



PLANNING AND DEVELOPMENT COMMITTEE

AGENDA

7 JULY 2020

Notice is hereby given, in accordance with the provisions of the Local Government Act 1993 that a **PLANNING AND DEVELOPMENT COMMITTEE MEETING of ORANGE CITY COUNCIL** will be held in the **VIA ONLINE VIDEO CONFERENCING PLATFORM ZOOM, ORANGE** on **Tuesday, 7 July 2020.**

David Waddell

CHIEF EXECUTIVE OFFICER

For apologies please contact Administration on 6393 8218.

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1 INTRODUCTION

1.1 DECLARATION OF PECUNIARY INTERESTS, SIGNIFICANT NON-PECUNIARY INTERESTS AND LESS THAN SIGNIFICANT NON-PECUNIARY INTERESTS

The provisions of Chapter 14 of the Local Government Act, 1993 (the Act) regulate the way in which Councillors and designated staff of Council conduct themselves to ensure that there is no conflict between their private interests and their public role.

The Act prescribes that where a member of Council (or a Committee of Council) has a direct or indirect financial (pecuniary) interest in a matter to be considered at a meeting of the Council (or Committee), that interest must be disclosed as soon as practicable after the start of the meeting and the reasons given for declaring such interest.

As members are aware, the provisions of the Local Government Act restrict any member who has declared a pecuniary interest in any matter from participating in the discussion or voting on that matter, and requires that member to vacate the Chamber.

Council's Code of Conduct provides that if members have a non-pecuniary conflict of interest, the nature of the conflict must be disclosed. The Code of Conduct also provides for a number of ways in which a member may manage non pecuniary conflicts of interest.

RECOMMENDATION

It is recommended that Committee Members now disclose any conflicts of interest in matters under consideration by the Planning and Development Committee at this meeting.

2 GENERAL REPORTS

2.1 ITEMS APPROVED UNDER THE DELEGATED AUTHORITY OF COUNCIL

RECORD NUMBER: 2020/866

AUTHOR: Paul Johnston, Manager Development Assessments

EXECUTIVE SUMMARY

Following is a list of more significant development applications approved by the Chief Executive Officer under the delegated authority of Council. Not included in this list are residential scale development applications that have also been determined by staff under the delegated authority of Council.

Since the June PDC Meeting report periods (21 May to 25 June), a combined total of 50 Development Applications have been determined under delegation (CEO and staff) with a combined value of \$9,651,365.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan strategy “7.1 Preserve - Engage with the community to develop plans for growth and development that value the local environment”.

FINANCIAL IMPLICATIONS

Nil

POLICY AND GOVERNANCE IMPLICATIONS

Nil

RECOMMENDATION

That Council resolves to acknowledge the information provided in the report by the Manager Development Assessments on Items Approved Under the Delegated Authority of Council.

FURTHER CONSIDERATIONS

Consideration has been given to the recommendation’s impact on Council’s service delivery; image and reputation; political; environmental; health and safety; employees; stakeholders and project management; and no further implications or risks have been identified.

Reference:	DA 130/2007(2)	Determination Date	9 June 2020
PR Number	PR13267		
Applicant/s:	Mandagery Constructions		
Owner/s:	Mr GC Barrett		
Location:	Lot 40 DP 810916 - 99 Bathurst Road, Orange Lot 41 DP 810916 – 101 Bathurst Road, Orange		
Proposal:	Modification of development consent - demolition (existing shed), residential units and subdivision. The modified development involves minor changes to approved Units 6 and 7 (within the converted dwelling house); and provision of two additional onsite car parking spaces at the site frontage within common property.		

2.1 Items Approved Under the Delegated Authority of Council

Value: Not applicable

Reference: DA 367/2008(2) **Determination Date** 19 June 2020

PR Number PR28460

Applicant/s: Mr MA and Mrs BM Crombie

Owner/s: Mr MA and Mrs BM Crombie

Location: Lot 100 DP 1257871- 5A Ploughmans Lane, Orange

Proposal: Modification of development consent - demolition (existing building) and outbuilding (new construction). The modification application seeks approval to regularise the unauthorised works.

Value: Not applicable

Reference: DA 101/2016(3) **Determination Date** 19 June 2020

PR Number PR2313

Applicant/s: Mrs BJ Maurice and Mr CA and Mrs CE Bailey

Owner/s: Mr CA and Mrs CE Bailey

Location: Lots 1 and 2 DP 715252 – 1 and 3 Carwoola Drive, Orange

Proposal: Modification of development consent - subdivision (21 lot residential). The modified proposal will modify Condition 29 of the development consent. This will remove the requirement to construct the concrete footpath along Cargo Road. A concrete footpath has already been constructed along the southern side of Cargo Road.

Value: Not applicable

Reference: DA 364/2017(3) **Determination Date** 25 May 2020

PR Number PR8325

Applicant/s: Mr JA Vandenberg

Owner/s: Amberlend Pty Limited

Location: Lot 4 DP 233405 - 45-47 McNamara Street, Orange

Proposal: Modification of development consent - small bar. The modification involves an extension to approved weekend trading hours. A 1am closure is now proposed on Friday and Saturday nights, being an extension to trade of 1 hour per night.

Value: Not applicable

Reference: DA 417/2017(2) **Determination Date** 3 June 2020

PR Number PR8327

Applicant/s: Ryan Stewart

Owner/s: Mr RJ Stewart

Location: Lot 1 DP 91037, 72 McNamara Street, Orange

Proposal: Modification of development consent - office premises (alterations and additions to existing building). The modified proposal seeks minor changes to the internal layout of the building as well as changes to the external façade in relation to window and door openings.

Value: Not applicable

2.1 Items Approved Under the Delegated Authority of Council

Reference: DA 411/2018(1) **Determination Date** 18 June 2020
PR Number PR4533
Applicant/s: Zhang Building and Development Pty Ltd
Owner/s: Zhang Building and Development Pty Ltd
Location: Lot 22 DP 522405 - 101 Gardiner Road, Orange
Proposal: Demolition (existing dwelling, ancillary structures, vegetation), multi dwelling housing (six dwellings), subdivision (four lot residential Torrens Title) subdivision (four lot residential Community Title)
Value: \$800,000

Reference: DA 326/2019(1) **Determination Date** 16 June 2020
PR Number PR13267
Applicant/s: Mandagery Constructions
Owner/s: Mr GC Barrett
Location: Lot 40 DP 810916 – 99 Bathurst Road and
Lot 41 DP 810916 – 101 Bathurst Road
Lot 30 DP 1190518 – 59-67 Bathurst Road
Proposal: Consolidation (Lots 40 and 41 DP 810916) , multi dwelling housing (three units) and subdivision (four lot Strata)
Value: \$500,000

Reference: DA 406/2019(2) **Determination Date** 28 May 2020
PR Number PR19434
Applicant/s: Adam Grant Constructions Pty Ltd
Owner/s: Mrs F Grant
Location: Lot 105 DP 1067744 - 259 Clergate Road, Orange
Proposal: Modification of development consent - general industry (16 industrial units) and subdivision (17 lot Strata title). The modified proposal seeks to form a 17 lot **Strata** Title subdivision, where the approved development was for a 17 lot **Community** Title subdivision.
Value: Not applicable

Reference: DA 16/2020(2) **Determination Date** 12 June 2020
PR Number PR25385
Applicant/s: Canobolas Hotel Pty Ltd
Owner/s: Hotel Canobolas Pty Limited
Location: Lot 18 SP 82891 - 18/266 Summer Street, Orange
Proposal: Modification of development consent - pub (internal alterations). The modified proposal involves reconfiguration of spaces at ground level, and part louvered infill to existing windows on the Lords Place western façade.
Value: Not applicable

2.1 Items Approved Under the Delegated Authority of Council

Reference: DA 29/2020(1) **Determination Date** 25 June 2020
PR Number PR9676
Applicant/s: Mad Hatter Beverage Co Pty Ltd
Owner/s: Mr MR Hardman
Location: Lot 1 DP 779074 - 137-139 Peisley Street, Orange
Proposal: Artisan food and drink industry
Value: \$35,000

Reference: DA 52/2020(1) **Determination Date** 1 June 2020
PR Number PR2631
Applicant/s: Mr D Farr
Owner/s: Mr RJ and Mrs DM Barnes
Location: Lot 6 DP 362829 - 148 Clergate Road, Orange
Proposal: Dwelling house and depot (ancillary office (former dwelling) and industrial shed)
Value: \$650,000

Reference: DA 93/2020(2) **Determination Date** 28 May 2020
PR Number PR28396
Applicant/s: Hibbards Pty Ltd
Owner/s: Hibbards Pty Ltd
Location: Lot 5 DP 1255866 - 8 Catherine Place, Orange
Proposal: Modification of development consent - dual occupancy and subdivision (two lot residential). It is proposed to modify the consent, specifically Stage 2 of the approved development, to effect a strata subdivision of the attached dual occupancy. The approved development was for a Torrens lot subdivision of the dual occupancy. The lot sizes will be altered very slightly, Lot 1 is proposed at 410.4m² (approved 410.3m²), and Lot 2 is proposed at 568.5m² (approved 568.6m²).
Value: Not applicable

Reference: DA 96/2020(1) **Determination Date** 19 May 2020
PR Number PR24012
Applicant/s: Mr J Benson
Owner/s: J & M Benson Properties Pty Ltd
Location: Lot 17 DP 1147595 - 13 Scott Place, Orange
Proposal: Depot
Value: \$60,000

Reference: DA 130/2020(1) **Determination Date**
PR Number PR27838
Applicant/s: Peter Basha Planning and Development
Owner/s: Hibbards Pty Ltd
Location: Lot 527 DP1233683, 25 Young Street, Orange
Proposal: Dual occupancy (attached) and subdivision (two lot strata)
Value: \$420,000

2.1 Items Approved Under the Delegated Authority of Council

Reference: DA 132/2020(1) **Determination Date** 27 May 2020
PR Number PR8422
Applicant/s: Designs@M
Owner/s: Ms NL Fogarty
Location: Lot 7 DP 259055 - 14 Mitchell Parade, Orange
Proposal: Dwelling additions and secondary dwelling
Value: \$120,000

Reference: DA 134/2020(1) **Determination Date** 5 June 2020
PR Number PR26308
Applicant/s: Kinross Wolaroi School
Owner/s: The Uniting Church in Australia Property Trust (NSW)
Location: Lot 30 DP 1190518 - 59-67 Bathurst Road, Orange
Proposal: School (new metalwork building) and demolition (shed and tree removal)
Value: \$2,500,000

Reference: DA 159/2020(1) **Determination Date** 16 June 2020
PR Number PR1725
Applicant/s: David Carey Town Planning and Development
Owner/s: Mr JD Burns
Location: Lot 1 DP 215365 - 6 Breen Street, Orange
Proposal: Secondary dwelling (conversion from outbuilding) and carport
Value: \$14,000

Reference: DA 165/2020(1) **Determination Date** 19 June 2020
PR Number PR28460
Applicant/s: Mr MA and Mrs BM Crombie
Owner/s: Mr MA and Mrs BM Crombie
Location: Lot 100 DP 1257871 - 5A Ploughmans Lane, Orange
Proposal: Change of Use of part of the existing outbuilding to secondary dwelling
Value: \$10,000

Reference: DA 182/2020(1) **Determination Date** 9 June 2020
PR Number PR11517
Applicant/s: McPickelway Properties Orange Pty Ltd
Owner/s: Ms V Kourtis and Mrs M Pertsoulis
Location: Lot 10 DP 203590, Lot 351 DP 625439 –
249 and 251-257 Summer Street, Orange
Proposal: Pub (alterations and additions and change of use)
Value: \$25,000

2.1 Items Approved Under the Delegated Authority of Council

Reference: DA 199/2020(1) **Determination Date** 22 June 2020
PR Number PR7529
Applicant/s: Orange City Council
Owner/s: Orange City Council
Location: Lots 1 and 2 DP 526194 - March Street, Orange
Proposal: Recreation area (demolition and earthworks)
Value: \$20,000

Reference: DA 205/2020(1) **Determination Date** 11 June 2020
PR Number PR27675
Applicant/s: Sandy June Pty Ltd
Owner/s: Sandy June Pty Ltd
Location: Lot 110 DP 1229500 - 48 Molong Road , Orange
Proposal: Fencing (replacement of front boundary fence)
Value: \$3,500

TOTAL NET* VALUE OF DEVELOPMENTS APPROVED BY THE CEO UNDER DELEGATED AUTHORITY IN THIS PERIOD: \$5,157,500.00
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** **Net** value relates to the value of modifications. If modifications are the same value as the original DA, then nil is added. If there is a plus/minus difference, this difference is added or taken out.*

Since the June PDC Meeting report periods (21 May to 25 June), a combined total of 50 Development Applications have been determined under delegation (CEO and staff) with a combined value of \$9,651,365.

2.2 DEVELOPMENT APPLICATION DA 234/2018(1) - 129-133 SALE STREET (CALDWELL HOUSE)

RECORD NUMBER: 2020/294
 AUTHOR: Andrew Crump, Senior Planner

EXECUTIVE SUMMARY

Application lodged	4 July 2018
Applicant/s	Health Infrastructure on behalf of Health Administration Corporation
Owner/s	Health Administration Corporation
Land description	Lot 2 DP 1230592 - 129-133 Sale Street, Orange
Proposed land use	Demolition of a Heritage Item (all buildings, structures and vegetation to be removed) and Category 1 Remediation (asbestos removal)
Value of proposed development	\$1,800,000.00 (as originally submitted) \$3,945,295.00 (revised application)

Council's consent is sought to demolish all buildings, structures and vegetation on the subject land, known as 129-133 Sale Street, Orange (refer Figure 1).

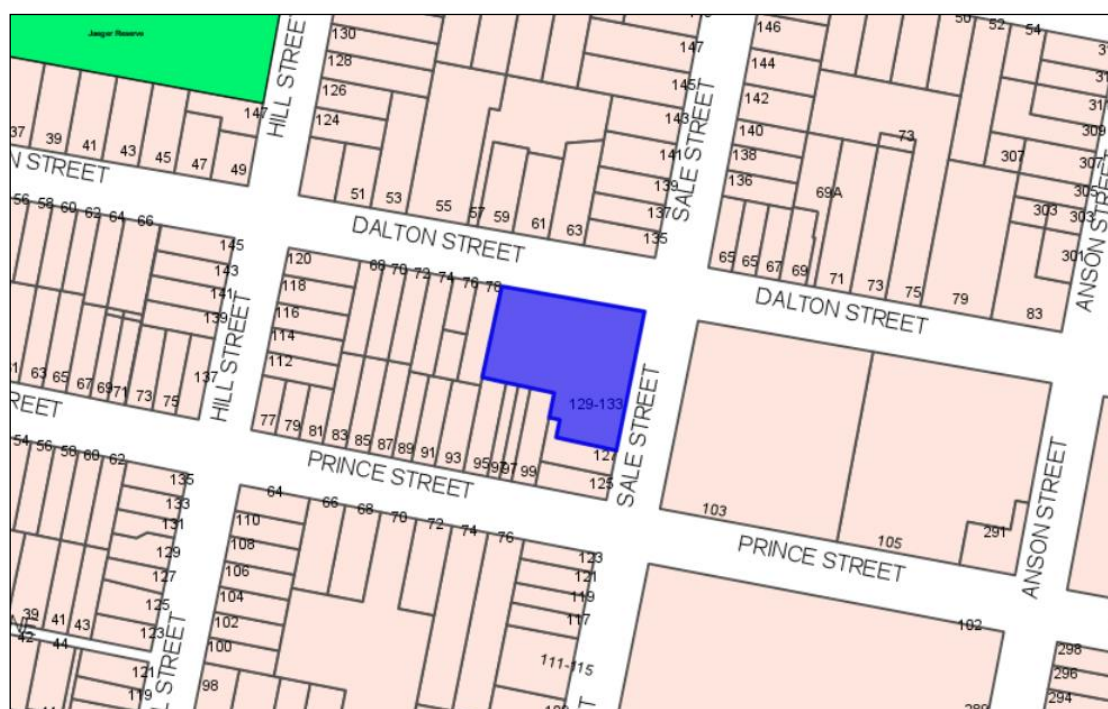


Figure 1 – locality plan

The subject land contains Caldwell House (former nurses quarters) and the more recent nurses quarters on the corner of Sale and Dalton Streets.

The buildings have been vacant for a number of years and have been neglected in more recent times. Over the course of the last decade or so the buildings have been subject to numerous break and enters, with perpetrators searching for copper wire and other materials of value left in the buildings upon them being vacated. In the process of illegally obtaining the copper wire and other material, friable asbestos has been disturbed and has been distributed throughout the buildings.

The applicant has presented a case purporting that the buildings would be unable to be occupied for future adaptive re-use as a result of asbestos contamination; or, in the event that the buildings could be successfully cleaned and encapsulated, the buildings would be subject to ongoing asbestos management plans, making the buildings undesirable to future occupants.

In addition to this, the applicant has suggested that the cost of remediating Caldwell House would be substantially more expensive than a full demolition option, resulting in any future adaptive re-use of the buildings being financially unviable.

The applicant is not contesting the heritage significance of Caldwell House – indicating that, if it were possible, they would prefer to see the building remain and be adaptively reused.

It is important to note that it is understood from the application that Health Infrastructure (NSW Health) have no intention of carryout the work, but are rather seeking consent for demolition so that the property can be divested and another party can carry out the work if so desired.

Council staff have scrutinised the claims presented within the application with the assistance of a contamination expert and a consultant engineer. Council's experts were directed to focus their advice on the heritage significant Caldwell House as it is accepted by Council staff that the more recent nurse's quarters (located in the north-eastern corner of the site) has only low levels of heritage significance.

The expert advice obtained by Council staff concluded that:

1. Caldwell House could be successfully remediated and occupied under an ongoing asbestos management plan¹. **Council's expert notes that the building is required to be cleaned under all the scenarios presented by the applicant.**
2. The building is structurally adequate to the extent that the necessary remediation steps suggested as being necessary by the applicant (such as lifting the floor, removing internal wall linings etc) could be safely undertaken.

It should be noted that one of the submissions from Adaptive Architects offers a methodology for cleaning and encapsulating that meets heritage conservation principles. Such a methodology would need to be fully resolved when Caldwell House is remediated.

3. Retention of Caldwell House would be approximately 33% more expensive than the complete demolition option. Noting that the additional cost purported by the application does not factor in the cost of a complete re-development of the site incorporating an adaptive re-use of Caldwell House.

It is important to reiterate, that under all possible scenarios, the asbestos must be removed from the building prior to it being demolished or adaptively re-used as required by Clause 452 of the *Work Health and Safety Regulation 2017* and the Safe Work Australia's Demolition Code of Practice. In other words, the building needs to be cleaned of asbestos or asbestos-containing material in any case.

¹ Asbestos Management Plans are very common, particularly for buildings the same era as Caldwell House.

It is also important to note that at the moment, the land with the significant heritage building still retained on the land, benefits from Council's generous incentives clause within the LEP. This clause effectively allows an impermissible use on the land such as offices or retail; or even a pub for instance provided that Council can be satisfied amongst other things that conservation of the heritage item was facilitated by the granting of a consent and that any proposal was in accordance with a heritage management document approved by the consent authority. Should it be agreed that the building can be demolished, the ability to rely on this clause evaporates.

The economic arguments presented within the application and discussed in detail below within the report, fail to account for this. That is, the demolition of Caldwell House would have a far greater negative impact on the value of the land than if the building was retained and the highest and best use sought for the land.

DECISION FRAMEWORK

Development in the Orange LGA is governed by The Environmental Planning and Assessment Act 1979 and the accompanying Environmental Planning and Assessment Regulations 2008. Sitting below the Act and Regulations is the Orange LEP 2011 and other State wide Environmental Planning Instruments (SEPP). Subordinate to the LEP and SEPPs is the Orange Development Control Plan 2004 which is a guiding document used to inform decision making. In addition the Infill Guidelines are used to guide development, particularly in the heritage conservation areas and around heritage items.

Orange Local Environment Plan 2011 – The provisions of the LEP must be considered by the Council in determining the application. LEPs govern the types of development that are permissible or prohibited in different parts of the City and also provide some assessment criteria in specific circumstances. Uses are either permissible or not. The objectives of each zoning and indeed the aims of the LEP itself are also to be considered and can be used to guide decision making around appropriateness of development.

Orange Development Control Plan 2004 – the DCP provides guidelines for development. In general it is a performance based document rather than prescriptive in nature. For each planning element there are often guidelines used. These guidelines indicate ways of achieving the planning outcomes. It is thus recognised that there may also be other solutions of merit. All design solutions are considered on merit by planning and building staff. Applications should clearly demonstrate how the planning outcomes are being met where alternative design solutions are proposed. The DCP enables developers and architects to use design to achieve the planning outcomes in alternative ways.

DIRECTOR'S COMMENT

This application relates to the heritage item "Caldwell House" and the associated nurse's quarters.

The applicant has presented a number of reasons to support their intent to demolish the buildings on the land which have been scrutinised in detail by Council's consultants and planning staff. The justification presented by the applicant is considered to be based on flawed logic; and accordingly is not supported by staff.

Due to the technicalities of this proposal in terms of heritage, demolition and remediation, staff engaged independent experts to provide practical advice regarding the application.

Council's experts suggest that the buildings can be saved and adequately remediated. This advice is at odds with the claims of the applicant's experts. Whilst the applicant offered to have the consultants meet to debate the conclusions of both sides, this offer was not taken up as the Council experts suggested such meetings generally are not fruitful.

It is extremely disappointing that the buildings on this site, as significant to the community as they are, have been left by the owners to become accessible to vandals and as a result, dilapidated.

This DA is a Crown Development, therefore Council cannot determine the application without the concurrence of the Applicant or Minister. This process would follow Council's advice on how it would like to progress this application. Council cannot refuse the application (it would have to be referred to the Western Regional Planning Panel).

Ten submissions were received from residents and community groups relating to this proposal. A small number (2) supported the proposal, whilst the majority oppose the application due mostly to the loss of a significant heritage item.

Staff recommend that demolition only be permitted of the later nurse's quarters and other less-significant buildings on the land, not of Caldwell House itself.

I support the recommendations within the report.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan strategy "10.1 Preserve - Engage with the community to ensure plans for growth and development are respectful of our heritage".

FINANCIAL IMPLICATIONS

Nil

POLICY AND GOVERNANCE IMPLICATIONS

Nil

RECOMMENDATION

With respect to development application DA 234/2018(1) for *Demolition of a Heritage Item (all buildings, structures and vegetation to be removed) and Category 1 Remediation (asbestos removal)* at Lot 2 DP 1230592 - 129-133 Sale Street, Orange it is recommended that Council:

- 1 Note the contents of the planning report and the recommendations therein.**
- 2 Accept the terms of the draft notice of determination.**
- 3 Direct Council staff to obtain the concurrence of either the applicant or the Minister as required by Section 4.33 of the Environmental Planning and Assessment Act.**
- 4 That Council delegate the authority to determine Development Application DA 234/208(1) to the Chief Executive Officer subject to the receipt of concurrence from the Crown.**

FURTHER CONSIDERATIONS

Consideration has been given to the recommendation's impact on Council's service delivery; image and reputation; political; environmental; health and safety; employees; stakeholders and project management; and no further implications or risks have been identified.

SUPPORTING INFORMATION**THE LAND**

The land is a large residentially zoned parcel of land to west of the former base hospital site. The land is described as Lot 2 DP 1230592, known as 129-133 Sale Street, Orange. The land is identified as a Local heritage item as it contains Caldwell House (former nurses quarters). The site also contains the more recent former nurses quarters on the north-eastern corner of the site.

The land is located on the (south-western) corner of the Dalton and Sale Streets intersection. The land adjoining to the west is residentially zoned and contains a single storey dwelling house. To the south of the land, part of the southern boundary shares a boundary with a former dwelling that been converted into health consulting rooms, and then a number of residential properties adjoin for the balance of the southern boundary.

The land across from Caldwell House is the former Orange Base Hospital site which is now three separate lots; the lot closest to the subject land is vacant, while the adjoining lot to the east comprises the partially constructed office building that will house the Department of Industries, and the third lot comprises the former ambulance station.

**THE APPLICATION/PROPOSAL**

Council's consent is sought to demolish all buildings, structures and vegetation on land described as Lot 2 DP 1230592, known as 129-133 Sale Street, Orange. As part of the demolition, the site would be remediated and made good for future development.

BACKGROUND

The subject land contains two primary buildings (Caldwell House and the later former nurse's quarters). It is accepted by Council staff that the later constructed former nurses quarters holds limited heritage significance, and therefore the proposal to demolish that particular building is accepted by Council staff and relevant conditions of consent are attached addressing the asbestos clean-up and other measures such as the control of dust and noise.

The other building on the land, Caldwell House, has been vacant since c2011. This is around the time the hospital moved to the Bloomfield Campus; at this time Community Health (the most recent occupants of the building) moved to the new hospital also.

The applicant advises that in:

June 2016 an EOI sales campaign for the site culminated in a commercial offer from a developer of aged care. The offer was accepted subject to Health Administration Corporation's (HAC) registration of a subdivision and the approval of the developer's DA for that aged care facility.

In late 2016 and again in mid-2017, whilst in final negotiations, there was forced entry, theft and a vandalism attack on the buildings, resulting in significant damage. The vandalism involved the forced removal of copper pipes and wiring. This has caused damage to ceilings and lagging which has resulted in asbestos being dispersed throughout the buildings.

CHRONOLOGY OF APPLICATION

The application was originally lodged on 4 July 2018. Shortly after receipt of the application, Council exhibited the material and engaged relevant experts.

Additional information was requested on 25 September 2018 which requested a revised Heritage Impact Statement (HIS) that provided a more detailed analysis of options and also provided heritage significance mapping. Council expert advice was provided along with the submission received.

Additional information was received 19 August 2019. The additional information purported that the extent of asbestos contamination was underestimated in the original application and that the cost of all options presented originally would be significantly more expensive than first suggested - in the order of approximately double the cost. Further asbestos audits were undertaken, a revised HIS was provided and additional expert advice was presented from Dr Ian Gardiner.

The revised material, along with the original material, was publicly exhibited on 30 September 2019 for a period of in excess of 30 days.

OPTIONS ANALYSIS

The applicant provides the following options analysis of a range of possible scenarios for the use of the site. The options include:

- 1 Asbestos remediation and clean-up; and complete demolition of all buildings, structures and vegetation (this is the applicant's preferred option).
- 2 Asbestos remediation and clean-up; with retention of front facade (and section of return side walls) of Caldwell House only.

- 3 Asbestos remediation and clean-up; demolition of later nurses quarters and ancillary structures, retention of main Caldwell House as shown red below labelled "B".



Figure 2 - extract from HIS – heritage significance mapping (B represents High Heritage Significance, C represents Moderate Heritage Significance and D represents Low Heritage Significance)

DEMOLITION METHODOLOGY

The applicant submits that the demolition will occur as follows:

Stage 1 – Site Establishment

- Site facilities to be located in the western side of the site.
- Provide security fencing around the site perimeter and manage the site against unauthorised entry.
- Provide an access and egress route, connecting all undemolished floors to the nearest street and identify it as an emergency exit.

Stage 2 – Removal of Hazardous Substances

- Prior to any stripping out or demolition, remove hazardous substances as outlined in the Hazard Material Survey by Envirowest Consulting (refer Annexure D).
- Prior to any stripping out or demolition, remove asbestos or materials containing asbestos in accordance with Asbestos Removal Control Plan by Envirowest Consulting (refer Annexure C).

Stage 3 – Removal of Single Storey Structures

- Use 1.8m high temporary fencing panels with appropriate signage to establish an exclusion zone around the immediate work area in accordance with AS 2601.
- Disconnect services at each building.
- Manually remove salvageable material.

- *Remove miscellaneous ground structures (light poles, signs etc).*
- *Use 25-tonne excavator with grab attachment to pull down structures.*
- *Wet down work face continually to minimise potential impact of raised dust within the site and upon adjoining properties.*
- *Sort and stockpile materials for recycling.*
- *Concrete/masonry waste may be crushed onsite or removed off-site for recycling*
- *Scrap metal stored and for removal from site.*
- *Clean up Stage 3 work area before commencing the removal of the multi storey buildings.*

Stage 4 – Removal of Multi Storey Buildings

- *Demolish Caldwell House first to allow greater access to the three-storey Nurses Accommodation building.*
- *Establish an exclusion zone around the immediate work area in accordance with AS 2601.*
- *Disconnect services at each building.*
- *Manually remove salvageable material.*
- *Remove miscellaneous ground structures (light poles, signs etc).*
- *Use 38-47 tonne excavator with grab attachment to pull down Caldwell House. A hammer attachment will likely be required for the demolition of the suspended first floor slab. The work face should be sprayed continuously during the demolition to minimise and dust being generated that may affect the subject site and adjoining properties. It is anticipated that demolition work will commence at the western end of Caldwell House and progress towards the eastern, Sale Street end.*
- *During the demolition works for Caldwell House, rubble should be progressively dropped to the ground by the excavator, and not stockpiled on the suspended concrete slab. Once rubble has been deposited on the ground, the area is to be made safe and the rubble moved to a designated stockpile area.*
- *Clean up the Caldwell House work area before commencing the removal of the 3-storey Nurses Accommodation building.*
- *Use 38-47 tonne excavator with grab attachment to pull down For the Nurses Accommodation building. Temporary work platforms constructed with compacted fill material may be required to be constructed along the southern side of the Nurses Accommodation Quarters to ensure that the entire structure can be safely demolished from the southern side of the building. A hammer attachment will likely be required for the demolition of the suspended first and second floor slabs. The work face should be sprayed continuously during the demolition to minimise and dust being generated that may affect the subject site and adjoining properties;*
- *During the demolition works rubble should be progressively dropped to the ground by the excavator, and not stockpiled on the suspended concrete slabs. Once rubble has been deposited on the ground the area is to be made safe and the rubble moved to a designated stockpile area;*

- *Once the above ground structure of the Nurse's Quarters has been demolished work can then commence on the demolition of slabs on ground, foundations and concrete hardstands. The excavator, with hammer attachment should pulverize the concrete foundations and any adjacent hardstand;*
- *Following the completion of demolition works on the multi storey buildings any remaining hardstand should be demolished by the excavator using conventional means;*
- *Any recyclable materials should be separated from the demolition waste and stockpiled. Concrete and masonry may be crushed onsite or carted off-site for recycling;*
- *Any scrap metal should be demolished and stored in a designated lay-down area for removal from site;*
- *Once all buildings and structures have been demolished a general clean-up of the site should be completed, with the site generally levelled to approximate natural ground levels.*

Stage 5 – Demobilisation of Site

- *Following the completion of all demolition, remediation works and site clearance the contractor shall be responsible for the removal of all plant equipment and rubbish generated throughout the demolition works. The site shall then be returned to the client upon completion of this stage.*
- *Any certifications required by Council should be provided to the client during the final handover of the site. This is likely to include certification from the environmental consultant that all asbestos has been cleared from the site, and certification from a geotechnical consultant that any earthworks, particularly and backfill on basement areas, has been carried out in accordance with Australian Standard AS 3798 – Guidelines on earthworks for commercial and residential developments.*

Stage 6 – Stabilisation of Site

The surface of the site is to be reasonably levelled and sown with appropriate grass seeds. Erosion and sediment controls should be placed as required.

Stage 7 – Final Handover

Following the completion of the Stage 6 works the site shall then be returned to the client. Any certifications required by Council should be provided to the client during the final handover of the site.

This is likely to include certification from the environmental consultant that all asbestos has been cleared from the site, and certification from a geotechnical consultant that any earthworks, particularly and backfill on basement areas, has been carried out in accordance with Australian Standard AS 3798 –Guidelines on earthworks for commercial and residential developments.

REMEDIATION COMPARISON

The submitted material by the applicant provides the following list of works that are suggested to be required to clean the site under either the demolition scenario and retain Caldwell House scenario:

Roof space	
Works required if Building Retained	Works required if Building Demolished
<ul style="list-style-type: none"> • Collect lagging and vacuum dust • Remove all pipes, cables, other contents • Remove roof tiles and clean and replace • Vacuum all timber trusses and paint to encapsulate remaining fibres • Remove original ceiling and suspended ceiling as contaminated waste • Works undertaken to avoid damage to frame • Remove residue in wall cavity as practical then drench with dilute paint to encapsulate fibres • Manual labour including bagging of waste for removal 	<ul style="list-style-type: none"> • Collection of lagging • Wet and seal all contents for later demolition • Removal comprises combination of manual removal and machines

Ground and First Floor	
Works required if Building Retained	Works required if Building Demolished
<ul style="list-style-type: none"> • Remove external pipes • Collect lagging and vacuum asbestos residue dust • Remove all asbestos material in walls, ceiling, doors • Remove vinyl floor. Will require grinding of floor for complete removal • Manual labour including bagging of waste for removal • Cleaning of all surfaces required after removal of asbestos contaminated waste 	<ul style="list-style-type: none"> • Collection of lagging • Remove all asbestos material in walls, ceiling, suspended ceiling • Wet and seal all contents for later demolition • Removal comprises combination of manual removal and machines

Sub floor Space	
Works required if Building Retained	Works required if Building Demolished
<ul style="list-style-type: none"> • Remove pipes and lagging residue • Remove all cables and remaining pipes • Alternative is to clean pipes and cables but this incurs higher labour charge • Remove all other contents including vinyl floor • All access to subfloor to be via existing access doors • Limited working height to be considered • All sub floor space requires covering with 50mm concrete slab to encapsulate residual asbestos on soil • Manual labour including bagging of waste for removal 	<ul style="list-style-type: none"> • Collect pipes and lagging residue • Wet and seal all contents for later demolition • Removal comprises combination of manual removal and machines • Excavation of 100mm of soil as asbestos waste
Clean Up	
Works required if Building Retained	Works required if Building Demolished
<ul style="list-style-type: none"> • After removal of asbestos containing material cleaning would to be undertaken. The preferred method is washing to a collection area where the water is filtered before discharge. • The final structure retains the concrete and brick with timber roof frame. • Roof tiles will be replaced after cleaning. • All remaining timber in the roof frame and sub floor space potentially contains asbestos and spraying with a dilute plastic paint is required for encapsulation. • Treatment of the external wall cavity is required to seal asbestos lagging residue. 	<ul style="list-style-type: none"> • After building demolition surface soil will be removed and transported to landfill as asbestos waste.

Waste and Traffic	
Works required if Building Retained	Works required if Building Demolished
<ul style="list-style-type: none"> Asbestos waste will require disposal at a landfill licenced to accept friable asbestos waste. Some asbestos cement material and vinyl may be removed as non-friable waste if not contaminated with lagging. The waste will be wrapped prior to transport. The quantity of waste has not been accurately determined however only asbestos contaminated waste will be removed and transported off-site. 	<ul style="list-style-type: none"> Asbestos waste will be removed from the building prior to demolition. Separate removal of asbestos will enable reuse or recycling of material not containing asbestos. Material with hard surfaces will be cleaned then classified as non-asbestos waste. Non-asbestos waste such as bricks and concrete will be crushed onsite and sold for reuse as fill. The demolition option will generate additional asbestos waste from all timber surfaces and soil excavations. The demolition option will produce asbestos and non-asbestos wastes. A demolition management plan will be prepared describing the process
Future Restrictions and Management	
Works required if Building Retained	Works required if Building Demolished
<ul style="list-style-type: none"> Asbestos cannot be completely removed from the building due to impact on porous surfaces and inaccessible location in voids. All timber in the roof and timber in sub floor space will remain and is impacted with asbestos fibres. Asbestos in the exterior wall cavity is also impacted with asbestos fibres. The asbestos on all timber surface and the wall cavities will be made safe by sealing with paint. Asbestos will also remain in the soil under the building after the removal works. Due to the nature of the asbestos in the soil it is unlikely it can be removed. The preferred make safe method of remediation is sealing with 50mm of concrete to encapsulate the asbestos residue. The site will need to be registered as contaminated land on the section 149 certificate for the land title deed. The land-use will be subject to implementation of a site management plan which restrict disturbance of the capping layer. The plan will need to be managed by the land owner and enforced by local council as a contaminated site. Restrictions will apply to retaining the building which has cost implications for redevelopment and ongoing maintenance. 	<ul style="list-style-type: none"> No restriction on the land-use following demolition and clearance by hygienist/environmental scientist.

- A site management plan will be required to be prepared for any works potentially breaching the encapsulation layers in the ceiling or sub floor space. The plan will recommend breaches to the encapsulated material are classified as friable asbestos works. Works on friable asbestos is required to be undertaken by a licensed asbestos removalist with SafeWork NSW class A licence.

Uncertainties

It is possible unidentified asbestos is present in the building due to location in inaccessible areas or covered by renovations over time. Asbestos lagged pipes in the walls have not been identified however they may be present which will not be known until the area is disturbed. The location of unidentified asbestos will require management at the time of identification.

It is important to note that a large amount of the identified disturbed material is assumed to be asbestos based on the submitted asbestos audits (testing has not been carried out to positively identify all material as asbestos – the audit relies mostly on visual inspection); and a large proportion of the identified asbestos is intact and not damaged. It is therefore possible that not all of the disturbed material is asbestos and the extent of contamination may be overstated by the applicant.

Further to the above; the *Asbestos Removal Options* report provides the below table which compares the removal factors for the scenarios of the building being retained and the building being demolished.

Factor	Retain Building	Demolition	Staff comment
Practical	Yes (accessibility restrictions)	Yes	Noted – both options are practically possible.
Damage to building	Floor requires grinding for vinyl floor removal All cable and pipes will require reinstallation Ceilings and walls will require replacement Possible accidental damage in removal process	N/A	The damage to the building could easily be managed through recognised conservation principles. These have not been explored as part of the submitted Heritage Impact Statement.
Cost	High	Moderate	33% additional cost for retention of Caldwell House is not considered exorbitant.

Factor	Retain Building	Demolition	Staff comment
			Particularly in consideration of how the building has been irresponsibly managed over the last decade.
Clean-up Time	<i>High</i>	<i>Low</i>	Noted. This could have been dramatically reduced had the building been managed more responsibly.
Asbestos retained onsite	<i>Yes (encapsulated to make safe)</i>	<i>No</i>	This is easily managed through a site specific management plan. This is not uncommon for a building of this era.
Waste generated	<i>Asbestos</i>	<i>Asbestos and non-asbestos</i>	NOTED. Retention of Caldwell House is far better for the environment and presents a much more sustainable option.
Transport	<i>Asbestos waste only</i>	<i>Asbestos waste & non-asbestos waste for re-use material</i>	Noted. As with above, retention presents a much better outcome for the environment.
Reuse of materials	<i>No</i>	<i>Crushed brick/concrete</i>	There is reuse of materials under the retention option as the build materials will remain as part of the building.

The above table does not clearly articulate the significant embodied energy² costs of the demolition scenario. The demolition scenario would have a far greater impact on the environment than the retention option through the additional embodied energy generated as a result of demolition of all buildings and redeveloping the site with all new buildings.

The embodied energy costs would be reduced significantly if only the later 1950s nurse's quarters were to be demolished.

Thus, the full demolition option is fundamentally inconsistent with the objects of the Act, which seeks to:

facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.

² Embodied Energy is the total amount of energy expended in all the processes of constructing a building including: the energy used in manufacturing all of materials used in the building, the energy used in transporting the materials, the energy used to build the building; and the energy used to demolish and dispose of the building at the end of its lifecycle.

NB: embodied energy does not include the energy used to operate the building over its life-cycle (Dixit et. al 2010).

Relying solely on an economic argument is contrary to the intent of the above object of the *Environmental Planning & Assessment Act*.

JUSTIFICATION

The applicant submits that the building is contaminated beyond being able to be made habitable; and even if it were able to be occupied it would be cost prohibitive and the stigma attached to the building as a consequence of the contamination makes the building undesirable.

In response to the presented justification by the Applicant, Council staff make the following comments:

- The building is a listed Heritage Item.
- The extent of asbestos disturbed within the building is a direct consequence of the poor management of the building by the owners.
- The exact extent of asbestos or asbestos-containing material distributed within the building is based on supposition rather than laboratory testing of all disturbed material.
- All asbestos must be removed from the building prior to it being demolished as required by Clause 452 of the Work Health and Safety Regulation 2017 and the Safe Work Australia's Demolition Code of Practice. In other words, the building needs to be cleaned of asbestos or asbestos-containing material in any case.
- The building can be made fit for purpose and can be adaptively reused retaining the heritage significance of the place.
- The highest and best use of the property will only be achieved with retention of the heritage building and having the benefit of Council's generous heritage incentives clause under the LEP. The ability to use the incentives clause will evaporate if the heritage item is removed from the site.
- The cost analysis presented by the applicant is based on flawed logic – it only accounts for the redevelopment of the site to a point that stops at the demolition phase and not the complete redevelopment of the site; where at a point in time the (comparative) additional cost in retaining the building would be recouped by the mere fact that there is a building on the land that does not need to be rebuilt.

MATTERS FOR CONSIDERATION

Section 1.7 - Application of Part 7 of the *Biodiversity Conservation Act 2016* and Part 7A of the *Fisheries Management Act 1994*

Section 1.7 of the EP&A Act identifies that Part 7 of the Biodiversity Conservation Act 2016 (BC Act) and Part 7A of the Fisheries Management Act 1994 have effect in connection with terrestrial and aquatic environments.

There are four triggers known to insert a development into the Biodiversity Offset Scheme (ie the need for a BDAR to be submitted with a DA):

- Trigger 1: development occurs in land mapped on the Biodiversity Values Map (OEH) (clause 7.1 of BC Regulation 2017);

- Trigger 2: development involves clearing/disturbance of native vegetation above a certain area threshold (clauses 7.1 and 7.2 of BC Regulation 2017); or
- Trigger 3: development is otherwise likely to significantly affect threatened species (clauses 7.2 and 7.3 of BC Act 2016).

The fourth trigger (development proposed to occur in an Area of Outstanding Biodiversity Value (clause 7.2 of BC Act 2016) is generally not applicable to the Orange LGA; as no such areas are known to occur in the LGA. No further comments will be made against the fourth trigger.

In relation to the above triggers; the subject land is not within an area of mapped high biodiversity value and there is no clearing of native vegetation proposed.

In terms of a test of significance pursuant to section 7.3 of the *Biodiversity Conservation Act*, given the disturbed urban environment, the development is not likely to significantly affect any threaten species, habitats or endanger ecological communities.

CROWN DEVELOPMENT

Section 4.32 of the *Environmental Planning and Assessment Act* defines a **Crown Development Application** as: *a development application made by or on behalf of the Crown*. The Crown includes a public authority. The EP&A Act defines a **public authority** as including a statutory body representing the Crown. The application was lodged by Health Administration Corporation. Health Administration Corporation as established by S9(1) of the *Health Administration Act*. According to s9(2)(f): *The Corporation ... is, for the purpose of any Act, a statutory body representing the Crown*.

The Crown Development provisions preclude Council from imposing a condition of consent to this development, except with the written approval of the Minister or the applicant. These same provisions also preclude Council from refusing to grant a consent for a Crown Development Application except with the written approval of the Minister (having first put the application before the Western Regional Planning Panel as the consent authority).

As the application is a Crown Development Application, the following process is recommended to be followed by Council:

With respect to development application DA 234/2018(1) for Demolition of a Heritage Item (all buildings, structures and vegetation to be removed) and Category 1 Remediation (asbestos removal) at Lot 2 DP 1230592 - 129-133 Sale Street, Orange it is recommended that Council:

- 1 *Note the contents of the planning report and the recommendations therein.*
- 2 *Accept the terms of the draft notice of determination.*
- 3 *Direct Council staff to obtain the concurrence of either the applicant or the Minister as required by Section 4.33 of the Environmental Planning and Assessment Act.*
- 4 *Council provide delegated Authority to the Chief Executive Officer that upon concurrence being obtained, that the Development Application be determined (approved) based on the draft consent considered by Council (with minor amendments permitted as part of the concurrence process). Alternatively, a report would have to be prepared to Council for development consent to be granted.*

Section 4.15

Section 4.15 of the *Environmental Planning and Assessment Act 1979* requires Council to consider various matters, of which those pertaining to the application are listed below.

PROVISIONS OF ANY ENVIRONMENTAL PLANNING INSTRUMENT s4.15(1)(a)(i)**Orange Local Environmental Plan 2011****Part 1 - Preliminary****Clause 1.2 - Aims of Plan**

The broad aims of the LEP are set out under Subclause 2. Those relevant to the application are as follows:

- (f) *to recognise and manage valued environmental heritage, landscape and scenic features of Orange.*

The development, specially the demolition of Caldwell House is fundamentally inconsistent with above aim of the plan.

Clause 1.6 - Consent Authority

This clause establishes that, subject to the Act, Council is the consent authority for applications made under the LEP.

Clause 1.7 - Mapping

The subject site is identified on the LEP maps in the following manner:

Land Zoning Map:	Land zoned R1 General Residential
Lot Size Map:	No Minimum Lot Size
Heritage Map:	Heritage item
Height of Buildings Map:	No building height limit
Floor Space Ratio Map:	No floor space limit
Terrestrial Biodiversity Map:	No biodiversity sensitivity on the site
Groundwater Vulnerability Map:	Groundwater vulnerable
Drinking Water Catchment Map:	Not within the drinking water catchment
Watercourse Map:	Not within or affecting a defined watercourse
Urban Release Area Map:	Not within an urban release area
Obstacle Limitation Surface Map:	No restriction on building siting or construction
Additional Permitted Uses Map:	No additional permitted use applies
Flood Planning Map:	Not within a flood planning area

Those matters that are of relevance are addressed in detail in the body of this report.

Clause 1.9A - Suspension of Covenants, Agreements and Instruments

This clause provides that covenants, agreements and other instruments which seek to restrict the carrying out of development do not apply with the following exceptions: covenants imposed or required by Council

- prescribed instruments under Section 183A of the *Crown Lands Act 1989*
- any conservation agreement under the *National Parks and Wildlife Act 1974*
- any trust agreement under the *Nature Conservation Trust Act 2001*
- any property vegetation plan under the *Native Vegetation Act 2003*
- any biobanking agreement under Part 7A of the *Threatened Species Conservation Act 1995*
- any planning agreement under Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979*.

Council staff are not aware of the title of the subject property being affected by any of the above.

Part 2 - Permitted or Prohibited Development**Clause 2.1 - Land Use Zones and Clause 2.3 - Zone Objectives and Land Use Table**

The subject site is located within the R1 General Residential zone. If the subject land was still being used for the purposes of Community Health Services (as community health [being a directorate within NSW Health] was the most recent occupant of the building), the current land-use would be characterised as a health services facility which is defined as:

health services facility means a building or place used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons, and includes any of the following—

- (a) *a medical centre,*
- (b) *community health service facilities,*
- (c) *health consulting rooms,*
- (d) *patient transport facilities, including helipads and ambulance facilities,*
- (e) *hospital.*

Health services facilities are permissible in the R1 General Residential zone.

Notwithstanding the above, the applicant is not seeking consent for a health services facility, but rather the demolition of the existing buildings. Accordingly, the demolition provisions are addressed below.

Clause 2.3 of LEP 2011 references the Objectives for each zone in LEP 2011. These objectives for land zoned R1 General Residential are as follows:

1 - Objectives of the R1 General Residential Zone

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *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.*
- *To ensure that development along the Southern Link Road has an alternative access.*

Retention of Caldwell House would be consistent with the objectives of the zone in so far as an adaptive re-use of the building could accommodate a future use that provides facilities or services to meet the day-to-day needs of the occupants of surrounding residential properties. Or alternately, Caldwell House could be adaptively re-used for residential purposes, adding to the diversity of the existing housing market.

Clause 2.7 - Demolition Requires Development Consent

This clause triggers the need for development consent in relation to a building or work.

The applicant is seeking consent to demolish all buildings and structures upon the land. The development requires consent given the heritage listing of the site, and the applicant has sought consent.

Part 3 - Exempt and Complying Development

The application is not exempt or complying development.

Part 5 - Miscellaneous Provisions

5.10 - Heritage Conservation

The subject land is identified as a heritage item pursuant to Schedule 5 of Orange LEP 2011. The relevant heritage inventory for the property provides the following statement of significance:

The 1937 Nurses Home is an historically and socially important element of the Orange Hospital which has retained the distinctive original character, including the Sale Street wing with art deco influences, complements the streetscape and contributes to the City as a heritage item.

(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.*

The development, specifically the proposal to demolish Caldwell House, is fundamentally antipathetic to the above objects of this clause, specifically objects (a) and (b). The development will result in the loss of a highly significant heritage item.

The demolition of Caldwell House is also antipathetic with the objects of the *Environmental Planning and Assessment Act*, specifically object (f) which seeks :

To promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

Allowing the demolition of Caldwell House is not an example of sustainable management of a significant heritage item; and accordingly the demolition of Caldwell House is not supported.

(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):*
 - (i) a heritage item,*

The development involves the demolition of a heritage item, and as such development consent is required, which the applicant has sought.

(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).

As mentioned above, if demolition of Caldwell House was agreed to it would have a substantial detrimental effect on the heritage significance of the site, effectively removing the significance entirely.

Council's Heritage Advisor has strongly opposed the development and has prepared detailed advice to Council. This was provided to the applicant, who in turn provided a detailed response. The heritage advice received by Council (**bold** and paraphrased in the applicant's response) and applicant's response (*italics*) is provided below:

In regard to the heritage value of Caldwell House, it is noted that:

- 1. The potential exists for the building to be converted to many uses as facilitated by the heritage conservation incentives of Orange LEP 2011; and*
- 2. The preferred approach would be for the building to be remediated (in terms of asbestos) and adaptively re-used.*

However, the ability to pursue the above is significantly constrained by the environmental risks to future occupants and the economic burden and risk outlined earlier.

In response to the matters raised in the Summary and Recommendations sections of the heritage advisor's report dated July 2018, we advise as follows:

- 1. The heritage advisor states that the HIS is not consistent with the NSW Heritage template or guide.**

The Heritage Impact Statement (HIS) by Weir Phillips Heritage has been revised and a copy is attached.

- 2. The heritage advisor is concerned that appropriate expert heritage advice has not been used to pursue appropriate options for the site. In response to this:**

a) Despite the fact that the HIS could not recommend retention of the building; it is our submission that Weir Phillips has provided "appropriate expert heritage advice". The HIS has assessed the proposal in the context of the following heritage publications:

- *NSW Heritage Office, Statements of Heritage Significance (2002 update)*
- *NSW Heritage Office, Statements of Heritage Significance (2002)*

In particular, Sections 5.3.3 and 5.4 of the revised HIS consider sympathetic solutions and explain why they have been discounted in terms of heritage values.

b) The conclusion reached in the HIS (essentially that there is no alternative but to demolish the building) is reflective of the well supported argument, that the environmental risks and the economic burden associated with asbestos remediation and demolition/retention of the building outweigh the heritage values.

- 3. Orange Council's heritage advisor is concerned that the SoEE and HIS draw erroneous conclusions of non-viability related to decontamination costs which are unrelated to heritage options.**

The process of having specialist contractors (in conjunction with asbestos assessors) provide detailed quotations has demonstrated that:

a) The level of asbestos contamination is greater and more complicated than what was expressed in the original DA documentation, particularly in terms of the difficulty in treating inaccessible areas and minimising the risk of airborne fibres for future occupants.

b) The cost of remediation is far greater than the estimates that were provided in the original DA documentation.

- 4. The heritage advisor is concerned that the justification for the demolition of the last remaining buildings associated with the Orange Base Hospital are not borne out by the evidence presented.**

It is suggested that the additional information provided in this document would address any concerns in this regard.

5. The heritage advisor is concerned that the proposal does not include an end use and built form which would replace the existing development of the site.

We agree; however, it is considered appropriate for Council to allow demolition without having this information provided due to the following:

- a) The circumstances around the asbestos situation suggest that demolition of the building is required (particularly for environmental reasons) regardless of future development plans for the site.*
- b) It is difficult to practically nominate “an end use and built form” option as part of this development application. In this regard, there is a range of future development options for the site, but none are known at this stage; and there is no obligation to pursue any option that may be put forward at this stage.*
- c) Once a development option is determined, the appropriateness and impact of such development will be guided, assessed and addressed as part of the DA process.*

6. The heritage advisor recommends that:

The Applicant is encouraged to engage with skilled and experienced heritage architects who can develop options for the adaptive re-use of the original East wing known as Caldwell House and the sympathetic development of the remainder of the site in accord with market indicators and use of the incentive clauses under the Orange LEP.

The options should then be costed in relation to the related decontamination and structural issues and reviewed with Council and following suitable discussions and market testing an application be prepared and lodged.

We appreciate the intent of the recommendation; however, our response is as follows:

- a) Before considering heritage appropriate options for re-use of the East wing, the first step is to address concerns regarding the asbestos contamination.*
- b) In pursuit of point (a), both specialist contractors (with their respective assessors) were asked to consider the following scenarios:*
 - Undertake the asbestos remediation of Caldwell House and retain front façade and verandah only. In this regard:*
 - DEMEX/ERS provided a quotation which has been provided to Council as commercial-in-confidence. In short, the cost is unrealistic; impractical; and prohibitive. This also should be regarded as a theoretical price only as a clearance certificate cannot be issued for the retained elements.*
 - IP/Airsafe refused to offer a quotation.*
 - Undertake the asbestos remediation of Caldwell House and retain the sale Street building (i.e. the east wing as referred to by the heritage advisor). In this regard both DEMEX/ERS and IP/Airsafe refused to offer a quotation because neither were confident that the remaining building would achieve a satisfactory standard of asbestos clean-up and could not obtain a clearance certificate.*

- c) *Given that a satisfactory situation is unlikely to be achieved in terms of asbestos remediation, we don't think that engaging a "skilled and experienced heritage architect" to consider adaptive re-use options for the East wing is necessary. It is recognised that the Orange LEP 2011 heritage conservation incentives facilitate a broad range of adaptive re-use options for Caldwell House. However, the highest and best land use will always be constrained by the asbestos situation and it is likely that the building and site will remain undeveloped and boarded up for the foreseeable future.*

The justification presented within the application is not centred on a proposition that the building is not heritage significant. The applicant fully acknowledges this by stating: *The preferred approach would be for the building to be remediated (in terms of asbestos) and adaptively re-used.*

The applicant's justification rather centres on the proposition that the building has deteriorated (although not expressly acknowledged by the applicant; the deterioration has occurred as a direct consequence of the neglect and inattention given to one of NSW Health's assets) to the point where it is unsalvageable/unusable; and therefore this results in it being acceptable to lose one of the City's valued heritage assets: a building that is effectively the only remnant health related building in an area of the City that has provided significant health care to the community within the region, an area much broader than just the Orange LGA.

Therefore, given that Council staff and the applicant are in agreement that the building is an important heritage item and should be retained, and given that the applicant has not categorically ruled out that the building cannot be cleaned-up, there is very little justification to support the demolition of Caldwell House.

With the proposition put forward by the applicant that the building is required to be demolished due to the deteriorated state (again caused directly by the neglect of the owners) refuted; it is then necessary to explore the applicant's secondary argument around the financial imposition of retention of the significant heritage item.

The applicant suggests that retaining the building following remediation would be cost prohibitive. Of the three options referred to above, retention *is* the most expensive. However, the applicant indicated that their consultant/contractors were not prepared to price the option of retention as they were of the view it could not be successfully achieved.

As indicated above, Council's experts disagree with the assertion that the building cannot be appropriately cleaned and occupied. Council engaged engineering consultants Bradford Barker to complete a peer review of the submitted material, carry out a basic inspection of Caldwell House in terms of its structural adequacy, and finally provide the missing costings that the applicant was unwilling to provide.

Bradford Barker concluded that:

- they agree with findings of Council's Contamination Expert;
- that the building would be structurally adequate to enable the necessary remediation works to be carried out; and
- that the option to retain Caldwell House is approximately 33% more expensive than the applicant's preferred option of complete demolition.

There is an important observation to make at this point. The applicant's cost argument is somewhat flawed. The focus of cost has been entirely focused only on the cost of demolition. But as indicated in the application, Health Infrastructure are not intending on carrying out the work. It is understood that their interests to date are simply in divesting the property with the consent in place.

Therefore, when a new party comes to acquire the land, it is very unlikely that they would stop at the completion of the demolition, but rather they would continue to develop the land to its highest and best use³.

What has been provided by the applicant is only an analysis of the demolition cost, not a realistic cost to redevelop the site. It is highly likely that the 33% additional cost at the remediation stage (to retain the building) would be partly or fully recouped by the mere fact that there was an existing building on the land that could be simply adapted for the desired highest and best use; albeit with the necessary upgrades required under the NCC.

The point being, the additional cost at the remediation stage to retain the building would not be the actual additional cost when accounting for the total redevelopment of the site.

In the absence of such a detailed, realistic and rigorous cost analysis of the complete redevelopment of the site, the cost argument is not one that could be supported.

So in summary:

- Caldwell House is a significant heritage item, a remnant of the historic and significant use of this locality as a regional medical precinct.
- Caldwell House is capable of being successfully remediated, albeit with an ongoing management plan (again such a document is not uncommon).
- The cost analysis provided by the applicant provides an incomplete picture of the total redevelopment cost of developing the subject land.

On this basis, allowing the demolition of Caldwell House would be fundamentally contrary to the objects of the *Environmental Planning and Assessment Act*, the aims of the LEP and the objects of this clause. **Thus, demolition of Caldwell House should not be supported.**

(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.*

³ The highest and best use of the property as a commercial use that could complement the new DPI building for example would only be permissible with the heritage items remaining on the land and an applicant utilising the incentives clause under the LEP.

A heritage management document as defined in the LEP means:

- (a) *a heritage conservation management plan, or*
- (b) *a heritage impact statement, or*
- (c) *any other document that provides guidelines for the ongoing management and conservation of a heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.*

A heritage impact statement has been submitted in support of the application.

(6) Heritage Conservation Management Plans

The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

At present there is no Conservation Management Plan prepared for the land. Given the recommendation for the retention of Caldwell House, it is appropriate to require that a Conservation Management Plan be prepared to guide future adaptive reuse along with the ongoing maintenance and management of Caldwell House.

(7) Archaeological Sites

The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the Heritage Act 1977 applies):

- (a) *notify the Heritage Council of its intention to grant consent, and*
- (b) *take into consideration any response received from the Heritage Council within 28 days after the notice is sent.*

The site is not a known archaeological site. Notwithstanding this, as the development will involve extensive ground disturbance with the demolition of the red brick (more recent) nurses quarters, there is a high likelihood of encountering an aboriginal object or archaeological relic. As such, Council's standard precautionary condition is attached that specifies a process to follow in the event an object or relic is discovered.

(8) Aboriginal Places of Heritage Significance

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:

- (a) *consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and*
- (b) *notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.*

The subject land is not an Aboriginal Place of Heritage Significance. An AHIMS search confirms that the site has no Aboriginal sites or places recorded against it.

(9) Demolition of Nominated State Heritage Items

The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item:

- (a) notify the Heritage Council about the application, and*
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.*

The subject land is not a Nominated State Heritage Item.

(10) Conservation Incentives

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

The conservation incentives clause could be relied upon for adaptive re-use of Caldwell House whilst ever Caldwell House remained on the land. A land-use could be contemplated that is impermissible in the R1 General Residential zone, such as a commercial office building.

The ability to rely upon the incentives clause would be lost if Caldwell House was demolished.

Part 6 - Urban Release Area

Not relevant to the application. The subject site is not located in an Urban Release Area.

Part 7 - Additional Local Provisions**7.3 - Stormwater Management**

This clause applies to all industrial, commercial and residential zones and requires that Council be satisfied that the proposal:

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

- (b) includes, where practical, onsite 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.*

Relevant conditions are attached in relation to the disconnection of services to the buildings approved to be demolished. A soil and erosion control plan will be required to be installed whilst any approved demolition works are undertaken.

7.6 - Groundwater Vulnerability

This clause seeks to protect hydrological functions of groundwater systems and protect resources from both depletion and contamination. Orange has a high water table and large areas of the LGA, including the subject site, are identified with "Groundwater Vulnerability" on the Groundwater Vulnerability Map. This requires that Council consider:

- (a) whether or not the development (including any onsite storage or disposal of solid or liquid waste and chemicals) is likely to cause any groundwater contamination or have any adverse effect on groundwater dependent ecosystems, and*
- (b) the cumulative impact (including the impact on nearby groundwater extraction for potable water supply or stock water supply) of the development and any other existing development on groundwater.*

Furthermore, consent may not be granted unless Council is satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that impact,*
- (c) if that impact cannot be minimised - the development will be managed to mitigate that impact.*

The proposal is not anticipated to involve the discharge of toxic or noxious substances and is therefore unlikely to contaminate the groundwater or related ecosystems. Measures will need to be implemented to ensure that dust and sediment do not escape the site. The proposal does not involve extraction of groundwater and will therefore not contribute to groundwater depletion.

Clause 7.11 - Essential Services

Clause 7.11 applies and states:

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*

- (d) *storm water drainage or onsite conservation,*
- (e) *suitable road access.*

In consideration of this clause, all utility services are available to the land. Disconnection to the red brick (more recent) nurses quarters will need to occur as part of the demolition.

STATE ENVIRONMENTAL PLANNING POLICIES

State Environmental Planning Policy 55 - Remediation of Land

Application has been made for a Category 1 remediation and as such SEPP 55 – Remediation of Land is applicable to the assessment of the application. The applicant has sought to treat the application as a Category 1 remediation due to the extent of asbestos material within the buildings.

The application is accompanied by the following documents related to the remediation of the land:

- Hazardous Materials Survey.
- Asbestos Removal Options.
- Asbestos Removal Control Plan.
- Preliminary Contamination Investigation.
- Asbestos Audit.

The asbestos will need to be removed from the site and transported to an appropriate facility. The transport of asbestos-containing material falls within the jurisdiction of the EPA. The Asbestos Removal Control Plan provides a detailed explanation and protocols for the removal of asbestos. The other accompanying documentation (Hazardous Materials Survey and Asbestos Audits) inform the Asbestos Removal Control Plan.

Relevant conditions are attached regarding the need for the asbestos removal to be in accordance with the Asbestos Removal Control Plan. Separate specific conditions are attached that obligate the beneficiary of the consent to implement appropriate air monitoring during the clean-up and demolition of the buildings permitted to be demolished. These conditions only relate to the buildings permitted to be demolished. There are also conditions attached obligating the beneficiary of the consent to furnish Council with all necessary clearance certificates for the works.

The Preliminary Contamination Investigation analysed samples taken from the site and tested them for heavy metals and organochlorine pesticides. The sampling returned slightly elevated levels of copper, zinc and lead, but all were below the residential land-use thresholds (noting that commercial uses have a lower threshold). Accordingly, there is no contamination within the site (save for the asbestos within the buildings) that would prevent the land being used for residential or commercial land-uses.

State Environmental Planning Policy (infrastructure)

State Environmental Planning Policy (infrastructure) is applicable to the application given the proximity of overhead power lines to the subject site in Dalton Street, specifically Clause 45 of the SEPP. This clause requires that Council, where applicable (such as in this case), consult with the electricity supply authority - in this case Essential Energy.

Council staff consulted with Essential Energy during the assessment process. Essential Energy did not raise any objections to the development but did provide Council with their standard requirements for developments within the vicinity of overhead powerlines. These have been included in the draft notice of approval.

PROVISIONS OF ANY DRAFT ENVIRONMENTAL PLANNING INSTRUMENT THAT HAS BEEN PLACED ON EXHIBITION 4.15(1)(a)(ii)

From 31 January to 13 April 2018 the Department of Planning and Environment publically exhibited an Explanation of Intended Effect (EIE) and Draft Planning Guidelines for the proposed Remediation of Land SEPP, which will repeal and replace State Environmental Planning Policy 55 – Remediation of Land (SEPP 55). Of particular note, the Draft Planning Guidelines state:

“In undertaking an initial evaluation, a planning authority should consider whether there is any known or potential contamination on nearby or neighbouring properties, or in nearby groundwater, and whether that contamination needs to be considered in the assessment and decision making process.”

“If the planning authority knows that contamination of nearby land is present but has not yet been investigated, it may require further information from the applicant to demonstrate that the contamination on nearby land will not adversely affect the subject land having regard to the proposed use.” (Proposed Remediation of Lands SEPP - Draft Planning Guidelines, Page 10).

Council staff are not aware of any contamination on adjoining sites.

DESIGNATED DEVELOPMENT

The applicant suggest that onsite crushing of the material may occur or it may be transported off-site. In any event, if the material is processed onsite it would be considered ancillary to the demolition and not a stand-alone use of the land, and as such would not be deemed designated development.

INTEGRATED DEVELOPMENT

The applicant has not indicated that the application requires any further approvals from other Government Agencies.

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

Development Control Plan 2004

Development Control Plan 2004 (“the DCP”) applies to the subject land (Part 0 – LEP, *Part 3 – General Considerations*, *Part 4 – Special Environmental Considerations* and *Chapter 13 – Heritage*). An assessment of the proposed development against the relevant Planning Outcomes will be undertaken below.

Pursuant to Planning Outcome 0.2-1 Interim Planning Outcomes - Conversion of Zones:

- *Throughout this Plan, any reference to a zone in Orange LEP 2000 is to be taken to be a reference to the corresponding zone(s) in the zone conversion table.*

The corresponding zone to zone 2a (Orange LEP 2000) is zone R1 General Residential (Orange LEP 2011). As such, *Orange DCP 2004 – 7 – Development in Residential Areas* would ordinarily be the principle part applicable. However, given the application relates to purely demolition, part 7 is not relevant and the other relevant parts are addressed below.

Part 3 – General Considerations

Part 3 provides planning outcomes of a general nature. Those of relevance to this assessment relate to cumulative impacts and waste generation. These are both addressed below under the heading “Likely Impacts”. The other matters within Part 3 not listed here are not relevant to the assessment.

Part 4 – Special Environmental Considerations

Part 4 deal with inter alia, contaminated land. This matter is considered above under the SEPP 55 considerations. The other matters within Part 4 not listed here are not relevant to the assessment.

Part 13 – Heritage

Part 13 deals with heritage considerations and specially deals with demolition of a heritage item; and requires that applications for demolition are well founded and sufficiently justified. Part 13 also requires that for application involving demolition, applicants *must include details of the proposed development requiring the demolition of the heritage-significant building or site*.

In regards to the above, Council staff are of the view that the applicant has not sufficiently demonstrated that the demolition is justified or well founded. Hence the rationale behind the recommendations contained within this report. In relation to the DCP requirement for the applicant to provide details of the development that necessitates the demolition, this is addressed above in the applicant’s response to Council’s Heritage Advisor’s commentary on the application. The absence of such information is considered as further reasons for the unsoundness of the applicant’s justification.

INFILL GUIDELINES

Despite the land being identified as a heritage item, given there are no building works involved, the Infill Guidelines are not applicable in the assessment of this application.

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

Demolition of a Building (clause 92)

The proposal involves the demolition of all buildings and structures on the land. A condition is attached requiring the demolition to be carried out in accordance with *Australian Standard AS2601 - 1991: The Demolition of Structures*.

Fire Safety Considerations (clause 93)

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

Buildings to be Upgraded (clause 94)

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

BASIX Commitments (clause 97A)

Not applicable.

THE LIKELY IMPACTS OF THE DEVELOPMENT s4.15(1)(b)**Context and Setting**

The subject land is one of the last remnants of the former hospital site. It contains the heritage significant Caldwell House. The proposal to demolish Caldwell House is contrary to the context and setting given the land's heritage status, and as such should not be supported.

Heritage Impacts

As described above, the development as proposed would result in the loss of an important heritage item. Council staff, through the use of experts in various fields relevant to the proposal, have concluded that there is insufficient grounds to warrant the demolition of the listed heritage item.

As described above, relevant conditions are attached that preclude works of any nature to occur to the Caldwell House building as part of this application.

Noise and Vibration ImpactsNoise Impacts

A *Noise and Vibration Assessment* has been prepared by Wilkinson Murray Pty Ltd (refer Annexure L). The assessment identified the nearest sensitive receivers as the following dwellings:

- R1 67 Dalton Street Residence
- R2 137 Sale Street Residence
- R3 63 Dalton Street Residence
- R4 61 Dalton Street Residence
- R5 59 Dalton Street Residence
- R6 78 Dalton Street Residence
- R7 97 Prince Street Residence
- R8 99 Prince Street Residence
- M1 65 Dalton Street Women's Health Orange
- M2 135 Sale Street Recovery Rehabilitation Services
- M3 95 Prince Street Cerebral Palsy Alliance
- M4 127 Sale Street Health Consulting
- M5 125 Sale Street Health Consulting (vacant)
- C1 123 Prince Street Hogan's Pharmacy
- TAFE March Street Orange College of TAFE

The sensitive receivers are indicated below in the aerial plan extract (Source – Applicants submission) from the *Noise and Vibration Assessment*.



The construction Noise assessment submitted in support of the subject development adopted the following noise management levels (NMLs):

Surrounding Residential Receivers

- Monday to Friday 50dBA
- Saturday 50dBA
- Highly noise affected 75dBA

Surrounding Non-Residential Receivers

- Consulting Suites 65dBA
- TAFE 65dBA

The assessment considered the noise generated at each scenario of the demolition process (based on the demolition stages outlined in the *Demolition Methodology* by Cook & Roe). The assessment predicted noise levels at the most potentially sensitive receivers. The predicted LAeq 15min noise levels associated with the proposed works exceed the NML at all of the most potentially affected receivers during at least one of the works scenarios. During demolition of multi storey buildings (being those authorised by the consent to be demolished) (the most noise intensive scenario) the predicted LAeq 15min noise levels at residential receivers R6, R7 and R8 exceed the highly affected level of 75 dBA by up to 33dBA at the most effected receiver (99 Prince Street). The applicants submit that these exceedances are primarily due to the use of an excavator with a hammer attachment and also onsite concrete crushing.

It is noted that the development, being demotion of a building is not a permanent activity on the site and as such the impacts are experienced over a relatively short period.

Notwithstanding this, to ensure the impacts remain within acceptable levels, relevant conditions are attached to require a management plan to mitigate the potential noise impacts. This is discussed below under the summary of Noise and Vibration Impacts heading below.

It should be noted that the recommendation of this report to not allow demolition of Caldwell House which effectively reduces the extent of demolition and, as a consequence, will reduce the environmental impacts in the locality.

Finally, it is noted that the demolition of the former base hospital (which occurred opposite the subject land) relied on a comparable demolition methodology, using comparable demolition equipment. This particular development had similar exceedances of the noise management levels; which were addressed via a similar requirement for a management plan. Council staff are recommending a consistent approach with this application.

Vibration impacts

According to the Wilkinson Murray report, the assessment of vibration requires consideration of two components:

- Human exposure to vibration.
- The potential for building damage by vibration.

The applicant indicates depending upon the size of the hydraulic hammer, there is a likelihood that the safe working distances for both cosmetic damage and human response cannot be maintained. On this basis consideration should be given to completing the works with a smaller machine so that safe working distances can be met. If the works cannot be conducted with a smaller machine, the works should not proceed without accompanying vibration monitoring to ensure compliance with the vibration standards. Additionally, dilapidation surveys should be considered to establish the condition of nearby structures prior to vibration intensive activities being carried out.

Summary of Noise and Vibration Impacts.

It is recommended in order to address impacts associated with noise and vibration that a Demolition Noise and Vibration Management Plan (DNVMP) be developed prior to works commencing. The DNVMP should address all reasonable and feasible measures to mitigate noise and vibration levels at nearby receivers. During demolition works best practice management strategies must be implemented to minimise any potential noise impact. These would include but are not limited to restricting hours of operation (7am to 6pm Monday to Friday and 8am to 1pm Saturdays. No work will occur on Sundays and Public Holidays), scheduling noisy works where practicable to the least sensitive time of day for the closest receivers, scheduling construction to minimise multiple use of the noisiest equipment or plant items where practicable, strategic positioning of plant items and work areas to reduce the noise emission to noise sensitive receptors, ensuring construction machinery is well maintained, awareness training for contractors in environmental noise issues and community consultation with local residents/businesses to assist in the alleviation of community concerns.

The attached Notice of Determination includes recommended conditions to address Noise and Vibration impacts.

Traffic Impacts

Traffic impacts associated with the development will be limited to trucks delivering machinery and trucks removing material from site, along with passenger vehicles related to people working onsite. The subject land benefits from its proximity to a section of Sale Street (between Dalton and Prince Streets) which has traffic calming devices at the northern and southern ends of the block to reduce traffic speed; as well as on-street parking down the centre of Sale Street which would be able to accommodate workers' vehicles. Both Sale and Dalton Streets are capable of dealing with the additional traffic movements, particularly heavy vehicles carting waste material from the site.

The development is not expected to generate any unreasonable traffic impacts during the proposed development, particularly given the short term nature of the development.

Air Quality

There is a high likelihood that air quality could be impacted by the demolition of the former nurses quarters, particularly given the presence of asbestos and asbestos-containing material. As such, a condition is attached that requires air quality monitoring by independent and suitably qualified person/s during the entire development, from site establishment through to final clearance.

Environmental Impacts

The site does not contain any native vegetation. There are a number of mature introduced deciduous trees that are proposed to be removed, along with a number of small shrubs. The subject trees are not likely to provide habitat to any threatened species and, as such the removal of the subject vegetation is not likely to give rise to any unsatisfactory environmental impacts.

Waste Generation

The development will obviously generate waste. A condition is attached that requires a waste management plan to be submitted. The transport of waste falls within the jurisdiction of the EPA. The waste contractor is obligated to take the waste to appropriate facilities for disposal or re-processing.

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.

There is strong likelihood that one or more of the above scenarios may arise, owing to the demolition methodology and the machinery intended to be used. However, the extent of such scenarios are ameliorated as far as practicable through the recommended conditions of consent.

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

The site is unsuitable for the proposed development. The retention of the heritage item on the site is strongly recommended for the reasons outlined above.

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

The proposed development is defined as "advertised development" under the provisions of SEPP 55 and the Environmental Planning & Assessment Regulations. The application was advertised for the prescribed period of 30 days on two separate occasions. Due to the extent of additional information submitted by the applicant, it was determined that the new information materially changed the application from what was originally submitted, so the application was publicly exhibited following a second advertisement in the local newspaper. Given the two exhibition periods, the submissions are grouped depending on which submission period they were received in.

Initial Exhibition Period**Submission 1 – Steve Adams – 145 Sale Street**

The submission is in support of the application and suggests that the building has become a public disgrace. The submission also commends Council on their initiative to purchase and demolish the former base hospital.

Council staff comment

Whilst the building has been left to decay and has been mismanaged, this is not sufficient grounds to warrant its demolition.

Submission 2 – Orange Historical Society

The submission strongly objects to the application. The submission provides a detailed history of the evolution of the site and its relationship with the former hospital site. The submission also makes the points that the building is required to be cleaned prior to demolition and that the extent of disturbance to the building would be far less if the building was properly managed and kept secure.

Council staff comment

Council staff are in full agreement with the points raised in the submission, as articulated in the foregoing assessment.

Submission 3 – Kara Jennison – 78 Dalton Street

The submission is from the owner of the property that shares a common boundary with the subject land, namely part of the western boundary. The submission raises three main concerns: dividing fencing, noise and vibration, and the demolition of Caldwell House.

Dividing Fence – The submitter shares a boundary with the subject land. On the boundary is a structure that is proposed to be removed. The structure has a solid wall running along or close to the boundary. Removing the structure would effectively remove part of the wall that acts as the dividing fence.

The submitter has requested that the fence be removed by manual means as opposed to machinery, and that a suitable replacement fence of similar materials and height be constructed prior to the structure being removed. The requests are reasonable, however, given the proximity of the structure on the boundary it may not be possible to construct a replacement fence until after the structure is removed.

Conditions are attached that require the wall on the common boundary between the subject land and 78 Dalton Street to be removed by manual labour as far as practicable. A further condition is attached that requires a replacement fence of similar materials and of a similar height to be installed on the common boundary within 28 days of the structure being removed.

Noise and Vibration – The submitter requests that dilapidation reports be prepared for all immediately surround structures. The submitter also requests that given the noise exceedances, Council impose a condition that requires the demolition contractor to consult with adjoining neighbours prior to periods of noise occurring.

Council staff comment

Council staff have recommended that a condition be imposed that requires dilapidation reports to be prepared for adjoining properties where those owners are happy for the persons preparing the report to enter their land.

In relation to noise impacts, Council staff have recommended that a condition be imposed that requires a Demolition Noise and Vibration Management Plan be prepared prior to works commencing on the land. As part of the Demolition Noise and Vibration Management Plan, the demolition contractor will be required to consult with adjoining owners to advise when the higher noise level activities will occur as part of the demolition. Additionally, the Demolition Noise and Vibration Management Plan will stipulate the protocols for a complaints register. In addition to this, the recommendations out of the acoustic report will be recommended as conditions of consent.

Caldwell House – The submitter raises concerns in relation to the demolition of the heritage listed Caldwell House.

Council staff comment

Council staff agree with the comments made within the submission, hence the reason why the report recommends that no works occur to Caldwell House.

Submission 4 – Euan Greer – 21 Lawson Crescent

The author of the submission strongly opposes the application and raises numerous valid points in support of the retention of Caldwell House.

Council staff comment

Council staff agree with the comments made and points raised in the submission, and as such Council staff are not supporting the demolition of Caldwell House.

Submission 5 – Adaptive Architects (James Nicholson)

The author of the submission is strongly opposed to the demolition of Caldwell House. The author provides a very detailed and highly technical critical analysis of the application and raises many similar points that have been raised by Council staff, such as the fact that the building is required to have all asbestos removed prior to any demolition works occurring on the land. The author also provides a detailed list of how the removal of asbestos could occur in line with heritage conservation principles.

The author of the submission also interrogates the costings provided within the application as originally submitted and rebuts numerous other claims within the application; such as the claim that the building would need to be classed as a type A construction for non-residential uses, or that the undersized rooms preclude adaptive re-use.

The submission is also accompanied by a very detailed concept plan that provides an example of how the building could be redeveloped as Hotel or Motel Accommodation.

Council staff comment

The submission is very detailed and provides a high level technical critique of the application as originally submitted. Council staff concur with much of what has been raised in the submission, and thus Council staff do not support the demolition of Caldwell House.

Subsequent Exhibition Period**Submission 1 – Steve and Kay Adams (same author as submission 1 received during the initial exhibition period)**

The authors of the submission are in support of the application and suggest that the applicant's proposition is the only viable option.

Council staff comment

Council staff disagree with the author and the applicant. Council staff have engaged experts who have concluded that Caldwell House can be successfully remediated and safely occupied.

Submission 2 – Anne Salter

The author of the submission strongly opposes the demolition of Caldwell House, raises the point that the building requires the asbestos to be removed prior to demolition, and also raises concerns in relation to the environmental cost of allowing the demolition of Caldwell House.

Council staff comment

Council staff agree with the comments raised in the submission. Council staff are not supporting the demolition of Caldwell House for the reasons raised in the forgoing assessment.

Submission 3 – Euan Greer (same author as submission 4 received during the initial exhibition period)

The author of the submission highlights in considerable detail inconsistencies and errors within the amended material, particularly relating to the submitted amended costings. The author also questions the veracity of the assessed extent of asbestos, stating that the level of contamination is based on supposition rather than clear knowledge of contamination levels. Additionally, the author questions the recommendations made in the HIS and the reliance on the other expert reports to arrive at the conclusion presented within the HIS. The author of the submission also provides examples of similar buildings that have been successfully adaptively re-used and provides commentary around the possible options.

Council staff comment

In relation to the costings, Council staff generally agreed that there was missing information, hence why Council engaged Bradford Barker to complete a peer review of the costings and also provide Council with a realistic figure for the retention of Caldwell House. Council staff agree with the comments made in relation to the exact extent of asbestos or asbestos-containing material. Comments have been made in the report in relation to this issue.

The commentary around the heritage issues of the proposal are acknowledged, much of which Council staff agree with; and as such Council staff are not in support of the demolition of Caldwell House.

Submission 4 – Adaptive Architects (same author as submission 5 received during the initial exhibition period)

The author of the submission expresses their strong opposition to the application, specifically the demolition of Caldwell House. The author of the submission presents a detailed critical analysis of the material relied upon to arrive at the conclusion that the building ought to be demolished, and suggests that in arriving at this position the various experts, particularly the author of the HIS, has relied on flawed logic. The submission provides a detailed interrogation of the costings presented and questions the impartiality of the various contractors that have provided quotes.

The submission rebukes the claims made within the additional material that draws a correlation between the asbestos contamination within this application and the “Mr Fluffy” scenario in the ACT.

The author provides a very detailed analysis of how the building could be practically cleaned and encapsulated, whilst ensuring heritage conservation principles are observed and significant heritage fabric is retained. It is important to point out that the author of the submission comes with the authority of being a registered architect and also being listed on the NSW Office of Environment and Heritage – heritage consultant register.

The author also provides rebutting remarks in relation to the claims made around issuance of clearance certificates, insurance implications, and the alleged stigma attached to the building as a result of “continually raising the stakes of the asbestos risk”.

Council staff comment

The submission is extremely detailed and provides a very high level critical review of the technical aspects of the proposal. Council staff are essentially in general agreement with much of what is presented in the submission. The submission echoes a critical concern that Council staff hold, that being the HIS does not present a detailed analysis of how the building could realistically be cleaned and made fit for purpose using techniques that align with the Burra Charter. The HIS simply accepts the methodology presented by the other experts and does not challenge or offer alternative ways of cleaning and encapsulating the asbestos within Caldwell House to align with accepted heritage conservation principles.

It is for this reason that Council staff have recommended the imposition of a condition that precludes any works to Caldwell House. When the time comes to clean Caldwell House it will need to be predicted on conservation principles.

Submission 5 Gloria Murray – 81 Prince Street (received outside of the exhibition period)

The submission questions who Health Infrastructure is, queries the built form of the future building and highlights the possible impacts.

Council staff comment

As detailed above, Health Infrastructure sits within the Health Administration Corporation which is a Crown body with the NSW Health Ministry.

In response to the building form and likely impacts, this is not possible to say as the application only seeks consent to demolish the buildings - there is no intent within the application to construct a building.

PUBLIC INTEREST s4.15(1)(e)

The proposed development is considered to be of moderate to high interest to the wider public due to the level of heritage significance of the subject building, particularly the social significance attributed to the building, as well as the fact that this is a public building.

Given what the proposal is seeking, it is considered that the proposed development is not in the public interest, and therefore the demolition of Caldwell House should not be supported.

SUMMARY

A Section 4.15 assessment of the development application indicates that the certain parts of the proposed development are not acceptable. The report and recommendations as outlined above do not support the demolition of the heritage listed building being "Caldwell House". The recommendation by Council staff is to allow the later nurse's quarters and other non-significant buildings on the land to be demolished; however, the draft consent does not authorise the demolition of Caldwell House itself.

The applicant has presented a number of reasons to support their intent to demolish the buildings on the land which have been scrutinised in detail by Council's consultants and planning staff. A detailed assessment of such has been provided within the report.

Attached is a draft Notice of Determination outlining a range of conditions considered appropriate to ensure that the development proceeds in an acceptable manner.


The rationale presented by the applicant for the demolition of this significant heritage item is considered to be unfounded for the reasons given above.

COMMENTS

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

ATTACHMENTS

- 1 Notice of Approval, D20/37499 [↓](#)
- 2 Plans, D20/37404 [↓](#)
- 3 Submissions, D20/37464 [↓](#)

	<p style="text-align: center;">ORANGE CITY COUNCIL</p> <p style="text-align: center;">Development Application No DA 234/2018(1)</p> <p>NA20/ Container PR27695</p>
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DRAFT NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

issued under the *Environmental Planning and Assessment Act 1979*
Section 4.18

Development Application

Applicant Name:	Health Infrastructure on behalf of Health Administration Corporation
Applicant Address:	C/- Peter Basha Planning and Development PO Box 1827 ORANGE NSW 2800
Owner's Name:	Health Administration Corporation
Land to Be Developed:	Lot 2 DP 1230592 - 129-133 Sale Street, Orange
Proposed Development:	Demolition of a Heritage Item (all buildings, structures and vegetation to be removed) and Category 1 Remediation (asbestos removal)

Building Code of Australia building classification:

Class to be determined by Certifier

Determination made under Section 4.16

Made On:	To be advised
Determination:	CONSENT GRANTED SUBJECT TO CONDITIONS DESCRIBED BELOW:

Consent to Operate From: Consent to Lapse On:

To be advised
To be advised

Terms of Approval

The reasons for the imposition of conditions are:

- (1) To ensure a quality urban design for the development which complements the surrounding environment.
- (2) To maintain neighbourhood amenity and character.
- (3) To ensure compliance with relevant statutory requirements.
- (4) To provide adequate public health and safety measures.
- (5) To ensure the utility services are suitably managed during demolition of authorised buildings.
- (6) To prevent the proposed development having a detrimental effect on adjoining land uses.
- (7) To minimise the impact of development on the environment.

Conditions

- (1) The development must be carried out in accordance with:
 - (a) **Plans by Peter Basha Planning and Development – Reference 17067DA – Dated 28.06.2018 sheets 1 – 4 (inc. aerials) (8 sheets)**

- (b) statements of environmental effects or other similar associated documents that form part of the approval

as amended in accordance with any conditions of this consent.

GENERAL CONDITIONS

- (2) This consent **DOES NOT AUTHORISE ANY WORKS** to occur to the portion of Caldwell House as shown in figure 1 below, shown in red and labelled "B". For the avoidance of doubt, this condition prevents the removal of asbestos, asbestos containing material or any other fabric from Caldwell House, being that portion of the building as shown in figure 1 below, shown in red and labelled "B". Separate approval is required for the clean-up/remediation of this part of this site.



Figure 1 - significant buildings shown red and labelled "B"

- (3) The portion of Caldwell House as shown in figure 1 above shown in red and labelled "B" is not to be demolished.

PRESCRIBED CONDITIONS

- (4) A sign is to be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out.

PRIOR TO WORKS COMMENCING

- (5) A Demolition Noise and Vibration Management Plan (DNVMP) shall be prepared for the authorised demolition works. The DNVMP shall include the following "Management Measures" (as detailed in the Demolition Noise and Vibration Assessment by Wilkinson Murray Report no. 18085 Version B dated July 2018):
- Demolition activities which are noise or vibration intensive shall only occur during normal construction hours i.e. between 7.00am – 6.00pm Monday to Friday, and 8.00am – 1.00pm Saturday, with no work on Sundays or public holidays.
 - Where practicable any particularly noisy works shall be staged with consideration to the least sensitive time of day for the closest receivers, providing respite periods as necessary.

- Scheduling demolition activities to minimise multiple use of the noisiest equipment or plant items where practicable.
- Strategic positioning of plant items and work areas to reduce the noise emission to noise sensitive receptors, where possible.
- Ensuring demolition machinery engine covers are closed, equipment is well maintained and silencers/mufflers are used, including routine maintenance for major items of demolition equipment that are significant demolition noise contributors.
- Provision of awareness training for contractors in environmental noise issues, as described above.
- Community consultation with local residents/businesses shall be undertaken to assist in the alleviation of community concerns. This shall occur prior to works commencing and again prior to each intensive noise generating event where noise management levels are likely to be exceeded.
- Maintaining a suitable complaints register. Should noise complaints be received, they must be immediately investigated and where appropriate, noise monitoring shall be undertaken at the locations concerned to determine compliance with the determined demolition noise limits. Reasonable and feasible measures would need to be implemented to reduce any noise impacts.

The DNVMP shall be submitted to Council's Director of Development Services for approval prior to works commencing on the site.

- (6) Air quality monitoring shall be undertaken in accordance with the Asbestos Removal Control Plan (ARCP) Air Monitoring Program submitted with the application and include (as a minimum) the following measures:

- Daily air monitoring (control monitoring) shall be undertaken on the site during removal works.
- The monitoring shall be undertaken in accordance with the Guidance Note on the Membrane Filter Method for Estimating Airborne Asbestos Dust, 2nd Edition [NOHSC:3003(2005)].
- Air monitoring shall be undertaken by an independent asbestos assessor at fixed locations along boundaries representative of the work areas as determined by the independent asbestos assessor.
- The frequency of control monitoring shall be daily for the duration of the asbestos removal work. Exposure (personal) monitoring will not be undertaken.
- Clearance air monitoring shall be undertaken after removal works have been completed in the removal areas, decontamination area and loading bay.
- Effectiveness and action of the monitoring results shall be undertaken in accordance with the Criteria for Asbestos Fibres Action Levels (SafeWork Australia 2011) (refer below insert for more detail).

Table 1. Criteria for asbestos fibres action levels (Safe Work Australia 2011)

Action level (airborne asbestos fibres/mL)	Control	Action
Less than 0.01	No new control measures are necessary	Continue with control measures
Between 0.01 and 0.02	1. Review 2. Investigate 3. Implement	Review control measures Investigate the cause Implement controls to eliminate or minimise exposure and prevent further release
More than 0.02	1. Stop removal work 2. Notify regulator 3. Investigate the cause 4. implement controls to eliminate or minimise exposure and prevent further release 5. Do not recommence removal work until further air monitoring is conducted	Stop removal work Notify the relevant regulator by phone followed by fax or written statement that work has ceased and the results of the air monitoring Conduct a thorough visual inspection of the enclosure (if used) and associated equipment in consultation with all workers involved with the removal work. Extend the isolated/barricaded area around the removal area/enclosure as far as reasonable practicable (until fibre levels are at or below 0.01 fibres/mL), wet wipe and vacuum the surrounding area, seal any identified leaks (e.g. with expandable foam or tape) and smoke test the enclosure until it is satisfactorily sealed. Do not recommence until fibre levels are at or below 0.01 fibres/mL.

- (7) Soil erosion control measures shall be implemented on the site prior to demolition works commencing.
- (8) Prior to the demolition works commencing, the applicant is to obtain an approval under Section 68 of the *Local Government Act* for the temporary closure of any footpath or roadway. A pedestrian/vehicle management plan is to accompany the application. Details are to be provided of the protective hoardings, fences and lighting that are to be used during demolition, excavation and building works in accordance with the requirements of the *Occupational Health & Safety Act 2000*, Australian Standard AS3798-1996 (Guidelines on Earthworks for Commercial and Residential Developments) and the WorkCover Authority.

Note: On corner properties particular attention is to be given to the provision of adequate sight distances.

- (9) Prior to demolition works commencing, the applicant is to submit a waste management plan that describes the nature of wastes to be removed, the wastes to be recycled and the destination of all wastes. All wastes from the demolition phase of this project are to be deposited at a licensed or approved waste disposal site.
- (10) A temporary onsite toilet is to be provided and must remain throughout the project or until an alternative facility meeting Council's requirements is available onsite.
- (11) Due to the extensive nature of the demolition works and their proximity to the public footpath, the applicant is to provide public liability and public risk insurance cover for a minimum of \$10,000,000, endorsed to cover Council for its respective rights and interests. Evidence of valid insurance cover must be submitted to Council prior to works commencing on-site.
- (12) A dilapidation report(s) shall be prepared by a suitably qualified engineer and shall be submitted to Council prior to works commencing on-site. The report(s) shall address the current condition of all buildings that exist on land that is immediately adjoining the development site. A dilapidation report shall also be prepared for the existing building that is to remain on the subject land as part of this development.

This condition shall not apply in the event that access is refused by those property owners.

DURING DEMOLITION / SITEWORKS

- (13) The removal of all asbestos and asbestos containing material as authorised by this consent shall be carried out in accordance with the Asbestos Removal Control Plan – report no. R7040arcp2 prepared by EnviroWest dated 17 May 2018 and in accordance with Clause 452 of the Work Health and Safety Regulation 2017.
- (14) All necessary asbestos clearance certificates shall be furnished to Council within 7 days of being issued.
- (15) All demolition work on the site is to be carried out in accordance with the Demolition Noise and Vibration Assessment report (Reference 18085 Version B) dated July 2018 prepared by Wilkinson Murray.
- (16) The wall that is proposed to be removed (forms part of existing carport) on the western boundary that is the common boundary of no. 78 Dalton Street shall be removed by manual labour as far as practicable.
- (17) A replacement fence on the western boundary shared by no. 78 Dalton Street shall be constructed in similar materials and to a height commensurate with the wall that was removed. The construction of the fence shall commence within 28 Days from the date that the existing wall is removed and be completed within four weeks from the date of works commencing on the new wall.

- (18) If Aboriginal objects, relics, or other historical items or the like are located during development works, all works in the area of the identified object, relic or item shall cease, and the NSW Office of Environment and Heritage (OEH), and representatives from the Orange Local Aboriginal Land Council shall be notified. Where required, further archaeological investigation shall be undertaken. Development works in the area of the find(s) may recommence if and when outlined by the management strategy, developed in consultation with and approved by the OEH.
- (19) In the event of an unexpected find during works such as (but not limited to) the presence of undocumented waste, odorous or stained soil, asbestos (above expected levels as detailed in the submitted documentation), structures such as underground storage tanks, slabs, or any contaminated or suspect material, all work on site must cease immediately. The beneficiary of the consent must discuss with Council the appropriate process that should be followed therein. Works on site must not resume unless the express permission of the Director Development Services is obtained in writing.
- (20) All construction/demolition work on the site is to be carried out between the hours of 7.00 am and 6.00 pm Monday to Friday inclusive, 7.00 am to 5.00 pm Saturdays and 8.00 am to 5.00 pm Sundays and Public Holidays. Written approval must be obtained from the General Manager of Orange City Council to vary these hours.
- (21) Building demolition is to be carried out in accordance with *Australian Standard 2601:2001 - The Demolition of Structures* and the requirements of Safe Work NSW.
- (22) Asbestos containing building materials must be removed in accordance with the provisions of the *Work Health and Safety Act 2011* and any guidelines or Codes of Practice published by Safe Work NSW, and disposed of at a licenced landfill in accordance with the requirements of the NSW EPA.
- (23) Any adjustments to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer.
- (24) The existing sewer connections to the buildings authorised to be demolished are to be capped off at the sewer main by Council at Developer's cost.
- (25) The existing water services to the buildings authorised to be demolished are to be sealed off at their respective Council mains by Council at the developer's cost.
- (26) All of the foregoing conditions are to be at the full cost of the developer and to the requirements and standards of the Orange City Council Development and Subdivision Code, unless specifically stated otherwise.

REQUIREMENTS OF ESSENTIAL ENERGY

- (1) If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment;
- (2) Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with;
- (3) Essential Energy's records indicate there is electricity infrastructure located within the property. Any activities within this location must be undertaken in accordance with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure.
- (4) Prior to carrying out any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the Electricity Supply Act 1995 (NSW).

- (5) Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the Code of Practice – Work near Overhead Power Lines and Code of Practice – Work near Underground Assets.

Other Approvals

- (1) *Local Government Act 1993* approvals granted under Section 68.
Nil
- (2) General terms of other approvals integrated as part of this consent.
Nil

Right of Appeal

If you are dissatisfied with this decision, Section 8.7 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court. Pursuant to Section 8.10, an applicant may only appeal within 6 months after the date the decision is notified.

Disability Discrimination Act 1992:

This application has been assessed in accordance with the *Environmental Planning and Assessment Act 1979*. No guarantee is given that the proposal complies with the *Disability Discrimination Act 1992*.

The applicant/owner is responsible to ensure compliance with this and other anti-discrimination legislation.

The *Disability Discrimination Act* covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references AS1428.1 - "Design for Access and Mobility". AS1428 Parts 2, 3 and 4 provides the most comprehensive technical guidance under the *Disability Discrimination Act* currently available in Australia.

Disclaimer - S88B of the Conveyancing Act 1919 - Restrictions on the Use of Land:

The applicant should note that there could be covenants in favour of persons other than Council restricting what may be built or done upon the subject land. The applicant is advised to check the position before commencing any work.

Signed:

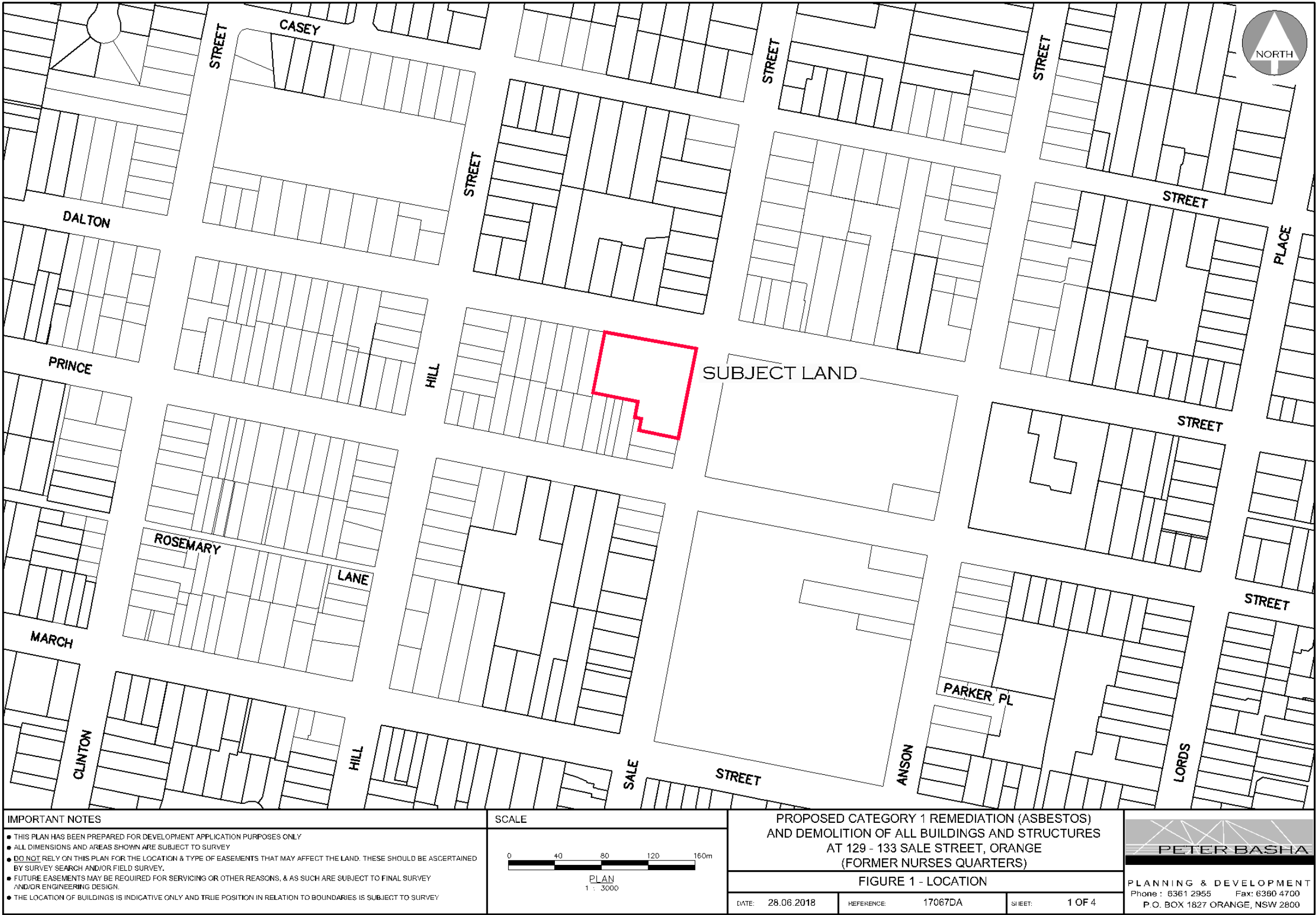
On behalf of the consent authority **ORANGE CITY COUNCIL**

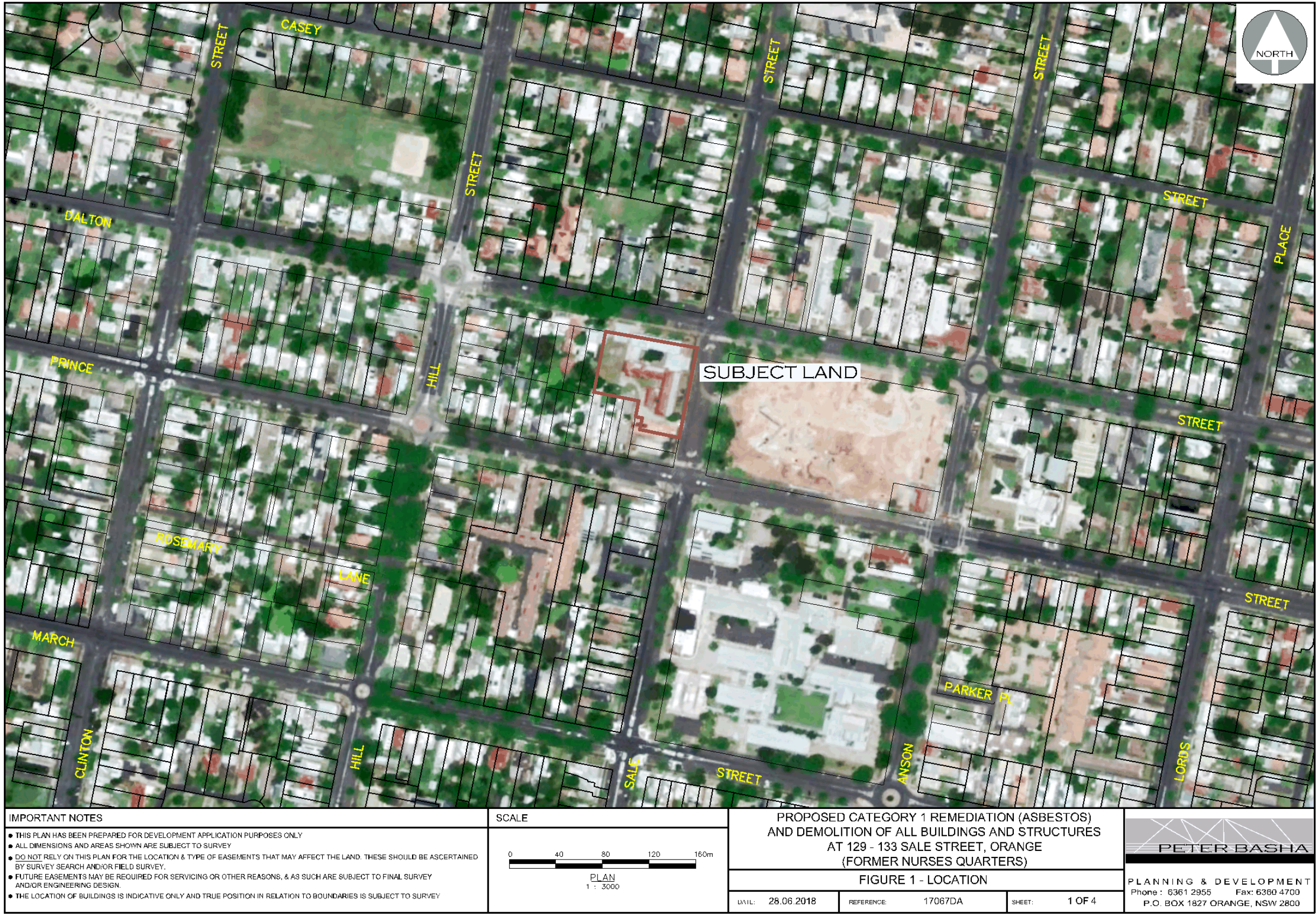
Signature:**Name:**

PAUL JOHNSTON - MANAGER DEVELOPMENT ASSESSMENTS

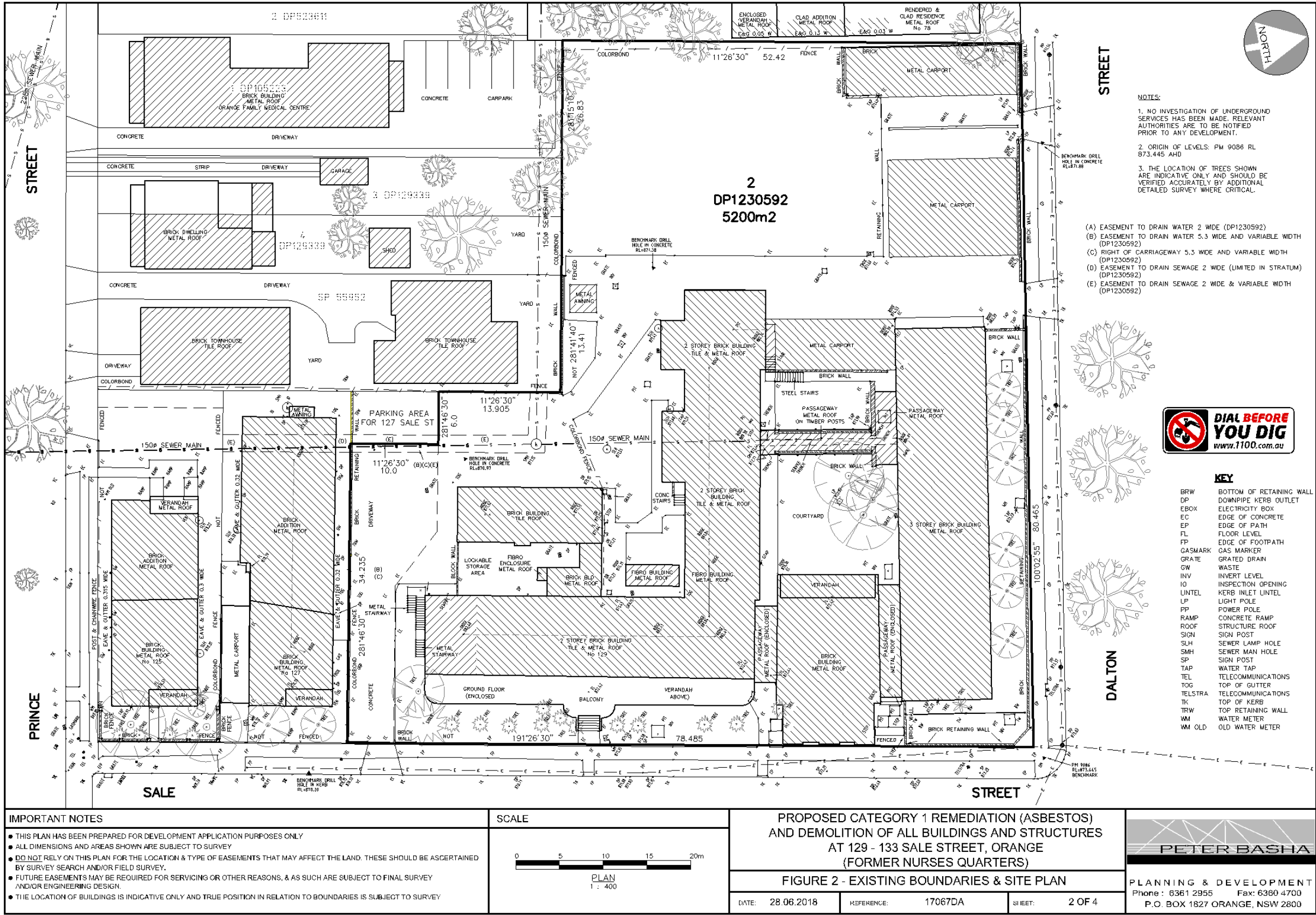
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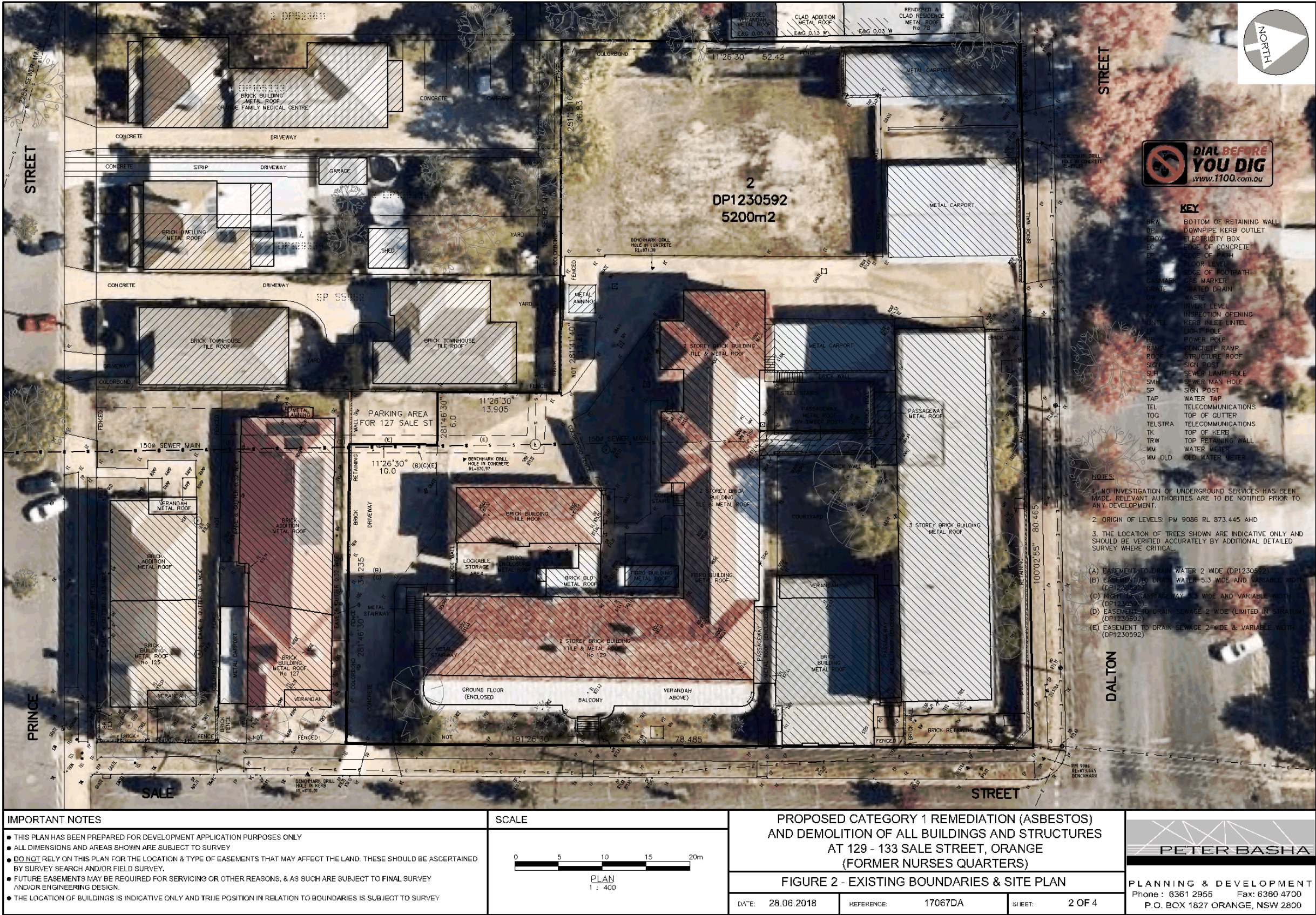
To be advised

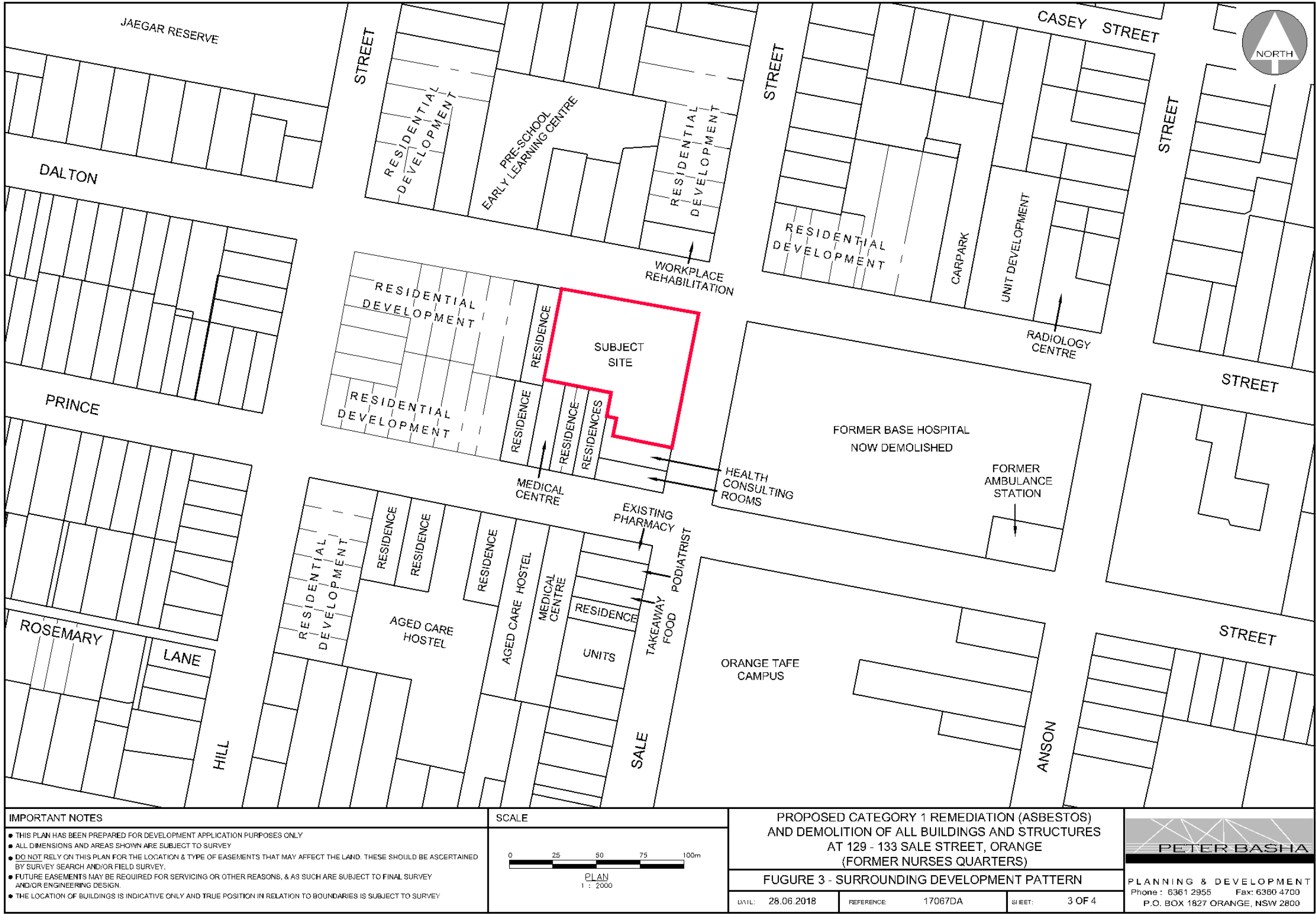




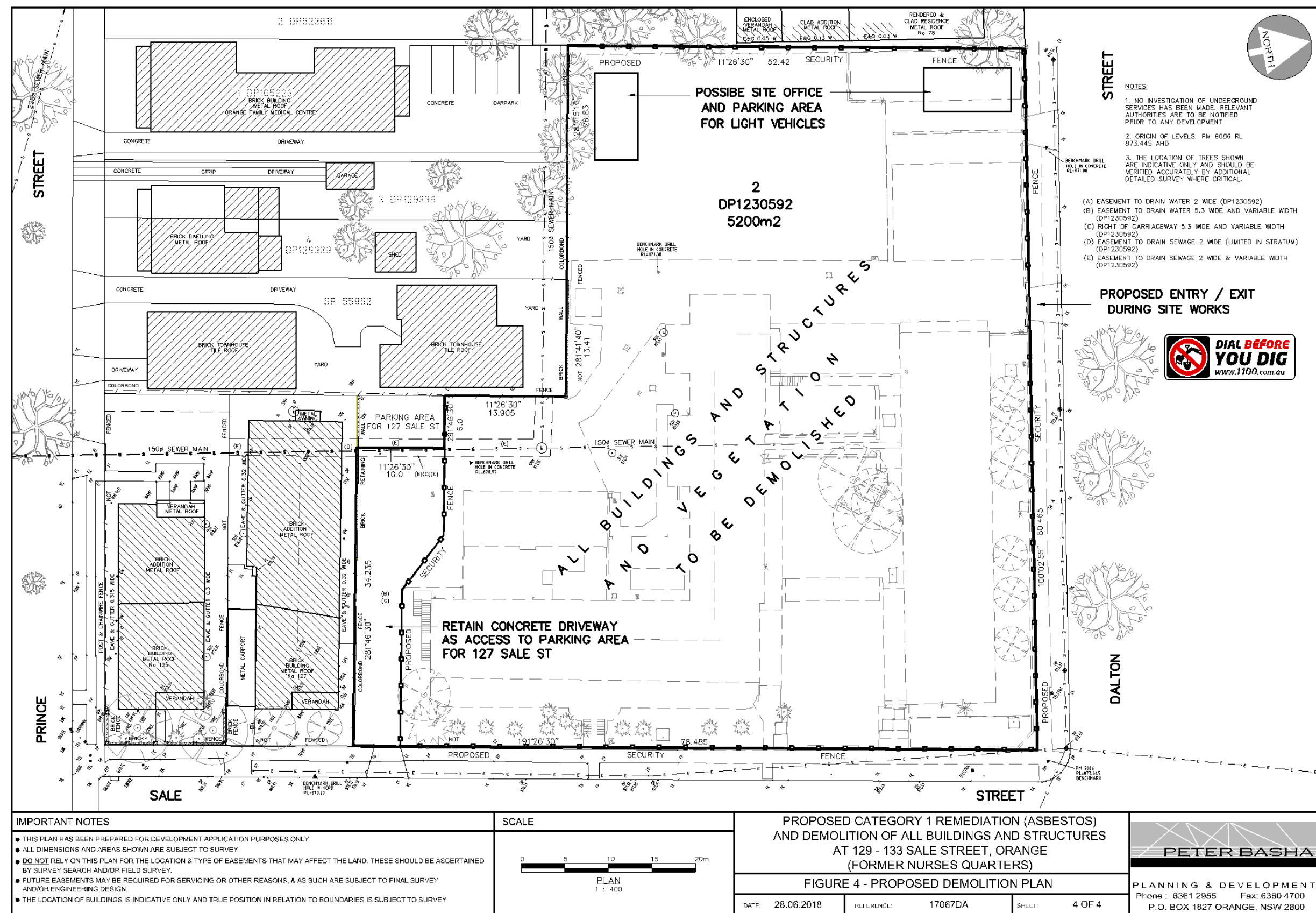












Submissions Received During 1st Exhibition



20 August 2018

The General Manager
Orange City Council
PO Box 35
135 Byng Street
ORANGE NSW 2800

Attn: Mr Garry Styles

**Re: DA 234/2018(1) PR27695 129-133 Sale Street - Objection
Demolition of Caldwell House and former Nurses' Quarters**

Dear Sir,

I would like to object to the demolition of the 1937 Nurses' Accommodation Building known as Caldwell House.

The reasons given for the demolition are all based on an economic argument. I have been through the submitted reports and it is clear that the economic argument is based on critically flawed assumptions, and there is **no economic case** for the demolition of the building. In fact the reports indicate an issue of public safety associated with its demolition if the statements in the reports are to be taken at face value.

Under these circumstances Council cannot consent to the demolition of the building.

Flawed Rationale 1 – The costs of Asbestos removal are prohibitive:

- This is the biggest flaw in the reports and underpins the main reason why the HIS accepts demolition as the best option.
- The Engineering Report, the Asbestos Report, and the Environmental Report all make it clear that the removal of asbestos across the site will need to be carried out and completed independently of and preceding any demolition. This means that the **process of removing asbestos is the same** in both the demolition and the retention of Caldwell House. The process involves vacuuming, wet wiping, washing, clearance air monitoring, and then all affected areas are sprayed down with a diluted acrylic paint to bond any remaining fibres and prevent them becoming airborne.
- The reports also make it clear that the roof space will need to be sprayed down with dilute acrylic paint to bond the asbestos to the timber rafters. This must happen in both the demolition and retention options.
- There is no reason why the roof tiles cannot be sprayed down internally at the same time (as it is a sealed space). Strangely there is no consideration that a roof resurfacing option to spray down the outside face of the roof tiles can do the exact same thing

Adaptive Architects Pty Ltd

Nominated architect: James Nicholson - Reg No 1205

and bond any loose fibres on the roof. Instead a very expensive and unnecessary option of removing roof tiles, cleaning and replacing them is offered.

- Likewise there is no consideration that the subfloor only needs to be encapsulated with a light cement slurry, or any other of a number of options for spraying a containment in this area. Instead the reports offer an engineered concrete slab that requires unnecessary expense and intervention into the building.
- As a result the QS report has a number of unnecessary costs associated with the retention of the building. It makes a separate figure for spraying down the rafters in the retention (\$62K) but fails to allow for the same in the demolition process. It allows for the unnecessary removal and replacement of tiles (\$103K), and the concrete slab under the building (\$140K).
- Most importantly the QS report allows \$304K for the removal of asbestos in the demolition option but allows \$666K for the asbestos removal in the retention option. From the other reports it is clear that this process **will be the same** in both cases. There is an extra \$362K added to the retention option that is not explained. This is a very significant part of the difference between the two options, which are separated by \$500K in the QS report.

Summary of QS costs for both options			
Works	Retain Calwell House	Demolish Calwell House	Comment
Asbestos Removal	\$620K (+\$337K)	\$283K	Difference unexplained for the same work
Escalation	\$46K (+\$25K)	\$21K	Pro-rata and so weighted by above
Demolition	\$112K (-\$295K)	\$407K	Extent of demolition may be overstated
Encapsulation rafters	\$62K	-(?)	Reports make clear this is required for both options
Remove and relay tiles	\$103K	-	Spraying inside and outside removes this requirement – may be required for demolition
Concrete seal subfloor	\$140K	-	Unnecessary, many other encapsulation options that are cheaper – needs offset against cost to remove soil in demo option
Contingency	\$217K (+\$73K)	\$142K	Pro-rata again, artificially inflating retain option.
Project Manager	\$200K (+\$50K)	\$150K	Assumes a much longer project with a number of unnecessary works
Total	\$1.5M (+\$500K)	\$1.0M	The true balance may be in favour of the retention option as there is a questionable \$790K in these figures

In fact, given that the unnecessary works total \$305K, and that there is an unexplained addition of \$362K for the same process of removing asbestos, and that there is an additional \$50K for a project manager on what should be an equivalent project, and there is a \$73K contingency as a percentage of the above, there is a very good chance that **modifying the scope to truly reflect the work necessary will result in the retention of the building being cheaper than the demolition**. The total saving will not be all the \$790K as there are some works to come out of that, but it is a good chance it is a greater saving than the \$500K difference.

Flawed Rationale 2 – Type A Construction

- The BCA report for the site has made its assessment based on the current configuration. That is, a three storey building attached to the two storey Caldwell House, and that the two buildings form one fire compartment. Under these circumstances it concludes that the whole of the building is Type A construction, the highest requirement under the BCA. This conclusion is based on the wrong assumption.
- The HIS makes it clear that the three storey nurses' wing is not significant and may be demolished. This leaves the two storey Caldwell House, which if used as a Class 5 structure would be Type B Construction, and for a Class 3 use could be a Type C Construction with the right egress options in place. Both Type B and Type C have no requirements for floors or roofs, nullifying much of the concern expressed in the Structural Assessment report. That report makes it clear that the building has an adequate structure for a residential use. Even a general office / consulting rooms use with prohibitions on certain loadings would be suitable.
- The Aged Care use previously proposed for the site, which is a Class 9c use is not appropriate because it would require a Type B Construction and would also have minimum room sizes, minimum opening sizes and minimum corridor sizes for the movement of stretchers. HI should not have pursued this option.
- **It is clear that the heritage building is not required to have a Type A construction type and thus all conclusions based on this assumption are wrong. The BCA report needs to be redone, focussing on Caldwell House as a stand-alone structure of two storeys.**

Flawed Rationale 3 – Undersized rooms prohibit reuse:

- The Engineering Report calls up the minimum requirements for the NSW Land & Housing Corporation in the LAHC Design Standards. This document is only designed to be used with LAHC developments and is **not relevant** to a site developed by private interests. The document itself states that it is meant for **"guidance rather than a prescriptive requirement"**, and yet the Engineering Report makes out that it is some sort of rule that the site needs to follow. **The BCA does not have a minimum room size for any use.** The Victorian amendment to the BCA has a minimum room size for a bedroom of 7.5m², which the building meets easily.
- The Engineering Report then states that due to the small room sizes that many of the internal walls will need to be removed to reuse the building. This is plainly not the case. We have attached a sketch of a use as a hotel/motel that demonstrates that the building can be reconfigured into a bedroom / sitting room / ensuite arrangement with minimal removal of walls and minimal structure. The retained nibs may even avoid the need for any beams as the Structural Report indicates that the slabs have been designed as one-way spans.
- **It is clear that the room sizes are adequate for many uses such as a Class 3 hotel/motel, a Class 6 Health Consulting rooms, or Class 5 Offices. The building is not suitable for a Class 2 or Class 9 use for various reasons.**

Flawed Rationale 4 – The Asbestos means we have to demolish the building:

- The newspapers keep repeated the very wrong information that the cost to remove asbestos from the building is over \$2M. It needs to be stressed that the cost is under \$300K.
- The Asbestos Report identifies the areas where the asbestos is dangerous and gives recommendations on how it can be cleaned up and made safe. The only area that it says cannot be remediated is the asbestos fibres that have fallen into the cavities of the walls. Given the other approaches to making the building safe, there should be a way of encapsulating these fibres in the cavities.
- However, if the report is true in stating that this cannot be done, and that this is in fact a serious amount of asbestos, then that raises a very serious issue for the demolition. The demolition cannot go ahead if there is unencapsulated asbestos still in the building during demolition. Asbestos inside a cavity wall cannot affect any occupants who use the building, but if that building were demolished then it would free those fibres into the local environment and pose a serious public risk to all of the neighbours. **Council cannot permit the demolition of a building if it poses a public risk.** The cavity asbestos will need to be encapsulated before demolition, and thus can pose no risk to occupants if the building is reused.
- **It is clear that the asbestos is more likely to prevent demolition than it is to require it.**

Flawed Rationale 5 – The building is not fit to be reused

These Nurses' Homes can be reused. There are successful examples at

- - Cootamundra (B&B);
- - Wagga (UNSW Rural School);
- - Murwillumbah (Uni centre for Rural Health); and
- - Leeton (Community Health Centre).

Clearly the building can be reused with a creative design solution.

Conclusion:

The Heritage Impact Statement makes it clear that Caldwell House is an important structure that should be retained. It says that “nurses’ quarters are generally a rare type of building”, and “many nurses’ quarters within the State have been demolished or are currently earmarked for demolition”. The building is identified as having aesthetic, historic, rarity and social significance. This is the only remaining Base Hospital building and in our HIS we identified it as the best 1930s example on the site. There should be no question of its demolition.

Unfortunately the HIS has accepted the flawed assumptions of the other reports at face value and agreed that there is an economic argument to demolish the building. The other reports need to be rewritten removing these flawed assumptions and making a true case for the option of removing Caldwell House or retaining it. The other options are not necessary.

The building is heritage listed. It undermines the heritage protections and the whole heritage system when the Government doesn't want to keep its heritage buildings. This is a law, not something you do if you choose to; and the Government need to follow their own laws. It is a poor example to other heritage site owners and we need to be carrying out best practice with our heritage sites.

Council must refuse this application as the information in the application is based on flawed assumptions and is thus misleading about the true cost of works. As the argument is primarily an economic one, this undermines their entire case for demolition. Until the reports have the correct information based on correct assumptions for the site it cannot be considered.

Yours Sincerely,

JAMES NICHOLSON

Director

Attached – plan of building showing example of hotel layout

Old Nurses' Home Building FIRST FLOOR - EXAMPLE - HOTEL/MOTEL

Ground floor - 12 rooms & dining/entertaining area

First floor - 14 rooms

Orange room rates - range \$120-\$240/night

Take average rate - \$180/night

Total 26 rooms = \$4,680/night

Annual = \$1.7M - say 50% vacancy = \$850,000 p.a.

Hotels apparently get an average 65% revenue from rooms, 25% from food and drink sales, and 10% from other sources - will only consider rooms at this point even though there is a 80-100 seat dining room in the project because we need to keep variables low

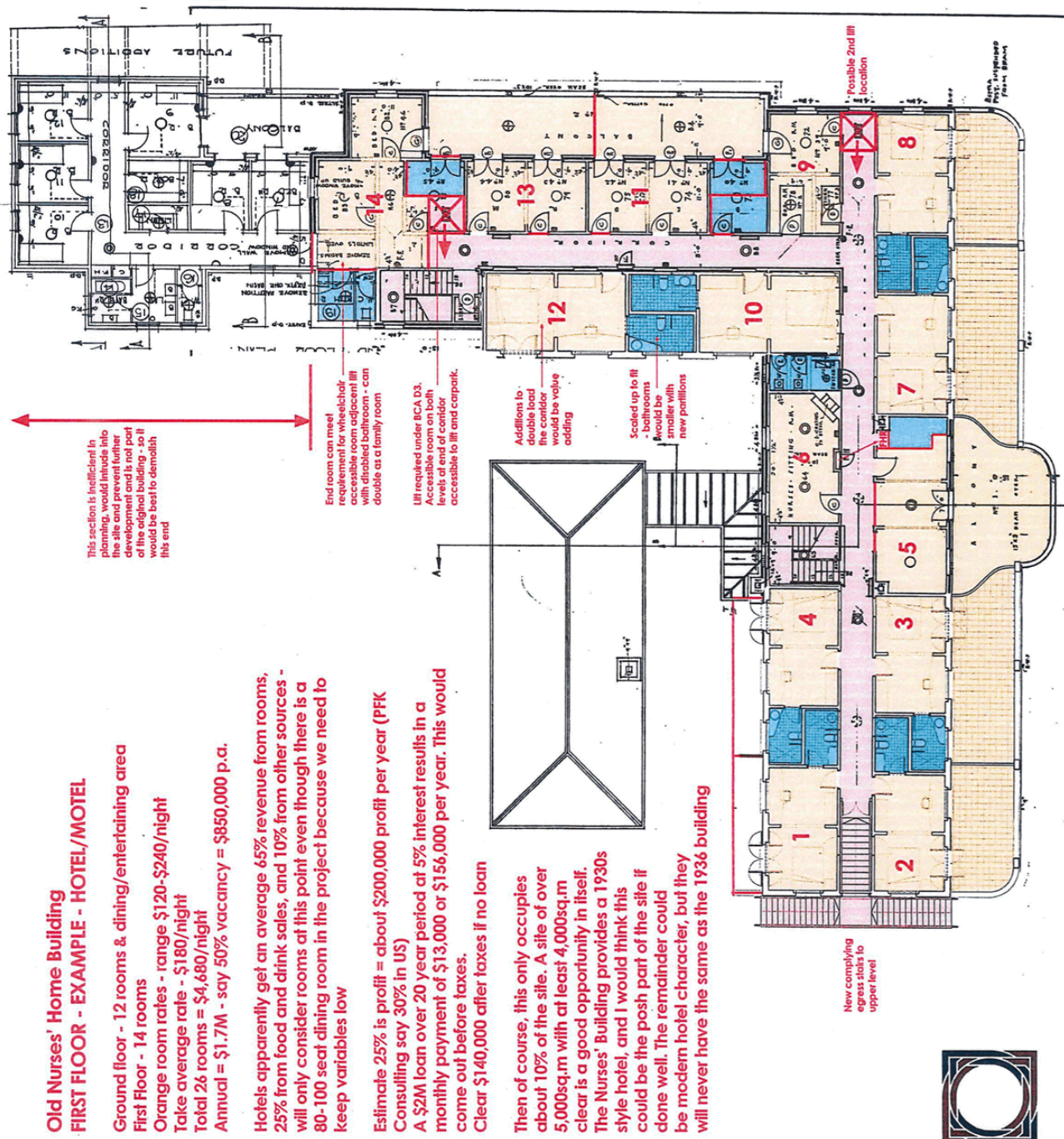
Estimate 25% is profit = about \$200,000 profit per year (PFK Consulting say 30% in US)

A \$2M loan over 20 year period at 5% interest results in a monthly payment of \$13,000 or \$156,000 per year. This would come out before taxes.

Clear \$140,000 after taxes if no loan

Then of course, this only occupies about 10% of the site. A site of over 5,000sq.m with at least 4,000sq.m clear is a good opportunity in itself.

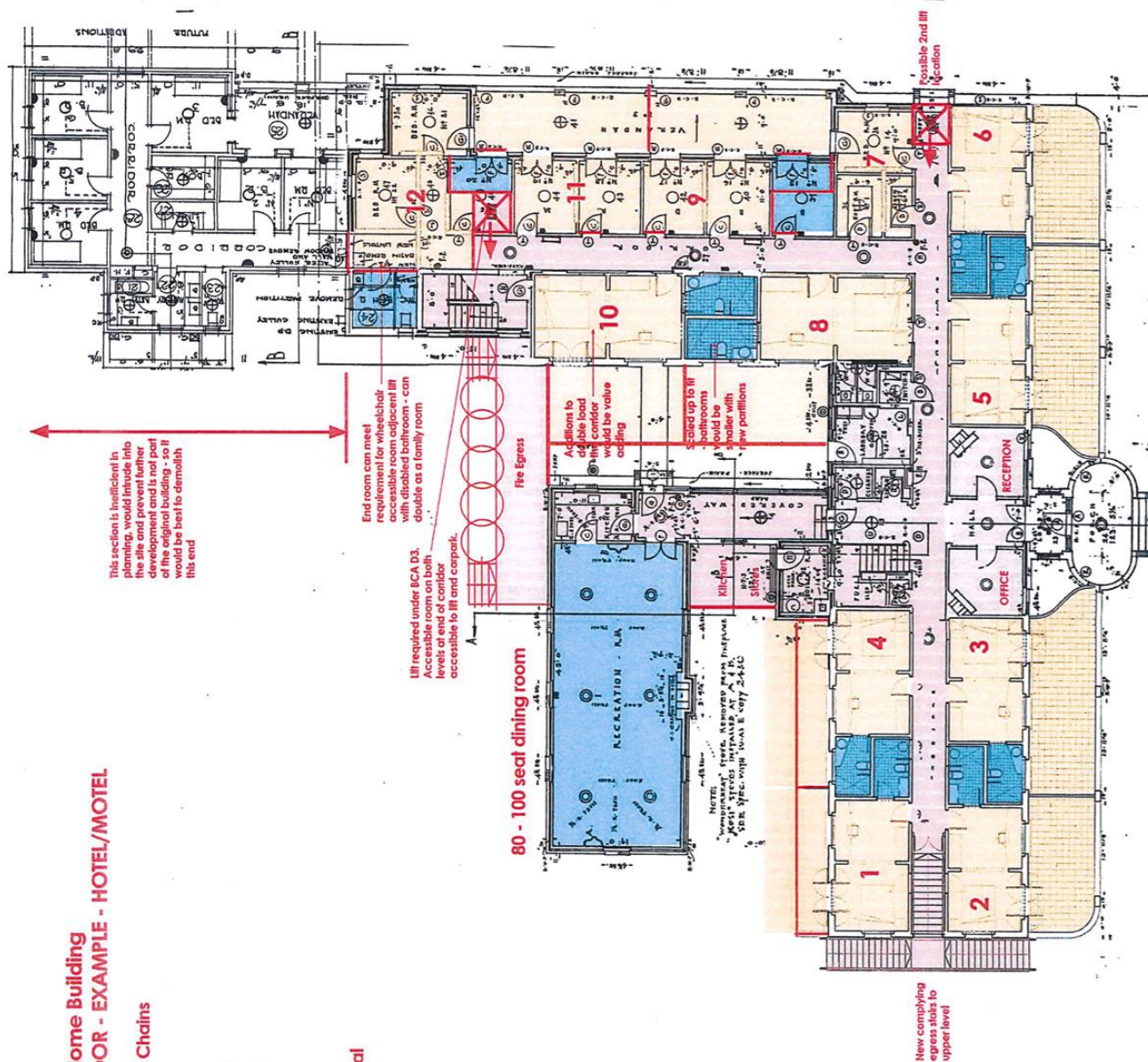
The Nurses' Building provides a 1930s style hotel, and I would think this could be the posh part of the site if done well. The remainder could be modern hotel character, but they will never have the same as the 1936 building



Old Nurses' Home Building **GROUND FLOOR - EXAMPLE - HOTEL/MOTEL**

Australian Hotel Chains

- Accor
- Best Western
- Crowne Plaza
- Four Seasons
- Hilton
- Holiday Inn
- Hyatt
- Ibis
- InterContinental
- Marriott
- Mercure
- Medina
- Metro
- Mirvac
- Novotel
- Peppers
- Quest *
- Radisson
- Rydges
- Sheraton
- Travelodge
- Westin



Kara Jennison

19th August 2018

To Whom It May Concern:

I am writing to you with regards to DA 234/2018(1) – PR27695 regarding 129-133 Sale Street. While I am overall in favour of development of the site I have some specific concerns regarding the current application.

I have no experience in these matters but am very concerned about the impact of the current application on my home at 78 Dalton St. This property is not just my home, but also represents a significant investment, my life savings to use the colloquial, and I believe the current proposal is a risk to my quiet enjoyment of the property.

I ask that the council review these requests and apply some conditions on the application in order to safe guard my home as well as protecting the heritage and aesthetics of our town.

- **Dividing Fence**

The DA involves the demolition of all structures on the site; this includes the common dividing fence between the site and my home. This fence consists of a high brick wall for approximately half the length of the property and a solid metal fence for the remainder of the length of the property.

My home is situated extremely close (less than a meter) from this wall, which forms the back of one of the car port structures on the DA site. While the wall is not entirely built on the legal boundary line, the wall and fence are the functional boundary between the premises.

I have two concerns regarding the wall and the fence. The first is that the proposed demolition method involves a large piece of earth moving equipment (25-tonne) pulling the wall down. Given the proximity to my house, it will be impossible to accomplish this demolition without encroaching on my property and poses a significant risk of direct or in-direct damage to my home during this process.

The second issue is that the DA has no provision for a replacement structure to separate the premises. The proposed demolition methodology involves the car port structure and associated wall and fence being demolished at the stage 3 of the proposed 6 stage process, and prior to the demolition of the multi story structures.

The removal of the wall/fence leaves my property further exposed for the duration of the works to the visual, dust, noise and other impacts of the works, and exposed ongoing.

There are also companion animals at my house, which without a solid separating structure are at risk of escape from the premises and additional stress from the works. The temporary fencing panels proposed to contain the site are not appropriate for the containment of companion animals.

I would like the council to address these issues by reviewing the demolition methodology proposed with a view to lower risk method being employed for the removal of the wall and fence, ideally manual removal.

Further, I request the council to also apply a condition that prior to stage 4 of the works proceeding an equivalent and appropriate structure be constructed to separate the site from my home.

As the current site owner is planning to sell the property with the DA attached, I have no opportunity to discuss the division of the premises pursuant to the dividing fence act prior to works commencing, as the other party is unknown, hence my request for Council to intervene in what is normally a civil agreement between neighbors.

- **Vibrations and Noise**

The development proposes to use 38-47-tonne excavators and hydraulic hammers in the demolition of the multi-storey structures. The report by Peter Basha indicates that this methodology has *"a likelihood that safe working distances for both cosmetic damage and human response cannot be maintained"* The report recommends that dilapidation surveys be considered prior to the vibration intensive activities commencing.

I would like to request council to make dilapidation surveys of all immediately surrounding structures mandatory prior to the works commencing, including my home. This will ensure a base line is established so any degradation to property can be accurately reported and repaired by the developers if required.

The report also outlines that acceptable noise levels will be exceeded, in some cases by a large margin. My house is one of those indicated to be impacted by excessive noise. I am happy to work with the developer regarding noise levels etc.

However I would like a condition of the development to be that neighbors, including myself, are consulted prior to periods of noise.

This will allow alternative arrangements to be made where required, such as for companion animals and elderly residents for whom excessive noise may be more stressful, and for whom noise mitigation may be more difficult.

- **Caldwell House**

The DA includes demolition of all structures on the site, including the heritage item 'Caldwell House'.

Caldwell house is of acknowledged historic and social significance to the people of Orange and to the wider community. The building is also of great aesthetic value as an example of art deco architecture.

Health infrastructure has been derelict in the care of the building, allowing it to reach its current dilapidated state. The DA represents an effort to bypass a duty of care to an historic item based purely on economic grounds, without any effort to contribute something of value back to the community.

I believe it would be a great shame to allow a building of this value and aesthetic to be demolished, however, if it becomes necessary to demolish Caldwell house, then we should be ensuring that the development that replaces it offers genuine benefits to our community.

Under the Orange Development *Control Plan 2004 – 13 Heritage* a DA should “*..demonstrate that the new development will enhance the character of the City, an application to demolish must include the details of the proposed development requiring the demolition of the heritage-significant building or site*”

I can not see that this requirement has been adequately addressed under the current DA. There are no plans to develop the site – simply demolish and on-sell. This no way contributes to the character of our city; it is simply convenient for Health Infrastructure and could leave us with a vacant site that is never developed into something of value and/or beauty to our community.

I suggest that the council rejects the request to demolish Caldwell house until the application to demolish is accompanied by a development application to replace the building.

This application can then be assessed by the council and the community as a whole. Does the replacement justify the destruction of part of our heritage?

Thank you for taking the time to review my submission. Should you require any further information please don't hesitate to contact me. I look forward to hearing from you regarding the outcomes of this submission.

Kind Regards,
Kara Jennison

E. B. Greer,

23 August, 2018

Mr. G. Styles,
General Manager,
Orange City Council,
Civic Centre,
Byng St.,
ORANGE , NSW, 2800

Dear Sir,

Re: DA 234/2018(1) PR27695 129-133 Sale St.

**Demolition of Caldwell House and former Nurses' Quarters
Amended Submission**

I have been made aware that a statement made in my objection letter of 18th August is incorrect. I said that Caldwell House is within the Central Orange Conservation Area. In fact, it is just beyond the northern boundary of the area. Due to vision problems at the time I misread the area map.

Attached is an amended submission correcting the error. At the same time, I have taken the opportunity to expand on some other points as new information has come to hand.

I apologise for the mistake and hope that the amended submission will not create any inconvenience.

Yours faithfully,

Euan Greer.

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E. B. Greer,

23 August, 2018

Mr. G. Styles,
General Manager,
Orange City Council,
Civic Centre,
Byng St.,
ORANGE, NSW, 2800

Dear Sir,

Re: DA 234/2018(1) PR27695 129-133 Sale St.**Demolition of Caldwell House and former Nurses' Quarters
Amended Submission**

The history and heritage significance of Caldwell House has been described in the Heritage Impact Statement (HIS) included with the DA. It is pleasing to note the writers of the HIS have made extensive use of the book "In Sickness and in Health: How medicine helped shape Orange's history (2011)." by Orange author, Elisabeth Edwards.

In 1977 the NSW State Heritage Act was introduced to conserve the environmental heritage of NSW. Environmental heritage is defined as places, buildings, works, relics, moveable objects and precincts that have State or local heritage significance. The Act allows a variety of orders and permits to protect items of environmental heritage.

My objections to the application for demolition of Caldwell House are:

1. It is a heritage listed building, FIRST AND FOREMOST. It is listed on the Orange Local Environment Plan (LEP) 2011 and is also very close to the Central Orange Heritage Conservation Area. The entry steps are within 75 metres of the northern boundary of the Area. Clearly, Caldwell House has a major impingement on the Conservation Area, a contribution that would be lost if it is demolished
2. It is a heritage listed building! What is the point of having a Heritage Register if not to protect the items on it?
3. Caldwell House is readily suited to adaptive re-use amply demonstrated by the owner, Health Infrastructure (HI), having found a willing purchaser wishing to convert the building for an aged care facility. Other nurses' homes in NSW have been successfully re-used. Examples are Wagga Wagga – UNSW rural school; Cootamundra – bed and breakfast; Leeton – community health centre; Tweed District Hospital – university centre for rural health

4. The issue of asbestos contamination as justification for demolition is a distraction. It is irrelevant. Local heritage architect, James Nicholson, has pointed out in the media that the asbestos would require removal anyway in any re-use of the building. Knowing the age of the building, a developer would be aware of the presence of asbestos and factored the expense of remediation into the project costings.
5. My reading of the DA is the willing purchaser declined to complete the transaction due to the added cost of correcting the damage and extra contamination caused by the thieves and vandals. Asbestos removal would already have been taken into account.
6. The damage appears to be the sole result of HI's failure to ensure an adequate level of security to prevent illegal access. This failure and consequent withdrawal of the buyer CANNOT AND MUST NOT be used to justify demolition of the heritage listed building.
7. Health Infrastructure cites the existence of Nurses' Homes of similar vintage in other regional locations as a justification for demolishing Caldwell House. This, too, is an irrelevance. These Nurses' Quarters are NOT in Orange and contribute nothing to our local heritage.
8. Further, they may be of similar vintage but the images presented show they bear little resemblance to Caldwell House. No indication is given in the DA that they have any level of heritage protection, at the very least inclusion on any local LEP. Likewise, there is nothing to prevent HI from similarly seeking demolition of these buildings in the future. One can anticipate HI would mount the same asbestos argument as in this DA.
9. Caldwell House was built in 1937. It was used for many years as a Nurses' Quarters and then as health administrative offices when no longer needed as accommodation. The building is permeated with 80 years of health care for Orange residents; it is important in the lives of many of Orange's present population. Pages 54 to 60 quote various sections from the Heritage Impact Statement and then attempt to nullify them with what come across to me as disingenuous comments (see also figure 59 'Significance of Buildings' on p.59).
10. The Ambulance Station (on the corner of Anson and Prince Streets) and Caldwell House/Nurses Home are the only visible links to the old Base Hospital. The locations of both are the only clear indication of the large size of the hospital and its importance since 1867 in the health care of the people of Orange.
11. On one thing, the DA and I agree. The 1966 additions to the Nurses' Quarters have no heritage significance and can justifiably be demolished. They are typical functional buildings of the period, of no architectural merit. "Their removal will enhance the setting of nearby heritage items [sic Caldwell House] by removing a building that is anomalous in a streetscape of individual dwellings (p.60)". It is sobering to consider that should they survive for another 50 years the living generations would probably consider them of high heritage value.
12. The DA states (p.53) the Orange Development Control Plan (DCP) 2004 requires that an application to demolish must include details of the proposed development requiring demolition of the heritage building. It appears THIS REQUIREMENT HAS NOT BEEN MET in the DA.

13. It is not clear from the DA whether HI intends to demolish the buildings itself (p.3) and offer a vacant site for sale or is just seeking approval to demolish so that the site can be offered for sale allowing the purchaser the option to demolish or re-use (p.1).
14. Costs for various demolition options are presented in the DA (p.6). Asbestos removal and complete demolition is given as \$1.9m; asbestos removal, destruction of the 1966 buildings and retaining Caldwell House as \$2.45m. Other options were between \$2.4 - 2.8m and all options exceeded the sale price of the land. Given the last, an extra \$0.55m to retain Caldwell House is a small price to pay. Whichever course is followed, the State taxpayer is going to lose out. And all, it seems, because HI failed to ensure adequate security of the site. The site and buildings should have been put up for sale as soon as they were vacated, instead of being left to be vandalised and deteriorate. The situation can be seen as demolition by neglect.
15. The DA raises questions of compliance by Caldwell House with present building codes, e.g. National Construction Code, minimum room sizes. These are irrelevant as any new building would have to meet the same codes. On the question of room size the current minimum is $3 \times 3\text{m} = 9\text{m}^2$. Existing rooms in Caldwell House are $2.74 \times 3.35\text{m} = 9.18\text{m}^2$ i.e. exceed the current. My impression from viewing the building is that Caldwell House is solidly built and would be a ready candidate for upgrading to meet modern standards. That certainly has been the case with other nurses' homes in the State (see point 3 above).

Comment

After considering this Development Application I conclude the best outcome will be for Health Infrastructure to adopt option 2 as presented on p.6. Removing the asbestos from the site, demolishing the 1966 Nurses' Quarters and associated buildings and making safe and retaining Caldwell House represents the smallest economic cost to the taxpayer and the best heritage outcome. HI had a committed buyer for Caldwell House with plans to adaptively re-use the building and presumably prepared for the cost of meeting modern building codes. With the 1966 buildings gone, a revitalised Caldwell House would be a prominent reminder in the streetscape of the previous important use of the entire Base Hospital precinct.

Caldwell House occupies only a small portion of the site, leaving the remainder available for other re-development opportunities and for the developer to earn additional profit.

Could not HI re-open negotiations with the previous buyer on the basis of option 2, that the site would be available in a condition similar to that previously and with the advantage that the 1966 buildings would be gone?

Summary

APPROVAL to demolish should be REFUSED and Health Infrastructure required to restore Caldwell House to a condition in which it is attractive to purchase for adaptive re-use.

Yours faithfully,

Euan Greer

Orange & District Historical Society Inc

Heritage Cottage, 148 March Street, Orange



Founded in 1949

Mr G Styles
General Manager
Orange City Council
Civic Centre
Byng Street
Orange NSW 2800

6 August 2018

Dear Sir,

I write regarding Health Infrastructure's proposed demolition of the former Nurses' Home in Sale Street, Orange, along with the adjacent former nurses' training school and nurses' accommodation building, known as Caldwell House.

This Development Application has the reference:

DA 234/2018(1) - 129-133 SALE STREET, ORANGE (CALDWELL HOUSE AND FORMER NURSES' QUARTERS)

Members of our society strongly object to the proposal for two main reasons – the heritage value of the buildings and the flawed argument that the cost of removing asbestos from the buildings would be prohibitive.

The Nurses' Home was opened on 12 October 1937 by the NSW Governor Lord Wakehurst. It represented a milestone in the history of Orange Base Hospital in that for the first time nurses were given decent accommodation after years of enduring substandard living quarters. The new two-storey brick building comprised a bedroom and sitting room for the sister in charge on the ground floor plus a spacious reception room measuring 45 feet by 19 feet. On the first floor there was a large sitting room and 50 bedrooms. As president of the Base Hospital Board Mick Martin said when the foundation stone was laid, it was 'only right that those who devote their lives to the care of the sick and suffering should be enabled to carry out their work under the most modern conditions and live in an atmosphere of health and comfort'.

This building accommodated hundreds of nurses over many years at a time when it was compulsory for nurses to live on site. It not only provided suitable accommodation but was a focal point for nurses where they could socialise in their spare time, such as it was.

The adjacent building, Caldwell House, was opened in 1966 as a regional training school for nurses as well as additional accommodation for 49 nurses. The school was named the Dr A E Colvin Nurses' Training School, after the man who had done so much for medicine in Orange and throughout western NSW. The building was named Caldwell House after Jack Caldwell, who had served as director and chairman of the Orange Base Hospital Board for a number of years. Both he and his wife had given great support to the hospital.

In more recent years, when nurses were no longer required to live on site, the nurses' quarters were used for a number of ancillary medical services, including rooms for the Orange Heart Support Group, which provided support for people who had undergone heart surgery or who suffered from various heart conditions.

Those two buildings, therefore, were until the demolition of the Base Hospital site, an integral part of health care in Orange and an important component of the city and region's medical history (see my book 'In Sickness and in Health', 2011).

I would further point out that the removal of asbestos in the buildings would have to take place regardless of whether the buildings were renovated or demolished, so Health Infrastructure's assertion that the removal would be prohibitively expensive, and therefore that demolition was the only alternative, is invalid.

I would add that the theft of copper piping and the resulting disturbance of asbestos may not have happened if Health Infrastructure had provided adequate security measures for the buildings since their closure.

We have a fine new Orange Health Service on Forest Road, but let us not forget the rich history of the remaining buildings in the former Base Hospital precinct.

Yours sincerely,

Elisabeth Edwards
President.

Andrew Crump

Sent: Friday, 3 August 2018 2:26 PM
To: Council Incoming
Subject: Orange City Council website contact form

**Orange City Council website Contact Form**

Your Name	Steve Adams
Address	Street Address: 145 Sale Street Town / City: Orange State: NSW Post Code: 2800 Country: Australia

Preferred Contact for a reply or further query from council ?	E-mail
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Your message	Re. DA234/2018(1) - PR27695
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I wish to lodge my full support for this development application. I live nearby the old nurses homes and hospital and the local residents have had to watch as vandals have turned these buildings into a public disgrace.

Whilst some may be saddened by the loss of memories that they associate with the buildings, these sentiments should not outweigh what is in the better interests of the local community and its residents.

I would also like to express my thanks to Council for purchasing the old hospital and taking the initiative to cleaned it up and make the future DPI use possible. It is a very satisfactory result.

Thank you
Steve Adams

You can [edit this submission](#) and [view all your submissions](#) easily.

Submissions Received During 2nd Exhibition



30 October 2019

The General Manager
Orange City Council
PO Box 35
135 Byng Street
ORANGE NSW 2800

Attn: Mr David Waddell

**Re: DA 234/2018(1) PR27695 129-133 Sale Street - Objection
Demolition of Caldwell House and former Nurses' Quarters**

Dear Sir,

I would like to object to the demolition of the 1937 Nurses' Accommodation Building known as Caldwell House on the grounds that no valid case has been made for demolition of this heritage item. The asbestos related concerns can be addressed and the building retained and reused.

I have attached my previous correspondence from August 2018 that demonstrated that the original DA reports and documents were based on flawed and misleading assumptions that lead to flawed and inappropriate recommendations and made no economic or other case for the demolition of this heritage item.

We note the DA has been revised and resubmitted with additional information, but the same outcome recommended. The revised application has added the following information:

- Further assessment from two asbestos removalist companies with asbestos assessors, with associated costings
- A review by a Consultant Occupational Physician
- A review of the Heritage Impact Statement

The revised application makes the claim that there is no option but full demolition of the heritage item. We have made a list of summary points at the end of this letter including the public risk to Council if this application is approved.

Revised Application

The revised application now claims that the original application greatly underestimated the level of asbestos contamination and the complexity of asbestos removal. This is very opportune given the original application fully addressed this issue with a *Hazardous Material Report*, an *Asbestos Report*, a report on *Asbestos Removal Options* and a *Demolition Methodology*. The revised application's position appears to either indicate a very poor level

Adaptive Architects Pty Ltd

of professionalism in the first application, or an exaggeration of the problem once the initial application failed. However, we must address the new reports at face value.

INDEPENDENCE: The original application demonstrated a significant predisposition in each report to favour the objective of the applicant, which was clearly in support of demolition. This was evident in the numerous flawed assumptions in the basis of the reports that lead to unnecessary costs and problems associated with retaining the heritage item while minimising the problems and costs of demolition.

There is no need to question the integrity of the consultants, as each consultant followed the assumptions of the applicant to their logically flawed outcome. Their work was correct but based on the wrong initial briefing. Our previous letter of objection identifies these flawed assumptions and the flawed outcomes they lead to in detail. The most obvious example was that the BCA report wrongly assumed that the three-storey building needed to be retained, which meant that every subsequent part of their analysis was irrelevant and recommended works that are not required.

The revised application now refers to the new asbestos removalists as *independent* assessors. These contractors have been briefed by the applicant, are working to the scope and methodology of the applicant, and we don't know if they have been paid by the applicant to produce their advice. At the very least they depend on the applicant's support for the chance to undertake the project. They are also demolition experts, not heritage contractors. They have no experience of heritage work and the specialist needs for retention of old buildings. A demolition expert will advise on how best to demolish. Their advice is in keeping with the applicant's proposal and they have not sought to independently solve the problems of retaining the building. They cannot be referred to as independent. The advice given as part of the revised application appears to be alarmist when considered against the original application advice.

The only way we can have independent advice on the possibility of asbestos remediation of the heritage item is if an assessor was engaged by Council or another independent party. They would need to be directed by Council to realistically assess the retention of the heritage item and to address the issues of concern using a methodology that investigates ways to be low impact and non-destructive. This should be overseen by Council's heritage advisor as the contractor will not have sufficient experience in this field. We have outlined such a methodology below and in our first letter of objection. Council may be able to obtain a quote without any cost, or there may be a charge for the contractor's time. **Without a truly independent assessment of the costs there can be no valid assessment of this application.**

Like all physicians, Dr Gardner has a high level of integrity due to his Hippocratic Oath, and we would not question his advice in terms of the health risks posed by asbestos contamination. However, his advice on this building is based on the information that he has been provided about the risks posed in the building. He does not have specialist skills in the safe removal of asbestos or the ability of the building to be made safe. He also does not have any heritage experience in the ways of finding ways to retain heritage fabric.

Dr Gardner's advice is stated to be based on the applicant's reports. He inspected the exterior and interior of the building, but only viewed photographs of the wall cavity where he claims to have seen chunks of asbestos from the roof lagging. While his conclusions on

the risk posed by asbestos are unquestionable, his conclusions on the ability of this building to be remediated are fully dependent on the quality of the information he has received. Dr Gardner's conclusion that it will be impossible to effectively clear or encapsulate all the asbestos fibres from the wall cavity assumes that it must be either removed or sprayed. He does not consider that the cavity can also be fully filled (noted below), which would effectively encapsulate the fibres and make the cavities safe.

The *heritage impact assessment's* analysis of the issues remains valid and should be followed. The conclusions of the HIS are based on the flawed conclusions of the other reports that retention is uneconomic, and without this influence the report would recommend retention and reuse of the building.

MR FLUFFY: Dr Gardner and the asbestos contractors draw a comparison with the Mr Fluffy asbestos remediations in the ACT to demonstrate that this building cannot be remediated and reused. There are three reasons why this comparison is not helpful.

1. This building's asbestos is in the form of localised pipe lagging, which is a solid material that has broken down. It has been disturbed, but it is not a ceiling wide loose fill material such as that used in the Mr Fluffy cases. The Mr Fluffy cases are a much more serious and extensive case of contamination.
2. The Mr Fluffy cases relate to residential buildings built in Canberra in the 1960s and 1970s, which were brick veneer buildings with timber framing. These buildings had a much more open structure that allows a greater level of contamination spread. Caldwell House is a 1930s double brick building with concrete slabs, with far greater sealing and a much more difficult pathway for contamination to spread.
3. When you investigate the Mr Fluffy cases in detail it becomes clear that the buildings were demolished for political reasons while the debate about remediation was still in progress. The history of this can be read at Adam Spence's blog¹ at <https://bit.ly/32Vk3Fh>. We recommend that every Councillor read this short history and make their own conclusions about whether the recommendations that were made during this process can or cannot be transferred to this situation and this building.

Asbestos Contamination

The central, and only, argument put in the revised application is that the level of asbestos contamination is much greater and more dispersed than previously reported. Yet, the asbestos seems to still be in the same areas as defined in the original application. The main contamination is in pipe lagging in the *roof space* and *ceiling*. There is concern that some of this asbestos has made its way into the *wall cavities*. There is also pipe lagging in the *basement* area.

Apparently asbestos contamination has entered the occupant areas of the building. The contractors claim that the solid asbestos lying on the floor has been crushed underfoot due to poor management by the building owners and must now be considered as equivalent to loose-fill asbestos despite being covered by plastic. There remains a very significant

¹ <https://adamspence.blog/2014/08/07/cause-and-effect-the-legacy-of-mr-fluffy/>

difference between the two and this assessment is contestable. It has a very large influence on the contractor's advice and needs to be reviewed independently.

The internal spaces will require remediation whether the building is demolished or retained. The only difference in the two processes is that if retained the building's internal surfaces will need to be reused. This means carpet replacement, floor finishes replaced, and wall and ceilings painted. The reports keep requiring that ceilings are removed but encapsulation only requires that they are painted with a suitable paint. When I worked on the North Head Quarantine Station the painter masked the entire room and sprayed the walls and ceilings in one go, which would be a perfect way to also encapsulate any fibres.

The report also seems to assume the walls are porous plasterboard like in the Mr Fluffy cases. These walls are all rendered brick and are in no way considered porous.

The reports also include things like renewing cables and the like. This is the standard for refitting a heritage building and should not be compared to the demolition costs. Most of the work to the interior should be considered under the refit of the building, because any new building would also need these same processes in new finishes and services.

Methodology that considers heritage

If the asbestos can then be contained or removed from the inaccessible areas the building can be made safe.

ROOF SPACES: We address this in our previous objection letter. The applicant shows very little imagination in how to address this issue. The process of removal and making safe involve the following processes:

- Remove any solid friable asbestos following safe work practices
- Industrial vacuum the roof space – there are recommendations on safe work practices that come out of the Mr Fluffy experience that can be used here
- Encapsulate any remaining fibres by spraying the interior of the roof space with a PVA paint solution or as recommended under safe work practices. This includes the top of the ceilings, the rafters and any exposed elements, and the underside of the roof cladding – spraying large areas with paint is now the preferred method of painting large spaces and is completely normal within the industry. Suitable equipment to do this is standard within the industry.
- Encapsulate any fibres from the top surface of the roof cladding by spray painting the exterior of the roof with a material that will comply with safe work practices and reinvigorate the roof for the long term. Once again there are many roof painting specialists that already operate and work with tiled roofs.
- Air monitoring and testing to give all clear

The reports continually make out that this is prohibitive and impossible, but it appears to be thoroughly straightforward. Instead of encapsulation the various reports always opt for the removal of the tiling, linings and the rafters, which of course make the project unviable.

WALL CAVITIES: Equally the reports seem to regard this as an impossible problem to address. The cavities are inaccessible and thus cannot be remediated. This poses more of a problem for demolition than reuse of the building, but we will address that below.

The reports draw out the problem of asbestos fibres in the wall cavities, which would only be a small amount due to the nature of the asbestos pipe lagging in the roof space. However, there is no safe level of asbestos and thus the reports note that these fibres may make their way into the occupied areas through breezes and various openings around windows, doors and penetrations. Indeed, it would be impossible to vacuum out the cavities and ensure that there was no further risk to occupants.

SOLUTION: However, with a bit of creativity and an understanding of the role of cavities, we can suggest a cost-effective solution. The only role of a cavity is to provide a separation of the external wet skin of brickwork from the internal dry skin of brickwork. These are connected by ties and have flashing junctions at openings.

Any asbestos fibres that have fallen down the cavity and collected on surfaces can be encapsulated by filling the cavity with a cementitious slurry product. Of course, this would normally bridge the cavity and introduce water problems, but we now have materials that can easily make this cementitious slurry completely waterproof, which would retain the integrity of the water barrier from the outside to the inside. The 1930s brickwork and mortar are not so soft as to need protection from damp, so this would effectively encapsulate any asbestos in the cavity. This process can be done without damaging the cavity or the wall, and a sufficiently wet slurry will make its way to fill the entire cavity. It only needs to be done on the upper floor where there are verandahs as the slabs prevent asbestos falling to the ground floor. Openings in the inner skin may be needed to fill areas that would not otherwise fill naturally, or it may be possible to drill through the inner skin and fill the cavity using hoses.

This may be misrepresented as an extreme or very expensive option, but a much more significant example of this was done on the new bell-tower at the Bathurst Anglican Cathedral for structural reasons.

BASEMENT: We have already addressed the issues of asbestos in the basement. Another inaccessible area, the process of making this area safe should include:

- Remove any solid friable asbestos following safe work practices
- Industrial vacuum the basement – there are recommendations on safe work practices that come out of the Mr Fluffy experience that can be used here
- Hand removal (or power suction) of topsoil for disposal down to firmer ground where required.
- Encapsulate any remaining fibres by spray-crete over ground levels and PVA solution over basement walls and under floors. This would only be necessary in areas required to be serviced as other areas can be sealed and access prohibited.
- Encapsulate any fibres from the exterior of the basement either through spraying or sealing the exterior of the subfloor walls.
- Air monitoring and testing to give all clear

The reports previously allowed for engineered slabs to the basement where these are clearly unnecessary.

The above are the areas where the risk of asbestos has been identified. These areas are easily dealt with. Therefore, we are questioning the independent advice of the asbestos removal contractors. This once again may be due to the commissioning advice they have received from the applicant. If Council commissioned independent contractors with the direction on how to retain the building for reuse, they may well get very different advice.

REUSE: Based on the advice of contractors the applicant makes a great deal out of the need for an *Asbestos Management Plan* (AMP) and claims that the building may be uninsurable.

AMP: If the building has been made safe and the air monitoring has given a clear bill of health then the building can be occupied safely. All potential users of the site will be made aware of the status of the building and that it is safe for occupation. Having an AMP is not a death sentence for the building. There are currently hundreds of health care buildings run by Health Infrastructure that are presently occupied with an AMP. I have been in occupied hospital buildings with ceiling spaces that have asbestos warning signs on them. There was a recent story in the paper about the number of schools that run with an active AMP. An AMP is a sensible precaution of a building owner. They do not stop the building being reused in any way.

CLEARANCE CERTIFICATE: The building would need a clearance certificate to be occupied. The contractor's advice assumes this would be impossible to be achieved. It is clear their advice does not account for the ability to remove or encapsulate all fibres as described above. They assume cavities would need to be cleared and roof framing would need to be removed.

If the building has air monitoring that shows the building to be safe, then it will be able to obtain a clearance certificate. There is no reason why this would not be possible.

FUTURE MAINTENANCE AND CHANGES: The applicant claims that all future works to the building will be subject to quite ludicrous requirements. The AMP will identify where the risks are, and most of those risks can be mitigated as described above. Putting a nail in a wall should not have any greater risk than in any other building. People working in the roof space, basement area or making openings in the upper floor external walls would be made aware of the risks and take appropriate precautions.

INSURANCE: The applicant then makes the claim that future maintenance would be *potentially* uninsurable. This is a claim without evidence and runs contrary to common sense. If the remediation is followed and the asbestos risks mitigated, then there is no reason why any works on the building would be uninsurable.

STIGMA: Unfortunately, the applicant is working against their best interests by continually raising the stakes of the asbestos risk. They have made this a very public issue and continually misrepresent the actual costs related to the asbestos within larger project figures to make their case for demolition seem more compelling in the newspapers. This makes the public and any potential occupiers very anxious about the building. This counterproductive policy should not influence Council's decision on whether to demolish or retain the heritage item. It does make it more difficult for the owners to sell the site, but this is a rod they have made for their own backs by deciding against adaptive reuse of the building.

We have made this point previously but will reiterate it. The site is massive, and the heritage building occupies only 10% of the site area. If they cannot sell this site, then they are not trying hard enough.

Costs:

Clearly our last objection letter was too effective in drawing out the contradictions and false assumptions in the costing of the works. This time all costings have become *commercial-in-confidence*. This removes the ability for me or anyone else to apply public accountability to this project. This role now falls to Council staff and the Councillors to do the hard work and investigate the veracity of the costs that have been claimed.

We will note that in our last letter we found that once the flawed assumptions were removed it was cheaper to retain the building than demolish it. The prices appear to have continued to include most of the flawed assumptions from last time.

Demolition:

In Council's assessment, one important principle must be maintained. The asbestos must be removed and made safe before demolition, and that to a higher standard than if the building were to be retained with the asbestos encapsulated, because demolition will break up the walls and spread the asbestos. This is anecdotally why the White Bay Power Station in Sydney was not demolished. The walls were made from concrete with asbestos fibres throughout. There was no safe way to demolish the building without a very serious asbestos contamination throughout the surrounding areas.

Adam Spence's blog makes this very important point about the potential cost savings of demolition over reuse of buildings in the Mr Fluffy cases. This is a quote from the Commonwealth Asbestos Branch.

*Seeking an alternative, the Department considered the idea of demolishing affected homes, purely to save on removal costs. However, the Asbestos Branch opposed this option, arguing that **safe demolition would require homes be cleaned first, negating any savings.***

What is not quoted by the applicant is the very extensive requirements introduced by the ACT government to protect the environment during the Mr Fluffy demolitions, which is explained in the blog entry. I expect they do not intend to follow these recommendations in their own demolition proposal.

The *Demolition Work - Code of Practice* by Safe Work Australia says the very same thing. All asbestos likely to be disturbed by the demolition must be identified and removed before demolition².

If the applicant's claim that the asbestos is much more extensive and difficult to remove is correct, then there is a much **greater risk to the public** from the demolition of the building. Unencapsulated asbestos during demolition can spread to the local area and cause health problems to the neighbours. As noted, there is no safe exposure level to asbestos.

The applicant must be able to demonstrate that all asbestos can be contained during the demolition. This means it must all be encapsulated. We would not expect to see this

² <https://www.safeworkaustralia.gov.au/system/files/documents/1705/mcop-demolition-work-v4.pdf>

building being demolished by large construction equipment with dust flying everywhere and a few hoses providing a spray cover. The fact that the revised application **does not include a revised demolition methodology** that addresses the perceived increase risk, or that details the method of addressing the cavities, is in my view evidence that the applicant does not really believe the risk has increased.

If unencapsulated asbestos was permitted to undergo demolition the **Council would be at risk** of claims by the neighbours that they subjected them to unacceptable risks, or for compensation for health problems down the line. If the asbestos can be encapsulated for demolition, then it can also be encapsulated for retention of the heritage item.

Conclusion

As we previously argued, this is a heritage building and it should be protected from demolition. The HIS identifies that the number of nurses' quarters being retained in NSW is dropping quickly and the type is becoming rare. The site has important historic and aesthetic values that should be retained. It is the last building of the hospital site. It is eminently adaptable to other uses if the right approach is taken, and we have previously issued plans demonstrating how this can be done.

The applicant has from the outset taken the view that the heritage item should be demolished. They have produced reports that misrepresent the issues based on flawed assumptions. They have argued for an economic case but have not made it without flawed reasoning. This revised application continues in this vein. I cannot make any case against their numbers on this occasion because they are now privileged information. It is up to Council to assess this application and push back against the easy answer to demolish heritage buildings.

Council would not allow a developer to make this case without better evidence. It should also not allow the State Government to make this case, as they are meant to be the guardians of heritage under our system. If the heritage system is to mean anything it must resist these applications that seek to demolish heritage buildings without merit.

Yours Sincerely,

JAMES NICHOLSON

Director

Summary of points

- Asbestos was fully addressed last time. I find it incongruous that there is such a discrepancy in assessment after the application failed.
- The previous reports showed flawed assumptions and conclusions identified in my previous letter
- Contractors that are briefed by the applicant and follow the applicant's flawed methodology cannot be considered to be independent
- A physician is not a specialist in whether the building can be made safe
- We show evidence that the Mr Fluffy case is not comparable to this site
- The internal spaces have been made safe according to the reports
- The inaccessible areas have viable ways to be made safe that have not been considered
- Many sites operate successfully with an AMP
- There is no reason why the building cannot get a clearance certificate
- Maintenance can be carried out and the building can be insured
- We cannot assess the costs as they have been hidden from the public
- Demolition requires the asbestos is made safe, and if such the building can be reused
- Demolition poses a greater risk to public safety if the asbestos cannot be encapsulated
- Council would be at risk of claims from the public if demolition is approved without encapsulation

1

E. B. Greer,

28 October, 2019

Mr. D. Waddell,
Chief Executive Officer,
Orange City Council,
Civic Centre,
Byng St.,
ORANGE , NSW, 2800

Dear Mr. Waddell,

Re: DA 234/2018(1) PR27695 129-133 Sale St.**Demolition of Caldwell House and former Nurses' Quarters****SUMMARY**

1. There appears to be a major concern with the costings from one of the quoting contractors. This could have a crucial impact for the decision made on the Development Application.
2. The level of asbestos contamination is central to the proponent's arguments for demolition, yet much of the argument appears based on supposition rather than clear knowledge of contamination levels.
3. Heritage issues are discussed in detail. Caldwell House is a listed building assessed as of 'high significance' in the Heritage Impact Statement yet full demolition is recommended. Aspects of the HIS used to support that decision are questioned.
4. Heritage reasons for the retention of elements of Caldwell House are presented and examples of successful outcomes with other listed buildings in Orange are given.
5. Two options for retaining elements of Caldwell House are discussed throughout. Retention of the eastern façade on Sale Street is the less preferred and minimal option. Nothing less is considered an acceptable outcome.

An initial version of this report was submitted to Council on 30 October, 2019

I write in response to the letter from Mr. Paul Johnston of 24 September advising of the readvertising of the above Development Application (DA) from Health Infrastructure NSW originally advertised on 19 July, 2018. I thank him for the opportunity to comment on the latest revision of the DA.

SOLD!! No.

From the start it is worth noting that Health Infrastructure had a willing buyer for Caldwell House and who planned to use it for accommodation. The buyer pulled out of the sale when the level of damage caused by the looters became known. At that stage, with supposed little prospect of a sale, Health Infrastructure began its moves for demolition. It is sobering to consider the level of costs incurred in preparing the versions of the DA and how it could have been better spent on behalf of NSW taxpayers. Had Health Infrastructure instituted proper security at the site from the beginning, the copper pipe would not have been stolen by looters thus creating the widespread asbestos contamination.

It can be said that the current situation is of Health Infrastructure's own making.

Covering letter

My response after reading the covering letter from Mr. Peter Basha on behalf of Health Infrastructure NSW was of a restatement, with much greater emphasis, of the material presented previously. Several quotations came to mind: "same old, same old"¹, they "doth protest too much methinks"² and "we'll all be rooned said Hanrahan"³.

However, these are not grounds for opposition to a DA. Turning from the emotional subjective to the rational objective my reasons for continued opposition to the DA follow.

Preliminary remarks

In his letter, Mr. Basha notes that Council is not concerned about the demolition of the 1966 Nurses' Quarters on the corner of Sale and Dalton Streets or other later structures on the site.

From the material presented in this supplementary report to the original DA its evident intent is to support the applicant's contention that complete demolition is the only economically and physically feasible option for Caldwell House and other buildings on the site. That is their understandable prerogative. Caldwell House is thus the focus of the applicant's submission. Accordingly, my comments address only the Caldwell House issue.

Central to the revision of the DA are the questions of the level of asbestos contamination in Caldwell House and the dangers they pose to human health. It is consideration of these factors by the applicant's advisers that have led to the demolition conclusion.

It is very clear that Caldwell House is badly contaminated with asbestos resulting from the theft of asbestos-lagged copper pipe. However, I strongly feel that the material overstates the case. Nor does it clearly consider or present the options for:-

- a. after rendering safe, removing the roof and gutting the eastern section of Caldwell House as seen in figure 1, p.8 of the Envirowest report or
- b. retaining just the eastern façade (i.e. front wall) and verandah (restored, as far as possible, to original condition including a reproduction roof if retaining the remediated original roof is more costly) of Caldwell House

¹ Colloquial

² William Shakespeare, 'Hamlet'

³ 'Said Hanrahan', Patrick Joseph Hartigan aka John O'Brien, ca. July 1919

Asbestos contamination; Reports by Envirowest Consulting (7/5/2019) and others

Given the centrality of the asbestos contamination question to the entire thrust of Health Infrastructure's push for complete demolition and remediation of the site it is critical that the data be examined carefully. The reports and conclusions of the independent experts and of the Heritage Impact Statement are based on these data.

1. According to the report (p.4), asbestos audits were conducted between 12.5.2016 and 3.8.2017. That is 2½ years ago. What changes have there been over that period? The building is not weather tight. Have friable asbestos levels decreased through dispersal into the surrounding environment? Have they increased internally via greater dispersal by air movement?
2. Under what atmospheric conditions were the samples taken? If it was windy then levels would be expected to be elevated given that Caldwell House is no longer weathertight. Conversely, if it was still or humid levels would likely be reduced. It is essential to interpretation of the results that the conditions are taken into account.
3. In Table 3 (p.6), asbestos was found in 45 locations of which 37 were classed as very low or low, 3 moderate, 2 high and 3 very high risk to human health. Of the last eight, six were associated with the asbestos pipe lagging itself. In the numerous illustrations it appears that the vast majority of asbestos sources would be, or have been in normal circumstances, corrected during routine maintenance.
4. Much attention is given in the various reports and assessments to the level of asbestos contamination in largely and completely inaccessible areas of Caldwell House. A particular concern has been contamination within the cavity brick spaces of the building. Apart from three photos on p.37 of the Envirowest report, no measures of contamination of that space appear to have been made. On p.40 of the Envirowest report it is categorically stated that "Inaccessible areas of the site were not inspected including wall cavities ...". And yet, concern with such contamination is taken as a major justification for the recommendation that demolition of all buildings on the site is the only possible option.
5. Concern at asbestos migration into inaccessible spaces such as brick cavities is based on the forensic deconstruction of a single 'Mr. Fluffy' house in Canberra. No details on the form of construction of that house are given. 'Mr. Fluffy' was a highly friable loose-fill form of asbestos. I accept that the broken asbestos lagging from the stolen copper piping within Caldwell House has released friable asbestos fibres. How do their numbers compare to those of the 'Mr. Fluffy' house? I have not seen figures on the levels in the two buildings and how they compare to standards (see also below). Without question there is gross asbestos contamination by the lagging throughout Caldwell House but it seems to be largely in clumps and thus apparently subject to the relatively simple remediation processes described in other reports.
6. Dr. I. R. Gardner has prepared an health risk report on the asbestos contamination of Caldwell House based in the main on the Envirowest report. In it he notes the photos showing the loose lagging in the wall cavity and, in conjunction with the 'Mr. Fluffy' experience, concludes "it **will be impossible** to effectively clear or encapsulate all the asbestos fibres from the wall cavity (even at any cost). Thus, it will be unable to be certified as 'clean'." Council should seek more information on why the methods of encapsulation used cannot be effective within a cavity brick wall. This request is in relation to the retention only of the Sale Street façade and verandah and the cost of treating same such that it can be certified as 'clean'.

7. There are very many public and private buildings of the same period as Caldwell House with building products containing asbestos. No concerns are being expressed about their continued occupation. It must be asked, what limitations are placed on alterations to these buildings, alterations such as drilling into brick work to hang a picture, knocking through a cavity wall to install a new power point? The inability to undertake such tasks without great expense and inconvenience in a remediated Caldwell House is taken as a justification for total demolition (see also below).

Remediation and demolition options (DEMEX/SERS, IP/AirSafe, Seib P/L)

DEMEX and IP are specialist asbestos removalists, SERS and AirSafe are asbestos assessors and Seib P/L are quantity surveyors and cost consultants. As a sidenote, DEMEX provide a concise description of asbestos control.

Three options for the site were considered for Caldwell House (Basha, p.2):-

- a. Asbestos remediation and complete demolition
- b. Asbestos remediation and retention only of the Sale St building including verandah
- c. Asbestos remediation and retention only of front façade including verandah

Option a is Health Infrastructure's preferred option while Council requested further information on b and c as its preferred options.

The information below is taken from material in the papers placed on public display.

Option	Original price \$m	New price \$m	% increase old to new
a. demolition	1.005	3.003	199
b. retain Sale St	1.840	no quote	-
c. façade+verandah	1.453	4.924	239
% increase a to c	45	64	

The new prices are taken from Seib (cost summary) in rearranged order to the DA and are **total** costs including all associated building costs and are those provided by one company only and it refused to quote on option b. The other refused to quote on options b and c.

It is clear that the new prices are approximately double those given in the original DA 12 months ago. What is not clear is whether the original prices included all associated costs. If not, then the apparent price differences from old to new are over-stated. This over-statement may be further exacerbated by the matters raised in **DEMEX Costings** below.

It is important to note that Seib (cost summary) gives the total cost of demolishing both the 1937 and 1966 nurses' quarters as \$3.945m and \$3.910m. These are approximately only \$1m less than the cost of new option c, retention of the front façade and verandah.

I consider \$1m a cheap price for the retention of a significant part of the heritage and social history of Orange. What I have difficulty understanding is why remediation of the façade is so expensive when much of the remediation will already have been incurred in preparing the rest of the building for safe demolition. Further clarification of the pricing is required. I also

cannot understand why the front façade, as such a small and discrete section of the building, presents such difficulty in fully encapsulating all remaining asbestos to render it certifiable as cleared.

I will return to this question under Heritage Impact.

DEMEX costings

It is crucial to this section to understand that there are two nurses' quarters on 129-133 Sale Street. The first, the subject of this DA, is Caldwell House but also known as the Nurses' Quarters, built in 1937, fronting Sale Street and facing the site of the Old Base Hospital. The other was built in 1966 to provide extra accommodation and is on the south west corner of Sale and Dalton Streets and presents to Dalton Street. It was known as the Nurses' Quarters and is to be demolished and is not a concern of this DA.

Careful reading of the DEMEX documents has revealed a major concern with the costings used in the table above. This seems as though it has arisen because of confusion arising from the two buildings being known as 'Nurses' Quarters'.

DEMEX was asked to quote on the three options described on p.3. Reference to p.8 of DEMEX' quotation shows that their option 2 is option a. above. HOWEVER, it is the cost of remediating BOTH nurses' quarters, not just Caldwell House. Option 2 is also option a. but covers the demolition of Caldwell House AND INCLUDES the remediation of the Nurses' Quarters fronting Dalton Street. DEMEX option 1 may equate to option b. or c. in retaining the façade of Caldwell House BUT STILL INCLUDES the remediation of the 1966 building. **All three options do not meet the specifications of the quotes requested and results in the costings submitted being greater than that of the work actually required.**

To further complicate matters it appears the scope of work costed by option 1 (i.e. my option c) is greater than required. Reading of the first three paragraphs on p.7 of the DEMEX papers suggests that 'façade' has been taken to mean all four external walls of the Sale Street building plus the roof and "to remove all internal structures to create a shell for future internal construction and redevelopment of the building." This description is further supported by the wording of paragraph 3. This scope of work is more like my option b. but the cost is still inflated by the inclusion of the remediation of the 1966 building.

IN CONCLUSION IT IS VITAL THAT THE CORRECTNESS OF THE DEMEX COSTINGS ARE CLARIFIED AS THEIR USE HAS A CRUCIAL IMPACT ON THE FINAL DECISION OF WHICH COURSE (OPTION) TO ADOPT AND IN BALANCING THE INTERESTS OF HERITAGE AND ECONOMY.

Heritage issues

Caldwell House is listed on the Orange 2011 LEP as a heritage item. It is within the vicinity of other listed items (adjoining, in Prince Street and in Dalton Street) and is just beyond the current northern boundary of the Central Orange Heritage Conservation Area (COHCA). The proposal in Council's 2012 Heritage Study to extend the COHCA to the north was accepted. The proposed extension is currently being reviewed by a Community Consultation Group to determine if even further extensions are warranted. When adopted, Caldwell House

will well and truly fall within the COHCA, further cementing its heritage significance as a building and as a part of the streetscape.

The Heritage Impact Statement (HIS) prepared by Weir Phillips Heritage is extensive and informative and concludes (p.1) “Caldwell House has historic and social significance as a good example of an Interwar Period Art Deco Style former nurses’ quarters. From 1937 it was the place of residence of a number of female nurses who served a significant role in caring for the wellbeing of the local and wider community.”

And yet the HIS goes on to recommend (p.1) “That the demolition of the buildings on site be approved for demolition so that full asbestos remediation can take place.”

I believe that this recommendation does not fully address some of the heritage issues nor take full account of the ways of overcoming the asbestos issues. I will consider various points in the HIS to demonstrate possibilities of avoiding the need for the full demolition of Caldwell House.

Assessment of heritage significance of Caldwell House

The HIS (pp.42-47) considers nine different criteria/sub criteria in establishing a significance rating. Of these, one rates Caldwell House as highly significant, six as significant and two as not significant. The ninth, criterion f. is incorrect in that the other extant examples of Nurses’ quarters of the same period have been adapted to other uses and are now likely no more intact than Caldwell House.

Overall, the 1937 building in its entirety has been rated as **highly significant** by the HIS (p.48). The heritage importance attached to Caldwell House is further emphasised by the recommendations to be followed in the unwelcome event the building is demolished.

In this regard it is important to note that the “external integrity of the earlier (i.e. 1937) building is substantially intact” (p.39). Six external changes to the Sale Street façade are listed; it seems to me that some of these are capable of easy restoration.

As well, Caldwell House “maintains a strong street presence among the context of smaller scaled Federation period dwellings with its balanced, symmetrical form that previously addressed the Orange Base Hospital across Sale Street.” (p.44). In addition, the building “has historic and ongoing significance for former resident nurses and with community groups ... who actively assisted with its establishment and operation.” (p.44).

Comparative analysis

On pp.39-42, the HIS compares the Interwar Period Art Deco Style of the 1937 Caldwell House with other buildings of that period in Orange and of nurses’ quarters in NSW. The HIS concludes that the four Orange buildings illustrated are better examples of the style. I suggest that, as a public/institutional building, none are of the scale of Caldwell House which stands alone, though the Canobolas Hotel is much larger. The building in the public health arena is not of the scale or size of Caldwell House nor does it have the historical ties to the old Orange Base Hospital.

Only eight nurses' quarters of the style and period are listed on the State Heritage Database (p.39). Five examples are illustrated (pp.41-42) and to me, only one, at Goulburn, bears any resemblance in style to Caldwell House, and that is to be demolished for hospital expansion and redevelopment. The other four appear to be of the same era but do not seem to have art deco features to the extent of Caldwell House. Caldwell House is thus not unique in all aspects of style. It is unique in its social history, in the story behind its establishment, community funding and growth over 74 years. Interestingly, the four have all been converted to other uses and presumably had to contend with the presence of asbestos during adaptation.

Comment:-

The HIS states (p.47) "The original 1937 nurses' quarters ... relates to and complements the streetscape of Federation period buildings." and yet later it is said that demolishing the quarters would be more in keeping with the low rise nature of the neighbourhood. To my mind, that is part of its significance – it is out of place for a particular purpose.

Caldwell House is now the only direct medical link to the old Base Hospital site – it was the home of untold numbers of nurses who cared for patients from Orange and the wider region. The Ambulance Station still exists but was nowhere near as intimately involved with patient welfare. To demolish everything of Caldwell House removes the last direct indication the site was used for health purposes for 144 years from 1867 to 2011.

HIS recommendations

In reaching its conclusions, apart from its own assessments of heritage significance, the HIS considered reports on structural integrity, compliance with building codes and the Envirowest asbestos document. A concern of the HIS was the need to bring the building into compliance with those of Building Codes Australia (BCA). These can be discounted as they are advisory only. In effect, the decision to recommend approval for **demolition of the entire site** (as desired by Health Infrastructure) was informed by the question of asbestos contamination.

Needless to say, I cannot agree with that recommendation. I do not believe that all options for remediation of a gutted Sale Street building or, at the very least, the Sale Street façade and verandah have been fully assessed. This is particularly relevant in light of the question about the DEMEX costings.

Obliteration or Preservation?

Health Infrastructure wants to obliterate part of Orange's History and heritage. That is not their decision to make. It is our decision! It is our history, our heritage. I do recognise the constraints placed upon Caldwell House by the asbestos contamination, contamination that was due to Health Infrastructure's dereliction in not ensuring proper security of the site from the instant of closure.

For the reasons outlined previously it is essential that a solid, physical indication of the former use of the precinct as a major regional health facility is retained. The Ambulance Station on the north west corner of Prince and Anson Streets remains but it is only an ancillary adjunct to the site. Caldwell House has a direct health care link.

We have over the years lost so much of the early history of the old hospital precinct and indeed of Orange's history. The very first hospital of 1867 existed for many years. In 1885 it was extended with twin turrets which served as nurses' bedrooms and bathrooms. In 1933 with the opening of new wards partly funded by the community Orange Base Hospital came into being. The original hospital was very similar in style to that in Bathurst which survived various developments of that hospital, including the latest in the early 2000s. Bathurst decided they did not want to lose a significant part of their heritage and history and now have a building which still functions as part of the hospital but is also a highly valuable heritage tourism asset.

Two ways of preserving a direct link by Caldwell House to the demolished health precinct have been considered in the DA by Health Infrastructure. Given the constraints of the site my preferred option is retention of the shell of Caldwell House. The other is the retention and restoration of the Sale Street façade, including the curved corner returns.

Preservation in Orange

Two recent projects in Orange reveal the success which can be achieved by retaining rather than demolishing buildings for the heritage and history of Orange.

The first was the adaptive reuse of the Carrington Hotel. It is said to be the oldest double storey brick building in Orange ca. mid 1860s and had been used as a public house since ca. 1872. It was quite run down but retained many original features. There were fears it would be demolished. Instead it was adaptively reused as commercial office space, now occupied by LiveBetter. Major changes were made internally but it is still possible to 'read' its earlier life as a pub. This has been accentuated by the reinstatement of the verandah which existed for many years. The Carrington is widely esteemed for its appearance and continuing contribution to the heritage of Orange.

The second is an example of the significant contribution to the streetscape and historical understanding which can be achieved by preservation of the façade of a building. 'Facadism' is often maligned but when it comes to a choice between a modern structure in a heritage streetscape and retaining a heritage façade which complements the streetscape, I'll take the façade every time. Certainly, it is very much a second best, bottom line approach. Over the last few months we have seen what can be achieved when Council adopts a non-negotiable limit on a DA approval as has happened with the Dalton Bros./Myer store. Parts of the building date from ca. 1860 with the latest part being 1895.

The structural problems encountered with the old store building made demolition of the entire structure the cheapest option. Council negotiated with the applicant and it was agreed that internal demolition and subsequent new construction would be approved **if** the façade was retained and restored. This came at considerable cost to the developer (which I suspect was much greater than the \$1m indicated above for the Sale Street façade) but in return they had complete freedom with internal layout and Orange achieved the preservation of its very early commercial history and the streetscape. The project is nearing completion and I believe will be a major contributor to the streetscape and promote its further rejuvenation.

Letter from James Nicholson, 20 August, 2018

Mr. Nicholson in his letter of objection presented a number of highly pertinent points against demolition. Having carefully read the revised voluminous supporting material for the DA, I have seen nothing to remove the relevance of Mr Nicholson's comments. They certainly need to be revisited and taken into consideration when assessing the revised DA.

My letter of objection, 23 August, 2018

Similarly, I ask that my previous arguments against demolition outlined in my letter also be taken into account rather than repeat them here. They have not been changed by the additional material presented in the revised DA.

Final comments

I have remarked earlier on the conditions under which the asbestos studies for this DA were conducted. It would also be relevant to have more information about the methodology of the forensic deconstruction of the 'Mr. Fluffy' house. For instance, what measures were taken to prevent spread of friable fibres from deconstructed areas of the house to undisturbed areas. In other words, is there certainty that later areas did not test positive because they were contaminated by the very act of prior deconstruction? The question is important because the findings from the 'Mr. Fluffy' episode are so widely used as justification for many decisions on asbestos contamination.

Asbestos is dangerous. No question. 'Mr. Fluffy' was gross contamination with a completely friable source. From what we now know about 'Mr. Fluffy' such wide spread contamination was to be expected. But how well does that relate to Caldwell House where the contamination is much more recent from a much less friable source (pipe lagging) and thus presumably less opportunity to spread. I would have thought that a better comparison would have been experiences with buildings of a similar era and also containing asbestos when they were repurposed. What levels of contamination were found in them and how was it remediated?

The various reports contain statements that various areas "are almost certainly contaminated". But these areas have not been tested (Envirowest, p.40). 'Almost certainly' is not scientifically acceptable as proof. Given the costs involved it is not likely to be acceptable economically either. Is it not imperative to know if the external wall cavities and roof timbers are contaminated? These after all are the major elements in plans for retention of all, or the façade, of Caldwell House.

CONCLUSION

I have remarked 2-3 times that my preferred option is for the retention of the eastern block of Caldwell House fronting Sale Street. If that is not possible, as appears likely due to the asbestos, then the outer walls (without roof) of the building, ready for new internal construction. My least preferred option is the retention only of the Sale Street façade and verandah including the recurved ends.

I find it hard to understand why the encapsulation of friable asbestos (if indeed any is found on investigation) in the façade and verandah is seen as so difficult. Presumably the façade is

cavity brick. Has thought been given to pumping expanding foam into the cavity? This would bind any asbestos and fill air gaps around doors, windows and ventilation holes precluding further movement of asbestos. Removal of doors, windows and vents would facilitate application of the foam and allow escape of any excess.

A more involved alternative (given suitable stabilising support of which the verandah would be part) is to remove the internal layer of bricks. The exposed internal face of the exterior bricks could then be decontaminated and/or encapsulated.

The verandah balustrades and columns appear to be solid brick and would only need surface remediation. Its roof is flat and is perhaps isolated from the main roof cavity thus escaping contamination.

Given the high level of heritage and social significance ascribed to Caldwell House in the Heritage Impact Statement, it is essential that some physical form of the building be retained on site. At the very least that must be the eastern façade and verandah.

Regardless of the physical form adopted, a full set of detailed plans of Caldwell House along with the revised Heritage Impact Statement to this DA must be deposited with Orange City Library. Before any work is commenced a full photographic record, internally and externally, is compiled by a professional photographer. It too will be held in the Library. In addition, all of the recommendations from the HIS set out in section 5.3.4 (p.51) be adopted.

Euan Greer
1 November, 2019

30 October 2019

Mr David Waddell
Chief Executive Officer
Orange City Council
135 Byng Street
ORANGE, NSW, 2800

Dear Mr Waddell,

DA 234/2018 (1) - 129-133 Sale Street, Orange (Caldwell House and Former Nurses' Quarters)

I completely **OBJECT** to the demolition of any part of the building known now as 'Caldwell House' which is contained within the 1935 Architectural Plans as 'Orange Base Hospital, New Nurses Quarters' which was opened on October 12 1937 by the NSW Governor Lord Wakehurst and had its foundation stone laid by Health Minister Herbert Fitzsimons in February that year.

Having internal removable fitting of asbestos located within the substantially constructed brick building is not a reason to demolish a significant Heritage Art Deco building and it is very arguable that complete demolition is likely to create a much higher health risk than removing the asbestos from the intact building. The Consultant uses the description 'extensive state of asbestos' I suggest this is incorrect as extensive would be a building in almost its entirety being constructed of asbestos. 'Caldwell House' is constructed of brick external and internal walls with a tile roof and only some internal fittings of asbestos.

I would suggest that Council would be failing to uphold its own Strategic Guidelines by allowing the demolition of this identified Historic and Socially Significant Heritage item. Commercial or financial viability should not be considered by Council when deciding the future of this building. I also object to the commissioning of Consultants from outside the area with absolutely no local connection, it is hard to believe, a Heritage Advisor advising to demolish such valuable Architectural Heritage.

This building has much potential to be repurposed for many different uses, eg a boutique lodge with shared bathroom facilities, similar to those located in Sydney which is lacking in Orange or an aged care home. There is every opportunity for this building to be restored beautifully with its splendid architecture and an updated fit out to become a building Orange will be proud of, accompanied by a complimenting garden and carpark.

Orange City Council is becoming more focused on environmental sustainability and a very large component of this is to reduce pollution. The demolition of buildings creates high amounts of pollution. The retention of a building in its intact form creates negligible pollution in comparison. OCC should transition to cease permitting the demolition of buildings.

Council holds the responsibility to preserve Identified Heritage items and those buildings which have Heritage value, regardless of any push to make a site available for new development. Therefore in the interests of the local Orange Community and that of the State, I expect Council to decide in favour of **RETAINING** the Significant Heritage Asset known as 'Caldwell House' in its entirety as constructed in 1937 and that it make funds available to professionally remove the asbestos fittings and seal surfaces as required to allow the next phase of repurposing to begin.

Yours faithfully

Anne Salter

Andrew Crump

Sent: Wednesday, 16 October 2019 1:50 PM
To: Council Incoming
Subject: DA 234/2018(1) - Lot 2 DP1230592 - 129-133 Sale Street Orange

Dear Sir / Madam

We live near the buildings proposed in this DA to be demolished.

From our perspective the state of dilapidation of these buildings needs to be rectified as soon as possible. It is currently an blight on the street scape a temptation for vandals and a safety issue for the community.

The development application clearly identifies that demolition is the only realistic option available to rectify this situation.

We therefore wish to commend the application to the council for prompt approval.

Your faithfully
Steve and Kay Adams

Orange City Council

135 Byng St

ORANGE. 2800

RE: DA 234/2018(1) – PR27695

Thank you for the above Notice. Circumstances prevented me from responding earlier.

I do like it when buildings are constructed for the benefit of Ratepayers.

However, I do not like it when Developers come in and persuade the Local Council to disregard the wishes of the Ratepayers; your largest source of Income.

What does "Health Infrastructure on behalf of Health Administration Corporation", mean? How high is the building going to be, for example. Will it block out the skyline and put shadows around the places near it and reduce the sunlight over this cold city? Does anyone on Council consider this?

When the Local Council allows State Government Office Buildings to be built in our area wouldn't they lose any control over the type of building the State Government chose to erect?

I would like an answer to my questions, thanking you.

Gloria Murray

2.3 DEVELOPMENT APPLICATION DA 120/2020(1) - 52-54 BATHURST ROAD, AND 25 AND 27 EYLES STREET (TACO BELL)

RECORD NUMBER: 2020/1005
AUTHOR: David Paine, Senior Planner

EXECUTIVE SUMMARY

Application lodged	25 March 2020
Applicant/s	McDuck Properties Pty Limited
Owner/s	Thomsons Corner Pty Limited
Land description	Lot 507 DP 712206, Lots 3 and 4 DP 37362 – 52-54 Bathurst Road, and 25 and 27 Eyles Street, Orange
Proposed land use	Takeaway Food and Drink Premises and Signage
Value of proposed development	\$1,100,000

Council's consent is sought for the construction of a Takeaway Food and Drink Premises and associated Signage on land described as Lot 507, DP 712206 and Lots 3 and 4, and DP 37362. The land is known as 52–54 Bathurst Road, and 25 and 27 Eyles Street, Orange. The subject site is known as the former Thompson's Nursery site.

A previous Development Application was approved by Council's Sustainable Development Committee Meeting on 1 April 2014 (DA 134/2013 (1)). The previous application was for a business premises (car wash), restaurant or café (two tenancies), subdivision and signage. The consent remains valid because of physical commencement that has been undertaken to activate the consent.

This application involves the construction of a Takeaway Food and Drink Premises and comprises of the following scope of works: construction of Takeaway Food and Drink Premises with seating for 42 seats; construction of an at-grade car park for 24 vehicles including three (3) staff parking spaces; drive-thru facility, including queuing for nine (9) vehicles; acoustic fence constructed along the southern and western boundary and removal of a street tree on Eyles Street.

The proposal is seeking consent to operate from Sunday to Thursday from 10am to 10pm and from 10am to 11pm on Friday and Saturday.

The proposed development was publicly notified and advertised in accordance with the Council's Community Participation Plan and one submission was received in response.

The subject land is located within the high profile eastern entry to the business area of the City; the subject land also adjoins the rear yards of properties within the heritage conservation area and is opposite the heritage item, Memory Park.

With the above in mind it is considered the development will present appropriately to the street and will not unreasonably impact upon the heritage significance of both the adjoining conservation area and the heritage item opposite the site.

Council sought the concurrence of Transport for NSW (previously known as RMS) which has been obtained and their requirements have been integrated as conditions of consent within the attached notice.

As such, the development is recommended for approval.

2.3 Development Application DA 120/2020(1) - 52-54 Bathurst Road, and 25 and 27 Eyles Street (Taco Bell)

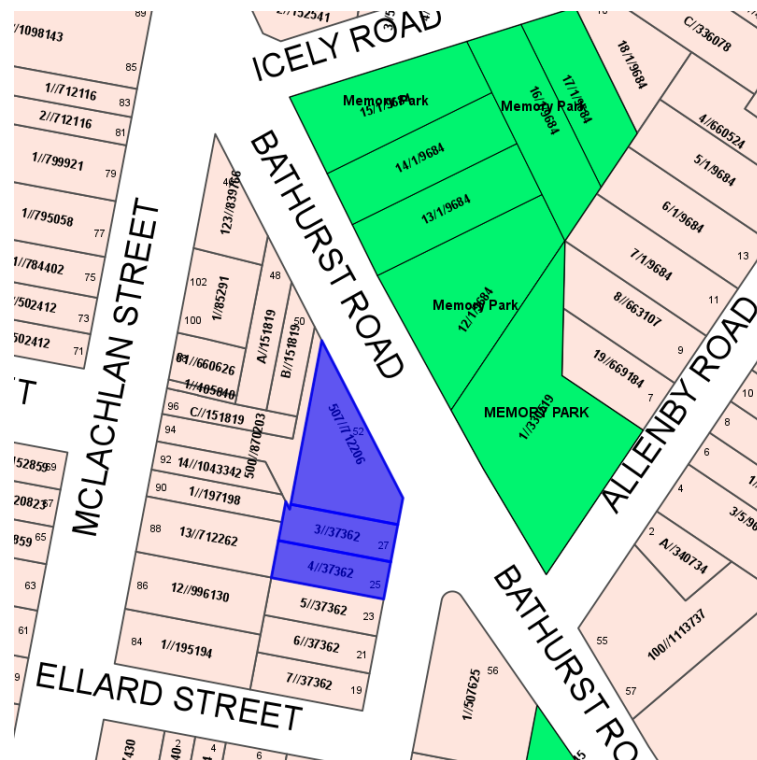


Figure 1 - locality plan

DECISION FRAMEWORK

Development in Orange is governed by two key documents: the Orange Local Environment Plan 2011 and the Orange Development Control Plan 2004. In addition, the Infill Guidelines are used to guide development, particularly in the heritage conservation areas and around heritage items.

Orange Local Environment Plan 2011 – The provisions of the LEP must be considered by the Council in determining the application. LEPs govern the types of development that are permissible or prohibited in different parts of the City and also provide some assessment criteria in specific circumstances. Uses are either permissible or not. The objectives of each zoning and the aims of the LEP itself are also to be considered and can be used to guide decision making around appropriateness of development.

Orange Development Control Plan 2004 – The DCP provides guidelines for development. In general, it is a performance based document rather than prescriptive in nature. For each planning element there are often guidelines used. These guidelines indicate ways of achieving the planning outcomes. It is thus recognised that there may also be other solutions of merit. All design solutions are considered on merit by planning and building staff. Applications should clearly demonstrate how the planning outcomes are being met where alternative design solutions are proposed. The DCP enables developers and architects to use design to achieve the planning outcomes in alternative ways.

Director's comments

Key issues in the assessment of this application relate to traffic and noise impacts, signage and how the development fits generally within the streetscape and surrounding locality. Some of these issues are highlighted more in this case as the commercial site adjoins residential land. The issues have been addressed in the body of this report and conditions of consent to mitigate identified issues have been recommended by staff.

It is recommended that Council supports the proposal subject to the adoption of the attached Notice of Determination.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan strategy "10.1 Preserve - Engage with the community to ensure plans for growth and development are respectful of our heritage".

FINANCIAL IMPLICATIONS

Nil

POLICY AND GOVERNANCE IMPLICATIONS

Nil

RECOMMENDATION

That Council consents to Development Application DA 120/2020(1) for *Takeaway Food and Drink Premises and Signage* at Lot 507 DP 712206, and Lots 3 and 4 DP 37362 – 52-54 Bathurst Road, Orange, and 25 and 27 Eyles Street, Orange pursuant to the conditions of consent in the attached Notice of Approval.

FURTHER CONSIDERATIONS

Consideration has been given to the recommendation's impact on Council's service delivery; image and reputation; political; environmental; health and safety; employees; stakeholders and project management; and no further implications or risks have been identified.

SUPPORTING INFORMATION

Council's consent is sought for a Takeaway Food and Drink Premises and associated Signage at Lot 507 DP 712206, and Lots 3 and 4 DP 37362. The land is known as 52–54 Bathurst Road, and 25 and 27 Eyles Street, Orange.

THE PROPOSAL

The development involves the construction of a Takeaway food and drink premise and comprises of the following scope of works:

- clearing the site
- construction of Takeaway Food and Drink Premises with seating for 42 seats
- construction of an at-grade car park for 24 vehicles including three (3) staff parking spaces

2.3 Development Application DA 120/2020(1) - 52-54 Bathurst Road, and 25 and 27 Eyles Street (Taco Bell)

- drive-thru facility, including queuing for nine (9) vehicles
- acoustic fence constructed along the southern and western boundaries
- associated signage
- vehicle access will be via the existing driveway on Bathurst Road and via a new entry driveway on Eyles Street
- removal of a street tree on Eyles Street
- loading dock facilities
- site landscaping.

The proposal is seeking consent to operate from Sunday to Thursday from 10am to 10pm and 10am to 11pm on Friday and Saturday.

MATTERS FOR CONSIDERATION

Section 1.7 - Application of Part 7 of the *Biodiversity Conservation Act 2016* and Part 7A of the *Fisheries Management Act 1994*

Section 1.7 of the EP&A Act identifies that Part 7 of the Biodiversity Conservation Act 2016 (BC Act) and Part 7A of the Fisheries Management Act 1994 have effect in connection with terrestrial and aquatic environments.

There are four triggers known to insert a development into the Biodiversity Offset Scheme (i.e. the need for a BDAR to be submitted with a DA):

- Trigger 1: development occurs in land mapped on the Biodiversity Values Map (OEI) (clause 7.1 of BC Regulation 2017);
- Trigger 2: development involves clearing/disturbance of native vegetation above a certain area threshold (clauses 7.1 and 7.2 of BC Regulation 2017); or
- Trigger 3: development is otherwise likely to significantly affect threatened species (clauses 7.2 and 7.3 of BC Act 2016).

The fourth trigger (development proposed to occur in an Area of Outstanding Biodiversity Value (clause 7.2 of BC Act 2016) is generally not applicable to the Orange LGA; as no such areas are known to occur in the LGA. No further comments will be made against the fourth trigger.

Trigger 1

The site is not mapped on the Biodiversity Values Map.

Trigger 2

In consideration of the second trigger, the prescribed clearing threshold for the site is 0.25 hectares pursuant to Clause 7.2 of the Biodiversity Conservation Regulation 2016. The site does not contain any significant vegetation and does not require the clearing of native vegetation.

Trigger 3

The subject land has been zoned for commercial purposes and does not contain or adjoin any land that has been mapped as containing biodiversity significance. The development is unlikely to adversely fragment or disturb the biodiversity structure or ecological functions of the development site or surrounding lands.

Section 4.15

Section 4.15 of the *Environmental Planning and Assessment Act 1979* requires Council to consider various matters, of which those pertaining to the application are listed below.

PROVISIONS OF ANY ENVIRONMENTAL PLANNING INSTRUMENT s4.15(1)(a)(i)**Orange Local Environmental Plan 2011****Part 1 - Preliminary****Clause 1.2 - Aims of Plan**

The broad aims of the LEP are set out under subclause 2. Those relevant to the application are as follows:

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

The application is considered to be consistent with aims (a), (b) and (f) listed above.

Clause 1.6 - Consent Authority

This clause establishes that, subject to the Act, Council is the consent authority for applications made under the LEP.

Clause 1.7 - Mapping

The subject site is identified on the LEP maps in the following manner:

Land Zoning Map:	Land zoned B6 Enterprise Corridor Zone.
Lot Size Map:	No Minimum Lot Size
Heritage Map:	Not a heritage item or within a conservation area
Height of Buildings Map:	No building height limit
Floor Space Ratio Map:	No floor space limit
Terrestrial Biodiversity Map:	No biodiversity sensitivity on the site
Groundwater Vulnerability Map:	Groundwater vulnerable
Drinking Water Catchment Map:	Not within the drinking water catchment
Watercourse Map:	Not within or affecting a defined watercourse
Urban Release Area Map:	Not within an urban release area
Obstacle Limitation Surface Map:	No restriction on building siting or construction
Additional Permitted Uses Map:	No additional permitted use applies
Flood Planning Map:	Within a flood planning area

Those matters that are of relevance are addressed in detail in the body of this report.

Clause 1.9A - Suspension of Covenants, Agreements and Instruments

This clause provides that covenants, agreements and other instruments which seek to restrict the carrying out of development do not apply with the following exceptions:

- covenants imposed or required by Council
- prescribed instruments under Section 183A of the *Crown Lands Act 1989*
- any conservation agreement under the *National Parks and Wildlife Act 1974*
- any trust agreement under the *Nature Conservation Trust Act 2001*
- any property vegetation plan under the *Native Vegetation Act 2003*
- any biobanking agreement under Part 7A of the *Threatened Species Conservation Act 1995*
- any planning agreement under Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979*.



Figure 2 – sewer line

A sewer main traverses the subject property along the northern boundary of Lot 3. The design of the development is such that all of the building will avoid the sewer main. However, it may be necessary for the buildings closest to the sewer main to require piers. An easement traverses the centre and rear of Lot 4 and part of the rear of Lot 3. This easement was established to cater for the redirection of the sewer main under the former development that was previously approved. It will be necessary for this easement to be extinguished. The title of the subject property is not affected by any of the above.

Part 2 - Permitted or Prohibited Development**Clause 2.1 - Land Use Zones and Clause 2.3 - Zone Objectives and Land Use Table**

The subject site is located within the B6 Enterprise Corridor Zone. The proposed development is defined as a Takeaway Food and Drink Premises and signage under OLEP 2011 and is permitted with consent for this zone.

Pursuant to the LEP dictionary;

Take away food and drink premises means premises that are predominantly used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises.

Signage means any sign, notice, device, representation or advertisement that advertises or promotes any goods, services or events and any structure or vessel that is principally designed for, or that is used for, the display of signage, and includes any of the following:

- (a) an advertising structure,
- (b) a building identification sign,
- (c) a business identification sign,

but does not include a traffic sign or traffic control facilities.

Clause 2.3 of LEP 2011 references the Objectives for each zone in LEP 2011. These objectives for land zoned B6 Enterprise Corridor are as follows:

1 - Objectives of the B6 Enterprise Corridor Zone

- *To promote businesses along main roads and to encourage a mix of compatible uses.*
- *To provide a range of employment uses (including business, office, retail and light industrial uses).*
- *To maintain the economic strength of centres by limiting retailing activity.*
- *To provide for residential uses, but only as part of a mixed use development.*

The development is considered appropriate within the zone and will allow for additional employment in the hospitality sector within the City (associated with the Takeaway Food and Drink Premises uses). The development will not jeopardise the economic strength of the CBD with the retail component limited to food and drink premise uses which are not atypical for the locality.

No residential uses are proposed as part of this development.

Clause 2.6 Subdivision – consent requirements

This clause triggers the need for development consent for the subdivision of land. Whilst the proposal has not specifically nominated that the subject land will be consolidated, this issue has been discussed with the applicant and is standard practice when development is occurring over separate parcels of land. A number of conditions are recommended to ensure that proof of lodgement for registration of a survey plan of consolidation of Lot 507, DP 712206, Lots 3 and 4 DP 37362 with NSW Government Land and Property Information has been undertaken prior to the issue of a Construction Certificate, with formal registration of the plan to occur prior to the issue of an Occupation Certificate.

Part 3 - Exempt and Complying Development

The application is not exempt or complying development.

Part 4 - Principal Development Standards

The LEP Principal Development Standards do not apply to this application.

Part 5 - Miscellaneous Provisions**5.10 - Heritage Conservation****(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.*

The development is not located within a heritage conservation area, nor is the land identified as a heritage item or draft heritage item. The land does, however, adjoin the rear of properties within the Glenroi Heritage Conservation Area and is opposite a Heritage Item identified as Memory Park, with other heritage Items in the vicinity including Bowen Terrace, Wolaroi and 171 Edward Street. As such, it is important to assess the likely impact upon the heritage significance of the conservation area and primarily the heritage item opposite the subject land. Council's Heritage Advisor has provided the following advice in relation to the proposed development.

Glenroi HCA

In terms of the impacts to the heritage conservation area the proposed development is likely to have a minimal impact. The development is located to the rear of the properties within the conservation area and the development will not be overly visible from within McLachlan Street, nor will it unreasonably impact upon the heritage significance of individual dwellings within the conservation area.

Memory Park

Orange Heritage Inventory describes the significance of Memory Park as follows:

An important visual and historic landscape on the main road and one of the key entry points to the City, the park includes mature tree planting, a watercourse and a range of civic improvements valued by the local community.

The heritage advice centred on a number of minor design suggestions intended to improve the presentation of the development and its relationship to the heritage item and the highway.

It is important to make the point that the development has been designed around an attempt to achieve the required noise criterion so there is a balance to be weighed between heritage considerations and allowing commercial development to occur on a commercially zoned site which adjoins sensitive residential receivers.

Heritage Advisor's Recommendations

1. *The pylon sign (S01) is in very close proximity to the proposed building and its two identical taco bell graphics and the sign/pylon height is very similar to the building. The pylon sign therefore duplicates the graphic of the taco bell applied to the building and adds complexity to the bulk and scale of the building in the vicinity. It is therefore recommended that the pylon sign be deleted from the proposal.*

Applicant's Response

The pylon sign is integral to the branding and marketing of the Taco Bell which does not rely solely on building façade signage. Its location and size (ie: height) was influenced by the existing signage (including existing pylon signs) along Bathurst Road. It is considered that the proposed signage is compatible with the desired character of the area and is consistent with the current signage in the immediate precinct along Bathurst Road including.

- (i) the existing pylon signage on the adjacent BP Service Station site*
- (ii) the pylon sign and associates signage for McDonalds*
- (iii) the pylon sign and associated signage for KFC*
- (iv) the pylon sign and associated signage for Red Rooster*
- (v) the pylon sign and associated signage for 7-Eleven Service Station*
- (vi) the pylon sign and associated signage for Hungry Jacks.*

Planning Officer's Response

The proposed pylon sign certainly adds to the complexity of the bulk and scale of the building. The subject sign extends above the height of the subject building which is of some concern. The applicant argues that the proposed pylon sign has been designed to be integrated into the building and forms part of the overall building design. Despite the bulk of this particular element, it is considered acceptable in this case on the basis that building and associated signage is well setback from Bathurst Road frontage, is recessive in colour and partly screened by the existing street trees in Bathurst Road and Eyles Street. Further, it is acknowledged that the submitted plans show that the pylon sign only contains an image of a bell and a small amount of written text. Overall, the signage design is considered to be consistent with the overall height of other pylon type signs in the locality and is therefore acceptable in this context.

Heritage Advisor's Recommendations

2. *Pedestrian access is a feature of Orange and the footpaths are immediately available on both sides of Bathurst Road. Memory Park is a common destination opposite the subject site. It is recommended that consideration is given to a pedestrian access from Bathurst Road in the location next to the Taco Bell porch entry with the banner sign (S02) being relocated to the north western portion of the site. The pedestrian access is to be provided with appropriate rumble or similar safety measures to protect pedestrians from vehicles.*

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Planning Officer's Comments:

The plans have been amended to include a pedestrian access from Bathurst Road. The internal driveway design should ensure low speed traffic movements to facilitate pedestrian safety from Bathurst Road into the site.

Heritage Advisor's Recommendations

3. *Replica materials are not supported in the Orange Conservation Areas and in areas with urban design quality and visual prominence. The integrity of materials and in particular timber from which many traditional buildings are fabricated is valued and protected.*

An alternate plain powder coat or anodised finish for the aluminium cladding proposed for the North and East elevations is an option as is another/alternate wood composite board cladding type product such as Urbanline Euro dark cedar Selkta or equal.

Applicant's Response:

A number of high quality products were considered for the project with the final mix notated on the architectural plans. The nominated materials are standard for all Taco Bell stores and represent the best and most durable materials that are available. In order to maintain consistence for the brand, Council can appreciate that this is to be reflected in the selected materials which are also being implemented in the proposed Bathurst store (which is in a Heritage Conservation Area) and the proposed Tamworth store (which has been approved).

Planning Officer's Comments:

The material and colours proposed by the applicant are considered "corporate materials". Whilst not ideal given the location of the site in a high profile area and positioned on the fringe of the heritage conservation area, the fact that the building incorporates recessive colours, is well setback from Bathurst Road by around 9m and partly screened by the existing street trees in Bathurst Road renders the design acceptable. Adequate landscaping will assist with integrating the building within the streetscape. The material and colour proposed are considered acceptable in this setting.

Heritage Advisor's Recommendations

4. *The colour for the perimeter fencing should be similar to Windspray to best reflect and background the adjoining planting.*

Planning Officer's Comments:

A condition has been included in the draft conditions to ensure compliance with this request.

Heritage Advisor's Recommendations

5. *An additional tree should be provided to the northern end of the Eyles Street boundary planting at a similar spacing to the adjoining two proposed trees with the objective of screening the car park and loading bay areas in the vicinity.*

Applicant's Response:

An additional tree is not supported as this would screen and obscure the building from the street.

Planning Officer's Comments:

The landscape plan and recommended conditions incorporates tree planting that would assist in reducing the perceived bulk of the development and would provide for increased screening for adjoining properties. On balance, it is considered that the proposed landscaping for the site as amended by conditions of consent will ensure a good quality design which will complement the aesthetic quality and amenity for the development and surrounds.

Heritage Advisor's Recommendations

6. *An additional tree should be provided in the northern corner of the lawn space next to the Plant screen space, so as to increase the tall background planting to the south and west of the site and building while improving the screening to the service spaces.*

Applicant's Response:

The landscape plan will be amended to add the additional tree.

Planning Officer's Comments:

A condition has been included in the draft conditions of consent that requires the planting of an additional tree. The landscape plan incorporates tree planting that would assist in reducing the perceived bulk of the development and would provide for increased screening for adjoining properties. On balance, it is considered that the proposed landscaping for the site is of a good quality design and would complement the aesthetic quality and amenity for the development and surrounds.

Heritage Advisor's Recommendations

8. *The driveway surfaces including the new apron crossovers to Bathurst and Eyles Streets are to utilize Charcoal pigment to produce a dark grey coloured concrete consistent with the traditional Basalt colour in Orange.*

Applicant's Response:

The internal car park will be bitumen sealed and therefore pigmentation is not an option. The crossovers will be concrete but should not be pigmented as they will clash with the existing concrete footpaths and kerb and gutter.

Planning Officer's Comments:

It is considered that the proposed bitumen seal would provide a dark colouring which is adequate for this development in its heritage context.

Part 7 - Additional Local Provisions**7.1 - Earthworks**

This clause establishes a range of matters that must be considered prior to granting development consent for any application involving earthworks, such as:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*
- (b) the effect of the development on the likely future use or redevelopment of the land*
- (c) the quality of the fill or the soil to be excavated, or both*
- (d) the effect of the development on the existing and likely amenity of adjoining properties*
- (e) the source of any fill material and the destination of any excavated material*
- (f) the likelihood of disturbing relics*
- (g) the proximity to and potential for adverse impacts on any waterway, drinking water catchment or environmentally sensitive area*
- (h) any measures proposed to minimise or mitigate the impacts referred to in paragraph (g).*

The earthworks proposed in the application are limited to the extent of cutting and filling required for the proposed Takeaway Food and Drink Premise and associated site works. The extent of disruption to the drainage of the site is considered to be minor and will not detrimentally affect adjoining properties or receiving waterways.

The extent of the earthworks will not materially affect the potential future use or redevelopment of the site that may occur at the end of the proposed development's lifespan.

The site is not known to be contaminated, nor is the site known to contain any Aboriginal, European or Archaeological relics. Previous known uses of the site do not suggest that any relics are likely to be uncovered. However, conditions are imposed to ensure that should site works uncover a potential relic or artefact, works will be halted to enable proper investigation by relevant authorities and the proponent required to seek relevant permits to either destroy or relocate the findings.

The earthworks will be appropriately supported onsite and the change in ground level is not substantial. Therefore the effect on the amenity of adjoining properties is considered to be minor.

The site is not in proximity to any waterway, drinking water catchment or sensitive area. Conditions will be imposed to require a sediment control plan, including silt traps and other protective measures, to ensure that loose dirt and sediment does not escape the site boundaries.

7.2 - Flood Planning

This clause applies to land identified on the Flood Planning Map as a Flood Planning Area and requires that, before any consent is issued, Council must be satisfied that the proposal:

- (a) is compatible with the flood hazard of the land, and*
- (b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) incorporates appropriate measures to manage risk to life from flood, and*
- (d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

A flood level and freeboard were established as part of the assessment of the previously approved business premise and have been used as part of this development for the building. Council's Technical Services Division have recommended a condition of consent be attached to the notice of approval that requires the plans to be amended to reduce the height of the proposed car park to the existing natural surface levels. This will ensure that the proposed development is unlikely to change flooding regimes on or off the site and would be unlikely to cause or contribute to erosion, siltation or reduce riparian vegetation. Revised building and engineering plans with amended levels will therefore need to be submitted with any construction certificate. The revised levels will need to address any resultant grade changes so as to maintain appropriate access.

7.3 - Stormwater Management

This clause applies to all industrial, commercial and residential zones and requires that Council be satisfied that the proposal:

- (a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting onsite infiltration of water*
- (b) includes, where practical, onsite 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.*

The proposal has been designed to include permeable surfaces and includes onsite retention of stormwater through the use of detention basins. It is therefore considered that stormwater management is satisfactory.

7.6 - Groundwater Vulnerability

This clause seeks to protect hydrological functions of groundwater systems and protect resources from both depletion and contamination. Orange has a high water table and large areas of the LGA, including the subject site, are identified with "Groundwater Vulnerability" on the Groundwater Vulnerability Map. This requires that Council consider:

- (a) *whether or not the development (including any onsite storage or disposal of solid or liquid waste and chemicals) is likely to cause any groundwater contamination or have any adverse effect on groundwater dependent ecosystems, and*
- (b) *the cumulative impact (including the impact on nearby groundwater extraction for potable water supply or stock water supply) of the development and any other existing development on groundwater.*

Furthermore, consent may not be granted unless Council is satisfied that:

- (a) *the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) *if that impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that impact,*
- (c) *if that impact cannot be minimised - the development will be managed to mitigate that impact.*

The proposal is not anticipated to involve the discharge of toxic or noxious substances and is therefore unlikely to contaminate the groundwater or related ecosystems. The proposal does not involve extraction of groundwater and will therefore not contribute to groundwater depletion. The design and siting of the proposal has sought to avoid impacts on groundwater and is therefore considered acceptable.

The applicant will be required to enter into a trade waste agreement with Council in relation to the discharge of liquids associated with the Takeaway food and drink premise.

Clause 7.11 - Essential Services

Clause 7.11 applies and states:

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required:

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *storm water drainage or onsite conservation,*
- (e) *suitable road access.*

In consideration of this clause, all utility services are available to the land and are adequate for the proposal.

STATE ENVIRONMENTAL PLANNING POLICIES**State Environmental Planning Policy 55 Remediation of Land**

State Environmental Planning Policy 55 - Remediation of Land (SEPP 55) is applicable. Pursuant to Clause 7 *Contamination and remediation to be considered in determining development application*:

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
 - (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The previous use of 52-54 Bathurst Road and 27 Eyles Street was for the purpose of a plant nursery, locally known as Thomson's Nursery. The previous use is not considered to raise any concerns regarding potential contamination. The proposal is considered acceptable under the above policy.

State Environmental Planning Policy 64 - Advertising and Signage

State Environmental Planning Policy 64 - Advertising and Signage (SEPP 64) is applicable and states in part:

3 Aims, Objectives etc

- (1) *This Policy aims:*
 - (a) *to ensure that signage (including advertising):*
 - (i) *is compatible with the desired amenity and visual character of an area, and*
 - (ii) *provides effective communication in suitable locations, and*
 - (iii) *is of high quality design and finish, and*

(8) Granting of Consent to Signage

A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:

- (a) *that the signage is consistent with the objectives of this Policy as set out in Clause 3 (1) (a), and*
- (b) *that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.*

The proposal includes a banner sign and two illuminated entry signs for each access on both Bathurst Road and Eyles Street. The four illuminated entry signs (2.1m high – two at each entry/exit point) and the proposed banner sign along the Bathurst Road street frontage will result in a proliferation of signage along the street frontages and is therefore not supported.

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Further, Council's Technical Services Division have supported this position and have advised that the proposed entry/exit signage in particular should be removed due to traffic safety concerns indicating that all signage at these points should be limited to traffic directional signage that is approved by Transport for NSW. The submitted plans show that the banner signage has no content at this stage and is likely to be used for product advertising over time which is prohibited in any event under the provisions of the SEPP. In order to restrain the extent of signage on what is an important site on the entrance to the CBD attached is a condition of consent that requires the entry exit signage and the banner sign along Bathurst Road frontage to be removed. Given that the pylon sign and branding of the building have been supported, it is considered that the deletion of the entry signs and the banner is appropriate for the site.

The amended signage subject to the adoption of the recommendation are considered to consistent with the aims and objectives of the plan.

1 - Character of the Area

- *Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?*
- *Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?*

The area is characterised as a mix of commercial and established residential properties with signage primarily associated with the commercial uses and some educational uses such as Wolaroi school signage. The character of the area is also influenced by the proximity of the Glenroi Heritage Conservation Area and the nearby heritage items (particularly Memory Park opposite). The character of the land is further influenced by its high profile location on the entrance to the business area of the City.

Given the above, it is considered important to protect the character of the area by ensuring that any signage is consistent with the requirements of the SEPP. The proposed signage subject to the adoption of the recommended conditions of consent discussed above will ensure that the signage is consistent with existing character of the area.

2 - Special Areas

- *Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?*

Whilst the subject land is not within a residential zoning, nor is it within a heritage conservation area or a listed item, the land does adjoin a residential zoning and is located between a heritage conservation area and a heritage item.

Therefore, it is the opinion of Council staff that the land, in terms of the application of the SEPP, is considered a special area by virtue of the land's proximity to the residential land and heritage conservation area and heritage item. To this end, the signage within the development is to be limited to business identification signage only. This is consistent with the provisions of the DCP in relation to this site. Further the recommended conditions will ensure that signage is acceptable for this precinct.

3 - Views and Vistas

- *Does the proposal obscure or compromise important views?*
- *Does the proposal dominate the skyline and reduce the quality of vistas?*
- *Does the proposal respect the viewing rights of other advertisers?*

The proposed signage, apart from the 8.3m pylon and other signage discussed above is shown to be limited to flush wall signage and, as such will not obscure or compromise important views, nor will it dominate the skyline or jeopardise the viewing rights of other signs in the area. In terms of the 8.3m pylon sign, the sign is sited in a manner that will not impact upon views and is a height commensurate with the height of the proposed building and other pylon signage located along Bathurst Road. It is considered that proposed pylon signage will not dominate the skyline, nor reduce the quality of important view corridors.

4 - Streetscape, Setting or Landscape

- *Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?*
- *Does the proposal contribute to the visual interest of the streetscape, setting or landscape?*
- *Does the proposal reduce clutter by rationalising and simplifying existing advertising?*
- *Does the proposal screen unsightliness?*
- *Does the proposal protrude above buildings, structures or tree canopies in the area or locality?*
- *Does the proposal require ongoing vegetation management?*

As indicated above, the proposal included a banner sign and four large directional signage on both the Bathurst Road and Eyles Street entry/exist. A condition has been included in the attached Notice to remove the banner sign and entry exit signs completely. The overall scale, proportions and forms of the remaining signage are appropriate within the context of the setting.

Landscaping on the site has been designed as part of the overall proposal, and low maintenance vegetation and grasses will be planted around the pylon signage.

5 - Site and Building

- *Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?*
- *Does the proposal respect important features of the site or building, or both?*
- *Does the proposal show innovation and imagination in its relationship to the site or building, or both?*

As discussed above the proposed entry/exit signage and the banner sign along Bathurst Road are not supported. The remaining signage is considered to be compatible with the scale, proportion and other characteristics of the site and proposed buildings on the land. The proposed level of signage subject to the adoption of the recommended conditions is not unreasonable for this type of land use.

6 - Associated Devices and Logos with Advertisements and Advertising Structures

- *Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?*

The proposed signage does not include any safety devices, platforms or lighting devices that form an integral part of the signage or structure on which it is to be displayed. The proposed signage includes a corporate logo in the design, which meets the definition of business identification signage.

7 - Illumination

- *Would illumination result in unacceptable glare?*
- *Would illumination affect safety for pedestrians, vehicles or aircraft?*
- *Would illumination detract from the amenity of any residence or other form of accommodation?*
- *Can the intensity of the illumination be adjusted, if necessary?*
- *Is the illumination subject to a curfew?*

The proposed illumination is considered acceptable. Attached is a condition of consent which requires all lighting associated with the signage to be designed in accordance with AS4282 1997 - Control of the Obtrusive Effects of Outdoor Lighting.

The illumination of signage is unlikely to create an adverse impact for users of Bathurst Road, nor existing dwellings in the vicinity of the subject land.

8 - Safety

- *Would the proposal reduce the safety for any public road?*
- *Would the proposal reduce the safety for pedestrians or bicyclists?*
- *Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?*

Council's Technical Services Division advise that the two illuminated entry/exit signs located on both Bathurst Road and Eyles Street are not supported given that they have the potential to obstruct movement, obscure sightlines, or reduce the safety along the public road. Council's Technical Services Division have recommended that such signage is removed from the plans with all directional signage required for the site to be submitted for separate approval by both Orange City Council and Transport for NSW. Conditions attached to this effect.

STATE ENVIRONMENTAL PLANNING POLICIES

The following State Environmental Planning Policies apply to the subject development:

State Environmental Planning Policy Infrastructure 2007

Clauses 101 and 104 of this SEPP are applicable to this development, and are discussed below. Concurrence with the Transport NSW (TfNSW) is required for this proposal.

2.3 Development Application DA 120/2020(1) - 52-54 Bathurst Road, and 25 and 27 Eyles Street (Taco Bell)

101 - Development with Frontage to Classified Road

The primary objective of this clause is to ensure that new development does not compromise the effective and ongoing operation and function of classified roads. The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

- (a) *where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

104 - Traffic-Generating Development

This clause applies to a takeaway food and drink premise of any size where it has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access is within 90m of the connection. It requires the consent authority to give written notice of the application to the Transport NSW and take their response into consideration, as well as consider the accessibility of the site concerned, and any potential traffic safety, road congestion or parking implications of the development.

The requirements of the Transport NSW have been integrated into the notice of approval as conditions of consent, and are as follows:

- *The proposed driveway via the Mitchell Highway is to be undertaken via a left in and left out only arrangement.*
- *Construction of the driveway located along the Mitchell Highway may be subject to the developer and TfNSW entering into a Works Authorisation Deed (WAD) for the developer to undertake private financing and construction of any works along the State classified road network. The WAD is to be entered into prior to the commencement of demolition works.*
- *A detailed design is to be submitted by the proponent to TfNSW and Council for approval for the concrete layback driveway prior to construction. The driveway is to be designed to provide good sight lines between pedestrians and motorists, match road levels and not interfere with drainage.*
- *The design is to also include relevant signage, line marking and a concrete splay or similar in the driveway along the Mitchell Highway to advise customers that all egress from the site into the Mitchell Highway is left turn only.*

2.3 Development Application DA 120/2020(1) - 52-54 Bathurst Road, and 25 and 27 Eyles Street (Taco Bell)

- *The current line marking arrangement in the shoulder of the Mitchell Highway near the proposed driveway will be subject to TfNSW concurrence as part of the detailed design process.*
- *All vehicular movements to and from the site are to be undertaken in a forward movement.*
- *Prior to the issuance of an Occupation Certificate, any redundant kerb layback crossing accessed along the Mitchell Highway servicing the land are to be removed and replaced with kerb and gutter to match existing kerb and gutter. Driveways are to be designed and maintained to provide good sight lines between pedestrians and motorists, match road levels and not interfere with drainage.*
- *Landscaping, signage and fencing are not to impede the sight lines of traffic within or when passing, entering or departing the site. Safe Intersection Sight Distance (SISD) requirements outlined in Austroads Guide to Road Design Part 4A is to be provided in both directions at the intersection of the driveway and the Mitchell Highway.*
- *It was noted there are various mature trees located along the frontage of the site, any removal of vegetation required to be undertaken to meet requirements is subject to the relevant consent and does not form part of TfNSW concurrence.*
- *Any current arrangement of on-street parking along the site frontage of the Mitchell Highway is to be replaced by 'No Stopping' signage (R5-400) at minimum, either side of the driveway within the Mitchell Highway, by the proponent prior to occupation of the premises. Relevant and timely communication to adjoining land owners impacted as a result of this change should be managed by the consent authority.*
- *Adequate turning circles, storage room and vertical clearances are to be provided within the site for the largest type of vehicle (9m) that will need to access the site during construction and operation.*
- *All demolition works are to be undertaken within the bounds of the site only.*
- *Prior to the commencement of construction works, the proponent is to contact TfNSW Field Traffic Manager on 1300 656 371 to determine if a Road Occupancy Licence (ROL) is required. In the event that an ROL is required, the proponent is to obtain the ROL prior to works commencing within 3m of the travel lanes in the Mitchell Highway.*
- *Prior to the issue of an Occupation Certificate, all works required to facilitate the development shall be completed.*

It is considered that the site has been appropriately designed to ensure that access points, car parking, queuing, loading and manoeuvring arrangements are sufficient for the proposed take away premise, and will not adversely impact on the surrounding road network, or on neighbouring properties. It should be noted that access egress to Bathurst Road will be limited to a left in left out manoeuvre meaning that traffic travelling towards Bathurst would be required to access the development via Eyles Street.

PROVISIONS OF ANY DRAFT ENVIRONMENTAL PLANNING INSTRUMENT THAT HAS BEEN PLACED ON EXHIBITION 4.15(1)(a)(ii)

From 31 January to 13 April 2018 the Department of Planning and Environment publically exhibited an Explanation of Intended Effect (EIE) and Draft Planning Guidelines for the proposed Remediation of Land SEPP, which will repeal and replace State Environmental Planning Policy 55 – Remediation of Land (SEPP 55). Of particular note, the Draft Planning Guidelines state:

“In undertaking an initial evaluation, a planning authority should consider whether there is any known or potential contamination on nearby or neighbouring properties, or in nearby groundwater, and whether that contamination needs to be considered in the assessment and decision making process.”

“If the planning authority knows that contamination of nearby land is present but has not yet been investigated, it may require further information from the applicant to demonstrate that the contamination on nearby land will not adversely affect the subject land having regard to the proposed use.” (Proposed Remediation of Lands SEPP - Draft Planning Guidelines, Page 10).

The Draft Remediation of Land SEPP is applicable to this proposal. The Draft SEPP requires in part that consideration be given to potential contamination on nearby or neighbouring properties and groundwater.

The contaminated status of adjoining lands will not impact on the proposed development.

DESIGNATED DEVELOPMENT

The proposed development is not designated development.

INTEGRATED DEVELOPMENT

The proposed development is not integrated development although concurrence was required from Transport for NSW for access in the site from a classified road. Concurrence has been obtained from Transport for NSW (see above for details) and their requirements have been integrated as conditions of consent within the attached notice.

PROVISIONS OF ANY DEVELOPMENT CONTROL PLAN s4.15(1)(a)(iii)**Development Control Plan 2004**

Development Control Plan 2004 (“the DCP”) applies to the subject land, *Chapter 2 – Natural Resource Management, Chapter 8 - Development in Business Zones, Chapter 13 - Heritage, Chapter 14 - Advertising and Chapter 15 - Car Parking*). An assessment of the proposed development against the relevant Planning Outcomes has been undertaken below.

Chapter 2 - Natural Resource Management

Section 2.1 - Water Quality

Section 2.1 - Water Quality identifies that development that concentrates, redirects flows, increases flow rates or disturbs land in close proximity to creeks has the potential to affect waterways with associated erosion, sedimentation and release of nutrients, which combine to affect downstream water quality.

Section 2.1 also identifies that development involving groundwater extraction and/or onsite wastewater disposal is deemed to affect groundwater resources.

The relevant matters have previously been addressed in detail under the headings “7.3 - Stormwater” and “7.6 - Groundwater Vulnerability”.

It is considered that the requirements of the DCP have been adequately addressed by this proposal.

Section 2.2 - Soil Resources

Section 2.2 - Soil Resources identifies that soil characteristics influence land use and development capability, including the suitability for building footings, onsite waste disposal, road engineering and drainage.

Council’s Technical Services Division has recommended a condition of consent requiring that the development is to be constructed in accordance with Council’s Development and Subdivision Code. This has been included in the condition of consent.

Erosion and Sedimentation

The DCP sets the following Planning Outcome in regard to Erosion and Sedimentation:

- *Measures implemented during construction to ensure that the landform is stabilised and erosion is controlled.*

An erosion and sediment control plan will be required in conjunction with the engineering design plans for the development. A condition is recommended in relation to this matter.

It is considered that the requirements of the DCP have been adequately addressed.

Chapter 8 - Development in Business Zones

Business Services Areas

- *Applications clearly demonstrate that the development will not detract from the role of the CBD as a regional centre.*

The development is not likely to impact upon the primacy role of the CBD. This type of development is considered appropriate within the zone and will appeal to the travelling public.

- *Provision of adequate fire-safety measures and facilities for disabled persons (according to the BCA) is addressed at the application stage (relevant for all development but particularly important where converting residential buildings for business use).*

2.3 Development Application DA 120/2020(1) - 52-54 Bathurst Road, and 25 and 27 Eyles Street (Taco Bell)

Relevant conditions are attached in relation to fire-safety and disabled access. These are considerations relevant to the construction certificate stage of the development.

- *Heritage streetscapes are conserved and enhanced through adaptive reuse of heritage buildings, restrained advertising and landscaped gardens.*

The development is not considered to form part of a heritage streetscape and is essentially a vacant commercial site, albeit within a high profile area of the City. The design is considered appropriate for its setting and zoning.

- *Areas on the main roads into and out of Orange (such as Molong Road and Bathurst Road) provide a high level of architectural design to enhance the visual character of the City entrances.*

The site is a prominent and high profile site on the eastern entrance to the City and, as such, the architectural design of the development is of high importance.

The building is a modern design which has been designed for a specific use – Takeaway premises and is considered acceptable in terms of its visual character.

The application was supported by a detailed landscape plan. The proposed landscaping will ensure that the development is suitably integrates well with the Bathurst Road streetscape.

- *All sites contain an element of landscaping. Landscaping provided is of a bulk, scale and height relative to buildings nearest the front property boundary so as to provide beautification and visual relief to the built form proposed or existing on the site.*

The depth of the landscape bed at the site frontage is sufficient to accommodate the spread of plantings that meet the abovementioned outcomes but, where practicable, a minimum depth of 3m is provided. Plantings are designed to provide shade for parking areas, to break up large areas of bitumen, to enhance building preservation and to screen against noise.

A landscape plan has been submitted in support of the development. The development is considered appropriate in this regard. The proposal includes the removal of one street tree in Eyles Street to facilitate the new access. The Street tree is of poor quality and Council's City Presentation Manager supports its removal subject to a number of conditions including a condition to replant the existing blister within the road reserve on the corner of Bathurst Road and Eyles Street. A condition is recommended in relation to this matter.

Chapter 13 - Heritage

Development In The Vicinity Of Heritage Items

- *Development conforms with recognised conservation principles.*

Heritage considerations have been addressed in previous sections of this report.

Chapter 14 - AdvertisementsAdvertisements

- *The location, size, colour and design of advertisement complement the character of the locality.*
- *Advertisements on buildings fit within the envelope of the building.*

As indicated previously in this report, the proposed signage is considered appropriate for the type of business and its location.

- *Free-standing pole or pylon signs relate to the height of associated buildings in business and industrial areas.*

The applicant is proposing a pylon sign with a height of 8.3m. This is considered an appropriate height, consistent with the scale of the development and other signage within the vicinity.

High-Profile Areas

- *Business identification Signs complement the character of the locality.*

As indicated previously in this report, the proposed signage is considered appropriate for the type of business and its location.

Chapter 15 - Car Parking

Off-street car parking spaces are required to be provided at the following rates for specific land uses:

Land Use	Minimum Requirements
Fast Food outlet	Development with onsite seating and drive-through facilities, the greater of: <ul style="list-style-type: none"> • One (1) space per two seats (internal seating) • One (1) space per three seats (internal and external seating)
Plus an extension area for queuing of cars for a drive-through facility is required (queue length of five (5) to twelve (12) cars measured from pick-up point). There should also be a minimum of four (4) car spaces for cars queued from the ordering point.	

The submitted plans show that the development will incorporate 42 seats. The applicant has provided a total of 24 onsite spaces (including one disabled spaces and three spaces dedicated for staff parking) in compliance with the requirements of the DCP. The proposal incorporates queuing capacity for up to nine (9) vehicles including a minimum of four (4) spaces from the order point. The proposal complies with the above requirement.

Provision is to be made onsite or at a convenient location for the type of delivery or service vehicle appropriate to the type of development. Consideration is to be given to the type of vehicles that are likely to service the site. The plans show that an 8.8m delivery vehicle is able to service the development. Council's Technical Services Division have attached a condition that the maximum size vehicle allowed within the site be 8.8m.

PROVISIONS PRESCRIBED BY THE REGULATIONS s4.15(1)(a)(iv)**Demolition of a Building (clause 92)**

The proposal does not involve the demolition of a building.

Fire Safety Considerations (clause 93)

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

Buildings to be Upgraded (clause 94)

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

BASIX Commitments (clause 97A)

BASIX is not applicable to the proposed development. A Section J energy efficiency statement will be required with the Construction Certificate application.

THE LIKELY IMPACTS OF THE DEVELOPMENT s4.15(1)(b)**Context and Setting**

The context and setting of a particular area is established by taking into account the surrounding situation having regard for adjoining land-uses, scenic qualities, scale of surrounding development, previous land-use, etc.

The locality immediately surrounding the subject land, as well as the subject land itself is characterised as an area of mixed land uses including commercial land (i.e. the former use of the subject land as a nursery and adjacent petrol station for instance), residential land-uses and public spaces including Memory Park opposite the site.

In terms of the compatibility with adjoining residential land-uses, the development is considered acceptable. An acoustic report has been prepared that indicates the development will achieve the relevant noise criteria, subject to a number of conditions. The scale of the development is considered appropriate for the site and its zoning.

Safety and Security

The proposed development provides for passive surveillance of the street and surrounding area. The internal driveway design should ensure low speed traffic movements to facilitate pedestrian safety.

Initial discussions with NSW Police recommended that any approval should include a condition for closed-circuit television (CCTV). A condition has been included in the draft schedule of conditions.

As such, the proposed development is considered acceptable in relation to safety and security.

Residential Amenity

The proposed development adjoins residential land-uses on the southern and western boundaries and consideration of the residential amenity of these properties is critical to the assessment of the development and as such has been separated under the following headings.

Noise Impacts

The development is accompanied by an acoustic report prepared by Day Design Pty Consulting Acoustics Engineer dated December 13 March 2020. The report states that the development will meet the relevant noise criteria subject to a number of recommendations.

The recommendations from the acoustic consultant include:

- Acoustic fences should be constructed along the west boundary of the site extending approximately 35m from the northern most point to the north building line. This section of fence shall be constructed to a minimum height of 2.4m above the ground level of the drive-thru driveway.
- Acoustic fences shall be constructed for the remainder of the west boundary and the southern boundary to a minimum height of 1.8m above the ground level of the drive-thru driveway.
- The plant area should be constructed from an acoustically opaque material, such as Colorbond, lapped and capped timber, masonry etc, to a height of either 1.8m above ground level of the plant area or at least 600mm above the tallest item of plant (whichever is the greater).

Council's Environmental Health staff have reviewed the report and recommendations. The above recommendations have been addressed by appropriate conditions of consent.

Hours of Operation

The proposal is seeking consent to operate from Sunday to Thursday from 10am to 10pm and from 10am to 11pm on Friday and Saturday. The acoustic report indicates that the development will comply with noise requirements during these times. The proposed hours of operation are considered acceptable. A relevant condition is attached in relation to the hours of operation.

Traffic Impacts

The subject land is located adjacent to the Mitchell Highway which is a classified road. As such, Transport for NSW has the function of controlling the travel lanes of the subject road. Council's officers have undertaken consultation with Transport for NSW in relation to vehicle access and other related traffic issues. Council has obtained concurrence of Transport for NSW (previously known as RMS) and their requirements have been integrated as conditions of consent within the attached notice.

It is considered that the site has been appropriately designed to ensure that access points, car parking, queuing, loading and manoeuvring arrangements are sufficient for the proposed take away premise, and will not adversely impact on the surrounding road network, or on neighbouring properties. Transport for NSW will require access/egress to Bathurst Road to be limited to a left in left out manoeuvre meaning that customers traveling south-east towards Bathurst along the Mitchell Highway will be required to access the site via the channelized right turn lane into Eyles Street with egress for those customers travelling towards Bathurst to also be via Eyles Street and Bathurst Road. The additional traffic generated by the development is not expected to have any negative impact on the local road network. Council's Technical Services Division concur with the recommendations of Transport for NSW.

Visual Impacts

The development is not likely to present any unreasonable impacts in terms of visual amenity. The building is setback from Bathurst Road and partly screened by the existing street trees in Bathurst Road. Adequate landscaping will assist with integrating the building within the streetscape.

Public Domain

The proposal includes the removal of a street tree which is located on Eyles Street, to enable the construction of the new driveway. The removal of the street tree was supported by Council's Manager of City Presentation.

The Manager of City Presentation also recommended that the blister within the road reserve on the corner of Bathurst Road and Eyles Street be replanted. A number of conditions have been included in the notice of determination.

The development is not likely to unreasonably impact upon any public open space and is considered acceptable.

Waste Impacts

A Waste Management Plan has been provided with the application. The proposal provides for individual storage bins. The applicant has demonstrated that a heavy rigid vehicle (HRV) can access the site and leave in a forward direction.

A condition of consent has been included to restrict the collection of waste to specific hours.

The application has provided no details of the manner in which litter will be suitably managed both onsite and in the surrounding street network. Attached is a condition of consent which requires the applicant to submit a litter patrol management plan for the approval of the Manager of Building and Environment prior to the issue of a construction certificate. The litter patrol management plan will be required to detail the commitments required to be undertaken by the operator of the site to suitably manage the pick-up of rubbish from the site and the surrounding street network.

Social- economic Impacts

The development has the potential to provide for positive socio-economic impacts. The development will allow additional employment during both construction and operational phases of the development.

Economic Impacts

The development has the potential to result in positive economic impacts for the City. The development will create additional competition in the Takeaway food market. The development will also generate employment during the construction phase and ongoing employment within the hospitality sector.

Cumulative Impacts

The development is not likely to present any unreasonable cumulative impacts within the locality. The acoustic assessment concludes that the development is acceptable in terms of noise. The development is also considered acceptable in terms of traffic, parking and manoeuvring and will not present any unreasonable environmental impacts within the locality.

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

Adequate services are available to the site to facilitate the proposed development. The site is considered suitable for the proposed development.

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

The proposed development is defined as "advertised development" under the provisions of the LEP. The application was advertised for the prescribed period of 14 days and, at the end of that period, one submission was received in response.

Submission

The submission raised concerns about the location of the proposed driveway off Eyles Street and the potential impacts on their property due to the close proximity to their driveway.

Other concerns relate to accessing their driveway, increased traffic along a narrow street and the potential impacts of the development on their pets.



Figure 3 - looking towards the southern boundary of the site and the location of the proposed driveway. The existing street tree in Eyles Street will be removed to enable the construction of the new driveway.

Most of the buildings structures, including the ordering point, loading bay, main building and plant area, are located well away from the southern boundary, although it is acknowledged that the drive-thru is located in close proximity to the southern boundary. The construction of the acoustic fence (1.8m) and landscaping along with the site's design should minimise potential impact on adjoining residents. The submitted Environmental Noise Assessment Report prepared by Day Design states the development will meet the relevant noise criteria subject to a number of recommendations. These recommendations will be addressed by an appropriate conditions of consent.

The proposal complies with the parking provisions contained within the DCP. The proposal has provided a total of 24 onsite spaces (including one disabled spaces and three spaces dedicated for staff parking). The proposed development is not expected to have a significant impact on the existing road network.

2.3 Development Application DA 120/2020(1) - 52-54 Bathurst Road, and 25 and 27 Eyles Street (Taco Bell)

The application was also supported by a Plan of Management which outlines Noise Management Practices, Safety and Security Management Practices and complaint handling procedures, which should ensure that if any complaints arise during the operation of the business, these complaints should be appropriately managed by the operator. A condition is recommended in relation to this matter.

PUBLIC INTEREST s4.15(1)(e)

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

SUMMARY


The proposed development is permissible with the consent of Council. The proposed development complies with the relevant aims, objectives and provisions of Orange LEP 2011 (as amended) and DCP 2004. A Section 4.15 assessment of the development indicates that the development is acceptable in this instance. Attached is a draft Notice of Approval outlining a range of conditions considered appropriate to ensure that the development proceeds in an acceptable manner.

COMMENTS

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

ATTACHMENTS

- 1 Notice of Approval, D20/36902 [↓](#)
- 2 Plans, D20/36904 [↓](#)
- 3 Submission, D20/35648 [↓](#)

	<p style="text-align: center;">ORANGE CITY COUNCIL</p> <p style="text-align: center;">Development Application No DA 120/2020(1)</p> <p>NA20/ Container PR1206</p>
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NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

issued under the *Environmental Planning and Assessment Act 1979*
Section 4.18

Development Application

Applicant Name:	McDuck Properties Pty Limited
Applicant Address:	Attention: Mr H Abbott 300 Rainbow Street COOGEE NSW 2023
Owner's Name:	Thomsons Corner Pty Limited
Land to Be Developed:	Lot 507 DP 712206, Lots 3 and 4 DP 37362 – 52-54 Bathurst Road, 25 and 27 Eyles Street, Orange
Proposed Development:	Take Away Food and Drink Premises and Signage

Building Code of Australia building classification:

As determined by the Certifier

Determination made under Section 4.16

Made On:	7 July 2020
Determination:	CONSENT GRANTED SUBJECT TO CONDITIONS DESCRIBED BELOW:

Consent to Operate From:	8 July 2020
Consent to Lapse On:	8 July 2025

Terms of Approval

The reasons for the imposition of conditions are:

- (1) To ensure a quality urban design for the development which complements the surrounding environment.
- (2) To maintain neighbourhood amenity and character.
- (3) To ensure the utility services are available to the site and adequate for the development.
- (4) To prevent the proposed development having a detrimental effect on adjoining land uses.
- (5) To minimise the impact of development on the environment.

Conditions

- (1) The development must be carried out in accordance with:
 - (a) **Plans numbered: DA00 Cover Page and Location Plan, DA01 Site Plan, DA02 Site Traffic Plan Rev: D, DA03 Proposed Floor Plan Rev: D, DA04 Roof Plan, DA05 Elevation Sheet No 1, DA06 Elevation Sheet No 2, DA07 Boundary Elevations, DA08 Sections, DA09 Signage Plan, DA10 Signage Details Sheet No 1, DA11 Signage Details Sheet No 2, DA12 External Finishes**

- (b) statements of environmental effects or other similar associated documents that form part of the approval

as amended in accordance with any conditions of this consent.

PRESCRIBED CONDITIONS

- (2) All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- (3) A sign is to be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out.

- (4) Where any excavation work on the site extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (a) protect and support the adjoining premises from possible damage from the excavation, and
 - (b) where necessary, underpin the adjoining premises to prevent any such damage.

Note: This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to this condition not applying.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

- (5) The colour of the all external fencing shall be 'Windspray' or a similar colour. Full details are to be provided prior to the release of the Construction Certificate.
- (6) Prior to the release of the Construction Certificate the applicant shall submit a revised signage plan indicating that all of the concrete blade signs shown on the Bathurst Road and Eyles Street vehicle entry/exits (Signs Numbered S05 and SO8) are removed. The proposed banner sign does not form part of this consent and shall be removed from the revised signage plan.
- (7) Traffic movements into the development from Eyles Street and from the development onto Bathurst Road (Mitchell Highway SH7) shall be in accordance with the requirements of Transport for NSW (TfNSW) as articulated in their letter dated 9 June 2020. The TfNSW requirements for the development are:
- The proposed driveway via the Mitchell Highway is to be undertaken via a left in and left out only arrangement.
 - Construction of the driveway located along the Mitchell Highway may be subject to the developer and TfNSW entering into a Works Authorisation Deed (WAD) for the developer to undertake private financing and construction of any works along the State classified road network. The WAD is to be entered into prior to the commencement of demolition works.
 - A detailed design is to be submitted by the proponent to TfNSW and Council for approval for the concrete layback driveway prior to construction. The driveway is to be designed to provide good sight lines between pedestrians and motorists, match road levels and not interfere with drainage.

- The design is to also include relevant signage, line marking and a concrete splay or similar in the driveway along the Mitchell Highway to advise customers that all egress from the site into the Mitchell Highway is left turn only.
- The current line marking arrangement in the shoulder of the Mitchell Highway near the proposed driveway will be subject to TfNSW concurrence as part of the detailed design process.
- All vehicular movements to and from the site are to be undertaken in a forward movement.
- Adequate turning circles, storage room and vertical clearances are to be provided within the site for the largest type of vehicle (9m) that will need to access the site during construction and operation.

Any removal of vegetation required to be undertaken to meet the above requirements is subject to the relevant consent being obtained from Orange City Council and does not form part of TfNSW concurrence.

Full details of the above requirements shall be submitted to Orange City Council and Transport for NSW for approval prior to the release of the Construction Certificate.

- (8) A detailed amended Landscaping Plan shall be submitted to and approved by Council's Manager Development Assessments prior to the issue of a Construction Certificate. The amended landscaping plan shall incorporate the following:
- One (1) additional tree in the northern corner of the lawn area next to the plant screen. The subject trees shall have a mature height commensurate with the height buildings on the land.
 - The Landscape Plan shall be modified to include the blister within the road reserve on the corner of Eyles Street and Bathurst Road. The amended Landscape Plan shall specify a minimum of two deciduous trees attaining a minimum height of 4m and a maximum height of 6m on maturity (due to close proximity to overhead power lines). The trees shall have a minimum lot size of 100 litre. Low understorey/groundcover plants shall also be incorporated into the amended Landscape Plan.
 - A replacement street tree of the same species of those existing within Eyles Street. The tree shall be replaced at full cost by the applicant with super-advanced trees of a species nominated by Council's relevant officer.

The clearing of existing vegetation within the blister shall be the responsibility of the proponent and undertaken following Council's WHS procedures.

- (9) An approval under Section 68 of the *Local Government Act* is to be sought from Orange City Council, as the Water and Sewer Authority, for alterations to water and sewer. No plumbing and drainage is to commence until approval is granted.
- (10) Prior to the issue of the Construction Certificate, evidence shall be submitted to Council of the lodgement of plans with the Department of Lands and Property Information to consolidate Lots 3 and 4 in DP 37362 and Lot 507 in DP 712206 into one parcel.
- (11) The applicant shall prepare and submit a Litter Patrol Management Plan for the approval of the Manager of Development Assessment prior to the issue of a construction certificate. The Litter Patrol Management plan shall detail the commitments required to be undertaken by the operator of the premises to suitably manage the pick-up of rubbish from the site and the surrounding street network and open spaces.
- (12) Engineering plans, showing details of all proposed work and adhering to any engineering conditions of development consent, are to be submitted to, and approved by, Orange City Council or an Accredited Certifier (Categories B1, C3, C4, C6) prior to the issuing of a Construction Certificate.
- (13) A water and soil erosion control plan is to be submitted to Orange City Council or an Accredited Certifier (Categories B1, C3, C4, C6) for approval prior to the issuing of a Construction Certificate. The control plan is to be in accordance with the Orange City Council Development and Subdivision Code and the Landcom, Managing Urban Stormwater; Soils and Construction Handbook.

- (14) The development's stormwater design is to include stormwater detention within the development, designed to limit peak outflows from the land to the pre-existing natural outflows up to the 100 year ARI frequency, with sufficient allowance in overflow spillway design capacity to safely pass flows of lower frequency (that is, a rarer event) without damage to downstream developments. Where appropriate, the spillway design capacity is to be determined in accordance with the requirements of the Dam Safety Committee.

The design of the detention storage is to be undertaken using the ILSAX/DRAINS rainfall-runoff hydrologic model or an approved equivalent capable of assessing runoff volumes and their temporal distribution as well as peak flow rates. The model is to be used to calculate the flow rates for the existing and post-development conditions. The developed flows are to be routed through the proposed storage within the model so that the outflows obtained are no greater than the flows obtained for the pre-existing natural flows. A report detailing the results of the analysis, which includes:

- catchment plan showing sub-catchments under existing and developed conditions;
- schematic diagram of the catchment model showing sub areas and linkages;
- tabulation detailing the elevation, storage volume and discharge relationships; and
- tabulation for the range of frequencies analysed, the inflows, outflows and peak storage levels for both existing and developed conditions;

together with copies of the data files for the model and engineering design plans of the required drainage system are to be submitted to Orange City Council upon application for a Construction Certificate.

The detention basin design shall allow for inundation of the site during flood events. Signage to alert users of the carpark of the risk of flooding shall be installed.

- (15) Engineering plans providing complete details of the proposed driveway and car parking areas are to be submitted to Orange City Council or an Accredited Certifier (Categories B1, C3, C4, C6) upon application for a Construction Certificate. These plans are to provide details of levels, cross falls of all pavements, proposed sealing materials and proposed drainage works and are to be in accordance with Orange City Council Development and Subdivision Code.

The submitted plans shall also detail modifications to the proposed parking, entrance gates and driveway to accommodate the turn path of a 9.0m heavy vehicle with a minimum 0.3m clearance to parking spaces, kerbs and other structures.

The parking layout shall be generally as per the approved plans with the following additional details:

- Parking space dimensions shall be in accordance with AS2890.1; and
- Parking spaces assigned to staff parking and general parking to be clearly identified by signage or line marking; and
- All heavy vehicle servicing areas shall be clearly identified by signage or line marking; and
- Pedestrian crossing line marking shall be installed between the front entry area and the Bathurst Road footpath; and
- The two existing vehicle laybacks/footpath crossings in Eyles Street shall be removed and the footpath reserve reinstated; and
- The concrete blade signs shown on the Bathurst Road and Eyles Street vehicle entry/exits shall be removed. Signage at the entry/exit points shall be limited to regulatory signage on posts as required by TfNSW.

- (16) A Liquid Trade Waste Application is to be submitted to Orange City Council prior to the issuing of a Construction Certificate. The application is to be in accordance with Orange City Council's Liquid Trade Waste Policy. Engineering plans submitted as part of the application are to show details of all proposed liquid trade waste pre-treatment systems and their connection to sewer.

Where applicable, the applicant is to enter into a Liquid Trade Waste Service Agreement with Orange City Council in accordance with the Orange City Council Liquid Trade Waste Policy.

- (17) **Payment of contributions for water, sewer and drainage works** is required to be made at the contribution rate applicable at the time that the payment is made. The contributions are based on 0.30 ETs for water supply headworks and 2.28 ETs for sewerage headworks. A Certificate of Compliance, from Orange City Council in accordance with the *Water Management Act 2000*, will be issued upon payment of the contributions.

This Certificate of Compliance is to be submitted to the Principal Certifying Authority prior to the issuing of a Construction Certificate.

- (18) Backflow Prevention Devices are to be installed to AS3500 and in accordance with Orange City Council Backflow Protection Guidelines. Details of the Backflow Prevention Devices are to be submitted to Orange City Council prior to the issuing of a Construction Certificate.

Certificates for testable Backflow Prevention Devices are to be submitted to Orange City Council by a plumber with backflow qualifications prior to the issue of an Occupation Certificate.

- (19) A Road Opening Permit in accordance with Section 138 of the *Roads Act 1993* must be approved by Council prior to **a Construction Certificate being issued or any intrusive works** being carried out within the public road or footpath reserve.

- (20) The minimum floor level of the building shall be 866.75m AHD. The Construction Certificate plans shall be amended to reduce the height of the carpark to existing natural surface levels. No filling of the site shall occur below the existing 865.9m AHD contour other than the footprint of the proposed building and pedestrian access paths. All vehicle manoeuvring areas, carparks and landscaping below the existing 865.9m AHD contour shall be constructed to the existing natural ground levels.

- (21) Prior to the issue of a Construction Certificate, written approval shall be obtained from Telstra/NBN for any relocation or modification works to the existing telecommunications pit located in the Eyles Street vehicle crossover.

PRIOR TO WORKS COMMENCING

- (22) A Construction Certificate application is required to be submitted to, and issued by Council/Accredited Certifier prior to any excavation or building works being carried out onsite.
- (23) A temporary onsite toilet is to be provided and must remain throughout the project or until an alternative facility meeting Council's requirements is available onsite.
- (24) The location and depth of the sewer junction/connection to Council's sewerage system is to be determined to ensure that adequate fall to the sewer is available.
- (25) Soil erosion control measures shall be implemented on the site.
- (26) Prior to the commencement of construction works, the proponent is to contact TfNSW Field Traffic Manager on 1300 656 371 to determine if a Road Occupancy Licence (ROL) is required. In the event that an ROL is required, the proponent is to obtain the ROL prior to works commencing within 3m of the travel lanes in the Mitchell Highway.

DURING CONSTRUCTION/SITEWORKS

- (27) All construction/demolition work on the site is to be carried out between the hours of 7am and 6pm Monday to Friday inclusive, 7am to 5pm Saturdays and 8am to 5pm Sundays and Public Holidays. Written approval must be obtained from the General Manager of Orange City Council to vary these hours.
- (28) All materials on site or being delivered to the site are to be contained within the site. The requirements of the *Protection of the Environment Operations Act 1997* are to be complied with when placing/stockpiling loose material or when disposing of waste products or during any other activities likely to pollute drains or watercourses.

- (29) No portion of the building - including footings, eaves, overhang and service pipes - shall encroach into any easement.
- (30) All services (water, sewer and stormwater) shall be laid outside the easement unless there is a direct connection to the main within that easement.
- (31) Any adjustments to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer.
- (32) The provisions and requirements of the Orange City Council Development and Subdivision Code are to be applied to this application and all work constructed within the development is to be in accordance with that Code.

The developer is to be entirely responsible for the provision of water, sewerage and drainage facilities capable of servicing the development from Council's existing infrastructure. The developer is to be responsible for gaining access over adjoining land for services where necessary and easements are to be created about all water, sewer and drainage mains within and outside the lots they serve.
- (33) All driveway and parking areas are to be sealed with hot mix or concrete and are to be designed for all expected loading conditions (provided however that the minimum pavement depth for gravel and flush seal roadways is 200mm) and be in accordance with the Orange City Council Development and Subdivision Code. In the event that concrete is proposed a "charcoal" pigment to produce a dark grey coloured concrete finish will be required.
- (34) Heavy-duty concrete kerb and gutter laybacks and footpath crossings are to be constructed for the entrances to the proposed development. The location and construction of the laybacks and footpath crossings are to be as required by the Orange City Council Development and Subdivision Code, Road Opening Permit and TfNSW requirements.
- (35) The existing 150mm diameter sewer main that crosses the site is to be accurately located. Where the main is positioned adjacent to any proposed building work, measures are to be taken in accordance with Orange City Council Policy - Building over and/or adjacent to sewers ST009.
- (36) The water and sewerage services to the existing allotments, where they are not proposed to be used as part of this development, are to be sealed off at their respective Council mains.
- (37) The fit-out of the food preparation and storage areas are to be installed in accordance with the requirements of Food Safety Standard 3.2.3 "Food Premises and Equipment" of the Australian New Zealand Food Standards Code and Australian Standard 4674-2004 "Design and construction and fit-out of food premises".
- (38) In the event of an unexpected find during works such as (but not limited to) the presence of undocumented waste, odorous or stained soil, asbestos, structures such as underground storage tanks, slabs, or any contaminated or suspect material, all work on site must cease immediately. The beneficiary of the consent must discuss with Council the appropriate process that should be followed therein. Works on site must not resume unless the express permission of the Director Development Services is obtained in writing.
- (39) All demolition works are to be undertaken within the bounds of the site only.

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE
--

- (40) No person is to use or occupy the building or alteration that is the subject of this approval without the prior issuing of an Occupation Certificate.
- (41) Prior to the issuance of an Occupation Certificate, any redundant kerb layback crossing accessed along the Mitchell Highway servicing the land are to be removed and replaced with kerb and gutter to match existing kerb and gutter. Driveways are to be designed and maintained to provide good sight lines between pedestrians and motorists, match road levels and not interfere with drainage.

- (42) Landscaping, signage and fencing shall not to impede the sight lines of traffic within or when passing, entering or departing the site. Safe Intersection Sight Distance (SISD) requirements outlined in Austroads Guide to Road Design Part 4A is to be provided in both directions at the intersection of the driveway and the Mitchell Highway.
- (43) Any current arrangement of on-street parking along the site frontage of the Mitchell Highway is to be replaced by 'No Stopping' signage (R5-400) at minimum, either side of the driveway within the Mitchell Highway, by the proponent prior to occupation of the premises. Relevant and timely communication to adjoining land owners impacted as a result of this change should be managed by the consent authority.
- (44) Prior to the issue of an Occupation Certificate, all works required by Transport NSW to facilitate the development shall be completed.
- (46) Finished ground levels are to be graded away from the buildings and adjoining properties and must achieve natural drainage. The concentrated flows are to be dispersed down slope or collected and discharged to the stormwater drainage system.
- (47) The owner of the building/s must cause the Council to be given a Final Fire Safety Certificate on completion of the building in relation to essential fire or other safety measures included in the schedule attached to this approval.
- (48) A total of 24 off-street car parking spaces are to be provided upon the site in accordance with the approved plans and the provisions of Development Control Plan 2004. The parking spaces are to be constructed in accordance with the requirements of Council's Development and Subdivision Code, prior to the issuing of an Occupation Certificate.
- (49) Where Orange City Council is not the Principal Certifying Authority, a final inspection of water connection, sewer and stormwater drainage shall be undertaken by Orange City Council and a final Notice of Inspection issued, prior to the issue of either an interim or a final Occupation Certificate.
- (50) The cut and fill is to be retained and/or adequately battered and stabilised (within the allotment) prior to the issue of an Occupation Certificate.

Landscaping shall be installed in accordance with the approved plans and shall be permanently maintained to the satisfaction of Councils Manager Development Assessments.
- (51) A Certificate of Compliance, from a Qualified Engineer, stating that the stormwater detention basin complies with the approved engineering plans is to be submitted to the Principal Certifying Authority prior to the issuing of an Occupation Certificate.
- (52) Certification from Orange City Council is required to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate stating that all works relating to connection of the development to Council assets, works on public land, works on public roads, stormwater, sewer and water reticulation mains and footpaths have been carried out in accordance with the Orange City Council Development and Subdivision Code and the foregoing conditions, and that Council will take ownership of the infrastructure assets.
- (53) A Road Opening Permit Certificate of Compliance is to be issued for the works by Council prior to any Occupation/Final Certificate being issued for the development.
- (54) Prior to the issue of an Occupation Certificate Lot 507 DP 712206, and Lots 3 and 4 DP 37362 shall be consolidated. An easement, to drain sewage and to provide Council access for maintenance of sewerage works, a minimum of 2.0m wide is to be created over the existing sewer main. Evidence that the lots have been consolidated and the sewer easement has been registered shall be submitted to the Principal Certifying Authority prior to issuing of an Occupation Certificate.
- (55) Certificates for testable Backflow Prevention Devices are to be submitted to Orange City Council by a plumber with backflow qualifications prior to the issue of an Occupation Certificate.

- (56) Acoustic fences are to be constructed along the western boundary of the site extending approximately 35m from the northern most point of the northern building line. This section of fence shall be constructed of lapped and capped hardwood fencing (excluding post and rails) to a minimum height of 2.4m above ground level of the drive-thru driveway. Acoustic fences shall be constructed for the remainder of the western and southern boundaries to a minimum height of 1.8m above the ground level of the drive-thru driveway, in accordance with the Environmental Noise Assessment Report 6934-1.1R, prepared by Day Design Pty Ltd.
- (57) The plant area is to be constructed from an acoustically opaque material, such as Colorbond, lapped and capped timber, masonry etc, to a height of either 1.8m above ground level of the plant area or at least 600mm above the tallest item of plant, whichever is the greater, in accordance with the Environmental Noise Assessment Report 6934-1.1R, prepared by Day Design Pty Ltd.
- (58) The total sound power level of plant installed within the plant area shall not exceed 76 dBA, and the total sound power level for all rooftop plant shall not exceed 85 dBA, in accordance with the Environmental Noise Assessment Report 6934-1.1R, prepared by Day Design Pty Ltd.
- (59) All of the foregoing conditions are to be at the full cost of the developer and to the requirements and standards of the Orange City Council Development and Subdivision Code, unless specifically stated otherwise. All work required by the foregoing conditions is to be completed prior to the issuing of an Occupation Certificate, unless stated otherwise.

MATTERS FOR THE ONGOING PERFORMANCE AND OPERATION OF THE DEVELOPMENT

- (60) The proposed floodlighting of the premises is to be designed, positioned, and installed, including appropriate shielding and orientation of the lighting fixture, as to not give rise to obtrusive light, interfere with traffic safety or detract from the amenity of surrounding properties in accordance with Australian Standard 4282:1997 - Control of the obtrusive effects of outdoor lighting.
- (61) An assessment of noise emissions from the premises is to be provided to Council within three months from the issue of any Occupation Certificate. This commissioning report is to indicate noise levels through the monitoring of noise emanating from the normal peak use of the premises and determine if any necessary noise mitigation measures are required. Any identified mitigation works shall be carried out within one month of the commissioning report, and the operation of the premises shall be carried out in accordance with any recommendations set out in the report.
- (62) Truck deliveries to the site are to occur only between the hours of 7am and 6pm.
- (63) Without the prior approval of Council, the hours of operation of the premises are not to exceed Sunday to Monday 10am to 10pm and from 10am to 11pm on Friday and Saturday.
- (64) Restaurant seating shall be no greater than 42 seats.
- (65) The operational controls contained within the approved Litter Patrol Management Plan and the Plan of Management must be complied with at all times.
- (66) A closed circuit television system (CCTV), incorporating digital video surveillance cameras and recorders, being installed and maintained on the premises and car parking area and to be operated during trading hours. The video surveillance cameras are also to continue recording for 30 minutes after closure of the premises.

Other Approvals

- (1) *Local Government Act 1993* approvals granted under Section 68.
Nil
 - (2) General terms of other approvals integrated as part of this consent.
Nil
-

Right of Appeal

If you are dissatisfied with this decision, Section 8.7 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court. Pursuant to Section 8.10, an applicant may only appeal within 6 months after the date the decision is notified.

Disability Discrimination Act 1992:

This application has been assessed in accordance with the *Environmental Planning and Assessment Act 1979*. No guarantee is given that the proposal complies with the *Disability Discrimination Act 1992*.

The applicant/owner is responsible to ensure compliance with this and other anti-discrimination legislation.

The *Disability Discrimination Act* covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references AS1428.1 - "Design for Access and Mobility". AS1428 Parts 2, 3 and 4 provides the most comprehensive technical guidance under the *Disability Discrimination Act* currently available in Australia.

Disclaimer - S88B of the Conveyancing Act 1919 - Restrictions on the Use of Land:

The applicant should note that there could be covenants in favour of persons other than Council restricting what may be built or done upon the subject land. The applicant is advised to check the position before commencing any work.

Signed:

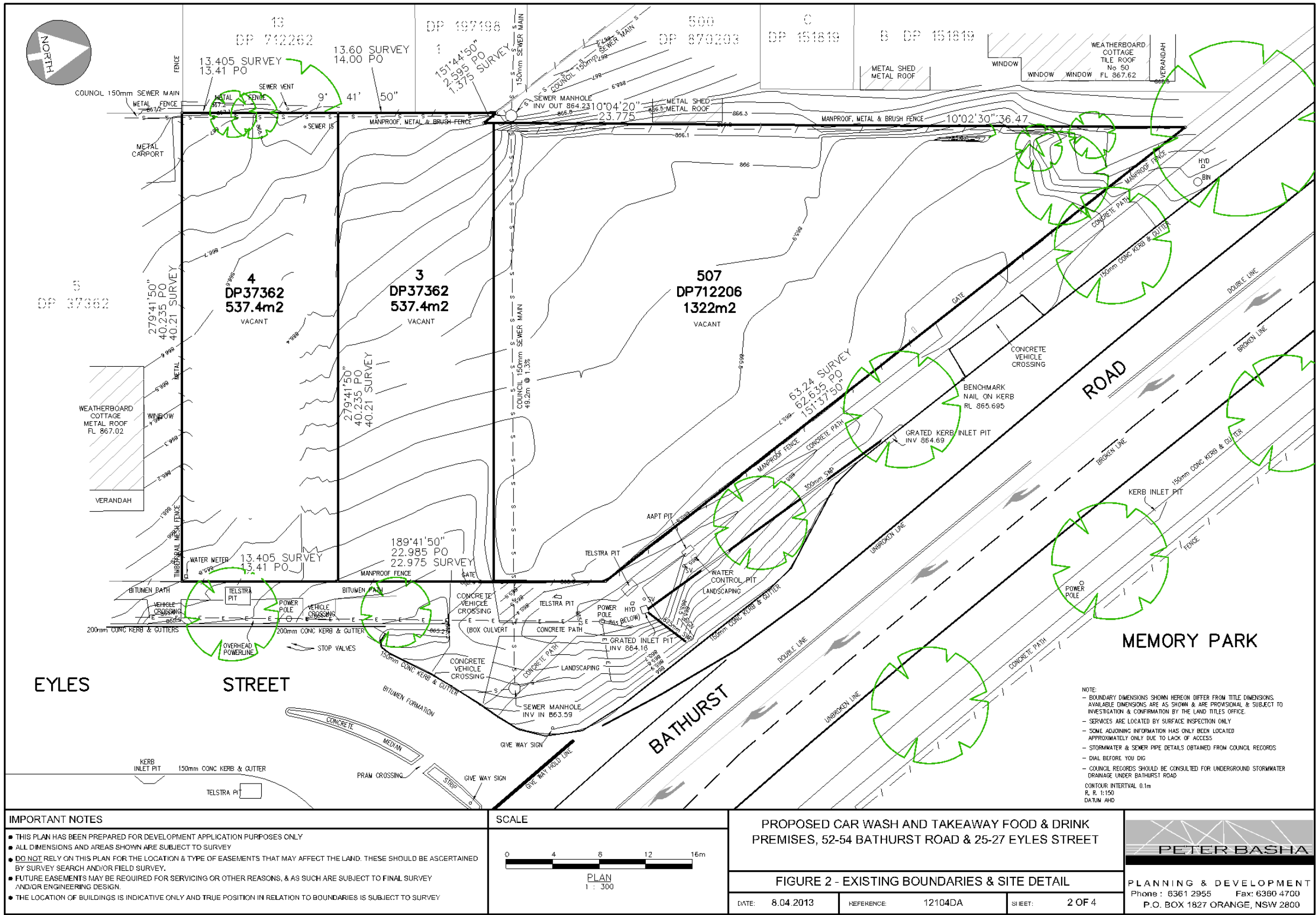
On behalf of the consent authority **ORANGE CITY COUNCIL**

Signature:**Name:**

PAUL JOHNSTON - MANAGER DEVELOPMENT ASSESSMENTS

Date:

8 July 2020





TACO BELL ORANGE
52-54 BATHURST ROAD, ORANGE NSW 2800

DRAWING LIST

- DA00 COVER PAGE & LOCATION PLAN
- DA01 SITE PLAN
- DA02 SITE TRAFFIC PLAN
- DA03 PROPOSED FLOOR PLAN
- DA04 ROOF PLAN
- DA05 ELEVATIONS SHEET 1
- DA06 ELEVATIONS SHEET 2
- DA07 BOUNDARY ELEVATIONS
- DA08 SECTIONS
- DA09 SIGNAGE PLAN
- DA10 SIGNAGE DETAILS - SHEET 01
- DA11 SIGNAGE DETAILS - SHEET 02
- DA12 EXTERNAL FINISHES



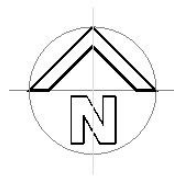
SITE LOCATION

52-54 BATHURST ROAD
ORANGE
NSW 2800



NOMINATED
ARCHITECT:
MAURICE BERALDO
NSW Reg 6354
VIC Reg 4884

Suite 14, Level 3
22-36 Mountain Street
Ultimo NSW 2007
T 02 9281 6177
bdai.com.au



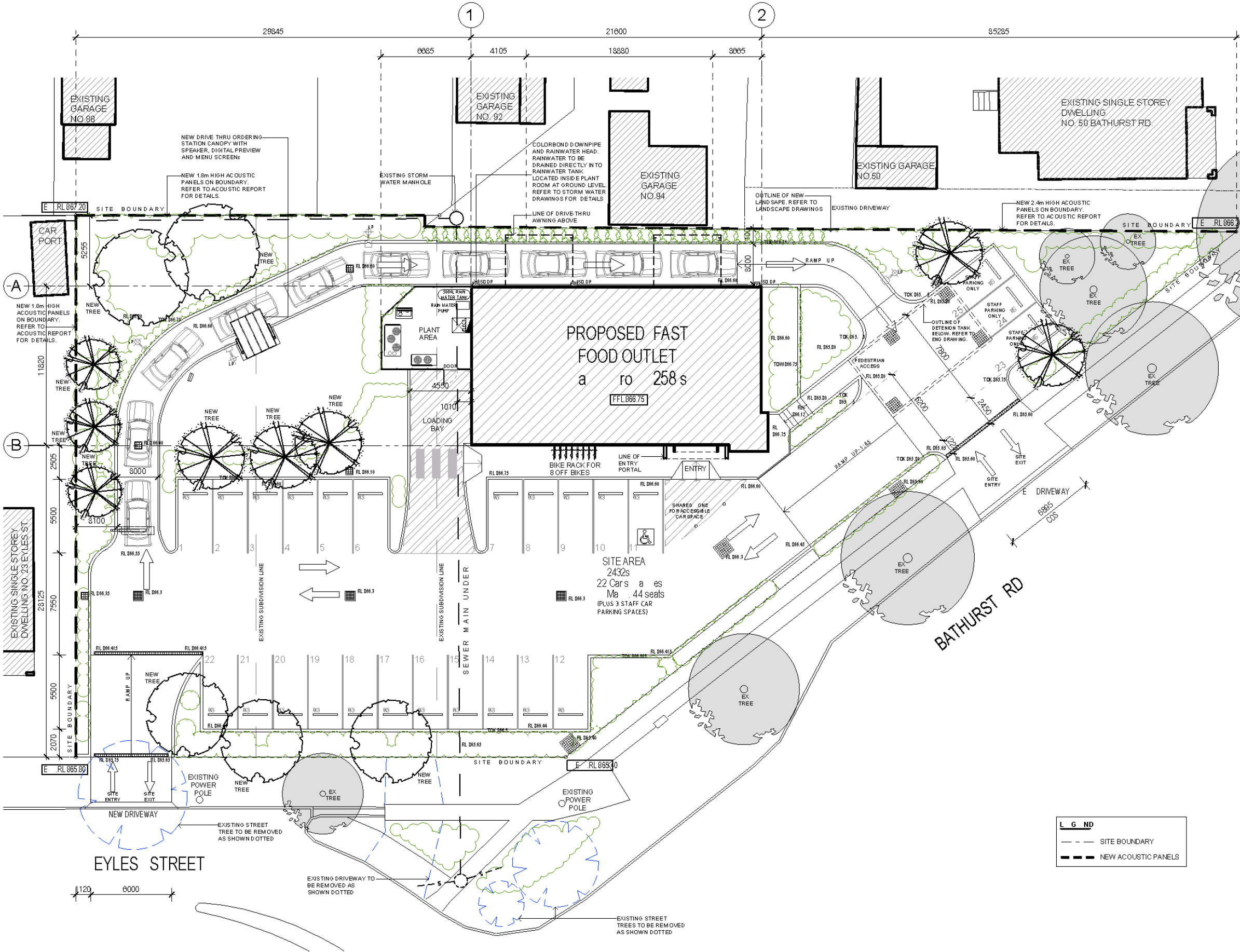
NOTE: WORK TO COMPLY WITH AS 4674.2004
CONSTRUCTION & FITOUT OF FOOD PREMISES

DA ISSUE

project TACO BELL ORANGE 52-54 BATHURST RD ORANGE, NSW 2800		
drawing COVERPAGE & LOCATION PLAN		
project ref 20102	date MAR 2020	checked BK
scale NTS @ A3	dwg. no. DA00	rev. A

amendments		

20/02/20	DAISSUE	A
date	index	rev.
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ARCHITECT:
MAURICE BERALDO
NSW Reg 6354
VIC Reg 4884
Suite 14, Level 3
22-36 Mountain Street
Ultimo NSW 2007
T 02 9281 6177
bdai.com.au

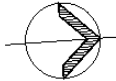


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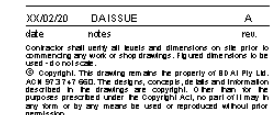
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TACO BELL ORANGE
52-54 BATHURST RD
ORANGE, NSW 2800
drawing
SITE PLAN

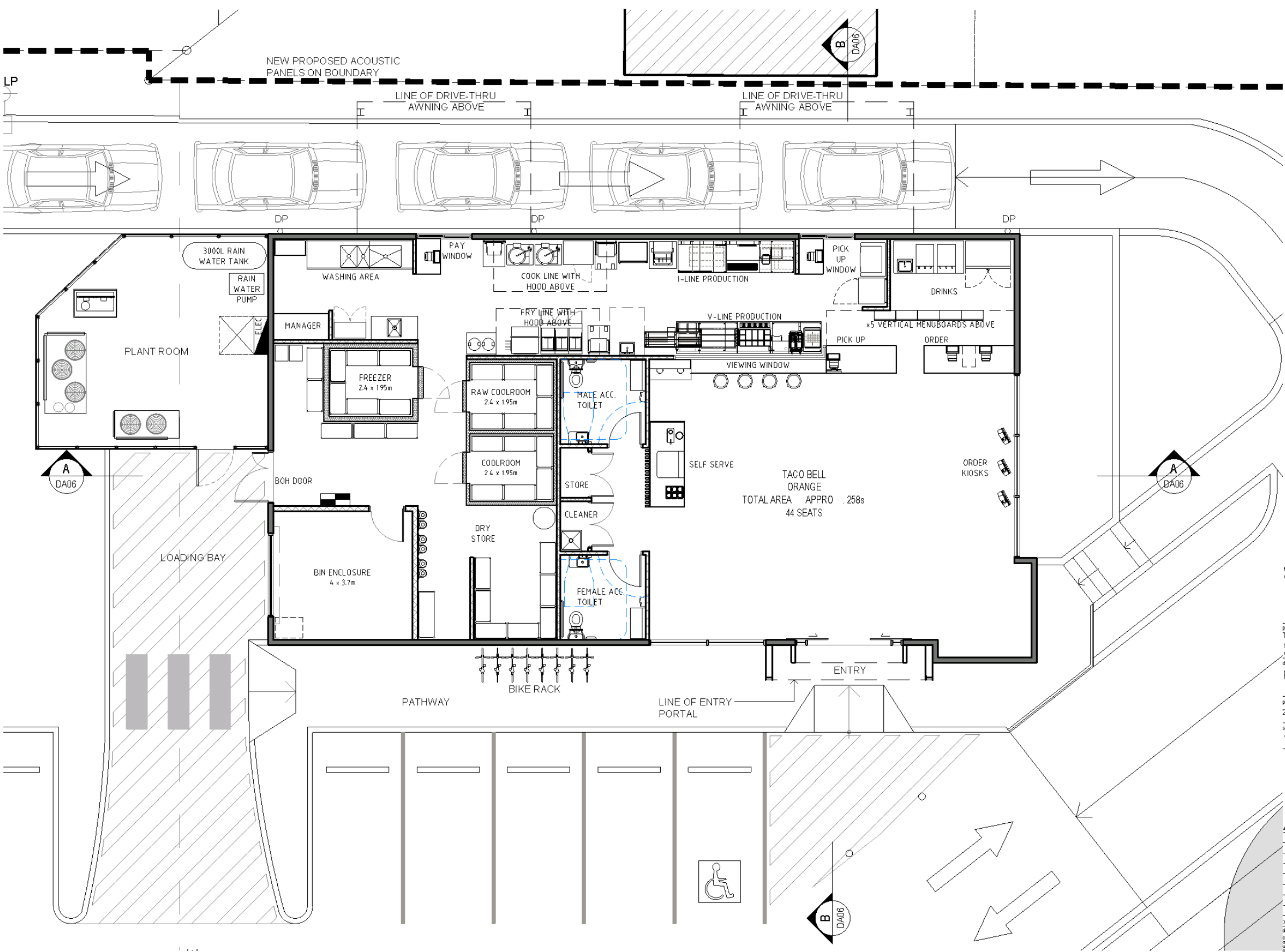
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INTERIORS

NOMINATED
ARCHITECT:
MAURICE BERALDO
NSW Reg 6354
VIC Reg 4884
Suite 14, Level 3
22-36 Mountain Street
Ultimo NSW 2007
T 02 9281 6177
bdai.com.au

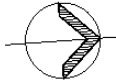


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CONSTRUCTION & FITOUT OF FOOD PREMISES

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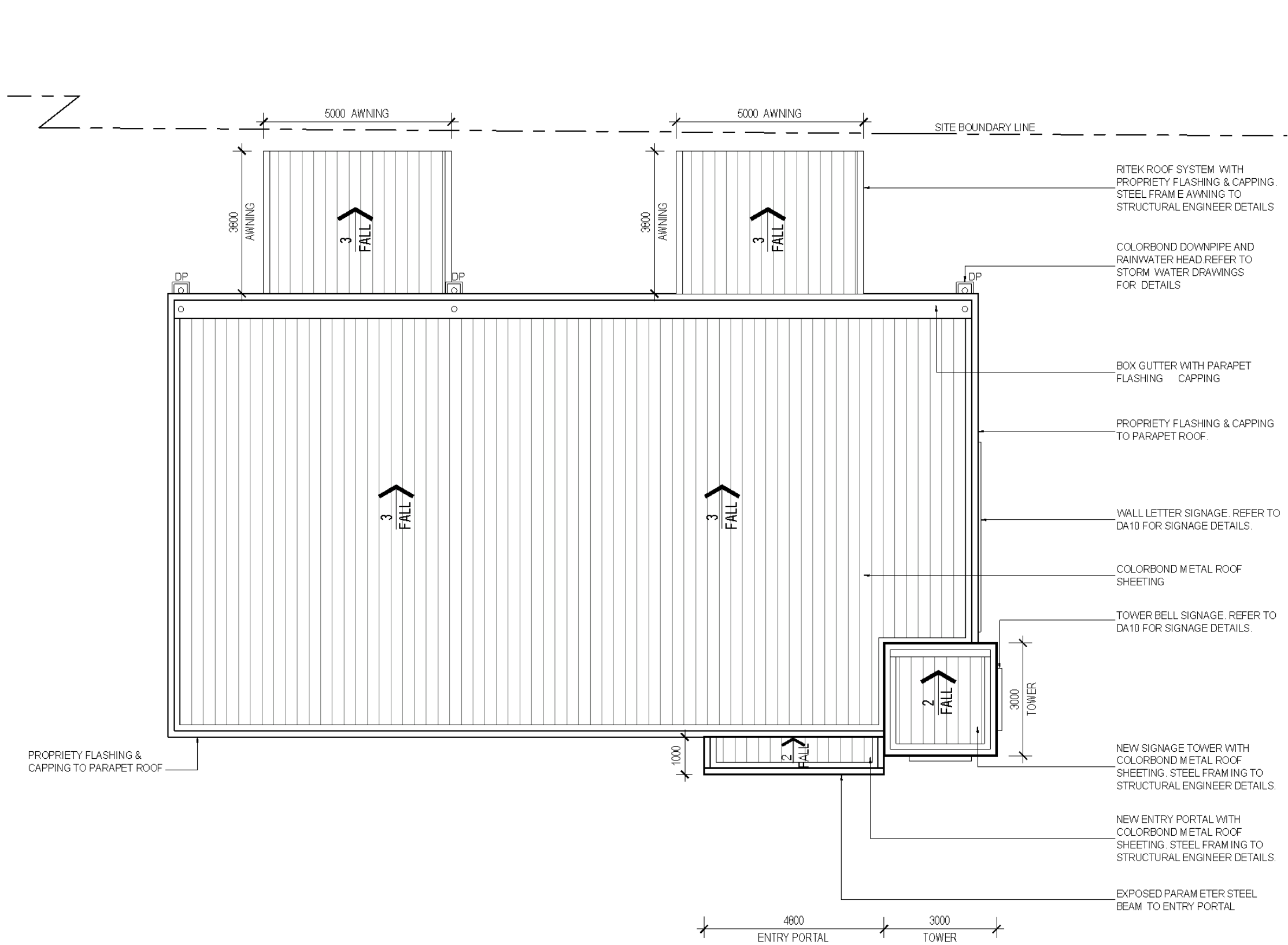
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TACO BELL ORANGE
52-54 BATHURST RD
ORANGE, NSW 2800
drawing
PROPOSED FLOOR PLAN

project ref	date	checked
20102	MAR 2020	BK
scale	dwg. no.	rev.
1:100 @ A3	DA03	A



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ARCHITECT:
MAURICE BERALDO
NSW Reg 6354
VIC Reg 4884

Suite 14, Level 3
22-36 Mountain Street
Ultimo NSW 2007
T 02 9281 6177
bdai.com.au

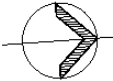


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CONSTRUCTION & FITOUT OF FOOD PREMISES

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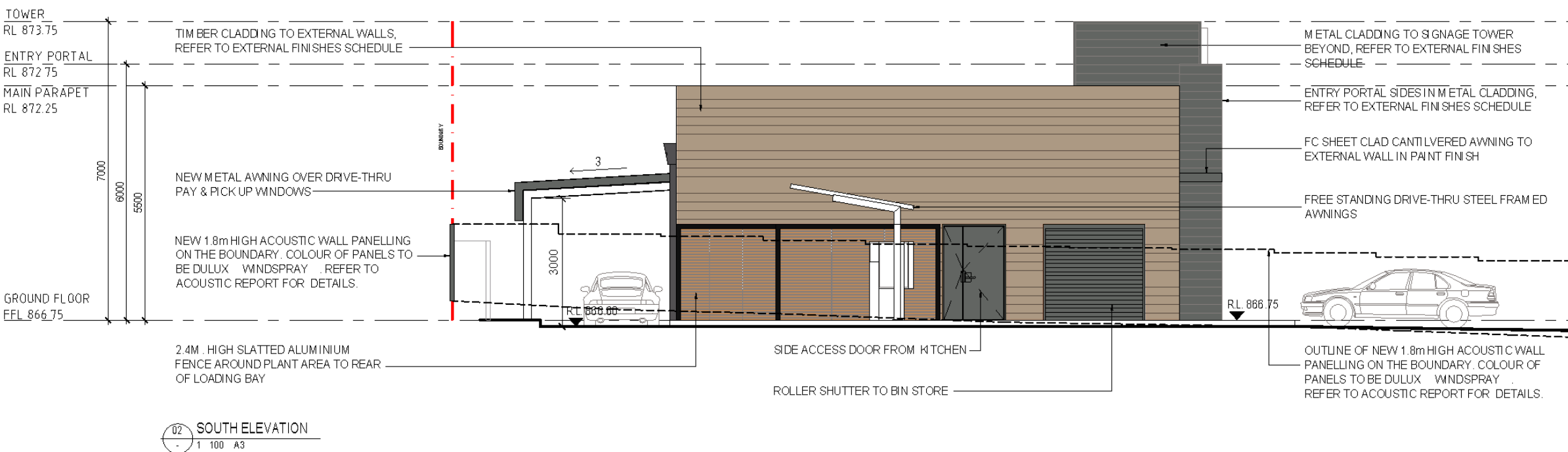
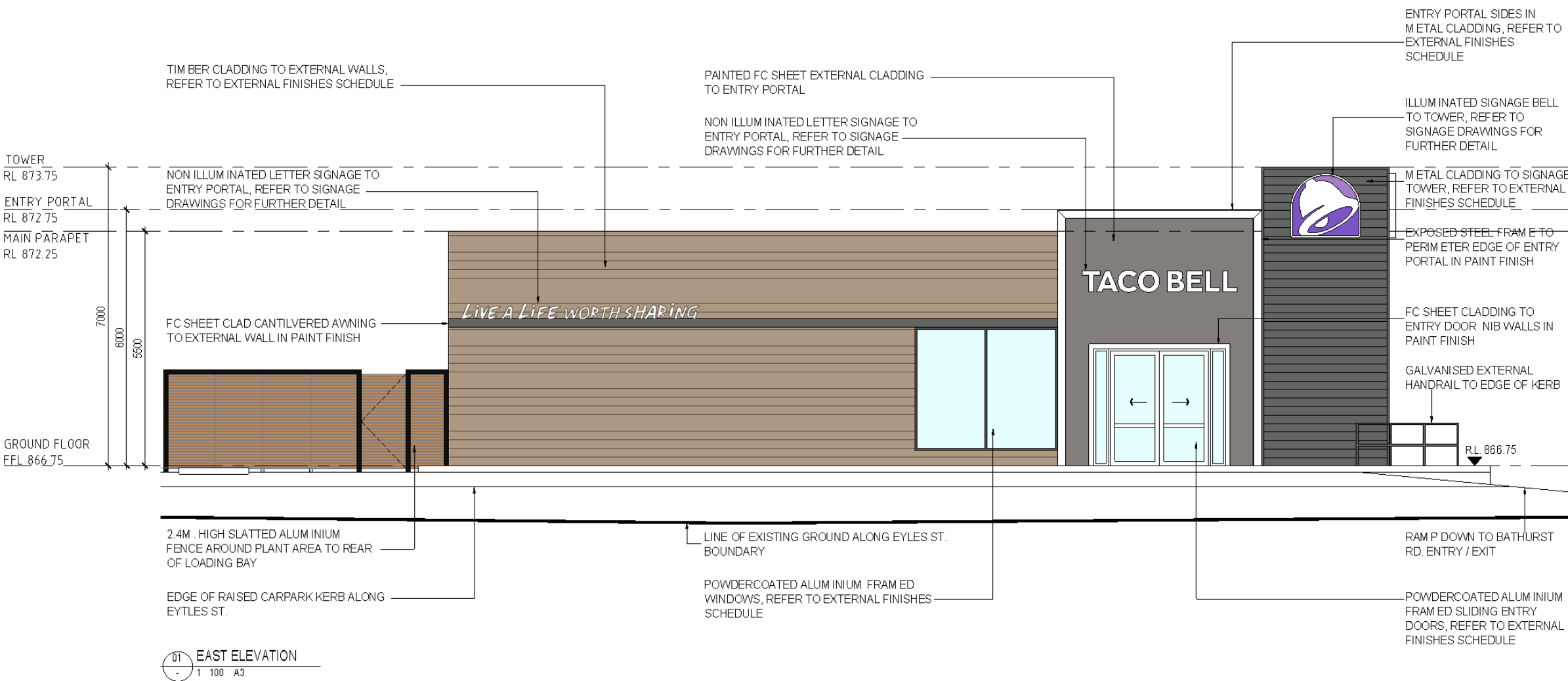
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TACO BELL ORANGE
52-54 BATHURST RD
ORANGE, NSW 2800
drawing
ROOF PLAN

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20102	MAR 2020	BK
scale	dwg. no.	rev.
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amendments

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NOMINATED ARCHITECT:
MAURICE BERALDO
NSW Reg 6354
VIC Reg 4884
Suite 14, Level 3
22-36 Mountain Street
Ultimo NSW 2007
T 02 9281 6177
bdai.com.au



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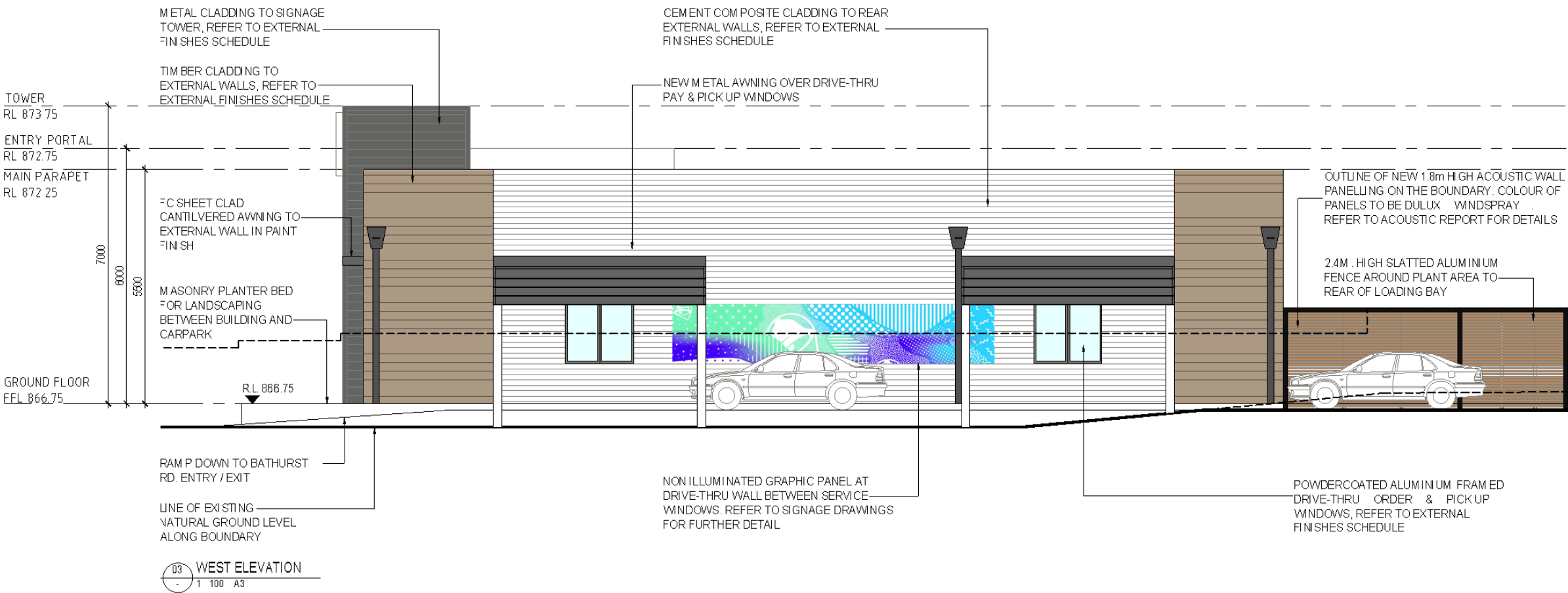
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TACO BELL ORANGE
52-54 BATHURST RD
ORANGE, NSW 2800
drawing
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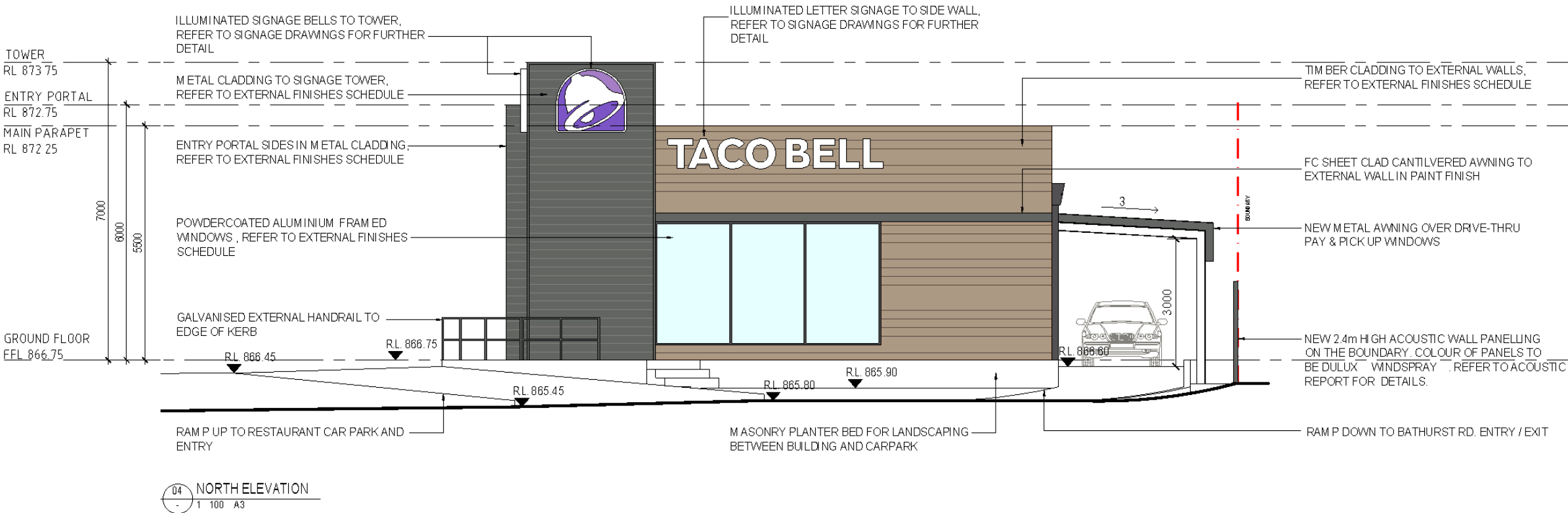
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amendments

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MAURICE BERALDO
NSW Reg 6354
VIC Reg 4884
Suite 14, Level 3
22-36 Mountain Street
Ultimo NSW 2007
T 02 9281 6177
bdai.com.au



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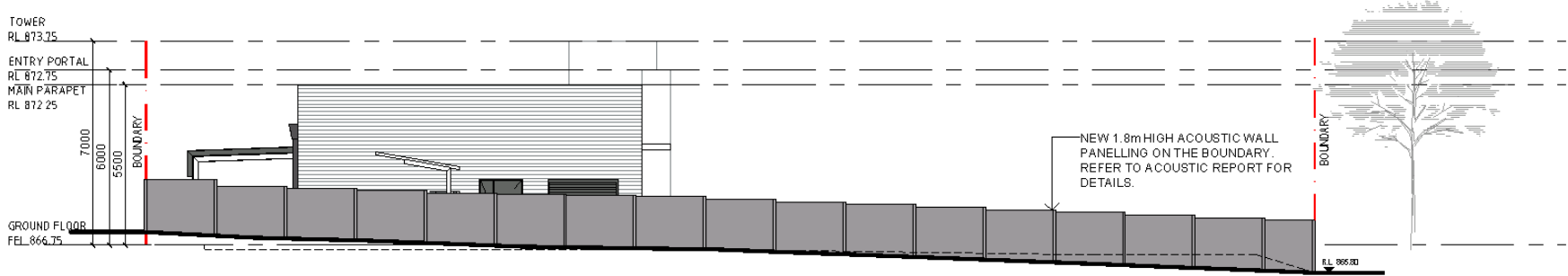
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project
TACO BELL ORANGE
52-54 BATHURST RD
ORANGE, NSW 2800
drawing
ELEVATIONS SHEET 2

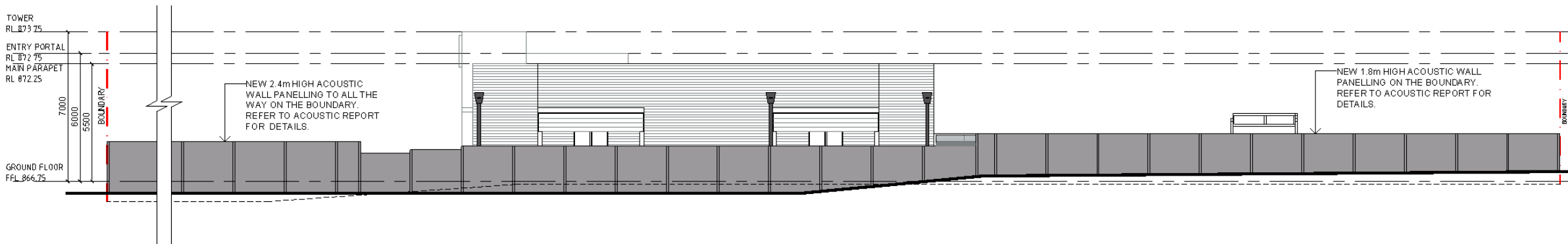
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20102	MAR 2020	BK
scale	dwg. no.	rev.
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amendments

20/02/20 DA ISSUE A
date notes rev.
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01 SOUTH ELEVATION
1 200 A3



02 WEST ELEVATION
1 200 A3



NOMINATED
ARCHITECT:
MAURICE BERALDO
NSW Reg 6354
VIC Reg 4884

Suite 14, Level 3
22-36 Mountain Street
Ultimo NSW 2007
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CONSTRUCTION & FITOUT OF FOOD PREMISES

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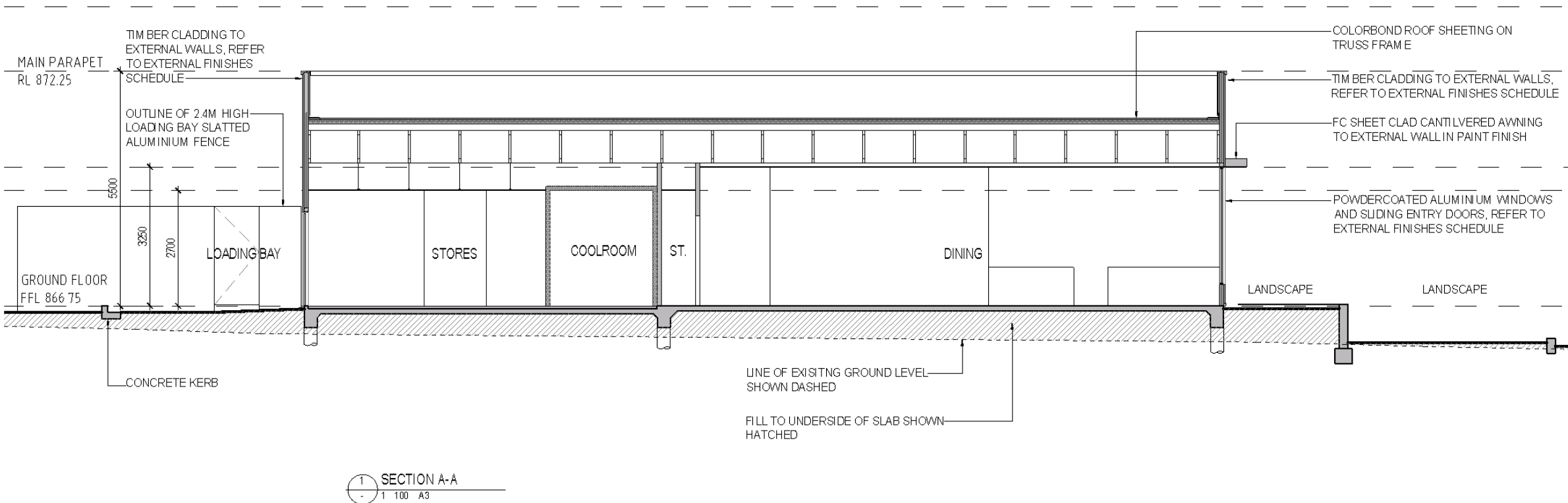
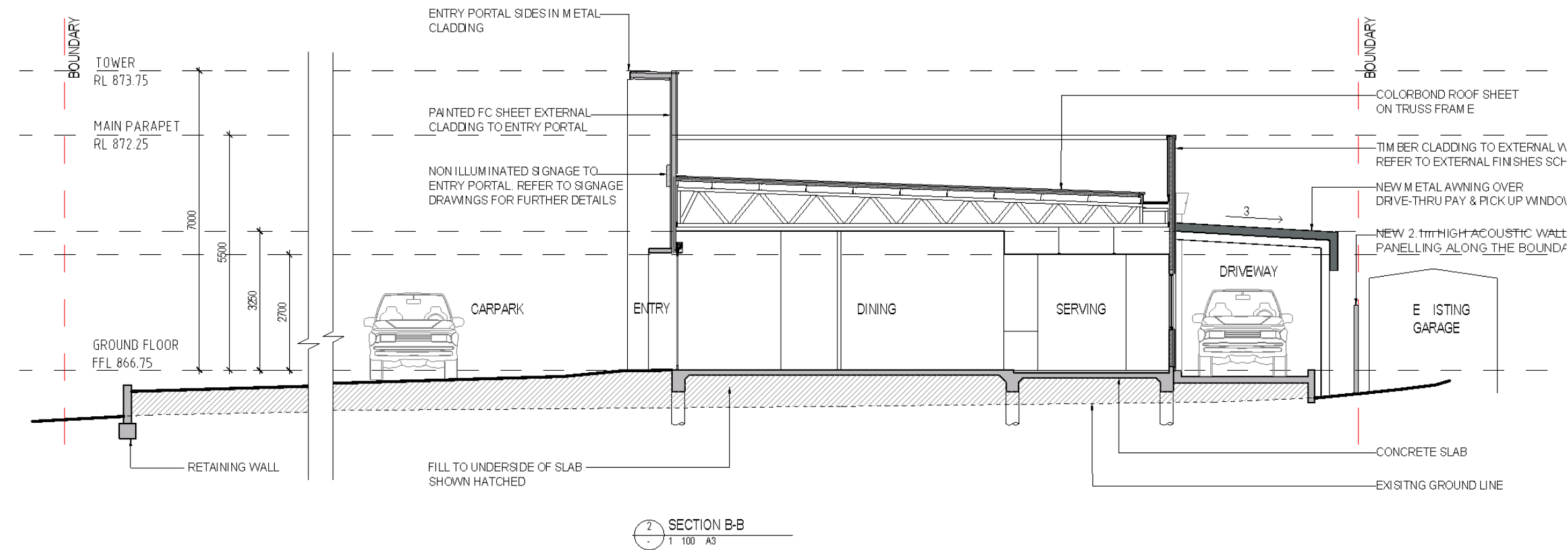
project
TACO BELL ORANGE
52-54 BATHURST RD
ORANGE, NSW 2800

drawing
BOUNDARY ELEVATIONS

project ref	date	checked
20102	MAR 2020	BK
scale	dwg. no.	rev.
1:200 @ A3	DA07	A

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NOMINATED ARCHITECT:
MAURICE BERALDO
NSW Reg 6354
VIC Reg 4884
Suite 14, Level 3
22-36 Mountain Street
Ultimo NSW 2007
T 02 9281 6177
bdai.com.au



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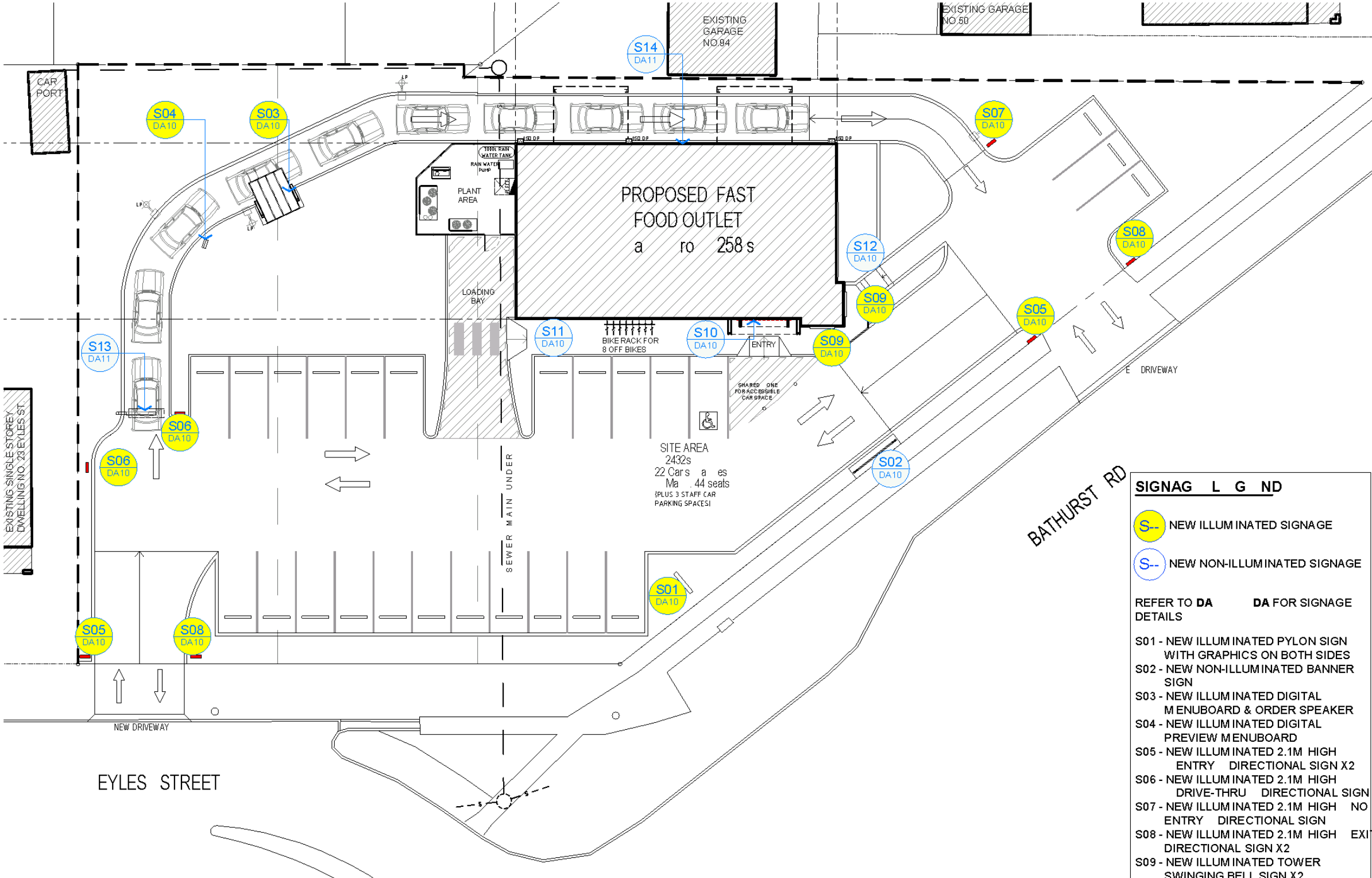
DA ISSUE

project
TACO BELL ORANGE
52-54 BATHURST RD
ORANGE, NSW 2800
drawing
SECTIONS

project ref	date	checked
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scale	dwg. no.	rev.
1:100 @ A3	DA08	A

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NSW Reg 6354
VIC Reg 4884

Suite 14, Level 3
22-36 Mountain Street
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SIGNAGE LEGEND	
	NEW ILLUMINATED SIGNAGE
	NEW NON-ILLUMINATED SIGNAGE
REFER TO DA FOR SIGNAGE DETAILS	
S01 - NEW ILLUMINATED PYLON SIGN WITH GRAPHICS ON BOTH SIDES	
S02 - NEW NON-ILLUMINATED BANNER SIGN	
S03 - NEW ILLUMINATED DIGITAL MENUBOARD & ORDER SPEAKER	
S04 - NEW ILLUMINATED DIGITAL PREVIEW MENUBOARD	
S05 - NEW ILLUMINATED 2.1M HIGH ENTRY DIRECTIONAL SIGN X2	
S06 - NEW ILLUMINATED 2.1M HIGH DRIVE-THRU DIRECTIONAL SIGN	
S07 - NEW ILLUMINATED 2.1M HIGH NO ENTRY DIRECTIONAL SIGN	
S08 - NEW ILLUMINATED 2.1M HIGH EXIT DIRECTIONAL SIGN X2	
S09 - NEW ILLUMINATED TOWER SWINGING BELL SIGN X2	
S10 - NEW NON-ILLUMINATED LETTER FLAT CUT OUT SIGNAGE WITH MATTE WHITE FINISH	
S11 - NEW NON-ILLUMINATED GRAPHIC PANEL LIVE A LIFE STENCIL	
S12 - NEW NON-ILLUMINATED LETTER FLAT CUT OUT SIGNAGE WITH MATTE WHITE FINISH	
S13 - NEW NON-ILLUMINATED 2.7M HIGH CLEARANCE BAR	
S14 - NEW NON-ILLUMINATED DRIVE THRU WALL GRAPHIC PANEL	

NOTE: WORK TO COMPLY WITH AS 4674.2004 CONSTRUCTION & FITOUT OF FOOD PREMISES

DA ISSUE

project

TACO BELL ORANGE

52-54B BATHURST RD

ORANGE, NSW 2800

drawing

SIGNAGE PLAN

project ref	date	checked
20102	MAR 2020	BK
scale	dwg. no.	rev.
1:200 @ A3	DA0	A

amendments

YX/R2/20

DA ISSUE

A

date

index

rev.

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MAURICE BERALDO
NSW Reg 6354
MC Reg 4884

Suite 14, Level 3
22-36 Mountain Street
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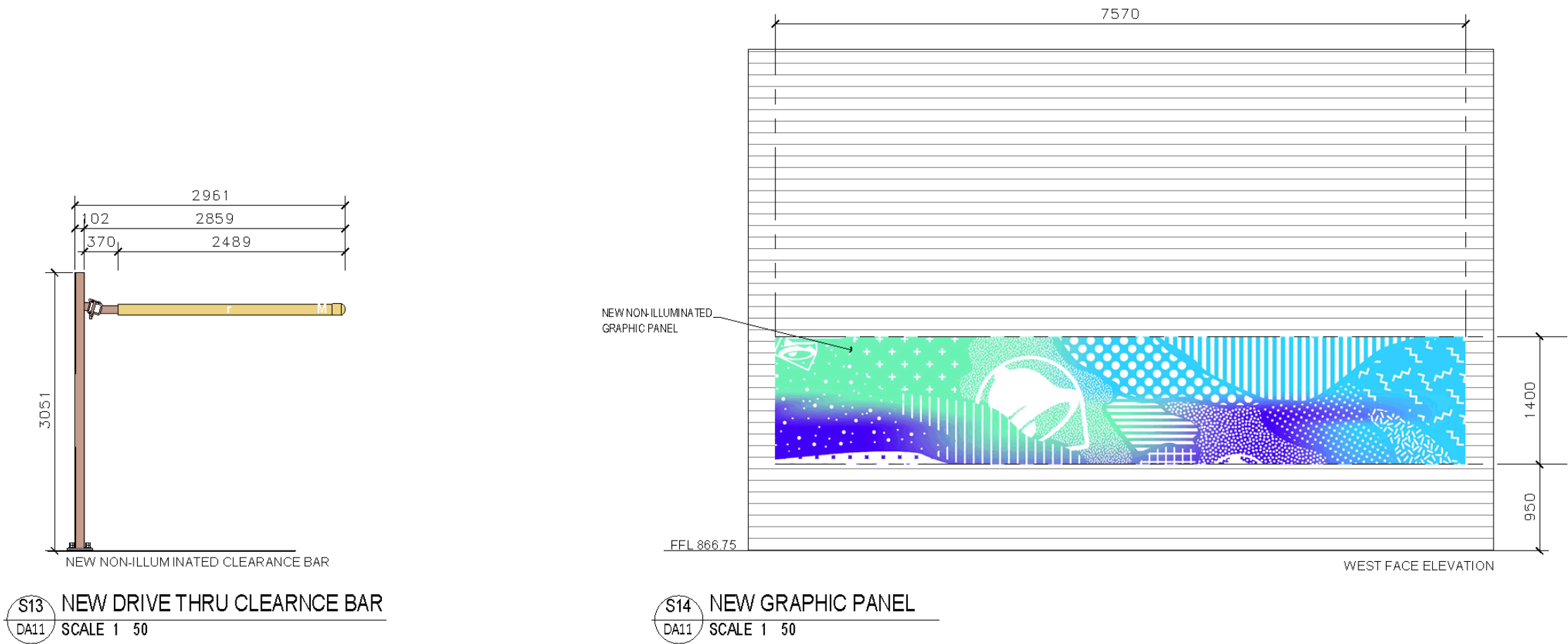
project
TACO BELL ORANGE
52-54 BATHURST RD
ORANGE, NSW 2800

SIGNAGE DETAILS

project ref	date	checked by
20102	MAR 2020	B
scale	dwg. no.	rev.
1:50 @ A3	DA10	A

amendments

XX/02/20	DAISSUE
date	notes
Contractor shall verify all levels and dimensions on site prior to commencing any work or shop drawings. If required dimensions are used, do not trace.	
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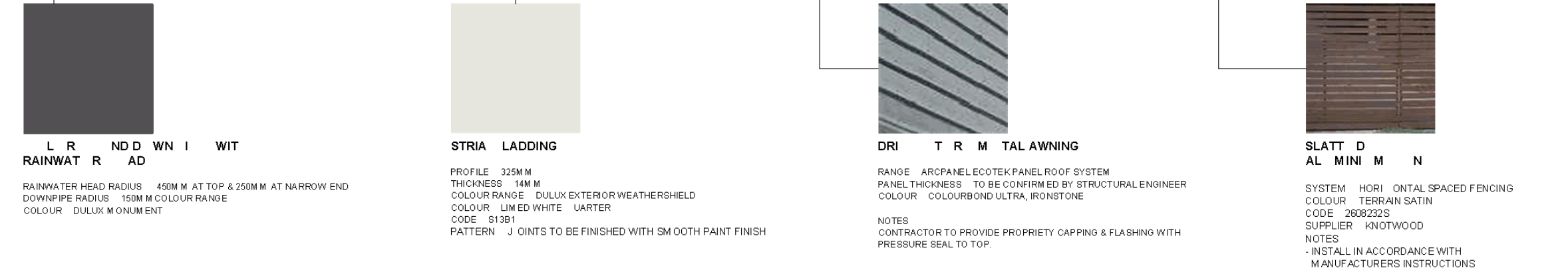
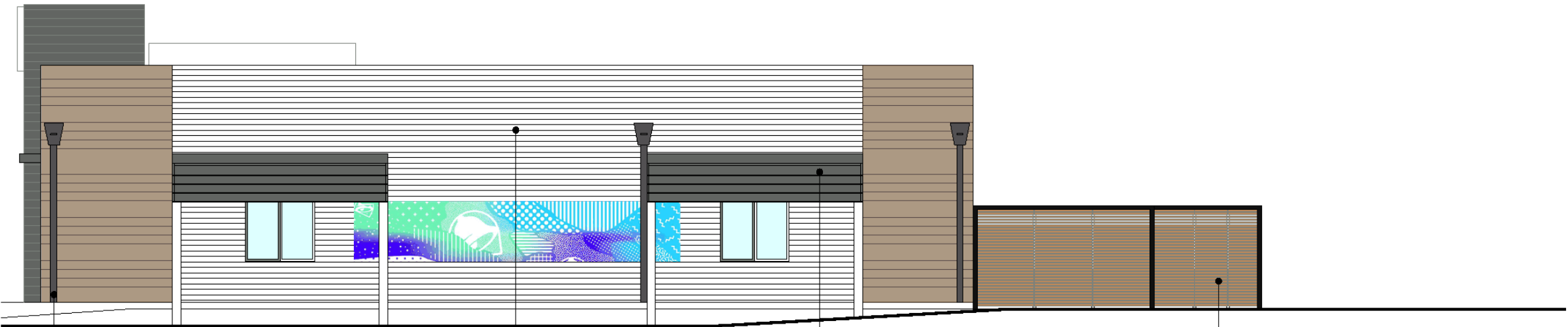
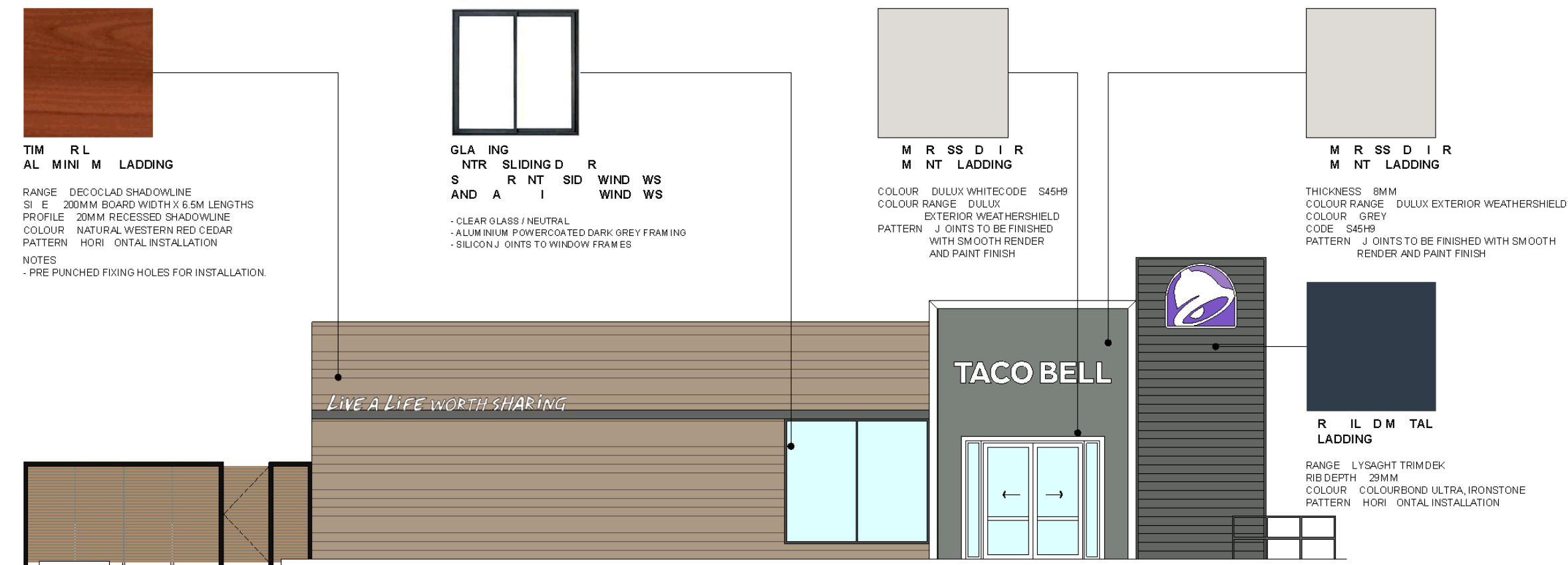
DA ISSUE

project
TACO BELL ORANGE
52-54 BATHURST RD
ORANGE, NSW 2800
drawing
SIGNAGE DETAILS

project ref	date	checked
20102	MAR 2020	BK
scale	dwg. no.	rev.
1:50 @ A3	DA11	A

amendments

20/02/20 DA155UE A
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Suite 14, Level 3
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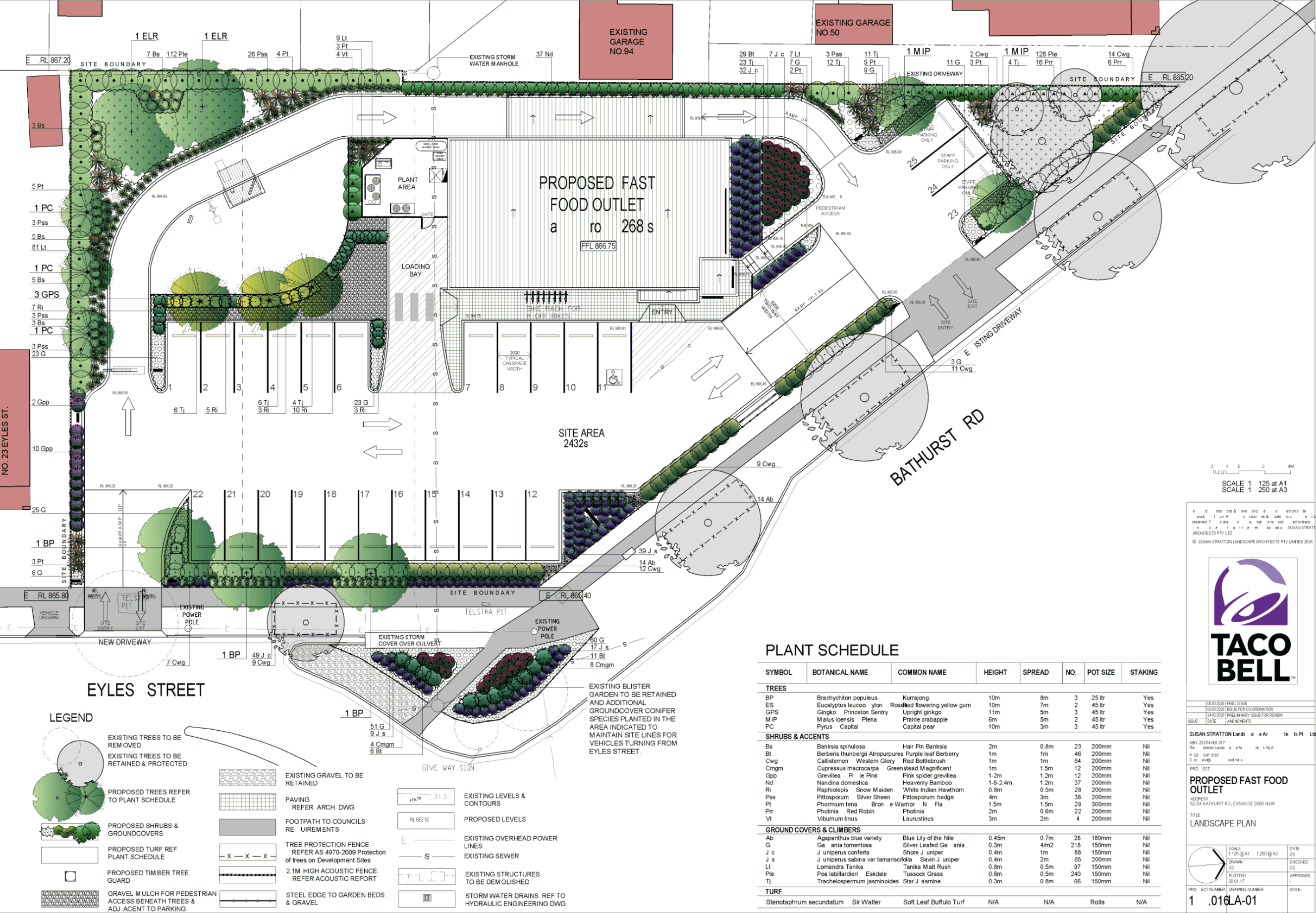
DA ISSUE

project
TACO BELL ORANGE
52-54 BATHURST RD
ORANGE, NSW 2800
drawing
EXTERNAL FINISHES

project ref	date	checked
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scale	dwg. no.	rev.
1:100 @ A3	DA12	A

amendments

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Contractor shall verify all levels and dimensions on site prior to commencing any work or shop drawings. If used dimensions to be used - 50/100/150/200/250/300/350/400/450/500/550/600/650/700/750/800/850/900/950/1000/1050/1100/1150/1200/1250/1300/1350/1400/1450/1500/1550/1600/1650/1700/1750/1800/1850/1900/1950/2000/2050/2100/2150/2200/2250/2300/2350/2400/2450/2500/2550/2600/2650/2700/2750/2800/2850/2900/2950/3000/3050/3100/3150/3200/3250/3300/3350/3400/3450/3500/3550/3600/3650/3700/3750/3800/3850/3900/3950/4000/4050/4100/4150/4200/4250/4300/4350/4400/4450/4500/4550/4600/4650/4700/4750/4800/4850/4900/4950/5000/5050/5100/5150/5200/5250/5300/5350/5400/5450/5500/5550/5600/5650/5700/5750/5800/5850/5900/5950/6000/6050/6100/6150/6200/6250/6300/6350/6400/6450/6500/6550/6600/6650/6700/6750/6800/6850/6900/6950/7000/7050/7100/7150/7200/7250/7300/7350/7400/7450/7500/7550/7600/7650/7700/7750/7800/7850/7900/7950/8000/8050/8100/8150/8200/8250/8300/8350/8400/8450/8500/8550/8600/8650/8700/8750/8800/8850/8900/8950/9000/9050/9100/9150/9200/9250/9300/9350/9400/9450/9500/9550/9600/9650/9700/9750/9800/9850/9900/9950/10000/10050/10100/10150/10200/10250/10300/10350/10400/10450/10500/10550/10600/10650/10700/10750/10800/10850/10900/10950/11000/11050/11100/11150/11200/11250/11300/11350/11400/11450/11500/11550/11600/11650/11700/11750/11800/11850/11900/11950/12000/12050/12100/12150/12200/12250/12300/12350/12400/12450/12500/12550/12600/12650/12700/12750/12800/12850/12900/12950/13000/13050/13100/13150/13200/13250/13300/13350/13400/13450/13500/13550/13600/13650/13700/13750/13800/13850/13900/13950/14000/14050/14100/14150/14200/14250/14300/14350/14400/14450/14500/14550/14600/14650/14700/14750/14800/14850/14900/14950/15000/15050/15100/15150/15200/15250/15300/15350/15400/15450/15500/15550/15600/15650/15700/15750/15800/15850/15900/15950/16000/16050/16100/16150/16200/16250/16300/16350/16400/16450/16500/16550/16600/16650/16700/16750/16800/16850/16900/16950/17000/17050/17100/17150/17200/17250/17300/17350/17400/17450/17500/17550/17600/17650/17700/17750/17800/17850/17900/17950/18000/18050/18100/18150/18200/18250/18300/18350/18400/18450/18500/18550/18600/18650/18700/18750/18800/18850/18900/18950/19000/19050/19100/19150/19200/19250/19300/19350/19400/19450/19500/19550/19600/19650/19700/19750/19800/19850/19900/19950/20000/20050/20100/20150/20200/20250/20300/20350/20400/20450/20500/20550/20600/20650/20700/20750/20800/20850/20900/20950/21000/21050/21100/21150/21200/21250/21300/21350/21400/21450/21500/21550/21600/21650/21700/21750/21800/21850/21900/21950/22000/22050/22100/22150/22200/22250/22300/22350/22400/22450/22500/22550/22600/22650/22700/22750/22800/22850/22900/22950/23000/23050/23100/23150/23200/23250/23300/23350/23400/23450/23500/23550/23600/23650/23700/23750/23800/23850/23900/23950/24000/24050/24100/24150/24200/24250/24300/24350/24400/24450/24500/24550/24600/24650/24700/24750/24800/24850/24900/24950/25000/25050/25100/25150/25200/25250/25300/25350/25400/25450/25500/25550/25600/25650/25700/25750/25800/25850/25900/25950/26000/26050/26100/26150/26200/26250/26300/26350/26400/26450/26500/26550/26600/26650/26700/26750/26800/26850/26900/26950/27000/27050/27100/27150/27200/27250/27300/27350/27400/27450/27500/27550/27600/27650/27700/27750/27800/27850/27900/27950/28000/28050/28100/28150/28200/28250/28300/28350/28400/28450/28500/28550/28600/28650/28700/28750/28800/28850/28900/28950/29000/29050/29100/29150/29200/29250/29300/29350/29400/29450/29500/29550/29600/29650/29700/29750/29800/29850/29900/29950/30000/30050/30100/30150/30200/30250/30300/30350/30400/30450/30500/30550/30600/30650/30700/30750/30800/30850/30900/30950/31000/31050/31100/31150/31200/31250/31300/31350/31400/31450/31500/31550/31600/31650/31700/31750/31800/31850/31900/31950/32000/32050/32100/32150/32200/32250/32300/32350/32400/32450/32500/32550/32600/32650/32700/32750/32800/32850/32900/32950/33000/33050/33100/33150/33200/33250/33300/33350/33400/33450/33500/33550/33600/33650/33700/33750/33800/33850/33900/33950/34000/34050/34100/34150/34200/34250/34300/34350/34400/34450/34500/34550/34600/34650/34700/34750/34800/34850/34900/34950/35000/35050/35100/35150/35200/35250/35300/35350/35400/35450/35500/35550/35600/35650/35700/35750/35800/35850/35900/35950/36000/36050/36100/36150/36200/36250/36300/36350/36400/36450/36500/36550/36600/36650/36700/36750/36800/36850/36900/36950/37000/37050/37100/37150/37200/37250/37300/37350/37400/37450/37500/37550/37600/37650/37700/37750/37800/37850/37900/37950/38000/38050/38100/38150/38200/38250/38300/38350/38400/38450/38500/38550/38600/38650/38700/38750/38800/38850/38900/38950/39000/39050/39100/39150/39200/39250/39300/39350/39400/39450/39500/39550/39600/39650/39700/39750/39800/39850/39900/39950/40000/40050/40100/40150/40200/40250/40300/40350/40400/40450/40500/40550/40600/40650/40700/40750/40800/40850/40900/40950/41000/41050/41100/41150/41200/41250/41300/41350/41400/41450/41500/41550/41600/41650/41700/41750/41800/41850/41900/41950/42000/42050/42100/42150/42200/42250/42300/42350/42400/42450/42500/42550/42600/42650/42700/42750/42800/42850/42900/42950/43000/43050/43100/43150/43200/43250/43300/43350/43400/43450/43500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From: Jessica Tom
Sent: Tuesday, 21 April 2020 12:20 PM
To: Council Incoming
Subject: Submission against Development DA 120/2020 - 52-54 BATHURST ROAD
ORANGE, 25 AND 27 EYLES STREET, ORANGE

Good Morning,

I am writing in regards to the DA 120/2020(1) as I would like to voice my concerns regarding the position of the drive way on Eyles street.

The proposed positioning will be directly next to the drive way of my house (23 Eyles Street). This would affect me and my partner in a number of ways; we would have difficulty accessing our own driveway at all times especially peak times and there would be excessive noise from cars due to the late hours of operation. I also have pets and this would cause a lot of disturbance for my dogs. The increase in traffic along this short and narrow street would be amplified dramatically causing congestion and difficulties for all living on the street.

This in my opinion is a violation of my rights living in a residential area as i should have the ability to go in and out of my drive way when required. I should also feel safe in my own home and having people around all hours of the night will hinder this.

I am requesting that the drive way be moved further away from ours or not on Eyles street at all.

Kind regards,

Jessica Tom