



IRF23/1590

Gateway determination report – PP-2022-4088

Rezone land from R2 Low Density Residential and RE1 Public Recreation to R1 General Residential and amend minimum lot sizes at 12-20 Shiralee Road, Orange.

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

Contents

1	Planning proposal.....	1
1.1	Overview.....	1
1.2	Objectives of planning proposal	1
1.3	Explanation of provisions	1
1.4	Site description and surrounding area.....	2
1.5	Mapping.....	4
1.6	Background and Chronology.....	5
2	Need for the planning proposal	5
3	Strategic assessment	5
3.1	Regional Plan	5
3.2	Local.....	5
3.3	Section 9.1 Ministerial Directions	6
3.4	State environmental planning policies (SEPPs)	8
4	Site-specific assessment	8
4.1	Environmental.....	8
4.2	Social and economic.....	9
4.3	Infrastructure	9
5	Consultation.....	9
5.1	Community	9
5.2	Agencies.....	9
6	Timeframe	10
7	Local plan-making authority	10
8	Assessment summary	10
9	Recommendation.....	10

Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal dated 21 November 2022
Council report and resolution from the business paper dated 6 June 2023
Preliminary Site Contamination Assessment dated 23/11/2021
Flood Impact Assessment dated 3 November 2022
Biodiversity Assessment Report dated November 2022

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Orange
PPA	Orange City Council
NAME	Rezone land from R2 Low Density Residential and RE1 Public Recreation to R1 General Residential and amend minimum lot sizes at 12-20 Shiralee Road, Orange.
NUMBER	PP-2022-4088
LEP TO BE AMENDED	Orange Local Environmental Plan 2011(OLEP)
ADDRESS	12-20 Shiralee Rd, Orange
DESCRIPTION	Lot 1 DP 630681, Lot A DP 381933, Lot 1 DP 381932 and Lot A DP 381935
RECEIVED	14/06/2023
FILE NO.	IRF23/1590
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 objectives of the planning proposal are to facilitate additional lot yield on the subject land by:

- amending the zone and minimum lot size
- rezone recreation zoned land to residential zone and apply relevant minimum lot size
- limit the application of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 for lots abutting the future park

On 11 August Council advised to exclude northwest part of the subject lands which are affected by high hazard flood and will need further strategic and technical consideration under a future planning proposal.

1.3 Explanation of provisions

The planning proposal seeks to amend the Orange LEP 2011 per the table and figure 2 and 3 below:

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	R2 Low Density Residential	R1 General Residential
	RE1 Public Recreation	R1 General Residential
Minimum lot size	No MLS	400m ²
	200 m ²	400m ²
	700m ²	500m ²
	3800m ²	700m ²
Additional local provision	None	New local provision to exclude application of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. PCO to determine wording prior to finalisation - See discussion under section 3.4 Direction 1.4 - Site Specific Provisions for more discussion on the additional local provision above.
Number of dwellings	155	less than 199 (the exclusion of part of the land will result in reduced lot yield)

Council has made amendments to the original planning proposal. A condition will be imposed on the Gateway determination to ensure that the planning proposal contains relevant amendments.

1.4 Site description and surrounding area

The subject lands are known as Hilltop Park and is located 1.5km south of Orange CBD. The subject lands are part of Shiralee Urban Release Area (certified) and has an area of approximately 20.05ha of land (including 7.7ha identified as recreation zoned land). The subject lands are bound by Pinnacle Road to the west, Shiralee Road to the north and Hawke Lane to the south. The highest part of the land is located in the middle of the subject lands and gently slopes away to the north and south.

The surrounding lands are mostly used for agricultural purposes but are intended to be developed for urban use in the future. However, the land west of the Pinnacle Road and south of the subject lands is zoned for and intended to be maintained for agricultural use at this stage.



Figure 1 Subject site (source: Planning proposal report 2022)



Figure 2 Site context (source: ePlanning Spatial Viewer 2023)

1.5 Mapping

Prior to community consultation, the planning proposal needs to be updated to exclude the northwest portion of the subject land as identified in the maps below by a red cross.

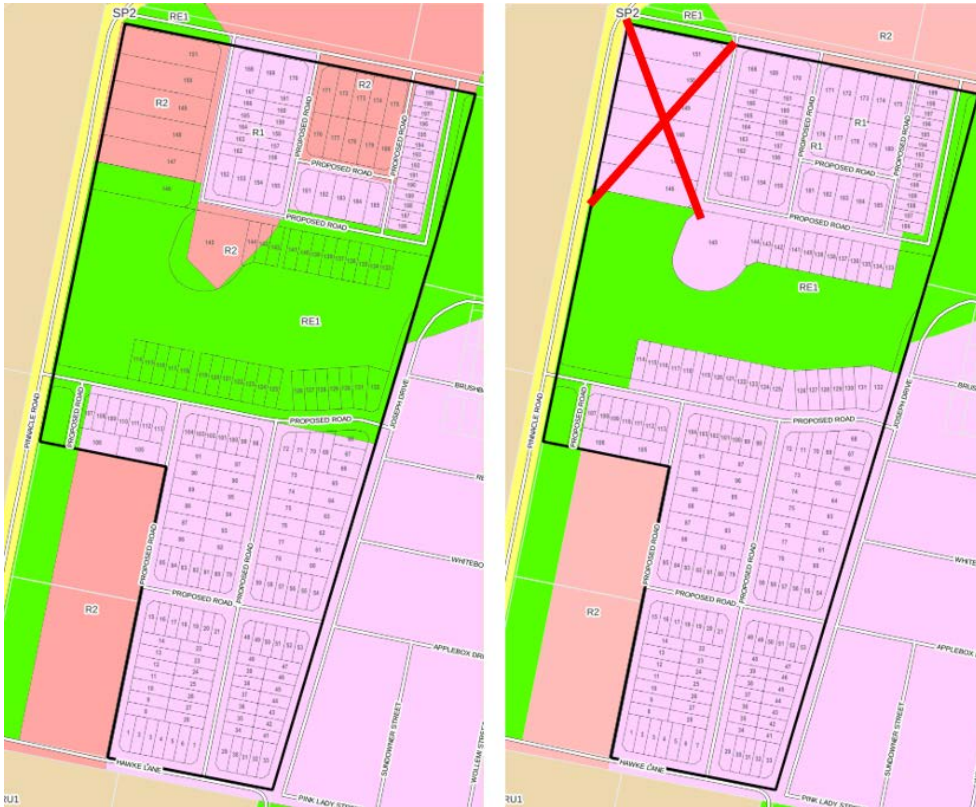


Figure 3 surrounding zoning and proposed zoning (source: planning proposal report 2022)



Figure 4 surrounding lot size and proposed lot size (source: planning proposal report 2022)

1.6 Background and Chronology

12-20 Shiralee Rd, Orange (subject lands) is part of the Shiralee Estate and includes a mixture of residential and recreational land. Since early 2022, the proponent and council have worked towards an agreement where part of the recreation zoned land is to be rezoned to residential and in return, the proponent will embellish the recreation area and dedicate the recreational land to council. A Voluntary Planning Agreement (VPA) to this effect has been reached, however, not finalised. The VPA does not form part of the Department's consideration for this planning proposal assessment.

During adequacy assessment, it was identified that part of the subject land is affected by overland flow, particularly the northwest side of the subject land which contains the higher hazard (H4-H6) flood category areas.

Planning circular PS 21-006 guides that understanding and management of the full range of flood behaviour up to the Probable Maximum Flood (PMF) is required to effectively consider flood risk in land use planning. The flood report accompanying the proposal only includes 1% Annual Exceedance Probability (AEP) flood event not PMF. As such, Council elected to exclude the high hazard flood prone land located on the northwest side and proceed with the remainder of the amendments for the rest of the subject land. Section 3.4 (4.1 Flooding) of this report includes detailed discussion for flooding.

2 Need for the planning proposal

The planning proposal is not the direct result of the local housing strategy, study or plan however it is consistent with the Orange Housing Strategy. The proposed increase of the dwelling yield will allow council to acquire 4.1ha of embellished parkland at the developer's cost. The planning proposal seeks to amend the zone and minimum lot size which is the best method to achieve the intended additional dwellings.

3 Strategic assessment

3.1 Regional Plan

Central West and Orana Regional Plan 2041 provides strategic land use guidance for the subject lands. The proposal will enable additional housing consistent with the Orange Housing Strategy. Development of the subject lands will maximise the cost-effective and efficient use of new infrastructure which will service the area. The proposal will also enable creation of an embellished park for the area. Additionally, the future housing stock can be built to be diverse housing (seniors housing, affordable housing). As such the proposal can give effect to the following objectives of the CWO Regional Plan 2041:

- *Objective 6: Support connected and healthy communities (Strategy 6.2)*
- *Objective 13: Provide well located housing options to meet demand (Strategy 13.3)*
- *Objective 14: Plan for diverse, affordable, resilient and inclusive housing (Strategy 14.1)*
- *Objective 17: Coordinate smart and resilient utility infrastructure (Strategy 17.1)*

3.2 Local

Assessment against the local strategic documents that apply to the area is as follows:

Table 6 Local strategic planning assessment

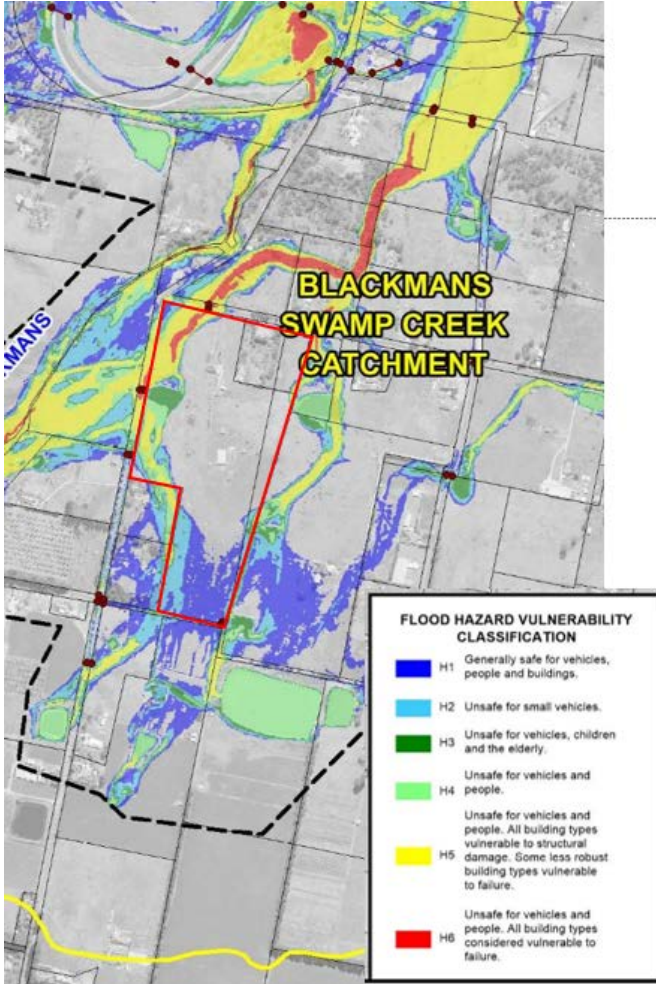
Local Strategies	Justification
Local Strategic Planning Statement	<p>The proposal is consistent with the following council LSPS priorities:</p> <ul style="list-style-type: none"> • Priority 2 - Support the delivery of new homes in residential release areas, including North Orange and Shiralee, and increase the range of housing options in existing urban areas. • Priority 6 - Provide recreational opportunities to meet the needs of residents of, and visitors to, Orange.
Orange Housing Strategy (OHS), July 2022	<p>The subject lands are part of the Shiralee Estate. The OHS provides direction to increase density for infill development. The Shiralee Estate is identified as an existing opportunity and planned serviced area. While Shiralee Estate is not an infill development, the general principle to increase density at a suitable location is achieved given this proposal is increasing density in an area that is planned to be serviced. The proposed amendments will give effect to the following priorities of the OHS:</p> <ul style="list-style-type: none"> • Coordinate services and community infrastructure to facilitate housing growth in appropriate locations • Increase housing supply diversity and choice to meet populations needs • Support the supply of affordable housing • Protect the local environment and scenic landscapes

3.3 Section 9.1 Ministerial Directions

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

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistent	See section 3.2 of this report.
1.4 Site Specific Provisions	Not consistent	<p>The proposal seeks to exclude application of complying development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 by amending <i>Schedule 4 Land excluded from the General Exempt</i> Development Code of the SEPP for the land adjoining directly adjoining to the park. Council intends to require compliance with the applicable DCP for the Hilltop area for the lots adjacent to the park.</p> <p>Prior to finalisation of the proposal, Parliamentary Counsel Office (PCO) will determine the mechanism to achieve this intent.</p> <p>The proposal will result in inconsistency with this direction; however, the application of the exclusion is justified and as such, the inconsistency is of minor significance.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.1 Flooding	Not consistent	<p>Parts of the subject lands are affected by overland flow flood and there is a dam within the site, which acts as a detention basin. The planning proposal is accompanied by a Flood Impact Assessment which considers impact from the 1% AEP flood only. Council's recent flood study indicates that the southern side of the sites are affected by category H1 and H2 flood hazard and the northwest side of the site is mostly affected by higher hazard flood (categories H4 – H6). The northwest flood prone portions are now excluded from the planning proposal. However, the southern side of the site is still proposed to be partly intensified and as such, the proposal is inconsistent with this direction. The study identifies the impact of the 1% AEP levels which needs to be mitigated. In this regard, the direction remains unjustified and requires consultation with Department's Biodiversity, Conservation & Science division to seek comments on development of the flood prone land.</p>  <p>Figure 5 PMF flooding (source: draft Blackmans Swamp Creek and Ploughmans Creek Floodplain Risk Management Study and Plan, October 2020)</p>
5.2 Reserving Land for Public Purposes	Not consistent	<p>The planning proposal seeks to reduce the existing public recreation land from 7.7ha to 4.1ha (from 38% to 20%). This reduction will result in open space reduction across the Shiralee Estate as well, from 16% to 15%.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<p>However, the reduction of the undeveloped recreation zoned land will enable council to ultimately acquire an embellished public park through a VPA.</p> <p>In this regard, the proposal is inconsistent with this direction, however the inconsistency is of minor significance.</p>
5.4 Shooting Ranges	Not Applicable	Orange Rifle Range is located east of the Shiralee Estate and there is a development exclusion zone applicable for the shooting Range. The subject sites are located outside of the Rifle Range Exclusion zone. No further work is required in relation to the LEP amendment.
6.1 Residential Zones	Consistent	The planning proposal will facilitate additional housing in the area and enable different residential and supporting land use in the area. The proposal is consistent with this direction.

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with the following SEPPs-

- [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) by requiring the new houses to be built to the current sustainable design standards
- [State Environmental Planning Policy \(Housing\) 2021](#) by accommodating a range of suitable diverse housing types in the area

4 Site-specific assessment

4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 9 Environmental impact assessment

Environmental Impact	Assessment
Flooding	As discussed in section 3.3, Ministerial Direction 4.1 Flooding.
Contamination	A preliminary contamination assessment has been included which concludes that the site is largely suitable for intended development. Further investigation and removal of asbestos material is required for any future development, which can be managed through the Development Assessment (DA) process.
Ground water vulnerability	The subject land is identified on the Groundwater Vulnerability map under the OLEP 2011. The proposal will facilitate additional dwellings on the site. The lots will be provided with reticulated water and sewerage services. Further detailed consideration will be undertaken during the DA stage.

Biodiversity

A biodiversity assessment report is included and identifies that the proposal will trigger the Biodiversity Offset Scheme and a vegetation management plan is to be established. Council will be required to consult Biodiversity, Conservation and Science during public exhibition.

4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 10 Social and economic impact assessment

Social and Economic Impact	Assessment
Housing diversity	The proposed land zone will permit a range of housing options which can contribute to housing diversity and supply in the local area.
Economy	The proposal is deemed to have a positive flow on effect into the local economy. The proposal will increase the number of dwellings in the area and as such strengthen the need for additional local service and increase population which will be serviced by local businesses.

4.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

Table 11 Infrastructure assessment

Infrastructure	Assessment
Water and Sewerage	The proposed increase is in an area which is planned to be serviced and will not result in a required upgrade of existing planned Council services. Any connection work can be assessed as a part of the future DA process.
Roads	A traffic impact assessment has been included to support the planning proposal which concludes that the increase in density does not compromise the safety or function of the surrounding road network.

5 Consultation

5.1 Community

An exhibition period of 20 working days is proposed, and forms a condition of the Gateway determination.

5.2 Agencies

The following agency is required to be consulted with as part of public exhibition-

- Biodiversity, Conservation and Science division for the impacts associated with flooding and biodiversity.

6 Timeframe

The planning proposal identifies a 12 month time frame to complete the LEP. However, the timeline is based on the original submission date with Council. The timeline is required to be updated.

The LEP Making Guidelines (August 2023) establishes maximum benchmark timeframe for planning proposal by category. This planning proposal is categorised as a standard proposal.

The Department recommends an LEP completion date of 23 July 2024 in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

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 is considered standard, the Department recommends that Council be authorised to be the Local Plan-Making Authority for this proposal.

8 Assessment summary

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

- The proposal is consistent with Central West and Orana Regional Plan 2041.
- The proposal generally gives effect to the Orange Local Housing Strategy.
- The proposal will facilitate future housing in Orange and can be serviced by planned infrastructure.
- The proposal will contribute to the local economy and employment.

As discussed in the previous sections and based on the assessment outlined in this report, the proposal (including mapping) must be updated before consultation to:

- exclude high flood hazard land in the northwest and update all relevant discussion to reflect this.
- include relevant amendments sought (local clause - exclusion from SEPP) and delete superseded controls for northwest land.
- update the timeline for the proposal.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 1.4 Site Specific Provisions and 5.2 Reserving Land for Public Purposes is minor; and
- Note that the consistency with section 9.1 Directions 4.1 Flooding is unresolved and will require further consultation with Department's Biodiversity, Conservation & Science Division.

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 to:

- exclude high flood hazard land in the northwest and update all relevant discussion within the planning proposal relating to this excluded area.
 - include the intent to exclude the application of the Exempt and Complying SEPP.
 - update the timeline for the proposal
2. The planning proposal should be made available for community consultation for a minimum of 20 working days.
 3. It is recommended that an LEP completion date of 23 July 2024 be included on the Gateway.
 4. Given the nature of the proposal, Council should be authorised to be the local plan-making authority.



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