

# PLANNING ASSESSMENT REPORT

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

103 PRINCE STREET, ORANGE



**ANDREW CRUMP**  
TOWN PLANNING

PREPARED ON BEHALF OF:  
ORANGE CITY COUNCIL

## Document Control

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## Executive Summary

*Table 1: Application Particulars*

<b>Development Application No.</b>	DA98/2022(1)
<b>Lodgement Date of application</b>	24/3/2022
<b>Applicant</b>	Maas Group Properties 103 Prince Pty. Limited
<b>Owner/s</b>	Maas Group Properties 103 Prince Pty. Limited
<b>Title particulars and address</b>	Lot 501 DP1279083 103 Prince Street, Orange
<b>Brief description of development</b>	<b>Stage 1:</b> Multi Dwelling Housing (16 Townhouses) & Torrens Title Subdivision (3 Lots (including a road) ). <b>Stage 2:</b> Residential Flat Building (60 Apartments), Recreation Area (Public Park) and Road.
<b>Estimated Cost of Development</b>	\$26, 074, 105.00

### The Development

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 (16 Townhouses) & Torrens Title Subdivision (3 Lots). A road is proposed over the right of way over the RE1 zoned Land.
- **Stage 2:** Residential Flat Building (60 Apartments), Recreation Area (Public Park) and Road.

### Background

This is an assessment report of development application DA98/2022(1) and is a subsequent assessment report to the report that went before the Western Region Planning Panel (the Panel hereafter) on 15 November 2022.

The matter was deferred by the panel subject to redesign of certain elements of the development, namely:

- Amend the design to include the north / south shared access road along the eastern boundary of the site.
- Redesign and reposition the RFB to provide a front setback commensurate with the adjoining DPIE building.

- Redesign the southern and western elevations of the RFB to reduce the dominance of projecting balconies and include external materials which are more compatible to the context and setting (i.e. introducing more brickwork and other compatible materials, whilst reducing the extent of painted surfaces).
- Redesign of the RFB to ensure the retention of significant vegetation including tree 16 (Cedrus Deodora).

The applicant has submitted an amended development application pursuant to clause 37 of the Environmental Planning and Assessment Regulation 2021.

The author is of the opinion that the applicant has satisfactorily addressed the matters of deferral and accordingly, as detailed throughout this report, the development is recommended for approval subject to the conditions contained within the attached Draft Notice of Approval.

### **Planning Agreement**

A planning agreement (VPA) between the applicant and Council has been entered into. The VPA relates to the development and dedication of the centrally located public open space land. The amended subdivision layout as described below, will necessitate a revised planning agreement.

The applicant has submitted a letter of offer indicating their willingness to enter in to a VPA which addresses the amended subdivision layout.

The VPA is subject to a separate resolution of Council which is to be dealt with separately to this report.

### **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 was previously 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 (WRPP), 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 sixteen, part 2 and part 3 storey dwellings (characterised as a multi dwelling housing development) and basement carpark (providing 32 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 60 apartments and basement carpark (providing 92 spaces (one additional space is provided as a visitor space in the shared accessway) 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 planning agreement has been entered into as part of 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 plan<sup>1</sup> within proposed lot 602 and then dedicate the land to Council.

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<sup>1</sup> 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 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.

The application falls within the meaning of “*Council related development*” as Orange City Council was the owner of the land at the point in time when the development application was lodged.

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, Recreation Area and Road*.

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

### **Summary of Consequential Changes**

The following identifies the principal amendments that the applicant has undertaken following the initial Panel hearing:

- All vehicle access points to the basement car parks within the development are via the proposed internal shared laneway along the eastern boundary.
- All loading and unloading; and garbage collection is to occur via the internal shared laneway.
- The RFB has been repositioned on the site to better relate to the immediate context and setting.
- The RFB’s southern and western elevations have been extensively redesigned to reduce the prominence of balconies.
- A more varied pallet of external materials comprising a mix of face brick and light weight cladding has been incorporated into the design of the RFB.
- The RFB has been repositioned to ensure the retention of the significant trees within the Sale Street frontage.
- The internal layout of the RFB has been redesigned to accommodate the above changes and consequently the overall number of units has reduced by 3 down to 60 units.

- The dwelling mix within the RFB has been adjusted such that the number of 3-bedroom units has been reduced by 7 and the number of one-bedroom and two-bedroom units has increase by two respectively.
- The number of dwellings within the multi dwelling housing has been reduced by 1, to 16 dwellings in total on the northern lot.

This is further summarised in the below table.

**Table 2: Comparison Table**

Component	Description			
	Residential Flat Building		Multi Dwelling Housing	
	Original	Current	Original	Current
Number of Buildings	1	No Change (NC)	1	NC
Number of storeys	Part 4, Part 5, Part 6 Storeys	NC (although, the configuration and arrangement of the storeys has changed)	Part 2 and Part 3 Storeys	NC
Basement	Yes – single level	Access now from internal shared laneway	Yes – single level	Access now from internal shared laneway
Overall Building Height	21.45m <sup>2</sup>	NC	~10.5m	NC
Total apartments / dwellings	63	60	17	16
Unit Mix			17 x 3-bedroom dwellings	16 x 3-bedroom dwellings
		Original		
		Current		
Unit Type	No.	%		
1 Bedroom units	4	6.3		
2 Bedroom Units	25	39.7		
3 Bedroom Units	34	54		

<sup>2</sup> Height of building determined with guidance from *Tony Legge v Council of the City of Sydney* [2016] NSWLEC 1424

Vehicular access	Sale Street	Internal Shared Laneway	Sale Street	Internal Shared Laneway
Parking (no. of on-site parking spaces)	105	93	34	32
Garbage Collection	Private agreement, collection in Sale Street	Collection via internal shared access under a private agreement.	Kerb side, Dalton Street	NC

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

*Table 3: Summary of applicable development standards*

Development Standard	Numerical Standard	Compliance
Minimum Lot size (multi dwelling housing)	800m <sup>2</sup>	Yes
Floor Space Ratio	1.8:1	Yes
Height of Building	<b>Part 16m</b>	<b>No (RFB only)</b>
	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 B**.

The previous iteration of the development application was exhibited on two separate occasions. A third exhibition period was triggered given the submission of an amended application, with such changes sufficient to warrant re-exhibition.

The formal exhibition periods are summarised below:

**Table 4:** 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
Third Exhibition	Monday, 27 March 2023 to Thursday, 20 April 2023 <sup>3</sup>	2

The submissions received during the first two exhibition periods were considered as part of the report that went before the Panel in November 2023.

Summary of Matters Raised In Submissions Received in the Third Exhibition Period.

Submission 1

- Overshadowing of the adjoining commercial building.
- Traffic Impacts.

Submission 2

- Height of Building / appropriateness of cl. 4.6 variation request
- Security, landscaping and safety of pedestrians using the shared accessway.

Detailed consideration of the two submissions is provided below.

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<sup>3</sup> Period extended to account for the easter holiday period.

### Resolution of Critical Issues Identified in the Previous Assessment

The following table provides an analysis of the resolution of the previously identified issues or deficiencies within the application as detailed in Planning Report to the WRPP dated 24 October 2022.

*Table 5: Resolution of Previously Identified Critical Issues.*

Critical Issues Identified in Previous Assessment	Resolution
The adequacy of the Clause 4.6 request to vary the height of buildings development standard.	A revised clause 4.6 has been provided which meets the legislation requirements of clause 4.6 as further detailed below.
<p>The identified departures from the West End Precinct DCP, particularly:</p> <ul style="list-style-type: none"> <li>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,</li> <li>the setbacks of the RFB, particularly the setback to Prince Street as detailed further in the dot point below; and</li> <li>The materiality, building form and architectural detailing of the RFB as raised by Council's Heritage Advisor.</li> </ul>	<p>The amended design incorporates the following:</p> <ul style="list-style-type: none"> <li>required north / south shared access along the eastern boundary.</li> <li>The setbacks of the RFB within Prince Street are commensurate with the adjoining commercial building.</li> <li>The materiality of the RFB has been amended to include extensive use of brick and other compatible light weight cladding materials.</li> </ul>
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	<p>The amended design sites the RFB in line with the adjoining DPIE building.</p> <p>The siting of the RFB is considered acceptable.</p>

bulk and scale of the building within Prince Street.	
The waste collection arrangements for the RFB.	The waste collection arrangements now involve collection of 1100L MGBs via the shared accessway. The collection vehicle is able to enter the site via Prince Street and exit via Dalton Street (i.e., a forward direction).
The departure from the DCP in terms of apartment mix within the RFB.	The apartment mix has improved in terms of a greater number of one-, and two-bedroom units and a reduction in the number of three-bedroom units.  There are no objections to the proposed apartment mix.

As can be observed from the above table, the amended design satisfactorily resolves the previously identified issues without generating any significant new issues or issues that aren't able to be resolved via conditions of consent. Accordingly, the development is recommended for approval.

### **RECOMMENDATION**

**That the Western Region Planning Panel consents to DA98/2022(1) for *Multi Dwelling Housing (16 dwellings) , Subdivision (three lots), Residential Flat Building, Recreation Area and Road* at Lot 501 DP1249083 – 103 Prince Street, Orange pursuant to the conditions of consent in the attached Notice of Approval.**

# 1 Introduction and Background

## 1.1 The Application

Development consent has been sought for the following:

- A three-lot Torrens title subdivision comprising two residential lots and a central Public Recreation lot.
- Construction of 16, 3-storey dwellings and basement car park (consisting of 32 parking spaces) 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 60 apartments and a basement carpark (92 parking spaces).
- Development of the central lot for the purposes of a public park comprising soft landscaping, 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 this application has continued to be an iterative process with further design amendments to both the dwellings and the RFB following the previous Panel hearing.

The most recent 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 following the panel hearing relate to redirecting the entrance to the basement car park from the shared access way and reducing the number of dwellings from 17 down to 16.

The overall siting, form and building appearance remains largely unchanged from that previously considered by the panel, save for the change to the basement car park to allow access via the shared accessway and the reduction in the number of dwellings.





**Figure 1:** MDH – Amended Design - Perspective view(north-west corner)



**Figure 2:** MDH – Amended Design - Dalton Street Perspective



**Figure 3:** MDH – Amended Design – Sale Street Perspective (south-west corner)



*Figure 4: MDH – Amended Design – Interface with Public Park*

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 Subdivision**

The layout of the three-lot subdivision has been amended to facilitate the shared accessway along the eastern boundary.

The southern (RFB) lot, proposed Lot 601, has been amended to include the portion of access way that would have been on the central park lot into Lot 601.

This arrangement will avoid complex arrangements that would arise under the Local Government Act in relation to easements over community land. Easements can be registered over community land only in certain circumstances (section 46). Where those circumstances apply, the easements generally need to be specifically authorised under a plan of management which must first be publicly exhibited with consideration by Council of any public submissions prior to adoption. There are also potential additional notification requirements under section 47 of the Local Government Act 1993 which in some circumstances include a requirement for approval of the Minister.

These requirements would have provided a level of uncertainty within the consent, which is now avoided by the applicant retaining a portion of the central lot and including the necessary rights of access and positive covenants.

### **1.2.3 RFB**

The design, siting and layout of the RFB has undergone substantial changes following the Panel hearing. Most notably:

- Vehicular access is now proposed via the shared accessway along the eastern boundary.
- Garbage collection will occur wholly within the site via the shared accessway: Garbage truck is able to enter via Prince Street and leave via Dalton Street.
- The siting of the building has been adjusted to avoid further tree losses and also align the front of the building commensurate with the front building line of the adjoining DPE building.

As observed in the below figures (Figures 6 and 7) showing the comparative change between the current design the previous design considered by the panel, the most notable changes relate to the form, materiality and general appearance of the RFB. The amended building design incorporates extensive use of face brick, significantly reduced areas of painted surfaces and integrates balconies that are less dominant in the appearance of the building.





*Figure 5: Comparison of designs*



*Figure 6: Comparison of designs*

Further detailed commentary on the RFB building is provided below.

#### 1.2.4 Public Open Space

The open space area remains largely unchanged from the previous design that was considered by the panel, save for the necessary adjustments to incorporate the shared accessway (which is now proposed on lot 601).



**Figure 7:** Public Park - Amended Design

Its noted that a BBQ area is still omitted from 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**

- Access Report prepared by Accessed
- Noise Assessment prepared by MAC Acoustics.
- 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.
- Stormwater Design prepared by BG&E

#### **1.3.2 Additional Information Documents**

- Heritage Impact Statement prepared by Carste Studio Pty. Ltd.
- Heritage Interpretation Strategy prepared by Carste Studio Pty. Ltd.
- Amended Traffic Impact Assessment prepared by Seca.
- Ecological Assessment prepared by Firebird ecoSultants Pty. Ltd.
- Site Audit Statement prepared by Geosyntec.
- CEMP prepared by Maas Property Group.
- Geotechnical Investigation Report.
- Preliminary Services prepared by Maas Property Group.
- Housing Needs and Diversity Study prepared by Umwelt.
- Response to Submissions

### 1.3.3 AMENDING DOCUMENTATION

The following documents have been submitted in the latest submission from the applicant.

- Cover letter Maas Property Group dated 16 March 2023
- Statement of Environmental Effects prepared by Maas Property Group dated March 2023.
- Cl.4.6 – (amended) Request to Vary Development Standard prepared by Maas Properties Group dated January 2023.
- Architectural plans prepared by EJE Architecture – Project No. 13956:

Dwg. No.	Title	Rev	Date
A-000	COVERSHEET	1	17/04/2023
A-010	EXISTING SITE PLAN	0	24/01/2023
A-011	SITE ANALYSIS	0	24/01/2023
A-012	SITE PLAN	1	10/03/2023
A-020	BASEMENT PLAN	1	10/03/2023
A-021	GROUND FLOOR PLAN	1	10/03/2023
A-022	LEVEL 1 PLAN	1	10/03/2023
A-023	LEVEL 2 PLAN	1	10/03/2023
A-024	LEVEL 3 PLAN	1	10/03/2023
A-025	LEVEL 4 PLAN	1	10/03/2023
A-026	LEVEL 5 PLAN	1	10/03/2023
A-027	LEVEL 6 PLAN (ROOF PLAN)	0	24/01/2023
A-030	ELEVATION – SHEET 1	1	10/03/2023
A-031	ELEVATION – SHEET 2	1	10/03/2023
A-035	PRINCE ST. ELEVATION	1	10/03/2023
A-036	DALTON STREET ELEVATION	0	24/01/2023
A-040	SECTIONS – SHEET 1	0	24/01/2023
A-041	SECTIONS – SHEET 2	0	24/01/2023
A-051	SITE PLAN 3D – SHEET 1	0	24/01/2023
A-052	SITE PLAN 3D – SHEET 2	1	10/03/2023
A-053	BUILDING ENVELOPE DIAGRAMS	0	24/01/2023
A-060	SHADOW DIAGRAMS	0	24/01/2023
A-061	SHADOW DIAGRAMS	0	24/01/2023
A-070	STAGING PLAN	1	10/03/2023

A-080	GROUND FLOOR AREA PLAN	1	10/03/2023
A-081	LEVEL 1 AREA PLAN	1	10/03/2023
A-082	LEVEL 2 AREA PLAN	1	10/03/2023
A-083	LEVEL 3 AREA PLAN	1	10/03/2023
A-084	LEVEL 4 AREA PLAN	1	10/03/2023
A-085	LEVEL 5 AREA PLAN	1	10/03/2023
A-090	SOLAR ACCESS & CROSS FLOW – GROUND FLOOR	1	10/03/2023
A-091	SOLAR ACCESS & CROSS FLOW – LEVEL 1	1	10/03/2023
A-092	SOLAR ACCESS & CROSS FLOW – LEVEL 2	1	10/03/2023
A-093	SOLAR ACCESS & CROSS FLOW – LEVEL 3	1	10/03/2023
A-094	SOLAR ACCESS & CROSS FLOW – LEVEL 4&5	1	10/03/2023
A-100	LIFT OPTION PLANS	0	24/01/2023
A-102	SILVER LEVEL UNIT	0	24/01/2023
A-110	PERSPECTIVES – SHEET 1	1	10/03/2023
A-111	PERSPECTIVES – SHEET 2	1	10/03/2023
A-112	PERSPECTIVES – SHEET 3	0	24/01/2023
A-113	PERSPECTIVES – SHEET 4	0	24/01/2023
A-114	PERSPECTIVES – SHEET 5	0	24/01/2023
A-115	PERSPECTIVES – SHEET 6	0	24/01/2023
A-116	PERSPECTIVES – SHEET 7	0	24/01/2023
A-117	PHOTOMONTATGE	0	24/01/2023
A-120	MATERIAL IMAGES	1	10/03/2023

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

Dwg. No.	Title	Versions
L100	MASTERPLAN – LANDSCAPE APPROACH	K
L101	MASTERPLAN - LANDSCAPE DESIGN	M
L201	STREET TREE AUGMENTATION	L
L301	TOWNHOUSES - LANDSCAPE DESIGN	L
L302	TOWNHOUSES - DETAIL PLANS	K
L303	APARTMENTS - LANDSCAPE DESIGN	M
L304	APARTMENTS - DETAIL PLANS	K
L400	PUBLIC DOMAIN - APPROACH	F
L401	PUBLIC DOMAIN - LANDSCAPE DESIGN	M
L402	PUBLIC DOMAIN - PERGOLAS	K
L403	PUBLIC DOMAIN - LABYRINTH	K
L404	PUBLIC DOMAIN - PLAYGROUND	K
L405	PUBLIC DOMAIN – PLAYGROUND IMAGES	K
L406	PUBLIC DOMAIN – POCKET PARK	L
L407	PUBLIC DOMAIN – TREE STRATEGY	K



- Draft Subdivision Plan prepared by Craig Jaques and Associates:

Dwg. No.	Title	Date
3925/23	Plan of Proposed Subdivision of Lot 501 DP1249083 – Prince, Sale and Dalton Streets, Orange	08/03/2023

- Shared Zone Driveway plans prepared by MAAS Group Properties – project no. 22037:

Dwg. No.	Title	Rev	Date
DR-01	Shared Zone Driveway – Part A	01	08/03/2023
DR-02	Shared Zone Driveway – Part B	01	08/03/2023
DR-03	Shared Zone Driveway – Part B	01	08/03/2023

- Exterior Lighting plan prepared by Electrical Projects Australia Project no. 22059:

Dwg. No.	Title	Date
E21	Site Plan – Electrical Layout	08/03/2023

- BASIX Certificate Number: 1288407M\_02
- SEPP 65 – Design Verification Statement by EJE Architects dated January 2023.
- Waste vehicle swept paths prepared by MAAS Group Properties.
- Street Interface arrangement prepared by MAAS Group Properties.
- Cover letter from the project arborist dated 6 March 2023.

## 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 10069m<sup>2</sup>.

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.

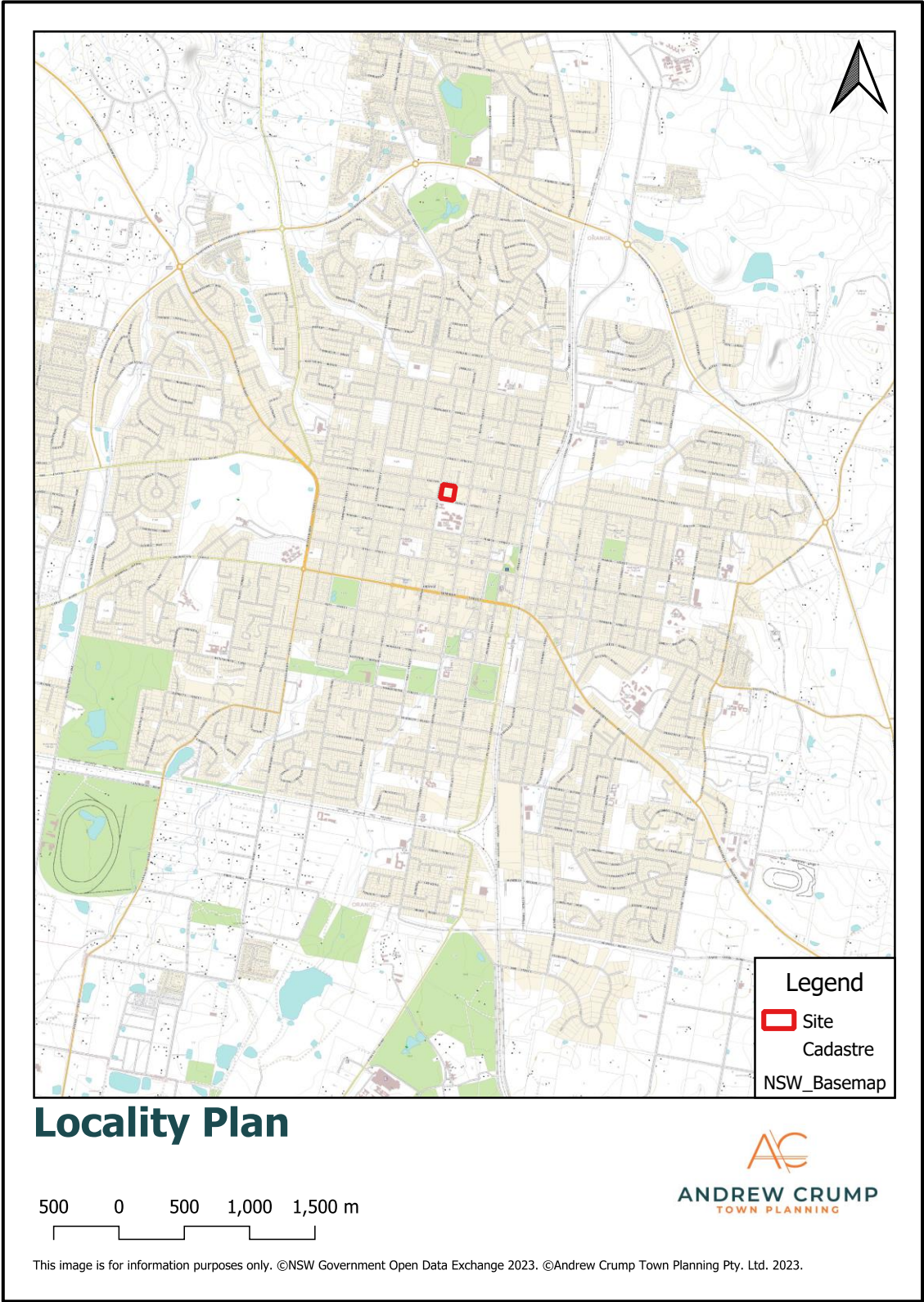


Figure 8: Locality Plan

## 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 buildings, with heights ranging from one to three storeys.

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



*Figure 9: Subject site looking towards the south along the eastern boundary.*





**Figure 10:** Adjoining DPE building and multi-storey carpark



**Figure 11:** Period cottages opposite site in Dalton Street





*Figure 12: Period cottages opposite site in Dalton Street*



*Figure 13: Non-residential uses within Sale Street*





Figure 14: 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 16, 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 60 apartments and a basement carpark providing 92 parking spaces.
- Development of the central lot for the purposes of a public park comprising soft landscaping, pathways, seating, children's play equipment, etc. This parcel is to be dedicated to Council as part of the planning agreement.

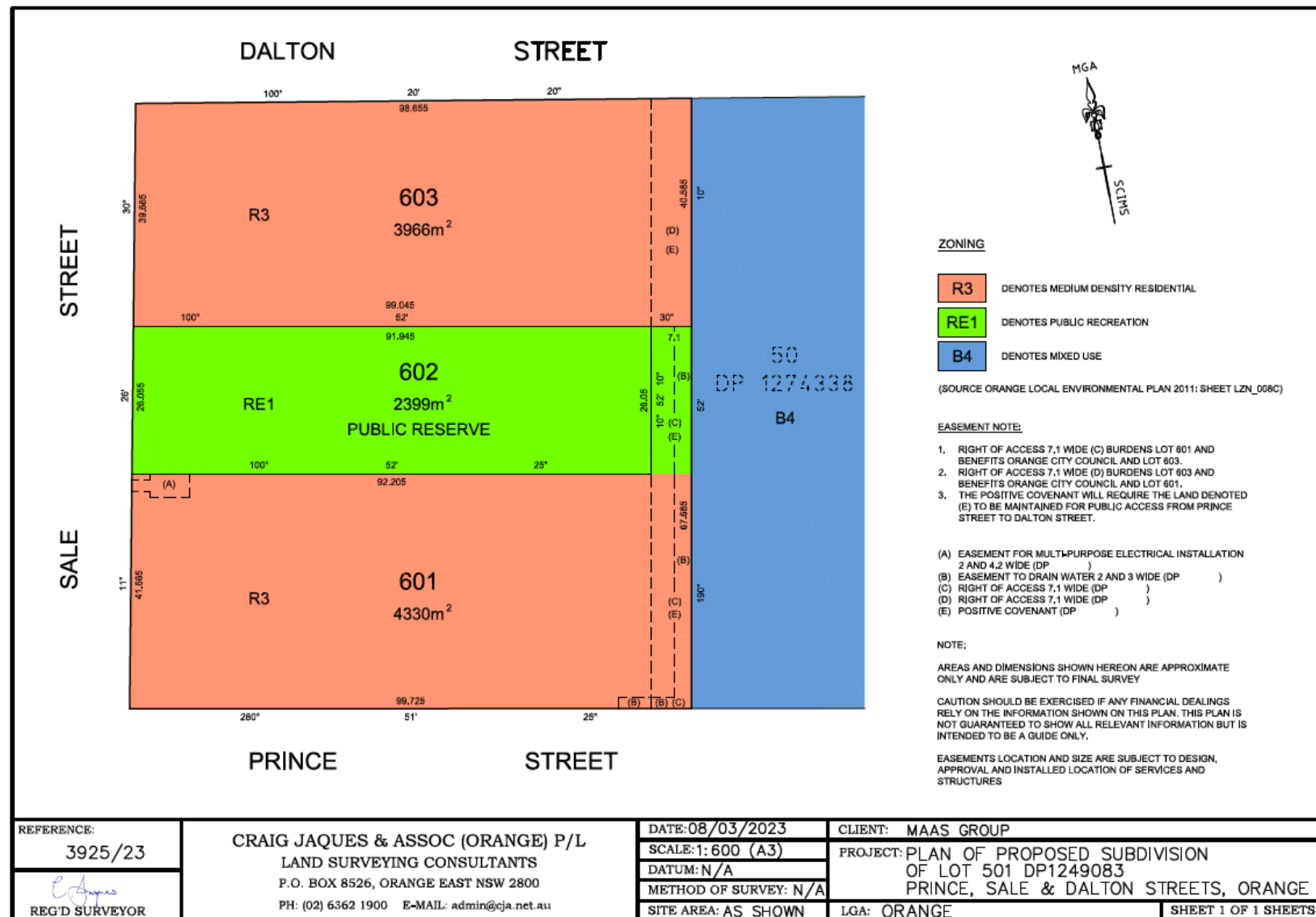
The submitted architectural plans accompany this report at **annexure C** and a summary of the key development statistics is provided in the below tables.

#### 3.1.1 Key Development Statistics

*Table 6: Key development statistics - subdivision*

Lot	Size	Zone	Future Land-use
601	4330m <sup>2</sup>	R3 – Medium Density Residential	RFB
602	2399m <sup>2</sup>	RE1 – Public Recreation	Dedicated Public Open Space
603	3966m <sup>2</sup>	R3 – Medium Density Residential	Multi Dwelling Housing





**Table 7:** 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	21.45m <sup>4</sup>		~10.5m
FSR	1.31:1		
Total apartments / dwellings	60		16
Unit Mix	<b>No. of each dwelling type</b>	<b>%</b>	16 x 3-bedroom dwellings
	6 x 1 Bedroom units	10	
	27 x 2 Bedroom Units	45	
	27 x 3 Bedroom Units	45	
Vehicular access	Two-way Shared accessway connecting with Dalton and Prince Streets		Two-way Shared accessway connecting with Dalton and Prince Streets
Parking	93 parking spaces		32 parking spaces
Garbage Collection	Private agreement, collection via shared accessway		Kerb side, Dalton Street

<sup>4</sup> Height of building determined with guidance from *Tony Legge v Council of the City of Sydney* [2016] NSWLEC 1424

## 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:

- 16, part 2 and part 3 storey dwellings, with basement level parking providing 32 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 various levels are shown in the below section.

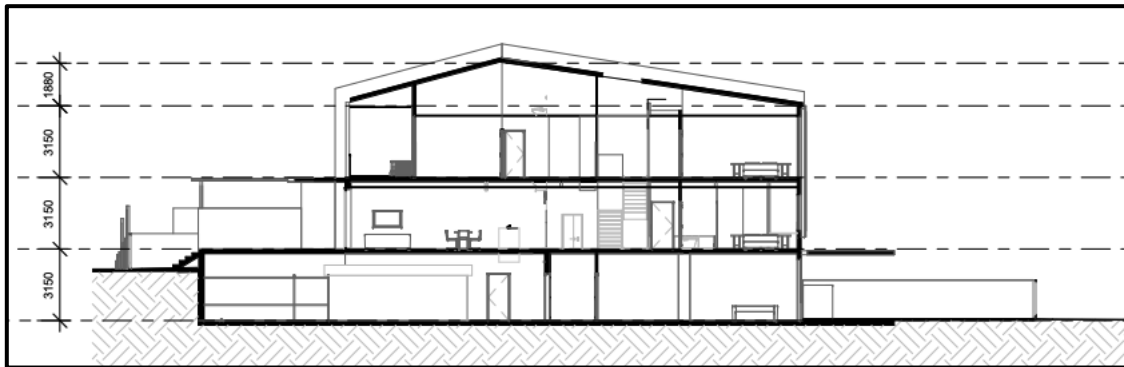


Figure 15: Section (Dalton Street to the left of image)

- The topography of Dalton Street slopes up from east to west, meaning the eastern dwellings are more elevated than those at the western end. This is also a consequence of ensuring the levels and heights of the basement and first floor work practically at the western end of the dwellings (meaning part of the basement is above ground level at the eastern end).

This results in additional stairs / elevated first floor from the front courtyards for those eastern dwellings – highlighted in the figure below.



Figure 16: Dalton Street Elevation

- Save for dwelling 1 and dwelling 16 (which are a replicated layout of the respective dwellings they adjoin), the remaining 14 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.

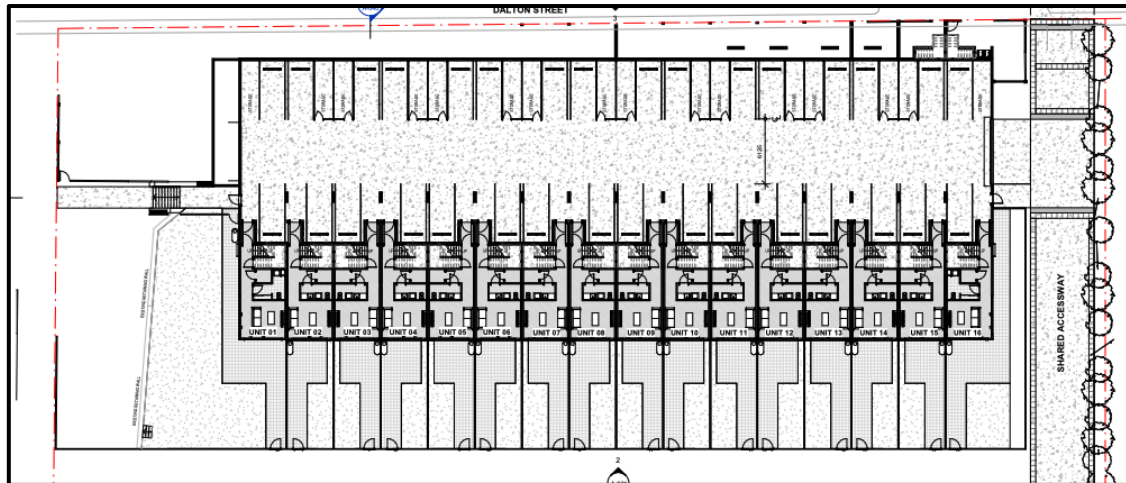


Figure 17: Floor Plan (Excerpt) - Basement and Ground Floor

- 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.

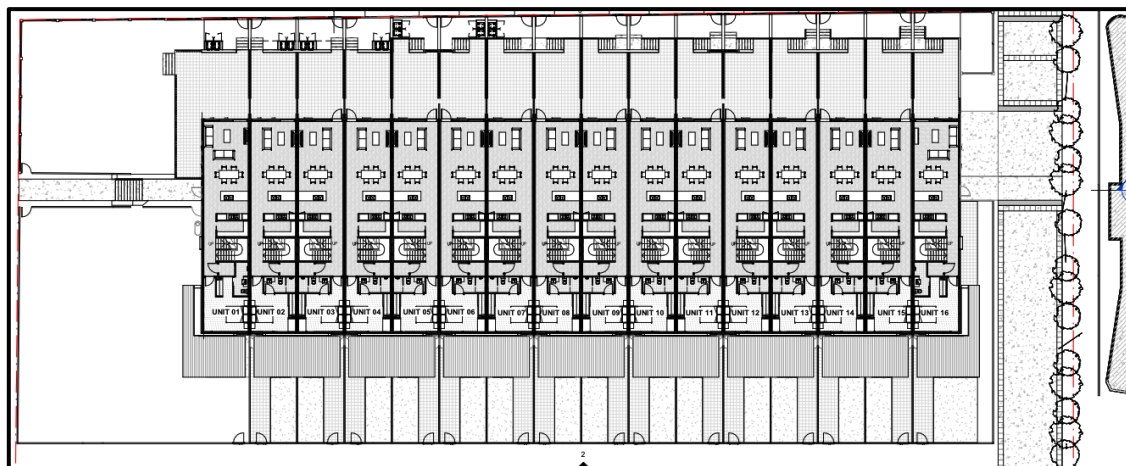


Figure 18: Floor Plan (Excerpt) - 1st Floor / Street level.

- 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.

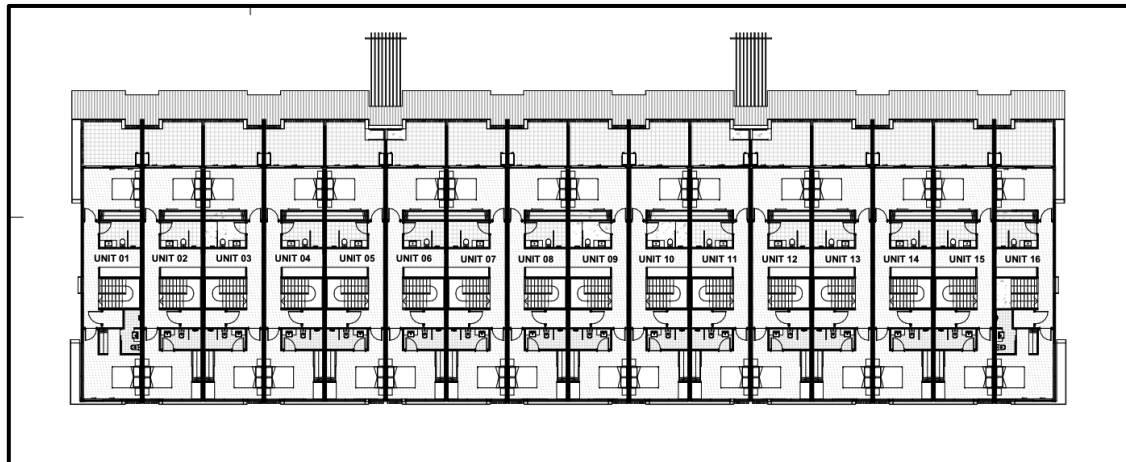


Figure 19: Floor Plan (Excerpt) - Level 2

- 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. There appears to be a discord between the latest architectural drawings and the landscape plans in terms location of the terracing and stair location and orientation. This is further addressed below.

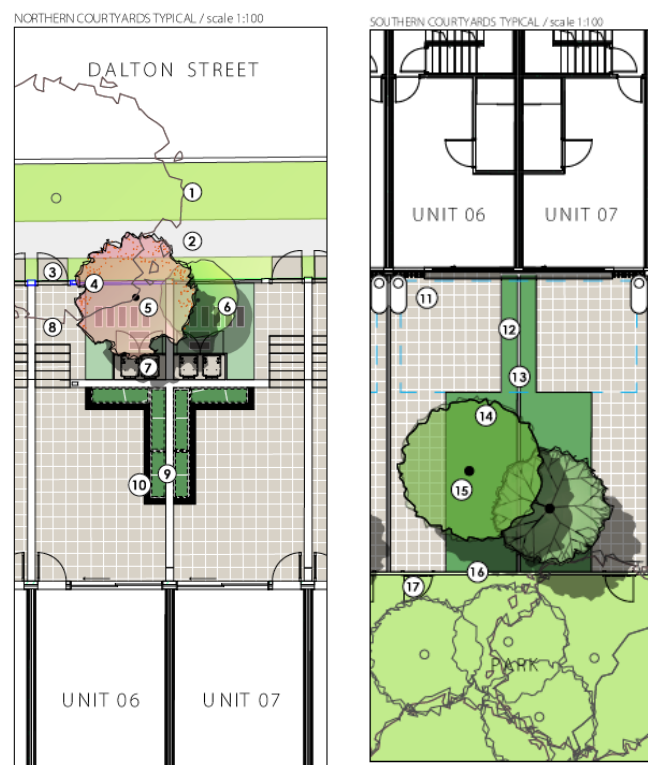


Figure 20a and 19b: Front and Rear landscaped courtyards

In terms of the built form and visual appearance of the multi-dwelling housing, as previously described in the report to the panel, 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 cohesive elements as shown below.



**Figure 21:** 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 60 units across six levels and 92 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 22:** Basement Level

There are 10 ground floor units (7 x two-bedroom and 3 x three-bedroom units). The ground floor also provides common access for residents to Prince and Dalton Streets, as well as access to the open space to the north and the shared accessway to the east.



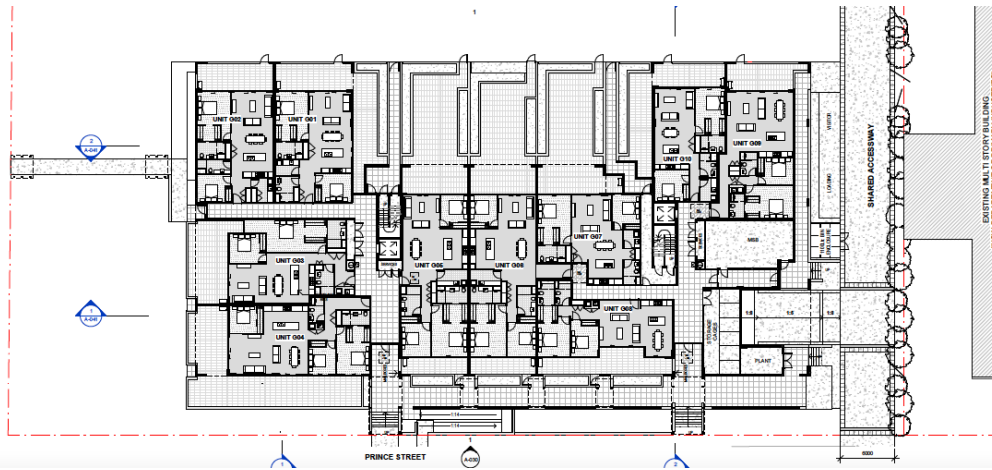


Figure 23: RFB-Ground Floor

Level 1 contains 13 units, comprising 3 x one bedroom units, 5 x two bedroom units and 5 x three bedroom units.

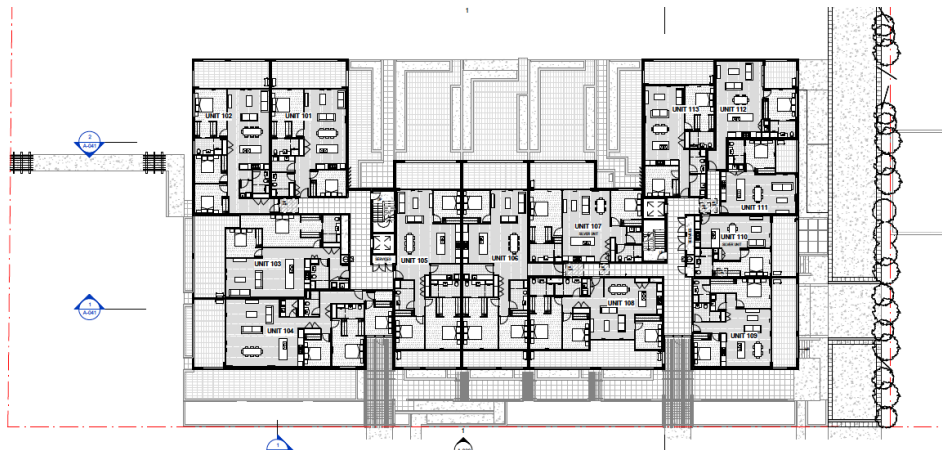


Figure 24: RFB Levels 1

Levels 2 and 3 are duplicate floor plates containing 12 units, comprising 1 x one bedroom unit, 5 x two bedroom units and 6 x three bedroom units per level.

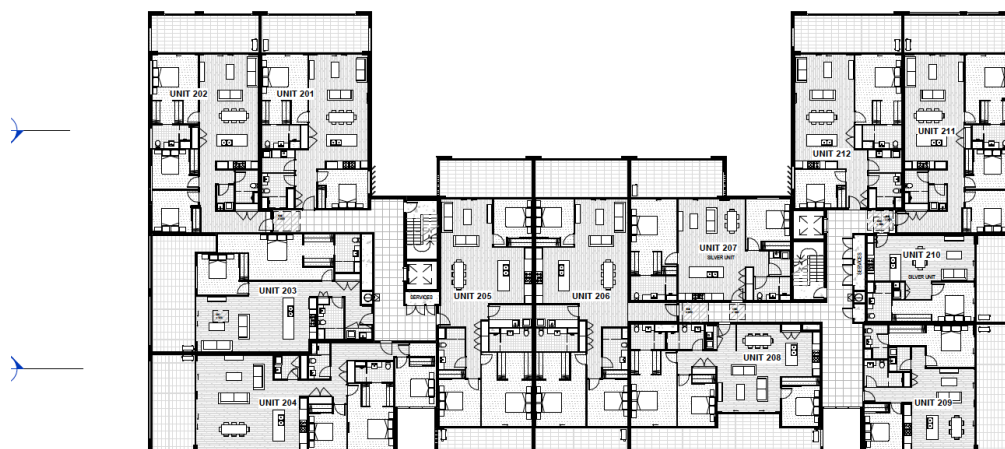


Figure 25: RFB Levels 2 and 3 (level 2 shown)

Level 4 contains 11 units in total (1 x one bedroom, 5 x two bedroom units and 5 x three bedroom units), along with a common terrace area comprising an enclosed BBQ area and covered balcony. All balconies on this level include circular columns arranged in pairs as part of the colonnade detail recommended by Council's Heritage Advisor.

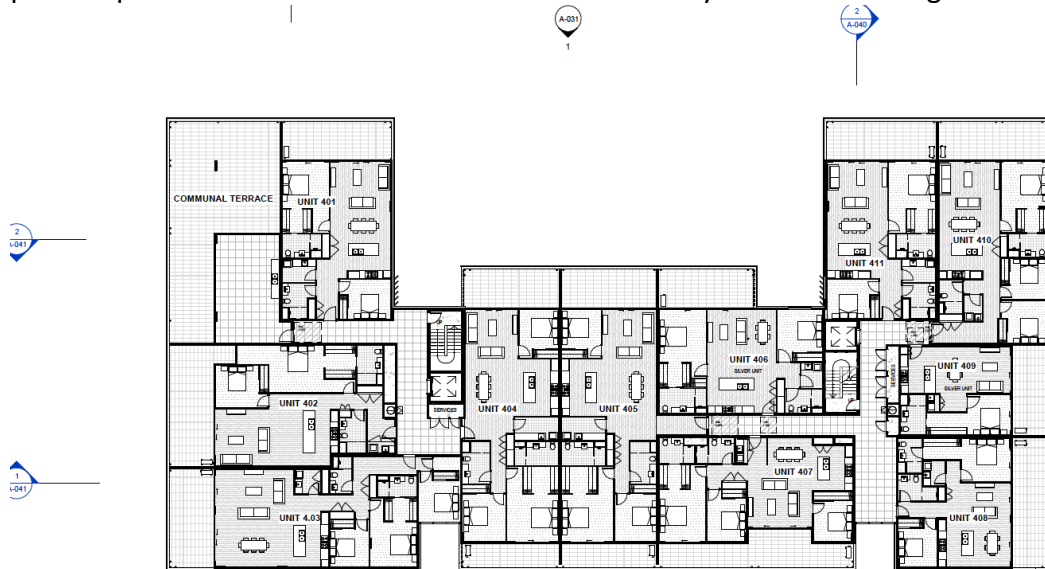


Figure 26: RFB - Level 4

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

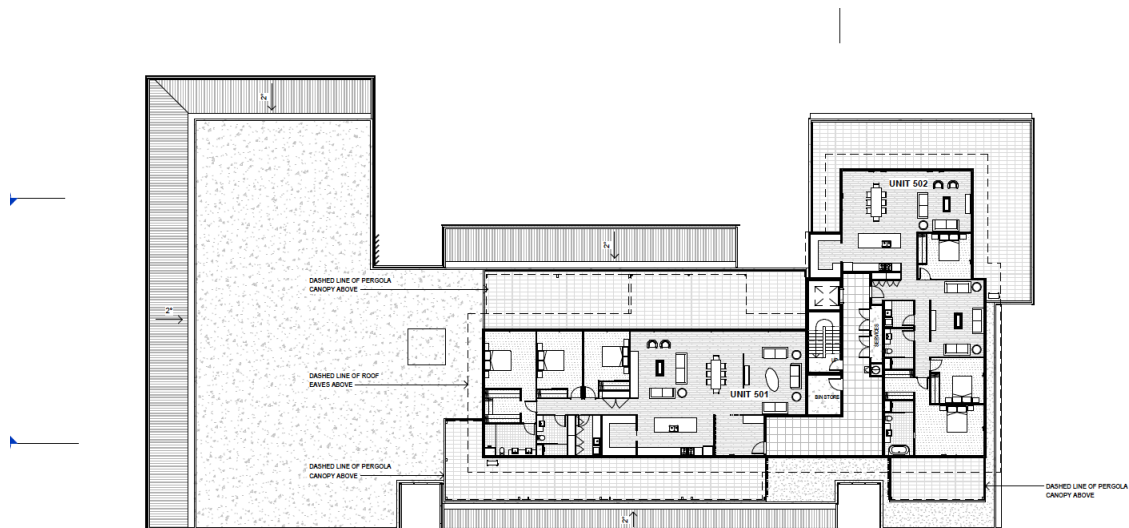


Figure 27: RFB - Level 5 (penthouses)

The roof over the penthouses comprises a traditional pitched roof (5 degrees) and incorporates the colonnade / pergola structures around the perimeter.



The materiality of the RFB comprises predominately masonry (face brick) from Ground Level to Level Three.

The Ground Level comprises a darker blue-grey coloured brick as a base while the middle three levels are further fractionated into three elements through the use of a deferring brick colour for the central section of building to the eastern and western portions. The eastern and western portion of brickwork through these middle levels is further modulated through the use of the blue-grey coloured base brick, which continues up from the ground level as a differentiating corner pier element.

The elevations through the middle levels of the building are further modulated through the use of horizontal corbel banding adding depth, texture and visual interest to the facade.

The fourth level adopts a lighter style of construction as means of replicating a roof-like structure, with wall cladding comprising standing seem material in Colorbond Gully (a mid-grey colour).

The roof over the balconies continues the lightweight appearance with the use of parapet fascia supported on circular columns arranged in pairs.

The level 5 penthouses comprise standing seem wall cladding, pitched roof and timber colonnade / pergola structures around the perimeter.

At street level the blue-grey brick has been adopted for raised garden beds which delineate the private and public spaces, the pedestrian ramps and access stairs. The use of timber pergola structures over the pedestrian access points and front courtyards of the ground floor units fronting Prince Street provide continuity through the overall design of the building.



*Figure 28: 3D view of RFB - Prince Street Frontage*

### 3.3 Staging of the development

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

#### Stage 1

- Completion of the proposed 3-lot Torrens title subdivision and associated infrastructure works.
- **Proposed Lot 603** - Construction of the 16 dwellings (as multi dwelling housing) and associated basement carpark, provision of infrastructure, landscaping, fencing, etc.

The draft consent has been arranged to allow the subdivision to occur concurrently with the construction of the dwellings.

#### Stage 2

- **Lot 601** - Construction of the part 4, part 5 and part 6 storey RFB comprising 60 apartments and associated basement car park, provision of infrastructure (including services, mechanical plant and the like), landscaping, fencing, etc.
- **Lot 602** (centrally located open space land) - embellishments and dedication of land to Council as public open space (i.e. a public park).

## 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 <b>Annexure B</b>.</p> <p>(iiia) a planning agreement has been entered into in relation to the public park. This is considered below under <b>section 5.8</b>.</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 <b>section 5.10</b> 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 <b>section 5.11</b> below.</p>
<p><i>(d) any submissions made in accordance with this Act or the regulations,</i></p>	<p>The amended development application was formally exhibited and a total of 2 submissions were received, and the matters raised are addressed below under <b>section 5.12</b></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 8: BC Act and Fisheries Act Matters*

Trigger	Commentary
<b>1. Development that occurs on land mapped on the Biodiversity Values Map (OEH) (clause 7.1 of BC Regulation 2017).</b>	<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>
<b>2. Clearing Threshold exceedance (clauses 7.1 and 7.2 of BC Regulation 2017).</b>	<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>
<b>3. Development that is likely to have a significant effect on threatened species</b>	<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"> <li>• The subject land is a brownfield site having been previously used for the purposes of a public hospital.</li> <li>• The development does not involve any clearing of native vegetation.</li> <li>• The development will not engender any water quality issues of any nearby sensitive waterways.</li> <li>• The land is not mapped as high value biodiversity land under the NSW Biodiversity Conservation Act.</li> </ul>



	<ul style="list-style-type: none"> <li>• The land is not mapped high biodiversity under Orange LEP 2011.</li> <li>• 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.</li> </ul> <p>Given the foregoing assessment, the development will not have a significant effect on any endangered ecological communities, threatened species or habitat.</p>
<b>4. Development proposed in an area of Outstanding Biodiversity Value</b>	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 9: LEP Summary Table*

Standard / Provision	Applicability
<b>Zone</b>	<b>R3 – Medium Density Residential</b> <b>RE1 – Public Recreation</b>
<b>Min. Lot Size (clause 4.1B)</b>	<b>800m<sup>2</sup></b>
<b>Height of Building</b>	<b>16m</b> <b>25m</b>
<b>FSR</b>	<b>1.8:1</b>
<b>Heritage Item or Conservation Area</b>	<b>Heritage Conservation Area</b>
<b>Earthworks</b>	<b>Yes – Basement Car Parks</b>
Flood Related Planning Controls	N/A
Terrestrial Biodiversity	N/A
<b>Ground Water Vulnerable</b>	<b>Yes</b>
Drinking Water Catchment	N/A
Airspace Operations	N/A
<b>Essential Services</b>	<b>Yes</b>

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 consistent with aim (f) of the plan. The development, as articulated within this report, has been satisfactorily redesigned to relate appropriately to local context and is appropriate in the heritage setting.

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

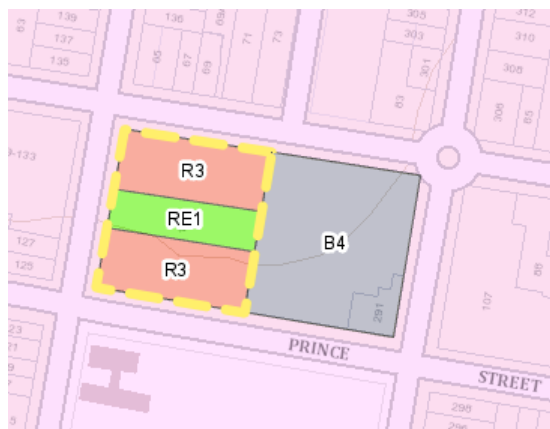
Clause 1.9A provides that any agreement, covenant, or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose, with the exception of:

- (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 29:** Zoning Mapping (subject land shown yellow outline)

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

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, Recreation Areas and Roads 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).*

**Road** means a public road or a private road within the meaning of the [Roads Act 1993](#), and includes a classified road.

Subdivision of land is permissible in any zone 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.

Specially in relation to the road, this relates to the area of the shared access way over the RE1 land. Roads are expressly permitted in 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 general 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 800m<sup>2</sup> when multi dwelling housing is proposed in R3 Medium Density zoned land.

Proposed lot 603 is 3966m<sup>2</sup> 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.

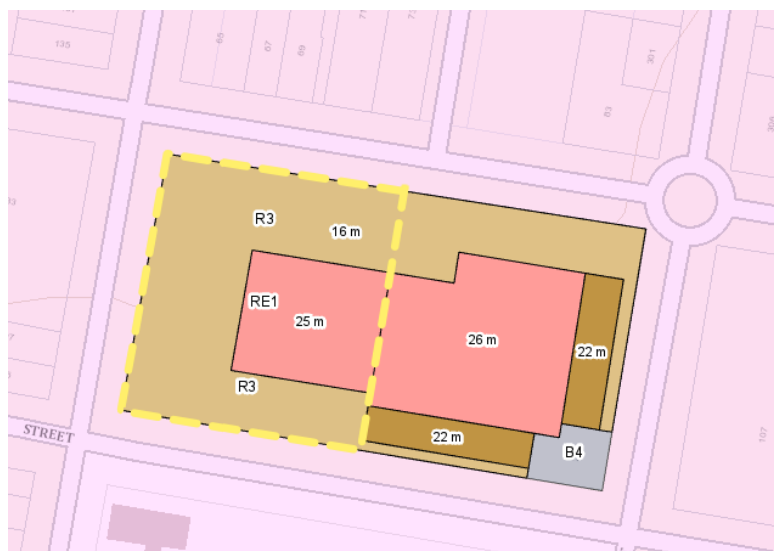
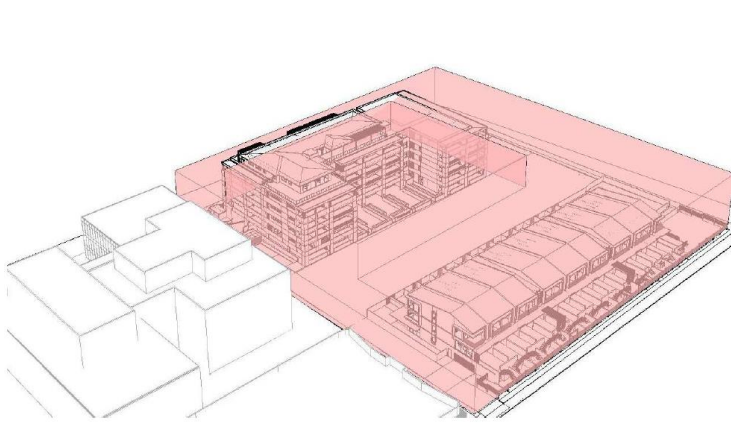


Figure 30: LEP Mapping - Height of Buildings

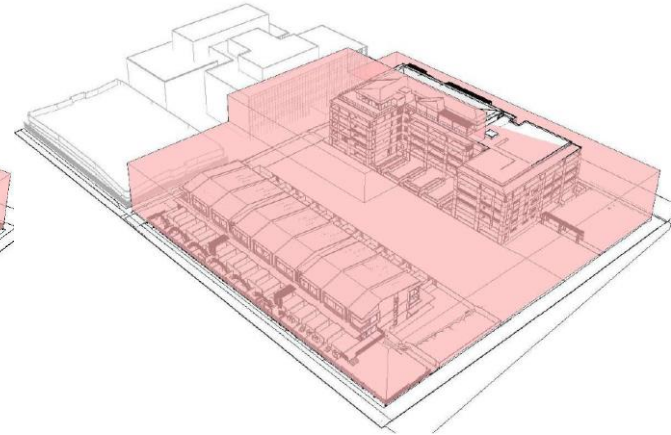
As observed in the above figure, the height controls have obviously been arranged to distribute the height in the centre of the site and provide a perimeter of buildings with a lower height as a means of transitioning to the lower scale / lower density of the surrounding development pattern and to respond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

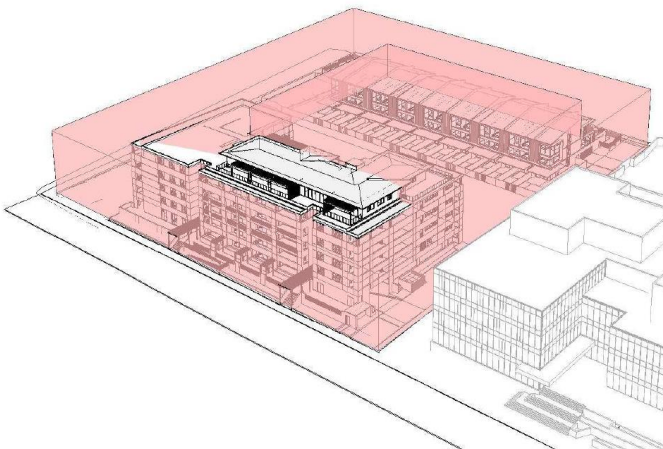
As can be observed in the below figures, the contravention relates to the level 5 units (penthouses) as well as the upper portion of level 4 as shown in the below building height envelopes submitted with the application.



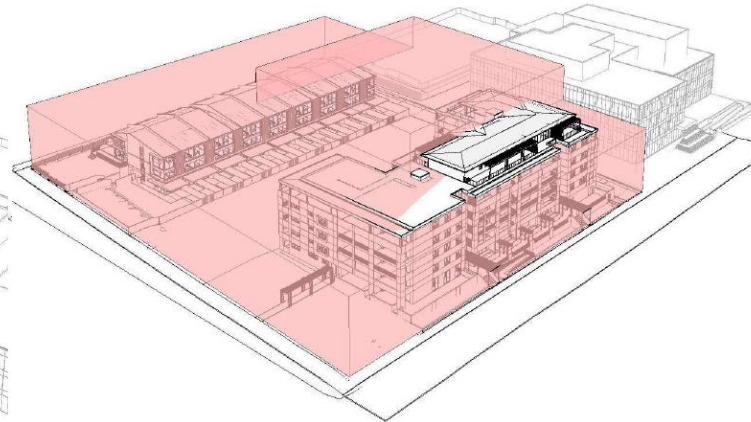
BUILDING ENVELOPE DIAGRAM -NORTH EAST



BUILDING ENVELOPE DIAGRAM -NORTH WEST



BUILDING ENVELOPE DIAGRAM -SOUTH EAST



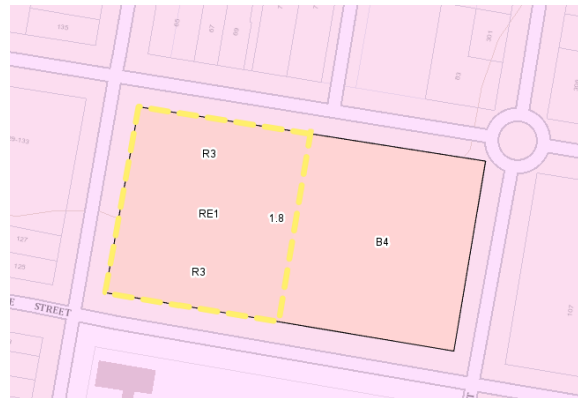
BUILDING ENVELOPE DIAGRAM -SOUTH WEST

**Figures 31(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 32: LEP Mapping – FSR**

The FSR calculations can be summarised as follows:

**Table 10: FSR Calculations**

Lot	Site Area (m <sup>2</sup> )	FSR	Allowable GFA	Proposed GFA(m <sup>2</sup> )	Actual FSR
501	8,296 <sup>5</sup>	1.8:1	14,932.8	10,851	<b>1.31:1</b>

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

<sup>5</sup> Accounting for the exclusions as detailed in clause 4.5(4)(b).



#### 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 applicant has submitted a request to vary the above-mentioned development.

#### Objectives of the Standard being varied.

*(1) The objectives of this clause 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.*

#### Numerical Value to be Varied.

The clause 4.6 requests states:

*Clause 4.3 and its supporting Height of Buildings Map restricts development to 16m and 25m. The numeric value of the Development Standard to which variation is sought is 16m.*

#### Percentage of Breach

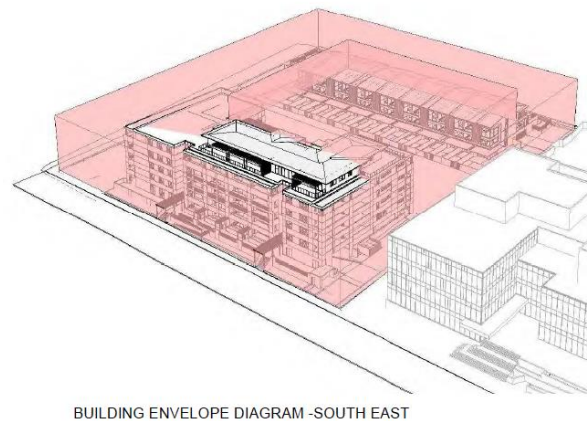
The Clause 4.6 states:

*The proposed new residential flat building will have the following:*

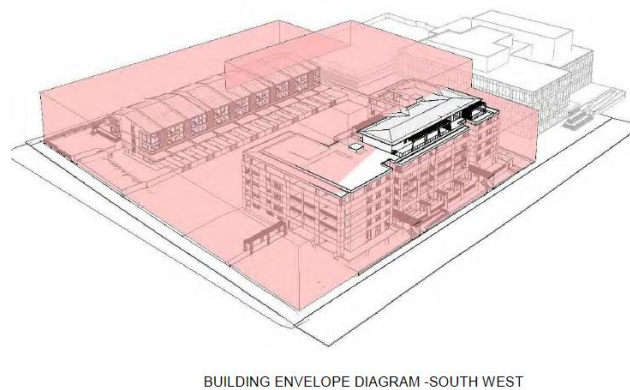
- *Maximum Building Height = 19.65m Ridgeline (lift overrun 20.25m)*
- *Actual Height Variation = 1.47m – 3.65m*
- *Percentage variation = 9.2% – 22.8%*
- *The non-compliance, varies from a minor encroachment of the level 4 façade up to the level 5 apartment encroachment.*
- *The level 4 façade breach varies from 0.68m to its maximum 1.47m for only 22.1% of the footprint of the building.*
- *The level 5 apartment breach varies from 1.47m to its maximum 3.65m for only 20.6% of the footprint of the building.*

- The total breaching area consumes 7.8% of the site of which the remaining 92.2% of the site is compliant.
- It is noted no buildings are sought over the RE1 zoned land which comprises a 25m height of buildings development standard.

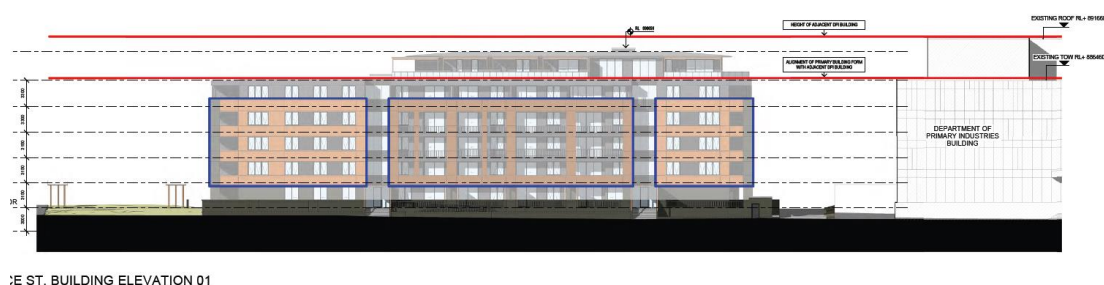
The Following figures show the extent of the encroachment:



**Figure 33:** Building envelopes – height of building control.



**Figure 34:** Building envelopes – height of building control.



**Figure 35:** Elevation showing relationship with adjoining commercial building.

## **Consideration**

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 pre-conditions as set out in clauses 4.6(3) and 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, in exercising their functions, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii) these are addressed below; the second precondition (cl.4.6(4)(b)) requires the consent to obtain the concurrence of the Planning Secretary, this is also address below.

### **Two Positive Opinions of Satisfaction (cl. 4.6(4)(i)&(ii))**

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).

In meeting the first element of the first precondition, consideration must be given to the applicants cl.4.6 request in that whether or not it “adequately demonstrates” firstly:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

*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 applicant's cl.4.6 request has relied on the above to demonstrate the unreasonable or unnecessary test<sup>6</sup> 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,*

**Response:**

*The proposal contributes positively to the desired medium residential density of the transitioning CBD and surrounding area. The medium-rise residential apartment building is positioned on the south of the site to assist the transition from the residential neighbourhood to the north and west up to the higher density commercial and educational uses to the east and south towards the city centre. The proposal will provide a development with a compliant building setback and facade line equal to that of the adjoining commercial development at 105 Prince Street as demonstrated in Appendix 3. The footprint of the upper level is set back from the outer walls of the level below and the height of the parapet to the levels below is consistent with the streetscape RL of 105 Prince Street. Therefore, the proposal fits contextually within the scale of adjoining development and the transition from the City centre.*

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

**Response:**

*Exceedance of the height control will not create additional building bulk that results in environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in the height would not create additional benefit for adjoining properties or the locality.*

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<sup>6</sup> The construction of clause 4.6(3)(a) is such that an applicant needs only to demonstrate one or the other, unreasonable or unnecessary, it does not need to demonstrate both.

**Visual Bulk and Scale:**

- *The proposed development provides an articulated building form that minimises perceived bulk and scale impacts when viewed from Sale Street, Prince Street and the surrounds of the site.*
- *The proposal will provide a development, which is consistent with the envisaged transitioning scale of the adjoining developments and is of an appropriate visual bulk for the locality, responding to the commercial uses to the east and south as the key transition from the residential use to the adjoining commercial uses and city centre.*
- *The proposal is compliant with the floor space ratio requirements set out under the OLEP 2011.*
- *The proposed bulk and scale of the development is in keeping with the planning ambitions for this location to support medium density residential development.*
- *The encroachment consists of a small portion of the buildings façade roofline and also a section of the level 5 penthouse apartments. The penthouse apartments have been recessed from the streetscape elevations. Placing these apartments with considerable setbacks from the building line results in minimal bulk and scale impact from the proposed variation.*
- *I have formed the considered opinion that most observers would not find the proposed developments height encroachment, by virtue of its height unsympathetic having regard to the existing and desired future built form characteristics of adjoining development. The visual catchment effect of the development would have an equal impact with or without the proposed encroachment.*

**Overshadowing:**

- *The proposal will not result in unreasonable overshadowing of adjoining properties. In particular, it is noted that the height breach at the penthouse level does not result in any additional loss of solar access to adjoining properties and the proposal is fully compliant with the solar access controls for adjoining properties and the development itself. The proposed development increases the provision of public open space offerings for surrounding residents through the provision of an additional open space offering. The breaching element of the development is located to the south of the additional offering and would not contribute to overshadowing of the open space area.*



- *The breaching element only results in minor additional overshadowing of the neighbouring commercial premises from 3pm and 4pm winter solstice 21<sup>st</sup> June as demonstrated in Appendix 4. Outside this 2 hour period during winter solstice the development, in either a compliant built form or with the breaching element, produce the same overshadowing effect.*

**Privacy:**

- *-The proposal will provide a development, which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained.*
- *The breaching element has been designed to ensure visual and acoustic privacy of adjoining properties is maintained as the uppermost dwelling and its living areas are ‘tucked into and centred’ upon the roof level concealed by the roof and floor level of the those below.*
- *Given the separation distances of the penthouse level from surrounding properties, the breach will not result in the loss of privacy for adjoining properties.*
- *The proposed and existing landscaping will further soften and screen perceived privacy impacts from adjoining dwellings. It should be noted that the majority of surrounding properties in Prince Street, Sale Street and Dalton Street have a traditional private open space arrangement upon their lots located within their rear yards. It should also be noted that a large number of these dwellings operate commercially with a variety of business throughout Sale Street and Dalton Street not utilised as dwellings.*
- *The proposed penthouse level has been designed to minimise impacts in terms of the acoustic or visual privacy of adjoining properties being located to ensure that sightlines are not directly available to private open space or windows to habitable spaces of adjoining properties by providing generous setbacks from the edge of the level below and in effect concealed by the parapet level below.*
- *The proposed penthouse level does not increase the privacy impacts (visual or acoustic) of the proposed development on adjoining properties or the surrounding neighbourhood. Removal of the proposed height encroachment does not reduce the visual or acoustic impact of the proposed development.*

**Views:**

- *The proposed penthouse level will not result in any increased loss of views from surrounding development due to its setback location and limited footprint.*
- *The encroachment will not result in loss of views from the public domain. Non-compliance with the standard does not contribute to adverse environmental impacts when viewed from the public domain.*

*The proposed height encroachment will not have any additional impacts on the amenity of neighbouring properties or public spaces within the locality therefore a reduction in the proposed height will not result in improved amenity for adjoining properties.*

The above commentary is adequate in demonstrating *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl4.6(3)(a)).*

The second arm of cl.4.6(3) requires the applicant to *adequately demonstrate* there is sufficient environmental planning grounds to justify the contravention.

In this regard the applicant provides the following:

*There are sufficient planning grounds to justify contravening the development standard as the additional height can be accomplished without adverse impacts upon its surrounds whilst also achieving the objects in Section 1.3 of the EPA Act.*

*The proposed development achieves the objects identified in Section 1.3 of the EP&A Act 1979, specifically:*

- *The proposal promotes the orderly and economic use and development of land (1.3(c)).*
- *The development represents good design and amenity of the build environment (1.3(g)).*
- *The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).*

*The proposed development is consistent with the provisions of orderly and economic development of land, in that it proposes to provide new medium density housing with a high level of design and amenity, in a manner, which meets the objectives of those applicable controls. This new residential accommodation over its economic life is consistent with the promotion and coordination of the orderly use and development of land.*

*The proposed height can be achieved without adverse impacts for the following reasons:*

- The proposed penthouse level will not result in any increased loss of views from surrounding development due to its setback location and limited footprint.*
- Given the separation distances of the penthouse level from surrounding properties, the breach will not result in the loss of privacy for adjoining properties.*
- The proposal will not result in unreasonable overshadowing of adjoining properties. In particular, it is noted that the height breach at the penthouse level does not result in any additional loss of solar access to adjoining properties and the proposal is fully compliant with the solar access controls for adjoining properties and the development itself.*
- The proposal will provide a development, which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained.*
- The proposal will provide a development, which is consistent with the envisaged transitioning scale of the adjoining developments and is of an appropriate visual bulk for the locality.*
- The development as proposed fits contextually with the site and streetscape as the intensity of the development is appropriate and acceptable, having regard to existing adjoining development and envisaged scale transition towards the CBD.*
- Non-compliance with the standard does not contribute to adverse environmental impacts and when viewed from the public domain, the appearance of the development will make a positive contribution to the streetscape.*
- The proposed development provides an articulated building form that minimises perceived bulk and scale impacts when viewed from Sale Street, Prince Street and the surrounds of the site.*

- *Reduction in the proposed height will not result in improved amenity for adjoining properties.*
- *Given the consistency of the proposal against the zone objectives and height objectives, consideration that the height can be achieved without adverse impacts on adjoining properties and that the development achieves the objects in Section 1.3 of the EP&A Act in my considered opinion there are sufficient environmental planning grounds to justify contravening the development standard.*

The above commentary adequately demonstrates there are sufficient environmental planning grounds to justify the contravention.

Having reached the necessary level of satisfaction required under clause 4.6(4)(i), the legislation now turns to the consent authority to be directly satisfied that *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

#### Objectives of the Standard

*(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,*

The development is not inconsistent with the above object. In this regard:

- The subject land is in proximity to the city centre, the immediate context with the 4 and 5 storey commercial building immediately adjacent to the site is a prominent and defining element in the urban character of the locality.
- The highest part of proposed building is concentrated to the south-east corner of the site in close proximity to the existing tall buildings within the precinct, primarily the DPIE building, but also, to a lesser extent, the TAFE buildings to south.
- The 5<sup>th</sup> level is recessed from the floors below which reduces the apparent bulk and assists with the transition in height to the lower scale buildings in the vicinity. Also, the built form on level 5 extends only partway along the southern elevation as a further means of transitioning the building height to relate to the lower density environment, primarily to the west of the site.

- The contravening elements at the 4<sup>th</sup> level of the building are appropriately treated in terms of materiality to respond as roof-like element which also acts as means of reducing the bulk and assist with the transition in height.
- The urban character to the west and north of the site is primarily characterised as a tradition single storey residential environment. The generous setbacks to the west where there are examples of buildings with a single storey / residential character results in numerous benefits, one of which is it retains the existing and mature trees which than acts as a vegetative / visual buffer between the higher buildings to the east and those buildings with a residential character to the west.

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

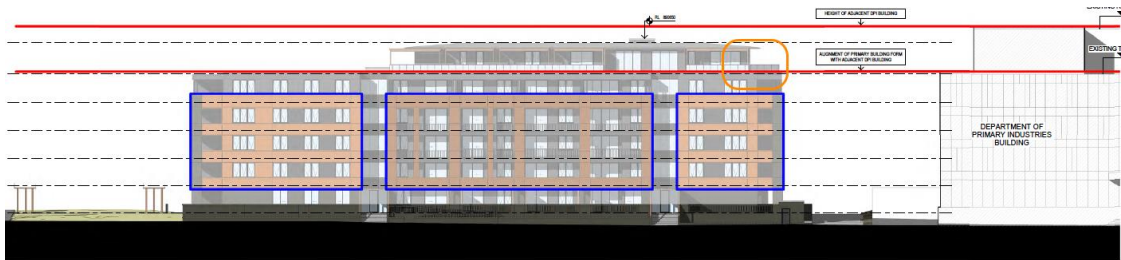
The additional built form on level 5 is not expected to adversely impact upon the amenity of neighbouring prosperities and public places due to the following:

- The upper levels (levels 4 and 5) of the RFB have been collaboratively designed through extensive dialogue with Council's Heritage Advisor who has offered a number of recommendations in relation to roof form, materiality of the upper levels, overall composition of the building, continuity between the vertical tripartite parts, colours and details of external materials, architectural treatments such as colonnades and balustrade treatments, all geared towards reducing the visual bulk and apparent height of the building.

The applicant has successfully incorporated these recommendations and what has resulted is a building that, although it contravenes the height of building standard, is considered to be contextually appropriate in the setting, a building that sits comfortably in the streetscape with a compatible design outcome considering the immediate context.

- In terms of overshadowing, the applicant has presented shadowing diagrams which clearly demonstrate that the extra height does not engender any adverse environmental impacts by why of overshadowing upon any neighbouring properties.

- In terms of privacy, the level 5 floor plate is recessed from the southern and eastern edges of the building below which serves to reduce the apparent bulk of the building by making the built form on level 5 less visible, however, it also serves to assist with reducing visual privacy impacts. As can be observed in the below figure, level 5 sit approximately in line with the roof of Level 4 of the adjoining building, noting there is built form above this height on the adjoining building although its non-habitable (plant room). Given the relationship between the two buildings, there is no direct overlooking, but downward overlooking. Recessing the penthouses means that any opportunity to overlook level 4 of the adjacent building in a downward direction and is obstructed by the projecting part of the building directly below. As such, there is limited overlooking opportunities created as a direct result of the extra height. It is acknowledged that there is an east facing balcony on the 5<sup>th</sup> level. However, the subject balcony is situated in the non-contravening part of the site towards the centre of the site<sup>7</sup>.



- In terms of views, there are no iconic or important views that would be interrupted as a direct result of the extra height. It's noted that the closest recognised iconic view is Mount Canobolas which is located to the south-west of the site and therefore built form to the immediate west would not interrupt these views.

Given the forgoing, the development, with specific reference to the contravening portion of the building, despite the noncompliance, is consistent with the objects of the height of building development standard.

<sup>7</sup> Out of completeness, the referenced balcony complies with the ADGs in terms of building separation.



### Objectives of the Zone

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 general 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. It's noted that the ADGs specifically encourage penthouses being incorporated into the design of an RFB.
- 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.

As observed from the above, the development is consistent with the objectives of the zone.

Given the above, the Panel can form the necessary level of satisfaction that the development is in the public interest because it is consistent with the objects of the standard and consistent with the objectives of the zone.

In relation to the requirement to obtain concurrence of the Planning Secretary, as per planning circular PS 20-002 the Panel may assume the concurrence of the Secretary.

Accordingly, the panel can be satisfied that the preconditions contained within cl.4.6(4) have been met, and the Panel would therefore be within power to grant consent.

Clause 4.6(7) is a matter for Council.

A copy of the clause 4.6 request is appended to this report.

#### 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.

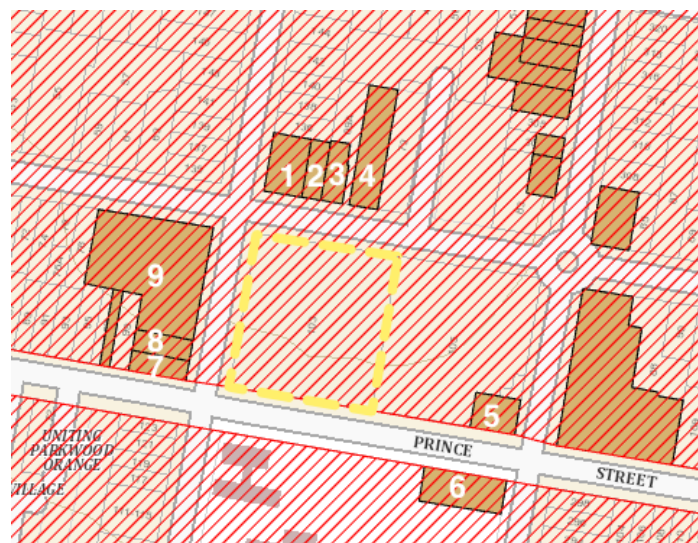


Figure 36: Heritage Listings

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' quarters<sup>8</sup>

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

<sup>8</sup> 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 a satisfactory heritage outcome within Prince and Sale Streets. Accordingly, the development application is consistent 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:

<b>Matter for consideration</b>	<b>Comment</b>
<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, relevant conditions of consent are attached 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.*

The clause contains a pre-condition on the grant of development consent as follows:

*Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—*

*(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*

*(b) includes, where practical, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*

*(c) avoids any significant impacts of stormwater runoff on adjoining downstream properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact*

Council's Technical Services have advised that the predevelopment runoff levels will be determined based on the site being 100% pervious.

In regards to sub clause (a) above, the development provides extensive areas of pervious surfaces such as the landscaped area in the southwestern corner of the site, the central public park and the areas of deep soil landscaping within both the MDH and RFB developments. The extent of retained permeable surfaces is satisfactory and there is no evidence currently to suggest that the soil characteristic of those areas would restrict water infiltration through the existing (and proposed in the deep soil landscaping areas) soil profiles.

In regards to sub clause (b) above, the dwellings on lot 603 are all required by BASIX to have a minimum of 3000L water tank installed and plumbed to toilets and laundries as an alternative to mains water supply. Additionally, a 5000L tank is required to collect roof water for irrigation of landscaping within the common areas of the RFB site.



In regards to sub clause (c) above, 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.

Council Technical Services have reviewed the stormwater concept design and have not raised objections to the proposed arrangements, however, a detailed suite of conditions have been recommended to deal with stormwater in terms of both collection, retention and discharge, as well as water quality leaving the site.

Given the foregoing, the development is considered satisfactory with regards to stormwater management.

#### 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.

An amended BASIX certificate has been submitted in support of the application and relevant conditions of consent are attached.

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 development's 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 their requirements. These are attached to the draft Notice of Approval.

#### 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 owner of the land at the time of lodgement of the development application was Orange City Council.

It is noted that in the intervening period between lodgement of the application and consideration by the Panel, the ownership has transferred to MAAS Group Properties Limited.

#### 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 10 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 not inconsistent with Design Principles for Residential Apartment Developments.

**Table 11: SEPP 65 - Evaluation of the RFB Against the Design Principles**

Principle	Response
<p><b>Principle 1: Context and neighbourhood character</b>  <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. 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. 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 <b>5.10.1 Heritage, Streetscape and Tree Removal</b>, the proposed RFB responds appropriately to the context and setting. The amended design includes front setbacks from Prince Street commensurate with the adjoining commercial building and adopts external materials that complement the heritage character of the area, particularly through the use of face brick which directly references buildings such as Caldwell House, the TAFE buildings and the prevailing residential character of the broader locality.</p> <p>The amended design also allows for retention of the important vegetated western edge of the site which is a fundamental contributor to the character of the locality.</p> <p>The development is consistent with <b>Principle 1</b>.</p>
<p><b>Principle 2: Built form and scale</b>  <i>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. 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. 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 <b>5.10.1 Heritage, Streetscape and Tree Removal</b> the proposed RFB is considered appropriate in terms of built form and scale.</p> <p>The design of the RFB now responds appropriately to the surrounding development pattern with front setbacks commensurate with the adjoining commercial building and a generous secondary setback to the west allowing retention of the vegetated western edge. Additionally, the greater setback to the DPIE building provides for an improved urban environment. The general form and composition of the RFB will result in a building that is compatible within the streetscape and the overall design of the building is appropriate in the context and setting.</p> <p>The development is consistent with <b>Principle 2</b>.</p>
<p><b>Principle 3: Density</b>  <i>Good design achieves a high level of amenity for residents and each 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>The development is generally consistent with the density requirements under the DCP, and with reference to the ADG compliance table at annexure A, it can be demonstrated that the proposed RFB will provide an adequate level of residential amenity for future occupants.</p> <p>The additional density proposed under this development can be sustained by; the existing infrastructure within the locality (or through upgrades to services as required by conditions of consent), provision of existing public transport within the vicinity of the site, access to employment opportunities, noting the site's proximity to the CBD and the CBD fringe employment generators.</p>

	The development is consistent with <b>Principle 3.</b>
<p><b>Principle 4: Sustainability</b>  <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 cross-ventilation. In terms of access to sunlight refer to below comments.</p> <p>A BASIX certificate has been submitted in support of the development which demonstrates compliance with the NSW Government's Water and Thermal efficiency targets.</p> <p>In relation to waste management, the author had previously requested, as part of the very first review of the application, to amended the design to include provision of recycling bins on each floor. This was undertaken by the architect as part of the earlier iterations and has subsequently been omitted again under the current design (or at least it's unclear if provision for recycling has been provided in the current design).</p> <p>Notwithstanding, a condition is recommended that requires the CC plans to clearly show provision for recycling bins in proximity to each elevator / lobby / waste chute on each floor.</p> <p>The Development is consistent with <b>Principle 4.</b></p>
<p><b>Principle 5: Landscape</b>  <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 areas at ground level along the Prince Street frontage as well as the landscaping in the open space in the southwestern corner of the site is considered appropriate and will achieve the objectives of this principle.</p> <p>Additionally, the landscaped edge along the eastern boundary adjacent to the shared accessway will provide a level of softening and screening of the development at the interface with the adjoining commercial building.</p> <p>The development is consistent with <b>Principle 5.</b></p>
<p><b>Principle 6: Amenity</b>  <i>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive</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>Each unit provides:</p>



<p><i>living environments and resident well-being.</i>  <i>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>	<ul style="list-style-type: none"> <li>• adequately sized living areas and outdoor spaces /balconies,</li> <li>• Indoor and outdoor spaces which are directly connected to provide a level of indoor/outdoor integration.</li> <li>• Reasonable movement of air through the apartments.</li> <li>• Reasonable levels of direct sunlight to at least 70% of apartments.</li> <li>• Bedrooms of an appropriate size and shape.</li> <li>• Adequate provision of storage spaces within each unit.</li> </ul> <p>Communal areas:</p> <ul style="list-style-type: none"> <li>• Are efficiently designed for the movement of people.</li> <li>• Provide adequate means of vertical circulation through the building.</li> <li>• Have access to natural light and ventilation.</li> <li>• Are sufficiently proportioned to provide ease of access for all age groups.</li> </ul> <p>Additionally, a variety of communal open space types and locations (ground level open space and communal BBQ area on level 4) enhance the well-being of future occupants of the RFB.</p> <p>The development is consistent with <b>Principle 6.</b></p>
<p><b>Principle 7: Safety</b>  <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>In the regard:</p> <ul style="list-style-type: none"> <li>• Habitable rooms within apartments overlook public or communal areas, allowing for natural surveillance of those areas.</li> <li>• The use of raised garden beds, well defined entry points, boundary fencing, differing pavement treatment to the shared accessway, etc. assist to easily demarcate the areas of public and private space.</li> <li>• Entry points are easily identifiable and are located in high traffic areas.</li> <li>• The layout of external communal areas provide good sight lines to reduce opportunities for seclusion and hiding.</li> <li>• External lighting within the shared accessway, communal areas within the RFB and within the public park will provide added security and safety for users of the area.</li> </ul> <p>The development is consistent with <b>Principle 7.</b></p>
<p><b>Principle 8: Housing diversity and social interaction</b>  <i>Good design achieves a mix of apartment sizes, providing housing</i></p>	<p>Refer to discussion below on the proposed unit mix within the development.</p>

<p><i>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>With reference to that discussion, the author is of the opinion that the apartment mix within the development is acceptable.</p> <p>The development provides for the housing needs of a variety of social demographics. It provides a type of housing within the City that has historically been underrepresented in the market, as evidenced in the housing needs study submitted in support of the development.</p> <p>The development is consistent with <b>Principle 8.</b></p>
<p><b>Principle 9: Aesthetics</b> <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 <b>5.10.1 Heritage, Streetscape and Tree Removal</b>, the amended design results in a building that is contextually appropriate with satisfactory aesthetics.</p> <p>In this regard the amended design incorporates the following:</p> <ul style="list-style-type: none"> <li>• Balconies which are more appropriately integrated into the overall form of the building.</li> <li>• A simpler and more modest building form has been adopted.</li> <li>• More contextually appropriate materials such as face brick with contrasting colours which define the base and middle portions of the building and lighter weight construction of the upper storeys define the top of the building.</li> </ul> <p>This design approach serves to modulate the building and defines the building into the important tripartite parts of a base, middle and top.</p> <p>The above measures combine to result in a building that is well-designed and an appropriate fit in local context.</p> <p>The development is consistent with <b>Principle 9.</b></p>

In relation to subclause (2)(c), consideration of the development against the ADGs is provided in table form attached to this report (provided at **Annexure A**).

As can be observed in the attached table, the development is considered to be generally compliant with the relevant objectives set out in sections 3 and 4 of the ADG, save for the access to sunlight provisions as further detailed below.

It is noted that the submitted design verification statement indicates compliance with the solar access provisions, however, the referenced provision is incorrect. The Sydney, Newcastle and Wollongong provision has been referenced which allows a lesser standard for direct sunlight to living areas of 2 hours, as opposed to the correct provision which requires 3 hours for areas outside of those mentioned above.

Consequently, the author of this report has completed an assessment of access to sunlight for each apartment which concludes the following:

- Units with a northerly aspect exceed sunlight requirements.
- Unit 111 receives an estimated 1.5 to 2 hrs direct sunlight given the acute angle of the sun created by the adjoining unit to the north and the overshadowing of the adjoining commercial building.
- Units with the last two digits 03 and 04 across levels G to 4 receive an estimated 2 – 2.5 hrs direct sunlight (between 12:30pm/1pm and 3pm). This is due to the western orientation and the acute angle of the sunlight created by the unit to the north which projects out to the west.

The above analysis means:

- 60% (36 of 60) of the units receive the requisite direct sunlight for the full three hours.
- 77% (46 of 60) (i.e. including #03 and #04 digit units) of units receive at least 2 to 2.5hrs direct sunlight.
- Unit 111 sits outside of the above and below referenced categories of units as it receives some direct sunlight, but less than 2-2.5 hrs.
- 22% (13 of 60) of units receive no direct sunlight.
- Only one of the six, one-bedroom units receives any direct sunlight (unit 111).

It's noted that the applicant's submission via the design verification statement indicates: ***Just over 14% receive no direct sunlight in mid- winter.*** It's unclear how this figure has been arrived at given the above analysis. It could be a carryover from the previous design which sat at around 15% of units that would have received no direct sunlight.

In relation to those units #03 and #04 across levels G to 4, given they are west facing, it is reasonable to suggest that the sun beyond 3pm (mid-winter) still retains some value in terms of solar gains and amenity for at least 30mins – 60mins. On this basis, it would be reasonable to conclude that the development achieves the relevant objective which states: *To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.*

In response to the number of south facing units or units that receive no direct sunlight, the applicant has submitted the following:

*For south facing apartments, there are significant views to the south, overlooking Prince Street. Living spaces are oriented to capture the views for these apartments. An enclosed communal recreation room has been provided on Level 4 of the apartment building which receives adequate sunlight during the winter months. Residents can use this room at any time if they would like more access to sunlight.*

Whilst the number of units which do not receive any sunlight is less than desirable, particularly given Orange's cool temperate climate, it is likely this has arisen as an unintended consequence of addressing the constraints of the site (given the existing part 4 and part 5 storey commercial building to the east); as well as meeting the applicable planning controls for the site (setbacks, retention of trees, etc.) and the matters raised in the Panels Notice of Deferral.

On balance however, given the development's level of conformity in all other respects (acknowledging the clause 4.6 request) and the considerable lengths the applicant has gone to address the panel's deferral matters, the development as a whole, still presents as an acceptable development and is recommended for approval. The Panel may form a different view however.

## **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:

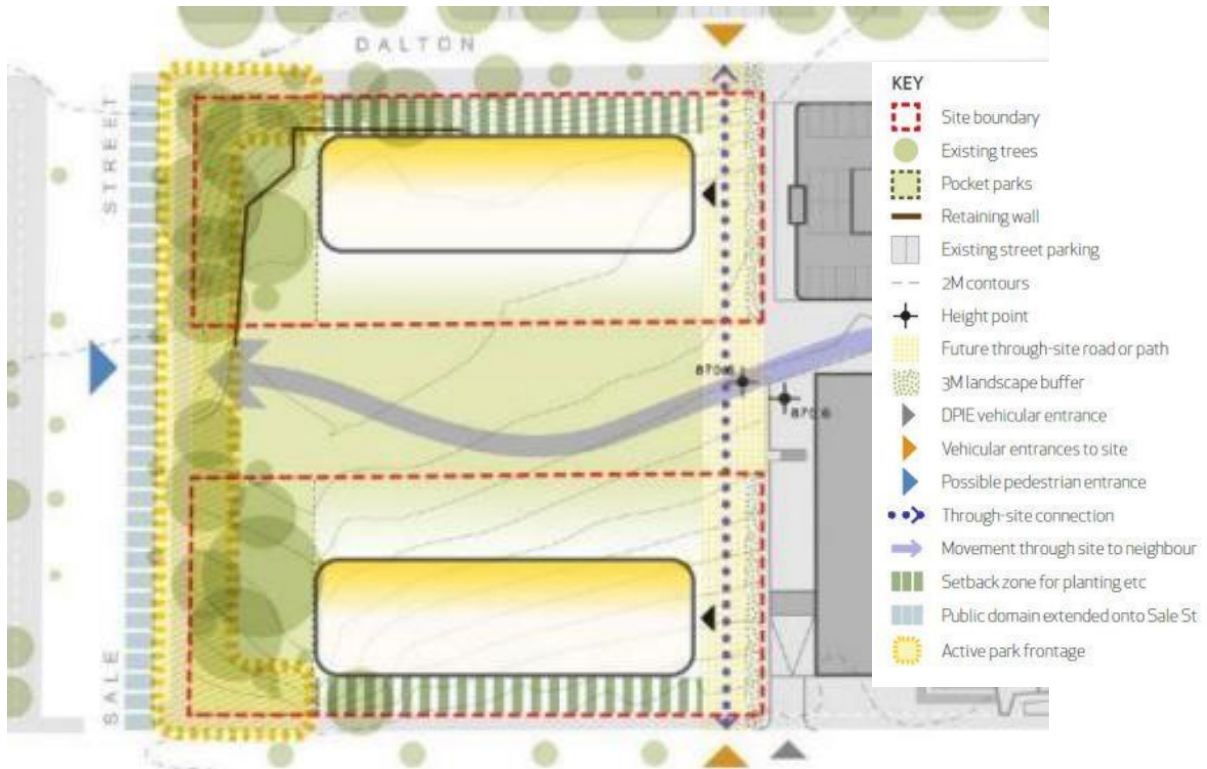
- Chapter 00 – Orange LEP 2010 (sic)
- Chapter 03 – General Considerations
- Chapter 04 – Special Considerations
- Chapter 05 – General Considerations
- Chapter 07 – Development in Residential Areas
- Chapter 13 – Heritage
- Chapter 15 – Car Parking

#### *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 37:** 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 B**.

The key elements are explored further below.



### **Internal Shared Accessway**

The design has been amended to include the internal shared accessway. The access is 6m in width with a 1.5m landscape strip along the eastern boundary.

The area is to be treated as a shared environment, meaning a 10km/h speed limit for vehicles.

Council's Technical Services initially requested a grade separated 1.2m-1.5m wide pedestrian path along the eastern side of the accessway.

The applicant's traffic engineer responded with the following:

*From our review of the plan, we consider that the driveway will act as a shared zone for the movement of vehicles, cyclists and pedestrians and as such should be designated as a shared zone with a posted speed limit of 10 km/h. In this way, the requirement for a separate footway is not required. This driveway will provide access for the future residents of the development site only and there will be little if any demand for the general public to walk along this driveway. The low traffic volumes on this driveway, together with the low pedestrian demands will ensure that this shared zone can operate in a safe manner.*

*It is noted that there is separate pedestrian access to the buildings provided direct off both Dalton Street and Prince Street which will further reduce the need for pedestrians to walk along this driveway.*

*The plans allow for a landscape zone to one side, the 6.0 m wide driveway acting as a shared zone and allows for this shared zone to have a different surface treatment to highlight the different character of this driveway, plus appropriate signage at both ends and traffic control devices.*

*From our review of the plans provided we consider that this driveway can operate in a safe and appropriate manner as a shared zone to allow for vehicles, cyclists and pedestrians.*

Council's Technical Services accepted the above and have recommended conditions of consent in relation to signage and pavement treatments. Council's Technical Services have explicitly precluded speed humps as they present a trip hazard.

The shared accessway also provides for the collection of waste. There is also a loading area for deliveries and the like and single visitor space.

The inclusion of the shared accessway within the design results in a significant improvement in the overall design of the development and eliminates a number of undesirable consequences that would have arisen in the absence of the laneway.

### **Heritage Considerations**

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

### **Setbacks**

The DCP requires the following setbacks:

*Table 12: Setback Analysis*

Street	Setback (m) required by DCP	Actual Setback (m)
Dalton Street	6.5	7.7
Prince Street	6.5	6.5
Sale Street	21.4	16.4m (townhouses) 20.4m
DPI	3 plus 10.5 for shared access way	10.5m to the building proper.
Setbacks above 4 storeys	5	Level 4 / 5 <sup>th</sup> storey, no increased setback. Level 5 / 6 <sup>th</sup> storey penthouses are recessed from the edge of building below.

As can be observed from the above table, the development is generally compliant with regards to setbacks. The setback to Prince Street was seen as a critical aspect of the previous assessment which is now satisfactorily resolved.

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:

*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 13: Unit Mix Comparison**

Dwelling Type	DCP Requirement	Required no. <sup>9</sup>	No. of units / type	% (rounded)	% change
1 bedroom	20%	12.6 (12)	6	10%	-50%
2 bedrooms	70%	44.1 (43)	27	45%	-37%
3 Bedrooms	15%	9.45 (8)	27	45%	+237.5%
Totals	105%	66.15 (63)	60	100%	--

Owing to the significant departure from the DCP that was proposed in the previous design, 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.

As previously noted, the study undertakes the following tasks:

- a literature review of applicable strategic planning documents,
- undertakes population projections,
- interrogates 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.

<sup>9</sup> Adjusted to account for the 105%.

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.

**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 38: Dwelling Composition comparison (source: umwelt)*

Whilst the author does not dispute the findings of the above referenced study, its noted that the study still offers little to support the applicants request to provide, now 6 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, as amended, presents an improved outcome in terms of apartment mix . The development meets the overarching principles of the housing strategy (and other relevant strategic planning studies) by adding to the diversity of housing stock through the provision of a mix of apartment types and sizes. The then provides a range of residential accommodation options in the market and additional lifestyle choices for residents within the city.

*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 this regard, a detailed assessment has been provided by Terras Landscape Architects.

Notwithstanding, as the subject trees are located within a 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*

Chapter 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 Chapter 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 Chapter 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 area.

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 14: Parking Calculations - Multi Dwelling Housing*

<b>Dwelling Type</b>	<b>No. Dwellings</b>	<b>Applicable Rate</b>	<b>Required No.</b>	<b>Proposed</b>
3 or more beds	16	1.5 / dwelling	25	32
		+	+	
		0.2 / dwelling	3.2	0
		<b>Total</b>	<b>28.2</b>	<b>32</b>

With reference to the attached plans, 32 on-site parking spaces are provided within the basement carpark. Thus, the development provides a theoretical surplus of 3.2 parking spaces.

However, the way the applicant is proposing to distribute the parking is by allocating two spaces per dwelling, and consequently, the development is deficient in the number of required visitor spaces.

It is open to the panel to include a condition that requires 3.2 spaces (or conservatively 3 whole spaces) set aside as visitor parking within the basement meaning that 3 dwellings would only be assigned 1 space.

Alternatively, the panel may form the view that the two spaces per dwelling is satisfactory, and the surplus under the per dwelling rate would off-set a situation where residents (of those 3 dwelling with only one parking space) with two vehicles need to park one of their vehicles on the street.



Given the direct frontage of these dwellings within Dalton Street, it is considered acceptable in this circumstance to forego the requisite visitor spaces in lieu of providing the extra resident parking.

### RFB

*Table 15: Parking Calculations - RFB*

Dwelling Type	No. Dwellings	Applicable Rate	Required No.	Proposed
1 Bedroom Units	6	1/ unit	6	6
2 Bedroom Units	27	1.2/unit	32.4	30
3 Bedroom Units	27	1.5 /unit	40.5	54
Visitor	60	0.2 /unit	12	3 <sup>10</sup>
<b>Total</b>	<b>60</b>	<b>--</b>	<b>90.9</b>	<b>93</b>

With reference to the attached plans, 92 on-site parking spaces are provided within the basement car park a number of which are arranged in a tandem or stacked arrangement. Meaning each stacked space will need to be assigned as pair of tandem / stacked spaces.

The development provides a surplus of **2.1 spaces**.

However, the applicant is proposing the parking to be distributed in a way whereby all three-bedroom units are allocated 2 spaces, a number of two-bedroom units are allocated 2 spaces and the remaining two-bedroom units and the one-bedroom units are allocated 1 space each. The pairs of stacked parking are all allocated to three-bedroom units. 3 parking spaces are nominated as visitor parking, with 2 spaces located within the RFB basement and the third is located to the north of the loading area, adjacent to the shared accessway.

<sup>10</sup> One of the three proposed visitor spaces is proposed within the shared accessway.

The stacked arrangement is not ideal and could become tedious and inconvenient over time and thus, underutilised by the future residents. Notwithstanding, the development does provide the requisite number of parking spaces, however, the allocation of those spaces is contrary to the DCP. It is open to the panel to require 12 visitor spaces within the development site as a condition of consent. Any such condition would have to ensure the following outcomes are achieved:

- Every unit is allocated at least one parking space.
- Visitor spaces are not located within the area of stacked / tandem spaces.

## **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 planning agreement (aka a VPA) pursuant to section 7.4 of the EP&A Act has been entered into 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 current 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 when previously exhibited.

The VPA has been executed and is referenced on the title pursuant to section 7.6 of the EP&A Act.

As the subdivision plan has been amended to facilitate the proposed development, which is subsequent to the VPA being executed, the applicant has provided Council with a letter of offer indicating their willingness to enter into an amended planning agreement to reflect the change in subdivision layout.

The following relevant condition is attached addressing this issue:

Prior to the issue of a construction certificate, evidence shall be provided to Council that demonstrates the beneficiary of the consent has entered into a Planning Agreement in accordance with the letter offer dated 4 April 2023 and evidence shall be provided that the planning agreement (as amended) has been registered on the title of the land the subject of the VPA.

### 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 lot<sup>11</sup>, pursuant to Orange Development Contributions Plan 2017 (Development in remainder LGA) as follows:

*Table 16: Development Contributions - Subdivision*

Component of plan	Rate	Amount
Open Space and Recreation	\$4,459.51 x 1 additional lot	\$4,626.04
Community and Cultural	\$1,293.24 x 1 additional lot	\$1,341.53
Roads and Traffic Management	\$5,886.40 x 1 additional lot	\$6,106.21
Local Area Facilities	--	--
Local Area Facilities	\$349.16 x 1 additional lot	\$362.19
<b>TOTAL</b>		<b>\$12,435.97</b>

#### 5.8.1.2 Multi dwelling housing.

Development contributions are applicable to the 16 x 3-bedroom dwellings (less the existing credit), pursuant to Orange Development Contributions Plan 2017 (Development in remainder LGA) as follows:

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<sup>11</sup> 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 17: Development Contributions - MDH**

Component of plan	Rate	Amount
Open Space and Recreation	\$4,626.04 x 15 additional 3-bedroom dwelling	\$69,390.60
Community and Cultural	\$1,341.53 x 15 3-bedroom dwelling	\$20,122.95
Roads and Traffic Management	\$6,106.21 x 15 3-bedroom dwelling	\$91,593.15
Local Area Facilities	--	--
Local Area Facilities	\$362.19 x 15 3-bedroom dwelling	\$5,432.85
<b>TOTAL</b>		<b>\$186,539.55</b>

**5.8.1.3 RFB**

Development contributions are applicable to the 60 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 26 units)), pursuant to Orange Development Contributions Plan 2017 (Development in remainder LGA) as follows:

**Table 18: Development Contributions - RFB**

Component of plan	Rate	Amount
Open Space and Recreation	\$1,951.35 x 6 (1 bedroom) \$2,641.00 x 27 (2 bedroom) \$4,626.04 x 26 (3 bedroom)	\$11,708.10 \$71,307.00 \$120,277.04
<b>Sub total</b>		<b>\$203,292.14</b>
Community and Cultural	\$565.87 x 6 (1 bedroom) \$765.89 x 27 (2 bedroom) \$1,341.53 x 26 (3 bedroom)	\$3,395.22 \$20,679.03 \$34,879.78
<b>Sub total</b>		<b>\$58,954.03</b>
Roads and Traffic Management	\$2,873.47 x 6 (1 bedroom) \$3,591.89 x 27 (2 bedroom) \$6,106.21 x 26 (3 bedroom)	\$17,240.82 \$96,981.03 \$158,761.46
<b>Sub total</b>		<b>\$272,983.31</b>
Local Area Facilities	--	--
Local Area Facilities	\$152.80 x 6 (1 bedroom) \$206.79 x 27 (2 bedroom) \$362.19 x 26 (3 bedroom)	\$916.80 \$5,583.33 \$9,416.94
<b>Sub total</b>		<b>\$15,917.07</b>
<b>TOTAL</b>		<b>\$551,146.55</b>

The contribution will be indexed quarterly in accordance with the Orange Development Contributions Plan 2017. This Plan can be inspected at the Orange Civic Centre, Byng Street, Orange. The above figures are relevant as at 23 April 2023.

### 5.8.2 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.

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

### **Clause 61 - Additional matters that consent authority must consider.**

Clause 61 (4) provides:

*In determining a development application for development for the purposes of a manor house or multi dwelling housing (terraces), the consent authority must consider the Low Rise Housing Diversity Design Guide for Development Applications published by the Department in July 2020.*

However, subclause (5) states:

*Subsection (4) applies only if the consent authority is satisfied there is not a development control plan that adequately addresses the development.*

The West End DCP specifically applies to the Land. The DCP envisages townhouse development to the north of the site and comprises specific provisions for such development.

In this regard, the Panel can be satisfied that there is a development control plan in place for the site *that adequately addresses the development.*

The development is not inconsistent with the provisions perscribed 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 amended the development in response to the deferral notice issued by the WRPP.

The majority of matters relating to Heritage, Streetscape and Tree Removal identified in the previous report to the Panel have been adequately resolved as detailed below.

Council's Manger City Presentation 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 (these reference numbers have carried through all subsequent plans).

Tree	Comment	Recommendation
Tree 1 – <i>Cedrus deodar</i>	<i>A tree of sound form and structure. Note that a nesting box installed in the specimen has an active beehive.</i>	Removal now accepted
Tree 2 – <i>Chamaecyparis</i> sp	<i>A tree of reasonable form and structure</i>	Removal now accepted.
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.
<b>Tree 5 – <i>Cedrus deodara</i></b>	<b>A tree of sound form and structure, its loss is disappointing and not supported.</b>	<b>Tree now retained as a result of the amended MDH design.</b>
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.
<b>Tree 7 – <i>Chamaecyparis</i> sp</b>	<b>a tree of reasonable health and structure in competition with Tree 6; helps create that urban forest linking of canopies.</b>	<b>Tree now retained as a result of the amended MDH design</b>
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 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 matsudana var 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 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 azedarach</i>	poor vigour, significant tip dieback	Removal Supported
<b>Tree 16 - <i>Cedrus deodar</i></b>	<b>a tree of sound form and structure; its loss is very disappointing</b>	<b>Tree now retained as a result of the amended RFB design</b>
Tree 17	DEAD	Removal supported
Tree 18 – <i>Acer 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 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

As can be observed in the above table, significant trees (previously sought to be removed, but not supported by Council staff) are now retained under the amended design, specially Trees 5, 7 and 16.

Landscape Plan L201 – Street tree augmentation provides for the replacement trees noted above.

In relation to the provision of street trees, relevant conditions are attached requiring the trees within Dalton Street to be installed prior to the issue of an occupation certificate for stage 1 and be planted within Council's preferred tree cell structures.

In relation to the street trees within Prince Street, the positioning of the trees appears to relate to the previous design, consequently, trees are shown in unsatisfactory positions such as in front of entrance points and in the way of the Prince Street vehicle access point.

As such, a condition is attached requiring an amended plan showing the trees within Prince Street clear of any pedestrian or vehicle access points. The trees within Prince Street will be required to be planted (within Council's preferred tree cell structure) prior to an Occupation Certificate under stage 2.

Conditions are also attached requiring TPZs in accordance AS4970 – 2009 to be established around all existing trees that are to be retained on the site prior to works commencing.

TPZs are to be implemented by a project arborist in consultation with Council's Manager City Presentation and remain in place for the duration of the development.

#### 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.

**RFB** – Council’s Heritage Advisor reviewed the amended design and advised that the amended design in relation to the siting and form/ composition of the building is now satisfactory subject to a number of recommended minor amendments to the materials including:

- the introduction of a second complimentary brick colour for the outer two portions of the middle levels of the building,
- continuation of the blue/grey base brick vertically on the corners of the building as a pier element,
- provision of additional windows at the eastern end of the southern elevation through levels 1 – 4;
- and inclusion of circular columns on level 4 as a continuation of the colonnade on level 5.

Council’s Heritage Advisor has indicated that, subject to resolution of the above matters, the development is able to be supported on heritage grounds.

The above-mentioned recommended design amendments have been included in the latest set of architectural drawings.

The design is thus considered satisfactory in terms of heritage and streetscape matters.

#### 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 conditions of consent during construction of the RFB:

- The applicant shall create a website or on-line platform for presenting the content identified in the HIP.

- The applicant shall 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 consult with the Orange & District Historical Society as part of the final review of the content for the interpretation material.
- The applicant shall install five interpretive sculptural objects from local artists nominated for the central park landscape. This is to occur following consultation with Council's CEO or his delegate.
- The applicant shall stall interpretive images related to the strategy within the two lobbies/common areas of the apartment building.
- The applicant shall prepare 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. The location of the panel shall be such that it is visible from the public realm.

## **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 amended landscape plans however, conditions of consent are recommended to include the following:

- A detailed landscape plan of the public open space 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 (stage 2) and incorporate the following requirements:
  - The detailed landscape plan shall be generally in accordance with Landscape Masterplan (in terms of indicative number of plants, species, spacing of plants, etc.) plans number L401 Rev M; L402 Rev K; L403 Rev K; L404 Rev K; L405 Rev K; L407 Rev K - job No. 13956.5 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 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.

Supplementary conditions are attached which obligates 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 and pathways) to the one detailed above are required for both stages 1 and 2 of the consent to ensure the intent of the landscape masterplan is implemented appropriately.

#### 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 amended traffic arrangements.

Traffic associated with the development will be via the entry / exit points from the shared accessway within Prince and Dalton Streets.

The access point (cars turning right) from Prince Street is appropriately situated so as not to impact the functional area of The Prince Street / Anson Street intersection.

Access via the north of the site for vehicles travelling east are able to turn across the centre line of the road without being impacted by any existing street trees.

All vehicles associated with the development are able to enter and leave the site in a forward direction.

The amended access arrangements will reduce the impacts on the Sale Street intersections, particularly the Sale Street / Prince Street intersection.

#### **Parking**

As detailed above, the development meets the requirements of the DCP in terms of off-street parking, save for the commentary around allocation of visitor spaces.

Council Technical Services have not raised any objections to the parking arrangements or layout.

Relevant conditions of consent are attached in relation to parking.

### 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 and also via Sale Street.

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.

Pedestrian permeability through the precinct has significantly improved through the provision of the shared accessway.

The safety of pedestrians using the shared accessway is enhanced through the use of differing pavement treatments and signage to bring to the attention of drivers that it's a shared environment. The speed limit of the shared zone is 10km/h.

### **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.

*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

The amended design provides for an amended arrangement for the collection of waste associated with the RFB. The amended arrangement will involve:

- 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 which are stored in the waste storage area within the basement.
- 2 x 240L recycling bins are to be provided on each level adjacent to the general waste chutes. Relevant conditions are attached as the current plans do not appear to make provision for the recycling bins.
- 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) in total.
- A temporary bin storage area is now provided adjacent to the internal shared accessway.
- A small motor vehicle will be required to tow the bins from the basement, up the ramp and to the storage area.
- A garbage truck is now able to enter the site via Prince Street, collect all waste (general or recycling waste) depending on the collection and exit via Dalton Street.

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

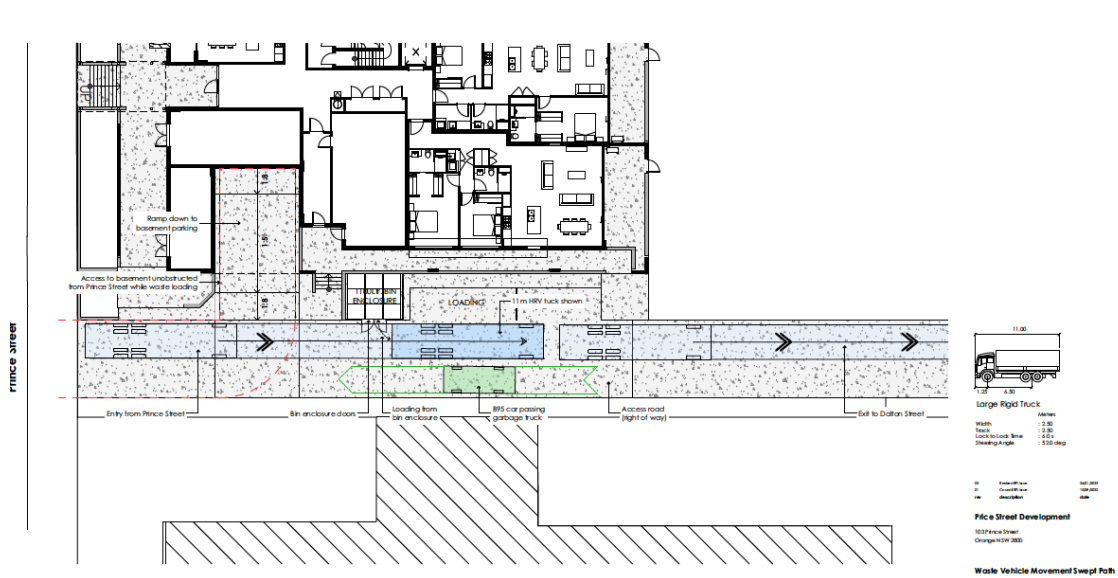


Figure 39: Garbage Collection Arrangements

As can be observed in the plan:

- the proposed arrangements allow for vehicles to pass during collection activities.
- The collection vehicle, when in the process of collecting waste, does not obstruct vehicle or pedestrian entrances or the entrance to the basements.
- Northbound vehicles entering via Prince Street or exiting the RFB basement during collection would be able to safely drive around the truck given the low speed, low traffic volumes expected to use the laneway.

This arrangement is considered superior to the previously proposed arrangement whereby waste was to be collected in Sale Street.

Relevant conditions are attached that require the beneficiary of the consent provide evidence to Council that a collection agreement with a local waste contractor has been entered into for the collection of both general waste and recycling via the shared accessway.

Additionally, a plan of management is required that outlines the way the waste collection arrangements will be managed to ensure all bin storage areas are maintained and kept in a clean and tidy manner, additional measures shall be implemented to ensure that bins are only stored in the external bin enclosure on collection days.

A further condition is recommended that requires the collection of waste (general waste and recycling) associated with the RFB to be in accordance with the Plan of Management in perpetuity.

### 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 <sup>1</sup>	✓
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 (NP).

### 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 <sup>1</sup>	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 <sup>2</sup>	✓
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 (NPF).

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.

Additionally, a condition is attached prior to occupation certificates being issued under both stages that require a commissioning report to be prepared that demonstrates compliance with the NA and relevant noise policies.



#### 5.10.6 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 now has multiple points of entry or if necessary, escape. The amended design provides for an improved safety and security outcome.

It is noted that NSW Police have provided comment previously on the development as detailed below. They have not provided comment in relation to the amended design.

##### 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 will be dedicated to Council, it will 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.*

It should be noted that the above comments relate to the design which omitted the shared accessway.

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 within the shared accessway and the communal areas of the RFB.

The above recommendations from NSW Police have been adjusted as required and included as recommended conditions of consent.

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.

#### **5.10.7 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.

#### **5.10.8 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).

The development provides a variety of housing types to meet the needs of a range of social demographics within the City.

#### **5.10.9 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.

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

### 5.12.1 Third Exhibition Period

The following provides detailed consideration of the submissions received during the third and most recent exhibition period. Submissions received in relation to the earlier iterations of the development were considered in the report to the Panel in November 2022.

The submissions are numbered in corresponding order to those in the redacted version at **annexure G**.

Submission Summary	Consideration
<p><b>Submission 1</b></p> <p>The submission raises concerns in relation to:</p> <ul style="list-style-type: none"> <li>overshadowing of the adjoining commercial building and</li> <li>increases in traffic and parking impacts.</li> </ul>	<p><u>Overshadowing</u></p> <p>In relation to overshadowing, as noted in the previous assessment report to the panel on this issue, Council's DCP or any other Council policy does not give weight to the overshadowing effects of development on adjoining commercial development.</p> <p>Secondly, the shadow caused by the proposed development relates to a western elevation only. No north facing windows of the development are impacted.</p> <p>Finally, as observed from the submitted shadow diagrams, the shadow caused by the development does not impact the building until after 3pm which is outside the standard period for which overshadowing is measured (i.e. 9am – 3pm). Noting there is a minor shadow cast on the building at 2pm. This is considered inconsequential when taking into account the amount of the western elevation that is not in shadow.</p> <p><u>Traffic / Parking</u></p> <p>Traffic and parking matters are addressed in detail in the body of the report.</p>



<p><b>Submission 2</b></p>	<p>The submission provides the following general comments:</p> <p><i>DPE acknowledges the revisions that have been made by the applicant and considers the revisions an overall improvement on the proposed development. The revised design has in part addressed a number of the issues raised by DPE in previous correspondence.</i></p> <p>The submitter's remaining concerns are addressed below.</p>
<p>The submission raises concerns in relation to:</p> <ul style="list-style-type: none"> <li>• The appropriateness of the clause 4.6 request / height of building, specifically in relation to privacy and overshadowing.</li> </ul>	<p><u>Height of building – Privacy</u></p> <p>In relation to the privacy impacts on the adjoining property to the east directly attributed to the level 5/penthouses, the following is noted:</p> <ul style="list-style-type: none"> <li>• The floor level of level 5 will align (approximately) with the top of wall height (of level 4) of the adjoining commercial building (refer Sheet A-030 EJE Plans), meaning there will be no direct overlooking.</li> <li>• The level 5/penthouses floor plate is recessed from the southern and eastern edges of the building below. Given the siting of the penthouses relative to the building below, and considering the point above, there will be no direct overlooking opportunities from internal areas of units on level 5 of the RFB to the commercial building or visa versa.</li> <li>• The east facing balcony on level 5 could present an overlooking issue however, the following is noted: <ul style="list-style-type: none"> <li>○ The subject balcony is within the area of the site that does not contravene the development standard.</li> <li>○ With specific reference to objective 3F-1 of the ADG, the development exceeds the requirements with regards to building separation.</li> </ul> </li> </ul>

	<p><u>Height of Building – Overshadowing</u></p> <p>In relation to the overshadowing directly attributed to the level 5 penthouses the following is noted:</p> <ul style="list-style-type: none"> <li>• The overshadowing of the adjoining commercial building relates to its western elevation only.</li> <li>• With reference to the submitted shadow diagrams, the shadow from the RFB does not impact the adjoining building until after 3pm (thus, outside the typical assessment period), save for a small amount at 2pm in the low southern corner of the building (considered negligible when taking into account the extent of wall not in shadow).</li> <li>• The extent of shadow shown in the shadow (elevation) diagrams shows the full extent of the shadow from the built form on level 5. However, it should be noted that a large proportion (~50%) of the shadow relates to the portion of building that does not contravene the development standard.</li> </ul> <p>For the reasons outlined above, the author does not agree with the concluding comments in the submission relating to the height variation / level 5 penthouses which states:</p> <p><i>The height variation, design and orientation of the penthouses do not appear to be consistent with the guidance in the Apartment Design Guide for minimising overshadowing and impacts on privacy.</i></p>
<ul style="list-style-type: none"> <li>• Concerns relating to the shared accessway; specifically relating to security, landscaping and pedestrian pathway/safety concerns.</li> </ul>	<p>The concerns raised in the submission are addressed separately below.</p> <p><b>Security</b> – detailed consideration has been given to the security, safety and crime prevention aspects of the amended design which conclude the development is acceptable.</p> <p>Specially in relation to the security in the shared accessway, the following is noted:</p>

	<ul style="list-style-type: none"> <li>• Habitable rooms from both the MDH and RFB address the shared laneway allowing for natural surveillance.</li> <li>• A detailed external light plan has been submitted in support of the development which will provide suitable illumination of the shared accessway to ensure a safe and inviting space through the night-time period.</li> <li>• NSW Police have recommended conditions of consent in relation to CCTV which have been included within the draft consent.</li> </ul> <p><b>Landscaping</b> – The author agrees that the landscaping masterplan lacks detail specifically relating to the laneway plantings. As such, a condition is attached that requires a detailed landscape plan to be provided (relevant to each stage) that provides details of the type of (evergreen) species selected for the eastern side of the accessway, along with the number of plants, centres and pot size. Consideration will need to be given to growth habit when selecting the particular species taking into account the constrained growing conditions.</p> <p>Pedestrian pathway – it is a correct statement that Council’s Technical Services preferred treatment in the shared accessway is a grade separated 1.2m wide pedestrian path.</p> <p>However, Council’s Technical Services have accepted the proposed arrangements (without a grade separated pathway) comprising signage and pavement treatment, noting the relevant conditions preclude speed humps from being installed as they present a trip hazard.</p>
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### 5.13 PUBLIC INTEREST s4.15(1)(e)

The proposal is not inconsistent with the aims of the EP&A Act, nor is it 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 19: 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.

The author notes the significant design amendments undertaken by the applicant to address the matters that were detailed in the Panel's notice of deferral. The amended design is now far more consistent with Council's relevant planning controls applying to the land, and despite the identified non-compliance with the ADGs in relation to access to sunlight, the development is considered satisfactory in this regard.

The development, particularly regarding the RFB, is considered to be contextually appropriate in the setting and the development will not engender any adverse environmental impacts in the locality.

The provision of a public park and the publicly accessible through site links, provide significant positive public benefits for the City.

This assessment has also considered the submitted clause 4.6 request to vary the height of building standard. The request meets the preconditions under clause 4.6(3). In addition, the consent authority can be satisfied that the proposed development is in the public interest as it is consistent with the objectives of the development standard and the objectives of the zone.

Given the foregoing, on the balance of all issues, the development is considered satisfactory and is thus, recommended for approval.

**End.**