



Planning,
Industry &
Environment

IRF21/4676

Gateway determination report – PP-2021-5680

Amendments to Rosedale Gardens to facilitate increased residential development up to 700 lots at 440 Clergate Road and 463 Leeds Parade, Orange

December 21



Published by NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

Title: Gateway determination report – PP-2021-5680

Subtitle: Amendments to Rosedale Gardens to facilitate increased residential development up to 700 lots at 440 Clergate Road and 463 Leeds Parade, Orange

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Table 1 Reports and plans supporting the proposal

| Relevant reports and plans |
|----------------------------------------------------------------------------------------------------|
| Orange City Council - Planning and Development Committee 2 November 2021 Report |
| Orange City Council – Rosedale Gardens – DCP Requirements 2021 |
| Flora Search – Preliminary Biodiversity Assessment 2016 |
| Biosis – Orange Abattoir Archaeological Survey Report 2016 |
| Geolyse – Stage 1 Preliminary Site Investigation – Assessment of Potential Site Contamination 2016 |

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

| | |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| LGA | Orange City Council |
| PPA | Orange City Council |
| NAME | Amendments to Rosedale Gardens to facilitate increased residential development up to 700 lots at 440 Clergate Road and 463 Leeds Parade, Orange (250 homes, 0 jobs) |
| NUMBER | PP-2021-5680 |
| LEP TO BE AMENDED | Orange Local Environmental Plan 2011 |
| ADDRESS | 440 Clergate Road and 463 Leeds Parade, Orange |
| DESCRIPTION | Lots 2 and 3, DP255983 Lots 14, 15 and 25 DP6694 |
| RECEIVED | 16/11/2021 |
| FILE NO. | IRF21/4676 |
| POLITICAL DONATIONS | There are no donations or gifts to disclose and a political donation disclosure is not required |
| LOBBYIST CODE OF CONDUCT | There have been no meetings or communications with registered lobbyists with respect to this proposal |

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal. The objectives of the planning proposal are to:

- Remove land zonings which restrict the location of lots and dwellings, to enable greater flexibility in location of these at final subdivision design of the Rosedale Gardens proposal.
- Enable a greater lot yield, to a maximum of 700 lots on the subject site.
- Exclude certain land, with a steep slope of 20% or more, from the exempt and complying development codes of the Housing Code, Inland Code or Low Rise Housing Diversity Code.

The objectives of this planning proposal are clear and adequate. However, updating is required prior to community consultation as a condition of the Gateway determination. This will reflect the limitation of exempt and complying development applying to areas with steep terrain.

1.3 Explanation of provisions

The planning proposal seeks to amend the Orange LEP 2011 and *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) in accordance with the changes below.

Table 3 Current and proposed controls

| Control | Current | Proposed |
|------------------------|-------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| Zone | R5 Large Lot Residential C4 Environmental Living RE1 Public Recreation SP2 Infrastructure- Electrical Transmission Line | R5 Large Lot Residential |
| Minimum lot size | No MLS, 4000m ² and 8000m ² | 2000m ² |
| Number of dwellings | 450 | Restricted to a maximum of 700 |
| Schedule 5, Codes SEPP | Nil | Include portions of the subject site with a slope of 20% or more in Schedule 5 |

The planning proposal adequately explains how the objectives of the proposal will be achieved, except for controlling development on slopes of 20% or more. This is discussed further in **section 3.4** of this report and forms part of the Gateway determination conditions.

1.4 Site description and surrounding area

The subject site consists of approximately 293ha of predominately undeveloped, rural land, which is used for livestock grazing (**Figure 1**). The Southern portion of the subject site still houses the old Orange Abattoir, which hasn't been operational since 2005. The TransGrid Line 947 - Wellington 330kV to Orange North 132kV Line also bisects the eastern portion of the subject site (**Figure 1**).

The subject site topography ranges from gentle slopes along the western boundary to steep (greater than 20% slope) hills to the eastern boundary (**Figure 2**). Environmental features present on the subject site include tributaries of the Macquarie River, remnant patches of native vegetation and manmade dams (**Figure 1**).

The proposal is located approximately 6km north of Orange CBD, along the boundary of the Orange and Cabonne Local Government Areas (LGAs) (**Figure 3**). The subject site is bounded by the Main Western Railway to the west, Pearce Lane to the north, rural land to the east and Charles Sturt University Campus along the south-eastern and southern boundary (**Figure 3**).



Figure 1 Subject site within red boundary (source: Rosedale Gardens Planning Proposal)

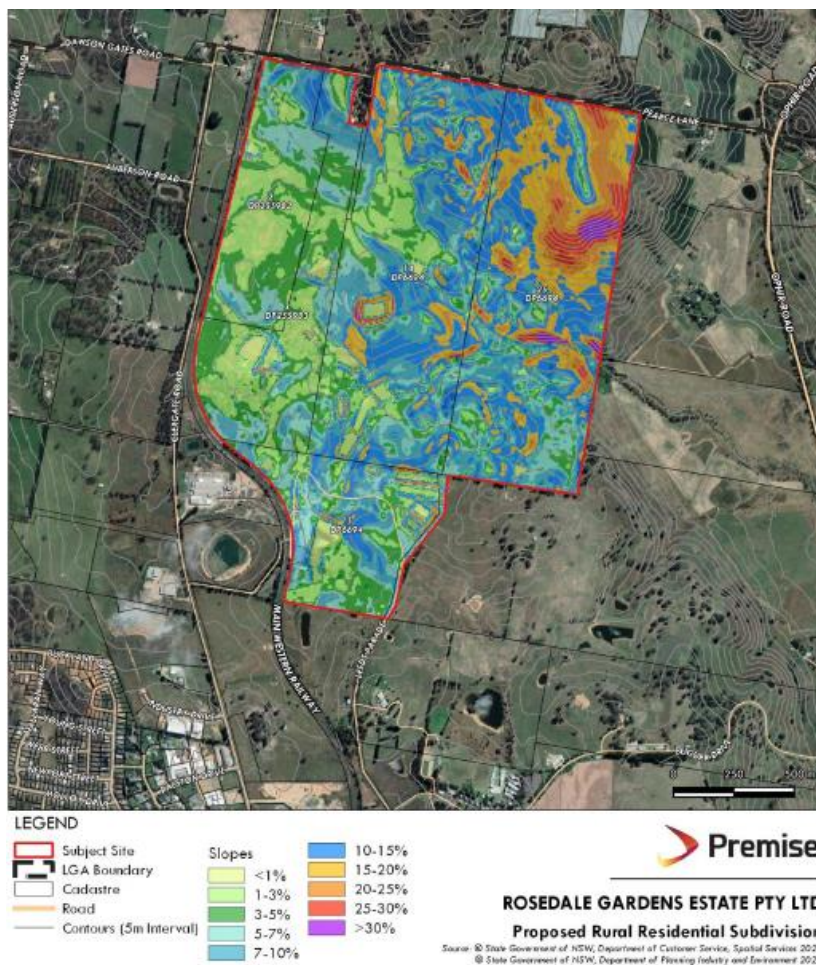


Figure 2 Slopes of the subject site (source: Rosedale Gardens Planning Proposal)

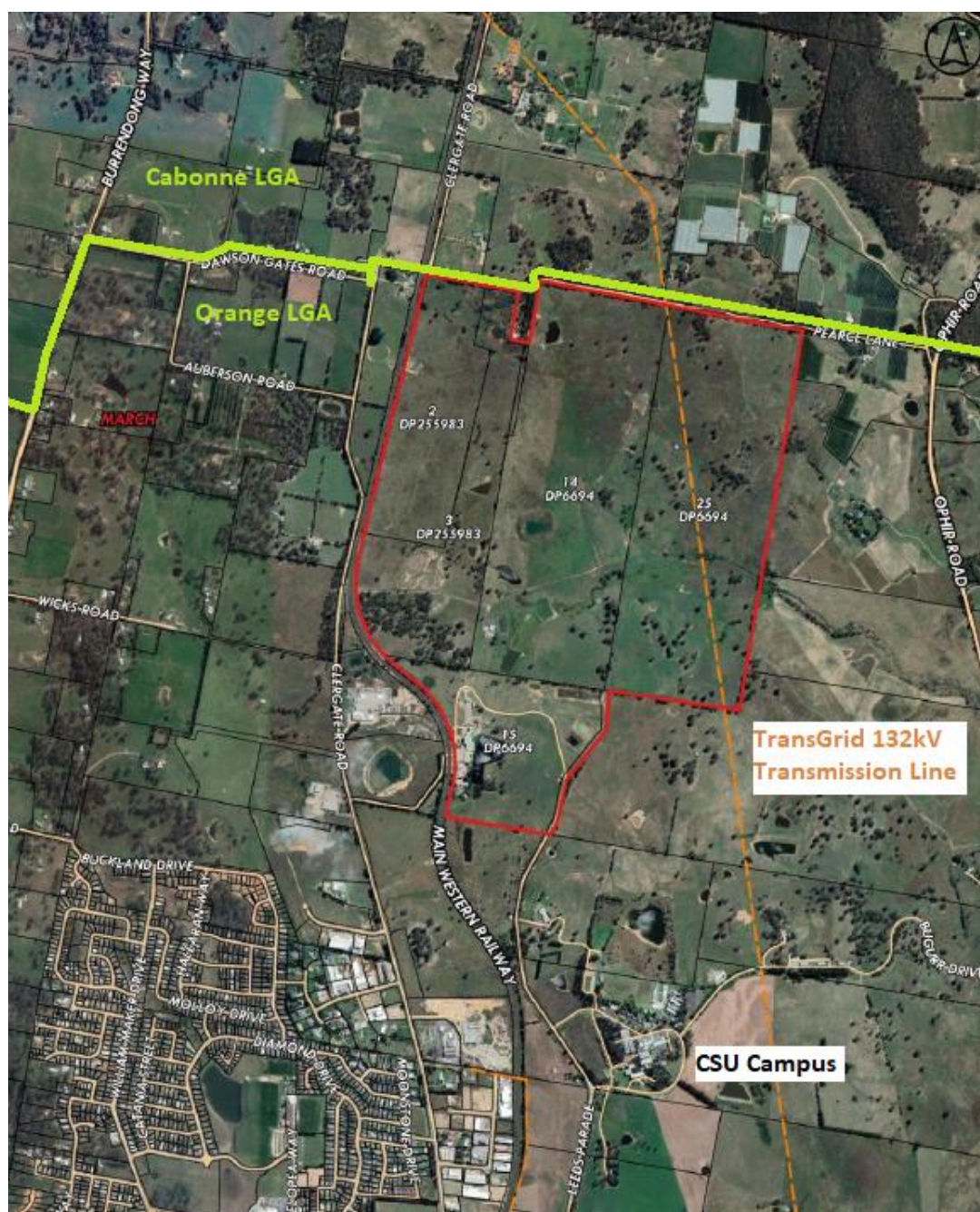


Figure 3 Site context (source: Rosedale Gardens Planning Proposal)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Orange LEP 2011 maps, which are suitable for community consultation. The specific Orange LEP 2011 map sheets proposed to be amended are:

- Land Zoning Maps LZN_006 and LZN_007C.
- Lot Size Maps LSZ_006 and LSZ_007C.
- The planning proposal also states new Additional Permitted Uses Maps APU_006 and APU_007C will need to be created to reflect the lot limiting clause to apply to the land.

The suitability of the proposed zoning changes is further discussed in the sections below. In summary, the suitability of the entire subject site to be rezoned to R5 Large Lot Residential is not yet determined until consultation with the relevant agencies has been completed. The planning proposal maps may require updating prior to community consultation, in response to agency comments. The Gateway determination will be conditioned to reflect this staged approach.

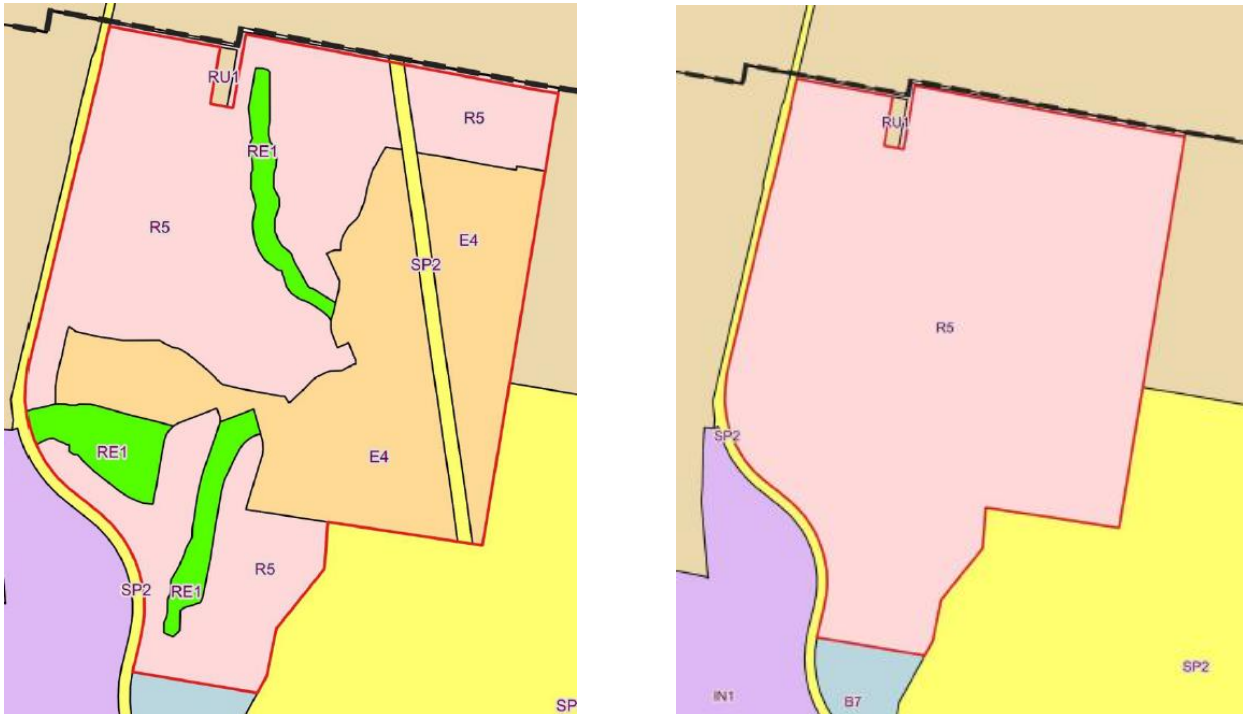


Figure 4 Current (left) and proposed (right) zoning maps (source: Rosedale Gardens Planning Proposal).

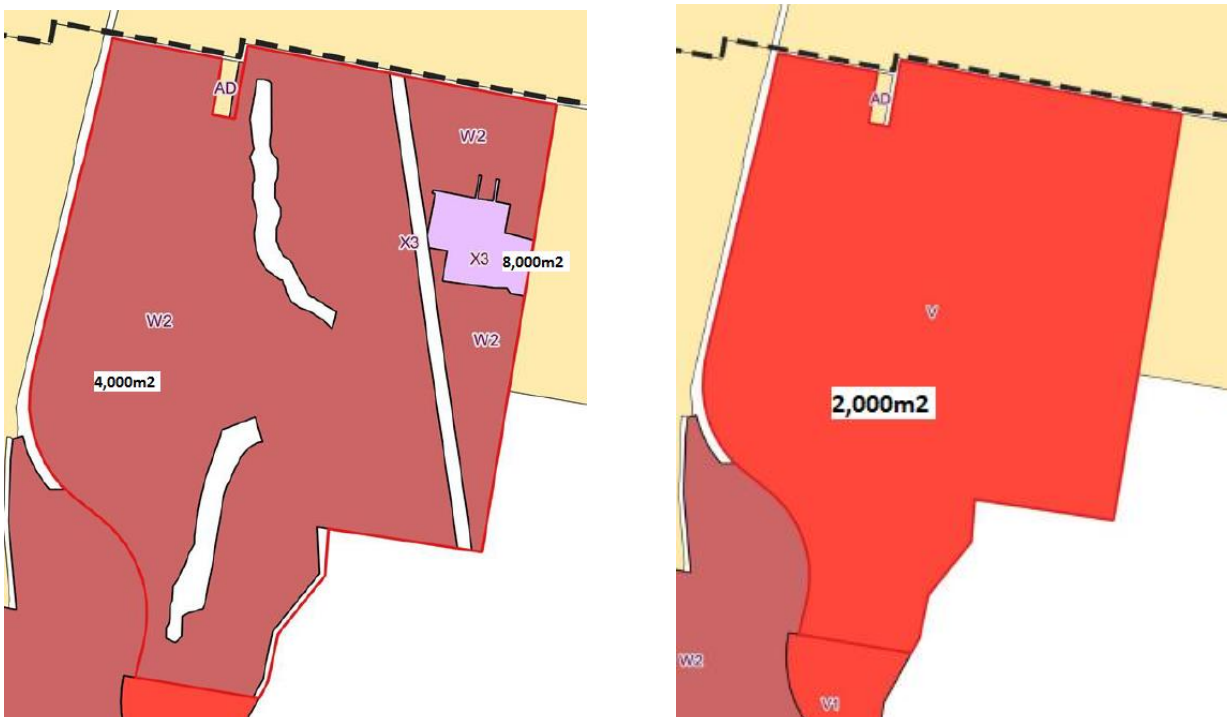


Figure 5 Current (left) and proposed (right) lot size maps (source: Rosedale Gardens Planning Proposal)

1.6 Background

The original Rosedale Gardens proposal (previously known as Clergate Hills rezoning (PP_2016_ORANG_002_00 / PP-2020-3314) affected the same subject site as the current Rosedale Gardens proposal. The original proposal was to change the land use from a mix of rural and industrial to large lot residential, which is explained further in **Table 4**. A conditional Gateway determination was issued on 10 June 2016 which originally only allowed for partial rezoning of the land to protect future industrial land (SA B – Orange) as identified in the Blayney Cabonne Orange Sub Regional Industrial and Rural Land Use Strategy (BCO) 2008/2011 update, along the rail corridor (see **Table 6** for further information).

Table 4 Previous and current LEP controls created by the original Rosedale Gardens proposal

| Control | Previous | Current |
|---------------------|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| Zone | IN1 General Industrial RU1 Primary Production | R5 Large Lot Residential E4 Environmental Living RE1 Public Recreation SP2 Infrastructure – Electrical Transmission Line |
| Minimum lot size | 4,000m ² (IN1) and 100ha (RU1) | No MLS, 4000m ² and 8000m ² |
| Number of dwellings | 2 | 450 |
| Urban Release Area | Nil | Created |

The Gateway determination was amended by an Alteration of Gateway determination (6 February 2017) after a Gateway determination review by the Western Joint Regional Planning Panel.

- The alteration allowed for the entire site to be considered as part of the rezoning.
- Condition 1 of the Altered Gateway determination required Council to prepare an Addendum to the BCO to justify removal of future industrial land.

The Department reviewed the Addendum BCO and consulted with Council and consultants to resolve issues with residential supply and demand; justification of loss of agricultural and industrial land; and land use conflict between the railway, rural and residential uses. The Addendum BCO (version April 2019) was eventually endorsed by the Department and the LEP Amendment No. 13 was notified on 21 February 2020.

2 Need for the planning proposal

The proposal is not the result of a Department approved regional or local strategy. The planning proposal states the proposal responds to increased housing needs in response to COVID-19. The Draft Orange Housing Strategy (OHS) 2021 (currently on exhibition) addresses the supply and demand around large lot residential development and includes justification for the proposal in the assessment of residential land supply through to 2055. This is discussed in more detail in **section 3.2** of this report.

A planning proposal is required to amend the provision of the Orange LEP 2011. There is uncertainty of the suitability of all requested amendments of the proposal proceeding. The main concern is rezoning of the entire site to zone R5 Large Lot Residential and reducing MLS to 2,000m². The current mixed zoning of R5/SP2/RE1/C4 and MLS of 4,000m² to 8,000m² was

originally supported as it reflected the environmental values and development constraints of the land in respect to biodiversity value, open space, riparian corridors, electricity easements and slopes. These values and constraints are still present on the site and adequate justification for removal of the SP2/RE1/C4 zones and 8,000m² MLS has not been provided. Specific assessment of these concerns against the regional and local strategic framework, section 9.1 Directions and site-specific assessment is discussed in detail below. Ultimately, a conditioned Gateway determination is recommended to ensure adequate justification for the rezoning and consultation with agencies can occur before agreeing to remove the SP2/RE1/C4 zones and 8,000m² MLS.

3 Strategic assessment

3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Central West and Orana Regional Plan 2036, of which there are several inconsistencies which are yet to be resolved. The planning proposal was submitted before the draft Central West and Orana Regional Plan 2041 was placed on public exhibition, therefore, is not included in the planning proposal strategic assessment.

Table 5 Regional Plan assessment

| Regional Plan Objectives | Justification |
|-------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Direction 13: Protect and manage environmental assets | Actions 13.1 and 13.2 apply as the proposal will affect land mapped as moderate to high biodiversity sensitivity in the Orange LEP 2011. While this mapping will not be affected, the proposal aims to rezone the entire land to zone R5, which will remove the RE1 and C4 zones on the land. These existing zones protect the environmental features by reducing the development potential on the land. Direction 13 is not addressed in the planning proposal and a condition of Gateway determination will be recommended to address this inconsistency. |
| Direction 14: Manage and conserve water resources for the environment | Action 14.2 applies as new developments will be located on groundwater sensitive land and nearby tributaries of the Macquarie River. The planning proposal mentions that water sensitive designs will be used as well as stormwater capturing devices. Council has raised concerns with the proposed stormwater harvesting proposal. Direction 14 is not addressed in the planning proposal and a condition of Gateway determination will be recommended to address this. |
| Direction 15: Increase resilience to natural hazards and climate change | Action 15.1 applies as the proposal will affect land mapped as high biodiversity sensitivity in the Orange LEP 2011 and is known to contain contaminated land. As previously stated, the proposal will increase development potential on sensitive and contaminated land. A preliminary land contamination report has stated the land can be adequately remediated which will be detailed in a further assessment. Direction 15 is not addressed in the planning proposal and a condition of Gateway determination will be recommended to address this. |
| Direction 16: Respect and protect Aboriginal heritage assets | All actions under Direction 16 apply as the proposal is known to contain 20 Aboriginal sites. The heritage report that accompanied the proposal stated that the Potential Archaeological Deposits should be avoided; however, development can be approved through further investigations, community consultation and acquisition of appropriate approvals such as an Aboriginal Heritage Impact Permit (AHIP). While impact to all Aboriginal sites is expected, the proposal does not increase the |

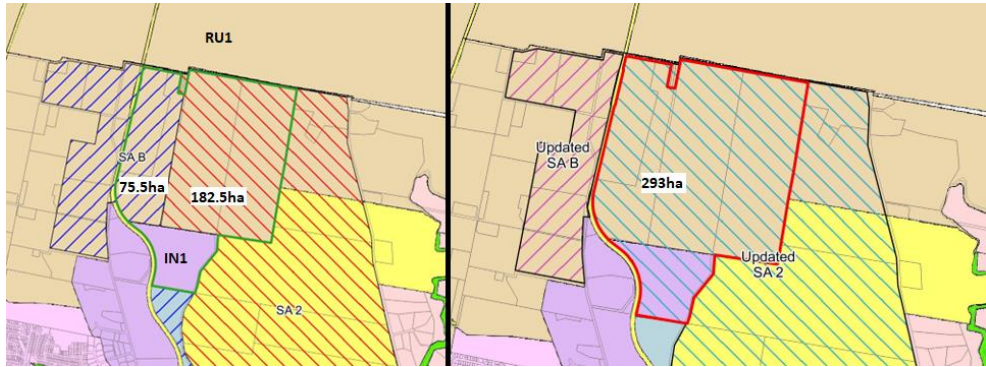
| | |
|-----------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | potential impact. This is mainly due to the location of the sites and original decision for an AHIP to cover impact to all Aboriginal sites in 2016. The proposal has adequately considered and can follow appropriate pathways to protect heritage assets and is consistent with Direction 16. |
| Direction 25: Increase housing diversity and choice | Actions 25.2 and 25.3 apply to the proposal as the proposal is located within 6km of Orange CBD and will require adequate infrastructure servicing. The planning proposal indicates the range of lot sizes between 2,000m ² to 4,000m ² will provide needed housing diversity in Orange. The draft Orange Housing Strategy (OHS) 2021 includes assessment of the need for this type of housing as explained in section 3.2 of this report. The provision of adequate infrastructure is required in the Orange LEP 2011 before the proposal can be developed and State designated infrastructure will be considered as the land is identified an Urban Release Area (URA). Detailed infrastructure assessment will be undertaken at the Development Application stage. Therefore, the proposal is consistent with Direction 25. |
| Direction 28: Manage rural residential development | All actions of Direction 28 apply to the proposal which will allow for increased density of rural residential development. Rezoning the entire lot to zone R5 is inconsistent with this Direction as it may not avoid areas of high environmental significance. Conflict with nearby industrial and agricultural users is proposed to be managed through separation buffer distances, vegetation plantings and appropriate location of houses with regards to topography to help in avoiding conflict where possible. Details of this will be resolved at the Development Control Plan (DCP) and subdivision stage. Therefore, the proposal is only partially consistent with Direction 28, until agency consultation has determined an appropriate approach to rezoning of the subject site. |
| Direction 29: Deliver healthy built environments and better urban design | Actions 29.2, 29.3 and 29.4 apply to the proposal as the proposal indicates open spaces, water sensitive design, and walking/cycling paths will be an important part of the design of Rosedale Gardens. Therefore, the proposal is consistent with Direction 29. |

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 6 Local strategic planning assessment

| Local Strategies | Justification |
|-----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Local Strategic Planning Statement 2020 | Priorities 2, 4, 6 and 13 of the Orange LSPS apply to new residential areas and the environment. Specific actions which relate to the proposal are priority 2, action 6 and priority 6, action 2 which relate to residential rezoning needing to provide adequate green grids and public open spaces. Additionally, priority 13, action 3 states “ <i>Require greenfield subdivisions to protect and enhance waterways and riparian corridors</i> ”. The proposed removal of the RE1 zone, which is in place to protect the riparian corridors, remnant vegetation and provide adequate provision of open spaces is inconsistent with these priorities and actions. Therefore, the proposal is inconsistent with the Orange LSPS 2020. |

| Local Strategies | Justification |
|----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Blayney Cabonne Orange Sub Regional Industrial and Rural Land Use Strategy (BCO) 2011 and Addendum 2019</p> | <p>The BCO 2011 and Addendum 2019 provide for adequate industrial land to service the sub-region and both versions have been endorsed by the Department. The BCO 2011 identifies the subject site as a split of future Industrial and Residential investigations areas. Specifically, the eastern extent of the subject site was within the future large lot residential SA 2 – University area (182.5 ha, or 62% of the site). The western extent is within future industrial SA B – Orange (75.5 ha or 26%). The southern portion of the lot, 35 ha (12%), is the old Orange Abattoir which at the time was zoned IN1 – General Industrial (Figure 6).</p>  <p>Figure 6 Previous zoning and strategic intent for the subject site as per the BCO 2011 (left) and Addendum 2019 (right) (source: BCO Addendum 2019)</p> <p>The Addendum 2019 is a specific update for the original Rosedale Gardens proposal which provides local strategic merit for the subject site to become a future rural residential area of 450 lots. This was based on the loss of industrial land being justified and predicted shortfall of houses by 2036 of between 719 (DPE low growth scenario) and 1,225 lots (DPE high growth scenario). The current Orange LEP controls were updated in 2020 to match the Addendum 2019 recommendations.</p> <p>The current Rosedale Gardens proposal will vary from the 2019 Addendum by increasing R5 supply by 250 lots. While an additional 250 lots is within the additional supply needs of the low and high growth predictions, other large lot residential sites in Orange have since been identified which will also fill this need. This if further assessed in the Draft Orange Housing Strategy section below.</p> |
| <p>Draft Blayney Cabonne Orange Sub Regional Industrial and Rural Land Use Strategy (BCO) 2019-2036</p> | <p>The draft BCO 2019-2036 has been exhibited but not adopted by Orange City Council. This draft Strategy has been adopted by Blayney and Cabonne councils, however, cannot be submitted to the Department for endorsement until also adopted by Orange City Council. The draft BCO (February 2020 version) was written before the Orange LEP Amendment to rezone Rosedale Gardens for residential purposes. As a result, this draft Strategy acknowledges Rosedale Gardens will likely be a residential area and assesses the North Orange area for suitability for future industrial uses. Therefore, the current Rosedale Gardens proposal is generally consistent with the draft BCO 2019-2036 which identifies the subject site for residential purposes.</p> |
| <p>Orange Sustainable Settlement Strategy (SSS) 2010</p> | <p>The Orange SSS was originally completed in 2004 and updated in 2010. The 2010 update has been endorsed by the Department. In this version the subject site is still mapped as a split of future Industrial and Residential investigations areas as it was created before the original Rosedale Gardens proposal was approved. Therefore, the Orange SSS is no longer relevant to the current proposal.</p> |

| Local Strategies | Justification |
|------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Draft Orange Housing Strategy (OHS) 2021 (October version) | <p>The draft OHS intends to replace the Orange SSS 2010 update and is currently on exhibition until February 2022. The draft OHS notes an existing supply of appropriately zoned land of 3841 lots and identifies eight new candidate greenfield sites, providing 4601 new lots. The combined existing stock and the proposed greenfield sites provide enough diversity of residential supply through to 2055.</p> <p>The draft OHS includes Rosedale Gardens existing 450 lots and compares to the proposed 700 lot potential. An additional 250 lots is expected to increase housing supply by one year. The additional 250 lots are justified in Table 9-1 of the draft OHS as addressing the potential shortfall in the 15-20 year period if the proposed Life Sciences Precinct does not proceed. The proposed Life Sciences Precinct contains part of the Agricultural Research Centre (ARC) which is owned by the NSW State Government. The site is an existing zoned R2 Low Density Residential area with no MLS, along Forest Road in south Orange. Development potential is 550 lots; however, the ARC intends to continue to operate for the foreseeable future. Therefore, the development of this precinct is uncertain and the additional 250 lots provided by the proposal may be required sooner and is considered consistent with the draft OHS Strategy.</p> |

3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 7 Section 9.1 Ministerial Direction assessment

| Directions | Consistent/ Not Applicable | Reasons for Consistency or Inconsistency |
|------------------------------------|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2.1 Environmental Protection Zones | Inconsistent | <p>This Direction applies as the proposal will affect land mapped as moderate to high biodiversity sensitivity in the Orange LEP 2011. The proposal is inconsistent with this Direction as it will remove the RE1/C4 zones which reduces the environmental protection standards on the land. The RE1/C4 zones were originally put in place to provide additional protection for the vegetation and watercourses on site. Justification of this inconsistency in the planning proposal is centred around implementation of the <i>Biodiversity Conservation Act 2016</i> (BC Act) and <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i>, which were not in place when the original Rosedale Gardens proposal was submitted for Gateway determination. This justification is inadequate as it does not address section 5 of the Direction which provides parameters around what would justify an inconsistency with this Direction. Additional information is required to appropriately address the inconsistency with Direction 2.1.</p> |
| 2.3 Heritage Conservation | Inconsistent | <p>This Direction applies as the proposal is known to contain 20 Aboriginal sites. The heritage report has stated an AHIP is required to legally remove the Aboriginal sites and fully develop the land. No agency feedback was received in response to the heritage impact during the original Rosedale Gardens proposal.</p> |

| | | |
|----------------------------------------|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | A condition of Gateway determination will be recommended to update the planning proposal to ensure this Direction is appropriately considered and addressed. |
| 2.6 Remediation of Contaminated Land | Inconsistent | The subject site has a history of potentially contaminating activities, including the old Orange Abattoir, dams previously used for agricultural purposes and irrigation of wastewater associated with the former Wooltop processing plant. A Stage 1 Preliminary Site Investigation was completed in 2016 for the original Rosedale Gardens planning proposal (PP-2020-3314) and found the site was suitable for rezoning for residential purposes despite historical contamination. This assessment has been updated to address the increase in density and the recommendations remain unchanged. A recommendation of the report is for additional assessment and remediation work to be completed before this site can be developed. A condition of Gateway determination will be recommended to update the planning proposal to ensure this Direction is appropriately considered and addressed. |
| 3.1 Residential Zones | Consistent | This Direction applies as the proposal will change development controls on an existing residential zoned area. The proposal is consistent with this Direction as it is proposed to increase residential opportunity and variety. The site specific DCP requires good design and adequate servicing will be available before development and residential density will be increased by the proposal. |
| 3.4 Integrating Land Use and Transport | Consistent | This Direction applies as it will alter development controls on residential zoned land. As part of the site specific DCP requirements, the subject site will have to be adequately provided with interconnected pedestrian and cyclist networks which provide access to existing networks such as the Charles Sturt University Campus to the south. The planning proposal states this is possible and is considered consistent with this Direction. |
| 4.4 Planning for Bushfire Protection | Inconsistent | This Direction applies as the subject site is mapped as containing bushfire prone land. Advice from Council has confirmed this vegetation has been removed, therefore, the mapping is showing a legacy issue only. However, advice from Rural Fire Service (RFS) during the original Rosedale Gardens proposal requested an updated bushfire assessment report to meet new guidelines. This is proposed to be addressed at DA stage to adequately assess the risk of existing and proposed vegetation in public open spaces, riparian corridors and grasslands once finalised. Given the increase in residential density, consultation with RFS will be required again to adequately address and justify any inconsistencies with this Direction. |

| | | |
|----------------------------------------|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5.10 Implementation of Regional Plans | Inconsistent | The planning proposal relates to the Central West Orana Regional Plan 2036. As discussed in section 3.1 of this report, rezoning the entire site to R5 is inconsistent with Directions 13, 14, 15 and 28 of the Regional Plan at this time and the planning proposal requires update to resolve these inconsistencies. |
| 6.1 Approval and Referral Requirements | Consistent | This Direction applies to all planning proposals. The proposal is consistent with this Direction as it will not create any additional concurrence, consultation or referral requirements. |
| 6.2 Reserving Land for Public Purposes | Inconsistent | This Direction applies to all planning proposals. The planning proposal intends to remove all RE1 zoned land which is inconsistent with section four of this Direction. The planning proposal does not address this Direction, therefore, there is no justification provided as to why this inconsistency may be of minor significance. It is recommended that a condition of Gateway determination require the planning proposal be updated to address this Direction. |
| 6.3 Site Specific Provisions | Inconsistent | The proposal is inconsistent with this Direction as it will require site specific controls on the subject site to limit the lot yield to 700 lots. A lot-averaging clause based on one from Cessnock is proposed in the planning proposal. Council needs to consider the adequacy of this proposed clause given concerns it has identified with protection of environmental values and management of constraints. The planning proposal should be amended to ensure there is sufficient guidance for drafting on Council's overall intentions for the site in terms of protection of environmental values and management of constraints. Consistency with the Direction remains unresolved. |

3.4 State environmental planning policies (SEPPs)

With exception of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, the planning proposal is consistent with all relevant SEPPs. Council has requested for certain parts of the subject site to be included in Schedule 5 of the Codes SEPP, to avoid complying development applying to steep land with a slope of 20% or more. This will allow for Council to issue appropriate development controls for any development which is usually permitted without consent under the Codes SEPP. Preliminary internal consultation with Planning Policy team indicates a change to the Codes SEPP would not be necessary and an alternative local mechanism should be used.

An alternative approach would be to include steep land as part of the environmentally sensitive land definition under the Orange LEP 2011. This will prevent complying development being permitted at the subject site, as per clause 1.19 of the Codes SEPP and already exists as clause 6.4 Blue Mountains LEP 2015. This could be achieved through creation of an additional local provision and associated mapping of land to restrict the clause applying to land with a slope of 20% or more. Additional information is required to consider steep terrain controls without amendment to the Codes SEPP.

4 Site-specific assessment

4.1 Environmental

Environmental features present on the subject site include tributaries of the Macquarie River, ranging in Strahler order from first order in the west, to third order streams in the most eastern portion of the subject site. Most of the site is also mapped as being groundwater vulnerable land in the Orange LEP 2011. Approximately 250-300 housing lots will enjoy direct frontage to water features or overlook adjacent water features. Given the riparian and groundwater values on the land, and increased potential for domestic harvest rights on waterfront land, consultation with the NSW Natural Resources Access Regulator (NRAR) and DPIE Water is recommended.

Remnant patches of native vegetation are located across the subject site, mainly within the existing RE1 and C4 zones and are mapped as moderate to high biodiversity sensitivity in the Orange LEP 2011. A large patch of vegetation to the south-west, within the RE1 zone, is associated with the NSW listed, White Box - Yellow Box - Blakely's Red Gum Grassy Woodland and Derived Native Grassland Critically Endangered Ecological Community (CEEC). Database searches of the Biodiversity Assessment Method Calculator have also found 25 threatened species which may be present on the subject site.

Impact to biodiversity is unknown until final subdivision layout and location of dwellings is determined. However, the planning proposal expects the level of clearing required for this proposal will be above the area clearing threshold to trigger offsetting under the Biodiversity Offsets Scheme. As per section 7.2(b) of the BC Act, a "development or an activity is likely to significantly affect threatened species if the development exceeds the biodiversity offsets scheme threshold". Given the development will cause a significant impact on threatened species as per the BC Act definition and an unknown impact on the CEEC, consultation is required with BCD to address these concerns. Furthermore, additional justification is required if removal of the protective RE1 and C4 zonings is to be pursued post agency consultation.

4.2 Social and economic

The proposal is facilitating an increased density of large lot residential dwellings which are already permissible at the subject site. The additional 250 lots will address a long term housing need in Orange as outlined in the draft OHS 2021. There is no expected cost to the community from the proposed development. The loss of public recreation land from rezoning the subject site to zone R5 is not adequately addressed and as proposed may have a social impact on the environment and community. The planning proposal and Council report state the eventual subdivision will determine the amount of land available for public recreation. However, there is no estimate if this will be an equivalent amount to the existing zoned land or not. Therefore, impact to the community is unknown at this time.

4.3 Infrastructure

The planning proposal states adequate services and infrastructure will be made available to the site through provisions of the site specific DCP. Council has submitted an additional document outlining the specific issues they expect the site specific DCP for this proposal to address. Some of these issues are vegetation buffers, cycling paths, stormwater management and the potential for additional local contributions required for road upgrades to meet the increased vehicle usage. The need for a site specific DCP is already addressed in the Orange LEP 2011 as the subject site is mapped as an URA. Of note, Council are updating the section 7.11 contributions plan to include the additional services required by an additional 250 lots created by this proposal.

The submitted Traffic Impact Assessment (TIA) states the increase in development potential will generate 5,180 vehicle movements per day. The TIA found that this increase is expected to have minor impact on the surrounding road network and moderate increase to queue length and delays. Previous agency consultation with John Holland Rail and Transport for NSW for the original Rosedale Gardens proposal raised concerns with the increased vehicle movements. Until the connection locations and increase vehicle usage were determined, John Holland were unable to comment on if the anticipated level crossing requests were likely to be granted or not. Refusal to grant a rail crossing could have serious restrictions on vehicle movements for the proposal and cause traffic delays and the need for intersection upgrades. The proponent may therefore be required to enter into a planning agreement with Council to address these off-site aspects and ensure adequate funds are available to meet these increased infrastructure upgrade needs. Transport for NSW raised multiple concerns with the existing road network capacity to meet the increased vehicle movements without various upgrades, especially at intersections. Transport for NSW requested for an updated TIA to address their concerns, which could occur at the DCP or subdivision stage. Consultation with John Holland Rail and Transport for NSW is recommended to be consulted on the increased vehicle movements generated by the proposal.

Furthermore, the planning proposal states an intention to use table-drains rather than kerb and guttering. This is not presently supported by Council, especially in terms of roads in steeper areas of the site and will need to be revisited as part of the DCP masterplan exercise. The site specific DCP will need to include provision for trunk water main(s) installation as proposed stormwater harvesting is insufficient.

The TransGrid Line 947 - Wellington 330kV to Orange North 132kV Line bisects the subject site and is currently zoned SP2 Infrastructure- Electrical Transmission Line. The justification for removal of the SP2 zone is based on conversations with a power designer which states it is possible for the high voltage overhead electricity transmission line to be relocated within the proposed road network and placed underground. This does not address the current easement over the land which TransGrid owns or provides any guarantee this work will occur, which is at the full cost of the developer. Consultation has not yet occurred with TransGrid to determine its views on the proposal. Consultation with TransGrid is considered essential given the inclusion of the SP2 zone came about from agency consultation during the original Rosedale Gardens proposal. This consultation requirement will form part of the Gateway determination to resolve the suitability of omitting the SP2 zone before proceeding to community consultation.

5 Consultation

5.1 Community

Council proposes a community consultation period of 14 days as the planning proposal meets the definition of a low impact planning proposal.

The exhibition period proposed is not appropriate. A 28 day consultation period is recommended given the complexity of the planning proposal. Much of the suitability of the planning proposal in relation to loss of protective SP2/RE1/C4 zoning is not justified at this time and subject to further information and agency consultation. Given the complexity of the planning proposal a minimum of 28 days consultation period is required giving the community time to understand and submit feedback.

5.2 Agencies

The proposal does not specifically identify which agencies will be consulted.

It is recommended the following agencies be consulted on the planning proposal and given 21 days to comment:

- Transport for NSW, to review and comment on the updated Traffic Impact Statement 2021, based on previous agency correspondence in 2019 which had concerns about road network capacity from the original proposed Rosedale Gardens development of 450 lots.
- John Holland Rail to review and comment on the updated Traffic Impact Statement 2021 and the suitability of proposed level crossing rail access.
- TransGrid, to review and comment on the proposed loss of SP2 Infrastructure zone which was originally zoned as SP2 upon request by TransGrid in 2019 to protect the Line 947 - Wellington 330kV to Orange North 132kV Line.
- DPIE Water and Natural Resources Access Regulator for increased density of houses on groundwater vulnerable land and along waterfront land with potential water harvesting rights.
- Environment Protection Authority to review and comment on preliminary contaminated land report.
- Heritage NSW to review and comment on the archaeological survey report.
- DPIE Biodiversity and Conservation Division, to review and comment on the preliminary biodiversity report and resolve inconsistencies with section 9.1 Direction 2.1 Environmental Protection Zones in terms of the proposed removal of the C4 and RE1 zones.
- Rural Fire Services to resolve the inconsistency with section 9.1 Direction 4.4 Planning for Bushfire Protection
- Cabonne Shire Council (land is on LGA boundary) and Charles Sturt University (significant adjoining landholder).

6 Timeframe

Council does not propose a time frame to complete the LEP.

The Department recommends a time frame of 12 months to ensure it is completed in line with its commitment to reduce processing times and has been conditioned to reflect this.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a Local Plan-Making authority.

As the planning proposal requires further information and agency consultation to support proposed zone and provisions it is recommended that Council not be authorised to be the local plan-making authority for this proposal at this time. This can be reconsidered before community consultation if outstanding concerns are adequately addressed.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- Facilitating increased residential density to a maximum of 700 lots is strategically justified through the draft Orange Housing Strategy and does not create any inconsistencies with other regional or local strategic policies in terms of providing additional and variety of housing choice.

As discussed in the previous sections 4 and 5, the proposal should be updated to:

- Justify rezoning the entire site to R5 Large Lot Residential and reducing the MLS to 2,000m². The current zoning and MLS controls were agreed to in 2020 due to site environmental values and development constraints, in respect to biodiversity value, open space, riparian corridors, electricity easements and slopes.

- Additional information is required to address inconsistencies with regional and local strategic policies; and enable relevant agencies to provide an informed opinion on the proposal.

Based on the assessment of this report, the proposal must be updated before agency consultation to:

- Adequately address steep terrain with appropriate local development controls and justify reducing the MLS to 2,000m² across the subject site.
- Provide additional justification for removal of the SP2 Infrastructure, RE1 Public Recreation and C4 Environmental Living zones, and the proposed rezoning the entire subject site to R5 Large Lot Residential.
- Adequately address the inconsistencies with the section 9.1 Ministerial Directions and Central West Orana Regional Plan 2036 Directions listed in **section 3** of this report.
- Update discussion on the proposed lot averaging clause to include Council's overall objectives for the site and to support their consideration at development assessment stage.

9 Recommendation

It is recommended the delegate of the Secretary:

- Note that the consistency with section 9.1 Directions 2.1 Environmental Protection Zones, 2.3 Heritage Conservation, 2.6 Remediation of Contaminated Land, 4.4 Planning for Bushfire Protection, 5.10 Implementation of Regional Plans, 6.2 Reserving Land for Public Purposes and 6.3 Site Specific Provisions are unresolved at this time and will require justification.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be updated prior to agency consultation to:
 - Adequately address steep terrain with appropriate local development controls.
 - Provide additional justification for removal of the SP2 Infrastructure, RE1 Public Recreation and C4 Environmental Living zones, and to demonstrate consistency with:
 - Section 9.1 Directions 2.1 Environmental Protection Zones and 6.2 Reserving Land for Public Purposes.
 - Directions 13, 14 and 15 of the Central West Orana Regional Plan 2036.
 - Include a discussion of the section 9.1 Direction 2.6 Remediation of Contaminated Land to demonstrate if the Planning Proposal Authority is satisfied the land can be adequately remediated and be made suitable for all future land uses
 - Update discussion on the proposed lot averaging clause to include Council's overall objectives for the site and to support their consideration at development assessment stage.
2. Prior to community consultation, consultation is required with the following public authorities:
 - Transport for NSW.
 - John Holland Rail.
 - TransGrid.
 - DPIE Water.
 - Natural Resources Access Regulator.
 - DPIE Biodiversity and Conservation Division.
 - Heritage NSW.
 - Environment Protection Authority.

- Rural Fire Services.
 - Cabonne Shire Council.
 - Charles Sturt University.
3. The planning proposal may need to be revised to address agency feedback and is to be forwarded to the Department for review and approval to progress to community consultation.
 4. The planning proposal should be made available for community consultation for a minimum of 28 days.
 5. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
 6. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.



(Signature)

23 December 2021

(Date)

Wayne Garnsey

Manager, Western Region



(Signature)

23 December 2021

(Date)

Garry Hopkins

Director, Western Region, Local and Regional Planning

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