

DETERMINATION AND STATEMENT OF REASONS

WESTERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	17 May 2023
DATE OF PANEL DECISION	17 May 2023
DATE OF PANEL MEETING	16 May 2023
PANEL MEMBERS	Garry Fielding (Chair), Graham Brown, David Ryan, Allan Renike
APOLOGIES	None
DECLARATIONS OF INTEREST	Kevin Duffy and Jeff Whitton

Public meeting held on 16 May 2023, opened at 11:00am and closed at 11:16am.
Papers circulated electronically on 3 May 2023.

MATTER DETERMINED

PPSWES-135 – Orange – DA98/2022(1), Lot 501 DP1279083 103 Prince Street, Orange

Multi Dwelling Housing (16 dwellings) and Subdivision (three lot Torrens title) (Stage 1); and Residential Flat Building (60 apartments), Recreation Area (public park) and Road (Stage 2).

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters listed at item 8 in Schedule 1.

Application to vary a development standard

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Orange Local Environmental Plan 2011 (LEP), seeking to demonstrate that:

- compliance with the cl. 4.3 Height of Buildings development standard is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard.

The Panel is satisfied that:

- the Applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP;
- the development is in the public interest because it is consistent with the objectives of the Height of Buildings development standard and the objectives for development in the R3 Medium Density Residential Zone; and
- the concurrence of the Secretary has been assumed.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The Panel's decision was unanimous.

REASONS FOR DECISION

The Panel considers the amended design is now substantially more consistent with the planning controls applying to the land and, despite the identified non-compliance with the ADGs in relation to sunlight access, the overall development is considered satisfactory in this regard. The Panel also acknowledges and

supports the significant design amendments undertaken by the applicant to address the matters detailed in the Panel's notice of deferral, dated 15 November 2022. The Panel considers the proposed development to be contextually appropriate in its setting and does not consider the development will present any unreasonable environmental impacts in the locality. Furthermore, it considers the provision of a public park and the publicly accessible through site links will provide significant positive public benefits for the locality.

Overall, the Panel considers that the amended proposal is not inconsistent with the aims of the EP&A Act, nor inconsistent with any relevant policy statements, planning studies, and guidelines etc. that have been considered in this assessment. The development is therefore in the public interest.

CONDITIONS

The development application was approved subject to the conditions detailed in Council's Assessment Report with one amendment to Condition 48 to read as follows –





Amended condition (48):

(48) Construction noise and vibration shall be managed in accordance with the Construction Environmental Management Plan provided by MAAS Group and dated 26 May 2022, with regular review throughout works to ensure controls remain effective as site conditions change. The adopted construction noise mitigation measures shall be the same as those referenced in the Noise Assessment prepared by Muller Acoustic Consulting – Reference: MAC211499-01RP1, Dated February 2022.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered 11 written submissions received over all three exhibition periods. Issues included Overshadowing of the adjoining commercial building, privacy impacts, traffic impacts, height of building/appropriateness of cl. 4.6 variation request, security, landscaping and safety of pedestrians using the shared accessway.

The Panel considers concerns raised in submissions have been adequately addressed in the Assessment Report and in the amended conditions.

PANEL MEMBERS	
 Garry Fielding (Chair)	 David Ryan
 Graham Brown	 Allan Renike

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSWES-135 – Orange - DA98/2022(1)
2	PROPOSED DEVELOPMENT	<p>Multi Dwelling Housing (16 dwellings) and Subdivision (three lot Torrens title) (Stage 1); and Residential Flat Building (60 apartments), Recreation Area (public park) and Road (Stage 2). The proposal includes the following:</p> <ul style="list-style-type: none"> • 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.
3	STREET ADDRESS	Lot 501 DP1279083 103 Prince Street, Orange
4	APPLICANT/OWNER	MAAS Group Properties 103 Prince Pty Limited (Applicant) Orange City Council (Owner)
5	TYPE OF REGIONAL DEVELOPMENT	Council related development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ○ State Environmental Planning Policy (Industry and Employment) 2021 ○ State Environmental Planning Policy (Planning Systems) 2021 ○ State Environmental Planning Policy (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Transport and Infrastructure) ○ State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development ○ Orange Local Environmental Plan 2011 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Orange Development Control Plan 2004 • Planning agreements: Yes • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality

		<ul style="list-style-type: none"> • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council Assessment Report: 24 April 2023 • 15 May 2023 - Memo addressing clause 7.6 of the LEP • Application includes Clause 4.6 request seeking an exception to Orange LEP 2011 Clause 4.3 – Height of Buildings (building height standard) • Written submissions during public exhibition: 11 • Verbal submissions at the public briefing meeting: <ul style="list-style-type: none"> ○ Paul French, Christine Marmara on behalf of the Department of Planning and Environment ○ On behalf of the applicant – Helen Saunders, Michael Noonan, Nick Whitten
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing and site visit: 21 June 2022 • Public Briefing: 15 November 2022 • Final briefing to discuss recommendation: 16 May 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Garry Fielding (Chair), David Ryan, Graham Brown, and Allan Renike ○ <u>Council assessment staff</u>: Andrew Crump (Consultant) • Public determination meeting: 16 May 2023
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Submitted with the Assessment Report