

JRPP No:	2010WES010
DA No:	Orange City Council DA 326/2010(1)
PROPOSED DEVELOPMENT:	104-108 SUMMER, STREET AND 41-47 SALE STREET, ORANGE DEMOLITION (EXISTING BUILDING), MOTEL (SERVICED APARTMENTS) AND RETAIL/COMMERCIAL PREMISES
APPLICANT:	Absolute Professional Services (NSW) Pty Ltd
REPORT BY:	Craig Mortell, Senior Planner, Orange City Council

Assessment Report and Recommendation

Application Lodged	22 October 2010
Development Application No	DA 326/2010(1)
Plan No/s	20 unnumbered sheets prepared by COX for Primespace Property Investment, labelled "108 Summer Street: Lot 517 DP 731824 & Lot 1 DP1088078 Orange" - dated December 2010 and January 2011
Owner/s	Primespace Property Investment Ltd Attn: Jason Bisa GPO Box 2219 CANBERRA CITY ACT 2601
Land Description	Lot 1 DP 1088078; Lot 517 DP 731824, Lots B, C and D DP 151926, Lot 42 DP 1085735 - 104-108 Summer Street and 41-47 Sale Street, Orange
Proposed Land Use	Demolition (existing building), Motel (serviced apartments) and Retail/Commercial Premises
Value of Proposed Development	\$12,000,000
Provisions of LEP 2000 (amended)	Zone 3(a) Regional Centre
Details of Advertisement of Project	30 October 2010 – 15 November 2010
Recommendation	Approval

THE APPLICATION

Development Consent is sought for demolition of existing buildings and construction of a four storey plus basement parking mixed use motel and retail/commercial premises at 104-108 Summer Street and 41-47 Sale Street, Orange. The subject land is described as Lot 1 DP 1088078; Lot 517 DP 731824, Lots B, C and D DP 151926 and Lot 42 DP 1085735.

The capital investment value of the proposal is over \$10m and in accordance with Section 13B(1)(a) of State Environmental Planning Policy (Major Development) 2005 is deemed to be regional development. Accordingly, the Joint Regional Planning Panel for the Western Region is the consent authority responsible for determining the application.

THE PROPOSAL

The proposal involves the following:

- demolition of the existing building at 108 Summer Street (the Ron Boulton Cycles shop)
- excavation of a basement car park accessed via Sale Street accommodating 53 parking spaces, a 37m² gymnasium and storage areas
- construction of a four storey building comprising
 - eight ground floor commercial and retail tenancies ranging in size from 91m² to 165m²
 - a ground floor reception and lounge area
 - three floors of motel style serviced apartments
 - 49 two and three bedroom units capable of being divided into one and two bedroom units (totalling 85 keyed rooms at maximum capacity).

The building is shaped to wrap around the buildings on the corner of Summer Street and Sale Street by forming an L shape on the inside of the block. Accordingly the development has two frontages, with the principle pedestrian access to the motel being from Summer Street while parking access and service vehicles are proposed to access the building from Sale Street.

At ground level the retail and commercial tenancies sleeve the building by presenting to the west and south. This design is in anticipation of redevelopment of the adjoining Summer Centre site (in the same ownership) such that these tenancies will address the future car park areas of that development.

MATTERS FOR CONSIDERATION

Section 79C of the Environmental Planning and Assessment Act 1979 requires Council to consider various matters, of which those pertaining to the application are listed below.

PROVISIONS OF ANY ENVIRONMENTAL PLANNING INSTRUMENT s79C(1)(a)(i)

Orange Local Environmental Plan 2000 (amended)

The subject land is zoned 3(a) Regional Centre under Orange Local Environmental Plan 2000 (amended) ("the LEP").

Clause 8 - General Considerations for Development

Clause 8 of the LEP requires that before determining an application for consent to development, Council shall give consideration to such matters listed therein that are of relevance. The matters that are considered to be of relevance to this proposal are:

- (c) the impact on the scenic, landscape or urban character of the area, and*
- (f) any measures necessary to mitigate any of these impacts.*

Council staff have held several meetings with the applicant and sought redesign of the proposal. The original design was considered to have a substantial impact on the scenic and urban character of the area, particularly in terms of streetscape appeal and visual bulk, scale, and height, particularly as it relates to the central Heritage Conservation Area of the CBD.

The revised design has reduced the prominence of the building by removal of the expansive fourth floor awning, changed use of colour schemes, and increased use of brickwork and trim details to lessen the impact of the tilt-panel concrete. In particular, the revised design seeks to use colours and materials to break the western and southern façades into three distinct areas, while the fourth floor is presented as a further element using different materials and colours. Overall this has the effect of relieving the oppressive appearance of the original design and creating a more human scale development.

Clause 2 - Aims of Plan

The relevant general aims of the LEP (clause 2) are to:

- (a) encourage development which complements and enhances the character of the City,*
- (b) provide for a range of development opportunities which contribute to the social, economic and environmental resources of the City in a manner that allows present and future generations to meet their needs by implementing the principles for ecologically sustainable development,*
- (f) recognise and manage valued environmental heritage, landscape and scenic features of the City.*

The application is considered consistent with the above objectives. The ability to complement the character of the City and heritage values of the CBD are detailed elsewhere in this report. The ecological sustainability of the proposal is derived from the provision of additional tourist accommodation within walking distance of the majority of facilities available in the CBD, limiting the need for further private vehicle use.

Clause 24 - The Zones

Clause 24 of the LEP provides that prior to determining an application for consent under this plan Council shall consider how the development meets:

- (a) the general aims of this plan, and*
- (b) the specific objectives of the zone in which it is proposed to be carried out, and*
- (c) any other relevant objectives and requirements of this plan.*

Clause 50 - General Controls for Zone 3(a) (Regional Centre Zone)

Clause 50 of the LEP provides general controls for the 3(a) Regional Centre zone in which the proposal is situated. The objective of the zone is:

to promote development which contributes to the role of the Orange central business district (CBD) as the primary retail and business centre in the City and region. Redevelopment of public car parking areas is essential to ensure the long term viability of the CBD.

The proposal is considered to be consistent with the first part of this objective and as motels, shops and offices are permitted with consent the application is considered to be permissible under the LEP.

REGIONAL ENVIRONMENTAL PLANS

There are no Regional Environmental Plans that apply to the subject land.

STATE ENVIRONMENTAL PLANNING POLICIES

State Environmental Planning Policy 64 - Advertising and Signage

The SEPP prohibits signage in heritage conservation areas, however clause 9 of the SEPP specifically excludes building identification signs from this prohibition. A building identification signs is defined in clause 4 of the SEPP as:

a sign that identifies or names a building, and that may include the name of a business or building, the street number of a building, the nature of the business and a logo or other symbol that identifies the business, but that does not include general advertising of products, goods or services.

Accordingly, the SEPP is not seen to limit or prohibit the protruding blade signs intended for each elevation. The signs, whilst large, are in proportion to the scale of the building and can be seen to assist in fenestrating the appearance of each elevation.

The ground floor tenancy signage zones have not been nominated in the plans. Related to this aspect of the development there is a need to ensure a consistent colour scheme is observed that prevents discordant and glaring contrasts between tenancies. It is therefore considered appropriate to place a condition on any approval requiring the lodgement of a conceptual advertising and branding scheme to provide a consistent placement, dimension and size of signage, as well as ensuring the overall appearance of the tenancies is consistent and harmonious appearance.

This should occur prior to any Occupation Certificate being issued and will provide guidance in the assessment of any future change of use applications for each tenancy.

PROVISIONS OF ANY DRAFT ENVIRONMENTAL PLANNING INSTRUMENT THAT HAS BEEN PLACED ON EXHIBITION s79C(1)(a)(ii)

Draft Orange Local Environmental Plan 2010 was placed on exhibition from 6 December 2010 to 14 February 2011. The exhibition period commenced after the lodgement of this application and, as such, it is considered that the draft LEP has minimal weight in the assessment. Notwithstanding this, the relationship of the application to the draft LEP has been considered as follows:

Clause 1.2 - Aims of Plan

Subclause 2 lists the particular aims of the plan, of these aims (a), (b) and (f) are most relevant to the application, these state:

- (a) To encourage development which complements and enhances the unique character of Orange as a major regional centre boasting a diverse economy and offering an attractive regional lifestyle.*
- (b) To provide for a range of development opportunities which contribute to the social, economic and environmental resources of Orange in a manner that allows present and future generations to meet their needs by implementing the principles of ecologically sustainable development.*
- (f) To recognise and manage valued environmental heritage, landscape and scenic features of the City.*

With regard to the above, the proposal is seen to provide a major source of tourist accommodation in the heart of the CBD, boosting the capacity of the City to provide for visitors and enhancing the economy. Accommodation is an important economic resource for the City and it is considered that being located within easy walking distance of most facilities in the City the proposal is consistent with ecologically sustainable development principles.

However, the site is located within a heritage conservation area and involves the demolition of the Ron Boulton Cycle shop which, although not listed as a heritage item, is one of the oldest commercial buildings in the City and considered to be an important contributor to the streetscape of this part of Summer Street. The original design proposed an overtly and deliberately contemporary design. This caused the proposal to clash substantially with its surrounds in a discordant manner. Subsequently, the proponent has amended the design to address this concern.

While the revised design remains modern, the changes result in a less attention seeking appearance. The removal of the dramatically projecting awning from the fourth floor and the use of different colours and materials to break up the bulk, together with an increased use of brickwork and trim details, helps the building to assume a more human scale. Importantly the design has resisted mimicry of the older buildings in the area but no longer attempts to dominate the streetscape. This allows the casual observer to appreciate the distinction between historic and contemporary designs without either undermining the other.

Clause 1.7 - Maps

The site is identified on the zoning map as B3 Commercial Core; on the heritage map as part of a heritage conservation area; on the height of buildings map as 12 metres; and on the floor space ratio map as 2:1 in Sale Street and 1.5:1 in Summer Street.

Provisions of Any Draft Environmental Planning Instrument that has been Placed on Exhibition s79C(1)(a)(ii) (cont)

Land Use Table

The development is permissible in the B3 zone.

Clause 4.3 - Height of Buildings

The LEP nominates a height of 12m over the site - this figure was selected to accommodate three storey buildings at the street frontage. Whilst the design exceeds this level it should be noted that the 6 metre setback in Summer Street assists the building to relate to the scale of the adjoining buildings. It should also be noted that height and floor space ratio controls are new concepts for planning in Orange and may be subject to refinement following exhibition.

It should be noted that the roof mounted compressor, stair and lift well overruns protrude above the fourth floor by up to 1.7m for the service lift overrun. These elements have been placed as far as possible to the eastern side of the north-south wing of the development. Such placement helps to screen them from view from the western and southern approaches, while the adjoining buildings in Summer Street help to partially screen these elements.

Clause 4.4 - Floor Space Ratio

The LEP nominates two different FSR values for the site with a ratio of 2:1 in Sale Street and 1.5:1 in Summer Street for an aggregate value of approximately 1.8:1 across the site. The proposal exceeds this value, however if the car parking attributable to the site from the adjoining Summer Centre development is taken into consideration the overall effect is consistent with the nominated FSR. While this would not normally be relevant the applicant has proposed imposition of an easement on the adjoining property to accommodate the parking shortfall. Accordingly, the easement will limit the overall density of development in the area. Importantly, the FSR mapping indicates an intention to allow Sale Street to have a greater mass of built form than Summer Street. The design reflects this intent by including a fourth floor 6m setback from Summer Street.

Clause 5.10 - Heritage Conservation

The clause provides objectives for the conservation of environmental heritage within Orange and establishes consent requirements such as heritage impact assessments and conservation management plans. Heritage issues are addressed in more detail in the following DCP 2004 Chapter 13 section of this report. However, the assessment considers the overall effect of the development to be acceptable subject to some additional conditions.

PROVISIONS OF ANY DEVELOPMENT CONTROL PLAN s79C(1)(a)(iii)

Development Control Plan 2004

Development Control Plan 2004 ("the DCP") applies to the subject land. Of particular relevance are Chapters 8, 13, 14 and 15.

Chapter 8 - Development in Business Zones

Clause 8.1 and the CBD Strategic Plan identify the site as suitable for *Tertiary Street Retail* adjoining a core shopping area. The block of Summer Street between Sale Street and Hill Street is also identified as a key gateway/threshold to the CBD. The CBD plan found that the dominance of shopping centres and driveways to public and private parking areas reduced streetscape qualities of the CBD. In particular, blank walls and unused shop entrances reduced amenity along important pedestrian pathways. For this reason the clause encourages developments to address the street.

The proposed design adheres to this principle and in fact also provides effective activation to both the western and southern façades as well. These façades front onto an expansive car park associated with the adjoining shopping centre. The activation of these elevations is considered to be a significant improvement over the current blank side wall of the cycle shop, albeit at a much greater scale and height. The design will provide an increased level of passive surveillance of the car park from both the retail ground floor shopfronts and also from the serviced apartment windows and balconies above. It is anticipated that this will help to deter crime and antisocial behaviour in this part of the CBD.

The clause encourages the continuation of traditional urban form with front elevations on or adjacent to the street boundary, particularly in Summer Street and associated side streets. The proposal is consistent with this outcome. The site includes “key site” 10 as identified in the CBD plan, being the vacant land between the shopping centre and the Ron Boulton Cycle shop. The CBD plan seeks to encourage the redevelopment of all key sites, and in this instance the intent is to promote infill development to remove what is currently a gap in the streetscape.

The 9 planning outcomes sought in section 8.1.1 of the DCP are reproduced below

- 1 *Buildings have a high level of urban design to contribute to the regional status of the City's Central Business District with attention given to façade features, external materials, colour and advertising.*
- 2 *Urban design demonstrates a clear reference to the CBD Strategic Action Plan.*
- 3 *Provision of adequate fire-safety measures and facilities for disabled persons (according to the BCA) are addressed at the application stage (Relevant for all development but particularly important where converting residential buildings for business use).*
- 4 *Land use complements the role of the CBD as a regional centre for commerce and services.*
- 5 *The reinstatement of verandahs on posts over footpaths is encouraged.*
- 6 *Car parking is provided to meet demand either as on-site parking areas or through contributions towards public parking in and adjacent to the CBD.*
- 7 *Advertising comprise business identification signs in accordance with SEPP 64.*
- 8 *Loading areas are provided for developments requiring access by large trucks in a manner that doesn't reduce active frontages for important pedestrian pathways.*
- 9 *Where possible, new buildings or external alterations in the CBD include an element of landscaping.*

Chapter 8 - Development in Business Zones (cont)

With respect to the above, the proposal provides a high level of urban design, achieving significant activation of both street frontages as well as side boundaries that face onto the adjoining expansive car park. While the design is clearly contemporary in appearance, the revised design's use of colours, some brickwork, trim details and modest articulation will enable the building to be read in a more human scale and relate to other buildings in the area without attempting to dominate the streetscape.

Council's building surveyor has provided advice on appropriate conditions of consent to address Building Code of Australia compliance.

The proposed use of retail and commercial on the ground floor with serviced apartments above is a positive contribution to the role of the CBD in the regional context.

While the design has not provided a verandah and posts over the footpaths it is noted that whilst encouraged, these are optional. Nonetheless the southern elevation has included a colonnade at ground level which is seen to contribute to pedestrian amenity in a similar fashion.

Car parking is discussed in response to chapter 15 below.

The advertising signs proposed are discussed in response to SEPP 64 above.

Two loading areas have been provided in both the original and revised plans. A "shared loading zone" to the rear of the properties in Summer Street is not intended to be used by the development itself, but has been created to ensure the development does not compromise the operations or development potential of the neighbouring properties.

The loading zone for the serviced apartments was originally located adjacent to the basement parking ramp and was opposed by both Council's engineer and the Roads and Traffic Authority on the basis of being in conflict with guest arrivals and departures.

The revised design has instead placed the loading bay south of the development in the adjoining car parking area and provided an internal corridor between the ground floor tenancies. This satisfactorily resolves the potential vehicular conflict but illustrates the interdependency between this proposal and the adjoining shopping centre redevelopment, currently the subject of a separate DA. Both sites are in the same ownership and the proponent was encouraged to adjust the lot boundaries to enable each development to be self-contained and independent. However, due to leasing and contractual difficulties the proponent has nominated the use of easements on title to ensure the loading bay and parking are protected for the life of the development.

Due to the proposal being designed to extend to the street frontage there has not been any opportunity to incorporate landscaping forward of the building. However, the car park on the adjoining development (proposed as a separate DA by the same land owner) does incorporate significant landscaping alongside the western elevation of this proposal, and once established this will greatly assist to soften the appearance of the development.

Chapter 13 - Heritage

The site is within the Central heritage conservation area (HCA), which broadly corresponds with the original “square mile” town layout in grid form. The DCP acknowledges that the central heritage conservation area has different characteristics for residential and commercial parts within the HCA. The commercial centre of the HCA is shown to have a strong consistency of scale while the early 20th century styles have been reduced, particularly at ground floor. The DCP seeks to emphasise the urban character of the CBD by reinstating consistency in scale and character, coupled with conserving key and contributing heritage buildings.

The Ron Boulton Cycle shop is not identified as a heritage item, but is recognised as providing a strong contribution to the streetscape of the western end of Summer Street. Originally built as a cordial factory the premises has undergone a number of transformations in three main stages to its current use today of ground floor retail shop with apartments above.

Council's Heritage Adviser has provided advice that generally opposes the development on a number of grounds. That advice is attached to this report and its main points are summarised as follows:

- That the site is significant and forms a key gateway into the CBD from the west;
- That the Summer Street frontage should be reformed by provision of a built edge to the property boundary;
- That the height should be kept consistent with the established pattern in the CBD;
- That the Ron Boulton Cycle shop at 108 Summer Street should be retained and incorporated in any design if possible;
- An extensive critique of the applicant's Statement of Heritage Impact;
- A critique of the changes evident in the recently revised drawings; and
- A series of recommendations, some of which could be achieved by way of conditions of consent while others would in effect require further redesign or refusal of the application.

Retention or loss of the cycle shop façade is one of two fundamental heritage issues in the application. Council's Heritage Adviser argues strongly for retention and adaptation. The proponent states that the building cannot be readily integrated within the project due to variations in floor heights not matching with the proposal. The proponent's SOHI argues that façadism, where only the external skin is retained in front of a new building, is generally considered to be a poor heritage outcome. This point was not disputed by Council's Heritage Advisor in his critique of the SOHI.

The proposal spans both the cycle shop site and the vacant land to the west. Retention of the façade would therefore either require a setback of the adjoining building, creation of a false frontage of similar scale to adjoin the cycle shop or result in a disjointed appearance to the building whereby the new building could possibly overwhelm the façade.

Chapter 13 - Heritage (cont)

Given that the cycle shop at 108 Summer Street has not been listed as a heritage item in its own right, its outright retention cannot be said to be crucial to the character of conservation area. Rather, it is important to consider the ability of a replacement to comfortably “fit” with the surrounding buildings. In this regard it should be noted that the land adjacent to the west is currently nothing more than an expansive car park in front of a shopping centre. Adjoining to the east is a series of shops with rooms above that do provide a substantial contribution to the conservation area.

With removal of the expansive and intrusive fourth floor awning, and the 6m setback of the fourth floor from Summer Street, the amended design no longer overwhelms its eastern neighbour.

Notwithstanding the overall scale of the building the revised plans are somewhat consistent with the ‘respectful design’ principle articulated in section 13.3 of the DCP, namely that:

A “low-key” design approach where heritage building forms, proportions and materials are applied but reproduction of decorative work and detailing is avoided; the design should demonstrate that it is a contemporary building or addition that respects the heritage setting

The design has not sought to mimic heritage decorative elements and is clearly of a contemporary nature. However, the use of different colours and materials seeks to divide the western and southern elevations into forms that have proportions consistent with Summer Street generally.

The second main heritage or urban design issue arising from the proposal is the prominence of the western and southern elevations. While not strictly speaking street elevations, their importance is derived from the fact that the land adjoining them is, and is intended to remain, devoid of built forms - being carparking and access to the Summer Centre.

In this regard the advice of Council’s Heritage Adviser is that the western façade should be “adequately articulated” to visually break up the overall massing into a number of distinct buildings, and that the fourth floor should only be allowed along the southern elevation.

Such a reduction of the fourth floor has implications for the internal layout of the ground floor, since the lift wells would then need to be positioned further south in order to run to the top floor. In turn this would necessitate extending the motel lobby further south at the expense of ground floor retail space. While this may not prove fatal to the design it would reduce the trading performance of the tenancies. A key feature of the design is the wrap-around activation of the main elevations, particularly into the car park frontages.

Additionally, the proposal currently intends to use the recessed portion of the fourth floor as a terraced area; the extent to which this is likely to be used is debatable but nonetheless it does provide a further point of activation and passive surveillance. A reduction in the fourth floor as proposed by Council’s Heritage Adviser would either result in the loss of this roof top entertaining space altogether or the creation of an altogether larger area. Any activity of such an expansive area would be likely to cluster around the connection to the fourth floor access such that the activation of the Summer Street balcony would be minimal.

Chapter 13 - Heritage (cont)

Accordingly, the reduction of the fourth floor proposed by Council's Heritage Adviser is seen to be an excessive response to the concern of improving the appearance of bulk and mass to the western elevation, especially where alternative remedies may provide relief.

The other recommendations of Council's Adviser are clearly designed to encourage the building to create an impression of a cluster of buildings rather than a single expansive form. This is fully supported by this report and the revised design sought to achieve this effect through the use of different colours and materials. However, the setback of the mid section on the western elevation is, by any reasonable assessment, negligible to the extent that the casual observer is unlikely to notice any discernable change. Therefore any approval should include a condition to require this area to be recessed a minimum of 1.2m compared to the plane of the front and rear sections of the building. This will provide an outwardly noticeable level of articulation and increasing the extent of shadow play across the building without unduly compromising the dimensions of the bedrooms in the apartments.

The Heritage Adviser also advised that the three sections of the western façade could be further differentiated through more extensive use of brickwork on each of the end sections, while the mid section could be a painted concrete finish if desired. Such a change of finish and texture is likely to reinforce the desired impression of a cluster of distinct buildings and should also be required as a condition of consent for at least the first three floors. The change in colour and materials for the fourth floor as proposed give the impression of a separate component and therefore need not be part of such a condition.

Chapter 14 - Advertising

Exempt development provisions apply to projecting wall business identification signs of 2.5m² or less, however this is limited to one such sign per property. The proposed signs are greater than this dimension and the proposal seeks a total of four such signs, one per elevation. Accordingly consent is required. As described under SEPP 64 the state policy does not apply to business identification signs.

The planning outcomes sought by the DCP require signs to complement the character of the locality, fit within the envelope of the building, and relate to the height of associated buildings. In this regard the protrusion of the signs above the Summer Street and Sale Street footpaths is technically inconsistent. However, there are a number of similar protruding signs throughout the CBD such that the proposed arrangement of signs can be seen to be consistent with the character of the area. Additionally, these elements assist in fenestration of the relevant elevations. The overall scale of the building means that the proposed signs will appear both moderate and appropriate.

Chapter 15 - Car Parking

Councils parking provisions are applied based on the net increase in parking demand as a consequence of a change of use, additions to existing buildings and to new buildings. An assessment of the proposed development against the relevant Planning Outcomes shows a shortfall of 41.4 parking spaces. This is comprised as follows.

Chapter 15 - Car Parking (cont)

Proposed Development

An 85 unit motel requires one space per unit, plus one space for the manager and one space per two staff. With a nominal four staff on duty this equates to 88 spaces. At a ratio of 4.1 spaces per 100m² the combined retail floor area of 1,082m² results in 44.362 spaces. In addition, changes to Sale Street necessitated by this and the Summer Centre development would require the loss of 15 on-street parking spaces. Council has previously accepted an agreement that these be provided upon the Summer Centre site.

The aggregate parking demand generated or displaced by the development is therefore 147.362 spaces.

Existing Development

At a ratio of 4.1 spaces per 100m² the Ron Boulton cycles shop of 236m² equates to 9.676 spaces. Three x 1 bedroom units required a total of three spaces. 26.2 spaces were attributable to the former (demolished) Blockbuster Video shop in Sale Street. Fourteen off-site parking spaces were previously attributed to blockbuster video.

The total of former/existing development parking attributed to the development is therefore 52.876 spaces

Net Increase

Proposed development less existing development equates to a net increase of 94.486 spaces.

Parking Proposed

Basement parking of 53 spaces has been provided in the design, resulting in an overall shortfall of 41.486 spaces.

In acknowledging a parking deficiency on the site, the proponent has shown a willingness to create an easement on the adjoining summer centre development which is anticipated to have "a generous surplus of parking". The easement would ensure that this proposal is provided with the requisite number of spaces.

It should be noted that the proponent's estimate of parking shortfall is only 22 spaces, rather than 41 and is based on other Quest complexes. However the proponents calculation also relies on assessing the proposal as 49 apartments rather than 85 keyed rooms. Depending on demand this equates to a difference of as many as 36 parking spaces. Notwithstanding this, it is understood that the adjoining Summer Centre is likely to have a surplus closer to 100 spaces, such that there is opportunity to consider the easement solution.

Chapter 15 - Car Parking (cont)

Council's DCP does state a preference for parking to be provided either onsite or for financial contributions to public parking. However, provision of parking on adjoining land with the consent of the owner is not precluded. Instead the DCP is silent on this possibility, which can be attributed to the unlikeness of adjoining developments being under the same ownership, rather than any particular intention to strictly segregate the parking of each development.

Indeed, the two operations are likely to complement each other such that peak parking demand for the proposal is likely to occur overnight, while the shopping centre peak demand will most often occur throughout the day and at the close of normal office hours. Therefore the idle parking spaces of the shopping centre should be readily available during the peak demand of the serviced apartments. The use of an easement on the adjoining land as offered by the proponent will ensure that the requisite parking is provided for the life of the development.

PROVISIONS PRESCRIBED BY THE REGULATIONS s79C(1)(a)(iv)

Demolition of a Building (clause 92)

The proposal involves the demolition of the Ron Boulton Cycle shop in Summer Street. A condition is attached requiring the demolition to be carried out in accordance with Australian Standard AS2601 - 1991: The Demolition of Structures.

Fire Safety Considerations (clause 93)

The proposal does not involve a change of building use for an existing building.

Buildings to be Upgraded (clause 94)

The proposal does not involve the rebuilding, alteration, enlargement or extension of an existing building.

THE LIKELY IMPACTS OF THE DEVELOPMENT s79C(1)(b)

The most significant potential impact of the development relates to streetscape and associated heritage values. The overall height and scale of the development is marginally greater than other commercial developments in the CBD. Being located adjacent to a large car park the full bulk of the building will be visible approaching the site from the west along Summer Street and from within the neighbouring car park. A similar level of impact will be observed approaching the site from the south along Sale Street which has a similar gap in the streetscape.

For this reason the original design and aesthetic treatment was not supported due to being overtly prominent and attention seeking, while also displaying a monotonous façade along both the western and southern elevations. The revised design has used colours, materials and articulation to break the mass into component parts, but it is still the same bulk and height. While these elements remain closely related in appearance, the overall effect does cause the proposal to have a more human scale.

The Likely Impacts of the Development (cont)

In addition, both the western and southern façades present a high level of activation. By contrast the current building in Summer Street displays a relatively blank wall. In Sale Street the view currently shows only the rear of properties addressing Summer Street. Accordingly, the proposed infill development of this site will create an activated presence to two important view corridors.

THE SUITABILITY OF THE SITE s79C(1)(c)

The site is zoned to permit the development, is fully serviced, has direct access to the local road network and does not contain any physical or technological hazards. Accordingly the site is suitable for the development.

ANY SUBMISSIONS MADE IN ACCORDANCE WITH THE ACT s79C(1)(d)

The proposed development is defined as "advertised development" under the provisions of the LEP. The application was advertised between the 30 October 2010 and 15 November 2010 and at the end of that period seven submissions had been received. Submissions tended to overlap in content and raised the following matters:

Misdescription of Proposal

Several submissions highlighted the discrepancy between the number of apartments (49) and the number of keyed rooms (85) proposed. This arises from the use of interlocking doors between suites intended to provide flexibility in their use. The inclusion of interlocking doors in this manner is typical of the industry and does not materially affect the nature of the proposal. Some objections have sought to link this matter to the issue of economic impact on existing providers (discussed below).

Notwithstanding this, the description of ground floor retail/commercial and serviced apartments above is accurate and sufficient to attract the attention of those that may be interested in such matters. Proposal descriptions are rarely exhaustive and it is common practice to include only the main features of a project, relying on public curiosity to seek out further detail.

Accordingly the description, as advertised, is considered appropriate to alert the community and invite their participation in the planning process.

Physical Access to the Rear of Properties Fronting Summer Street

The proposal places the basement driveway alongside a shared loading dock to the rear of these properties. The configuration of these features ensures appropriate ongoing access to the affected properties and does not isolate them from future redevelopment potential.

Any submissions made in accordance with the Act (cont)

Parking and Traffic

The parking shortfall is acknowledged and discussed in greater detail elsewhere in this report. Referral to the RTA raised no significant objection and their concerns, largely echoed by Council's engineer, have resulted in some adjustments to the ground floor layout to improve ingress and egress onto Sale Street and to relocate the loading bay for the development so as to avoid conflict with guest arrivals and departures.

Shadowing

The proposal is located north of a proposed Sale Street entrance to the adjoining summer centre redevelopment site. Accordingly, most of the shadowing will fall across car parking and manoeuvring areas. However, the northern arm of the development fronting Summer Street will cast afternoon shadows eastward onto the adjoining commercial premises. These properties will retain full northern access as at present. Morning shadows will be cast westward onto the adjoining Summer Centre car park.

There are no residential land uses affected by the shadow casting. Therefore, while the scale of the building will cast significant shadows, the receiving lands are not considered to be sensitive to reduced solar access.

Opposition to Potential Liquor Licensing

This objection is predicated on the belief that the proponent will ultimately seek to convert the building into a full service hotel. There is no evidence to support this assertion and even were that to be the case such a change of use would require a further development application to assess the merits of such a use.

Economic Impact on Existing Accommodation Providers

Land use planning only plays a limited role in regulating competition of any industry. Having determined the appropriate range of uses for a given zone and the geographic extent of that zone, the market decides the actual use to be undertaken. Development assessment can concern itself with the scale of a use, but only where the scale is directly relevant to physical impacts.

Attempts to use land use planning to limit scale for economic reasons amount to protectionism, which in turn would have an impact on the broader local economy (ie by hindering supply of accommodation the price would be higher). This may reduce the number of tourists and/or the spending power of those tourists who do arrive. The result is fewer tourist dollars circulating to merchants beyond the accommodation sector.

Heritage Impacts

This potential is acknowledged and described in greater detail under chapter 13 of the DCP in this report.

Any submissions made in accordance with the Act (cont)

Building heights

This objection relates to the fourth storey of the building as it relates to the predominantly two-three storeys in Summer Street. While this difference is acknowledged, the additional height alone is not sufficient to prevent the development from complementing the pattern of development in the CBD. The scale of development in the CBD is not uniform and does fluctuate. The design of the fourth floor, using different materials and colours, combined with a 6m setback from Summer Street, assist the development to coexist relatively harmoniously with its surrounds.

Car Parking

This objection relates to the number of parking spaces compared to the number of keyed rooms. The applicant has provided analysis of similar serviced apartment complexes, occupancy rates and peak parking demand. When combined with the surplus of parking in the adjoining Summer Centre development the supply of parking is considered to be adequate.

Scale of Signage

The projecting business identification signs are of a considerable size, however this must be considered in the context of the proposed building. In this regard the signage is seen to be consistent with similar signage to building ratios evident throughout the CBD.

PUBLIC INTEREST s79C(1)(e)

The proposed development is considered to be of minor interest to the wider public due to the relatively localised nature of potential impacts. In broad terms the development will add to the availability of tourist and visitor accommodation in the City. The proposal is not inconsistent with any relevant policy statements, planning studies, guidelines etc that have not been considered in this assessment.

LAND AND ENVIRONMENT COURT PLANNING PRINCIPLES

The principle of **Heritage – Demolition of contributory item in conservation area** was set out by Commissioner Moore in *Helon v Strathfield Municipal Council [2006] NSWLEC 66* as follows:

- 43 *Most Local Environmental Plans include a heritage provision that requires a proposal's impact on the heritage significance of an item or conservation area to be assessed. **This planning principle applies only to contributory items in a conservation area, not to listed heritage items.***

Land and Environment Court Planning Principles (cont)

- 44 *A contributory item in a conservation area is a building that is not individually listed as a heritage item, but by virtue of age, scale, materials, details, design style or intactness is consistent with the conservation area, and therefore reinforces its heritage significance.*
- 45 *The demolition of a building which contributes to a conservation area will impact on the area's heritage significance even if its replacement building "fits" into the conservation area. Although the replacement building may be a satisfactory streetscape or urban design outcome, this does not address heritage impacts as the original heritage element has been removed. Despite this, it is open to the consent authority still to permit the demolition of a contributory element, for example, if the replacement has other planning benefits that the original does not.*
- 46 *The following questions should be addressed in assessing whether the demolition should be permitted:*
- 1 *What is the heritage significance of the conservation area?*
 - 2 *What contribution does the individual building make to the significance of the conservation area?*

The starting point for these questions is the Statement of Significance of the conservation area. This may be in the relevant LEP or in the heritage study that led to its designation. If the contributory value of the building is not evident from these sources, expert opinion should be sought.
 - 3 *Is the building structurally unsafe?*

Although lack of structural safety will give weight to permitting demolition, there is still a need to consider the extent of the contribution the building makes to the heritage significance of the conservation area.
 - 4 *If the building is or can be rendered structurally safe, is there any scope for extending or altering it to achieve the development aspirations of the applicant in a way that would have a lesser effect on the integrity of the conservation area than demolition?*

If the answer is yes, the cost of the necessary remediation/rectification works should be considered.
 - 5 *Are these costs so high that they impose an unacceptable burden on the owner of the building? Is the cost of altering or extending or incorporating the contributory building into a development of the site (that is within the reasonable expectations for the use of the site under the applicable statutes and controls) so unreasonable that demolition should be permitted?*

If these costs are reasonable, then remediation/rectification (whether accompanied by alteration and/or extension or not) should be preferred to demolition and rebuilding.
 - 6 *Is the replacement of such quality that it will fit into the conservation area?*

If the replacement does not fit, the building should be retained until a proposal of suitable quality is approved.

Land and Environment Court Planning Principles (cont)

The above principle is seen to be directly relevant to the assessment of this proposal as it involves the demolition of the Ron Boulton Cycle shop, which is not a listed heritage item but is recognised as an important contributory item in the heritage conservation area. Accordingly the following comments address the above questions.

- 1 The central heritage conservation area encompasses most of the original “square mile” of Orange. As such it has two main characters, the commercial precinct in the core and surrounding residential areas comprising established period homes. The conservation area significance is therefore derived from being the origins of European settlement in the area. Nonetheless it is notable that much of the commercial parts of the conservation area have undergone piecemeal redevelopment such that the CBD now reflects a wide range of time periods from early settlement through to early and mid 20th century, as well as a number of more recent additions.
- 2 The Ron Boulton Cycle shop is one of the oldest buildings in the CBD, having started as a cordial factory and been adaptively reused and extended in stages over time. The façade is relatively intact, however the internal configuration, fabric and roof forms have been significantly compromised.
- 3 The building is structurally sound.
- 4 The applicant states that the building cannot be incorporated into the design due to differences in ceiling/floor heights and room configurations being inconsistent with the proposal.
- 5 Not applicable.
- 6 The replacement, as amended, is considered capable of fitting into the conservation area. Whilst contemporary in appearance the revised plans have reduced the level of contrast between old and new and sought to break the appearance into component parts such that the overall scale becomes consistent with other buildings in the area.

SUMMARY

The most fundamental aspect of the proposal and this assessment concern the ability of a large scale contemporary building to fit within an established heritage conservation area. This has been compounded by the site being located adjacent to an expansive car park area such that its flank will be on full display. However, it could equally be argued (although the proponent has not done so) that because the site is located at the western entrance to the CBD that a bold landmark may be justified to fully announce the sense of arrival into the main commercial district in the City.

The original design was clearly created with the latter in mind. However, the revised plans have removed some of the boldest elements and enabled the building to comfortably accompany the adjoining buildings to the east without overwhelming them. Similarly, the four storey scale continues to act as a clear landmark or gateway when approaching from the west. With appropriate conditions to further embellish the aesthetic treatment and enhance the articulation of the western façade, it is considered that the design may successfully serve the dual functions of landmark entrance and also establish the pattern of bulk and scale that may be anticipated in this precinct of the CBD.

Summary (cont)

The proposed development is permissible with the consent of Council. The applicant has adequately demonstrated that the proposed development complies with the relevant aims, objectives and provisions of the LEP. A section 79C assessment of the development indicates that the development is acceptable in this instance. Attached is a draft Notice of Approval outlining a range of conditions considered appropriate to ensure that the development proceeds in an acceptable manner.

COMMENTS

The requirements of the Environmental Health and Building Surveyor and the Engineering Development Manager are included in the attached Notice of Approval.

The proposed development seeks to alter the area and extent of an existing right-of-way benefiting an adjoining property on the corner of Sale Street and Summer Street. The proponent has supplied a statement signed by the owner of the only legally benefited lot consenting to the change proposed. Other properties that have informally benefited from this right-of-way have also been accommodated in the design by provision of a "shared loading bay" adjacent to these properties intended for their use. This, together with the basement parking driveway, serves to provide a buffer between the development and the adjoining properties and could serve to assist in their ultimate redevelopment at some future point.

RECOMMENDATION

That the Western Region Joint Regional Planning Panel approves development application DA 326/2010(1) for Demolition (existing building), Motel (serviced apartments) and Retail/Commercial Premises at Lot 1 DP 1088078, Lot 517 DP 731824, Lots B, C and D DP 151926 and Lot 42 DP 1085735 - 104-108 Summer Street and 41-47 Sale Street, Orange pursuant to the conditions of consent in the attached Notice of Approval.

Craig Mortell

SENIOR PLANNER (STRATEGIC)

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