

DETERMINATION AND STATEMENT OF REASONS

WESTERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	16 February 2021
PANEL MEMBERS	Garry Fielding (Chair), Sandra Hutton, Stephen Davies, Allen Renike
APOLOGIES	None
DECLARATIONS OF INTEREST	Russell Turner declared a non-pecuniary conflict of interest having voted on this application in his capacity as Councillor.

Papers circulated electronically on 2 February 2021.

MATTER DETERMINED

PPWES-40 – Orange – DA234/208/(1) at 129-133 Sale Street Orange for the demolition of local heritage listed item (as described in Schedule 1)

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 observed at site inspections listed at item 8 in Schedule 1.

Development application

The panel determined to refer the development application to the Minister of Planning and Public Spaces as per the requirements under section 4.33 of the *Environmental Planning and Assessment Act 1979 (The Act)*, as the Panel recommends partial approval pursuant to section 4.16 of The Act.

The decision was unanimous.

REASONS FOR THE DECISION

The matter has been referred to the Western Regional Planning Panel under Section 4.33(2) of the *Environmental Planning and Assessment Act*, arising from agreement not being reached on draft Conditions 2 and 3, as proposed by Orange City Council (the Council) but not agreed to by the Crown. The matter relates to the Crown Development Application for remediation of asbestos contamination and demolition of all building and structures forming a local heritage item on the subject land. The matter in contention relates to the Council proposing to grant partial consent, only, (through the imposition of two conditions) that would not authorise (a) the demolition of one group of structures on the subject land, being those identified as high heritage significance (local) item and referred to as the 1937 Caldwell House; nor (b) remediation of asbestos within those structures (given the application does not contemplate remediation of Caldwell House with retention in mind).

On 2 November 2020, the Panel deferred its determination of the Crown Development Application to seek, via Council and the applicant, independent expert property analysis to assist the Panel in its deliberations. The reasons for deferral and the Panel's considerations at that time are provided for in the Record of Deferral dated 2 November 2020.

An economic viability analysis was sourced and supplied to the Panel on 2 February 2021, and the Panel has further deliberated on the matter via electronic determination.

The Panel has subsequently resolved to support the imposition of draft Conditions 2 and 3 as proposed by the Council, which has the effect as outlined above (including to not support demolition of the most significant portion of the 1937 Caldwell House). The decision of the Panel was unanimous.

Given the applicant has not agreed to the relevant conditions, the Panel is unable to issue the partial consent except with the approval of the Minister, as provided for under Section 4.33(1)(b) of the *Environmental Planning and Assessment Act 1979*. The matter will be referred by the Panel Chair to the Minister, seeking that approval.

The Panel was not sufficiently satisfied to support the demolition of Caldwell House and grant consent for that outcome, noting that:

- (a) The heritage value of the 1937 Caldwell House is not in contention, including by the applicant, who indicated that if it was possible and recommended by its experts, it would prefer to see Caldwell House retained, remediated and adaptively reused. This is also the Panel's preference.
- (b) The Panel originally expressed reservations on the applicant's (and their expert's) position that complete elimination of risk to human health (via complete demolition and due to the extent of friable asbestos now present arising from vandalism) is the only valid outcome.

The Panel's view, informed also by Council's experts, is that due to the applicant's stated position on eliminating risk completely, other valid planning, heritage and community outcomes have not been adequately explored for the masonry (brick) structure. This includes the integration of remediation and adaptive reuse solutions (achieved elsewhere in buildings of similar era and with asbestos management challenges and post remediation risk management) that reduce the valid human health risks to as low as reasonably practicable, including with residual risk areas managed in the long term.

- (c) The Panel has considered the Economic Viability Assessment for the two scenarios assumed by the authors of that assessment. The evidence presented in that assessment demonstrates that full demolition is the more viable scenario of the two assessed. It is noted that neither scenario suggests a positive residual land value under assessed conditions. For the partial retention scenario (which is based on residential land use options for the Caldwell House component), the assessment states this would not be attractive to a developer, and the sensitivity assessment reveals that a 10% increase in sales prices would be needed for the partial retention scenario to achieve a typically acceptable internal rate of return and a positive residual land value (albeit small).

The professional evidence as presented is accepted as it relates to residential land use scenarios for Caldwell House. The Panel did note that a shift in sales prices of the order identified in the sensitivity analysis, which may then make the partial retention of Caldwell House for residential land use more attractive, may well occur in Orange over the short-to-medium term given reported recent movements in regional housing markets.

Ultimately, however, the Panel remains unconvinced that there are not other land use options for Caldwell House (other than residential) that could be contemplated, and that these have not been explored by the applicant, and are not contemplated by the economic viability assessment.

The Panel also notes that the Council, in recommending the retention of Caldwell House through the contested draft conditions, has undertaken a thorough and well considered assessment informed by engaged experts where warranted. Council's assessment process sought to engage with the applicant to fully explore other remediation and adaptive re-use options for the Caldwell House component (including an offer to cost and review those together and then determine the ultimate fate of Caldwell House). The Panel considers that request a reasonable one, and notes this was rejected by the applicant due to its position that there would be no satisfactory solution to asbestos management other than through full demolition.

It is clear to the Panel through the Council assessment report and submissions made, that the Council and the community value and take pride in local heritage values, and that extends to the social and streetscape values they assign to Caldwell House. It is evident that both the Council and the community have a strong view that there is an appropriate role for Government to show leadership and assign value to heritage when making risk management and site reuse decisions.

Having regard to the above, the Panel has formed the opinion that demolition of Caldwell House is currently not warranted, and that consent should be granted to the application as recommended by Council inclusive of draft Conditions 2 and 3. This provides partial consent to demolish and remediate part of the site but requires retention of Caldwell House. This will provide further time for the applicant, or others in the market, to more fully explore risk management positions and options, in conjunction with remediation and adaptive reuse for a wider potential suite of land use options and outcomes possible under the LEP's heritage incentive clause, which would remain operative whilst the site's heritage values remain.

The Panel's decision is subject to approval from the Minister to grant partial consent inclusive of draft Conditions 2 and 3.

CONDITIONS





The development application was approved subject to the conditions in the council assessment report.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. The panel notes that issues of concern included:

- Loss of important local heritage item.
- Inadequate consideration of recycling options.
- Heritage Impact Statement inadequately analyses how the building could realistically be cleaned and made fit for purpose using techniques that align with the Burra Charter.

The panel considered that concerns raised by the community were adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Garry Fielding (Chair)	 Sandra Hutton
 Stephen Davies	 Allan Renike

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSWES-40 – Orange – DA234-208(1)
2	PROPOSED DEVELOPMENT	Demolition of a Heritage Item (all buildings, structures and vegetation to be removed) and Category 1 Remediation (asbestos removal).
3	STREET ADDRESS	129 – 131 Sale Street Orange
4	APPLICANT/OWNER	Health Administration Corporation
5	TYPE OF REGIONAL DEVELOPMENT	Crown development referred under section 4.33 of the EP&A Act
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ◦ State Environmental Planning Policy 55 – Remediation of Land ◦ State Environmental Planning Policy (Infrastructure) ◦ 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: Nil • 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 • 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: 7 October 2020 • Council assessment memo: 16 October 2020 • Applicant submission: 30 October 2020 • Supplementary Report and Economic Viability Study: 23 December 2020 • Written submissions during public exhibition: 10 • Unique submissions received by way of objection: 10 • Verbal submissions at the public meeting 2 November 2020: <ul style="list-style-type: none"> ◦ Community members: Euan Greer, James Nicholson ◦ On behalf of the applicant – Rachel Mitchell, Ian Gardner
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection: 2 November 2020 <ul style="list-style-type: none"> ◦ <u>Panel members</u>: Garry Fielding (Chair), Sandra Hutton, Stephen Davies, Allan Renike ◦ <u>Council assessment staff</u>: Andrew Crump, Mark Adamson • Final briefing to discuss council's recommendation: 2 November 2020 <ul style="list-style-type: none"> ◦ <u>Panel members</u>: Garry Fielding (Chair), Sandra Hutton, Stephen Davies, Allan Renike ◦ <u>Council assessment staff</u>: Andrew Crump, Mark Adamson • Public determination meeting: 2 November 2020 • Briefing to discuss Economic Viability Study: 10 February 2021 <ul style="list-style-type: none"> ◦ <u>Panel members</u>: Garry Fielding (Chair), Sandra Hutton, Stephen Davies, Allan Renike ◦ <u>Council assessment</u>: Mark Hodges • Final briefing to discuss Economic Viability Study: 16 February 2021 <ul style="list-style-type: none"> ◦ <u>Panel members</u>: Garry Fielding (Chair), Sandra Hutton, Stephen Davies, Allan Renike

9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report