

# City of Ryde Submission

146-150 Vimiera Road, Marsfield  
Rezoning Review (RR-2022-23)



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## Executive Summary

The 146-150 Vimiera Road, Marsfield Planning Proposal (the Proposal) seeks to amend the Ryde Local Environmental Plan 2014 (RLEP 2014) in relation to the subject site located at 146-150 Vimiera Road, Marsfield, by amending the land use zone from RE2 Private Recreation to part R2 Low Density Residential and part RE1 Public Recreation. In addition, the Proposal seeks to amend Schedule 1 of RLEP 2014 to include semi-detached and attached dwellings as additional uses. A height development standard of 9.5 metres is proposed to be applied for the portion of the site to be zoned R2.

In accordance with the Department of Planning and Environment's Planning Circular PS 18-012, if Council fails to indicate its support within 90 days after the proponent submits a request, the proponent will have the opportunity to request a Rezoning Review. A Rezoning Review request was subsequently submitted by the proponent on 14 September 2022.

The submitted planning proposal, prepared by Ethos Urban on behalf of North Ryde RSL, Eastwood Rugby Club, and Vimiera Recreation Grounds Limited, states that it seeks to:

- Rezone the site to part R2 Low Density Residential and part RE1 Public Recreation, and to permit semi-detached and attached dwellings on the part of the site proposed to be zoned R2 Low Density Residential via an additional permitted use clause.
- Apply a maximum building height of 9.5 metres to the portion of the site proposed to be zoned R2 Low Density Residential.
- Dedicate the proposed RE1 Public Recreation area to Council as passive open space.
- In addition, a site-specific amendment to the Ryde Development Control Plan 2014 is being prepared separately in order to give effect to the Master Plan and provide more detailed planning controls in order to mitigate any future environmental impacts.

The amendment to the Development Control Plan (DCP) is the subject of a separate statutory process. However, should the planning proposal receive a Gateway Determination, Council would endeavour to publicly exhibit the draft DCP amendment concurrently to the planning proposal.

The application states that the planning proposal and master plan include the following:

- Delivery of a new public park fronting Vimiera Road with an area of approximately 10,000m<sup>2</sup>, including full-sized basketball, multi-purpose sports court, an all-abilities play space, pedestrian paths, seating, and fitness equipment.
- Approximately 132 dwellings across lots ranging in size between 188-540m<sup>2</sup> with six key dwelling typologies comprising detached, semi-detached, and attached (terrace) dwellings.
- Stormwater management and water-sensitive urban design infrastructure, including infrastructure to manage overland flows from surrounding properties.
- Planting of 570 additional trees across the Site, to provide total site canopy cover of approximately 65%.
- New internal public roads with two vehicular connections to Vimiera Road.
- Pedestrian access to Thelma Street to provide walkable community access to the new park.

The Proposal is also accompanied by an offer to enter into a Planning Agreement which is the subject of a separate process. As the Planning Agreement has not been accepted by Council, it cannot be relied upon to address any strategic deficiencies in the current proposal.

The planning proposal, as part of its justification, has highlighted that the subject land is not suitable for heritage listing and that the site is currently underutilised. However, this argument is flawed in that the planning proposal has not appropriately considered the amenity and aesthetic value that the community has for the site. These values relate to the current open space use and the opportunity that the site has to fill the real gap in active open space in the Ryde LGA. Similarly, the flawed argument does not consider the use restrictions that private management of the site has on the current utilisation of the site. Public management

of the site would significantly increase the community use of the overall site and open the use of the playing fields to a broader range of sporting activities.

Council staff found that the Proposal does not comply with relevant strategies or, there is uncertainty in the delivery of the parts of the proposal that are relied upon to provide strategic consistency. There are two main factors in this inconsistency. The first is that the proposal is inconsistent with council's Open Space Future Provision Strategy (OSFPS) and inconsistent with numerous elements of the North District Plan relating to provision of space including, Objective 6, 7 and 31, and Action 73. The second is the lack of certainty in the delivery of the submitted master plan under the current proposal, which creates significant uncertainty in the strategic merit and strategic consistency of the proposal. This submission outlines Council's assessment of the Proposal and identifies issues yet to be resolved by the proponent.

## Background

A pre-lodgement meeting between the applicant, their consultant, and Council was held on 22 March 2022. The advice provided by Council following that pre-lodgement meeting was extensive and included guidance on development application matters so that appropriate amendments to the overall master plan and lot boundary location could be made prior to the lodgement of the planning proposal. The advice also advised the inconsistency with Council's Open Space Future Provision Strategy (OSFPS).

The planning proposal was submitted to Council on 19 May 2022. Accompanying the planning proposal is a master plan design concept for the R2 and RE1 land development and embellishment. A draft amendment to the DCP was also submitted to Council by the applicant and is the subject of a separate assessment process. An additional information letter was sent to the applicant on 2 August 2022. This letter advised the applicant of the strategic inconsistencies found in the planning proposal assessment and provided the applicant with the opportunity to respond/amend the proposal. The applicant's response to the additional information request, received on 25 August 2022, disagrees with Council's assessment with respect to Open Space impacts and advised that a contingency plan to develop Seniors Housing on the site will also be pursued if the planning proposal is not supported by Council. The applicant also provided further information on 14 September 2022 to address concerns relating to the delivery of design benefits such as the proposed tree canopy; this further information suggested covenants be put in place over the proposed future properties to prevent certain types of Complying Development on the site that would compromise the proposed design outcomes. The use of covenants is not considered an efficient or appropriate mechanism to ensure the proposed benefits of the proposal are achieved.

A Rezoning Review request was submitted by the proponent on 14 September 2022, as Council fails to indicate its support within 90 days after the proponent submits a request. As a result, the related Planning Proposal (PP-2022-1822) has been put on hold until a decision on the Rezoning Review request has been made. The Proposal is currently with the Department of Planning and Environment for assessment.

## Site History

On 25 August 2020 Council considered a heritage report, prepared by Kemp and Johnson, titled *Heritage Assessment Report: T.G. Millner Field*, and dated March 2020. The purpose of that report was to investigate the TG Millner Fields site for possible heritage listing. Whilst this report did not recommend the heritage listing of the site, it did make several relevant statements as follows:

- Thomas George (TG) Millner (1887-1986) was a prominent local with links to rugby union and the Eastwood Rugby Club.
- During 1950 and 1951, TG Millner purchased the then owned FA Baylis site facing Vimiera Road (the subject site) from Elizabeth Baylis, FA Baylis' widow.
- Millner sold the Vimiera Road land (the subject land) to the Eastwood Club and loaned the money for the purchase, while a listed club, Vimiera Recreation Grounds Limited, was set up to manage the property.
- The Field has some historical association with TG Millner, who donated the land and is considered to be a figure of local historical significance, however the fabric of the Field does not demonstrate this historical association. The history of the site is capable of interpretation as part of any future redevelopment. The Field is likely to have some level of social significance to the various associated sports organisations and users of the Club and sports facilities, however this social significance is

likely to relate more to the amenity of the site for the community (an exclusion criterion for heritage listing)...

- Any social significance of the TG Millner Field is likely to relate to the community amenity of the site (an exclusion criterion), and such amenities are capable of relocation.

As shown from the above heritage study statements, TG Millner purchased the land in 1950 and in the 1960s donated the land to the Eastwood Rugby Club via a sale funded by him lending the money to the club. The Vimiera Recreation Grounds Limited was set up, like a Trust, to manage the property.

It is noted that the above heritage report suggests that the community amenity link to the site has some social significance but “*such amenities are capable of relocation*”. However, this relocation suggestion is made in the context of the report assessing the site for heritage listing in isolation to the overall planning for the locality. The open space and amenity of the subject site (donated for such use) is significant and to relocate such amenity and facilities elsewhere in the Ryde LGA would be almost impossible. In this regard the open space significance of the site cannot, and should not, be underestimated.

Much of the planning proposal argument is that the land has no historical significance and hence, being privately owned, can be sold or developed. However, this argument is flawed in that it overlooks the abovementioned social and amenity value that this large parcel of land (originally donated to the community for recreational use) has to the wider community, and its ability to fill a real gap in the open space provision in the Ryde Local Government Area.

## The Site

The Planning Proposal site (Lot 6 in DP 1046532) is known as the TG Millner playing fields at 146 Vimiera Road, Marsfield. The site is surrounded by existing residential development as shown in figure 1.



**Figure 1: Aerial Image of the site and immediate surrounds (Source: RydeMaps).**

Marsfield is located between Macquarie University and Macquarie Park to the east and Epping to the west and is approximately 14km north-west of the Sydney CBD. Marsfield is characterised by predominately low-rise housing, with educational institutions and local retail. The Terrys Creek bushland is located to the west of the site.



The land surrounding the site is generally zoned RE2 Low Density Residential and characterised by one and two storey residential dwellings. A land parcel to the northwest of the site is zoned as SP2 (Research Facility) currently occupied by the CSIRO.

The Site is located approximately 400m south of Epping Road and has an approximate area of 6.17 hectares. The site has road frontages to Vimiera Road (200m wide) and Thelma Street (55m wide), with vehicular access to both street frontages, and also a 4.5m-wide undeveloped access handle connecting through to Culloden Road.

The Site is currently occupied by Eastwood Rugby Club, the North Ryde RSL Sports Club and a 78-place childcare centre. Existing site comprises the TG Millner Field (see Figure 2 and Figure 3 for the existing playing field facilities at the subject site), a district-grade playing field with grandstand seating, and a range of associated structures used by Eastwood Rugby Club. A large informal rugby training area is located in the south-eastern portion of the Site. The NRRSL Sports Club, a registered club which includes bar, bistro and gaming facilities, is located in the centre of the Site adjacent to the TG Millner Field. The childcare centre is located on a portion of the site under lease adjacent to the northern boundary near Vimiera Road.



**Figure 2: TG Millner layout and facilities**



Figure 14: TG Millner Field facilities

1. Access gateway
2. The 1960s grandstand
3. North-western sports field
4. North Ryde RSL Club building
5. Eastwood Rugby Amenities block
6. Childcare centre
7. RUFC building
8. Pair of electrical substations
9. car parking area
10. Sheds
- 11 South-eastern sports field

Figure 3: TG Millner Field Facilities (Source: Heritage Assessment Report TG Millner Field, Kemp & Johnson, March 2020)

There is no heritage listed item adjoining or within the immediate vicinity of the site. The closest items are 400m to the east in Balaclava Road and 450m to the north on the north side of Epping Road.

## The Planning Proposal

The Proposal is summarised as follows:

Table 1: Proposal summary

<b>Site Area</b>	6.17 ha
<b>Proposed zones</b>	Part RE1 Public Recreation Part R2 Low Density Residential
<b>Intended future use</b> (Subject to Development Approval)	RE1 – Passive Recreation R2 – Approximately 132-136 dwellings across lots ranging in size between 188-537 m <sup>2</sup> with six key dwelling typologies comprising semi-detached and attached (terrace) dwellings.
<b>Proposed Areas</b>	RE1 Zone – 1.0 ha R2 Zone – 5.17 ha

The proposed amendments to the Ryde Local Environmental Plan 2014 (LEP2014) are:

- Change to the zoning map for the site from the current RE2 Private recreation to part R2 Low Density Residential and part RE1 Public Recreation,
- Change Building Height Map to introduce maximum building height of 9.5 metres (same as surrounding zone)
- Addition of Clause in Schedule 1 of the LEP to permit Semi-Detached and Attached Dwellings (Terraces) in the proposed R2 zoned portion of the site only,
- Addition of Local Provisions Clause to the LEP 2014 to set the minimum and maximum lot sizes permitted on the proposed R2 zoned portion of the site.

- Proposed amendment to the Ryde DCP to provide site specific planning controls for the site as proposed in the submitted master plan.

## Relevant Council Resolutions

Council has passed several resolutions relating to the TG Millner fields site. These resolutions clearly show Council's position on the site and its clear intention to retain the site for open space. A summary of these resolutions is as follows:

**Table 2: Relevant Council Resolution**

Meeting date	Item	Resolution
24 April 2018	NoM 8	That the City of Ryde Council: <ol style="list-style-type: none"> <li>Recognise the value of the existing TG Millner site for recreational public use.</li> <li>Commence negotiations to purchase TG Millner to secure its use for public open space following a comprehensive investigation into its viability.</li> <li>Urgently review whether the TG Millner playing fields meet the criteria for heritage listing and if so seek an interim heritage order with a view to a permanent listing that protects these fields as open space in perpetuity.</li> </ol>
22 October 2019	NoM 5	<ol style="list-style-type: none"> <li>That having regard to the need to protect existing green spaces in our City, the General Manager investigate the heritage listing of TG Millner Fields in Marsfield.</li> <li>That a report be presented to Council in February 2020 as part of the next stage in the LEP review.</li> </ol>
25 August 2020	Item 14	<ol style="list-style-type: none"> <li>That Council does not proceed with heritage listing T.G. Millner Field.</li> <li>That a further report be provided to Council as soon as is practicable, including consideration of the strategic land use planning actions required to ensure the ongoing provision of open space and recreation opportunities to the community, and the role of land currently zoned for private recreation.</li> </ol>
25 August 2020	NoM 14	That the City of Ryde Council re-affirm its commitment to:- <ol style="list-style-type: none"> <li>Recognise the iconic nature of the TG Millner Fields to the local community as a highly valued public, open green space that is fully utilised by the community.</li> <li>Request that Council staff commence work on drafting a report on "Open Space Planning for the Future of Ryde".</li> <li>Affirm the support of all political public representatives at the Federal, State and Local Government areas for the preservation of this important public open space.</li> <li>Write to the Prime Minister, Premier of NSW, the NSW Minister for Planning, the Member for Ryde, the Member for Epping, the Member for Lane Cove, and the Member for Bennelong advising of our position and seeking their commitment or re-affirmation of their support for the retention of this important public recreational open space.</li> </ol>
28 June 2022	Mayoral Minute	That Council:- <ol style="list-style-type: none"> <li>Recognise the rich history of the TG Millner playing fields in Marsfield, and the vital importance of large open spaces for our local community.</li> <li>Oppose any plans that reduce or diminish the public's access to green space in Ryde.</li> <li>Instruct the Acting General Manager to take any and all steps necessary to help secure this iconic local landmark as green open space in perpetuity.</li> </ol>



Council recognises the TG Millner playing field significance to the local community not only for its historical link to the Eastwood Rugby Club and to TG Millner. There is an unmet demand for full size outdoor playing fields in the locality and the community has a social and aesthetic link to the site as open space. The opportunity to provide additional open space of this size is limited, or almost impossible, and this opportunity should not be overlooked. The following sections will outline this issue in more detail.

## Strategic Merit of the Proposal

### Part 1 Objectives or intended outcomes

From the assessment of the Proposal's listed objectives only three of the stated objectives can be reasonably certain if the Proposal is supported. The remaining four listed objectives are not considered to have been met by the proposal as there is too much uncertainty in the delivery of those objectives to consider them in support of the planning proposal, and in the case of the first objective, it is not considered a relevant planning consideration.

The objectives listed in the Proposal are noted and assessment comments are provided as follows:

**Table 3: Objectives and Council Comments**

Objectives	Council comments
<b>1. Facilitate the rezoning, development and sale of the existing private landholding to allow for the investment in new facilities and sporting infrastructure by NRRSL and Eastwood Rugby.</b>	Not supported. This objective is not a planning objective, rather an individual or company objective, it would not be certain should the proposal proceed, and it is not a relevant planning consideration.
<b>2. Increase the diversity of low-rise housing stock within the Ryde LGA by permitting semi-detached and attached (terrace) housing to be delivered on the Site.</b>	Not supported in this location. The proposal, if delivered, has the potential to contribute to the housing diversity within the Ryde LGA. However, the rezoning is not required to meet the current housing targets, and Council has other options for the delivery of terrace housing that are not inconsistent with relevant open space objectives.
<b>3. Contribute to the amenity of the existing and future community by delivering a new high-quality public open space within the Vimiera Road frontage of the Site.</b>	Not supported. The proposed passive recreation park may contribute to the amenity of the immediate development. However, Council, through the OSFPS has identified the need for active playing field on the site to maintain appropriate levels of access to recreation space. The proposal is considered inconsistent with the relevant Strategy for achieving this objective.
<b>4. Apply a maximum building height limit that is that same as that which applies to adjoining residential areas</b>	The inclusion of a maximum building height of 9.5 metres being the same as surrounding residentially zoned land is a suitable outcome. This objective is supported.
<b>5. Provide for a significant net increase in urban tree canopy within the Site.</b>	Not supported. The intent of the proponent to increase urban tree canopy is admirable and that intent of the applicant is not questioned. However, the intended tree canopy increase noted on the submitted master plan is uncertain under the proposed changes and may not necessarily be delivered. As such it should not be given weight in this assessment.



	<p>There is no legal mechanism available for a planning proposal to require the works proposed in the master plan to be delivered as that is contrary to a Section 9.1 Ministerial Direction (1.5 Site-specific Provisions). It is acknowledged that a proposed DCP amendment will assist with this intent, but the DCP is not a statutory instrument that provides certainty for such an outcome, particularly when the SEPP provisions (Complying Development) can circumvent the application of DCP in this regard. The master plan uncertainty is increased when consideration is given to the fact that much of the tree canopy increase is based on future privately owned allotments. The enforcement and retention of tree canopy on private land is very uncertain when considering future development on those lots. It is suggested that the proposal be reconsidered to better guarantee the proposed outcome. Consideration could be given to reconfiguration of the proposed master plan to ensure there is capacity to provide tree canopy, including via street trees, in the proposed public domain.</p> <p>It is also noted that a rezoning is not required to achieve this objective.</p>
<b>6. Facilitate the integration of 'smart cities' principles into the design and use of the future site.</b>	<p>Not supported.</p> <p>The intent of integrating 'smart cities' principles in future development is uncertain and cannot be enforced by the current planning proposal. These principles are guidelines that lack statutory certainty and should not be considered as a matter supporting a planning proposal.</p>
<b>7. Manage urban stormwater and improve water quality within and around the Site.</b>	<p>No objection.</p> <p>The provision of open space along the frontage of Vimiera Road has the potential to positively contribute to the management of urban stormwater.</p> <p>However, it is noted that the rezoning of the land is not required to manage or improve water quality in and around the site, and this could be achieved under the current zoning.</p>

The intended outcomes of the Proposal as listed, and Council's comments are provided as follows:

**Table 4: Intended Outcomes and Council Comments**

<b>Intended Outcomes</b>	<b>Council comments</b>
<b>1. Delivery of a new public park fronting Vimiera Road with an area of approximately 10,000 m<sup>2</sup>, including full-sized basketball/multi-purpose sports court, an all-abilities play space, pedestrian paths, seating and fitness equipment.</b>	<p>Not supported.</p> <p>The open space proposed in the planning proposal is noted. The Open Space Future Provision Strategy (OSFPS) identifies a shortfall of 4 playing fields in the locality to 2036. There would be an even greater shortage beyond 2036. The OSFPS suggests options for addressing this shortfall, including 2 fields at the TG Millner site (the site). It is also not consistent with Council's Local Strategic Planning Statement (LSPS) which requires the provision of open space to service population needs or the open space objectives and actions of the North District Plan. Under its current zoning, the Site includes 3 full-size fields, regardless of whether</p>

	it is privately owned, they make significant contributions to the well-being of the community and contribute to the capacity for sport and recreation within the Local Government Area.
<b>2. Approximately 132 dwellings across lots ranging in size between 188-537 m<sup>2</sup> with six key dwelling typologies comprising semi-detached and attached (terrace) dwellings.</b>	Not supported. The intended outcome of approximately 132-136 low density dwellings across a range of lot sizes is generally supported. However, the uncertainty of this outcome is increased due to the lack of statutory mechanisms in the planning proposal to deliver the development and design intent outlined in the master plan. Further, there is sufficient capacity for housing in the current planning controls and a rezoning is not required to deliver the required dwellings to meet current housing targets.
<b>3. Stormwater management and water-sensitive urban design infrastructure, including infrastructure to manage overland flows from surrounding properties.</b>	No objection. Stormwater management is a development application matter but is an acceptable outcome from the planning proposal. However, it is noted that a rezoning is not required to achieve this outcome.
<b>4. Planting of 570 additional trees across the Site, to provide total site canopy cover of approximately 65%.</b>	Not supported. The planting and retention of 570 additional trees is the applicant's intent (not questioned in this assessment) of the planning proposal. However, there is significant uncertainty in the ongoing retention of this increased canopy when much of the planting proposed by the master plan will be within privately owned allotments. The applicant will not have any power over the retention of these plantings after sale of the properties and Council will have limited power, considering SEPP provisions, that these planting will remain on privately owned land in the longer term. It is also noted that a rezoning is not required to achieve this outcome.
<b>5. New internal public roads with two vehicular connections to Vimiera Road.</b>	Not supported. The provision of internal roads will benefit the development of the site only and has no wider local network function.
<b>6. Pedestrian access to Thelma Street to provide walkable community access to the new park.</b>	Not supported. Pedestrian access through the site is generally supported but is an uncertain outcome for a planning proposal. A rezoning is not required for this outcome to be delivered.

## The Proponent's Response

The proponent was advised of staff concerns relating to the proposal on 2 August 2022 and their response to this advice was received on 25 August 2022, with further information also provided on 14 September 2022. The proponent's response is discussed as follows.

### *Active Open Space Provision*

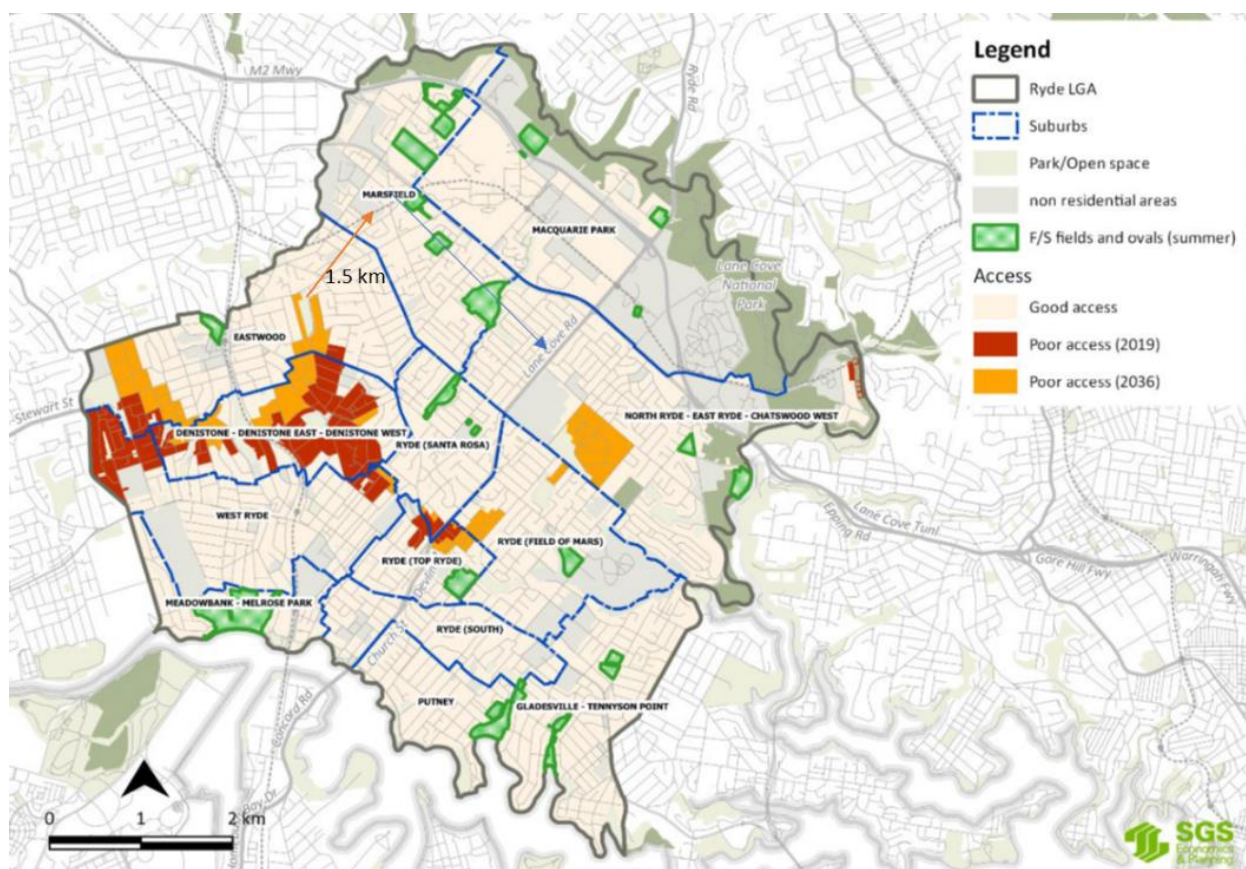
The proponent has argued that the OSFPS "is not a land use planning policy that should be used to assess this Planning Proposal. It does not rezone or acquire land or require the dedication of land by private landowners."

The OSFPS is a Council adopted Strategy and is a relevant consideration for the assessment of a planning proposal, as are the provisions of the Planning Ryde Local Strategic Planning Statement (LSPS) and the North District Plan.

The proponent has stated that the proposed development does not generate the need for a full-sized playing field and the provision of same by this development is not appropriate. The response suggests that Council should pursue other options rather than the subject site as this site would not represent "value for money" if the site was purchased.

It is agreed that this development alone does not generate the need for a full-sized playing field. However, as an application for a rezoning, the additional unplanned need must be considered in light of existing capacity and anticipated future capacity. As discussed in the OSFPS, the identified logical available options for consideration are sites that are not burdened by existing development, and they represent opportunities for open space development due to their limited existing development.

Further, the proposed loss of private recreation land to residential uses and the retention of a portion of this site for informal recreation is not, on balance, considered to be consistent with Council's strategic open space provision responsibilities and would result in a worsening of potential local access to formal active recreation spaces. In general, it was found that people are willing to travel a maximum of 1.5 km to access outdoor field and ovals. Figure 2 below illustrates that there is poor access to full size outdoor field and ovals south of the subject site. The site provides crucial access to field and ovals for its surrounding residents. The gap becomes larger in winter as there is more demand for outdoor ovals in winter.



**Figure 4: Full size outdoor field and oval: access gaps in 2019 showing in orange, gaps in 2036 showing in red.**

The proponent has argued that the provision of a full-sized playing field on the land would make the proposed development unviable. As an alternative, the proponent's response is to propose a Seniors Living development, under the provisions of the SEPP (Housing) as a contingency. The proponent also stated that the Seniors Living proposal would not be accompanied by a VPA or include any open space provision. This is an option to be explored by the proponent and the comparative merit of this scheme to a potential Seniors Housing development on the site is not a relevant planning consideration for this current proposal, which is assessed on its merits and consistency with the strategic framework as per the planning proposal process.

Whilst Council's letter of 2 August suggested alternative options for the proponent, including "Review location of zone boundary between the R2 and RE1 zone to provide for full size playing field and surrounding passive open space. This will require a review of the density provisions in relation to lot size map changes.". However, the proponent has not discussed this option with Council in sufficient detail for Council to provide an assessment and their response to Council's letter indicates that they are not seeking to revise their proposal to address the issues raised by Council with respect to open space provision.

#### *Recreational Needs Assessment*

The planning proposal has included a Recreational Needs Assessment that suggests that the locality is already well serviced with active playing fields and that there is a need for smaller, passive recreational areas. The proposal cites the current underutilisation of the TG Millner playing fields in support of this argument.

However, the submitted needs assessment is not consistent with, nor supported by, Council's Open Space Future Provision Strategy (OSFPS) that identifies the current shortfall and future need for additional playing fields in the locality.

The proposal's argument that the current playing fields are underutilised does not take into account the difference between the current private management of the site when compared to a potential public (Council)



management of the site. The current private management of the site is heavily restricted to the use for specific sports and users, e.g., club members or affiliates. If the site was publicly managed, the site utilisation could be significantly increased through utilising the main playing field for more sports and the other secondary fields for training and playing of a larger range of sporting activities and users. The public management of the site would open the land to both structured and unstructured community use that is not currently permitted by the private management of the land.

### *Strategic Consistency*

The applicant's response of 25 August considers that the proposed amendments to the DCP and VPA offer provides sufficient certainty, for future development, to enable the planning proposal to be supported. In addition to this the applicant has also proposed that any proposed addition of a Clause in Schedule 1 of the Ryde LEP 2014 to refer to the DCP requirements. This is possible but it does not address the significant uncertainty that Council has in relation to the provisions of the *Low Rise Housing Diversity Code* (the Code) under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

To address this concern, the applicant has proposed:

*"we believe that the imposition of a covenant which prevents application of the Codes SEPP (whether through the requirement in the Draft DCP or by the current landowner required through the final Planning Agreement) would address Council's concerns and is a robust and readily enforceable approach. The Proponents will provide separate legal advice to Council shortly which confirms that this approach can be readily implemented to address Council's concerns."*

Further advice in this regard was provided on 14 September 2022.

The use of covenants (such as under the *Conveyancing Act 1919*) is not considered an efficient or effective means to deliver appropriate housing and design outcomes. The potential regulatory implication of administering such a mechanism is not considered an acceptable mechanism to manage the future uses of the land. Should any rezoning of the land to provide housing proceed, consideration should be given to a revised masterplan that better ensures the outcomes proposed. This could, for example, include reconfiguration of lots and streets to deliver greater tree canopy in the public domain.

From the above assessment of the planning proposal's listed outcomes the stated outcomes are not considered to provide sufficient justification to warrant rezoning.

Consistency with adopted strategic objectives is continued in Part 3 below – see "Relationship to Strategic Planning Framework – The Strategic Merit Test".

## **Part 3 Justification**

### **Need for the Planning Proposal**

*Is the planning proposal a result of an endorsed LSPS, strategic study or report?*

Council response:

The planning proposal is not the result of an endorsed LSPS, strategic study or report. The potential provision of low density housing diversity is generally consistent with the Ryde LSPS and will contribute, in a minor way, to dwelling targets in the North District Plan. However, as found in the Ryde Local Housing Strategy the Ryde LGA will achieve the dwelling targets with or without additional rezoning of land.

The impact on open space provision is considered to be inconsistent with Ryde LSPS. In particular, the proposal would result in the loss of private recreation space with the potential to provide formal active recreation, with residential uses and some informal recreation space. The proposal is accompanied by a Voluntary Planning Agreement; however, this would not facilitate additional capacity through acquisition of land and would simply bring forward works already planned works that would be required should the land remain private open space.

In particular, the proposal is considered inconsistent with Action OS1.1 of the Ryde LSPS - *“Identify opportunities for collaborating with non-Council open space land owners and private recreation providers in the LGA to increase the range and amount of, and access to, recreation opportunities.”* The subsequent Open Space Future Provision Strategy (OSFPS) identifies the site as such an opportunity.

The planning proposal is inconsistent with the OSFPS, which identifies the subject site for the provision of formal active playing fields. The planning proposal has submitted an open space needs assessment report that concluded that a playing field is not required in the vicinity and that the proposed passive open space is more appropriate. Council’s Parks section does not agree with the assessment of open space needs and recommends that the existing, Council adopted, strategy be enforced; the OSFPS indicates that ongoing provision of formal active recreation will be needed on the site in order to keep pace with projected growth and demand in the Ryde LGA.

*Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

Council response:

Given the Ryde LSPS and OSFPS’s objectives for the site, particularly with respect to open space, the planning proposal is not considered the best means of achieving the relevant objectives for the site. The objectives with respect to the provision of housing can be achieved in other locations that would not result in inconsistencies with relevant open space objectives.

### Relationship to Strategic Planning Framework – The Strategic Merit Test

The ‘Local Environmental Plan Making Guideline’ poses a series of questions to consider for this part of the planning proposal. A strategic merit test is provided in the following table.

Strategic Merit Issue	Comment
State Environmental Planning Policies and Local Directions	<p>The planning proposal is not inconsistent with any SEPP or s9.1 Ministerial Direction.</p> <p>However, Direction 1.5 <i>Site Specific Provisions</i> specifically prohibits the inclusion of site specific plans and development controls, such as a master plan. As such there is significant uncertainty in the delivery of the master plan intent and hence the justification for the planning proposal is weak.</p>
Greater Sydney Region Plan - A Metropolis of Three Cities	The planning proposal is generally consistent with the Greater Sydney Region Plan - A Metropolis of Three Cities.
North District Plan	<p>The planning proposal is not required to meet the housing targets contained in the Plan, and the uncertainty in the delivery of the intended outcomes of the proposal are such that in its current form there is a risk that it will result in outcomes that are not consistent with this Plan.</p> <p>Further, the proposal is considered inconsistent with numerous elements of the North District Plan relating to provision of space including, Objective 6, 7 and 31, and Action 73.</p>
Planning Ryde: Local Strategic Planning Statement	The open space proposed in the planning proposal is not consistent with the LSPS which requires the provision of open space to service population needs (Planning Priority OS1 and Action OS1.4).

### Site-specific Merit

An assessment of the key issues relevant to the planning proposal is provided in the following table.

Site Specific Issues	Assessment
Traffic	Should the proposal be supported, a range of traffic measures, including site access, restricted egress to left turn only and vehicle turning paths may be suitably addressed at the development application stage. Cycleways in Vimiera Road must be retained and enhanced.
Parking	<p>Parking is limited in Vimiera Road and must be provided on site. All parking for the open space area must be provided on site.</p> <p>The OSFPS requires provision of playing field space on site. For such space to be functional sufficient parking must also be on-site. The provision of playing field space and parking for same would require an amendment to the overall design and changes to the proposed zone boundary between the RE1 and R2 zones. As such the current proposal cannot be supported until such amendments have been investigated and fully assessed.</p>
Transport	It is likely that the majority of visits to the site will be via private vehicle (see parking comments above). However, public transport is currently available in Epping Road approximately 400m to the north of the site.
Social impact	<p>The site is currently occupied by private playing fields that, being privately operated, have reduced public use despite significant local and regional demand.</p> <p>The current proposal is inconsistent with the OSFPS and is likely to have a detrimental social impact on the surrounding community.</p>
Heritage	<p>The subject site is not encumbered by any heritage listed items and there are no items adjacent to or in the immediate vicinity of the site. The closed items are in Balaclava Road and Epping Road, 400m and 450m respectively, from the site.</p> <p>The planning proposal is not anticipated to have any impact on these items.</p>
Public Infrastructure	The land is able to be serviced with necessary infrastructure, such as water, sewer, electrical and communications subject to minor upgrades to cater for any future development.
Flooding	The site is flood affected in the 100 year flood event in the Terry's Creek catchment. The land impacted by flood is in the western portion fronting Vimiera Road and would impact the intended open space area shown in the submitted master plan. Overland flow from Yangalla Street in a westerly direction to Vimiera Road contributes to this flood affectation. The flood and overland flow impacts can be managed in any future development application process.

## Conclusion

The planning proposal to rezone the subject site from RE2 Private Recreation to part R2 Low Density Residential and part RE1 Public Recreation has been assessed with particular attention being given to strategic consistency and site-specific merit.

The assessment of the planning proposal has found that there is partial consistency with existing strategies in relation to housing diversity only. The planning proposal is inconsistent with Council's Open Space Future Provision Strategy (OSFPS) in that it is not providing for playing fields, and strategic justification in other areas is weak. It is also considered to be inconsistent with the relevant open space objectives of the North District Plan.

The planning proposal's intent to achieve strategic consistency and site-specific merit relies heavily on the master plan submitted with the application. Whilst this intent is noted, and the applicant's intent is not specifically questioned, the reliance on the master plan for this strategic merit leaves significant uncertainty with respect to key outcomes. While this can partially be addressed by the proposed DCP amendment, this also lacks certainty given that State Environmental Planning Policies (specifically Exempt and Complying development Housing Code) can override these provisions. As such, the proposal has been assessed noting the range of possible outcomes not limited to those envisaged in the masterplan. Furthermore, Council currently has sufficient capacity to meet its housing needs without rezoning this land, whereas it will likely be unable to meet future recreation needs should the rezoning occur as proposed.

The site-specific merits also rely on uncertain provisions such as tree planting on private allotments ultimately beyond the control of the applicant and uncertain delivery of housing diversity given SEPP provisions.

Given this uncertainty and the fact that the Ryde LGA does not require additional rezonings to achieve required dwelling targets, it is recommended that the planning proposal for 146 Vimiera Road, Marsfield not proceed to a Gateway determination.