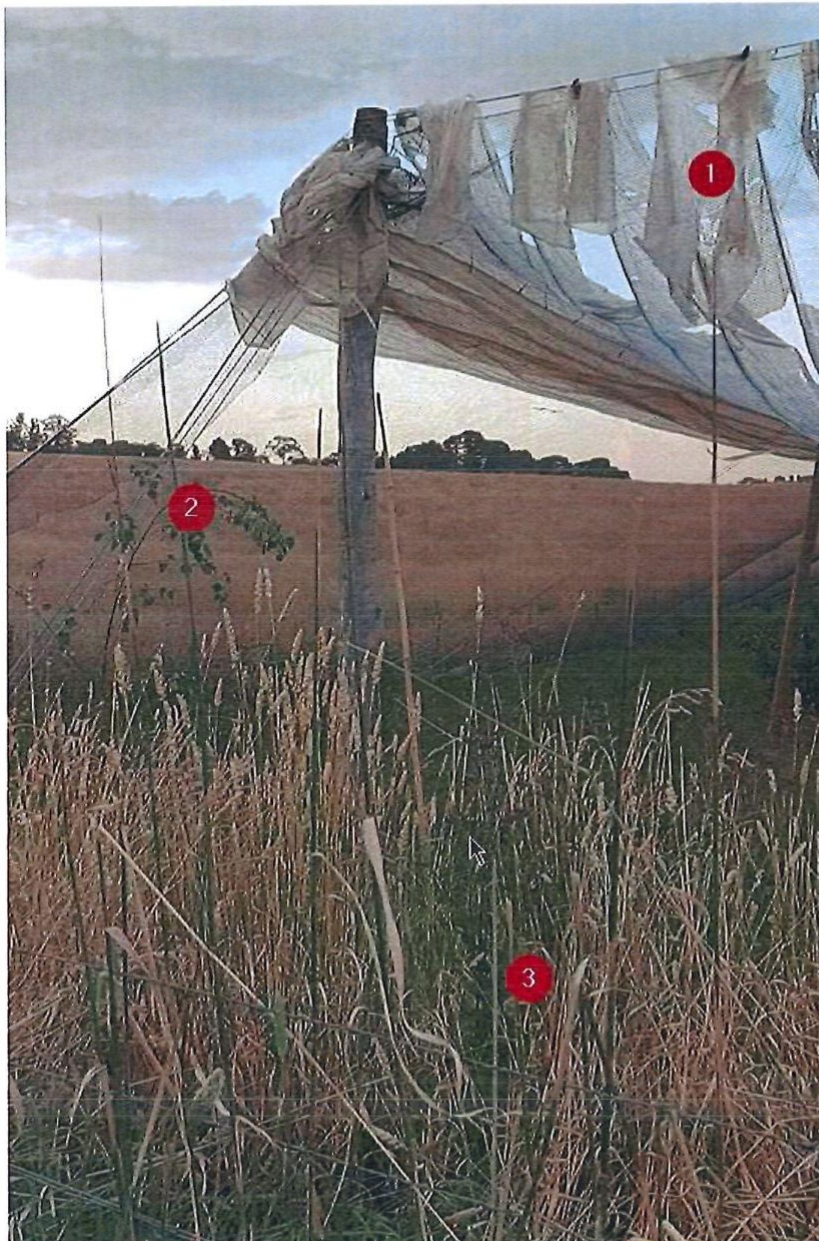
Mr Perry and his staff have never maintained these areas.



February 2025 – So what do we have right now

Area 1 – North of Stairs Road

1. Damaged rain netting
2. No effective vegetative buffer
3. Unmaintained boundary zone with grass more than a metre high



- NOTIFICATION OF MODIFICATION APPLICATION FOR DEVELOPMENT CONSENT
Application No DA 149/2007(2) - Lot/DP Lot 101 DP 1140615

Area 2–

1. Damaged netting
2. Noise and dust
3. No effective vegetative buffer





- NOTIFICATION OF MODIFICATION APPLICATION FOR DEVELOPMENT CONSENT
Application No DA 149/2007(2) - Lot/DP Lot 101 DP 1140615
62

Appendum 1

Sent: Monday, 24 March 2025 8:51 AM
To: Orange City Council
Cc: Paul Johnston; Benjamin Hicks
Subject: Addendum to Response to Application – "Modification of the Development Application DA149/2007(2)-PAN-498317"
Attachments: Addendum1.pdf

Dear Orange Council,

Please find attached Addendum 1 to our submission regarding "Modification of the Development Application DA149/2007(2)-PAN-498317".

It is our understanding that the assessment of the "Modification of the Development Application DA149/2007(2)-PAN-498317" has yet to commence and we ask that this addendum is considered by Council as part of this assessment process when it commences.

At the time we responded to this DA submission on February 10th we were awaiting the fulfillment of our "GIPA" request to obtain a copy of the "Notice of Determination of a Development Application" provided for DA149/2007 around July 2007. This GIPA request was submitted to Orange City Council via email on the February 6th. We only received the "Notice of Determination of a Development Application" and its supporting report only on the 10th March 2025 and spoke to Paul Johnston in relation to it on the 20th March.

This "Notice of Determination of a Development Application" for DA 149/2007(1) is directly relevant to the non-compliance issues we outlined in our original response and further supports the case to reject the new proposal to modify the original DA approval.

Can you confirm that this email submission has been received and registered as a submission against DA149/2007(2)-PAN-498317?

Regards,

Appendum 1

24th March 2025

Orange City Council
Wiradjuri Country
PO Box 35
Orange NSW 2800

**Application – “Modification of the Development Application DA 149/2007(2) - PAN-498317”
Harrison-Street Submission - Addendum 1**

To the Chief Executive Officer,

We are writing to add further to our response to the submission “Modification of the Development Application DA149/2007(2) - PAN-498317”. This submission is related to 1040 Pinnacle Road (Lot 101 DP 1140615).

At the time we responded to the submission on February 10th we were awaiting the fulfillment of our "GIPA" request to obtain a copy of the "Notice of Determination of a Development Application" provided for DA149/2007 around July 2007. This GIPA request was submitted to Orange City Council via email on the February 6th.

We only received the "Notice of Determination of a Development Application" and its supporting report only on the 10th March 2025 and spoke to Paul Johnston in relation to it on the 20th March.

The "Notice of Determination of a Development Application" for DA 149/2007(1) is directly relevant to the non-compliance issues we outlined in our original response and further supports the case to reject the new proposal to modify the original DA approval.

Most requirements within this document have not been complied with by nor ever enforced by Orange City Council.

The document also reinforces that the claims of a drafting error in the 2007 Plan made in DA149/2007(2) by are invalid.

Once again, these documents make it clear that there was no innocent mistake, rather there has been a deliberate and ongoing pattern of inappropriate development and operations that have resulted in the loss of our privacy and our rights to quiet enjoyment of our property.

NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

1. Terms of Approval

Determination: **CONSENT GRANTED SUBJECT TO CONDITIONS DESCRIBED BELOW:**

Consent to Operate From: 19 July 2007
Consent to Lapse On: 19 July 2012

Terms of Approval

The reasons for the imposition of conditions are:

- (1) To ensure compliance with relevant statutory requirements.
- (2) To prevent the proposed development having a detrimental effect on adjoining land uses.
- (3) To minimise the impact of development on the environment.

The Terms of Approval clearly states that the imposition of conditions are:

“(2) To prevent the proposed development having a detrimental effect on adjoining land uses.”

development and non-compliance with the following conditions has had very detrimental effects on adjoining land uses and users. The Council appears to have made no attempts to ensure that ever met the approval conditions.

At Point 3 the Determination further states that the terms of approval are:

“(3) To minimise the impact of development on the environment”.

In our original submission we outlined the significant adverse environmental impacts caused by the intensive orcharding practices carrying out on this property by

2. Restriction-as-to-user

MATTERS FOR THE ONGOING PERFORMANCE AND OPERATION OF THE DEVELOPMENT

- (1) A Restriction-as-to-User pursuant to section 88B of the NSW Conveyancing Act 1979 shall be placed on the titles of proposed Lots 100 and 101 requiring the land to be developed and operated in accordance with the Property Management Plan prepared by Peter Basha Planning and Development dated 27 February 2007.

The Notice of Determination outlines the Restriction-as-to-user applied to the title of 1040 Pinnacle Road (and our other neighbour on Lot 100). This states that the owner of 1040 Pinnacle Road must develop and operate the orchard in compliance with the 2007 Property Management Plan.

The requirement is that the 2 lots must be “... operated in accordance with the Property Management Plan”. This clearly implies an ongoing requirement for to be compliant not just prior to the dwelling being constructed or a set timeframe.

Up until this point in time in 2025, Mr Perry has not complied with the development and conditions outlined in this approval or the Property Management Plan as demonstrated in our original submission.

REPORT TO GENERAL MANAGER: PLANNING APPROVALS COMMITTEE MEETING 18 JULY 2007

Furthermore, the attached report to the OCC General Manager dated 10 July 2007 contains the following elements that has not complied with since the approval was given.

1. Orchard Area 1 to the North of

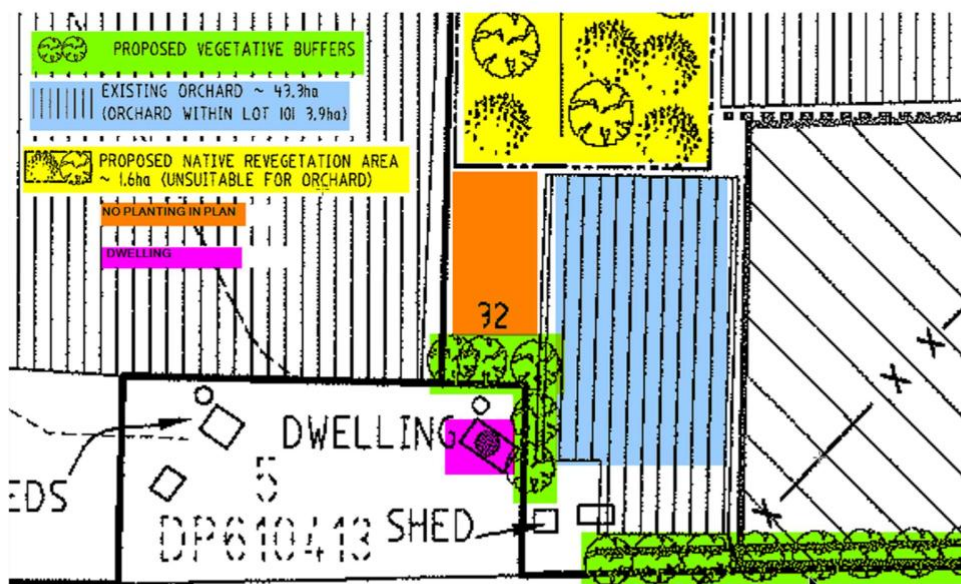
The lot size and shape relates to the topography of the site and will permit maximum agricultural development of the land. The existing orchard enterprise is to be retained, with a small reduction from the present allotment size, which permits the transfer of an area of grazing land to the adjoining proposed lot. The proposed subdivision will not affect the viability of the existing cherry and apple orchard, given that it involves the loss of only 2.12ha of non-productive land, which is to be transferred to proposed Lot 101.

The attached report (page 8) states that the areas to the north of removed from what became Lot 100 was grazing land. The report then goes on to describe it as non-productive land.

The 2007 Property Management Plan maps show this area as not having existing orchard or planned orchard. It was to be vegetative buffer, vacant land and native revegetation areas which fits with the description above.

However, it has been developed as orchard in contradiction with the Property Management plan.

Unlike what is proposed in the 2025 submission, there was no drafting error in this area. It was grazing land at the time of the original submission and known to be of low productivity. There appears that there was no intention to ever plant orchard there.



3

Response – Addendum 1 - NOTIFICATION OF MODIFICATION APPLICATION FOR DEVELOPMENT CONSENT
Application No DA 149/2007(2) - Lot/DP Lot 101 DP 1140615

2. Future development on the site has no adverse visual impacts to the locality

Visual Impacts

The proposed subdivision itself will not generate an adverse visual impact. Council, in determining the suitability of the proposed subdivision, must be satisfied that future development of these lots will not adversely impact upon the visual qualities of the locality.

Page 11 states that **future** development on 1040 Pinnacle Road will not adversely impact upon the visual qualities of the locality.

The rain netting installed on 1040 Pinnacle Road has significant visual impact to ours and other neighbours as well as being visible from Pinnacle Road, Wallace Lane and the Pinnacle lookout. It is intrusive and unattractive. It most definitely adversely impacts the visual qualities of this locality. All the way along the lot's boundary with Stairs Road, the old black hail netting has been left only partially rolled up and in places reaches the ground





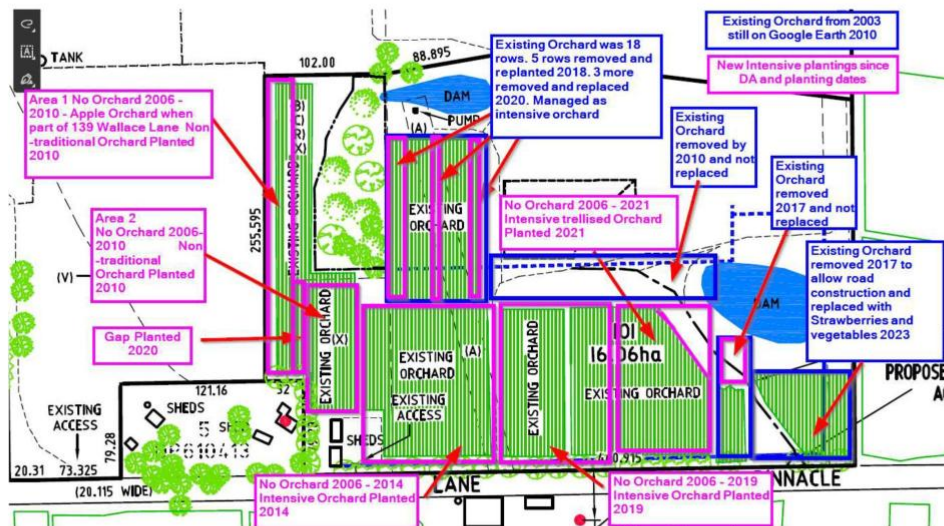
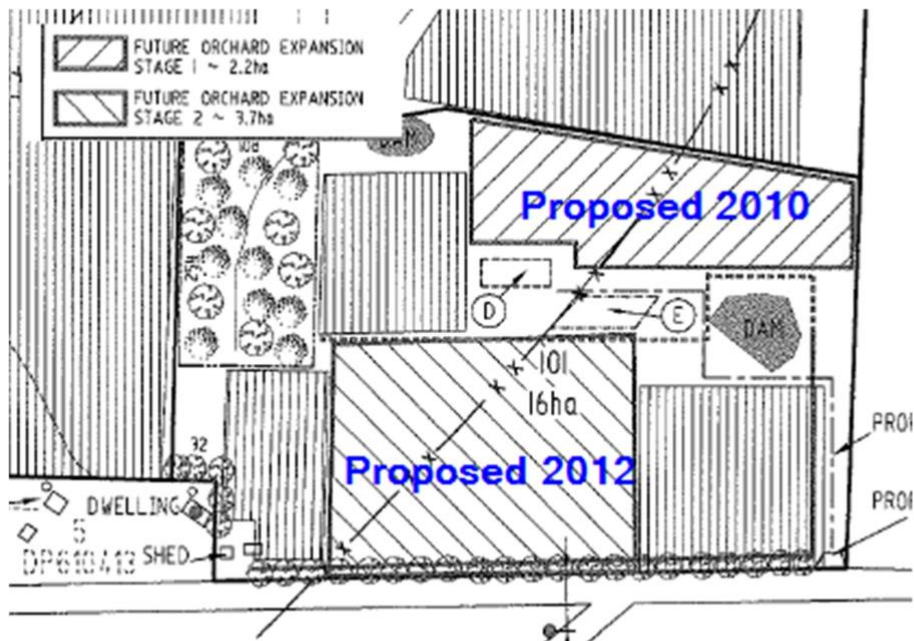
3. Approval is for new areas to be planted but no replanting of existing orchard

(Page 8) Note the report incorrectly references Lot 100 in this paragraph.

The existing orchard located upon proposed Lot 100 is to be expanded, with 2.2ha of cherries to be planted in 2010 and another 3.7ha planted in 2012 subject to reasonable profits in the preceding years. This will increase the orchard established on proposed

The areas flagged for planting in 2010 and 2012 were never planted within that time frame. The 2.2 ha plot is currently still under grazing and lucerne production.

Instead, planting was undertaken in areas flagged to have no orchard under the Plan and within existing areas that were first cleared and then more intensively re-planted (not permitted under the LEP in 2007).



4. The current operations area/farm office was meant to only be a single storage shed

A shed located in the south-western corner of the proposed allotment is to be used as a storage shed to support the orchard enterprise. Cool store facilities are available on nearby farms, on a contract basis, for the processing of fruit for market.

A building envelope has been identified upon the allotment along with an associated waste

The shed referred to in the report was an old style shed and was replaced by only in 2014. Sometime around 2009 a second shed was also constructed in this locality in contravention to the approval report and the Property Management Plan and unnecessarily close to our house.

There are now 2 sheds in this corner of 1040 Pinnacle Road immediately adjacent to our home.

These sheds are the site office and operational hub for 1040 Pinnacle Road. Machines are stored, run, and maintained in sheds that are only 30m from our home. The vast increase in the operations area, and its proximity to our home is visible in the 2023 Google Image below compared to that in 2006.

The report to the General manager shows that there was never approval sought nor given for it to be used for Rural Industry as defined under the [Orange Local Environmental Plan \(LEP\) 2000 version 24/02/2006](#).

Rural industry means a business undertaking involving:

- (a) the handling, treating, processing or packing of primary products, or
- (b) regular servicing or repairing of plant or equipment used for the purpose of agriculture or a business referred to in paragraph (a).





5. Environmental Impacts and Water Quality

Orange LEP Clause 72 “Water Quality Protection Area” (Page 6) is explicit in that consent shouldn’t be granted if the development results in the “destruction of native riparian vegetation in the area”.

- (b) the development will not result in:
- (i) destruction of native riparian vegetation in the area, or
 - (ii) siltation of the water body, or
 - (iii) an on-site sewage management facility being located on the land from which effluent or nutrients are likely to enter the water body.

Page 11 continues the discussion and concerns around the environmental impacts of the subdivision and outlines the rehabilitation that was meant to have occurred in the North West corner.

Environmental Impact

The subject land has a long history of agricultural production. The Property Management Plan identifies a small area of native trees existing along the watercourse in the north-western section of proposed Lot 101 and recommends additional planting of native trees and shrubs to increase biodiversity, provide habitat and protect water quality.

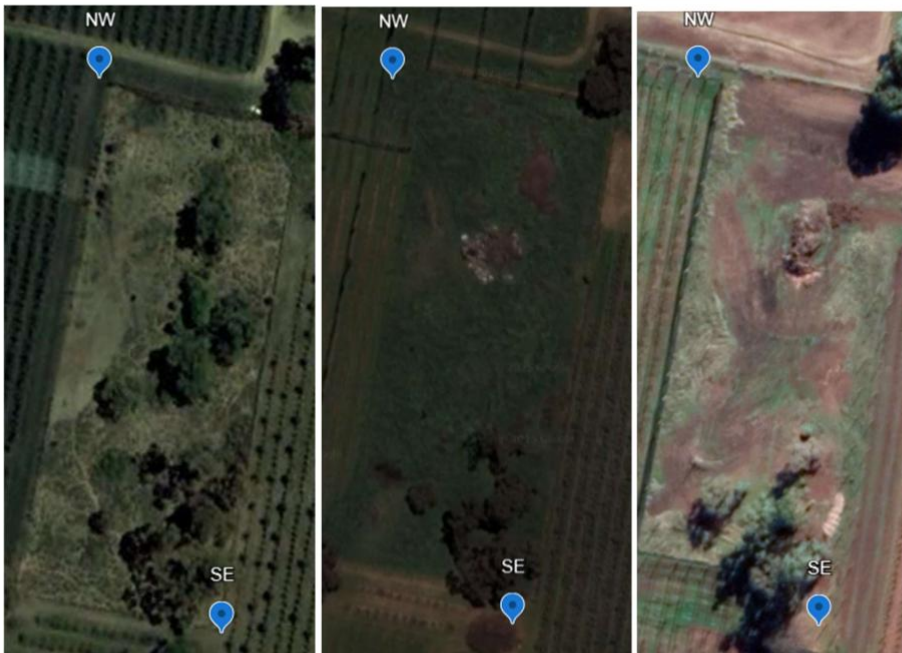
A large section of this is now under orchard planted after the 2007 approval. No rehabilitation works has been undertaken by

The riparian zone has been partially planted out with orchard, heavily cleared, and grazed, rather than being protected and conserved. also has had a bonfire site in the riparian zone since at least

2010, which is not appropriate to its management. The rain netting is also starting to disintegrate and pollute this area.



The riparian zone can be seen to have been significantly cleared as evident in comparison of the 2006 google imagery with what is on site in 2010, 2019 (when [redacted] ran an excavator through that area) and 2023 (excavation scars are still clearly visible).





and staff also refill and wash out the chemical sprayers on site. When he ran his chicken enterprise the washing facilities were on the eastern boundary of the property. also has 2+ staff working on site full-time and year-round, but no toilet facilities are onsite. It is unclear how effluent and chemical runoff is currently managed in compliance with the DCP Planning Outcomes (Part 12.1 - General Controls in Water Supply Catchments and 12.2 Water Quality Protection Area) outlined on page 10.

The relevant Planning Outcomes (Part 12.1 - General Controls in Water Supply Catchments and 12.2 Water Quality Protection Area) include:

- Development Proposals clearly demonstrate measures which are to be instituted to maximise impacts on the quality and availability of water resources for public water supply use
- Effluent is treated outside the defined protection area
- Adjacent waterways, including native riparian vegetation zones are protected and conserved
- Soil and water management measures are incorporated in the development

The applicant has adequately demonstrated that the proposed subdivision complies with the above Planning Outcomes. Issues in relation to the location of building envelopes have been discussed above.

6. The DCP should have been used by Council as the standard for the vegetative buffers described in the Property Plan and associated maps.

The attached Report also refers to the DCP so Orange City Council should have applied the DCP's standards in section 6.5 "GENERAL RURAL PLANNING ISSUES" regarding vegetative buffers as required by the Property Management Plan which were to be implemented to protect from the now significant agricultural impacts from 1040 Pinnacle Road.

PROVISIONS OF ANY DEVELOPMENT CONTROL PLAN s79C(1)(a)(iii)

Development Control Plan 2004

Development Control Plan 2004 applies to the subject land (*Part 6.1 – Rural Subdivision and Part 6.2 – Subdivisions Creating lots 40ha and greater, Part 12.1 - General Controls in Water Supply Catchments and Part 12.2 - Water Quality Protection Area*).

A vegetation "biological" buffer is appropriate for spray drift of chemicals applied by ground-based jets or boom sprays.

The buffer should:

- have a minimum width of 30 metres and attain a height of up to 15-20 metres
- comprise a range of fine-leaf native trees and shrubs in a variety of shapes, with leaf cover to the ground level and located in a manner that provides for airflow through the buffer vegetation - not as an "impermeable" windbreak
- comprise vegetation with a mature height at least 1.5 times the height of the adjacent spray
- comprise plant species and varieties appropriate to the area
- be maintained to provide an effective buffer at all times, including replacing dead or dying plants as required

We look forward to discussing our submission to DA149/2007(2) in detail with a representative of the Council's development assessment team in more detail. This should be on site in the first instance so that the Council can truly appreciate the negative impacts that this unapproved development has had and will continue to have on our property until rectified.

Please contact either of us if you require further information or clarification of anything in our response.

Please keep us informed and involved in this process.

Thank you for your consideration of our response.

Regards,

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)

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.

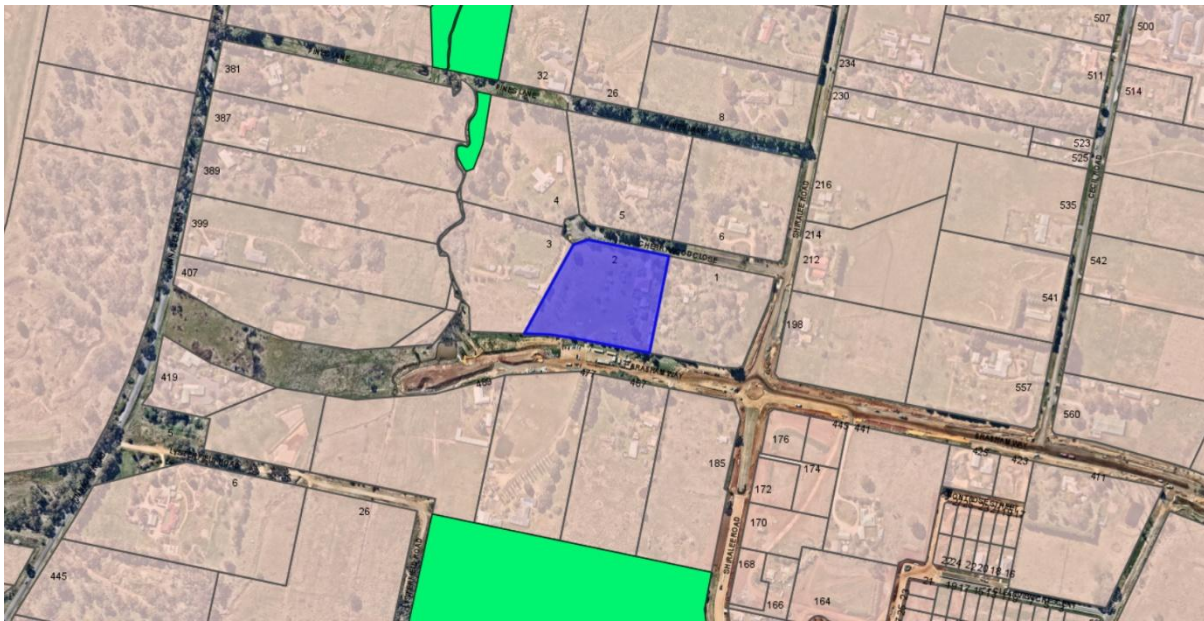


Figure 1 - locality plan

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.





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.

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

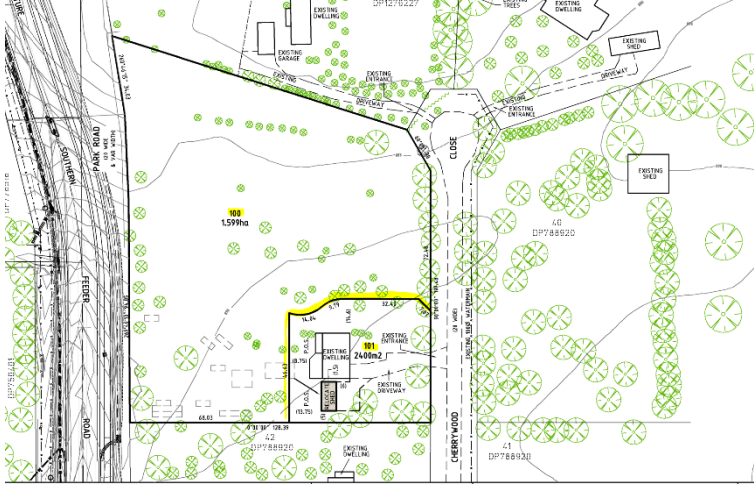
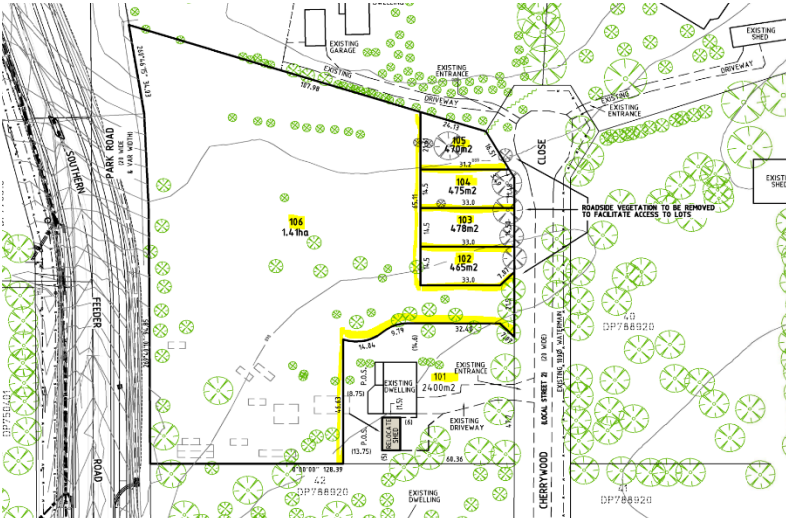
Council’s consent is sought for the proposed subdivision of Lot 43 DP 788920 commonly known as 2 Cherrywood Close, Orange to create ten lots and a new public road. The proposed subdivision will also require the demolition of existing outbuildings and structures, removal of certain trees, and the relocation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

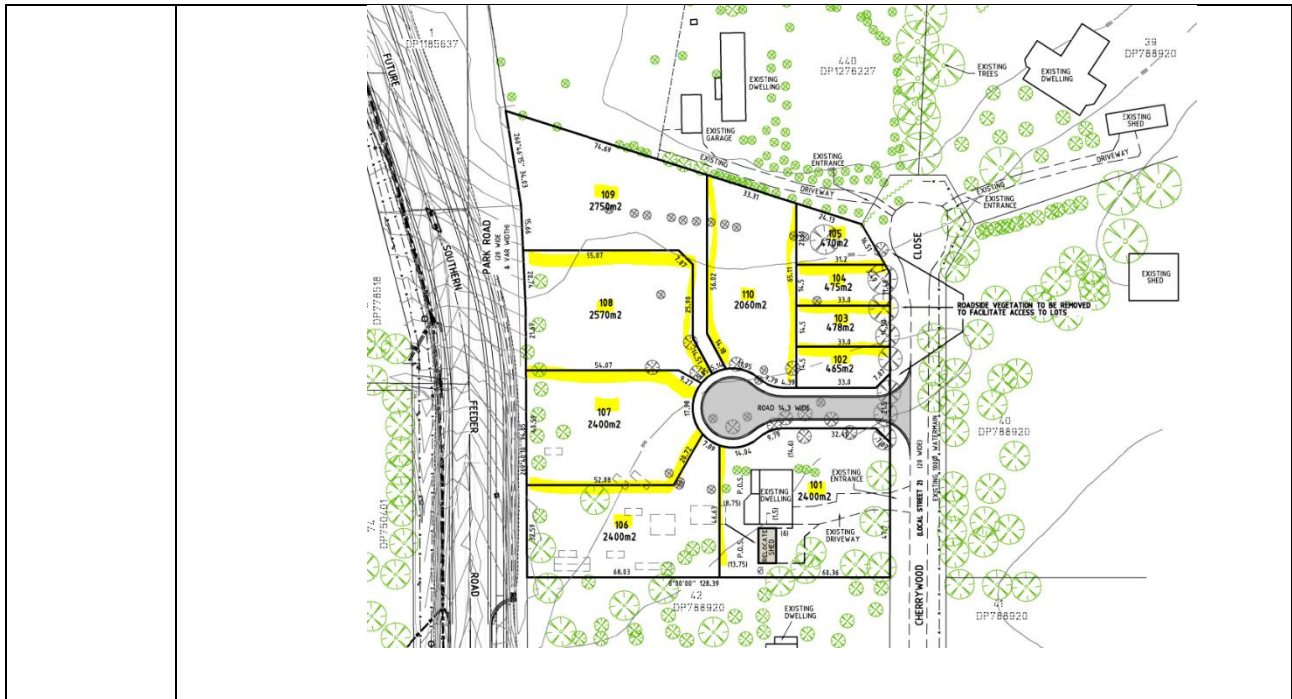
Servicing of all lots with town water, reticulated sewer, inter-allotment stormwater drainage, electricity and telecommunications will be required.

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

The development will be carried out in stages as follows:

Stage	
Stage 1	<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> 
Stage 2	<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> 
Stage 3	<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>

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

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

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).

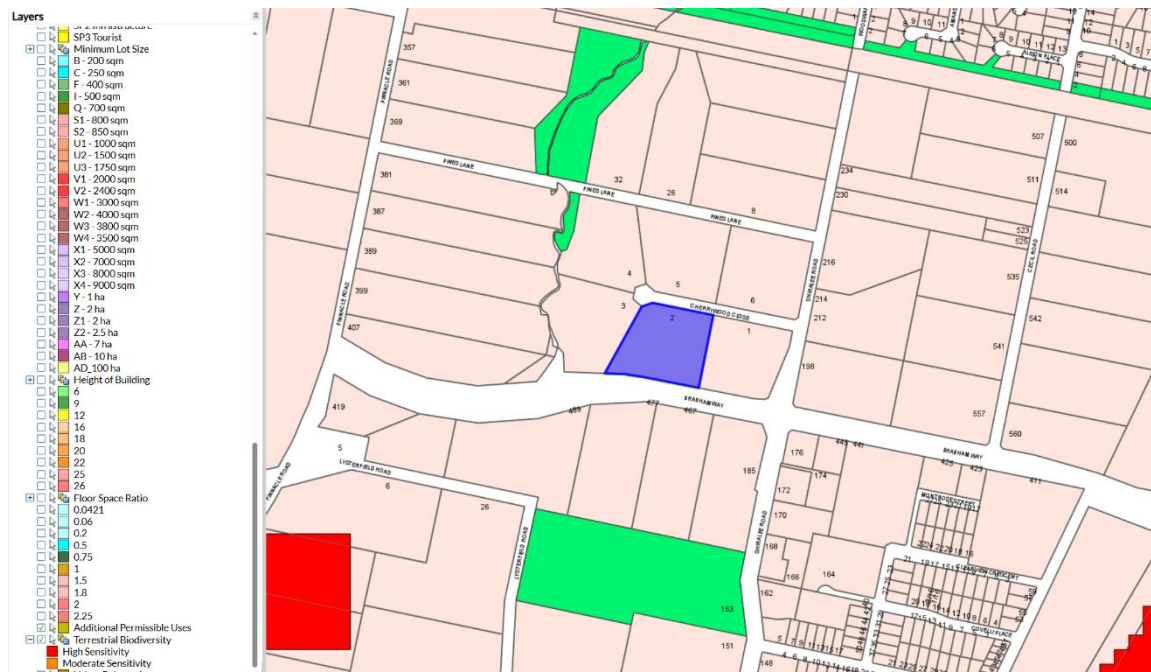


Figure 4 - Terrestrial Biodiversity

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

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.*

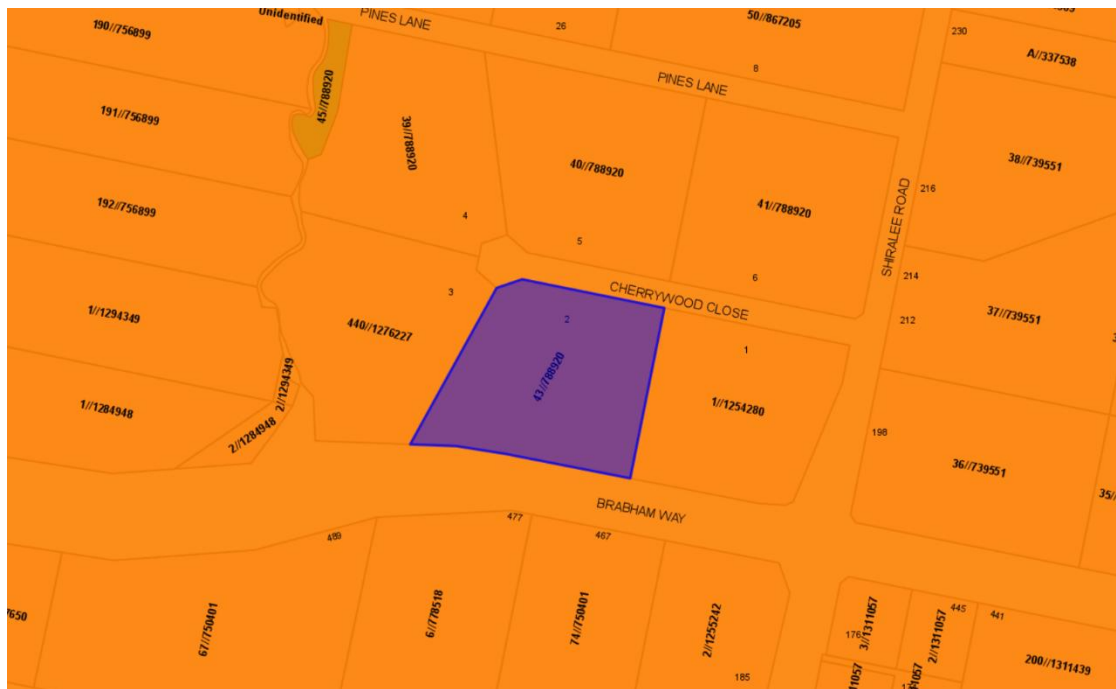


Figure 5 - Bushfire Prone Land Map

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,*

- (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

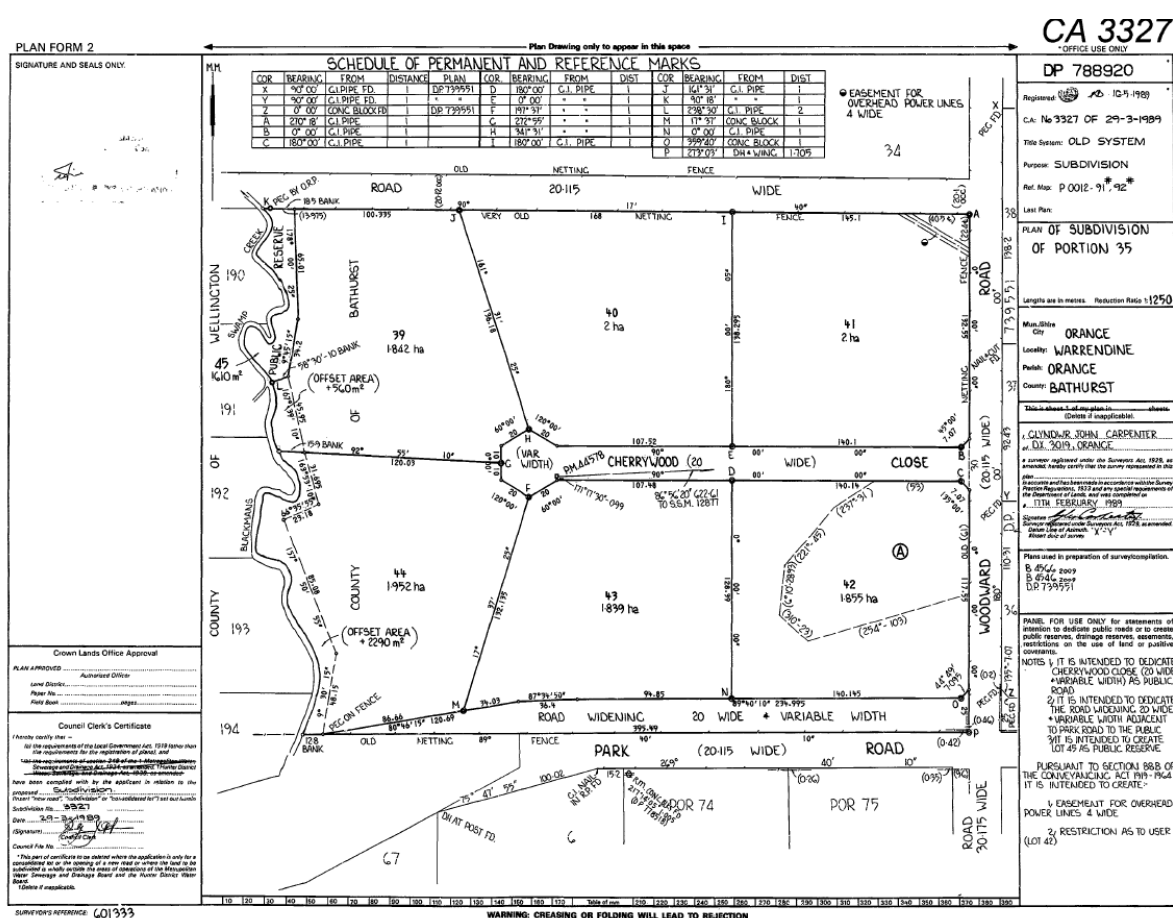
Those matters that are of relevance are addressed in detail in the body of this report.

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.*

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



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:

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.

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.

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:

(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.

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:

- to ensure that new subdivisions reflect existing lot sizes and patterns in the surrounding locality,*
- to ensure that lot sizes have a practical and efficient layout to meet intended use,*
- to ensure that lot sizes do not undermine the land's capability to support rural development,*

- (d) to prevent the fragmentation of rural lands,
- (e) to provide for a range of lot sizes reflecting the ability of services available to the area,
- (f) to encourage subdivision designs that promote a high level of pedestrian and cyclist connectivity and accommodate public transport vehicles.

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.

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.

- 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*

- (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.*

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,*

- (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.

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

- (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.

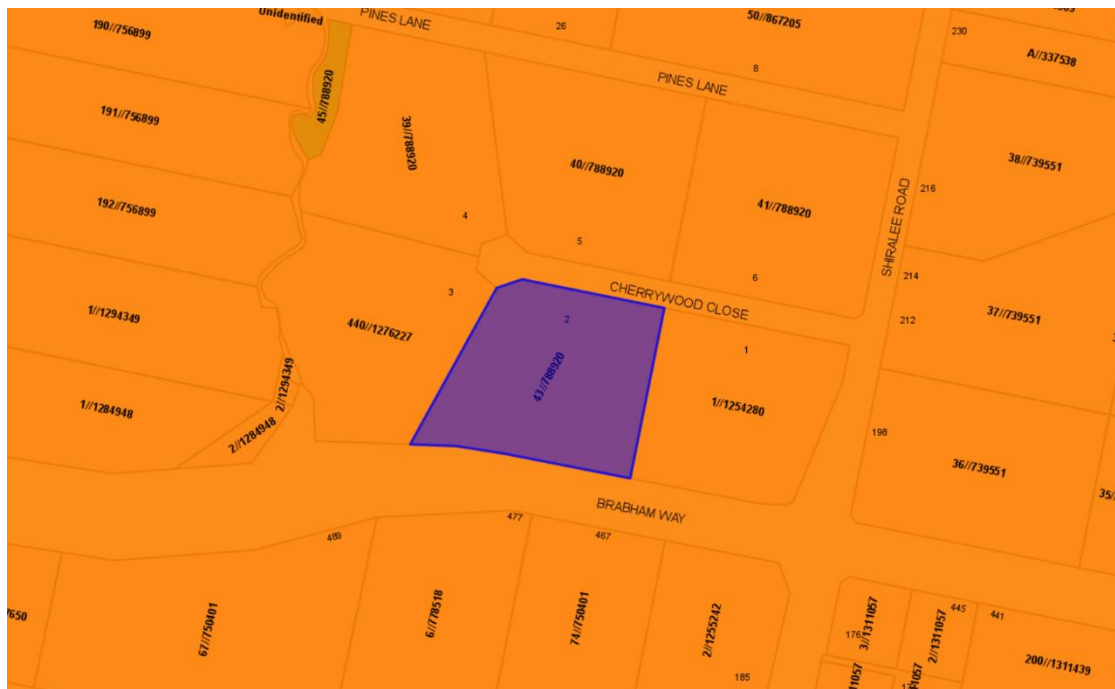


Figure 7 - Bushfire Prone Land Map

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).

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

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	All lots have setbacks to achieve 29kW/m ² over the entire area. Proposed Lot 109 to maintain a 11m APZ on western boundary to achieve minimum APZ, allowing compliant Building Envelope of approximately 1000m ² (Figure 3)

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.

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.

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.

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.

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 Shiralee 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.

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:

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.

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.

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.

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.

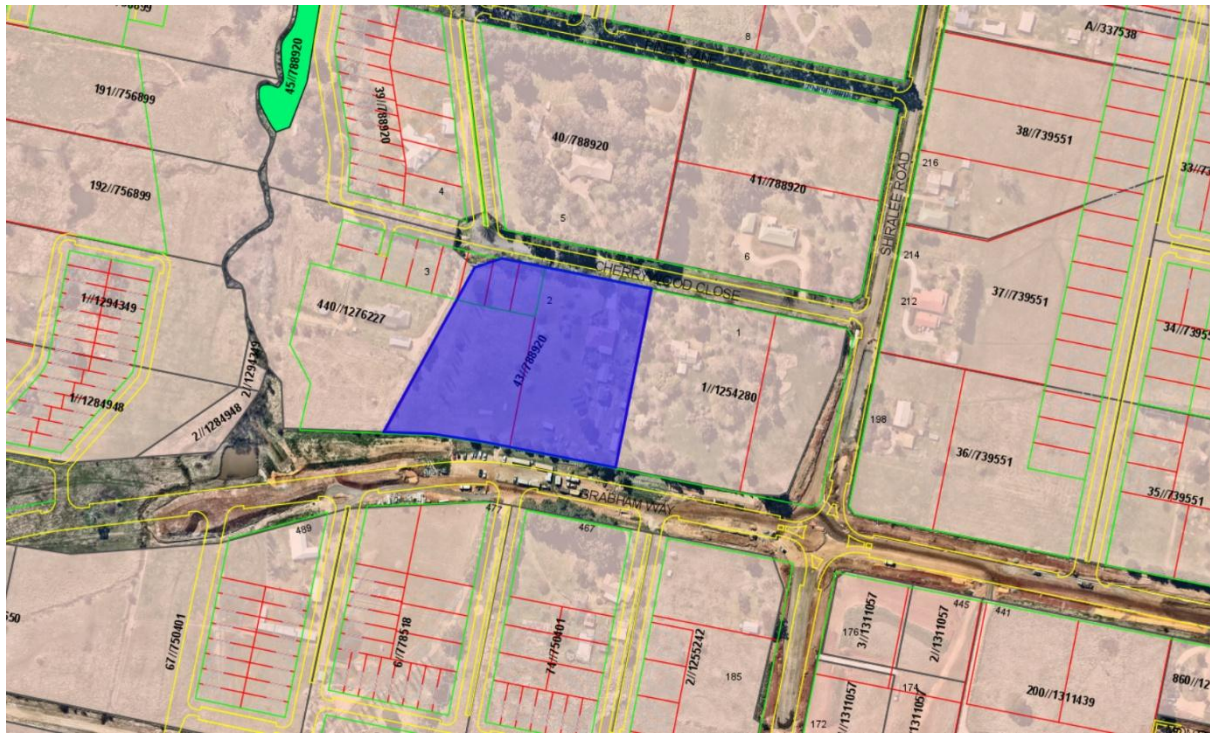


Figure 8 - LEP map (future development)

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.

- 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 excepted.

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.

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.

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.

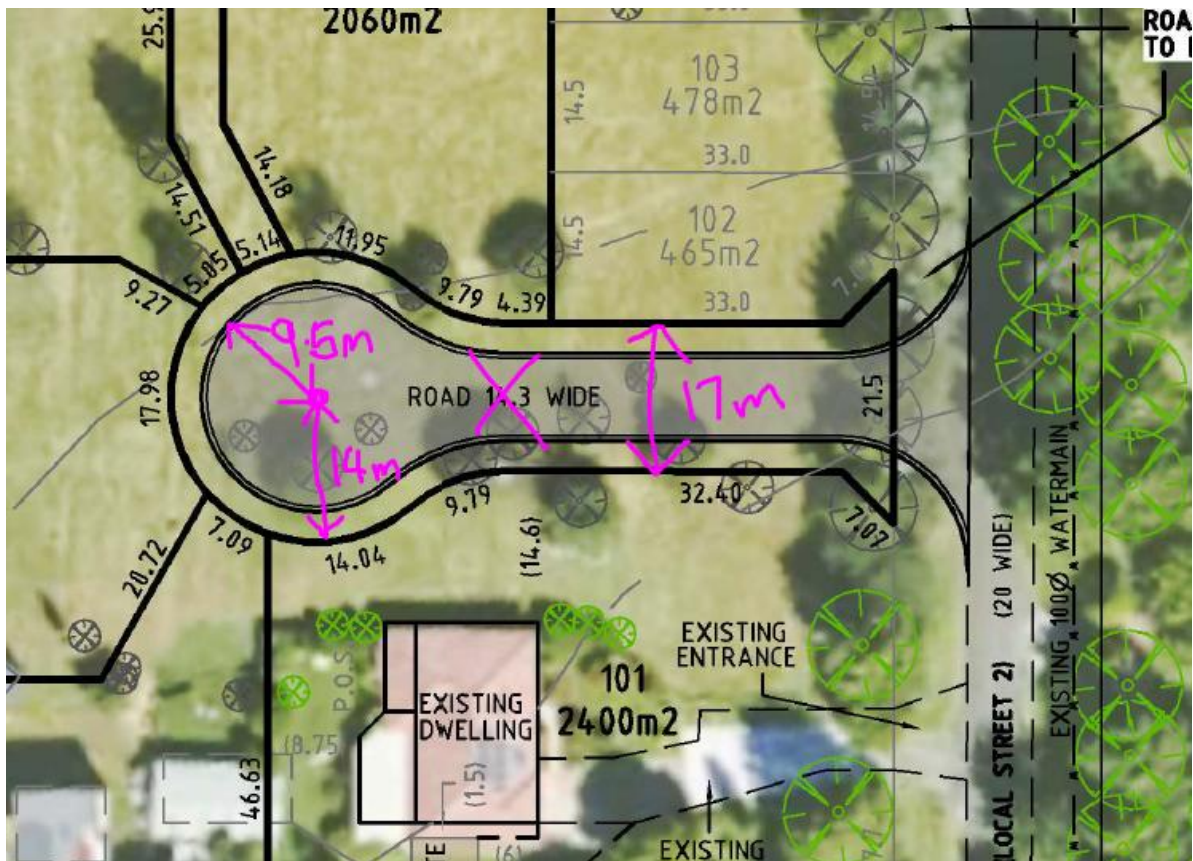
Capacity of Road Network

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.



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.

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.

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 [↓](#)



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	22/07/25
Date from which the consent operates	22/07/25
Date on which the consent lapses	22/07/30
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>Approved plans Sheet no 1 to 13, Reference No 23028DA, prepared by Peter Basha, dated on 9 December 2024. (13 sheets)</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
	All building work must be carried out in accordance with the provisions of the National Construction Code.
	Condition reason: To ensure compliance with relevant statutory requirements.
3	Development and subdivision work requirements
	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.

	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: <div style="margin-left: 40px;"> (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) </div> The Principal Certifier shall determine when inspections and compliance certificates are required. 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.

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

	<p>Proposed lots are to be provided with interlot stormwater drainage, including those lots abutting public land, where the surface of the entire lot cannot be drained to the kerb and gutter at the lot frontage. A grated stormwater pit is to be constructed within each lot provided with interlot stormwater drainage. Engineering plans for this drainage system are to be approved by Orange City Council or an Accredited Certifier (certifier – subdivision) prior to the issuing of a Subdivision Works Certificate.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
18	<p>Stormwater discharge</p> <p>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.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
19	<p>Sewer main construction</p> <p>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.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
20	<p>Water reticulation analysis</p> <p>A water reticulation analysis is to be carried out by Orange City Council on any proposed water reticulation system for the development. Engineering plans are to be submitted to and approved by Orange City Council prior to the issue of a Subdivision Works Certificate.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
21	<p>Road naming application</p> <p>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.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
22	<p>Road construction requirements</p> <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</p>

	<p>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 accommodate 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 Certificate issued by Orange City Council / Accredited Certifier prior to any excavation or works being carried out on site.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>
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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.
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 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.

	Condition reason: To comply with Councils Development and Subdivision Code.
31	Construction of half road width
	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.
	Condition reason: To comply with Councils Development and Subdivision Code.
32	Single access battle-axe lot footpath crossing
	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.
	Condition reason: To comply with Councils Development and Subdivision Code.
33	Kerb and gutter layback and footpath crossing
	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.
	Condition reason: To comply with Councils Development and Subdivision Code.
34	Provision of water service and sewer junction
	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.
	Condition reason: To comply with Councils Development and Subdivision Code.
35	Services within lot
	All services are to be contained within the allotment that they serve.
	Condition reason: To comply with Councils Development and Subdivision Code.
36	Concrete footpaths and cycleways
	Footpaths and cycleways are to be constructed in accordance with the Shiralee DCP.
	Construction work is to be to the requirements and standards of the Orange City Council Development and Subdivision Code.
	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
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 Council prior to the issuing of a Subdivision Certificate.
	A Certificate of Compliance, from Orange City Council, certifying that the maintenance security deposit has been paid, is to be submitted to the Principal Certifying Authority prior to the issuing of a Subdivision Certificate.
	Condition reason: To comply with Councils Development and Subdivision Code.

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 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

	<ul style="list-style-type: none"> 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.
	Condition reason: To comply with Councils Development and Subdivision Code.
5	Section 88B restriction on title - proposed Lot 101 – Stage 1
2	<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.
	<ul style="list-style-type: none">
	Condition reason: To comply with Councils Development and Subdivision Code.
5	Potential safety risk (Essential Energy)
3	<p>If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.</p> <p>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.</p>
	Condition reason: To provide adequate public health and safety measures

5	Electrical Infrastructure (Essential Energy)
4	<p>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.</p> <p>Condition reason: To provide adequate public health and safety measures</p>
5	Asset Protection Zone (APZ)
5	<p>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.</p> <p>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.</p> <p>Condition reason: To comply with Council's Development and Subdivision Code.</p>
5	RFS - Asset Protection Zones
6	<p>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:</p> <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; • 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;

	<ul style="list-style-type: none"> • 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>
57	<p>RFS - Access - Internal Roads</p> <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 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>
58	<p>RFS - Water and Utility Services</p> <p>The provision of water, electricity and gas, must comply with the following in accordance with</p>

	<p>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</p>

	<p>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 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

	<p>branches;</p> <ul style="list-style-type: none"> • 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>
6	RFS - Construction Standards
1	<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>
6	Protection of Trees
2	<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>
6	Distance of walls from boundaries
3	<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>

Ongoing use for subdivision work

64	RFS - General Advice
	<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>

	Condition reason: To comply with RFS requirement
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Demolition Work

Before demolition work commences

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

During demolition work

65	Demolition - in accordance with AS 2601:2001 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.
66	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.
67	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.

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:

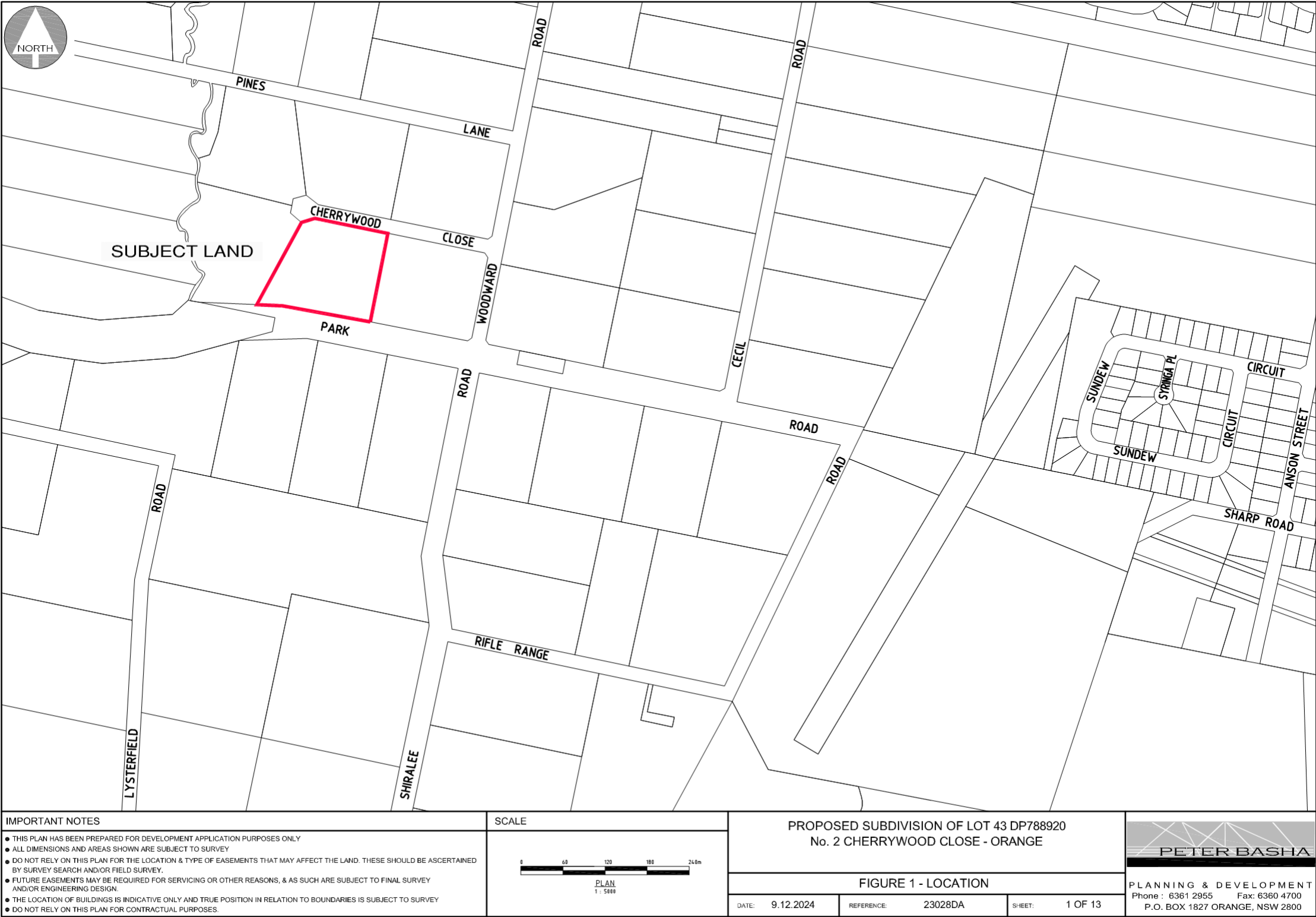
- the collection of stormwater,
- the reuse of stormwater,
- the detention of stormwater,
- the controlled release of stormwater, and
- connections to easements and public stormwater systems.

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.

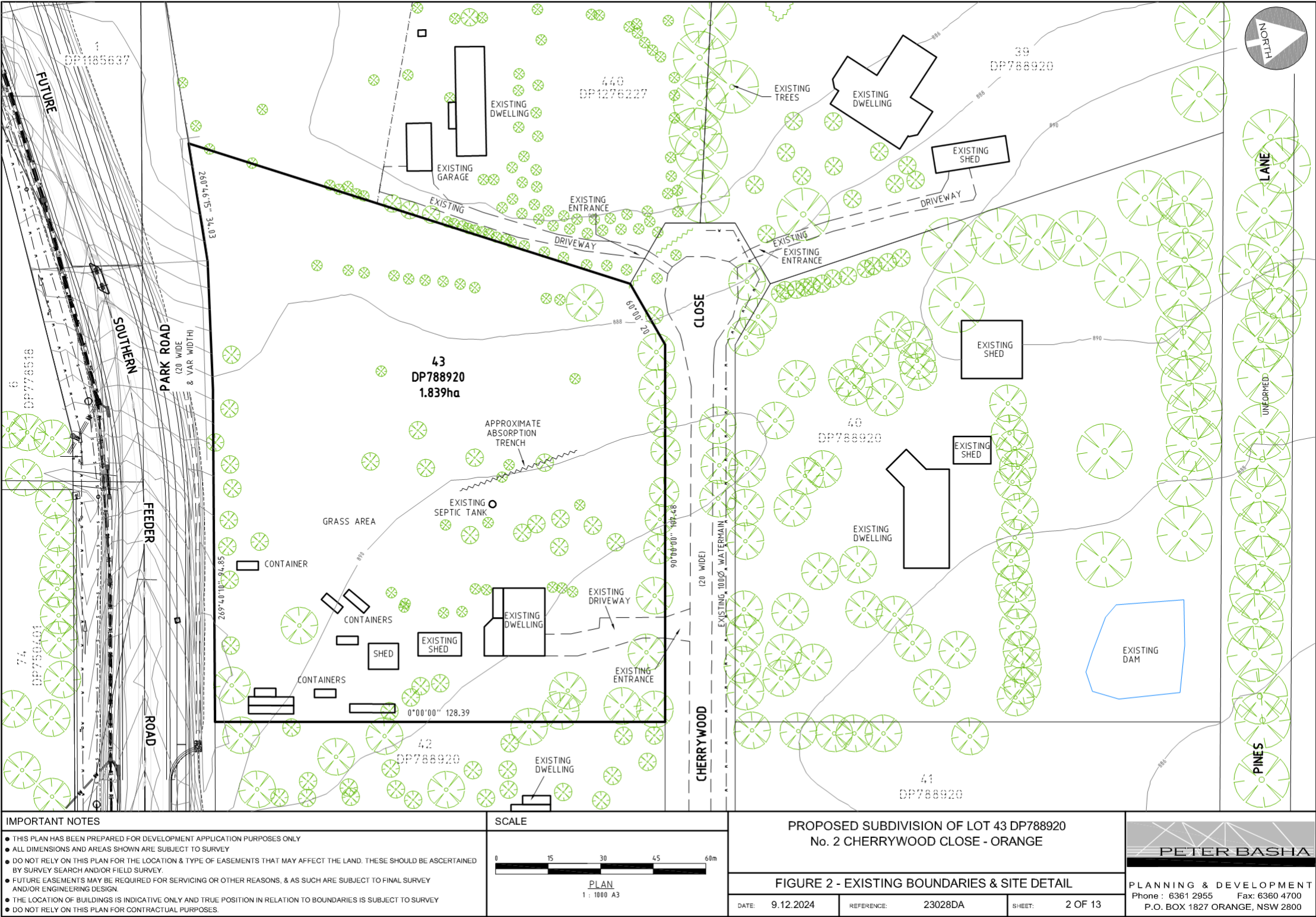
Subdivision certificate means a certificate that authorises the registration of a plan of subdivision under Part 23 of the *Conveyancing Act 1919*.

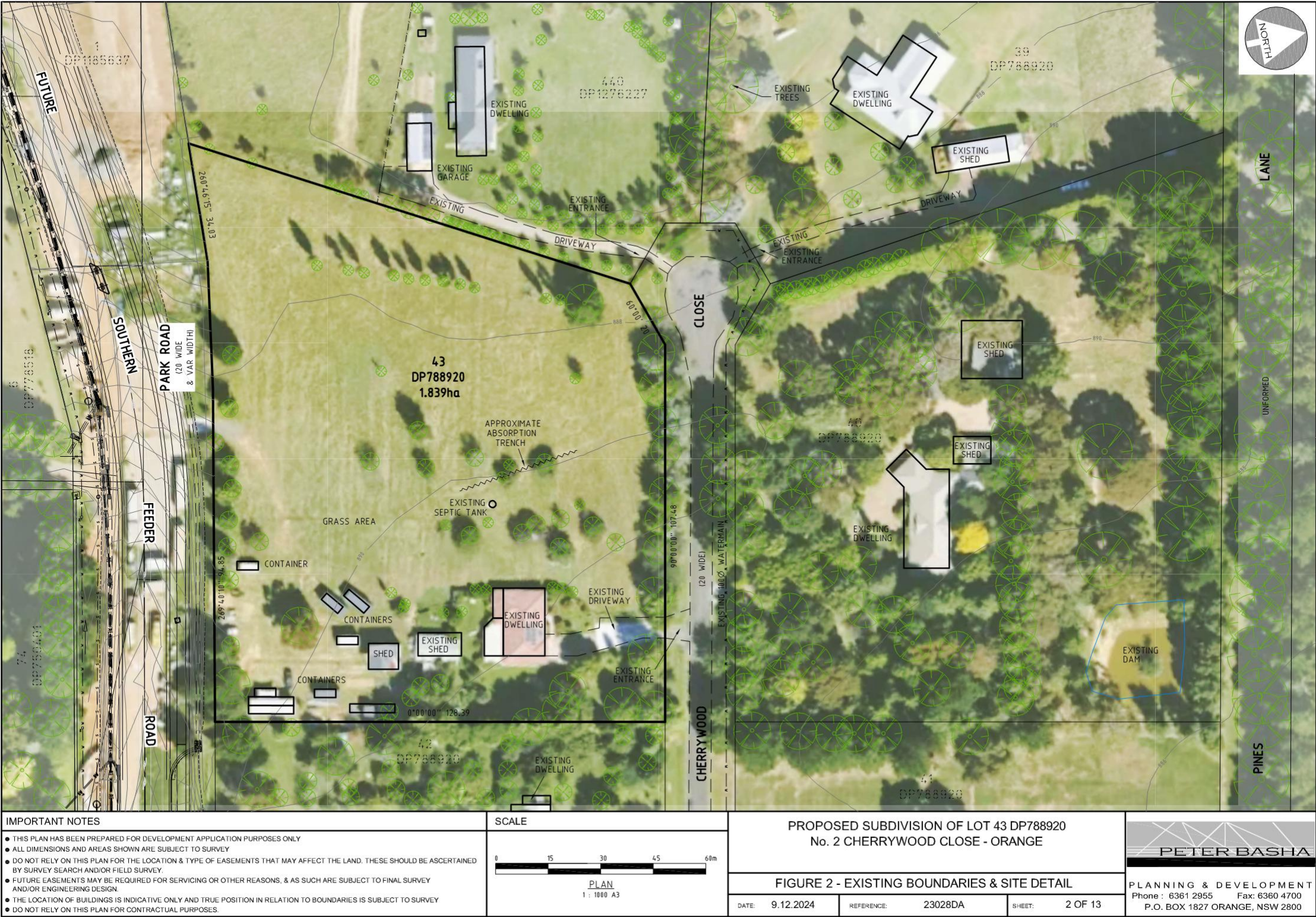
Subdivision work certificate means a certificate to the effect that subdivision work completed in accordance with specified plans and specifications will comply with the requirements of the EP&A Regulation.

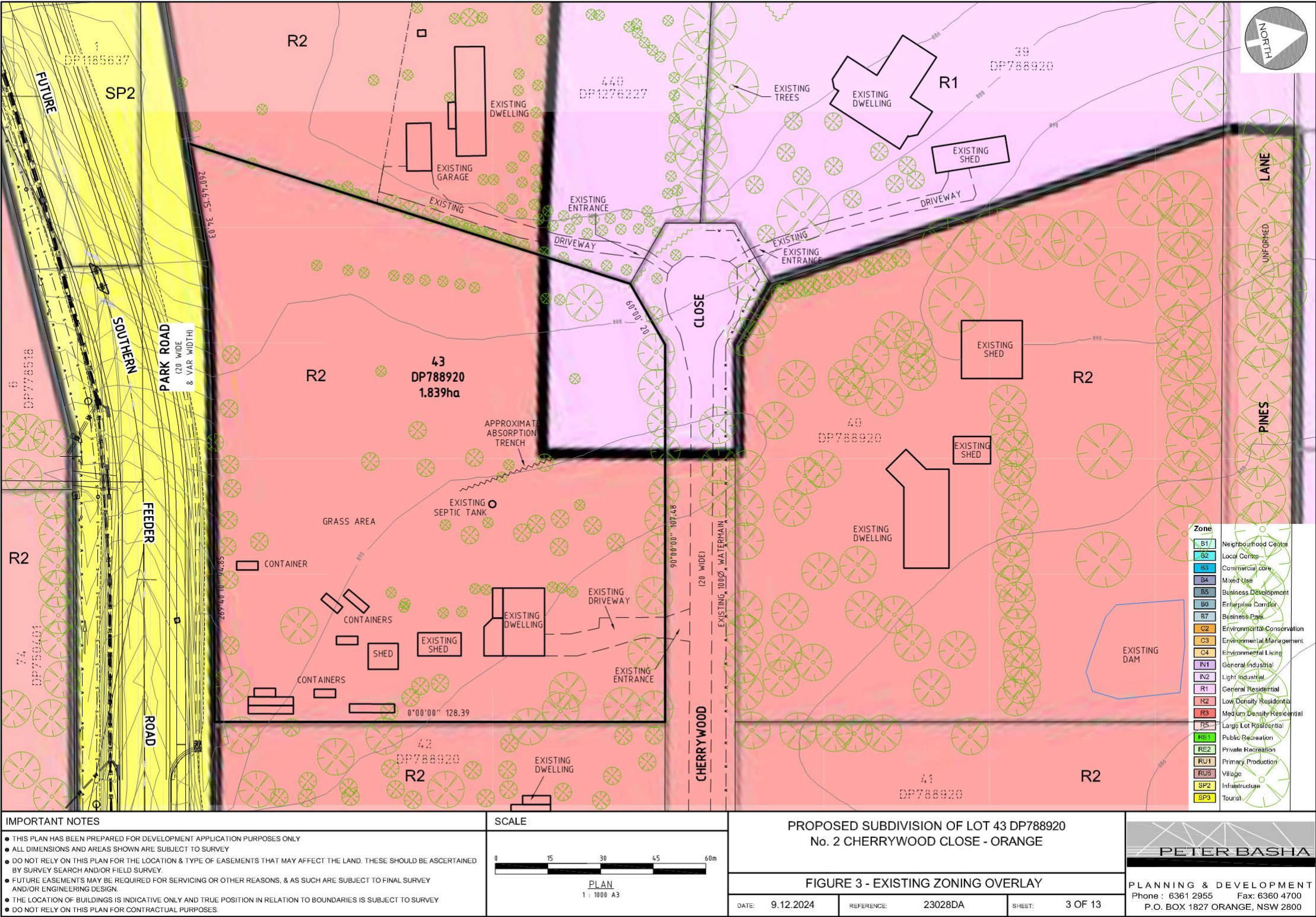
Sydney district or regional planning panel means Western Regional Planning Panel.

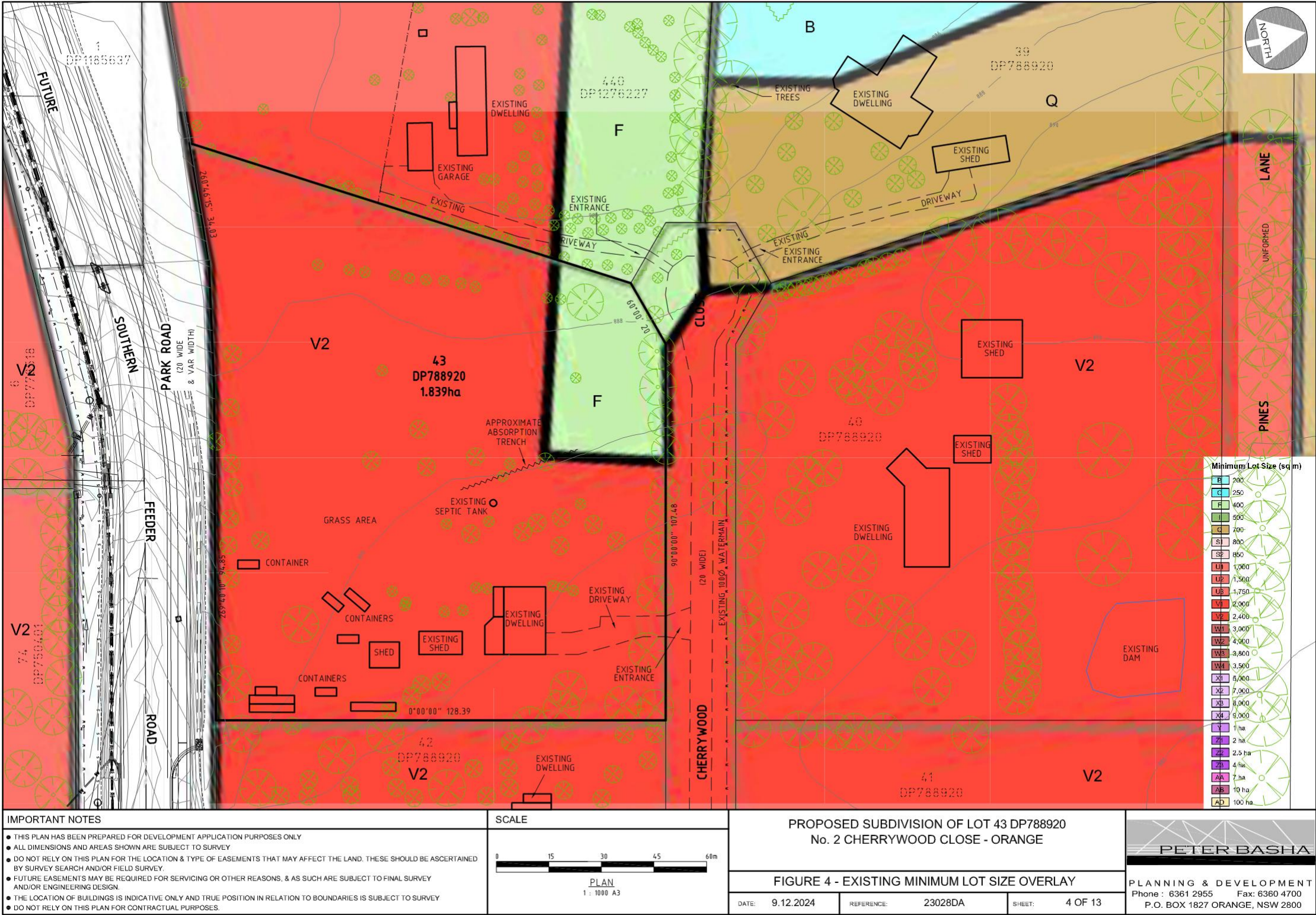


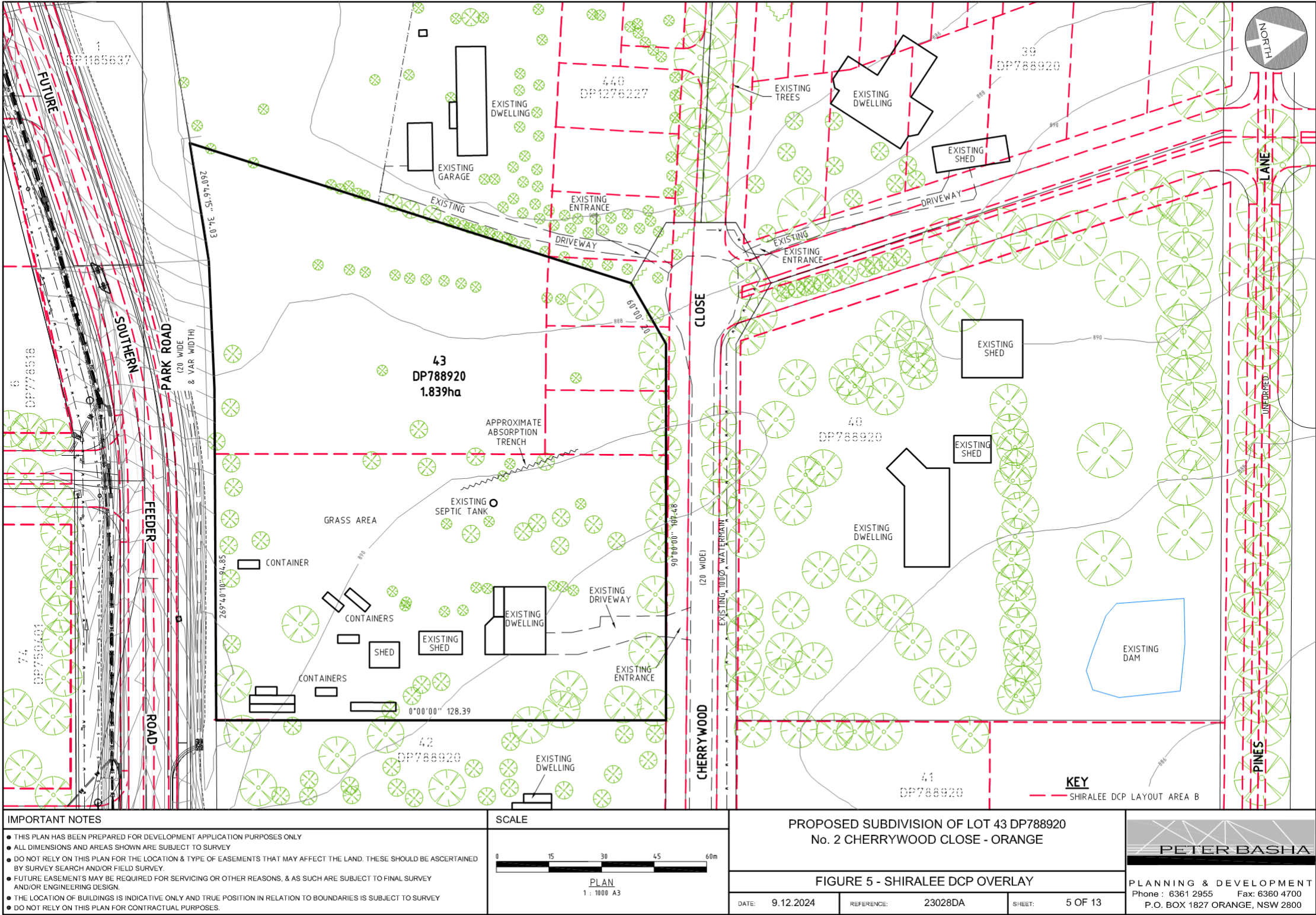


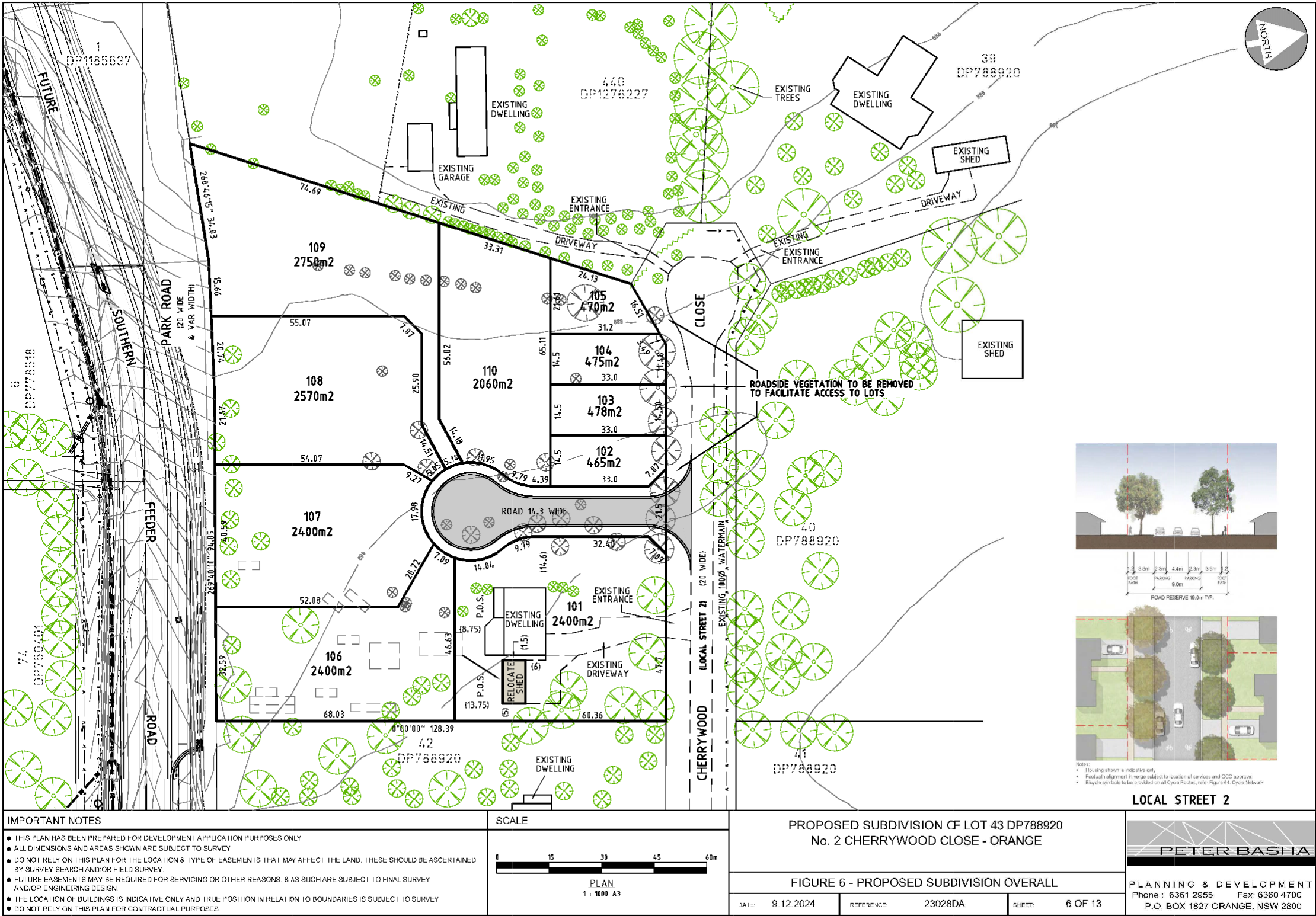


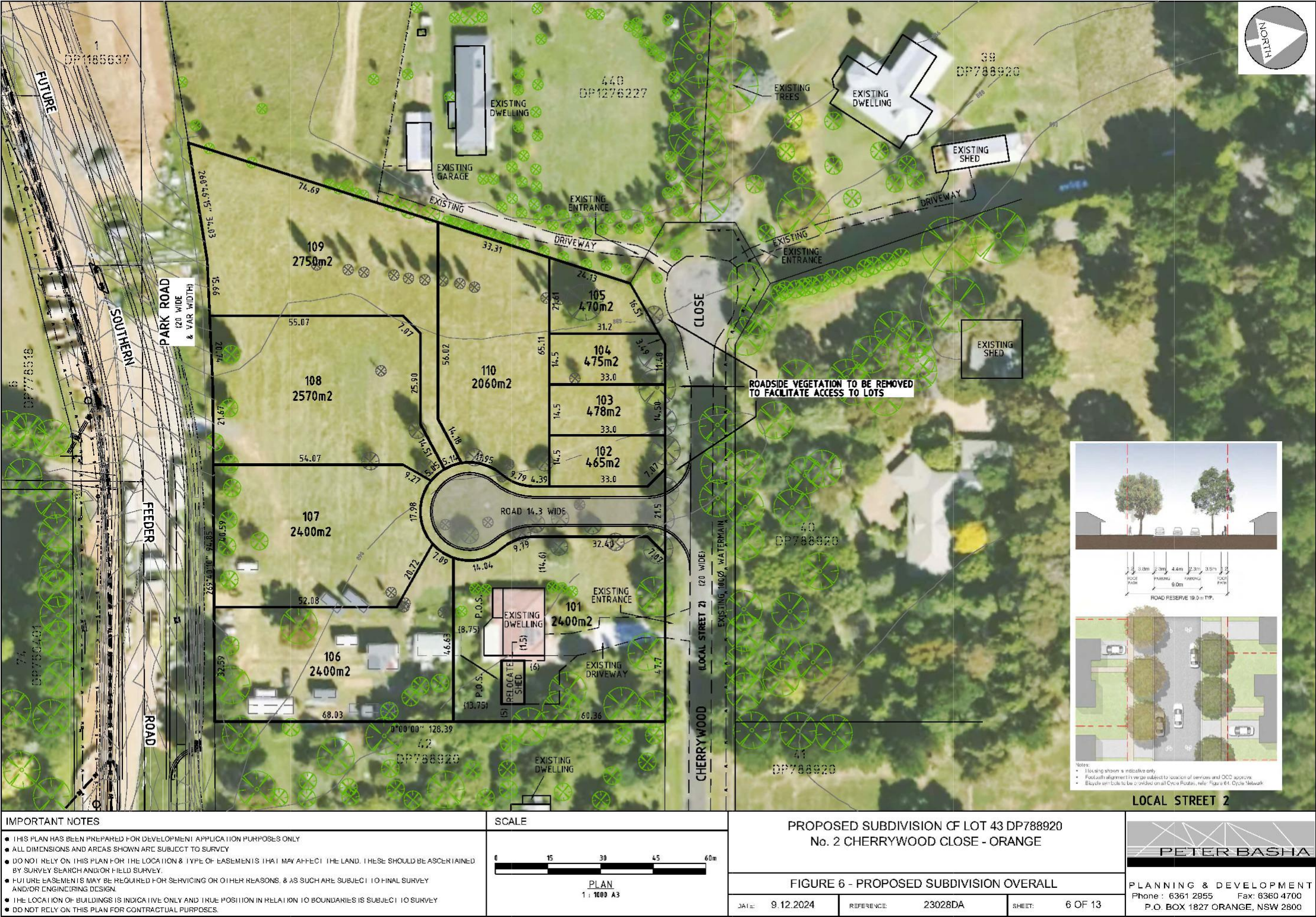


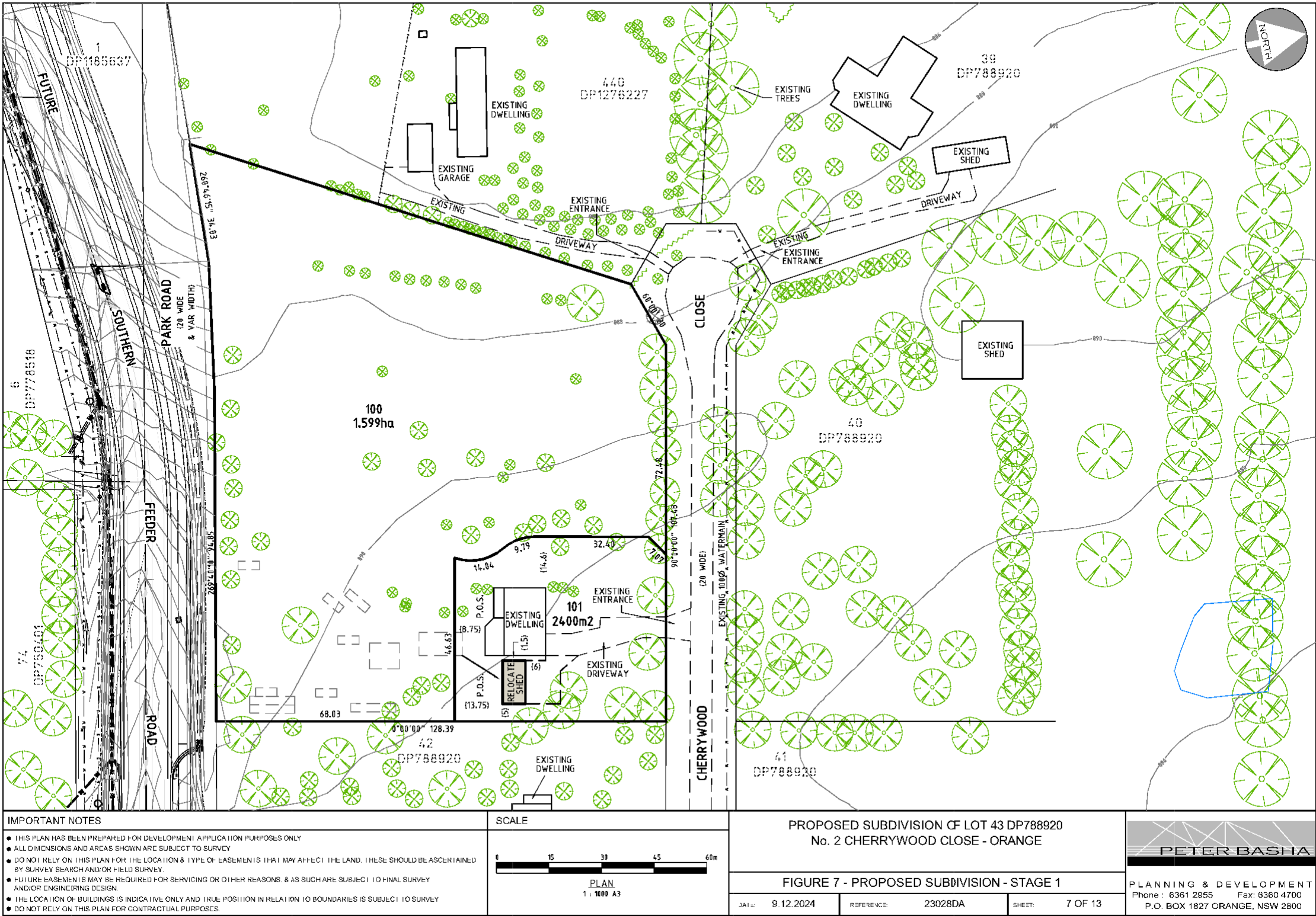


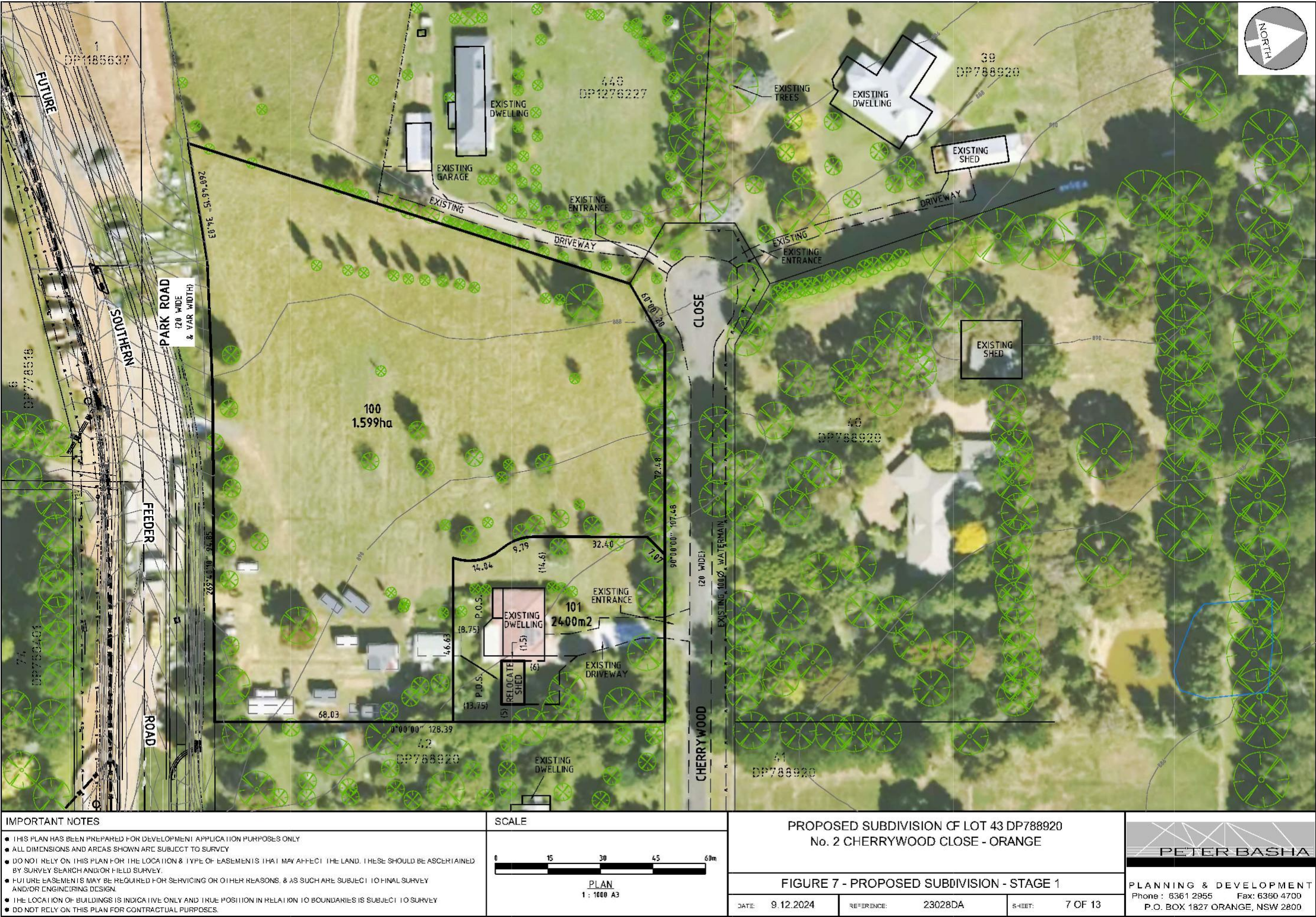


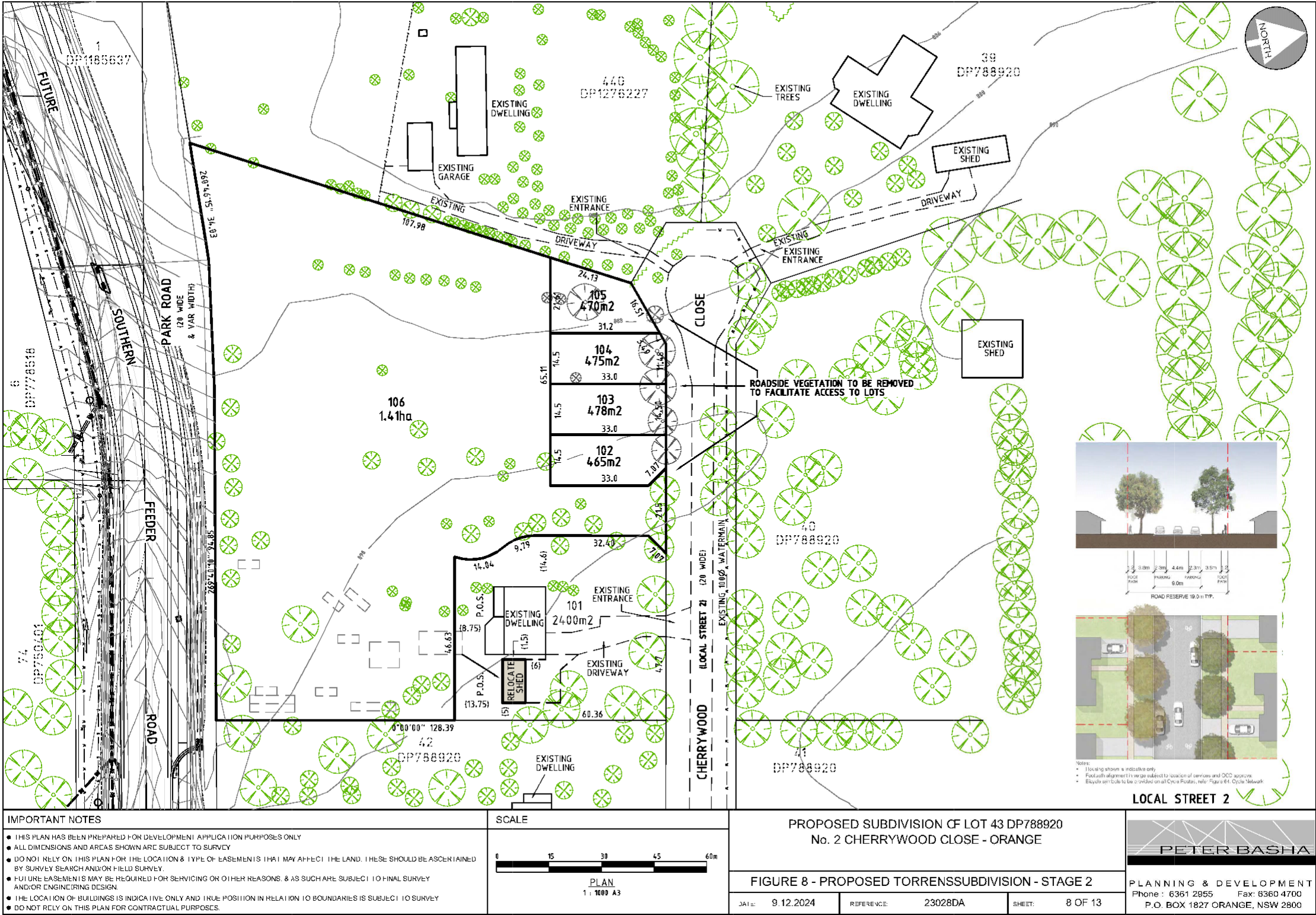


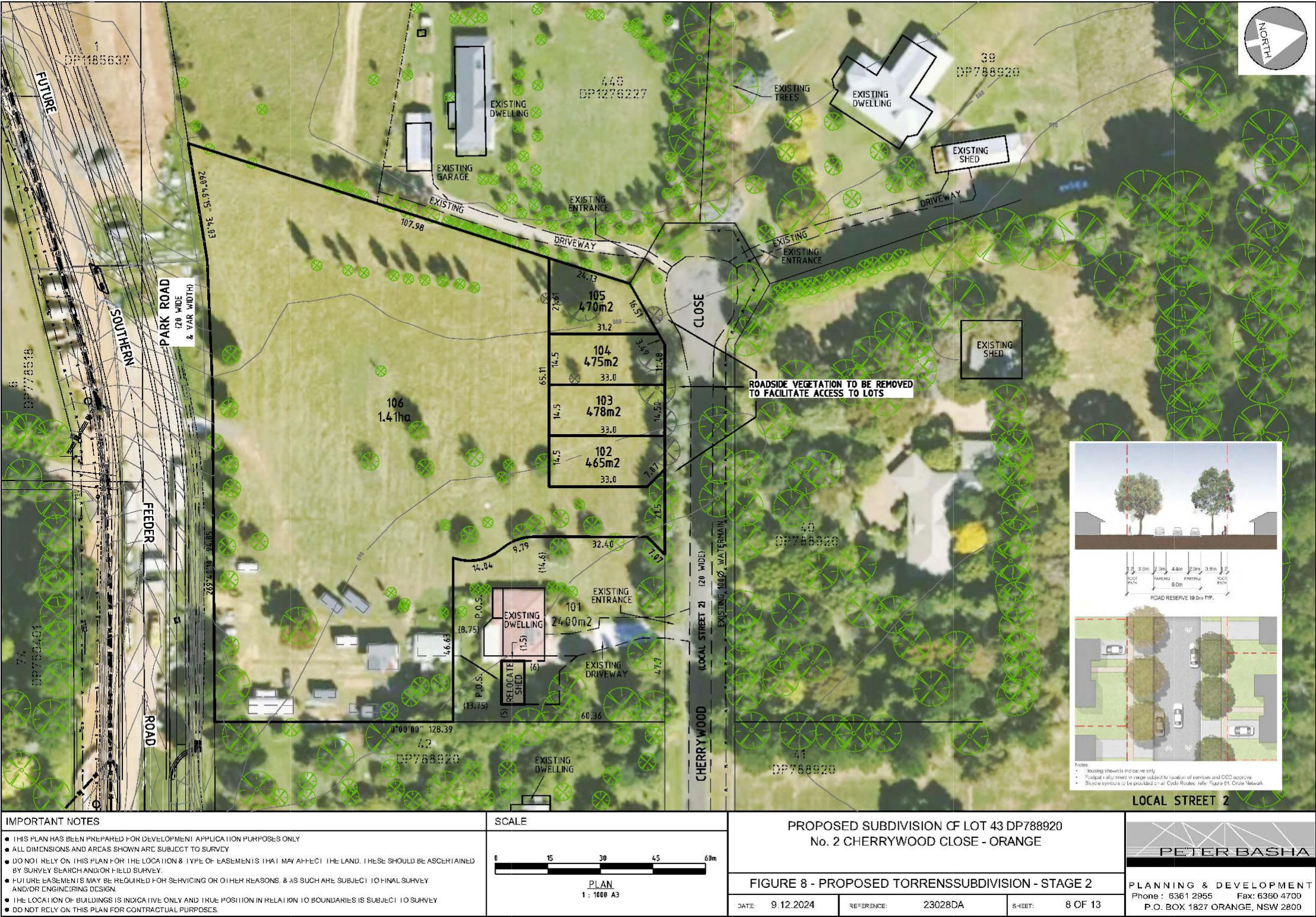


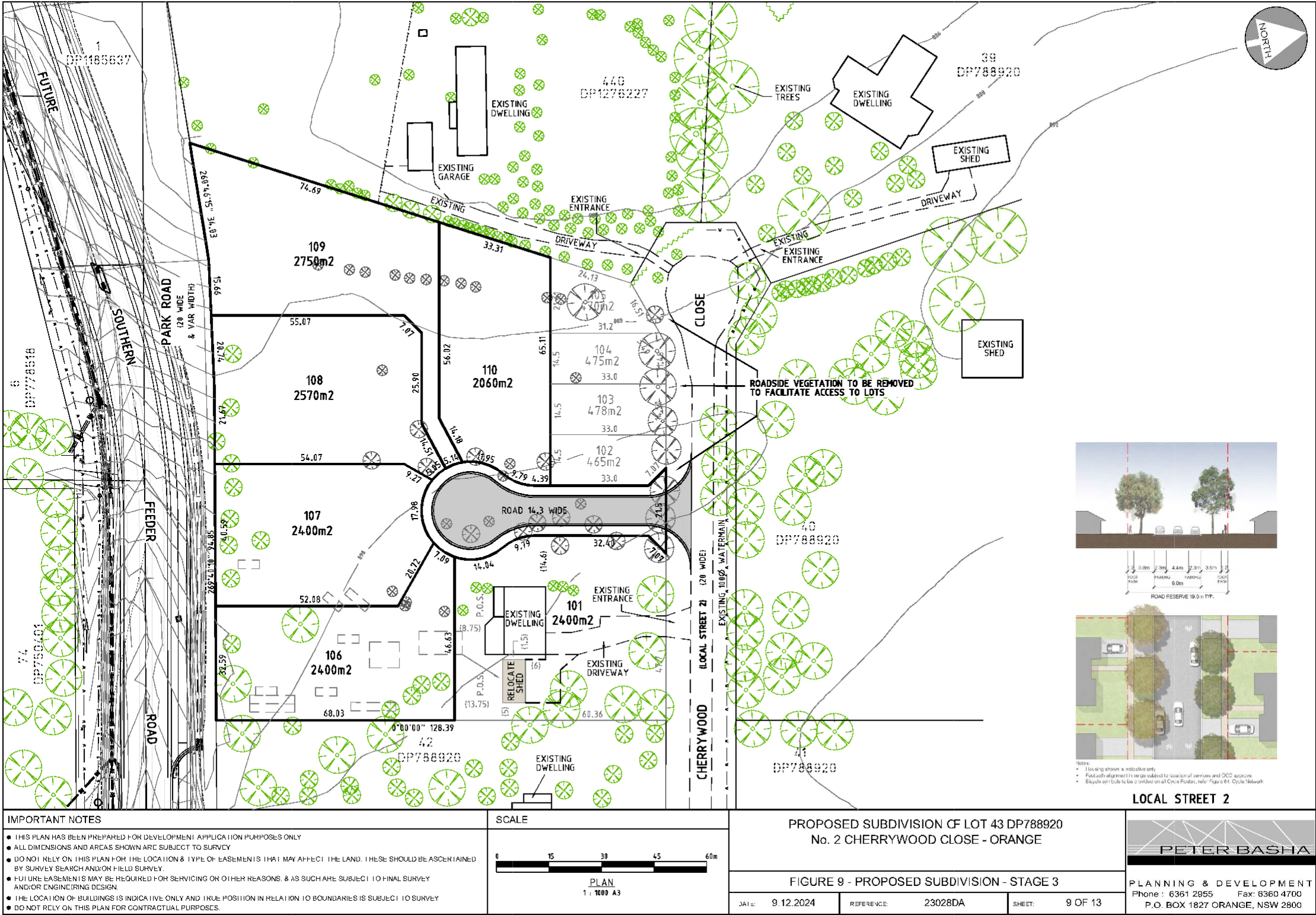


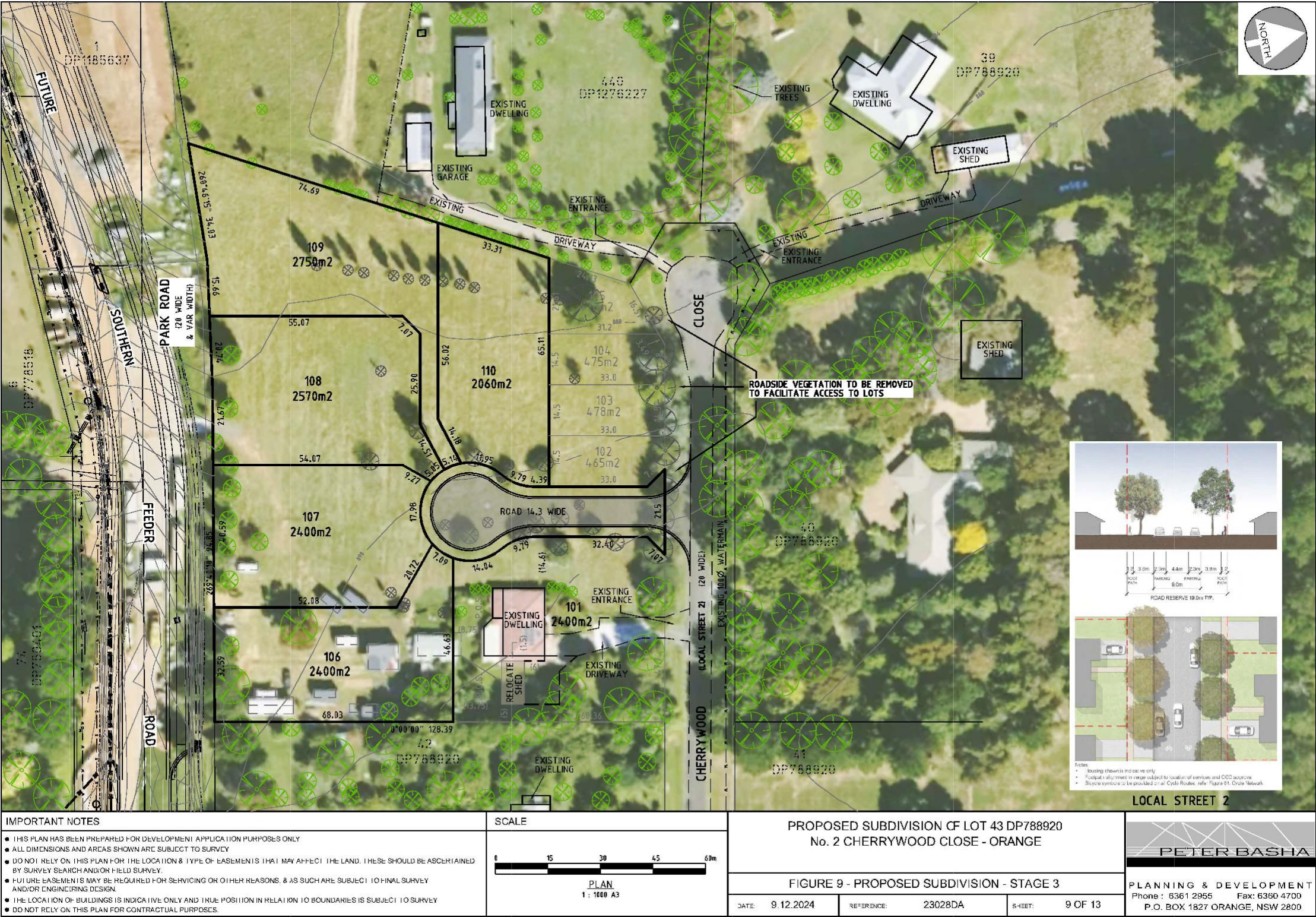


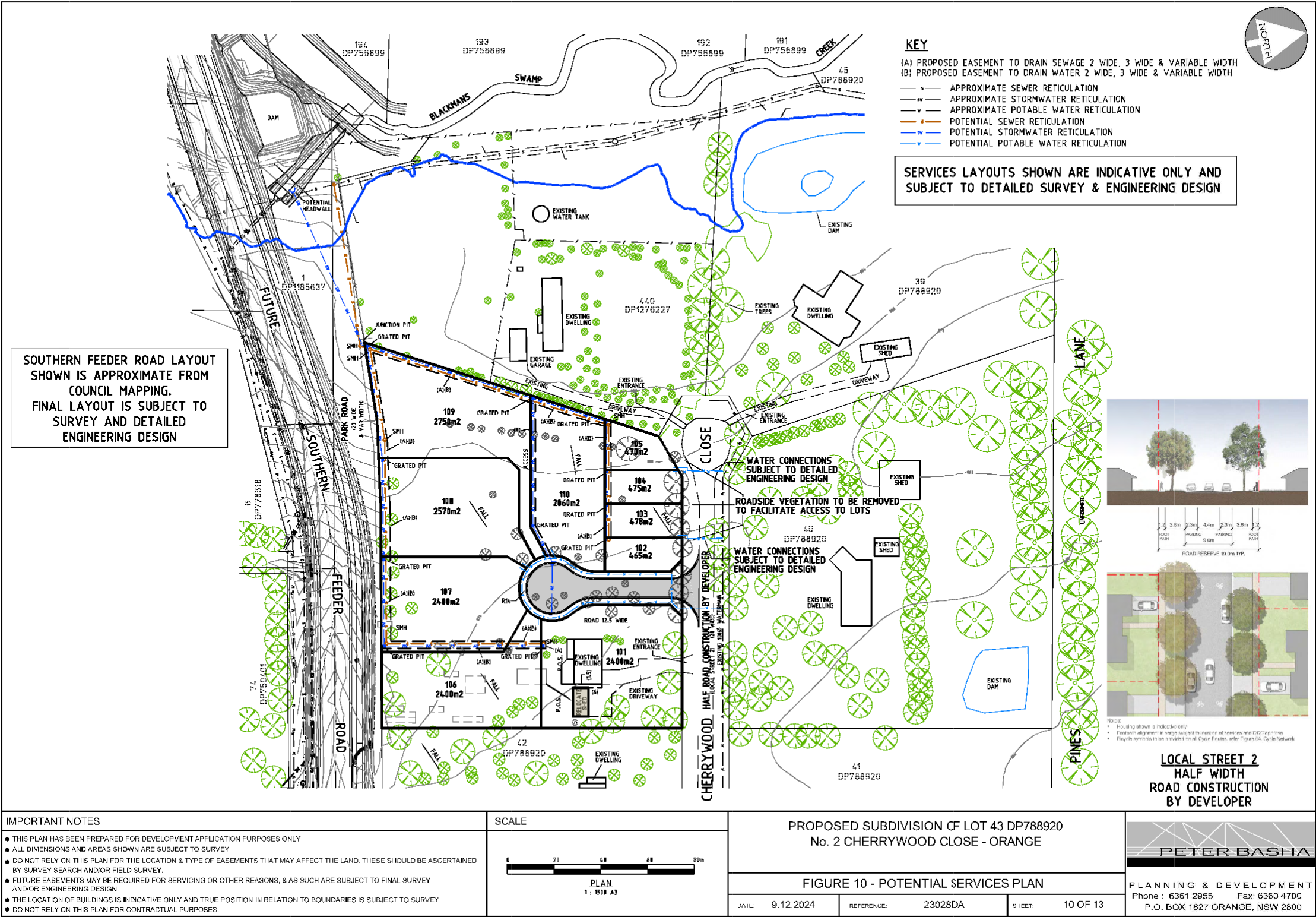


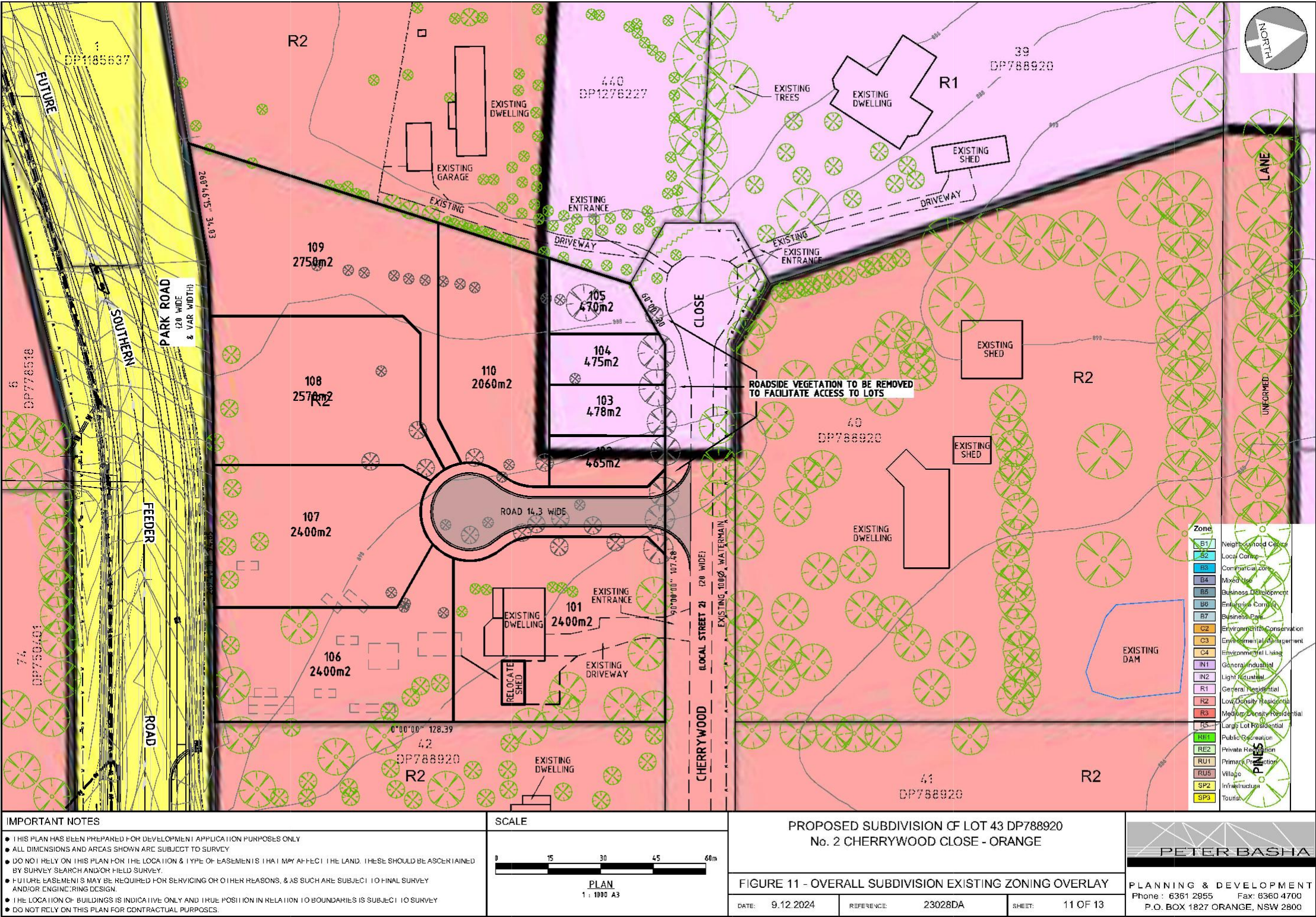


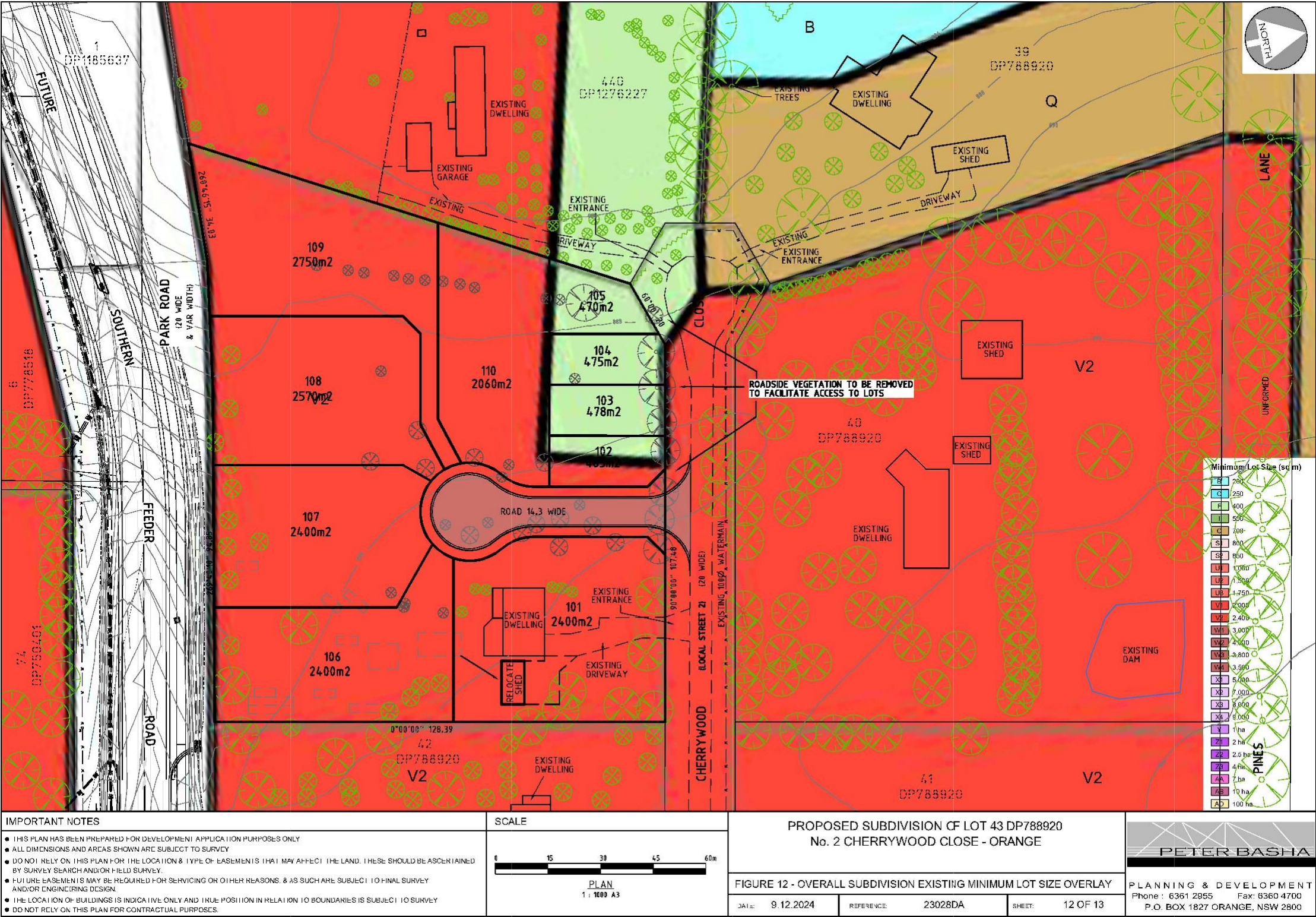


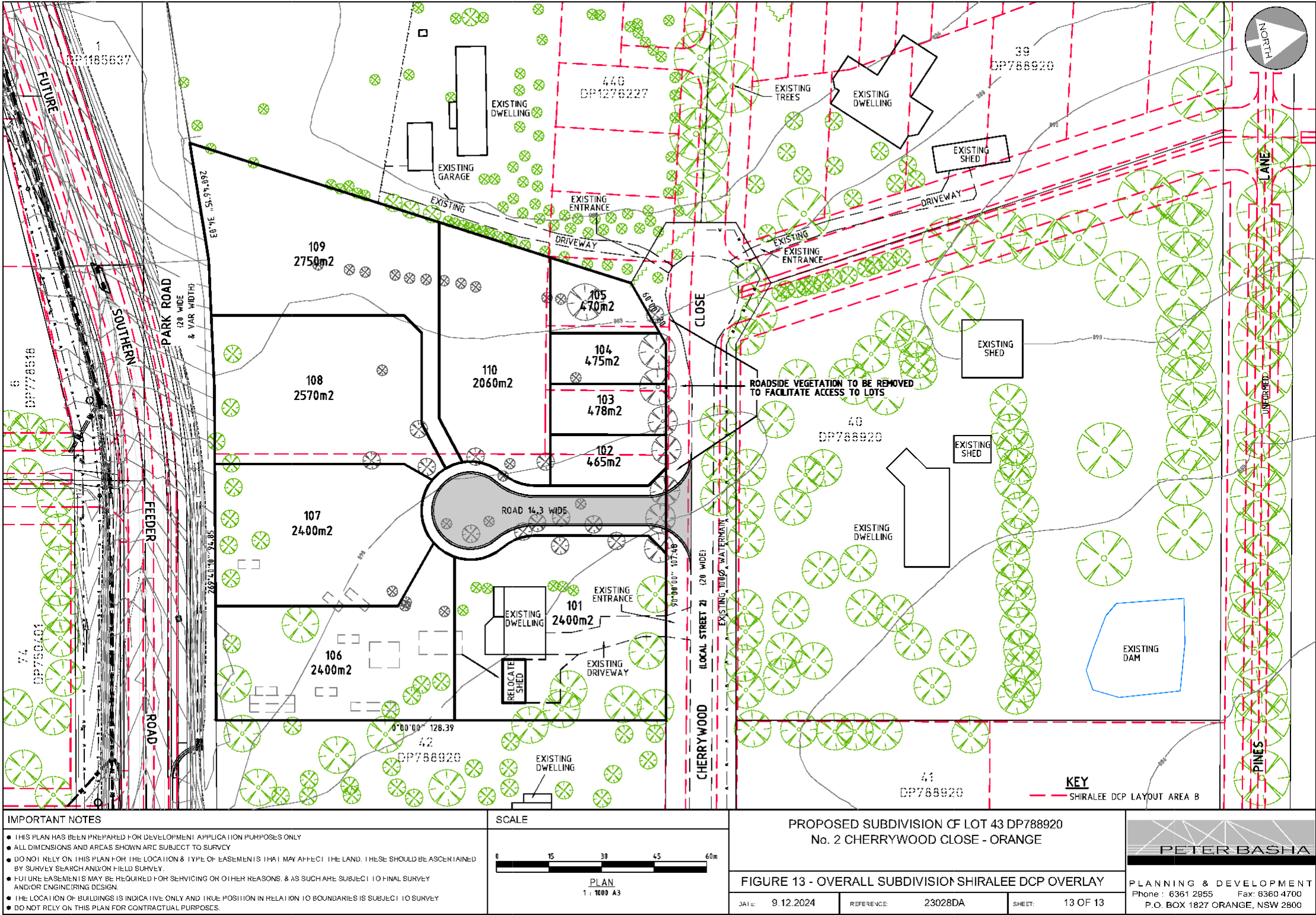














Orange City Council
PO Box 35
ORANGE NSW 2800

Your reference: CNR-78697 DA 1/2025(1)
Our reference: DA20250210000514-S38-1

ATTENTION: Anu Vishwakarma

Date: Thursday 3 July 2025

Dear Sir/Madam,

Integrated Development Application
s100B – Subdivision – Torrens Title Subdivision
2 Cherrywood Close Orange NSW 2800, 43//DP788920

I refer to your correspondence dated 19/06/2025 seeking general terms of approval for the above Integrated Development Application.

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

Asset Protection Zones

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

1. 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:

- 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;
- 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

1

Postal address

NSW Rural Fire Service
Locked Bag 17
GRANVILLE NSW 2142

Street address

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

T (02) 8741 5555
F (02) 8741 5550
www.rfs.nsw.gov.au



- leaves and vegetation debris should be removed.

2. 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.

3. 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.

Construction Standards

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

4. 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.

Access - Internal Roads

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

5. 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*:

- 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.

6. Proposed cul-de-sac turning head, must be provided to the dead end road, incorporating either a minimum 12 metre radius turning circle or turning heads compliant with A3.3. Vehicle turning head requirements of *Planning for Bush Fire Protection 2019*.

Access - Property Access





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

7. 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 2019*:

- 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.

Water and Utility Services

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

8. 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*:

- 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.

Landscaping Assessment

Intent of measures: to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting firefighting activities.

9. 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:





RFS



- 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.

General Advice – Consent Authority to Note

- Council is advised that this assessment, was undertaken based on the Proposed Plan of Subdivision of Lot 43 in Dp788920, No 2 Cherrywood Close Orange, Ref: 23028DA, Sheets 1 to 13 inclusive and dated 9/12/2024 as prepared by Peter Basha, Planning & Development Pty Ltd as well as the Bush Fire Assessment Report, prepared by Statewide Bushfire Consulting Pty Ltd, Steven Houghton, Job Ref: 24BBSC_1144 and report dated 12/12/2024 and 3/7/2025; and,
- 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*.

This letter is in response to an assessment of the application based on the submitted further information and supersedes our previous general terms of approval dated 12/05/2025.

For any queries regarding this correspondence, please contact Craig Casey on 1300 NSW RFS.

Yours sincerely,

Nika Fomin
Manager Planning & Environment Srv (Est)
Built & Natural Environment





BUSH FIRE SAFETY AUTHORITY

Subdivision – Torrens Title Subdivision
2 Cherrywood Close Orange NSW 2800, 43//DP788920
RFS Reference: DA20250210000514-S38-1
Your Reference: CNR-78697 DA 1/2025(1)

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

This authority supersedes the previous Bush Fire Safety Authority DA20250210000514-Original-1 issued on 12/05/2025 and confirms that, subject to the attached reissued General Terms of Approval being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under *s100b of the Rural Fires Act 1997*.

Nika Fomin

Manager Planning & Environment Srv (Est)
Built & Natural Environment

Thursday 3 July 2025



2.5 DEVELOPMENT APPLICATION DA 100/2025(1) - 59-67 BATHURST ROAD - KWS

RECORD NUMBER: 2025/1521

AUTHOR: Amira Halla, Town Planner

EXECUTIVE SUMMARY

Application lodged	18 March 2025
Applicant/s	Kinross Wolaroi School
Owner/s	Kinross Wolaroi School Property Limited
Land description	Lot 30 DP 1190518 - 59-67 Bathurst Road, Orange
Proposed land use	Educational Establishment (school) (alterations and additions) and Demolition (tree removal)
Value of proposed development	\$5,018,700.00

This Development Application seeks approval for alterations and additions to the former Wolaroi Mansion and Tower Building within the Kinross Wolaroi School campus at Bathurst Road, Orange. The proposed works facilitate a new dining space on the ground floor and learning spaces to the first floor. The changes are located within the northeastern portion of the building, to the rear of the principal former mansion building. The works will also include a contemporary verandah to this northern elevation incorporating design references to the historic building form and architecture. As part of the proposal, conservation works will be undertaken throughout the building in areas that require repair or stabilisation. Overall, the works will facilitate the continuation of the educational use of the place and not adversely impact any principal significant spaces or fabric.

A key planning consideration relates to heritage. The site contains an item of heritage, the Wolaroi mansion. The works are sufficiently separated from this item and will not impact upon its heritage significance. The design has been carefully developed in consultation with Council's Heritage Advisor, ensuring it complements the heritage context. Conditions of consent have been recommended to ensure that the planned works will achieve a positive heritage outcome.

The application is reported to the Planning and Development Committee for determination as the value of works exceeds \$2.5 million. The proposed value of works is \$5,018,700.00. The application was publicly advertised for 14 days as per Council's Community Participation Plan. No submissions were received.

As outlined in this report, the proposed development is expected to satisfy the Local and State planning controls that apply to the subject land and particular land use. Subject to conditions, the proposal is not expected to have any adverse impacts.

Approval of the application is recommended.

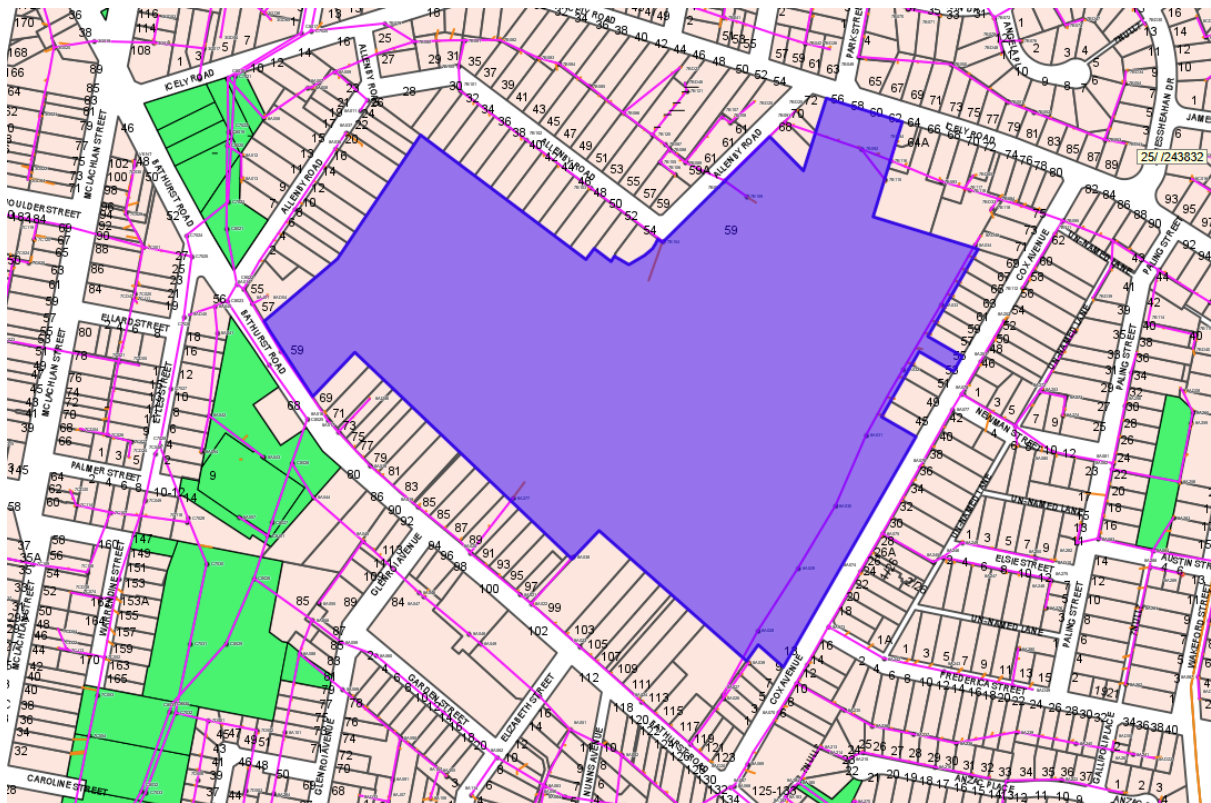


Figure 1 - locality plan (extension highlighted in blue)

DECISION FRAMEWORK

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

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

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

DIRECTOR'S COMMENTS

The proposed development seeks to undertake alterations to the former boarding dormitories that are attached to the main Wolaroi building (the main heritage building at KWS). The dormitories were an addition to Wolaroi House from the 1930's and have minor heritage value. However, given their connection to the important Wolaroi House, all works must give consideration to the heritage values.

The \$5.02M alterations to convert this part of the building from the dormitory use to other school uses has been planned by the school for some time. This planning started with the 'new' boarding house was constructed to the north of the campus some years ago. It is pleasing to see these works now progressing.

The works proposed enlarge the existing ground floor dining hall, provides for new learning and breakout spaces, and bathroom facilities, and improved accessibility to the first floor; along with a new verandah at ground and first floors. Works are located mainly on the northern side and internally of the building, so will not adversely impact on the heritage significance of the original Wolaroi House.

Staff have undertaken a thorough assessment of the proposal conclude with support of the planned works. Conditions of consent have been recommended to ensure a sound outcome is achieved particularly having regard to heritage.

It is recommended that Council supports the subject development.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan Strategy "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 100/2025(1) for *Educational Establishment (school) (alterations and additions) and Demolition (tree removal)* at Lot 30 DP 1190518 - 59-67 Bathurst Road, Orange pursuant to the conditions of consent in the attached Notice of Approval.

FURTHER CONSIDERATIONS

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

SUPPORTING INFORMATION**PLANNING HISTORY**

DA147/2023(2) - Educational Establishment (student accommodation)

DA311/2023(1) - School (ancillary and incidental community notice and public information signage)

DA147/2023(1) - Educational Establishment (student accommodation)

DA354/2021(1) - School (alterations to existing covered learning area and new awning)

DA134/2020(1) - School (new metalwork building) and Demolition (shed and tree removal)

THE PROPOSAL

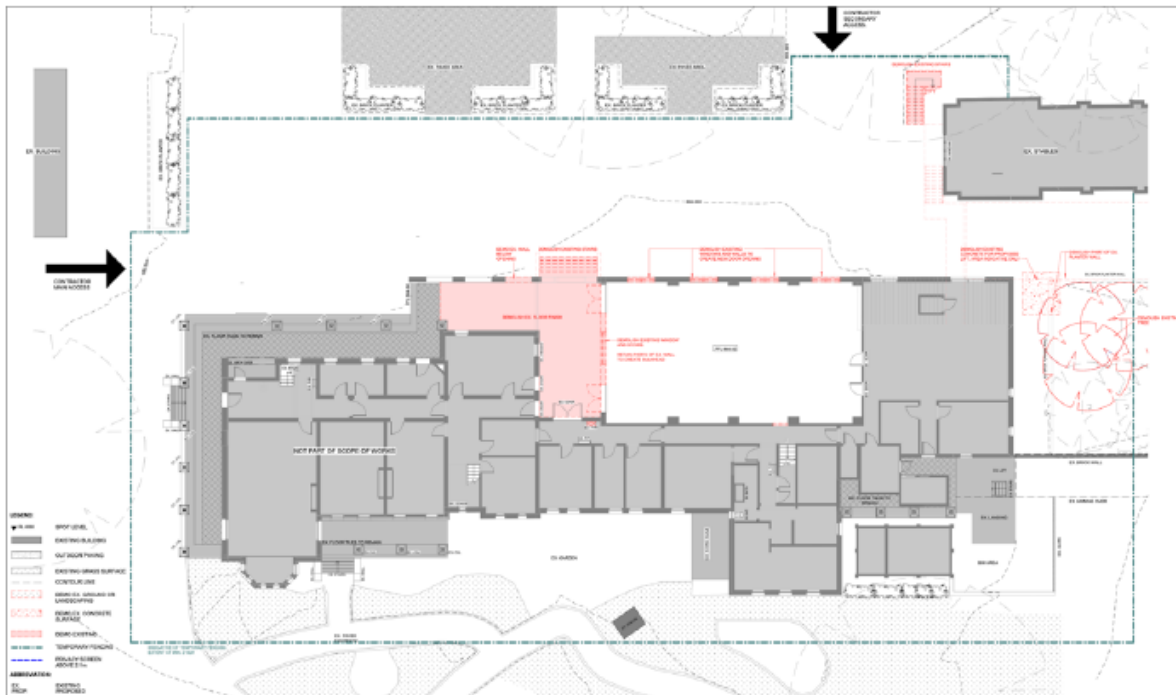
The proposal involves alterations and additions within the Kinross Wolaroi School campus at Bathurst Road, Orange. The proposed works involve alterations to the existing two-story extension building constructed in 1930. External alterations include the erection of a ground and first floor verandah with new stairs and a passenger lift. Conservation works are also proposed to the balcony of the existing villa. Internal works include demolition and internal layout changes to facilitate a new dining space on the ground floor and learning spaces to the first floor.

Aside from conservation works, all works are located within the 1930 east extension, to the rear of the principal Victorian former mansion building. Overall, the works will facilitate the continuation of the educational use of the place and not adversely impact any principal significant spaces or fabric.

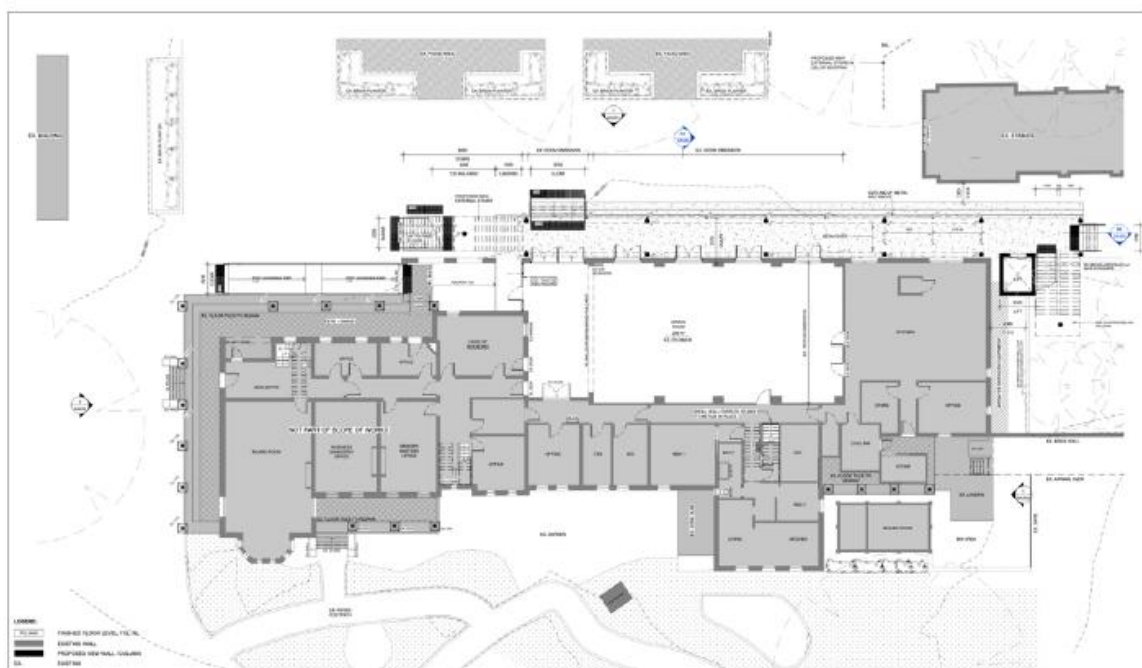
Specifically, the proposal involves the following works:

- Removal of the existing stairs (five risers) from the courtyard to the dining hall porch, removal of the existing tiled floor finish to the porch, and removal of the wall between the dining hall and porch. Parts of the wall will be retained above to create a bulkhead.
- Removal of windows and masonry below sills to the dining hall windows to create new door openings.
- Creation of a single door opening to the south wall of the dining hall, connecting to the east-west hall of the extension.
- Removal of galvanised steel bridge and associated stairs to the former stables building.

- To the east of the extension, removal of three trees, part of the planter wall, and a small area of existing concrete to permit lift installation.
- Construction of a new accessible ramp and walkway along the northern elevation of the original verandah, and a new walkway along the north elevation of the extension (level with the dining hall), accessed by new stairs to its western and eastern ends.
- Construction of a new glazed wall to the west side of the dining room, with glazed double doors; a new glazed wall to the west side of the north elevation, and four new pairs of glazed double doors in the former window openings.



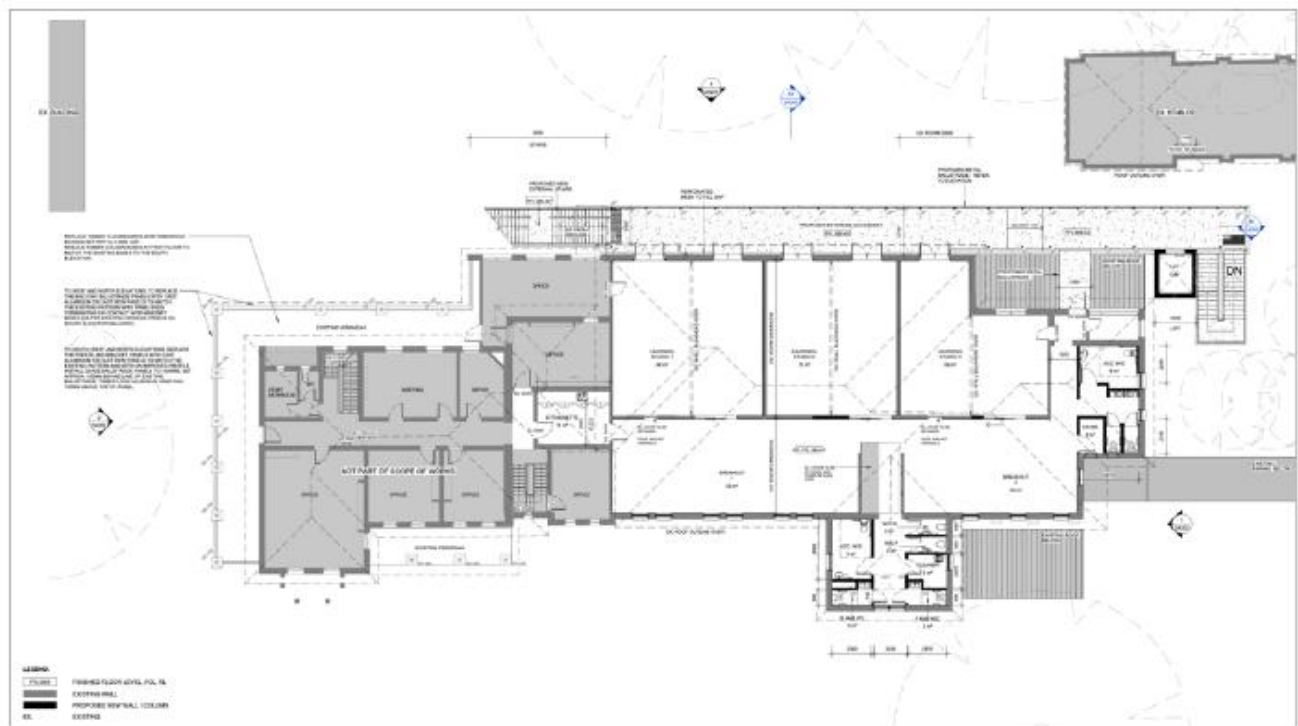
Existing and Demolition – Ground Floor (Source: McIlldowie Partners extract from Sheet DA010)



Proposed Ground Floor Plan (Source: McIlldowie Partners extract from Sheet DA101)

- [illegible]

Existing and Demolition – First Floor (Source: McIlldowie Partners extract from Sheet DA011)



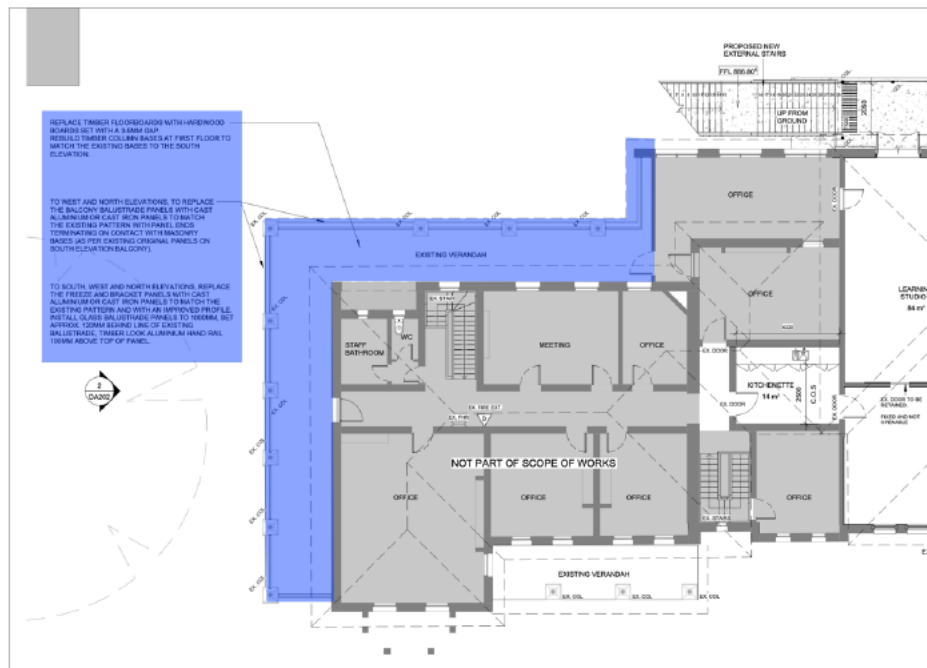
Proposed Ground Floor Plan (Source: McIlldowie Partners extract from Sheet DA102)

Note - All student accommodation in this building will be transferred to the new student accommodation (extension of new *Wolaroi House*) that is currently under construction at the northern side of the campus on Icely Road. In effect, all dormitory and accommodation elements will be removed from the first floor. The new spaces created as a result of internal demolition will become learning studios and breakout areas with new support facilities including bathrooms, kitchenette, cleaners room and storage. The retained dormitories, bedrooms and laundry/sorting room in the original section of the first floor will be reassigned as offices and a meeting room.

Conservation works:

The following conservation measures are proposed:

- Replacement of timber decking with new hardwood boards.
- Replacement of damaged timer column bases at the first floor level with masonry bases.
- Replacement of replica balustrade, frieze and bracket panels with new cast aluminium/cast iron panels.
- Installation of secondary glass balustrade panels to 1000mm high, set 120mm behind the line of the existing balustrade.



Proposed Conservation Works indicated in blue (Source: McIlldowie Partners extract from Sheet DA102)

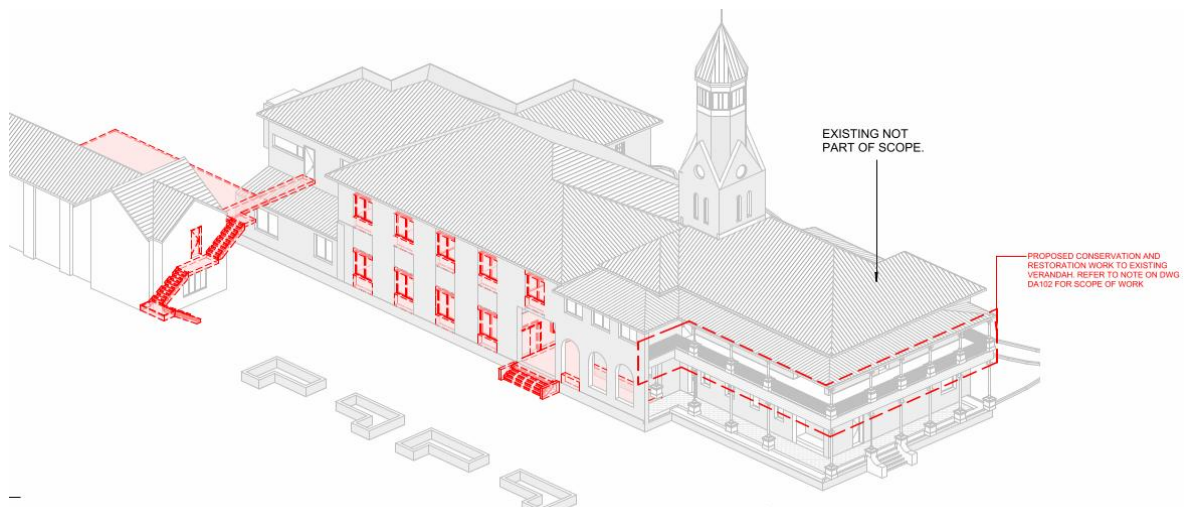


Figure 6 - 3D demolition plan

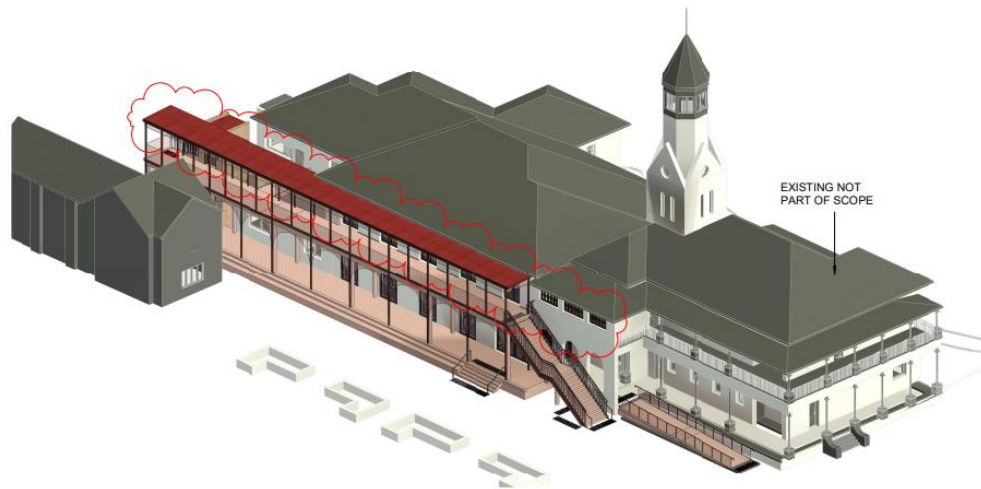


Figure 7 - 3D proposed plan

MATTERS FOR CONSIDERATION

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

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

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

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

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

The proposal is not likely to significantly affect a threatened species. The subject land and adjoining lands are not identified a biodiversity sensitive on the Orange LEP 2011 Terrestrial Biodiversity Map. The proposal does not involve clearing of native vegetation; clearing thresholds prescribed by regulation do not apply. The development site is a highly modified urban environment. The land does not contain known threatened species or ecological communities.

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

Section 4.15

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

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

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

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

The application is considered to be consistent with the above listed LEP aims:

The proposal involves alterations and additions to an existing two-story extension building. With regards to Aim (a) the existing educational extension is of compatible bulk and scale to other buildings on the school site. The bulk, height and scale of the extension will not change as part of these works. External works predominantly pertain to creating greater accessibility and conservation works. It is noted that there is a noticeable disparity of scale to the surrounding residential development of the locality, however, the proposed works are of a minor nature and potential impacts are mitigated through existing design elements and setbacks.

In relation to Aim (b) the proposed development is expected to support activities consistent with this aim. It is expected that the improvements of this school will contribute to the social, economic and environmental resources of the city.

In relation to Aim (f), it is acknowledged that the proposed works on the extension is located on the same subject site as a locally listed heritage item, however, the proposed works will not impact on the significance of this item or its contribution.

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
Lot Size Map:	No Minimum Lot Size
Heritage Map:	Heritage Item (I9) 'Wolaroi mansion'
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:	Blackmans Swamp Creek PMF 2021

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

Clause 1.9A - Suspension of Covenants, Agreements and Instruments

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

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

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

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

The subject site is located within the R1 General Residential zone. The proposed development is defined as an *educational establishment* under OLEP 2011 and is permitted with consent pursuant to Section 3.36(1) of State Environmental Planning Policy (Transport and Infrastructure) 2021.

The objectives for land zoned in R1 General Residential are as follows:

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

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

The proposed development is not inconsistent with the objectives of this zone. The development maintains existing student accommodation on site for students and staff of Kinross Wolaroi School. The proposed alterations and additions involve internal reconfiguration, greater accessibility and provides maintenance to maintain the school's unique heritage contribution to the surrounding area. This supports the needs of the educational facility which in turn, meets the needs of existing and future residents. The development of this educational facility will support facilities and services to meet the day-to-day needs of residents.

Clause 2.7 - Demolition Requires Development Consent

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

The proposal involves demolition works to accommodate the planned development. The applicant is seeking the consent of Council. Conditions have been imposed in relation to waste management and compliance with applicable standards. Additionally, it is noted that the proposed demolition works have been reviewed by Council's Heritage Advisor who found the work to be acceptable, subject to recommended conditions.

Part 3 - Exempt and Complying Development

The application is not exempt or complying development.

Part 4 - Principal Development Standards

Not relevant to the application. The subject site does not have any relevant limitations.

Part 5 - Miscellaneous Provisions

5.10 - Heritage Conservation

The subject land contains a Local heritage item, namely, "Wolaroi" former mansion (Item I9).

(1) Objectives

The objectives of this clause are as follows:

- (a) *to conserve the environmental heritage of Orange,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

(2) Requirement for Consent

Development consent is required for any of the following:

- (a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):*
 - (i) a heritage item,*
 - (ii) an Aboriginal object,*
 - (iii) a building, work, relic or tree within a heritage conservation area,*
- (b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,*
- (c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,*
- (d) disturbing or excavating an Aboriginal place of heritage significance,*
- (e) erecting a building on land:*
 - (i) on which a heritage item is located or that is within a heritage conservation area, or*
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,*
- (f) subdividing land:*
 - (i) on which a heritage item is located or that is within a heritage conservation area, or*
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.*

(3) When Consent Not Required

However, development consent under this clause is not required if:

- (a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development:*
 - (i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and*
 - (ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or*
- (b) the development is in a cemetery or burial ground and the proposed development:*
 - (i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and*
 - (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or*

- (c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or*
- (d) the development is exempt development.*

(4) Effect of Proposed Development on Heritage Significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under Subclause (5) or a heritage conservation management plan is submitted under Subclause (6).

(5) Heritage Assessment

The consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or*
- (b) on land that is within a heritage conservation area, or*
- (c) on land that is within the vicinity of land referred to in Paragraph (a) or (b),*

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

(6) Heritage Conservation Management Plans

The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a Heritage Conservation Management Plan before granting consent under this clause.

(7) Archaeological Sites

The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the Heritage Act 1977 applies):

- (a) notify the Heritage Council of its intention to grant consent, and*
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.*

(8) Aboriginal Places of Heritage Significance

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and*
- (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.*

(9) Demolition of Nominated State Heritage Items

The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item:

- (a) notify the Heritage Council about the application, and*
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.*

(10) Conservation Incentives

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

The subject site is located at 59-67 Bathurst Road, Orange. The site has an area of approximately 20.9 hectares. The Wolaroi building was built in 1884 and acts as a picturesque example of nineteenth century residential architecture in Australia. The building consists of an ornate two storey Victorian Italianate style building with a tower. Today, the Wolaroi building acts as the main administration centre for the school.

The proposed works are to the 1930s extension to the 1884 Wolaroi school building. The site contains approximately 24 buildings which features several 20th century classrooms, admin and sports facilities. The school is built around the former Wolaroi mansion. The extension does not have any heritage value, however, careful assessment has been undertaken to ensure the proposal is complimentary given its proximity and relationship with the Wolaroi school building.

It is proposed to undertake alterations and additions to the 1930s extension to provide a larger dining hall on the ground floor, and new learning, break out spaces and bathroom facilities to the first floor. The proposal also involves conservation works and the addition of a new verandah at ground and first floor level (with stairs and a lift) to provide improved access. The proposed works seek to facilitate the continuation of the educational use of the place.

The proposed works have been referred to Council's Heritage Advisor who provided the following comments:

- *An earlier plan proposed sliding aluminium windows above the arches in the north elevation. The amended plans propose to remove existing windows and replace with windows that match the original. This treatment of the external windows on the first floor of the north elevation will enhance the heritage significance and is supported.*
- *An earlier plan depicted the proposed ramp up to the ground floor verandah in a detracting manner. The amended plans propose the use of a perforated sheet material to provide a uniform element to the outer face of the balustrade. This is supported as it will produce an improved and sympathetic character to this new element.*
- *The existing internal stairs are to be retained with the floor infilled over. This space is to be retained and curated as the keeping and interpretative place for the former boarding house. This is supported as it follows previously provided heritage advice and comments.*
- *Subject to conditions, the proposal is supported from a heritage perspective.*

Additionally, it is noted that:

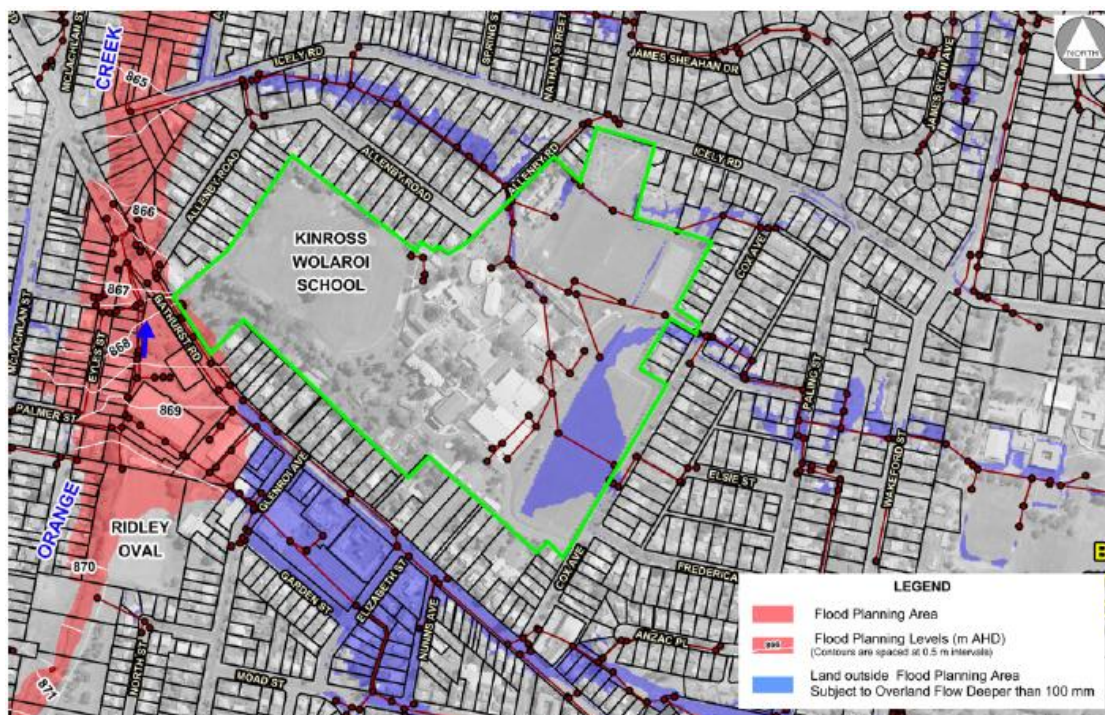
- The Wolaroi mansion will be retained in its current form. The proposed development does not involve works to the building, its landscape setting or entrance driveway. The landmark character of the heritage item will not be impacted by the proposal.
- There is a negligible spatial or visual impact between the mansion and proposed development, and it is considered that the proposed development has been designed in consideration of heritage values.
- The proposed design and detailing of the external works will complement existing buildings on the school campus and contribute to a harmonious and cohesive setting.
- The proposed verandah incorporates design references to the historic building form and architecture.
- The proposal involves the removal of three trees to the east of the extension to allow verandah access. These trees are not identified as holding any heritage value.
- The works are restrained in their approach, limiting interventions to only what is necessary to minimise visual and material impacts to significant elevations, while also providing significant upgrades to the building to allow its ongoing use.
- The new verandah and accessway will be present on the north elevation of the extension but will not dominate it.
- The proposal involves the removal of intrusive elements (footbridge, external stairs and adjacent awning) that connect the 1930s extension with the former stables at first floor level. These elements are later additions that are unsightly and detract from the mansion and the 1930s extension.

Council's heritage adviser has recommended conditions of consent that have been incorporated into the attached Notice of Determination. The recommended conditions will ensure that the proposed works will have an acceptable impact on the Wolaroi building meet the objectives on this part. See attached recommended Notice of Determination for details.

5.21 - Flood Planning

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

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



As can be seen above, part of the subject land is mapped as being affected by the Blackmans Swamp Creek flood planning area. The area the subject of this application is however located well clear of the flood affected parts of the site. The proposed development in this regard will not change flooding regimes on or off the site and would be unlikely to cause or contribute to erosion, siltation or reduce riparian vegetation. On this basis the development is unlikely to create a cost burden on the community or neighbours. Additionally, the proposal does not increase impervious areas or runoff.

Clause 5.22 Special Flood Considerations

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

- (3) *Development consent must not be granted to development for the following purposes on land to which this clause applies unless the consent authority is satisfied that the development*
- (a) *will affect the safe occupation and efficient evacuation of people in the event of a flood, and*
 - (b) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
 - (c) *will adversely affect the environment in the event of a flood.*

Part (5) of clause 5.22 defines what is sensitive or hazardous development. Such development includes educational establishments. The map below shows the extent of the PMF Flooding on the site.



Blackmans Swamp PMF map / subject site highlighted in blue

As can be seen from the map above, the majority of land that is affected by the PMF flooding area is located towards the centre and eastern parts of the school grounds and is not near the development site (highlighted in blue in Figure above). The site has a long history of use for educational purposes. The planned works are located above the PMF mapping and occupation of this building on completion will not adversely affect the safe evacuation of students from the site in the event of a significant flood.

Part 6 - Urban Release Area

Not relevant to the application. The subject site is not located in an Urban Release Area.

7.3 - Stormwater Management

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

- (a) *is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting onsite infiltration of water*

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

The proposal maintains existing onsite stormwater management. The proposal is not expected to increase or alter the predevelopment levels.

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. There are no aspects of the proposal that would cause adverse impacts on groundwater resources. In this regard:

- The development of the land requires wastewater disposal to occur via Council’s sewer reticulation.
- The proposal does not involve the use, storage or disposal of large quantities of liquid waste or chemicals in a manner that would pose a threat to groundwater resources
- The proposal does not involve any activity that would deplete groundwater resources.

Clause 7.11 - Essential Services

Clause 7.11 applies and states:

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

- (a) the supply of water,*
- (b) the supply of electricity,*

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

The proposed development will satisfy the requirement of this clause. The subject land is serviced by all urban utilities. Any adjustment to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer. Recommended conditions attached.

STATE ENVIRONMENTAL PLANNING POLICIES

The following SEPPs applicable to the proposed development:

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

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 4 - Remediation of Land

4.6 - Contamination and Remediation to be Considered in Determining Development Application

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
 - (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*
- (2) *Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (3) *The applicant for development consent must carry out the investigation required by Subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) *The land concerned is:*
 - (a) *land that is within an investigation area,*
 - (b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*

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

In consideration of the above, there is no evidence of contamination on site. The development site has long standing education use; it is not located within an investigation area; and is not known to have been used for a purpose listed in Table 1 to the contaminated land planning guidelines. As such, a contamination investigation report has been deemed not necessary. Given the above, Council does not expect any adverse impacts in response to the proposed works.

STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

Chapter 2 - vegetation in non-rural areas

The Biodiversity and Conservation SEPP requires consideration for the protection and/or removal of vegetation and gives effect to the local tree preservation provisions of ODCP 0.4 Tree Preservation.

It is proposed to undertake alterations and additions to the 1930s extension to provide a larger dining hall on the ground floor, and new learning, break out spaces and bathroom facilities to the first floor. The proposal also involves conservation works and the addition of a new verandah at ground and first floor level (with stairs and a lift) to provide improved access. The proposed works seek to facilitate the continuation of the educational use of the place.

The proposal involves the removal of three trees from the eastern side of the extension building to facilitate access to the proposed verandah.

Council conducted a site inspection on 8 May 2025 and found the following:

- The three trees planted in a small grove as part of the site landscaping.
- The three trees are deciduous species that are not native to the land nor hold any heritage value.
- Although the health of the trees are not in question, it is noted that the removal is necessary to facilitate the proposed works. The proposed works would work to support the continuation of the educational use of the site.
- There are no objections to the planned removal of the trees. The impact on existing vegetation is considered minimal in consideration to the proposed works and existing trees on site.
- The trees are not identified as having any heritage significance and at time of inspection the trees did not appear to support threatened habitats or species.
- To compensate for the loss of trees, a condition has been imposed requiring three trees to be planted within the development site. These trees shall be a minimum of 75L container size at time of planting and the species selected shall have the ability to grow to 10m at maturity.
- Given the above the proposal is considered acceptable with regard to the Biodiversity and Conservation SEPP and Part 0.4 of the ODCP 2004.

STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021**2.119 Development with frontage to classified road.**

Given that part of the campus has frontage to a classified road (Bathurst Road) Section 2.119 of State Environmental Planning Policy (Transport and Infrastructure) 2021 (the SEPP) requires consideration.

Classified road has the same meaning as in the Roads Act 1993.

Note.

The term is defined as follows -

classified road means any of the following -

- (a) a main road,*
- (b) a highway,*
- (c) a freeway,*
- (d) a controlled access road,*
- (e) a secondary road,*
- (f) a tourist road,*
- (g) a tollway,*
- (h) a transitway,*
- (i) a State work.*

In consideration of this clause, the proposal will not alter existing vehicular access arrangements to the school site via Bathurst Road, Cox Avenue, Allenby Road or Icely Road. The proposal will have nil impact on the safety, efficiency and ongoing operation of Bathurst Road. The proposal is well removed from the Bathurst Road frontage and will not be impacted by traffic noise or vehicle emissions.

Section 2.122 Traffic-generating Development

The proposed development does not represent *traffic generating development* because pursuant to Section 2.122(1) and the Table in Schedule 3 of SEPP it does not involve:

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

As such, the proposed development is not required to be referred to TfNSW.

Chapter 3 Educational establishments and child care facilities.**Clause 3.36 Schools - development permitted with consent**

- (1) *Development for the purpose of a school may be carried out by any person with development consent on land in a prescribed zone.*
- (6) *Before determining a development application for development of a kind referred to in Subclause (1)... the consent authority must take into consideration -*
 - (a) the design quality of the development when evaluated in accordance with the design quality principles set out in Schedule 8, and*

- (b) *whether the development enables the use of school facilities (including recreational facilities) to be shared with the community.*

In consideration of the applicable clauses:

- The proposed development is permitted within consent on the subject land [prescribed zone R1 General Residential].
- Pursuant to Section 3.36(6), development consent must not be granted unless the consent authority has considered the design quality of the development against the design quality principles set out in Schedule 8 of the SEPP. It is considered that the proposal will satisfy the design principles established in Schedule 8, as follows:

Principle 1 - Context, built form and landscape

- *Schools should be designed to respond to and enhance the positive qualities of their surroundings.*
- *In designing built forms and landscapes, consideration should be given to a Country-centred approach and respond to site conditions such as orientation, topography, natural systems, Aboriginal and European cultural heritage and the impacts of climate change.*
- *Landscapes should be integrated into the overall design to improve amenity and to help mitigate negative impacts on the streetscape and neighbouring sites.*

The development satisfies the matters raised in Principle 1. In this regard:

- The proposed works pertain to the 1930s extension and do not involve any changes to the original 1884 Wolaroi Building. The Development Application has been designed with careful assessment undertaken to ensure the proposal is complimentary given its proximity and relationship with the Wolaroi school building. There is a negligible spatial or visual impact between the mansion and proposed development, and it is considered that the proposed development has been designed in consideration of heritage values.
- The proposed design and detailing of the verandah and ramp will complement existing buildings on the school campus and contribute to a harmonious and cohesive setting.
- The proposed verandah incorporates design references to the historic building form and architecture.
- The proposal involves the removal of intrusive elements (footbridge, external stairs and adjacent awning) that connect the 1930s extension with the former stables at first floor level. These elements are later additions that are unsightly and detract from the mansion and the 1930s extension.
- The proposal involves the repair of degraded elements of the mansion's balcony at first floor level (decking boards, balustrade panels, and column bases), thereby conserving a highly significant component of the mansion.

Principle 2 - Sustainable, efficient and resilient

- *Good school design combines positive environmental, social and economic outcomes and should align with the principles of caring for Country.*
- *Schools should be designed to be durable and resilient in an evolving climate.*

- *Schools and their grounds should be designed to minimise the consumption of energy, water and other natural resources and reduce waste.*

The development satisfies the matters raised in Principle 2. In this regard:

- The proposal involves a purpose-built learning spaces and break out rooms that may be easily adapted for associated uses.
- The proposed alterations and additions enable the continued use of the extension as an educational facility. This aligns with the objective of this principle to provide 'positive environmental, social, economic outcomes...'.- The improvement of this facility is not expected to have any opposing effect on aboriginal principles of caring for country.
- The new building works will be subject to the requirements of Section J of the National Construction Code.

Principle 3 - Accessible and inclusive

- *School buildings and grounds should be welcoming, easy to navigate and accessible and inclusive for people with differing needs and abilities.*
- *Schools should be designed to respond to the needs of children of different ages and developmental stages, foster a sense of belonging and seek to reflect the cultural diversity of the student body and community.*
- *Schools should be designed to enable sharing of facilities with the community and to cater for activities outside of school hours.*

The development satisfies the matters raised in Principle 3. In this regard:

- The proposal involves the addition of a verandah to the ground and first floor to improve accessibility to and from the building. Additionally, the proposal involves the addition of a ramp and lift. This has been designed appropriately to align with the existing heritage design of the site and provides increased accessibility and inclusivity for students, staff and visitors. This specifically aligns with the principle for schools to be, "easy to navigate and accessible and inclusive for people with differing needs and abilities".
- The proposal does not involve community use of the building; notwithstanding, other existing facilities on the school campus are shared with the community for certain activities outside of school hours.

Principle 4 - Healthy and safety

- *Good school design should support wellbeing by creating healthy internal and external environments.*
- *The design should ensure safety and security within the school boundaries, while maintaining a welcoming address and accessible environment.*
- *In designing schools, consideration should be given to connections, transport networks and safe routes for travel to and from school.*

The development satisfies the matters raised in Principle 4. In this regard:

- The new building will improve the standard of student education.
- The proposal improves the accessibility and transport network to and from the extension building.
- The proposal will not alter existing site operational arrangements in relation to access and security.

Principle 5 - Functional and comfortable

- *Schools should have comfortable and engaging spaces that are accessible for a wide range of formal and informal educational and community activities.*
- *In designing schools, consideration should be given to the amenity of adjacent development, access to sunlight, natural ventilation, proximity to vegetation and landscape, outlook and visual and acoustic privacy.*
- *Schools should include appropriate indoor and outdoor learning and play spaces, access to services and adequate storage.*

The development satisfies the matters raised in Principle 5. In this regard:

- The proposal involves internal reconfiguration to the ground and first floor to allow for a larger dining hall and new learning / break out spaces. This involves the removal of sections of walls to create larger spaces with the retention of nibs and bulkheads to ensure the original plan remain legible. This has been reviewed by Councils heritage adviser and found to be acceptable and ensures the improved functionality of the educational use of this space.
- It is noted that all demolished student accommodation will be transferred to the new student accommodation undergoing construction (DA 147/2023(2)).
- The proposed alterations and additions aims to respect the existing amenity of surrounding school buildings and neighbouring residential sites.
- The extension building maintains high levels of ventilation and access to natural light.

Principle 6 - Flexible and adaptable

- *In designing schools, consideration should be given to future needs and take a long-term approach that is informed by site-wide strategic and spatial planning.*
- *Good design for schools should deliver high environmental performance and ease of adaptation, and maximise multi-use facilities.*
- *Schools should be adaptable to evolving teaching methods, future growth and changes in climate, and should minimise the environmental impact of the school across its life cycle.*

The development satisfies the matters raised in Principle 6. In this regard:

- The proposed works enable to continued and improved use of the extension building to be used for educational purposes. The extension enables multi uses within the site, including learning spaces, break out rooms, dining halls, bathrooms and storage. Additionally, the extension building maintains the office/meeting rooms, board room, accommodation, living and kitchen spaces.

- Additionally, it is noted that the proposed learning spaces and break out rooms are purpose-built spaces that may be easily adapted for associated uses.

Principle 7 - Visually appealing

- *School buildings and their landscape settings should be aesthetically pleasing by achieving good proportions and a balanced composition of built and natural elements.*
- *Schools should be designed to respond to and have a positive impact on streetscape amenity and the quality and character of the neighbourhood.*
- *The identity and street presence of schools should respond to the existing or desired future character of their locations.*
- *The design of schools should reflect the school's civic role and community significance.*

The development satisfies the matters raised in Principle 7. In this regard:

- The design of the external works including the verandah, ramp, stairs and lift takes into consideration the design and colours of the Wolaroi house and the surrounding school buildings. This ensures that the proposed works remain complimentary to the site.
- The remaining works are internal and involve internal reconfiguration to enable improved use of the site and will not be readily visible from the public domain.
- Additionally, it should be noted that the application was referred to Councils' heritage adviser who provided preliminary advice and reviewed updated plans to ensure that the external and internal works were complementary to the area and the item

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

There are no draft Environmental Planning Instruments currently on exhibition that relate to the subject land or proposed development.

DESIGNATED DEVELOPMENT

The proposed development is not designated development.

INTEGRATED DEVELOPMENT

The proposed development is not integrated development.

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

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

Part 00 - Tree Preservation

The proposal involves the removal of 3 trees from the eastern side of the building that are required to be removed to allow for the construction of the verandah access way. The trees are planted as part of a small grove situated to the east of the site. The remaining trees are to remain unimpacted with only the necessary removal required to enable the works.

The trees are not identified as having any heritage significance and at time of inspection (8 May 2025), the trees did not appear to support threatened habitats or species. To compensate for the loss of trees, a condition has been imposed requiring three trees to be planted within the development site. These trees shall be a minimum of 75L container size at time of planting and the species selected shall have the ability to grow to 10m at maturity.

Please refer to Biodiversity and Conservation within this report for further assessment.

Given the above, the proposal is considered to have a satisfactory impact. The proposed enables the continued and improved educational use of the extension building and has an acceptable impact on biodiversity with the addition of plantings to replace the removed trees.

Part 7 - Development in residential zones

Chapter 7 *Development in Residential Areas* applies to the subject land. However, the DCP only sets Planning Outcomes that are relevant to:

- Urban residential subdivision (typically in an estate situation).
- Residential development (dwellings, dual occupancies, multi-dwelling complexes).
- Health consulting rooms (essentially the re-use of a former dwelling).
- Shops and businesses.
- Exhibition homes.
- Home businesses.
- Bed and breakfast development.
- Development in the villages of Spring Hill and Lucknow.
- Development in the vicinity of Charles Sturt University.

The development proposed by this DA does not fit within any of the above categories. There are no Planning Outcomes in DCP 2004 – 07 that are of relevance to this proposal.

Part 13 - Heritage

Orange DCP 2004 - 13 Heritage sets the following Planning Outcomes:

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

The proposal is not adverse to these Planning Outcomes. Heritage matters have been addressed above under the heading Clause 5.10. Council's Heritage Adviser has reviewed the plans and has indicated support for the planned works. The proposal will not adversely impact on the significance of the Local heritage item on the subject land.

Part 15 - Car Parking

Pursuant to DCP 2004, the minimum onsite parking requirement for schools is 1 space for every two employees and 1 space per ten students over 17 years of age. The proposal does not involve any alteration to staff and students numbers. Additional parking will not be required for the proposed re-development.

Orange Development Control Plan 2004 – 4A Flood Affected Land

According to the *Blackmans Swamp Creek and Ploughmans Creek Flood Study*, small areas within the eastern and northern sections of the campus are subject to overland flow of +100mm; while the south western corner (Bathurst Road frontage) is identified as a flood planning area. The planned works are located well away from those parts of the site affected by flooding. The requirements of DCP 2004 – 4a have been addressed earlier in this report under the sub heading *Clause 5.21 and 5.22*.

INFILL GUIDELINES

The proposed development will be consistent with the relevant criteria contained in Council's Infill Guidelines:

- The proposed works will not be visible from the public domain. The character of the surrounding streetscapes will not be impacted.
- The development will be visually and spatially removed from the heritage item on the subject land and will have nil impacts on its significance.
- The proposed building design and detailing will reasonably complement nearby buildings on the school campus and contribute to a harmonious and cohesive setting.

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

The proposal involves demolition works to facilitate the planned development. Conditions have been imposed in relation to waste management and compliance with applicable standards. Additionally, it is noted that the proposed demolition works have been reviewed by Council's Heritage Advisor who found the work to be acceptable, subject to conditions. See attached Notice of Determination.

Fire Safety Considerations (clause 62)

The proposal does not involve a change of building use for an existing building. The proposal seeks to improve the existing educational use of the extension building.

Section 64 Consent authority may require upgrade of buildings

This section applies to a development application for development comprising the rebuilding, alteration, enlargement or extension of an existing building. In determining the application, Council is required to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the National Construction Code (NCC).

A BCA 2022 Review has been prepared by Philip Chun Building Compliance and was submitted in support of the application.

The report reviews the capability of the design to meet Building Code of Australia 2019 Amendment 1 (BCA) requirements, as required by Section 19 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

The report gives consideration to the following key compliance matters of the BCA provisions, being:

- Section B - Structure
- Section C - Fire Resistance
- Section D - Access and Egress*
- Section E - Fire Services and Equipment
- Section F - Health and Amenity
- Section G - Ancillary Provisions
- Section J - Energy Efficiency

A separate report by Credwell Consulting was also submitted in support of the application which addressed matters in relation to access for people with a disability. Council's building staff have included conditions of consent to address issues in relation building upgrade requirements.

BASIX Commitments (clause 75)

BASIX is not applicable to the proposed development.

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

Heritage Significance

As outlined in this report, the proposal will not have adverse impact on the significance of the Wolaroi Mansion on the subject land. A detailed assessment of heritage related matters has been provided above under the heading 5.10 Heritage.

Visual Impacts

The proposed building will have acceptable visual impacts as follows:

- The proposed verandah and ramp will not be visible from the public domain. It is noted that the design of the verandah and ramp is in keeping of the existing character, colours, and design of surrounding school buildings, namely Wolaroi building.
- The proposed design and detailing will reasonably complement nearby buildings on the school campus and contribute to a harmonious and cohesive setting.
- The proposed works will allow for the continued use of the extension building to be used for educational purposes.

Traffic Matters

- The proposal will have nil impact on existing traffic arrangements (site accesses, internal roadways, parking areas, car parking requirements). The applicants advise that there is no proposal to alter student numbers. The proposal does not generate an increase in the need for additional parking.

Privacy

- There are no aspects of the proposal that would cause adverse privacy impacts on the residential properties that adjoin the school campus. The existing interface with these properties remain unaffected.

Noise

- The proposal relates to the refurbishment of an existing school building. The proposal is not expected to cause additional noise impacts on residential properties that adjoin the school campus. The proposed works are well removed from surrounding residential properties.

Environmental Impacts

- The site for the proposed works does not have particular environmental values. Conditions are included in relation to waste management (associated with demolition works).

Construction Impacts

The construction phase of the development will be managed so as to not adversely impact upon the operation and safety of the school environment; or the amenity of surrounding development. The applicants submit that potential impacts will be addressed as follows:

- Construction fencing/hoarding is to be established around the work site to prevent unauthorised entry.
- Access routes to and from the work site for authorised personnel and construction vehicles are to be clearly delineated and barricades/fencing to be established where necessary.
- Safe access routes around the work site for students and others associated with the school are to be clearly delineated and barricades/fencing to be established where necessary.
- A parking area is to be designated for construction related vehicles.
- A designated waste storage area with appropriate holds is to be provided to minimise wind-blown litter.
- Ensure construction activities are confined to standard work hours so as to reduce noise impacts to sensitive receivers where possible.
- Place appropriate work site safety signage as required.

The above-described measures are considered to be acceptable. The works are located centrally within the development and the school will ultimately be responsible for implementing these controls during construction.

Headworks Charges

The proposed works do not result in additional floor area or student accommodation. Water and sewer headworks charges are not applicable to the proposal pursuant to the Water Management Act 2000.

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

The subject site will be suitable for the proposed development due to the following:

- The development is permitted with development consent and is consistent with the R1 General Residential zone objectives.
- The site has longstanding use for educational purposes (since 1884).

- The development application has been designed with careful assessment undertaken to ensure the proposal is complimentary to the site. The design of the external works (including the verandah, stairs, ramp and lift) incorporates the design and colours of the Wolaroi house and surrounding school buildings.
- The proposed building is visually and spatially removed from the heritage item on the subject land.
- Utility services are available.
- Site access and onsite vehicle areas are suitable.
- The land is not subject to known technological or natural hazards.

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

The proposed development is defined as "advertised development" under the provisions of the Community Participation Plan. The application was advertised for the prescribed period of 14 days and at the end of that period no submissions were received.

PUBLIC INTEREST s4.15(1)(e)

The proposed development is considered to be of minor interest to the wider public due to the relatively localised nature of potential impacts. The proposal 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.

COMMENTS

The requirements of the Development Engineer and Heritage Advisor are included in the attached Notice of Determination.

ATTACHMENTS

- 1 Draft Notice of Determination, D25/87879 [📄](#)
- 2 Plans, D25/84320 [📄](#)



NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

Application number	DA 100/2025(1) PAN-516935
Applicant	KINROSS WOLAROI SCHOOL C/- PETER BASHA PLANNING & DEVELOPMENT PO BOX 1827 ORANGE 2800
Description of development	Educational Establishment (school) (alterations and additions) and Demolition (tree removal)
Property	59-67 BATHURST ROAD ORANGE 2800 30/-/DP1190518
Determination	Approved Consent Authority - Council
Date of determination	25/07/25
Date from which the consent operates	25/07/25
Date on which the consent lapses	25/07/30

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

Reasons for approval

DA 100/2025(1)

1

To ensure compliance with relevant statutory requirements.

To ensure the utility services are available to the site and adequate for the development.

To prevent the proposed development having a detrimental effect on adjoining land uses.

To comply with the Environmental Planning and Assessment Act 1979.

The proposal will reasonably satisfy local and state planning controls.

The proposal development will be consistent with the zone objectives and principal development standards.

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

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 Amira Halla / Town Planner

Terms and Reasons for Conditions

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

General Conditions

1	Approved plans and supporting documentation
	Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.
	Drawings by McIldowie Partners.
	Project No. 3196
	Drawing No. DA001 (REV P2) – No. DA900 (REV P2). 15 sheets.
2	Dated 30/06/2025
	In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.
	Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.
	National Construction Code
3	All building work must be carried out in accordance with the provisions of the National Construction Code.
	Condition reason: To ensure compliance with relevant statutory requirements.

Building Work

Before issue of a construction certificate

3	A schedule of conservation works
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	<p>A Heritage Asset Action Plan for works at and adjoining the stables must be prepared in accordance with the <i>Statement of Best Practice for Heritage Asset Action Plans</i> (Department of Premier and Cabinet, 30 June 2021) and submitted to, and approved by, Council's Manager Development Assessments.</p> <p>Condition reason: To ensure the works does not detract from the heritage significance of the building and history</p>
4	<p>Photographic Archival Recording</p> <p>Prior to the issue of a Construction Certificate, a Photographic Archival Recording should be undertaken of the place and must be prepared in accordance with the Heritage NSW Guidelines for 'Photographic Recording of Heritage Items Using Film or Digital Capture'. The record photos are to be annotated with a set of measured drawings of the existing buildings and combined with the history and significance statement provided in the SoHI so as to produce a complete summary. Three hard copies and one digitised copy are required: One for the Client, One for Council and the third for the Local studies section of the Orange Regional Library.</p> <p>Condition reason: To ensure the works does not detract from the heritage significance of the building and history</p>
5	<p>Interpretive space</p> <p>The existing space between the two side walls, the long cross passage and the former toilets opposite – new toilets and retained stairs, is to be retained and curated as the keeping and interpretive place for the former boarding house.</p> <p>Condition reason: To ensure the works does not detract from the heritage significance of the building and history</p>
6	<p>Section 68 application - water and sewer</p> <p>An approval under Section 68 of the <i>Local Government Act</i> is to be sought from Orange City Council, as the Water and Sewer Authority, for water, sewer and stormwater connection. Details concerning the proposed backflow prevention between the nominated water tank supply and the potable system are to be provided. No plumbing and drainage is to commence until approval is granted.</p> <p>Condition reason: To ensure the utility services are available to the site and adequate for the development.</p>
7	<p>Survey for hazardous materials</p> <p>A survey to determine the existence of any hazardous materials on the site is to be provided. Suitable arrangements are to be made to dispose of, or remediate any identified hazardous materials - including the notification of authorities and/or the obtaining of any required permits. Particular care and attention is to be paid to the disposal of any waste containing asbestos material.</p>

	Condition reason: To prevent the proposed development having a detrimental effect on adjoining land uses.
8	Replacement of tree plantings
	Three trees shall be planted within the development site. These trees shall be a minimum of 75L container size at time of planting and the species selected shall have the ability to grow to 10m at maturity.
	Condition reason: To ensure compliance with relevant statutory requirements.

Before building work commences

9	Appoint PC
	Appoint Principal Certifier. The person having the benefit of the development consent and a construction certificate shall:
	(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)
	The Principal Certifier shall determine when inspections and compliance certificates are required.
	Condition reason: To ensure compliance with relevant statutory requirements.
10	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.
11	No commencement until details received
	The construction works the subject of this development consent MUST NOT be commenced until:
	(a) Detailed plans/specifications of the building have been endorsed with a

	<p>construction certificate by:</p> <ul style="list-style-type: none"> (i) the Council, or (ii) a registered certifier, and <p>(b) The person having the benefit of the development consent:</p> <ul style="list-style-type: none"> (i) has appointed a Principal Certifier, and (ii) has notified the Council of the appointment, and <p>(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</p> <p>(d) Builder's name and licence number has been supplied to Council or the Principal Certifier; or</p> <p>(e) Owner Builder's permit issued by Department of Fair Trading to be supplied to Council or the Principal Certifier; and</p> <p>(f) Home Building Compensation Fund (HBCF) has been paid and a copy of the Certificate supplied to Council or the Principal Certifier; and</p> <p>(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> <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>
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During building work

12	Adjustments to utility services
	Any adjustments to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer.
	Condition reason: To comply with Council's Development and Subdivision Code.

13	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.
14	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.
15	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.

Before issue of an occupation certificate

16	Erosion and sediment control - soil to be stabilised
	Prior to the issuing of an occupation certificate, soil on the site shall be stabilised to prevent erosion and the pollution of waters by uncontrolled sediment.
	Condition reason: To prevent site erosion and sediment loss, and protect waterways from sediment pollution.
17	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.
18	Section 68 final - water and sewer

	Where Orange City Council is not the Principal Certifier, a final inspection of water connection, sewer and stormwater drainage shall be undertaken by Orange City Council and a compliance certificate issued, prior to the issue of an occupation certificate.
	Condition reason: To ensure the utility services are available to the site and adequate for the development.

Occupation and ongoing use

19	Annual fire safety statement
	The owner is required to provide to Council and to the NSW Fire Commissioner an Annual Fire Safety Statement in respect of the fire-safety measures as required by Part 10 of the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation</i> .
	Condition reason: To ensure compliance with relevant statutory requirements.

Demolition Work

Before demolition work commences

20	Heritage - photographic record
	The building must be photographically recorded and surveyed prior to demolition in accordance with Council's "Guidelines for Photographic Recording of Heritage Buildings and Sites". One set of photographs showing the features and construction methods of the building must be provided to Council for its records, along with a detailed site plan.
	Condition reason: To preserve and record features of the building environment that hold historical or heritage significance.

During demolition work

21	Demolition - in accordance with AS 2601:2001
	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.

22	Hours of work - demolition
	All demolition work on the site is to be carried out between the hours of 7am and 6pm Monday to Friday inclusive, 7am to 5pm Saturdays, and 8am to 5pm Sundays and Public Holidays. Written approval must be obtained from the Chief Executive Officer of Orange City Council to vary these hours.
	Condition reason: To ensure compliance with relevant statutory requirements.

On completion of demolition work

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

General advisory notes

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

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

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

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

Dictionary

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

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

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

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

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

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

Council means ORANGE CITY COUNCIL.

Court means the Land and Environment Court of NSW.

EPA means the NSW Environment Protection Authority.

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

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

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

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

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

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

Stormwater drainage system means all works and facilities relating to:

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

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

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

3196 KWS Tower Building
59 - 67 Bathurst Road, Orange NSW 2800

DA SHEET LIST		
Sheet Number	Sheet Name	Current Revision
DA001	Title Page & Sheet List	P2
DA002	Location Masterplan	P2
DA005	Existing - Ground Floor Plan	P2
DA006	Existing - First Floor Plan	P2
DA010	Existing & Demolition - Ground Floor Plan	P2
DA011	Existing & Demolition - First Floor Plan	P2
DA020	Demolition - North Elevation	P2
DA021	Demolition - East & West Elevation	P2
DA101	Ground Floor Plan	P2
DA102	First Floor Plan	P2
DA103	Roof Plan	P2
DA201	Elevations - North	P2
DA202	Elevations - East & West	P2
DA300	Sections	P2
DA800	Artists Impression	P2



SITE

TITLE BOUNDARY
DP1190518

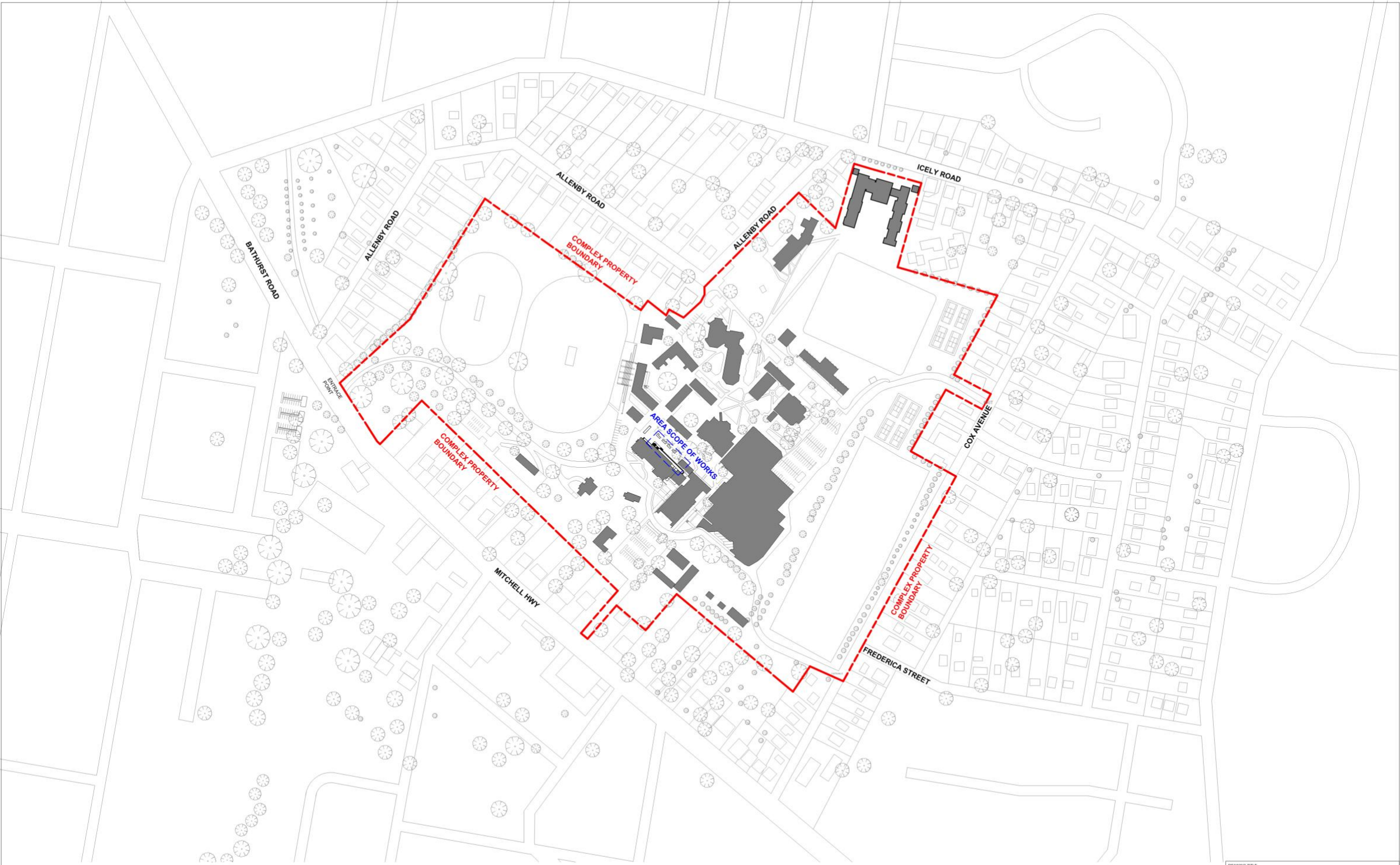
DEVELOPMENT APPLICATION

REVISION SCHEDULE			
Rev	Date	By	Description
P1	02.07.24	SP	DA submission
P2	30.06.25	AF	UPDATED DA SUBMISSION

NORTH POINT	

CONTRACTORS	
DO NOT SCALE PRINTS. USE FIGURED DIMENSIONS ONLY. ALL DIMENSIONS MUST BE CHECKED ON SITE BEFORE COMMENCING ANY WORK OR MAKING ANY SHOP DRAWINGS.	
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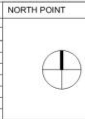
<div></div> <div>T: +61 3 8895 0300 info@mcildowiepartners.com.au</div> <div>Level 2, 325 Flinders Lane Melbourne, Vic 3000</div>	<div>CLIENT</div> <div>Kinross Wolaroi School</div>	<div>SCALE</div> <div>1 : 2000 @ A1</div>	<div>DRAWN</div> <div>SP</div>	<div>DRAWING NUMBER</div> <div>DA001</div>
	<div>PROJECT NAME</div> <div>Tower Building</div>	<div>DATE</div> <div>30.06.25</div>	<div>CHECKED</div> <div>EG</div>	
	<div>PROJECT ADDRESS</div> <div>59-67 Bathurst Rd, Orange NSW 2800</div>	<div>JOB No.</div> <div>3196</div>	<div>DATE PRINTED</div> <div>8/8/2025 10:17 AM</div>	<div>REV.</div> <div>P2</div>
		<div>FILE</div> <div>Architect-Docs\3196_KWS Tower Building\3196_KWS Tower Building.dwg</div>		



DEVELOPMENT APPLICATION

DRAWING TITLE			
Location Masterplan			
SCALE		DRAWN	
1 : 2000 @ A1		SP	
DATE		CHECKED	
30.06.25		EG	
JOB No.		DATE PRINTED	
3196		30/06/25 15:22:49	
FILE			
A:\Work\Draws\1196 - KWS Tower Building\1196_KWS Tower Building.dwg			
DRAWING NUMBER			DA002
REV.			
P2			

REVISION SCHEDULE			
Rev	Date	By	Description
P1	02.07.24	SP	DA submission
P2	30.06.25	AF	UPDATED DA SUBMISSION

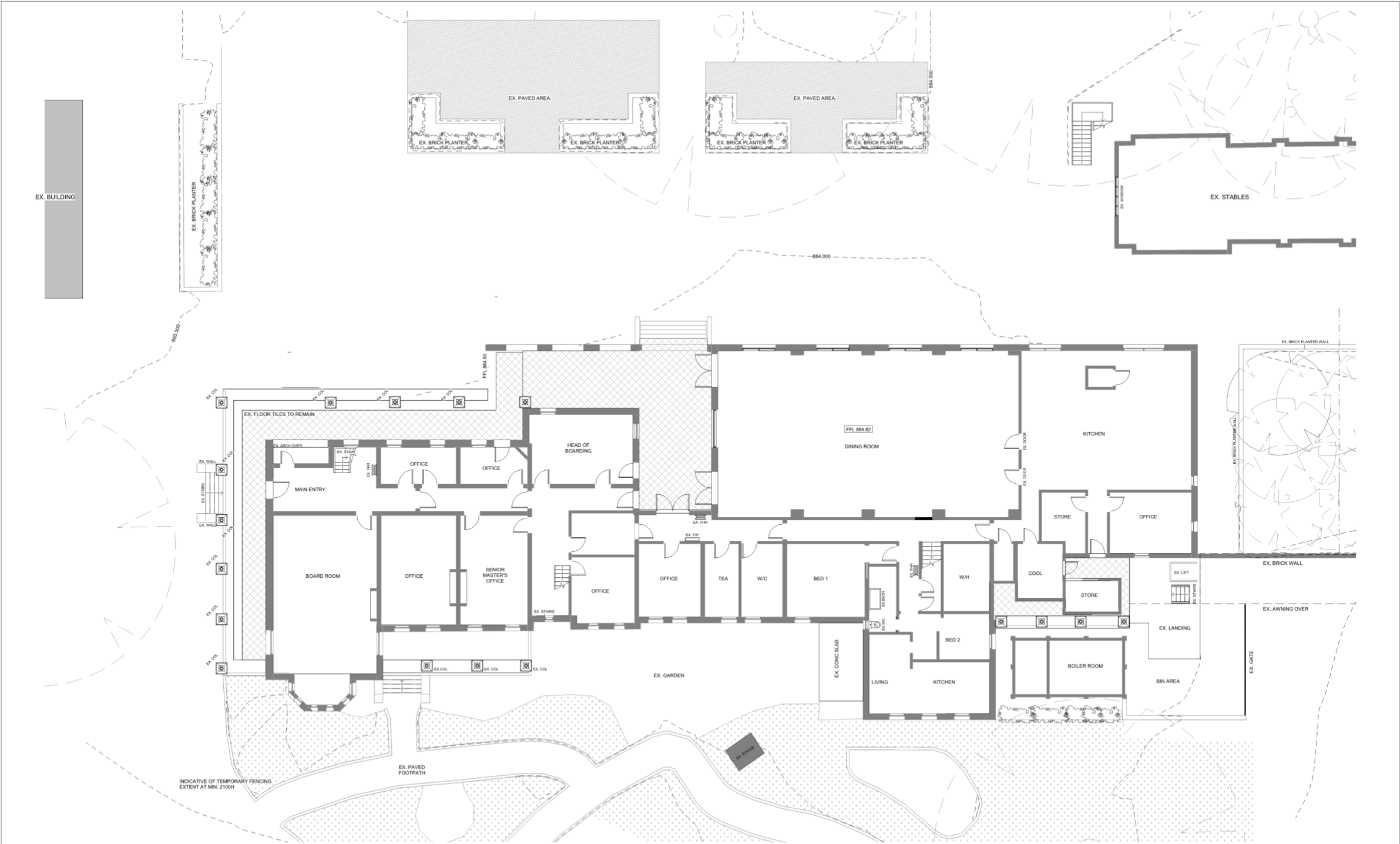


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 Melbourne, VIC 3000

CLIENT: Kinross Wolaroi School
 PROJECT NAME: Tower Building
 PROJECT ADDRESS: 59-67 Bathurst Rd, Orange NSW 2800



REVISION SCHEDULE			
Rev	Date	By	Description
P1	10.07.24	SP	DA submission
P2	30.06.25	AF	UPDATED DA SUBMISSION

NORTH POINT

CONTRACTORS

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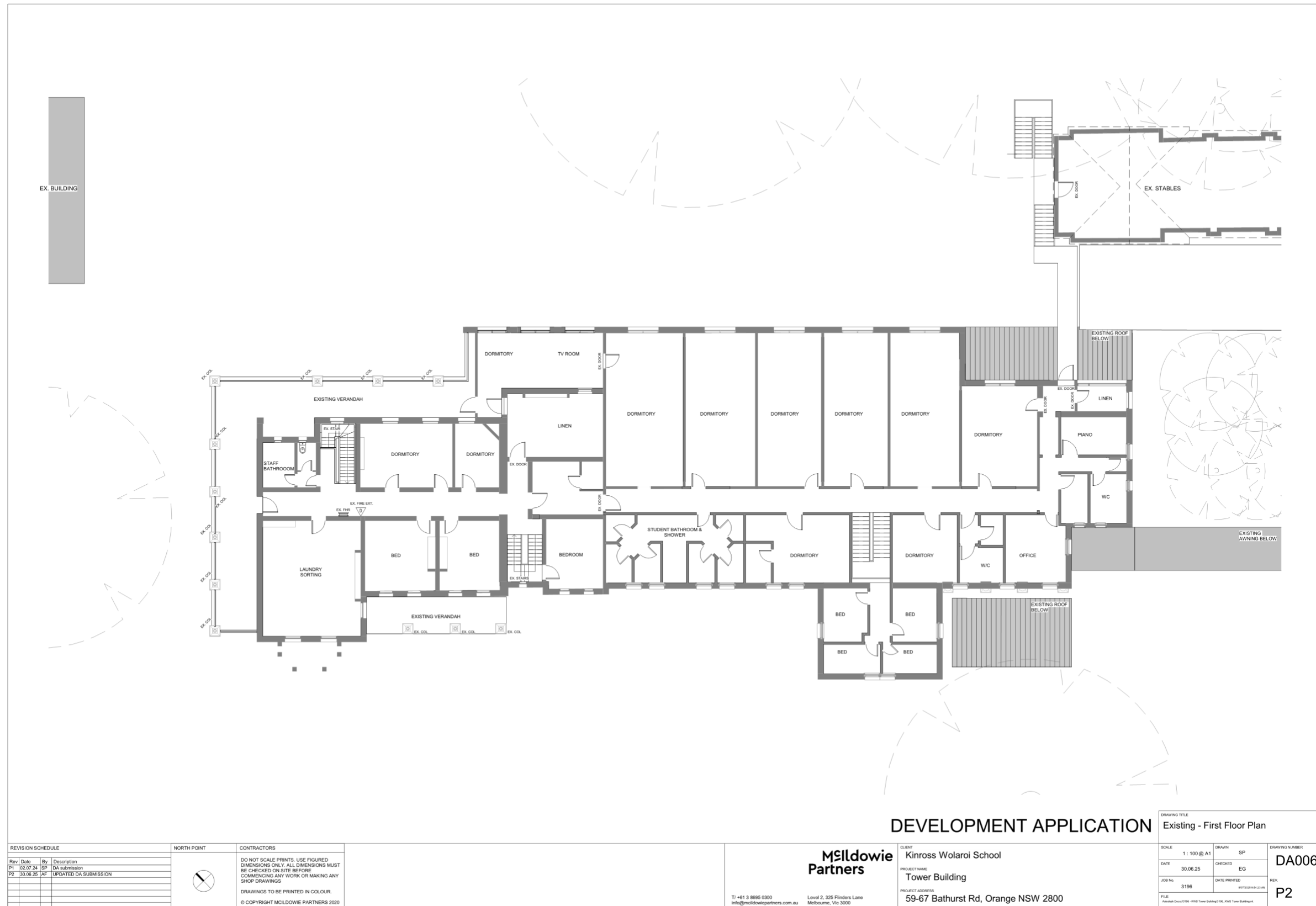
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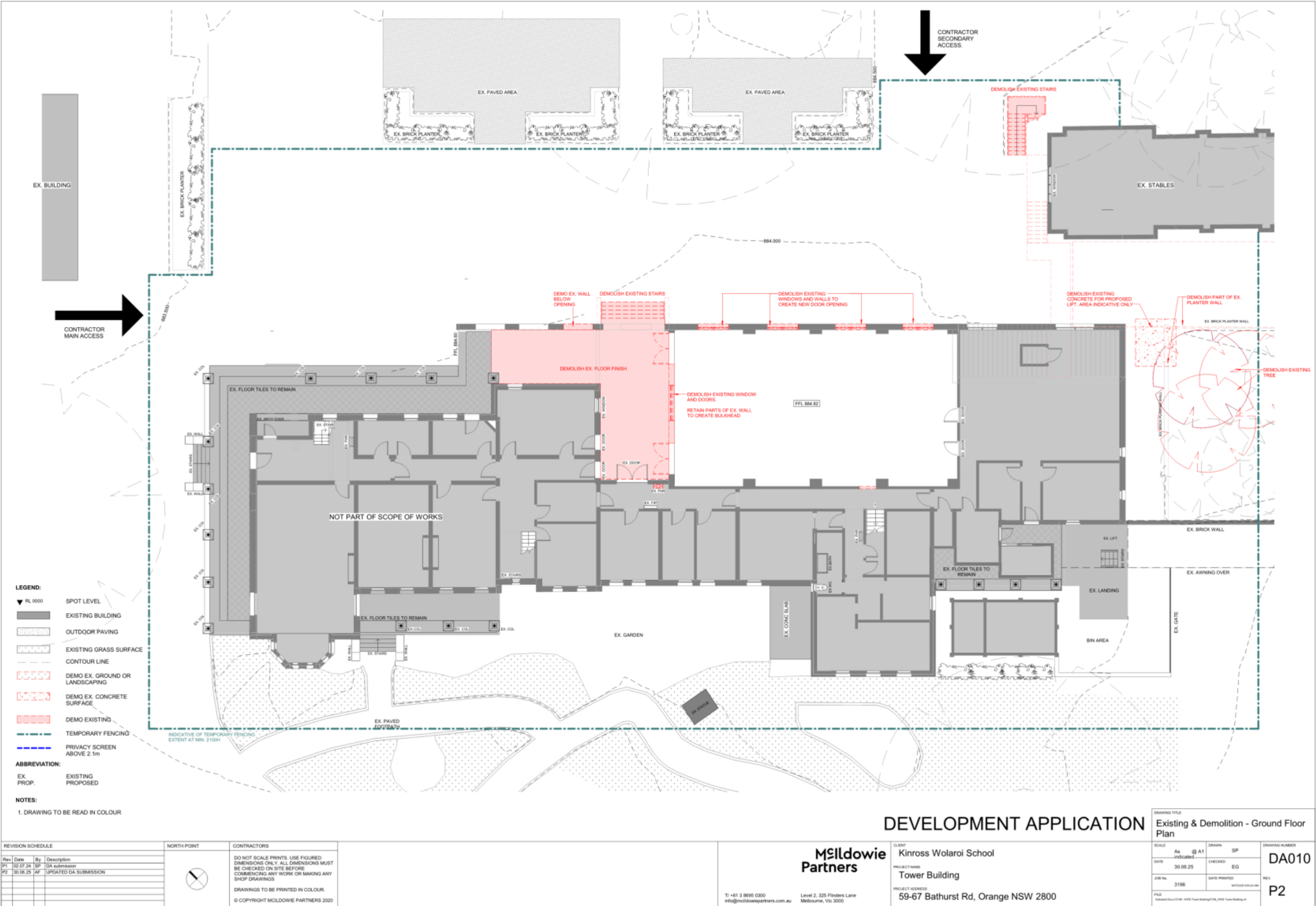
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Tower Building

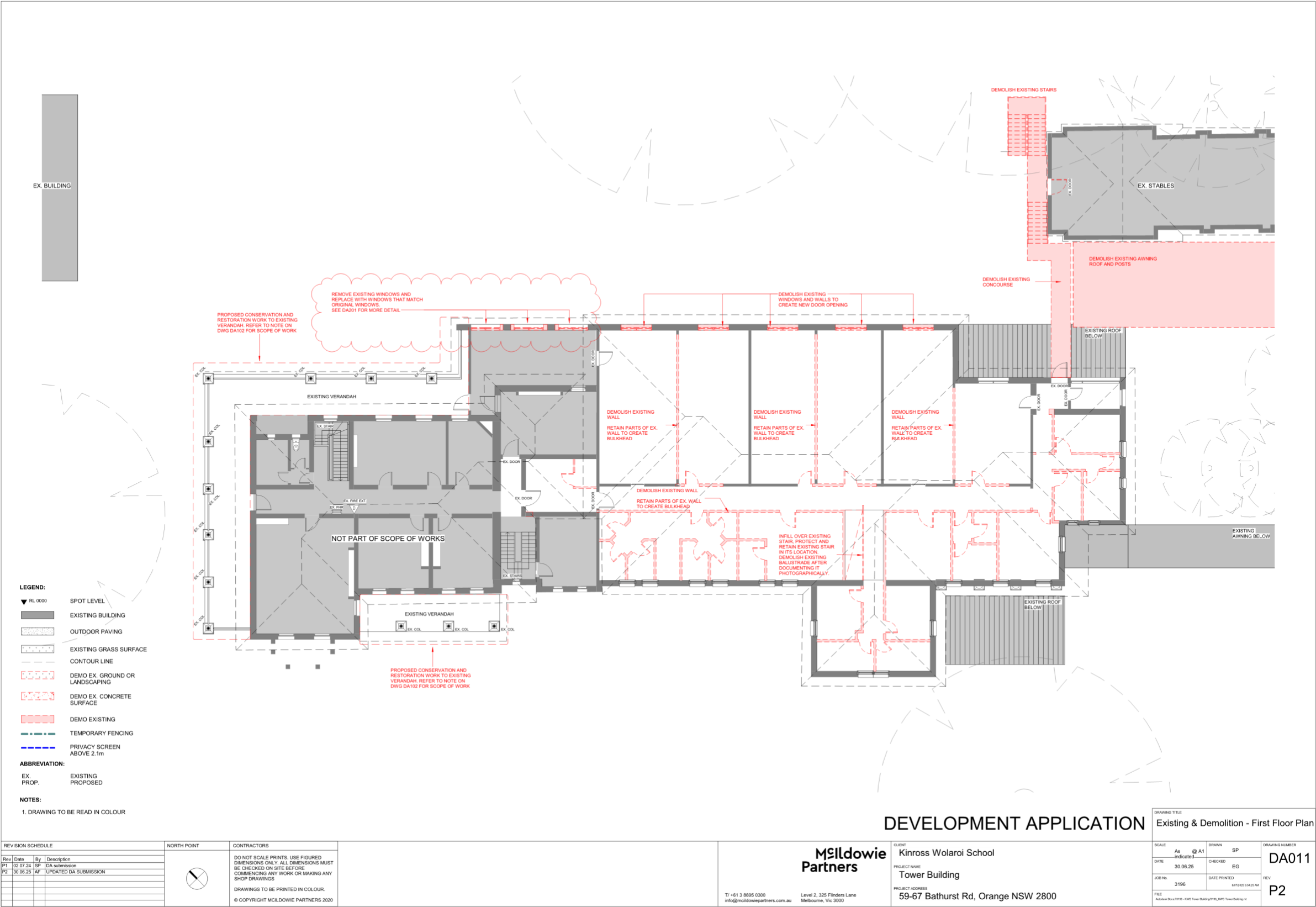
PROJECT ADDRESS
59-67 Bathurst Rd, Orange NSW 2800

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DRAWING NUMBER	
DA005	REV.
P2	

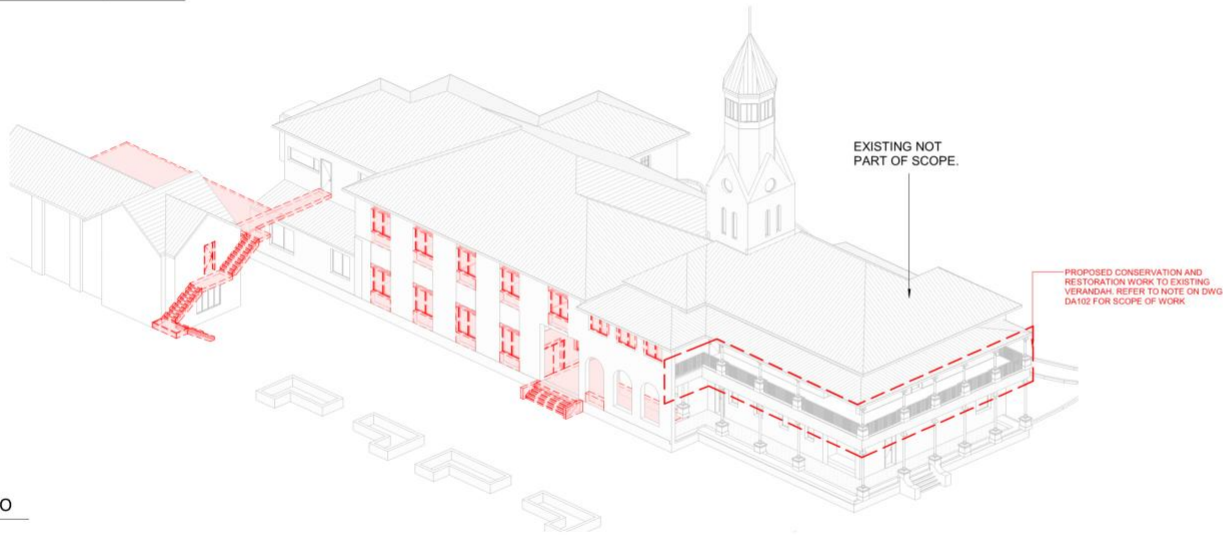








1 North Elevation Copy 1
1 : 100



2 3D AXO

- LEGEND:**
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 - EXISTING BUILDING
 - OUTDOOR PAVING
 - EXISTING GRASS SURFACE
 - CONTOUR LINE
 - DEMO EX. GROUND OR LANDSCAPING
 - DEMO EX. CONCRETE SURFACE
 - DEMO EXISTING
 - TEMPORARY FENCING
 - PRIVACY SCREEN ABOVE 2.1m
- ABBREVIATION:**
- EX. EXISTING
 - PROP. PROPOSED
- NOTES:**
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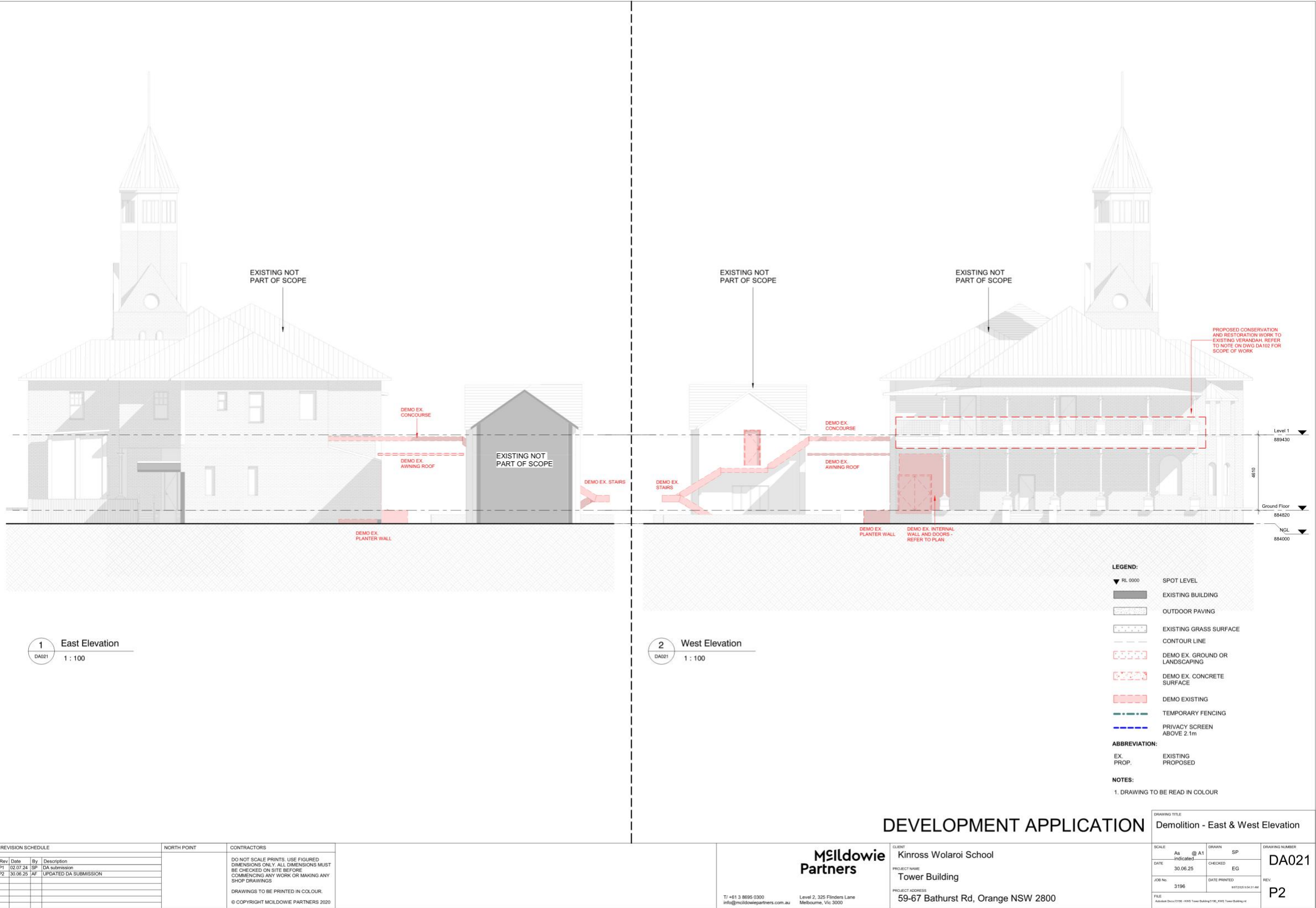
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P2	30.06.25	AF	UPDATED DA SUBMISSION		

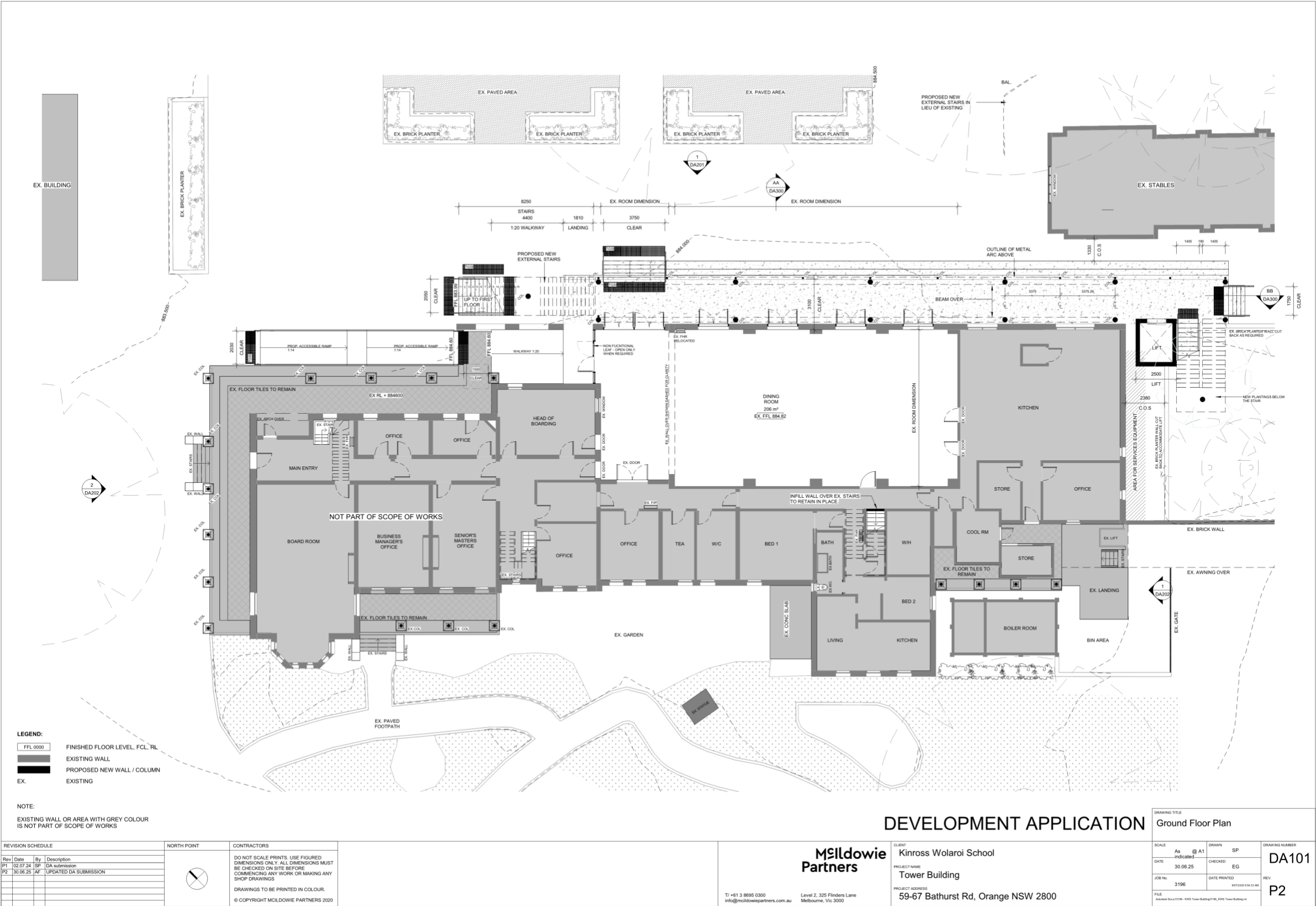
REVISION SCHEDULE				NORTH POINT	CONTRACTORS
Rev	Date	By	Description		
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P2	30.06.25	AF	UPDATED DA SUBMISSION		

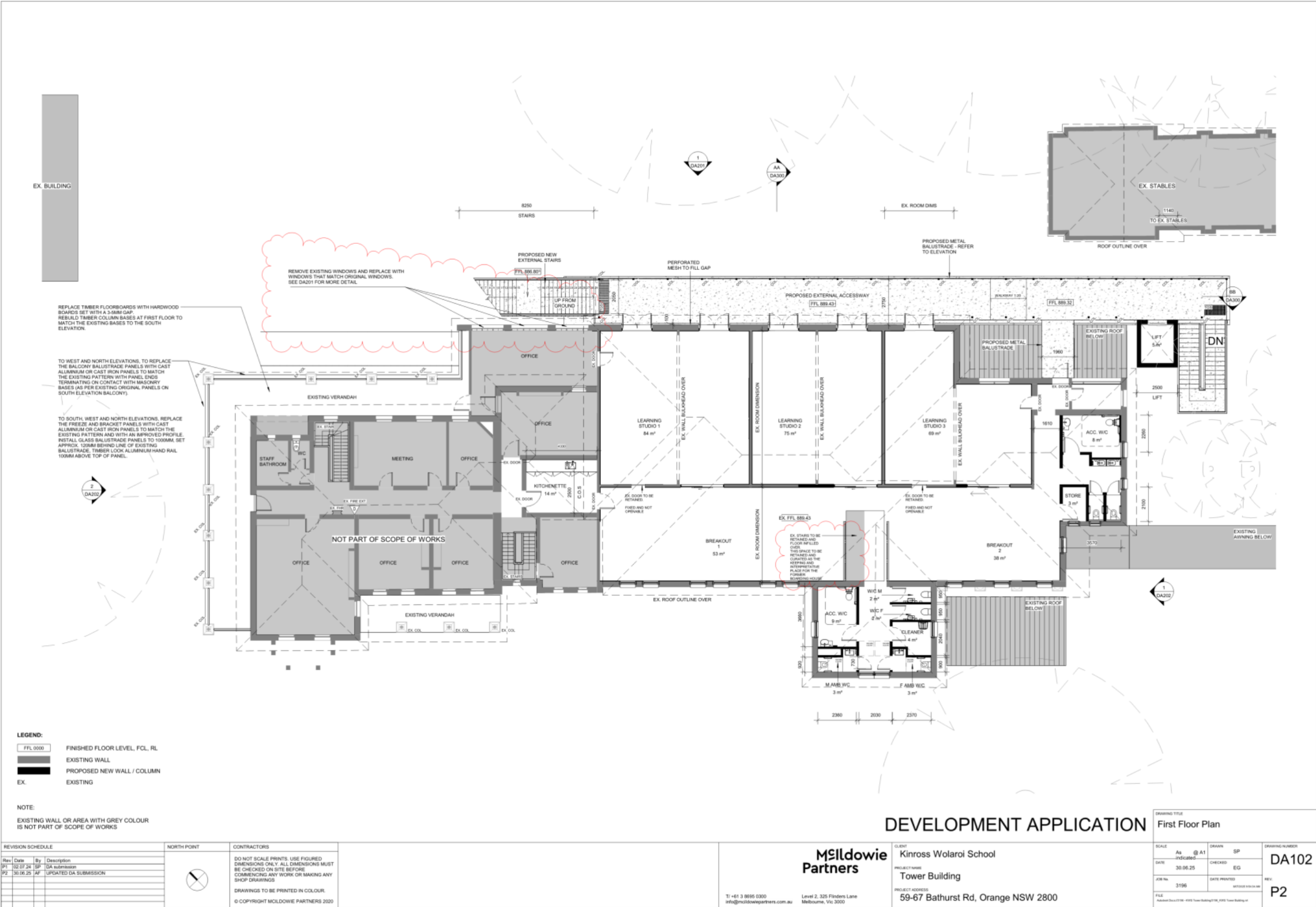
McIlldowie Partners		CLIENT Kinross Wolaroi School	PROJECT NAME Tower Building	PROJECT ADDRESS 59-67 Bathurst Rd, Orange NSW 2800		
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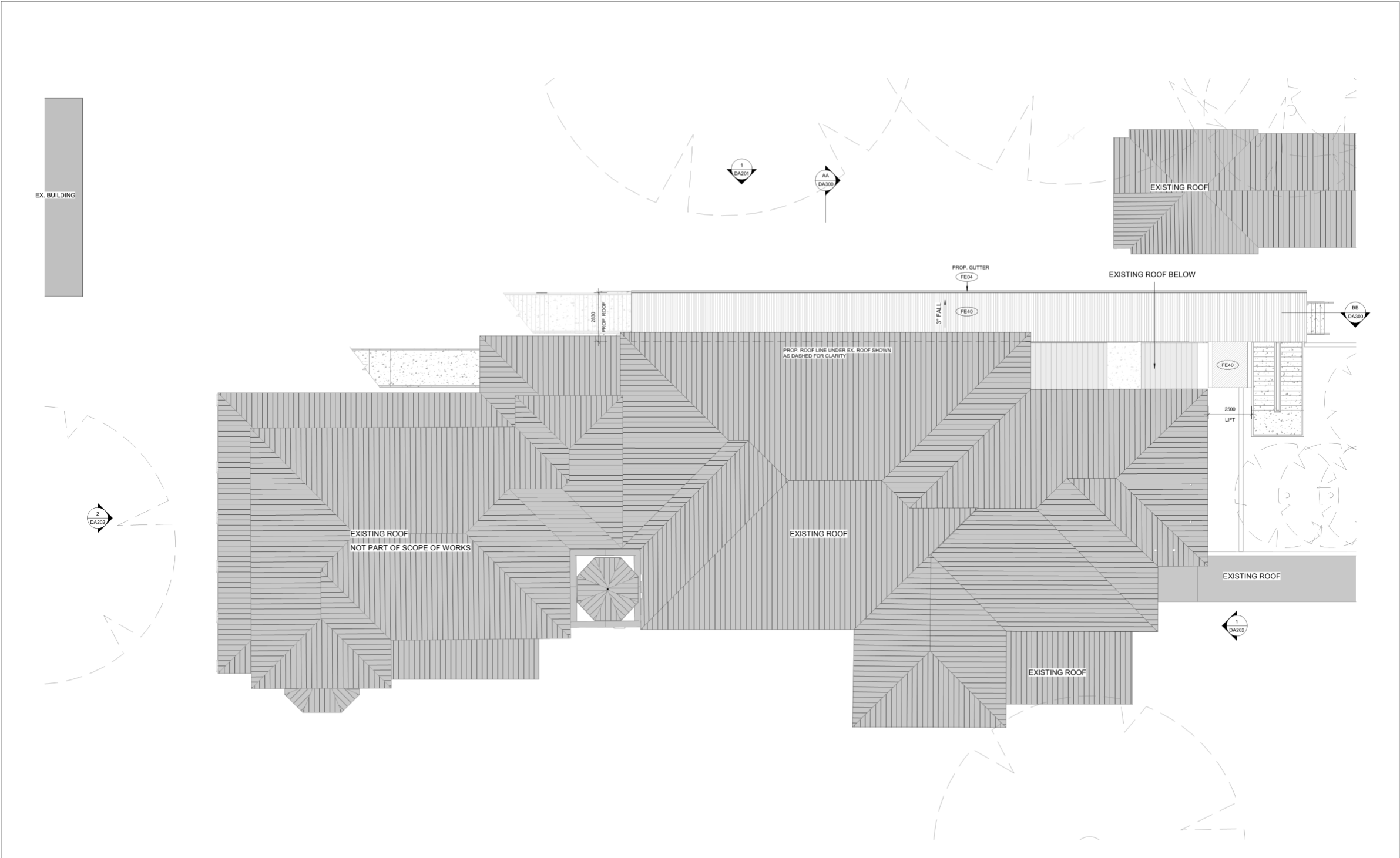
DEVELOPMENT APPLICATION

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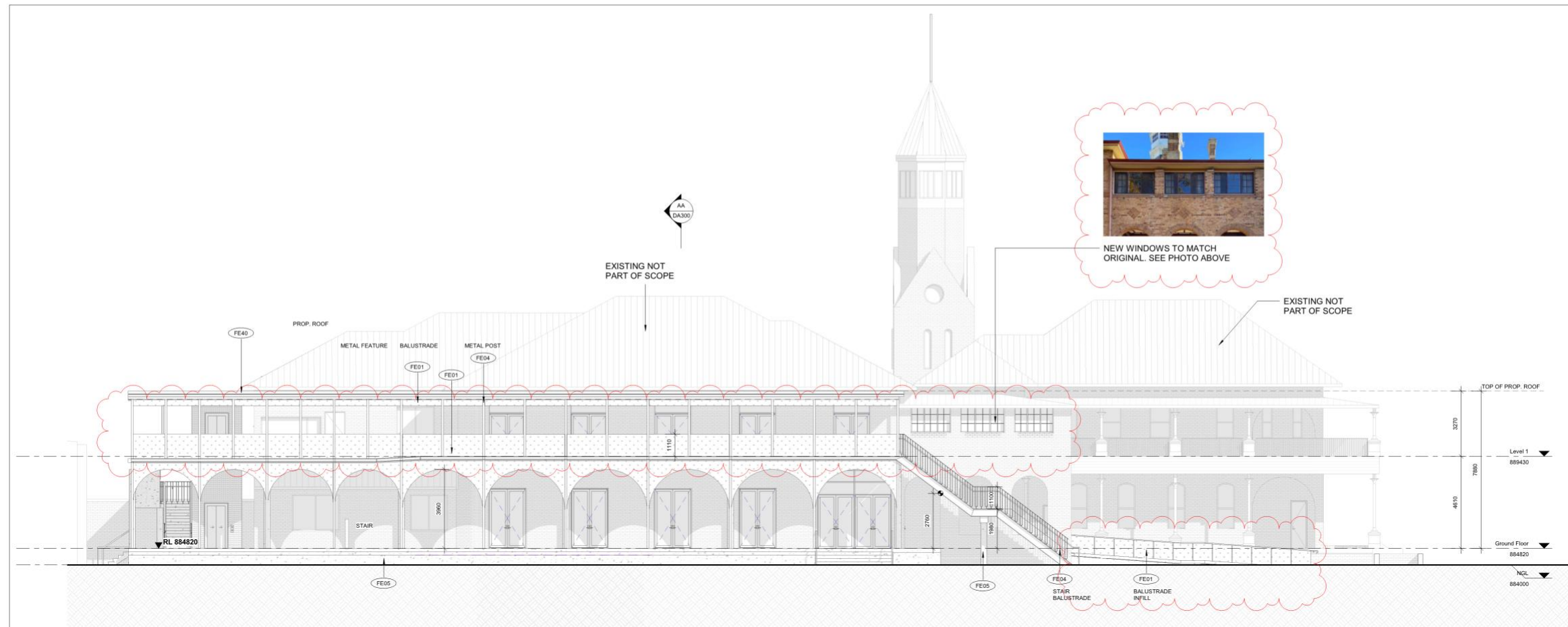




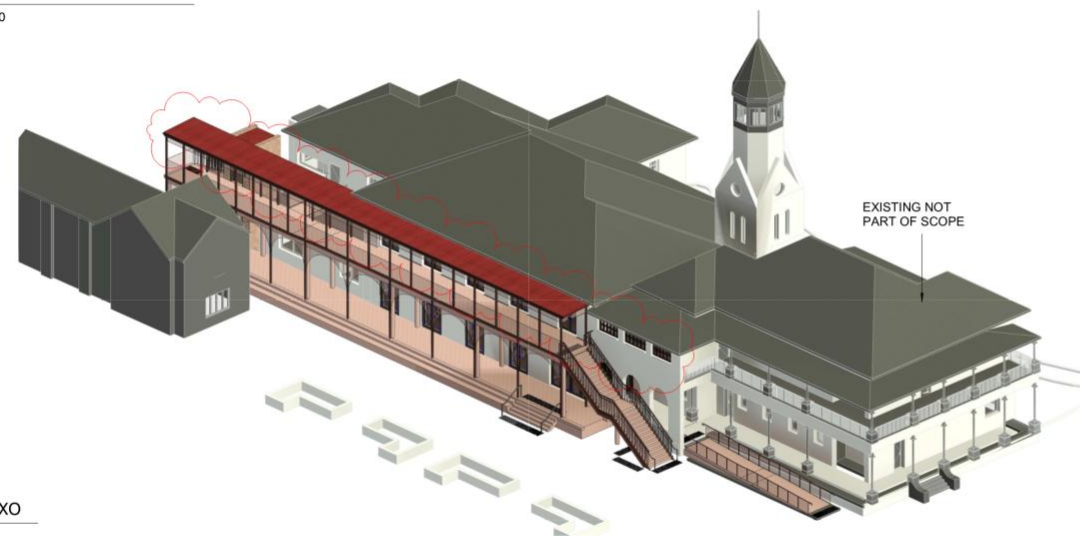




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1 North Elevation
DA201 1 : 100



2 3D AXO
DA201

MATERIAL SCHEDULE:

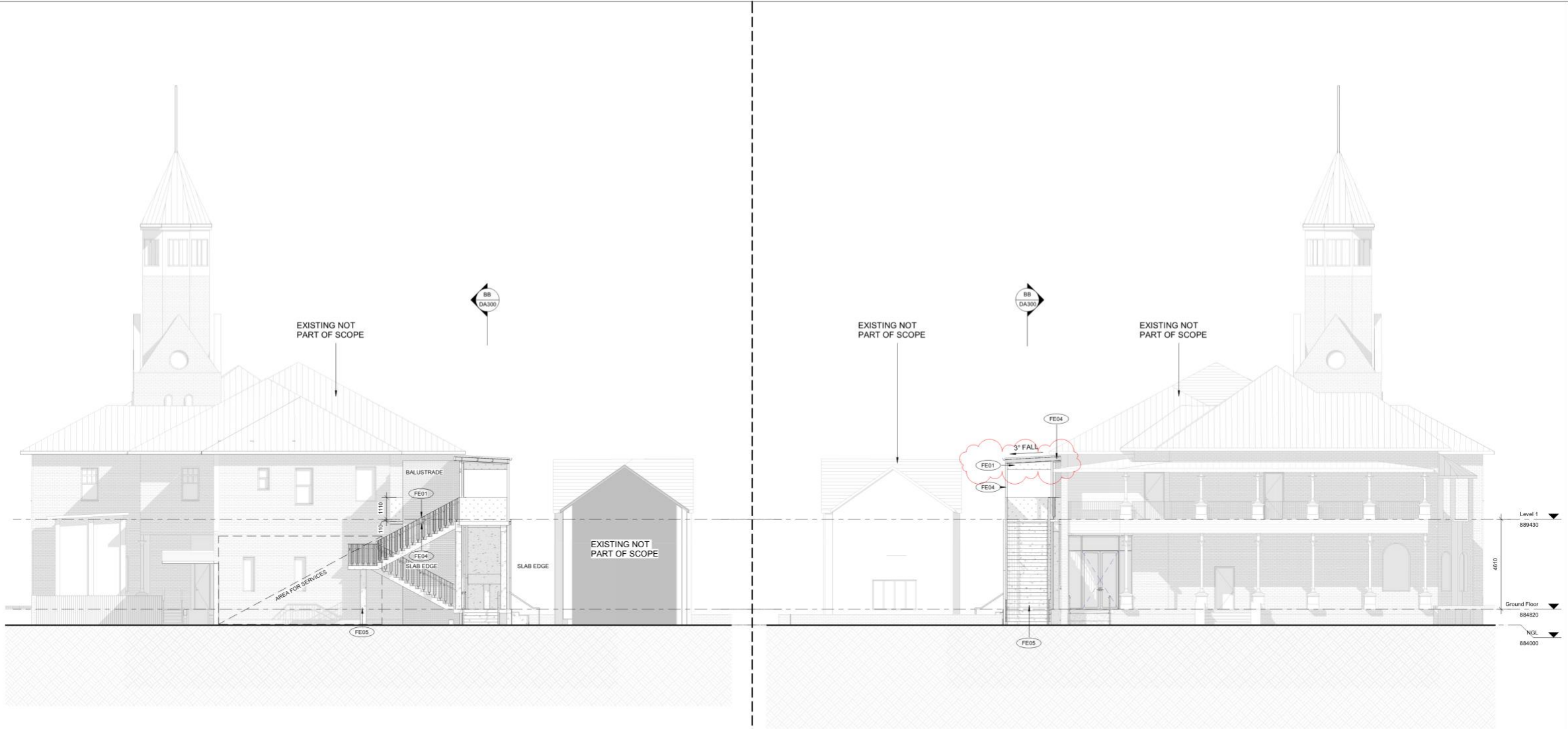
					
FE01 PERFORATED METAL RED COLOUR	FE02 WARM TONE BRICK	FE03 POWDERCOATED PAINT SILVER	FE04 POWDERCOATED PAINT RED	FE05 RED EXPOSED CONCRETE	FE40 METAL ROOF SHEETING RED COLOUR

DEVELOPMENT APPLICATION

[illegible]

CLIENT	Kinross Wolaroi School
PROJECT NAME	Tower Building
PROJECT ADDRESS	59-67 Bathurst Rd, Orange NSW 2800

DRAWING TITLE Elevations - North		
SCALE: 1 : 100 @ A1	DRAWN SP	DRAWING NUMBER DA201
DATE 30.06.25	CHECKED EQ	
JOB NO: 3196	DATE PRINTED NOT 2025-10-30 12:00	
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		REV. P2



1 East Elevation
 DA202 1 : 100

2 West Elevation
 DA202 1 : 100

REVISION SCHEDULE				NORTH POINT	CONTRACTORS
Rev	Date	By	Description		
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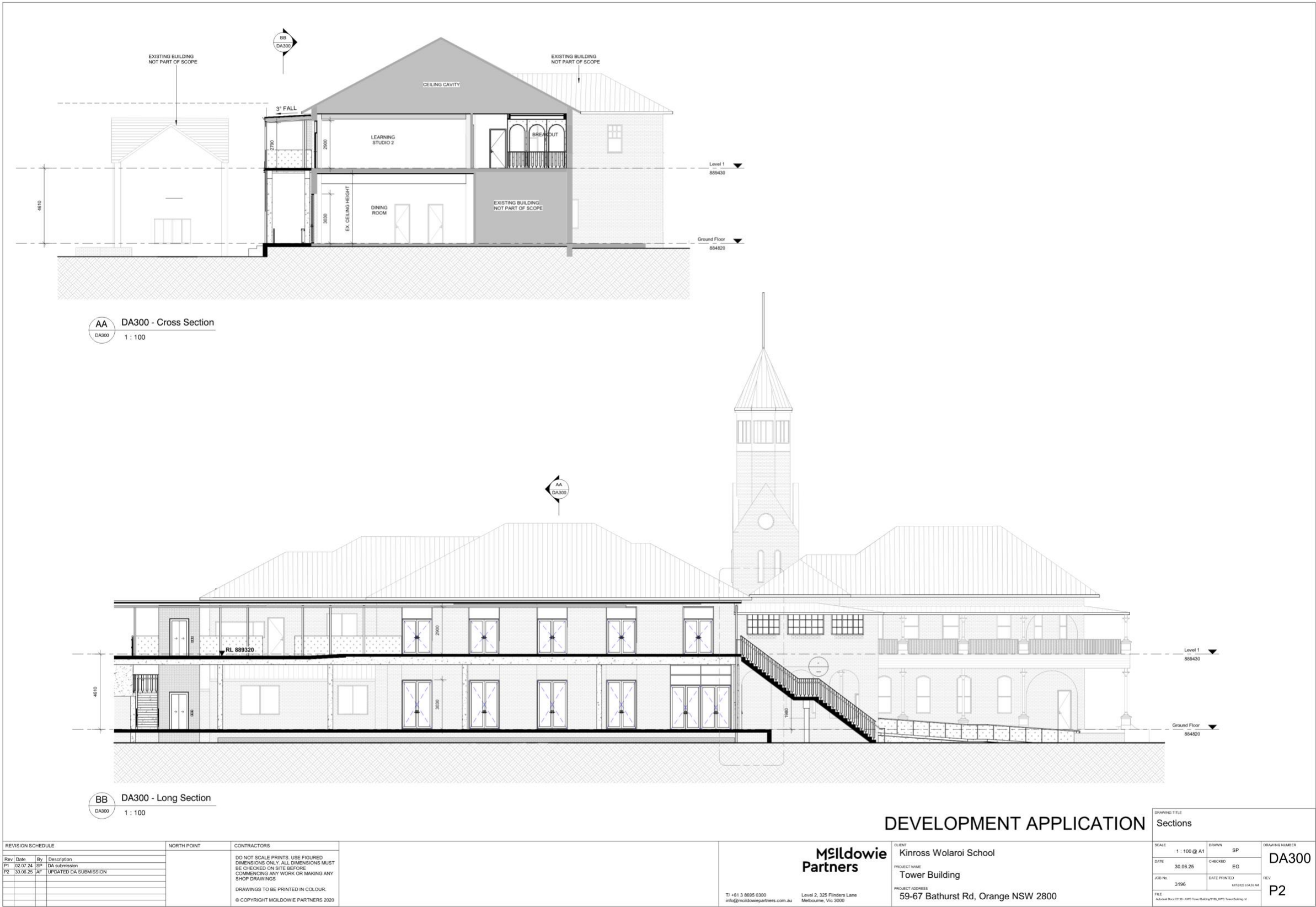
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CLIENT
 Kinross Wolaroi School
 PROJECT NAME
 Tower Building
 PROJECT ADDRESS
 59-67 Bathurst Rd, Orange NSW 2800

DEVELOPMENT APPLICATION

DRAWING TITLE			
Elevations - East & West			
SCALE	1 : 100 @ A1	DRAWN	SP
DATE	30.06.25	CHECKED	EG
JOB No.	3196	DATE PRINTED	6/8/2025 09:59 AM
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REVISION SCHEDULE			
Rev	Date	By	Description
P1	02.07.24	SP	DA submission
P2	30.06.25	AF	UPDATED DA SUBMISSION

NORTH POINT	

CONTRACTORS	
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DEVELOPMENT APPLICATION

CLIENT
Kinross Wolaroi School
PROJECT NAME
Tower Building
PROJECT ADDRESS
59-67 Bathurst Rd, Orange NSW 2800

DRAWING TITLE			
Artists Impression			
SCALE	@ A1	DRAWN	SP
DATE	30.06.25	CHECKED	EG
JOB NO.	3196	DATE PRINTED	04/09/24
FILE	Architect Drawings - Kinross Wolaroi School Tower Building - 04/09/24		
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REV.			P2

2.6 POST-EXHIBITION REPORT - AMENDMENT TO ORANGE DEVELOPMENT CONTROL PLAN 2004 - 277 CARGO ROAD SITE-SPECIFIC DEVELOPMENT CONTROL PLAN

RECORD NUMBER: 2025/1559

AUTHOR: Alison Weir, Coordinator Strategic Planning

EXECUTIVE SUMMARY

Council resolved at the 3 June 2025 Planning and Development Committee meeting, to place an amendment to the Orange Development Control Plan 2004 to guide the development of land at 277 Cargo Road, Orange, being Lot A DP 408148 on public exhibition. The amendment to the Orange Development Control Plan 2004 was placed on exhibition for a period of 28 days from Tuesday, 10 June 2025 until Tuesday, 8 July 2025.

The draft site-specific Development Control Plan (**Attachment 1**) applies to land known as “Stage 1” of the Witton Place Candidate Area. The Witton Place Candidate Area is one of several greenfield precincts identified by the Orange Local Housing Strategy (OLHS) (adopted 7 June 2022) as being suitable for investigation for rezoning and associated residential development. Under the OLHS, the Witton Place Candidate Area is identified as a critical site for meeting the City of Orange’s long-term housing needs.

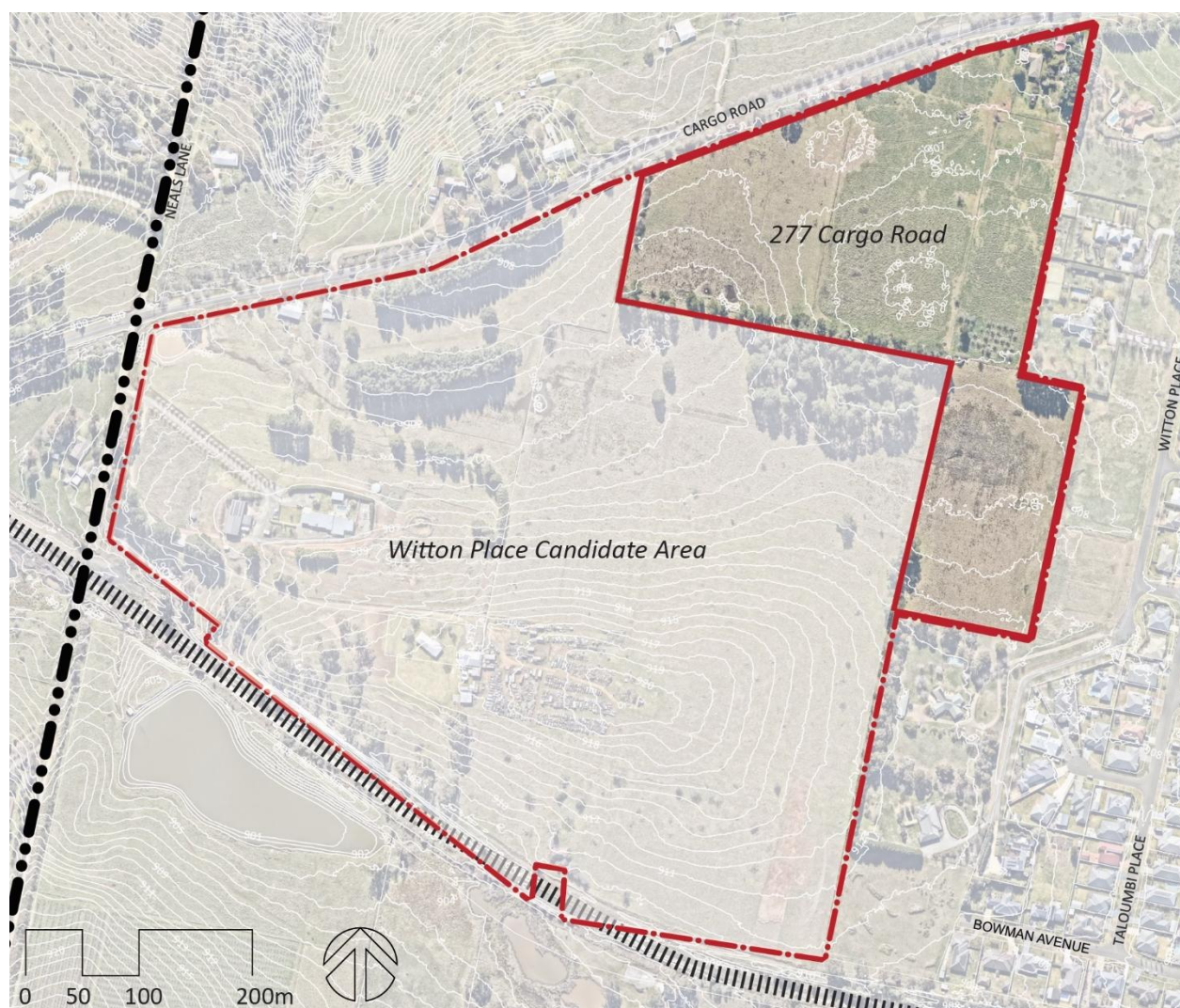


Figure 1 - Witton Place Candidate Area and 277 Cargo Road

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan Strategy “7.3 Plan for growth and development that balances liveability with valuing the local environment”.

FINANCIAL IMPLICATIONS

Nil.

POLICY AND GOVERNANCE IMPLICATIONS

Nil.

RECOMMENDATION

- 1 That Council adopts the amendment Orange Development Control Plan 2004 and includes site-specific development controls relating to 277 Cargo Road (Lot A DP 408148) under Chapter 7 of Orange Development Control Plan 2004.**
- 2 That a notice be placed on Council’s website for the adoption of the amendment to the Orange Development Control Plan 2004 in accordance with the Environmental Planning and Assessment Regulation 2021 within 28 days of adoption.**

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

Consistent with Council’s approach to the OLHS Candidate Areas, and in accordance with the requirements of Section 8.8 of the OLHS Council, staff prepared an Urban Design Study to guide any future Planning Proposals for the Candidate Area. The Structure Plan responds to the key features of the sites in ensuring that density is well located to not impact on any key views into the site, that density is located on amenity, and that open space protects and enhances the key natural features of the site. The Urban Design Study has been translated into site-specific controls for 277 Cargo Road that are included in the draft site-specific Development Control Plan.

The draft site-specific Development Control Plan responds to the requirements of Part 6 Urban release areas, Clause 6.3 Development Control Plan of the LEP, and includes:

- (a) A staging plan outlining future staging for Witton Place Candidate Area.
- (b) Detailed urban design controls, seeking to protect and enhance the rural entry into the city. visually prominent locations and ensure the sustainable and efficient use of land.
- (c) An overall transport movement hierarchy.
- (d) An open space strategy ensuring the enhancement and protection of riparian corridors, vegetation and visually prominent locations.
- (e) Stormwater and water quality management controls.
- (f) Controls seeking to ameliorate natural and environmental hazards.
- (g) Controls seeking to ensure the suitable provision of public facilities and services.

2.6 Post-exhibition Report - Amendment to Orange Development Control Plan 2004 - 277 Cargo Road Site-Specific Development Control Plan

The amendment to the Orange Development Control Plan 2004 was placed on exhibition for a period of 28 days from Tuesday, 10 June 2025 until Tuesday, 8 July 2025. During the exhibition period two submissions (**Attachment 2**) were received.

Submission 1

The submitter requested the inclusion of a neighbouring property as part of the Development Control Plan. The subject land requested for the inclusion has not been rezoned, nor being assessed by Council as a planning proposal, therefore it cannot be included as part of the Development Control Plan as it is not zoned to facilitate the development which is anticipated under the site-specific controls.

Submission 2

The submission was noted as confidential, however, in accordance with Council's Community Participation Plan (December 2023) submissions are not confidential and are open to public access under the Government Information (public Access) Act 2009. The submission has therefore been summarised as follows.

The submitter notes numerous amendments to the Witton Place Candidate Area Structure Plan including detailed layout and alignment requirements, open space requirements, additional road connections through to Witton Place, relocation of an emergency access point for firefighting purposes, and active travel route locations. Other suggested amendments relate to the layout of later stages of the structure plan which are not subject to the controls of the DCP.

As per the requirements of the Orange Local Housing Strategy, a comprehensive urban design analysis and associated structure plan was developed for the Witton Place Candidate Area. Accordingly, the structure plan responded to the strategic need for greater housing diversity and better placemaking through a rigorous urban design process.

The proposed changes, whilst understanding the need for flexibility in the concept layout, are in contention with principles and objectives of the urban design study. Notwithstanding this, it is noted that the Structure Plan provides high level principles and guidance regarding the future subdivision and design of the precinct. Alterations or changes to the layout will be considered on the merits of the proposal, alongside detailed survey, and engineering input at the Development Application stage. Based on the submission it is not considered necessary to make any detailed amendments to the concept plan. Any changes to the subsequent stages of the structure plan can be reviewed if a future Planning Proposal and Site-Specific Development Control Plans are received for those sites.

The submission also requested changes to written controls in relation to clarifying Water Sensitive Urban Design (WSUD) standards, clarifying the protection of native vegetation, battleaxe lot controls, mid-block connection lengths and clarity of the wording of controls within the site-specific Development Control Plan. The Development Control Plan has been amended to reflect the comments in the submission with the changes addressing the following:

Summary of Amendments

1. The DCP has been amended to reflect the WSUD design requirements (D8, D10-D12) consistently adopted for development within drinking water catchments, which has been the approach adopted for the Redmond Place precinct.
2. Control (Subdivision Design, D6) in relation to protecting vegetation have been amended to reflect the exclusion of the pine plantation.

2.6 Post-exhibition Report - Amendment to Orange Development Control Plan 2004 - 277 Cargo Road Site-Specific Development Control Plan

3. Controls allowing for the provision of battleaxe lots have been added (D31 and D32). Noting that battleaxe lots are generally only appropriate in exceptional circumstances, such as where conventional vehicle access to a primary road is denied.
4. Mid-block connections numerical provisions have been removed.

Next Steps

If Council proceed as per the recommendation, the site-specific Development Control Plan will be appended to the Orange Development Control Plan 2004 - DCP 07 Development in Residential Areas, and uploaded to Council's website with a notice of adoption (**see Attachment 3** for the draft Notice of Adoption of Amendment to ODCP 2004).

ATTACHMENTS

- 1 ODCP 2004 - Site Specific Development Control Plan 277 Cargo Road, D25/85514 [↓](#)
- 2 Submissions (redacted), D25/85904 [↓](#)
- 3 Draft Notice of Adoption of Amendment to ODCP 2004, D25/85523 [↓](#)

7.18 DEVELOPMENT AT 277 CARGO ROAD

This chapter describes the place-specific principles and design controls that apply to development within 277 Cargo Road. The principles and design controls are intended to guide the development of the precinct as a resilient, inclusive and liveable neighbourhood that supports Orange's identity as a sustainable regional city. To this end, this chapter has the following aims—

- (a) preserve the scenic landscape character,
- (b) protect and enhance the rural entry into the City,
- (c) ensure good design at all scales,
- (d) protect the neighbouring drinking water catchment through appropriate land and water cycle management,
- (e) support the provision of diverse lots and housing to support the communities needs,
- (f) promote resilience against natural hazards and climate change,
- (g) ensure the sustainable use of energy, infrastructure, and resources, and
- (h) ensure buildings and places are universally accessible and inclusive.

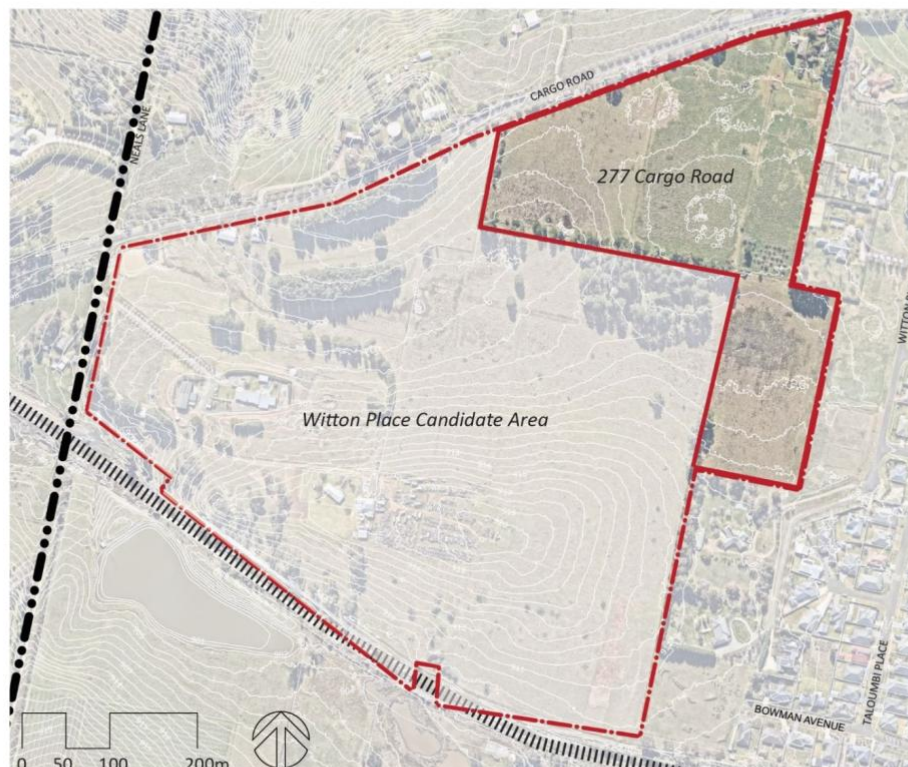


Figure 7.2-5.1 – 277 Cargo Road

Relationship to other controls

Unless otherwise stated, the provisions of the DCP other than those described in this chapter continue to apply to development on land to which this chapter applies. Where there is an inconsistency between the provisions of this chapter and any other provision of the DCP, the provisions of this chapter will prevail.

Transitional arrangements

This chapter only applies to applications made on or after the date of its commencement. In this regard—

- (a) any application lodged but not yet determined prior to the date of commencement of this chapter will be assessed in accordance with any other provisions of this DCP (including those provided in any prior version of the DCP) that applied at the time of lodgement,
- (b) any application to modify a development consent lodged in relation to a notice of determination issued prior to the date of commencement of this chapter will be assessed in accordance with any other provisions of this DCP (including those provided in any prior version of the DCP) that applied to the development at the time of issuance of the notice of determination,
- (c) any application for a review of determination lodged in relation to a notice of determination issued prior to the date of commencement of this chapter will be assessed in accordance with any other provisions of this DCP (including those provided in any prior version of the DCP) that applied to the development at the time of the issuance of the notice of determination.

Design Principles

Principle 1—Respond to Country	Responding to Country is the starting point for good design. It means taking a Country-centred approach to place design that recognises the importance of traditional ways of connecting with and caring for the land. It also means understanding the unique landscape, cultural and ecological qualities of each site, and how these inform its 'place' as part of Country.
Principle 2 – Celebrate local character	Place design responds to the site's unique landscape and townscape qualities and provides opportunities for great place making and a distinctive local character.
Principle 3— Protect scenic values and views	Place design preserves and enhances the unique scenic qualities and views associated with the site, including its role as a visual gateway to the City of Orange and its setting within the City's western hillscares.
Principle 4— Fit with context	Place design achieves a good fit with its context, and complements and contributes to the City's wider character and liveability, including the site's established Ploughmans Valley context.
Principle 5 — Provide housing diversity and choice	Place design should provide for a diverse range of housing needs over time by enabling an adaptable mix of compatible lot sizes, housing types, tenures and affordability levels.
Principle 6— Provide connected, healthy and inclusive places	Place design fosters a sense of belonging and community, and provides for safe, walkable, and beautiful streets that connect people to homes, open spaces and surrounding communities.
Principle 7 — Design with nature	Place design prioritises the protection of biodiversity 'hot spots', including riparian zones and remnant native vegetation communities, and protects natural site features including landform, hydrology, groundwater sources and geology.
Principle 8 – Protect water catchments	Place design should protect the drinking water catchment through the inclusion of appropriate water quality management and water sensitive urban design (WSUD) infrastructure.
Principle 9—Sustainability and resilience	Place design should manage risks and hazards, including climate change, and promote sustainable neighbourhoods.

Urban design concept

Figure 7.2-5.2 shows Council's adopted urban design concept for the Witton Place Candidate Area as identified in the Orange Local Housing Strategy. The urban design concept translates the design principles into a preferred urban form and land use concept at the 'whole-of-precinct' scale. This chapter only applies to the first stage known as 277 Cargo Road as identified in the staging plan figure 7.2-5.3.

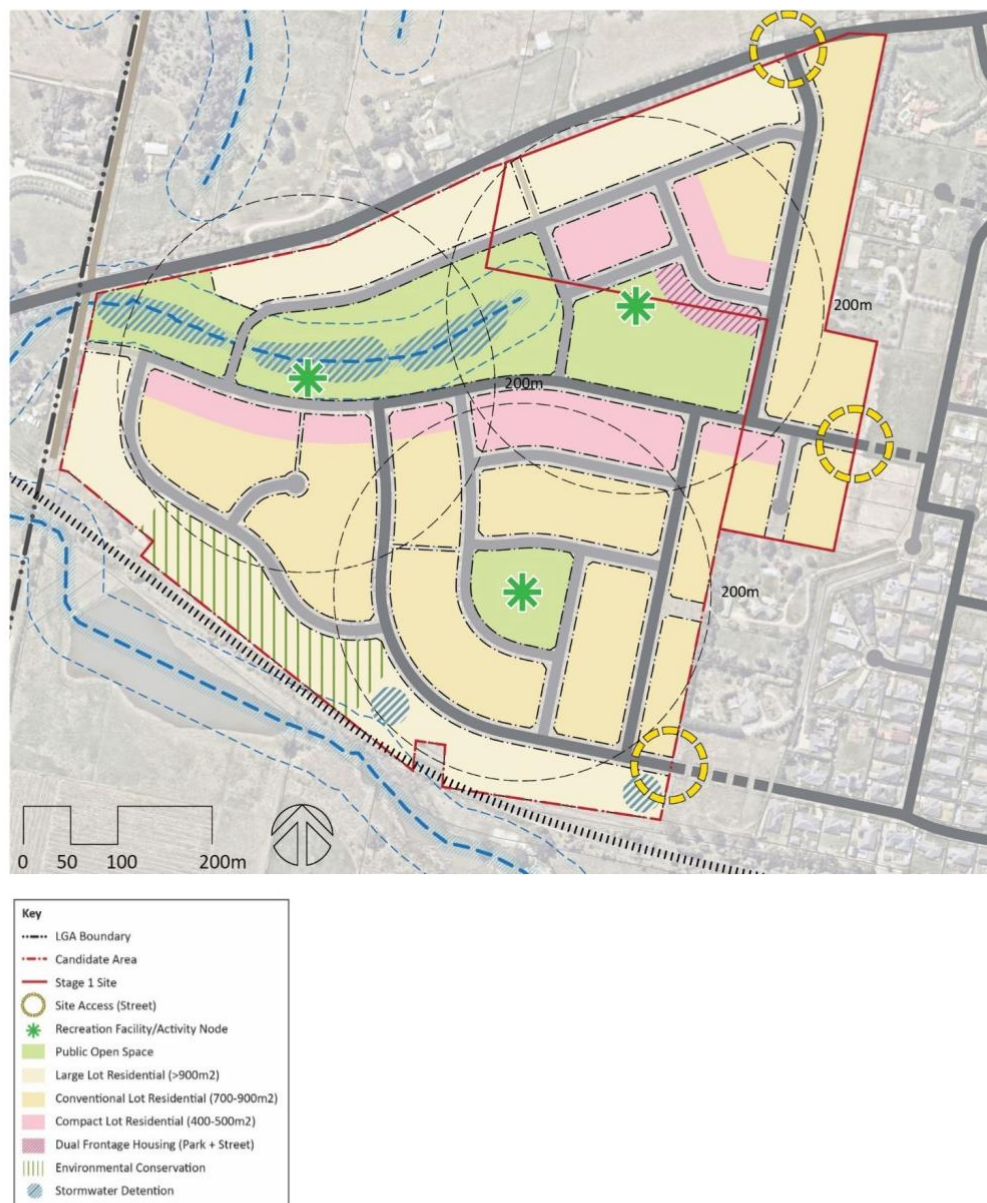


Figure 7.2-5.2 – Witton Place Candidate Area Structure Plan

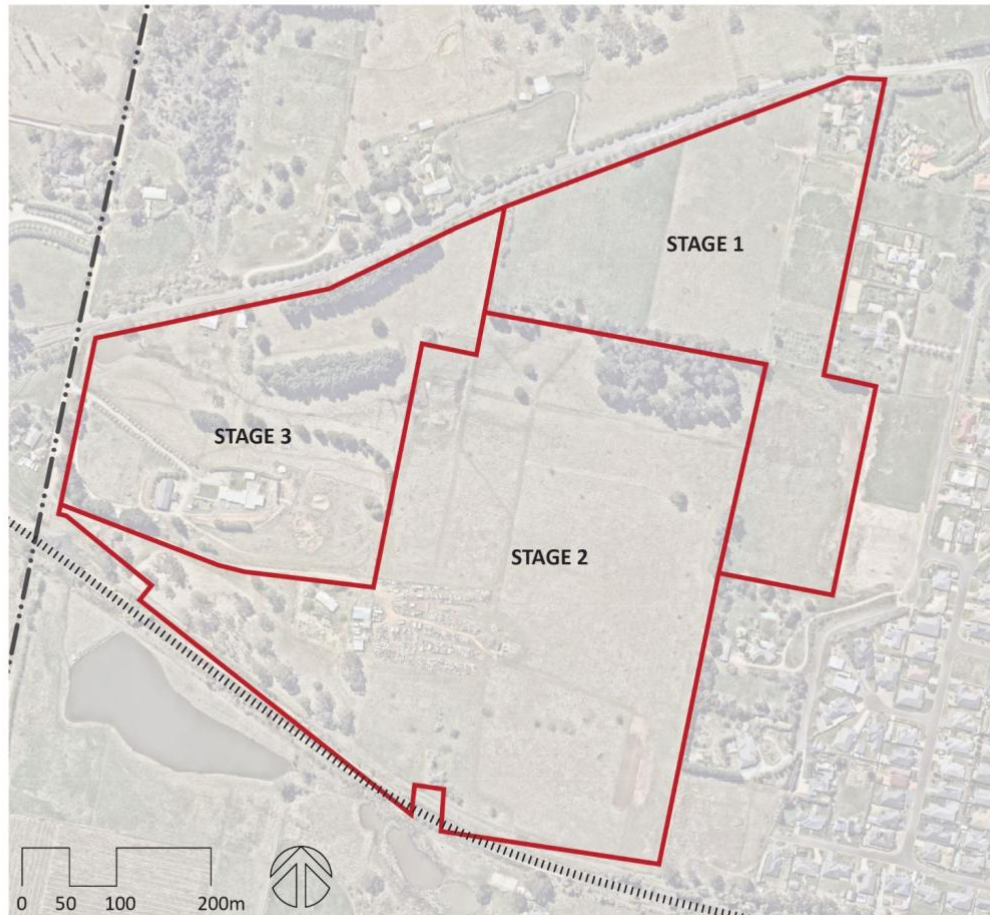


Figure 7.2-5.3 – Staging Plan

Important character elements

The urban design concept embodies a number of important character elements. These describe the precinct-specific place qualities that development is required to support. Supporting the important character elements is a task shared by all development proposals, regardless of their scale or nature.

The important character elements for 277 Cargo Road are intended to work in combination with each other and support the principle of a precinct 'whole' that is greater than the sum of its 'parts'. In this respect, development proposals need to consider each element as an essential part of a combined whole. Achieving consistency with the important character elements will ensure each development 'knows its place' within the precinct's overall vision, achieves a good fit with neighbours and contributes to the accumulation of shared place qualities over time.

The important character elements for 277 Cargo Road are described below.

1. Respond to Country

Place design should prioritise opportunities for Connecting with Country in accordance with the processes, principles and design guidance described in the NSW Connecting with Country framework. Place design safeguards potentially culturally significant features, including waterways and riparian zones, topographic features and views to surrounding landmarks, including Gaanha Bula—Mount Canobolas.

2. Natural landscape and scenic protection

Place design recognises the setting of the site as a visual gateway into the City. Open space is designed so that high points maintain their natural landform qualities and enable public views and vistas to Gaanha Bula—Mount Canobolas and surrounding hillscares.

Areas of visual prominence, ecological importance, including areas of significant native vegetation and habitat, are identified, and protected through the public open space network. Waterways and riparian zones are protected by being incorporated into the public open space network.

3. Movement networks

Place design incorporates a legible hierarchy of streets and public open spaces. Street and public open space layout supports opportunities for meeting places (activity nodes) and wayfinding. The street network provides for future street connections to the subsequent stages, Witton Place and Bowman Avenue.

4. Land use and urban form

Street block and lot patterns enable robustness and adaptability to a variety of housing needs as these change over time. Streets and street blocks are oriented to enable a variety of public and private view sharing opportunities, and to maintain a strong visual connection between the site and its surrounding natural and rural landscapes. Topography and natural landscape elements are expressed through the formation of the street and public open space networks, and through responsive variations in lot and street block sizes. Lot sizes and dwelling density are located to respond to variations in site qualities and topography.

Place design responds to the long-term social needs of the City, including those for housing diversity and affordability. Visual richness is provided through a diversity of compatible housing types and styles, with smaller lot housing located close to amenity (parks and green spaces), enabling aging in place at a neighbourhood scale. Housing is located to face onto public open space, providing a well-designed built edge delineating the public and private realms.

Larger lots are located along the Cargo Road edge to preserve the road corridor's semi-rural character and are located in areas with higher visual prominence. A transition in residential block sizes along the candidate area's other edges to match in with different edge conditions (eg, Cargo Road to the north, railway line to the south). Lot sizes along the candidate area's eastern edge are compatible with the established low-density character of Ploughmans Valley. Larger lots interfacing agriculture land protect operational viability through appropriate buffers and lot sizes.

5. Public domain

Place design supports existing urban neighbourhoods by extending the City's green and social infrastructure, and by enabling the provision of new parks and recreational infrastructure accessible to existing residents. The street network responds to topography on the site and provides for a well-connected, comfortable public domain that creates opportunities for the community to easily move within and beyond the site.

A connected open space network provides opportunities for community focal points and opportunities to gather, providing opportunities for play, exercise and healthy living for people of all ages and abilities.

Connecting with Country

Objective		Design Criteria	
O1	To ensure development prioritises opportunities to Connect with Country and recognises the importance of traditional ways of connecting with and caring for the land.	D1	Development prioritises opportunities for Connecting with Country in accordance with the processes, principles and design guidance described in the NSW <i>Connecting with Country</i> framework.
		D2	Place design safeguards potentially culturally significant features, including waterways and riparian zones, topographic features and views to surrounding landmarks, including Gaanha Bula—Mount Canobolas.

Desired future character

Objectives		Design Criteria	
O1	To ensure development responds to the site's unique landscape and townscape qualities to ensure great place making and a distinctive local character.	D1	Development supports the precinct's design principles.
		D2	Development complements and where possible enhances the precinct's important character elements.
		D3	Development is generally in accordance with the urban design concept provided in Figure 7.2-5.2.
		D4	Development provides visual richness through a diversity of compatible housing types and styles, with smaller lot housing located close to amenity (e.g., parks and green spaces).

Views and scenic quality

Objectives		Design Criteria	
O1	To promote development outcomes that respond to the sites, rural context, landform, and scenic qualities, and as a visual gateway for the City.	D1	District and local views are preserved and enhanced to improve legibility and wayfinding.
		D2	Larger lots are located along the Cargo Road edge to preserve the road corridor's semi-rural character.
		D3	Views to Gaanha Bula – Mount Canobolas and surrounding rural hillsides are celebrated through place design.
		D4	View sharing is encouraged through complementary siting of buildings, responsive design, and well-positioned landscaping.
		D5	Open space is located so that high points maintain their natural landform qualities and enable public views and vistas to Gaanha Bula – Mount Canobolas.
		D6	Streets and street blocks are oriented to enable a variety of public and private view sharing opportunities (as indicated in Figure 7.2-5.5), and to maintain a strong visual connection between the site and its surrounding natural and rural landscapes.

Subdivision design

Street network and open space design			
Objectives		Design Criteria	
O1	Subdivision design is to: a) Preserve the sense of the topography and views from the site. b) Retain significant biodiversity assets and drainage corridors. c) Create a legible road network and street hierarchy that responds to the topography on the site and provides for a well-connected, comfortable public domain that creates opportunities for the community to easily move within and beyond the site.	D1	Subdivision design facilitates the precinct layout indicated in Figure 7.2-5.2.
		D2	Subdivision design facilitates a legible the street network and hierarchy indicated in Figure 7.2-5.4.
		D3	Subdivision design supports existing urban neighbourhoods by extending the City's green and social infrastructure, and by enabling the provision of new parks and recreational infrastructure accessible to existing residents.
		D4	Street and public open space layout supports opportunities for meeting places (activity nodes) and wayfinding.

	d) Ensure connected open space network provides opportunities for community focal points and opportunities to gather.	D5	Topography and natural landscape elements are expressed through the formation of the street and public open space (green grid) networks, and through responsive variations in lot and street block sizes.
	e) Provide permeable, legible, convenient and safe street network for active transport.	D6	Roads and streets are not to proceed through natural features, including native mature trees, or existing biodiversity strands.
	f) Ensure green and blue spaces and networks are incorporated as building blocks of neighbourhood character and liveability.	D7	Public domain and open space are designed to enhance safety and security, consistent with the Safety by Design principles.
		D8	Subdivision design and public domain design are to incorporate Water Sensitive Urban Design (WSUD).
	g) Ensure green and blue infrastructure supports natural rehydration of the landscape and regeneration of groundwater sources.	D9	Urban heat is managed through the provision for cool landscapes at the neighbourhood scale, including the strategic allocation of green and blue spaces and provision for the incorporation of WSUD infrastructure in road reserves and other public spaces.
		D10	Waterways and stormwater management are integrated into the green infrastructure network and is informed by total water cycle management principles consistent with the strategy indicated in Figure 7.2-5.2.
		D11	Appropriate provision is made for appropriate water quality management infrastructure, including wetlands.
		D12	The public stormwater management network is designed to achieve a reduction in pollutant loads for total suspended solids, phosphorous and nitrogen of 10% from pre-development loads.
		D13	Place design supports the long-term expansion of the City's urban tree canopy in accordance with Council's adopted Greening Orange – Our Orange Urban Forest Strategy.
O2	To provide road networks that can accommodate a higher level of transport infrastructure and facilitate equitable sharing of the road network,	D14	Subdivision design minimises demand for vehicle trips by incorporating a permeable and walkable street grid and public space network, optimising the

	prioritising the needs of pedestrians and cyclists first.		feasibility of future public transport (bus) routes through the appropriate location of smaller lot housing, and by connecting to the City's strategic shared path network.
		D15	Intersections are designed to maximise ease of movement for pedestrians and cyclists, and buses, and to slow vehicular traffic.
		D16	Lots adjoining Cargo Road are not to have direct access to Cargo Road (excluding existing dwellings).
		D17	Streets are to be designed to integrate traffic calming measures.
O3	To encourage healthy living, social interaction, and environmentally responsible forms of transport through active transport options.	D18	A cycle and pedestrian network is provided in accordance with 7.2-5.5.
		D19	Footpaths are to be provided in accordance with Council's Subdivision and Development Code.
		D20	Shared paths are at least 2.5 metres wide to accommodate both pedestrians and cyclists and are separated from vehicular traffic in accordance with 7.2-5.5.
		D21	Paths are well-lit, with appropriate signage and road markings.
Lot size, orientation and layout			
Objectives		Design Criteria	
O4	Subdivision design is to:	D22	The preferred block orientation is established in Figure 7.2-5.2.
	a) Ensure development occurs in a logical and co-ordinated manner.	D23	Subdivision design provides for a transition in residential lot and street block sizes the edges to match in with different edge conditions (e.g. Cargo Road to the north and Ploughmans Valley.)
	b) Preserve the rural character of the entry into Orange.	D24	Lot sizes along Cargo Road maintain the rural entry into the City by providing significant private landscaping and rural style fence treatments.
	c) Retain and protect existing trees and vegetation.	D25	Lot sizes along the eastern edge are compatible with the established low-density character of Ploughmans Valley.
	d) Establish housing diversity and mix within neighbourhoods.	D26	Lot sizes and dwelling density are located to respond to variations in site qualities and topography.

	D27	Lot layout and sizing is designed to protect areas of ecological importance, including areas of significant native vegetation and habitat.
	D28	Development applications are to minimise the extent of any cut and fill likely to be required to accommodate future development.
	D29	Subdivision design ensures that the opportunities for connection into future development of subsequent stages are provided.
	D30	Retain and incorporate mature trees and biodiversity assets (excluding the pine tree plantations) into the subdivision design.
	D31	Lots are fully serviced and have direct frontage/access to a public road.
	D32	<p>The creation of battle-axe lots may be considered where—</p> <ul style="list-style-type: none"> • conventional frontage to a primary road is restricted or denied, or • the lots front public open space. <p>In considering an application for the creation of a battle-axe lot, Council may take into account—</p> <ol style="list-style-type: none"> a) the existing street and lot layout, b) physical constraints that inhibit the creation of other lot types, c) the likely impacts on the amenity of adjoining properties, d) the desired future character of the locality.
	D33	Battle-axe lots must have its own access handle with frontage to a public road.
	D34	A mix of lot sizes is to be provided, which responds to the long-term social needs of the City, including those for housing diversity and affordability.

		D35	Lots are rectangular. Where lots are an irregular shape, they are large enough and oriented appropriately to enable dwellings to meet the controls in this DCP.
O5	To ensure development is sited to maintain a rural entry into the City.	D36	Lots onto Cargo Road require a building envelope at subdivision stage for dwellings and associated outbuildings.
		D37	Lots onto Cargo Road are to have a minimum rear setback of 30 metres.
		D38	Lots onto Cargo Road may have a maximum of one (1) outbuilding.
		D39	Post and rail fencing is to be provided along Cargo Road and on side boundaries of lots along Cargo Road.
		D40	Lots onto Cargo Road are to provide at least two 100L tree (minimum height of at least 8 meters) 10 meters of the rear setback.

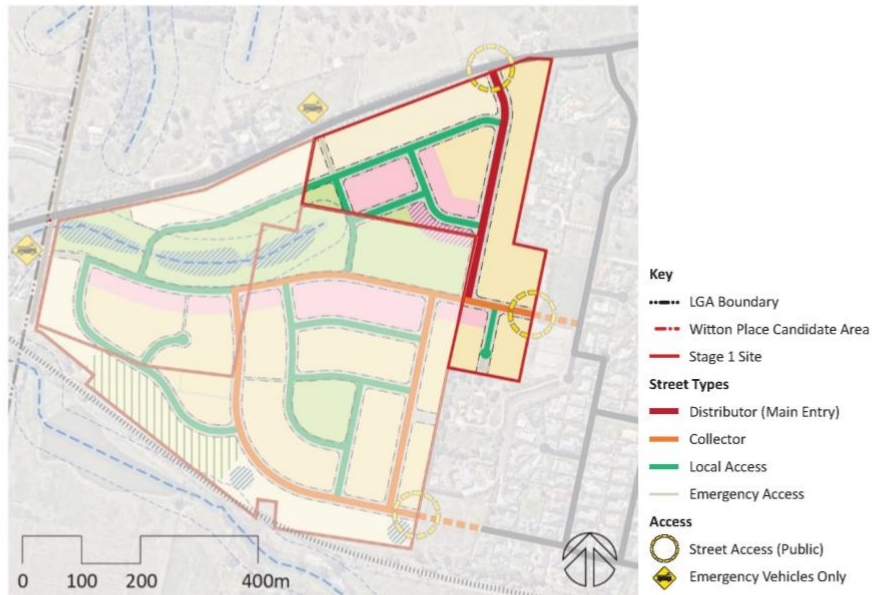


Figure 7.2-5.4 – Street hierarchy

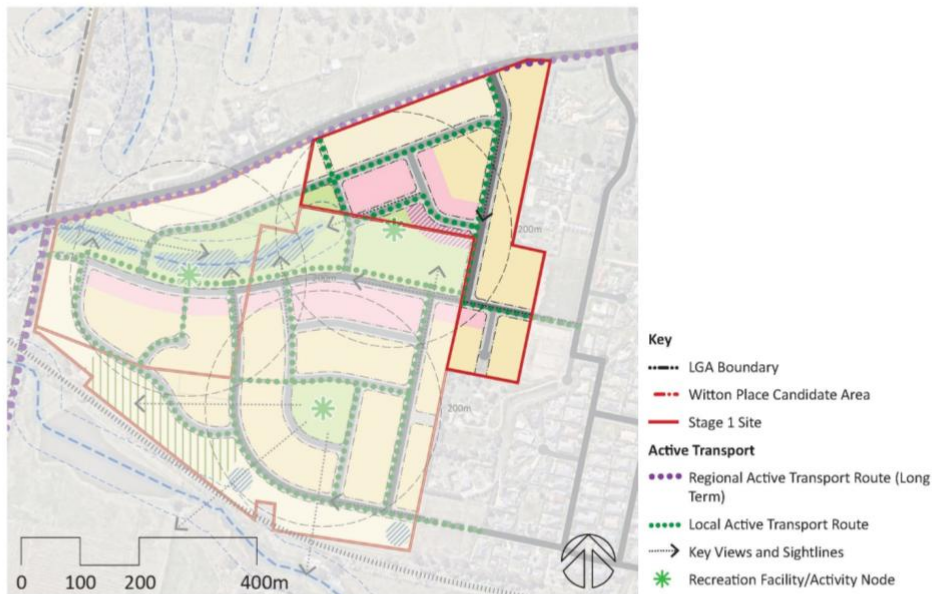


Figure 7.2-5.5 – Active transport network

(next page is Page 8.1)

Submission 1

277 Cargo Rd – Draft DCP Submission to Council

Chief Executive Officer – David Waddell
Orange City Council
c/- Strategic Planning Team
Ms Alison Weir

4 July 2025

Alison,

Re: Draft DCP for Cargo Rd Release Area

Site: 277 Cargo Rd, Orange

1 Introduction

Thanks to Council for the opportunity to make a submission on the Draft DCP on exhibition until 8 July 2025. As you know, I represent _____, the Applicant for the Site.

In late June we previously provided a draft submission in the form of an amended Structure Plan layout for the Site and the broader Urban Release Area (URA).

This letter and its attachments are provided to provide our final submission including the attached **Plan A501 Amendments to DCP Structure Plan** and a summary of the key text amendments in this letter below. As the Applicant is still in negotiations with some of the land owners affected by the broader DCP Subdivision Layout – we request the submission is commercial-in-confidence (unless otherwise agreed). We are happy to work with Council post-exhibition on any issues.

2 Plan A501 Amendments to DCP Structure Plan

Our suggested amendments to the Structure Plan in Figure 7.2-5.2 are summarised as follows (please see the attached plan for details). This largely agrees with the road layout suggested with the following key amendments. We note that whilst the DCP only currently applies to 277 Cargo Rd – it would be beneficial to have some agreement over the remainder of the URA (especially 4 Neals Lane) at this early stage, especially relating to open space:

1) Whole URA:

- a) **Subdivision Layout:** The role of a Structure Plan (in our opinion) should guide future development applications for subdivision and this is recognised in Design Criteria D3 (Desired future character) & D1 (Street network & open space design). However, it should be recognised (either as a clear text statement in the DCP and/or annotation on the Structure Plan) that it is a guideline and subject to detailed survey, site studies, and detailed design that may seek to vary the outcome whilst demonstrating compliance with the key principles.
- b) **Lot Size:** The Structure Plan includes a Legend with a range of lot sizes for large / conventional/ compact / dual frontage lots. This is acceptable if this is a guideline only and variation is justified. The Applicant will seek to provide a mix of lot sizes that includes smaller lots where noted. We have not yet tested detailed lot sizes as survey information is still being prepared.

Date: 4 July 2025

Page | 1

277 Cargo Rd – Draft DCP Submission to Council

- c) **Open Space:** (Point 4 on Plan A501) The amount of open space provided in the exhibited DCP Structure Plan is estimated at 9.69ha across the URA. We suggest that this is reduced to 7.69ha (reduced by 2ha) as this land will need to be dedicated to Council for their ownership and maintenance and offset contributions. We believe that sufficient open space has been provided to provide a 'district' level active play area and playground as well as the required stormwater management systems (subject to detailed design) with passive recreation along the 1st order watercourse (overland flow path). An indicative layout of these areas is provided.
- d) **East-West Road (South of Main Park):** (Point 3 on Plan A501) We suggest that the main east-west road south of the stormwater and main park is move slightly north – particularly towards the eastern end. This ensures that the connection along the narrow southern strip of 277 Cargo Rd does not result in more than two possible battle-axe lots in the corner near Witton Place. It reduces the amount of open space to be maintained by Council (see above). Compact residential lots are retained on flatter land.
- e) **Ownership Boundaries/Staging:** (Point 1 on Plan A501) The DCP Structure Plan is largely achievable but ideally the proposed roads are aligned to property/ownership boundaries (especially north-south roads at the interface of 4 Neals Ln and 349 Cargo Rd) so they can be constructed in the relevant stage.
- f) **Alternative Road Connections:** (Points 9 & 10 on Plan A501) We suggest that the proposed connections to Witton Place (in 277 Cargo Rd) and through 58 Witton Place (from 4 Neals Lane) can be deleted on the Structure Plan. A connection to Witton Place is unlikely to be achieved with the current minimum lot size and subdivision approvals through this land. A cul-de-sac for limited lots through 277 Cargo Rd will service 58 Witton Place and a through road is unlikely to be needed due to low likely low yield.
- g) **Cycle/Shared Path Connections:** (Points 13 & 14 on Plan A501) We suggest that primary cycle paths (on-road) and/or shared path connections (in park) should connect back to Bowman Ave and down to the Ploughmans Creek Wetlands. There is currently no shared path extending up Cargo Road and this is less likely to be a desire line for most active travel.

2) **Roads General:**

- a) **Cut/Fill:** (Points 5 & 6 on Plan A501) It is critical that Council consider the contours of the Site in designing the roads to minimise cut /fill – particularly with road shaping and the interfaces to adjacent lots. Running roads parallel to contours on steeper areas of the Site is likely to result in cut into slopes on the high side and steeper driveways on both sides with associated drainage issues. On steeper slopes, we recommend roads should be perpendicular to the slope, particularly if north-south – so that the longer axis of housing lots is east-west (passive solar) running along the contour to minimise cut/fill on housing sites. This mostly applies to 4 Neals Lane.
- b) **Drainage:** (Point 7 on Plan A501) We also suggest that if roads run parallel to contours, they are angled slightly downslope or are near or at the ridgeline so drainage can easily be achieved within the road reserve. This mostly applies to east-west roads in 4 Neals Lane. This is why we have straightened some of these roads.

3) **277 Cargo Rd:**

- a) **Dual frontage Housing lots:** (Point 15 on Plan A501) In the DCP these many of these are split over the property boundary with 4 Neals Lane. We suggest moving the road that is north of these lots slightly south to align with the 4 Neals Lane boundary. Whilst some Dual Frontage Lots will occur in 277 Cargo Rd – most will occur as part of 4 Neals Lane on the flatter land near the ridgeline. The adjacent open space to the south still has ~48-50m depth for some active play areas widening further for a playground and some landscape planting to the west.
- b) **Compact Lots / Park Interface:** We have also shifted the north-south road that cuts through the linear park slightly to the west. Originally an open space parcel was maintained in the western corner of 277 Cargo Rd for a temporary on-site detention (OSD) basin and pump station. These engineering requirements are now likely to move further down the open space system so the additional open space is not required. It slightly extends the compact lot surrounded by the perimeter road but the block length does not exceed 130m.

277 Cargo Rd – Draft DCP Submission to Council

- c) **Temporary Emergency Access:** (Point 12 on Plan A501) An emergency access connection to Cargo Road is shown near the north-western corner of 277 Cargo Rd. We suggest this should be a 6m wide easement along the western edge of 277 Cargo Rd. It can also act as a temporary bushfire asset protection zone. Once connection to Bowman Avenue is achieved (as part of 4 Neals Lane) and bushfire is addressed, then this easement can be removed as there will be alternate emergency access. TfNSW is unlikely to be supportive of additional access points to Cargo Rd.
- 4) **4 Neals Lane:**
 - a) **Internal (Staging) Boundary:** (Point 2 on Plan A501) Please note that 4 Neals Lane will be broken into two (2) parcels with the land owner maintaining control of the narrow section connecting the lot to Neals Lane, the bushland adjacent to the railway corridor, the existing house and shed, and a 40m by 80m extension from the house lot as shown by the dotted RED line. This requires some adjustment for staged roads on or near that parcel, like that shown. If roads are shown across this parcel, we suggest they are shown in a different colour/line-type as 'future connections subject to owners' or similar so that owner does not assume a road will be forced upon them. This could be recognised on the Staging Plan if Council wishes but it is not critical.
 - b) **Hilltop Park:** Whilst road were shown around the entire perimeter of the hilltop park on 4 Neals Lane – we suggest that roads on at least two sides should be sufficient with a pedestrian/cycle connection on the 3rd side within the park.
 - c) **OSD Basin near Bowman Ave:** Our preliminary stormwater advice suggest an OSD basin in this location is unlikely to be needed. An OSD basin near the bushland at the railway line is an appropriate location for further testing.

3 DCP Principles/Text

- 5) **WSUD:** (Point 16 on Plan A501) We suggest that the DCP (D8/D10-12) contains conflicting information about WSUD requirements, some of which are not adopted strategies of Council. We suggest that as Council has recognised/adopted the S2S principles – that these are the only requirements that should be referenced. D11 should not refer to NorBE but should reference S2S principles.
- 6) **(Native) Vegetation:** Our initial discussions with Council suggest the ecological and visual benefits of the pine trees throughout the area are limited and they may be reaching end-of-life. Therefore, wherever there is reference to protection of vegetation (e.g. D6 – Street network & open space design), we suggest the word 'native' is placed in front of 'vegetation' or 'trees' to distinguish them from non-native pines, in case the community is confused.
- 7) **Battle-Axe Lots:** We are only proposing approximately two (2) battle-axe lots in the corner on 277 Cargo Rd closest to Witton Place. D33 (Lot size orientation & layout) might be amended to 'direct frontage and/or access to a public road' so these are not inconsistent. Acceptable if you wish to add that battle-axe lots should be minimised and less than 5% of lots created.
- 8) **Mid-Block Connections:** (D36 – Lot size orientation & layout) Whilst we agree that mid-block connections should break up longer blocks – we suggest 130m is a number that is not achieved by the original DCP Structure Plan. Perhaps amend this to a performance rather than a prescriptive control. The AMENDED Structure Plan largely achieves 130-200m.
- 9) **Control Numbering:** Several of the Objectives have the same numbering which makes referencing difficult. Perhaps run the Design Criteria (D) numbering continuously through the entire DCP so each reference does not also require the Objective (O) reference as well or switch to complex numbering.

277 Cargo Rd – Draft DCP Submission to Council

4 Conclusion

The above suggestions may require amendments not only to the Structure Plan but the other figures in the DCP.

We look forward to working with Council to finalise the DCP and to move towards lodgement of a DA for Subdivision on 277 Cargo Rd shortly.

Please contact me if you have any queries.

Regards

Date: 4 July 2025

Page | 4

Submission 2

From:
Sent: Thursday, 3 July 2025 10:10 AM
To: Orange City Council
Cc:
Subject: Formal Submission - F4125-22 – 277 Cargo Road – Draft Site-Specific Development Control Plan

Dear Council Planning Team,

We are writing to formally request an amendment to the Orange Development Control Plan to include our property at Orange within the Witton Place Candidate Area, currently associated with the planning proposal for 277 Cargo Road.

Our property the land at 277 Cargo Road, which has recently been approved for rezoning to R2 Low Density Residential under Planning Proposal PP-2023-9342. The Witton Place Candidate Area, as identified in the Orange Local Housing Strategy, encompasses both 277 Cargo Road and adjacent parcels, including ours. However, our land has not yet been incorporated into the current DCP framework guiding residential development in this precinct.

We intend to submit a Planning Proposal seeking residential zoning for our land, consistent with the strategic intent of the Witton Place Candidate Area. This will comply with section 10.4 of the Environmental Planning and Assessment Act 1979 to ensure alignment with Council's planning objectives and to facilitate orderly development, we respectfully request that the DCP be amended to:

Extend the Witton Place Candidate Area boundary to include

Apply the same Urban design concept, infrastructure planning, and minimum lot size provisions proposed for 277 Cargo Road.

Recognise the strategic merit of our site for residential development, given its proximity, access, and compatibility with surrounding land uses.

We believe this amendment will support Council's goals for housing supply, infrastructure efficiency, and cohesive neighbourhood planning. We welcome the opportunity to work collaboratively with Council staff and relevant authorities to ensure our proposal meets all environmental, infrastructure, and community considerations.

Thank you for considering our request. Please don't hesitate to contact us should you require further information or wish to discuss this matter in more detail.

Yours sincerely,



D25/85521

06 August 2025

DRAFT Notice of Adoption – Amendment to Orange Development Control Plan – Site-Specific Development Control Plan 277 Cargo Road

Council at its meeting held on Tuesday 5 August 2025 adopted a Site-Specific Development Control Plan for 277 Cargo Road (Lot A DP408148) that will become appended to DCP 07 Development in Residential Areas of the Orange Development Control Plan 2004.

The Plan will come into effect on the date of this notice, in accordance with Section 14(2) of the *Environmental Planning and Assessment Regulation 2021*.

RECORD NUMBER: 2025/1383
AUTHOR: Craig Mortell, Senior Planner

The site-specific Development Control Plan (DCP) for 274 Leeds Parade (**attachment 1**) was adopted at the Planning and Development Committee meeting on 2 April 2024. In accordance with Section 14(2) of the *Environmental Planning and Assessment Regulation 2021* the notice was not loaded onto Councils website of the adoption within 28 days requiring Council to re-adopt the DCP.

The draft site-specific DCP has been reformatted to align with Council's current DCP structure and updated to remove references to 264 Leeds Parade, which while rezoned, requires a redesign of the concept plan.



Figure 1 – 274 Leeds Parade site-specific Development Control Plan layout

The recommendation in this report relates to the Delivery/Operational Plan strategy “7.3 Plan for growth and development that balances liveability with valuing the local environment”.

2.7 Amendment to Orange Development Control Plan 2004 - Site-Specific Development Control Plan - 274 Leeds Parade

FINANCIAL IMPLICATIONS

Nil

POLICY AND GOVERNANCE IMPLICATIONS

Nil

RECOMMENDATION

- 1 That Council adopts the amendment Orange Development Control Plan 2004 and includes site-specific development controls relating to 274 Leeds Parade (Lot 211 DP 1177178) under chapter 7 of Orange Development Control Plan 2004. 2
- 2 That a notice be placed on Council's website of the adoption of the amendment to the Orange Development Control Plan 2004 in accordance with the Environmental Planning and Assessment Regulation 2021 within 28 days of adoption.

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 subject land at 274 Leeds Parade was identified in the Orange Local Housing Strategy as part of a candidate area suitable for future residential development. A planning proposal to rezone the land from B7 Business Park to R1 General Residential was submitted to Council and considered at the Planning and Development Committee meeting on 7 March 2023. The draft site-specific DCP related specifically to the northern portion of the candidate area and was supported on the basis that it aligned with strategic planning objectives to increase housing supply.

As part of the rezoning process, the site was designated an Urban Release Area under section 6.3 of the Orange Local Environmental Plan 2011, requiring the preparation and adoption of a site-specific Development Control Plan (DCP) before development can proceed. The site-specific DCP addresses the following matters:

Staging Plan:

The site pertains only to 274 Leeds Parade as a single stage. This aligns with Council's infrastructure and servicing plans.

Transport and Movement:

No additional access points are proposed to Leeds Parade. Access is proposed from Miriam Drive.

Landscaping Strategy:

A landscape buffer is proposed along the southern edge for amenity and water quality management. Further landscaping is proposed along Leeds Parade.

Recreation Network:

The proposal does not include open space. The site is in proximity to regional open space networks and cycleways within the broader residential precinct.

2.7 Amendment to Orange Development Control Plan 2004 - Site-Specific Development Control Plan - 274 Leeds Parade

Stormwater and Water Quality:

Stormwater flows are conceptually addressed to connect into the existing stormwater harvesting scheme nearby. The southern landscape area contributes to water quality outcomes.

Natural Hazards:

The site is confirmed to not be flood prone. The land is identified as bush fire prone land and will be required to address Planning for Bush Fire Protection 2019 in accordance with the Environmental Planning and Assessment Act 1979 at the Development Application stage.

Urban Design and Significant Sites:

The DCP provides for setbacks, landscaping, and access controls along Leeds Parade to manage the interface.

Higher Density and Commercial Uses:

Not proposed due to lack of supporting facilities.

Public Services and Facilities:

Not proposed as the site can access existing services.

The draft site-specific DCP was placed on exhibition concurrently with the Planning Proposal for a period of 28 days from 18 January 2024 to 16 February 2024.

2 submissions (**attachment 2**) were received in relation to the draft requesting the protection of the established trees along Miriam Drive. The draft site-specific DCP requires the protection of significant landscape features addressing the submissions received. Post exhibition, the draft site-specific DCP has been formatted to ensure consistency with DCP 2004 and the consultants' branding elements have been removed.

An administrative error now requires Council to re-adopt the draft site-specific Development Control Plan for 274 Leeds Parade to ensure compliance with Section 14(2) of the *Environmental Planning and Assessment Regulation 2021*. The draft notice of adoption (**attachment 3**) has been attached to this report.

ATTACHMENTS

- 1 Draft Development Control Plan - 274 Leeds Parade, D25/77084 [📄](#)
- 2 Submissions (redacted) - LEP Amendment 34 and Site Specific DCP - 274 Leeds Parade, D24/27476 [📄](#)
- 3 Draft Notice of Adoption - site-specific DCP 274 Leeds Parade, D25/85830 [📄](#)

7.17 DEVELOPMENT IN THE VICINITY OF LEEDS PARADE AND MIRIAM DRIVE

This chapter applies to land zoned R1 General Residential on the northern side of Miriam Drive and west of Leeds Parade.

The land is identified as 274 Leeds Parade lot 211 DP 1177178 as shown on DCP Map 19 – Leeds Parade/Miriam Drive.

The intention is to create a residential design outcome that respects development to Leeds Parade, co-ordinated grid street layout and consideration of urban concept design between land holdings to the north of Miriam Drive.

SUBDIVISION LAYOUT

A masterplan for the precinct is attached in Map 19. The defined road and allotment layout provides for an accessible and permeable network of streets, walkways and open spaces. The layout includes opportunities for detention basins to manage stormwater. The DCP also addresses visual and access treatment to Leeds Parade. The masterplan also provides for connectivity with surrounding lands to the north of 274 Leeds Parade.

PO 7.17-1 PLANNING OUTCOMES – SUBDIVISION LAYOUT

- 1 The subdivision layout is generally in accordance with the Conceptual Subdivision Layout (Map 19).
- 2 Subdivision design and construction complies with the Orange City Development and Subdivision Code.
- 3 Lots are oriented to maximise energy-efficiency principles. Where practicable, lots are rectangular rather than splay shaped and oriented to provide the long axis within the range N 20 degrees W to N 30 degrees E or E 20 degrees N to E 30 degrees S.
- 4 An achievable range of lot sizes are provided that provide for diversity in housing development and choice. A minimum lot size of 550m² overall.
- 5 Road widths are provided consistent with or greater than indicated on the masterplan.
- 6 Connectivity within the internal road network is consistent with the DCP Map.
- 7 Future road link connections to adjoining lands are provided for as indicated on the DCP Map.
- 8 Battleaxe lots have a minimum area of 650m², excluding the access handle. Access handles have a minimum width of 4.5m incorporating a 3m- wide

driveway.

- 9 Local collector roads connect to Leeds Parade generally at the locations shown on the Conceptual Subdivision Layout. Future road connections to adjoining land are located generally in accordance with the Conceptual Subdivision Layout.
- 10 Residential lots have direct frontage and access to a public road. Access is not available to Leeds Parade for adjoining lots.
- 11 On-site stormwater detention basins and drainage reserves are provided.
- 12 All utility services are provided to the proposed lots.
- 13 Significant landscape features are retained and disturbance to natural vegetation, landform and overland-flow paths is minimised.
- 14 Public open-space areas are sited in accordance with the Conceptual Subdivision Layout. Public open-space contains significant trees/tree groups, threatened species, populations, ecological communities or their habitats. Public open-space areas incorporate stormwater detention basins where required.
- 15 A 15m- wide landscape buffer with a vegetative height of 15-20m is provided adjacent to the rear western boundary of lots adjoining Leeds Parade.

WATER SENSITIVE URBAN DESIGN

The site comprises land at and above the headwaters of first order streams. First order streams are frequently vulnerable to erosion and scouring if significant additional volumes of overland flow are experienced. As such it is imperative that development of the overall site and individual lots within manage stormwater discharges appropriately.

PO 7.17-2 PLANNING OUTCOMES - WATER SENSITIVE URBAN DESIGN

- 1 Stormwater runoff from the precinct is managed through appropriate detention basins to manage volumes, quality and runoff speeds to pre-development levels.
- 2 Raingardens are incorporated into public open spaces to manage the runoff speeds and water quality.
- 3 Development of individual lots minimises impermeable surfaces to reduce the extent of runoff.
- 4 Development of individual lots includes raingardens to minimise discharge rates and improve water quality.

PEDESTRIAN & CYCLIST AMENITY

The masterplan illustrates a deformed grid layout that provides a high degree of permeability for motorists. This is augmented by the inclusion of midblock walkways on extended blocks. The walkways loosely align to provide for ease of movement without creating gun barrel rat runs.

Additionally street widths are sufficient to provide for footpaths and street trees that will provide for a village feel to the pedestrian experience.

Traffic calming speed humps on the principal internal road aligned with walkways will reduce potential conflicts between motorists and pedestrians and/or cyclists. A wide principal road allows space for cyclists on the road. Road locations further help to provide more direct travel routes for alternate modes of travel on footpaths and roadside cycling routes.

PO 7.17-3 PLANNING OUTCOMES - PEDESTRIAN AND CYCLIST AMENITY

- 1 Walkways be incorporated with road locations as indicated on the masterplan in Map 19.
- 2 Road design loosely aligns to provide a reasonably direct travel route across the precinct, connecting open spaces with the future student housing area further north.
- 3 Side and rear fencing that forms part of the perimeter of this master plan is encouraged to be made of timber or colorbond construction using a consistent style to other perimeter fencing in the area. Where factory pre-coloured metal fencing is used it must be of a light cream colour so as to blend with any timber fencing that will be visible from beyond the master plan area.

SOLAR ACCESS

The majority of lots indicated in the masterplan have been oriented north-south or east west or within a few degrees of such alignments. This configuration has natural benefits for passive solar design and ensures that private outdoor spaces receive a considerable amount of solar access.

PO 7.17-4 PLANNING OUTCOMES - SOLAR ACCESS

- 1 Lot layouts are consistent with the prevailing orientations indicated in the masterplan, i.e. predominately north-south or east-west, or within a few degrees of such, to maximise solar passive design options.
- 2 The majority of lots have a width to depth ratio of 1:1.6 or greater to ensure sufficient space behind primary dwellings for outdoor courtyard space with

good solar access.

3 Dual occupancy sites have a near square configuration and are located to the northern side of intersections to minimise the extent of overshadowing on neighbouring land.

PUBLIC SAFETY

Minimal use of cul-de-sacs, battle-axe lots and the adoption of modest street curvature helps to maximise passive surveillance of public spaces. Providing open road areas and minimal hidden walkways will deter antisocial use of these features. Open space landscaping needs to be designed to limit concealment opportunities while also providing pleasant visual relief. Placement of street trees is to be considered in relation to the placement of street lights to ensure appropriate night time illumination of footpaths.

PO 7.17-5 PLANNING OUTCOMES – PUBLIC SAFETY

- 1 Street trees and street lights are located clear of each other to ensure appropriate illumination of footways as well as roads
- 2 Open space area landscaping is configured to minimise concealment opportunities and maximise passive surveillance to discourage antisocial use of the area.
- 3 Traffic calming speed bumps are incorporated into the main internal road that align with walkways to ensure there are sufficient safe crossing points.

FENCING

Front fences and walls:

- assist in highlighting entrances and creating a sense of identity within the streetscape.
- are constructed of materials compatible with associated housing and with fences visible from the site that positively contribute to the streetscape.
- provide for facilities in the street frontage area such as mail boxes.

PO 7.17-5 PLANNING OUTCOMES – FENCING

- 1 Front fences and walls have a maximum height of 1.2 metres.
- 2 Front fences and walls are designed to use similar or compatible materials used in the locality to positively contribute to the streetscape.

ORANGE DEVELOPMENT CONTROL PLAN 2004

PAGE 7.42

3 Front fencing is integrated with a variety of plantings.

4 Colorbond, timber, masonry or similar solid fencing is not erected on Leeds Parade forward of the 15m front dwelling setback. (relates to lot 12 only).

5 Side fences on corner lots fronting a street:

- have a maximum height of 1.8 metres behind the front building line of the dwelling;
- use similar or compatible materials used in the locality to positively contribute to the streetscape.

ALLOTMENTS ADJACENT TO LEEDS PARADE

Allotment facing the eastern side of Leeds Parade will not have access to Leeds Parade.

As part of the subdivision, landscape treatment and fencing is to be constructed. A detailed landscape and fencing plan will be required with the development application for subdivision. Landscaping is to be placed in the shown open space buffer area with rear fencing not to include access gates.

Provide a visual landscape barrier between rear yards and Leeds Parade to achieve privacy.

Provide visual amenity when travelling along Leeds Parade.

Reduce the visual dominance of sheds in yards facing Leeds Parade in terms of width and height.

PO 7.17-6 PLANNING OUTCOMES – ALLOTMENTS FACING LEEDS PARADE

The location and design of backyard sheds is to be a minimum width of 7 metres with landscaping situated between the rear boundary and the shed.

A detailed landscape plan is required as part of an application for a shed or other outbuilding (studio, green house, BBQ structure etc).

Rear sheds are to be no higher than 3.5 metres ridge height and 2.5 metres wall height.

Dwellings on these lots will face an internal street with associated access from that internal street.

ORANGE DEVELOPMENT CONTROL PLAN 2004

PAGE 7.43

MAP 19 – LEEDS PARADE MIRIAM DRIVE



(Next page is Page 8.1)

Submission 1

From:
Sent: Sunday, 14 January 2024 9:53 PM
To: Orange City Council
Subject: RE: Development proposal 274 Leeds Parade, Orange

Director Development Service,
Orange City Council,
Orange, NSW 2800.

Att: Paul Johnston
RE: Development proposal 274 Leeds Parade, Orange

I will be a resident going to have an impact due to this development project. I understand the requirement to have more residential lands: but that should be done with minimum impact on the environment.

My main concern is how this project is going to save those nicely grown big trees along Miriam Drive. The nicely grown trees along the Miriam Drive provide significant landscape features within the Orange LGA as well as help to maintain the ecosystem. They reduce air pollution, provide food and shelter for wildlife, minimize erosion and maintain healthy soil, increase rainfall, and absorb sunlight as energy. , trees are an essential component of life on Earth.

Therefore, please take suitable steps to develop sustainably by protecting the nicely grown trees along the Miriam Drive.

Thank you for your understanding.

Kind regards,

Submission 2

From:
Sent: Sunday, 14 January 2024 9:47 PM
To: Orange City Council
Subject: RE:Amendment 34 to Orange Local Environmental Plan 2011 264 and 274 Leeds Parade, Orange

Paul Johnston,
Acting Director Development Service,
Orange City Council,
Orange, NSW 2800.

Dear Paul,
RE: Amendment 34 to Orange Local Environmental Plan 2011 264 and 274 Leeds Parade, Orange

I received your letter dated 8/12/2023 (D23/102170 F3823-9). As a resident (who will be in) going to be affected by this proposed development project, I don't have any objection to the proposed project as long as the larger grown trees (along the Mirriam Drive) are not going to be removed.

As you know, trees provide oxygen and limit carbon in the atmosphere. It is well known that trees act as carbon sinks, taking in carbon dioxide from the air during photosynthesis and releasing the oxygen that humans breathe. While trees use carbon dioxide to make their food, they need oxygen (much like humans do) to process that food into energy. They reduce air pollution, provide food and shelter for wildlife, minimize erosion and maintain healthy soil, increase rainfall, and absorb sunlight as energy.

I strongly believe that the council will take necessary steps to protect those trees (along the Mirriam Drive) working with the developer as a leader in protecting the natural environment around Orange.

Thank you.

Yours truly,



D25/58380

06 Tuesday 2025

DRAFT Notice of Adoption – Amendment to Orange Development Control Plan – Site-Specific Development Control Plan – 274 Leeds Parade

Council at its meeting held on Tuesday 5 August 2025 adopted a site-specific Development Control Plan for 274 Leeds Parade that will become appended to DCP 07 Development in Residential Areas of the Orange Development Control Plan 2004.

The Plan will come into effect on the date as the date of this notice, in accordance with Section 14(2) of the *Environmental Planning and Assessment Regulation 2021*.

2.8 PLANNING PROPOSAL - RURAL LAND BOUNDARY ADJUSTMENT CLAUSE

RECORD NUMBER: 2025/1263

AUTHOR: Craig Mortell, Senior Planner

EXECUTIVE SUMMARY

Council regularly receives enquiries from rural and environmental landowners seeking to realign lot boundaries for practical, sensible reasons (e.g. aligning with natural features, correcting historic errors, improving access). However, Orange LEP 2011 currently provides no mechanism for these adjustments unless they meet a vague and subjective “minor change” test under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

This local policy gap:

- Creates unnecessary stress and uncertainty for landowners.
- Consumes significant staff time due to lack of clear guidance or standards.
- Exposes Council to allegations of inconsistency, bias, favouritism or ad-hoc decision making when decisions differ from case to case.
- Fails to recognise circumstances where realignments deliver environmental or agricultural benefits without fragmenting rural land.

A framework is needed to provide clarity, fairness and consistency, while upholding the strategic goals of protecting productive rural land and avoiding inappropriate subdivision.

Staff have prepared a Planning Proposal and supporting Development Control Plan (DCP) amendments that would introduce a formal mechanism for assessing and approving genuine rural lot boundary adjustments, bringing Orange in line with regional best practice. It is anticipated that Council staff, following Council authorisation and receipt of a gateway determination from the Department, place the amendment to the LEP and the draft DCP on public exhibition concurrently. The exhibition period would extend for 28 days.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan Strategy “7.3 Plan for growth and development that balances liveability with valuing the local environment”.

FINANCIAL IMPLICATIONS

Nil

POLICY AND GOVERNANCE IMPLICATIONS

Nil

RECOMMENDATION

That Council resolves to:

- 1 Support the preparation and submission of a Planning Proposal to insert new Clause 4.2D into the Orange LEP 2011 (as outlined).**
- 2 Authorise the CEO (or delegate) to address any Gateway conditions and progress the matter without further reporting until post-exhibition.**
- 3 Prepare and concurrently exhibit a draft DCP amendment to support the implementation of the new clause.**

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**Background**

Council staff currently operate without clear policy support when responding to enquiries for boundary adjustments in rural areas. The lack of defined parameters or processes leads to delays, risks inconsistency, and erodes confidence in Council's decision-making. Formalising a pathway for genuine realignments will streamline administration and reduce reputational risk.

The current development control framework for this is provided by Orange Local Environmental Plan (LEP) 2011, Orange Development Control Plan (DCP) 2004 and Subdivision 38 of the NSW General Exempt Development Code. The LEP establishes minimum subdivision lot size standards for land located within rural and conservation zones (Clause 4.1), along with other provisions governing the circumstances in which the subdivision of land may be undertaken with development consent.

The Orange DCP 2004 prescribes development controls relevant to the subdivision of land within rural and conservation zones, including the setting of minimum separation distances and buffers to be maintained between residential and agricultural land uses.

The NSW General Exempt Development Code establishes the circumstances in which the subdivision of land (including "a realignment of boundaries") may be undertaken without the requirement for development consent (ie, as "exempt development").

The issue is pertinent for three reasons:

1. Unlike LEPs for comparable LGAs (eg, Bathurst Regional, Blayney Shire, Cabonne Shire, Cowra Shire, Forbes Shire and Mid-Western Regional LGAs), the Orange LEP 2011 does not contain a clause that permits, subject to a development consent, "lot boundary adjustments" for land located within rural or conservation zones where this is otherwise prohibited due to a non-compliance with the LEP's minimum subdivision lot size standard.

At the same time, the LEP's minimum subdivision lot size standard and other subdivision controls operate in such a way as to make it impossible to deal with lot boundary realignments via a development consent in many circumstances.

2.8 Planning Proposal - Rural Land Boundary Adjustment Clause

This means that, regardless of the planning merits involved, the undertaking of a lot boundary realignment is prohibited in a significant number of cases, unless it can be shown to qualify as exempt development under the NSW General Exempt Development Code.

2. The criteria for determining what qualifies as exempt development for the purposes of a lot boundary realignment under the NSW General Exempt Development Code is subjective and untied to any numerical standard or yardstick.

It should be noted that even though such development may be “exempt” from the need to obtain development consent, Council is the sole body authorised to issue a Subdivision Certificate within the City of Orange LGA and therefore functions as a *de facto* consent authority for lot boundary realignments undertaken under the Code.

3. While dealing with the subdivision of land in general, the Orange DCP 2004’s existing subdivision controls do not provide any specific design criteria to guide lot boundary realignments within rural and conservation zones.

At the same time, existing controls that are likely to be relevant to many lot boundary realignments within these zones - particularly those that relate to the setting of minimum separation distances and buffers between agricultural and residential land uses - may need to be updated to ensure their consistency with contemporary benchmarks and industry guidelines.

The following discussion provides the background and rationale for the recommended amendments to Orange Local Environmental Plan (LEP) 2011 and the accompanying Development Control Plan (DCP) to permit rural and conservation zone boundary adjustments. More detailed analysis is provided in the draft Planning Proposal itself which is attached for Council’s information.

Current Policy and Issues

Orange LEP 2011 sets a strict minimum subdivision lot size of 100 hectares for most rural (RU1) and environmental management (C3) zones. Unlike neighbouring councils (e.g., Bathurst, Blayney, Cabonne), Orange LEP lacks a specific clause allowing lot boundary adjustments below these minimum sizes, even when no additional lots or dwellings result.

Consequently, landowners seeking minor boundary adjustments currently face significant hurdles. They must either:

- Demonstrate compliance with subjective "minor change" criteria under NSW's General Exempt Development Code (Subdivision 38, Clause 2.75).
- Apply for an exemption under Clause 4.6 of the LEP, which rarely applies due to stringent size thresholds (minimum resulting lot of 90 hectares).

The absence of clear local guidelines creates:

- Frequent, time-consuming enquiries to Council staff.
- A lack of consistent decision-making standards.
- Increased risk of claims of bias or favouritism.
- Legal and operational uncertainty.

Importance of Boundary Adjustments

Lot boundary realignments involve altering property boundaries without creating additional parcels or dwelling entitlements. Common reasons landowners may seek boundary adjustments include:

- Aligning boundaries with natural features (watercourses, roads).
- Ensuring legal and physical access to public roads.
- Correcting historical survey inaccuracies.
- Enhancing agricultural productivity by better aligning resource access.
- Rectifying encroachments.

Such adjustments generally represent low-risk, practical improvements benefiting land management, agricultural productivity, and environmental outcomes.

Regional Consistency

A comparative analysis shows that 55 non-metropolitan and outer metropolitan NSW Councils currently include boundary adjustment clauses in their LEPs. Neighbouring Councils (Cabonne, Blayney, Bathurst) already permit adjustments, providing flexibility absent in the Orange LEP.

Legal Context and Case Law

Several NSW Land and Environment Court cases have clarified the legal understanding of boundary adjustments:

- The resultant lots must bear reasonable resemblance to original lots.
- Adjustments must avoid substantial changes to lot configurations.
- Boundary adjustments must not create new subdivision potential.

These legal principles have informed the drafting of a new clause to ensure compliance with established case law and prevent unintended subdivision outcomes.

Proposed Amendments**LEP Amendment**

The proposal introduces a new Clause 4.2D allowing boundary adjustments in RU1, C2, C3, and C4 zones with consent, provided:

- No new lots or dwelling opportunities arise.
- Agricultural viability and land use compatibility are maintained.
- Adjustments demonstrate alignment with existing landforms and uses.

DCP Amendment

The DCP amendment provides essential criteria to operationalize the new LEP clause, including:

- A numeric sliding-scale definition for "minor change" thresholds, guiding exempt developments.
- Clarified criteria for rectifying encroachments.
- Updated buffer and separation distances between agricultural and non-agricultural uses to reflect contemporary NSW Department of Primary Industries guidelines, enhancing rural productivity and minimizing conflict.

Operational Benefits

The proposed changes to the LEP and DCP will have the following benefits:

- Reduce Council staff administrative burden by providing clear assessment criteria.
- Enhance transparency, fairness, and consistency in decision-making.
- Protect Council from potential litigation or claims of favouritism.
- Support landowners with legitimate and beneficial realignment proposals.

Community and Stakeholder Impact

The recommended amendments offer considerable community benefits by:

- Providing clarity for landowners and developers.
- Safeguarding rural and environmental zones from inappropriate subdivision.
- Improving environmental outcomes through better alignment of boundaries with ecological and topographical features.

Conclusion

Introducing specific lot boundary adjustment clauses and supporting criteria into Orange LEP 2011 and DCP addresses significant current policy gaps. It aligns Orange's planning approach with regional standards and case law, ensuring a robust, fair, and practical framework for rural boundary adjustments.

ATTACHMENTS

- 1 Planning Proposal - Rural Lot Boundary Adjustment Clause, D25/88313 [↓](#)
- 2 Planning Proposal - Appendix A - Case Law Summary, D25/88040 [↓](#)
- 3 Planning Proposal - Appendix B - Summary of controls by other Councils, D25/88046 [↓](#)
- 4 Planning Proposal - Appendix C - Draft Orange LEP Clause, D25/88048 [↓](#)
- 5 Planning Proposal - Appendix D - Proposed supporting changes to Orange DCP 2004, D25/88054 [↓](#)
- 6 FAQs, D25/71108 [↓](#)

Draft Clause for Orange Local Environmental Plan 2011

4.E Boundary adjustments in certain rural and conservation zones

- (1) The objective of this clause is to facilitate boundary adjustments between lots where 1 or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land but the objectives of the relevant zone can be achieved. This clause applies to land in any of the following zones—
 - (a) Zone RU1 Primary Production,
 - (b) Zone C3 Environmental Management
- (2) Despite clause 4.1(3), development consent may be granted to the subdivision of 2 or more adjoining lots to which this clause applies, if the subdivision will not result in—
 - (a) an increase in the number of lots, and
 - (b) an increase in the number of dwellings on, or dwellings that may be erected on, any of the lots.
- (3) Before determining a development application for the subdivision of land under this clause, the consent authority must consider the following—
 - (a) the existing uses and approved uses of other land in the vicinity of the subdivision,
 - (b) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
 - (c) whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),
 - (d) whether or not the subdivision is likely to be incompatible with a use on land in any adjoining zone,
 - (e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),
 - (f) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land, and
 - (g) whether or not the subdivision is likely to have an adverse impact on the environmental values, heritage vistas or landscapes or agricultural viability of the land.
- (4) This clause does not apply—
 - (a) in relation to the subdivision of individual lots in a strata plan or a community title scheme, or
 - (b) if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.

Example clauses from other Councils

Cabonne Local Environmental Plan 2012

4.2B Boundary adjustments in certain rural zones

- (1) The objective of this clause is to facilitate boundary adjustments between lots where 1 or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land but the objectives of the relevant zone can be achieved.
- (2) This clause applies to land in any of the following zones—
 - (a) Zone RU1 Primary Production,

(b) Zone RU2 Rural Landscape.

- (3) Despite clause 4.1, development consent may be granted to subdivide land by way of a boundary adjustment between adjoining lots where 1 or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that—
- (a) the subdivision will not create additional lots or the opportunity for additional dwellings, and
 - (b) the number of dwellings or opportunities for dwellings on each lot after the subdivision will be the same as before the subdivision, and
 - (c) the potential for land use conflict will not be increased as a result of the subdivision, and
 - (d) the agricultural viability of the land will not be adversely affected as a result of the subdivision.

Blayney Local Environmental Plan 2012

4.2B Boundary adjustments between lots in certain rural zones

- (1) The objective of this clause is to facilitate boundary adjustments between lots where one or more resultant lots do not meet the minimum lot size but the objectives of the relevant zone can be achieved.
- (2) This clause applies to land in the following zones—
- (a) Zone RU1 Primary Production,
 - (b) Zone RU2 Rural Landscape.
- (3) Despite clause 4.1, development consent may be granted to subdivide land by way of a boundary adjustment between adjoining lots where one or more resulting lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land, if the consent authority is satisfied that—
- (a) the subdivision will not create additional lots or the opportunity for additional dwellings, and
 - (b) the number of dwellings or opportunities for dwellings on each lot after the subdivision will remain the same as before the subdivision, and
 - (c) the potential for land use conflict will not be increased as a result of the subdivision, and
 - (d) the subdivision will not have a significant adverse effect on the agricultural viability of the land.

Coffs Harbour LEP 2013

4.2D Boundary adjustments of land in certain rural, residential and environment protection zones

- (1) The objective of this clause is to facilitate boundary adjustments between lots if one or more lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land and the objectives of the relevant zone can be achieved.
- (2) This clause applies to land in the following zones—
- (a) Zone RU2 Rural Landscape,
 - (b) Zone R5 Large Lot Residential,
 - (c) Zone E2 Environmental Conservation.
- (3) Despite clause 4.1, development consent may be granted to subdivide land by adjusting the boundary between adjoining lots if one or more lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land, and the consent authority is satisfied that—
- (a) the subdivision will not create additional lots or the opportunity for additional dwellings, and
 - (b) the number of dwellings or opportunities for dwellings on each lot after the subdivision will be the same as before the subdivision, and
 - (c) the potential for land use conflict will not be increased as a result of the subdivision, and
 - (d) if the land is in Zone RU2 Rural Landscape, the agricultural viability of the land will not be adversely affected as a result of the subdivision.

Before granting consent to development to which this clause applies the consent authority must be satisfied that the subdivision will not compromise the continued protection and long-term maintenance of any land in Zone E2 Environmental Conservation.

Bathurst Regional LEP 2014

4.2D Boundary changes between lots in certain rural and environment protection zones

- (5) The objective of this clause is to permit the boundary between 2 lots to be altered in certain circumstances to give landowners a greater opportunity to achieve the objectives of a zone.
- (6) This clause applies to land in any of the following zones—
 - (c) Zone RU1 Primary Production,
 - (d) Zone RU2 Rural Landscape,
 - (e) Zone RU3 Forestry,
 - (f) Zone RU4 Primary Production Small Lots,
 - (g) Zone E1 National Parks and Nature Reserves,
 - (h) Zone E2 Environmental Conservation.
- (7) Despite clause 4.1(3), development consent may be granted to the subdivision of 2 or more adjoining lots to which this clause applies, if the subdivision will not result in—
 - (a) an increase in the number of lots, and
 - (b) an increase in the number of dwellings on, or dwellings that may be erected on, any of the lots.
- (8) Before determining a development application for the subdivision of land under this clause, the consent authority must consider the following—
 - (h) the existing uses and approved uses of other land in the vicinity of the subdivision,
 - (i) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
 - (j) whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),
 - (k) whether or not the subdivision is likely to be incompatible with a use on land in any adjoining zone,
 - (l) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),
 - (m) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land, and
 - (n) whether or not the subdivision is likely to have an adverse impact on the environmental values, heritage vistas or landscapes or agricultural viability of the land.
- (9) This clause does not apply—
 - (c) in relation to the subdivision of individual lots in a strata plan or a community title scheme, or if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.

Appendix A Case Law Summary

Key cases related to boundary adjustments are *Ousley Pty Ltd v Warringah Shire Council* (1999) NSWLEC 143, *McCabe & Others v Blue Mountains City Council* (2006) NSWLEC 176, *Barnes v Dungog Shire Council* (2012) NSWLEC 1021 and *Johnson v Coffs Harbour City Council* (2018) NSWLEC 1094.

Key determinations resulting from these cases are:

1. In *Ousley Pty Ltd v Warringah Shire Council* (1999) NSWLEC 143, Talbot J found that the “adjustment” to a lot boundary sought in that case “must be construed as being a re-arrangement of a boundary so that no significant changes are made to the configuration of any existing allotments”. Talbot J also found that:

The extent of any changes must pay respect to the existing subdivision design and fit the prescription of an adjustment to a boundary between allotments so that the resulting parcels of land bear some resemblance to the lots which existed before the subdivision.

2. In *McCabe & Others v Blue Mountains City Council* (2006) NSWLEC 176, Jagot J considered the scope of the Blue Mountains LEP 1991’s provision for development consent to be granted for the subdivision of land if “it is for a boundary adjustment where no additional lots are created”. In that case, Jagot found that the “ordinary and grammatical meaning” of the phrase “lot boundary adjustment” does not embrace “any and all alterations of a boundary that make land suitable for an applicant’s requirements”. Jagot J found that in reaching this conclusion, “questions of [both] fact and degree are involved”. Jagot J agreed with Talbot J’s finding that “the resulting parcels of land [must] bear some resemblance to the lots which existed before the subdivision”. Jagot J dismissed the applicant’s appeal after finding (among other things) that:

The plan shows that the overall configuration of the proposed lots bears no resemblance to that of the existing lots. The new boundary between [the] proposed lots has no relationship to the existing boundary.

3. The principles established above are also applied in *Barnes v Dungog Shire Council* (2012) NSWLEC 1021. In dismissing the applicant’s appeal in that case, Commissioner Tuor found that:

The overall configuration of the proposed lots bears no resemblance to the existing lots. The new boundary between the proposed lots has no relationship to the existing boundary There will be a real physical change in conditions as the proposed Lot 41 will have sole frontage to Chichester River, thereby extinguishing the riparian right currently afforded to existing Lot 4 The subdivision is not for the purpose of a ‘boundary adjustment’ but the proposed development may accurately be described as the consolidation of [the original lots], and the subsequent subdivision of the consolidated lot into two lots.

4. In *Johnson v Coffs Harbour City Council* (2018) NSWLEC 1094, the findings of Commissioner Gray closely correlate with the principles established in the cases cited above. This matter revolved around the applicability of a lot boundary adjustment clause (Clause 4D) in the Coffs Harbour LEP 2013 which enables lot boundary adjustments to be undertaken with consent in certain rural and conservation zones where the subdivision of land would otherwise be prohibited due to non-compliance with the LEP's minimum subdivision lot size standard. The version of Clause 4D considered at the time of the case is almost identical to the lot boundary clauses currently included in the Blayney LEP 2012 and Cabonne LEP 2012. The clause is reproduced below.

Coffs Harbour LEP 2013

4.2D Boundary adjustments of land in certain rural, residential and environment protection zones

- (1) The objective of this clause is to facilitate boundary adjustments between lots if one or more lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land and the objectives of the relevant zone can be achieved.
- (2) This clause applies to land in the following zones -
 - (a) Zone RU2 Rural Landscape,
 - (b) Zone R5 Large Lot Residential,
 - (c) Zone E2 Environmental Conservation.
- (3) Despite Clause 4.1, development consent may be granted to subdivide land by adjusting the boundary between adjoining lots if one or more lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land, and the consent authority is satisfied that -
 - (a) the subdivision will not create additional lots or the opportunity for additional dwellings, and
 - (b) the number of dwellings or opportunities for dwellings on each lot after the subdivision will be the same as before the subdivision, and
 - (c) the potential for land use conflict will not be increased as a result of the subdivision, and
 - (d) if the land is in Zone RU2 Rural Landscape, the agricultural viability of the land will not be adversely affected as a result of the subdivision.
- (4) Before granting consent to development to which this clause applies the consent authority must be satisfied that the subdivision will not compromise the continued protection and long-term maintenance of any land in Zone E2 Environmental Conservation.

In the case, Commissioner Gray found that:

The present application is consistent with the notion of an ***alteration of a boundary*** to reflect the physical features of the land, as the current configuration of the lots bears no resemblance to the physical features of the land.

Similarly, it renders the use more feasible or practical by aligning the historical use, or planning units, with the proposed configuration. In favour of its planning merits, it results in a better pattern of subdivision across the site and a lot size consistent with the neighbouring lot sizes (*emphasis added*).

While this finding explicitly acknowledges the broad planning merits attached to the proposal, it does at the same time imply that Commissioner Gray does not in this instance consider an “alteration of a boundary” to necessarily be the same thing as a “lot boundary adjustment” as permitted under the LEP’s lot boundary adjustment clause. This is reflected in the commissioner’s finding that:

However, in considering the degree of the alteration required to achieve this alignment, it is in my view out of scope of a subdivision “by adjusting the boundary”, for three reasons. The first is that the change to the boundary is so significant that I do not accept it can be considered “adjusting” In the context of the site as a whole, that degree of alteration to the boundaries of Lot 200 is so substantial that it cannot be considered to fall within the ordinary meaning of “adjusting” the boundary.

The second reason is that the resulting lots do not bear sufficient resemblance to the lots currently in existence Accordingly, I accept that the description of the proposal is more akin to a consolidation of the two lots and subsequent subdivision.

The third reason is that the size of Lot 200 is increased through the proposal so significantly that it is more than simply a slight or marginal adjustment to boundaries. Lot 200 would go from comprising 6.6% of the total site area to 50% of the total site area.

(a) Summary of implications

The court judgements referred to above specify the limits currently established in NSW case law around just what a lot boundary realignment does and does not entail when it is to be considered in the context of a “lot boundary adjustment” clause in an LEP. The cases are also useful in that they (albeit only incidentally) appear to establish a broad principle that, for a given “realignment of lot boundaries” to qualify as exempt development under the NSW General Exempt Development Code, it also needs to meet the basic tests established in these judgements.

A key consideration in both cases, and one that recurs throughout the judgements reviewed above, is whether a given proposal may reasonably be characterised as a simple “lot boundary adjustment” on the one hand, or is more akin to the more elaborate consolidation of existing lots and the subsequent re-subdivision of this new (consolidated) lot on the other. Taken together, the judgements cited above imply the following implications:

1. Not all proposals to change (ie, “alter” or “realign”) a lot boundary will automatically qualify as a “lot boundary adjustment”, even if the proposal satisfies LEP requirements to avoid creating additional lots or dwelling entitlements.

2. Determination of whether a given subdivision equates to a “lot boundary adjustment” (as opposed to an alteration of lot boundaries or some other form of subdivision) is not automatically tied to its overall planning merits or to the benefits it may confer on the landowners. While such merits and benefits may well stem from a proposal, they are not in and of themselves determinants of whether the proposal qualifies as a “lot boundary adjustment” in the legally recognised sense of the phrase.
3. In order to qualify as a lot boundary adjustment, and regardless of its other merits or degree of compliance with applicable planning controls, a given subdivision must demonstrate that:
 - (i) The resulting subdivision pattern will bear “*some resemblance*” to the original subdivision pattern, and
 - (ii) The resulting lot boundary alignment will demonstrate a “*relationship*” to the original boundary alignment.
4. In considering whether a given proposal meets these requirements, the *degree of change* (in both quantitative and qualitative terms) is relevant. While there are no codified criteria for determining this, the judgements referred to above indicate that the following matters are relevant:
 - (i) Whether the proposal entails “a real physical change in conditions”, such as closing off or opening access to a natural resource or road frontage,
 - (ii) The magnitude of change in the linear extent of the resulting lot boundaries when compared to the original boundaries, and
 - (iii) The magnitude of change in the area of each resulting lot when compared to the original lots.

In crude terms, and outside the specific requirements of any lot boundary adjustment clause to be included in the Orange LEP 2011, the basic test that these judgements collectively establish is whether the proposed boundary realignment retains the same basic configuration and characteristics of the original lots, or instead alters these to the degree that the work is better characterised as the creation of a distinctly new lot configuration with lots expressing distinctly new functional and physical characteristics. It is this basic test that should inform any additional development controls that may need to be included in an updated or revised Orange DCP 2004 should these be deemed to be required (see Section 8 below).

In the absence of any codes or guidelines to the contrary, it is considered appropriate to apply this same test to the question of whether a given lot boundary realignment qualifies as exempt development under the NSW General Exempt Development Code. Development control criteria recommended to be considered as part of the current comprehensive review of the Orange DCP 2004 in this regard are described in the Orange DCP 2004 Requirements section.

Appendix B Non-Metropolitan and Outer Metropolitan Boundary Adjustment Clauses

LEP		Clause	
1	Armidale LEP 2012	4.1E	Exceptions to minimum subdivision lot size for boundary adjustments
2	Ballina LEP 2012	4.2B	Exceptions to minimum subdivision lot size for boundary adjustments
3	Bathurst Regional LEP 2014	4.2D	Boundary changes between lots in certain rural and environmental protection zones
4	Bega Valley LEP 2013	4.2E	Exceptions to minimum subdivision lot size for boundary adjustments
5	Bellingen LEP 2010	4.1AB	Boundary changes between lots in certain rural, residential, environmental protection and waterways zones
6	Blayney LEP 2012	4.2B	Boundary adjustments between lots in certain rural zones
7	Byron LEP 2014	4.1C	Minimum subdivision lot size for boundary adjustments in certain rural and residential zones
8	Cabonne LEP 2012	4.2B	Boundary adjustments in certain rural zones
9	Cessnock LEP 2011	4.2C	Boundary adjustments in certain rural and environmental protection zones
10	Clarence Valley LEP 2011	4.1B	Boundary adjustments between lots in certain rural, residential and environmental protection zones
11	Coffs Harbour LEP 2013	4.2D	Boundary adjustments of land in certain rural, residential and environmental protection zones
12	Cootamundra LEP 2013	4.2B	Boundary changes between lots in certain rural and environmental protection zones
13	Cowra LEP 2012	4.1D	Boundary changes between lots in certain rural, residential and environmental protection zones
14	Deniliquin LEP 2013	4.2D	Boundary changes between lots in certain rural, residential and environmental protection zones
15	Dungog LEP 2014	4.1B	Exceptions to minimum subdivision lot size for lot boundary adjustments in Zone RU1
16	Eurobodalla LEP 2012	4.2C	Boundary changes between lots in certain rural and environmental protection zones
17	Forbes LEP 2013	4.2E	Boundary adjustments in certain rural zones
18	Glen Innes LEP 2012	4.1C	Boundary changes between lots in Zone RU1
19	Gloucester LEP 2010	4.1A	Boundary adjustments between lots in Zones RU1 and C3
20	Gosford LEP 2014	4.2B	Boundary adjustments in certain rural and environmental protection zones
21	Goulburn Mulwaree LEP 2009	4.1D	Boundary adjustments in certain rural and environmental protection zones
22	Great Lakes LEP 2014	4.1C	Exceptions to minimum subdivision lot size for boundary adjustments
23	Greater Taree LEP 2010	4.1D	Exceptions to minimum subdivision lot size for boundary adjustments
24	Griffith LEP 2014	4.2G	Boundary adjustments in certain rural and environmental protection zones
25	Gunnedah LEP 2012	4.2C	Boundary changes between lots in Zones RU1 and E3
26	Guyra LEP 2012	4.2C	Boundary adjustments in Zone RU1
27	Hawkesbury LEP 2012	4.1H	Boundary changes between lots in certain rural, residential and environmental protection zones
28	Inverell LEP 2012	4.1E	Boundary changes between lots in Zone RU1
29	Kempsey LEP 2013	4.2C	Boundary changes between lots in certain rural, residential and environmental protection zones

LEP		Clause	
30	Lake Macquarie LEP 2014	4.2C	Boundary adjustments in certain rural and environmental protection zones
31	Lismore LEP 2012	4.2D	Boundary adjustments of land in certain rural, residential and environmental protection zones
32	Liverpool LEP 2008	4.2A	Boundary changes between lots in certain rural, residential and environmental protection zones
33	Liverpool Plains 2012	4.1C	Boundary adjustments in certain rural, residential and environmental protection zones
34	Mid-Western Regional LEP 2012	4.2C	Boundary changes for farm adjustments
35	Murray LEP 2011	4.2D	Boundary adjustments in Zones RU1 and C3
36	Nambucca LEP 2010	4.1C	Boundary changes between lots in certain rural, residential and environmental protection zones
37	Narrabri LEP 2012	4.1C	Boundary adjustments of land in certain zones
38	Narromine LEP 2011	4.2E	Boundary adjustments in certain rural and environmental protection zones
39	Oberon LEP 2013	4.2C	Boundary changes between lots in certain rural, residential and environmental protection zones
40	Port Macquarie-Hastings LEP 2011	4.2C	Boundary adjustments of land in certain rural, residential and environmental protection zones
41	Port Stephens LEP 2013	4.1E	Boundary adjustments of land in certain rural, residential and environmental protection zones
42	Richmond Valley LEP 2012	4.2C	Exceptions to minimum subdivision lot size for boundary adjustments
43	Shoalhaven LEP 2014	4.1G	Minimum subdivision lot size for boundary adjustments
44	Snowy River LEP 2013	4.2E	Boundary changes between lots in certain rural and environmental protection zones
45	Tamworth Regional LEP 2010	4.2D	Boundary changes between lots in certain rural zones
46	Tenterfield LEP 2013	4.2F	Exceptions to minimum subdivision lot size for boundary adjustments
47	Tumut LEP 2012	4.2C	Boundary adjustments of land in certain zones
48	Upper Hunter LEP 2013	4.1D	Boundary changes between lots in certain rural, residential and environmental protection zones
49	Uralla LEP 2012	4.2C	Boundary changes between lots in certain rural, residential and environmental protection zones
50	Wagga Wagga LEP 2010	4.6A	Boundary changes between lots in certain rural and environmental protection zones
51	Walcha LEP 2012	4.2D	Boundary adjustments in certain rural zones
52	Weddin LEP 2011	4.1A	Boundary changes between lots in certain rural zones
53	Wingecarribee LEP 2010	4.2B	Boundary changes between lots in certain rural, residential and environmental protection zones
54	Wollondilly LEP 2011	4.2B	Boundary adjustments of land in certain rural, residential and environmental protection zones
55	Wyong LEP 2013	4.2C	Boundary adjustments in certain rural and environmental protection zones

Appendix C Draft Clause 4.2D of Orange LEP 2011*Orange Local Environmental Plan 2011***4.2D Boundary adjustments between lots in certain rural and conservation zones**

- (1) The objective of this clause is to facilitate boundary adjustments between lots where 1 or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land but the objectives of the relevant zone can be achieved.
- (2) This clause applies to land in any of the following zones—
 - (a) Zone RU1 Primary Production,
 - (b) Zone C3 Environmental Management.
- (3) Despite clause 4.1, development consent may be granted to subdivide land by way of a boundary adjustment between adjoining lots where 1 or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that—
 - (a) the subdivision will not create additional lots or the opportunity for additional dwellings, and
 - (b) the number of dwellings or opportunities for dwellings on each lot after the subdivision will be the same as before the subdivision, and
 - (c) the potential for land use conflict will not be increased as a result of the subdivision, and
 - (d) the agricultural viability of the land will not be adversely affected as a result of the subdivision.
- (4) Before determining a development application for the subdivision of land under this clause, the consent authority must consider the following—
 - (a) the existing uses and approved uses of other land in the vicinity of the subdivision,
 - (b) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
 - (c) whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),
 - (d) whether or not the subdivision is likely to be incompatible with a use on land in any adjoining zone,
 - (e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),
 - (f) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land, and
 - (g) whether or not the subdivision is likely to have an adverse impact on the environmental values, heritage vistas or landscapes or agricultural viability of the land.
- (5) This clause does not apply—
 - (a) in relation to the subdivision of individual lots in a strata plan or a community title scheme, or
 - (b) if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.

Appendix D - Proposed Amendment to Orange Development Control Plan 2004

In Chapter 6: Rural Development

Control	Relevant Provisions	Application
PO 6.1-1	Planning Outcomes for Rural House Sites <ol style="list-style-type: none"> House sites are located in a manner that does not inhibit normal farming practice either on the land or on land in the vicinity, in order to minimise potential agricultural/residential conflicts. Houses are oriented in a manner that optimises solar orientation and provides protection from prevailing winter winds. General farming lots and associated location of dwelling houses should be undertaken in a manner that optimises the potential for economic use of the most productive land. Houses are located to facilitate access to a public road and power supply. House sites are located outside water-supply catchment areas. 	Zones RU1 and C3
PO 6.2-1	Planning Outcomes for 40 ha+ Subdivisions <ol style="list-style-type: none"> Lot size and shape maximise the agricultural potential of the land. Development applications demonstrate how the lot configuration provides for the sustainable use of the land as a resource. Development applications demonstrate that an environmental benefit is derived from the subdivision (such as conservation of remnant vegetation, soil conservation and enhancement of waterways). Works associated with environmental conservation as outlined in the Farm Plan are implemented prior to issuing a subdivision certificate. Suitable house sites are identified with adequate separation from agriculture or other primary industries. House sites are identified that are suitable for on-site sewage disposal and removed from creeks, drainage depressions and flow lines. Development applications demonstrate that a house site or sites are suitable for building and on-site sewage management systems are free from contamination. Appropriate access to a public road is provided. 	Zones RU1 and C3
PO 6.3-1	Planning Outcomes for 16-40 ha Horticulture Subdivisions <ol style="list-style-type: none"> The land is used either for an existing horticultural/viticultural enterprise or arrangements have been made to the satisfaction of the Council to provide for the establishment of such an enterprise. The development promotes sustainable agriculture. The works have been carried out on vacant land in accordance with the approved Farm Plan prior to the erection of any dwelling house. Applications provide information demonstrating, to the satisfaction of Council, that the land is capable of sustaining horticulture or viticulture in accordance with a professionally prepared Farm Plan. 	Zones RU1 and C3

Control	Relevant Provisions	Application
	<ol style="list-style-type: none"> Applications identify suitable house sites with adequate separation from agricultural activities or other primary industries. (refer <i>table of recommended separation distances between agricultural and non-agricultural land uses</i>) Development applications demonstrate a house site or sites suitable for building, on-site sewage management systems free from contamination and a clear distance from creeks, natural drainage depressions and flow lines. Suitable access to a public road is provided. The number of accesses to a main road are not increased. 	
PO 6.5-1	<p>Planning Outcomes for Dwellings in Proximity to Agriculture and Other Rural Activities</p> <ol style="list-style-type: none"> Dwelling houses should be located to minimise conflicts with the operation of activities associated with primary production. Where a dwelling is proposed to be located within 150 metres of land where spraying of chemicals is likely to occur, an adequate biological buffer is to be established between the dwelling and that agricultural land. 	Zones RU1 and C3
PO 6-10-2	<p>Planning Outcomes for Rural Dwelling Houses</p> <ol style="list-style-type: none"> The dwelling house complies with Council's Energy Smart Homes Code. The dwelling house is sited on land identified as being suitable for construction and free from contamination, flooding and bushfire risk. Privacy and views of neighbouring houses are retained. A suitable area is available for perpetual on-site disposal of wastes. Substantial remnant vegetation is protected from disturbance. An adequate water supply is provided. All-weather access to a public road is provided. Entry gateways are set back sufficiently from the front boundary to allow vehicles to pull up off the public road carriageway. A buffer area is established in the vicinity of agricultural operations. Outbuildings are located in proximity of and to the rear of the main dwelling house when viewed from the nearest road. 	Zones RU1 and C3
PO 6-11-1	<p>Planning Outcomes for Rural Dual Occupancies</p> <ol style="list-style-type: none"> Both dwellings achieve the planning outcomes for rural dwellings outlined in Section 6.10. Both dwellings are located on the same lot and in close proximity to provide a rural character where dwellings form part of a discrete cluster of buildings in a rural setting. On-site sewage management systems adequately provide for two dwellings. 	Zones RU1 and C3

Control	Relevant Provisions	Application
	4. Detached dwellings are designed to complement each other in scale and form (both dwellings do not have to be the same but do need to appear as a group).	

Include as table to PO 6.3-1(5) - Table of Recommended Separation Distances Between Agricultural and Non-Agricultural Land Uses

Agricultural Land Use	Distance (metres)	Source
Pig Farms (indoor)	(1)1000 ^a (2) 500	(1) Living and Working in Rural Areas Handbook (2007) (2) For facilities holding less than 200 pigs - Draft Standard Instrument LEP (2017)
Pig Farms (outdoor)	500	National Environmental Guidelines for Outdoor Rotational Piggeries - Revised: Australian Pork Limited (2013)
Poultry (broiler & eggs) indoor and outdoor	(1)1000 ^b (2) 500	(1) Living and Working in Rural Areas Handbook (2007) and Level 1 Odour Modelling case study (2) For facilities holding less than 1,000 birds - Draft Standard Instrument LEP (2017)
Dairies	500 ^c	Including for facilities holding less than 50 head - Draft Standard Instrument LEP (2017)
Cattle Feedlots	1000 ^d 500	Living and Working in Rural Areas Handbook (2007) For facilities holding less than 50 head - Draft Standard Instrument LEP (2017)
Sheep or goat Feedlots	500	Living and Working in Rural Areas Handbook (2007)
Rabbits	150 ^e	Rabbit Farming: Planning and Development Control Guideline: NSW DPI (2002)
Other intensive livestock	250	SEPP (Exempt and Complying Development Codes) 2008
Stock grazing	50	Living and Working in Rural Areas Handbook (2007)
Stock yards	200	SEPP (Exempt and Complying Development Codes) 2008 – Inland Code
Outdoor Cropping/sugar cane/turf farms	300	Living and Working in Rural Areas Handbook (2007)
Outdoor horticulture	250	SEPP (Exempt and Complying Development Codes) 2008
Protected cropping (greenhouses)	250	SEPP (Exempt and Complying Development Codes) 2008
Silos/grain storage bunkers	100	SEPP (Exempt and Complying Development Codes) 2008 – Inland Code
Fan assisted silos (Macadamia nuts)	300	Living and Working in Rural Areas Handbook (2007)

Source: *Buffer Zones to Reduce Land Use Conflict with Agriculture: An Interim Guideline (NSW Department of Primary Industries, November 2018, Primefact 1624, 1st Edition)*

Notes:

- Subject to environmental assessment in accordance with the Australian Pork Limited AUSTRALIAN PORK LIMITED National Environmental Guidelines for Indoor Piggeries (NEGIP) May 2018.
- Subject to environmental assessment in accordance with Best Practice Management for Meat Chicken Production in NSW - NSW DPI (2012).
- Subject to environmental assessment in accordance with Environmental Management Guidelines for the Dairy Industry. NSW DPI (2008) if the dairy can accommodate 50 head or more.
- Subject to environmental assessment in accordance with the National Guidelines for Beef Cattle Feedlots in Australia, 3rd edition. Meat and Livestock Australia (2012).
- Subject to environmental assessment in accordance with Rabbit Farming: Planning and Development Control Guideline. NSW DPI (2002).

In Chapter 12: Rural Environment Protection Zone

Control	Relevant Provisions	Application
PO 12.1-1	Planning Outcomes - General Controls in Water Supply Catchments 1. Development proposals clearly demonstrate measures that are to be instituted to minimise impacts on the quality and availability of water resources for public water supply use.	Zone C3
PO 12.2-1	Planning Outcomes - Water Quality Protection Areas 1. Effluent is treated outside the defined protection area. 2. Adjacent waterways, including native riparian vegetation zones, are protected and conserved. 3. Soil and water management measures are incorporated in the development.	Zone C3
PO 12.3-1	Planning Outcomes - Housing and Subdivision 1. The configuration of lots and house sites provide for development well removed from sensitive waterways. 2. Concessional lots and new houses on land traversed by the water catchment boundary are located outside the water catchment. 3. Native vegetation is protected and reinstated along waterways. 4. Degraded areas and waterways are restored.	Zone C3

FAQs: Orange LEP 2011 Planning Proposal for Lot Boundary Adjustments

1. What is this Planning Proposal about?

This Planning Proposal seeks to amend the Orange Local Environmental Plan (LEP) 2011 to allow landowners in rural and conservation zones (RU1, C2, C3, and C4) to adjust lot boundaries through subdivision, even if resulting lot sizes are smaller than current minimum lot size standards.

2. What is a lot boundary adjustment?

A lot boundary adjustment is a minor subdivision between adjoining lots to realign property boundaries without creating any additional lots or dwelling entitlements.

3. Why is this amendment needed?

Current regulations prevent many sensible boundary adjustments because most rural and conservation lots in Orange are smaller than the minimum 100 hectares required by the LEP. This amendment will provide flexibility to resolve practical issues like aligning boundaries with fences or natural features, without increasing rural land fragmentation.

4. Will this amendment create more rural residential lots or dwellings?

No. The amendment specifically prohibits creating additional lots or new dwelling entitlements. Its sole purpose is to facilitate boundary realignments of existing properties.

5. Will this change negatively impact farming or conservation?

No. The proposed amendment includes strict criteria to ensure agricultural viability and conservation values are not compromised. Boundary adjustments must demonstrate they will not adversely affect agricultural productivity or environmental protection.

6. How does the amendment align with strategic planning goals?

This amendment aligns closely with regional planning objectives and Orange City Council's own strategic documents, supporting agriculture, efficient land management, and environmental protection without allowing further fragmentation or rural residential growth.

7. What criteria must be met for boundary adjustments?

The key criteria are:

- No new lots or dwellings are created.
- No increase in potential land use conflicts.
- Agricultural and environmental viability must remain unaffected or be enhanced.

8. Does this affect all properties in Orange?

No, it only applies to properties within the RU1 Primary Production, C2 Environmental Conservation, C3 Environmental Management, and C4 Environmental Living zones.

9. Will boundary adjustments require development consent from Council?

Yes. Each boundary adjustment proposal will require a development application and assessment by Council, ensuring compliance with the specific criteria outlined in the amendment.

10. How can the community provide feedback on this proposal?

The Planning Proposal will be publicly exhibited for at least 28 days, allowing the community to review and provide written submissions. Details of the exhibition and consultation process will be published on Council's website and through local media.

11. When is this expected to take effect?

Subject to the Planning Proposal being approved through the Gateway process and following public consultation, it is anticipated to become effective in mid-2026.

12. What happens next?

Following public exhibition, Council will review all feedback, finalize the Planning Proposal, and submit it to the NSW Department of Planning and Environment for approval and legal drafting. Once finalized, the amendment will be formally made and included in the Orange LEP 2011.

2.9 PLANNING PROPOSAL - ORANGE LEP 2011 ADMINISTRATIVE AMENDMENT (HOUSEKEEPING AMENDMENT)

RECORD NUMBER: 2025/1463

AUTHOR: Craig Mortell, Senior Planner

EXECUTIVE SUMMARY

This report presents a Planning Proposal to initiate a housekeeping amendment to the Orange Local Environmental Plan (LEP) 2011. Typically, housekeeping amendments are undertaken every five years. The amendments in this proposal are administrative in nature and seek to improve the accuracy, usability, and internal consistency of the LEP, without changing its strategic intent or enabling any additional development beyond what is currently permitted.

The Planning Proposal (**attached**) addresses a range of minor issues, including corrections to heritage schedules and mapping, adjustments to zoning boundaries where cadastral misalignments have occurred, and minor clause amendments to remove ambiguity or resolve inconsistencies. A summary of the changes includes the following (see supporting information and Planning Proposal for further detail):

- **Heritage Schedule and Mapping Corrections:** Amendments to fix typographical errors, remove duplicate listings, and align mapped overlays with current cadastre and known site conditions.
- **Clause Amendments:**
 - Extension of strata and community title minimum lot size protections to additional residential zones.
 - Clarification of the allowed size for secondary dwellings in rural zones.
 - Inclusion of "creative industry" as a permitted land use in the E2 Commercial Centre zone, which applies to the CBD, to support economic diversification.
 - Inclusion of "secondary dwelling" as a permitted land use in the R5 Large Lot Residential zone, which applies to areas such as Ammerdown, Clifton Grove and other areas on the edge of the city, to remove an anomaly in the assessment of secondary dwellings in these areas.
 - Broadening the application of "buffer area" provisions to include all sites within buffer areas, allowing continued urban design control during key development transitions.
 - Creation of a new clause to facilitate public and community events by not requiring formal development consent. Other approvals under the Local Government Act, Roads Act or Crown Land Management Act would still apply.

Development consent under the Environmental Planning And Assessment Act takes longer to process than permits under other Acts due in part to the need to undertake formal public exhibition and notification processes and then assess any issues raised by submissions.

Event organisers would still require owners consent to stage an event, and Council staff can still require appropriate commitments before providing such approval, including matters such as: traffic management, crowd control, waste management and post-event site clean-up and the like.

2.9 Planning Proposal - Orange LEP 2011 Administrative Amendment (Housekeeping Amendment)

- **Zoning Adjustments:** Minor realignments of RE1 Public Recreation and R2 Low Density Residential zones, and a spot rezoning at 205-207 Byng Street from R1 General Residential to E4 General Industrial to reflect the longstanding industrial use of the site.
- **Other Schedule Amendments:**
 - Removal of an Additional Permitted Use from Schedule 1 in relation to 120 Calton Road, as the listing contains a sunset clause which has now expired.
 - Updating headings in Schedule 2 Exempt Development to remove a potential ambiguity between Advertising Signage and Business Identification Signs.

The proposed amendment aligns with the Central West and Orana Regional Plan 2041, the Orange Local Strategic Planning Statement 2020, relevant Ministerial Directions, and applicable State Environmental Planning Policies. It is proposed that the Planning Proposal proceed through the “basic” LEP amendment pathway with public exhibition following a Gateway Determination.

Council’s endorsement is sought to submit the Planning Proposal for Gateway Determination, undertake any required consultation and public exhibition, and to prepare a final LEP amendment for Council’s consideration following the review of submissions.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan Strategy “7.3 Plan for growth and development that balances liveability with valuing the local environment”.

FINANCIAL IMPLICATIONS

Nil

POLICY AND GOVERNANCE IMPLICATIONS

Nil

RECOMMENDATION

That Council resolves to:

- 1 **Submit the Planning Proposal to amend the Orange Local Environmental Plan 2011 (Housekeeping Amendment - Administrative) to the Department of Planning, Housing and Infrastructure for Gateway Determination in accordance with Section 3.33 of the Environmental Planning and Assessment Act 1979.**
- 2 **Undertake any revisions or updates to the Planning Proposal required by the Gateway Determination.**
- 3 **Carry out public exhibition and agency consultation of the Planning Proposal for a minimum of 28 days in accordance with the Gateway Determination and the Local Environmental Plan Making Guideline.**

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

This Planning Proposal seeks to undertake a series of minor, administrative amendments to the Orange Local Environmental Plan (LEP) 2011. These “housekeeping” changes aim to improve the accuracy, clarity, and usability of the LEP without altering its strategic intent or enabling additional development beyond what is already permitted. The changes are grouped and summarised as follows (see attached Planning Proposal for further detail):

1. Heritage Schedule and Mapping Corrections

A number of updates are proposed to the heritage schedule and heritage mapping layers to correct typographical errors, align listings with current property descriptions, and remove duplications. These changes ensure that heritage items are accurately identified, mapped, and protected in accordance with their significance and location.

2. Clause Amendments

Several minor clause amendments are proposed to address inconsistencies and remove potential ambiguities:

- **Minimum Lot Size Protections:** Extension of existing protections to ensure strata or community title subdivision cannot be used to bypass minimum lot size requirements in additional low density residential and village zones.
- **Buffer Areas:** Amendment to an existing clause to broaden its application beyond the Shiralee area, allowing similar ‘buffer area’ controls to be used in other urban expansion areas to manage urban design outcomes.
- **Creative Industry Uses:** Addition of “creative industry” as a permitted land use in the E2 zone to support activation and economic diversity in the Orange CBD. Creative industries are defined as:

creative industry means a building or place the principal purpose of which is to produce or demonstrate arts, crafts, design or other creative products, and includes artists’ studios, recording studios, and set design and production facilities.

- **Secondary Dwellings:** Clarification of floor area controls in rural zones under Clause 5.5 to correct a drafting error (where the square metre standard was left at 0), and align with the prevailing standard across the LEP of 60m² or 50% of the principal dwelling.
- **Secondary Dwellings in R5 zone:** clarify the intent to allow secondary dwellings as permissible development on large lot residential land without the need to rely upon the Housing SEPP for permissibility, which in turn has required requests under Section 4.6 to vary the development standards because the SEPP falls back to the LEP to establish the permissible size. This planning proposal will ensure that secondary dwellings in the R5 zone can access the same size limits as other secondary dwellings in Orange.
- **Clause Naming Conventions:** Minor revisions to clause titles to better reflect their content and avoid potential confusion.
- **New clause - Events permitted without development consent:** inclusion of a new clause to allow a range of community events on public reserves without the need for a development consent. Other approvals and permits under the Local Government Act, Roads Act and Crown Land Management Act would still be required.

3. Zoning Map Realignments

- Minor realignments of the RE1 Public Recreation zone are proposed where mapping errors have resulted in encroachments into adjoining residential lots. These updates restore the correct zoning to affected properties and ensure that the RE1 zone accurately applies to public reserve land. Additionally, land at 205-207 Byng Street is proposed to be rezoned from R1 General Residential to E4 General Industrial to reflect the longstanding approved industrial use of the site, which is more consistent with the surrounding streetscape.

4. Other Schedule Amendments

- **Removal of Expired Additional Permitted Use** - An Additional Permitted Use provision relating to 120 Calton Road is proposed to be repealed following the expiry of its sunset clause. This change will eliminate ambiguity regarding dwelling entitlements on this land, which is otherwise protected by C3 Environmental Management zoning and minimum lot size controls.
- **Update headings in Schedule 2 Exempt Development** - The schedule currently lists "Advertising signage (business identification signs in Zone E4)" and "Advertising signage (business identification signs in Zone R1, R2, R3 and R5)". These headings have the potential to create confusion between the more generic "Advertising signage" definition and the more specific "Business Identification Signs". The proposal will remove the term Advertising signage from these headings to remove any ambiguity.

Consistency with Strategic Planning Frameworks

The Planning Proposal provides more detail on consistency with strategic planning framework, but in brief the proposal responds to the framework as follows:

Central West and Orana Regional Plan 2041

The proposal is consistent with the Central West and Orana Regional Plan 2041. Specifically, the proposal supports regional plan directions by enhancing protection of agricultural land through removal of an expired dwelling entitlement at 120 Calton Road, encouraging economic diversification through enabling creative industries in the Orange CBD, and protecting heritage assets through updates to heritage mapping and schedules.

Orange Local Strategic Planning Statement (LSPS) 2020

The proposal aligns with the priorities set out in the Orange Local Strategic Planning Statement (LSPS) 2020, including protecting and celebrating heritage assets, diversifying the local economy by fostering creative industries, supporting a vibrant city centre through expanded permissible land uses, and managing urban growth efficiently by preventing unintended land fragmentation or subdivision loopholes.

Section 9.1 Ministerial Directions

The proposal is consistent with relevant Ministerial Directions under Section 9.1 of the *Environmental Planning and Assessment Act 1979*, particularly Direction 1.1 (Business and Industrial Zones), Direction 2.3 (Heritage Conservation), and Direction 5.10 (Implementation of Regional Plans), by supporting economic activation without compromising commercial centres, ensuring accurate heritage protection, and directly contributing to the objectives outlined in the Central West and Orana Regional Plan.

State Environmental Planning Policies (SEPPs)

The Planning Proposal complements applicable State Environmental Planning Policies (SEPPs), notably the SEPP (Exempt and Complying Development Codes) 2008 by clarifying buffer area provisions, and SEPP (Primary Production and Rural Development) 2021 by safeguarding rural land from subdivision practices that could undermine agricultural viability or environmental values.

Conclusion

These changes are administrative in nature and are designed to improve the internal consistency and functionality of the Orange LEP 2011. The Planning Proposal has been prepared in accordance with Division 3.4 of the Environmental Planning and Assessment Act 1979 and the Department's LEP Making Guideline (August 2023).

If endorsed by Council, the proposal will be submitted for Gateway Determination and exhibited in accordance with any conditions issued by the Department.

ATTACHMENTS

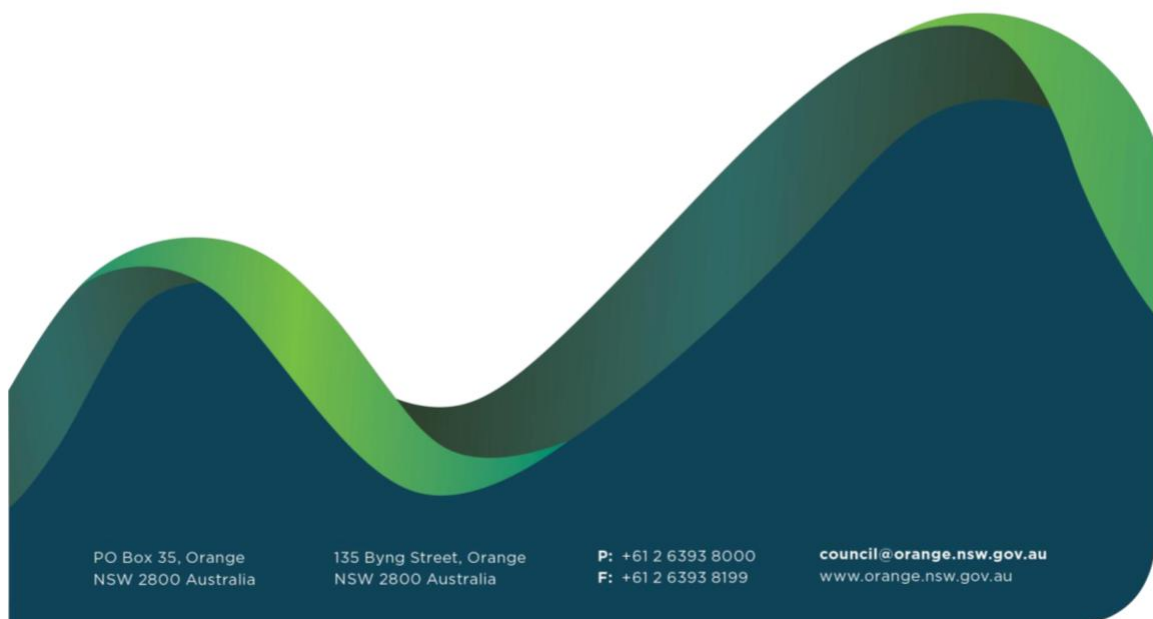
- 1 Draft Planning Proposal - Orange LEP 2011 - Housekeeping Administrative Amendment 2025, D25/87997 [↓](#)



DRAFT - PLANNING PROPOSAL

Orange Local Environmental Plan 2011 – Housekeeping Amendment (Administrative)

Prepared by Orange City Council
July 2025



Document Control

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A	FINAL—For Gateway Alteration	24 July 2025
-	-	-

Table of Contents

Introduction	1
Part 1 – Objectives and Intended Outcomes	1
Part 2 – Explanation of Provisions	3
2.1 Schedule 1 - Additional Permitted Use Schedule corrections	3
2.2 Schedule 2 - Exempt Development Corrections.....	3
2.3 Schedule 5 - Environmental Heritage (Schedule Only) corrections.....	3
2.4 Heritage (Map Only) corrections.....	3
2.5 Schedule 5 – Environmental Heritage (Map and Schedule) corrections	4
2.5 land use zone mapping corrections.....	4
2.6 orange local environmental plan 2011 Clause Amendments.....	6
Part 3 – Justification of Strategic and Site-Specific Merit	9
3.1 Strategic Merit	9
3.2 Site-Specific Merit	12
Part 4 – Maps	15
Part 5 – Community Consultation.....	17
Part 6 – Project Timeline	17
Attachments.....	18
Attachment 1 – Draft LEP Map Amendments (Heritage Layer).....	18
Attachment 2 – Draft LEP Map Amendments (Land Zoning)	24
Attachment 3 – Draft LEP Map Amendments (ADDITIONAL PERMITTED USES).....	27
Attachment 4 – Copy of Clause Amendment Draft clauses.....	28
Attachment 5 – Copy of changes to schedule 2 exempt development	32

List of Figures

Figure 1 misalignment of RE1 zone (green) with Council owned reserve (red outline)	4
Figure 2 misalignment of RE1 Zone (Green) with boundary of neighbouring residential lots	5
Figure 3 Area of Lot A DP 151915 (205-207 Byng Street) shown in red - to be rezoned E4 General Industrial	5
Figure 4 - Heritage Item I37	18
Figure 5 - Heritage Item I106.....	18
Figure 6 - Heritage Item I247.....	19
Figure 7 - Heritage Item I346.....	19
Figure 8 - Heritage Item I353.....	20
Figure 9 - Heritage Item I353.....	20
Figure 10 - Heritage Item I353.....	21
Figure 11 - Heritage Item I353.....	21
Figure 12 - Heritage Item I71.....	22
Figure 13 - Heritage Item I113.....	23
Figure 14 - Heritage Item I286.....	23
Figure 15 - Realignment of RE1 zone at Glendale Crescent and Pine Ridge Drive.....	24
Figure 16 - Realignment of RE1 zone at Molong Road.....	25
Figure 17 - Land Zone change at 205-207 Byng Street	26
Figure 18 - Change to Additional Permitted Uses Map.....	27

Introduction

This Planning Proposal has been prepared by Orange City Council in accordance with Division 3.4 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and the Local Environmental Plan Making Guideline (August 2023). The proposal seeks to undertake a series of minor “housekeeping” amendments to the Orange Local Environmental Plan (LEP) 2011 to correct mapping and schedule errors, update clause references, and resolve zoning anomalies.

The amendment is administrative in nature and does not facilitate any additional development potential beyond that already envisaged by the LEP. Where detailed supporting information is required, placeholder text has been inserted for subsequent completion.

Part 1 – Objectives and Intended Outcomes

Objectives:

- To correct minor errors in heritage item schedules, mapping, and zoning layers.
- To resolve clause and schedule inconsistencies and administrative anomalies within the LEP.
- To enhance the usability and accuracy of the LEP without changing strategic policy intent.
- To clarify the intent of controls in relation to secondary dwellings in rural areas and large lot residential areas.
- To enable the use of buffer areas as urban design controls in new areas where appropriate.
- To support the trading performance of the Central Business District by enabling Creative Industries in the CBD.
- To enable community events, meetings, exhibitions and concerts to occur without development consent in certain circumstances.

Intended Outcomes:

- Updated LEP maps and schedules that accurately reflect the current cadastral and heritage information.
- Update headings in schedule 2 Exempt Development to clarify the intended scope of exempt business identification signs.
- Alignment of LEP zoning and land-use tables with actual land ownership and use.
- Clearer clause wording to remove a potential subdivision loophole under Strata or Community Title.
- Amend a clause to clarify the allowed size of secondary dwellings.
- Amend a clause in relation to buffer areas to enable use of the mechanism in more areas where appropriate.
- Update to the Land Use Table for the E2 Commercial Centre Zone to allow Creative Industries as permissible with consent.

- Update to the Land Use Table for the R5 Large Lot Residential Zone to allow secondary dwellings to be permissible with consent under the LEP, rather than relying upon the Housing SEPP.
- Introduce a clause to enable community events to be permitted without consent.

Part 2 – Explanation of Provisions

2.1 Schedule 1 - Additional Permitted Use corrections

1. Repeal entry 4 in relation to 120 Calton Road as the 2 year sunset provision has now expired and remove the related item 3 from the Additional Permitted Uses Map. *(Refer to Attachment 3 for an indicative map of the proposed change to the APU map).*

Orange LEP Schedule 1 entry 4 relates to enabling a dwelling entitlement on land at 120 Calton Road. This listing is subject to a 2 year sunset provision which has now lapsed. The dwelling entitlement was not acted upon in this period and has therefore been lost. The Planning Proposal seeks to repeal this entry from the schedule in the interest of removing any doubt or ambiguity as to the dwelling entitlement remaining.

2.2 Schedule 2 - Exempt Development Corrections

2. Update headings to remove the term “Advertising Signage” to instead use “Business Identification Signage” to remove potential ambiguities between the different definitions. *(Refer to Attachment 5 for indicative changes to the schedule text)*

2.3 Schedule 5 - Environmental Heritage (Schedule Only) corrections

The following heritage corrections (3 – 13) result from either discovery of errors or updates following registration of approved subdivisions. The proposed updates seek to improve the reliability of the LEP as an accurate reflection of the location of important heritage values that have been previously identified.

3. **Item I53** – Amend schedule entry to correct item number from “I153” to “I53”.
4. **Item I273** – Correct street name typographical error to “Glenroi Avenue”.
5. **Item I318** – Remove duplicate listing for former Lot 93 DP 1120242 at 101-105 Burrendong Way.

2.4 Heritage (Map Only) corrections

Refer to Attachment 1 for indicative maps of the following proposed changes.

6. **Item I37** – Update mapping label for “Brownholm” house (currently mislabelled as part of I38).
7. **Item I106** – Correct mapping: move heritage overlay from 137 Edward Street to 135 Edward Street.
8. **Item I247** – Refine mapping to eastern parts of Lot 1 & Lot 2 DP 354656 at 350 Peisley Street.
9. **Item I346** – Expand heritage mapping for Spring Hill Cemetery to include part Lot 7300 DP 114472.

10. **Item I353** – Extend mapping of railway infrastructure (bridges & culverts) adjacent to multiple Huntley Road & Kinghorne Lane parcels.

2.5 Schedule 5 – Environmental Heritage (Map and Schedule) corrections

Refer to Attachment 1 for indicative maps of the following proposed changes.

11. **Item I71** – Update listing and mapping following subdivision: now 92 Woodward Street (Lot 1 DP 1307410); remove mapping from Lots 2 & 3 DP 1307410 and road reserve.
12. **Item I113** – Update listing and mapping to Lot 3 DP 1262729; remove mapping from Lot 1 DP 15399043.
13. **Item I286** – Update to Lot 5 DP 1311057 (170 Shiralee Road); remove mapping from superseded parent lots.

2.5 Land Use Zone Mapping Corrections

Zoning changes in this proposal relate to correcting the alignment of two areas (14 and 15) of RE1 Public Recreation land away from established residential houses and one spot rezoning (16) from R1 General Residential to E4 General Industrial. *(Refer to Attachment 2 for indicative maps of the following proposed changes).*

14. Realign RE1 Public Recreation zone at 8 Glendale Crescent and 24 Pine Ridge Drive to correctly apply to Lots 38 & 39 DP 841430, instead of neighbouring residential lots.

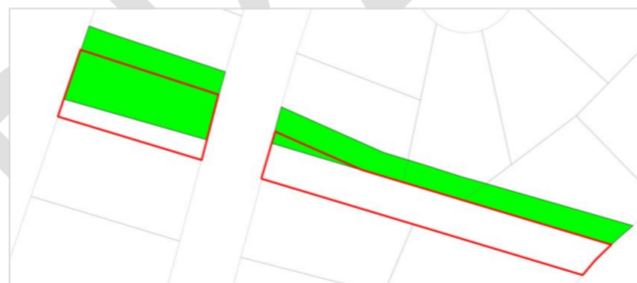
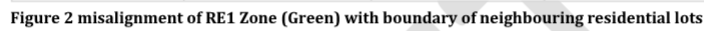
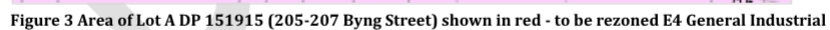


Figure 1 misalignment of RE1 zone (green) with Council owned reserve (red outline)

15. Correct RE1 zone alignment on Molong Road opposite Northstoke Way affecting residential properties from 32 – 36A Turner Crescent to remove minor RE1 encroachment into rear yards of the affected lots in Turner Crescent.



16. Rezone 205–207 Byng Street from R1 General Residential to E4 General Industrial to reflect existing approved industrial use.



This limits the flexibility of the site to accommodate uses that, while appropriate in an industrial context, would not fit within the scope of the previous development consents. Notably there are no residential homes on the northern side of Byng Street between McLachlan Street and William

Street and as such the streetscape character of this block of Byng Street is entirely commercial / industrial.

Accordingly, the rezoning will recognise the established use and built form pattern by placing the property into a zone consistent with the adjoining industrial lands to the west.

2.6 ORANGE LOCAL ENVIRONMENTAL PLAN 2011 CLAUSE AMENDMENTS

3. **Land Use Table: Zone E2 Commercial Core** - Add “creative industry” as a permissible land use in the zone. *(Refer to Attachment 4 for indicative drafting of the proposed land use table change).*

The term “creative industry” was established by the Department of Planning as part of the Creative Communities policy in December 2023. Defined as a sub term of Light Industries the use was automatically enabled in zones with that use. The scope of the definition is suitable for the E2 Zone which applies to the Orange Central Business District. The definition specifically includes a demonstration to the public, implying that these activities are likely to attract the general public.

Including this term in the land use table for the E2 zone will encourage a boost of foot traffic, thereby enhancing the trading performance in the CBD. This approach will also allow those creative industries that benefit from public attendance to be located in high visitation areas making them more viable, while also allowing creative industries that are more independent of public attendance to still seek suitable locations in traditional industrial estates.

The planning proposal therefore broadens support for the range of Creative Industry business models.

4. **Land Use Table: R5 Large Lot Residential** – Add “secondary dwellings” as a permissible land use in the zone. *(Refer to Attachment 4 for indicative drafting of the proposed land use table change).*

When secondary dwellings are permissible under the LEP they have a size limit of the greater of 60m² or 50% of the principal dwelling size.

The definition of “secondary dwelling” was originally excluded from the R5 zone, making it technically prohibited under the LEP. This was only done on the basis of advice from the Department of Planning that listing it in the zone would be redundant since State Environmental Planning Policy (Housing) overrides the LEP to make the use permissible in the R5 zone.

However, the SEPP wording limits the size of a secondary dwelling to 60m² or:

“if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument—the greater floor area”

In practice, this wording causes the SEPP to fall back to the LEP for permissibility if a secondary dwelling is greater than 60m². The current LEP prohibition means that the floor area permitted “on the land” for a secondary dwellings is effectively 0. This anomaly has resulted in several applications being lodged with Council that in turn rely upon a section 4.6 request for an exception to the development standard simply to achieve the 50% size limit that is available to all other secondary dwellings in Orange.

This planning proposal seeks to include the term Secondary Dwelling as a permissible land use in the R5 zone, thereby removing the need to consider the SEPP provisions and enabling secondary dwellings under the same rules as apply in other zones where the use is permissible under the LEP.

5. **Part 4 Principal Development Standards: Clause 4.1AA** – Extend reinstated minimum lot size controls to Zones R1, R2, R5 and RU5 to close strata/community title loophole. *(Refer to Attachment 4 for indicative drafting of the proposed clause change).*

Currently, clause 4.1AA ensures that strata title and community title arrangements are not used as a means to circumvent the minimum lot size requirements in the RU1, C2, C3 and C4 zones. This is required to clause 4.1(4) creating an exception to the MLS for strata title and community title schemes. It is assumed that the exception exists to allow Residential Flat Buildings, Multi-dwelling housing and other forms of multiple dwelling developments to be subsequently strata or community titled, rather than as a means of being able to subdivide greenfield land to any size desired.

In the Orange context it is considered that the protection afforded by clause 4.1AA should be extended to the RU5, R1, R2 and R5 zones. Most of the R1 zone and substantial parts of the R2 zone have no minimum lot size applying to them and as such they do not require 4.1(4) exception to be able to be strata or community titled. Where Council has applied minimum lot sizes this is intended to regulate the appropriate level of density in various areas. Clause 4.1B provides some flexibility in relation to dual occupancies and multi-dwelling housing in areas that are subject to minimum lot sizes.

6. **Part 4 Principal Development Standards: Clause 4.1B** – to be renamed to remove reference to Residential Flat Buildings as these are not mentioned in the body of the clause. *(Refer to Attachment 4 for indicative drafting of the proposed clause change).*

The clause title includes “residential flat buildings” despite this term not being referenced in the body of the clause. The proposal seeks to remove this reference to avoid ambiguity or confusion.

7. **Part 5 Miscellaneous Provisions: Clause 5.5** – Amend to permit secondary dwellings in rural zones up to the greater of 60m² or 50% of the principal dwelling floor area. *(Refer to Attachment 4 for indicative drafting of the proposed clause change).*

Clause 5.5 establishes the maximum floor area for secondary dwellings in rural zones. Currently the clause applies to the greater of either 0m² or 50% of the total floor area of the principal dwelling.

The 0m² provision is an error, presumably arising from the introduction of the clause in November 2021. All other secondary dwellings in Orange, whether permitted under the LEP or via a SEPP have the criteria of 60m² or 50% of the principal dwelling. Given that the clause specifically relates to rural zones, where the typical lot is assumed to have more land than land in urban zones, it is appropriate to amend the clause to be consistent with the prevailing standard of 60m² or 50% of the principal dwelling.

8. **Part 7 Additional Local Provisions: Clause 7.15** – Replace specific reference to “Shiralee Hilltop Park Buffer” with general term “Development in Buffer Areas” to capture other sites throughout the City subject to a buffer zone. *(Refer to Attachment 4 for indicative drafting of the proposed clause change).*

The title of the clause references the “Shiralee Hilltop Park Buffer Area” as this was the only area considered at the time of the introduction of the clause. Subsequently Council has relied upon a similar “buffer area” mechanism in relation to the Redmond Place Precinct (subject to clauses 7.16 and 7.17).

The purpose of the clause is to ensure that newly rezoned greenfield areas with specific urban design outcomes are temporarily exempted from the application of State Environmental Planning Policy (Exempt and Complying Development Codes) for a period of 10 years.

By amending the clause to remove references to Shiralee Hilltop Park and relying instead on the more general term Buffer Area and adjusting subclause 4 into a table that establishes dates for each relevant precinct, the proposal will make this mechanism more broadly available.

Accordingly, the proposal seeks to:

- Re-title the clause as Development in Buffer Areas
- Replace the reference to ‘Shiralee Hilltop Park Area’ in subclause 1 to read ‘identified buffer areas’.
- Redraft subclause 4 to establish a table where one column identifies specific areas such as Shiralee Hill Top Park or Redmond Place Precinct and another column establishes the date on which the clause ceases to have effect for that area. An example draft of this change is shown below.

(4) this clause ceases to have effect on the land identified in Column 1 of the Table to this clause on the corresponding date shown in Column 2 of the Table.

Column 1	Column 2
Shiralee Hill Top Park	1 August 2034
Redmond Place Precinct	1 August 2035

9. **Part 7 Additional Local Provisions: New Clause 7.18 “Events permitted without development consent”.** Creation of a new clause to facilitate the holding of community based events, meetings, exhibitions and the like without needing to undertake a formal development application. *(Refer to Attachment 4 for indicative drafting of the proposed new clause).*

Council frequently receives requests and enquiries – often at short notice – from community organisations and groups seeking to hold a public event. Such events are generally regarded as providing a positive contribution to the social and economic fabric of Orange. This is modelled on clause 7.12 of the Greater Taree Local Environmental Plan 2010.

7.18 Events permitted without development consent

- (1) The objective of this clause is to provide for the temporary use of public reserves and public roads for exhibitions, meetings, concerts or events.
- (2) Despite any other provision of this Plan, development (including any associated temporary structures) for the purpose of a temporary event may be carried out on a public reserve or public road without development consent.

Note—

Other approvals may be required, and must be obtained, under other Acts, including the *Local Government Act 1993*, the *Roads Act 1993* and the *Crown Land Management Act 2016*.

(3) In this clause—

public reserve has the same meaning as in the *Local Government Act 1993*.

temporary event means an exhibition, meeting, concert or other event that is open to the public for which land is used for a period of not more than 52 days (whether or not consecutive) in any period of 12 months.

Part 3 – Justification of Strategic and Site-Specific Merit

The various components of the proposal are considered to have strategic and site-specific merit consistent with the NSW Department of Planning and Environment Local Environmental Plan Making Guideline (August 2023) as detailed in section 3.1 and 3.2 below:

3.1 Strategic Merit

The following questions are taken from table 3 of the departmental guidelines (sections A and B):

SECTION A – NEED FOR THE PLANNING PROPOSAL

Q1. Is the Planning Proposal a result of an endorsed LSPS, Strategic Study or Report?

Yes. The proposal aligns with the priorities set out in the Orange Local Strategic Planning Statement (LSPS) 2020, including protecting and celebrating heritage assets, diversifying the local economy by fostering creative industries, supporting a vibrant city centre through expanded permissible land uses, and managing urban growth efficiently by preventing unintended land fragmentation or subdivision loopholes. The specific relevant priorities in the LSPS are:

LIVEABILITY AND PLACE IDENTITY

- **Planning Priority 6:** Protect and celebrate our heritage assets
“Orange has a rich and layered history that is visible in the built and natural environment. Protection of these assets is important to reinforce the city’s identity and narrative.”

The proposed corrections to the heritage schedule and mapping directly support this priority by ensuring identified assets are accurately represented and protected.

ECONOMIC PROSPERITY

- **Planning Priority 8:** Grow and diversify the economy
“There is potential for the city to foster creative industries and innovation sectors, particularly in the Central Business District, supporting a vibrant economy.”

The land use table amendment to include Creative Industry in the E2 Zone reflects this aspiration and supports the development of knowledge-based and cultural sectors.

- Planning Priority 9: A vibrant city centre
"Continue to encourage activation and diversity of land uses in the CBD that support retail, entertainment, professional services, and the creative sector."

The proposed changes facilitate such activation through expanded permissible uses tied to public interaction and creative production.

ENVIRONMENTAL SUSTAINABILITY

- Planning Priority 2: Manage urban growth efficiently
"Ensure that rural land is not prematurely or unnecessarily fragmented in ways that could compromise its long-term value or constrain future land use flexibility."

The amendment to restrict unintended subdivision under strata/community title further supports efficient and intentional growth management.

- Planning Priority 3: Protect and manage valued environmental and agricultural land
"Protecting agricultural lands and environmental assets from fragmentation and incompatible development is critical for long-term sustainability."

Removal of the lapsed APU at 120 Calton Road and the boundary adjustment clause for rural and environmental zones uphold this principle by preventing ad hoc increases in dwelling entitlements.

Q2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes or is there a better way?

The Planning Proposal is the best and only means of achieving the objectives.

Q3. Will the Planning Proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

Yes. The proposal is consistent with the Central West and Orana Regional Plan 2041. The proposal supports key directions of the Regional Plan, particularly:

- **Direction 12:** Enhance the productivity of the region's agricultural lands
 Removal of a lapsed Additional Permitted Use (APU) on biophysical strategic agricultural land at 120 Calton Road, will retain the site for primary production and prevent further fragmentation.
- **Direction 17:** Revitalise and strengthen regional city and local centres.
 The proposal enables and encourages Creative Industries in the Orange CBD, contributing to economic diversification, activation of public spaces, and creative employment opportunities.
- **Direction 20:** Protect and celebrate heritage

Correcting heritage schedule and mapping entries to ensure greater accuracy will assist in the protection of known cultural and historic values.

Q4. Is the Planning Proposal consistent with a Council LSPS that has been endorsed by the Planning Secretary or GCC, or another endorsed local strategy or strategic plan?

Yes. The proposal aligns with the priorities set out in the Orange Local Strategic Planning Statement (LSPS) 2020, including protecting and celebrating heritage assets, diversifying the local economy by fostering creative industries, supporting a vibrant city centre through expanded permissible land uses, and managing urban growth efficiently by preventing unintended land fragmentation or subdivision loopholes.

The proposal also aligns with the Orange, Blayney and Cabonne Regional Economic Development Strategy – 2023 Update by enabling Creative Industries to be undertaken with consent in the E2 Commercial Core. This land use will contribute positively to both tourism and employment generation. Enabling this use in the CBD will also reinforce the role of the Orange CBD in providing higher order services for the region and help to bolster the trading performance of other firms in the CBD (by virtue of increased visitation to the CBD).

Q5. Is the Planning Proposal consistent with any other applicable State and regional studies or strategies?

None applicable.

SECTION B - RELATIONSHIP TO THE STRATEGIC PLANNING FRAMEWORK

Q6. Is the Planning Proposal consistent with applicable SEPPs?

Yes. The Planning Proposal complements applicable State Environmental Planning Policies (SEPPs), notably the SEPP (Exempt and Complying Development Codes) 2008, and SEPP (Primary Production and Rural Development) 2021 as follows.

- SEPP (Exempt and Complying Development Codes) 2008: by clarifying the scope of temporary exclusions in newly rezoned buffer areas such as Shiralee and Redmond Place, thereby preserving urban design outcomes during key transition periods.
- SEPP (Primary Production and Rural Development) 2021: by ensuring rural boundary adjustments do not inadvertently increase dwelling entitlements or reduce agricultural viability.

Q7. Is the Planning Proposal consistent with applicable Ministerial Directions (section 9.1 Directions) or key government priority?

Yes. The proposal is consistent with relevant Ministerial Directions under section 9.1 of the Environmental Planning and Assessment Act 1979. Specifically the Planning Proposal is consistent with the following directions:

Planning Proposal (Administrative Amendment)

11

- Direction 1.1 – Business and Industrial Zones: by enabling Creative Industries in the E2 CBD Zone without undermining core commercial functions.
- Direction 2.3 – Heritage Conservation: by improving the accuracy of heritage mapping and scheduling, and ensuring statutory protection aligns with actual site conditions.
- Direction 4.3 – Flood Prone Land and 4.4 – Planning for Bushfire Protection: not triggered by this administrative proposal as no changes affect mapped hazard areas.
- Direction 5.10 – Implementation of Regional Plans: directly supports implementation of the Central West and Orana Regional Plan 2041.

3.2 Site-Specific Merit

The following questions are taken from table 3 of the departmental guidelines (sections C, D and E):

SECTION C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

Q8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

No. The amendments proposed are administrative in nature and do not involve rezoning any land that has not already been developed for urban purposes. Accordingly no habitat or ecological communities will be disturbed as a result of this proposal.

Q9. Are there any other likely environmental effects of the Planning Proposal and how are they proposed to be managed?

No. The amendments proposed are administrative in nature and are not related to any specific or intended development.

Q10. Has the Planning Proposal adequately addressed any social and economic effects?

Yes. There are no adverse social or economic effects anticipated.

SECTION D – INFRASTRUCTURE (LOCAL, STATE AND COMMONWEALTH)

Q11. Is there adequate public infrastructure for the Planning Proposal?

Not relevant.

SECTION E – STATE AND COMMONWEALTH INTERESTS

Q12. What are the views of State and Federal public authorities and government agencies consulted in order to inform the Gateway determination?

Unknown at this time. Any State and Federal public authorities identified by the Gateway determination will be consulted as part of the exhibition process.

Additional Permitted Use Schedule change

The Planning Proposal seeks to repeal an APU entry in relation to 120 Calton Road. The land is within and surrounded by the C3 Environmental Management Zone and is also on land classed as Biophysical Strategic Agricultural Land (BSAL). The land and neighbouring properties are subject to a 100ha minimum lot size in recognition of their agricultural value. Removal of the APU listing is considered to affirm the intent to protect the agricultural value of the area.

Heritage Corrections

- Schedule only corrections
 - **Item I53** “Chinamen’s Bend Cemeteries” is currently listed as I153 (with a duplicate letter I) which causes confusion with item I153 “Five Ways Uniting Church”. The proposal will remove the duplicate letter I from Item I53 “Chinamen’s Bend Cemeteries”. This will improve the reliability of the schedule.
 - **Item I273** is currently listed as being located at 33-45 Glenroi Street. The correct address is “Glenroi Avenue”. The proposal will replace Street with Avenue to correctly align with the street address thereby improving reliability of the schedule.
 - **Item I318** and **Item I138** appear to be a duplication of the same heritage item. This may be due to a slight boundary adjustment having occurred. Item I138 relates to the current Lot 3 DP 12233201, while item I318 relates to Lot 93 DP 1120242 which no longer exists. However the label on the heritage map currently reads I318 and the polygon is consistent with the current boundaries of Lot 3 DP 12233201.

Accordingly, the proposal will delete the entry for item I138 entirely and update the Lot and DP information for Item I318 to read Lot 3 DP 12233201. This will align the schedule to the existing heritage map and improve the reliability of both.
- Map only corrections
 - **Item I37** – Update mapping label for “Brownholm” house (currently mis-labelled as part of I38).
 - **Item I106** – Correct mapping: move heritage overlay from 137 Edward Street to 135 Edward Street.
 - **Item I247** – Refine mapping to eastern parts of Lot 1 & Lot 2 DP 354656 at 350 Peisley Street.
 - **Item I346** – Expand heritage mapping for Spring Hill Cemetery to include part Lot 7300 DP 114472.
 - **Item I353** – Extend mapping of railway infrastructure (bridges & culverts) adjacent to multiple Huntley Road & Kinghorne Lane parcels.
- Map and schedule corrections
 - **Item I71** – Update listing and mapping following subdivision: now 92 Woodward Street (Lot 1 DP 1307410); remove mapping from Lots 2 & 3 DP 1307410 and road reserve.
 - **Item I113** – Update listing and mapping to Lot 3 DP 1262729; remove mapping from Lot 1 DP 15399043.
 - **Item I286** – Update to Lot 5 DP 1311057 (170 Shiralee Road); remove mapping from superseded parent lots.

Zoning Map Corrections

- 8 Glendale Crescent and 24 Pine Ridge Drive.

The RE1 zone is currently mapped intruding onto residential properties at:

- 7 Glendale Crescent (Lot 37 DP 841430),
- 5 Westhaven Place (Lot 22 DP 829469),
- 15 Pine Ridge Drive (lot 23 DP 829469) and
- 22 Pine Ridge Drive (Lot 25 DP 829469).

These above lots adjoin Council owned land at:

- 8 Glendale Crescent (lot 38 DP 841430) and
- 24 Pine Ridge Drive (Lot 39 DP 841430).

The council owned lands have the same area and dimensions as the RE1 zone polygon and are identified as a public reserve. The privately owned land identified above have each been developed for normal residential purposes consistent with the R2 zone that generally applies in the area. It is therefore considered that the zoning and cadastre have 'slipped' out of alignment during an unknown update of the latter.

The proposal will enhance the accuracy of the LEP by correcting the zoning map to apply the RE1 zone to Lots 38 & 39 DP 841430 and restore the R2 Low Density Residential zone to the neighbouring private dwellings. This will ensure the orderly use and future development / redevelopment of the private dwellings described above.

- 32 – 36A Turner Crescent

The RE1 zone is currently mapped intruding onto residential properties at:

- 32 Turner Crescent (Lot 208 DP 1279673)
- 32A Turner Crescent (Lot 207 DP 1279673)
- 34 Turner Crescent (Lot 206 DP 1279673)
- 32A Turner Crescent (Lot 205 DP 1279673)
- 36 Turner Crescent (Lot 204 DP 1279673)
- 36A Turner Crescent (Lot 203 DP 1279673)

These lots adjoin Council owned land fronting onto Molong Road known as Lot 196 DP 1007290. The intrusion of the RE1 zone onto the residential lots consists of a small sliver being approximately 500mm at its widest point. This appears to be a minor but clear misalignment of the Zone and Cadastral boundaries.

The proposal will enhance the accuracy of the LEP by correcting the zoning map to apply the RE1 zone to Lot 196 DP 1007290 and restore the R2 Low Density Residential zone to the neighbouring private dwellings. This will ensure the orderly use and future development / redevelopment of the private dwellings described above.

- 205 – 207 Byng Street

The land at 205–207 Byng Street (Lot A DP 151915) is currently zoned R1 General Residential and it adjoins the E4 General Industrial zone to the immediate west of the site. Historically, Orange LEP 2000

contained clause 26 *Development Near Zone Boundaries* which enabled consent for uses on land that adjoin a neighbouring zone if the proposed use was permissible in that adjoining zone. This was effectively the equivalent of standard instrument clause 5.3 *Development Near Zone Boundaries*, which has not been adopted by Orange LEP 2011.

Under Orange LEP 2000, half of the land was approved for a public building (central west group apprentices), which would broadly match the standard instrument definition of Industrial Training Facility. While the remainder of the site was approved as a commercial/warehouse use. Both of these uses relied upon clause 26 of the Orange LEP 2000.

As a result of the adoption of Orange LEP 2011 these uses are now reliant upon existing use rights provisions which significantly restricts the ability of the site to support a commercial or industrial change of use. The built form is that of a pair of traditional warehouse / factory units and are not suitable for conversion to residential use.

The adjoining land to the west in Byng Street is commercial / industrial in nature while to the immediate east is commercial use occupying a traditional, heritage listed, corner store style of building. As such there is no residential character to the northern side of this block of Byng Street (between McLachlan Street and William Street).

The proposal will therefore rezone 205 – 207 Byng Street from the current R1 General Residential zone to the E4 General Industrial Zone to better reflect the existing approved industrial use and the streetscape character of this part of the Byng Street. This will allow for the orderly and efficient use of the land by enabling a range of potential use changes consistent with the built form and neighbourhood context.

Part 4 – Maps

Indicative maps are provided in Attachment 1. The following list explains the intended changes and should be read in conjunction with attachment 1. More formal LEP mapping will be prepared prior to gazettal.

HER - Heritage Map changes

HER_007D

- **Item I247 – 350 Peisley Street.** Refine mapping to eastern parts of Lot 1 & Lot 2 DP 354656 at 350 Peisley Street.

HER_008A

- **Item I71 – 92 Woodward Street.** Update mapping following subdivision: item is now Lot 1 DP 1307410; remove heritage mapping from Lots 2 & 3 DP 1307410 and road reserve.

HER_008B

- **Item I286 – 170 Shiralee Road.** Update map to match Lot 5 DP 1311057; remove mapping from superseded parent lots (172 – 176 Shiralee Road).

HER_008C

- **Item I37 – 82 Byng Street.** Update mapping label for “Brownholm” house (currently mislabelled as part of I38).

- **Item I106 – 137 Edward Street and 135 Edward Street** Correct mapping: remove heritage overlay from 137 Edward Street and create heritage overlay on 135 Edward Street.

HER_008D

- **Item I113 – 84 Brabham Way** Update mapping to Lot 3 DP 1262729; remove mapping from Lot 1 DP 15399043.

HER_015

- **Item I346 – Spring Hill Cemetery.** Expand heritage mapping for Spring Hill Cemetery to include part Lot 7300 DP 114472.

HER_008D and HER_009

- **Item I353 –** Extend mapping of railway infrastructure (bridges & culverts) adjacent to multiple Huntley Road & Kinghorne Lane parcels.
Part Lot 7603 DP 1290581 and part Lot 1 DP 1155339, Part Lot 7604 DP 1290587 and part Lot 12 DP 817638,

LZN - Land Zoning Map to be updated in relation to land at:

- 8 Glendale Crescent (Lot 38 DP 841430) to be fully zoned RE1 Public Recreation
- 7 Glendale Crescent (Lot 37 DP 841430) to be fully zoned R2 Low Density Residential
- 5 Westhaven Place (Lot 22 DP 829469) to be fully zoned R2 Low Density Residential
- 15 Pineridge Drive (Lot 23 DP 829469) to be fully zoned R2 Low Density Residential
- 24 Pineridge Drive (Lot 39 DP 841430) to be fully zoned RE1 Public Recreation
- 22 Pineridge Drive (Lot 25 DP 829469) to be fully zoned R2 Low Density Residential
- 32 – 36A Turner Crescent (Lots 203-208 DP 1279673) to remove minor RE1 encroachment, leaving each lot as R2 Low Density Residential.
- 205–207 Byng Street (Lot A DP 151915) to be rezoned from R1 General Residential to E4 General Industrial.

Additional Permitted Uses Map

APU_008D – 120 Calton Road to be updated to remove Item 3 and the mapping of 120 Calton Road.

Part 5 – Community Consultation

The Planning Proposal is anticipated to follow the “basic” amendment pathway as outlined in the LEP Plan Making Guidelines (August 2023). Public exhibition will be undertaken for a minimum of 28 days in accordance with the Gateway Determination, including notification via the NSW Planning Portal, Council’s website, and local press. Agencies with a specific interest in heritage or infrastructure will be notified directly.

Part 6 – Project Timeline

Project Stage	Anticipated Start	Anticipated Completion
Gateway Determination	Late August 2025	Early September 2025
Agency Consultation	September 2025	Early October 2025
Public Exhibition	September 2025	Early October 2025
Post-Exhibition Review	Early October 2025	Early November 2025
Legal Drafting & PCO Review	Early November 2025	Late November 2025
LEP Finalisation & Gazettal	December 2025	December 2025

Attachments

Attachment 1 – Draft LEP Map Amendments (Heritage Layer)

Heritage Item I37 – Update mapping label for “Brownholm” house (currently mislabelled as part of I38).

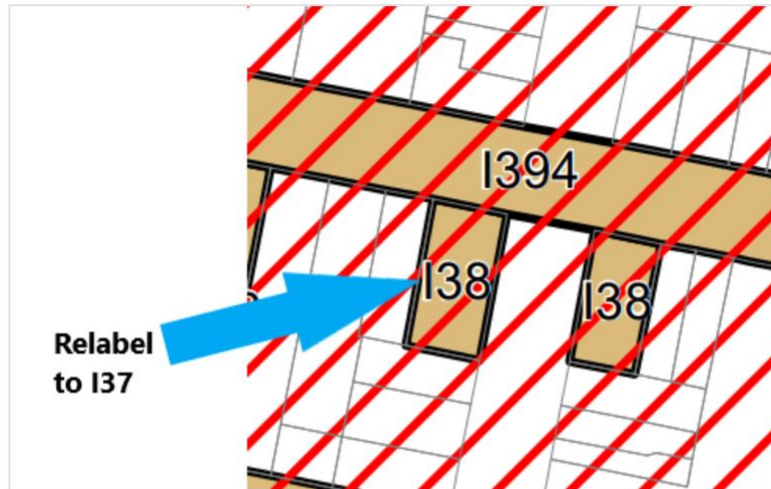


Figure 4 - Heritage Item I37

Heritage Item I106 – Correct mapping: remove 137 Edward Street, map 135 Edward Street.

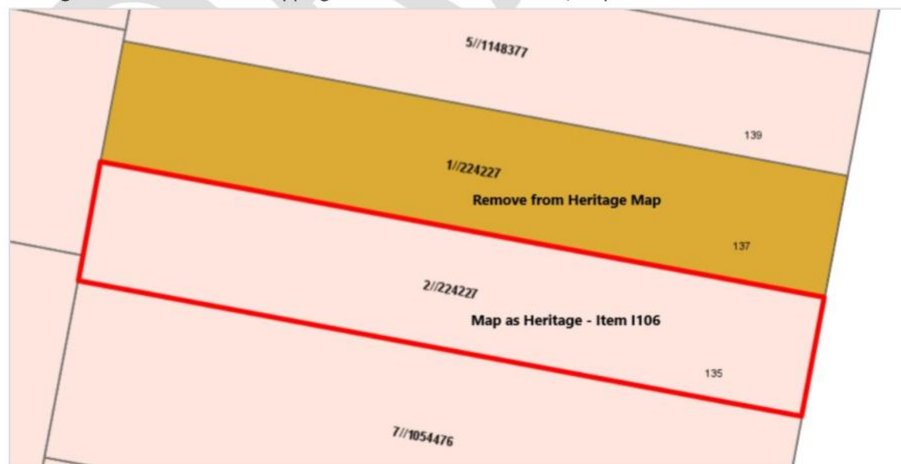


Figure 5 - Heritage Item I106

Heritage Item I247 – Refine mapping to eastern parts of Lot 1 & Lot 2 DP 354656 at 350 Peisley Street.

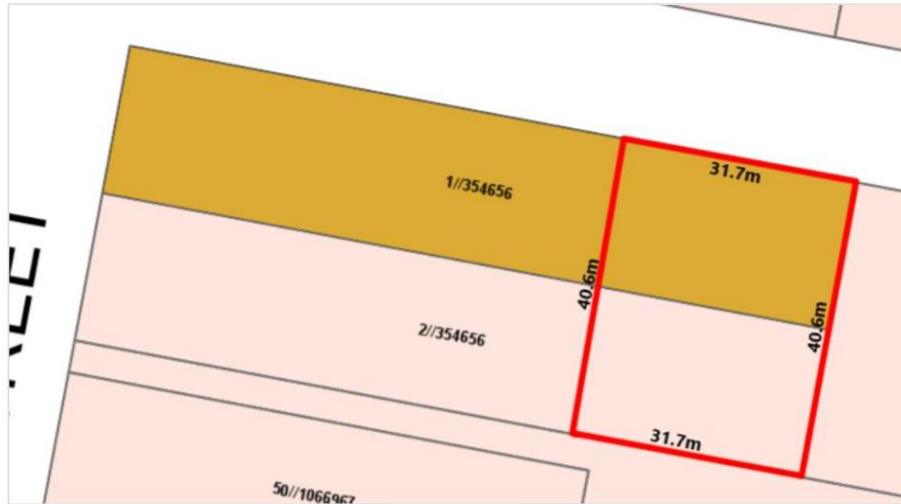


Figure 6 - Heritage Item I247

Heritage Item I346 – Expand Spring Hill Cemetery to include part Lot 7300 DP 114472.



Figure 7 - Heritage Item I346

Heritage Item I353 - Part A (railway infrastructure (bridges & culverts))

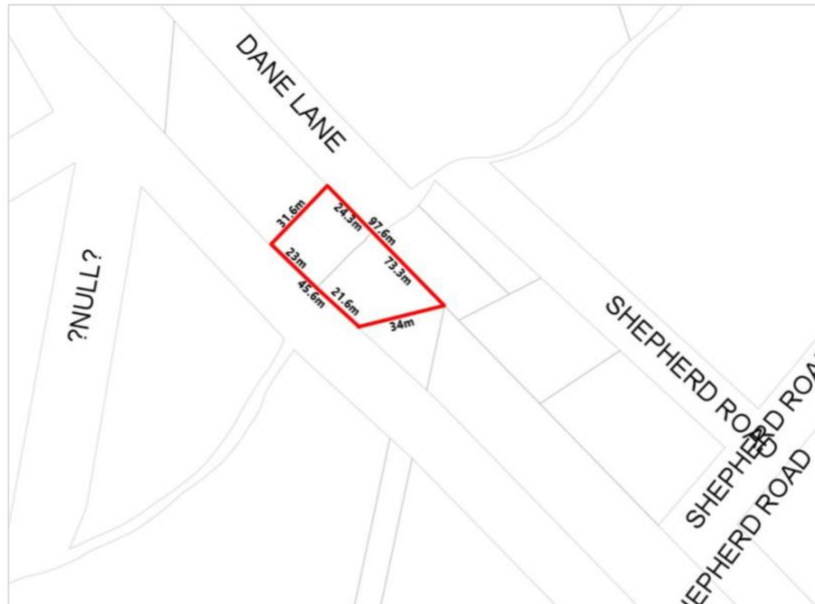


Figure 8 - Heritage Item I353

Heritage Item I353 - Part B (railway infrastructure (bridges & culverts))



Figure 9 - Heritage Item I353

Heritage Item I353 - Part C (railway infrastructure (bridges & culverts))



Figure 10 - Heritage Item I353

Heritage Item I353 - Part D (railway infrastructure (bridges & culverts))



Figure 11 - Heritage Item I353

Heritage Item I71 – Update mapping: item reduced to just 92 Woodward Street (Lot 1 DP 1307410); remove mapping from Lots 2 & 3 DP 1307410 and remove from road reserve.

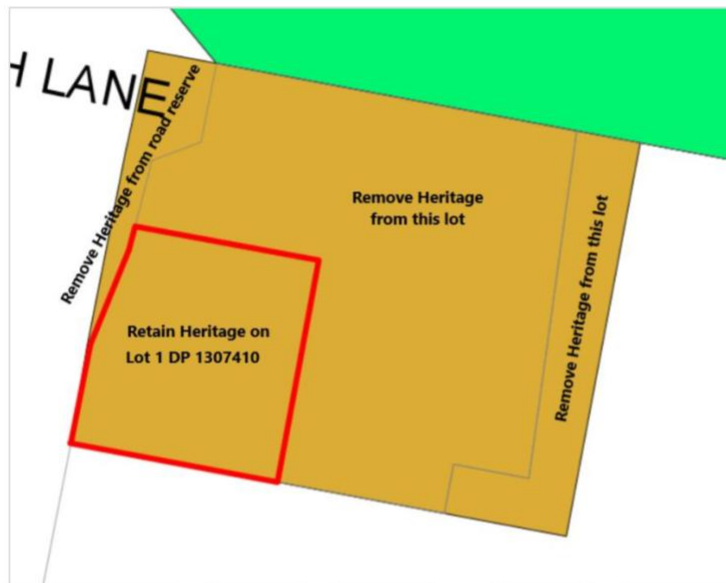


Figure 12 - Heritage Item I71

Heritage Item I113 – Update mapping of item to Lot 3 DP 1262729; remove mapping from Lot 1 DP 15399043. **Do not change neighbouring item**



Figure 13 - Heritage Item I113

Heritage Item I286 – Update to Lot 5 DP 1311057 (170 Shiralee Road); remove mapping from superseded parent lots.



Figure 14 - Heritage Item I286

Attachment 2 – Draft LEP Map Amendments (Land Zoning)

Realign RE1 Public Recreation zone at 8 Glendale Crescent and 24 Pine Ridge Drive to correctly apply to Lots 38 & 39 DP 841430, instead of neighbouring residential lots.

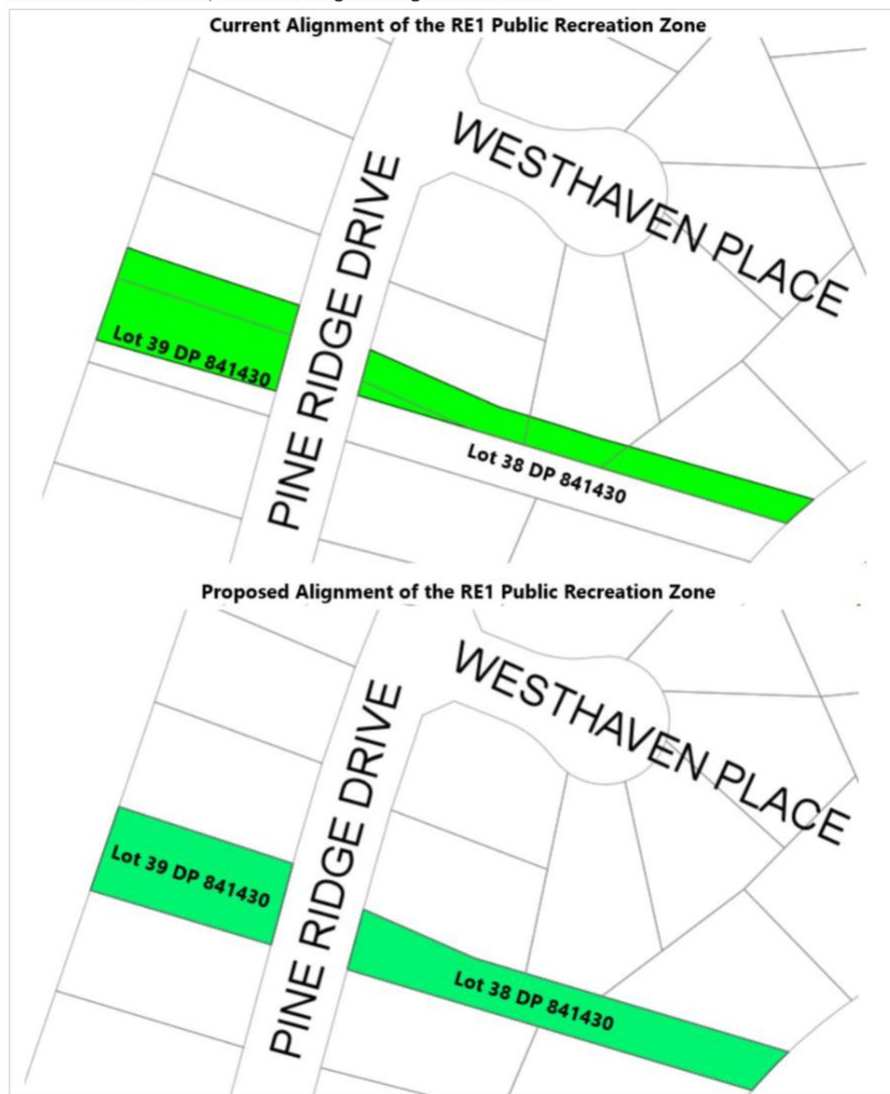


Figure 15 - Realignment of RE1 zone at Glendale Crescent and Pine Ridge Drive

Correct RE1 zone alignment on Molong Road opposite Northstoke Way affecting residential properties from 32 – 36A Turner Crescent to remove minor RE1 encroachment into rear yards of the affected lots in Turner Crescent.

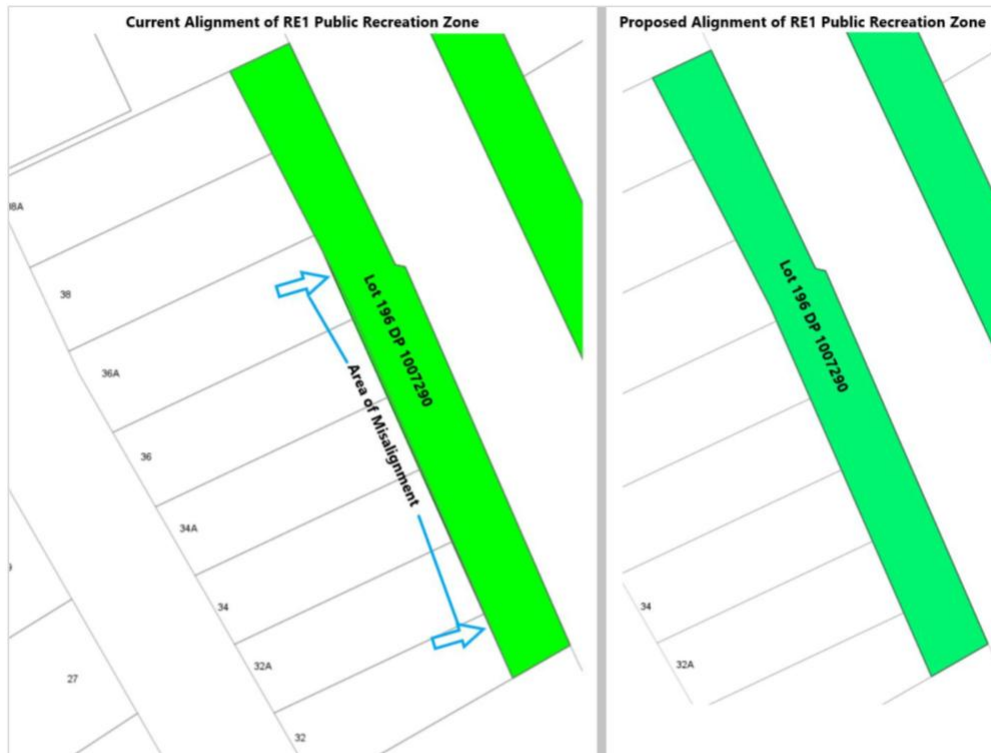


Figure 16 – Realignment of RE1 zone at Molong Road

Rezone 205–207 Byng Street from R1 General Residential to E4 General Industrial to reflect existing approved industrial use.

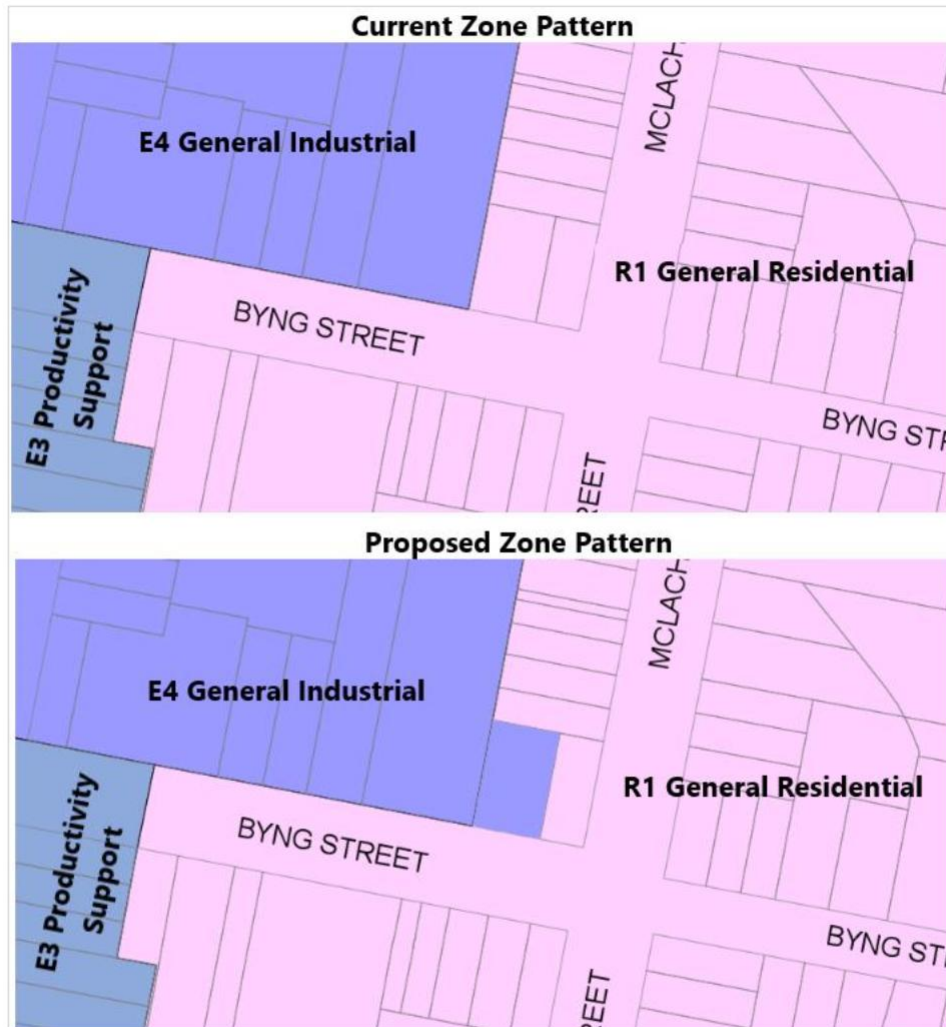


Figure 17 - Land Zone change at 205-207 Byng Street

Attachment 3 – Draft LEP Map Amendments (ADDITIONAL PERMITTED USES)

Remove the Additional Permitted Use “item 3” relating to 120 Calton Road

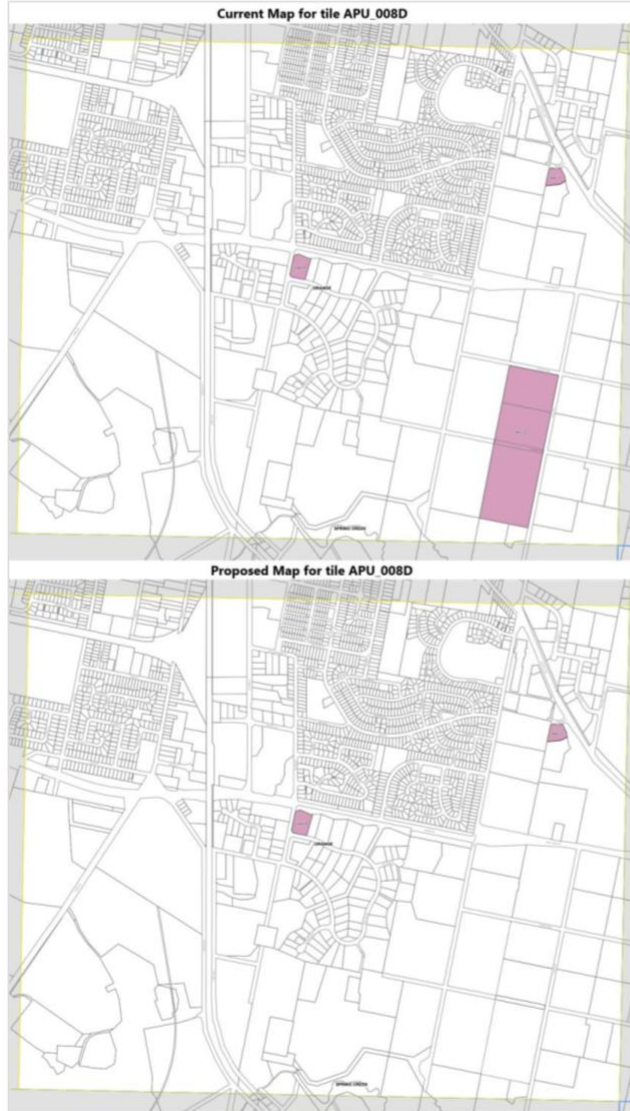


Figure 18 - Change to Additional Permitted Uses Map

Attachment 4 – Copy of Clause Amendment Draft clauses

Land Use Table - Add “creative industry” as an additional permitted land use in Zone E2 (Central Business District).

<p>Zone E2 Commercial Centre</p> <p>1 Objectives of zone</p> <ul style="list-style-type: none"> • To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity. • To encourage investment in commercial development that generates employment opportunities and economic growth. • To encourage development that has a high level of accessibility and amenity, particularly for pedestrians. • To enable residential development only if it is consistent with the Council’s strategic planning for residential development in the area. • To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces. • To promote development that contributes to the role of the Orange CBD as the primary retail and business centre in the City and region. <p>2 Permitted without consent Environmental protection works; Home occupations; Home-based child care</p> <p>3 Permitted with consent Amusement centres; Artisan food and drink industries; Backpackers’ accommodation; Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Creative Industries; Dwelling houses; Entertainment facilities; Function centres; Group homes; Home industries; Hotel or motel accommodation; Information and education facilities; Local distribution premises; Medical centres; Mortuaries; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restricted premises; Secondary dwellings; Shop top housing; Tank-based aquaculture; Vehicle repair stations; Veterinary hospitals; Any other development not specified in item 2 or 4</p> <p>4 Prohibited Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm stay accommodation; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Open cut mining; Recreation facilities (major); Research stations; Residential accommodation; Resource recovery facilities; Rural industries; Sewerage systems; Sex services premises; Storage</p>
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premises; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle sales or hire premises; Warehouse or distribution centres; Waste disposal facilities; Water recreation structures; Water supply systems; Wholesale supplies

Land Use Table - Add "Secondary Dwellings" as an additional permitted land use in Zone R5 Large Lot Residential.

Zone R5 Large Lot Residential

1 Objectives of zone

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To provide for student housing in close proximity to the Charles Sturt University.
- To ensure development is ordered in such a way as to maximise public transport patronage, and encourage walking and cycling, in close proximity to settlement.
- To ensure development along the Southern Link Road has an alternative access.

2 Permitted without consent

Environmental protection works; Home-based child care; Home occupations

3 Permitted with consent

Animal boarding or training establishments; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Crematoria; Dwelling houses; Environmental facilities; Exhibition homes; Extensive agriculture; Home businesses; Home industries; Information and education facilities; Kiosks; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Respite day care centres; Roads; **Secondary dwellings**; Tank-based aquaculture; Veterinary hospitals; Water supply systems

4 Prohibited

Any development not specified in item 2 or 3

Clause 4.1AA – Extend reinstated minimum lot size controls to Zones R1, R2, R5 and RU5 to close strata/community title loophole.

4.1AA Minimum subdivision lot size for community title schemes

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

- (a) to ensure that the land to which this clause applies is not fragmented into lots that would create additional dwelling opportunities.
- (2) This clause applies to a subdivision (being a subdivision that requires development consent) under the *Community Land Development Act 2021* of land in any of the following zones—
 - (a) RU1 Primary Production,
 - (b) C2 Environmental Conservation,
 - (c) C3 Environmental Management,
 - (d) C4 Environmental Living,
 - (e) R1 General Residential,
 - (f) R2 Low Density Residential,
 - (g) R5 Large Lot Residential,
 - (h) RU5 Village,
 but does not apply to a subdivision by the registration of a strata plan.
- (3) The size of any lot resulting from a subdivision of land to which this clause applies (other than any lot comprising association property within the meaning of the *Community Land Development Act 2021*) is not to be less than the minimum size shown on the *Lot Size Map* in relation to that land.
- (4) This clause applies despite clause 4.1.

Draft wording of amended clause 4.1AA - changes shown in red

Clause 4.1B – to be renamed to remove reference to Residential Flat Buildings as these are not mentioned in the body of the clause.

4.1B Minimum lot sizes for dual occupancy and multi dwelling housing and residential flat buildings

Draft wording of amended clause 4.1B title - changes shown in red

Clause 5.5 – Amend to permit secondary dwellings in rural zones up to the greater of 60m² or 50% of the principal dwelling floor area.

5.5 Controls relating to secondary dwellings on land in a rural zone

If development for the purposes of a secondary dwelling is permitted under this Plan on land in a rural zone—

- (a) the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—
 - (i) 60 square metres,
 - (ii) 50% of the total floor area of the principal dwelling, and
- (b) the distance between the secondary dwelling and the principal dwelling must not exceed 60 metres.

Draft wording of amended clause 5.5 - changes shown in red

Clause 7.15 – to be amended to replace specific reference to “Shiralee Hilltop Park Buffer” with general term “Development in Buffer Areas” and to capture the Redmond Place precinct.

7.15 Development in Buffer Areas

- (1) The objective of this clause is to ensure high quality urban design outcomes in key urban areas.
- (2) This clause applies to land identified as “Public Park Buffer Area” or “Richmond Place Precinct Buffer Area” on the *Buffer Zone Map*.

Note—

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, clause 1.19(1)(e)(i) provides that complying development must not be carried out on land identified by an environmental planning instrument as being within a buffer area.

- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following—
 - (a) the urban design outcomes arising from the siting, design and orientation of the development,
 - (b) the opportunities for passive surveillance of the public park,
 - (c) interfaces between the development and the public park,
 - (d) fencing and borders between the development and the public park,
 - (e) whether the development is likely to adversely affect the design, visual character, operation or maintenance of the public park.
- (4) this clause ceases to have effect on the land identified in Column 1 of the Table to this clause on the corresponding date shown in Column 2 of the Table.

Column 1

Shiralee Hill Top Park
Redmond Place Precinct

Column 2

1 August 2034
1 July 2035

Draft wording of amended clause 7.15 - changes shown in red

Clause 7.18 – To be included as a new clause at the end of Part 7.

7.18 Events permitted without development consent

- (1) The objective of this clause is to provide for the temporary use of public reserves and public roads for exhibitions, meetings, concerts or events.
- (2) Despite any other provision of this Plan, development (including any associated temporary structures) for the purpose of a temporary event may be carried out on a public reserve or public road without development consent.

Note—

Other approvals may be required, and must be obtained, under other Acts, including the *Local Government Act 1993*, the *Roads Act 1993* and the *Crown Land Management Act 2016*.

(3) In this clause—

public reserve has the same meaning as in the *Local Government Act 1993*.

temporary event means an exhibition, meeting, concert or other event that is open to the public for which land is used for a period of not more than 52 days (whether or not consecutive) in any period of 12 months.

Draft wording of proposed clause 7.18

Attachment 5 – Copy of changes to schedule 2 exempt development

~~Advertising signage (Business Identification Signs in Zone E4)~~

(1) Pole or pylon signs—

- (a) Only one pole or pylon sign (which may include a directory board for multiple occupancies on the land) per site.
- (b) Maximum area—5.0m².
- (c) Maximum height—4.6m.
- (d) Must not obscure sight distance for vehicles approaching, entering or leaving the site.

(2) Flush wall signs—

- (a) For a multiple occupancy site—must not exceed 2.5m².
- (b) For a single occupancy site—must not exceed 20% of the area of the front elevation of the building.
- (c) If in relation to an industrial building or unit—must be attached to the building or unit.

(3) Projecting wall signs—

- (a) For a single occupancy site—must not exceed 5m².
- (b) If in relation to an industrial building or unit—must be attached to the building or unit.

~~Advertising signage (Business Identification Signs in Zone R1, R2, R3 and R5)~~

Internal signs—

- (a) Must not comprise an item of environmental heritage as detailed in Schedule 5.
- (b) Must not be visible from outside the premises on which it is displayed.
- (c) If attached to a glass display window—must be behind the glass.

~~Advertising signage (other signs)~~

(1) Internal signs—

- (a) Must not comprise an item of environmental heritage as detailed in Schedule 5.
- (b) Must not be visible from outside the premises on which it is displayed.
- (c) If attached to a glass display window—must be behind the glass.
- (2) Real estate signs—
 - (a) In rural or residential zones—maximum area of 2.5m².
 - (b) In employment or mixed use zones—maximum area of 4.5m².

Draft wording of Schedule 2 – changes shown in red.