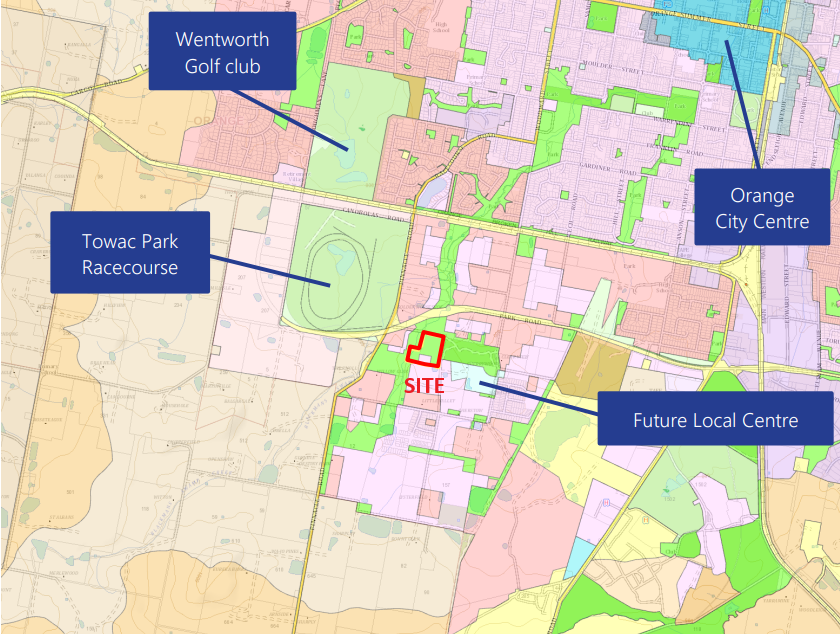
2.4 Planning Proposal to amend Orange LEP - 26 Lysterfield Road

RECORD NUMBER:

AUTHOR: Craig Mortell, Senior Planner

**EXECUTIVE SUMMARY**

Council is in receipt of a Planning Proposal that seeks to amend the Orange LEP by rezoning part of the land at 26 Lysterfield Road from RE1 Public Recreation zone to R2 Low Density Residential zone. The proposal also nominates a minimum lot size of 200m2 for the rezoned land. This proposal arises from a deferred commencement consent (DA 387/2021(1)) which granted approval for a subdivision of 14 Torrens title lots and 3 open space lots, where two of the open space lots would be considered under a Voluntary Planning Agreement (VPA) for potential rezoning.



**Figure 1: Site location - 26 Lysterfield Road**

If supported the proposal will result in an additional 9 residential lots being created and the remaining open space lot being dedicated to Council at no cost. The VPA was entered into in February 2023 and this Planning Proposal has been lodged in accordance with that agreement.

**LINK TO DELIVERY/OPERATIONAL PLAN**

The recommendation in this report relates to the Delivery/Operational Plan strategy “”.

**FINANCIAL IMPLICATIONS**

Nil

**POLICY AND GOVERNANCE IMPLICATIONS**

Nil

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| **Recommendation**  **That Council support the Planning Proposal in principal, and;**   1. **Direct staff to forward the matter to the Department of Planning and Environment for a Gateway Determination, and** 2. **That staff shall request the Department of Planning and Environment to delegate the making of the plan to Council, and** 3. **Upon receipt of a Gateway Determination staff shall review the conditions and coordinate any minor changes or additional studies that may be required, and** 4. **That subject to the above staff commence any government agency consultation and public exhibition requirements** |

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**FURTHER CONSIDERATIONS**

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

**SUPPORTING INFORMATION**

A map of land with red rectangles

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**Figure 2: Subdivision as approved under DA 387/2021(1)**  **- proposal relates to Lots 15 and 16 only**

DA 387/2021(1) sought to subdivide the land at 26 Lysterfield Road in accordance with the Shiralee masterplan. That subdivision created 14 residential lots and three public open space lots, 2 of the open space lots (Lots 15 and 16) were intended for investigation for residential development.

Under the Shiralee Masterplan most of the land at 26 Lysterfield was identified for public open space owing primarily to anticipated need for a stormwater detention basin at the site. This corresponds with Lots 15, 16 and 17 in the approved subdivision.

In the years following the adoption of the Shiralee Masterplan the approach to stormwater detention throughout Shiralee was refined and the need for some basins was removed. Additionally, Council undertook a flood study in 2019 that further refined knowledge of flood behaviour in the area, which indicates that with some land shaping the flooding hazard can be avoided on the subject land (Lots 15 and 16).

Under the contribution plans there is limited scope to acquire the extent of public open space identified throughout Shiralee. Council staff have sought to address this issue by negotiating with developers on a case-by-case basis to have RE1 land dedicated to Council free of charge in exchange for modest changes to the Shiralee plan that may increase development potential while still retaining the overall intent of the masterplan.

DA 387/2021(1) required a Voluntary Planning Agreement (VPA) to be entered into. The VPA identified that one of the open space lots would be dedicated to Council for public recreation and the remaining two investigation lots would be considered for rezoning to residential purposes via a Planning Proposal.

**Voluntary Planning Agreement (VPA)**

As part of DA 387/2021(1) for residential subdivision Council and the developer entered into a planning agreement in relation to potential rezoning of land from RE1 Public Open Space to R2 Low Density Residential land. This arose from a shortfall of funds under the contributions cap to be able to acquire the extent of RE1 zoned land indicated in the Shiralee plan. Negotiations during the assessment of DA 387/2021(1) led to the planning agreement being offered whereby a Planning Proposal would be lodged and assessed for two areas of RE1 land to be rezoned to R2 and in exchange the remainder of the RE1 land would be dedicated to Council at no cost.

Under the terms Schedule 3 of the VPA Council is required to:

1. consider the Planning Proposal, and
2. if the Council determines to support the Planning Proposal, cooperate with the landowner for the prosecution of the Planning Proposal such that amendments to the LEP . . . are effected.

Should a Gateway determination deny the Planning Proposal the landowner must then dedicate lots 15 and 16 to Council at no cost.

To clarify, Council is under no obligation to support the Planning Proposal and retains full discretion in that regard. If the Planning Proposal is knocked back by Gateway for whatever reason, the land will then be dedicated to Council at no charge for public open space.

The Planning Proposal before Council is fully consistent with the terms of the VPA.

**Contributions**

Regardless of whether the Planning Proposal is supported or not, or if it is subsequently denied at the Gateway or not, the dedication of RE1 land will be at no cost to Council.

If the land is rezoned to R2 Low Density Residential and a DA for subdivision is received, lots created under that DA will attract normal development contributions applicable in Shiralee.

**Relevant State Environmental Planning Policies (SEPPs)**

*SEPP (Resilience and Hazards) 2021*

Chapter 4 Remediation of land. The land involved has been altered by past grazing activity and is unlikely to be contaminated. The preliminary site investigation undertaken for DA 387/2021(1) – while not submitted in support of this proposal – included soil samples from the area of lot 15 on the western side of the site.

This corresponds to areas where previous sheds / containers had occurred and broadly overlaps the area of lot 15, being the western area nominated for rezoning.

A map of a land with numbers and symbols

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**Figure 3 – Soil sampling sites from DA 387/2021(1)**

That analysis found that concentrations of heavy metal analytes, organochlorine pesticides / organophosphorus pesticides (OCP/OPP), PAH, TRH and BTEX analytes were all below Site Assessment Criteria or laboratory reporting limits and no asbestos was noted on the site or soil tested.

This gives a reasonable level of confidence that the land, particularly lot 15, is suitable for residential development. Further investigation, if required, can be undertaken during DA assessment processes for the areas nominated to be rezoned.

*SEPP (Biodiversity and Conservation) 2021*

Chapter 2 Vegetation in non-rural areas. The approved subdivision on the site is consistent with the Shiralee structure plan and the proposal will not result in any changes to road layout and the land involved is clear of trees. As a result the extent of vegetation affected by an expansion of the residential zone will consist primarily of grasses.

*SEPP (Transport and Infrastructure) 2021*

Chapter 2 Infrastructure. The area to be rezoned to residential land will have direct frontage to roads already approved for the existing residential development approved under DA 387/2021(1). Similarly, the land can readily connect to other infrastructure and services being provided for that development.

**Central West and Orana Regional Plan (CWORP) 2041**

*Objective 11* of the CWORP aims to strengthen Bathurst, Dubbo and Orange as innovative and progressive regional cities. This includes focusing on the provision of new residential development in and around CBDs which will support population growth.

The strategic focus for Orange is to increase ‘capacity to facilitate improved housing diversification and affordability through a mix of infill development and new greenfield development encompassing design quality principles.’ the site is located within the growth corridor of Shiralee and consistent with this intent.

*Objective 13* of the CWORP aims to provide well located housing options to meet demand. This includes an adequate supply of affordable, well-designed housing in places where people want to live.

The site is located around 3.25km from Orange City centre and is part of a planned expansion of the city forming part of the Shiralee area. Once developed The site will be well connected and supported by employment opportunities within the LGA. The proposal seeks to rezone future Lots 15 and 16 (as approved under DA 387/2021(1)) to provide for residential land uses. This will assist in the supply of housing in a well located area close to city centre and other local amenities.

*Objective 14* of the CWORP aims to plan for diverse, affordable, resilient, and inclusive housing. This relates to aspects such as lot sizes, the type of dwelling, number of bedrooms and suitability of accommodation for different people within the community.

The proposal remains consistent with Structure Plan developed as part of the South Orange URA. The additional lots provide opportunities for various housing forms to suit a range of needs within the community. The final configuration of future dwellings will be determined by the future buyers and their specific needs in line with Objective 14.

**Shiralee Development Control Plan**

The plan of subdivision approved under DA 387/2021(1) is consistent with the layout nominated in the Shiralee DCP master plan. The proposed rezoning of lots 15 and 16 to ultimately allow a further subdivision to continue the residential pattern in this area with the lots having access / frontage to the roads already approved under DA 387/2021(1).

A blueprint of a stadium

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The public will retain direct access to the remaining RE1 land (Lot 17) along the Lysterfield Road frontages, as well as the new road to be constructed that wraps around lots 1 – 14. This will ensure that Lot 17 is available for passive recreation and general amenity benefits.

Subdivision of lots 15 and 16 to create final lots consistent in size and shape with lots 1 – 14 will ensure a coherent neighbourhood character and create a sense of connection for this pocket of residential development to the more central part of Shiralee to the east of the site.

At the subdivision stage Council should consider conditions in relation to rear fencing to the public open space in order to avoid a monotonous expanse of metal fencing in the public realm and instead achieve a degree of activation and interaction between the dwellings and the open space.

**Section 9.1 Ministerial Directions**

*Direction 1.1 Implementation of Region Plans*

The PP is consistent with the Central West and Orana Regional Plan 2041 (refer above).

*Direction 1.4 Site Specific Provisions*

The PP utilises appropriate zones to achieve the intended land use outcomes which do not require or impose any additional provisions or development standards and hence is consistent with this direction.

*Direction 4.1 Flooding*

The Direction requires that planning proposals must include provisions that give effect to:

* the NSW Flood Prone Land Policy,
* the principles of the Floodplain Development Manual 2005,
* the Considering flooding in land use planning guideline 2021, and
* any adopted flood study and/or floodplain risk management plan prepared in accordance with the principles of the Floodplain Development Manual 2005 and adopted by the relevant council.

Relevantly, the direction requires that a planning proposal must not permit residential accommodation in “high hazard” areas. While the area has been identified as subject to flooding in a PMF as well as being partially affected by overland flows these areas are not considered to be “high hazard” and as such the prohibition is not triggered.

The planning proposal submitted to Council notes:

“*Council recently prepared an updated flood study for Shiralee (2019). This study mapped the current flood hazard (shown light blue) and overland flows (shown dark blue) as illustrated within* ***Figure 19*** *relating to the site*.

A map of a flooded area

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*This mapping identifies that proposed Lot 15 is not flood affected. Further, following discussions with Council it was identified that while proposed Lot 16 was partially impacted by overland flooding, it would be feasible to reshape this land and reduce the extent of flooding to convey the overland flood via the road network and within drainage pipes along the road. This would therefore reduce the extent of flooding over the site and provide additional land for development also noting the flood study had identified that the number and location of basins could be reduced within Shiralee meaning there would be a surplus of RE1 zoned land.”*

It is more accurate to note that the northern edge of proposed lot 15 is affected by flooding while proposed lot 16 is fully within the overland flooding area. However, the mapping does not indicate the anticipated depth of flooding during a 1% ARI event and the land is not within a “high hazard” area for the purposes of the Direction.

The proposal is correct when it suggests that reshaping of the land during a subdivision can reduce the extent of flooding anticipated. This will need to be assessed in more detail during a DA for subdivision to ensure that such earthworks do not result in greater flooding impacts on other lands. However Council’s Technical Services have indicated that this is not expected to be the case.

*Direction 5.1 Integrating Land Use and Transport*

The Direction requires that urban zones must be located so as to give effect to the aims, objectives and principles of *“Improving Transport Choice – Guidelines for planning and development (DUAP 2001)”* and *“The Right Place for Business and Services – Planning Policy (DUAP 2001)”.*

The latter is only relevant to commercial and industrial zones. While in terms of the former the future residential lots will be provided with access to key transport nodes/networks via appropriate road, cycle and pedestrian linkages within the estate. Accordingly the proposal is considered to be consistent with the Direction.

*Direction 5.2 Reserving Land for Public Purposes*

The Direction requires that a Planning Proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Planning Secretary.

The reference to “relevant public authority” in the Direction is intended for situations where a government department has requested land be specifically reserved for one of their functions. i.e. if the Department of Education was seeking a school site or similar. Beyond this the Direction is primarily concerned with making sure that reductions in public open space are fully justified.

The planning proposal states:

*Council considered the site during the DA assessment and determined that the land may be rezoned as it is no longer required to be dedicated for public recreation purposes noting the significant amount of RE1 zoned land within the Shiralee area.*

More specifically the RE1 land at 26 Lysterfield Road was initially identified in the Shiralee plan as the site of a potential detention basin to help manage stormwater flows in the broader Shiralee area. After the adoption of the Shiralee masterplan Council’s Technical Services division refined the approach to stormwater management in Shiralee and were able to rationalise the number and size of detention basins required. This resulted in some basins being relocated or, in this case, no longer required.

While stormwater detention was not the sole basis upon which the land was initially designated as RE1 land it was the driving factor. With this factor now resolved it is appropriate to adjust the size and configuration of RE1 land in this area.

The proposal reflects negotiations that were undertaken during assessment of DA 387/2021(1) and importantly the area of proposed lot 17 remains substantial in area and provides linkages between Lysterfield Reserve to the east and Councils former quarry site to the west. The remaining RE1 land at 26 Lysterfield Road will be sufficient to provide for passive recreation, urban ecological functions and continue to play a role in managing flooding and stormwater events though to a lesser extent than originally anticipated.

In view of the above the proposal is considered to be consistent with the Direction.

*Direction 6.1 Residential Zones*

The Direction requires that a planning proposal must include provisions that encourage provision of housing that will:

1. broaden the choice of building types and locations available in the housing market, and
2. make more efficient use of existing infrastructure and services, and
3. reduce the consumption of land for housing and associated urban development on the urban fringe, and
4. be of good design

Additionally the Direction requires that such land must be appropriately serviced.

In response the planning proposal states:

*This PP is consistent with this Direction as it will facilitate the delivery of residential lots that will encourage a variety of housing typologies to suit the needs of people within the Shiralee community. It will also make efficient use of infrastructure being outlaid within South Orange URA therefore being able to easily connect into this wider network.*

This response is supported and the proposal is considered to be consistent with the Direction.

**Conclusion**

The Planning Proposal relates to two small areas of RE1 zoned land located at the edges of a much larger RE1 zoned area. The overall area was established during the creation of the Shiralee masterplan at a time when the final stormwater solution for shiralee was yet to be determined. Subsequent design work by Technical Services indicated that this land would not be required for a detention basin, although its low lying position means that most of the land will remain subject to overland flows and minor flooding.

Development of the Shiralee area has revealed that the ambitious extent of public open space identified is difficult to secure within the constraints of the contributions system. Equally however, flooding and overland flows remain a constraint to the development of various areas of Shiralee and such land should be in public ownership to allow for proper hazard management.

Subsequent to adoption of the Shiralee plan the Ploughmans Creek and Blackmans Swamp Creek Flood Study was undertaken and this has refined our knowledge of flooding overland flows through Shiralee. Technical Services have confirmed that the area indicated in lots 15 and 16 are, subject to some earthshaping, capable of being developed for residential purposes.

In view of this the proposal to rezone lots 15 and 16 for residential development is supported on the following grounds:

* As portrayed in the proposal this will enable approximately 9 additional residential lots in a manner that presents a consistent character and density as nominated in the Shiralee masterplan,
* The remaining RE1 land (Lot 17) remains easily accessible to the public and has not been screened off by the additional lots, this area remains of a substantial size and dimensions such that the passive recreation and amenity benefits are largely retained,
* The additional lots will effectively connect what would otherwise be a pocket of residents (lots 1-14) to Lysterfield road and the core of the village further to the east.
* The additional lots will not require new or additional roads and are able to connect to services that will be extended to the area for lots 1-14. Consequently the additional lots represent a more efficient use of infrastructure and services
* Financially the additional lots will result in a marginal increase in contributions achieved within Shiralee without incurring additional costs and the additional supply of residential lots will provide a small, but positive, contribution towards the housing affordability concerns in Orange.

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**Attachments**

1 Draft Planning Proposal - Redacted, D23/83552

2 Draft Zone Map Tile, D23/78442

3 Draft Minimum Lot Size Map Tile, D23/78441

4 Signed Planning Agreement - Arising from DA 387/2021(1) - Redacted, D23/83556

5 Considering Flooding in Land Use Planning Guideline (July 2021), D23/78447