



DOC22/309425-3

6 May 2022

Craig Mortell
Development Services
Orange City Council

Via Concurrences and Referral Portal

**Planning Proposal 2021-5680: Request for agency advice
440 Clergate Road and 463 Leeds Parade, Orange**

Dear Mr Mortell

Thank you for the request on 14 April 2022 for advice from the NSW Environment Protection Authority (EPA) on the Planning Proposal 2021-5680 (Proposal) for the rezoning of 440 Clergate Road and 463 Leeds Parade, Orange NSW (Premises) being Lots 2 and 3 in DP 255983 and Lots 14, 15, and 25 in DP 6694.

The Proposal regards the following changes:

- Re-zone the entire site to R5 large lot residential.
- Change the minimum lot size to 2,000m² from the current proposed no minimum lot size, 4,000m², and 8,000m².
- Increase the number of maximum dwellings to 700 from the current 450 proposed.
- Include portions of the site with a slope of 20% or more into Schedule 5 of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)*.

The EPA recommends that you consider the following issues:

Noise

The proposed rezoning is in the vicinity of a rail line that has the potential to produce noise from its operation over a 24-hour period. It may be necessary to undertake an acoustical assessment to assess any potential noise impacts from the operation of the rail line to help identify any reasonable and feasible mitigation measures. Such an assessment should be prepared by a suitably qualified acoustical consultant. The assessment should consider the requirements of [State Environmental Planning Policy \(Transport and Infrastructure\) 2021](#) and the [Development near Rail Corridors and Busy Roads - Interim Guideline](#) (Department of Planning 2008).

The EPA regulates noise from rail lines, so it is important to ensure that any encroachment of sensitive development on the rail corridor does not result in potential land use conflict, as such conflict can be challenging to resolve.

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Potential land contamination

1. An updated preliminary site investigation report is recommended

The EPA recommends that the preliminary site investigation (PSI) report is updated to describe current site conditions. It is recommended the PSI is expanded to include areas of environmental concern that can occur in an agricultural setting including potential sheep dips and a protocol for unexpected finds.

The PSI prepared to support this Planning Proposal is dated February 2016. Without an updated PSI it is unknown if there have been any developments, such as demolition works or illegal dumping at the site, between then and now.

The PSI should:

- be prepared, or reviewed and approved, by consultants certified under either the Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) scheme (CEnvP(SC)) or the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme.
- be prepared in accordance with the relevant guidelines made or approved by the EPA under section 105 of the *Contaminated Land Management Act 1997*.

The EPA recommends that the updated PSI be submitted to the consent authority as part of consent conditions.

2. A targeted environment investigation is recommended for some areas

Given that majority of the site appears to have been used for agricultural purposes, the EPA recommends targeted environmental investigations focusing on portions of the site associated with former abattoir area and remnant site infrastructure, and the identified electrical substation / transformer area as well as any further areas identified in the updated PSI as potential areas of concern.

This should include comment on the potential for any contamination to pose unacceptable risk to human health or the environment (on- or off-site) and whether further assessment needs to be carried out and/or remediation is required to make the site suitable for the proposed use.

The targeted environmental investigations should:

- be prepared, or reviewed and approved, by consultants certified under either the Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) scheme (CEnvP(SC)) or the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme.
- be prepared in accordance with the relevant guidelines made or approved by the EPA under section 105 of the *Contaminated Land Management Act 1997*.

3. A site audit statement should be prepared

The EPA recommends that a Section A1 or A2 Site Audit Statement certifying suitability of the land for the proposed use be prepared and submitted to the consent authority (Council) if and when an application for subdivision is lodged for those areas identified in the PSI and targeted investigations as areas of concern.

4. Consent conditions should ensure that contamination risk does not increase

The EPA recommends that any consent conditions that are subsequently issued ensure the proposed development does not result in a change of risk in relation to any pre-existing contamination on the site so as to result in significant contamination [note that this would render the Applicant the 'person responsible' for the contamination under section 6(2) of *Contaminated Land Management Act* (CLM Act)].

5. There may be a duty to notify the EPA of contamination

The EPA should be notified under section 60 of the CLM Act for any contamination identified which meets the triggers in the Guidelines for the Duty to Report Contamination. Further information is available here: www.epa.nsw.gov.au/resources/clm/150164-report-land-contamination-guidelines.pdf

6. Certified consultations should be used to assess contamination

The EPA recommends use of “certified consultants”. Please note that the EPA’s Contaminated Land Consultant Certification Policy (<https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/clm/18520-contaminated-land-consultant-certification-policy.pdf?la=en&hash=D56233C4833022719BCE0F40F870C19DC273A1F7>) supports the development and implementation of nationally consistent certification schemes in Australia, and encourages the use of certified consultants by the community and industry. Note that the EPA requires all reports submitted to the EPA to comply with the requirements of the CLM Act to be prepared, or reviewed and approved, by a certified consultant.

If you have any questions about this request, please contact Stuart Gibson on (02) 9995 6193 or via email at environmentprotection.planning@epa.nsw.gov.au .

Yours sincerely

MITCHELL BENNETT
Unit Head – Statutory Planning



Our ref: DOC22/365054
Your ref: PP-2021-5680

Craig Mortell
Orange City Council
cmortell@orange.nsw.gov.au

Dear Craig

Planning Proposal – Amendment 33 – 440 Clergate Road, Orange - Rosedale Gardens

Thank you for your e-mail dated 12 April 2022 to the Biodiversity, Conservation and Science Directorate (BCS) of the Department of Planning and Environment inviting comments on the proposed amendments for 440 Clergate Road, Orange.

BCS understands that the proposal seeks to;

- Rezone the subject site to RU5 from a mix of RU5, RE1, SP2 and E4
- Reduce the minimum lot size across the site to 2000m² from a mix of 4000m² and 8000m².

BCS has the following primary areas of interest relating to strategic land use planning proposals:

1. The impacts of development and settlement intensification on biodiversity
2. Adequate investigation of the environmental constraints of affected land
3. Avoiding intensification of land use and settlement in environmentally sensitive areas (ESAs)
4. Ensuring that development within a floodplain is consistent with the NSW Government's Flood Prone Land Policy, the principles set out in the Floodplain Development Manual, and applicable urban and rural floodplain risk management plans.

We also understand that planning proposals must comply with current statutory matters such as the Local Planning Directions under S9.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

We generally support strategic planning proposals which:

- Avoid rural settlement intensification in areas of biodiversity value and other environmentally sensitive areas;
- Include objectives, such as 'no net loss of native vegetation'; and
- Minimise flood risk to human life, property and the local environment while maintaining floodplain connectivity for environmental benefit.

Some specific comments on the proposed amendments are provided in **Attachment A**. The BCS generic recommendations for planning proposal are provided in **Attachment B** and guidance for identifying High Environmental Value land is provided in **Attachment C**.

If you require any further information regarding this matter, please contact Michelle Howarth, Senior Conservation Planning Officer, via michelle.howarth@environment.nsw.gov.au or (02) 6883 5339.

Yours sincerely

A handwritten signature in black ink that reads "Samantha Wynn". The signature is written in a cursive, flowing style.

Samantha Wynn
Senior Team Leader Planning North West
Biodiversity, Conservation and Science Directorate

10 May 2022

Planning Proposal – 440 Clergate Road, Orange (PP-2021-5680)

BCS Advice

1. The proposed zoning, minimum lot size and subdivision plan could be revised to improve consistency with regional and local strategies

Central West and Orana Regional Plan 2036

Planning proposals should demonstrate consistency with the strategic planning framework including the relevant Regional Plan. To achieve directions, and actions in the relevant Regional Plan for areas with High Environmental Value (HEV), Planning Proposals should identify areas of HEV at the property scale and the current land uses in such areas should not be intensified.

The planning proposal is not consistent with the directions and actions of the Central West and Orana Regional Plan that relate to biodiversity. The planning proposal is not consistent with;

- Direction 13 – protect and manage environmental assets
- Action 13.1 – protect high environmental assets through local environmental plans
- Action 13.2 – minimise potential impacts arising from development in areas of high environmental value, and consider offsets or other mitigation mechanisms for unavoidable impacts

Whilst the planning proposal states that *‘the future subdivision of the land will trigger the BOS’* and therefore any impacts will be assessed under the Biodiversity Assessment Method (BAM) and offset in accordance with the *Biodiversity Conservation Act 2016* (BC Act), the planning proposal does not show that there has been any attempt to avoid areas of HEV, nor does it propose any provisions to protect these values. Furthermore, land use intensification is proposed for the areas that are currently zoned for conservation (C4).

Areas of HEV should instead be better protected by Planning Proposals through an appropriate zone which has strong conservation objectives and limited land uses, an appropriate minimum lot size so the land cannot be subdivided, and future management.

BCS does not support removing the current Conservation zoning without further site assessment.

Draft Central West and Orana Regional Plan 2041

In addition to above the draft Central West and Orana Regional Plan 2041 advocates;

- the validation of regional scale HEV mapping via site specific investigations during strategic and local planning, and development proposals
- avoidance of areas with identified HEV and focusing development on areas with lower biodiversity values

The planning proposal has not clearly identified all areas of HEV present or likely to be present on the subject site nor has there been any attempt to avoid such values.

Orange Local Strategic Planning Statement 2020 (LSPS)

Planning priority 13 of the Orange LSPS is *‘Protect, conserve and enhance Oranges urban tree canopy, landform, waterways and bushland’*. Action 3 of the planning priority is *‘require greenfield subdivisions to protect and enhance waterways and riparian corridors’*.

Page 23 of the planning proposal states *‘the mapped vegetation community in the south-west of the site would be predominantly retained and enhanced through augmentation of the waterway and the development of a riparian management and vegetation plan’*.

The planning proposal proposes to remove current RE1 and C4 zonings in areas where the riparian corridors are present. This is not consistent with planning priority 13 and action 3.

Recommendations

- a) The planning proposal should further identify and map the extent of areas of HEV on the subject site with both desktop analysis and site investigations.
- b) Areas identified as HEV should be protected through planning mechanisms (e.g. C zones and minimum lot sizes to preclude subdivision).

2. Conclusions of the likelihood of occurrence for predicted threatened species is not adequately justified or consistent

The planning proposal has not adequately justified conclusions that threatened species are unlikely to occur on the site. The assessment of likelihood for predicted threatened species presented in Table 5 of Appendix D of the planning proposal is not consistent with the conclusions in the Ecology Report (prepared by FloraSearch) that accompanies the planning proposal.

Recommendation

- a) Conclusions that threatened species are unlikely to occur should be adequately justified. Otherwise Council should acknowledge that the likelihood of threatened species being present on the site has not been adequately assessed and assume that future subdivision and development of the site has the potential to impact on threatened species habitat.

3. Biodiversity Offset Scheme is likely to apply to future subdivision of the site

The BC Act and *Biodiversity Conservation Regulation 2017* (BC Reg) section 7.1 apply to subdivisions. When assessing subdivisions, the consent authority must consider the clearing of native vegetation required, or likely to be required, for the purpose for which the land is to be subdivided.

Native vegetation includes trees, understorey plants, groundcover and plants occurring in a wetland that are native to New South Wales (including planted native vegetation), not just trees.

If the subdivision will impact native vegetation and the clearing exceeds the biodiversity offsets scheme (BOS) thresholds (Part 7, BC Reg), the BAM must be applied and a biodiversity development assessment report (BDAR) prepared to assess and calculate the biodiversity offset credit requirement.

Biodiversity offsets are calculated and secured in accordance with the BC Act for the subdivision. Once this is done, no further offsets are required for subsequent development of the land that is within the approved subdivision.

The BAM requires proponents to demonstrate that biodiversity impacts have been avoided and minimised as far as possible, with residual impacts offset. Both the complexity of assessments, and the costs to the proponent associated with complying with the BOS, are lower where impacts on biodiversity are avoided and/or concentrated in areas of lower vegetation integrity.

Based on the information provided it is likely that the impacts of the future subdivision of the subject site will trigger entry into the BOS. Entities at risk of SAIL have additional assessment requirements under the BAM (see below for further information).

4. Any future development is likely to impact on SAI entities

Based on the information provided, BCS understands that the area currently zoned as C4 contains remnant native vegetation that is likely to conform to the threatened ecological community *White Box - Yellow Box - Blakely's Red Gum Grassy Woodland and Derived Native Grassland in the NSW North Coast, New England Tableland, Nandewar, Brigalow Belt South, Sydney Basin, South Eastern Highlands, NSW South Western Slopes, South East Corner and Riverina Bioregions* (Box Gum Woodland). Box Gum Woodland is listed as a Critically Endangered Ecological Community (CEEC) under the BC Act and therefore is listed as an entity for Serious and Irreversible Impacts (SAI). Where a proposal is determined likely to have a serious and irreversible impact on biodiversity values the planning authority must not grant approval.

As stated above the planning proposal should identify and map the extent of HEV within the subject site. Any future development assessment could be simplified by identifying the extent of HEV and SAI entities on the subject site up front in the strategic planning for the site.

BCS does not support amendments that facilitate land use intensification in areas of HEV.

Biodiversity, Conservation and Science Directorate (North West Branch) general advice for local government strategic planning

Rural settlement intensification can have significant impacts on biodiversity. Development will have short and long-term negative impacts on biodiversity. These negative impacts are caused by activities such as:

- the clearing of house and building sites;
- the disturbance caused by infrastructure (such as new roads, fence lines, dams and access to utilities); and
- the construction of asset protection zones for statutory fire protection.

The cumulative effect of multiple subdivisions will magnify these substantial impacts on biodiversity. These impacts are not regulated by the *Biodiversity Conservation Act 2016* or *Local Land Services Act 2013*.

There is also a need to recognise climate change as a severe and wide ranging threat to biodiversity in NSW. Rising temperatures and sea-levels, changed rainfall and fire regimes will affect biodiversity in complex and often unpredictable ways. As a result of climate change, current threats to biodiversity, including habitat loss, weeds, pest animals and drought, are expected to intensify.

In many cases, existing approaches to biodiversity conservation (protection of intact vegetation, species recovery, mitigation of current threats and revegetation and restoration activities) will form the basis of adaptation programs to address the impacts of climate change. Reducing existing threats to biodiversity, such as habitat loss, pests and weeds is the most effective option for enabling species to adapt to climate change (at least in the short term) as this will increase the capacity of species to persist in their current locations and form the base from which migration can occur.

Council has the responsibility to control the location and, to a degree, development standards of settlement and other land use intensification. Local Environmental Plans (LEPs) can be used to avoid settlement and development in Environmentally Sensitive Areas (ESAs) including areas of remnant native vegetation.

The S9.1 Directions in the Environmental Planning and Assessment Act 1979 (EP&A Act) require that Councils in preparing a new LEP must include provisions that facilitate the protection and conservation of ESAs. As a minimum, these provisions must aim to maintain the existing level of protection for ESAs within the LGA, as afforded by the current LEP.

As a matter of priority the BCS recommends six actions be taken by Councils when developing new LEPs. These will address the S9.1 Directions, and protect biodiversity from growth, development and associated pressures and changes:

1. Implement appropriate Environmental Zonings;
2. Avoid development in remnant native vegetation;
3. Establish large minimum lot sizes;
4. Conduct comprehensive environmental studies if areas of high environmental sensitivity occur in sites where there is a strong imperative to intensify land use;
5. Include a biodiversity overlay and clauses within the LEP; and
6. Define biodiversity protection and management measures in Development Control Plans (DCPs).

1. Implement appropriate Conservation Zonings

The zone, C1 'National Parks and Nature Reserves', should be applied to all of the NPWS estate within the LGA. We also encourage Councils to apply other environmental and water ways zones in appropriate areas.

The C1 zoning (formally known as Environmental Zone E1) is intended to apply to all lands acquired under the *National Parks and Wildlife Act 1974* (NP&W Act), and therefore is not limited to only the 'National Park' and 'Nature Reserve' classifications.

BCS is also strongly supportive of the implementation of appropriate environmental zonings to other areas identified to have high biodiversity. Private and public lands with high conservation values, including those providing linkages or corridors, can be protected in LEPs through appropriate zoning and/or via overlays with associated development controls. Councils should implement land use zonings such as C2-C4 and W1-W2 to provide as much protection as possible to biodiversity and ecological communities. Specific advice regarding the use of these zones is included in Practice Note previously forwarded to Council.

In particular, we advocate the application of the C2 zone to areas of private or Crown lands that are presently managed primarily for conservation (such as crown reserves or areas under conservation covenants).

We also recommend that Travelling Stock Reserves (TSRs) with known conservation values are included in C3 zones at a minimum, although C2 zoning would be preferred. Mapping of TSRs, including identified conservation values, is available via the Grassy Box Woodlands Conservation Management Network. This mapping can be accessed via <http://gbwcmn.net.au/node/6>.

2. Avoid development in remnant native vegetation

- *Council, through the Land Use Strategy and LEP, can protect biodiversity by avoiding development such as settlement and other land use intensification, in areas of remnant native vegetation.*
- *Development should be directed to areas that have already been cleared, unless such areas have been identified as having environmental importance.*

Excluding remnant native vegetation from development pressure on private land could be largely achieved by retaining such areas on relatively large holdings, within RU1 and RU2 zones for example.

Similarly, higher density settlement in 'fire prone' locations should be avoided in the first instance. Where residential areas abut native vegetation there is pressure for the required Asset Protection Zones and other hazard management measures to encroach on that vegetation.

Avoiding settlement in remnant native vegetation is also likely to avoid bushfire prone lands.

Settlement should also be avoided in locations that are likely to be targeted for biodiversity investment. Landholders in such areas may receive incentive funding for protection and enhancement of native vegetation or revegetation of cleared areas.

BCS can direct Councils to the best available mapping of remnant native vegetation for their LGA to help Council identify areas where further settlement intensification should be avoided.

For the Orange LGA:

- The Orange LEP incorporates a terrestrial biodiversity layer based on regional scale mapping of ESA's supplied by the Department during preparation of the 2011 LEP.

- The Central West Orana Regional Plan 2036 incorporates mapping of potential areas of high environmental value (HEV). This dataset can be accessed via the NSW Government SEED Portal: <https://datasets.seed.nsw.gov.au/dataset/high-environmental-value-for-central-west-orana-regional-growth-planning-area-detailed7053e>

At the broad strategic level, these maps can be used to identify areas that are most likely to be free from significant biodiversity constraints, therefore more suited to development.

3. Establish large minimum lot size limits

Minimum lot size limits should be large in RU1 and RU2 zones as well as environmentally sensitive areas. This will reduce the pressures of development and settlement on biodiversity in rural lands.

Minimum lot size limits can be used to reduce the pressures of development and settlement on biodiversity. The LEP should define realistically large minimum lot size limits with associated dwelling provisions to control the intensity of development and settlement.

In particular, Council needs to ensure that minimum lot sizes in environmentally sensitive areas are of an appropriately large size to control the cumulative impact of any development and settlement intensification permitted in those areas by the LEP.

The selected lot sizes should be designed to meet expectations of rural living while minimising the adverse environmental impacts of any settlement that may occur with the subdivision.

If Council is strongly of the opinion that lot sizes need to be reduced then this should not be applied uniformly. Environmentally sensitive areas should be excluded from lot size reductions.

4. Conduct targeted environmental studies

Where development in areas of native vegetation or environmentally sensitive areas cannot be avoided, a targeted environmental study should be conducted. This should focus on ensuring a “maintain or improve” outcome for biodiversity.

Where Council is unable to avoid applying zonings or minimum lot sizes which permit essential development intensification in remnant native vegetation, a targeted study should be conducted to investigate the biodiversity values of the area. Any study should determine and demonstrate how potential biodiversity impacts can be avoided and mitigated on the subject land. Under the *Biodiversity Conservation Act 2016* biodiversity offsets may be required for future subdivisions.

This study and any resulting objectives, zonings and lot sizes should aim to ensure a ‘maintain or improve’ outcome. This is a vital step in the strategic planning process and in effectively addressing the s.9.1 Directions.

5. Define biodiversity protection and management measures in Development Control Plans

Biodiversity protection and management measures should be defined in DCPs for all areas zoned for rural small holdings, residential and other development intensifications.

We view DCPs as a secondary mechanism to provide biodiversity protection and management measures. It is vital that biodiversity values are first considered strategically in zoning decisions and development assessment provisions. We do not consider it acceptable to completely defer consideration of these matters to the DCP stage.

It is also important to consider the threats to remnant native vegetation posed by adjoining land uses.

For example, threats to biodiversity associated with nearby growth and intensification of residential land use include (but are not limited to):

- Clearing;
- domestic animals;
- invasive plants;
- effluent and waste dispersion;
- changes in hydrology and hydraulics;
- increasing access due to fire trails and other tracks; and
- firewood collection.

Particular attention should be paid to relevant Key Threatening Processes identified and listed under the *Biodiversity Conservation Act 2016*. Mechanisms to abate threats to ESAs (such as implementing codes of practice, best management practice, alternative designs and operations, control technology and buffers between remnant vegetation and small holdings) should be considered.

Council should recognise that buffers may be necessary between environmentally sensitive areas and other land uses. The size of the buffer will vary depending on the nature or activity being undertaken and the level of management control required to prevent or minimise adverse impacts. Provisions should be made to rigorously assess any developments within environmentally sensitive areas and adjoining buffers to prohibit land uses and activities that threaten the ecological integrity, values and function of the area.

Some forms of development adjacent to national parks and reserves can impact on their values and should be avoided or restricted. Council should consider how these areas could be buffered from incompatible development and activities so that potential conflicts can be minimised.

The Departments Guidelines for Developments adjacent to NPWS Estate have been designed to assist Councils when they are assessing development on lands adjoining NPWS estate. However, the issues identified in these guidelines are also relevant when considering buffers for protection of environmentally sensitive areas.

HEV Criteria and Identification Methods at the Property Scale

High Environmental Value (HEV) Criteria and Components		Property Scale HEV Identification Method
Criterion 1. Sensitive Biodiversity Mapped on the Biodiversity Values Map		
1.1 Biodiversity Values Map		<ul style="list-style-type: none"> a. Identify the parts of the land on the Biodiversity Values map which can be viewed at https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/about-the-biodiversity-offsets-scheme/when-does-bos-apply/biodiversity-values-map. b. Inspect those mapped areas on the land to verify accuracy and map as HEV where the map is accurate.
Criterion 2. Native vegetation of high conservation value		
2.1 Over-cleared vegetation types		<ul style="list-style-type: none"> a. Identify Plant Community Types (PCTs) on the land through field work. b. Register and visit the Vegetation Information System (VIS) database at vis@environment.nsw.gov.au. c. Use the VIS to determine whether the % cleared status of the PCTs identified through field work on the land is above 70%. d. Map all PCTs on the land with the % cleared above 70% as HEV.
2.2 Vegetation in over-cleared landscapes (Mitchell landscapes)		<ul style="list-style-type: none"> a. Identify over-cleared Mitchell landscapes by viewing map data from the SEED portal https://www.seed.nsw.gov.au/ – selecting NSW (Mitchell Landscapes) – latest version, selecting Show on Seed Map and viewing the View Over Cleared Land Status. b. Map all native vegetation on the land as HEV if it is in an over-cleared Mitchell landscape.
2.3 Threatened Ecological Communities - any vulnerable, endangered, or critically endangered ecological community listed under the BC Act, the FM Act 1994 or the EPBC Act and not mapped on the BV map		<ul style="list-style-type: none"> a. Identify Plant Community Types (PCTs) on the land through field work. b. Register and visit the VIS database at vis@environment.nsw.gov.au. c. Use the VIS to determine whether the PCTs on the land have Threatened Ecological Community (TEC) Status. d. If not identified as a TEC from steps a – c above, then refer to the NSW Threatened Species Scientific Committee determinations to consider whether the any of the PCTs accords with the determinations. e. Map all PCTs on the land that are TECs as HEV.
2.4 100m buffer on Coastal Wetlands and Littoral Rainforest areas as per the Coastal Management SEPP 2018		<ul style="list-style-type: none"> a. Locate the land on the SEPP Coastal Management SEPP maps available at https://webmap.environment.nsw.gov.au/PlanningHtml5Viewer/?viewer=SEPP_CoastalManagement b. Map any parts of the land shown as proximity areas for Coastal Wetlands and Littoral Rainforest as HEV.
Criterion 3. Threatened species		
3.1 Key habitat for threatened species (vulnerable, endangered, or critically endangered species listed under BC Act)	Key breeding habitats with known breeding occurrence	<ul style="list-style-type: none"> a. Search BioNet for threatened species records on and within 5km of the land b. Undertake field work to identify potential breeding habitats on the land for threatened species. c. Either assume breeding occurrence and map identified breeding habitats on the land as HEV or undertake targeted surveys during the breeding season and map these habitats as HEV if breeding occurs there.
	Core Koala Habitat	<ul style="list-style-type: none"> a. Check council records for approved comprehensive or individual property Koala Plans of Management (KPOM). b. Identify areas of core koala habitat on the land mapped in any

High Environmental Value (HEV) Criteria and Components		Property Scale HEV Identification Method
		<p>approved KPoM and map these areas as HEV.</p> <p>c. If there are no approved KPoMs, then undertake field work in accordance with the relevant State Environmental Planning Policy (SEPP) for koalas, e.g. SEPP (Koala Habitat Protection) 2020, to determine whether Core Koala Habitat is present on the land.</p> <p>d. Map any core koala habitat identified on the land through field work as HEV.</p>
	Habitat for known populations of species-credit-species and SAIL entities (species-credit species and SAIL entities are identified in the Threatened Biodiversity Data Collection)	<p>a. Search BioNet for threatened species records on and within 5km of the land.</p> <p>b. Undertake field work to identify populations of threatened species credit species on the land and their habitats.</p> <p>c. Map all habitats of known populations of species credit species on the land as HEV.</p> <p>The Biodiversity Assessment Method and the Department's survey assessment guidelines should be referred to for suitable habitat assessment methodologies.</p> <p>If a recent Biodiversity Development Assessment Report has been prepared for the land, then this could be referred to in support of demonstrating how this criterion has been considered.</p>
	Key habitats for migratory species	<p>a. Search BioNet for threatened migratory species records on and within 5km of the land.</p> <p>b. Undertake field work to identify habitats of threatened migratory species on the land.</p> <p>c. Map all habitats of threatened migratory species on the land as HEV.</p>
Criterion 4. Wetlands, rivers, estuaries & coastal features of high environmental value		
4.1 Nationally important wetlands	Note: Rivers and their riparian areas comprising HEV are included in the Biodiversity Values Map under HEV Criterion 1 as protected riparian land	<p>a. Search the Directory of Important Wetlands in Australia for those occurring in NSW available at http://www.environment.gov.au/cgi-bin/wetlands/search.pl?smode=DOIW.</p> <p>b. Identify any nationally important wetlands listed in the directory that occur on the land and map these areas as HEV.</p>
4.2 Vulnerable Estuaries and ICOLLs		<p>a. Identify whether any vulnerable estuaries or ICOLLs occur on, or in the vicinity of, the land by reviewing the maps available at https://datasets.seed.nsw.gov.au/dataset/vulnerableestuariesandicolls.</p> <p>b. Map any vulnerable estuaries or ICOLLs that occur on, or in the vicinity of, the land as HEV.</p>
Criterion 5. Areas of geological significance		
5.1 Karst landscapes		<p>a. Identify whether limestone outcrops or caves occur on the land.</p> <p>b. Consider any additional Karst landscapes that occur in the vicinity of the land, with reference to the NSW Government's <i>Guide to New South Wales Karst and Caves</i> available at https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Land-and-soil/nsw-karst-cave-guide-110455.pdf and any other available karst mapping, such as karts maps associated with local environmental plans.</p> <p>c. Map any limestone outcrops or caves on the land and any other karst landscapes that occur in the vicinity of the land as HEV.</p>
5.2 Sites of geological significance included in the State Heritage Register or Heritage Inventory		<p>a. Identify whether the land contains, or is in the vicinity of, the sites of geological significance.</p> <p>b. Map any sites of geological significance that occur on, or in the vicinity of, the land as HEV.</p>



Department of Planning and Environment

Our ref: PP-2021-5680/IRF22/2565

Mr David Waddell
Chief Executive Officer
Orange City Council
ORANGE NSW 2800

Attention: Craig Mortell, Senior Planner - Development Services

Dear Mr Waddell

Planning proposal [PP-2021-5680] to amend Orange Local Environmental Plan 2011 – Rosedale Gardens - agency consultation

Thank you for your correspondence of 2 June 2022 and updated planning proposal of 13 July 2022.

Council has asked whether conditions 1 to 3 of the Gateway determination dated 23 December 2021 have been satisfactorily completed and whether the planning proposal can proceed to community consultation.

The planning proposal is not ready for community consultation. The following must be addressed by Council before the proposal can proceed to community consultation:

1. As Planning Proposal Authority, Orange City Council is responsible for the governance of the planning proposal. Council has requested the planning proposal proceed to exhibition but has not addressed all the matters raised by agencies.

Section 4.5 of the revised planning proposal states the view of State agencies will be obtained post-Gateway, which has now occurred. This part of the planning proposal should be updated to show the issues raised by agencies and how they have been addressed. Agency correspondence received in meeting Gateway conditions will be publicly available and the community should be able to see how Council has considered and responded to matters raised when the proposal is exhibited.

2. Condition 1 is satisfied except for the following:

- steep terrain - the revised planning proposal provides discussion and a proposed new map for steep terrain where slopes greater than 20% have been mapped. However, the maps do not include all land that has a terrain greater than 20% terrain when compared to the slope analysis (Figure 14), and there is no text in the planning proposal justifying this discrepancy.
- SP2 zone – it is understood that further consultation with Transgrid is proposed. The planning proposal shows alternative options for zone and lot size maps but there is no discussion about when the different options would apply and at what stage a decision would be made. The community needs to understand the link between these maps and Transgrid.

- RE1 public recreation - the planning proposal does not adequately describe the reason why the RE1 zone is proposed to be removed and the methods by which Council will ensure land for recreation and open space is provided to Council's satisfaction. There is a reference to this being provided in the short term by a DCP but no indication of how this will work. The community viewing this planning proposal needs to understand how the loss of RE1 zoned land will be offset by recreation and open space land in the R5 zone. At this stage Ministerial Direction 6.2 - Reserving Land for Public Purposes has not been resolved and will need to be before the planning proposal is submitted for finalisation.
- C4 Environmental Living area – see discussion below under BCS response.
- Contamination of land - although the contamination report has recommended that the land can be made suitable, Transport for NSW required further work near the railway corridor.

3. Condition 2:

- Biodiversity, Conservation and Science Directorate (BCS)

Council's email correspondence of 2 June 2022 refers to a (then) upcoming meeting with BCS but no advice has been provided as to whether matters raised by BCS have been resolved.

BCS earlier advice requested the planning proposal map High Environmental Value (HEV) areas and identify how these will be avoided.

The revised planning proposal has included a map (Figure 4) described as 'Current high environmental value/sensitivity map' however there is no reference to this map in the planning proposal, including what it represents and how it relates to BCS's advice or to section 9.1 Direction 2.1 Environmental Protection Zones. The planning proposal also includes a 'concept site layout' which does not reflect the areas of sensitivity shown on Figure 4.

Orange LEP 2011 includes mechanisms to consider areas with high environmental value at development application stage (eg. cl. 7.4 and 7.5) however the narrative of how this might apply in this case is not documented in the planning proposal.

Updated mapping of environmental sensitivity to amend the LEP map layers, identification that the 'concept site layout' is subject to development assessment and may not be achieved given LEP provisions, and confirmation that there are no areas of sensitivity requiring specific conservation zoning could resolve the concerns raised by BCS and address the inconsistency with Section 9.1 Direction 2.1 Environmental Protection Zones which remains unresolved.

- Transport for NSW (TfNSW) – the amended proposal does not address or document the issues raised by TfNSW.
- Cabonne Council - the amended proposal does not refer to concerns raised by Cabonne Council in relation to potential land use conflict with adjoining rural land or how these will be addressed.

- Heritage NSW (HNSW) - the amended proposal does not address HNSW comments requiring archaeological test excavation and update to the due diligence report.

It is noted that no response has been received from John Holland Rail, Transgrid, Water NSW, NRAR, NSW RFS and Charles Sturt University. Section 4.5 of the Planning Proposal should be updated to show that consultation occurred but no response was received.

In updating the planning proposal in response to agency submissions, Council may determine that some matters are best handled at development application stage and through the proposed Development Control Plan. This may be appropriate, but Council should be clear about what will be included in the DCP and when it will be available for community consultation.

If you have any more questions, please contact Wayne Garnsey, Manager at the Department of Planning and Environment on 58526800.

Yours sincerely



2 August 2022

Garry Hopkins
Director, Western Region
Local and Regional Planning

David Walker

From: Samantha Gibbins <Samantha.Gibbins@environment.nsw.gov.au>
Sent: Wednesday, 31 August 2022 9:00 AM
To: David Walker; Kym McNamara
Cc: Rose O'Sullivan; cmortell@orange.nsw.gov.au; Nicole Davis
Subject: RE: [#221025] Heritage NSW Response - Planning Proposal -Rosedale Gardens, Orange

Hi David,

Thanks for sending through this additional information and context. I note from your email that:

- The maximum lot yield will not exceed 700 lots.
- Out of the 290 hectare site, around 20 hectares of land could, if needed, be set aside for protection of sensitive landforms or sites.
- If the detailed investigations reveal the need for a greater area of protection, the resulting outcome would be delivery of less lots than the anticipated maximum. This is a reality the applicant apparently fully understands.
- The current proposal to rezone those areas of the site not currently identified as R5, to R5, means that flexibility exists to design an appropriate subdivision layout that takes full account of identified site sensitivities, such as those that may be identified through biodiversity, archaeological, stormwater or other detailed investigations.

Our preference is that an ACHAR, including test excavations, is prepared to inform the planning proposal, as per our original advice. However, given the particular circumstances you have outlined, along with the above, we agree that the completion of an ACHAR can be deferred to the DA stage. This is based on the understanding that the results of the test excavations, and the ACHAR, will be used to inform the final design of the subdivision, including avoidance of identified significant Aboriginal cultural heritage values where possible.

Please contact me if you have any questions about the above advice.

Kind regards,

Sam

From: David Walker <David.Walker@premise.com.au>
Sent: Thursday, 25 August 2022 11:10 AM
To: Samantha Gibbins <Samantha.Gibbins@environment.nsw.gov.au>; Kym McNamara <Kym.McNamara@environment.nsw.gov.au>
Cc: Rose O'Sullivan <Rose.OSullivan@environment.nsw.gov.au>; cmortell@orange.nsw.gov.au
Subject: RE: [#221025] Heritage NSW Response - Planning Proposal -Rosedale Gardens, Orange

Hi Samantha and Kym

Thanks again for your time last week regarding the Orange LEP amendment 33 and the current Heritage NSW advice requiring completion of an ACHA prior to finalisation of the amendment.

We discussed at the meeting that providing some additional details around the areas involved in the concept layout may provide Heritage NSW with sufficient comfort that there is capacity within the site to identify available areas that could, if necessary, be set aside for protection, without prejudicing the overarching targeted maximum lot yield.

The current concept plan (attached) provides for up to 700 lots. As you can see, the majority of lots exceed the 2000m² minimum area.

As proposed by the applicant via the planning proposal, the limit of 700 lots is to be enshrined in a specific LEP clause that will ensure that the maximum lot yield of the scheme does not exceed this number. In the context of the proposed minimum lot size of 2,000m², and the areas conceptually be set aside for open space and roads, we note the following:

- The site has an area of approximately 290 hectares
- 700 lots at an MLS of 2,000m² would require a minimum area of 140 ha
- Areas set aside for roads and open space (via the concept plan) are, respectively, 62.3 ha and 28.2 ha.
- Being reasonable and assuming that lots within areas of steeper slope or containing native vegetation may be larger, we have assumed that 20% of lots are in fact a minimum of 3,900m² (strategically ensuring these are less than 4,000m² so that further subdivision is not possible). This would result in approximately 490 x 2000m² lots and 210 x 3900m² lots. This increases the conceptual minimum development area from 140 ha to 180 ha.
- 290 ha less areas for roads and open space (62.3+28.2) leaves 199.5 ha for development.
- As a means of testing the above, it is common in land use planning terms to assume that around 20% of land should be excluded from conceptual lot yields to account for open space and roads. This is typically increased to 30% where the land is constrained (eg, due to slope). In this case, assuming a 30% reduction factor against the original 290 ha, leaves 203 ha for lot development, which is very close to the 199.5 ha figure flagged above. 203/2000 suggests the land could accommodate around 1,015 lots of 2000m². As per the above, a limit of 700 is placed on this subdivision, to ensure that lots can be larger than the minimum, or to provide for the yield target whilst still ensuring any areas of sensitivity can be accommodated.

Therefore, considering the difference between the area needed to deliver a mix of 2000 and 3900 m² lots, around 20 hectares of land could, if needed, be set aside for protection purposes. This is, in our submission, a significant area and more than sufficient to ensure that any conflict between the targeted lot yield and ensuring adequate protection of sensitive landforms or sites is possible.

Finally, we note that the maximum lot yield is just that, a maximum. In the unlikely event that detailed investigations revealed the need for a greater area of protection, the resulting outcome would be delivery of less lots than the anticipated maximum. This is a reality the applicant fully understands.

As a last point, it is the applicant's intention to work with Council to deliver a future housekeeping amendment to the LEP to ensure that all lands set aside for either recreation or protection are protected by an appropriate zoning. The challenge with the current layout is that it was established based on an early concept layout and it was always expected that amendments to the zone boundaries would be required to reflect the proposed concept. This approach adds an unnecessary step into the project whereby the delivery of the subdividing DA would be delayed whilst the amendment is actioned (noting that a subdivision proposing to divide areas of RE1 zoned land would not be permissible until an LEP amendment was completed. The current proposal to rezone those areas of the site not currently identified as R5, to R5, means that flexibility exists to design an appropriate subdivision layout that takes full account of identified site sensitivities, such as those that may be identified through biodiversity, archaeological, stormwater or other detailed investigations. On adoption of the layout (via the required DCP), and the subsequent delivery of the lots, the protection/recreation areas would be zoned appropriately to provide future protection. This approach is supported by Council as it provides for the more efficient and effective delivery of lots, a key object of the EP&A Act.

On the basis of the above, and noting the historic rezoning of the land for development purposes, we submit that there is no compelling need to complete an ACHA at this time and that this should, and can, reasonably be deferred to the DA stage, as is the case with the current rezoning arrangement.

We also note for relevance, that recent rezonings in Orange, such as the Shiralee subdivision, were not subject to ACHA's prior to rezoning.

It would be appreciated if we can further discuss the matter, or receive your comments on the above, in order that we can resolve DPE's concerns and enable the project to proceed to community exhibition.

Please let me know if you have any questions.

Kind regards,



DAVID WALKER
General Manager – Central NSW

T 02 6393 5000 | **M** 0437 621 057
E David.Walker@premise.com.au
A 154 Peisley St, Orange NSW 2800



From: Samantha Gibbins <Samantha.Gibbins@environment.nsw.gov.au>
Sent: Wednesday, 17 August 2022 1:50 PM
To: David Walker <David.Walker@premise.com.au>
Cc: Rose O'Sullivan <Rose.OSullivan@environment.nsw.gov.au>; cmortell@orange.nsw.gov.au
Subject: RE: [#221025] Heritage NSW Response - Planning Proposal -Rosedale Gardens, Orange

Thanks David,

I can certainly speak with you in the first instance to gain more understanding of the issues, but it is likely that I'll need to run things by Rose when she returns from leave in the week of the 29 Aug.

Would you prefer to wait and set up a meeting once Rose is back?

Otherwise, I'm available for an initial chat tomorrow between 1 pm and 3 pm if that works for you.

Kind regards,

Sam

From: David Walker <David.Walker@premise.com.au>
Sent: Wednesday, 17 August 2022 1:07 PM
To: Samantha Gibbins <Samantha.Gibbins@environment.nsw.gov.au>
Cc: Rose O'Sullivan <Rose.OSullivan@environment.nsw.gov.au>; cmortell@orange.nsw.gov.au
Subject: RE: [#221025] Heritage NSW Response - Planning Proposal -Rosedale Gardens, Orange

Hi Samantha

Thanks for your response.

We would like to discuss the need for an ACHA at this point, noting that the land was rezoned from RU1 only two years ago without an ACHA being completed, and due diligence being sufficient. Nothing has changed on the land in the intervening time and the nature of the proposed land use is consistent with the approved rezoning in 2020. Put simply, we would like to understand why an ACHA is required now when it was not required previously (in the absence of any other change to the site, landscape or regulatory framework).

As stated, the applicant has always been committed to completing the ACHA process at DA stage and this informing detailed design of the subdivision layout.

It would be greatly appreciated if you can find some time to discuss the above.

Kind regards,



DAVID WALKER
General Manager – Central NSW

T 02 6393 5000 | **M** 0437 621 057
E David.Walker@premise.com.au
A 154 Peisley St, Orange NSW 2800



From: Samantha Gibbins <Samantha.Gibbins@environment.nsw.gov.au>
Sent: Wednesday, 17 August 2022 12:37 PM
To: David Walker <David.Walker@premise.com.au>
Cc: Rose O'Sullivan <Rose.OSullivan@environment.nsw.gov.au>; cmortell@orange.nsw.gov.au
Subject: RE: [#221025] Heritage NSW Response - Planning Proposal -Rosedale Gardens, Orange

Hi David,

I apologise, but I have had no prior involvement with this project. I have looked at the advice previously provided by Rose and note that the due diligence assessment is not considered sufficient and that an Aboriginal Cultural Heritage Assessment Report (ACHAR) should be prepared to inform the planning proposal.

I note in your email that your preferred approach is to deal with the ACHAR and subsurface testing process in conjunction with DA. This is not something that we would usually support - our advice remains that an ACHAR, including consultation with the Aboriginal community and archaeological test excavation, should be prepared upfront to inform the planning proposal.

Could you please outline what you wish to discuss?

Kind regards,

Sam

Sam Gibbins, BA (Hons), PhD

Senior Assessments Officer, Archaeologist
Environment and Heritage - Heritage NSW
Department of Planning and Environment

T (02) 9895 6586 **E** Samantha.Gibbins@environment.nsw.gov.au

heritage.nsw.gov.au and dpie.nsw.gov.au

Locked Bag 5020
Parramatta NSW 2124

Working days Monday to Friday, 8:00am – 4:00pm



I acknowledge the traditional custodians of the land and pay respects to Elders past and present. I also acknowledge all the Aboriginal and Torres Strait Islander staff working with NSW Government at this time.

Please consider the environment before printing this email.

From: David Walker <David.Walker@premise.com.au>
Sent: Wednesday, 17 August 2022 11:00 AM
To: Samantha Gibbins <Samantha.Gibbins@environment.nsw.gov.au>
Cc: Rose O'Sullivan <Rose.OSullivan@environment.nsw.gov.au>; cmortell@orange.nsw.gov.au
Subject: FW: [#221025] Heritage NSW Response - Planning Proposal -Rosedale Gardens, Orange

Hi Samantha

Can you advise if you have some time this week to discuss this project?

Kind regards,



DAVID WALKER
General Manager – Central NSW

T 02 6393 5000 | **M** 0437 621 057
E David.Walker@premise.com.au
A 154 Peisley St, Orange NSW 2800



From: David Walker <David.Walker@premise.com.au>
Sent: Friday, 12 August 2022 12:39 PM
To: Rose O'Sullivan <Rose.OSullivan@environment.nsw.gov.au>
Cc: cmortell@orange.nsw.gov.au; Samantha Gibbins <Samantha.Gibbins@environment.nsw.gov.au>
Subject: RE: [#221025] Heritage NSW Response - Planning Proposal -Rosedale Gardens, Orange

Hi Rose

We are under some time pressures to progress this. It would be great to speak to Samantha in the short term. Samantha, can you advise when you have 30 mins to discuss the project with us?

Kind regards,



DAVID WALKER
General Manager – Central NSW

T 02 6393 5000 | **M** 0437 621 057
E David.Walker@premise.com.au
A 154 Peisley St, Orange NSW 2800



From: Rose O'Sullivan <Rose.OSullivan@environment.nsw.gov.au>
Sent: Friday, 12 August 2022 12:13 PM
To: David Walker <David.Walker@premise.com.au>
Cc: cmortell@orange.nsw.gov.au; Samantha Gibbins <Samantha.Gibbins@environment.nsw.gov.au>
Subject: RE: [#221025] Heritage NSW Response - Planning Proposal -Rosedale Gardens, Orange

Hello David

Thank you for your email and apologies for the delay responding.

Broadly, our advice recommends thorough Aboriginal cultural heritage assessment at the planning proposal stage to provide the best opportunity to protect and conserve Aboriginal cultural heritage sites and values.

I am happy to arrange a time to meet and discuss this planning proposal and the timing of the detailed Aboriginal cultural heritage assessment work. However, I am currently on leave, returning on 29 August. I will be in touch when I return and we can arrange a time to meet.

If you have any queries in the meantime, my colleague Samantha Gibbins (cc'd above) may be able to assist. Otherwise I look forward to speaking with you in a few weeks.

Kind Regards
Rose

Rose O'Sullivan

Principal Assessments Officer – North (Archaeologist)
Heritage Assessments
Heritage NSW
Department of Planning and Environment

T (02) 4224 4177 **M** 0429 152 180 **E** rose.osullivan@environment.nsw.gov.au
dpie.nsw.gov.au

85 Faulkner Street
Armidale NSW 2350

Working days Monday to Friday



I acknowledge the traditional custodians of the land and pay respects to Elders past and present. I also acknowledge all the Aboriginal and Torres Strait Islander staff working with NSW Government at this time.

Please consider the environment before printing this email.

From: David Walker <David.Walker@premise.com.au>

Sent: Monday, 8 August 2022 1:11 PM

To: Rose O'Sullivan <Rose.OSullivan@environment.nsw.gov.au>

Cc: cmortell@orange.nsw.gov.au

Subject: FW: [#221025] Heritage NSW Response - Planning Proposal -Rosedale Gardens, Orange

Hi Rose

With respect to the attached, we would appreciate the opportunity to discuss the response from Heritage NSW with respect to the Rosedale Gardens LEP Amendment in Orange, NSW.

You may be aware that the history of this site is that it was rezoned from RU1 and IN1 in 2020 to allow for a combination of R5, E4 and RE1. The client has decided to seek a reduced minimum lot size and update the zoning to be consistent as R5 across the site. This has not changed the areas of the site that would be impacted, as all areas of the land (outside the recreation areas) were to be developed with large lot residential allotments. At the time of the original rezoning a due diligence assessment was completed and the need for some further sub-surface testing was identified, to be completed at DA stage. We have completed the attached updated AHIMS search, which reflects the findings of the studies completed in 2016. Whilst the RE1 zoning is being removed via this amendment, the amount of recreation land to be provided would be consistent with the amount originally shown in the 2020 rezoning. The reason for removal of the RE1 zoning is to provide flexibility with the master planning and developed design. The recreation land would be dedicated to Council at DA stage and Council staff have confirmed it is expected that a housekeeping amendment would occur to adopt RE1 zoning of the recreation areas in the approved subdivision plan.

It remains the preferred approach to deal with the ACHA and subsurface testing process in conjunction with DA, as the master-planning of the subdivision will be further advanced. At this stage, the concept plan is very simplistic and requires further inputs to be refined. A masterplan and DCP are required to be developed due the urban release provisions of the LEP, which provides regulators with certainty that the opportunity exists for management of these issues.

I would welcome the opportunity to discuss the project with you. At the current time, heritage remains the only outstanding substantive issue holding back the next phase of the rezoning process, which is to proceed to community consultation.

Please advise when suits to discuss.

Kind regards,



DAVID WALKER
General Manager – Central NSW

T 02 6393 5000 | **M** 0437 621 057
E David.Walker@premise.com.au
A 154 Peisley St, Orange NSW 2800



From: Craig Mortell <CMortell@orange.nsw.gov.au>

Sent: Wednesday, 1 June 2022 8:47 AM

To: David Walker <David.Walker@premise.com.au>

Subject: FW: Heritage NSW Response - Planning Proposal -Rosedale Gardens, Orange

From: James Sellwood <James.Sellwood@environment.nsw.gov.au>

Sent: Friday, 27 May 2022 6:33 PM

To: Craig Mortell <CMortell@orange.nsw.gov.au>

Cc: Rose O'Sullivan <Rose.OSullivan@environment.nsw.gov.au>; James Sellwood <James.Sellwood@environment.nsw.gov.au>

Subject: Heritage NSW Response - Planning Proposal -Rosedale Gardens, Orange

Hi Craig

Please find attached advice from my colleague Rose O'Sullivan on this planning proposal.

Apologies for the delay in our response, we've recently been through a restructure which has impact on our staff resources.

Best regards
James

James Sellwood (*he/him*)
Senior Heritage Planning Officer
Heritage Assessments
Heritage NSW
Department of Planning and Environment

T 02 9274 6354 E james.sellwood@environment.nsw.gov.au

heritage.nsw.gov.au

Level 6, 10 Valentine Avenue, Parramatta NSW 2150
Locked Bag 5020, Parramatta NSW 2124

Working days Monday to Friday



Heritage Management System is live – heritage.nsw.gov.au/what-we-do/heritage-management-system



I acknowledge the traditional custodians of the land and pay respects to Elders past and present. I also acknowledge all the Aboriginal and Torres Strait Islander staff working with NSW Government at this time.

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PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING THIS EMAIL

Mr Craig Mortell
Orange City Council
cmortell@orange.nsw.gov.au

Planning Proposal – Rosedale Gardens, Orange

Dear Mr Mortell

Thank you for the opportunity to provide comment on the planning proposal to make amendments to *Orange Local Environmental Plan 2011* (LEP) for the Rosedale Gardens Estate at 440 Clergate Road and 463 Leeds Parade, Orange, to allow for future subdivision and residential development. Our apologies for the delay in this response.

Aboriginal cultural heritage considerations under the *National Parks and Wildlife Act 1974*

A Due Diligence Assessment is not considered sufficient assessment to inform a planning proposal

An Aboriginal cultural heritage due diligence assessment prepared by Biosis Pty Ltd (2016) has been provided in support of this the planning proposal.

We advise Council that an assessment under the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* (2010) is not considered an archaeological assessment or substitute for a comprehensive Aboriginal Cultural Heritage Assessment Report (ACHAR).

The due diligence process does not adequately assess the impacts of this planning proposal on Aboriginal cultural heritage as required by Local Planning Direction 3.2 – Heritage Conservation. This is because without Aboriginal community consultation and full archaeological investigation the extent of the impacts on Aboriginal objects and heritage values through the planning proposal and future development is not known.

In relation to the Biosis (2016) report, we advise Council that:

- archaeological test excavation is recommended within the planning proposal area. This should occur before the planning proposal is determined to provide accurate information about the extent and nature of Aboriginal heritage sites and the potential impact of the planning proposal on Aboriginal cultural heritage values.
- the due diligence assessment itself was prepared in 2016 and we consider that this report requires updating, and
- for the purposes of exercising due diligence, the results of an Aboriginal Heritage Information Management System (AHIMS) search may only be relied upon for 12 months. The Biosis (2016) report includes an outdated AHIMS search from 2015.

An Aboriginal Cultural Heritage Assessment Report should inform the planning proposal

Future development that the planning proposal is intended to facilitate must be appropriately assessed in the planning proposal and this has not occurred. We cannot provide certainty about whether an Aboriginal Heritage Impact Permit (AHIP) could be issued for any future development applications without a comprehensive ACHAR prepared in accordance with Heritage NSW guidelines.

Assessing Aboriginal cultural heritage impacts before or at the planning proposal stage:

- provides the best opportunity to identify Aboriginal cultural heritage values
- establishes how those values interact with proposed future development, and
- provides certainty to all parties about any future Aboriginal cultural heritage management requirements.

Heritage NSW recommends that an ACHAR, including consultation with the Aboriginal community and archaeological test excavation, is prepared to inform this planning proposal. Further information on how to prepare an ACHAR is available on our website at heritage.nsw.gov.au/applications/aboriginal-objects-and-places/before-you-apply/.

Local heritage considerations under the *Environmental Planning and Assessment Act 1979*

We note that the planning proposal site is located next to the following Local heritage items listed under Council's LEP:

- "Rosedale" homestead (I12) to its east
- "Wyelba" house (I310) to its west, and
- Canobolas Wool Topmaking building (I309) to its south west.

We note that, as these Local heritage items are listed under your LEP, Council is the consent authority, and the assessment and consideration of any impacts on them from the planning proposal rests with Council.

The Heritage Council, and Heritage NSW as its Delegate, do not have a role in the assessment and approval of impacts to Local heritage items. As such, we do not provide advice on planning matters which impact on Local heritage.

If you have any questions about this advice, please contact me by phone on 02 4224 4177 or by email at rose.osullivan@environment.nsw.gov.au.

Yours sincerely



Rose O'Sullivan

Senior Assessment Officer

Heritage Assessments

Heritage NSW

27 March 2022



Phone: 02 6392 3241

Fax: 02 6392 3260

Contact: HJ Nicholls

THE GENERAL MANAGER
POST OFFICE BOX 17
MOLONG 2866

Website: www.cabonne.nsw.gov.au

Email: council@cabonne.nsw.gov.au

Doc ID: 1384380

Your Ref:

ABN: 41992 919 200

03 May 2022

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

Attention: Craig Mortell

Dear Sir,

ORANGE LOCAL ENVIRONMENTAL PLAN 2011 - AMENDMENT 33 (PP-2021-5680) AGENCY CONSULTATION – PLANNING PROPOSAL 463 LEEDS PARADE AND 440 CLERGATE ROAD, ORANGE– ROSEDALE GARDENS ESTATE PTY LTD

Council acknowledges your correspondence dated 4 April 2022. It is noted that Orange City Council invites Cabonne Council to review and provide comment on the above-mentioned Planning Proposal and associated documents. Please be advised that the Planning Proposal was put to council for its consideration at its April 2022 meeting.

Council notes that the planning proposal, seeks to rezone a 290ha orchard holding for large lot residential development creating a lot yield of 700 allotments.

The Planning Proposal, while addressing the relationship of the proposal to the housing and employment strategies of Orange City Council, is silent upon the potential impact of the development upon established adjacent farmland within the Cabonne LGA.

Council requests that consideration be given in the proposed rezoning of land known as 440 Clergate Road and 463 Leeds Parade, Orange, as to potential impact upon both Cabonne Council and the State government's right to farm policies, the protection of farmland within the Cabonne LGA, and request consideration of the aims and objectives of the Cabonne LEP 2012, the objectives of the RU1 zone, and measures to including biosecurity measures, to ensure the protection of established farming north of the subject land.

Furthermore, that consideration be given to implementation of adequate buffer distances or planning controls to address potential land use conflict between

residential and rural land uses, biosecurity measures, and to protect the right to farm for established nearby farmland should the rezoning proposal proceed.

If you wish to discuss this matter further, please contact the undersigned on 02 6392 3241.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'HJ Nicholls', written in a cursive style.

HJ Nicholls
Deputy General Manager – Cabonne Services



DOC22/265114-1

The General Manager
Orange Local Council
Orange, NSW, 2800

Attention: Craig Mortell
Senior Planner – Development Services

14/04/2022

Dear Mr Mortell,

AMENDMENT TO THE ORANGE LOCAL ENVIRONMENTAL PLAN - 2011

Thank you for the opportunity for the Environment Protection Authority (the EPA) to provide comment regarding the proposed amendment to the Orange Local Environmental Plan (LEP) in respect of the land located 463 Leeds Parade and 440 Clergate Road (the Site). The EPA received the planning proposal for the LEP on the 04 March 2022 from the Orange Regional Council (Council).

The EPA has not undertaken a detailed review of the LEP. However, the following comments are offered for your consideration.

Land Management

The EPA understands that the strategic focus of the plan is to facilitate the rezoning of land which currently contains land zoned R5, E4, RE1, SP2 and rezone the site to R5 Large Lot Residential. The current surrounding land zoning is a mixture of General Industrial (IN1), Primary Production (RE1) and Infrastructure (SP2). The EPA acknowledges the potential of future land-use conflict due to the surrounding site activities on residential properties. The EPA recommends that Council ensure an adequate buffer distance between the IN1, RU1 and the proposed R5 land. The buffer should consider potential noise, water and air quality impacts on the community from industrial activities such as those regulated by the EPA under Schedule 1 of the Protection of the Environment Operations Act (POEO Act). A list of industries the EPA regulates in the Orange local government area can be obtained via the EPA's public register, which can be found at <https://apps.epa.nsw.gov.au/prpoeoapp/default.aspx>

Contaminated Land

The EPA suggests that Council ensures that all site remediation work is completed in a planned and proper manner. This includes the removal of all asbestos waste by a trained and licenced professional to ensure further site contamination is not caused. After the destruction and removal of all abattoir infrastructure, including any underground storage units Council should ensure a full site investigation is completed to fully assess any potential ground and water pollution. Further information on

contaminated land can be found via the EPA's website: <https://www.epa.nsw.gov.au/your-environment/contaminated-land>

If you have any questions or wish to discuss the matter further, please contact Aron Quinn on 6333 3802 or at info@epa.nsw.gov.au.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Carlie Armstrong', with a stylized flourish at the end.

Carlie Armstrong
Unit Head - Regulatory Operations

Mr Craig Mortell
Orange City Council
PO Box 35
ORANGE NSW 2800

Dear Mr Mortell

Re: Orange Local Environmental Plan 2011 – Amendment 33 (PP-2021-5680)

Thank you for your referral via the planning portal inviting comment from Transport for NSW (TfNSW) as part of the exhibition of *Orange Local Environmental Plan 2011 (OLEP 2011) Amendment 33*.

TfNSW understands the planning proposal would facilitate the creation of up to 700 R5 Large Lot Residential lots and proposes ongoing vehicular access via a new access onto Pearce Lane (near the existing level crossing) and converting a private level crossing (currently serving Lot 3 DP 255983) to a public level crossing. As indicated in the documentation supporting the PP, additional traffic generated from the proposal would use both level crossings.

We also note that the proposed development is located immediately adjacent to an operational rail corridor from Orange Junction to Dubbo. Future rail movements may increase along this corridor for maintenance and testing as part of the Regional Rail - Mindyarra Maintenance Centre, currently under construction in Dubbo.

TfNSW has reviewed the Traffic Impact Assessment (TIA) and notes the Level of Service (LoS) for right turn movements at Clergate Road onto the Northern Distributor Road will degrade to a LoS F under projected future traffic conditions, with queueing anticipated. Appropriate control measures for this intersection, including signalisation of the intersection of Clergate Road and Northern Distributor Road needs to be considered, in consultation with Council and TfNSW.

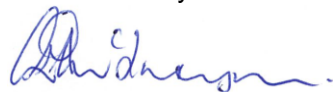
TfNSW does not currently support the proposal in its current form. Concerns are raised about the future safe operation of the aforementioned level crossings as a result of the increase in traffic from the future development.

Further investigation is required to demonstrate that the increase in traffic can be safely accommodated. Mitigation measures (such as upgrading the existing level crossings) may be required to ensure future safe operations. The cost of any proposed mitigation measures would need to be borne by the proponent, with the scope discussed and agreed with the following parties:

- TfNSW as the Rail Authority;
- UGL as TfNSW contracted Rail Infrastructure Manager; and
- Council (as the appropriate Roads Authority).

Further detailed comments in relation to the PP, details of the required additional investigation required and comments relevant to the future Development Application stage are provided in **Attachment A**. If you wish to discuss this matter further please contact the undersigned on 0417 431 982.

Yours faithfully



Andrew McIntyre
Manager Development Services
West Region | Community & Place
Regional & Outer Metropolitan

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Attachment A – Detailed comment about the Planning Proposal

New Northern Access via Public level crossing at Pearce Lane

The proposed new northern access is likely to have an impact on the public level crossing as the new access is in close proximity to the crossing. The Traffic Impact Assessment forecasts up to 10% of the traffic generated will utilise the northern access and have potential impact on the public level crossing on Pearce Lane. TfNSW requests additional safety assessment of the proposal against Australian Standard 1742.7 and *Railway Crossing Safety Series 2011, Plan: Establishing a Railway Crossing Safety Management Plan* (Roads and Traffic Authority 2011 and an ALCAM assessment on the crossing to confirm that it is safe and suitable to accommodate the expected increase in vehicle usage as a result of the development.

New Western Access and Upgrade of an existing private level crossing to a public level crossing

TfNSW's records indicate that the crossing is provided exclusively for Lot 3 DP 255983 as a private crossing. As suggested in the planning proposal, this private crossing is proposed to be upgraded to a public level crossing and required formal approval from TfNSW.

In addition to the SIDRA analysis of Clergate Road and western access intersection, the following assessments are required to facilitate TfNSW further review before approval is granted for such upgrade.

- Safety assessment adopting Safe Systems Approach and form safety interfacing agreement with all stakeholders investigating all treatment options including grade separation.
- ALCAM assessment and assessment against Australian Standard 1742.7 and *Railway Crossing Safety Series 2011, Plan: Establishing a Railway Crossing Safety Management Plan* (Roads and Traffic Authority 2011 to confirm that (in the event of an upgraded level crossing being proposed) level crossing is safe and suitable to accommodate the expected increase in vehicle usage as a result of the development, and
- Subject to the result of the above assessments, liaise and renew interfacing agreement with TfNSW regard the potential upgrade to the level crossing and subsequently form a Works In Kind agreement with local road authority (i.e Orange City Council).

Private overbridge

The Planning proposal states that there is a single lane bridge over the Main Western Railway Line constructed to accommodate abattoir staff to walk over after parking on land on the western side of the railway line. Although the Planning Proposal does not include the overbridge as an access, it is important for TfNSW to review the overbridge at this stage.

Although all lands including Lot 15 DP 6694, Lot 1 DP 1226372 and Lot A DP 100828 are owned by one landowner, the bridge does not appear to be required as an access to Lot 15 DP 6694 and Lot 1 DP 1226372 as both lots have separate legal access and the bridge may be required to be reviewed by TfNSW for its potential closure. As such, the bridge must not be used during the Planning Proposal stage until such time as TfNSW determines the future provision of the bridge. It is believed that non-use of the bridge during this stage will have negligible impacts as the proposed traffic route does not include the bridge. Prior to lodgement of the future DA for subdivision, it is requested that the applicant consult with TfNSW and the Rail Infrastructure Manager in regard to the future use of this overbridge.

Contamination of Rail Land

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Contamination of Rail Land

It is noted that a Preliminary Site Investigation Report has been submitted to support the Planning Proposal and concludes that negligible risks to human health or the environment existed at the site and residual contamination aspects would be more practicably addressed at construction DA stages following subdivision.

TfNSW is currently conducting an environmental assessment to identify contamination on the Country Regional Network. All railway corridors are generally deemed to be contaminated unless proven otherwise by sample testing. Contamination risk arises from both the construction (e.g., unknown fill used in rail construction) and operations (e.g., transportation of contaminated material, spills) of the railway. Potential contaminants could include, but are not limited to, heavy metals, PAHs, phenolics (boiler ash), Organochlorine Pesticides (OCPs) and Organophosphorus Pesticides (OPPs). Although TfNSW is committed to ensuring the health and wellbeing of the community, TfNSW is not aware whether there are contaminants found in the rail corridor or on the common boundaries with the development site.

In accordance with State Environmental Planning Policy (Resilience and Hazards) 2021-Section 4.6 'Contamination and remediation to be considered in determining development application' (Previously State Environmental Planning Policy No. 55 – Remediation of Land) the consent authority (Council) must consider whether the land is contaminated.

Noise, vibration & air quality

Noise, vibration & air quality

The Planning Proposal has not included any future residential development applications will be required to comply with Section 2.99 of State Environmental Planning Policy (SEPP) (Transport & Infrastructure) 2021 and the Guideline.

State Environmental Planning Policy (SEPP) (Transport & Infrastructure) 2021 provides that for development that is in or immediately adjacent to a rail corridor the consent authority must be satisfied that the development would not be adversely affected by rail noise, vibration or air quality due to the volume of traffic the rail line carries. It is important to ensure that a sensitive use such as a residential use should not be located adjacent to the rail corridor to ensure that people residing in the Site are not placed subject to adverse noise and air quality impacts as a result of rail operations.

As such, it is strongly recommended that Development for sensitive uses on the Site that is immediately adjacent to the operational rail corridor must ensure that acoustic building treatments are provided within 100m of the corridor to achieve noise requirements and compliance with the noise requirements shall only be based on shielding from fences, noise walls and intervening objects which are permanent structures, and exclude shielding from any object which forms part of a future development stage.

Stormwater management

Storm water Management

The Planning Proposal has not included details of stormwater management for TfNSW and Rail Infrastructure Manager to determine if it has any adverse impacts on the rail corridor.

As the Land is immediately adjacent to the rail corridor, the rail corridor must not be adversely impacted by any future developments in the Land in terms of stormwater management.
Future public transport service provision

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Future public transport service provision

Should the land be rezoned, and the project continue to the development assessment stage for subdivision, public transport service provision should be considered as part of the project scope. A future development application should consider opportunities to provide public transport through the subdivision area, providing customers with greater travel choices.