

PLANNING ASSESSMENT REPORT

SUBDIVISION, MULTI DWELLING HOUSING, RESIDENTIAL FLAT BUILDING AND RECREATION AREA

103 PRINCE STREET, ORANGE



ANDREW CRUMP
TOWN PLANNING

PREPARED ON BEHALF OF:
ORANGE CITY COUNCIL

Document Control

Contact Details				
Andrew Crump Director	E: info@andrewcrump.com.au	P: 0408 446 429	M: PO Box 9060 Orange East NSW 2800	
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- **Annexure B** – Architectural Plans
- **Annexure C** – Landscape Masterplan
- **Annexure D** – Clause 4.6 Request to Vary a Development Standard
- **Annexure E** – SEPP 65 – Design Verification Statement
- **Annexure F** – Public Submissions (redacted) (both exhibition period)
- **Annexure G** – Heritage Advice

Executive Summary

Table 1: Application Particulars

Development Application No.	DA98/2022(1)
Lodgement Date of application	24/3/2022
Applicant	Maas Group Properties 103 Prince Pty Limited
Owner/s	Orange City Council
Title particulars and address	Lot 501 DP1279083 103 Prince Street, Orange
Brief description of development	Stage 1: Multi Dwelling Housing (17 Townhouses) & Torrens Title Subdivision (3 Lots). Stage 2: Residential Flat Building (63 Apartments) & Recreation Area (Public Park).
Estimated Cost of Development	\$26, 074, 105.00

A development application has been made to Orange City Council in relation to land that is legally described as Lot 501 DP1249083, known as 103 Prince Street, Orange and seeks consent for:

- **Stage 1:** Multi Dwelling Housing (17 Townhouses) & Torrens Title Subdivision (3 Lots).
- **Stage 2:** Residential Flat Building (63 Apartments) & Recreation Area (Public Park).

Independent Planning Assessment Engagement

Andrew Crump Town Planning Pty. Ltd. (the Author hereafter) have been engaged by Orange City Council to carry out an independent planning assessment of the development application on behalf of Council given the land to which the application relates is in the ownership of Orange City Council.

Notwithstanding the above, Orange City Council staff have fulfilled certain normal functions such as internal referrals and advice from SMEs including:

- Technical Services – Assistant Development Engineer.
- Technical Services – Manager Waste Services and Technical.
- Development Services – Environmental Health and Building Surveyor.
- Development Services – Environmental Health Officer.
- Corporate and Community Services – Manager City Presentation.

Council's appointed Heritage Advisor has also provided SME advice in relation to Heritage and Urban Design matters.

Council staff also completed the mandatory administrative functions such as uploading the application to the NSW Planning Portal, Advertising and Exhibition requirements and obtaining any necessary external / agency referrals.

The Proposal

The development application seeks consent for an initial three lot Torrens title subdivision of the subject land and the construction of seventeen, part 2 and part 3 storey dwellings (characterised as a multi dwelling housing development) and basement carpark (providing 34 spaces) that will be situated on the resultant lot fronting Dalton Street (proposed lot 603)

Subsequent to this initial stage, the application also involves the construction of a part 4, part 5 and part 6 storey residential flat building (RFB hereafter) comprising 63 apartments and basement carpark (providing 105 spaces) on the resultant lot fronting Prince Street. In addition to this, the application also includes the installation of hard and soft landscape elements within the central lot (proposed lot 602) for the purposes of a public park which is intended to be dedicated to Council as part of a planning agreement.

A draft planning agreement has been prepared alongside the development application. The planning agreement involves the development of the central RE1 zoned land for the purposes of a public park and the dedication of that land to Orange City Council.

The Planning Agreement obligates the applicant to undertake certain embellishment works as approved on the endorsed landscape plan¹ within proposed lot 602 and then dedicate the land to Council.

The development application is referred to the Western Regional Planning Panel (the Panel hereafter) for determination pursuant to State Environmental Planning Policy (Planning Systems) 2021 as the development is categorised as a Council related development over \$5million.

¹ Recommended conditions of consent seek to require an amended landscape plan prior to the issue of a construction certificate under stage 2 of the consent.

The application falls within the meaning of “*Council related development*” as the current owner of the land is Orange City Council.

Orange Local Environment Plan 2011 applies to the land.

The land is zoned partly R3 – Medium Density Residential and partly RE1 – Public Recreation. The development is characterised as; Subdivision of land, Multi Dwelling Housing, Residential Flat Building and Recreation Area.

All of the aforementioned land-uses are permissible uses within the respective zones.

The following development standards under Orange LEP 2011 apply to the land:

Table 2: Summary of applicable development standards

Development Standard	Numerical Standard	Compliance
Minimum Lot size (multi dwelling housing)	800m ²	Yes
Floor Space Ratio	1.8:1	Yes
Height of Building	Part 16m	No
	Part 25m	Yes

The development contravenes the applicable height of buildings development standard and accordingly a clause 4.6 request has been submitted with the application.

A detailed analysis of the clause 4.6 request to vary the development standard is provided within the body of the report.

Chapter 17 – West End Development Control Plan is a site specific DCP within Orange DCP 2004 and applies to the land. An assessment of the development against the relevant provisions of the DCP is provided within the body of the report along with a compliance table at **annexure A**.

The development application was exhibited on two separate occasions.

The formal exhibition periods are summarised below:

Table 3: Summary of Exhibition Periods

Exhibition	Exhibition Period	No. of Submissions
First	Monday, 20 June 2022 to Monday, 18 July 2022.	7
Second (revised proposal)	Monday 19 September 2022 to Monday 3 October 2022.	2

Primary issues raised in submissions

The primary issues raised in the submission include:

- Traffic and Parking impacts.
- The bulk and scale of the RFB and its impacts upon the street and adjoining building.
- The adequacy of the clause 4.6 request.
- Overshadowing impacts on the adjoining building.
- The need for commercial development within the site.
- Impacts from the proposed tree removal.

Critical Issues within the Assessment

As detailed throughout the body of this report, the following matters are viewed as the critical issues as they relate to the assessment of the development application:

- The adequacy of the Clause 4.6 request to vary the height of buildings development standard.
- The identified departures from the West End Precinct DCP, particularly:
 - the vehicular access and pedestrian arrangements / absence of the north / south internal shared accessway and the resultant tree loss attributed to the proposed entrances off Sale Street,
 - the setbacks of the RFB, particularly the setback to Prince Street as detailed further in the dot point below; and
 - The materiality, building form and architectural detailing of the RFB as raised by Council's Heritage Advisor.
- The revised siting of the RFB within the Prince Street frontage being ~2.6m further forward than the original submission and DCP requirements. This has occurred as a result of a flaw in the general design / layout of the development as originally submitted where the RFB extended into the RE1 land rendering the development impermissible. To remedy this, the applicant has simply responded by repositioning the RFB ~2.6m closer to Prince Street to avoid the RE1 land. This has the effect of amplifying the overall bulk and scale of the building within Prince Street.
- The waste collections arrangements for the RFB; and
- The departure from the DCP in terms of apartment mix within the RFB.

Options available to the panel.

Given the amalgam of issues and the lack of support on critical matters from Council's technical experts as detailed within this report, the author is not in a position to recommend approval of the development in its current form.

Accordingly, it is recommended the Western Regional Planning Panel resolve to either:

1. Require the applicant to redesign the development to achieve, as a minimum, the following:
 - Redesign the development to include the north/south shared vehicular and pedestrian accessway along the eastern boundary as required by the West End Precinct DCP. In doing so, delete the access points from Sale Street.
 - Redesign and reposition the RFB such that the outermost edge of the front balconies within Prince Street (south elevation) is no further forward than the front building line of the adjoining Public Administration building. Additional landscape planting should be provided within the increased setback area within Prince Street.
 - Redesign the southern and western elevations of the RFB (with particular emphasis on the form, appearance and dominance of balconies within those elevations), to reduce the overall bulk and scale of the building including contextually appropriate detailing within those elevations that present to Prince and Sale Streets.
 - Retain the significant vegetation within the western side of the development site.
 - Amend the waste management arrangements for the RFB to occur wholly within the development site.

Or alternatively,

2. Refuse development application DA98/2022(1) based on the following reasons.
 - The bulk and scale of the Residential Flat Building, with specific reference to the south and west elevations, along with the architectural detailing within the same elevations, combines to present an unsatisfactory design outcome within the street and adversely impacts upon the heritage setting.

- The development application is contrary to the desired future character objectives of the West End Precinct DCP within Orange DCP 2004.
- The clause 4.6 request to vary the height of buildings standard (clause 4.3 OLEP2011) does not provide the consent authority with the necessary level of positive satisfaction required by Clause 4.6(4) of Orange LEP 2011.

RECOMMENDATION

That the Western Regional Planning Panel resolve to require the redesign of DA98/2022(1) that will achieve the following:

- **Redesign the development to include the north/south shared vehicular and pedestrian accessway along the eastern boundary as required by the West End Precinct DCP. In doing so, delete the access points from Sale Street.**
- **Redesign and reposition the RFB such that the outermost edge of the front balconies within Prince Street (south elevation) is no further forward than the front building line of the adjoining Public Administration building. Additional landscape planting should be provided within the increased setback area within Prince Street.**
- **Redesign the southern and western elevations of the RFB (with particular emphasis on the form, appearance and dominance of balconies within those elevations), to reduce the overall bulk and scale of the building including contextually appropriate detailing within those elevations that present to Prince and Sale Streets.**
- **Retain the significant vegetation within the western side of the development site.**
- **Amend the waste management arrangements for the RFB to occur wholly within the development site.**

1 Introduction and Background

1.1 The Application

Development consent has been sought for the following:

- A three-lot Torren title subdivision comprising two residential lots and a central Public Recreation lot.
- Construction of 17, 3-storey dwellings and basement car park as part of a multi dwelling housing development.
- Construction of a part 4, part 5 and part 6-storey Residential Flat Building (RFB hereafter) providing 63 apartments and a basement carpark (105 parking spaces).
- Development of the central lot for the purposes of a public park comprising plantings, pathways, seating, children's play equipment etc. This parcel is to be dedicated to Council as part of a planning agreement.

The application relates to land legally described as Lot 501 DP1249083, known as 103 Prince Street, Orange.

1.2 Background / Design Iterations

The evolution of the application has been an iterative process which has resulted in numerous design amendments to both the dwellings and the RFB, as well as the design and general layout of the embellishments within the centrally located public open space. These design changes are detailed below.

1.2.1 Multi dwelling housing

The general siting of the dwellings and their internal layout has remained largely unchanged throughout the life of the application. The changes that have occurred principally relate to the form of the dwellings and materiality. The multi dwelling housing as initially submitted is shown below in perspective view.



DALTON ST. PERSPECTIVE

Figure 1: MDH - original design - Perspective view



DALTON ST. PERSPECTIVE

Figure 2: MDH - original Design - Perspective view 2

Council's Heritage Advisor reviewed the plans as originally submitted and made the following (abridged) recommendations:

- The vehicular access to be provided from an internal driveway along the eastern boundary.
- The length of the townhouse building is uncharacteristic in the setting and should be further articulated using blade walls, and roof forms and details that reference the setting.
- The flat roof form is uncharacteristic. An alternate roof form that interprets or responds more appropriately to the setting is recommended.
- The use of brick is to be extended from boundary wall to boundary wall.

- Glass balustrades are uncharacteristic for the setting and thus not supported on the three main elevations and streetscape.

Refer to **annexure G** which contains the complete heritage advice.

Second iteration

Following the receipt of the heritage advice, the applicant retained the original siting and access arrangements, but amended the external appearance / roof form to include a series of gable roofs as shown below:



DALTON ST. PERSPECTIVE

Figure 3: MDH - second iteration - Perspective view



DALTON ST. PERSPECTIVE

Figure 4: MDH - second iteration - Perspective view 2

Council's Heritage Advisor reviewed the second iteration of the proposed townhouses and made the following (abridged) recommendations:

- The use of arbitrary gable roof forms detracts from the streetscape and the integrity of the HCA.
- The design should be further amended to include the introduction of seven expressed common walls and recessed elements in two locations to break the building up into three distinct adjoining elements.
- Commentary provided on the use of an alternate material to the use of glass for the balustrades.
- The use of Bowral blue brick or Murray grey brick is recommended for all boundary walls, street edges, fences and ground floor walls
- As part of the Panel briefing, the Panel separately noted the abrupt interface with the park which appears to remain unchanged in the design as shown below.
- The access arrangements should be amended to provide access to accord with the DCP.

Final Iteration

Following the receipt of the heritage advice relating to the second iteration of the plans, the applicant again retained the original siting and access arrangements, but further amended the external appearance of the dwellings as shown below. This is the version that is the subject of this planning assessment.



DALTON ST. PERSPECTIVE

Figure 5: MDH - Final Design - Perspective view



DALTON ST. PERSPECTIVE

Figure 6: MDH - Final Design - Dalton Street Perspective



SOUTHERN PERSPECTIVE

Figure 7: MDH - Final Design - Perspective view – interface with public open space

An assessment of the most recent version of the plans relating to the multi dwelling housing component of the application is provided below under the heading Heritage, Streetscape and Tree removal.

1.2.2 RFB

The majority of changes that have occurred to the design of the RFB related to the detailing and materiality of the level 5 / penthouses where council's heritage advisors recommendations focused on achieving a greater level of integration between the built form on level 5 and the balance of building below.

In addition to this, the heritage advice also sought to ensure the RFB comprised three distinct, but intrinsically interrelated elements; elements that make up the composition of any tall building; that being a defined bottom, middle and top.



1 SOUTH ELEVATION - (PRINCE ST)
1 : 200

Figure 8: RFB - Initial design - Prince Street elevation



1 SOUTH ELEVATION - (PRINCE ST)
1 : 200

Figure 9: RFB - second iteration - Prince Street elevation



1 SOUTH ELEVATION - (PRINCE ST)
1 : 200

Figure 10: RFB - final design - Prince Street elevation

Also observable in the above figures is the changes to the level 4 exterior materials and colours following recommendations by Council's Heritage Advisor in relation to modulating the building and creating distinct tripartite parts.

It's also noted that the latest design effectively lowers the overall height of the building by 800mm and also repositions the built form further back into the site as comparatively shown in the below two figures (the top figure being the latest iteration)



Figures 11a and 11b: Comparative analysis - Position of Level 5 built form

In addition to the design changes noted above, the RFB has been repositioned approximately 2.6m closer to Prince Street.

This was necessitated by a flaw in the initial planning of the original site layout where the RFB was noted as sitting over the zone boundary within the RE1 land. As a consequence of this, the RFB was prohibited in the RE1 which had the effect of causing the entire development to be prohibited.

The applicant's remedial solution to the identified impermissibility was to simply reposition the RFB approximately 2.6m closer to Prince Street. The appropriateness of this approach is detailed below under the heading, Heritage, streetscape and Tree Removal.

1.2.3 Public Open Space

The open space as initially submitted is shown in the below figure.

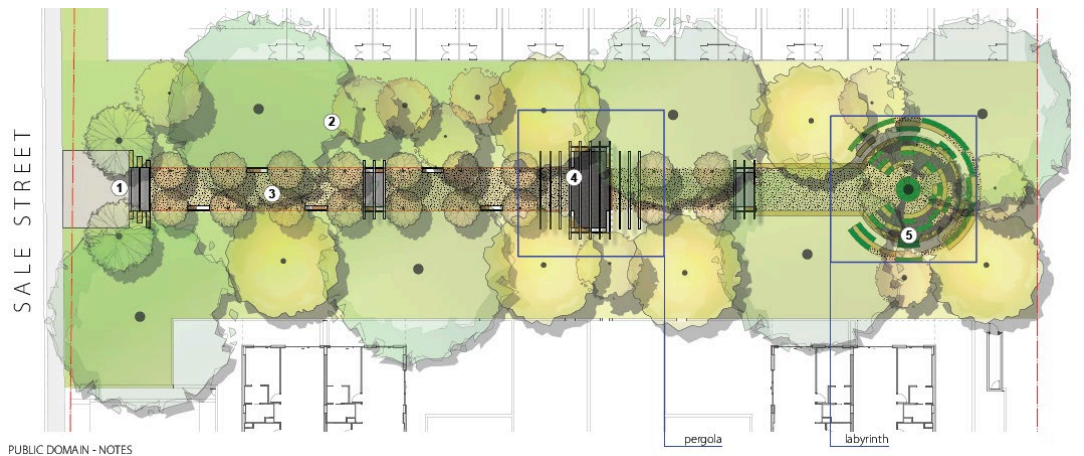


Figure 12: Public Park - Original Submission

The initial design included a central spine of hard landscaping comprising a path and pergola structures leading to a labyrinth feature at the eastern end.

The initial design omitted certain elements envisioned by the DCP such as landscaped areas for gathering, an area for informal children's play and BBQ area

The applicant has amended the public space as follows:

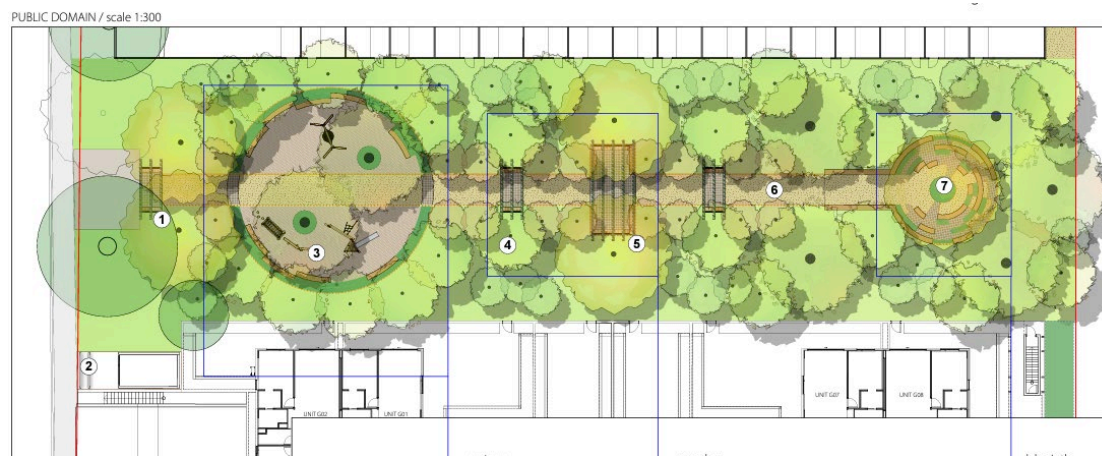


Figure 13: Public Park - Amended Design

The design was subsequently adjusted to include an area for nature play with the introduction of timber play equipment.

Its noted that a BBQ area is still omitted for the design. Further commentary on the proposed public park is provided below.

1.3 Supporting Documentation

The following documentation has been submitted in support of the application and has been considered as part of this planning assessment report (superseded documents have not been referenced here):

1.3.1 Application Material Initially Lodged

- Statement of Environmental Effects prepared by Maas Property Group.
- BASIX Certificates
- SEPP 65 – Design Verification Statement by EJE Architects
- Access Report prepared by Accessed
- Noise Assessment prepared by MAC Acoustics.
- Traffic Impact Statement prepared by Seca Solution.
- Tree Assessment Report prepared by Terras Landscape Architects.
- Community Consultation Report
- Waste Cycle Strategy prepared by BG&E.
- Construction waste management plan.
- Operational Waste Management Plan.
- External Lighting Plan prepared by Electrical Projects Australia.
- Stormwater Design prepared by BG&E

1.3.2 Additional Information Documents

- Heritage Impact Statement prepared by Carste Studio Pty. Ltd.
- Amended Traffic Report.
- Ecological Assessment Firebird ecoSultants Pty. Ltd.
- Site Audit.
- CEMP prepared by Maas Property Group.
- Geotechnical Investigation Report.
- Preliminary Services prepared by Maas Property Group.

1.3.3 Further Additional Documents

- Cover letter Maas Property Group dated 29 August 2022
- Architectural plans prepared by EJE Architecture – Project No. 13956:

Dwg. No.	Title	Rev
A-000	COVERSHEET	M
A-001	ARCHITECTURAL NOTES	B
A-010	SITE PLAN	M
A-011	SITE PLAN 3D - SHEET 1	K
A-012	SITE PLAN 3D - SHEET 2	J
A-021	SITE ANALYSIS	A
A-030	NOTIFICATION PLAN	D
A-040	PERSPECTIVES - SHEET 1	M
A-041	PERSPECTIVES - SHEET 2	L
A-042	PERSPECTIVES - SHEET 3	E
A-043	PERSPECTIVES - SHEET 4	G
A-044	PERSPECTIVES - SHEET 5	H
A-047	PHOTO MONTAGE	K
A-048	PRINCE ST. ELEVATION	A
A-049	DALTON ST. ELEVATION	A
A-050	SHADOW DIAGRAMS	E
A-052	LIFT OPTION PLANS	D
A-055	STAGING PLAN	D
A-056	SILVER LEVEL UNIT	G
A-060	SOLAR ACCESS & CROSS FLOW - GROUND FLOOR	E
A-061	SOLAR ACCESS & CROSS FLOW - LEVEL 1	E
A-062	SOLAR ACCESS & CROSS FLOW - LEVEL 2	E
A-063	SOLAR ACCESS & CROSS FLOW - LEVEL 3	E
A-064	SOLAR ACCESS & CROSS FLOW - LEVEL 4 & 5	E
A-100	BASEMENT PLAN	L
A-101	GROUND FLOOR PLAN	V
A-102	LEVEL 1 PLAN	V
A-103	LEVEL 2 PLAN	U
A-104	LEVEL 3 PLAN	U
A-105	LEVEL 4 PLAN	U
A-106	LEVEL 5 PLAN	R
A-107	LEVEL 6 PLAN	H
A-190	GROUND FLOOR AREA PLAN	M
A-191	LEVEL 1 AREA PLAN	M
A-192	LEVEL 2 AREA PLAN	M
A-193	LEVEL 3 AREA PLAN	M
A-194	LEVEL 4 AREA PLAN	M
A-195	LEVEL 5 AREA PLAN	M

A-196	LEVEL 6 AREA PLAN	B
A-200	ELEVATIONS - SHEET 1	P
A-201	ELEVATIONS - SHEET 2	P
A-300	SECTIONS - SHEET 1	K
A-301	SECTIONS - SHEET 2	K

- Landscape Masterplan Documentation Prepared by Terras Landscape Architects Job No. 13956.5:

Dwg. No.	Title	Versions
L100	MASTERPLAN – LANDSCAPE APPROACH	H
L101	MASTERPLAN - LANDSCAPE DESIGN	H
L200	STREE TREE AUGMENTATION	H
L301	TOWNHOUSES - LANDSCAPE DESIGN	H
L302	TOWNHOUSES - DETAIL PLANS	H
L303	APARTMENTS - LANDSCAPE DESIGN	H
L304	APARTMENTS - DETAIL PLANS	H
L305	ROOF TERRACE – LANDSCAPE DESIGN	H
L400	PUBLIC DOMAIN - APPROACH	C
L401	PUBLIC DOMAIN - LANDSCAPE DESIGN	H
L402	PUBLIC DOMAIN - PERGOLAS	H
L403	PUBLIC DOMAIN - LABYRINTH	H
L404	PUBLIC DOMAIN - PLAYGROUND	H
L405	PUBLIC DOMAIN – PLAYGROUND IMAGES	H
L406	PUBLIC DOMAIN – POCKET PARK	H
L407	PUBLIC DOMAIN – TREE STRATEGY	H

- Cl.4.6 – (amended) Request to Vary Development Standard prepared by Maas Properties Group.
- Draft Subdivision Plan prepared by Craig Jaques undated reference 3925/22
- Housing Needs and Diversity Study prepared by Umwelt.
- Detailed Waste Area Plan prepared by Maas.
- External Materials Schedule
- Revised Zoning Overlay
- Street Interface Arrangement Plan.
- Response to Submissions
- Waste Agreement

2 The Site and Surrounding Context

2.1 Site Location

The land forms part of what is informally known as the former Orange Base Hospital site and sits to the west of the existing DPE building (which also formed part of the former Base Hospital site).

The site has three road frontages to the following streets:

- Prince Street to the south.
- Sale Street to the West
- Dalton Street to the north.

The site is a large regular shaped parcel of some 10069m².

The site comprises the remnant vegetation associated with the former Base Hospital along the western boundary.

The topography of the land is generally flat with a high point in the north western corner of the site with the site sloping gently from north to south.

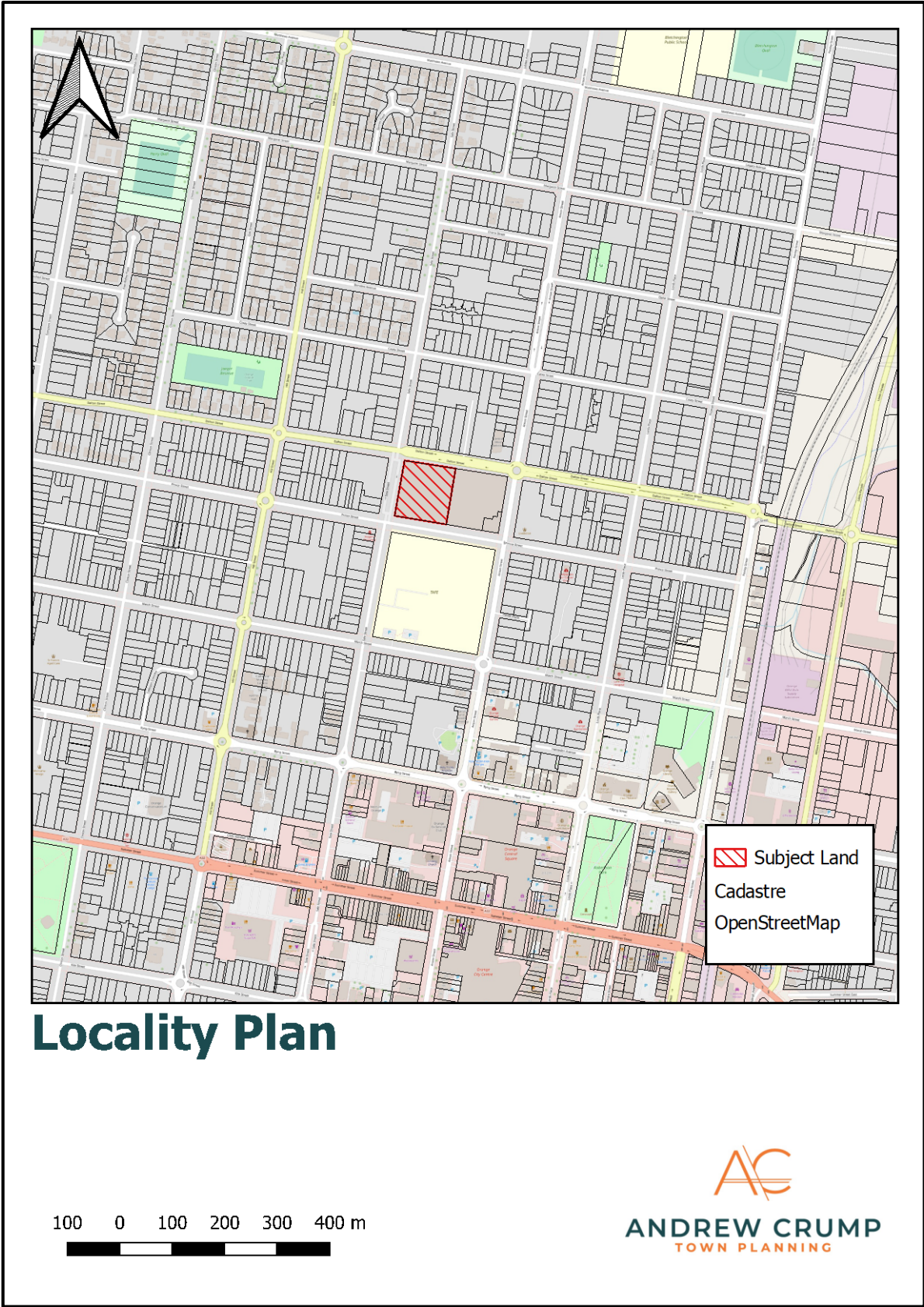


Figure 14: Locality Plan

2.2 Surrounding Development Pattern

The surrounding development pattern is mixed and comprises the following:

North – The development to the north comprises mostly single storey detached dwellings, some have been adaptively reused for medical purposes.

East – The subject land shares its eastern boundary with the DPE Building which is a 4-storey contemporary office building fronting Prince Street with a multi-level carpark in the Dalton Street frontage.

South – The development to the south comprises the Orange TAFE which consists of numerous institutional style buildings ranging in age from the 1930s through to modern building with heights ranging from one to three storeys.

West – To the west of the site is the former nurses' quarters and two former dwellings. To the southwest there is the pharmacy located on the corner and other commercial uses.



Figure 15: Subject site looking towards the south along the eastern boundary



Figure 16: Adjoining DPE building and multi-storey carpark



Figure 17: Period cottages opposite site in Dalton Street



Figure 18: Period cottages opposite site in Dalton Street



Figure 19: Non-residential uses within Sale Street



Figure 20: Aerial Image

3 The Proposal

3.1 Overview

The proposal involves the following:

- A three-lot Torrens title subdivision comprising two residential lots and a public recreation Lot.
- Construction of 17, part 2 and part 3 storey dwellings and basement carpark as part of a multi dwelling housing development within the resultant lot fronting Dalton Street.
- Construction of a part 4, part 5 and part 6 storey RFB providing 63 apartments and a basement carpark.
- Development of the central lot for the purposes of a public park comprising plantings, pathways, seating, children's play equipment, etc. This parcel is to be dedicated to Council as part of a planning agreement.

The submitted architectural plans accompany this report at **annexure B** and a summary of the key development statistics is provided in the below tables.

3.1.1 Key Development Statistics

Table 4: Key development statistics - subdivision

Lot	Size	Zone	Future Land-use
601	4144m ²	R3 – Medium Density Residential	RFB
602	2583m ²	RE1 – Public Recreation	Dedicated Public Open Space
603	3966m ²	R3 – Medium Density Residential	Multi-Dwelling Housing

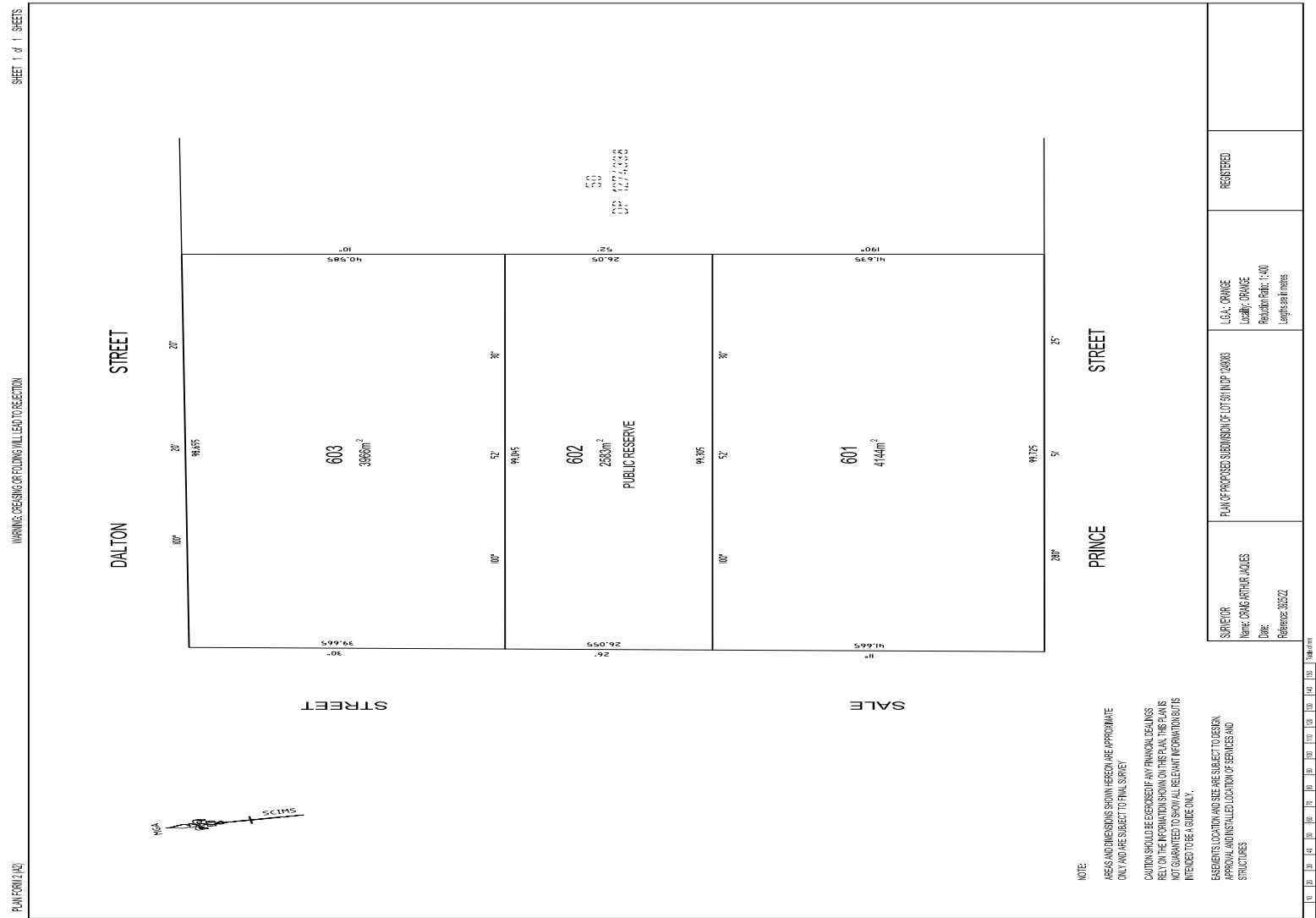


Figure 21: Proposed Subdivision Plan

Table 5: Key Development Statistics - Residential Accommodation

Component	Description	
	RFB	Multi Dwelling Housing
Number of Buildings	1	1
Number of storeys	Part 4, Part 5, Part 6 Storeys	Part 2 and Part 3 Storeys
Basement	Yes – single level	Yes – single level
Overall Building Height	21.55m ²	~10.5m
GFA	1.8:1	1.8:1
Total apartments / dwellings	63	17
Unit Mix	No. of each dwelling type	%
	4 x 1 Bedroom units	6.3
	25 x 2 Bedroom Units	39.7
	34 x 3 Bedroom Units	54
Vehicular access	Sale Street	Sale Street
Parking	105 parking spaces	34 parking spaces
Garbage Collection	Private agreement, collection in Sale Street	Kerb side, Dalton Street

3.2 Detailed development description

The following sections provide a detailed description of the residential accommodation.

3.2.1.1 Multi-dwelling Housing

Concurrently with the initial three lot subdivision, it is proposed to construct multi-dwelling housing comprising:

- 17, part 2 and part 3 storey dwellings, with basement level parking providing 34 off-street parking spaces, and individual storage lockers. The dwellings are effectively split level and are afforded ground level access to the front and rear of each dwelling. The levels are shown in the below section.

² Hight of building determined with guidance from *Tony Legge v Council of the City of Sydney* [2016] NSWLEC 1424

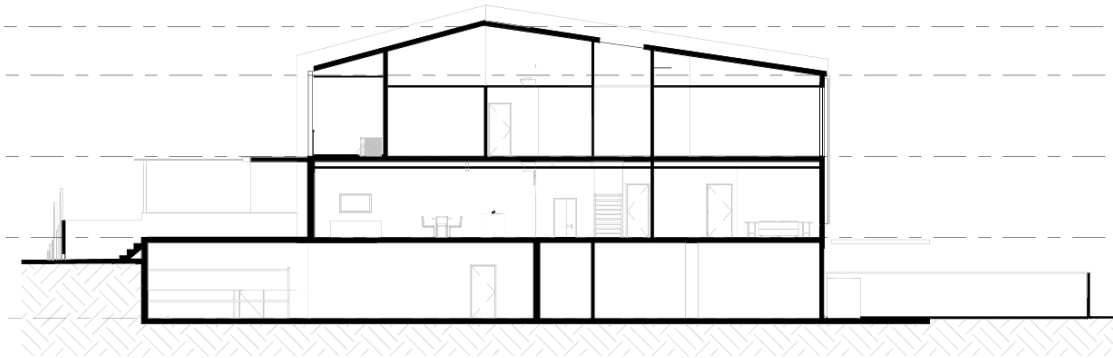


Figure 22: Section (Dalton Street to the left of image)

- Save for dwelling 1 (which is a replicated layout of the adjoining dwelling 2), the remaining 16 dwellings are arranged in back-to-back pairs, effectively mirror reversed layouts.
- Each dwelling has a ground floor living room, laundry and circulation space directly leading from the basement parking.

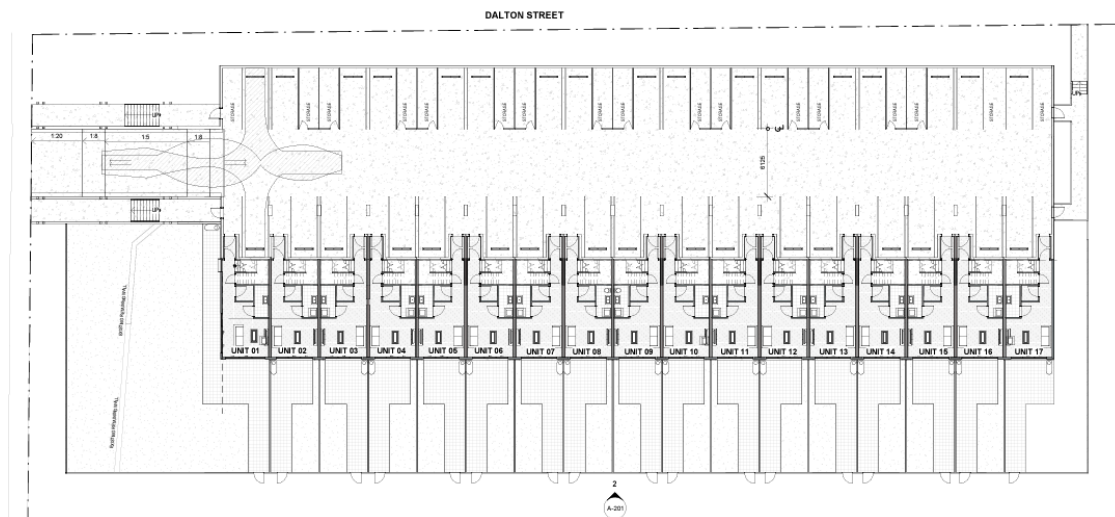


Figure 23: Floor Plan (Excerpt) - Basement and Ground Floor

- Level 1 comprises a south facing bedroom with ensuite and WIR and an open plan kitchen / living / dining area occupies the northern portion of each dwelling. The stairwell separates the two spaces. Direct pedestrian access is provided from Dalton Street from this level.

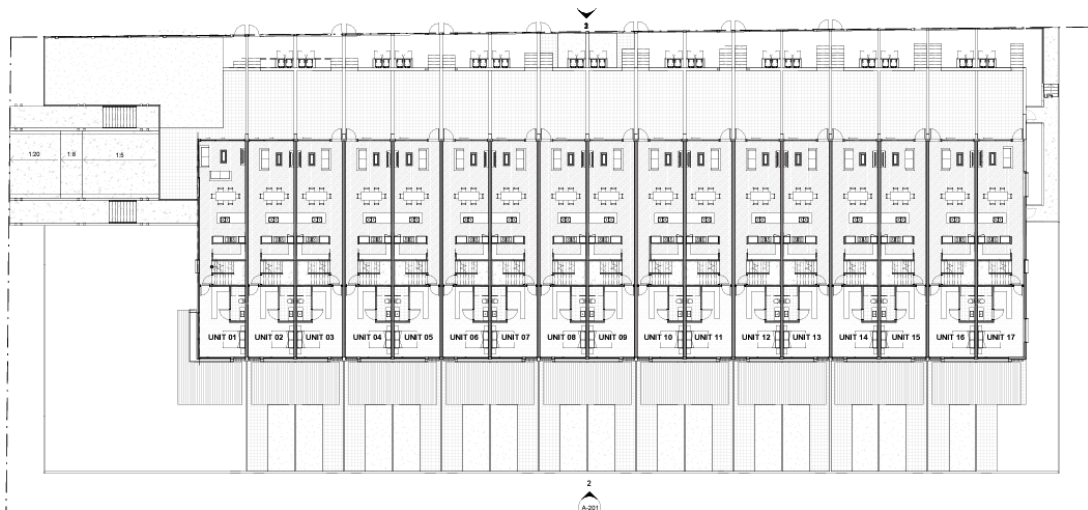


Figure 24: Floor Plan (Excerpt) - 1st Floor / Street level

- Level 2 also comprises a south facing bedroom with ensuite and WIR and a master bedroom occupies the northern portion of the dwellings and again, the stairwell separates the two spaces.

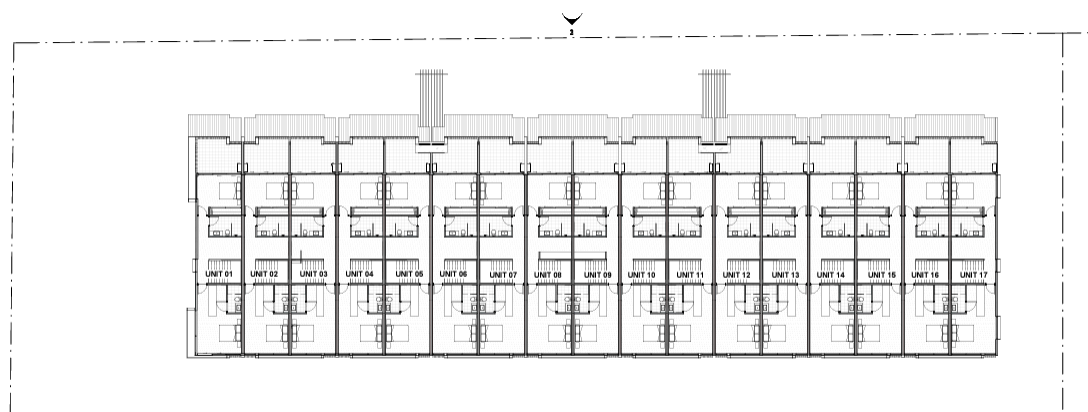


Figure 25: Floor Plan (Excerpt) - Level 2

- Each dwelling is afforded a front and rear private courtyard. The front courtyards are terraced and provide direct access to Dalton Street via stairs down to a smaller courtyard which also houses the respective dwelling's bins. The rear courtyards are partly paved and partly provided with soft landscaping. Each dwelling is provided with direct PA access to the public park at the rear.

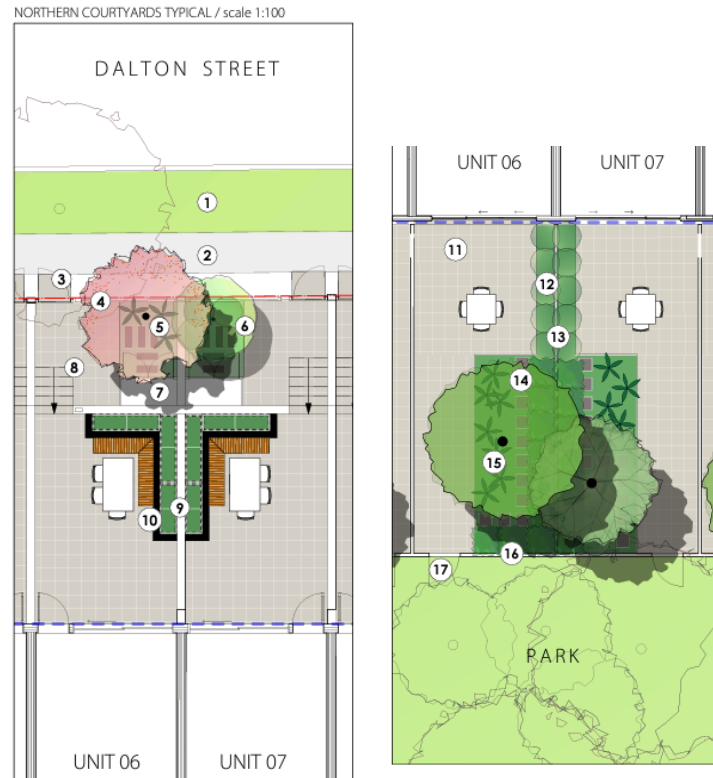


Figure 26a and 26b: Front and Rear landscaped courtyards

In terms of the built form and visual appearance of the multi-dwelling housing, the building is articulated through the use of pitched roofs, expressed vertical dividing walls and recessed portions that combine to fractionate the long linear north and south elevations into three separate but joined elements as shown below.



Figure 27: Dalton Street elevation - showing the articulated front facade

3.2.1.2 RFB

The Residential Flat Building is a part 4, part 5 and part 6 storey building. The building steps down in the number of storeys from east to west.

The building comprises 63 units across six levels and 105 parking spaces within the basement carpark.

In addition to parking, the basement also includes storage cages, the starting level of two central cores within the building providing lift access and stairwell, as well providing an area for utilities and garbage storage

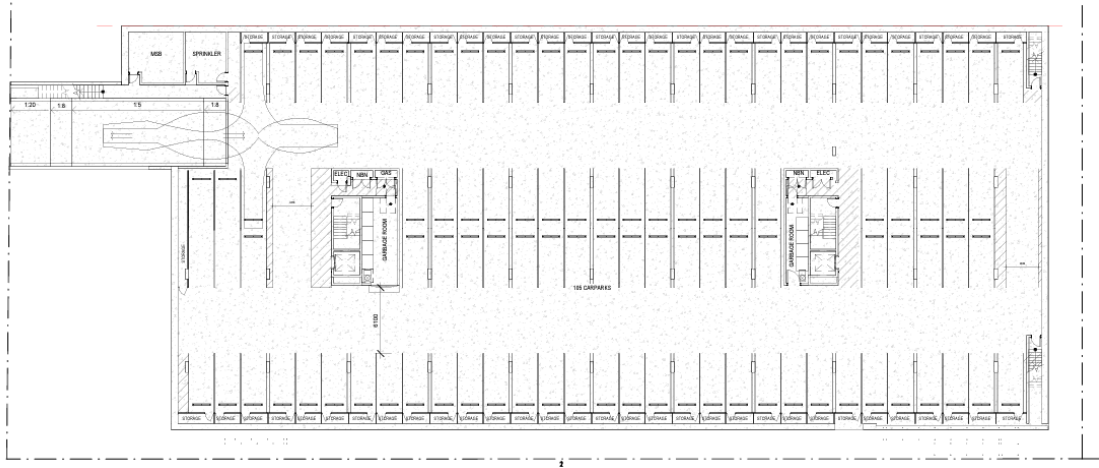


Figure 28: Basement Level

There are 12 ground floor units each provided with courtyards.

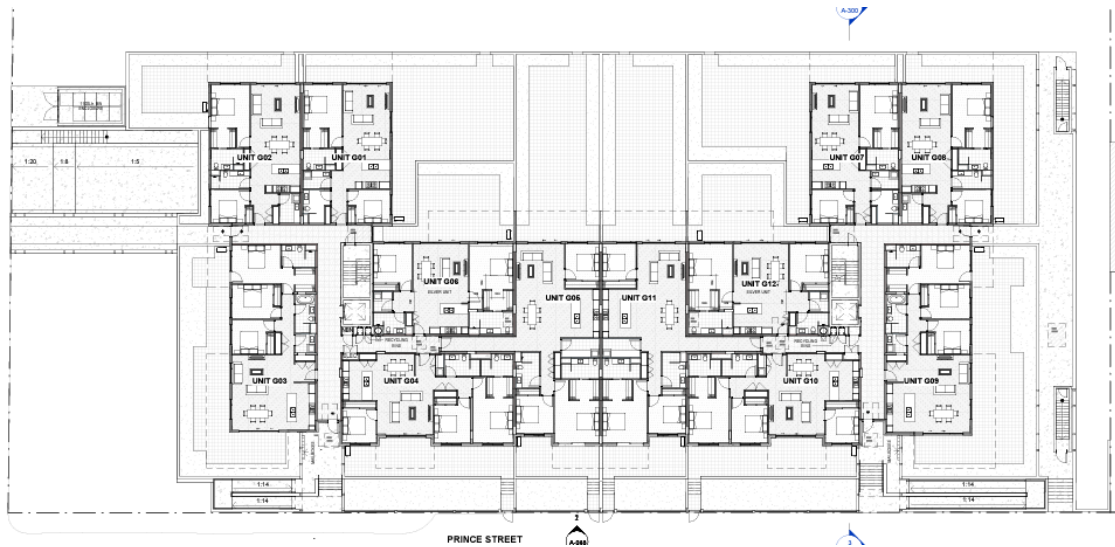


Figure 29: RFB-Ground Floor

Levels 1 and 2 floor plans are duplicates of each other and comprise 14 units. These levels include the 4, one-bedroom units with two on each level.

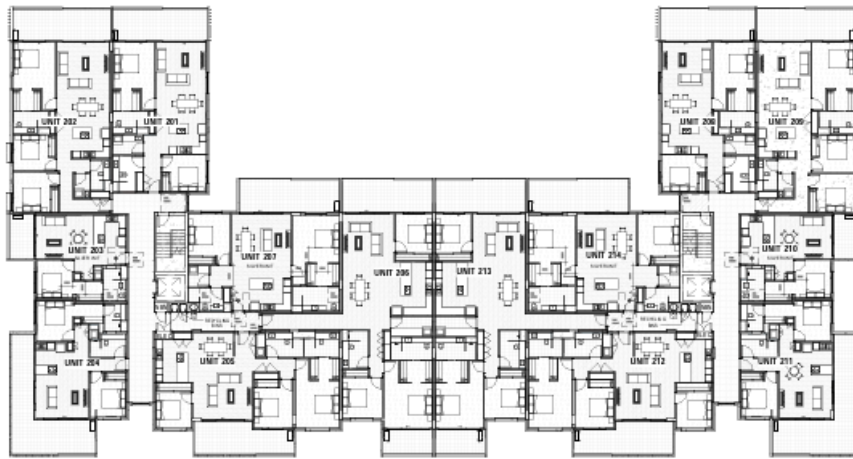


Figure 30: RFB Levels 1 and 2

Level 4 comprises 9 units as well as an area of communal terrace with covered seating area.

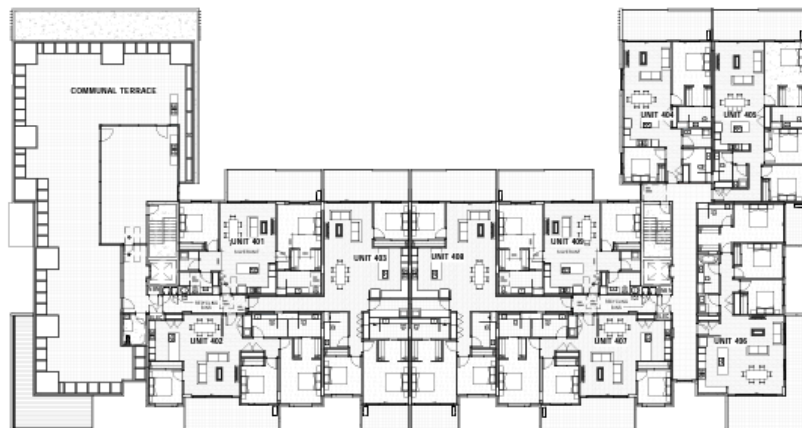


Figure 31: RFB - Level 4

Level 5 comprises two, 3-bedroom penthouses positioned over the eastern half of the building below.



Figure 32: RFB - Level 5 (penthouses)

3.3 Staging of the development

The applicant requests consideration of the application arranged in the following sequencing:

Stage 1

- Completion of the prospected 3-lot Torrens title subdivision and associated infrastructure works.
- **Proposed Lot 603** - Construction of the 17 dwellings (as multi dwelling housing) and associated basement carpark, provision of infrastructure, landscaping, fencing, etc.

Stage 2

- **Lot 601** - Construction of the part 4, part 5 and part 6 storey RFB comprising 63 apartments and associated basement car park, provision of infrastructure, landscaping, fencing, etc.
- **Lot 602** (centrally located open space land) - embellishments and dedication of land to Council

4 Strategic Context

4.1 Central West and Orana Regional Plan 2036

The Central West and Orana Regional Plan guides the NSW Government's land use planning priorities and decisions over the next 20 years and provides an overarching framework to guide further strategic plans and decision making.

The Plan includes priority actions as well as medium and longer-term actions to coincide with population and economic change within the region.

Of relevance is Direction 25: *Increase Housing Diversity and Choice which includes the following relevant actions:*

25.2 Increase housing choice in regional cities and strategic centres at locations near or accessible to services and jobs.

25.4 Locate higher density development close to town centres to capitalise on existing infrastructure and increase housing choice.

As detailed below, this development will assist in achieving these actions in relation housing diversity.

4.2 Central West and Orana Regional Plan (DRAFT) 2041

The Central West and Orana Regional Plan (Draft) is similar to the current plan in that it seeks to establish a consistent strategic planning framework, vision and direction for land use, addressing future needs for housing, jobs, infrastructure, a healthy environment, access to green spaces and connected communities (DPE 2022).

Of particular relevance to this application is Objective 8 – *Plan for diverse affordable, resilient and inclusive housing.*

The proposed development is broadly consistent with this objective of the plan. The development provides a type of housing that occupies the often referred to “missing middle” of the housing market.

4.3 Orange City Council Community Strategic Plan 2018-2028

The Community Strategic Plan sets a 10-year vision for the city which is underpinned by a number of long-term strategic goals

The vision for future housing delivery within the city seeks to ensure a healthy, safe and inclusive vibrant community.

4.4 Orange Local Strategic Planning Statement

Orange Local Strategic Planning Statement is a 20-year vision for land-use planning for the Orange Local Government Area.

Specifically, the LSPS acts as a link between the strategic priorities identified at a regional or district level, and the finer-grained planning at a local level expressed in council's local environmental plan and development control plans, to ensure consistency in strategic planning approaches. While mainly related to land use planning from the State to the local level the LSPS is also intended to connect and align with Council's broader role via the Community Strategic Plan.

The LSPS identifies 19 Planning Priorities to achieve the Council's vision for Orange, along with actions and the means for monitoring and reporting on the delivery of the actions.

Specifically relating to the subject development, the LSPS includes the following planning priority:

Provide diverse housing choices and opportunities to meet changing demographics and population needs, with housing growth in the right locations.

4.5 Orange City Council – Orange Local Housing Strategy

The Orange Local Housing Strategy was adopted by Council in June 2022. The strategy helps guide the decision making of Council and the private sector in order to deliver a greater diversity of housing which can accommodate the existing and future population and address the demographic changes being experienced in the LGA. The Housing Strategy also guides the design and location of housing into the future.

The strategy provides the following vision:

The Housing Strategy supports a housing market that meets the diverse and changing needs of the Orange community. It enables a sustainable supply of housing for everyone, at all income levels, that has access to jobs and services, and that respects Orange's unique landscape comprising scenic, ecological and agricultural values. Supported by community facilities and open space housing ultimately needs to contribute to Orange's future as a liveable city (Orange City Council).

The underlying endeavours of all of the strategies referenced above relate to the provision of a diverse range of housing within the community that protects the important social, environmental and economic foundations of the City.

The proposed development is not inconsistent with this pursuit. The development will increase the amount of housing stock within the city and introduce housing typologies to the market that have historically been underrepresented within Orange.

5 Consideration

5.1 Environmental Planning and Assessment Act 1979

The Environmental Planning and Assessment Act (the Act hereafter) (Part 4) and the accompanying Regulations provide the principal statutory framework for the assessment of development applications in NSW.

In particular, the Consent Authority must take certain matters into consideration when determining a development application.

The following sections of this document provide an assessment of the mandatory heads of consideration listed in section 4.15 – **Evaluation** of the Act as summarised in the below table.

5.1.1 Matters for Consideration under the EP&A Act

Matter for Consideration	Commentary
<p><i>The provisions of:</i></p> <p><i>(i) any environmental planning instrument, and</i></p> <p><i>(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority ..., and</i></p> <p><i>(iii) any development control plan</i></p> <p><i>(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and</i></p> <p><i>(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),</i></p>	<p>(i)The provisions of Orange LEP 2011 are addressed below. Of note, the development contravenes the height of building development standard.</p> <p>Relevant SEPPs are also addressed below.</p> <p>(ii)There are no draft EPs applicable.</p> <p>(iii) Orange DCP 2004, specifically ch. 17-West End Precinct DCP has been addressed. Refer below and to the DCP compliance table at Annexure A.</p> <p>(iiia) a draft VPA has been prepared in relation to the public park. This is considered below under section 5.8.</p> <p>(iv)the development is not inconsistent with the prescribed matters.</p>
<p><i>(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</i></p>	<p>The likely impacts of the development are considered under section 5.10 below.</p>
<p><i>(c) the suitability of the site for the development,</i></p>	<p>Suitability of the site for the proposed development is considered under section 5.11 below.</p>
<p><i>(d) any submissions made in accordance with this Act or the regulations,</i></p>	<p>The development application was formally exhibited on two separate occasions and a total of 9 submissions were received and the matters raised are addressed below under section 5.12</p>
<p><i>(e) the public interest.</i></p>	<p>The proposal is not inconsistent with any relevant policy statements, planning studies, and guidelines etc. that have not been considered in this assessment.</p>

5.2 Section 1.7 – Application of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994.

Section 1.7 of the Act refers to Part 7 of the Biodiversity Conservation Act and Part 7A of Fisheries Management Act. These Acts require consideration of the development's effect on Terrestrial and Aquatic Environments.

Specifically, the referenced Acts contain four triggers under which a development is to be assessed under the Biodiversity Offset Scheme. These are detailed in the below table:

Table 6: BC Act and Fisheries Act Matters

Trigger	Commentary
1. Development that occurs on land mapped on the Biodiversity Values Map (OEH) (clause 7.1 of BC Regulation 2017).	<p>The development is not proposed on land identified on the NSW Biodiversity Values Map.</p> <p>Accordingly, the development does not trigger this clause.</p>
2. Clearing Threshold exceedance (clauses 7.1 and 7.2 of BC Regulation 2017).	<p>Although it is proposed to remove a number of exotic trees, the development does involve the clearing of any native vegetation and accordingly, the development does not trigger this clause.</p>
3. Development that is likely to have a significant effect on threatened species	<p>An ecological report has been prepared in support of the development which explores the development's potential to impact upon endangered ecological communities, threatened species and habitats. The report found the development to be satisfactory.</p> <p>The development will not have a significant effect on threatened species, nor will the development impact on any endangered ecological communities or habitat. In this regard:</p> <ul style="list-style-type: none"> • The subject land is a brownfield site having been previously used for the purposes of a public hospital. • The development does not involve any clearing of native vegetation. • The development will not engender any water quality issues of any nearby sensitive waterways. • The land is not mapped as high value biodiversity land under the NSW Biodiversity Conservation Act.

	<ul style="list-style-type: none"> • The land is not mapped high biodiversity under Orange LEP 2011. • A nesting box is located in one of the subject trees to be removed, conditions of consent are recommended to deal with the relocation of the nesting box. <p>Given the foregoing assessment, the development will not have a significant effect on any endangered ecological communities, threatened species or habitat.</p>
4. Development proposed in an area of Outstanding Biodiversity Value	N/A – the land is not an area categorised as Outstanding Biodiversity Value.

Given the foregoing assessment, it can be demonstrated that the development is consistent with the requirements of section 1.7 of the Act (and related Acts). Moreover, the development is not required to be assessed against the Biodiversity Offset Scheme and a Biodiversity Development Assessment Report is not required for the development.

The development is considered acceptable with regards to Section 1.7 of the EP&A Act.

5.3 Designated Development

The Environmental Planning and Assessment Regulations (the Regs) contain provisions for certain large scale or offensive development that are to be categorised as designated development.

With reference to schedule 3 within the Regs, this development is not categorised as designated development.

5.4 Integrated Development

Certain types of development will require additional approvals or licences under other Acts as part of the carrying out of a development.

With reference to Section 4.46 of the Act, this development is not integrated development.

5.5 PROVISIONS OF ANY ENVIRONMENTAL PLANNING INSTRUMENT s4.151)(a)(i)

5.5.1 Orange Local Environmental Plan 2011

Orange Local Environmental Plan 2011 (the LEP hereafter) applies to the subject land.

5.5.1.1 Summary of Development Standards and Other Local Provisions

The following table summarises the applicable LEP provisions. Further commentary of those that are applicable (identified in **BOLD** text) is provided below.

Table 7: LEP Summary Table

Standard / Provision	Applicability
Zone	R3 – Medium Density Residential RE1 – Public Recreation
Min. Lot Size (clause 4.1B)	800m²
Height of Building	16m 25m
FSR	1.8:1
Heritage Item or Conservation Area	Heritage Conservation Area
Earthworks	Yes – Basement Car Parks
Flood Related Planning Controls	N/A
Terrestrial Biodiversity	N/A
Ground Water Vulnerable	Yes
Drinking Water Catchment	N/A
Airspace Operations	N/A
Essential Services	Yes

5.5.1.2 Aims of the Plan

The LEP provides the following aims of the plan:

- (1) *This Plan aims to make local environmental planning provisions for land in Orange in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.*
- (2) *The particular aims of this Plan are as follows—*
 - (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
 - (a) to encourage development that 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 that contribute to the social, economic and environmental resources of Orange in a way that allows the needs of present and future generations to be met by implementing the principles of ecologically sustainable development,*
 - (c) to conserve and enhance the water resources on which Orange depends, particularly water supply catchments,*
 - (d) to manage rural land as an environmental resource that provides economic and social benefits for Orange,*
 - (e) to provide a range of housing choices in planned urban and rural locations to meet population growth,*
 - (f) to recognise and manage valued environmental heritage, landscape and scenic features of Orange.*

The development is consistent with aim (e) in that a diverse range of housing is proposed under the application, housing typologies that have historically been underrepresented within the local housing market.

The development is inconsistent with aim (f) of the plan. The development, as articulated within this report, has the potential to adversely impact upon visual quality and heritage significance of the Heritage Conservation area.

The development is not inconsistent with the remaining aims of the plan.

5.5.1.3 Clause 1.9A - Suspension of Covenants, Agreements, and Instruments

Clause 1.9A provides that any agreement, covenant, or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose, with the exception of:

- (a) to a covenant imposed by the Council or that the Council requires to be imposed, or
- (b) to any relevant instrument within the meaning of section 13.4 of the Crown Land Management Act 2016, or
- (c) to any conservation agreement within the meaning of the National Parks and Wildlife Act 1974, or
- (d) to any Trust agreement within the meaning of the Nature Conservation Trust Act 2001, or
- (e) to any property vegetation plan within the meaning of the Native Vegetation Act 2003, or
- (f) to any biobanking agreement within the meaning of Part 7A of the Threatened Species Conservation Act 1995, or
- (g) to any planning agreement within the meaning of Subdivision 2 of Division 7.1 of the Act.

Based on a title search for subject parcel, the author is not aware of any covenants, agreements or instruments affecting the land that would unduly constrain the proposed development.

5.5.1.4 Zoning and Permissibility

The land is zoned Part R3 Medium Density Residential and Part RE1 Public Recreation as shown in the below figure.

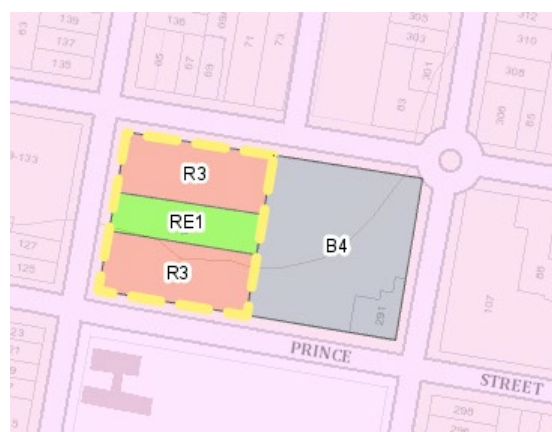


Figure 33: Zoning Mapping (subject land shown yellow outline)

The development is characterised as a *subdivision of land, Multi Dwelling Housing, Residential Flat Building and Recreation Area*.

Section 6.2 of the EP&A Act defines subdivision of land as:

the division of land into 2 or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition. The division may (but need not) be effected—

(a) by conveyance, transfer or partition, or

(b) by any agreement, dealing, plan or instrument rendering different parts of the land available for separate occupation, use or disposition.

The dictionary contained within the LEP defines Multi Dwelling Housing, Residential Flat Buildings and Recreation Areas as follows:

multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.

recreation area means a place used for outdoor recreation that is normally open to the public, and includes—

(a) a children’s playground, or

(b) an area used for community sporting activities, or

(c) a public park, reserve or garden or the like,

and any ancillary buildings, but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor).

Subdivision of land is permissible in any zoning pursuant to clause 2.6 of the LEP.

Multi dwelling housing is explicitly permissible within the R3 zone with development consent.

Residential flat buildings are not expressly listed as permissible (nor are they listed as prohibited) in the R3 zone, however, residential accommodation is expressly listed as permissible for which RFBs are a subset land-use and are thus, permissible in the zone with development consent.

Recreation areas are explicitly permissible within the RE1 zone with development consent.

This development application is seeking consent.

5.5.1.4.1 Zone objectives

The objectives of the R3 Medium Density Residential zone are listed as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure development is ordered in such a way as to maximise public transport patronage, and encourage walking and cycling, in close proximity to settlement.*

The development is not inconsistent with the objects of the R3 Medium Density Residential zone as follows:

- In regard to the first objective, the development will increase the amount of housing stock within the city in a generally sense, but more specifically, increase the amount of housing stock within certain segments of the housing market that have historically been undersupplied.
- In regard to the second objective, the development will add to the diversity of housing choices within the city, providing housing types that are typically underrepresented in the Orange Housing Market.
- The third objective is not applicable.
- In respect of the fourth objective, the development site is appropriately located such that it is easily accessible via public transport; or by walking and cycling from the CBD and other areas of the city.

The objectives of the RE1 Public Recreation zone are listed as follows:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To ensure development is ordered in such a way as to maximise public transport patronage and encourage walking and cycling in close proximity to settlement.*
- *To ensure development along the Southern Link Road has alternative access.*

The development is not inconsistent with the objects of the RE1 Public Recreation zone as follows:

- In regard to the first objective, the land will be dedicated to Council as part of the planning agreement as public open space.
- In regard to the second objective, the open space will provide for a range of active and passive uses catering for a broad range of needs.
- In regard to the third objective, the subject parcel will be fully landscaped in line with the landscape masterplan which provides appropriate plant species for Orange's climate. Note the commentary below which seeks an amended plan.
- In regards to the fourth objective, the development will result in an area of public open space that is appropriately located such that it can be enjoyed by people who live and work in the area.
- The fifth stated objective is not relevant to the application.

5.5.1.5 Principal Development Standards under the LEP

The following principal development standards under part 4 of the LEP apply to the assessment of the Development Application:

- *Clause 4.1B – Minimum Lot size for dual occupancy, multi dwelling housing and residential flat buildings.*
- *Clause 4.3 – Height of Buildings*
- *Clause 4.4 – Floor Space Ratio*

The above clauses are addressed separately below.

5.5.1.5.1 Clause 4.1B - Minimum Lot size for dual occupancy, multi dwelling housing and residential flat buildings.

Clause 4.1B provides requirements for minimum lot sizes for certain types of residential development in certain residential zones.

Relevantly, the clause requires land to be a minimum of 800m² when multi dwelling housing is proposed in R3 Medium Density zoned land.

Proposed lot 603 is 3966m² and thus meets the development standard.

5.5.1.5.2 Clause 4.3 – Height of Buildings

The subject land comprises two height controls of 16m and 25m as shown below.

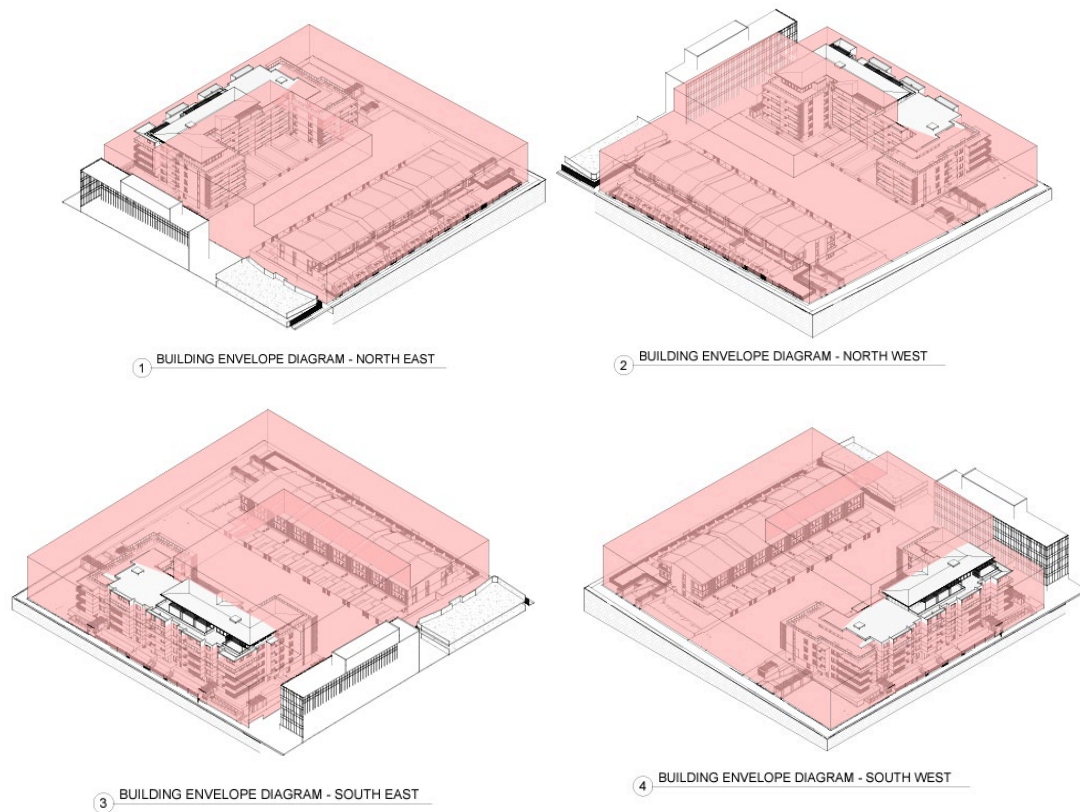


Figure 34: LEP Mapping - Height of Buildings

As observed in the above figure, the height controls have obviously been arranged to distribute the height in the centre of the site and provide a perimeter of buildings with a lower height as a means of transitioning to the lower scale / lower density of the surrounding development pattern and to respond to the context and setting within the broader locality.

The applicant is proposing a building (RFB) which contravenes the development standard, specially the 16m height control.

As can be observed in the below figures, the contravention relates to the level 5 units (penthouses) as well as the upper portion of level 4 as shown in the below building height envelopes submitted with the application.



Figures 35(a-d) : Building Envelope Diagrams

As a consequence of the contravention, a clause 4.6 request to vary the development standard has been prepared in support of the development application. Clause 4.6 is separately addressed below.

5.5.1.5.3 Clause 4.4 Floor Space Ratio

The floor space ratio applying to the site is 1.8:1 – refer below.

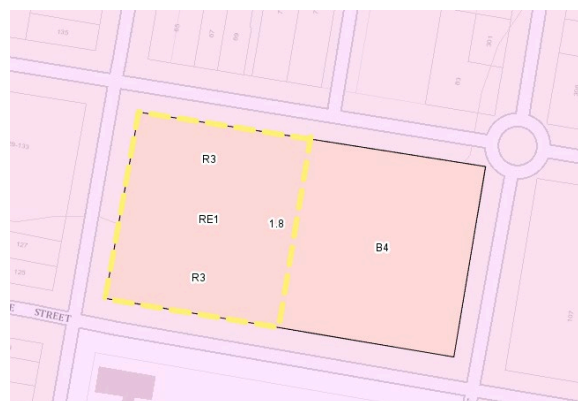


Figure 36: LEP Mapping – FSR

Given the proposed subdivision will occur at a point in time preceding the construction of the RFB, the FSR for the RFB is calculated based on the land area of the resultant lot; and out of completeness, an assessment of the FSR for multi dwelling housing on the resultant lot to the north is also provided.

The FSR calculations can be summarised as follows:

Table 8: FSR Calculations

Lot	Site Area (m ²)	FSR	Allowable GFA	Actual GFA(m ²)	Actual FSR
501	10069	1.8:1	18,124.2	3,247	0.32:1
603 ³	3966	1.8:1	7,138.8	3,247	0.45:1
601	4145	1.8:1	7,461	6998	1.68:1

As can be observed from the above table, the development does not contravene the FSR development standard applying to the land.

5.5.1.5.4 Clause 4.6 – Exceptions to Development Standards

As established above, the proposed development contravenes clause 4.3 height of building development standard of OLEP 2011 and as such clause 4.6 is relevant to the assessment of the development.

The following assessment is guided by the court of appeal decision *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action),

Clause 4.6(2) gives legal power to a consent authority to grant development consent for a development that contravenes a development standard. However, clause 4.6(2) is subject to conditions as set out in clause 4.6(4).

Clause 4.6(4) establishes preconditions that must be satisfied before the consent authority can exercise the power to grant consent to a development that contravenes a development standard

The first precondition, in cl 4.6(4)(a) (as established in *Initial Action*) is that the consent authority exercising their functions, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii).

³ Post-subdivision calculation.

The first being that the applicant has adequately addressed the matters required by clause 4.6(3). *These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters (Initial Action).*

Wehbe v Pittwater Council established 5 ways an applicant may demonstrate the unreasonable or unnecessary test including:

The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

The applicants cl.4.6 request has relied on the above to demonstrate the unreasonable or unnecessary test. It's noted that the request also addresses the other matters identified in *Wehbe*, however, for the reasons outlined below these have not been addressed.

Relevant to the above, the objectives of the development standard are as follows:

(a) to provide for taller buildings in the City centre and to enable a transition in building height in response to varying urban character and function,

(b) to protect the amenity of neighbouring properties and public places, with particular regard to visual bulk, scale, overshadowing, privacy and views [emphasis added].

It's noted that the clause 4.6 request, in the introductory sections of the document, attempts to quantify the extent of the encroachment with the following comments:

Percentage variation (between proposal and the environmental planning instrument

The proposal requests a 4.25m encroachment at its highest point into the 16m permissible height limit. The site area of the residential flat building is 4145m² and the proposed encroachment occupies 475m² therefore representing a noncompliance of 11.5% as depicted in figures of Appendix 1.

Clause 4.3 Height of buildings

Pursuant to clause 4.3 building on the land shall have a maximum height of 16m and 25m. The area subject of the requested variation falls within the 16m height limit. There is a noncompliance with the control as the building breaches the 16m height standard by a maximum of 4.25m. The level 5 encroachment occupies 11.5% of the overall footprint of the building.

The above analysis relates only to the encroachment above level 4 (i.e. the penthouses), when a review of the plans indicates there is also an encroachment below this level on level 4 across the full length of the building as shown in the below figures.

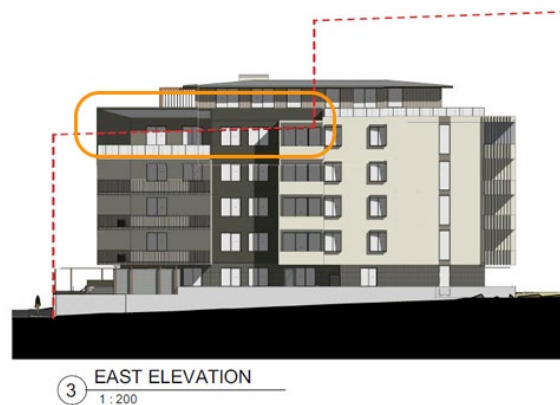


Figure 37: Building envelopes highlighting the encroachment on level 4 East Elevation



Figure 38: Building envelopes highlighting the encroachment on level 4 West Elevation

Based on the above, it would be difficult for the consent authority to establish the necessary levels of positive satisfaction as required by clause 4.6(4) when the request has not accurately quantified the full extent of the contravening elements of the building; particularly so considering these contravening elements, although lower than the penthouses, are closer to the street and to the neighbouring property to the east.

It is thus considered that the cl. 4.6 request could not have adequately addressed how the development is consistent with the objectives of the clause when the above noted contravening elements have not been identified or acknowledged in the request.

Therefore, the clause 4.6 request does not meet the necessary requirements at the first step, and it is not considered necessary to provide further analysis of the clause 4.6 request against the remaining sections of the clause.

It should be noted however, that as the recommendation herein is for the Panel to require redesign of the RFB, should the Panel adopt this recommendation, it will be necessary for a subsequent clause 4.6 to be prepared in that allows the consent authority to reach the necessary level of satisfaction required by clause 4.6(4).

5.5.1.6 *Miscellaneous Provisions*

5.5.1.6.1 Heritage Conservation

The subject land is located within the Bletchington Heritage Conservation Area and is in proximity to numerous local heritage items as shown below.



Figure 39: Heritage Listings

1. 65 Dalton Street
2. "Twilight" – 67 Dalton Street
3. "Waroon" – Dalton Street
4. 71 Dalton Street
5. Former Ambulance Station – 291 Anson Street
6. "Kingsciere" Flats
7. 125 Sale Street
8. "Nganbirra" – 127 Sale Street
9. Cladwell House and Former Nurses' quarters⁴

As such, clause 5.10 – Heritage Conservation is applicable, specifically the following clauses.

⁴ Approved to be demolished.

(1) Objectives *The objectives of this clause are as follows—*

- (a) to conserve the environmental heritage of Orange,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

In regards to the objects of the clause, as detailed below under heading **5.10.1.- Heritage, Streetscape and Tree Removal**, Council's heritage advisor has indicated that the development, specifically the RFB, will result in an unsatisfactory heritage outcome within Prince and Sale Streets. Accordingly, the development application is inconsistent with the above objective (b). Refer to the below section for further commentary.

(2) Requirement for consent *Development consent is required for any of the following—*

(a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)—

(iii) a building, work, relic or tree within a heritage conservation area,

...

(e) erecting a building on land—

(i) on which a heritage item is located or that is within a heritage conservation area,

(f) subdividing land—

(i) on which a heritage item is located or that is within a heritage conservation area, [emphasis added].

The above clause requires development consent to demolish trees, subdivide land and erect a building on land that is within a heritage conservation area.

This application is seeking consent.

*(4) **Effect of proposed development on heritage significance** The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).*

*(5) **Heritage assessment** The consent authority may, before granting consent to any development—*

(a) on land on which a heritage item is located, or

(b) on land that is within a heritage conservation area, or

(c) on land that is within the vicinity of land referred to in paragraph (a) or (b)

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

In regard to the above clauses, a detailed heritage impact statement was submitted in support of the application.

Further detail is provided below under the heading **5.10.1. - Heritage Impacts**.

5.5.1.7 Additional Local Provisions

The following Additional Local Provisions listed under part 7 of the LEP apply to the assessment of the Development Application:

- Clause 7.1 – Earthworks
- Clause 7.3 – Stormwater Management
- Clause 7.6 – Ground Water Vulnerable
- Clause 7.11 – Essential Services

The above clauses are addressed separately below.

5.5.1.7.1 Earthworks

The development involves the construction of two basement car parks and accordingly clause 7.1 is applicable to the assessment of the application.

In regards to the above clause, before granting consent to which this clause applies, the consent authority must consider the following:

Matter for consideration	Comment
<i>(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,</i>	The development is unlikely to affect any existing drainage patterns, nor will the development contribute to, or exacerbate any existing, soil erosion in the locality.
<i>(b) the effect of the development on the likely future use or redevelopment of the land,</i>	The development is unlikely to jeopardise the future redevelopment capacity of the subject land.
<i>(c) the quality of the fill or the soil to be excavated, or both,</i>	A geotechnical report has been prepared which identified the site as comprising areas of uncontrolled fill relating to the former hospital, but the report does not identify any serious impediments to a project such as the one proposed in this application. Notwithstanding, it is likely that further Geotechnical investigations would be required to inform the detailed design stage of the development.
<i>(d) the effect of the development on the existing and likely amenity of adjoining properties,</i>	The development involves the excavation of an underground basement for parking which is not expected to result in any adverse amenity impacts to adjoining properties.,
<i>(e) the source of any fill material and the destination of any excavated material,</i>	Conditions are recommended in relation to the importation and exportation of fill material to and from the site.
<i>(f) the likelihood of disturbing relics,</i>	Given the recent demolition of the hospital, and the highly disturbed nature of the site, the likelihood of encountering a relic is low. Notwithstanding, if the Panel is disposed to approving the application, relevant conditions are recommended in relation to the discovering of relics and the need for an unexpected finds procedure.
<i>(g) the proximity to and potential for adverse impacts on any waterway, drinking water catchment or environmentally sensitive area,</i>	The site is not in proximity to any waterway, drinking water catchment or environmentally sensitive area.
<i>(h) any measures proposed to minimise or mitigate the impacts referred to in paragraph (g).</i>	Notwithstanding, if the Panel were minded to approve the application, relevant conditions of consent would be required in relation to sediment and erosion control.

5.5.1.7.2 Stormwater Management

Clause 7.3 of Orange LEP 2011 seeks to *minimise the impacts of urban stormwater on the land to which the development applies and on adjoining downstream properties, native bushland and receiving waters.*

In regards to the above clause, a detailed stormwater design was submitted in support of the development. The indicative stormwater design presented an option where an underground OSD tank is to be installed at the front and centre of the RFB below the front entry stairs and forecourt area.

However, with the subsequent repositioning of the RFB ~2.6m further forward, it is unclear if this option remains viable.

In any event, Council's Technical Services have recommended a suite of conditions in relation to the management of stormwater. Such conditions would need to be imposed on a development consent if the Panel were minded to approve the development.

5.5.1.7.3 Essential services

Clause 7.11 of Orange LEP 2011 states that development consent must not be granted unless all necessary services for that development are, or will be, in place when required.

In regard to the above-referenced clause, it is noted that all necessary services are either connected to the site or are in proximity and able to be connected if required.

5.5.2 State Environmental Planning Policies (SEPPs)

The following State Environmental Planning Policies apply to the land. Those SEPPs in BOLD text specifically apply to the assessment of the DA:

- **SEPP (Biodiversity and Conservation) 2021**
- **SEPP (Building Sustainability Index: BASIX) 2004**
- SEPP (Exempt and Complying Development Codes) 2008
- SEPP (Housing) 2021
- **SEPP (Industry and Employment) 2021**
- **SEPP (Planning Systems) 2021**
- SEPP (Primary Production) 2021
- **SEPP (Resilience and Hazards) 2021**
- SEPP (Resources and Energy) 2021
- **SEPP (Transport and Infrastructure)**
- **SEPP No 65—Design Quality of Residential Apartment Development**

5.5.2.1 SEPP (Biodiversity and Conservation) 2021

SEPP (biodiversity and Conservation) 2021 is applicable to the subject development as the proposal requests consent to demolish (remove) trees in non-rural areas of the State. Part 2.3 of the SEPP applies to vegetation in any non-rural area of the State that is declared by a Development Control Plan to be vegetation that Council can issue a permit to a landholder to be cleared.

Chapter 0 Transitional Provisions of the Orange DCP 2004 (the DCP) prescribes the kinds of trees and other vegetation that are subject to Clause 2.9(2) of the SEPP.

Notwithstanding this mechanism to receive a permit to remove certain trees, given the demolition is to occur within an HCA, development consent is required under the LEP. This applicant is requesting consent to remove this vegetation.

It is therefore considered that the requirements of the SEPP (biodiversity and Conservation) 2021 have been met.

5.5.2.2 SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 is applicable to the assessment of the Development Application given the proposal is to construct residential accommodation.

BASIX certificates have been submitted in support of the application and relevant conditions of consent are recommended if the Panel is minded to approve the development.

5.5.2.2.1 SEPP (Industry and Employment) 2021

SEPP (Industry and Employment) 2021 is applicable to the assessment of the application given the developments proximity to electrical infrastructure.

In accordance with Clause 2.45, the development was referred to Essential Energy for comment.

Essential Energy responded indicating no objections to the development and provided recommended conditions of consent. These conditions would need to be included in a consent if the Panel was minded to approve the development.

5.5.2.3 SEPP (Planning Systems) 2021

SEPP (Planning Systems) 2021 is applicable to the assessment of the application. The development application is considered regionally significant development being a Council related development over \$5million.

The application falls within the meaning of “*Council related development*” as the current owner of the land is Orange City Council.

5.5.2.4 SEPP (Resilience and Hazards) 2021

State Environmental Planning Policy (Resilience and Hazards) is applicable to the development application; and at clause 4.6 it requires that a consent authority must not consent to the carrying out of development of land unless it has firstly considered whether or not the land is contaminated.

If the land is contaminated, the consent authority must be satisfied that the land is suitable in its contaminated state for the development that is proposed; or, if the land requires remediation to be made suitable for the proposed development, it is satisfied that the land will be remediated before the land is used for that purpose.

Furthermore, SEPP (Resilience and Hazards) requires that before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying findings of a preliminary investigation of the land concerned.

In respect of the above, the subject land was previously used for the purposes of a public hospital.

Council issued development consent DA251/2016 for *Demolition (former Orange Base Hospital and associated infrastructure, including Category 1 remediation works)* on 18 October 2016.

The demolition and remediation works have been completed and a site audit was prepared by Geosyntec Consultants Pty. Ltd.

The site audit concludes that the site is suitable for residential land-uses.

Given the foregoing, the site is considered suitable for the proposed development and no further investigation is warranted.

5.5.2.5 SEPP No 65—Design Quality of Residential Apartment Development

The development involves the construction of a residential flat building of more than 3 storeys and comprising more than 4 dwellings. Accordingly, SEPP No 65—Design Quality of Residential Apartment Development applies to the assessment of the application. (RFB component only).

Relevantly clause 28(2) states:

2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration)—

(a) the advice (if any) obtained from the design review panel, and

(b) the design quality of the development when evaluated in accordance with the design quality principles, and

(c) the Apartment Design Guide.

In relation subclause 2(a), Orange City Council has not appointed a design review panel and therefore the clause is not applicable.

In relation to subclause (2)(b), table nine below provides an evaluation of the design quality of the development as assessed against the design quality principles. Based on the comments in the below table, the development is inconsistent with Design Principles 1, 2 and 9 and redesign is recommended to achieve a development that more closely aligns to the intent of those design principles.

In relation to subclause (2)(c), the applicant has submitted a SEPP 65 Design Verification Statement (provided at **annexure E**) in support of the application which provides an assessment of the development against the criteria within the Apartment Design Code. The author is satisfied that the Design Verification Statement adequately demonstrates compliance with the ADG.

Table 9: SEPP 65 - Evaluation of the RFB Against the Design Principles

Principle	Response
<p>Principle 1: Context and neighbourhood character <i>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</i> <i>Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</i> <i>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</i></p>	<p>As detailed below under the heading 5.10.1 Heritage, Streetscape and Tree Removal, the proposed RFB does not respond appropriately to the context and setting. Refer to commentary below. <u>The development is inconsistent with this principle and redesign of the RFB is recommended.</u></p>
<p>Principle 2: Built form and scale <i>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</i> <i>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</i> <i>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</i></p>	<p>As detailed below under the heading 5.10.1 Heritage, Streetscape and Tree Removal, the proposed RFB does not respond appropriately to the context and setting. Refer to commentary below. <u>The development is inconsistent with this principle and redesign of the RFB is recommended.</u></p>
<p>Principle 3: Density <i>Good design achieves a high level of amenity for residents and each</i></p>	<p>The development is generally consistent with the density requirements under the DCP and with reference to the submitted SEPP 65 Design</p>

<p><i>apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</i></p>	<p>Verification Statement the proposed RFB will provide an adequate level of residential amenity.</p>
<p>Principle 4: Sustainability <i>Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</i></p>	<p>The development generally complies with this principle. The apartments are consistent with the ADC in terms of solar access and cross-ventilation. Notwithstanding, as this report is recommending redesign, any redesign will need to be cognisant of this principle.</p>
<p>Principle 5: Landscape <i>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long-term management.</i></p>	<p>The proposed landscaping within the communal open space areas located on level 4 and the ground level open space in the southwestern corner of the site is appropriate and will achieve this principle. The repositioning of the RFB ~2.6m further forward has the effect of reducing the opportunities for landscaping within the setback area within Prince Street.</p>
<p>Principle 6: Amenity <i>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</i></p>	<p>With reference to the ADG and the SEPP 65 Design Verification Statement, the future occupants of the proposed units will be afforded an acceptable level of residential amenity.</p>

<p>Principle 7: Safety <i>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</i> <i>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</i></p>	<p>Refer to CPTED considerations below. The development is generally compliant with this principle.</p>
<p>Principle 8: Housing diversity and social interaction <i>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</i> <i>Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</i> <i>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</i></p>	<p>Refer to discussion below on the proposed unit mix within the development. With reference to that discussion, the author is of the opinion that the apartment mix within the development is acceptable and therefore the development is consistent with this principle.</p>
<p>Principle 9: Aesthetics <i>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</i> <i>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</i></p>	<p>As detailed below under the heading 5.10.1 Heritage, Streetscape and Tree Removal, the proposed RFB does not respond appropriately to the context and setting. Refer to commentary below. <u>The development is inconsistent with this principle and redesign of the RFB is recommended.</u></p>

5.6 PROVISIONS OF ANY DRAFT ENVIRONMENTAL PLANNING INSTRUMENT s4.15(1)(a)(ii)

The author is not aware of any draft EPIs affecting the land.

5.7 PROVISIONS OF ANY DEVELOPMENT CONTROL PLAN s4.15(1)(a)(iii)

5.7.1 Orange Development Control Plan 2004

Orange DCP 2004 applies to the land. The DCP contains a site specific DCP titled the West End Precinct DCP which is addressed below. In addition to the West End Precinct DCP, the following additional chapters are also applicable:

- Chapter 00 – Orange LEP 2010 (sic)
- Chapter 03 – General Considerations
- Chapter 04 – Special Considerations
- Chapter 05 – General Considerations
- Chapter 07 – Development in Residential Areas
- Chapter 13 – Heritage
- Chapter 15 – Car Parking

5.7.1.1 West End Precinct DCP

The West End Precinct DCP applies specifically and exclusively to the subject land.

The DCP is founded and underpinned by sound planning principles which seek to achieve a certain level of amenity as part of the desired future character for the area.

The stated design principles for the site broadly convert diagrammatically to the below figure.

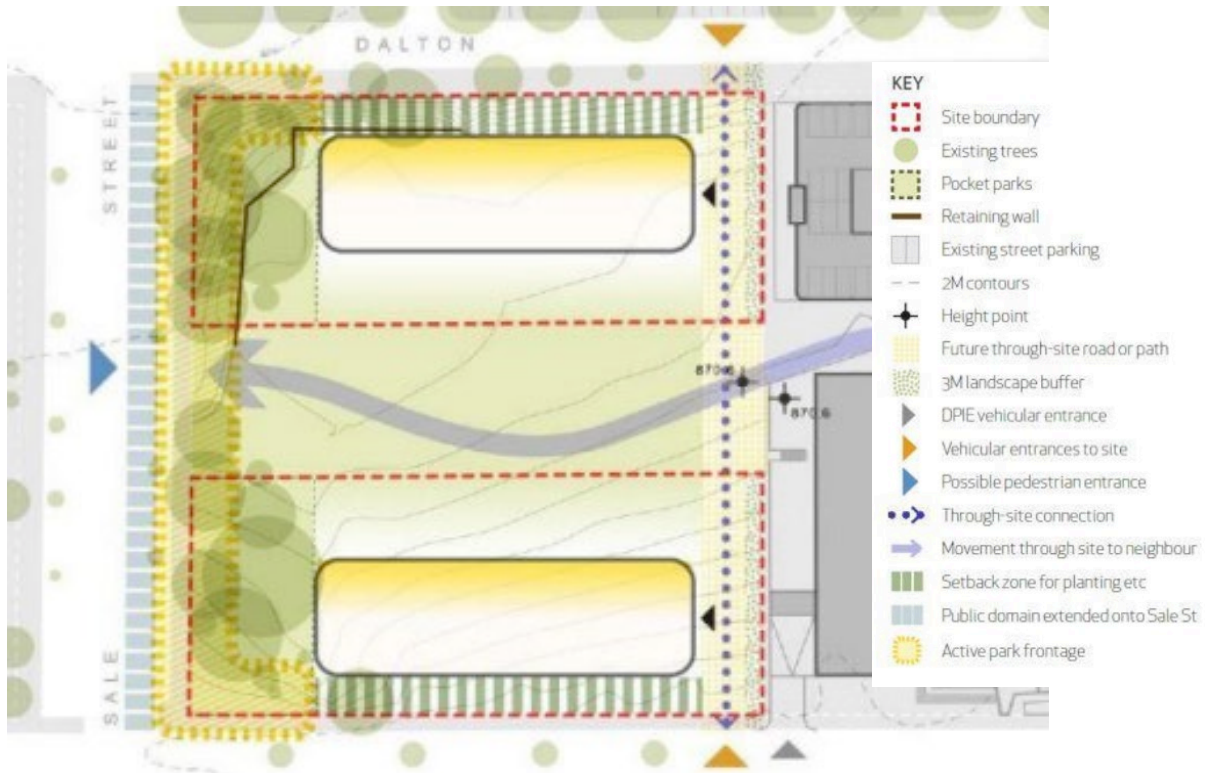


Figure 40: Design Principles

Broadly, the DCP separates the site into three key parts; namely, residential development at the north and south, with the higher density accommodation to the south to avoid overshadowing impacts. The centre of the site is to be developed as a public park and dedicated to Council.

Access to the site, both pedestrian / cycling and vehicular, is to occur via a shared laneway along the eastern boundary which in turn provides permeability through the site across all axis, whilst protecting the extant remnant trees along the western edge.

The positioning of the buildings; and their visual appearance and form, is to respond in an appropriate way to the context and setting, with particular attention required to the heritage characteristics of the locality.

A detailed analysis of the DCP controls is provided at **annexure A**.

With reference to the DCP Compliance table, it's noted that there are key departures from fundamental elements of the DCP which have the multifactorial effect of resulting in unsatisfactory outcomes to the point where the development is not able to be supported.

The key elements are explored further below.

Omitted internal shared pathway

The omission of the internal shared accessway creates a number of independent but related issues. In this regard:

- The design, despite amendments, still necessitates the removal of a number of significant exotic trees along the western edge of the site. This would be avoided if access was provided via an internal driveway. It is acknowledged that the DCP allows access to the townhouses from Sale Street, but only on the condition that no trees are impacted.

Council's Manager City Presentation has not offered his support of the development given the impacts arising from the necessary tree removal.

- The waste management arrangements are cumbersome and present an undesirable outcome within Sale Street including the likely removal of at least 1 street tree. The waste management arrangements for the RFB would be significantly improved with the inclusion of the internal driveway as waste collection could occur wholly within the site. This is a requirement of the DCP.
- Further from a traffic point of view, the internal layaway could provide an area for removalist trucks, delivery vehicles, etc. such that these activities could occur wholly within the site also. Finally, an allocation of visitor parking could also be provided off the internal access given the existing arrangements provides all visitor parking within the secure basement parking area. This is further discussed below.
- The omission of the shared driveway reduces the pedestrian permeability of the site and it also closes-off the public park at the eastern end creating an elevated safety and crime risks.

Heirtage Considerations

The heritage considerations are addressed below under the heading *Heritage, Streetscape and Tree Removal*.

Setbacks

The DCP requires the following setbacks:

Table 10: Setback Analysis

Street	Setback (m) required by DCP	Actual Setback (m)
Dalton Street	6.5	7.7
Prince Street	6.5	3.9
Sale Street	21.4	16.4 (townhouses) RFB – not dimensioned but appears similar to the Townhouses setback from the plans.
DPI	3 plus 10.5 for shared access way	3.1 to ground levels stairs to basement. 10.5 to the building proper.
Setbacks above 4 storeys	5	Level 4 / 5 th storey, no increased setback. Level 5 / 6 th storey penthouses are recessed from the edge of building below.

As can be observed from the above table, there are significant departures from the DCP in terms of setbacks.

In particular, the setback of the RFB within Prince Street and the setback of the corner of the building at the Prince and Sale Streets junction will result in an unacceptable outcome within the street. Council's heritage advisor has indicated that the development is not supportable on heritage grounds and the setbacks of the buildings are interrelated in that advice.

This is further addressed below under the heading **5.10.1 – Heritage, Streetscape and Tree Removal**.

Housing Needs / Unit Mix

One of the underpinning objectives of the DCP is to:

The integrated design is to achieve a mix of medium density housing including town houses apartment types, sizes and orientations to increase housing choice.

Accordingly, the DCP specifies the following apartment mix for the RFB:

Table 6-3 Mix of units to be included in apartment building

Dwelling Type	Dwelling Design
1 bedroom units	20%
2 bedroom units	70%
3 bedroom units	15%

The applicant proposes an alternative to the above as detailed below.

Table 11: Unit Mix Comparison

Dwelling Type	DCP Requirement	Required no. ⁵	No. of units / type	% (rounded)	% change
1 bedroom	20%	12.6 (12)	4	6.3%	-68.5%
2 bedrooms	70%	44.1 (43)	25	39.7%	-43.3%
3 Bedrooms	15%	9.45 (8)	34	54%	260%
Totals	105%	66.15 (63)	63	100%	--

Owing to the significant departure from the DCP demonstrated above, it was requested (as part of the Panel briefing notes) that the applicant amend the development commensurate to the DCP or, that further justification be provided in support of the departure.

In response, a dwelling needs study prepared by Umwelt was provided.

The study provides a literature review of applicable strategic planning documents, undertakes population projections, ventilates the market demand data derived from an EOI conducted by MAAS and provides a breakdown of existing housing types within the Orange housing market and compares those to the proposed development.

The report concludes that:

- there is generally an undersupply of units such as those proposed in comparison to the amount of conventional single dwellings in the market.
- Within the units / apartments segment there is an oversupply of 2-bedroom units and an undersupply of 3 bedroom.

⁵ Adjusted to account for the 105%.

Table 5.1 Dwelling composition comparison

Dwelling type	WEDCP recommendation	103 Prince St Proposal	Existing Orange unit Composition	Existing Orange townhouse Composition
1-bedroom dwellings	20%	6%	30%	17%
2-bedroom dwellings	70%	40%	55%	58%
3-bedroom dwellings	15%	54%	11%	23%

Figure 41: Dwelling Composition comparison (source: umwelt)

Whilst the author does not dispute the findings of the above referenced study, it is noted that the study offers little to support applicants request to provide 4 x one-bedroom units within the RFB.

The study conflates the number of 1- and 2-bedroom units when comparing to 3-bedroom units which strengthens the argument to support additional 3-bedroom units but provides limited commentary on the appropriateness of the number of 1-bedroom units proposed.

Notwithstanding the above, it should be noted that this style of higher density housing will be a relatively new entrant in the housing market in Orange, noting that the market has not experienced an RFB such as this in the past.

Accordingly, the author is of the view that whilst not strictly compliant with the DCP, the development does meet the overarching principals of the housing strategy and other relevant strategic planning studies as it will add to the diversity of housing by providing a mix of apartment types and sizes and allow for additional lifestyle choices for residents within the city.

Should the Panel take a contrary view to the authors view on this issue, it will need to be stated in the Panel's recommendation.

5.7.1.2 Chapter 00 – Orange LEP 2010 (sic)

Chapter 00 contains, inter alia, tree preservation provisions, which specify tree species which are exempt from the order, but also specifies the requirements for when tree removal is proposed including the requirement for advice from an arborist.

In the regard, a detailed assessment has been provided by Terras Landscape Architects.

Notwithstanding, as the subject trees are located within an HCA, development consent is required under Clause 5.10 of the LEP.

The development is not inconsistent with the requirements of Chapter 00.

5.7.1.3 Chapter 03 – General Considerations

Part 3 provides planning outcomes of a general nature. Those of relevance to this assessment relate to cumulative impacts, energy efficiency and waste generation. Cumulative impacts and waste generation are both addressed below under the heading “Likely Impacts”. Energy efficiency is addressed with reference to BASIX considerations. The other matters within Part 3 not listed here are not relevant to the assessment.

5.7.1.4 Chapter 04 – Special Considerations

Chapter 4 deals with, inter alia, contaminated land. This matter is considered above under the SEPP (Resilience and Hazards) considerations. The other matters within Part 4 not listed here are not relevant to the assessment.

5.7.1.5 Chapter 07 – Development in Residential Areas

A review of the chapter 7 provisions has been undertaken. There are no provisions of relevance within chapter 7 that have not been identified within the consideration of the West End Precinct DCP or elsewhere within the report.

5.7.1.6 Chapter 13 – Heritage

The subject land is located within a heritage conservation.

Heritage Impacts likely to arise from the development are addressed below under the heading **5.10.1 – Heritage, Streetscapes and Tree Removal**.

5.7.1.7 Chapter 15 – Car Parking

This chapter provides the applicable car parking requirements of certain development types.

The DCP specifies parking for residential development at the following rates:

- One-bedroom unit 1.0 space per unit
- Two-bedroom unit 1.2 spaces per unit
- Three (or more-bedroom unit) 1.5 spaces per unit
- Visitors 0.2 spaces per unit

Multi Dwelling Housing

Table 12: Parking Calculations - Multi Dwelling Housing

Dwelling Type	Number Dwellings	Applicable Rate	Required No.
3 or more beds	17	1.5 / dwelling	25.5
		+	+
		0.2 / dwelling	3.4
		Total	28.9

With reference to the attached plans, 34 on-site parking spaces are provided within the basement carpark. Thus, the development provides a surplus of **5.1 parking**.

RFB

Table 13: Parking Calculations - RFB

Dwelling Type	Number Dwellings	Applicable Rate	Required No.
1 Bedroom Units	4	1/ unit	4
2 Bedroom Units	25	1.2/unit	30
3 Bedroom Units	34	1.5 /unit	51
Visitor	63	0.2 /unit	12.6
Total	63	--	97.6

With reference to the attached plans, 105 on-site parking spaces are provided within the basement car park. Thus, the development provides a surplus of **7.4 spaces**.

The development is consistent with the requirements of the DCP in terms of on-site parking. Further discussion on parking is provided below.

5.8 PROVISIONS OF ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4 (s4.15(1)(a)(iia))

A draft planning agreement (aka a VPA) pursuant to section 7.4 of the EP&A Act has been prepared in relation to the development and applies to land described as Lot 501 DP1249083. The VPA is titled “103 Prince Street Planning Agreement” and is Dated 11 October 2022.

The terms of the VPA obligate the applicant to:

- the dedication of land with an area of not less than 2,620sqm for a public park (Park Land); and
- the carrying out of civil works, landscaping and other embellishments on the Park Land.

The landscape treatments and dedication of land are consistent with s7.4(1)(b) and s7.4(2)(a) of the EP&A Act.

The VPA is consistent with s7.4(3).

The VPA was exhibited concurrently with the development application. No public submissions were received directly relating to the VPA.

To ensure the VPA is executed effectively, a deferred commencement condition is recommended to be imposed on the notice of determination if the Panel is minded to approve the application.

The terms of the deferred commencement condition are recommended as follows:

PART 1 DEFERRED COMMENCEMENT CONDITION

This is a deferred commencement Consent pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979. This consent does not become operative until Condition (1) below has been satisfied. All deferred commencement conditions shall be satisfactorily resolved within a period of 12 months from the determination date as shown on this consent.

(1) Voluntary planning agreement - The applicant shall enter into a voluntary planning agreement (as defined in Section 7.4 of Environmental Planning and Assessment Act 1979 (NSW)) with Orange City Council for the delivery of the public benefits generally described in the “103 Prince Street Planning Agreement” prepared by Lindsay Taylor Lawyers Dated 11 October 2022 and accepted by Council on 1 November 2022 in respect of that offer.

5.8.1 S7.11 – Development Contributions

Pursuant to section 7.11 of the EP&A Act, Orange Development Contributions Plan applies to the land and given the proposed residential land-use, development contributions are to be levied.

The following tables summarise the applicable contribution.

Relevant conditions of consent would need to be attached to a notice of determination if the Panel is minded to approve the development in its current form.

5.8.1.1 Three Lot Subdivision

Development contributions are applicable to one additional residential lot⁶, pursuant to Orange Development Contributions Plan 2017 (Development in remainder LGA) as follows:

Table 14: Development Contributions - Subdivision

Component of plan	Rate	Amount
Open Space and Recreation	\$4,459.51 x 1 additional lot	\$4,459.51
Community and Cultural	\$1,293.24 x 1 additional lot	\$1,293.24
Roads and Traffic Management	\$5,886.40 x 1 additional lot	\$5,886.40
Local Area Facilities	--	--
Local Area Facilities	\$349.16 x 1 additional lot	\$349.16
TOTAL		\$11,988.31

5.8.1.2 Multi dwelling housing

Development contributions are applicable to the 17 x 3-bedroom dwellings (less the existing credit), pursuant to Orange Development Contributions Plan 2017 (Development in remainder LGA) as follows:

⁶ The planning assessment relating to DA312/2018(1) acknowledged that a single development contribution credit was applicable to the land the subject of this development application.

Table 15: Development Contributions - MDH

Component of plan	Rate	Amount
Open Space and Recreation	\$4,459.51 x 16 additional lot	\$71,352.16
Community and Cultural	\$1,293.24 x 16 additional lot	\$20,691.84
Roads and Traffic Management	\$5,886.40 x 16 additional lot	\$94,182.40
Local Area Facilities	--	--
Local Area Facilities	\$349.16 x 16 additional lot	\$5,586.56
TOTAL		\$191,812.96

5.8.1.3 RFB

Development contributions are applicable to the 63 x units (less the existing credit required under the initial subdivision stage (to account for this, the number of three-bedroom units levied a contribution has been reduced by one down to a total of 33 units)), pursuant to Orange Development Contributions Plan 2017 (Development in remainder LGA) as follows:

Table 16: Development Contributions - RFB

Component of plan	Rate	Amount
Open Space and Recreation	\$1,881.10 x 4 (1 bedroom)	\$7,542.40
	\$2,545.94 x 25 (2 bedroom)	\$63,648.50
	\$4,459.51 x 33 (3 bedroom)	\$147,163.83
Sub total		\$218,354.73
Community and Cultural	\$545.50 x 4 (1 bedroom)	\$2,182.00
	\$738.32 x 25 (2 bedroom)	\$18,458.00
	\$1,293.24 x 33 (3 bedroom)	\$42,676.92
Sub total		\$63,316.92
Roads and Traffic Management	\$2770.04 x 4 (1 bedroom)	\$11,080.16
	\$3,462.59 x 25 (2 bedroom)	\$86,564.75
	\$5,886.40 x 33 (3 bedroom)	\$194,251.20
Sub total		\$291,896.11
Local Area Facilities	--	--
Local Area Facilities	\$147.30 x 4 (1 bedroom)	\$489.20
	\$199.34 x 25 (2 bedroom)	\$4,983.50
	\$349.16 x 33 (3 bedroom)	\$11,522.28
Sub total		\$16,994.98
TOTAL		\$590,562.74

5.8.3 Water and sewer headworks charges

Council's Assistant Development Engineer has recommended conditions of consent requiring the payment of water and sewer headworks charges for both types of residential accommodation proposed. These would need to be attached to a notice of approval if the Panel is minded to approve the development.

5.9 PROVISIONS PRESCRIBED BY THE REGULATIONS s4.15(1)(a)(iv)

The development is not inconsistent with the provisions prescribed by the Regulations.

5.10 THE LIKELY IMPACTS OF THE DEVELOPMENT s4.15C(1)(b)

5.10.1 Heritage, Streetscape and Tree Removal

As detailed above, the applicant has elected to depart from various aspects of the West End Precinct DCP, in particular and relevant to the Heritage, Streetscape and Tree Removal impacts, the application as submitted contemplates access into the basement carpark via footpath crossings within Sale Street in lieu of the north / south accessway.

Whilst Council's Technical Services have not raised any objections to this arrangement from a traffic point of view, the arrangement does necessitate the removal of a number of trees within the western green belt fronting Sale Street contrary to the DCP.

It's acknowledged that the applicant has amended the application to improve upon the original outcome where all but one tree were to be removed. The proposal now involves the removal of 9 trees within the site and at least one in Dalton Street and possibly two street trees in Sale Street – refer waste management comments below.

Council's Manger City Prestation has provided the following analysis of the trees to be removed and the trees to be retained.

The following tree numbers correspond to the Terras plan no. L200 Ver. H.

Tree	Comment	Recommendation
Tree 1 – <i>Cedrus deodara</i>	<i>A tree of sound form and structure. Note that a nesting box installed in the specimen has an active beehive.</i>	Removal not supported
Tree 2 – <i>Chamaecyparis</i> sp	<i>A tree of reasonable form and structure</i>	Removal not supported
Tree 3 – <i>Pistacia chinensis</i>	tree is of poor form/dead.	Removal supported
Tree 4 – <i>Chamaecyparis</i> sp	Marked as being retained.	TPZ in accordance with AS4970 – 2009 shall be established prior to site construction works.
Tree 5 – <i>Cedrus deodara</i>	A tree of sound form and structure, its loss is disappointing and not supported.	Removal not supported
Tree 6 – <i>Liriodendron tulipifera</i>	a tree of poor vigour and structure it <u>should not</u> be retained.	Shall be replaced with like for like at minimum 200Litre container size.
Tree 7 – <i>Chamaecyparis</i> sp	a tree of reasonable health and structure in competition with Tree 6; helps create that urban forest linking of canopies.	Removal not supported

Tree 8 – <i>Liriodendron</i>	Marked as being retained.	Remedial pruning required. TPZ in accordance with AS4970 – 2009 shall be established prior to site construction works.
Tree 9 – <i>Liriodendron</i>	Marked as being retained.	Remedial pruning required. TPZ in accordance with AS4970 – 2009 shall be established prior to site construction works.
Tree 10 – <i>Liriodendron</i>	Marked as being retained.	Remedial pruning required. TPZ in accordance with AS4970 – 2009 shall be established prior to site construction works.
Tree 11 – <i>Fraxinus</i> <i>sp</i>	reasonable form and health. Marked as being retained	TPZ in accordance with AS4970 – 2009 shall be established prior to site construction works.
Tree 12 – <i>Salix</i> <i>matsudana var</i> <i>tortuosa</i>	a specimen of poor vigour and health, significant tip dieback and epicormic type growth.	Tree <u>should not</u> be retained.
Tree 13 – <i>Chamaecyparis</i> <i>lawsoniana</i>	Marked as being retained.	TPZ in accordance with AS4970 – 2009 shall be established prior to site construction works.
Tree 14 – <i>Liriodendron</i>	poor vigour, significant tip dieback.	Removal Supported
Tree 15 – <i>Melia</i> <i>azedarach</i>	poor vigour, significant tip dieback	Removal Supported
Tree 16 - <i>Cedrus</i> <i>deodar</i>	a tree of sound form and structure; its loss is very disappointing	Removal not supported
Tree 17	DEAD	Removal supported
Tree 18 – <i>Acer</i> <i>buergerianum</i>	marked as being retained.	TPZ in accordance with AS4970 – 2009 shall be established prior to site construction works.
Tree 19	marked as being retained.	TPZ in accordance with AS4970 – 2009 shall be established prior to site construction works.
Tree 20 – <i>Prunus</i>	marked as being retained.	TPZ in accordance with AS4970 – 2009 shall be established prior to site construction works.
Tree 21 – <i>Lagerstroemia</i> <i>indica</i>	marked as being retained.	TPZ in accordance with AS4970 – 2009 shall be established prior to site construction works.

Tree 22 – <i>Magnolila grandiflora</i>	A tree of reasonable structure considering past history, exhibiting apical tip dieback.	No recommendation made.
Tree 23 –	doesn't exist.	N/A

Council's Manager City Presentation further notes that *trees above in blue (an additional five [5]) would be retained if the proposal adhered to the DCP and created a pocket park on the western boundary. They are trees with minimum 20 and up to 50-year life expectancy.*

Further to the above comments from Councils' MCP, Council Heritage Advisor states:

The current building setback, access design provisions and landscaping –failure to retain appropriate trees do not meet the Recommendation in relation to setbacks, amenity and tree retention within the heritage context and an appropriate level of amenity.

Based on the above SME advice, it is recommended that the Panel require redesign of the development to provide the internal shared pathway / vehicular access; in addition to a greater setback from Sale Street and thus, negate the removal of the above referenced trees.

However, it will be necessary to impose conditions of consent in the event the Panel is minded to approve the development in its current form. The conditions would include a requirement for the replacement trees as noted above, provision of street trees in Council's preferred tree cell structures and implementation of the required TPZs. TPZs are to be implemented by a project arborist in consultation with Council's Manager City Presentation.

Heritage and Streetscape Considerations

Multi Dwelling Housing – As detailed above, the design of the multi dwelling housing has evolved throughout the life of the application.

The long linear north and south elevations of the building are now appropriately articulated through the use of expressed vertical walls and recessed elements which fractionates the building in to three separate but joined parts.

The building design and presentation is considered acceptable subject to further changes to materiality relating to the ground floor walls and framing of balustrades.

If the Panel is minded to approve the development, conditions of consent are recommended which achieve the following:

- For all dwellings within the site: amend the exterior wall material to be face brick for all ground floor walls facing north and west.
- Replace the aluminium framed glass balustrade with a steel framed glass balustrade

RFB – As detailed above, as part of the initial appraisal of the application, an anomaly was identified in relation to the siting of the RFB where it encroached into the RE1 land. This had the effect of causing the whole development to be prohibited.

The remedial action taken by the applicant to address this issue was to simply move the building ~2.6m closer to Prince Street. Not only did this action serve to amplify the bulk and scale of the building, but it has also had the compounding effect of reducing the amount of ground floor open space and associated planting, as well as projecting the five sets of balconies (29 structures in total) closer to the street.

Council's Heritage Advisor notes *there are three issues which directly affect the bulk and scale/height of the proposal in relation to the consideration of the Heritage context which include:*

- *The perspective view/architectural renders show clearly that the balconies are substantial structures with enclosed sides*
- *The materials are similar to those on the main building – generally concrete and*
- *While they cantilever above the ground and change in material at the top, the transition in bulk and scale is minimal*

Council heritage advisor concludes: *The bulk and scale of the apartment building in relation to the setback from the Prince Street boundary does not meet the Recommendation for the Heritage context and is not supported [emphasis added].*

In relation to the siting and appearance of the built form on level 5, Council's Heritage Advisor is generally supportive of the amended design noting the following:

Modified drawings indicate the use of a low-pitched roof to Level 5 and the introduction of pergola canopies. Drawing A-300 illustrates view lines from the Prince Street northern footpath to show that the Level 5 bulk would not be visible from that side of the street. It does not show view lines from the Prince Street footpath on the southern side of the street. The modified design provides for the use of a combination of roof form, materials, colours and details which would provide suitable mitigation of the scale/height in the context and the change is supported.

Heritage Interpretation

A heritage interpretation plan (HIP) has been submitted in support of the application. The HIP will adopt a variety of materials, media and devices to convey the following:

- 1. Recognition of the site being part of the traditional lands of the Aboriginal Wiradjuri peoples.*
- 2. Recognise the early layout of the 1933 hospital building.*
- 3. Record and present important historical themes and associated persons.*
- 4. Illustrate the character and development of the early Base Hospital precinct.*
- 5. Present a gallery of historical and social images associated with the site.*

Council's Heritage Advisor has reviewed the HIP and indicated that the HIP is consistent with NSW Heritage Office guidelines and is generally acceptable. However, the following are recommended to be included in a condition of consent prior to CC for the RFB, if the Panel is minded to approve the application:

- The applicant shall commit to the creation of a website or on-line platform for presenting the content identified in the HIP
- The applicant shall commit to consult with the Aboriginal community on the final content of any heritage interpretation material and the location of the proposed totem poles.
- The applicant shall commit to consult with the Orange & District Historical Society as part of the final review of the content for the interpretation material.
- The applicant shall commit to the installation of the five interpretive sculptural objects from local artists nominated for the central park landscape.
- The applicant shall commit to the mounting of interpretive images related to the strategy within the two lobbies/common areas of the apartment building.

- The applicant shall commit to preparing a detailed design for the main interpretive panel proposed for the Respite Park on the corner of Sale and Prince Streets to ensure that it is fully accessible for viewing. The post mounted sign as shown in the HIP will not meet this criterion.

Summary of Heritage Matters

The following summary is provided by Council's Heritage Advisor in relation to the heritage context (relating to both buildings):

In relation to the assessment of the project within the heritage context, the following issues as shown within the proposal are not supported but are capable of modification through design revisions ensuing from Conditions of Consent:

- *The heritage interpretation strategy including structures for the web content, landscape and buildings;*
- *Use of face brickwork to all ground floor walls on both buildings;*
- *Use of face brickwork to Sale, Dalton & Prince Street boundary walls;*
- *Provision of four additional pergolas to the Prince Street entrances.*

The following issues are not supported as documented in the proposal and require further consideration. The existing scheme is therefore not supported in the current form in relation to these matters:

1. *Retention and protection of significant trees;*
2. *Loss of landscape, amenity & safety within the Sale Street setback for the provision of servicing & access;*
3. *Setback and landscape to the eastern boundary with the DPI premises;*
4. *Provision of a commercial activity with community benefit including a kiosk and accessible family toilet;*
5. *The setback of the apartment building to the southern boundary, the Prince Street frontage and the south western corner at Sale Street;*
6. *The architectural form and detailing of the apartment building: the Prince Street balconies with particular emphasis on the Sale Street corner.*

The author is of the view that items 1-3; and 5 and 6 stated above are sufficient to warrant redesign of the development.

In relation to item 4, this is a more challenging item for the applicant to achieve as the two zonings affecting the land limit the types of commercial activity allowed; a café or restraint or a takeaway food drink premise, for instance are prohibited under the current zoning. There appears to be a disconnect between the LEP and the DCP on this issue.

Notwithstanding the above, provision of a suitable amenities building within the public park could easily be achieved via condition of consent if the Panel was minded to approve the development.

Given the above advice of Council's Heritage Advisor, it is recommended the Panel require redesign of the development to adequately address the above matters.

5.10.2 Landscaping and Public Space

5.10.2.1 Public Open Space

The landscape masterplan for the public open space has been reviewed by Council's Manager City Presentation. There are no fundamental objections to the amend landscape plans however conditions of consent are recommended if the Panel is minded to approve the development to include the following:

- A detailed landscape plan of the public open on proposed lot 602 shall be prepared by a landscape architect and submitted to Council's Manager Development Assessments for approval prior to the issue of the first Construction Certificate for the residential flat building and incorporating the following requirements:
 - The detailed landscape plan shall be generally in accordance with Landscape Masterplan plans number L401 – L405 job No. 13956.5 Rev H (all plans) prepared by Terras Landscape Architects; except as amended by the following:
 - The plan shall include a detailed schedule of all selected trees, shrubs and ground covers including botanical name, size at maturity, pot size and number of each species.
 - A BBQ area shall be installed and shown on the plans adjacent to the central path mid-way between the children's play equipment and the central pergola. The BBQ area shall provide suitable electric BBQs for public use.

- A single unisex accessible toilet shall be installed generally in line within the BBQ area (north / south axis) but on the opposite side of the central path to the BBQ area.
- A perimeter pathway shall be installed around the outer edge of the park with secondary paths branching off the perimeter path that adjoin each private access gate in a common boundary with the public open space. The perimeter path shall be sufficiently offset from the boundary to allow for gate swing. All paths required under this condition shall be decomposed granite or similar.

A supplementary condition(s) will be required which obligate the applicant to complete the works as shown in the approved landscape plan prior to the issue of an occupation certificate for the residential flat building or as required by the terms of the VPA.

5.10.2.2 Landscaping within the residential development

No objections have been raised in relation to the proposed landscape masterplan as they relate to the multi dwelling housing and RFB.

A similar set of conditions (excluding the requirement for the BBQ area, public toilet and pathways) to the ones detailed above would be required for both stages 1 and 2 of a consent if the Panel is minded to approve the development.

5.10.2.3 Pocket Park

The landscape plans have been amended to include a “pocket park” in the southwestern corner of the site. There is some ambiguity in the DCP as to the future intent of this area.

It is understood Council does not wish to take ownership of the pocket park.

However, the heritage interpretation plan seeks to install some form of heritage interpretation panel in this space.

Heritage interpretation of the former public hospital should be available for the general public to enjoy and to support the ongoing understanding of the heritage significance and history of the site.

As such, a public positive covenant is recommended to be registered against the title of the property in accordance with section 88E or 88B of the Conveyancing Act 1919. The covenant would allow public access into the “pocket park”. The covenant would require certain additional conditions relating to matters such as ongoing maintenance, requirement for the area to be kept in a safe and healthy condition, etc.

5.10.3 Traffic, Parking and Access

Traffic

A traffic Impact statement has been submitted in support of the development.

Council’s Technical Services have not raised any objections to the traffic arrangements.

That said however, as detailed throughout this report, the DCP requires vehicular access to be provided via a north/south shared accessway that joins directly with Prince and Dalton Streets.

From a traffic point of view, adopting the DCP’s requirements for access would result in the following additional positive outcomes:

- Waste management could be wholly contained within the site as detailed below.
- An area for removalist trucks and other delivery vehicles could be provided within the laneway in proximity to the RFB with direct access into the lift well and thus, removing the need for trucks and commercial vehicles to park within the street network for such activities.

Parking

As detailed above, the development meets the requirements of the DCP in terms of off-street parking, Council Technical Services have not raised any objections to the parking arrangements.

Notwithstanding, from a practical sense, its noted that all of the on-site parking, including the required visitor spaces is provided within the secured basements.

What this means is that visitors will have to prearrange with residents to get access into the basement parking and utilise the visitor spaces. Whilst this will occur in some circumstances, in reality, it’s likely that the majority of visitors will park within the surrounding streets.

This arrangement could be improved if the internal laneway as required by the DCP was to be included as part of the development. A proportion of the required visitor spaces could be provided directly off the laneway and thus, accessible without needing to arrange access into basement carpark for visitors. This would reduce the developments impact upon off-site parking in the locality.

Pedestrian Access

Pedestrian access into the respective buildings is adequate. Access into each of the townhouses is provide directly from Dalton Street in accordance with the DCP. Likewise, several access points into the RFB are provided from Prince Street including an accessible ramp.

Active travel within the surrounding street network comprises mostly sealed footpaths within the road reserves. Council's Technical Services have recommended conditions of consent that require footpath upgrade works within the frontage of the development site within Dalton, Sale and Prince Streets. These recommended conditions would need to be included in a notice of approval if the Panel is minded to approve the development.

Pedestrian access associated with the public park would be significantly improved if the internal shared pathway was provided, not only would permeability through the site be improved, but it would also create a safer public space and reduce the risk of crime as detailed below under the heading - safety, security and crime prevention.

5.10.4 Waste Management

5.10.4.1 Construction Waste Management

Council's Environmental Health and Building Surveyor has recommended a condition of consent that obligates the applicant to prepare a detailed waste management plan with the express objective of reducing waste generated during the construction phase of the development.

This condition would need to be included in a notice of approval if the Panel is minded to approve the development.

5.10.4.2 Operational Waste management

Multi Dwelling Housing

The ongoing waste arrangements for the end users within the Multi Dwelling Housing is considered acceptable.

The applicant amended the proposal to relocate the storage of bins from the rear yards of the respective dwellings to the front courtyard area.

This arrangement is far more practical than the arrangement that was initially proposed. Under the current arrangement residents of the dwellings are able to walk their bins a short distance directly to the kerb side in Dalton Street under a conventional kerb-side agreement.

RFB

Waste management within the RFB is obviously inherently more complex than the dwellings.

The arrangement to manage waste within the RFB is described below:

- Two vertical waste chutes are provided in the common areas of each level allowing residents to dispose of general waste which travels down into bins that are stored in the waste storage area within the basement.
- 240L recycling bins are provided on each level adjacent to the general waste chutes.
- The building manager is responsible for the management of all bins and the waste arrangements generally.
- The two bin storage areas within the basement provide storage capacity of 9 x 1100L Mobile Garbage Bins (MGBs).
- A temporary bin storage area is then provided at street level for the MGBs to be stored prior to collection.
- A small motor vehicle will be required to tow the bins from the basement, up the ramp and to the storage area.

A detailed drawing has been prepared which depicts how the bins will be emptied into the garbage truck provided below:

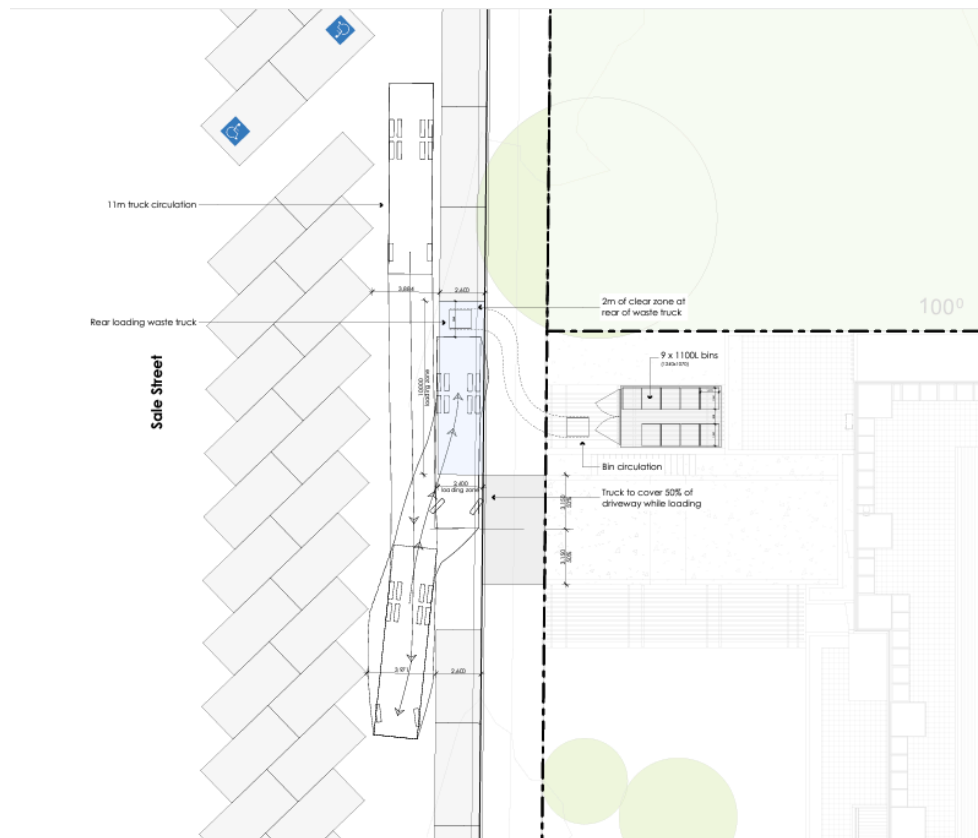


Figure 42: Garbage Collection Arrangements

Given the existing traffic arrangements in Sale Street with centre herringbone pattern parking, it's likely that this arrangement will present undesirable traffic impacts whilst the collection is occurring. It's also likely, based on available information, that an area of no parking or a loading zone would need to be established within the street to facilitate this arrangement which would reduce the amount of on-street parking; although, this could be managed via a time limited loading zone and a management plan that required the collection of garbage to occur between certain times. Additionally, and not shown on the above referenced plan, is the presence of two street trees where this arrangement would likely necessitate their removal.

It should be noted that if the arrangement under the DCP where the north/south access laneway is provided, the collection of waste could occur wholly within the development site. A bin storage area could be provided adjacent to the access laneway, a garbage truck could enter and leave the site in a forward direction; it would eliminate the need for the temporary bin storage structure within the front setback in Sale Street., it would eliminate any loss of street parking attributed to the collection of garbage and it would remove the need for the 1100L MGBs to cross the public footpath.

Related to the above, Council's Technical Services have provided the following advice within their technical referral:

Proposed waste management / servicing of the apartment building via mobile 1m3 MGBs towed to storage yard beside Sale Street footpath is not desirable. Preference is for a redesign of the building that allows on-site servicing of bins from the basement carpark.

Based on the advice from Council's Technical Services it is recommended that the Panel require the applicant to undertake the necessary redesign.

If the Panel is minded to approve the development as submitted, it will be necessary to include conditions of consent that deal directly with the management of the waste for the RFB, including:

- The introduction of a time limited loading zone, or similar, adjacent to the RFB basement carpark access.
- Prepare and submit to Council for approval a Plan of Management that deals directly with the management of waste within the RFB and outlines as a minimum; the schedule of collection for MGBs, when the MGBs will be stored in, and collected from, the temporary storage area .
- Obligate the owner and any successive body corporate or similar to enter into an appropriate commercial waste agreement for the collection of waste in line with the adopted PoM.

5.10.5 Noise Impacts

A Noise Assessment (NA) has been prepared by MAC acoustics and has been submitted in support of the development.

The NA identified sensitive receivers, recorded background noise levels, provided operational noise criteria (Intrusive noise levels, etc.) and construction noise criteria, modelled applicable scenarios during both construction and operational phases and, at the end of which the following results were obtained

5.10.5.1 Construction Phase

Table 18 presents the results of modelled construction noise emissions. Predictions identify that emissions from construction have the potential to be marginally (up to 3dBA) above the noise management levels at the closest assessed residential receivers. Accordingly, the following practical recommendations are provided to reduce the impact of construction noise on surrounding receivers:

- all plant should be shut down when not in use. Plant to be parked/started at farthest point from relevant assessment locations;
- operating plant in a conservative manner (no over-revving);
- selection of the quietest suitable machinery available for each activity;
- avoidance of noisy plant/machinery working simultaneously where practicable; and
- minimisation of metallic impact noise.

Table 18 Combined Noise Predictions

Receiver	Receiver Type	Predicted Noise Level dB LAeq(15min)	PNTL dB LAeq(15min)	Compliant
R1	Residential	57	55	x
R2	Residential	57	55	x
R3	Residential	50	55	✓
R4	Residential	58	55	x
R5	Residential	58	55	x
ED1	Educational	53	55 ¹	✓
C1	Commercial	57	70	✓
C2	Commercial	64	70	✓
C3	Commercial	57	70	✓
C4	Commercial	55	70	✓
C5	Commercial	58	70	✓
C6	Commercial	54	70	✓

Note 1: External level based on 10dB with windows open for adequate ventilation (NPF).

5.10.5.2 Operational Phase

6.1 Operational Noise Assessment

Noise predictions from all sources have been quantified at surrounding residential receivers to the project site and are presented in **Table 16**.

Table 16 Noise Predictions – All Receivers				
Location	Period ¹	Predicted Noise Level dB LAeq(15min)	PNTL dB LAeq(15min)	Compliant
R1	Day	32	50	✓
	Evening	32	43	✓
	Night	<30	40	✓
R2	Day	<30	50	✓
	Evening	<30	43	✓
	Night	<30	40	✓
R3	Day	<30	50	✓
	Evening	<30	43	✓
	Night	<30	40	✓
R4	Day	38	50	✓
	Evening	38	43	✓
	Night	35	40	✓
R5	Day	30	50	✓
	Evening	<30	43	✓
	Night	<30	40	✓
ED1	When in use	34	43 ²	✓
C1	When in use	34	63	✓
C2	When in use	35	63	✓
C3	When in use	30	63	✓
C4	When in use	33	63	✓
C5	When in use	37	63	✓
C6	When in use	30	63	✓

Note 1: Day - the period from 7am to 6pm Monday to Saturday or 8am to 6pm on Sundays and public holidays; Evening - the period from 6pm to 10pm; Night - the remaining periods.

Note 2: External level based on 10dB with windows open for adequate ventilation (NP0).

Council's Environmental Health Officer has reviewed the NA and has not raised any objections to the development in relation to noise impacts. However, certain conditions of consent are recommended to ensure compliance with the terms of the NA. These would need to be attached to the notice of approval if the Panel were minded to approve the development.

5.10.6 Impact on Existing non-Council Services

Sale Street comprises street lighting on the footpath as shown below. Based on available information, it appears as though the light pole with Sale Street at the northern end of the site shown in the below figure conflicts with the proposed vehicle access to the multi dwelling housing and will require relocation if the proposed access arrangements are agreed to.



Figure 43: existing light requiring relocation

There is existing NBN infrastructure within the Sale Road reserve that appears to conflict with the RFB vehicle entrance as shown in the below figure⁷. Relevant conditions of consent would be necessary to ensure appropriate steps are made with NBN to relocate the infrastructure.



Figure 44: NBN infrastructure and location of access

⁷ This assessment has been undertaken by extrapolating measurements from the submitted site plan and overlaying them on the detailed survey using ArchiCAD. The above figures are approximate and for assessment purposes only.

5.10.7 Safety, Security and Crime Prevention

The safety, security and crime prevention considerations for a development can be assessed using the crime prevention through environmental design (CPTED) principles of natural surveillance, access control, territorial reinforcement and space management as follows:

Natural Surveillance

An appropriate level of natural surveillance opportunities will be afforded to future residents of the RFB.

Windows and /or balconies within all units within the RFB and multi dwelling housing are oriented to achieve reasonably clear sight lines between private and public areas.

The primary entries to the RFB are clearly identifiable from the street.

Notwithstanding the above, unavoidable practical realities may arise within the design of an RFB that results in areas of possible entrapment opportunities, concealed areas providing hiding spots, or the like. In such circumstances, it's important that mitigation measures such as exterior lighting, CCTV, etc. are implemented to reduce the risk as discussed below.

The public open space proposed within the application is closed off at the eastern end, contrary to the objectives under the DCP.

The Panel should satisfy itself that this arrangement is acceptable. As detailed above, the arrangements envisaged under the DCP would provide a superior outcome as it would remove the dead-end at the rear of the park and provide additional opportunities for escape for a victim in the event of crime being committed within the open space. This goes to (one of) the core issues identified within the assessment, that being, the departure from DCP to remove the North / South internal shared laneway creates other issues.

It is noted that NSW Police have provided comment on the development as detailed below.

Access Control

Access control is the principle which deals with physical and symbolic barriers used to attract, channel, avert or control the movement of people in an attempt to minimise criminal behaviour. The access controls implemented for the development are listed as follows:

- Clear entry points are provided to all buildings.
- Access to the rear yards of ground floor units where they adjoin directly with the public realm are controlled by lockable gates.
- Access into the basement car parks will be restricted to residents or their guests.
- The public open space will be an attractive and inviting place for people to congregate.

Territorial Reinforcement

Fencing to external boundaries and within the development site between units is considered acceptable to demarcate the area of public and private open space areas.

Space Management

The exterior of the buildings will be well maintained and well-presented and will be appropriately illuminated at night. Any occurrences of graffiti is required to be removed promptly, and faulty exterior lighting, must be repaired as soon as practicable.

The applicant submits that the RFB will be managed by an appointed building manager. It will be their responsibility to ensure the above building maintenance is undertaken.

In terms of the maintenance of the public open space, as this land would be dedicated to Council, it would become Council's responsibility to manage the park as required by the provisions within the Local Government Act.

NSW Police Referral

The development was referred to NSW Police for review and comment in relation to the development's appropriateness with regards to CPTED principles.

Central West Police District's Crime Prevention Officer has reviewed the Development and identified the following Crime Risks:

The identified crime risks for residential areas are Break and Enter offences, Stealings, Malicious Damage and Domestic Violence offences. The proposed development would be expected to increase the reporting of these offences but only insofar as the increase in population density occurs.

The specific crime risks that occur within a housing development with basement storage cages are increased stealing offences specifically where the storage cages are not designed adequately. This rise has been evident in metropolitan areas that see an increase in these sorts of developments.

The public greenspace will attract its own set of crime risks if care is not taken in the design to prevent certain crimes from occurring.

Based on the above, the Crime Prevention Officer provides the following recommendations:

- *The party responsible for the public greenspace install lighting at the rear (eastern end) of the plot to allow for vision from the street in hours of darkness*
- *CCTV be installed at entrance/ exit to Unit block basement*
- *Public areas on all parts of development be adequately lit during hours of darkness*
- *A strong consideration for CCTV being installed in public areas of all buildings.*

With reference to the above, the applicant has submitted a detailed external lighting plan which shows lighting within the Public open space as well as the communal areas of the RFB.

If the Panel is minded to approve the development, it is recommended the above recommendations from NSW Police be adjusted as required and included as conditions of consent.

In addition to this, if a consent is to be prepared, it is recommended that a condition of consent be included that requires additional lighting to be included at the eastern end of the public open space to improved safety and reduce the risk of crime.

Based on the foregoing, coupled with the imposition of conditions of consent as recommended, the proposed development presents an acceptable level of safety, security and crime prevention.

5.10.8 Economic Impacts

The development has the potential to generate positive economic impacts during both the construction phase and the operational phase of the development.

The development is likely to stimulate the local economy during the construction phases of the development through the procurement of local tradespeople and the use of local suppliers.

Post-construction the development will increase the amount of housing stock within the local housing market, providing housing typologies that have largely been unrepresented in the past.

5.10.9 Social Impacts

The development has the potential to result in positive social impacts.

The development includes a VPA which requires the developer to develop the public recreation land and dedicate the land to Council. This will provide a material public benefit and will provide a social meeting place for people living and working in the area to use.

The design of the RFB will create social inclusion and opportunities for residents to meet and interact within the areas of communal open space, with particular reference to the roof terrace on level 4 and the “pocket park” in the southwest corner of the site (in addition to the public open space land).

5.10.10 Cumulative impacts

Cumulative impacts of a development can arise under four typical scenarios, namely:

- time crowded effects where individual impacts occur so close in time that the initial impact is not dispersed before the proceeding occurs

- space crowded where impacts are felt because they occur so close in space, they have a tendency to overlap
- nibbling effects occur where small, often minor impacts, act together to erode the environmental condition of a locality; and
- synergistic effects, where a mix of heterogeneous impacts interact such that the combined impacts are greater than the sum of the separate effects.

Whilst it would be possible for one or more of the above scenarios to occur; particularly during the construction phase of the development, appropriate conditions of consent recommended by Council's Environmental Health Officer as detailed above, will ensure such a situation does not arise, or if it were to arise, it would not occur at levels that would not cause adverse impact or harm within the locality.

The development is therefore considered acceptable with regards to cumulative impacts in the locality.

5.11 THE SUITABILITY OF THE SITE s4.15(1)(c)

The site would be suitable for some form of medium density residential redevelopment given the following:

- RFBs and multi dwelling housing are both permissible within the R3 zones.
- The objectives of the zone encourage residential development at a higher density than other parts of the city.
- A detailed site specific DCP applies to the land that seeks to ensure a certain desired future character is achieved when the land is further developed.
- The site is conveniently located in proximity to the CBD to encourage walking and cycling and reduce motor vehicle dependency.
- The author is not aware of the site being affected by any physical, natural or technological hazards that have not been identified within the report.

Whilst the site may be suitable for a medium density residential development as detailed above; there are a number of impacts identified within the application currently before the Panel that results in the site being unsuitable for the development that is proposed.

5.12 ANY SUBMISSIONS MADE IN ACCORDANCE WITH THE ACT s4.15(1)(d)

5.12.1 First Exhibition Period

The following provides detailed consideration of the submissions received during the first and second exhibition periods. The submissions are number in corresponding order to those in the redacted version at **annexure F**

Submission Summary	Consideration
<p>Submission 1</p> <p>The author of the submission draws attention to the selected plant species proposed within the public open space, being evergreen. The author of the submission suggests this is an inappropriate selection for Orange's climate and recommends replacement with deciduous species.</p> <p>The submission also questions the appropriateness of balconies on the southern side of the building.</p>	<p>The author agrees with the comments in relation to tree species within the public open space, refer to above commentary under the heading Landscaping and open space.</p> <p>In relation to the comments regarding orientation of balconies, the applicant has responded with the following:</p> <p><i>Some south facing balconies are unavoidable within the design development of a residential flat building given the site contains a long south facing boundary that requires street address, facade articulation and streetscape activation. A wellbalanced design considers the climate of the southern balconies in collaboration with multiple other design considerations. There are only two units per floor that contain a balcony with only south facing facades. The residential flat building is compliant with the solar access and natural ventilation requirements of SEPP 65 Design Quality of Residential Apartment Development.</i></p> <p>The author accepts the above comment.</p>
<p>Submission 2</p> <p>The author of the submission raises concerns in relation to vehicular access arrangements and the impacts on the availability of parking within the locality.</p>	<p>It's noted that the development complies with the DCP in relation to car parking.</p> <p>It's also noted that Council's Technical Services have not raised any objections to the development in terms of traffic and parking arrangements.</p> <p>The author agrees that the development has the potential to impact upon on-street parking given the visitor spaces are all within the secure basements.</p> <p>Commentary is provided above in relation to addressing this issue as part of the redesign.</p>

<p>Submission 3</p> <p>The submission request amendments to the access arrangements such that all traffic enters and leaves via Dalton.</p> <p>The author also raises the following questions:</p> <p>What is Maas Group.</p> <p>Why do we need multi-level apartments in Orange?</p> <p>Why Prince Street when the Traffic is already heavy?</p> <p>Why not building on ground level that people can afford?</p> <p>Where are all the people coming from and what do they do?</p>	<p>Extensive commentary is provided above in relation to the access arrangements.</p> <p>In relation to the first question, the EP&A Act does not concern itself with who an applicant is, the Act simply states anyone (including a company) can make a development application on any land, but only with the consent of the owner.</p> <p>In relation to the second question, the DCP is predicated on the access arrangements comprising a north/south shared accessway. There are a number of sound planning reasons supporting this arrangement as detailed above.</p> <p>In relation to the third question, this development provides medium density housing which will add to the diversity of housing within the local housing market. This is consistent with all relevant strategic policies applying to the LGA. Moreover, “ground level homes” would be contrary to the objectives of the zone and an inefficient use of R3 zone land.</p> <p>The third question is not a concern pertaining to the assessments of the application. This is a consideration that would have been dealt with, to some extent when preparing the existing LEP.</p>
<p>Submission 4</p> <p>The author of the submission suggests the applicant install EV chargers.</p>	<p>This is not something explicitly required in the DCP, however, it would align with the energy efficiency controls within the DCP and it is recommended that the Panel consider a condition of consent requiring an EV Charging station.</p>
<p>Submission 5</p> <p>The Author of the submission raises concerns in relation to:</p> <ul style="list-style-type: none"> the appropriateness of the clause 4.6, 	<p>In response to the comments regarding the appropriateness of the clause 4.6, this is addressed separately above.</p> <p>In terms of the bulk and scale of the building and its relationship with the adjoining building and broader context, detailed commentary is provided above, the author is requesting redesign to address this issue.</p>

<ul style="list-style-type: none"> • the bulk and form of the development and its incongruity with the adjoining DPE building in terms of setbacks and articulation. • The residential density of the development based on the apartment mix within the DCP leading to increased impacts in terms of traffic and parking and offer a suggestion to delete the penthouses in response to the additional density. • Overshadowing of the adjoining DPE building creating added pressure costs associated with heating the building in winter • The setback of the building from the eastern boundary. • The removal of the trees to the west of the site and suggestion to reposition the building closer to the western boundary if the trees are removed. • Increased traffic and parking impacts in the locality with the potential for residents and visitor to the RFB parking in the DPE car park. 	<p>In terms of density and occupation rates, its acknowledged above that the apartment mix proposed diverges from the DCP. It is also noted however, that the density calculations under the DCP in terms of dwellings per hectare is more or less achieved as detailed within the DCP compliance table. The consequence of additional density quite rightly relates to added pressures in the locality on things like traffic and parking. However, as detailed above, the development complies with parking requirements and commentary is provided in relation to the provision of visitor parking external to the secured basements.</p> <p>It's acknowledged above that the development does not strictly accord with the DCP setback requirements from certain boundaries, noting the DCP requires a 13.5m setback from the eastern boundary and the subject building is proposed at 10.5m.</p> <p>Notwithstanding, the LEP allows a building that is between 16m and 25m on the subject land, so it was always envisaged (from the time of the rezoning of both properties) that a tall building would eventually be built on the land and a 3m additional setback of a building that is 16m will not significantly reduce afternoon shadowing upon a western elevation of an adjoining building.</p> <p>Furthermore, the Orange DCP prioritises and protects only north facing windows of adjoining dwellings from overshadowing, not western elevations of a commercial building; and finally, it is difficult from a practical sense to avoid overshadowing a western elevation where a similar scale building is allowed under an LEP and DCP.</p> <p>In terms of the tree removal along the western boundary, as detailed above, redesign is recommended to retain the significant trees.</p> <p>A detailed assessment of parking is provided above which shows the development to be compliant with the DCP.</p>
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<p>Submission 6</p> <p>The submission raises concerns in relation to the following:</p> <ul style="list-style-type: none"> • The bulk of the proposed RFB, its height and lack of relief; along with its proximity to the street and adjoining building. • Concerns relating to the composition and density of the RFB, noting that the proposed unit mix deviates from the DCP by increasing the number of 3-bedroom units thus, creating the likelihood of additional occupants and additional impacts from traffic, parking, etc. • The appropriateness to allow the variation to the height of building standard. • Overshadowing of the adjoining building to the east. • Public Park access and the DCP design principle to provide through site links into the adjoining property. • Impacts of tree removal and a request for Council to consider repositioning the building further to the west if all the trees were to be removed. • Traffic Impacts. • Public and active transport. 	<p>The concerns raised in the submission in relation to bulk, setbacks and visual appearance of the RFB have been supersede by the RFB being moved further forward to what was proposed when this submission was originally drafted. Notwithstanding this, as detailed above, this report is recommending redesign to address these concerns.</p> <p>In relation to the additional density as a result of the proposed unit mix, its noted that the development complies with the DCP in terms of carparking and further commentary is provided above around the preference for the internal driveway and the opportunity for visitor parking outside of the secure basements. It's also noted that Council's Technical Services have not raised any objections in relation to traffic.</p> <p>Comments in relation to overshadowing of the adjoining building to the east are provided above in relation to submission 5.</p> <p>Commentary in relation to the clause 4.6 request is provided above which outlines that the submitted cl.4.6 does not meet the necessary level to satisfy the consent authority in the required matters.</p> <p>The submitter's sentiments towards the through site link are noted. It is recommended that the Panel include a condition of consent requiring a secured gated providing access from the DPE site into the public park.</p> <p>In relation to tree removal, as detailed above, this report is recommending redesign of the development to retain the significant trees.</p> <p>The notion of shifting the RFB further to the west to reduce an overshadowing impact on a commercial property at the detriment of the public realm would not have been supported.</p> <p>Traffic Impacts are addressed above.</p>
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<ul style="list-style-type: none"> • Materiality of the RFB. • Residential amenity and the DCPs aspirations for the development to provide some form of commercial land-uses. 	<p>In relation to active transport, the subject site is considered suitable for medium density residential development. Its peripheral CBD location means its well position to encourage walking and cycling. The same rationale was adopted for the rezoning of the adjoining land to B4.</p> <p>In terms of public transport, there are a number of bus routes that run along Anson Street which is in close proximity to the subject land.</p> <p>In terms of the selected materials of the RFB, detailed commentary is provided above, and this report is recommending redesign of the development.</p> <p>In terms of residential amenity and the provision of commercial uses within the development, whilst it is acknowledged that the DCP encourages this, at an LEP level, the two zones allow only a limited range of commercial uses; a café or restaurant for instance is prohibited. Notwithstanding, there are a number of existing non-residential uses in close proximity to the site such as the pharmacy, barber and takeaway food drink premises in Sale Street and the coffee shop located in the DPE building next door to the subject land.</p> <p>Notwithstanding this, the Panel may take a contrary view to that of the author and insist upon a suitable commercial use/s as part of the recommendation for redesign.</p>
<p>Submission 7</p> <p>This submission is an adjunct to submission 3 and is by the same author. The author raises concerns in relation to additional traffic within Prince Street and the impact that may have on them by way of vibration and air pollution.</p>	<p>The development is unlikely to directly generate additional traffic at the volumes necessary to generate adverse vibration and air pollution impacts within the locality.</p>

SECOND EXHIBITION PERIOD	
<p>Submission 1</p> <p>The author of this submission is the same author of submission 6 from the initial exhibition period.</p> <p>The author reiterates their concerns in relation to overshadowing, building setbacks to Prince Street, building height, building form, privacy and screening at the interface between the RFB and the adjoining building to the east and concerns regarding the appropriateness of the proposed trees planted along the eastern boundary of the development site.</p>	<p>Commentary in relation to the proposed RFBs impact upon the adjoining commercial building by way of overshadowing are provided above in response to submission 5 above.</p> <p>In relation to the concerns regarding setbacks, building height and building form of the RFB, the author of this report is in agreeance and accordingly, this report recommends redesign of the RFB as detailed above.</p> <p>In relation to the comments regarding privacy and screening, it's noted that the two opposing buildings are to be positioned approximately 20m from each other, this is considered an acceptable distance to mitigate any unreasonable visual privacy impacts, particularly when factoring in the commercial use of the adjoining building.</p> <p>In relation to tree plantings along the eastern edge of the development site, it's unclear if the author of the submission is requesting evergreen trees for screening or deciduous trees to allow solar access in winter. Notwithstanding, the Panel may wish to include a relevant condition to address this matter if the Panel is minded to approve the development.</p>
<p>Submission 2</p> <p>The author of this submission is the same author of submission 2 from the initial exhibition period.</p> <p>The author reiterates their previous concerns in relation to parking and traffic.</p>	<p>Refer to previous comments in relation to submission 2 above.</p>

5.13 PUBLIC INTEREST s4.15(1)(e)

The proposal is not inconsistent with any relevant policy statements, planning studies, and guidelines etc. that have not been considered in this assessment. The development is therefore in the public interest.

5.14 GENERAL COMMENTS

This report has been informed by SME advice from the following council officers / contractors.

Table 17: Summary of internal referrals

Title / Position	Area of Expertise
Assistant Development Engineer	Council and Non-council infrastructure and services. Traffic and Parking.
Environmental, Health & Building Certifier	NCC, POEO Act and EP&A Act.
Environmental Health Officer	POEO Act (Noise, Dust, sediment control).
Manager City Presentation	Landscaping, public open space, trees and other vegetation.
Manager Waste Services & Technical	Waste collection arrangements
Heritage Advisor	Heritage Conservation and Urban Design

Expert advice from the following External Agencies was also received:

- NSW Police relating to Crime Prevention Through Environmental Design
- Essential Energy relating to the safety and ongoing operation of the local electricity network.

6 Summary

In Summary, Andrew Crump Town Planning Pty. Ltd. have carried out a planning assessment of a development application at 103 Prince Street, Orange against the requirements of Section 4.15 of the Environmental Planning and Assessment Act 1979.

At a macro level, the proposal will, as acknowledged in the briefing notes from the Panel, generate a number of positive externalities within the city including:

- the development and dedication of the public open space by the developer which is a material public benefit; and
- the contribution the development will make to the diversity of housing within the City.

However, it is at the more micro level, or the finer grain detailing within the application, particularly relating to the presentation of the RFB and the proposed access arrangements, where the development is found to be unsupportable in its current form.

The author is of the view that the major issues identified in this report *are* resolvable, however, they are not resolvable via conditions of consent alone and hence, the recommendation for redesign.

End of Report