



EXTRAORDINARY PLANNING & DEVELOPMENT COMMITTEE

AGENDA

21 APRIL 2026

Notice is hereby given, in accordance with the provisions of the Local Government Act 1993 that an **EXTRAORDINARY PLANNING & DEVELOPMENT COMMITTEE MEETING of ORANGE CITY COUNCIL** will be held in the **COUNCIL CHAMBER, CIVIC CENTRE, BYNG STREET, ORANGE** on **Tuesday, 21 April 2026**.

Scott Maunder
CHIEF EXECUTIVE OFFICER

For apologies please contact Executive Support on 6393 8391.

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1 INTRODUCTION

MEMBERS

Cr M McDonell (Chairperson), Cr T Mileto (Mayor), Cr T Greenhalgh (Deputy Mayor), Cr K Duffy, Cr G Judge, Cr F Kinghorne, Cr D Mallard, Cr S Peterson, Cr G Power, Cr M Ruddy, Cr J Stedman, Cr J Whitton

1.1 Apologies and Leave of Absence

1.2 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 & Development Policy Committee at this meeting.

2 GENERAL REPORTS

2.1 Options Paper - Planning Pathways Regarding Electricity Generating Works Applications Within the Orange Local Government Area

RECORD NUMBER: 2026/623

AUTHOR: Craig Mortell, Senior Planner

EXECUTIVE SUMMARY

In response to the Notice of Motion of 17 February 2026, moved by Cr Tony Mileto, this options paper outlines a range of potential planning pathways for Council to consider in guiding the appropriate location and control of the larger scale renewable energy infrastructure projects, particularly utility-scale solar farms. Solar farms are captured under the broader planning definition Electricity Generating Works. There is no standalone definition for solar farms.

Electricity Generating Works (EGW) is the planning term used to cover every development that generates or stores electricity regardless of source. This means it covers everything from domestic scale roof top solar systems and back-up generators through to commercial solar farms as well as coal or gas fired power stations. With regard to storage systems the definition would encompass small house batteries, community or neighbourhood batteries and grid scale commercial batteries.

It is not practical to monitor or seek to control the purchase and deployment of small consumer grade portable devices such as small portable generators (typical on various construction sites), portable battery packs or camping style systems. Therefore, while the definition of EGW would technically encompass small consumer devices of this sort it is not proposed to actively regulate the use of devices that are portable and/or temporarily deployed.

Key Considerations

In exploring the range of options for regulating EGW, staff have adopted the principles of:

- Protecting prime agricultural land for agricultural production.
- Protecting the drinking water catchment of the city from potential contaminants and/or erosion and sedimentation.
- Protecting important scenic rural landscapes and visually prominent sites or areas for their inherent aesthetic, cultural and tourism benefits.

Agricultural Protection

The urban footprint of Orange is positioned on the edge of some of the most important agricultural land in the country. To the south of the city the volcanic soils around Mount Canobolas have been recognised by the State and mapped as Biophysical Strategic Agricultural Land (BSAL). Whereas to the north of the city the rural lands, while still important to primary production, have a different geological composition and the agricultural outputs are correspondingly lower. As such, retaining the BSAL land for agricultural land is of a higher priority than non-BSAL land.

Drinking Water Catchment

Because large scale solar farms intercept most of the solar radiation reaching the site, experience has shown this can dramatically reduce photosynthesis of plants underneath the panels. In some cases, this can lead to bare patches under the panels that may then experience erosion or increased sediment run off during rain events. Additionally, hailstorms can crack some panels leading to leaching of the materials used in their construction, including small amounts of lead and cadmium and potentially antimony, antimony-phosphide and gallium. While the amounts of heavy

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metals involved are unlikely to present a significant concern, there is still a logic to avoid even the smallest amount if there are alternative sites available.

Scenic/Visual Protection

The value of rural land is not purely limited to agricultural output. The scenic and aesthetic values of such lands contribute to overall amenity of the area, enhance the cultural appreciation and relationship of people to the land and provide a passive benefit to local tourism operations. Rural landscapes are also more likely to contain a range of vegetation communities and offer a stark contrast to urban environments. Various studies have attested to the value of rural landscapes in providing psychological benefits in the form of fostering relaxation, emotional balance, improved mood, feelings of tranquillity and even cognitive restoration. Accordingly, the siting of solar farms should seek to avoid visually prominent locations such as ridge lines, elevated slopes and the corridors either side of high traffic roads.

Planning Pathway Options

The options respond to recent development application experience, community concern regarding cumulative impacts, and the need to balance State renewable energy objectives with local agricultural, environmental and landscape values. Each option presents a different mechanism within the NSW planning framework, with varying levels of strategic certainty, flexibility, and risk.

The options presented include:

- Option 1** No change.
- Option 2** Prohibition within the C3 Environmental Zone through a Planning Proposal. This may require funding to engage a consultant to prepare any supporting studies for the Planning Proposal (estimated \$100,000 – currently unfunded). The range of studies would depend on advice from the Department of Planning, Housing and Infrastructure but are likely to focus on confirming the impacts on primary production (as the main justification for the prohibition) and the economic impact and energy security implications arising from a prohibition, as well consequences for other forms of Electricity Generating Works such as house / community batteries.
- Option 3** Update the Orange Local Environmental Plan 2011 (LEP) and Orange Development Control Plan 2004 (DCP) to strengthen scenic protection zones and renewable site planning and design guidelines and provide additional guidance around negotiating Planning Agreements at a local level for electricity generating works applications. This would require funding to engage a consultant to identify and develop controls in relation to scenic protection zones (estimated \$60,000 – currently unfunded).
- Option 4** Develop a Renewable Energy Strategy. Some councils, particularly in metropolitan areas, have adopted their own bespoke strategies. These typically relate to Council's own emission reductions and procurement policies. However, these strategies do not typically address broad acre solar farms or similar scale projects, and locational preferences. This would require funding to analyse locational preferences and develop the Strategy (estimated \$80,000 – currently unfunded).
- Option 5** Whether in addition to, or in place of, any of the above options Council may direct the CEO to pursue advocacy on the issue of solar farms, and electricity generating works more broadly. This would have the ability to establish Councils position on solar farms on the public record in the shortest timeframe, giving a clear signal to the

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industry and potential developers as to Councils position. However, until and unless the advocacy work achieved actual reforms of state policy or legislation that position would remain contestable.

Noting, options 3 and 4 may be combined as a staged project. Each option is discussed in more detail in the body of this report. Please note that options 2, 3 and 4 have financial implications that are currently unfunded.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan strategy “7.3 Plan for growth and development that balances liveability with valuing the local environment”.

FINANCIAL IMPLICATIONS

Subject to the option selected, the proposal is not expected to have significant financial implications. Some of the options may require a financial commitment for supporting studies or surveys.

POLICY AND GOVERNANCE IMPLICATIONS

Nil

RECOMMENDATIONS

That Council

- 1. Request the CEO to progress options 3 and 4 and to provide a further report to Council on cost, sequence and pathway.**
- 2. Continue advocacy with the State government, agencies and relevant bodies to elevate the protection of primary production as well as tourism and scenic values in the planning framework, especially in relation to evaluation of applications for Electricity Generating Works.**

FURTHER CONSIDERATIONS

The recommendation of this report has been assessed against Council’s key risk categories and the following comments are provided:

Service/Project Delivery	The proposal is not expected to impact on service or project delivery
Financial	Subject to the option selected the proposal is not expected to impact on Council’s financial position. Some options may require funds to implement supporting studies or surveys.
Reputation/Political	The proposal may have a minor impact on Councils reputation in terms of support for renewable energy. This needs to be balanced with providing support for maintaining agriculture and primary production in the rural areas.
Environment	The proposal is not expected to have any direct impact on the natural environment.
Compliance	The proposal is not expected to result in or contribute to any breach of legal or regulatory requirements.
People & WHS	The proposal is not expected to have any impact on the health and wellbeing of Council staff, Councillors, contractors, visitors or

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	members of the public.
Information Technology/ Cyber Security	The proposal is not expected to have any impact on Council's assets or business practices.

SUPPORTING INFORMATION

Staff have identified 5 options for Council to consider. Options 3 and 4 may be combined in a hybrid approach. A brief overview of each option is presented below. Some options may require more resources (both financial and time) to implement, specifically in terms of developing an appropriate evidence base to support the final position.

OPTION 1 – NO CHANGE

Under this option, Council would retain the existing planning framework, including the current permissibility of *Electricity Generating Works* within the RU1 Primary Production zone via SEPP (Transport and Infrastructure) 2021 and the C3 Environmental Management zone under the Orange LEP 2011. This option maintains reliance on development assessment processes to manage impacts on a case-by-case basis without any explicit controls in relation to the main types of electricity generating works other than the guidelines currently in place for large scale renewable energy systems which technically do not apply to the scale of developments that the Joint Regional Planning Panel has considered to date.

Opportunities

- Maintains maximum flexibility for renewable energy proponents and landowners.
- The no change approach avoids potential unintended consequences that may follow if there was a decision to remove the definition of Electricity Generating works from the C3 Zone. (example – community battery proposals and emerging technologies in this area would be prohibited if the definition was to be removed from the C3 Zone)
- Fully aligned with State-led renewable energy policies and market-driven infrastructure delivery.
- Avoids the cost, time and risk associated with LEP or DCP amendments.
- Enables site-specific assessment and mitigation through development consent conditions.
- Reduces the likelihood of Departmental objection or Gateway risk.

Constraints

- Relies heavily on subjective assessment of cumulative impacts at DA stage. Site planning considerations are often poorly considered by applicants, increasing assessment timeframes and planning complexities.
- Does not provide clear upfront guidance to communities or proponents on suitable locations.
- High potential for ongoing community opposition, particularly where proposals occur on productive or visually exposed land.
- Limited ability to address cumulative landscape or agricultural impacts across multiple approvals.

Strategic Considerations

This option reflects a reactive, assessment-driven approach rather than a forward-looking strategic planning response. While it remains supportive of renewable energy development, it does not

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proactively address the systemic issues emerging through recent development applications - particularly cumulative visual and landscape impacts, fragmentation or loss of agricultural land, and the erosion of rural character.

By maintaining the status quo, Council forgoes the opportunity to establish clearer spatial direction, articulate community expectations, or guide proponents toward more suitable locations. As a result, the planning system continues to absorb these challenges at the DA stage, where options for strategic influence are limited and where community concerns are often amplified.

In short, this option supports flexibility but does not resolve the underlying strategic tensions between renewable energy delivery, agricultural productivity, and rural landscape values.

OPTION 2 – ZONE BASED PROHIBITION

This option involves amending the Orange LEP 2011 to prohibit *Electricity Generating Works* within specific zones being the C3 Environmental Management zone which covers the majority of the rural areas of the LGA and corresponds with Council's drinking water catchment. The intent would be to direct large-scale solar farms away from environmentally sensitive, agriculturally productive and visually prominent rural land.

Opportunities

- Provides clear and enforceable strategic direction at the LEP level.
- Protects land with high agricultural, environmental and landscape values.
- Reduces land-use conflict between renewable energy and primary production.
- Addresses community concerns regarding industrialisation of rural landscapes.
- Improves certainty for investors by clarifying where solar farms are not appropriate.
- Consistent with the intended function of the C3 zone and regional planning practice.

Constraints

- Reduces the supply of land potentially available for solar development.
- Removes Council's ability to consider solar farms under exceptional site-specific proposals within the C3 zone.
- Removes Council's ability to consider large scale battery operations, such as neighbourhood or community batteries.
- This would also remove consideration of other centralised power stations such as gas or coal fired power stations as they are captured under the definition of Electricity Generation Works.
- Should Council later wish to support a particular project this would require a separate Planning Proposal to be prepared, likely to take 12-18 months, and may not achieve State government support.
- May attract criticism that Council is limiting renewable energy opportunities.
- Potential for increased development pressure in other rural zones (displacement effect).
- Potentially restricts access to some battery infrastructure associated with larger systems.

Strategic Considerations

This option represents a decisive and highly protective planning stance, placing the long-term safeguarding of environmental, agricultural and landscape values above development flexibility.

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Strategically, it offers clarity and certainty - both for the community and for proponents - by drawing a firm spatial boundary around where electricity generation is not appropriate. This reduces ambiguity and helps manage expectations early in the development process.

However, the strength of this approach is also its limitation. By relying on zoning as the primary determinant of suitability, the framework becomes rigid and may not fully reflect the nuanced variation in landscape sensitivity, visual exposure or agricultural productivity that exists within the C3 zone. It effectively substitutes strategic nuance with regulatory simplicity.

The approach also shifts Council's role from one of negotiated assessment to one of upfront exclusion. While this can reduce conflict, it also removes the ability to respond to emerging technologies, innovative project designs or site-specific opportunities that may offer low-impact outcomes. In a rapidly evolving renewable energy sector, this rigidity may constrain Council's capacity to adapt to new forms of infrastructure or changing State policy directions.

Overall, this option provides strong protection and clear direction but at the cost of flexibility, adaptability and the ability to engage strategically with proponents on a case-by-case basis.

Next Steps

To pursue this option the following process would be observed:

1. Council would direct staff to prepare a formal draft Planning Proposal which would then be reported to Council.
2. If the Planning Proposal is supported the matter would then be forwarded to the NSW Department of Planning, Housing and Infrastructure for a gateway determination.
3. Upon receipt of the gateway determination staff would work through any conditions imposed by the State. This may require the preparation of various studies to provide some strategic justification for the change to the LEP. The range of studies would depend on advice from the Department of Planning, Housing and Infrastructure but are likely to focus on confirming the impacts on primary production (as the main justification for the prohibition) and the economic impact and energy security implications arising from a prohibition, as well consequences for other forms of Electricity Generating Works such as house / community batteries. Funding to engage a consultant to prepare any supporting studies for the Planning Proposal is currently unfunded.
4. Once preliminary conditions have been satisfied the matter would then be placed on public exhibition, typically for 20 working days.
5. A post exhibition report would then be prepared and presented back to Council for the final decision.
6. After the decision has been made a range of administrative processes would be completed to give effect to the Planning Proposal and officially amend the LEP.

OPTION 3 – UPDATE THE ORANGE LOCAL ENVIRONMENTAL PLAN 2011 AND THE ORANGE DEVELOPMENT CONTROL PLAN 2004 PROVISIONS

Under this option, utility-scale solar development would remain permissible, but would be subject to detailed Development Control Plan provisions addressing siting, design, scale, landscaping, setbacks, cumulative impacts and decommissioning. This may be strengthened with supporting

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provisions being included in the Local Environmental Plan – subject to achieving the support of the Department of Planning, Housing and Infrastructure.

Opportunities

- Retains planning flexibility while strengthening assessment criteria.
- Allows Council to define “best practice” expectations for solar farms.
- Can address visual impact, landscape buffers, biodiversity protection and agricultural coexistence.
- DCP provisions could be faster to implement than LEP changes. This could result in a staged approach with DCP amendments allowing some early guidance while working on LEP provisions to improve robustness.
- Provides additional guidance to applicants prior to lodgement.
- Potentially provides an opportunity to also develop additional guidance around negotiating Planning Agreements at a local level for electricity generating works applications

Constraints

- DCP provisions cannot prohibit development where a use is permitted.
- Limited weight if inconsistent with State policy or SEPPs.
- Still relies on subjective merit-based assessment.
- Does not prevent proposals on fundamentally unsuitable or sensitive land.
- Less effective in managing cumulative impacts across multiple sites.

Strategic Considerations

This option provides a more nuanced and adaptive strategic response compared to a strict prohibition model. By strengthening the DCP and potentially introducing targeted LEP provisions, Council gains greater influence over the quality, design and siting of solar proposals without fundamentally restricting renewable energy development across broad rural areas.

Strategically, this approach positions Council to shape outcomes rather than simply accept or reject them. Enhanced controls allow Council to articulate clear expectations around landscape protection, visual mitigation, agricultural coexistence and cumulative impact management. This can lift the overall standard of proposals and reduce conflict by ensuring proponents address key issues early in the design process.

However, the strategic limitations are equally important. Because DCPs cannot override permissibility, this option cannot prevent development on land that is inherently unsuitable or highly sensitive. It therefore relies on the assessment process—and the persuasiveness of Council’s policy framework—to influence site selection. This places a heavier burden on Council staff to negotiate outcomes and defend decisions, particularly where State policy strongly favours renewable energy delivery.

The approach also provides only partial coverage of the C3 Environmental Management zone. While it may improve the quality of proposals within that zone, it does not offer the comprehensive spatial certainty or land-use protection that a zoning-based approach could deliver. As a result, cumulative impacts, landscape fragmentation and rural character concerns may still arise, albeit with better tools to manage them.

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Overall, this option strengthens Council's strategic position without sacrificing flexibility, but it does not fully resolve the core spatial planning challenges associated with large-scale solar development.

Next Steps

To pursue this option the following process would be observed:

1. Council staff would prepare a planning report for Council's consideration that outlined the most appropriate approach and likely controls for a DCP/LEP.
2. If the selected option contemplates an amendment to the LEP Council would direct staff to prepare a formal draft Planning Proposal which would then be reported to Council. If the Planning Proposal is supported the matter would then be forwarded to the NSW Department of Planning, Housing and Infrastructure for a gateway determination.
3. Upon receipt of the gateway determination staff would work through any conditions imposed by the State.
4. Once preliminary conditions have been satisfied the matter would then be placed on public exhibition with supporting DCP amendments, typically for 20 working days.
5. A post exhibition report would then be prepared and presented back to Council for the final decision.
6. After the decision has been made a range of administrative processes would be completed to give effect to the Planning Proposal and officially amend the LEP and DCP.

OPTION 4 – STRATEGIC RENEWABLE ENERGY SITING FRAMEWORK

This would require Council to prepare a strategic framework that identifies *preferred*, *conditional* and *avoided* locations for large-scale renewable energy infrastructure across the LGA. The framework would be based on land capability, agricultural productivity, landscape sensitivity, visual exposure, environmental constraints and infrastructure access, rather than land use zoning alone. Indicative components of a Siting Framework might include:

1 Preferred Locations

- This would include land with:
 - Lower agricultural capability (non-BSAL where practicable)
 - Limited visibility from public viewpoints
 - Flat or gently undulating topography
 - Proximity to existing grid infrastructure
 - Separation from towns, villages and scenic routes
- Areas already influenced by infrastructure (e.g. near substations, industrial landscapes)

2 Conditional/Constrained Locations

- Land capable of supporting solar development only where:
 - Visual impact is demonstrably low
 - Agricultural use can continue or be reinstated
 - Strong landscaping, screening and setbacks are achievable
 - Cumulative impact thresholds are not exceeded

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3 Avoided Locations

- Ridgelines, elevated land and prominent slopes
- Key scenic corridors (e.g. gateways, major roads)
- BSAL and highly productive agricultural land
- Drinking water catchments
- Areas contributing strongly to rural character or tourism identity

Opportunities

- Enables a place-based, evidence-led approach.
- Avoids blunt reliance on zoning boundaries alone.
- Improves transparency and predictability for proponents and the community.
- Provides a strong strategic foundation for future statutory controls.
- Allows nuance and professional judgement in site selection.

Constraints

- Non-statutory; limited direct enforceability.
- Cannot prohibit development on its own.
- Requires technical studies (visual, landscape, agricultural).
- Risk proponents treat it as guidance only.
- May raise expectations of restrictions not yet legally enforceable.

Strategic Considerations

This option represents a sophisticated and forward-looking strategic response that elevates Council's role from reactive assessment to proactive spatial planning and is best viewed as a strategic stepping stone rather than a final regulatory solution. By developing a comprehensive Siting Framework, Council can articulate a clear, evidence-based rationale for where large-scale renewable energy infrastructure should be encouraged, conditionally supported or avoided altogether. This shifts decision-making from case-by-case negotiation to a more transparent, place-based logic that is easier to defend and explain.

The framework also strengthens Council's strategic position by building the technical evidence base needed to support future statutory controls. It allows Council to test assumptions, refine criteria and engage with the community and industry before committing to LEP or DCP amendments. This reduces the risk of unintended consequences and improves the likelihood of State agency support should formal planning changes be pursued later.

However, its non-statutory status means its influence ultimately depends on how consistently it is applied and how seriously proponents treat it. While it can significantly improve the quality, consistency and defensibility of decisions, it cannot prevent proposals in avoided areas nor fully resolve conflicts where State policy strongly favours renewable energy delivery. As such, it enhances strategic clarity and decision-making rigour but does not, on its own, provide the regulatory certainty that zoning-based controls can deliver.

If option 4 is pursued it may in time form the evidence base for pursuing option 3 (i.e. a stepping stone approach). This in turn would make the LEP and DCP provisions of option 3 more defensible and robust. It is likely that if option 3 is selected the Department of Planning, Housing and Infrastructure may require aspects of option 4 to be undertaken. The advantage of option 4 would

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be to secure a policy position early while the final regulatory controls are then progressed. This would provide Council with some negotiating support for any applications that emerge in the interim.

Overall, this option is a strategically valuable foundation—strengthening Council’s evidence base, guiding future policy development and improving assessment outcomes—while leaving open the pathway to more formal regulatory reform in the future.

Next Steps

The Strategy would be developed as follows:

1. Commission or prepare technical studies (currently unfunded) to underpin a robust, evidence-based approach to siting large-scale renewable energy infrastructure. Studies may include:
 - Landscape character and visual sensitivity assessment
 - Strategic agricultural land and land capability analysis
 - Identification of visually prominent land (ridgelines, elevated slopes)
 - Scenic and gateway corridor mapping (including major road approaches)
 - Review of cumulative impacts and emerging development patterns
 - Infrastructure and grid proximity constraints
2. Prepare spatial mapping layers identifying:
 - Preferred, constrained and avoided areas for large-scale solar development
 - Landscape and visual sensitivity areas
 - Key agricultural precincts and productive land
 - Sensitive environmental and water catchment areas
3. Develop a Strategic Renewable Energy Siting Framework that:
 - Clearly articulates Council’s strategic intent for the location of large-scale renewable energy infrastructure
 - Is informed by the above studies and mapping
 - Provides guidance for landowners, the community and proponents
 - Is capable of informing development assessment in the interim and supporting future statutory amendments.
4. Engage with State and regional planning processes, including:
 - Submissions to the Department of Planning, Housing and Infrastructure
 - Participation in Central West–Orana Renewable Energy Zone (REZ) consultation and infrastructure planning
 - Collaboration with neighbouring councils and regional organisations
5. Align Council advocacy positions with the evidence and mapping prepared as part of the Strategic Siting Framework, strengthening Council’s credibility and influence in State-level discussions.
6. Report the draft framework to Council for endorsement as a strategic policy document, noting that the framework is non-statutory but forms the strategic foundation for subsequent planning controls amendments, likely to both the LEP and DCP.

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OPTION 5 – ADVOCACY

Whether in addition to, or in place of, any of the above options Council may direct the CEO to pursue advocacy on the issue of solar farms, and electricity generating works more broadly. This would have the ability to establish Councils position on solar farms on the public record in the shortest timeframe, giving a clear signal to the industry and potential developers as to Councils position. However, until and unless the advocacy work achieved actual reforms of state policy or legislation that position would remain contestable.

Opportunities

- Participation and collaboration with other councils in our region through the Central West Joint Organisation.
- Through the Minister for Planning seek or suggest reforms to State Environmental Planning Policies such as:
 - Establishing visual impact assessment criteria, like the schedule of matters that is required to be considered for billboards and other signage under the SEPP (Industry and Employment) 2021
 - Nominate exclusion zones on the outskirts of population centres, on ridgelines or on slopes greater than 5% unless a detailed visual analysis confirms the development will not be viewable by more than a modest number of dwellings.
 - Split the current definition so that Energy Storage Systems (i.e. batteries) can be regulated independently of Energy Generating Works (solar farms) recognising that they have vastly different visual impacts and opportunities to mitigate through screening.
- Seeking support from key stakeholders such as tourism bodies
- Engagement with the Aboriginal community to establish any areas or locations that should be avoided on cultural grounds.
- Providing commentary and feedback on State government policies and reform initiatives

Constraints

- Council does not have the ability to dictate changes to State policies or legislation.
- Advocacy work in this space may generate adverse reactions from the renewable energy industry in the form of counter-advocacy. It should be expected that there would be some level of push back on environmental and sustainability grounds.
- Established case law exists on the weight to be given to planning controls in the LEP and provisions in the DCP. As long as these remain permissive then any less formal position would be vulnerable to challenge.

Strategic Considerations

The option of advocacy is non-exclusive and may be pursued alongside any of the other options, or as a preliminary step to gauge the level of support across different sectors of the community. Advocacy work in this space would highlight Councils position on solar farms. However, on its own even a detailed position would not prevent any future solar farms and would have minimal weight in the assessment and determination of any application that was broadly consistent with the planning controls that are in place.

This creates the risk of Council being perceived as inconsistent if it is seen to be advocating against solar farms while simultaneously approving development applications for them. Advocacy without

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a detailed evidence base could also be perceived as an arbitrary position lacking in rigour. Balanced against these risks clear and bold advocacy work may also be seen as Council being proactive and seeking to take a leadership position in this space, partly arising from concerns expressed by our community from recent development applications.

If this option is pursued the messaging should be nuanced, acknowledging the gaps in the knowledge base, and calling for work to be done to close those gaps. In this light a restrictive stance can be presented as adhering to the precautionary principle as a restrictive stance can always be relaxed if evidence emerges to suggest that is warranted.

CONCLUSION

Each of the options presents a different balance between certainty and flexibility. Council's challenge is to determine how best to manage large-scale renewable energy development in a way that contributes to State energy transition goals while safeguarding the agricultural productivity, environmental values and rural landscapes that underpin the Orange region's identity and economy.

The options outlined are not mutually exclusive and may be combined or staged to achieve a balanced and defensible planning framework. Specifically, options 3 and 4 may provide a staged approach that would enable Council to respond proportionately while maintaining alignment with broader energy transition objectives. Please note that options 2, 3 and 4 have financial implications that are currently unfunded.

ATTACHMENTS

- 1 Notice Of Motion - Requesting Options Paper - Large-Scale Renewable Energy Infrastructure - 17 February 2026, D26/43624 [↓](#)
- 2 Central Joint Organisation - Discussion Paper - Lessons Learned Renewable Energy Projects and Voluntary Planning Agreements - 31 Oct 2025, D26/43621 [↓](#)

Attachment 1 Notice of Motion - Requesting Options Paper - Large-Scale Renewable Energy Infrastructure - 17 February 2026

4 NOTICES OF MOTION/NOTICES OF RESCISSION**4.1 Notice of Motion - Identification of Suitable Locations for Solar Farm Establishment in the Orange LGA**

RECORD NUMBER: 2026/54

I, **CR TONY MILETO** wish to move the following Notice of Motion at the Council Meeting of 17 February 2026:

MOTION

That Council staff prepare an options paper for consideration by Council on the appropriate location and controls of large-scale renewable energy infrastructure.

BACKGROUND

Council has recently processed two development applications for solar farms that attracted community opposition, highlighting growing concern about the cumulative impacts of this form of development on agricultural land, rural landscapes, and community expectations. This motion requests Council staff develop an options paper for the appropriate location and controls of large-scale renewable energy infrastructure.

Should these controls be developed and implemented they will provide greater clarity and certainty in the planning framework regarding the development of large-scale renewable energy infrastructure.

It is envisaged that the options developed will have strong strategic and site-specific merit, balancing the State's renewable energy objectives with the long-term protection of agricultural productivity, environmental values, and rural landscapes that are fundamental to the identity and economy of the Orange region.

Signed Cr Tony Mileto

STAFF COMMENT

Council staff support the approach to the development of an options paper for consideration by Council.

FINANCIAL/RESOURCING IMPLICATIONS

Council staff will be required to consider and develop an options paper for Council. This is consistent with strategic and town planning objectives for Orange.

POLICY AND GOVERNANCE IMPLICATIONS

Nil

Discussion Paper: Lessons learned on renewable energy projects in the region and Voluntary Planning Agreements

31 October 2025



Attachment 2 Central Joint Organisation - Discussion Paper - Lessons Learned Renewable Energy Projects and Voluntary Planning Agreements - 31 Oct 2025

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Executive Summary

At the CNSWJO Board meeting in May 2025, it was resolved to develop a “lessons learned document” regarding large renewable energy developments, including case studies from member councils. The resolution is linked to prior work and discussions occurring in the Portfolio Mayors and Opt-In Advocacy Subcommittees of CNSWJO, with particular regard to community concerns surrounding renewable energy projects and cumulative impacts. It is further understood that there has been interest from the Board on the intersection between Voluntary Planning Agreements and large renewable energy developments.

Regional councils are chronically resource- and time-poor, struggling to comprehensively and strategically respond to State Government Net Zero targets as well as planning frameworks that nominate regional locations as Renewable Energy Zones or categorise developments as State Significant. In local government, one of the biggest levers that councils have in planning for and responding to these macroeconomic and socio-spatial challenges is through their function as land-use planning authorities.

The purpose of this Discussion Paper is to:

- canvass planning-related mechanisms – specifically, VPAs – that seek contributions from proponents to go towards mitigating the impacts (including cumulative impacts) of renewable energy developments and delivering real benefits to host communities,
- platform real-world insights from member councils on major renewable energy projects and associated VPAs, and
- provide points of discussion for further development of local policy responses and advocacy messaging.

Throughout October 2025, CNSWJO staff completed a desktop analysis of major renewable projects within the JO region. This exercise revealed 36 major renewable projects have been approved or are under consideration. Nine of these projects have confirmed VPAs in place. General Managers at each of the 11 member councils were contacted via email during October, with ongoing correspondence received from GMs and planning staff up until late October.

For completeness, the purpose of different contributions mechanisms (s7.11, s7.12, VPAs) have been included in this Discussion Paper. The relationship between VPAs and Community Benefit Sharing arrangements have been explored through the lens of the Department of Planning, Housing and Infrastructure guidance.

Throughout this Paper, “discussion points” are highlighted in grey boxes for member consideration. These discussion points may generate further, nuanced conversations within and across councils on renewable energy developments and associated land-use planning processes and mechanisms.

It is recommended that the following points be considered by members as part of their internal council discussions and operations:

- Create and endorse a Planning Agreements Policy, with specific provisions relating to renewable energy development

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- Set out broad expectations for timing of negotiations, projects/programs to be funded, and preference for VPA instalment schedules (prior to construction)
- Enshrine within a local council VPA Policy that registration of VPAs on title in those instances where the proponent and landholder are one in the same is a routine expectation
- See Discussion point 5
- Develop and maintain a public and online Planning Agreements Register for all VPAs entered into.

The following actions are recommended to be undertaken collaboratively, with further guidance sought from the JO Planners Group:

- Create a VPA Policy template to support member councils
- Engage in concerted discussions on preparing VPAs and VPA milestones for Regionally and State Significant Development
 - This Group could also advocate to the Department for a dedicated resource to bring each council in the JO up to a certain level of VPA expertise
- Monitor the launch of the Australian Government's [Renewable Energy Developer Rating Scheme](#)
- Seek answers from the Department on how benefit rates were determined in the [Benefit-Sharing Guideline](#)
 - Advocate for the Department's *Benefit-Sharing Guideline* to be reframed to ensure that councils can develop their own 'minimum community benefit thresholds' as Policy and that the Department Guideline only applies where no local Policy is in place
- Request the inclusion of proponents working collaboratively to identify and mitigate cumulative impacts in the next iteration of the Clean Energy Council's [Best Practice Charter](#) commitments
- Advocate to the Department on restricting the ability for Community Consultative Committees to administer VPA funds
 - See also Discussion point 4
- Champion RAI's "[REAL deal for the regions](#)" regional contributions framework and the possibility of extending the existing NSW Housing and Productivity Contributions model to the Central West region.

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Glossary

The Act	NSW Environmental Planning and Assessment Act 1979
AHCS	Affordable Housing Contributions Scheme
BESS	Battery Energy Storage System
CIV	Capital Investment Value
DA	Development Application
DCCEEW	NSW Department of Climate Change, Energy, the Environment and Water
DPHI	NSW Department of Planning, Housing and Infrastructure
The Department	DPHI
EIS	Environmental Impact Statement
EP&A Act	NSW Environmental Planning and Assessment Act 1979
RSD	Regionally Significant Development
SEARs	Secretary's Environmental Assessment Requirements
SSD	State Significant Development
SSI	State Significant Infrastructure
VPA	Voluntary Planning Agreement or Planning Agreement

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1. Introduction

At the CNSWJO Board meeting in May 2025, it was resolved to develop a “lessons learned document” regarding large renewable energy developments, including case studies from member councils. The resolution is linked to prior work and discussions occurring in the Portfolio Mayors and Opt-In Advocacy Subcommittees of CNSWJO, with particular regard to community concerns surrounding renewable energy projects and cumulative impacts. It is further understood that there has been interest from the Board on the intersection between Voluntary Planning Agreements and large renewable energy developments.

As Australia’s energy grid transitions to renewables (such as wind and solar), the bulk of renewable energy projects and infrastructure is occurring in regional and rural parts of the country. Renewable energy developments have become increasingly controversial in regional Australia. This is due to myriad factors, including the perception of inequitable financial gains/losses to landholders, host communities, and local councils, and emergent issues of cumulative impacts inside and outside of host LGAs.

Regional councils are chronically resource- and time-poor, struggling to comprehensively and strategically respond to State Government Net Zero targets as well as planning frameworks that nominate regional locations as Renewable Energy Zones or categorise developments as State Significant. In local government, one of the biggest levers that councils have in planning for and responding to these macroeconomic and socio-spatial challenges is through their function as land-use planning authorities.

2. Scope

The purpose of this Discussion Paper is to:

- canvass planning-related mechanisms – specifically, VPAs – that seek contributions from proponents to go towards mitigating the impacts (including cumulative impacts) of renewable energy developments and delivering real benefits to host communities,
- platform real-world insights from member councils on major renewable energy projects and associated VPAs, and
- provide points of discussion for further development of local policy responses and advocacy messaging.

3. Methodology

Throughout October, staff completed a desktop analysis of major renewable projects within the JO region. This desktop analysis included perusing council websites and policies, the Department’s Planning Portal¹, and any online versions of VPAs linked to renewable energy projects. As of 13 October 2025, the following major developments (under consideration or determined) per Table 1 were identified through this process.

¹ [Major Projects](#) and [Western Regional Planning Panel](#)

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Table 1. Identified major renewable energy projects approved or under consideration in CNSWJO region

LGA	Project	DA status	VPA in place
Bathurst	Glanmire Solar Farm	SSD determined (approved)	Y
	Crudine Ridge Wind Farm	SSD determined (approved)	Y
	Brewongle Solar Farm	SSD under consideration	TBC
	Sunny Corner Wind Farm*	SSD under consideration	TBC
	Panorama BESS	SSD under consideration	TBC
Blayney	Flyers Creek Wind Farm	SSD determined (approved)	Y
	180 Greghamstown Rd Solar Farm	RSD under consideration	TBC
	269 Marshalls Ln Solar Farm	RSD determined (approved)	N
Cabonne	Molong BESS	SSD under consideration	TBC
	Manildra Solar Farm	SSD/former Part 3A	N
	Molong Solar Farm (2340 Belgravia Rd)	RSD determined (approved)	N
Cowra	-	-	-
Forbes	Jemalong Solar Project	SSD determined (approved)	Y
	Peninsula Solar Farm at Paytens Bridge	SSD determined (approved)	Y
	Forbes Solar Farm (207 Hoopers Rd)	SSD under consideration	TBC
	Daroobalgie Solar Farm	SSD determined (approved)	TBC
	Sunrise Clean Teq* (noting this is not a renewables project, but mining for critical minerals in demand by renewables and BESS)	SSD/former Part 3A	Y
Lachlan	Graphite Energy solar farm (Lake Cargelligo Rd & Wyalong Rd)	RSD determined (approved)	N
	Sunrise Clean Teq*	SSD/former Part 3A	Y
Lithgow	Sunny Corner Wind Farm*	SSD under consideration	TBC
	Wallerawang BESS	SSD determined (approved)	TBC
	Lake Lyell Pumped Hydro energy storage	SSI under consideration	TBC
	Ben Bullen Wind Farm	SSD under consideration	TBC
	Mount Lambie Wind Farm	SSD under consideration	TBC
	Pinecrest BESS	SSD under consideration	TBC
	Great Western BESS	SSD determined (approved)	TBC
Mt Piper BESS	SSD determined (approved)	TBC	
Oberon	Paling Yards Wind Farm	SSD under consideration	TBC
	The Pines Wind Farm	Yet to be lodged	TBC
Orange	140 Cadia Road solar farm and BESS	RSD determined (approved)	N
	25 Lone Pine Av solar farm and BESS	RSD under consideration	TBC
	643 Mitchell Highway solar farm	RSD determined (approved)	N
Parkes	Parkes Solar Farm	SSD determined (approved)	N
	Goonumbla Solar Farm	SSD determined (approved)	N
	Quorn Park Solar Farm	SSD determined (approved)	N
	Ridgey Creek BESS	SSD determined (approved)	Y
	Sunrise Clean Teq*	SSD/former Part 3A	Y
Weddin	Mary Gilmore Way Solar Farm	RSD determined (approved)	N
*Cross-LGA project			

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General Managers at each of the 11 member councils were contacted via email between Friday 10 October and Wednesday 22 October about the identified developments in Table 1 and general thoughts on:

- renewable energy developments with regards to VPAs,
- VPAs administration,
- community benefit funds and the Department Guideline, and
- cumulative impacts.

It was generally asked for responses to these prompts within 5-10 business days for the purposes of a “lessons learned” document to the CNSWJO Board. Responses received up until Thursday 30 October have been included as considerations in this Discussion Paper.

Over-the-phone and written responses to these emails were received from 10 out of 11 councils by Thursday 30 October. A big thank you is extended to those councils and members of staff who were able to share their insights in this timeframe.

Additionally, correspondence with the General Manager of Mid-Western Regional Council occurred in October. Mr Brad Cam offered to speak on this topic at the February 2026 Board meeting. Some of his initial insights have made it into this Discussion Paper.

4. Planning context

4.1 Regionally Significant Development

Regionally Significant Development² is usually any development over a certain capital investment value, being over \$5m CIV in the cases of ‘private infrastructure’. These types of development are generally determined by a Planning Panel (presently, the Western Region Planning Panel), with councils able to submit assessment reports and suggested determination outcomes (and conditions of consent) to the Planning Panel. Planning Panels are independent from the Department when it comes to determining regionally significant development, insofar as these Panels are not subject to the direction or control of the Planning Minister.

4.2 State Significant Development

State Significant Development and State Significant Infrastructure is usually any development over a certain CIV (in most cases, \$30m), development that occurs in designated precincts (such as Inland Rail corridor and Central-West Orana REZ for transmission works), or any development declared by the

² Note that there are proposed changes to the Planning system in NSW which would abolish the Regionally Significant Development pathway—read more here about the *Environmental Planning and Assessment Amendment (Planning System Reforms) Bill 2025*: <https://legislation.nsw.gov.au/view/html/bill/91b26603-f1f7-4738-9705-c65b163963fb>

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Planning Minister to be 'state significant' (call-in powers). These types of development are determined by the Department, with councils able to make submissions and representations to DPHI on environmental impact assessment matters. Councils can recommend to the Department that conditions of consent relating to s7.11 and s7.12 developer contributions and VPAs be included in any approval, although these requests do not need to be honoured by the Department in its final determination.

4.3 Renewable Energy Zones

REZs have been identified in the State by virtue of the *Electricity Infrastructure Investment Act 2020*. No part of the Central West and Orana REZ occurs within the boundaries of the CNSWJO member council LGAs, however, environmental impacts such as vehicle movements during construction are keenly felt within parts of the JO region.

There are certain assessment differences between renewable energy projects proposed within a REZ versus outside of a REZ. Levels of planning assessment support from the State Government differ between REZ and non-REZ proposals.

4.4 Sections 7.11 and 7.12 Local Contributions Plans

Sections 7.11 and 7.12 of the Act allow local councils to levy developer contributions on local development. Councils cannot levy both contribution rates (ie cannot apply both s7.11 and s7.12 contributions) to the same development and application of either of these sections of the Act require significant strategic planning and documentation.

In short, s7.11 contributions go towards the provision of amenities and services within a geographically defined area. As such, councils usually create s7.11 contribution maps in preparation for residential growth areas or industrial precincts. In contrast, s7.12 allows for fixed contribution rates to be levied on all eligible development at a baseline rate to go towards broader public amenities and services. The implementation of s7.12 contributions plans is therefore usually simpler for councils to achieve, with the trade-off being that a low default contribution rate is usually not sufficient to adequately cover the contributions needed from large and unexpected developments that generate significant demand on services or environmental impacts.

5. Voluntary Planning Agreements

Voluntary Planning Agreements (VPAs) – or, in more recent years, simply 'Planning Agreements' – are one mechanism that planning approval bodies may use to mitigate environmental impacts, negotiate planning outcomes, and lock-in community benefits associated with a development or rezoning/other Local Environmental Plan changes.

Historically, the Department has been wary to tout Planning Agreement pathways to councils in negotiating development outcomes with proponents. This is mostly due to probity and corruption risks

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that may arise in negotiating development outcomes that would confer land-use benefit on a proponent for a 'price' as determined in a VPA. The flip side to these concerns is the flexibility and case-by-case nature that VPAs afford councils in negotiating in-kind or monetary outcomes from proposed developments that may not otherwise be sufficiently captured by rigid application of s7.11 and s7.12 contributions plans. This is particularly the case where councils are facing a flurry of development within a certain industry (or across multiple industries) that council has not been able to strategically plan for in its planning and contributions framework.

Additionally, s7.11 and s7.12 contributions are one-off payments and are only able to be levied where there is a direct nexus between the development/planning proposal and the additional infrastructure/services needed to sustainably accommodate the development/planning proposal. Therefore, it can be legally tedious through s7.11 and s7.12 contributions to acquire and pool funds for broader community infrastructure in an LGA associated with ongoing renewable energy projects.

As s7.11 and s7.12 contributions generally go towards the provision of council infrastructure and assets, it may be inappropriate to use these contributions pathways for the purpose of acquiring funds for social infrastructure and community programs. For example, when it comes to the provision of social and affordable housing, some metropolitan councils in NSW tend to rely on the mechanism of an Affordable Housing Contribution Scheme whereby proponents pay a proportion of 'development uplift' into an Affordable Housing Contributions Fund. This is in addition to s7.11 or s7.12 contributions, and potentially even in addition to VPAs.

For administrative ease, some proponents seek to exclude the application of all other contribution mechanisms within a VPA (such as s7.11, s7.12, and AHCS) to facilitate a 'one-stop-shop' for all required contributions within the Planning Agreement. This appears to also be encouraged by the Department for renewable energy State Significant Development.

Discussion point 1: Is it councils' preference to exclude the application of s7.11, s7.12, and other contributions mechanisms within the terms of a VPA? Is this administratively simpler or more complex, in terms of allocating source VPA funds to different programs and purposes of council?

Returning to the questions of probity and managing corruption risks in the VPA process, the Department recommends each council create and endorse a Planning Agreements Policy and Planning Agreements Register. The Policy can set out circumstances in which it is reasonable to negotiate VPAs. The creation and periodic review of a Planning Agreements Policy appears to be fundamental in laying the groundwork for successful and considered VPA negotiations, as well as enhancing community trust in VPA outcomes. A Planning Agreements Policy also gives councils the opportunity to get on the 'front foot' in detailing how they expect proponents to engage with councils and negotiate outcomes. Mid-Western Regional Council has a draft Policy specific to this topic, known as the [Renewable Energy Planning Agreements Policy](#).

Discussion point 2: Does your council have a Planning Agreements Policy? Is it silent on renewable energy projects and proponents?

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Discussion point 3: Does your council have a Planning Agreements Register? Or does council only make Planning Agreements publicly available online during the exhibition phase of each draft VPA?

6. Community Benefit Sharing

The renewables transition does not generate significant numbers of jobs long-term; economic benefits in terms of job creation are mostly experienced during the construction phase. This is particularly concerning for traditional mining communities where they feel they will not receive a like-for-like job offer in the powering down of coal and the ramping up of renewables. In LGAs with high amenity rural landscapes, such as the outskirts of Orange, community pushback tends to focus on the potential changing character of these areas that renewable energy projects could foster.

With these challenges of a just transition, more political attention is being paid to the role of community benefit funds and social programs (paid for by renewables) that can sustain communities in the decades to come.

The Department's Renewable Energy Planning Framework³ includes key guidelines for proponents and assessors, such as the [Benefit-Sharing Guideline](#). The Guideline was published in November 2024 and focuses on how money/contributions for community benefit programs and funds are to be calculated and administered, at the nearby neighbour scale and at the broader local community scale. Importantly, this Guideline applies to renewable energy developments inside and outside of REZs. The Guideline does not however apply to non-SSD projects, nor does it apply to:

- hydrogen projects,
- pumped hydroelectric projects,
- BESS on non-rural zoned land, or
- electricity transmission infrastructure.

Core aspects of the Guideline include the Department recommending Planning Agreements be used to establish community benefit funds, especially for council-managed programs⁴. The Department also states that generally, councils should administer no less than 85% of the relevant portion of the total benefit-sharing value⁵.

The Guideline lays out the following benefit-sharing rates⁶:

Total funding for benefit-sharing should be:

- \$850 per megawatt per annum for solar energy development, or

³ NSW Government, DPHI. (n. d.). *Renewable Energy Planning Framework*. Retrieved from <https://www.planning.nsw.gov.au/policy-and-legislation/renewable-energy/renewable-energy-planning-framework>

⁴ NSW Government, DPHI. (November 2024, p. 17). *Benefit-Sharing Guideline: Guidance for large-scale renewable energy projects*. Retrieved from <https://www.planning.nsw.gov.au/sites/default/files/2024-11/benefit-sharing-guideline.pdf>

⁵ Ibid, p. 20

⁶ Ibid, p. 24

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- \$1,050 per megawatt per annum for wind energy development, or
- \$150 per megawatt hour per annum for stand-alone battery energy storage systems located in a rural zone (i.e. RU1 Primary Production, RU2 Rural Landscape, RU3 Forestry, RU4 Primary Production Small Lots), based on installed capacity and paid over the life of the development and indexed to the Consumer Price Index.

The Benefit-Sharing Guideline lumps together contributions for nearby neighbour funds as well as community benefit programs:

The total value of benefit-sharing, calculated by adding together the proposed funding amounts for any neighbourhood and local community benefit programs (whether council-managed or otherwise), should not exceed the rates outlined.⁷

Despite the Guideline being 'guidance' and not a mandatory approach to community benefit sharing, it is expected that the provisions in the Guideline form a minimum standard that the Department will accept in assessing benefit-sharing arrangements for SSD renewable energy projects.

7. Lessons Learned – VPAs and Community Benefit Sharing

The following "lessons learned" have been sourced from member councils (refer to **3. Methodology** part of report) as well as Mid-Western Regional Council. "Lessons" have been grouped by topic and wherever possible, common patterns have been identified.

7.1 Preparing VPAs

Due to the diversity of the CNSWJO region, some councils are more advanced and sophisticated in how they negotiate VPAs. Other councils have expressed complete overwhelm with the VPA process and s7.11/s7.12 contributions pathways. There is a desire for 'uniformity' in the process and the need for a "VPA guide for dummies" which answers:

- When should councils first have discussions about VPAs with a proponent?
- When should councils agree to in-principle offerings?
- How binding is a Letter of Offer?
- Should the Department require SSD proponents that intend on entering into VPAs to have an in-principle Letter of Offer at the point of requesting SEARs? Prior to the EIS?
- What's our bargaining power? When should we be negotiating in a more 'hard line' way and when should we accept what is offered?
- Can we ask for a lump sum payment as well as annual contributions?
- What can we actually ask for from proponents? In-kind, road replacements, money?

Even councils that have several VPAs and are accustomed to SSDs in their LGA experience confusion and disorientation, mostly due to the Department being inconsistent in how it assesses projects and its

⁷ Ibid, p. 24

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requirements from proponents (as well as councils). Constant advocacy by planning staff in councils is required to remind the Department of core issues, emerging issues, and localised considerations necessary in determining SSDs. Further, the Department “changes its mind as to what it wants from Council each time in the heads of agreement for Planning Agreements”. These factors create considerable burdens for local council planning staff which are severely disproportionate to councils’ actual level of authority in determining SSDs.

A further complicating factor for council planners is how differently Regionally Significant Developments are treated from State Significant Developments. As noted elsewhere in this Discussion Paper (**6. Community Benefit Sharing**), the Department has released Guidelines on assessing renewable energy developments that are SSDs and encouraging VPA pathways to capture community benefit funds. For many councils that are dealing with multiple RSD-level renewable energy projects but no SSD projects, there is no formal support in how to leverage outcomes from these developments for the broader community. It is understood that Forbes Shire Council’s s7.12 Contributions Plan Policy includes provision for when Council should consider VPAs as an alternative to local contributions schemes for renewable energy developments.

Existing guidance from the Department⁸ tends to discourage the use of VPAs for local development in comparison to s7.11/s7.12 contributions plans. These factors combine to create a gap in support and information for developments that are significant enough to be afforded their own planning approval pathway (via the Western Regional Planning Panel) yet not apparently significant enough to warrant the need for establishment of community benefit funds as outlined in the *Benefit-Sharing Guideline*.

Councils, through forums such as the CNSWJO Planners Group, may wish to engage in concerted discussions on preparing VPAs and VPA milestones for Regionally and State Significant Development. This Group could also advocate to the Department for a dedicated resource to bring each council in the JO up to a certain level of VPA expertise.

A final note on preparing VPAs: if a council misses the opportunity for VPA creation during the DA phase of renewable energy development, there still exists the opportunity to recoup funds or in-kind contributions by other means. Councils that foster decent relationships with proponents, primarily through their Economic Development Team, are at an advantage in striking non-VPA agreements with proponents where there is demonstrated need. For example, if a council can demonstrate over a 10-year period that a development has had a substantial impact on the quality of local road networks, and there is open dialogue between council and the proponent, an agreement can be reached on rectifying these impacts. Forbes Shire Council has had success in this regard with mining companies in the region.

⁸ NSW Government, DPHI. (n. d.). *Local infrastructure contributions system practice note: Selecting the most appropriate contribution mechanism*. Retrieved from <https://www.planningportal.nsw.gov.au/local-infrastructure-contributions/selecting-contribution-mechanism>

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7.2 DPHI Benefit-Sharing Guideline

Benefit rates as a ‘ceiling’ and not a ‘floor’

The *Benefit-Sharing Guideline* has been criticised for a) excluding some renewable energy developments and infrastructure from application of the Guideline, and b) setting a ‘ceiling’ on these rates rather than a ‘floor’ for negotiating higher benefit-rates per MW. It has been expressed by some councils that the Guideline rates should act as floor, with higher contributions sought when considering the location of projects relative to urban centres, capacity for those centres to accommodate workforces, cumulative impacts with other projects, water scarcity issues, and so on.

Local policies that have been in place for longer than the Department’s Guideline, such as Armidale Regional Council’s [Renewable Energy Community Benefit Framework](#) (adopted May 2024), contain much higher benefit rates than the Guideline:

...the minimum community benefit threshold for [council] is... \$850 per megawatt of capacity per annum for energy storage developments (including pumped hydro)... Projects that do not deliver community benefits above this threshold are likely to be considered not in the public interest.

Local councils are best placed to understand the social licence challenges facing renewables in their community and the scope of tangible impacts that will be felt by the community during construction, commissioning, operation, and decommissioning.

Councils should seek answers from the Department on how benefit rates were determined in the *Benefit-Sharing Guideline*. Councils could advocate for the Guideline to be reframed to ensure that councils can develop their own ‘minimum community benefit thresholds’ as Policy and that the Department Guideline only applies where no local Policy is in place.

Administration of funds

Councils not being able to administer 100% of benefit funds is considered a poor outcome. Councils have completed extensive community engagement and routine creation of Community Strategic Plans, putting out expressions of interest for Community Plan proposals from their residents, and adherence to Integrated Planning and Reporting (IP&R) processes.

Allowing up to 15% of the benefit funds to be administered by ad hoc community groups (usually Community Consultative Committees) can create non-legacy assets that have limited positive impacts on the broader community. A related criticism of community-administered funds has been purely grounded in questions of efficiency: “why you would want to administer less than \$15,000 of funds per year yourselves is beyond me”.

Although it seems the intent from the Department is for the smaller pool of funds to go towards ‘neighbourhood benefits’ of nearby neighbours to the development, there are doubts that Community Consultative Committees are successfully delivering on this outcome. SSD DA conditions of consent may

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require the proponent to set up a Community Consultative Committee⁹ and thus proponents have been pushing for these Committees to be established to administer partial benefit-funds. Up to three representatives on the Committee are appointed by the proponent¹⁰ and thus the proponent has a direct and tangible influence on how benefit funds are allocated to various causes. By contrast, there is no reference to 'neighbours' or 'nearby receivers' as required committee members on the Community Consultative Committee¹¹. As a result, an observation has been made that these Community Consultative Committees tend to favour funding outcomes that have a 'PR star quality' to them, which is not always in alignment with the public interest.

Councils may wish to consider advocating to the Department on restricting the ability for Community Consultative Committees to administer VPA funds.

Discussion point 4: Councils may wish to advocate to the Department to update:

- *its Community Consultative Committee Guideline to ensure explicit references are made to 'neighbours' and 'nearby receivers' as mandatory committee members, or*
- *its Benefit-Sharing Guideline so as to exclude 'neighbourhood benefits' from the total contributions calculation.*

7.3 The substance of VPAs

VPA monetary instalments

Councils can negotiate contributions from VPAs to be paid in one lump sum or annually. It is perhaps preferable for smaller projects to offer 50% of the value of contributions in an upfront lump sum payment and the rest of the balance paid annually for the life of the project. Larger developments can be negotiated such that an annual payment for the life of the project is paid to council and that payment is commensurate with CIV (e.g. 1.5% of CIV divided across annual payments).

Councils should look to include term periods within their VPAs that favour the VPA lasting the life of the project (*including* decommissioning) or a minimum period (e.g. 25 years), whichever is longer, especially if councils are seeking VPA instalments to be paid annually rather than as an upfront lump sum payment. If councils prefer an upfront lump sum payment, they may wish to concede no term lengths of the VPA with the proponent (except in the circumstances of a modification of the DA).

Some VPAs require an initial payment upon signing of the Agreement. For instance, the Daroobalgie Solar Farm VPA, per the [DA conditions of consent](#), requires a lump sum payment to Council within 30 days of signing. Proponents will try and push back first VPA installments to be at the commissioning stage, but with renewable energy development, most of the impacts are felt by the community during construction. If a project fails during the commissioning phase (post-construction), then councils have been shortchanged of any VPA contributions up until that point.

⁹ NSW Government, DPHI. (June 2023). *Community Consultative Committee Guideline*. Retrieved from <https://www.planning.nsw.gov.au/sites/default/files/2023-02/community-consultative-committee-guideline.pdf>

¹⁰ Ibid, p. 7

¹¹ Ibid, p. 8

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It is not uncommon for VPAs to list explicit funds that contributions will be allocated to (e.g. Lithgow's Economic Transition Fund) or planning purposes (e.g. public road upgrades). In other cases, annual VPA monetary instalments are not devoted to a specific purpose in the terms of the VPA.

Acknowledgement of funds

Councils tend to generally prefer administering 100% of the funds from a VPA whilst honouring the source of those funds in media releases relating to community grants programs and the like. Wording to this effect has been included in the [Ridgey Creek BESS VPA](#) between Parkes Shire Council and the proponent.

Further, the abovementioned VPA and others in the JO region (e.g. Bathurst) have requirements for consultation to occur with proponents on how funds are to be allocated. This can be based on the following principles:

- contribution to increased resilience for the community,
- alignment with Council's Community Strategic Plan,
- supporting the development of skills and capabilities within the community,
- providing important infrastructure for use within the community such as roads, and
- supporting initiatives for increase sustainability within the community

In Blayney's [Flyers Creek VPA](#), the proponent can make representations on how they believe funds should be allocated, and Council must have regard to these opinions, but ultimately Council is not bound by the proponent's opinions on these matters.

7.4 DA conditions of consent

Councils must be emphatic in their position that VPAs are specifically referred to in DA conditions of consent. Per the above section (**7.3 The substance of VPAs**), councils should seek VPA commencement and first payments to occur as soon as possible, preferably at or before construction commencing, and this timing should be reflected in the sequencing of DA consent conditions.

The registration of VPAs on land titles is vexed. All interested parties need to agree to registration on title per s7.6 of the Act, before this can be included as a condition of consent on a DA. Where renewable development is occurring on land not in ownership of the proponent, this is a difficult proposition. Consideration could be given to enshrining within a local council VPA Policy that registration of VPAs on title in those instances where the proponent and landholder are one in the same is a routine expectation.

Relatedly, a condition should be included in DA approvals restricting the proponent from assigning its interest in the development without prior agreement with Council (and an assignment of the VPA to the incoming party).

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7.5 Cross-boundary projects

It is not uncommon for major renewable energy proposals to extend across LGA boundaries. Even if the physical siting of a project does not extend across boundaries, it is understood that environmental impacts (such as traffic movements and workforce accommodation) during construction is likely to impact more than one LGA.

Councils within the CNSWJO region and beyond the region must work together to negotiate an agreed approach to dealing with proponents for cross-boundary projects and expected impacts. Many councils have had 'practice' at this with previous and ongoing mining projects.

Proponents may enter into several VPAs with individual councils for the same project, or a singular VPA may include multiple councils as parties (e.g. Sunrise Clean Teq VPA between the proponent, Forbes Shire, Lachlan Shire, and Parkes Shire councils).

In those circumstances where renewable energy VPAs would be required between the proponent and each Council separately, they are generally prepared concurrently. This presents the opportunity for councils to work together in presenting a unified front in what they are willing to accept in each of their VPAs, and an agreed understanding of which council is likely to experience the most-to-least impacts. Funds could be apportioned on a pro rata basis, depending on physical development (per MW, per turbine, per PV panel) percentages in each LGA. Funding allocation may be negotiated amongst councils based on the extended impacts footprint in each LGA, or some other agreed metric between councils and based on emerging cumulative impacts.

The Department's *Benefit-Sharing Guideline* includes case studies that examine different cross-boundary arrangements for community benefit sharing funds. However, it is worth noting that the total contributions set-out in the Guidelines result in councils 'competing' with each other for apportionment of funds. In these circumstances, it is an absolute necessity for councils to work together and make reasonable adjustments to their negotiating positions, to foster strong community outcomes in the long run.

Mid-Western Regional and Dubbo Regional Council have negotiated varying VPA percentage splits for funds across at least two projects. In one project, VPA funds were split 50/50 despite some impacts being more keenly felt in one LGA. At a later date, this was acknowledged and a 60/40 split of funds proposed for a different project's VPA, to ensure the relationship between councils remained constructive and fruitful. Councils must be willing to engage in a little 'give and take' and acknowledge any historical anomalies in how VPA funds may have been apportioned relative to actual impacts.

There can be challenges where councils have different experience levels in negotiating and interacting with the VPA process, seemingly putting one council at advantage over another when it comes to cross-boundary development impacts.

As suggested elsewhere in this report (**7.1 Preparing VPAs**), councils, through forums such as the CNSWJO Planners Group, may wish to engage in concerted discussions on preparing VPAs and advocating to the

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Department for a dedicated resource to bring member council in the JO up to a certain level of VPA expertise.

7.6 Cumulative impacts

Cumulative impacts arise when several developments across multiple (or the same) sector occur or propose to occur simultaneously in a locality. Usually, the sum of these impacts are greater than their individual parts (known as synergistic effects). Cumulative impacts can even be felt before any DA has been lodged; consider the phrase ‘consultation fatigue’ in communities that are constantly being consulted on for similar developments by 10 different proponents (when only 4 proponents progress to making a development application).

Cumulative impacts are poorly understood in a proactive way in the NSW planning framework. This is due mostly to the development details of operations/impacts being treated as commercially sensitive information amongst proponents. This paradigm discourages proponents from co-identifying impacts that may coalesce into cumulative impacts, particularly where there is competition between proponents to ‘secure’ a development ahead of their peers (as is the case with Access Rights in REZs).

Government roles

As a matter of principle, there is wariness in relying on VPA funds to go towards projects and initiatives that previously would have been funded by Federal or State governments. For example, the Federal Financial Assistance Grants program has not kept pace with local needs and demands. Constant cost-shifting from Federal and State governments to Local government is now systemic¹². This consideration is important in the discussion around VPAs and community benefit sharing arrangements, in that these arrangements can inadvertently embed “letting government off the hook”.

As for development-related cumulative impacts, the Department has the October 2022 [Cumulative Impact Assessment Guidelines for State Significant Projects](#) that is largely considered not fit-for-purpose in the case of the renewable energy boom in the regions. In REZs, work is apparently underway by the State Government to better understand cumulative impacts and their timing¹³.

Mid-Western Regional Council has previously commissioned the [Managing the impacts of State Significant Development Final Report: Prepared for Mid-Western Regional Council](#) (January 2024). This work has identified the challenges in assigning responsibility in planning for and responding to cumulative impacts, and this is especially true where a boom of construction workers places unforeseen strain on housing, water, wastewater, waste, health, and policing resources.

The main positive outcome of this work has been the establishment of a whole-of-government steering committee from all NSW agencies to coordinate planning and responses to cumulative impacts. General

¹² Local Government NSW. (July 2025). *Cost Shifting 2025: How State costs eat Council rates*. Retrieved from <https://lgsw.org.au/Public/Public/Advocacy/Cost-shifting.aspx>

¹³ NSW Government, DCCEEW. (January 2025). *Submission – Inquiry into the Impact of Renewable Energy Zones (REZs) on rural and regional communities and industries in New South Wales*. Retrieved from <https://www.parliament.nsw.gov.au/lcdocs/submissions/89054/0044%20NSW%20Government%20DCCEEW.pdf>

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Managers from three councils within the Central West and Orana REZ attend the steering committee, with the General Manager of Mid-Western Regional Council as Chair.

Industry role

The Clean Energy Council has created a *Best Practice Charter*¹⁴ that renewable energy proponents can sign themselves up to. This Charter was created with significant local input from Mid-Western Regional Council and Regional Development Australia (RDA) Orana. The Charter contains the following commitments for renewable energy proponents:

1. *We will engage respectfully with the local community, including Traditional Owners of the land, to seek their views and input before submitting a development application and finalising the design of the project.*
2. *We will provide timely information and be accessible and responsive in addressing the local community's feedback and concerns throughout the life of the project.*
3. *We will be sensitive to areas of high biodiversity, cultural and landscape value in the design and operation of projects.*
4. *We will minimise the impacts on highly productive agricultural land and explore opportunities to integrate agricultural production.*
5. *We will consult the community on the potential visual, noise, traffic and other impacts of the project, and on the mitigation options.*
6. *We will support the local economy by providing local employment and procurement opportunities.*
7. *We will offer communities the opportunity to share in the benefits of the project, and consult them on the options available, including the relevant governance arrangements.*
8. *We commit to using the project to support educational and tourism opportunities where appropriate.*
9. *We will demonstrate responsible land stewardship over the life of the project and welcome opportunities to enhance the ecological, cultural and/or agricultural value of the land.*
10. *During the life of the project, we will recycle waste materials where feasible and commit to responsible decommissioning or refurbishment/repowering of the site at the end of the project's life.*

Signatories to the Charter are required to report annually how they are adhering to these 10 commitments across their portfolio. Failure to provide this annual reporting within a reasonable timeframe will lead to a company being removed as a signatory¹⁵.

It is acknowledged that the Charter commitments do not specifically address the need for cumulative impacts to be collaboratively addressed by proponents. This has been identified as a 'next step' in advocacy by stakeholders such as the General Manager at Mid-Western Regional Council. A further critique of the Charter is that there is limited commitment to community engagement at project's end-of-life and decommissioning phase.

¹⁴ Clean Energy Council. (2025). *Best Practice Charter*. Retrieved from <https://cleanenergycouncil.org.au/advocacy/best-practice-charter>

¹⁵ Ibid

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Councils could potentially incorporate references to this Charter into their Planning Agreements Policy (and individual VPAs), such that proponents who are signatories to the Charter are afforded some material bonus (e.g. slightly reduced community benefit rate per MW). This would incentivise proponents to engage with and adhere to the Best Practice Charter, and collectively 'lift the game' for proponent behaviour in regional NSW.

Discussion point 5: Would your council consider it viable to include references to the Clean Energy Council's Best Practice Charter in its VPA Policy and individual VPAs? Are there any risks associated with referencing a third-party Charter in a council Policy?

Discussion point 6: What aspects are missing from the Charter commitments? What local "commitments" could your council seek from proponents in how they engage with council and communities?

The Federal Department of Climate Change, Energy, the Environment and Water is launching a Renewable Energy Developer Rating Scheme¹⁶ with the purpose of providing transparent and periodic assessments of renewable energy and transmission business performance, community engagement track record, and compliance with commitments to local communities. This work appears to acknowledge the social licence barriers, aided by unfettered cumulative impacts, facing the renewables transition in Australia.

Dilapidation reports

These reports for road networks should be required prior to any intensification in use of the road network. Councils can mandate that proponents are to maintain roads during construction and have DA conditions of consent about how roads are to be maintained and at whose cost.

With regards to natural disasters, proponents may try and use these events as an excuse not to maintain roads to a pre-agreed standard.

Land zoned for rural purposes and s7.11 contributions

Bathurst Regional Council has adopted a [s7.11 Contributions Plan](#) that applies to land zoned for rural purposes where development will generate significant numbers of heavy vehicles. This is one avenue of shoring up contributions for key council transport infrastructure and road assets in the face of the renewables rollout on rural zoned lands.

Note that s7.11 and s7.12 can be set aside in VPAs, but there is no mandated requirement to set aside these Contribution Plans. In any case, councils can use the method of calculating contributions from s7.11 or s7.12 Local Contributions Plans for inclusion in VPAs and when advocating for Local Contributions to be levied on State Significant Development.

¹⁶ Australian Government, Department of Climate Change, Energy, the Environment and Water. (2025). *Consultation hub: Renewable Energy Developer Rating Scheme developer registration of interest process*. Retrieved from <https://consult.dccceew.gov.au/renewable-energy-developer-rating-scheme-developer-roi-process>

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Scarcity impacts

Councils that deliver a lot of road works and rely on stable prices for gravel are facing competition with proponents for that same resource (anecdotally inflating local prices by 30%). Similarly, councils' own workforces can be decimated where the proponent seeks to hire numerous truck drivers during construction.

These factors require further consideration when balancing requests for proponents to favour locally-produced resources and labour against shocks in pricing/labour needs of local businesses and operators.

Rating for Local Government Act purposes

Very little revenue through council rates can be acquired from renewable energy development, particularly as most renewable energy developments rely on a leasing arrangement with the host landholder of rural land. For example, wind towers are rated as 'business' but each tower only has a lease around its footprint, and as the dominant use of the land is still for farming, barely any increase in rates revenue occurs.

The lack of revenue from council rates acts as further impetus for levying contribution requirements on renewable energy developments through VPAs and other means, to curtail cumulative impacts.

7.7 Other learnings

- **Stake your council's claim for a VPA to be entered into in the response to SEARs process** for SSD, at a minimum. Make representations early that the VPA shall be explicitly referenced in conditions of consent.
- **Have plans or a wishlist of projects/programs you want VPAs to fund.** This aids in negotiating VPAs with proponents and reminding proponents of their corporate social responsibility in aligning their project with what the community actually desires through several years of council-led consultation. VPAs can fund staff positions as well – such as a horticulturalist employed to deliver revegetation projects for the life of the renewable energy development. Proponents tend to want VPA outcomes to overlap with their 'green' goals.
- **Always use contributions calculated on a per MW rate rather than a per 'wind tower' or per 'solar panel' rate.** If a proponent seeks to modify their DA by increasing MW capacity but keeping the number of towers etc the same, councils lose out on extra VPA funds. This was the case with Flyers Creek in Blayney, whereby the VPA was calculated on funding per wind tower with 37 wind towers originally proposed. The DA was then modified to increase the height and electricity generating capacity of each wind tower with no corresponding increase in VPA funding.
- **The wording of conditions of consent is prone to legalese.** There have been instances where SSD approval is given, conditional upon the proponent "submitting" an Accommodation Management Plan to Council, prior to construction commencing. However, this wording of "submit" but not requiring the Accommodation Management Plan to be "to the satisfaction of Council" allows for substandard outcomes to occur. Crucially, important environmental and social impacts arising from workforce accommodation plans should not be 'conditioned away' by the Department without due consideration of these impacts during the assessment of the Development Application.

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- **Leverage off advocacy that is already out there for the regions.** The Regional Australia Institute’s proposed “REAL Deal for the regions” envisages a regional contributions framework co-funded by industry, Federal, and State Governments to deliver social infrastructure (health facilities, housing including social and affordable housing, schooling) across regions impacted by the renewables transition¹⁷. The NSW Planning system already contains the tools to realise this goal, through the Housing and Productivity Contributions Fund¹⁸. However, to date, that Fund has only applied to Greater Sydney, Newcastle and Lower Hunter, Central Coast, and the Illawarra-Shoalhaven regions.

8. Summary of Discussion points

Discussion points throughout this Paper are collated below:

Discussion point 1: Is it councils’ preference to exclude the application of s7.11, s7.12, and other contributions mechanisms within the terms of a VPA? Is this administratively simpler or more complex, in terms of allocating source VPA funds to different programs and purposes of council?

Discussion point 2: Does your council have a Planning Agreements Policy? Is it silent on renewable energy projects and proponents?

Discussion point 3: Does your council have a Planning Agreements Register? Or does council only make Planning Agreements publicly available online during the exhibition phase of each draft VPA?

Discussion point 4: Councils may wish to advocate to the Department to update:

- its Community Consultative Committee Guideline to ensure explicit references are made to ‘neighbours’ and ‘nearby receivers’ as mandatory committee members, **or**
- its Benefit-Sharing Guideline so as to exclude ‘neighbourhood benefits’ from the total contributions calculation.

Discussion point 5: Would your council consider it viable to include references to the Clean Energy Council’s Best Practice Charter in its VPA Policy and individual VPAs? Are there any risks associated with referencing a third-party Charter in a council Policy?

Discussion point 6: What aspects are missing from the Charter commitments? What local “commitments” could your council seek from proponents in how they engage with council and communities?

¹⁷ Regional Australia Institute. (September 2025). *Towards Net Zero: Building a legacy*. Retrieved from [https://regionalaustralia.org.au/common/Uploaded%20files/Files/2025/Towards%20Net%20Zero/Building%20a%20Legacy%20\(ISIP\).pdf](https://regionalaustralia.org.au/common/Uploaded%20files/Files/2025/Towards%20Net%20Zero/Building%20a%20Legacy%20(ISIP).pdf)

¹⁸ NSW Government, DPHI. (2025). *Housing and Productivity Contribution*. Retrieved from <https://www.planningportal.nsw.gov.au/development-and-assessment/contributions/housing-and-productivity-contribution>

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9. Key takeaways for CNSWJO councils

The application of 'lessons learned' will be different for each council. Therefore, it is recommended that the following points be considered by members as part of their internal council discussions and operations:

- Create and endorse a Planning Agreements Policy, with specific provisions relating to renewable energy development
 - Set out broad expectations for timing of negotiations, projects/programs to be funded, and preference for VPA instalment schedules (prior to construction)
 - Enshrine within a local council VPA Policy that registration of VPAs on title in those instances where the proponent and landholder are one in the same is a routine expectation
 - See Discussion point 5
- Develop and maintain a public and online Planning Agreements Register for all VPAs entered into.

The following actions centre around universal messages from this Paper. It is recommended that these next steps are undertaken collaboratively, with further guidance sought from the JO Planners Group:

- Create a VPA Policy template to support member councils
- Engage in concerted discussions on preparing VPAs and VPA milestones for Regionally and State Significant Development
 - This Group could also advocate to the Department for a dedicated resource to bring each council in the JO up to a certain level of VPA expertise
- Monitor the launch of the Australian Government's [Renewable Energy Developer Rating Scheme](#)
- Seek answers from the Department on how benefit rates were determined in the [Benefit-Sharing Guideline](#)
 - Advocate for the Department's *Benefit-Sharing Guideline* to be reframed to ensure that councils can develop their own 'minimum community benefit thresholds' as Policy and that the Department Guideline only applies where no local Policy is in place
- Request the inclusion of proponents working collaboratively to identify and mitigate cumulative impacts in the next iteration of the Clean Energy Council's [Best Practice Charter](#) commitments
- Advocate to the Department on restricting the ability for Community Consultative Committees to administer VPA funds
 - See also Discussion point 4
- Champion RAI's "[REAL deal for the regions](#)" regional contributions framework and the possibility of extending the existing NSW Housing and Productivity Contributions model to the Central West region.

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10. Useful resources

There are other resources that are useful to this Discussion Paper and the topics of social licence, VPAs, contribution frameworks, community benefit sharing, and cumulative impacts. Some resources that have not made it into the main body of this Paper are collated below for further reading:

- [Dubbo Regional Council – Short-Term Worker Accommodation in the LGA \(2023\)](#) – analysing local accommodation needs in light of cumulative impacts from various major projects
- [Essential Media – Talking Renewables to the Regions \(July 2024\)](#) – survey of social licensing issues in the regions and how to communicate with the public about the renewables transition
- [Foundation for Rural Regional Renewal – Striking a New Deal for Renewables in Regions \(2025\)](#) – a Paper drawing on the experiences of regional leaders (including local government) and the challenges faced/to be overcome with the energy transition
- [Hay Shire Council – Fundamental Principles for Successful Renewable Development in Hay LGA \(February 2024\)](#)
- [NSW DPHI – Planning Agreements Practice Note](#) – contains modules on all aspects of creating a Planning Agreements Policy, using Planning Agreements, negotiating and entering into Planning Agreements etc
- [NSW Parliamentary Inquiry – First Report No. 62 Impact of Renewable Energy Zones on rural and regional communities and industries in NSW \(August 2025\)](#)
- [SGS Economics & Planning – Development contributions for affordable housing \(2018\)](#)
- [UDIA NSW – Unlocking Local Contributions in NSW \(2025\)](#)

2.2 Development Application DA 46/2026(1) - 7 Squatters Ridge

RECORD NUMBER: 2026/432

AUTHOR: James Coutts, Undergraduate Planner

EXECUTIVE SUMMARY

Application lodged	12 February 2026
Applicant/s	J & M MacDouall Pty Ltd
Owner/s	Mr KS Allen
Land description	Lot 29 DP 248205 - 7 Squatters Ridge, Clifton Grove
Proposed land use	Secondary Dwelling
Value of proposed development	\$347,364

Council's consent is sought for a secondary dwelling at 7 Squatters Ridge, Clifton Grove - Lot 29 DP 248205. The proposed secondary dwelling is a two-bedroom dwelling located to the northwest of the primary dwelling.

The subject site is located within the R5 Large Lot Residential zone. The proposed development is defined as a secondary dwelling and is not permitted in this zone under Orange Local Environmental Plan 2011. However, it is permissible under State Environmental Planning Policy (Housing) 2021, and the application is therefore seeking consent pursuant to that instrument.

The SEPP (Housing) 2021 limits the gross floor area of a secondary dwelling to 60m², unless a greater floor area is permitted on the land under another environmental planning instrument.

In this instance, the proposed secondary dwelling has a gross floor area of 105m² and therefore exceeds the default development standard. Although Orange Local Environmental Plan 2011 contains a more flexible floor area control for secondary dwellings in circumstances where that land use is permissible, that flexibility cannot presently operate in this case because secondary dwellings are not listed as permissible in the R5 Large Lot Residential zone under the LEP. As a result, the applicant has sought to seek a variation to the 60m² development standard.

The assessment contained within this report concludes that the variation is reasonable in the circumstances. In reaching that conclusion, regard has been had to the size of the subject land, the scale of the existing principal dwelling, the compatibility of the proposal with the established character of the locality and the limited impacts arising from the development. The variation is also considered reasonable in light of the anomalous planning outcome created by the current interaction between the Housing SEPP and Orange Local Environmental Plan 2011.

The anomaly arises because, the state policy is attempting to allow each Council to set an appropriate percentage rule, however the mechanism is worded as follows:

*“if a greater floor area is permitted for a secondary dwelling **on the land** under another environmental planning instrument – the greater floor area.”*

By using the phrase “on the land” an application must first be tested for permissibility under the LEP before the percentage rule could be considered. Since the LEP does not permit secondary dwellings in the R5 zone the local percentage is in effect unavailable.

In normal practice clause 5.4 of the LEP has set the local percentage rule, for zones where secondary dwellings are permissible, at 50% of the principal dwelling. The LEP applies this rule to urban residential zones which typically have smaller lot sizes. Logic would suggest that as a lot size increases there would be more space available to absorb the secondary dwelling with appropriate setbacks and that any impacts on neighbours would be reduced even if the size increased.

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In this context the section 4.6 request can be seen as seeking to enable the intent of the SEPP (of allowing the LEP to establish the percentage rule) and overcome the difficulty caused by the wording of the SEPP reference.

It should be noted that Council is currently seeking to amend Orange Local Environmental Plan 2011 to permit secondary dwellings within the R5 Large Lot Residential zone. This amendment is intended to correct the current inconsistency, remove the need for unnecessary Clause 4.6 variation requests, and ensure that secondary dwellings in the R5 zone are assessed under the same provisions applying in other residential zones.

The site is bushfire prone land, and the application is supported by a Bush Fire Assessment Report prepared by Bushfire Planning & Design and authored by a BPAD Level 3 accredited practitioner. The report identifies the bushfire hazards affecting the site and recommends measures consistent with Planning for Bush Fire Protection 2019. Having regard to section 4.14(1)(b) of the *Environmental Planning and Assessment Act 1979*, the proposal is considered capable of achieving an acceptable bushfire planning outcome subject to conditions of consent.

The proposed development is advertised development pursuant to Council's Community Participation Plan 2019 and Schedule 1 of the Environmental Planning and Assessment Act 1979. At the completion of the exhibition period, no submissions were received.

As outlined in this report, the proposed development is considered satisfactory on balance, having regard to the relevant Local and State planning controls applying to the subject land and the proposed land use. While the application involves a Clause 4.6 variation to the floor area standard for secondary dwellings, that variation is considered to be well founded and reasonable in the circumstances. This application has been forwarded to Council for determination given that the variation sought exceeds 10% of the development standard and is beyond the delegations for staff to determine. Subject to the recommended conditions of consent, the impacts of the development are considered acceptable, and approval of the application is recommended.



Figure 1 - locality plan

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DIRECTOR'S COMMENT

The major issue in the assessment of this application relates to the need for a section 4.6 variation to a development standard. This has been required due to the poor construction of section 52(2)(c) of SEPP (Housing) which enables consent to be granted where:

- (c) *the total floor area of the secondary dwelling is—*
- (i) *no more than 60m², or*
 - (ii) *if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument—the greater floor area.*

The underlined phrase effectively prevents any application made under the SEPP from accessing the percentage rule normally available under clause 5.4 of the LEP. This is not logical given that if the use were permissible “on the land” under the LEP, the application would not be made under the SEPP in the first instance. Council did not make secondary dwellings permissible in the R5 zone on the advice of the Department that doing so would duplicate the SEPP and create confusion. Given these issues, an LEP amendment is underway to permit secondary dwellings within the R5 zone and address this inconsistency.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan strategy “7.3 Plan for growth and development that balances liveability with valuing the local environment”.

FINANCIAL IMPLICATIONS

Nil

POLICY AND GOVERNANCE IMPLICATIONS

Nil

RECOMMENDATION

That Council consents to Development Application DA 46/2026(1) for Secondary Dwelling at Lot 29 DP 248205 - 7 Squatters Ridge, Clifton Grove pursuant to the conditions of consent in the attached Notice of Approval.

FURTHER CONSIDERATIONS

The recommendation of this report has been assessed against Council’s key risk categories and the following comments are provided:

Service/Project Delivery	Approval or refusal may affect infrastructure demands, service planning or community expectations.
Financial	Decisions may lead to financial implications through infrastructure contributions, legal appeals or compensation claims.
Reputation/Political	The outcome may attract public or political scrutiny, especially if perceived as inconsistent or contentious.
Environment	The application may have environmental impacts - positive or negative - depending on the nature of the development.
Compliance	The decision must align with planning legislation, regulation and controls and Council policies to avoid legal risk.
People & WHS	Development activities may introduce safety risks for workers, residents or the broader community.

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Information Technology/ Cyber Security	Systems used to assess and manage the application must ensure data integrity and secure handling of sensitive information.
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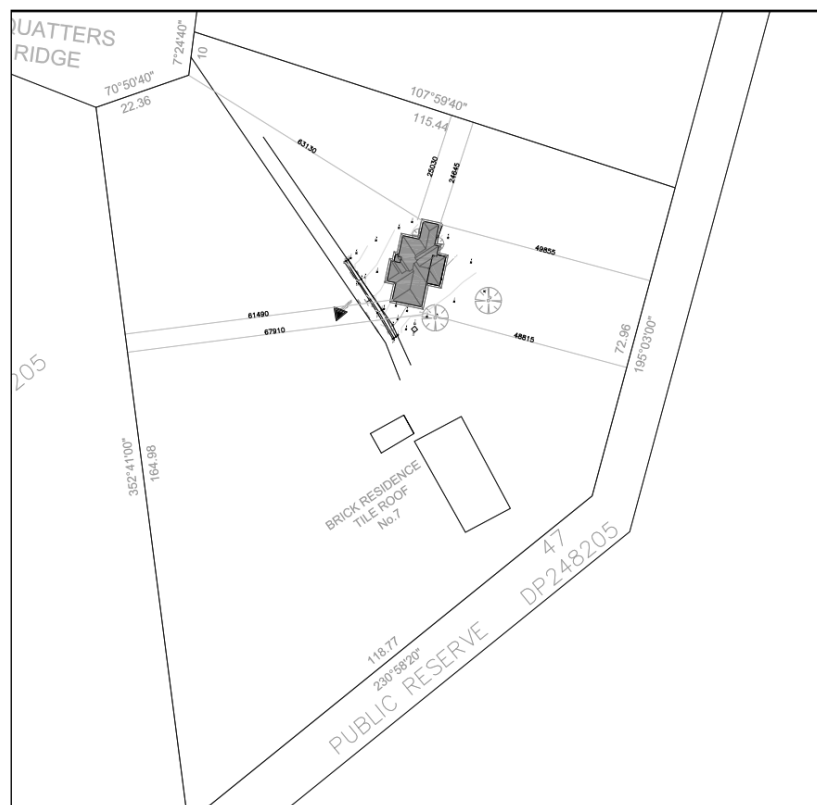
SUPPORTING INFORMATION
THE PROPOSAL

The proposal involves the construction of a secondary dwelling at 7 Squatters Ridge, Clifton Grove - Lot 29 DP 248205. The proposed secondary dwelling will be located to the north-west of the main residence and will comprise two bedrooms with associated living, kitchen, dining, a bathroom with separate W/C and alfresco (a total floor area of 105m²) and an attached single garage.

Construction materials consist of brick walls with steel roof sheeting and aluminium windows. Access will be retained via the existing access point off Squatters Ridge. The proposed development will connect to existing essential services except for sewage, which will be disposed of to the identified area northwest of the proposed dwelling.

The proposed development for a secondary dwelling is not permissible in the R5 Large Lot Residential zone, and therefore not permissible under the provisions of the Orange LEP 2011. However, a secondary dwelling is permitted using the provisions of the State Environmental Planning Policy (Housing) 2021. The secondary dwelling has a total floor area of 105m² and thus will exceed the prescribed maximum floor area permitted for secondary dwellings within the SEPP.

Consent is sought to vary the floor area development standard pursuant to Clause 4.6 Exception to Development Standards of Orange Local Environmental Plan 2011. An assessment of this variation has been included in the body of this report and concludes that the proposed variation is reasonable in the context of the locality with consideration of the conflicting development restrictions across the various residential zones within the Orange City Council area.


Figure 2 – proposed site plan

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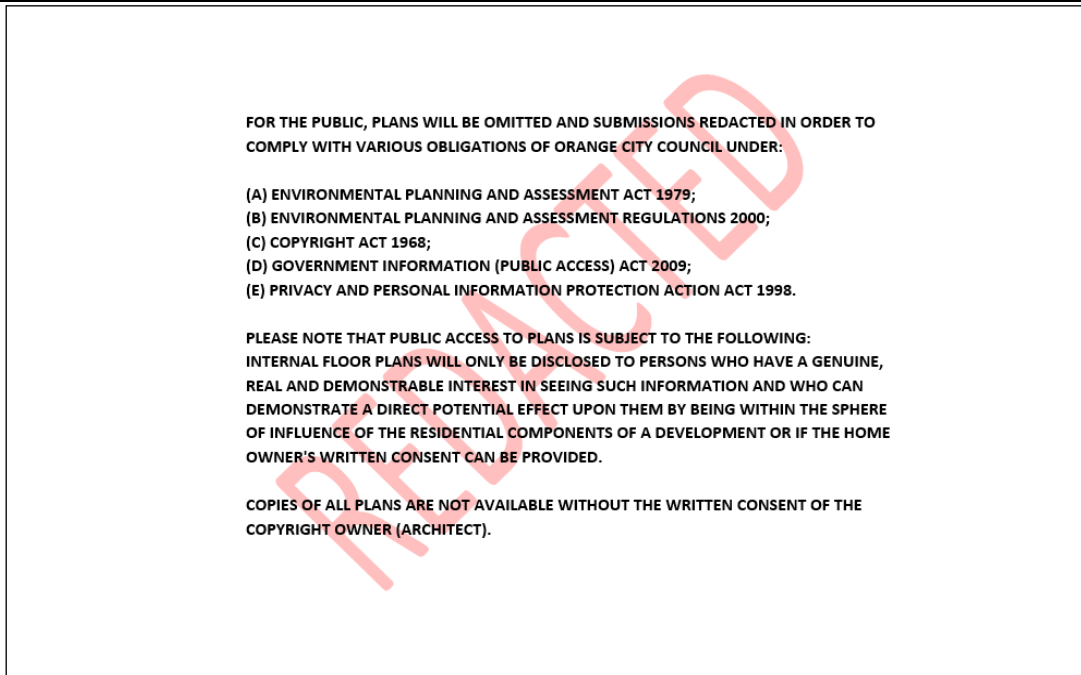


Figure 3 – proposed floor plan

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 (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.

Summary

The site does not occur within land mapped on the Biodiversity Values Map and no clearing/disturbance is proposed. As the proposal does not trigger any of the four requirements for insertion into the BOS, a Biodiversity Development Assessment Report is not required to be lodged with the application for development consent. No other comments are warranted under this section.

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Section 4.14 Consultation and development consent—certain bush fire prone land

Development consent cannot be granted for the carrying out of development for any purpose (other than a subdivision of land that could lawfully be used for residential or rural residential purposes or development for a special fire protection purpose) on bush fire prone land (being land for the time being recorded as bush fire prone land on a relevant map certified under section 10.3(2)) unless the consent authority—

- (a) is satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection prepared by the NSW Rural Fire Service in co-operation with the Department (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document) that are relevant to the development (the relevant specifications and requirements), or*
- (b) has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.*
- (1A) If the consent authority is satisfied that the development does not conform to the relevant specifications and requirements, the consent authority may, despite subsection (1), grant consent to the carrying out of the development but only if it has consulted with the Commissioner of the NSW Rural Fire Service concerning measures to be taken with respect to the development to protect persons, property and the environment from danger that may arise from a bush fire.*
- (1B) This section does not apply to State significant development.*
- (1C) The regulations may exclude development from the application of this section subject to compliance with any requirements of the regulations. The regulations may (without limiting the requirements that may be made)—*
 - (a) require the issue of a certificate by the Commissioner of the NSW Rural Fire Service or other qualified person in relation to the bush fire risk of the land concerned, and*
 - (b) authorise the payment of a fee for the issue of any such certificate.*

The application is supported by a Bush Fire Assessment Report prepared by Bushfire Planning & Design, authored by a BPAD Level 3 accredited practitioner. This satisfies Section 4.14(1)(b) of the *Environmental Planning and Assessment Act 1979*, which requires consideration of bushfire risk and the implementation of measures to protect life, property and the environment. The report identifies bushfire hazards affecting the site and recommends an acceptable solution in accordance with the principles and requirements of *Planning for Bush Fire Protection 2019 (PBP 2019)*. Given that the acceptable solution proposed has been endorsed by a BPAD Level 3 accredited practitioner, Council can be satisfied that the design has adequately complied with the requirements of Planning for Bushfire Protection.

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.

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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:

- (e) *to provide a range of housing choices in planned urban and rural locations to meet population growth,*
- (f) *to recognise and manage valued environmental heritage, landscape and scenic features of Orange.*

The application is considered to be consistent with the applicable aims 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 R5 Large Lot Residential
Lot Size Map:	Minimum Lot Size 2 Ha
Heritage Map:	Not a heritage item or conservation area
Height of Buildings Map:	No building height limit
Floor Space Ratio Map:	No floor space limit
Terrestrial Biodiversity Map:	Biodiversity sensitivity on the site
Groundwater Vulnerability Map:	Not 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.

- (a) *to a covenant imposed by the Council or that the Council requires to be imposed, or*
- (b) *to any relevant instrument under Section 13.4 of the Crown Land Management Act 2016, or*
- (c) *to any conservation agreement under the National Parks and Wildlife Act 1974, or*
- (d) *to any Trust agreement under the Nature Conservation Trust Act 2001, or*
- (e) *to any property vegetation plan under the Native Vegetation Act 2003, or*

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- (f) *to any biobanking agreement under Part 7A of the Threatened Species Conservation Act 1995, or*
- (g) *to any planning agreement under Subdivision 2 of Division 7.1 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 R5 Large Lot Residential zone. The proposed development is defined as a secondary dwelling and is not permitted in this zone under OLEP 2011 but is permitted under the SEPP (Housing) 2021. This application is seeking consent under the SEPP.

Clause 2.3 of LEP 2011 references the Land Use Table and Objectives for each zone in LEP 2011. These objectives for land zoned R5 Large Lot Residential are as follows:

Objectives of zone R5 Large Lot Residential

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*
- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*
- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To provide for student housing in close proximity to the Charles Sturt University.*
- *To ensure development is ordered in such a way as to maximise public transport patronage, and encourage walking and cycling, in close proximity to settlement.*
- *To ensure development along the Southern Link Road has an alternative access.*

Although the proposed secondary dwelling is not permissible in the zone under the OLEP 2011, the proposal is still consistent with the objectives of the zone as it will provide further residential housing in a rural setting whilst preserving the surrounding environment. The development will not hinder the proper and orderly development of urban areas in the future.

Part 3 - Exempt and Complying Development

The application is not exempt or complying development.

Part 4 - Principal Development Standards**Clause 4.6 - Exceptions to Development Standards**

This clause is applicable as the proposed secondary dwelling has a floor area that is greater than the maximum size allowed under State Environmental Planning Policy (Housing) 2021. Clause 52(2) of the SEPP sets out maximum total floor area for secondary dwellings, which relevantly states:

- (b) *the total floor area of the secondary dwelling is no more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.*

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The proposed secondary dwelling is situated on land within the R5 Large Lot Residential zone where secondary dwellings are prohibited under the Orange LEP 2011; although they are permissible under Clause 49 of the Housing SEPP.

Accordingly, this clause identifies that a secondary dwelling cannot have a total floor area greater than 60m², which the proposed secondary dwelling of this development exceeds. The proposed total floor area of the secondary dwelling is 105m², representing a variation of 75%.

Clause 4.6(1) is intended to achieve the following objectives:

- (a) provide an appropriate degree of flexibility in applying certain development standards
- (b) achieve better outcomes for and from development by allowing flexibility in particular circumstances.

At its core, a Clause 4.6 variation may be supported where it can be shown that the objectives of the standard are unreasonable and/or unnecessary to apply in this particular case, and where it can be shown that the objectives of both the plan and the clause to be varied are achieved notwithstanding the non-compliance with the numerical value of the standard.

Clause 4.6 may not be used to routinely seek variation to a standard and may not be used in such a way as to render a development contrary to the intent of the standard or the plan that it relates to. Clause 4.6 may also not be used as a de facto rezoning tool and cannot be used to bypass permissibility issues that a particular proposal may have.

The permissibility of secondary dwellings in the R5 Large Lot Residential zone was excluded from the Orange LEP on Departmental advice that such development was already permitted under the provisions of the SEPP (Affordable Rental Housing) 2009, which has subsequently been replaced by SEPP (Housing) 2021. Although, under the provisions of the SEPP there are limitations on the floor area allowed for secondary dwellings (Clause 52(2)) (maximum 60m² GFA); whereas in the LEP, secondary dwellings are permissible if they have a total floor area that is not greater than 60m², or do not exceed 50% of the floor area of the principal dwelling.

The applicant has requested that, given the conflicting provisions that apply throughout the City for this type of development, and Council's previous approach to the consideration of same with other requests, that Council determine the suitability of the proposed development against the secondary dwelling standard of 50% of the principal dwellings floor area as opposed to the current limitation of 60m². The applicant has advised that the GFA of the primary dwelling is 284.2m². In this case 50% of the GFA of the main dwelling equals 142.1m². Based on a GFA of 105m² the development represents 36.9% of the main dwelling and would have ordinarily easily met the standard if it were permissible in the zone under the LEP as opposed to the SEPP.

The secondary dwelling development is proposed on a large rural residential parcel (1.44ha) and will not result in an excessive site coverage, as it would if it were to be constructed on an urban parcel. The proposed site coverage for the development is considered comparable to that of adjoining rural residential parcels such that the character of Clifton Grove is preserved. The site coverage proposed remains far less than the site coverage typical of secondary dwellings permitted in urban areas, demonstrating that large lot environments have greater capacity to accommodate larger secondary dwellings with the same or lesser impacts compared to urban lots.

As a result, Council may consider including secondary dwellings as permissible in the R5 Large Lot Residential zone with future amendment to the Orange LEP.

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Matters to Demonstrate in an Application

Under Clause 4.6(3) when applicants lodge development applications and associated requests to vary a development standard, development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

The applicant has relied upon the 2nd 'test' in Winten and the 1st and 2nd 'ways' in Wehbe – i.e. the underlying objectives or purpose of the standard is satisfied or the objectives are not relevant; and the 4th 'way' in Wehbe - the development standard has been virtually abandoned or destroyed by the consent authority's own actions in order to satisfy point (a) and judgment in the case of *Four2Five Pty Ltd v Ashfield Council* [2015] in order to satisfy point (b).

Clause 4.6(3)(a) Comment

Through the Judgment in *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46 ("Winten") the Court established a 'Five-part test' for considering whether strict compliance with a development standard is unreasonable or unnecessary in a particular case.

The Five Part Test

The Five Part Test is anchored in Land and Environment Court Planning Principles. The Department of Planning recommends that consent authorities apply the test in their assessment of Clause 4.6 variations. The five-part test embodies the following:

- 1 *the objectives of the standard are achieved notwithstanding noncompliance with the standard*
- 2 *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary*
- 3 *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable*
- 4 *the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*
- 5 *the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

With regard to Point (1), section 52 of SEPP(Housing) does not contain specific objectives, however the overall principles in section 3 of the SEPP include:

- (c) *ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) *promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) *minimising adverse climate and environmental impacts of new housing development,*
- (f) *reinforcing the importance of designing housing in a way that reflects and enhances its locality,*

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It is considered that the secondary dwelling on a large residential lot in Clifton Grove will provide residents with reasonable amenity, makes use of existing infrastructure and services, does not adversely impact the climate and, given the relationship to the overall size of the lot, will read as consistent with the character of Clifton Grove.

With regard to Point (2), it is considered that a variation of the minimum total floor area for secondary dwellings is a development standard that may be considered within the ambit and operation of this clause.

Floor area requirements for secondary dwellings are a blunt assessment tool aimed at achieving good design outcomes, whilst at the same time making efficient use of the land at densities likely to achieve a reasonable return for the development; and at the same time ensuring that neighbourhood character and amenity is not excessively compromised.

The variation is considered acceptable in this case due largely to the size of the rural residential allotment and the fact that the secondary dwelling would have an allowable floor area if it were permissible in the zone under the LEP. As the proposed development is a secondary dwelling and is situated on a parcel of land that is not typical of an urban area, the variation is considered to be acceptable in this instance as the effect of the proposal on the surrounding development will be minimal.

With regard to Point (3), it is considered that strict compliance with the 60m² standard under SEPP (Housing) 2021 would not necessarily defeat or thwart the underlying objective or purpose of the development standard. However, the proposal is considered to be consistent with the objectives of the development standard.

With regard to Point (4), the development standard cannot be said to be abandoned. However, it is considered that other land holdings within close proximity to the subject site would most likely encounter this issue themselves.

With regard to Point (5), the zoning of the land is reasonable and appropriate for the proposal. It is considered that insistence on full compliance with Clause 52(2) for this site is unreasonable and unnecessary in this case.

Clause 4.6(3)(b) Comment

As established in *Four2Five*, where a variation to a development standard is sought, the onus rests with the applicant to demonstrate that there are sufficient environmental planning grounds to justify the variation. In this regard, the applicant must establish that strict compliance with the relevant development standard is unreasonable or unnecessary. Importantly, any such environmental planning grounds must be specific to the particular circumstances of the proposed development and must not be grounds that could reasonably apply to a similar form of development on any other land.

In this case, the following environmental planning grounds support the proposal:

- A variation of the development standard is justified in this case because it can be demonstrated that the proposal satisfies the objectives of the R5 Large Lot Residential zone and the objectives of the secondary dwelling standards under the Housing SEPP.
- The secondary dwelling development has a high degree of compliance with the other relevant LEP and DCP provisions.
- The proposed secondary dwelling is considered compatible with the residential land use pattern in this area. A variation of the minimum floor area to allow the proposed

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secondary dwelling to be excised on a large lot allotment does not diminish this aspect of the development.

- It is demonstrated that non-compliance with the development standard does not generate unacceptable impacts in the locality.

The proposed development with its non-compliance to Clause 52(2) is not contrary to any of the objectives for the zone. Even if it is prohibited under the LEP it is compliant under the Housing SEPP (subject to the 4.6 variation being granted). Neither does the proposed development significantly contravene the DCP's planning outcomes.

Overall, it is considered that the proposed development does not result in any adverse impact on the operation of the LEP or the DCP, and would not result in any significant adverse impact.

Given that the proposed variation to the development standard exceeds 10% the decision with respect to this application reverts to Council as it is beyond the delegations issued to Council staff. It is considered that the proposal, including the variation sought, is consistent with the above objectives. It is recommended that Council supports the application.

Part 5 - Miscellaneous Provisions**Clause 5.4 - Controls Relating to Miscellaneous Permissible Uses**

This clause contains various development standards that apply to specific types of development. Relevantly the clause requires:

- *secondary dwellings to be limited to the greater of 60 square metres or 50% of the floor area of the principal (main) dwelling*

In this regard, the proposal is inconsistent with the former requirement as the proposed secondary dwelling exceeds 60m². However, the development does comply with the latter standard as it does not exceed 50% of the floor area of the principal dwelling.

It must be noted that due to the development being prohibited in the zone, the secondary dwelling is being assessed under the SEPP (Housing) 2021, where the former standard (<60sqm) is applied. Due to the development exceeding this measurement, a Clause 4.6 variation has been applied to vary Clause 52(2) of the SEPP (Housing) 2021 which has been addressed above.

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**7.1 - Earthworks**

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

- the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*
- the effect of the development on the likely future use or redevelopment of the land*
- the quality of the fill or the soil to be excavated, or both*
- the effect of the development on the existing and likely amenity of adjoining properties*
- the source of any fill material and the destination of any excavated material*
- the likelihood of disturbing relics*

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- (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 building or structure. 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 and conditions may be imposed requiring the use of verified clean fill only. Excavated materials will be reused onsite as far as possible and conditions may be imposed to require that surplus materials will be disposed of to an appropriate destination.

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 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 may be 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 site is not in proximity to any waterway, drinking water catchment or sensitive area. Conditions may 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.

7.3 - 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 with a 28,000L rainwater tank. It is therefore considered that the post development runoff levels will not exceed the predevelopment levels.

7.4 - Terrestrial Biodiversity

This clause seeks to maintain terrestrial biodiversity and requires that consent must not be issued unless the application demonstrates whether or not the proposal:

- (a) *is likely to have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land*
- (b) *is likely to have any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna*

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- (c) *has any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (d) *is likely to have any adverse impact on the habitat elements providing connectivity on the land.*

Additionally this clause prevents consent being 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, or*
- (c) *if that impact cannot be minimised - the development will be managed to mitigate that impact.*

The proposal is located on land that has been identified on the Terrestrial Biodiversity Map as partially comprising “Biodiversity Sensitivity” land. The subject site was inspected on 5 February 2026 and the area of sensitivity located in the north-eastern corner observed. The area is limited to trees with no understorey present, and evidence of modification to the landscape was prevalent with an established regime of mowing the entire subject site observed. The proposed development of the site is located clear of the sensitive area. Additionally, the proposed vehicular access to the development is clear of the sensitive areas.

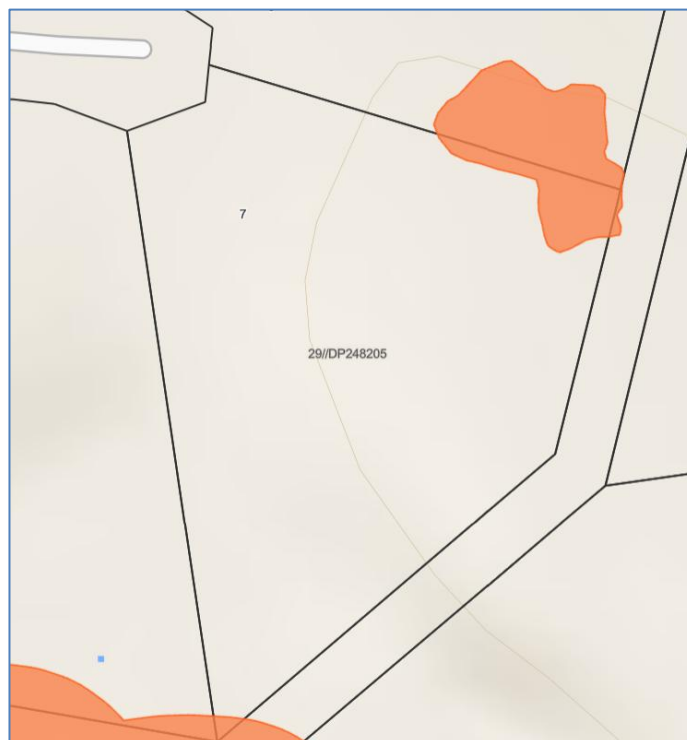


Figure 4 - terrestrial Biodiversity mapped on site

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Figure 5 – site conditions on 5 February 2026

In this regard the proposal has been designed to site the building and its access in a manner that seeks to avoid adverse consequences. The proposed siting of the building is greater than 10m from the mapped biodiversity. This ensures that no part of any tree trunk measuring over 30 cm in circumference at 1.3m above ground falls within this buffer in accordance with the 10/50 Vegetation Clearing Scheme, avoiding automatic eligibility for clearing rights under the *Rural Fires Act 1997*.

Under the Code, trees are only eligible for clearing within 10m of an “external wall of a habitable building” if parts of the trunk exceed 30cm circumference at chest height. By situating the footprint outside this buffer, the proposal intentionally prevents any requirement or entitlement for removal under the 10/50 rules.

Furthermore, native vegetation is protected under the *NSW Native Vegetation Act 2003* and the *Biodiversity Conservation Act 2016*, which regulate clearing via development consent, property vegetation plans or self-assessable codes. No removal is proposed by the applicant, and the objectives of avoiding incidental clearing and upholding biodiversity outcomes is achieved, as mandated by these statutes.

Accordingly, the proposal is unlikely to fragment, diminish or disturb the biodiversity structure, ecological functions or composition of the land and does not reduce habitat connectivity with adjoining sensitive areas.

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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 on-site conservation,*
- (e) suitable road access.*

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

STATE ENVIRONMENTAL PLANNING POLICIES

The following SEPPs are applicable to the proposed development:

- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021**Chapter 4 - Remediation of Land****4.6 - 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.**
- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) The land concerned is:
 - (a) land that is within an investigation area,**

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- (b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
- (c) *to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital -land:*
 - (i) *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
 - (ii) *on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

The proposed development is for continued residential-type use of the land. The site has not been used for any known approved activities which would render the soil contaminated to such a degree as to prevent the future development of the land for the purposes of a secondary dwelling. It is noted that surrounding land in the immediate vicinity has a residential use component. As such, the proposal is considered to be consistent with the provisions of the SEPP.

STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021**Chapter 3**

Division 2 Clause 49 applies and states:

Development for the purposes of a secondary dwelling includes the following:

- (a) *the erection of, or alterations or additions to, a secondary dwelling*
- (b) *alterations or additions to a principal dwelling for the purposes of a secondary dwelling.*

The proposed secondary dwelling meets the definition outlined in the SEPP. The secondary dwelling is not permissible in the R5 Large Lot Residential zone under the Orange LEP, although is permissible under State Environmental Planning Policy (Housing) 2021. The proposed development is not contrary to the objectives of the SEPP as outlined in this report.

Due to the development being prohibited in the zone, the secondary dwelling is being assessed under SEPP (Housing) 2021, where the <60m² standard is applied. Due to the development exceeding this measurement, a Clause 4.6 variation has been applied to vary Clause 52(2) of the SEPP, which has been addressed above.

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

There are no draft Environmental Planning Instruments currently on exhibition that relate to the subject land or proposed development.

DESIGNATED DEVELOPMENT

The proposed development is not designated development.

INTEGRATED DEVELOPMENT

The proposed development is not integrated development.

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

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Orange Development Control Plan 2004

Orange DCP 2004 - Part 7 Development in Residential Areas is relevant to this proposal. The provisions are considered below.

PO 0.4-2 INTERIM PLANNING OUTCOMES - TREE PRESERVATION

1. *Trees prescribed by this DCP must not be ringbarked, cut down, topped, lopped or wilfully destroyed without the Council's approval and landowners consent*
2. *This clause applies to Eucalypts of any size belonging to the White Box, Yellow Box and Blakely's Red Gum Endangered Ecological Communities, including species indicated as affected in the tree preservation table.*
3. *This clause also applies to any tree, native or exotic, with a trunk diameter equal to or greater than 300mm at breast height (refer AS4970-2009 for measurement guidelines).*
4. *Notwithstanding IPO-4(3) this clause does not apply to species indicated as exempt in the tree preservation table.*
5. *An application for the Council's approval must be accompanied by an appropriately qualified specialist (i.e. Arborist) report outlining the following information*
 - *The location, size, species and condition (i.e. diseased, healthy, etc)*
 - *A statement that details any anticipated impacts on vegetation that may have derived from endangered ecological communities and/or that may be habitat for threatened species*
 - *The purpose of removal and whether the pruning of the tree would be a more practical and desirable alternative*
 - *Whether a replacement tree or trees should be planted*
 - *The location, size and species of any trees proposed to replace those intended for removal*
 - *The owners consent to the application being lodged*
 - *Any other relevant information regarding the tree to be removed (i.e. photographs)*

The proposal is considered to be satisfactory against the above outcomes. The two trees identified for removal are below IPO-4(3) specifications and are therefore permitted to be removed.

PART 7 - DESIGN ELEMENTS FOR RESIDENTIAL DEVELOPMENT

The DCP sets the following Planning Outcomes in regard to Residential Development.

Residential Design Objectives

- *To ensure that the development fits into its setting and environmental features of the locality.*
- *To ensure that the appearance of housing is of a high visual quality, enhances the streetscape and complements good quality surrounding development.*
- *To ensure that new development complements places with heritage significance and their settings in a contemporary way.*
- *To develop a sense of place with attractive street frontages.*
- *To encourage visually appealing cohesive streetscapes.*
- *To create a safe and secure environment.*
- *To provide consistent design elements that protect private investment.*

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The relevant objectives of this section of the DCP are detailed below.

Neighbourhood Character

The DCP sets the following Planning Outcomes in regard to Neighbourhood Character:

- *Site layout and building design enables the:*
 - *creation of attractive residential environments with clear character and identity*
 - *use of site features such as views, aspect, existing vegetation and landmarks*
- *Buildings are designed to complement the relevant features and built form that are identified as part of the desired neighbourhood character.*
- *The streetscape is designed to encourage pedestrian access and use.*

The proposed secondary dwelling has no major implications on the existing neighbourhood character. The proposed secondary dwelling, being located 63m from the street, will not alter the existing streetscape. The proposal retains its appropriate scale in the existing locality. Whilst the R5 zone does not allow for dual occupancies or secondary dwellings, SEPP (Housing) 2021 does allow for secondary dwellings. Large dwellings, outbuildings and secondary dwellings form a part of the residential landscape in this locality.

Building Appearance

The DCP sets the following Planning Outcomes in regard to Building Appearance:

- *The building design, detailing and finishes relate to the desired neighbourhood character, complement the residential scale of the area, and add visual interest to the street.*
- *The frontages of buildings and their entries face the street.*
- *Garages and car parks are sited and designed so that they do not dominate the street frontage.*

The impact of the building appearance for the proposed secondary dwelling will be minimal as the building is located approximately 63m from the street frontage. In addition, the subject site occupies a narrow frontage at the head of a cul-de-sac, resulting in very limited visibility from the public domain. The proposed design, detailing and external finishes are of an acceptable standard, incorporating brick cladding and steel roofing that are consistent with the established character of the surrounding residential area.

Bulk and Scale Objectives

- *To allow flexibility in siting buildings and to ensure that the bulk and scale of new development reasonably protects the amenity of neighbouring properties and maintains appropriate neighbourhood character.*
- *To allow adequate daylight, sunlight and ventilation to living areas and private open spaces of new and neighbouring developments.*
- *To encourage the sharing of views, while considering the reasonable development of the site.*

The development is not inconsistent with the above objectives as detailed below.

Visual Bulk

The DCP sets the following Planning Outcome in regard to Visual Bulk:

- *Built form accords with the desired neighbourhood character of the area with:*
 - *side and rear setbacks progressively increased to reduce bulk and overshadowing*

2.2 Development Application DA 46/2026(1) - 7 Squatters Ridge

- *site coverage that retains the relatively low density landscaped character of residential areas*
- *building form and siting that relates to landform, with minimal land shaping (cut and fill)*
- *building height at the street frontage that maintains a comparable scale with the predominant adjacent development form*
- *building to the boundary where appropriate.*

In consideration of the applicable DCP guidelines, the proposal is assessed as satisfactory. The proposed secondary dwelling will not adversely impact the amenity of neighbouring properties. Owing to the substantial separation between the structure and adjoining boundaries, the development will not result in any unreasonable overshadowing. The total combined floor area of the principal dwelling, secondary dwelling, and all ancillary structures remains below the maximum permitted under the DCP, which allows up to 60% site coverage. The proposed development achieves a site coverage of only 3%. Earthworks are minimal, with a maximum cut-and-fill extent of less than 600 mm, ensuring the existing landform is largely retained.

Daylight and Sunlight

The DCP sets the following Planning Outcome in regard to Daylight and Sunlight:

- *Buildings are sited and designed to ensure:*
 - *daylight to habitable rooms in adjacent dwellings is not significantly reduced*
 - *overshadowing of neighbouring secluded open spaces or main living area windows is not significantly increased*
 - *consideration of Council's Energy Efficiency Code.*

In consideration of the relevant DCP guidelines, the proposal is deemed satisfactory. The secondary dwelling is positioned well away from adjacent dwellings, ensuring it will not impact their access to daylight and will not result in any overshadowing of neighbouring secluded open space or primary living room windows. Given the generous separation distances and the orientation of the development, no further considerations are required with respect to daylight and sunlight access for either the subject site or adjoining properties.

Views

The DCP sets the following Planning Outcomes in regard to Views:

- *Building form and design allow for residents from adjacent properties to share prominent views where possible.*
- *Views including vistas of heritage items or landmarks are not substantially affected by the bulk and scale of the new development.*

The proposed development will not significantly affect any view from adjacent properties. Neither neighbouring properties have significant windows in the direction of the proposed development. Nor does this development block any views these properties have towards Mt Canobolas. There is substantial and well-established landscaping in the surrounding area.

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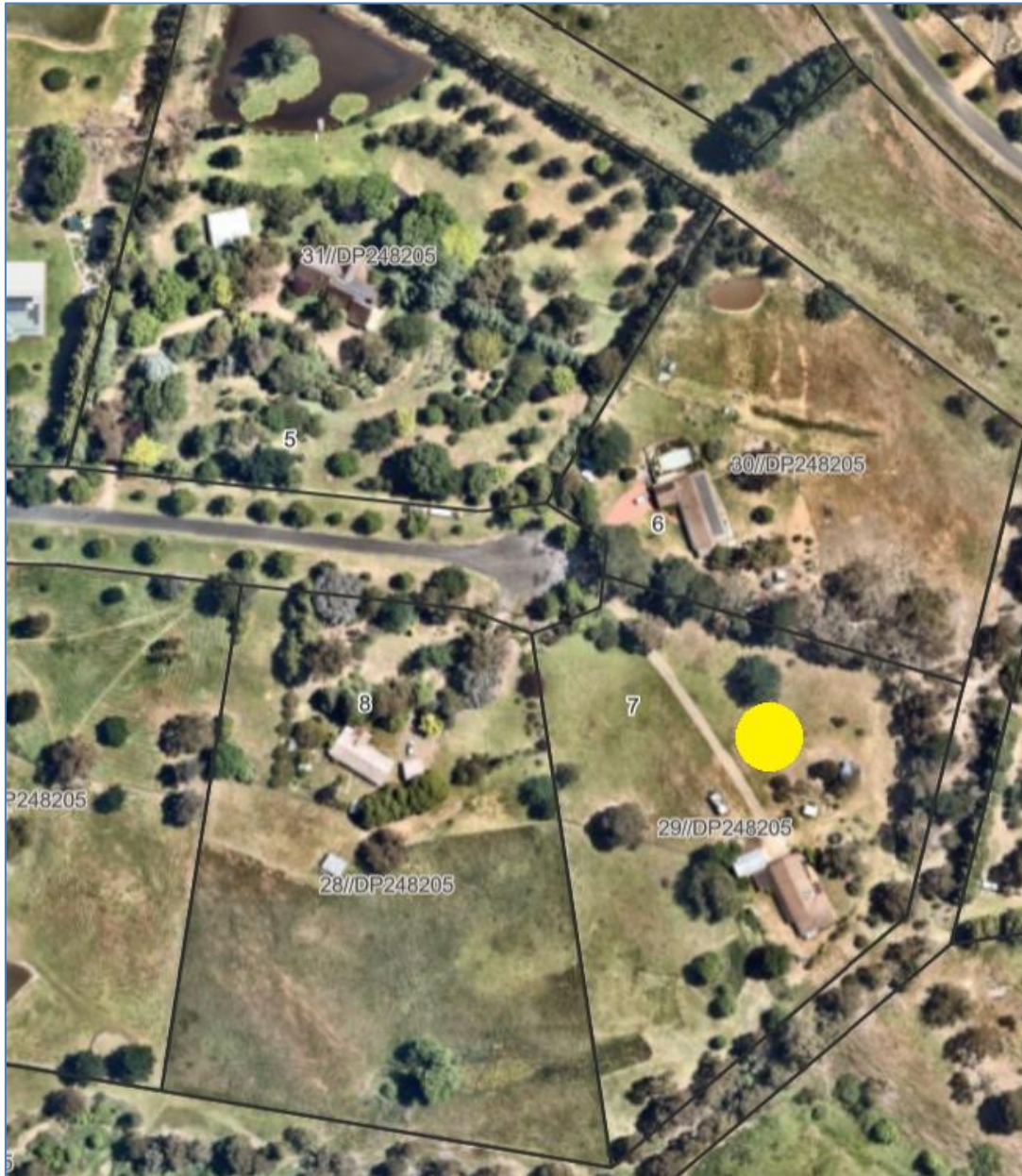


Figure 6 – location of proposed development (yellow dot) and surrounding dwellings

Privacy and Security Objective

- *To ensure that the siting and design of buildings provide privacy for residents and neighbours in their dwellings and principal private open space.*

The development is not inconsistent with the above objective as detailed below.

Visual Privacy

The DCP sets the following Planning Outcome in regard to Visual Privacy:

- *Direct overlooking of principal living areas and private open spaces of other dwellings is minimised firstly by:*
 - *building siting and layout*
 - *location of windows and balconies**and secondly by:*
 - *design of windows or use of screening devices and landscaping.*

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In consideration of the DCP guidelines the proposal is considered to be satisfactory. The development will have minimal overlooking impact. The secondary dwelling overlooks the subject site land itself, with well-established landscaping on adjacent land. The development will have minimal privacy and overshadowing impacts. The secondary dwelling will be single storey at ground level, meaning that there will be minimal privacy impacts.

Acoustic Privacy

The DCP sets the following Planning Outcome in regard to Acoustic Privacy:

- *Site layout and building design:*
 - *protect habitable rooms from excessively high levels of external noise*
 - *minimise the entry of external noise to private open space for dwellings close to major noise sources*
 - *minimise transmission of sound through a building to affect other dwellings.*

In consideration of the DCP Guidelines the proposal is considered to be satisfactory. The site is located in an area where ambient noise levels are expected to be low due to the predominant residential land use pattern.

Site Access and Circulation Objectives

- *To provide convenient and safe access and parking that meets the needs of all residents and visitors.*
- *To encourage the integrated design of access and parking facilities to minimise visual and environmental impacts.*

The development is not inconsistent with the above objectives as detailed below.

Circulation and Design

The DCP sets the following Planning Outcome in regard to Circulation and Design:

- *Accessways and parking areas are designed to manage stormwater.*
- *Accessways, driveways and open parking areas are suitably landscaped to enhance amenity while providing security and accessibility to residents and visitors.*
- *The site layout allows people with a disability to travel to and within the site between car parks, buildings and communal open space.*

The proposal is considered satisfactory in this regard. Forward egress to the public street is readily achieved due to the substantial size of the subject site (1.44 ha). Ample space is available to accommodate parking for multiple vehicles, as well as safe pedestrian movement.

Car Parking

The DCP sets the following Planning Outcomes in regard to Car Parking:

- *Parking facilities are provided, designed and located to:*
 - *enable the efficient and convenient use of car spaces and accessways within the site*
 - *reduce the visual dominance of car parking areas and accessways.*
- *Car parking is provided with regard to the:*
 - *the number and size of proposed dwellings*
 - *requirements of people with limited mobility or disabilities.*

In consideration of the DCP Guidelines, the proposal is considered to be satisfactory. There will be a single attached garage to the secondary dwelling.

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Private Open Space

The DCP sets the following Planning Outcomes in regard to Private Open Space:

- *Private open space is clearly defined for private use.*
- *Private open space areas are of a size, shape and slope to suit the reasonable requirements of residents including some outdoor recreational needs and service functions.*
- *Private open space is:*
 - *capable of being an extension of the dwelling for outdoor living, entertainment and recreation*
 - *accessible from a living area of the dwelling*
 - *located to take advantage of outlooks; and to reduce adverse impacts of overshadowing or privacy from adjoining buildings*
 - *orientated to optimise year round use.*

Useable open space on the subject land continues to be available for the development. There are separate private open space areas for both the existing and secondary dwelling.

DEVELOPMENT CONTRIBUTIONS PLAN 2024

Development contributions are applicable to the proposed secondary dwelling (one additional dwelling), pursuant to Orange Development Contributions Plan 2024 (Remainder of LGA), as follows:

Open Space and Recreation	One additional 2-bedroom dwelling @ \$1,658.68	\$1,658.68
Community and Cultural	One additional 2-bedroom dwelling @ \$217.55	\$217.55
Roads and Traffic Management	--	Nil
Stormwater Drainage	--	Nil
Local Area Facilities	--	Nil
Plan Preparation and Administration	One additional 2-bedroom dwelling @ \$167.31	\$167.31
TOTAL		\$2,043.54

Note: Development on land situated outside the Orange urban area and areas zoned for rural residential purposes is not required to make contributions for Roads and Cycleways and Stormwater Drainage.

A condition of consent will be added requiring payment of contributions prior to issue of an Occupation Certificate.

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

Demolition of a Building (clause 61)

The proposal does not involve the demolition of a building.

Fire Safety Considerations (clause 62)

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

Buildings to be Upgraded (clause 64)

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

BASIX Commitments (clause 75)

A BASIX Certificate has been submitted in support of the proposed development. Certificate number: 1823223S_02 issued on Monday 08 December 2025.

2.2 Development Application DA 46/2026(1) - 7 Squatters Ridge**THE LIKELY IMPACTS OF THE DEVELOPMENT s4.15(1)(b)****Generally**

The proposed development is unlikely to generate any impacts that would adversely affect the quality of the environment of the locality, particularly as the secondary dwelling is considered to reasonably integrate into the surrounding land use pattern.

Visual Amenity

The visual impact of the proposed secondary dwelling is considered satisfactory and has been addressed above in the relevant considerations under the DCP 2004. As demonstrated on the site plan, the footprint of the secondary dwelling does not comprise overdevelopment in the context of the lot size. This is in conjunction with the generous boundary setbacks to assist in maintaining the open character of the area.

Existing and Future Amenity of the Neighbourhood

The potential impact upon the amenity of the neighbourhood is considered satisfactory, and the non-compliance with the development standard does not generate unacceptable impacts in the locality.

Cumulative Impacts

The proposed development will not reduce the open space, solar access or privacy afforded to neighbouring properties. Similarly, the site layout and building design will provide a reasonable standard of residential amenity to the proposed secondary dwelling in terms of open space, solar access and privacy. Landscaping is established around the dwelling and is expected to complement future privacy landscaping in the vicinity.

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

It is considered that the site is suitable for the proposal as the site is appropriately serviced and there are no known physical attributes, technological or natural hazards which constrain the site. Electricity and telephone services are available to the site. The secondary dwelling will have its own separate effluent disposal and the development does not require upgrading of any other existing services.

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 Community Participation Plan. The application was advertised for the prescribed period of 14 days, and at the end of that period no submissions had been received.

PUBLIC INTEREST s4.15(1)(e)

The proposal will not be inconsistent with any policy statement, planning study or guideline that has not been considered in this assessment. There are no aspects of the proposal that will be contrary to the welfare or well-being of the general public.

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

2.2 Development Application DA 46/2026(1) - 7 Squatters Ridge

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 DRAFT Notice of Determination, D26/43476 [↓](#)
- 2 Plans, D26/40159 [↓](#)

**NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION**

Application number	DA 46/2026(1) PAN-611692
Applicant	Jamie Macdouall 2/20 Cameron Place
Description of development	Secondary Dwelling
Property	7 SQUATTERS RIDGE CLIFTON GROVE 2800 29/-/DP248205
Determination	Approved Consent Authority - Council
Date of determination	21/04/26
Date from which the consent operates	21/04/26
Date on which the consent lapses	21/04/31

Under section 4.18(1) of the EP&A Act, notice is given that the above development application has been determined by the granting of consent using the power in section 4.16(1)(a) of the EP&A Act, subject to the conditions specified in this notice.

Reasons for approval

Attachment 1 DRAFT Notice of Determination

1. The proposed development will reasonably satisfy Local and State planning controls.
2. The proposed development will comply with the requirements of State approval authorities.
3. Impacts of the proposed development on the natural and built environment will be within acceptable limit, subject to mitigation conditions.
4. The proposed development will complement the existing or desired future character of the area.
5. The proposed development will be consistent with the Zone objectives and principal development standards.
6. The proposed development is permitted in the Zone.
7. Utility services are available and adequate.
8. Public exhibition of the application was undertaken in accordance with Council's Community Participation Plan or State legislation. No public submissions were received.

Right of appeal / review of determination

If you are dissatisfied with this determination:

Request a review

You may request a review of the consent authority's decision under section 8.3(1) of the EP&A Act. The application must be made to the consent authority within 6 months from the date that you received the original determination notice provided that an appeal under section 8.7 of the EP&A Act has not been disposed of by the Court.

Rights to appeal

You have a right under section 8.7 of the EP&A Act to appeal to the Court within 6 months after the date on which the determination appealed against is notified or registered on the NSW planning portal.

The Dictionary at the end of this consent defines words and expressions for the purposes of this determination.

PAUL JOHNSTON
MANAGER DEVELOPMENT ASSESSMENTS
Person on behalf of the consent authority

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

General Conditions

1	<p>Compliance with Building Code of Australia and insurance requirements under Home Building Act 1989</p> <ol style="list-style-type: none"> 1. It is a condition of a development consent for development that involves building work that the work must be carried out in accordance with the requirements of the Building Code of Australia. 2. It is a condition of a development consent for development that involves residential building work for which a contract of insurance is required under the Home Building Act 1989, Part 6 that a contract of insurance is in force before building work authorised to be carried out by the consent commences. 3. It is a condition of a development consent for a temporary structure used as an entertainment venue that the temporary structure must comply with Part B1 and NSW Part H102 in Volume 1 of the Building Code of Australia. 4. In subsection (1), a reference to the Building Code of Australia is a reference to the Building Code of Australia as in force on the day on which the application for the construction certificate was made. 5. In subsection (3), a reference to the Building Code of Australia is a reference to the Building Code of Australia as in force on the day on which the application for development consent was made. 6. This section does not apply— <ol style="list-style-type: none"> a. to the extent to which an exemption from a provision of the Building Code of Australia or a fire safety standard is in force under the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, or b. to the erection of a temporary building, other than a temporary structure to which subsection (3) applies. <p>Condition reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
2	<p>Erection of signs</p> <ol style="list-style-type: none"> 1. This section applies to a development consent for development involving building work, subdivision work or demolition work. 2. It is a condition of the development consent that a sign must be erected in a prominent position on a site on which building work, subdivision work or demolition work is being carried out—

Attachment 1 DRAFT Notice of Determination

	<ul style="list-style-type: none"> a. showing the name, address and telephone number of the principal certifier for the work, and b. showing the name of the principal contractor, if any, for the building work and a telephone number on which the principal contractor may be contacted outside working hours, and c. stating that unauthorised entry to the work site is prohibited. <p>3. The sign must be—</p> <ul style="list-style-type: none"> a. maintained while the building work, subdivision work or demolition work is being carried out, and b. removed when the work has been completed. <p>4. This section does not apply in relation to—</p> <ul style="list-style-type: none"> a. building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or b. Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.
	<p>Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.</p>
3	<p>Fulfilment of BASIX commitments</p> <p>It is a condition of a development consent for the following that each commitment listed in a relevant BASIX certificate is fulfilled—</p> <ul style="list-style-type: none"> 1. BASIX development, 2. BASIX optional development, if the development application was accompanied by a BASIX certificate. <p>Condition reason: Prescribed condition under section 75 of the Environmental Planning and Assessment Regulation 2021.</p>
4	<p>Notification of Home Building Act 1989 requirements</p> <ul style="list-style-type: none"> 1. This section applies to a development consent for development involving residential building work if the principal certifier is not the council. 2. It is a condition of the development consent that residential building work must not be carried out unless the principal certifier for the development to which the work relates has given the council written notice of the following— <ul style="list-style-type: none"> a. for work that requires a principal contractor to be appointed— <ul style="list-style-type: none"> i. the name and licence number of the principal contractor, and ii. the name of the insurer of the work under the Home Building Act 1989, Part 6, b. for work to be carried out by an owner-builder— <ul style="list-style-type: none"> i. the name of the owner-builder, and ii. if the owner-builder is required to hold an owner-builder permit under the Home Building Act 1989—the number of the owner-builder permit. 3. If the information notified under subsection (2) is no longer correct, it is a condition of the development consent that further work must not be carried out unless the

Attachment 1 DRAFT Notice of Determination

	<p>principal certifier has given the council written notice of the updated information.</p> <p>4. This section does not apply in relation to Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.</p>
	<p>Condition reason: Prescribed condition under section 71 of the Environmental Planning and Assessment Regulation 2021.</p>
5	<p>Approved plans and supporting documentation</p> <p>Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.</p> <p>Plans by Cavalier Homes. Drawn by JM, dated 18/11/2025. 6 Sheets (Sheets 3-8)</p> <p>BASIX Certificate number: 1823223S_02 issued on Monday 08 December 2025.</p> <p>NatHERS Certificate No. 0012404562 generated 22 November 2025.</p> <p>In the event of any inconsistency with the approved plans/documents and a condition of this consent, the condition prevails.</p> <p>Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.</p>
6	<p>National Construction Code</p> <p>All building work must be carried out in accordance with the provisions of the National Construction Code.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>

Building Work

Before issue of a construction certificate

7	<p>Bush fire - detailed plans and specifications</p> <p>Detailed plans and specifications are to be provided with the CC application in accordance with the bushfire hazard assessment report by Bushfire Planning & Design reference no. BR-2025-01620-A dated 25/11/2025. The required bush fire control measures shall be installed in accordance with "Section 7.5 Planning for Bush Fire Protection 2019", Australian Standard AS3959-2018 Construction of buildings in bushfire-prone areas and (if required) the relevant requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015).</p>
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Attachment 1 DRAFT Notice of Determination

	Condition reason: To ensure compliance with relevant statutory requirements.	
8	Contributions - payment of development contributions	
	The payment of \$2043.54 must be made to Council in accordance with Section 7.11 of the Act and Orange Development Contributions Plan 2024 - Remainder of LGA toward the provision of the following public facilities:	
	Open Space and Recreation	@ \$1658.68 each additional 2-bedroom dwelling \$1658.68
	Community and Cultural	@ \$217.55 each additional 2-bedroom dwelling \$217.55
	Roads and Traffic Management Facilities	Nil Nil
	Stormwater Drainage	Nil Nil
	Local Area Facilities	Nil Nil
	Plan Preparation and Administration	@ \$167.31 each additional 2-bedroom dwelling \$167.31
	TOTAL:	\$2043.54
	The contribution will be indexed quarterly in accordance with Orange Development Contributions Plan 2024 (Remainder of LGA), which may be inspected at the Orange Civic Centre, Byng Street, Orange.	
	Condition reason: Because the development will require the provision of, or increase the demand for public amenities and services.	
9	Section 68 application - water and sewer	
	An approval under Section 68 of the <i>Local Government Act</i> is to be sought from Orange City Council, as the Water and Sewer Authority, for water, sewer and stormwater connection. Details concerning the proposed backflow prevention between the nominated water tank supply and the potable system are to be provided. No plumbing and drainage is to commence until approval is granted.	
	Condition reason: To ensure the utility services are available to the site and adequate for the development.	
10	Contributions - payment of water and sewer contributions (obtain section 307 Certificate)	
	Submit an application to Council under section 305 of the <i>Water Management Act 2000</i> to obtain a section 307 Certificate of Compliance. The <i>Application for a 307 Certificate under section 305 Water Management Act 2000</i> form can be found on Council's website.	
	A section 307 Certificate must be obtained prior to the issue of any Construction	

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	Certificate.
	Condition reason: Obtain a section 307 Certificate of Compliance.

Before building work commences

11	<p>Appoint PC</p> <p>Appoint Principal Certifier. The person having the benefit of the development consent and a construction certificate shall:</p> <p style="margin-left: 40px;">(a) Appoint a Principal Certifier and notify Council of the appointment (if Council is not appointed) and,</p> <p style="margin-left: 40px;">(b) Notify Council of their intension to commence the erection of the building (at least two (2) day's notice is required)</p> <p>The Principal Certifier shall determine when inspections and compliance certificates are required.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>
12	<p>Construction certificate required</p> <p>A construction certificate must be obtained from Council or an accredited certifier at least two (2) days prior to any building or ancillary work commencing. Where the construction certificate is obtained from an accredited certifier, the determination and all appropriate documents must be notified to Council within seven (7) days of the date of determination.</p> <p>Condition reason: To ensure compliance with Section 6.7 of the Environmental Planning and Assessment Act 1979, and Part 3 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.</p>
13	<p>Erosion and sediment control - implementation</p> <p>Erosion and sediment controls shall be implemented onsite in accordance with Managing Urban Stormwater: Soils and Construction - Volume 1 (4th edition).</p> <p>Condition reason: To prevent site erosion and sediment loss, and protect waterways from sediment pollution.</p>
14	<p>No commencement until details received</p> <p>The construction works the subject of this development consent MUST NOT be commenced until:</p>

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	<p>(a) Detailed plans/specifications of the building have been endorsed with a construction certificate by:</p> <ul style="list-style-type: none"> (i) the Council, or (ii) a registered certifier, and <p>(b) The person having the benefit of the development consent:</p> <ul style="list-style-type: none"> (i) has appointed a Principal Certifier, and (ii) has notified the Council of the appointment, and <p>(c) The person having the benefit of the development consent has given at least two (2) day's notice to the Council of the person's intention to commence the erection of the building; and</p> <p>(d) Builder's name and licence number has been supplied to Council or the Principal Certifier; or</p> <p>(e) Owner Builder's permit issued by Department of Fair Trading to be supplied to Council or the Principal Certifier; and</p> <p>(f) Home Building Compensation Fund (HBCF) has been paid and a copy of the Certificate supplied to Council or the Principal Certifier; and</p> <p>(g) A sign has been erected onsite in a prominent position containing the information prescribed by Clause 98A(2) and (3) of the EP&A Regulations, being the name, address and telephone number of the Principal Certifier for the work, name of the principal contractor for the work and telephone number on which that person may be contacted outside working hours, and stating that unauthorised entry to the site is prohibited. This sign must be maintained onsite while work is being carried out and removed when the work has been completed.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>
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During building work

15	<p>Unexpected finds - contamination</p> <p>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 onsite must cease immediately. The</p>
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	<p>beneficiary of the consent must discuss with Council the appropriate process that should be followed therein. Works onsite must not resume unless the express permission of Council's Director Development Services is obtained in writing.</p> <p>Condition reason: To ensure any unexpected finds of contamination are notified to Council and managed appropriately.</p>
16	<p>Erosion and sediment control - review, maintain and modify</p> <p>Erosion and sediment controls shall be regularly reviewed, maintained, and modified as required in accordance with Managing Urban Stormwater: Soils and Construction - Volume 1 (4th edition), to ensure they remain effective.</p> <p>Condition reason: To prevent site erosion and sediment loss, and protect waterways from sediment pollution.</p>
17	<p>Hours of work - construction</p> <p>All construction 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 Chief Executive Officer of Orange City Council to vary these hours.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>
18	<p>Naturally occurring asbestos</p> <p>The site is located within an area identified as containing serpentinite rock formations, which can contain chrysotile, a naturally occurring asbestos. Therefore the applicant or person with management or control of the site shall ensure that a written plan (an Asbestos Management Plan) for the site is prepared in accordance with the provisions of the <i>Work Health and Safety Act 2011</i> and <i>Work Health and Safety Regulation 2011</i>.</p> <p>To assist applicants with developing an Asbestos Management Plan, applicants are encouraged to access the "<i>Asbestos Management Plan for Orange City Council</i>" 2014, which is available on Council's website: www.orange.nsw.gov.au</p> <p>Condition reason: To prevent the proposed development having a detrimental effect on adjoining land uses.</p>
19	<p>Protection of the Environment Operations Act - material delivery</p> <p>All materials onsite or being delivered to the site are to be contained within the site. The requirements of the <i>Protection of the Environment Operations Act 1997</i> 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.</p> <p>Condition reason: To protect waterways from pollution by stockpiled or placed</p>

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	construction materials.
20	Reduced levels
	All constructions works are to be strictly in accordance with the Reduced Levels (RLs) as shown on the approved plans.
	Condition reason: To comply with the Environmental Planning & Assessment act, 1979.

Before issue of an occupation certificate

21	Bush fire - installation of measures
	In accordance with the bushfire protection report by by Bushfire Planning & Design reference no. BR-2025-01620-A dated 25/11/2025, the required bush fire control measures shall be installed in accordance with "Section 7.5 Planning for Bush Fire Protection 2019", Australian Standard AS3959-2018 Construction of buildings in bushfire-prone areas and (if required) the relevant requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015).
	Condition reason: To ensure compliance with relevant statutory requirements.
22	Cut and fill
	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.
	Condition reason: To comply with the Environmental Planning & Assessment Act, 1979.
23	Erosion and sediment control - soil to be stabilised
	Prior to the issuing of an occupation certificate, soil on the site shall be stabilised to prevent erosion and the pollution of waters by uncontrolled sediment.
	Condition reason: To prevent site erosion and sediment loss, and protect waterways from sediment pollution.
24	No use or occupation without occupation certificate
	No person is to use or occupy the building or alteration that is the subject of this approval with the prior issuing of an occupation certificate.
	Condition reason: To ensure compliance with the Building Code of Australia.
25	Section 68 final - water and sewer
	Where Orange City Council is not the Principal Certifier, a final inspection of water connection, sewer and stormwater drainage shall be undertaken by Orange City Council

	and a compliance certificate issued, prior to the issue of an occupation certificate.
	Condition reason: To ensure the utility services are available to the site and adequate for the development.

Occupation and ongoing use

26	Bush fire - ongoing measures
	In accordance with the bushfire protection report by Bushfire Planning & Design reference no. BR-2025-01620-A dated 25/11/2025, the required bush fire protection measures as outlined in Part C of the report are to be adhered to and managed in perpetuity.
	Condition reason: To ensure compliance with relevant statutory requirements.

General advisory notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the [Conditions of development consent: advisory notes](#). The consent should be read together with the *Conditions of development consent: advisory notes* to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a construction certificate or subdivision works certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.

Dictionary

The following terms have the following meanings for the purpose of this determination (except where the context clearly indicates otherwise):

Approved plans and documents means the plans and documents endorsed by the consent authority, a copy of which is included in this notice of determination.

AS means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

Building work means any physical activity involved in the erection of a building.

Certifier means a council or a person that is registered to carry out certification work under the *Building and Development Certifiers Act 2018*.

Construction certificate means a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation and *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

Council means ORANGE CITY COUNCIL.

Court means the Land and Environment Court of NSW.

EPA means the NSW Environment Protection Authority.

EP&A Act means the *Environmental Planning and Assessment Act 1979*.

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Independent Planning Commission means Independent Planning Commission of New South Wales constituted by section 2.7 of the EP&A Act.

Occupation certificate means a certificate that authorises the occupation and use of a new building or a change of building use for an existing building in accordance with this consent.

Principal certifier means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

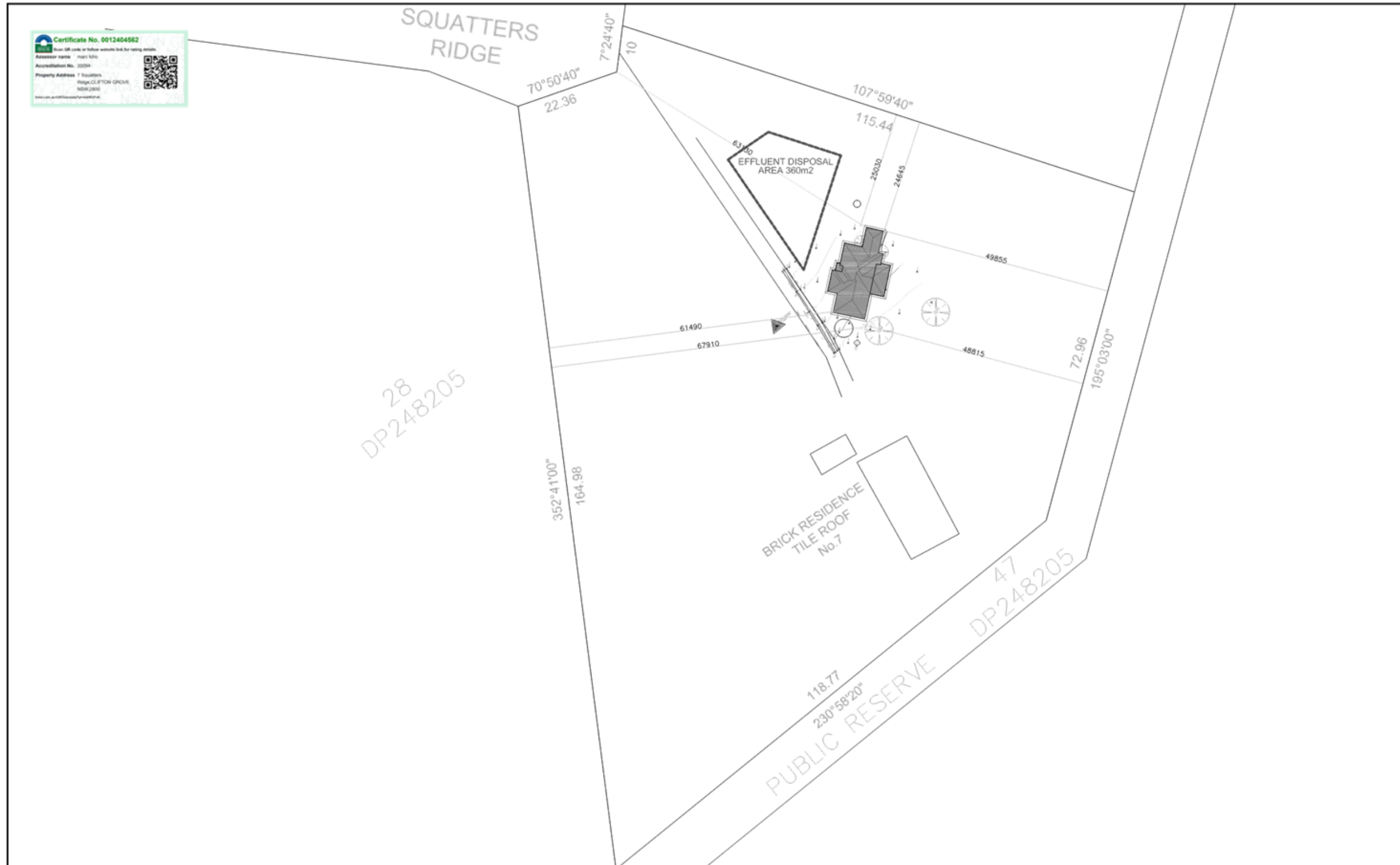
Site work means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.



Stormwater drainage system means all works and facilities relating to:

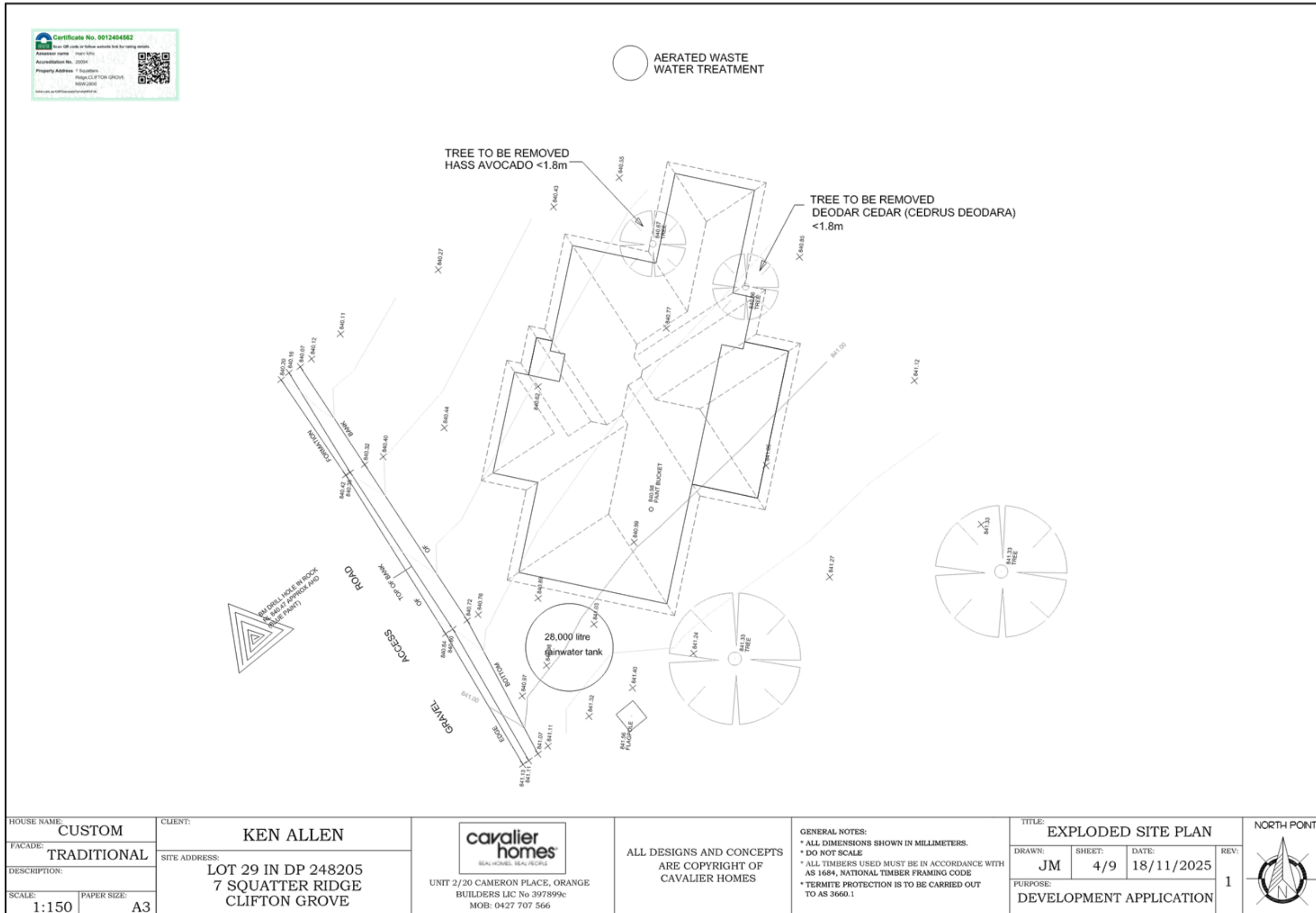
- the collection of stormwater,
- the reuse of stormwater,
- the detention of stormwater,
- the controlled release of stormwater, and
- connections to easements and public stormwater systems.



Strata certificate means a certificate in the approved form issued under Part 4 of the *Strata Schemes Development Act 2015* that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

Sydney district or regional planning panel means Western Regional Planning Panel.



HOUSE NAME: CUSTOM		CLIENT: KEN ALLEN		 UNIT 2/20 CAMERON PLACE, ORANGE BUILDERS LIC No 397899c MOB: 0427 707 566	ALL DESIGNS AND CONCEPTS ARE COPYRIGHT OF CAVALIER HOMES	TITLE: SITE PLAN			NORTH POINT 		
FACADE: TRADITIONAL		SITE ADDRESS: LOT 29 IN DP 248205 7 SQUATTER RIDGE CLIFTON GROVE				GENERAL NOTES: * ALL DIMENSIONS SHOWN IN MILLIMETERS. * DO NOT SCALE * ALL TIMBERS USED MUST BE IN ACCORDANCE WITH AS 1684, NATIONAL TIMBER FRAMING CODE * TERMITE PROTECTION IS TO BE CARRIED OUT TO AS 3660.1	DRAWN: JM	SHEET: 3/9		DATE: 18/11/2025	REV: 1
SCALE: 1:750	PAPER SIZE: A3	PURPOSE: DEVELOPMENT APPLICATION									

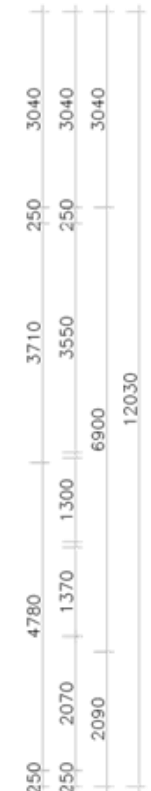
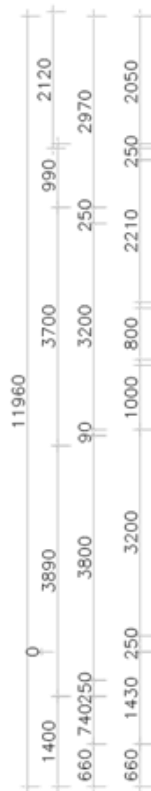
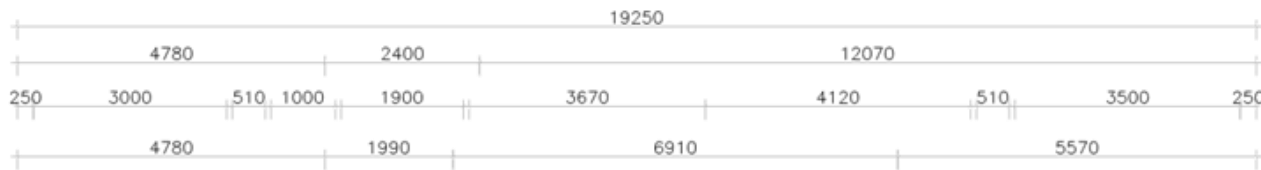


HOUSE NAME: CUSTOM		CLIENT: KEN ALLEN		 UNIT 2/20 CAMERON PLACE, ORANGE BUILDERS LIC No 397899c MOB: 0427 707 566	ALL DESIGNS AND CONCEPTS ARE COPYRIGHT OF CAVALIER HOMES	TITLE: EXPLODED SITE PLAN			NORTH POINT 
FACADE: TRADITIONAL		SITE ADDRESS: LOT 29 IN DP 248205 7 SQUATTER RIDGE CLIFTON GROVE				GENERAL NOTES:	DRAWN: JM SHEET: 4/9 DATE: 18/11/2025	REV: 1	
SCALE: 1:150	PAPER SIZE: A3	* ALL DIMENSIONS SHOWN IN MILLIMETERS. * DO NOT SCALE * ALL TIMBERS USED MUST BE IN ACCORDANCE WITH AS 1684, NATIONAL TIMBER FRAMING CODE * TERMITE PROTECTION IS TO BE CARRIED OUT TO AS 3660.1				PURPOSE: DEVELOPMENT APPLICATION			

AREAS:

LIVING: 105.0m² or 11.29Sq
 ALFRESCO: 20.6m² or 9.3Sq
 PORCH: 2.17m² or 0.23Sq
 GARAGE: 30.0m² or 6.99Sq

TOTAL: 157.77m² or 16.96Sq



FOR THE PUBLIC, PLANS WILL BE OMITTED AND SUBMISSIONS REDACTED IN ORDER TO COMPLY WITH VARIOUS OBLIGATIONS OF ORANGE CITY COUNCIL UNDER:

- (A) ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979;**
- (B) ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATIONS 2000;**
- (C) COPYRIGHT ACT 1968;**
- (D) GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009;**
- (E) PRIVACY AND PERSONAL INFORMATION PROTECTION ACTION ACT 1998.**

PLEASE NOTE THAT PUBLIC ACCESS TO PLANS IS SUBJECT TO THE FOLLOWING: INTERNAL FLOOR PLANS WILL ONLY BE DISCLOSED TO PERSONS WHO HAVE A GENUINE, REAL AND DEMONSTRABLE INTEREST IN SEEING SUCH INFORMATION AND WHO CAN DEMONSTRATE A DIRECT POTENTIAL EFFECT UPON THEM BY BEING WITHIN THE SPHERE OF INFLUENCE OF THE RESIDENTIAL COMPONENTS OF A DEVELOPMENT OR IF THE HOME OWNER'S WRITTEN CONSENT CAN BE PROVIDED.

COPIES OF ALL PLANS ARE NOT AVAILABLE WITHOUT THE WRITTEN CONSENT OF THE COPYRIGHT OWNER (ARCHITECT).

BASIX REQUIREMENTS

THE FOLLOWING TO BE INSTALLED WITH MINIMUM RATING OF 3 STARS: SHOWERHEADS, KITCHEN TAPS, BASIN TAPS, TOILET FLUSHING SYSTEM

R2.7 INSULATION BATTS PLUS FOIL TO EXTERNAL WALLS WITH WALLS SHARED WITH INC BATHROOM GARAGE AND WC TO HAVE R2.7 INSULATION

R5.0 INSULATION BATTS PLUS FOIL TO CEILING OVER LIVING AREAS

PROVIDE WEATHER SEALS TO ALL EXTERNAL DOORS

GAS INSTANTANEOUS HOT WATER SYSTEM

ELECTRIC OVEN AND GAS COOK TOP

INDIVIDUAL FAN DUCTED TO EACH BATHROOM, MANUAL ON/OFF SWITCH

INDIVIDUAL FAN NOT DUCTED TO EACH KITCHEN, MANUAL ON/OFF SWITCH

MECHANICAL VENTILATION TO THE LAUNDRY

REVERSE CYCLE A/C

NOTE

H2 TREATED TERMITE RESISTANT FRAMES AND TRUSSES

PERIMETER TREATMENT AND PIPE PENETRATIONS BY RENTOKIL COMPLY WITH 3.1.3, VOLUME 2 OF THE BCA

SMOKE ALARMS COMPLY WITH 3.7.2 OF BCA

GLAZING TO BE IN ACCORDANCE WITH PART 3.6, VOLUME 2 OF NCC

LEGEND

DP		DOWN PIPE x 8
GT		GARDEN TAP x 4
S		SMOKE ALARM x 3
M		MIXER
TS		TAP SET
GP		GAS POINT x 1
WP		WATER POINT



HOUSE NAME: CUSTOM	CLIENT: KEN ALLEN	 REAL HOMES. REAL PEOPLE. UNIT 2/20 CAMERON PLACE, ORANGE BUILDERS LIC No 397899c MOB: 0427 707 566	ALL DESIGNS AND CONCEPTS ARE COPYRIGHT OF CAVALIER HOMES	GENERAL NOTES: * ALL DIMENSIONS SHOWN IN MILLIMETERS. * DO NOT SCALE * ALL TIMBERS USED MUST BE IN ACCORDANCE WITH AS 1684, NATIONAL TIMBER FRAMING CODE * TERMITE PROTECTION IS TO BE CARRIED OUT TO AS 3660.1	TITLE: FLOOR PLAN	NORTH POINT
FACADE: TRADITIONAL	SITE ADDRESS: LOT 29 IN DP 248205 7 SQUATTER RIDGE CLIFTON GROVE				DRAWN: JM SHEET: 5/9 DATE: 18/11/2025 REV: 1	
DESCRIPTION:	SCALE: 1:100 PAPER SIZE: A3	PURPOSE: DEVELOPMENT APPLICATION				



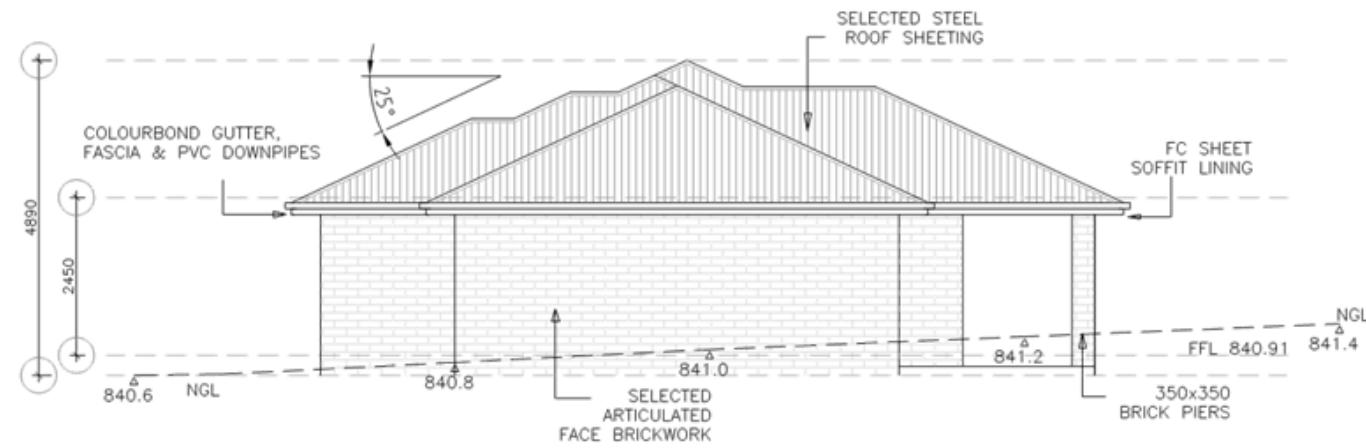
ELEVATION A
NORTH WESTERN ELEVATION

BAL 12.5 REQUIREMENTS

ROOFING TO HAVE MINERAL WOOL FITTED TO RIDGES, VALLEYS AND HIPS


ALL ROOF PENETRATIONS, VENTS ETC TO BE FITTED WITH 2mm MESH

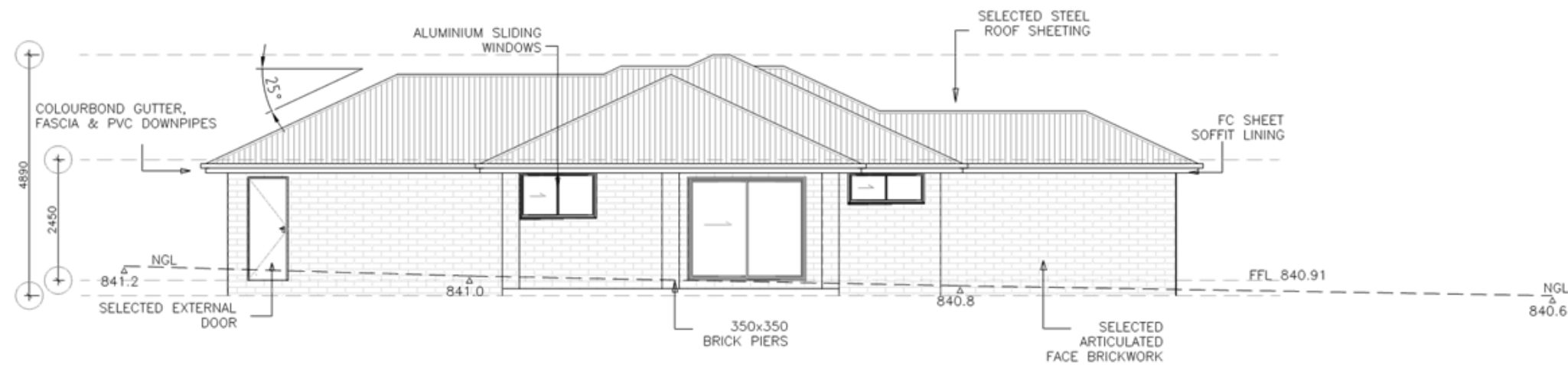
WINDOWS FITTED WITH STEEL MESH SCREENS



ELEVATION B
SOUTH WESTERN ELEVATION

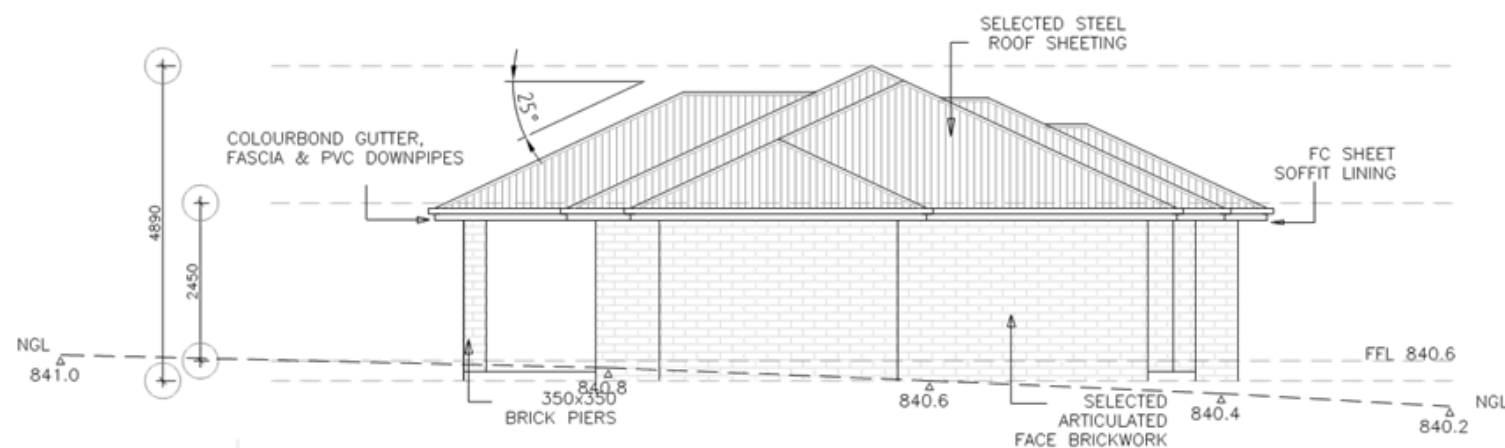


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FACADE: TRADITIONAL	SITE ADDRESS: LOT 29 IN DP 248205 7 SQUATTER RIDGE CLIFTON GROVE				DRAWN: JM	SHEET: 6/9	DATE: 18/11/2025		REV: 1
DESCRIPTION:					PURPOSE: DEVELOPMENT APPLICATION				
SCALE: 1:100					PAPER SIZE: A3				



ELEVATION C


SOUTH EASTERN ELEVATION

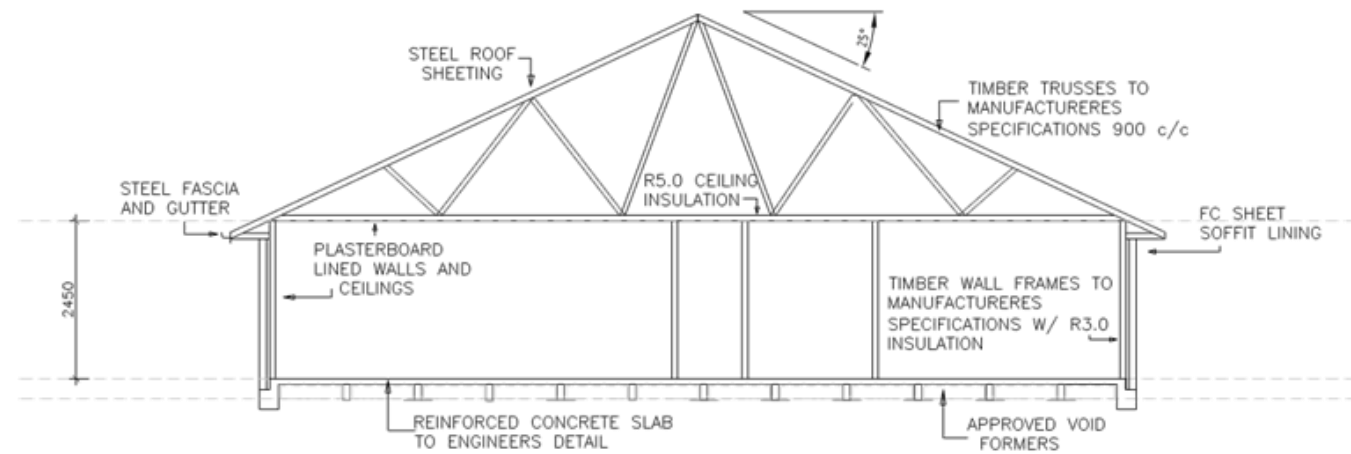


ELEVATION D

NORTH EASTERN ELEVATION



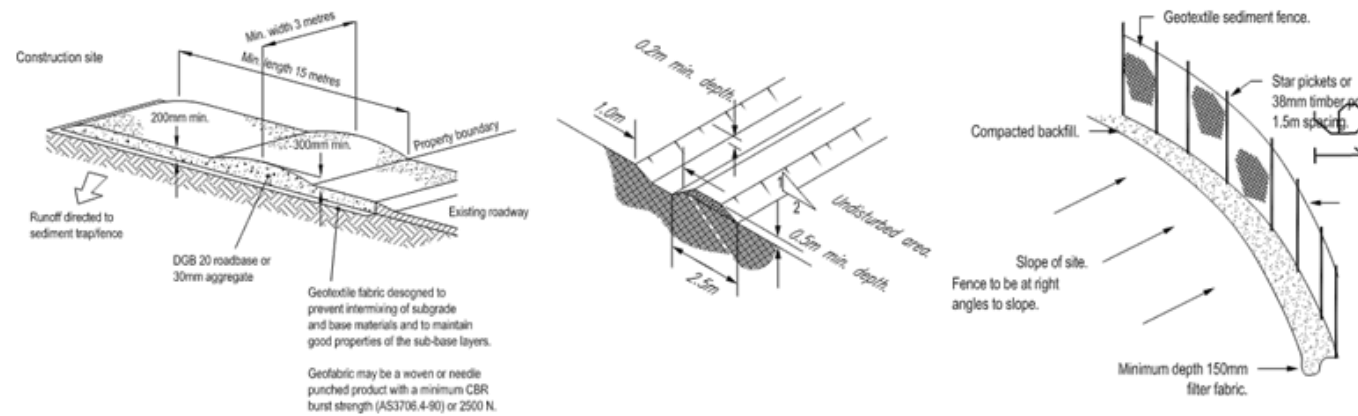
HOUSE NAME: CUSTOM		CLIENT: KEN ALLEN	 ALL DESIGNS AND CONCEPTS ARE COPYRIGHT OF CAVALIER HOMES	GENERAL NOTES: * ALL DIMENSIONS SHOWN IN MILLIMETERS. * DO NOT SCALE * ALL TIMBERS USED MUST BE IN ACCORDANCE WITH AS 1684, NATIONAL TIMBER FRAMING CODE * TERMITE PROTECTION IS TO BE CARRIED OUT TO AS 3660.1	TITLE: ELEVATIONS			NORTH POINT	
FACADE: TRADITIONAL		SITE ADDRESS: LOT 29 IN DP 248205 7 SQUATTER RIDGE CLIFTON GROVE			DRAWN: JM	SHEET: 7/9	DATE: 18/11/2025		REV: 1
DESCRIPTION:					PURPOSE: DEVELOPMENT APPLICATION				
SCALE: 1:100	PAPER SIZE: A3								



SECTION A-A

Insulation & Construction Details

Roof	Medium (SA >0.475<0.70) Reflective sarking
Ceilings	R5.0 (excluding garage)
External Walls	R2.7 (excluding garage)
Internal Walls	R2.7 (internal walls shared with garage, bathroom, laundry, WC)
Floors	Waffle pod slab
Draught sealing	Draught stoppers & foam seals on all external doors & internal garage door. Draught stoppers on all ceiling exhaust fans.
Ceiling penetrations	Downlights to be IC rated to permit coverage with insulation.
Window / glass door type	Double glazed clear sliding w/aluminium frame U=4.10 & SHGC=0.52 (+or- 5%)
Front door	Solid timber (glass panels <25% of door area)



Construction Notes

- Strip topsoil and level site.
- Compact subgrade.
- Cover area with needle-punched geotextile.
- Construct 200mm thick pad over geotextile using roadbase or 300mm aggregate. Minimum length 15 metres or to building alignment. Minimum width 3 metres.
- Construct hump immediately within boundary to divert water to a sediment fence or other sediment trap.

All erosion and sediment control measures required as conditions of building approval to be installed prior to any other work such as cut and fill taking place on site. These measures to be maintained throughout the course of construction and satisfactory stabilisation of the site upon completion of the works.

Control measures to be in accordance with Council's information brochure, and the Department of Conservation and Land Management. All sediment control techniques including runoff diversion techniques, sediment trapping devices, construction of entrances/exits, buffer zones and revegetation techniques shall be constructed to prevent sediment and other debris leaving the site or entering council drainage system. All such control measures to be maintained in a sound and workable condition and shall not be removed from site until permanent rehabilitation measures have been completed.

SEDIMENT AND EROSION CONTROL PLAN

HOUSE NAME: CUSTOM	CLIENT: KEN ALLEN		ALL DESIGNS AND CONCEPTS ARE COPYRIGHT OF CAVALIER HOMES	GENERAL NOTES: * ALL DIMENSIONS SHOWN IN MILLIMETERS. * DO NOT SCALE * ALL TIMBERS USED MUST BE IN ACCORDANCE WITH AS 1684, NATIONAL TIMBER FRAMING CODE * TERMITE PROTECTION IS TO BE CARRIED OUT TO AS 3660.1	TITLE: ELEVATIONS	NORTH POINT
FACADE: TRADITIONAL	SITE ADDRESS: LOT 29 IN DP 248205 7 SQUATTER RIDGE CLIFTON GROVE				UNIT 2/20 CAMERON PLACE, ORANGE BUILDERS LIC No 397899c MOB: 0427 707 566	
SPECIFICATION: STANDARD					PURPOSE: DEVELOPMENT APPLICATION	
SCALE: 1:100	PAPER SIZE: A3					

2.3 Development Application DA 353/2025(1) - 86 Summer Street

RECORD NUMBER: 2026/433

AUTHOR: Kate Yates, Senior Planner

EXECUTIVE SUMMARY

Application lodged	10 September 2025
Applicant/s	Patch Planning
Owner/s	Parkstone Village on Summer Pty Ltd
Land description	Lot 100 DP 1291348 - 86 Summer Street, Orange
Proposed land use	Demolition, Specialised Retail Premises and Retail Premises (construction and use)
Value of proposed development	\$5,423,000

The application seeks consent for the partial demolition and construction of specialised retail premises and retail premises across three tenancies at 86-108 Summer Street, Orange on land described as part of Lot 100 DP 1291348 (Figure 1). The existing Summer Street façade of the former Ron Boutlon’s Marine and Cycle building at 108 Summer Street is to be retained and refurbished, with a new building constructed behind the façade and on the adjoining vacant land.

The application was publicly exhibited in accordance with Orange City Council’s Planning and Development Community Participation Plan (December 2023). Notification was undertaken by publication on Council’s website on 1 October 2025 and by notifying adjoining landowners. The exhibition period closed on 16 October 2025. Two submissions were received.

The subject site is a contributory building located within the Dalton Central Heritage Conservation Area (C1) as identified in Schedule 5 of Orange Local Environmental Plan 2011.

The proposed development would consist of an 800m² specialised retail premises, and two retail premises 120m² and 678m² for a total of 1598m². The proposed building materials include brickwork ‘Bowral Gertrudis Brown’ and precast concrete panels with powder coated aluminium framed doors and windows with clear shopfront glazing and cantilevered awnings on the northern, western, eastern and a portion of the southern elevation.

The proposed site works include the provision of a stormwater drainage system, pruning of a Council street tree on Summer Street, removal of a Council street tree on Sale Street, concrete slab construction for vehicle access to an internal loading area, connection to utility services and landscape planter boxes on the western and southern sides. The proposal will provide a covered pedestrian walkway on the western, eastern and a portion of the southern sides of the new building, connecting Summer and Sale Streets.

General vehicle access to the site will continue to be provided via the existing Summer Street and Sale Street driveways to the Summer Centre, known as “The Village” (Village) at grade car park, with service access provided via the existing right-of-way from Sale Street. The proposal does not provide any additional parking and relies upon the parking capacity that currently exists across the Village off-street car park.

Key issues assessed include heritage, façade retention and extent of demolition, conservation and interpretation, urban design and visual presentation of the new building, tree retention, traffic and servicing the site, waste collection, water and sewer connections.

2.3 Development Application DA 353/2025(1) - 86 Summer Street

Substantial negotiations with the applicant have been undertaken during the course of planning assessment to ensure façade retention is feasible and to improve the visual presentation of key building elevations on the western approach to the Orange CBD. Conditions have been included in the Notice of Determination requiring further design changes to aspects of the final submitted design, heritage conservation, interpretation, engineering and other issues such as:

- Requiring reconstruction of the pitched roof in galvanised corrugated steel behind the retained facade at 108 Summer Street to a length of 5m and to match the existing in pitch and flashings which corresponds on the West Elevation with the width of the first new retail bay and its module
- Improve the visual presentation of the western, southern and eastern elevations of the new building
- Tree retention and replacement
- Materials and finishes
- Public art zone
- Restricting service vehicles entering the loading area on the existing Right of Way to 8.8m Medium Rigid Vehicle (MRV)
- Stormwater to be within the site
- Diversion of sewer main
- Resolution of 1.1m level difference between existing levels on Sale Street footpath and proposed finished level in Tenancy 3

2.3 Development Application DA 353/2025(1) - 86 Summer Street


Figure 1 – locality plan

DIRECTOR’S COMMENT

The proposed commercial development provides a gateway building on the western boundary of the town centre.

The major issues in the assessment of this application relate to the desire to retain the existing façade at 108 Summer Street for a range of heritage-related reasons outlined in the assessment report, retention of street trees/carparking space, urban design and visual amenity.

From pre-DA and throughout assessment Council have requested a satisfactory structural assessment report with a methodology that demonstrates façade retention is feasible.

A structural assessment report prepared by Barson Pty Ltd was provided on 2 March 2026 confirming that the brick façade is in suitable condition for retention with some remediation and maintenance works.

The final set of amended plans depict a “Public Art Zone” to a blank façade on the southern elevation. A public art plan and proposal was not submitted with the application.

2.3 Development Application DA 353/2025(1) - 86 Summer Street

The draft Notice of Determination outlines a range of conditions, including retention of existing Sale Street tree and amended awning design for tree retention considered appropriate to ensure that the development proceeds in an acceptable manner.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan strategy “7.3 Plan for growth and development that balances liveability with valuing the local environment”.

FINANCIAL IMPLICATIONS

Nil

POLICY AND GOVERNANCE IMPLICATIONS

Nil

RECOMMENDATION

That Council consents to development application DA 353/2025(1) for Demolition, Specialised Retail Premises and Retail Premises (construction and use) at Lot 100 DP 1291348 - 86 Summer Street, Orange pursuant to the conditions of consent in the attached Notice of Approval.

FURTHER CONSIDERATIONS

The recommendation of this report has been assessed against Council’s key risk categories and the following comments are provided:

Service/Project Delivery	Approval or refusal may affect infrastructure demands, service planning or community expectations
Financial	Decisions may lead to financial implications through infrastructure contributions, legal appeals or compensation claims.
Reputation/Political	The outcome may attract public or political scrutiny, especially if perceived as inconsistent or contentious.
Environment	The application may have environmental impacts - positive or negative - depending on the nature of the development.
Compliance	The decision must align with planning legislation, regulation and controls and Council policies to avoid legal risk.
People & WHS	Development activities may introduce safety risks for workers, residents or the broader community.
Information Technology/ Cyber Security	Systems used to assess and manage the application must ensure data integrity and secure handling of sensitive information.

SUPPORTING INFORMATION

DEVELOPMENT CONSENTS

The following applications are relevant to the current proposal:

- Development consent **DA382/2007(1)** was granted on 21 November 2007 for the demolition three buildings onsite, the Blockbuster Video building and remediation of the site.
- Development consent **DA21/2010(1)** was granted on 4 April 2011 for the demolition and redevelopment of the site to construct the retail centre (Summer Centre) that occupies the southern portion of the site.

2.3 Development Application DA 353/2025(1) - 86 Summer Street

- Development consent **DA326/2010(1)** was granted on 17 February 2011 for demolition of 108 Summer Street building and the construction of a four-storey mixed use building consisting of Motel (Quest Apartments), retail and commercial premises, and a basement carpark. noting this consent has since been surrendered.
- Development consent **DA39/2014(1)** was granted on 16 June 2014 for Torrens Title subdivision to create five lots. The subdivision proceeded to excise Lots 2 and 3 from the existing site, being Lot 12 in DP 1255039.
- Development consent **DA238/2020(1)** was granted on 3 November 2020 for the demolition of the 108 Summer Street building, construction of a mixed use development including hotel or motel accommodation, pub, bistro, retail shops, basement parking and subdivision (two lot Torrens title and three lot strata title). Noting this consent has since been surrendered.

PRE-DA ADVICE

Council officers meet with the applicant on 25 June 2025 and provided written PDA advice on 7 July 2025.

Pre-DA advice related to issues including the strategic and statutory context, Orange City Future City strategic directions for the revitalisation and development within the CBD, proposed site underutilisation, heritage and feedback on the design response to the local context, traffic, parking and loading access, sewer, stormwater and surrender of development consent DA238/2020(1).

Transport for NSW (TfNSW) provided pre-DA advice recommending Council require a Traffic Impact Assessment (TIA) be developed with reference to Section 5 and Appendix E of TfNSW Guide to Transport Impact Assessment for the proposal. The TIA scope was to consider the need to undertake existing traffic counts to establish the current traffic movements through the site and take up of existing off-street car parking spaces. The intersections of interest to TfNSW were the Mitchell Highway / Sale Street signalised intersection.

THE PROPOSAL

The application seeks consent for the partial demolition and construction of specialised retail premises and retail premises across three tenancies at 86-108 Summer Street, Orange on land described as part of Lot 100 DP 1291348 (Figure 2).

The proposed development seeks consent for:

- Partial demolition of the former Ron Boulton Marine and Cycles building at 108 Summer Street, with the retention and refurbishment of the Summer Street façade.
- A new building will be constructed behind the façade and on the adjoining vacant land, with primary frontages to both Summer and Sale streets and secondary frontages to the Village carpark and retail centre to the south and west (Figures 3-12).
- Proposed development would consist of an 800m² specialised retail premises (Tenancy 1), and two retail premises 120m² (Tenancy 2) and 678m² (tenancy 3) for a total of 1598m² (tenants yet to be secured).
- Building design adaptable for other uses or tenants in the future which would be subject to separate approvals.
- Proposed external finishes will comprise:

2.3 Development Application DA 353/2025(1) - 86 Summer Street

- Select dark brickwork for external walls on the northern elevation and partially on the eastern and western elevations, with the remaining sections finished in painted precast concrete panels in a variety of colours, including cream, dark brown, and white.
- Select black powder coated aluminium framed doors and windows with clear shopfront glazing.
- The awning and its supports will comprise a painted finish in 'monument'.
- Proposed business identification sign zones on the elevations.
- Removal of existing Council street tree in the Summer Street footpath to accommodate the proposed awning.
- Provision of a stormwater drainage system.
- Concrete surface to principal vehicle manoeuvring areas.
- Extension and connection to the available urban utility services.
- Establishment of landscaping planter boxes on the western and southern sides of the new building.
- Proposed development will be serviced by the existing access arrangements that benefit the site and Village carpark.
- New internal loading area, to be accessed via the ROW (ROW) from Sale Street, widened to 7.0m and provide access to a loading area capable of accommodating a 12.5m heavy rigid vehicle (HRV), while retaining rear access for the adjacent properties to the north.
- Cantilevered awnings to provide a covered pedestrian walkway on the western and southern sides of the new building, connecting Summer and Sale Streets.



Figure 2 - site plan

2.3 Development Application DA 353/2025(1) - 86 Summer Street

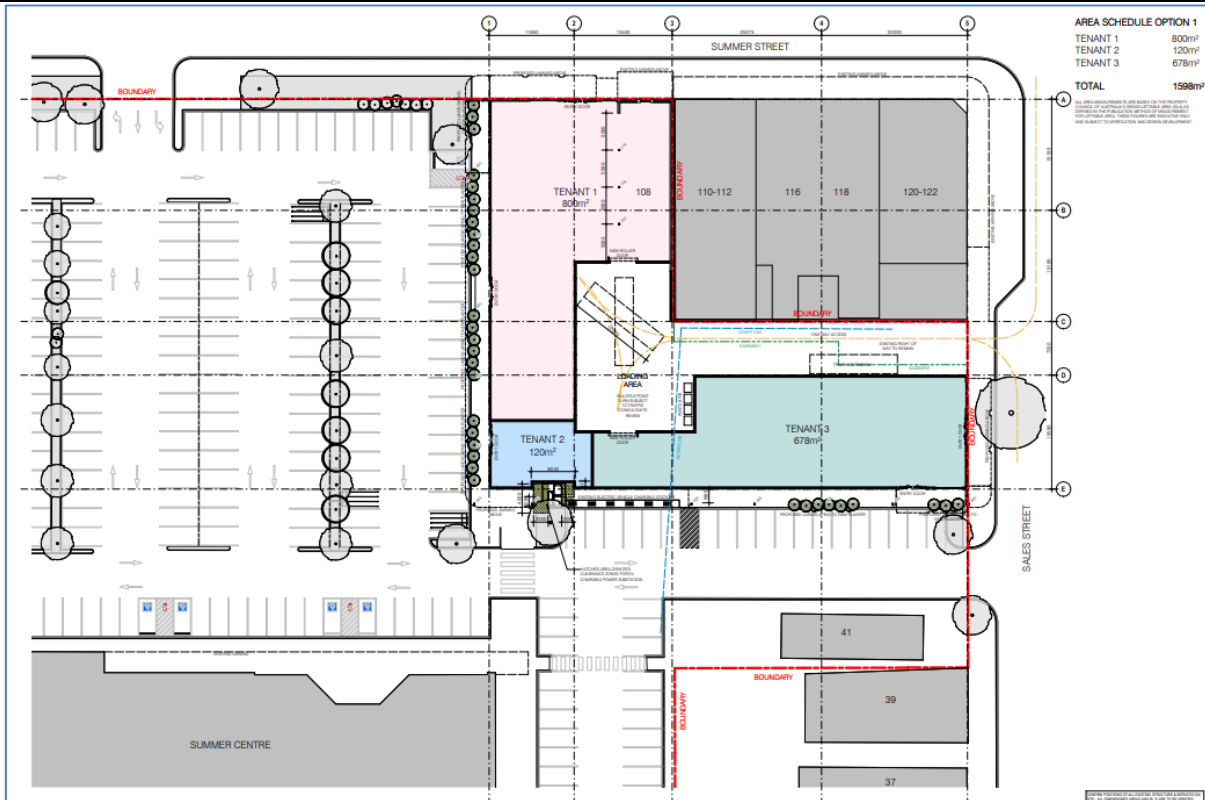


Figure 3 – proposed ground floor plan (dwg DA23 [R05])

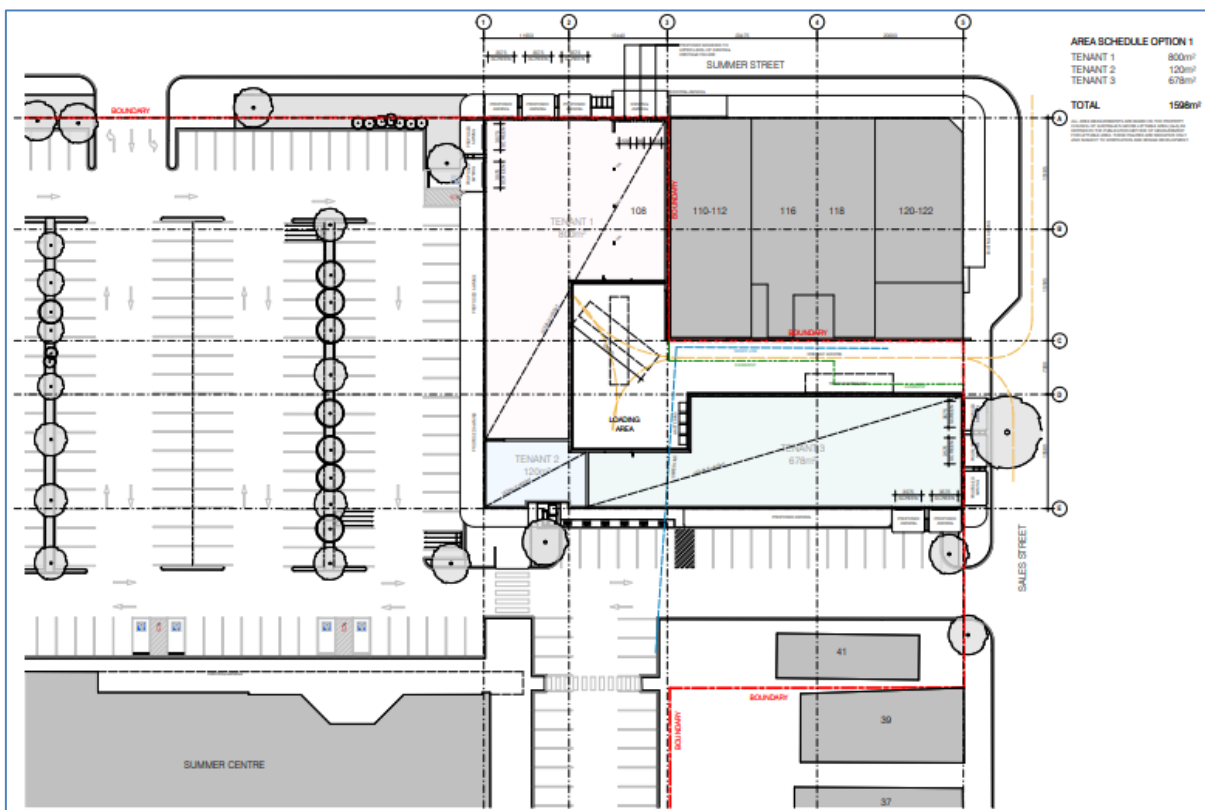


Figure 4 – proposed level 01 plan (dwg DA24 [R04])

2.3 Development Application DA 353/2025(1) - 86 Summer Street

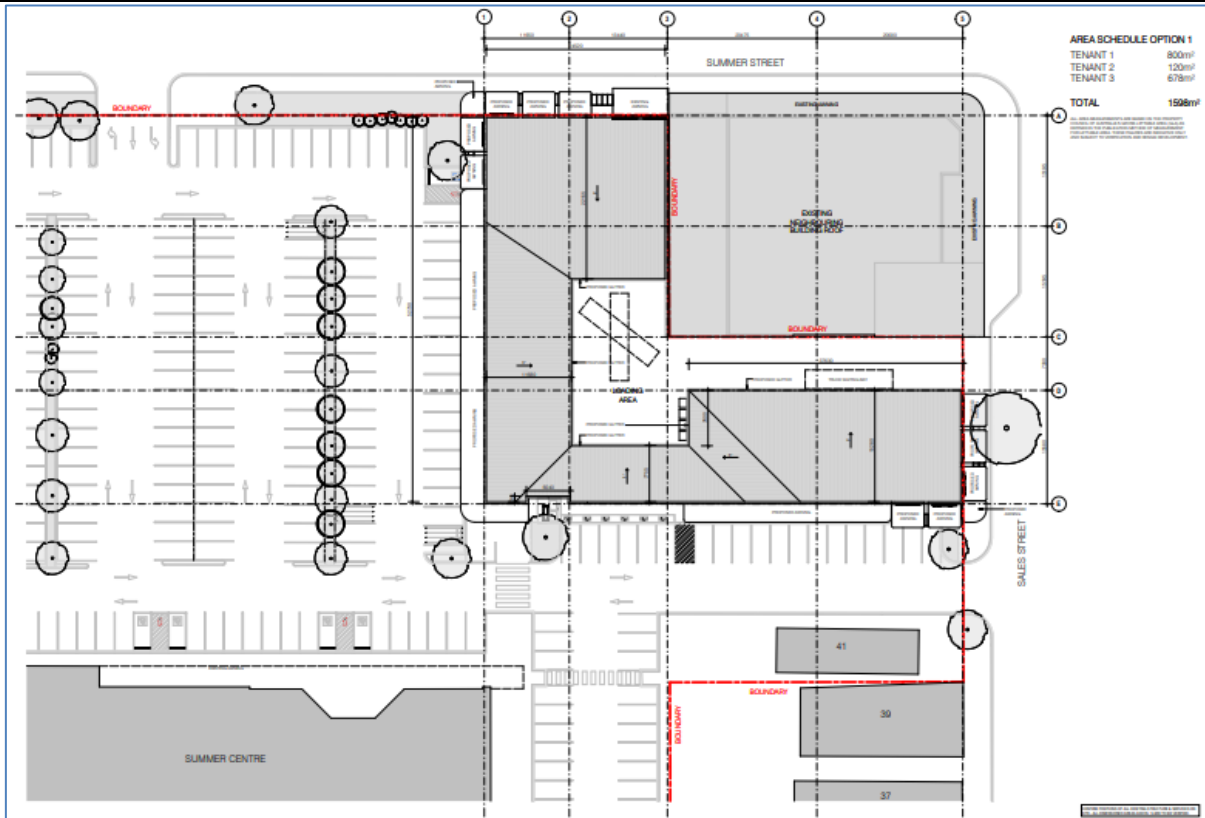


Figure 5 – proposed roof plan (dwg DA25 [R04])

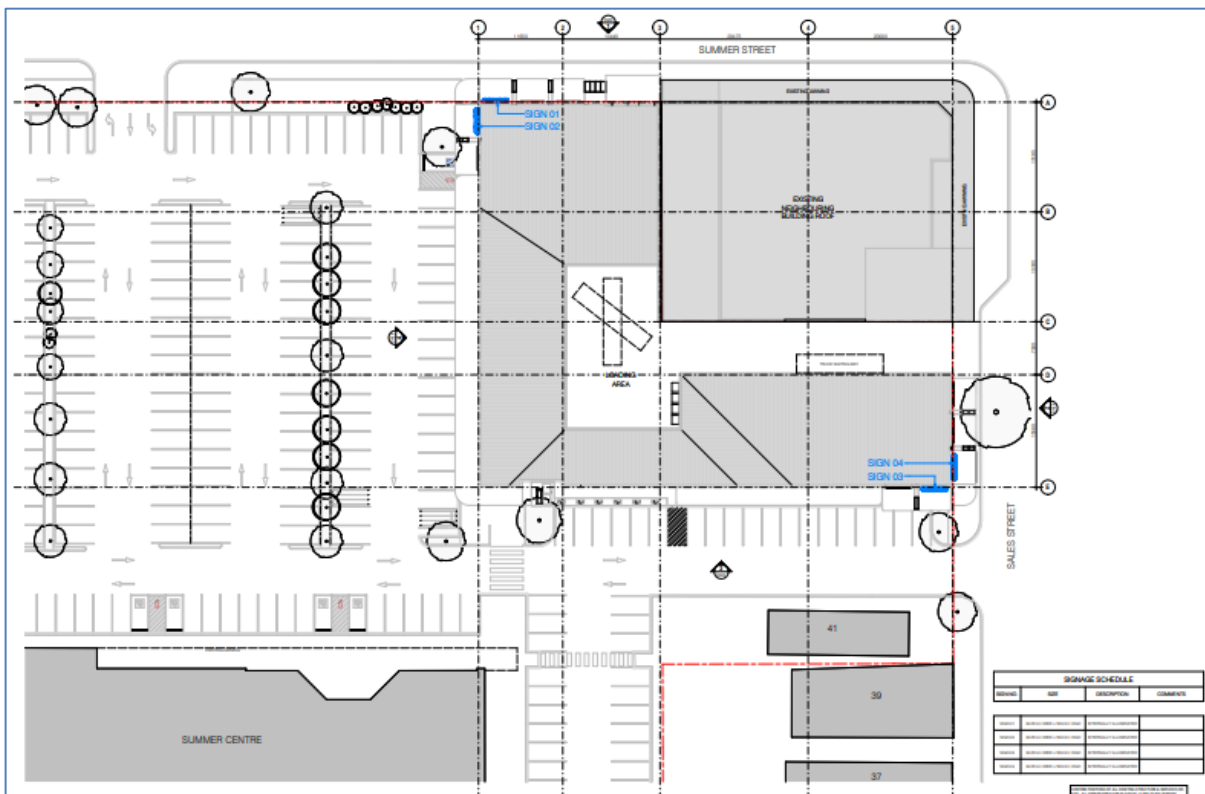


Figure 6 – proposed signage plan (dwg DA28 [R04])

2.3 Development Application DA 353/2025(1) - 86 Summer Street



Figure 7 – proposed elevation (dwg DA29 [R05])



Figure 8 – proposed signage elevations (dwg DA31 [R04])

2.3 Development Application DA 353/2025(1) - 86 Summer Street



Figure 9 – proposed Summer Street elevation (dwg DA32 [R03])

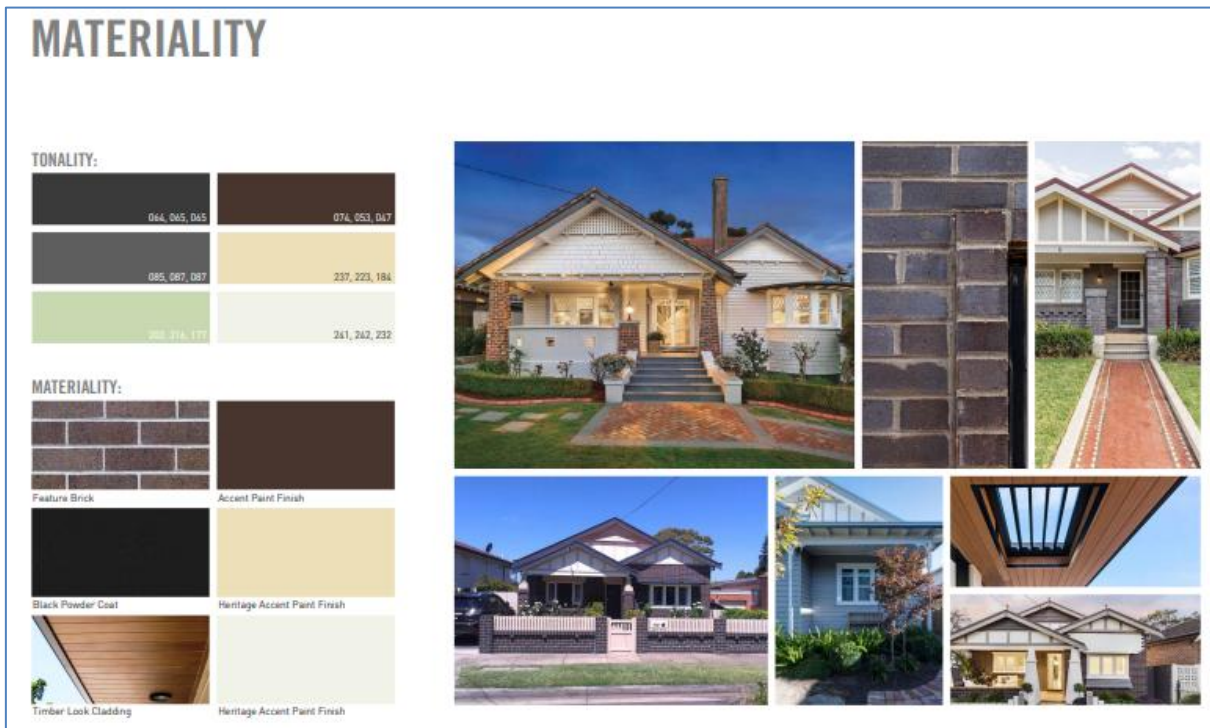


Figure 10 – proposed roof plan (dwg DA33 [R03])

2.3 Development Application DA 353/2025(1) - 86 Summer Street

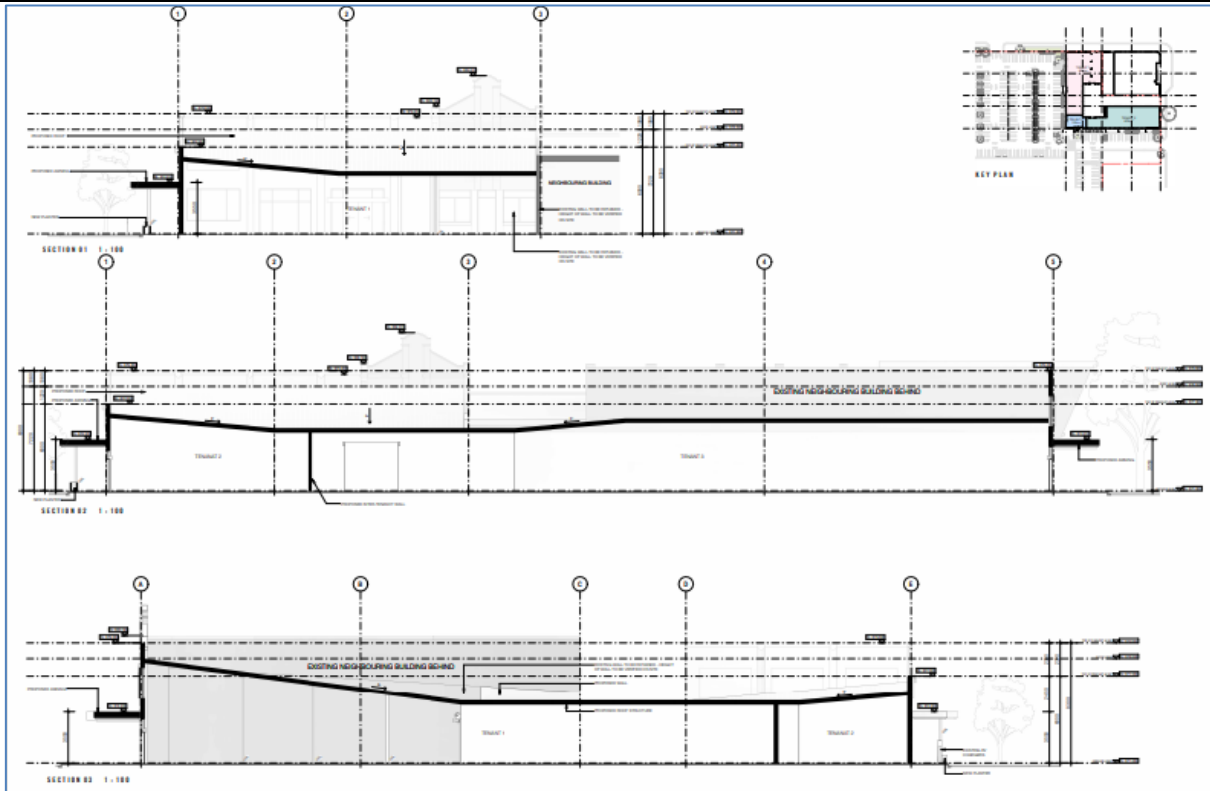


Figure 11 – proposed Sections 1-3 (dwg DA34 [R04])

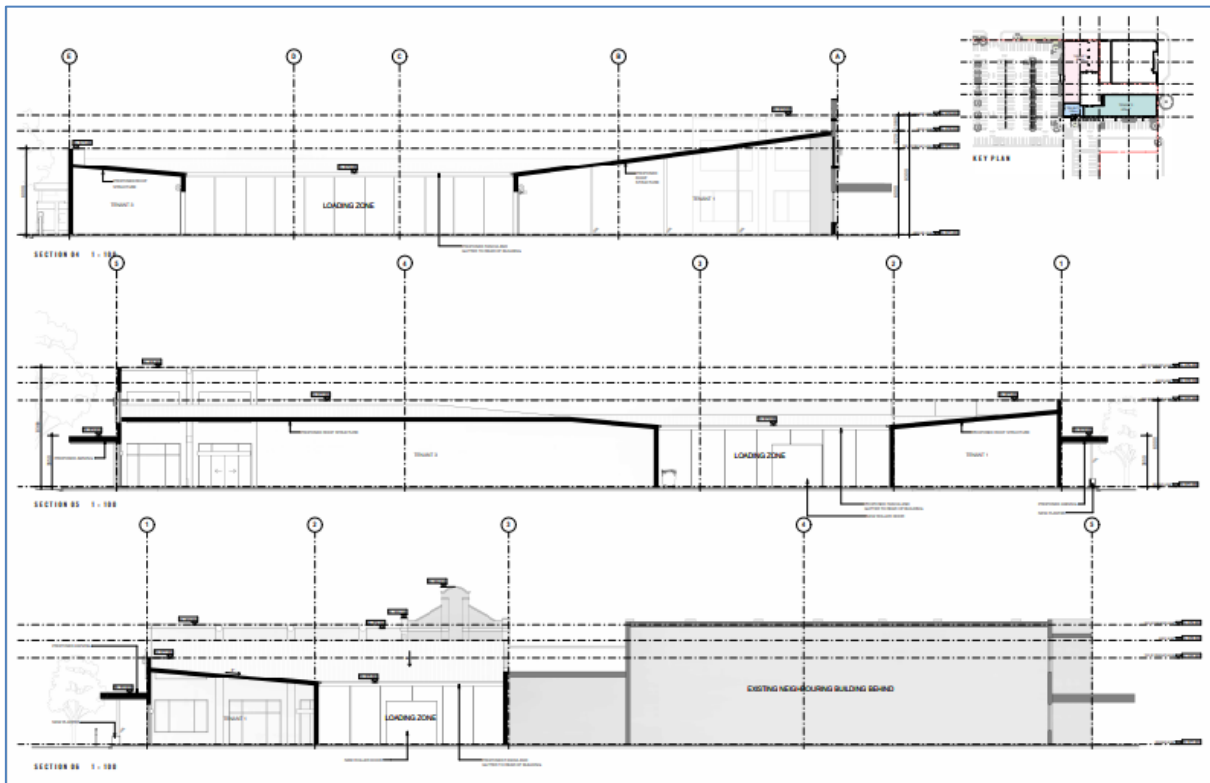


Figure 12 – proposed sections 4-6 (dwg DA35 [R04])

2.3 Development Application DA 353/2025(1) - 86 Summer Street

SITE AND SURROUNDS

The site has a legal description of Lot 100 DP 1291348, 86 Summer Street, Orange with area of 2.049ha.

The site is located on the western boundary of the Orange Central Business District (CBD) with primary frontage of 28m to Summer Street and secondary frontage of 25m to Sale Street. (Fig 13).



Figure 13 - locality plan

Levels on the site fall by 2m from west to east. The site is identified as groundwater vulnerable and is identified as flood prone land, being within the Blackmans Swamp Creek Probable Maximum Flood.

The existing shopping centre, commonly known as “The Village”, is set back from Summer Street and occupied by major tenancies Dan Murphys, IGA supermarket, and small speciality retail and food and beverage premises, with at-grade car parking to the north and east, a loading dock to the west and a two storey shop-top housing development at 41 Sale Street.

2.3 Development Application DA 353/2025(1) - 86 Summer Street

The subject site is located within the Dalton Central Heritage Conservation Area (C1) as identified in Schedule 5 of Orange Local Environmental Plan 2011 (OLEP 2011); however, it does not contain any heritage items. The site is in the vicinity of several heritage items of State and Local significance.

The proposed development would be carried out in the north eastern portion of the site on an irregular L- shaped block. This part of the site is currently occupied by the former Ron Boutlon's Marine and Cycle building at 108 Summer Street, an example of a Federation Arts and Craft style commercial building. The remainder of the site is vacant land and a fenced area used for carparking.

An existing ROW 5.905m wide off Sale Street provides access for rear loading and parking to four existing properties located at 110-122 Summer Street.

There are two existing street trees, one *Pyrus Ussuriensis* (Manchurian Pear) in Summer Street and one *Quercus palustris* (Pin Oak) in Sale Street. In addition, there are four existing trees and four small shrubs within the subject site proposed for removal.

The Summer Street public domain includes brick pavements, street trees, a bus zone and on-street carparking, and is characterised by wide awnings that provide good pedestrian amenity. Sale Street public domain includes brick pavements, garden beds with street trees, awnings, a streetlight south of the ROW and an inroad street tree. (Figure 14).

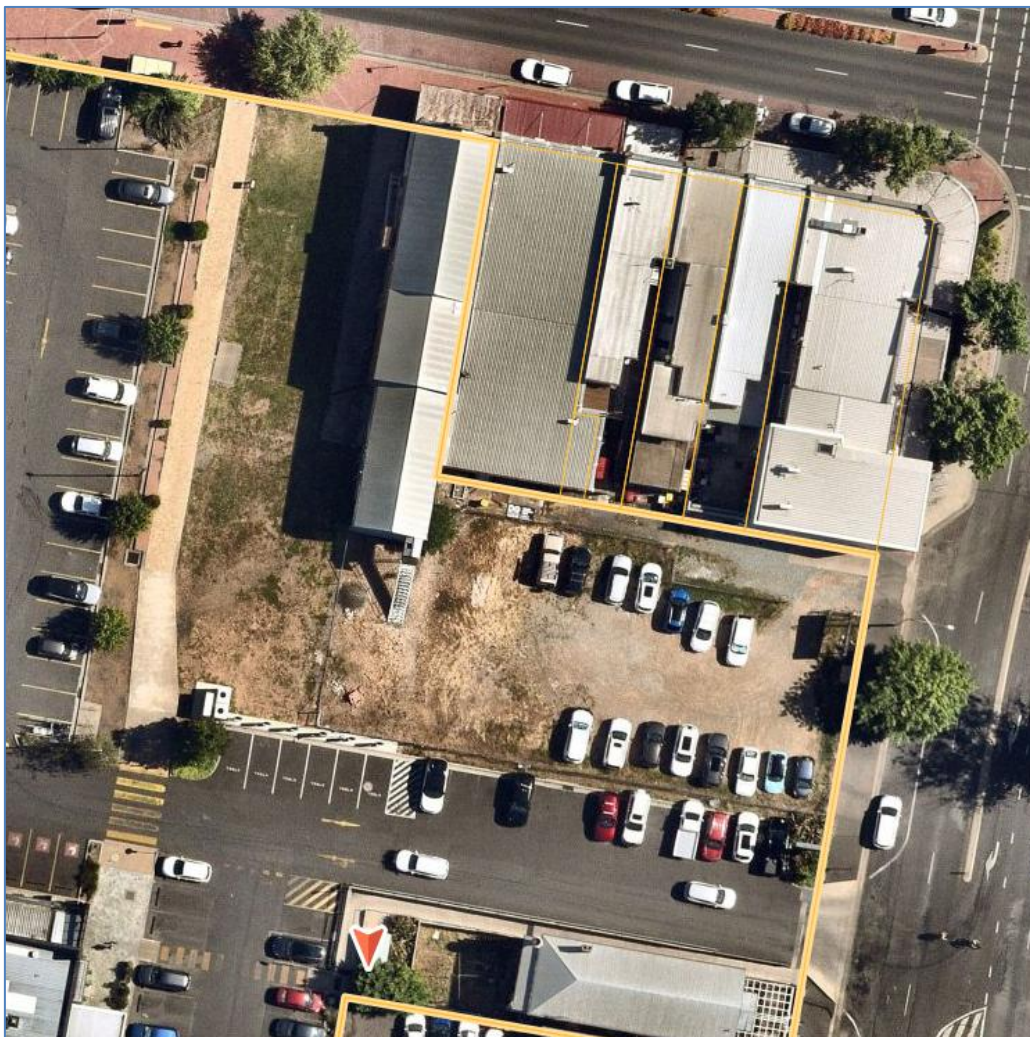


Figure 14 – subject site existing public domain

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Photos of the site and surrounds are provided below (Figures 14 to 24):



Figure 14a - existing 108 Summer Street building viewed from western approach to the CBD



Figure 14b - existing 108 Summer Street building viewed from western approach to the CBD

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Figure 15a - 108 Summer Street building façade, awning and existing street tree Manchurian pear



Figure 15b - 108 Summer Street building façade, awning and existing street tree

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Figure 16 - signalised intersection Summer and Sale streets



Figure 17 - Sale Street looking south street trees and awning

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Figure 18 - Summer Street existing elevation



Figure 19 - Sale Street existing elevation, existing street tree Pin Oak, street light and ROW



Figure 20 - existing vehicle entry to the Village carparking and pedestrian crossing on Sale Street

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Figure 21 - existing parking and EV charging on southern edge of subject land



Figure 22 - subject site looking north, existing EV battery/substation adjacent to pedestrian path

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Figure 23 - existing pedestrian crossing and path looking north



Figure 24 - existing pedestrian path and trees looking north to Summer Street

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ENVIRONMENTAL PLANNING ASSESSMENT - MATTERS FOR CONSIDERATION**Biodiversity Conservation Act 2016 & Fisheries Management Act 1994**

Section 1.7 of the Environmental Planning and Assessment Act 1979 (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 (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 and no further comments apply.

In consideration of this section, the proposed development is not likely to significantly affect a threatened species:

- The development site is not identified on the Biodiversity Values Map published under the Biodiversity Conservation Regulation 2016. Furthermore, the site does not contain mapped high biodiversity sensitivity pursuant to the Orange LEP 2011 Terrestrial Biodiversity Map.
- The proposal does not involve removal of native vegetation. Clearing thresholds prescribed by regulation are not applicable.
- The site is contained within an established residential area and has been modified by the urban land use pattern. The subject land does not contain known threatened species or ecological communities.

Based on the foregoing consideration, a Biodiversity Assessment Report is not required, and the proposal suitably satisfies the relevant matters at Clause 1.7.

IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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.

STATE ENVIRONMENTAL PLANNING POLICIES

The following SEPPs applicable to the proposed development:

- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy (Industry and Employment) 2021*

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STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021**Clause 4.6 - 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.*
- (2) *Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (4) *The land concerned is:*
 - (b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*

Previous development consent relating to the subject site (**DA 328/2007(1)**) was granted on 21 November 2007 for the demolition of three buildings, the Blockbuster Video building and remediation of the entire site. The DA included a site contamination investigation, remediation report and a hazardous material survey that confirmed that there are no significant contamination issues on the subject site.

Subsequent development applications including the existing Summer Centre development (**DA 21/2010(1)**) have been constructed. Since approval the site has not been used for a purpose referred to in Table 1 of the managing contaminated land planning guidelines.

Council's Environmental Health Officer has deemed that the proposed development is suitable for commercial use and recommended a condition to ensure that unexpected finds of contamination are notified to Council and managed appropriately.

The proposed development satisfies Clause 4.6(1), Clause 4.6(2), Clause 4.6(4)(b) and the site can be made suitable for the proposed use.

STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021**Chapter 2 Subdivision 2 Development in or adjacent to road corridors and road reservations****Clause 2.119 of the SEPP relates to development with frontage to classified road:**

- (1) *The objectives of this section are—*
 - (a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
 - (b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*
- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*

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- (a) *where practicable and safe, 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.*

Mitchell Highway (Summer Street) is a classified State Road (A32) and Orange's main street through the CBD. Sale and Hill Streets are local roads. Council is the roads authority for both roads and all other public roads in the area, in accordance with Section 7 of the *Roads Act 1993*.

The proposed development is located adjacent to Summer Street and does not change existing vehicular access into and from the Village carpark from Summer and Sale Streets. Vehicle access will remain via the driveways on Summer Street - left-in and left-out. Alternatively, the left-in and left-out on Sale Street.

The proposal seeks approval for loading for servicing the site via the existing ROW off Sale Street, widened from approximately 5.905m to 7.0m to accommodate a 12.5m heavy rigid vehicle (HRV).

Council's analysis found that the size of vehicle access to the loading area results in conflicts with the following:

- proposed building awning over the Sale Street footpath
- existing streetlight located adjacent to the ROW to be relocated
- existing street tree located adjacent to the ROW to be removed
- deletion of one (1) existing parallel parking space in Sale Street (carparking contribution fees are to be paid for the loss of on-street parking).

None of these conflicts are addressed in the submitted Traffic Impact Assessment. A condition of consent is included to limit vehicle size to 8.8 MRV accessing the ROW.

The proposed retail use is not considered sensitive to road traffic noise or vehicle emissions. The majority of truck through traffic in the CBD travels upon the Northern Distributor Road, reducing traffic noise and vehicle emissions on the Mitchell Highway adjacent to the site. No mitigation measures are proposed to ameliorate noise and vehicle emission impacts.

A referral to Transport for NSW (TfNSW) was made and returned with the following comments:

"After reviewing the documents, there are no proposed changes to the current access arrangements. Therefore, a referral to TfNSW is not warranted."

As such the proposal is deemed suitable against the SEPP Clause 2.119.

Refer to discussion in Traffic and Parking section.

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Clause 2.122 of the SEPP relates to traffic generating development:

- (1) *This section applies to development specified in Column 1 of the Table to Schedule 3 that involves—*
- (a) *new premises of the relevant size or capacity, or*
 - (b) *an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.*
- (2) *In this section, **relevant size or capacity** means—*
- (b) *in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection—the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.*

The existing Village carpark entry off Summer Street is 118m from the Summer Street and Sale Street signalised intersection, and the carpark entry off Sale Street is 65m from this intersection.

Schedule 3 of the SEPP outlines traffic generating development that is to be referred to TfNSW requires commercial developments where more than 2,500m² of additional gross floor area (GFA) is proposed.

Specialised retail and retail premises are a type of commercial premises. The proposed use specified in Schedule 3 is commercial premises and has been calculated as having a GFA of 1598m² and does not meet the criteria for a referral to TfNSW for concurrence.

The proposal is deemed suitable against the SEPP Clause 2.122.

Chapter 2 Infrastructure – Division 5 Electricity Transmission or Distribution – Subdivision 2 Development Likely to affect an electricity transmission or distribution network

Clause 2.48(1) Determination of development applications – other development

This section applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following—

- (a) *the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*
- (b) *development carried out—*
 - (i) *within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
 - (ii) *immediately adjacent to an electricity substation, or*
 - (iii) *within 5m of an exposed overhead electricity power line,*

Underground electricity power lines exist in Summer and Sale streets and there is an existing light pole that aligns with the southern edge of the existing ROW on Sale Street. The property is located near electrical infrastructure and could be subject to requirements listed under Clause 2.48.

Essential Energy was consulted on the proposed development and no comments relating to the potential safety risks arising from the proposed development.

Essential Energy made the following general comments:

- *If the proposed development changes, there may be potential safety risks, and it is recommended that Essential Energy is consulted for further comment;*

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- Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with;
- Any activities in proximity to electrical infrastructure 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;
- 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); and
- 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.
- All Torrens lots must have access and frontage to a public road as per Service and Installation rules this is to allow for the provision of power/services to the new development, a right of carriageway can not to be used for the provision of power/services to any part of the new development.
- If the site’s energy demand exceeds Essential Energy’s standard limits, electricity supply upgrades may be required, including the possible installation of a pad mount substation within the development. It is advised to use Essential Energy’s Connection portal early to identify network needs and plan accordingly. Should network augmentation be necessary, consult the current list of Accredited Service Providers (ASPs) to arrange the necessary works.

The proposed development complies with Clause 2.48 of the SEPP.

Refer to discussion in Clause 7.11 - Essential Services section.

STATE ENVIRONMENTAL PLANNING POLICY (INDUSTRY AND EMPLOYMENT) 2021

Part 3.1 of SEPP (Industry and Employment) seeks to achieve the following aims and objectives:

- (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
- (b) to regulate signage (but not content) under Part 4 of the Act, and
- (c) to provide time-limited consents for the display of certain advertisements, and
- (d) to regulate the display of advertisements in transport corridors, and
- (e) to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.

Clause 3.2 of the SEPP provides definitions and the proposed signage zones would be defined as ‘business identification signs’ which means a sign that identifies or names a building and that may include the name of a building, the street name and number of a building, and a logo or other symbol but does not include general advertising of products, goods or services.

The drawings depict signage zones on the retail bays to the northern, southern, eastern and western façades for future business identification signs. However, tenants for the proposed development are yet to be identified. As no detail has been provided regarding signage design,

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content, information or potential illumination, it is not possible to carry out an assessment against Schedule 5 of the SEPP assessment criteria.

As such, signage will be subject to future development consent, and no further assessment against the SEPP is necessary.

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 the aims of the plan. The development will generate investment and ongoing employment in the Orange CBD, has been architecturally designed to respond to existing buildings and further enhances the City as a major regional centre with a diverse local economy.

Clause 1.7 - Mapping

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

Land Zoning Map:	Land zoned MU1 Mixed Use, E2 Commercial Centre
Lot Size Map:	No Minimum Lot Size
Heritage Map:	Within Dalton Central Heritage conservation area
Height of Buildings Map:	Building height limit 12m
Floor Space Ratio Map:	Floor space limit 1.5:1
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:	Blackmans Swamp Creek - Probable Maximum Flood

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

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PART 2 - PERMITTED OR PROHIBITED DEVELOPMENT

Clause 2.1 - Land Use Zones

The subject site is zoned part E2 Commercial Centre and part MU1 Mixed Use (Figure 25). An existing driveway on Hill Street that provides access to the Village loading dock and a portion of the carpark is zoned MU1 Mixed Use.

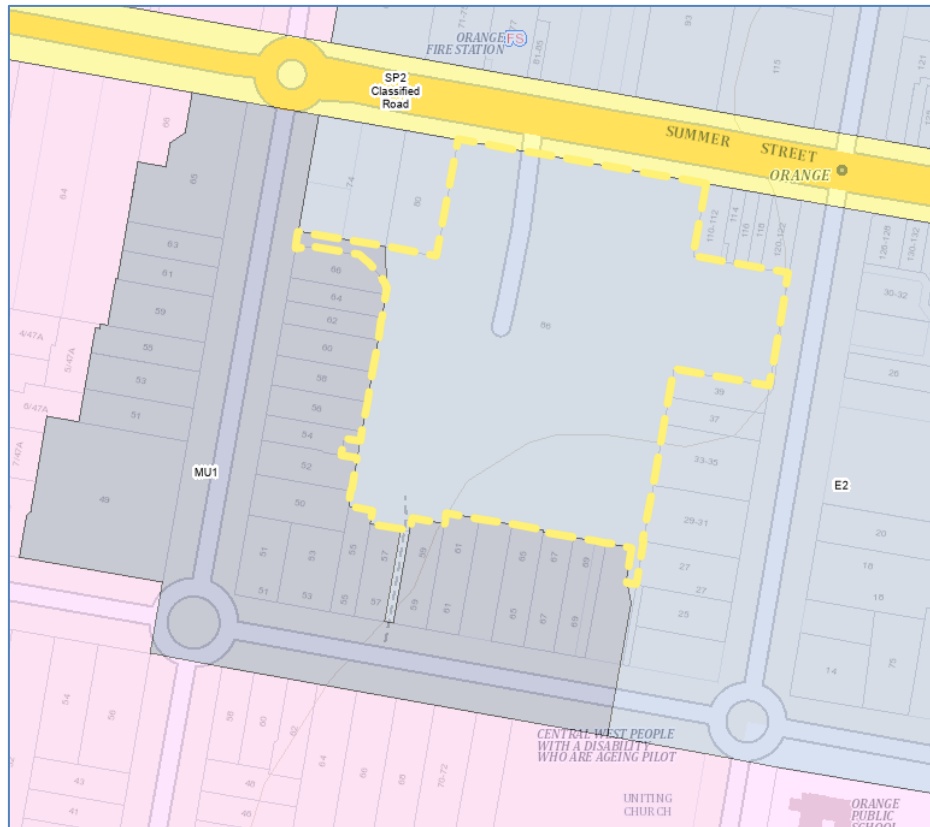


Figure 25 – land zoning map

The proposed development is located wholly within the E2 Commercial Centre zone and defined as specialised retail premises and retail premises under the OLEP 2011 as follows:

Specialised retail premises means a building or place the principal purpose of which is the sale, hire or display of goods that are of a size, weight or quantity, that requires—

- (a) a large area for handling, display or storage, or
- (b) direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire,

but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale, hire or display of other goods referred to in this definition.

Retail premises means a building or place used for the purpose of selling items by retail or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale).

Retail premises are a type of commercial premises which are permitted with consent in this zone. This application is seeking consent.

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Clause 2.2 Zoning of land to which Plan applies.

The subject site is zoned E2 Commercial Centre and MU1 Mixed Use under Orange Local Environmental Plan 2011 (OLEP). The proposed development site (part of Lot 100 DP 1291348) is located on vacant land within the E2 Commercial Centre portion of the site. Commercial premises (retail premises and specialised retail premises) are permissible with consent in the E2 Commercial Centre zone.

Clause 2.3 - Zone Objectives and Land Use Table

Clause 2.3 of LEP 2011 references the Land Use Table and Objectives for each zone in LEP 2011. These objectives for land zoned MU1 Mixed Use and E2 Commercial Centre are as follows:

Objectives of zone E2 Commercial Centre

- *To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.*
- *To encourage investment in commercial development that generates employment opportunities and economic growth.*
- *To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To promote development that contributes to the role of the Orange CBD as the primary retail and business centre in the City and region.*

There are no aspects of the proposal that contravene the objectives of the zone. The proposal provides a new building for retail land uses that have the potential to service the needs of the local and wider community and increase economic growth. The proposal increases employment opportunities in an accessible location. The proposed development is centrally located and reasonably accessible via public transport, walking and cycling, with cantilevered awnings that provide amenity for pedestrian circulation through the Village and shopfronts to active street frontages on Summer and Sale Streets and the western elevation of the existing Village carpark. The proposal involves façade retention of 108 Summer Street and construction of a new retail building behind on L-shaped vacant land. The proposal will strengthen the western approach to the Orange CBD and contributes to the role of the Orange CBD as a primary retail and business centre for the region.

Objectives of zone MU1 Mixed Use

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

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- *To promote, where possible, the retention and reuse of heritage items and the retention of established buildings that contribute positively to the heritage or cultural values of the land in the zone.*
- *To promote development that supports the role of Orange CBD as the primary retail and business centre in the region.*

There are no aspects of the proposal that contravenes the objectives of the zone.

The proposed development will facilitate retail and specialised retail premises that are compatible with and integrate with the existing retail uses at the Village and increase employment opportunities. The proposal includes active frontage to Summer and Sale Street and includes a north-south covered walkway which will encourage walking to, from and through the site. The proposed specialised retail and retail premises will be located on the ground floor of the new buildings.

The subject site does not include any heritage items and will not impact upon heritage items. The proposal involves retention and restoration of a façade of 108 Summer Street to contribute to the character of the HCA, and construction of a new retail building on the northeastern corner of the existing shopping centre. The proposal is located on an important gateway site in the Orange CBD, being located on the western edge of the town centre and will help to strengthen the role of the CBD as the primary business and retail centre in the region.

Clause 2.7 - Demolition Requires Development Consent

This clause triggers the need for development consent in relation to a building or work. This requirement does not apply to any demolition that is defined as exempt development.

The proposal involves the retention of the existing façade of the former Ron Boutlon's Marine and Cycle building at 108 Summer Street, and demolition of the masonry and timber building beyond this, and the applicant is seeking the consent of Council under Clause 2.7 and Clause 5.10(2)(a)(iii).

It is noted that previous Development Approval was granted for the demolition of this building at 108 Summer Street under **DA238/2020(1)**, which was later surrendered.

Refer to discussion in demolition and façade section.

PART 3 - EXEMPT AND COMPLYING DEVELOPMENT

The application is not exempt or complying development.

PART 4 - PRINCIPAL DEVELOPMENT STANDARDS**Clause 4.3 - Height of Buildings**

Clause 4.3 height of buildings (HoB) aims to enable a transition in building height in response to varying urban character and function and to protect the amenity of neighbouring properties and public places, with particular regard to visual bulk, scale, overshadowing, privacy and views. The clause requires the height of a building on any land to not exceed the maximum height shown for the land on the identified on mapping.

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Figure 26 – height of building map

The HoB map provides for a range of building heights across the wider site from 9m to 12m (Figure 26). The development site has a height limit of 12m. The tallest component of the proposal is 10.935m at the top of the retained façade and 8.3m at the top of the proposed new building. The proposal will not breach the height limit and is consistent with the established HoB limit.

Clause 4.4 - Floor Space Ratio

This clause limits the floor space ratio (FSR) permitted on land identified on the Floor Space Ratio Map.

The subject land is identified on the Map as having an FSR of 1.5:1 to the Summer Street frontage and shopping centre site, while the portion fronting Sale Street is subject to an FSR of 2:1 (Figure 27).

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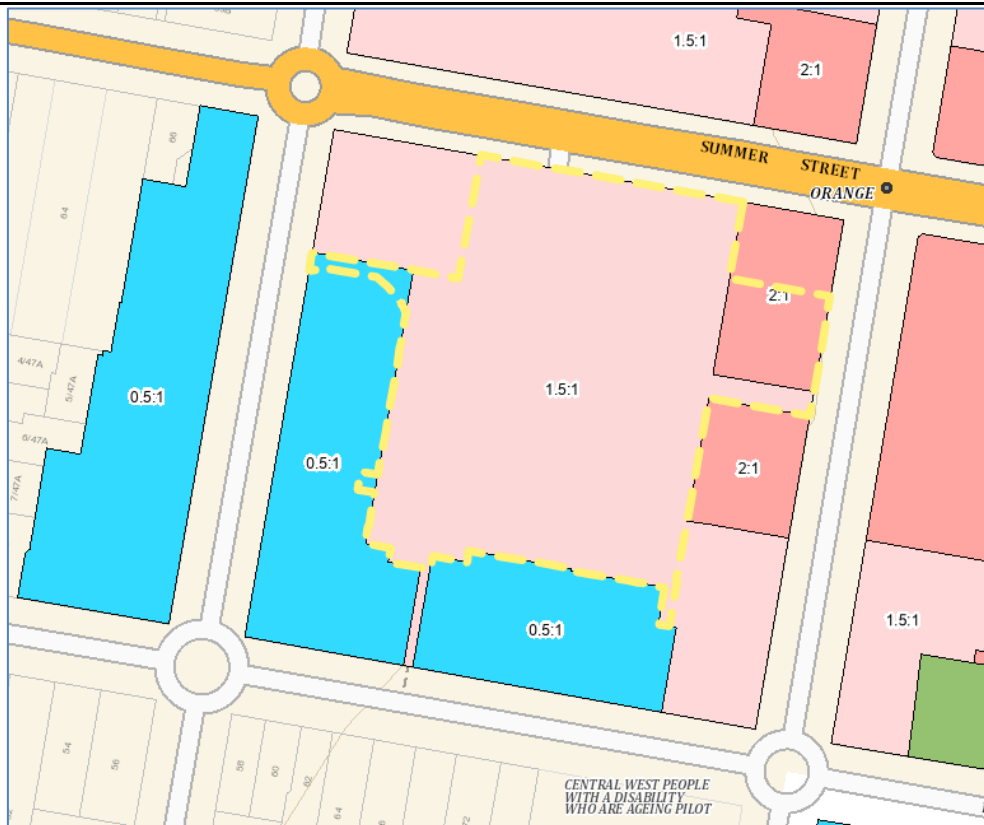


Figure 27 – FSR map

The GFA for the existing shopping centre was established by **DA 238/2020(1)** as 5,006m². Subsequent minor alterations and additions pursuant to **DA 102/2021(1)** resulted in a minor increase of 15m². The building at 41 Sale Street has a GFA of 135m². Therefore, the existing GFA on the subject land is calculated as 5,156m².

The proposed development, minus the exclusions detailed in clause 4.5, has been calculated as having a GFA of 1598m², which would result in a GFA across the site of 6,784m².

The site area has been calculated under clause 4.5 as 20,490m². Considering the proposed retail development and existing development upon the site, the Summer Centre land holding would have an FSR of 0.33:1. The existing and approved development is consistent with the FSR requirements of the LEP.

PART 5 - MISCELLANEOUS PROVISIONS

5.10 - Heritage Conservation

The subject land is not a listed heritage item pursuant to Schedule 5 of Orange LEP 2011. The subject land is, however located within the Dalton Central Heritage Conservation Area (C1). The site is in the vicinity of several contributory heritage items of State and Local significance including:

State and Local significance

- Item I360/s170 Heritage and Conservation Register SHI listing sheet: 4690048 - 79 Summer Street - Fire Station
- Item I179/s170 Heritage and Conservation Register SHI listing sheet: 030016 - 50 Hill Street - dwelling (Ageing, Disability and Home Care)

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Local significance

- Item I198 - Summer Street - relating to the bluestone kerbs
- Item I121 - 59 Sale Street - Baptist Church
- Item I124 - 22 Sale Street - Orange Infants School
- Item I25 - 47-49 Hill Street - “Newstead” club (former mansion)
- Item I148 - 74 Kite Street - St John’s Uniting Church and Hall

The heritage items and heritage conservation area are shown in Figure 28.

A review of the Aboriginal Heritage Information Management System (AHIMS) did not identify the site as containing Aboriginal heritage items.



Figure 28 – subject site within the Dalton Central HCA (C1) and vicinity of heritage items

(1) Objectives

The objectives of this clause are as follows:

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

The proposed development is not fundamentally contrary to the objects of the clause. As discussed in detail below, there are some contentions around the extent of demolition of the building at 108 Summer Street, façade retention, awning reinstatement, selected materials, finishes and details for the retained façade and the infill building design. There are conditions relating to the following:

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- Appointment of a heritage architect to advise on construction drawings and during the construction phase to retain the heritage significance of the facade structure.
- Requiring revised drawings to reconstruct the pitched roof in galvanised corrugated steel behind the retained facade to a length of 5m to match the existing in pitch and flashings which corresponds on the western elevation with the width of the first new retail bay and its module.
- Requiring the base of the walls to the northern, southern, eastern and western elevations (of the new building) to be clad where solid, with gloss ceramic subway tiles and standard tile capping piece to a height of 750mm or equal to one uniform shopfront cill level.
- A scope of heritage conservation works to the retained facade is to be prepared by the consulting heritage architect, prior to construction and reviewed and approved by Council.
- An interpretation plan related to the Barrett's Cordial Factory is to be prepared by the consulting heritage architect and is to include a cast bronze plaque on the Summer Street retained facade and two interpretive panels with text and images at a minimum of 450 x 1200mm and mounted on selected solid walls on the western elevation at a suitable height.
- A capping detail with a minimum height of 150mm and 15mm recessed shadow line below, between it and the panel, is to be provided at the parapet of all the new plain concrete panel walls.
- All highlight window panels in the plain concrete wall panels are to be deleted.
- A schedule of all external materials and colours is to be prepared and approved by Council prior to construction.

With the imposition of these conditions of consent, the development is considered satisfactory in terms of its consistency with the objectives of this clause.

(2) Requirement for Consent

Development consent is required for any of the following:

- (a) *demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):*
 - (iii) *a building, work, relic or tree within a heritage conservation area,*
- (e) *erecting a building on land:*
 - (i) *on which a heritage item is located or that is within a heritage conservation area,*

The development involves the demolition of most of the 108 Summer Street building within the Dalton Central HCA, street trees and the erection of a new infill building. As such, development consent is required and the application seeks consent.

(4) Effect of Proposed Development on Heritage Significance

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

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A Statement of Heritage Impact (SHI) was undertaken by Everick Heritage for the proposed development and provides an assessment of the impact of the proposal on the heritage conservation area and surrounding heritage items in the vicinity.

The subject land comprises the former Ron Boutlon's Marine and Cycle building at 108 Summer Street.

The SHI prepared by Everick Heritage provides detailed research documenting the story of the Barrett's cordial factory on the site in various forms. An analysis of physical and documentary evidence of 108 Summer Street demonstrates the following:

The current building at 108 Summer Street is the same location as Barrett's cordial factory operating on the site from at least 1877-1920s.

The masonry building fronting Summer Street was once two storey at the front, with a single storey at the rear. It was built on the same location as the previous timber framed building (Figure 29).



Figure 29 – photograph of Barrett's Cordial Factory and the Barrett family residence c1880s

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Figure 30 – photograph of the commercial building at 108 Summer Street c1920s viewed from the fire station tower (Source: O&DHS)

The existing brick building dates from phase three of the Barrett's Cordial Factory (1900s to 1920s), including the demolition of the former timber factory building and the construction of the present commercial building at 108 Summer Street, and prior to the rear extension (Figure 30).

By 1928, the building was occupied by 'The Equitable Grocery Stores' which operated until 1943, and the Egg Board Store until 1946. From 1963 to 1971 the building was occupied by Smith Sons & Rees Ltd, motor parts and replacements; and during the 1980s the building was occupied by Repco.

The current shopfront and cantilevered awning have replaced an original two-storey verandah and re-entrant shopfront.

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Figure 31 – 108 Summer Street elevation



Figure 32 – view to the subject land from the shopping centre carpark facing east

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Figure 33 – view to the west facing elevation showing changes to the building in brickwork

Building exterior

The SHI describes the exterior of the two storey building with two front brick masonry sections and the rear timber framed section on sandstone footings and clad in weatherboards. All three sections of the roof are gabled in different pitch and clad in corrugated metal sheeting. The building shares a party wall with 110 Summer Street on the eastern elevation. Views of the existing building are shown at Figures 31-34.

The north elevation on the Summer Street frontage has a shopfront at ground floor and rendered brickwork to the first floor and gable parapet. To either side of the shopfront, the brickwork is decorated with bright, turquoise coloured tiles, some of which are missing or damaged. A cantilevered awning is suspended from the façade with metal rods. The façade is of Federation Arts and Crafts style, indicating construction between 1890 and 1920.

The first section of the building on the western elevation is masonry face brickwork, some of which has been painted. The central section of the building dates from various eras from 1890 to 1960. The rear section of the building has a higher ground floor than the front section. It may have been built for another purpose or period and has been heavily modified.

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Figure 34 – view to the timber rear section of west facing elevation - building interior

Building interior

The ground floor materials and detailing represent a decommissioned retail premises, and the layout indicates there have been intrusive alterations and refits within the building to remove internal walls to create open areas, alter stair access to the first floor and the like.

Views of the building interior are shown below at Figures 35-37.



Figure 35 – shopfront and immediate backroom interior

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Figure 36 – backroom to the original building showing the transition between the shopfront and manufacturing floor. Note the transition of timber floorboard to concrete



Figure 37 – modern refit staircase and fibre cement sheet partitions

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Grading of Significance

The SHI provides a grading of significance for the commercial building at 108 Summer Street, with much of the exterior elements graded high-to-moderate significance.

Further the SHI statement of significance provides an assessment criteria in accordance with the guidelines for Assessing Heritage Significance as follows:

“The two-storey masonry building at 108 Summer Street is important as an authentic example of a Federation Arts and Crafts style commercial building of early twentieth century design and construction. The building was originally constructed as the Barrett’s Cordial Factory, a prominent local enterprise recognised across NSW during the late nineteenth and early twentieth centuries and replaced a previous factory building that had operated on the site from 1877. The building retains a strong presence within the historic streetscape of Summer Street and is representative of the type of commercial development that occurred in Orange during a period of rapid economic and social development of the city in the late nineteenth century.

The commercial building at 108 Summer Street meets the threshold for local heritage significance on its individual merit and as a contributory element of the Dalton Central Heritage Conservation Area (C1)”

Subsequent to detailed research and assessment of the site’s heritage significance, the SHI concludes that the building at 108 Summer Street:

“makes a positive contribution to the Dalton Central Heritage Conservation Area (C1) and would have the potential to be considered as a heritage item in its own right on the basis of historic, associational and aesthetic values. In its current state the building provides a tangible link to the development of secondary industry in Orange in the period 1870-1920 and the site has a significant connection to the Barrett family and Barretts Cordial. The shopfront is representative of commercial development in NSW in the Federation period and is a good example of Federation Arts and Crafts architectural style.”

Heritage Architectural Advice by Everick Heritage

Everick Heritage encouraged the applicant to retain more of the existing building envelope fronting Summer Street, however the applicant advised that options to retain the building were *“not viable for the proposed use and functionally of the new retail centre.”*

Retention of the façade was recommended on the basis of the following heritage architectural advice:

- Retain masonry returns to stabilise the façade (recommended minimum 900-1200mm) to each side of the parapet (Engineers advice, documentation and solution for stabilisation and maintenance of the façade during construction should be provided as evidence).
- Roof protection of previous interior surfaces be retained or provided (e.g. ensure flashing to new roof aligns with existing roof profile)
- Incorporate slight set back of new façade immediately adjacent to the existing to provide prominence to the heritage component
- Undertake conservation works to the retained façade including repainting in appropriate colour scheme, replacement of damaged shopfront tiles to match existing, replacement of timber framed first floor windows to match original

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- Retain and conserve the over-footpath awning.
- Large signage should be provided on new building façade and not on upstand at awning fascia. Smaller signage could be located on the front of the fascia itself
- Consider reinstating columns to either side of entry of 108 Summer Street in line with façade above and include stallboards to new shopfront windows.
- Include heritage interpretation on the blank facades of the new retail premises to promote an understanding of the history of the site.
- Break up the large façade into smaller units and consider a more detailed façade treatment to the street frontages than the car park.
- Provide trees or planter beds to carpark elevations.

The SHI makes the following final recommendations:

- Structural engineering advice is required to inform the retention of the façade of 108 Summer Street in a safe and viable manner.
- Conservation works should be undertaken to restore the retained façade of 108 Summer Street, with traditional detailing including the turquoise-coloured tiles to the shopfront, timber framed casement and awning windows with split-pane sashes and face brick returns to either side of the parapet.
- Heritage interpretation should be implemented on the south and/or west facing facades of the new development to convey the significance and history of 108 Summer Street.

Council Heritage Assessment

Council's Heritage advisor reviewed the SHI report noting the excellent research documenting the story of the Barrett's Cordial Factory in various forms, the comparative analysis and evidence.

However, Council's Heritage advisor contended the significance assessment and noted the SHI report offers some internal views of the building, yet there are no considerations related to the exterior and in particular the front elevation to Summer Street and the side elevation to the west, or the potential conservation of the fabric.

Throughout assessment Council's Heritage Advisor contended the extent of demolition of the heritage building (the former Barrett's Cordial Factory at 108 Summer Street) and made recommendations to improve the visual presentation of the new building.

Refer to discussion in heritage, built form and design.

(5) Heritage Assessment

The consent authority may, before granting consent to any development:

- on land on which a heritage item is located, or*
- on land that is within a heritage conservation area, or*
- 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.

The applicant has prepared a Statement of Heritage Impact (SHI) in accordance with NSW OEH guidelines which is considered acceptable.

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(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.

Not applicable. The land is not currently identified as a heritage item pursuant to Schedule 5 of LEP 2011.

(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.

The SHI states the archaeological potential of the site is low, except for areas of moderate potential related to the cesspits and earth closets for outhouses related to Barrett's Cordial Factory and the Barrett family residence from 1877 to the 1920s. These locations are depicted in orange on the following plan (Figure 38).

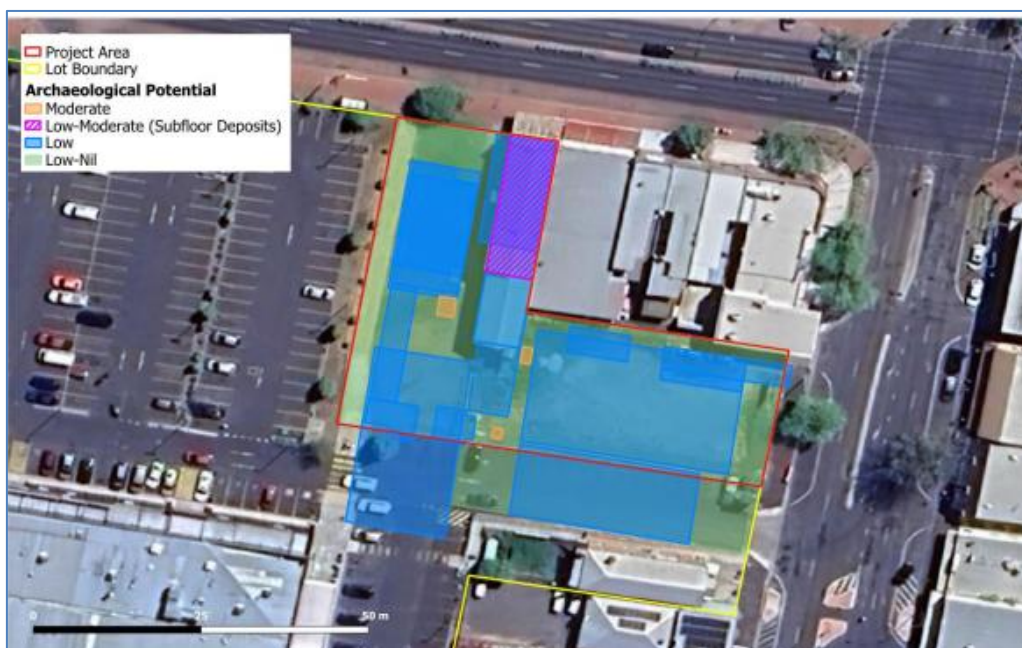


Figure 38 – indicative plan of the archaeological potential of 86-108 Summer Street site
 (Source: Everick Heritage)

- To ensure the proposed development is compliant with the requirements of the *Heritage Act 1977 (NSW)*, the SHI recommends further assessment of historical archaeology, including the preparation of a Historical Archaeological Assessment, Archaeological Research Design and Excavation Methodology be prepared.
- Test excavation under either Section 139 or Section 140 of the Heritage Act 1977 (NSW), to satisfy the obligations of the developer under the Heritage Act.

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Notwithstanding this, a precautionary condition is attached which sets out a procedure necessary to be followed in the event that an Aboriginal object or European relic are identified.

(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 land is not a known Aboriginal Place of Heritage Significance.

(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 land does not contain a Nominated State Heritage Item.

5.21 - 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 function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

Councils flood planning map confirms that the subject site is not affected by the 1% AEP flood event. However, the Blackmans Swamp Creek Probable Maximum Flood traverses a portion of the site adjacent to Summer Street across vacant land and the Village carpark (Figure 39).

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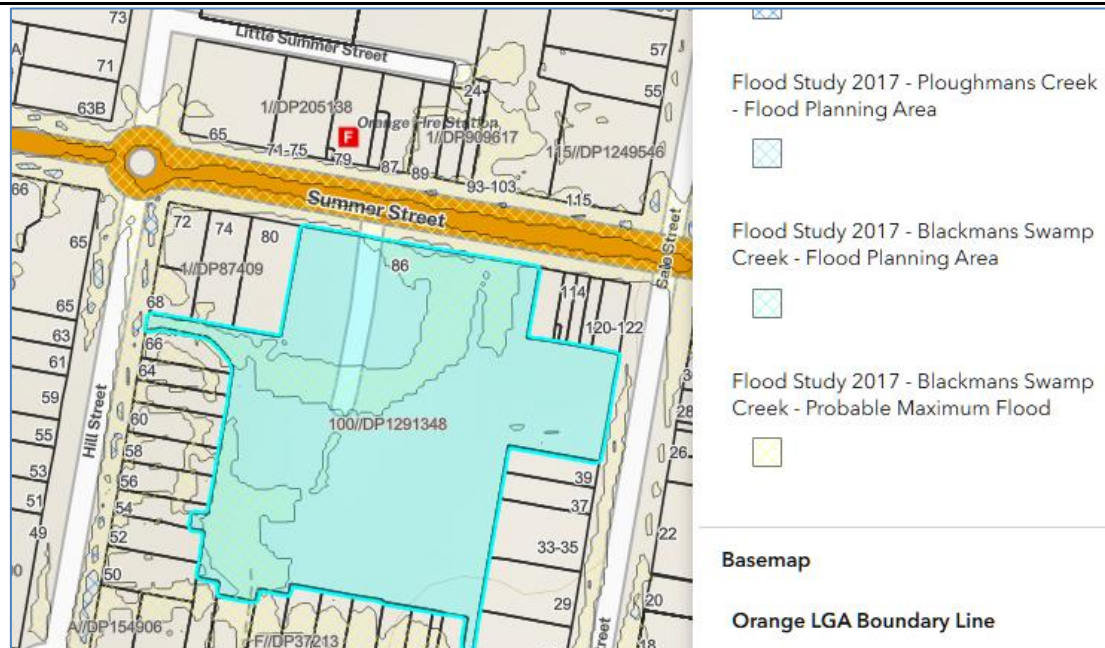


Figure 39 – Flood Study 2017 mapping

The proposal is a commercial development and no residents will be living on the premises. The proposed development is unlikely to change flooding behaviour on or off the site and is unlikely to adversely affect the safe occupation and efficient evacuation of people from the site. Further, the development is unlikely to cause or contribute to erosion, siltation or reduce riparian vegetation. Notwithstanding the above, a suitable condition of consent may be imposed relating to finished floor levels and the location of electrical outlets as a precautionary measure.

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

7.1 - 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 excavation for structural footings and subsurface conduits required for the proposed building. 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.

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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, and conditions are imposed requiring the use of verified clean fill only. Excavated materials will be reused onsite as far as possible, and conditions are imposed to require that surplus materials will be disposed of to an appropriate destination.

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 known to contain any Aboriginal relics. The archaeological potential of the site is low, except for areas of moderate potential related to the Barrett's Cordial Factory and the Barrett family residence from 1877 to the 1920s.

The SHI recommends further assessment of historical archaeology, including the preparation of a Historical Archaeological Assessment, Archaeological Research Design and Excavation Methodology. Test excavation under either Section 139 or Section 140 of the Heritage Act 1977 (NSW) is recommended to satisfy the obligations of the developer under the Heritage Act.

Conditions are imposed to ensure test excavation under either Section 139 or Section 140 of the Heritage Act 1977 (NSW) be undertaken before any major works are carried out to satisfy the obligations of the developer under the Heritage Act. In addition, 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 site is not in proximity to any waterway, drinking water catchment or sensitive area. Conditions may 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.

7.3 - 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 proposed development will increase the impervious areas within the site catchment, and onsite detention (OSD) will be incorporated within the underground drainage network to manage post-development flows and maintain pre-development discharge rates.

Council's engineer advises that the proposed stormwater quality treatment, proposed gross pollutant trap and onsite stormwater detention systems located in the ROW laneway are considered acceptable. Peak flow rates will be attenuated to pre-developed levels for the 5% AEP and 1% AEP events using storage within the stormwater pipe network.

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However, the stormwater management plan depicts the proposed stormwater piped connection to an existing Sale Street pit that extends outside of the site boundary, across the footpath and Sale Street road reserve. (Figure 40)



Figure 40 – stormwater management plan (dwg MKR01141-00-SK002 [P1])

Council’s engineer advises that the piped stormwater associated with the development proposal will need to be fully contained within the site boundary and be connected to the existing carpark stormwater pit(s) located adjacent to the Sale Street carpark entry.

Conditions of consent are included in the Notice of Determination to resolve this issue.

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,*

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(c) *if that impact cannot be minimised - the development will be managed to mitigate that impact.*

The subject site is mapped as being 'groundwater vulnerable'. However, the proposed development does not include any uses or activities that would likely impact on existing groundwater conditions at the site.

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 on-site conservation,*
- (e) *suitable road access.*

In consideration of this clause, all utility services are available to the land.

In regard to (b) the supply of electricity,

Essential services including electricity, reticulated water and sewerage infrastructure are available for connection to the site and considered adequate to service the proposed development.

Essential Energy did not raise concern in its submission regarding potential safety risks of the development or its ability to be connected to existing electricity infrastructure. It is noted that Essential Energy referral advice for **DA 238/2020(1)** commented that there is electrical infrastructure located within the site boundaries.

In regard to (c) the disposal and management of sewage,

Council's engineer advises that the existing sewer main currently services the five commercial properties at 110 to 122 Summer Street (Figure 41).

In accordance with Orange City Council Sewerage Infrastructure Services Procedures, the existing 150mm sewer main crossing the site is to be diverted around the proposed building and connected via Sale Street into a suitable downstream sewer main located in with either Summer Street or the rear of 26-30 Sale Street.

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Figure 41 – existing sewer to be diverted around proposed building

In regard to (d) storm water drainage or on-site conservation,

The proposed stormwater quality treatment and onsite stormwater detention systems located in the ROW laneway are considered acceptable. However, all piped stormwater associated with the development proposal will need to be fully contained within the site and connect to the existing carpark stormwater pit(s) located adjacent to the Sale Street carpark entrance. No stormwater pipes are permitted within the public footpath or Sale Street road reserve.

Water and sewer headworks charges are to be determined prior to the issue of a construction certificate (under a s305/s307 application) based on NSW Water Directorate s64 Determination of ET Guidelines for retail use. Actual usage category for ET calculations will depend on details provided at time of assessment.

In regard to (e) suitable road access.

Adequate road access is provided for the public via the existing Village carpark intersections to Summer Street and Sale Street. All driveway, service vehicle manoeuvring and parking areas are to be sealed with hot mix or concrete and be designed for all expected loading conditions.

Approval under s138 of the Roads Act is required for works in the public road reserve related to the trafficable footpath crossing for service vehicles off Sale Street and for proposed awnings over the footpath located in Sale and Summer streets.

Conditions are included in the Notice of Determination to resolve these issues.

A separate loading dock entry/exit is proposed for the development utilising the existing ROW along Sale Street, which services the rear of the five commercial properties at 110 to 122 Summer Street. However, Council's engineer advises that service vehicle access for the larger tenancies 1 and 3 is proposed via an extension of the existing ROW from Sale Street. The

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Traffic Impact Assessment swept paths has demonstrated that the proposed service vehicle access could accommodate 2-way traffic flow and a forward in/out for a 12.5m heavy rigid vehicle (HRV) using the existing left-in, left out arrangement for the ROW.

Council's engineer advises that the impacts of the proposed 12.5m HRV service access to the loading area would result in the following conflicts with the existing elements in the public domain (Figure 42):

- proposed building awning over Sale Street footpath
- existing streetlight located adjacent to the ROW to be relocated
- existing street tree located adjacent to the ROW to be removed
- deletion of one (1) existing parallel parking space in Sale Street (carparking contribution fees are to be paid for the loss of on-street parking).

None of these conflicts are addressed in the submitted Traffic Impact Assessment.



Figure 42– impact of proposed 12.5m length HRV on existing elements in Sale Street road reserve

The previous **DA 238/2020(1)** for the site proposed an 8.8m length MRV service vehicle that had no conflicts with building awnings, the existing streetlight, street tree or on-street parking spaces. Conditions of consent are included in the Notice of Determination to restrict the size of vehicles servicing the proposed development loading area.

In regard to (f) waste

A site specific waste management plan (SSWMP) is to be prepared and submitted to Council for approval prior to issue of any construction certificate. The SSWMP is to nominate the approved destinations and estimated volumes of each waste stream for demolition and construction waste. The SSWMP is to describe the estimated volumes of waste, recyclables and FOGO waste that will be generated by the specialised retail (bulky goods) and retail premises. The SSWMP must quantify the appropriate allocation of suitable waste receptacles for each occupancy with storage space, a methodology of waste retrieval and nominated collection point(s). The plan must nominate the proposed contractor(s) and identify the number of receptacles for each waste category to be serviced on an ongoing basis.

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Ongoing conditions are included in the Notice of Determination relating to stormwater system service agreement and annual reporting, waste service agreement, and requiring all waste collection to occur from within the site (no on street collection will be allowable).

AMENDMENTS

A preliminary assessment of the proposed development by Council's Heritage Advisor. The Heritage Advisor raised concern with the extent of demolition of a contributory building within the Dalton Central Heritage Conservation Area, recommending retention of the façade and first third of the building, new building presentation on key elevations, materials and finishes. This feedback was issued to the applicant for amendment in September 2024.

Following a further assessment of the proposed development by Council officers, concerns were identified with urban designs such as height, massing, large unbroken facades, conflict between EV charging electrical infrastructure and pedestrian access, southern elevation awning continuation, proposed awning design impacts on two street trees, servicing to loading dock, stormwater design and waste management. A request for information and amendments was sent to the applicant on 20 November 2025 requesting amended plans to resolve heritage, design and engineering issues.

The applicant responded on 19 December 2025 contending retention of the front third of the building at 108 Summer Street and providing the first set of amended plans. The plans depict minor changes to elevations, materials and finishes, request to remove both existing street trees to facilitate construction and minimise ongoing awning maintenance, offset by tree planting in low planters on the southern elevation. No structural report was provided.

Council officers reviewed the revised plans and raised concern with elements of the proposed development. In particular, the visual presentation of the western and southern elevations, lack of articulation and awning impacts on street trees. Council staff were of a view that improvements should be made to aspects of the development and worked through the issues with Council's Heritage Advisor. A request for further information was issued on 20 January 2026 to resolve concerns with the feasibility of façade retention, a site specific waste management plan, loading dock and servicing to demonstrate that proposed vehicle swept paths for site servicing account for all required waste management receptacles and storage areas and proposed by a 12.5m Heavy Rigid Vehicle (HRV) truck movements to the loading dock is feasible.

Council officers provided the applicant with detailed heritage feedback on the amended set of plans on 22 January 2026 and met with the applicant via Teams on 28 January 2026.

The applicant responded with a final set of amended plans submitted on 2 March 2026 that included a structural engineering investigation report that was a visual inspection from the street of the façade and awning of the building at 108 Summer Street and included a high-level methodology and concept ketch for support of the existing brick facade during demolition and construction.

The following planning report assesses the changes made and conditions of consent as based on the final set of amended plans.

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

There are no draft Environmental Planning Instruments currently on exhibition that relate to the subject land or proposed development.

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DESIGNATED DEVELOPMENT

The proposed development is not designated development.

INTEGRATED DEVELOPMENT

The proposed development is not integrated development.

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

ORANGE DEVELOPMENT CONTROL PLAN 2004

Orange Development Control Plan 2004 (DCP) provides the criteria for assessing development to support statutory provisions of the OLEP 2011. The relevant sections of the DCP are assessed below:

CHAPTER 0 - INTERIM PROVISIONS

PO 0.4-10 PLANNING OUTCOMES - RESIDENTIAL PROXIMITY

The DCP sets out the following planning outcomes for residential proximity.

- 1. The design of industrial and commercial development is consistent or compatible with nearby residential areas in terms of design, siting and landscaping.*
- 2. The hours of operation, traffic and noise generation do not interfere with reasonable expectations of residential amenity.*
- 3. Noise-generating activities are contained within the building where practicable.*
- 4. Industrial air conditioning compressors are shielded to direct noise away from residential development.*
- 5. Car park and security lighting is positioned and shielded to prevent direct light spill onto residential properties.*
- 6. Measures to prevent dust, odour and chemical spray from reaching or affecting residential properties must be demonstrated.*
- 7. The design must demonstrate how residential privacy and solar access will be maintained.*

The proposal incorporates mixed use development in proximity to residential development.

A traffic impact assessment was submitted in support of the proposal. The assessment considered the proposal as complying with all applicable standards and will not result in excessive traffic generation.

It is noted that comments made by Council's Environmental Health Officer for **DA 238/2020(1)** noted that a number of acoustic assessments had previously been undertaken for the Summer Centre demonstrating no detrimental impacts to surrounding residential development. Given the distance and expectation that there will not be an excessive noise increase as a result of the commercial development, the proposal is consistent with the noise outcome of PO-0.4-10.

Conditions have also been recommended regarding hours of operation and patron management to minimise acoustic emissions.

Given the existing mixed-use nature of the locality, and the siting and design of the proposed commercial building, it is considered that the proposal will not result in significant amenity impacts and is compatible with nearby residential development.

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PO 0.4-2 PLANNING OUTCOMES - TREE PRESERVATION

The DCP sets out the following planning outcomes for Tree Preservation.

1. *Trees prescribed by this DCP must not be ringbarked, cut down, topped, lopped or wilfully destroyed without the Council's approval and landowner's consent*
3. *This clause also applies to any tree, native or exotic, with a trunk diameter equal to or greater than 300mm at breast height (refer AS4970-2009 for measurement guidelines).*
4. *Notwithstanding IPO-4(3) this clause does not apply to species indicated as exempt in the tree preservation table.*
5. *An application for the Council's approval must be accompanied by an appropriately qualified specialist (i.e. Arborist) report outlining the following information:*
 - *The location, size, species and condition (i.e. diseased, healthy, etc)*
 - *A statement that details any anticipated impacts on vegetation that may have derived from endangered ecological communities and/or that may be habitat for threatened species*
 - *The purpose of removal and whether the pruning of the tree would be a more practical and desirable alternative*
 - *Whether a replacement tree or trees should be planted*
 - *The location, size and species of any trees proposed to replace those intended for removal*
 - *The owner's consent to the application being lodged*
 - *Any other relevant information regarding the tree to be removed (i.e. photographs)*

There are two existing Council street trees that will be impacted by the proposed development. These include a *Pyrus Ussuriensis* (Manchurian Pear) in the Summer Street public domain and *Quercus palustris* (Pin Oak) inroad planting in Sale Street.

An arborist report has not been provided to support the proposal. The applicant does not contest the street tree health, rather states that Council previously approved removal of the Summer Street tree under **DA 238/2020(1)**, requiring a replacement tree planting in a more suitable street location to ensure no net loss of urban canopy.

Throughout the course of planning assessment of the proposal there have been three design revisions to the layout of the new building and extent of trees to be removed.

The initial design proposal submitted in August 2025 sought to remove the existing street tree on the Summer Street frontage due to conflict with the proposed cantilevered awning over the public domain and ongoing maintenance of guttering and the like. Council advised that tree removal was not supported and amendments to the awning design were necessary.

The first set of amended plans provided in December 2025 sought to remove both street trees to facilitate continuous cantilevered awnings on the primary street frontages, stating that retaining the trees was not feasible due to constructability and ongoing maintenance constraints of the awning and gutters. The applicant proposed street tree removal be offset by planting nine (9) new trees in 550mm high raised planters at 3m centres on the southern elevation of the building.

Council officers met onsite with the Manager of City Presentation (MCP) to review the street tree health and canopy extents, with plans that overlaid the proposed awning to assess the impacts.

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The final set of amended plans submitted in March 2026 seeks to retain and prune the Manchurian pear on the Summer Street frontage to reduce conflicts between the canopy and proposed awning, and to remove the Pin Oak tree from Sale Street to facilitate 12.5m heavy rigid vehicle (HRV) access to and from the site via the ROW. The applicant's accompanying response to RFI table clarify the new tree species on the southern elevation would be *Pyrus Calleryana* 'Capital' (ornamental pear tree).

Throughout the course of assessment the cantilevered awning design has not been altered.

Council's MCP reviewed the final proposal and advises the following:

Summer Street Tree

Canopy pruning would result in the loss of half of the existing tree canopy on the Summer Street frontage which is not feasible (Figure 43). Council supports removal of the Manchurian pear and replacement with a strata vault cell 11 to 16m³ size to be constructed at the developer's cost in the parking lane of Summer Street immediately south of the bus zone. The replacement tree to be minimum 200L pot size at installation with species to be determined by Council in due course.

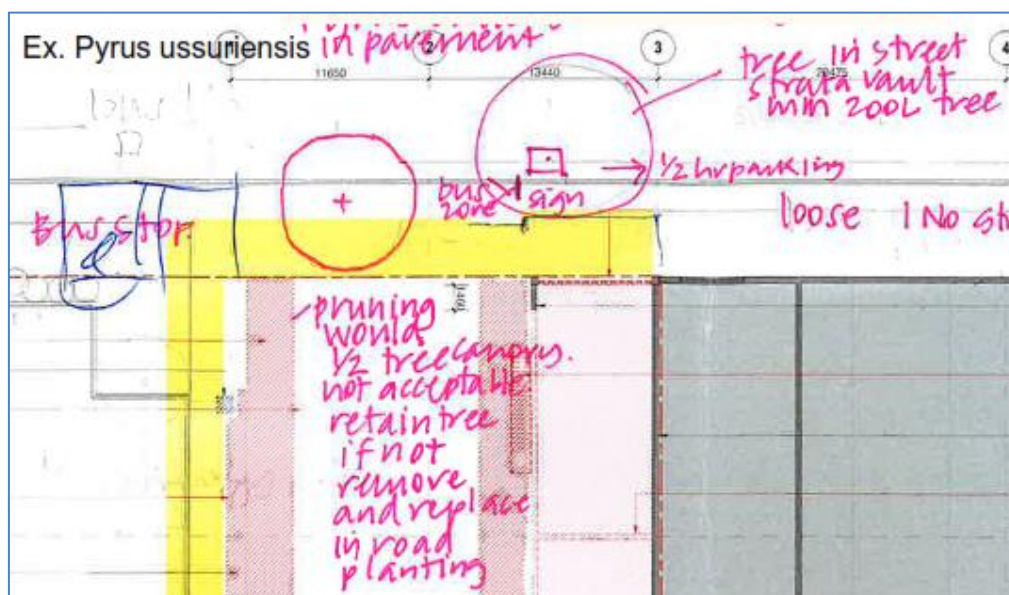


Figure 43 – extent of awning (yellow) in conflict with Summer Street tree

Sale Street Tree

The MCP objects to the removal of the Pin Oak on the Sale Street frontage and recommends amending the awning design to retain the healthy street tree (Figure 54). A condition of consent is included to require the following outcome on the eastern elevation in Sale Street:

1. Retain existing Sale Street tree
2. Allow minor canopy pruning to be carried out by Council's Manager of City Presentation
3. Submission of amended awning design that makes allowance for mature street tree retention

Southern Elevation Planters

The final set of plans depict nine (9) new *Pyrus Calleryana* 'Capital' trees at 3m centres in three (3) 8.6m to 8.8m long x 2.5m wide x 550mm tall planters on the southern elevation of the building.

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The MCP objects to the proposed tree species as they are ubiquitous across the Orange urban landscape, adding little to biodiversity. Alternative species suitable for the volume of soil growing medium are to be sourced.

The MCP recommends alternative tree species as follows:

- Cimmarron Ash (*Fraxinus pennsylvanica* 'Cimmzam' Cimmarron as per Lords Place south FC stratavault installation OR
- Field Maple (*Acer campestre*) as per Lords Place south FC stratavault installation

Design review finds the three proposed planters provide insufficient soil depth and an overall 11.8m³ to 12m³ soil volume which is not adequate to support a tree to maturity. Further, trees planted at close centres against the building are unlikely to thrive.

Amendments to landscaping on the southern elevation include:

- Retain the planters with species selected for clear sightlines and microclimate
- Provide three new medium sized trees planted in three new stratavault cells 11m³ to 16m³ in size, to be constructed in three parking bays at the developer's cost (Figure 44).

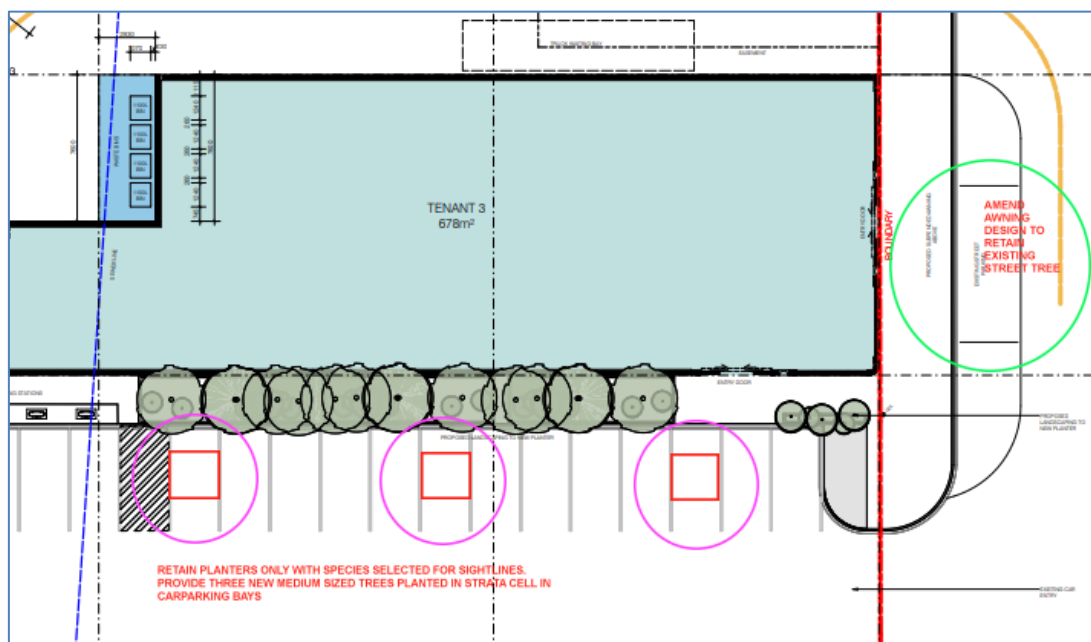


Figure 44 – location of three medium sized trees in strata vault cells in parking

Western Elevation

The loss of three (3) existing trees within the carpark is supported on the basis that three (3) replacement trees of suitable species and heights in the same locations in stratavault cells 11m³ to 16m³ in size at 8m centres be constructed at the developer's cost, resulting in no net parking loss .

Conditions of consent are included in the Notice of Determination to resolve the tree issues.

PO 0-4.11 PLANNING OUTCOMES - TRANSPORT ROUTES

The DCP sets out the following planning outcomes for Transport Routes.

1. *The development provides a high standard of visual appeal to motorists, cyclists and pedestrians as well as adjoining property owners.*
2. *The visual appearance of the development, including any signage, lighting or other ancillary element, must not generate a distraction to motorists.*

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3. *Any signage must not be animated whether by movement or flashing lights.*
4. *Where land has more than one street frontage the street with the lower volume of traffic is to provide the principal access to the development, subject to safety considerations.*

PO 0-4.11 Planning Outcomes - Transport Routes

5. *Where access is provided onto an arterial road, distributor road or major collector road, the access point must have appropriate safe sight distances for the prevailing speed limit and clear and unimpeded entrance/exit signage must be displayed.*
6. *Where on-site customer parking is provided that is not immediately visible from a public road clear and unimpeded directional signage must be displayed.*

The proposed development provides fine grain amenity with visual appeal on the northern and eastern elevations. The design incorporates three double height brick retail bays with glazed shopfronts, tiles to a cill height, with a continuous awning that matches the awning of the retained façade, and locations for future signage above the awning.

Council's Heritage Advisor made recommendations for amendments to the building design, in particular on the western and southern elevations to improve the visual presentation of the building on the western approach to the CBD on Summer Street and to adjoining property owners.

Refer to discussion in Heritage, built form and design section

Signage zones are indicative only; no detail has been provided for the design and are subject to future development consent.

Summer Street (Mitchell Highway) is a classified road and Sale Street forms part of the local road network. The existing vehicle access and egress to the Village carpark off Summer and Sale streets remains unchanged.

There is adequate surplus parking provided in the Village carpark for customers accessing the proposed development off Summer and Sale streets, and existing Village signage is located at each vehicular entry. **Refer to discussion in Parking section**

CHAPTER 3 GENERAL CONSIDERATIONS**PO 3.1-1 PLANNING OUTCOMES - CUMULATIVE IMPACT**

The DCP sets out the following planning outcomes for cumulative impact.

1. *Applications for development demonstrate how the development relates to the character and use of land in the vicinity.*
2. *The introduction of new development into a locality maintains environmental impacts within existing or community-accepted levels.*
3. *Water conservation measures are implemented.*

The proposed development has considered the amenity of the surrounding area, which is typically characterised by mature trees, wide streets and commercial development. The proposed development is not considered to negatively impact the nearby existing residential area or the nearby town centre. The proposal is considered to increase amenity and have a positive impact on the surrounding area through the provision of retail and specialised retail uses. Consideration of the locality's heritage importance was undertaken by Everick Heritage and reviewed by Council's Heritage Advisor. The development is not considered to have a detrimental impact on surrounding heritage items. However, Council's Heritage advisor made recommendations to improve the visual presentation of the commercial development.

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Refer to discussion in Heritage, built form and design section.

PO 3.4-1 PLANNING OUTCOMES - WASTE GENERATION

The DCP sets out the following planning outcomes for Waste Generation.

1. Applications involving demolition indicate measures that will be implemented for reuse and recycling of waste materials.
2. Development involving demolition is carried out in a manner that optimises reuse and recycling of waste materials consistent with waste-minimisation principles (refer table).

MATERIALS	PROCESS		END USE	POTENTIAL
Concrete	Crushed	Recycled	Fill, levelling, road base	100%
Surplus pour	Use up	Pavers, slabs		High
Bricks	Cleaned	Reused	Construction	100%
	Crushed	Recycled	Landscaping, driveways, drains	100%
Roof tiles	Cleaned	Reused	Roofing, landscaping	100%
	Crushed	Recycled	Landscaping, driveways, drains	100%
Plasterboard (clean)	Reprocessed	Recycled	New plasterboard	100%
Hardwood beams de-nailed	Reuse		Flooring, furniture, fencing, craft	100%
Other timber	Cleaned Ground	Reuse	Formwork, bridging, propping, landscaping, woodfloor (oil spills)	High 100%
Doors, windows	Cleaned	Reuse	Second-hand market	Market driven
Fittings	Cleaned up	Reuse	Second-hand market	Market driven
Glass	Crushed	Recycled	Aggregate for concrete products	100%
Unbroken		Reuse	Repairs, glazing, glass houses	100%
Carpet – wool		Reuse	Mulch, landscaping	
Underfelt – natural	Reuse		Compost cover, mulch, landscaping	High
Synthetic rubber (as in underlay)	Shredded	Recycled	Safety barriers, speed humps	New markets
Trees	Relocated	Reuse	Landscaping on or off site	100%
Greenwaste	Shredded	Recycled	Compost, mulch, fertiliser	100%
Soil	Screened	Reuse	Topsoil	100%
Metals: aluminium, copper, lead, zinc, steel	Scrap metal	Recycled	New metal products	100%
Packaging: Cardboard		Recycled	New packaging	100%
Plastic/steel drums	Cleaned		Reused	
Metal strapping	Reused		Return to supplier	High
Paint tins		Recycled	Tin extracted	200%

A Waste Management plan (WMP) was not submitted with the application; however, conditions recommend a WMP be prepared including the details of waste and their reuse or disposal during the demolition and construction phases.

Refer to discussion in Collection of waste section.

CHAPTER 4 SPECIAL ENVIRONMENTAL CONSIDERATIONS

PO 4.1-1 PLANNING OUTCOMES - SEWERAGE DISPOSAL

The DCP sets out the following planning outcome for Sewerage Disposal.

1. Development within the urban area of Orange as defined above is connected to sewerage facilities or arrangements to the satisfaction of Council have been made for the provision of sewerage services prior to occupation.

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The recommended conditions ensure that sewage disposal is undertaken in a safe and efficient manner. Conditions are recommended requiring the sewer main be diverted around the proposed development and all existing sewer main connections for adjoining properties be maintained.

PO 4.3-1 PLANNING OUTCOMES - LAND SHAPING

The DCP sets out the following planning outcomes for land shaping.

1. *Applications include details on the existing and proposed landform, watercourses and vegetation.*
2. *Applications are accompanied by a soil-erosion control plan for implementation prior to and upon commencement of the work.*
3. *Landfilling comprises inert material only and does not include putrescible waste, vegetation, or other material that may decompose.*
4. *Landfill is compacted to the required standard and evidence of compaction rates are provided upon completion of the work or otherwise as directed by Council.*

The submitted site survey confirms the site as relatively flat. Excavation works are limited to facilitate structural footings and subsurface conduits required for the proposed building.

A soil erosion control plan has not been submitted as part of the proposal. However, conditions are recommended requiring a soil erosion control plan prior to works commencing.

PO 4.4-1 PLANNING OUTCOMES - CONTAMINATED LAND

The DCP sets out the following planning outcomes for contaminated land

1. *Land subject to development is clear from contamination.*
2. *Development complies with the Contaminated Land Management Act 1997.*
3. *Applications for development consent on land used or likely to have been previously used for uses in the table below include contamination assessment and where necessary a proposed remediation strategy to make the site suitable for the proposed use.*
4. *An independent site audit at the applicant's cost is carried out to assess the information provided with an application where Council considers that:*
 - *information may be incorrect or incomplete;*
 - *it needs to verify that the information adheres to appropriate standards, procedures or guidelines; or*
 - *the type or level of contamination requires an independent technical review.*

As described in the **SEPP (RESILIENCE AND HAZARDS) 2021 Chapter 4 Section** above, previous contamination investigations carried out on the site have determined that the site is suitable for the proposed development. As such, the proposal is considered consistent with PO 4.4-1.

CHAPTER 8 DEVELOPMENT IN BUSINESS ZONES

The site is located within the Orange CBD.

PO 8.1-1 PLANNING OUTCOMES - CENTRAL BUSINESS DISTRICT

The DCP sets out the following planning outcomes for the Central Business District.

1. *Buildings have a high level of urban design to contribute to the regional status of the City's Central Business District with attention given to façade features, external materials, colour and advertising.*
2. *Urban design demonstrates a clear reference to the CBD Strategic Action Plan.*

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3. *Provision of adequate fire-safety measures and facilities for disabled persons (according to the BCA) are addressed at the application stage (relevant for all development but particularly important were converting residential buildings for business use).*
4. *Land use complements the role of the CBD as a regional centre for commerce and services.*
5. *The reinstatement of verandahs on posts over footpaths is encouraged.*
6. *Car parking is provided to meet demand either as on-site parking areas or through contributions towards public parking in and adjacent to the CBD.*
7. *Advertising comprise business identification signs in accordance with SEPP (Transport and Infrastructure) 2021*
8. *Loading areas are provided for developments requiring access by large trucks in a manner that doesn't reduce active frontages for important pedestrian pathways.*
9. *Where possible, new buildings or external alterations in the CBD include an element of landscaping.*

The site is identified as a key gateway/threshold to the CBD within the DCP (Figure 45).



Figure 45 – extract from ODCP 2004 – Structure Plan identifying the site as a key gateway to the CBD

Consistent with the DCP, the proposed commercial development provides a gateway building on the western boundary of the town centre. The proposed development complements the adjoining traditional style two storey retail uses on Summer Street. Both the retained façade of 108 Summer Street and the over-footpath awning supported by tension rods will be conserved.

A new continuous cantilevered awning is provided on the northern, western and eastern elevations of the new building. A s138 approval under the Roads Act for constructing new awnings

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over the public footpaths on Sale and Summer Streets will be required, noting that TfNSW will be the approval authority for the new Summer Street awning.

Further design changes are recommended via conditions to improve the visual presentation of the western and southern elevations and as discussed in the **Heritage, built form and design section**.

Provision of retail and specialised retail tenancies in the proposed building will complement the role of the Orange CBD and existing retail uses at the Village.

The surplus onsite parking provides sufficient parking for the commercial tenancies, the Village, and adjacent to the broader town centre.

The proposal includes one new loading dock accessed via the ROW off Sale Street that will be in addition to the existing loading dock accessed off Hill Street that services the Village retail centre.

Proposed landscaping includes 550mm high planters on the western elevation under the proposed commercial building.

A BCA Assessment Report was not submitted with the application to demonstrate the development is capable of achieving compliance with the BCA, to address fire safety measures, the provision of adequate access to the building and facilities for people with disabilities.

With regards to fire protection measures, the applicant requests a condition of consent to require that a BCA assessment of the relevant provisions of the BCA be undertaken prior to construction certificate.

With regards to building access, of note the proposed plans and elevations depict the building, not the internal fit out of individual tenancies, location of bathrooms and the like. The proposed ground floor level RL 871.380 across all three tenancies ties in with existing levels on all sides of the building except for the eastern elevation, where existing level RL 870.280 near the proposed entry door is 1.1m lower than the proposed ground level. Provision of a compliant ramp into the premises that is located within the site boundary will be necessary. A performance solution may be required for access to proposed Tenancy 3. The proposed building will be required to comply with the Disability (Access to Premises- Buildings) Standards 2004 and all relevant standards. Conditions of consent are included in the Notice of Determination to resolve BCA/NCC issues.

CHAPTER 13 HERITAGE

PO 13.3-1 PLANNING OUTCOMES - HERITAGE DEVELOPMENT

The DCP sets out the following planning outcomes for heritage development.

1. *Development relates to the significant features of heritage buildings on or near the site, as reflected in inventory sheets.*
2. *Development conforms with recognised conservation principles.*
3. *Conservation Management Plans are prepared for development having a significant effect on heritage sites.*

The subject site is located within the Dalton Central Heritage Conservation Area (C1) as identified in Schedule 5 of Orange Local Environmental Plan 2011 (OLEP 2011); however, it does not contain any heritage items. The site is in the vicinity of several heritage items of State and Local significance.

A Statement of Heritage Impact (SHI) prepared by Everick Heritage has been provided to support the proposed development.

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The façade of the former Ron Boutlon’s Marine and Cycle building at 108 Summer Street is proposed to be retained and refurbished, with a new building constructed behind the façade and on the adjoining vacant land.

The SHI finds the commercial building at 108 Summer Street is representative of the Federation Arts and Crafts architectural style and makes a positive contribution to the heritage significance of the surrounding heritage conservation area. On this basis, the entire removal of a building constructed between the 1870s and 1920s could adversely affect the heritage conservation area. The retention of the façade and its incorporation into the new development will attempt to mitigate any adverse impacts as the conservation of the 108 Summer Street will continue to contribute to the significance of the Dalton Central Conservation Area.

The proposed development will result in minor adverse impacts on the heritage significance of the Dalton Central Heritage Conservation Area (C1).

The proposal is unlikely to have a significant effect on the heritage items and it is not considered necessary that a conservation plan be prepared.

Refer to detailed assessment under OLEP 2011 5.10 - Heritage Conservation

CHAPTER 15 CARPARKING

PARKING REQUIREMENTS

Off-street car parking spaces are required to be provided at the following rate for specific land uses:

Type of development	Minimum requirements
Shop (within the CBD)	4.1 spaces/100m ² GLFA
Bulk retail	1 space for 50m ² GFA

The design and layout of parking areas is to comply with AS2890.1-2004 Parking facilities off-street car parking.

The existing shopping centre proposal (DA21/2010) approved 267 car parking spaces. The Gross Lease Floor Area (GLFA) across the shopping centre is 5,084m², generating a parking requirement of 208.4 (209) spaces.

The traffic consultant ground-truthed the existing car parking provision at the centre and found that there are 291 at-grade parking spaces comprised of 268 visitor spaces located to the north and east, and approximately 23 staff spaces to the southwest near the loading dock. This represents a surplus of 82 car parking spaces.

The proposed development is comprised of general retail and specialised retail or bulky goods. Based on a rate of 4.1 spaces per 100m² GLFA, the general retail (Tenancies 2 and 3 is 798m²) generates a parking need of 33 spaces. The specialised retail bulky goods (Tenancy 1 is 800m²) generates a parking need of 16 spaces based on a rate of 1 space per 50m² GFA. This equates to a total of 49 additional parking spaces.

The total parking requirement across the centre would be 258 spaces, resulting in surplus of 33 spaces.

There is sufficient existing parking provision, and the proposed development will not generate a parking demand that exceeds that already provided on the site.

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It is noted that should the specialised retail use change to retail use in the future, an additional 33 car spaces would be required and there no longer would be a surplus of car parking spaces at the Village.

DELIVERY AND SERVICE VEHICLES

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 design and layout of delivery areas and parking areas is to comply with AS2890.2-2004 Off-street commercial vehicle facilities.

Refer to 7.11 Essential Services for detailed discussion regarding the proposed loading dock and cumulative impacts of size of truck accessing the proposed development.

INFILL GUIDELINES

Council's Infill Guidelines have been prepared to provide an assessment framework for developments located in heritage settings to ensure good quality and sensitive design outcomes. The framework is structured to guide development in heritage settings under five key heads of consideration, namely:

- Character
- Scale and form
- Siting
- Materials and Colour
- Detailing

These considerations are discussed in detail in the Heritage, built form and design section.

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

Demolition of a Building (clause 61)

The proposal involves the demolition of the majority of the 108 Summer Street building. A condition is attached requiring the demolition to be carried out in accordance with *Australian Standard AS2601 - 2001: The Demolition of Structures* and the requirements of Safe Work NSW.

Fire Safety Considerations (clause 62)

The proposal involves a change of building use for an existing building. Council is satisfied that the fire protection and structural capacity of the building are appropriate for the proposed new building use. Relevant conditions are attached.

Buildings to be Upgraded (clause 64)

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

BASIX Commitments (clause 75)

BASIX is not applicable to the proposed development.

ENVIRONMENTAL PLANNING ASSESSMENT

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

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CONTEXT AND SETTING

The subject land is located on a prominent gateway site on the western edge of Orange CBD in proximity to local heritage items and adjacent to existing retail uses. The development pattern comprises two storeys on Summer and Sale streets and single storey existing retail development at the Village.

HERITAGE, BUILT FORM AND DESIGN

The SoEE describes the key built form and design components of the proposed development:

- Partial demolition of the former Ron Boulton Marine & Cycles building, with the Summer Street façade to be retained and refurbished (Figure 46).
- A new building will be constructed behind the façade and on the adjoining vacant land.



Figure 46 – proposed façade retention and demolition of 108 Summer Street

- First use development is sought for the tenancies as a specialised retail premises and retail premises (despite tenants yet to be secured).
- Building design adaptable for other uses or tenants in the future which would be subject to separate approval.
- Proposed external finishes (Figure 47) will comprise:
 - Select dark brickwork for the external walls along the northern elevation and partially along the eastern and western elevations, with the remaining sections finished in painted precast concrete in a variety of colours, including cream, dark brown, and white.
 - Select black powder coated aluminium framed doors and windows with clear shopfront glazing.
 - The awning and its supports will comprise a painted finish in ‘monument’.
- Proposed business identification sign zones on the elevations.
- Provision of a stormwater drainage system.
- Removal of the Council street tree in the Summer Street footpath to accommodate the proposed awning.
- Concrete surface to principal vehicle manoeuvring areas.
- Extension and connection to the available urban utility services.

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- Establishment of landscaping planter boxes along the western and southern sides of the building.
- Proposed development will be serviced by the existing access arrangements that benefit the site.
- New internal loading area, to be accessed via the ROW from Sale Street, widened to 7.0m and providing access to a loading area capable of accommodating a 12.5m heavy rigid vehicle (HRV), while retaining rear access for the adjacent properties to the north.
- The proposal will provide a covered pedestrian walkway along the western and southern sides of the new building, connecting Summer Street and Sale Street



Figure 47 – proposed elevations (dwg DA29[R05])

Throughout assessment Council’s Heritage Advisor contended the extent of demolition of the heritage building (the former Barretts Cordial Factory) at 108 Summer Street and provided detailed review of the various iterations of the architectural plans, making recommendations to improve the visual presentation of the new building. Key issues and recommendations provided to the applicant follow.

A. Initial design proposal submitted in August 2025

- Extent of demolition of the heritage building – Barrett’s is not supported due to the major loss of heritage significance (Fig 48). Demolition of the two rear portions and steel external stairs are supported.
- Loss of the trees on the western elevation is supported on the basis they are replaced with a suitable tree species / height in similar locations
- Conservation of the front elevation, fenestration and tiles to the piers is recommended following a detailed fabric review
- Replacement of the ground floor aluminium doors and shopfront to a suitable interpreted design is supported

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- It is expected that a suitable extent of the original front one third structure for the heritage envelope of Barrett's will be retained and adapted at ground level to allow for openings for tenancy one and for the loading service area.
- It is expected that the existing first floor of Barrett's will be retained and adapted as required for structure and to interpret the building envelope. It may or may not be adapted to serve the tenancy.

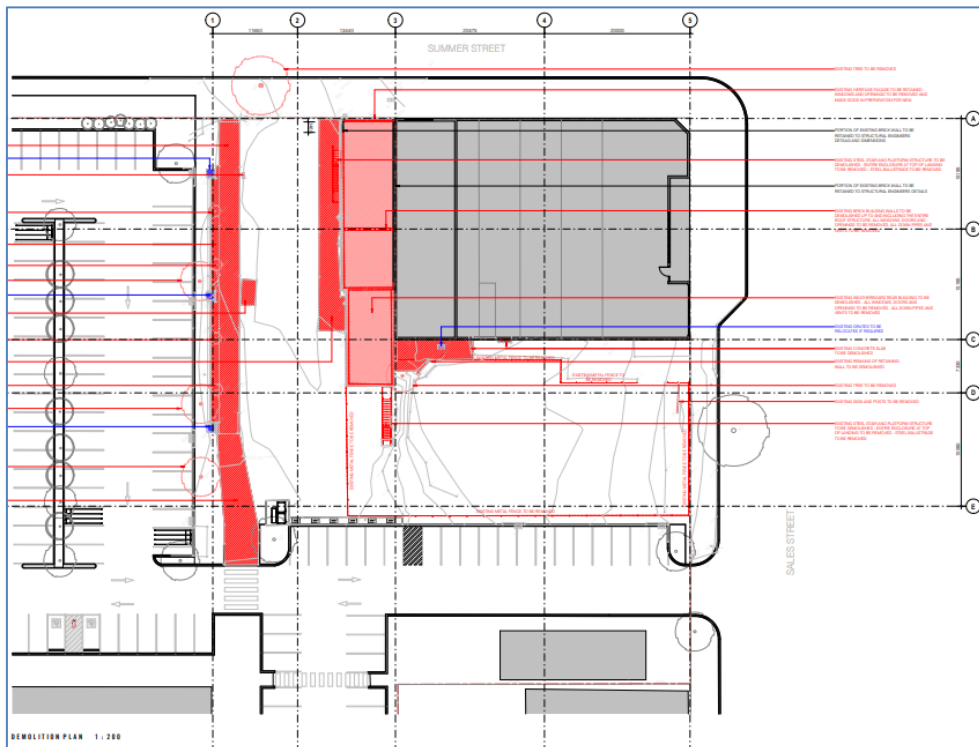


Figure 48 – proposed demolition ground floor depicted in red (dwg DA16[R06])

- The use of dry pressed face brick is supported while a traditional brown such as Bowral 76 Gertrudis brown is recommended as an alternative. Dark grey brick is not appropriate in this context
- Timber look cladding is not supported in the HCA unless the material and colour have integrity. Fake aluminium and timber are not supported. Aluminium materials are acceptable for new buildings and may be used simply in a timber colour without faux texturing
- The tonality changes from the existing colour on Barretts, to the new is regarded as being extreme and is not sympathetic with the heritage building.
 - The use of dark blue grey face brick is supported on the element which adjoins the Barretts building is regarded as being a recessed visual character next to the heritage structure while remaining walls are to be a dry pressed face brick similar to Bowral brown or Gertrudis, with coloured mortar not white, which are closer to the local standard and sympathetic with the retained Barretts building.
 - The use of Black and Monument colours are not supported colours in the HCA and alternatives are recommended. Basalt as a Grey is supported for key elements such as the awning fascia.
- The proposal is an infill of three structures including the existing cycle shop on Summer Street.

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Feedback on the proposed building which constitutes infill of three structures including the existing cycle shop building on Summer Street

- Recommend replacement tree planting within the parking arrangement arrayed against the proposed west elevation of building and tenant 1. The number of car spaces is to be modified/adapted - small cars/bicycles/mobility vehicles, to accommodate three trees.
- Landscape details are required to illustrate that the planter elements on the footpath will not reduce the capacity of an accessible footpath.
- Joinery to the conserved façade is to be determined after a detailed fabric survey to confirm whether or not the original timber elements are capable of being retained and restored - the standard heritage process.
- A suitable design for either a suspended awning or a reinstated verandah is to be determined as the cantilevered approach is not supported.
- The traditional 'subway' tiled finishes on the ground floor piers are to be retained, conserved and supplemented as required.
- The proposed four elements to the new western elevation are supported, subject to the selection of an alternate face brick for a lighter colour scheme on the new three bays so as to reduce the contrast between the Barretts building and the new works. The dark blue grey face brick is acceptable for the element which adjoins the Barretts building is supported as this detailing and colour is consistent with good practice for a recessed junction with a heritage building.
- A cantilevered awning is acceptable, despite the recommended preference for a suspended awning offered previously, as this is consistent with the new construction of the four elements.
- Conservation works to the remaining elevations of the Barretts building – front and west including the fenestration and face brickwork, are to be the subject of a detailed review.

The new tenancy - one element

- The use of gloss ceramic tiles on the ground floor wall/pier elements as a consistent detail in the streetscape would benefit the proposal.

West elevation to the carpark

The built form to the west elevation would be supported providing minor changes:

- The northwest corner of the building is to be radiused to acknowledge the corner.
- The radius is to occur at the upper facade, to the awning (similar to what is currently shown) and to the ground floor level façade which may be either glazed or tiled.
- One extra double height bay with glazing is to be provided to the returning first floor elevation from the Summer Street corner so to be consistent with the three bays on the Summer Street elevation.
- There is to be a projecting expressed parapet to the solid first floor walls which is to align with the top of the recessed 'signage' bays.
- A single wall colour only is to be provided to the solid walls, and the dimensioned vertical grid of panel joints and verandah posts is to be coordinated.
- The ground floor walls up to dado height are to be clad in gloss ceramic subway tiles.

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- Two additional bays in the ground floor western wall - one each side of the central entry door set are to be glazed similar to the glazing and solid piers on the NW end bays so as to better activate the elevation and reduce the extent of blank solid walls.
- The southwestern corner is to be detailed in a similar manner to the NW corner – three double height elevations and glazed ground floor shopfronts with doors to suit the tenancies.
- Replacement three trees are to be illustrated on the west elevation.

South elevation to the lane access

- To turn the corner from the West elevation, there are to be three two level bays on the South elevation for tenancy two, consistent with the two other corners.
- There is to be a projecting expressed parapet to the solid first floor walls which is to align with the top of the recessed 'signage' bays.
- A single wall colour only is to be provided to the solid walls, and the dimensioned vertical grid of panel joints and verandah posts is to be coordinated.
- The ground floor walls up to dado height are to be clad in gloss ceramic subway tiles.
- Two additional bays in the ground floor southern wall as part of Tenancy three, and not in front of the EV chargers, are to be glazed similar to the glazing and solid piers on the NW end bays so as to better activate the elevation and reduce the extent of blank solid walls.
- One extra similar two-level bay is to be added to the Kite Street corner where this wall turns from the south to the east elevation. This will anchor this corner and reduce the lack of activation on the southern wall.
- Check and confirm that the footpath width between the EV Car chargers and the building wall is compliant for accessibility

East Elevation to Sale Street

- The design, materials and details are supported, subject to the change in the face brick, Black powder coat to Basalt and selected gloss ceramic 'subway' tiles below that dado/sill to the floor level.

B. First set of amended plans submitted in December 2025

The applicant reiterated that the proposed development requires demolition of the majority of the building with retention of the front façade that would be incorporated into the new design. Retention of the front third of the building is not feasible.

Design changes made and reflected on the amended elevations depicted at Figure 49:

- Bowral 76 Gertrudis brown dry pressed face brick to street facing facades.
- Continuous awnings on the primary street frontages.
- Removal of two street trees to accommodate the awnings on Summer and Sale streets, reasoning that retention would hinder construction and create ongoing maintenance issues.
- Compensatory tree planting on the southern elevation to provide a visual buffer and soften the built form.
- Refined articulation of the building with additional fenestration and two highlight windows on the southern elevation.
- Recesses, projections, parapets and subtle detailing reinforce a sense of scale and rhythm across the building, ensuring a quieter, refined treatment of the façades.

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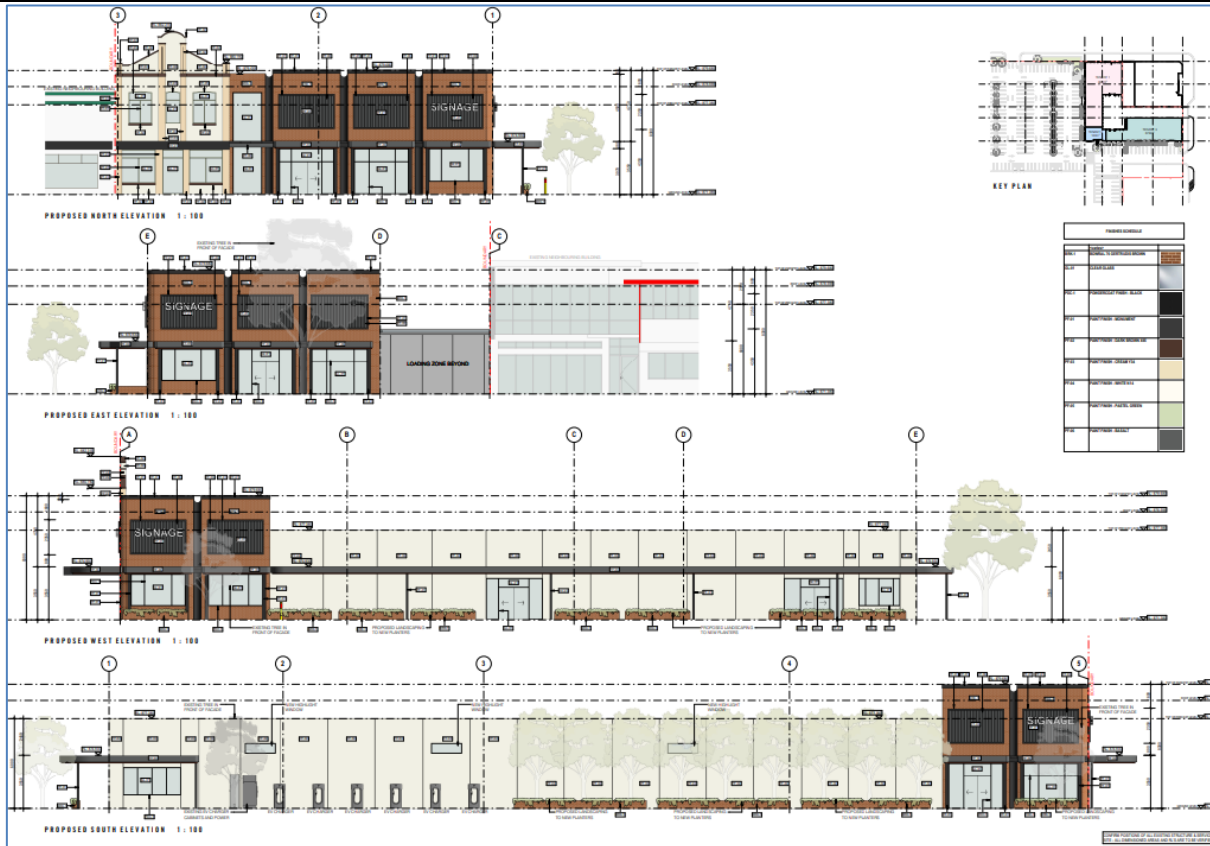


Figure 49 – proposed elevations (dwg DA 29[R06])

Council's Heritage advisor feedback provided on the first set of amended plans:

- Retention of the facade only is not acceptable in this particular situation. Based on the heritage research evidence provided by the Heritage Consultant to the Applicant, the new detail indicates that the building has sufficient significance to warrant retention in part.
 - o A level of adaptive re-use would be supported to ensure that the spaces would integrate with the tenancies.
 - o Additional plans required to illustrate the extent of retention and adaptation of the front portion which appears to be in the order of 15m from the frontage.

At a minimum, design amendments are necessary that demonstrate an acceptable visual presentation for the western and southern elevations, improved articulation with awnings. Required design changes and additional information included:

- A detailed proposal from the Architect and heritage consultant to support the materials, finishes and details for the retained front elevation. Insufficient detail provided to indicate the extent of conservation.
- Insufficient detail provided for the reinstated awning in either of the two types indicated within the advice, suspended or cantilevered.
- The west and south elevations are to include shopfronts at the minimum of alternate wall panels. Sketch provided for reference (Figure 50).
 - o Sketch presumes that the tenancies and floors remain with the exception of the heritage building.
 - o The use of the additional number of taller panels is to offset the use of the lower standard panels while ensuring that the elevations will be suitably activated.

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- The awnings on the south elevation are to be fully connected to the SW corner and SE corner.
- Elevations:
 - o South: Three tall bays at each end and two central tall bays.
 - o West: Three tall bays at each end and one central tall bay.
 - o A parapet detail on the lower panels to interpret the expressed parapet on the tall panels.
 - o Shopfronts to correspond to the tall panels plus two extra shopfronts on the west and south lower panels to activate these areas.
 - o The steel posts may be excluded if the awnings are to be fully cantilevered given the awning face does not correspond with the pavement edge.
 - o The base of all panels is to be clad in gloss ceramic tile to 1200mm high.
- Generally, for materials and colours:
 - o Coloured metal panels may be used without any false timber wood grain.
 - o Black and monument are to be substituted with suitable Greys.
 - o The feature brick is to be specified - equal to or similar is not acceptable.

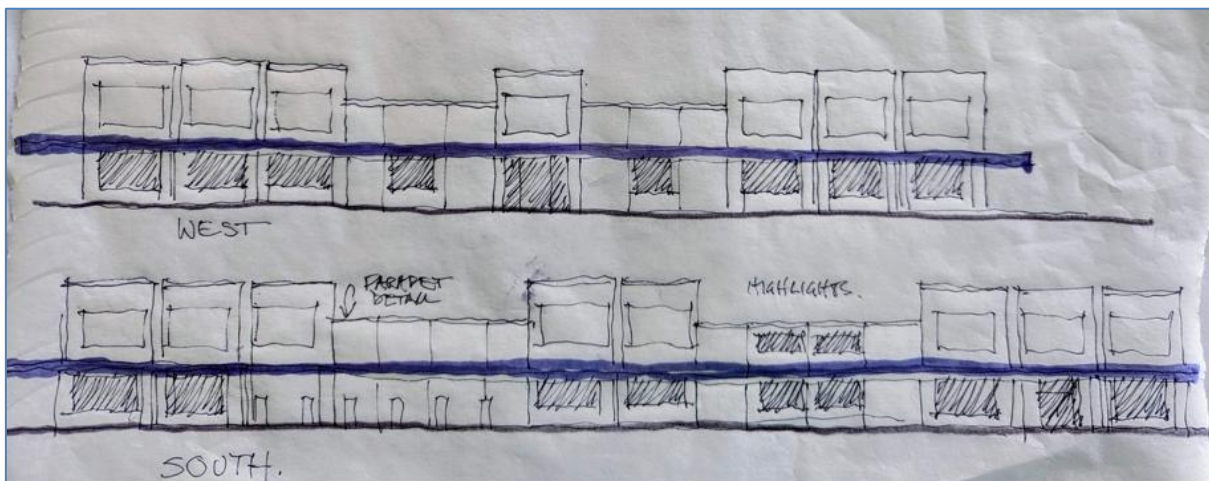


Figure 50 – sketch with recommended design amendments to the western and southern facades

During further negotiations with the applicant in January 2026, Council advised that subject to the submission of a satisfactory structural report with a methodology that demonstrates façade retention is feasible, Council would be willing to reconsider its position about the extent of demolition proposed to 108 Summer Street.

C. Final set of amended plans submitted in March 2026

The final set of amended plans address Council’s Heritage Advisor feedback in part only. Design changes made and reflected on the amended elevations depicted at Figure 51:

- Structural engineering investigation report for the façade and awning.
- Addition of a book-ended parapet feature on the south western corner facing the carpark.
- Addition of four new tall parapet bays, additional shop-front glazing on the western elevation adjacent to the western entrance to tenancy 1.
- Two highlight windows related on the southern elevation, within a new dedicated public art zone to promote visual interest and heritage connection (no public art plan provided).

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- Planting nine (9) medium sized trees *Pyrus Calleryana* 'Capital' in a 2.5m wide planter bed on the southern elevation.
- Removal of existing Sale Street tree to facilitate 12.5m HRV access to and from the site.
- Retain and prune existing Summer Street tree to reduce conflict with the proposed awning.
- Retention of existing awning at 108 Summer Street and remediation works.
- New cantilevered awnings to street elevations, western elevation and a portion of the southern elevation.
- Southern elevation is not provided with a consistent connected awning as there is no pedestrian footpath provided underneath (due to the interruption caused by the existing electric vehicle chargers and proposed tree planters).
- Retention of the existing turquoise tiles to the front of 108 Summer Street.
- Base of the primary frontages and the internal-facing store entrances with feature cladding with Austral glass feature bricks in a mix of 'polished smokey quartz' and 'polished golden amber' proposed to align with the 800mm sill height of the existing building.
- Proposed bricks 'Bowral Gertrudis Brown'.

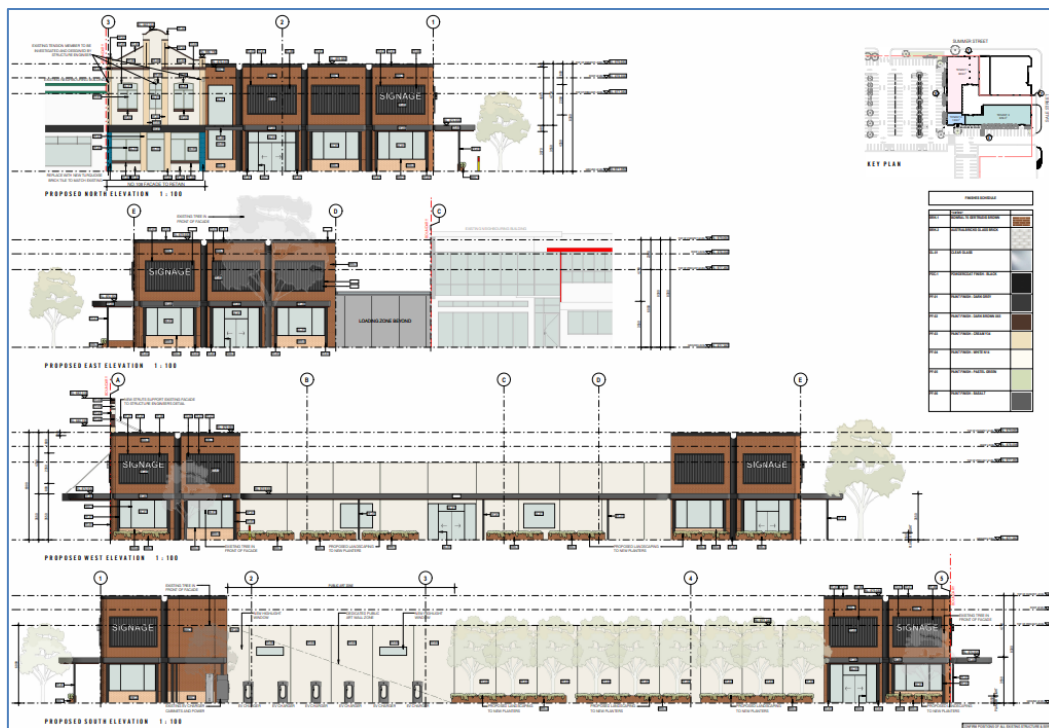


Figure 51 – final set of plans proposed elevations

Further design amendments are included in the Notice of Determination to further improve the visual presentation and articulation of the western and southern elevations of the new building (Figures 52-54).

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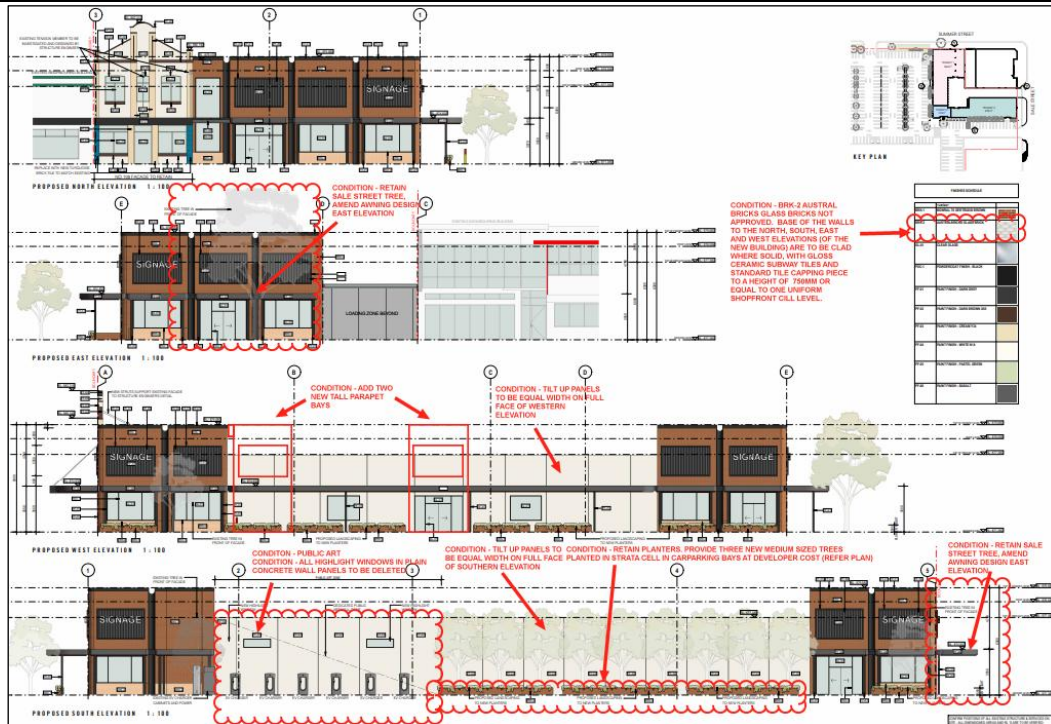


Figure 52 – recommended design amendments to eastern, western and southern elevations

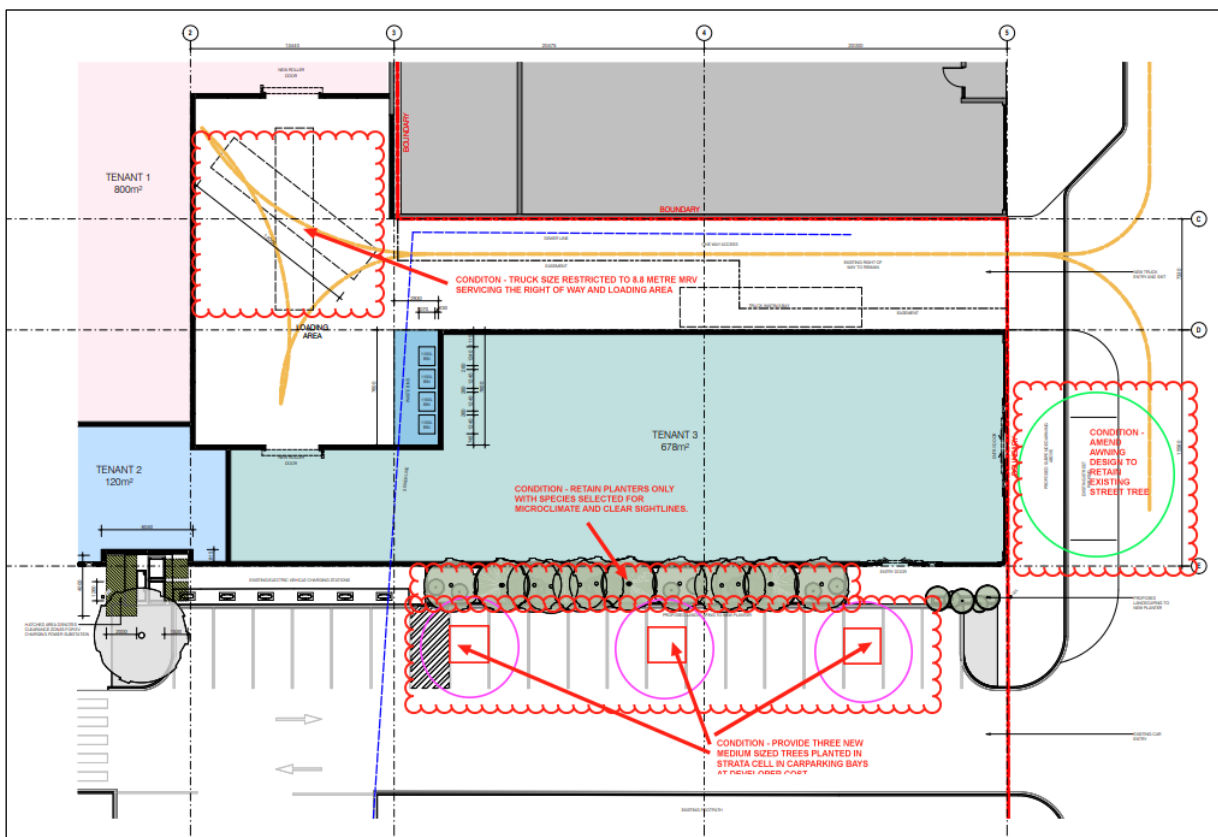


Figure 53 – recommended design amendments to southern elevations

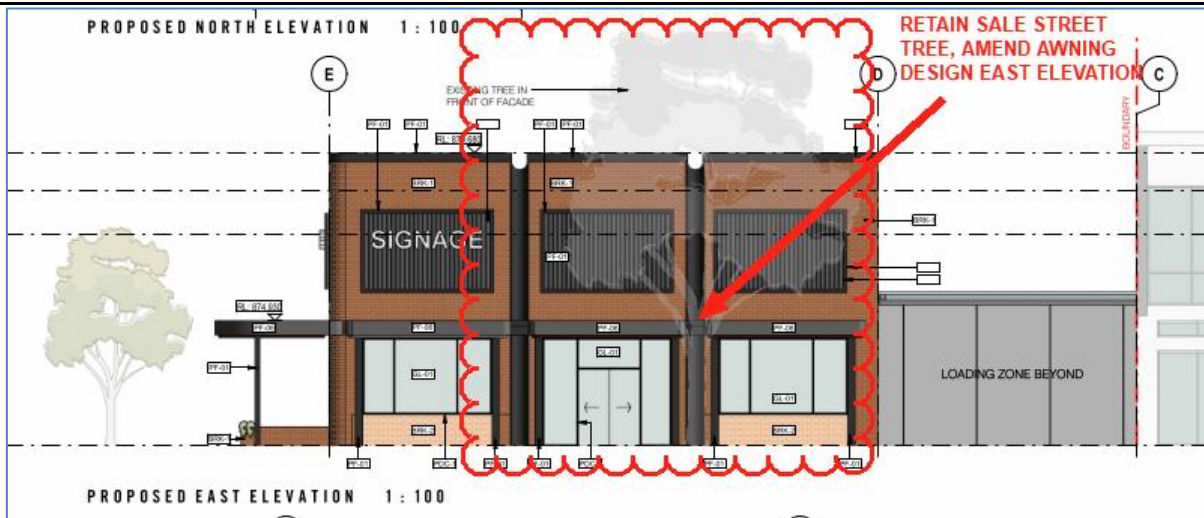
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Figure 54 – recommended design amendments to eastern elevations

Conditions of consent are included in the Notice of Determination to resolve these design issues as follows:

Prior to construction certificate, submit amended plans prepared by a qualified architect for approval of the Director of Development Services that depict the following design changes:

- Western elevation (Figure 52), submit amended façade design plans that:
 - Add one additional new tall parapet bay at the northern end to create three tall parapet bays.
 - Add one additional new tall parapet bay centrally over entry doors to tenancy 1.
 - All tilt up panels to be equal width on the full face of the elevation.
- Southern elevation (Fig 52-53), submit amended façade design plans that:
 - All tilt up panels to be equal width on the full face of the elevation.
 - Retain low planters with suitable species selected for microclimate and clear sightlines for pedestrians and motorists.
 - Provide three new medium sized trees planted in three new stratavault cells 11m³ to 16m³ size to be constructed at the developer’s cost in three parking bays (Figure 53).
 - Public Art condition.
- Eastern elevation (Figure 54), submit amended façade design plans that:
 - Retain existing Sale Street tree.
 - Selected canopy pruning by Manager of City Presentation.
 - Amended awning design for tree retention.

Demolition and façade discussion

From pre-DA and throughout assessment Council have requested a satisfactory structural assessment report with a methodology that demonstrates façade retention is feasible.

A structural assessment report prepared by Barson Pty Ltd was provided on 2 March 2026 that documents a visual inspection of the building exterior at 108 Summer Street from the footpath and outlines recommendations for the existing structural condition of the façade and awning as follows:

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Brickwork façade and return

Overall, in our opinion the brick façade is in suitable condition for retention with some remediation and maintenance works including the below:

- Repointing of brickwork on the western façade column and replacement of broken brick
- Retiling of brick column where tiles have been removed or removal as advised by heritage consultant.
- Repainting of brick façade upon completion of proposed construction works.
- The existing footings appear to be adequately supporting the brickwork façade. During construction works, underpinning would be recommended prevent differential movement occurring due to exposure to open ground conditions and wetting/ drying of the assumed clay subsoil.
- Temporary support of the brickwork will be required at the first floor and roof level to a structural engineer's design. A high-level methodology and concept sketch for supporting the brick façade during demolition and construction (Fig 55)

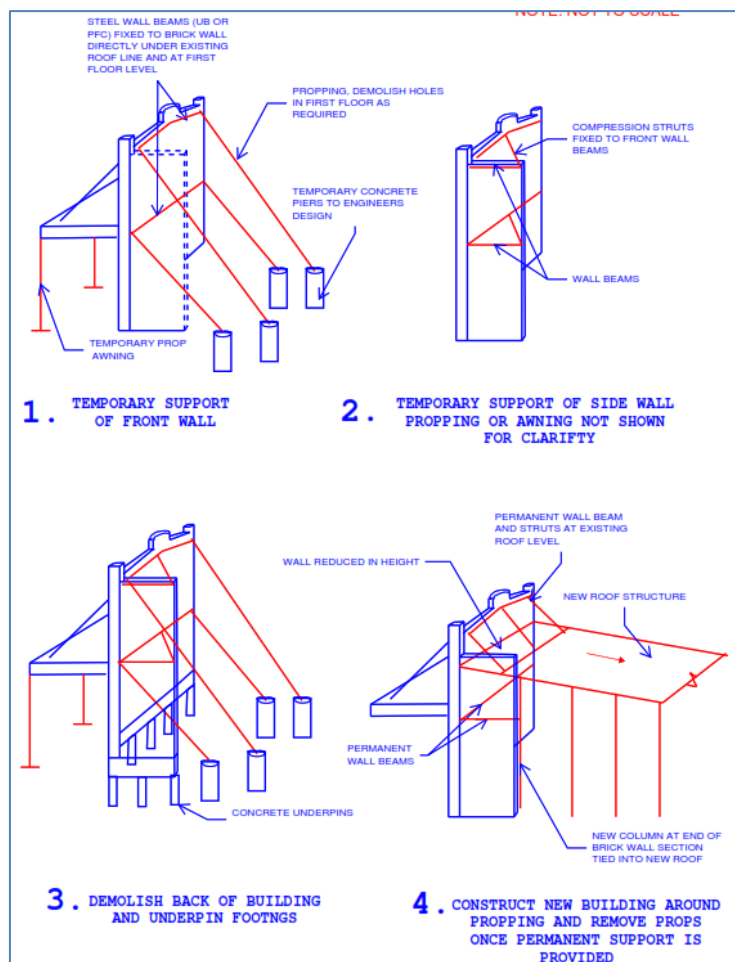


Figure 55 – high-level methodology and concept sketch for supporting the brick façade during demolition and construction

Awning

Further investigation would be required with removal of the existing ceiling cladding, to inspect the structural members and connection of tension rods. Timber members and sheeting shall be replaced as necessary due to current damage and to prevent future weathering or water ingress.

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Design Concerns

- *The existing design of the awning considers tension only members to support the weight of the cantilevered structure, which is common for this age of construction. Current design methodologies must include the allowance for wind uplift forces in accordance with AS1170.2-2021. These uplift forces would induce compressive forces into the tension only members should the weight of the awning be less than the design uplift. The existing estimated 40mm solid square bar would have some capacity in compression, however it is thought that this may not be sufficient. It is recommended that this is investigated at the Construction Certificate Stage.*
- *The tension rod connection to the existing brickwork appeared to be in good condition however it is recommended that these connections be extended through the brick columns to fix into the permanent new steel structure behind.*

This structural assessment report made recommendations for the remediation and maintenance of the brickwork facade and return, cantilevered awning tension rod connections to brick columns, and a high level concept method to provide temporary support for the front and side wall with concrete underpins and propping.

The proposed retained returns of the building depicted on the architectural plans are 1.86m on the western wall and 23.5m on the eastern wall. As proposed, the structural SHS supports depicted on the drawings and sections will be visible on the western elevation above the first new retail bay when viewed from Summer Street on the western approach to the CBD.

Council's Heritage Advisor recommends bespoke conditions of consent be included in the Notice of Determination to require the following prior to works commencing:

- Full structural engineering drawings, detail and specifications for the support of the existing building façade that is to remain to ensure the structural adequacy of the building façade during and after demolition works.
- A dilapidation report prepared by a suitably qualified engineer addressing the current condition of buildings that adjoin the development site.
- A revised drawing is to be prepared to reconstruct the pitched roof in galvanised corrugated steel behind the retained facade to a length of 5m and to match the existing in pitch and flashings which corresponds on the West Elevation with the width of the first new retail bay and its module.
- A heritage architect is to be appointed to advise on the construction drawings and during the construction period - to ensure that the works are appropriate and sufficient to retain the heritage significance of the structure.

Subject to conditions of consent the demolition works proposed will have no significant impact on adjoining lands, streetscape or public realm. Conditions may be imposed in respect of hours of operation, dust suppression and the need to investigate for, and appropriately manage the presence of any materials containing asbestos.

In addition, Council's Building Surveyor recommends the following bespoke conditions of consent be applied to demolition work prior to works commencing:

- Prior to demolition works commencing, a structural engineering detail for the support of the existing building facade that is to remain, is to be submitted to Council for approval.

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Reason: To ensure structural adequacy of the building facade during and after demolition works.

- 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 licenced or approved waste disposal site.

Reason: To ensure the demolition waste is disposed of properly.

- Prior to demolition works commencing, a dilapidation report prepared by a suitably qualified engineer is to be submitted to Council addressing the current condition of the buildings that are adjoining the development site.

Reason: To record the condition of adjoining buildings.

HERITAGE

Conditions are imposed to require the following:

- Test excavation in accordance Section 139 or Section 140 of the Heritage Act 1977 (NSW) be undertaken before any major works are carried out, in accordance with the recommendations in the statement of heritage impact report prepared by Everick Heritage dated 21 August 2025. **Reason** to satisfy the obligations of the developer under the Heritage Act.
- Appointment of a heritage architect to advise on construction drawings and during the construction phase to retain the heritage significance of the facade structure.
- Requiring revised drawings to reconstruct the pitched roof in galvanised corrugated steel behind the retained facade to a length of 5m and to match the existing in pitch and flashings which corresponds on the West Elevation with the width of the first new retail bay and its module.
- Requiring the base of the walls to the north, south, east and west elevations (of the new building) are to be clad where solid, with gloss ceramic subway tiles and standard tile capping piece to a height of 750mm or equal to one uniform shopfront cill level.
- A scope of heritage conservation works to the retained facade is to be prepared by the consulting heritage architect, prior to construction and reviewed and approved by Council.
- An interpretation plan related to the Barretts Cordial Factory is to be prepared by the consulting heritage architect and is to include a cast bronze plaque on the Summer Street retained facade and two interpretive panels with text and images at a minimum of 450 x 1200mm and mounted on selected solid walls on the West Elevation at a suitable height.
- A capping detail with a minimum height of 150mm and 15mm recessed shadow line below between it and the panel, is to be provided at the parapet of all the new plain concrete panel walls.
- All highlight window panels in the plain concrete wall panels are to be deleted
- Schedule of all external materials and colours is to be prepared and approved by Council prior to construction.

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EQUITABLE ACCESS TO THE BUILDING FROM SALE STREET AND FIRE COMPLIANCE

A BCA Assessment Report was not submitted with the application to demonstrate the development is capable of achieving compliance with the BCA, to address fire safety measures, the provision of adequate access to the building and facilities for people with disabilities.

With regards to fire protection measures, the applicant requests a condition of consent to require a BCA assessment of the relevant provisions of the BCA be undertaken prior to Construction Certificate.

With regards to building access, of note the proposed plans and elevations depict the building, not the internal fit out of individual tenancies, location of bathrooms and the like. The proposed ground floor level RL 871.380 across all three tenancies ties in with existing levels on all sides of the building except for the eastern elevation where existing level RL 870.280 near the proposed entry door is 1.1m lower than the proposed ground level. Provision of a compliant ramp into the premises that is located within the site boundary will be necessary. A performance solution may be required for access to proposed Tenancy 3. The proposed building will be required to comply with the Disability (Access to Premises- Buildings) Standards 2004 and all relevant standards. Conditions of consent are included in the Notice of Determination to resolve BCA/NCC issues.

PUBLIC DOMAIN AND LANDSCAPING

As discussed, Essential Services section related to footpaths and trafficable pavements and Tree Preservation section for street tree retention, pruning and required new tree and landscaping in low planters conditions of consent are imposed to resolve issues and require:

- Public domain plans prepared by a qualified engineer based on an accurate survey, drawn to scale, including details for footpath and trafficable pavements, pits, edges, and a technical specification be submitted to the Principal Certifier for approval prior to the issue of a construction certificate

Reason: To ensure the public domain surrounding the new building is high quality and ties into existing levels and services in the footpath.

- Tree protection (DPIE condition)

Reason: To ensure adequate tree protection measures are in place for retained street trees.

Street Tree - Removal and Replacement (Summer Street)

- The existing street tree (Manchurian pear) on the Summer Street frontage is approved for removal. The tree must be replaced in a strata vault cell 11m³ to 16m³ size, to be constructed in the parking lane of Summer Street immediately south of the bus zone at full cost of the applicant. Replacement tree to be minimum 200L pot size at installation with tree species to be nominated by Council's Manager City Presentation.

Reason: To ensure no net loss in urban canopy in the CBD.

- A detailed landscape plan and details for retained trees, replacement trees on the western elevation in stratavault cells and new trees in stratavault cells on the southern elevation, low planting in raised planters, plant schedule, watering systems and ongoing maintenance

Reason: To ensure adequate shade provision and greening of the development.

AWNINGS OVER THE FOOTPATH

The developer will be required to obtain a s138 approval under the Roads Act for constructing awnings over the public footpaths on Sale Street and Summer Street. In addition, TfNSW will need to grant approval for the Summer St awning.

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Street Awning - Structural Certification

- Prior to the issue of an occupation certificate, certification from a structural engineer is to be provided certifying that the street awning is suitable for its intended use and all loadings in accordance with Australian Standard AS1170.

Reason: To ensure compliance with relevant statutory requirements.

HOARDINGS OVER THE FOOTPATH

- Prior to the issue of a construction certificate, 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 SafeWork NSW.

Note: The **Section 68** application is to make allowance for access to adjacent retail premises and particular attention is to be given to the provision of adequate sight distances.

Reason: To ensure compliance with relevant statutory requirements.

PUBLIC ART

The final set of amended plans depict a “Public Art Zone” to a blank façade on the southern elevation. A public art plan and proposal was not submitted with the application.

Conditions are imposed to require:

- Final details of the public art to be delivered by and at the developer’s cost. Public art plan is to be developed in consultation with the Manager of the Orange Regional Art Gallery and submitted to the Manager of Development Services prior to a construction certificate.
- Approved public art is to be delivered and approved by the Principal Certifier prior to Occupation Certificate.

TRAFFIC AND PARKING

Trip Generation

TfNSW provided pre-DA advice recommending Council require a Traffic Impact Assessment (TIA) be developed with reference to Section 5 and Appendix E of TfNSW Guide to Transport Impact Assessment for the proposal. The TIA scope was to consider the need to undertake existing traffic counts to establish the current traffic movements through the site and take-up of existing off-street car parking spaces. The intersections of interest to TfNSW are the Mitchell Highway/Sale Street signalised intersection, and the Mitchell Highway/Hill Street roundabout.

A submitted TIA in support of this application **DA 353/2025(1)** adopted the **DA 238/2020(1)** SIDRA analysis of the signalised intersection of Summer Street and Sale Street, that included additional trip generation and traffic growth in Summer Street over 10 years. The hotel development would have generated over 200 vehicles per hour (vph) in the weekday PM and Saturday peaks. The analysis found that the intersection, and existing Village carpark intersections to Summer Street and Sale Street would continue to operate at a Level of Service A with minimal average delays and queues and retain significant spare capacity. This analysis was endorsed by TfNSW, and the application was subsequently approved by Council.

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Trip generation for the proposed retail and specialised retail (bulky goods) **DA 353/2025(1)** would generate 53vph in the weekday PM peak and 66vph in the Saturday peak. This equates to approximately 1 additional vehicle trip per minute, distributed across the two existing Village carpark intersections, on-street parking and off-street car parks.

The proposed trip generation will be less than 33% of **DA 238/2020(1)**, is moderate and would not impact on the operation of the intersection and local road network at a Level of Service A. As such, additional SIDRA modelling was not considered necessary.

Existing servicing for the Village is undertaken via the loading docks accessed off Hill Street. The proposal seeks to provide service access for loading and waste collection via a widened existing ROW off Sale Street with a left-in and left-out arrangement. A condition of consent is included to limit vehicle size to 8.8 MRV accessing the ROW.

Car Parking

The traffic consultant ground-truthed the existing car parking provision at the centre and found there are 291 at-grade parking spaces comprised of 268 visitor spaces located to the north and east, and approximately 23 staff spaces to the southwest near the loading dock. This represents a surplus of 82 car parking spaces.

The proposed development requires 49 additional parking spaces. The total parking requirement across the Village centre would be 258 spaces resulting in surplus of 33 spaces.

There is sufficient existing parking provision, and the proposed development will not generate a parking demand that exceeds that already provided on the site.

Further the reduction of three (3) parking spaces to provide three (3) stratavault cells at the developer's cost with new trees to increase shade and improve the visual presentation of the southern elevation of the new building is imposed as a condition of consent. This requirement will not impact on parking provision.

Site Access and Servicing

The application proposes a number of access points including:

- existing access onto Summer Street utilising a left turn in and left turn out;
- existing access onto Sale Street utilising a left turn in and left turn out; and
- service vehicle entry from Sale Street utilising the existing ROW in a left turn in and left turn out.

The proposed loading dock for the development is located via a shared access driveway ROW that services existing properties at 110-112 Summer Street. **Refer to detailed discussion in Essential Services section.**

A condition of consent is imposed to restrict the size of vehicles servicing the proposed development loading area on the ROW to an 8.8m Medium Rigid Vehicle (MRV) to provide safe access and egress from the loading dock. This is suitable for an. All ROW provisions for adjoining development will remain.

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Construction Traffic

A Construction Environmental Management Plan (CEMP) was not submitted with the DA. As the site is located within the CBD, it is considered likely that construction will impact the surrounding intersections and pedestrian movements in the vicinity of the site. As such, a condition is recommended requiring that prior to any works commencing, a CEMP be submitted to and approved by Council.

The CEMP will be required to address construction traffic management including:

- access and egress to the site during construction;
- construction vehicles will be required to enter and exit the site in a forward direction;
- traffic controllers will be employed to safely manage site access and egress at all times;
- queuing or marshalling of trucks will not be permitted on any public road;
- a Traffic Control Plan will inform road users of any changed traffic conditions in the vicinity of the works site;
- pedestrian access around the site will be maintained at all times; and
- manage construction hours, noise to relevant standards, abatement of dust to ensure minimal impact on adjoining tenants and the safe operation of the site.

On the basis of the above, it is considered that the preliminary CEMP indicates construction traffic impacts can be appropriately managed.

COLLECTION OF WASTE

Demolition and Operational Waste

A condition is recommended requiring a site specific waste management plan (SSWMP) to be prepared and submitted to Council for approval prior to construction certificate. The SSWMP is to nominate the approved destinations and estimated volumes of each waste stream for demolition and construction waste.

The SSWMP is to describe the estimated volumes of waste, recyclables and FOGO waste that will be generated by the specialised retail (bulky goods) and retail premises. The SSWMP must quantify the appropriate allocation of suitable waste receptacles for each occupancy with storage space, a methodology of waste retrieval and nominated collection point(s).

The plan must nominate the proposed contractor(s) and identify the number of receptacles for each waste category to be serviced on an ongoing basis.

A condition is imposed requiring that a detailed operational waste management plan be prepared prior to the issue of an Occupation Certificate.

OTHER ISSUES

Contamination

As discussed in SEPP (RESILIENCE AND HAZARDS) 2021 Clause 4.6 it is considered that there are no contamination issues which preclude the proposed development.

The recommended conditions of consent require all works on the site to cease immediately in the event of an unexpected find, 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. Works on site must not resume unless the express permission of Council is obtained in writing.

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Stormwater Management

As discussed in Section 7.3, the proposed development will increase the impervious areas within the site catchment and onsite detention (OSD) will be incorporated within the underground drainage network to manage post development flows and maintain pre-development discharge rates.

Council's engineer advises that the proposed stormwater quality treatment, proposed gross pollutant trap and onsite stormwater detention systems located in the ROW laneway are considered acceptable. Peak flow rates will be attenuated to predeveloped levels for the 5% AEP and 1% AEP events using storage within the stormwater pipe network.

However, the stormwater management plan depicts the proposed stormwater piped connection to an existing Sale Street pit that extends outside of the site boundary, across the footpath and Sale Street road reserve (Figure 40).

Council's engineer advises that the piped stormwater associated with the development proposal will need to be fully contained within the site boundary and connect to the existing carpark stormwater pit(s) located adjacent to the Sale Street carpark entry.

Conditions of consent are included in the Notice of Determination to resolve this issue.

Development Contributions

Orange Development Contributions Plan 2024 does not apply to the development.

There is no shortfall in parking provisions for the development so there are no applicable development contributions. However, the recommended conditions of consent will require the applicant to provide contributions to water supply headworks and sewerage headworks, prior to the issue of a construction certificate.

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

The proposed development is located in the E2 Commercial Centre zone and MU1 Mixed Use zone and is permissible with the consent of Council. The subject land is considered to be suitable to undertake the proposed development due to the following:

- The development is permissible and compliant with the relevant provisions of the LEP.
- The development is considered to be satisfactory in regard to Section 4.15 of the Environmental Planning and Assessment Act 1979.
- The potential impacts of the development can be managed appropriately through the conditions of consent.
- The development of the site will not create significant adverse impacts on the context and setting of the area.
- The development of the site will not detrimentally affect adjoining land and is unlikely to lead to land use conflicts.
- All utility services are or can be made available and can be made adequate.
- PMF does not pose significant constraints.
- There is no known contamination on the land.
- The subject land has no significant biodiversity or habitat value.

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

The development was notified to adjoining landowners and publicly advertised in accordance with Council's Community Participation Plan from 1 October 2025 until close of business on 16 October 2025.

The period was observed and the application was exhibited for 14 days in accordance with the Community Participation Plan and at the end of the period two submissions were received. A summary review of the submissions is provided below:

Matters Raised in Submissions	Council Staff Assessment/Comments
<p>Sale Street elevation - <i>Submitters raised concerns that they could not locate a Sale Street elevation showing the streetscape and adjoining properties.</i></p>	<p>The architectural plans include proposed elevations (dwg DA 29). East elevation depicts the proposed new building in relation to the adjoining property on Sale Street</p>
<p>Design specification for pavements at right-of-way pavements - <i>Submitters raised concern about the specification for pavement construction proposed for the ROW located at the southern boundary of their property adjoining Spilt Milk.</i></p>	<p>Pavement design will be developed during the detailed design and construction documentation phases following a DA approval.</p> <p>A condition of consent will require public domain plans prepared by a qualified engineer based on an accurate survey, drawn to scale, including details for footpath and trafficable pavements, pits, edges, and a technical specification to be submitted to the Principal Certifier for approval prior to the issue of a construction certificate.</p>
<p>Require that construction on Sale Street frontage has minimal impacts for tenants at 120-122 Summer Street - <i>Submitters raised concern regarding construction impacts on the Sale Street frontage and request conditions of consent which:</i></p> <ol style="list-style-type: none"> 1. <i>Define the hours and days of work.</i> 2. <i>Define decibel levels of noise during all nominated work periods.</i> 3. <i>Require the developer to take measures to minimise and monitor dust created by the development.</i> 4. <i>Require the developer to make good all damage to surfaces.</i> 5. <i>Require the developer not to obstruct or impede access or customer traffic to our tenants premises.</i> 	<p>Conditions of consent will require:</p> <ol style="list-style-type: none"> 1-3 Preparation and implementation of a Construction Management Plan (CMP) to manage construction hours, noise to relevant standards, abatement of dust, and access, to ensure minimal impact on adjoining tenants and the safe operation of the site. 4 A road opening permit condition will require the developer to make good all damage to surfaces 5 The ROW (ROW) provides legal right of access. Builder will need to make arrangements with individual property owners prior to and during works.

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Matters Raised in Submissions	Council Staff Assessment/Comments
<p>Right-of-way access - <i>Submitters raised the following concerns as the adjoining landowner of 110-112 Summer Street:</i></p> <p><i>How will access be maintained to the rear of the building during and after construction. This is a single lane for the majority of its length and is required by the tenant each day to be able to support the management of their retail business which is a bicycle shop. It is imperative that this access continues as this will severely constrict their ability to trade in line with their retail offering to the community. Is there a need for a traffic management plan to avoid undue congestion or impose safety risks to the tenant & their employees.</i></p>	<p>In addition, the CMP will be required to address site access during construction, including maintaining access to the rear of existing buildings on the ROW, traffic management, and pedestrian safety to minimise impacts on neighbouring tenants.</p> <p>The ROW provides legal right of access. The builder will need to make arrangements with individual property owners prior to and during works.</p> <p>A traffic plan for service vehicle access onto Sale Street will be required that details pedestrian safety improvements and to manage vehicle movements in the ROW laneway and access onto Sale Street.</p> <p>Conditions of consent are included</p>
<p><i>Submitters raised the following concerns as the adjoining landowner of 110-112 Summer Street:</i></p>	
<p>Structural Engineers Report - <i>As there will be construction which is adjoining my building will there be certification of the ability of the existing building to withstand proposed works and provided details of vibration emissions.</i></p> <p><i>Provisions of measures required to be implemented to avoid damage to this adjoining property.</i></p>	<p>Council's Building Surveyor advises that the new building must be designed to be entirely self-supporting, able to withstand the required forces that can be imposed upon it and not cause any load impacts on existing adjoining properties/buildings. The structural design must be in accordance with relevant engineering standards and statutory obligations.</p> <p>With regard to vibration during construction and/or any damage caused by, this a dilapidation report prepared by a qualified structural engineer is necessary to provide a photographic record as part of their assessment.</p> <p>A condition of consent will require that prior to demolition works commencing a dilapidation report prepared by a suitably qualified structural engineer be submitted to Council addressing the current condition of the buildings that are adjoining the development site.</p>

2.3 Development Application DA 353/2025(1) - 86 Summer Street

Matters Raised in Submissions	Council Staff Assessment/Comments
<p>Dilapidation Reports - <i>Requirement to provide a dilapidation report prior to any works commencing that also includes photos of both internal walls and ceilings and external walls/facade as well as the external roof.</i></p> <p><i>Completion of construction works to receive condition of structure along with similar photos of both internal and external photos taken prior to the commencement.</i></p> <p><i>Submitter requests a copy of this Final Dilapidation Report to review prior to the Occupation Certificate being issued by Council/Principal Certifier.</i></p>	<p>A dilapidation report is a standard engineering mitigation measure to provide a photographic record of the existing condition of building interior and exterior to manage potential impacts on adjoining properties.</p> <p>Council's Building Surveyor advises that a dilapidation report relies upon a photographic record as part the structural engineer's assessment.</p> <p>A dilapidation report is not normally required at completion of works onsite, it will be used as a reference if an issue/damage arises during construction.</p> <p>There is no statutory obligation for the adjoining landowner to receive, review or approve the report.</p> <p>A condition of consent will require an updated dilapidation report to be prepared by the structural engineer and be submitted to the Principal Certifier addressing the condition of the buildings that are adjoining the development site and to facilitate compliance with statutory obligations, prior to issue of the Occupation Certificate</p>
<p>Construction Management Plan - <i>Provisions to provide a construction management plan that will address both noise to applicable standards and the abatement of dust.</i></p>	<p>The CMP will be required to address noise to the relevant standards and the abatement of dust.</p> <p>A condition of consent is included in the Notice of Determination</p>

2.3 Development Application DA 353/2025(1) - 86 Summer Street

Matters Raised in Submissions	Council Staff Assessment/Comments
<p>Customer parking access on Summer Street - <i>Ensure customers are not restricted from parking in front of 110-112 Summer Street and that pedestrian access to the retail premises will be maintained throughout this construction period.</i></p>	<p>A condition of consent will require that prior to the issue of a construction certificate, the applicant 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.</p> <p>The s68 application is to maintain clear access to adjacent retail premises during construction.</p> <p>A condition of consent is included in the Notice of Determination</p>
<p>Sewer Main - <i>Confirm no such works will impede the ability to access the sewer for adjoining tenants at 110-112 Summer Street</i></p>	<p>Sewer main diversion works will be undertaken either by Council or under supervision of Council. No properties will be without sewer for the duration of the work.</p>

PUBLIC INTEREST s4.15(1)(e)

The proposal will not be inconsistent with any policy statement, planning study or guideline that has not been considered in this assessment. There are no aspects of the proposal that will be contrary to the welfare or well-being of the general public.

DEVELOPMENT CONTRIBUTIONS
Section 64 Local Government Act 1993

Council's engineer advises that development contributions for water and sewer headworks charges to be determined prior issue of a construction certificate are applicable to the proposed development.

INTERNAL REFERRAL COMMENTS

The requirements of Council's Heritage, Environmental Health and Building Surveyor, the Engineering Development Section, Waste, City Presentation and Planning are included in this report.

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

ATTACHMENTS

- 1 DRAFT Notice of Determination, D26/45131 [↓](#)
- 2 Plans, D26/44488 [↓](#)
- 3 Submissions, D26/44406 [↓](#)

**NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION**

Application number	DA 353/2025(1) PAN-565647
Applicant	Patch Planning 7 30-32 CARRINGTON STREET SYDNEY 2000
Description of development	Proposed demolition of an existing building, construction and use of a new building (specialised retail premises and retail premises)
Property	86 SUMMER STREET ORANGE 2800 100/-/DP1291348
Determination	Approved Consent Authority - Council
Date of determination	8/04/26
Date from which the consent operates	8/04/26
Date on which the consent lapses	8/04/31

Under section 4.18(1) of the EP&A Act, notice is given that the above development application has been determined by the granting of consent using the power in section 4.16(1)(a) of the EP&A Act, subject to the conditions specified in this notice.

Reasons for approval

- The proposed development will reasonably satisfy Local and State planning controls.

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- The proposed development will comply with the requirements of State approval authorities.
- Impacts of the proposed development on the natural and built environment will be within acceptable limit, subject to mitigation conditions.
- The proposed development will complement the existing or desired future character of the area.
- The proposed development will be consistent with the Zone objectives and principal development standards.
- The proposed development is permitted in the Zone.
- Utility services are available and adequate.
- OPTIONAL: Public exhibition of the application was undertaken in accordance with Council's Community Participation Plan or State legislation. Two submissions were received, and mitigation measures have been implemented to address the matters raised.

Right of appeal / review of determination

If you are dissatisfied with this determination:

Request a review

You may request a review of the consent authority's decision under section 8.3(1) of the EP&A Act. The application must be made to the consent authority within 6 months from the date that you received the original determination notice provided that an appeal under section 8.7 of the EP&A Act has not been disposed of by the Court.

Rights to appeal

You have a right under section 8.7 of the EP&A Act to appeal to the Court within 6 months after the date on which the determination appealed against is notified or registered on the NSW planning portal.

The Dictionary at the end of this consent defines words and expressions for the purposes of this determination.

Paul Johnson
Manager - Development Assessments
Person on behalf of the consent authority

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

General Conditions

1	<p>Erection of signs</p> <ol style="list-style-type: none"> 1. This section applies to a development consent for development involving building work, subdivision work or demolition work. 2. It is a condition of the development consent that a sign must be erected in a prominent position on a site on which building work, subdivision work or demolition work is being carried out— <ol style="list-style-type: none"> a. showing the name, address and telephone number of the principal certifier for the work, and b. showing the name of the principal contractor, if any, for the building work and a telephone number on which the principal contractor may be contacted outside working hours, and c. stating that unauthorised entry to the work site is prohibited. 3. The sign must be— <ol style="list-style-type: none"> a. maintained while the building work, subdivision work or demolition work is being carried out, and b. removed when the work has been completed. 4. This section does not apply in relation to— <ol style="list-style-type: none"> a. building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or b. Crown building work certified to comply with the <i>Building Code of Australia</i> under the Act, Part 6. <p>Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.</p>
2	<p>Shoring and adequacy of adjoining property</p> <ol style="list-style-type: none"> 1. This section applies to a development consent for development that involves excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land, including a structure or work in a road or rail corridor. 2. It is a condition of the development consent that the person having the benefit of the development consent must, at the person's own expense— <ol style="list-style-type: none"> a. protect and support the building, structure or work on adjoining land from possible damage from the excavation, and b. if necessary, underpin the building, structure or work on adjoining land to prevent damage from the excavation. 3. This section does not apply if— <ol style="list-style-type: none"> a. the person having the benefit of the development consent owns the

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	adjoining land, or b. the owner of the adjoining land gives written consent to the condition not applying.		
	Condition reason: Prescribed condition under section 74 of the Environmental Planning and Assessment Regulation 2021.		
3	Approved plans and supporting documentation Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.		
	Approved plans prepared by i2C Architecture		
	Plan number	Revision number	Plan title
	2024-325- DA16	R08	DEMOLITION PLAN
	2024-325- DA17	R03	DEMOLITION LEVEL 01 PLAN
	2024-325- DA18	R03	DEMOLITION ROOF LEVEL FLOOR PLAN
	2024-325- DA19	R05	EXISTING ELEVATIONS
	2024-325- DA20	R06	EXISTING SITE PLAN
	2024-325- DA21	R07	PROPOSED SITE PLAN
	2024-325- DA22	R06	GFA ANALYSIS PLAN
	2024-325- DA23	R09	PROPOSED GROUND FLOOR PLAN
	2024-325- DA23A	R01	PROPOSED WASTE MANAGEMENT PLAN
	2024-325- DA24	R07	PROPOSED LEVEL 01 PLAN
	2024-325- DA25	R07	PROPOSED ROOF PLAN
	2024-325- DA26	R05	SIGNAGE PLAN
	2024-325- DA29	R09	PROPOSED ELEVATIONS
	2024-325- DA31	R06	PROPOSED SIGNAGE ELEVATIONS
	2024-325- DA32	R06	STREETSCAPE ELEVATIONS
	2024-325- DA33	R06	MATERIALITY
	2024-325- DA34	R05	PROPOSED SECTIONS
	2024-325- DA35	R05	PROPOSED SECTIONS
	Approved plans prepared by Craig Jacques & Associates		
	4912/25 Sheet 1	Partial Detail and Level Survey Plan	
	4912/25 Sheet 2	Partial Detail and Level Survey Plan	
	Approved documents		
	Document title	Version number	Prepared by
	Structural Engineers	REF: 50847-SR01 B	BARNSON
			Date of document
			23.02.26

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	Investigation Report			
	In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.			
	Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.			
4	Development and subdivision works requirements			
	All of the following 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 engineering work required by the following conditions is to be completed prior to the issue of an Occupation or Subdivision Certificate, unless stated otherwise.			
	Condition reason: To comply with Council's Development and Subdivision Code.			
5	National Construction Code			
	All building work must be carried out in accordance with the provisions of the National Construction Code.			
	Condition reason: To ensure compliance with relevant statutory requirements.			

Demolition Work

Before demolition work commences

6	Construction Site Management Plan			
	Before site work commences, a construction site management plan must be prepared, and provided to the principal certifier . The plan must include the following matters:			
	<ol style="list-style-type: none"> 1. The location and materials for protective fencing and hoardings on the perimeter of the site; 2. Location of dedicated washdown areas (located away from drainage lines, stormwater drains and water bodies); 3. Provisions for public safety; 4. Pedestrian and vehicular site access points and construction activity zones; 5. Details of construction traffic management including: <ol style="list-style-type: none"> a. Proposed truck movements to and from the site; b. Estimated frequency of truck movements c. Construction vehicles will be required to enter and exit the site in a forward direction d. Queuing or marshalling of trucks will not be permitted on any public road; and e. Measures to ensure pedestrian safety near the site; 6. Details of bulk earthworks to be carried out; 7. The location of site storage areas and sheds; 			

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	<ol style="list-style-type: none"> 8. The equipment used to carry out works; 9. The location of a garbage container with a tight-fitting lid; 10. Dust, noise and vibration control measures; 11. Details of chemical storage and management; 12. The location of temporary toilets; 13. The protective measures for the preservation of trees on-site and in adjoining public areas including measures in accordance with: <ol style="list-style-type: none"> a. AS 4970 – Protection of trees on development sites; b. An applicable Development Control Plan; <p>A copy of the construction site management plan must be kept on-site at all times while work is being carried out.</p> <p>Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
7	<p>Demolition management plan</p> <p>Before demolition work commences, a demolition management plan must be prepared by a suitably qualified person.</p> <p>The demolition management plan must be prepared in accordance with Australian Standard 2601 – The Demolition of Structures, the Code of Practice – Demolition Work, council's development control plan and must include the following matters:</p> <ol style="list-style-type: none"> 1. The proposed demolition methods 2. The materials for and location of protective fencing and any hoardings to the perimeter of the site 3. Details on the provision of safe access to and from the site during demolition work, including pedestrian and vehicular site access points and construction activity zones 4. Details of demolition traffic management, including proposed truck movements to and from the site, estimated frequency of those movements, and compliance with AS 1742.3 Traffic Control for Works on Roads and parking for vehicles 5. Protective measures for on-site tree preservation and trees in adjoining public domain (if applicable (including in accordance with AS 4970-2009 Protection of trees on development sites and Orange Council DCP 2004)) 6. Erosion and sediment control measures which are to be implemented during demolition and methods to prevent material being tracked off the site onto surrounding roadways 7. Noise and vibration control measures, in accordance with any Noise and Vibration Control Plan approved under this consent 8. Details of the equipment that is to be used to carry out demolition work and the method of loading and unloading excavation and other machines 9. Details of any bulk earthworks to be carried out 10. Details of re-use and disposal of demolition waste material in accordance with Orange Council DCP 2004 11. Location of any reusable demolition waste materials to be stored on-site (pending future use) 12. Location and type of temporary toilets onsite 13. A garbage container with a tight-fitting lid. <p>Condition reason: To provide details of measures for the safe and appropriate disposal of demolition waste and the protection of the public and surrounding</p>

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	environment during the carrying out of demolition works on the site
8	<p>Tree protection measures</p> <p>Before any site work commences, <Council's Manager City Presentation and the principal certifier, must be satisfied the measures for tree protection detailed in the construction site management plan are in place.</p> <p>Condition reason: To protect and retain trees.</p>
9	<p>Heritage - photographic record</p> <p>The building must be photographically recorded and surveyed prior to demolition in accordance with Council's "Guidelines for Photographic Recording of Heritage Buildings and Sites". One set of photographs showing the features and construction methods of the building must be provided to Council for its records, along with a detailed site plan.</p> <p>Condition reason: To preserve and record features of the building environment that hold historical or heritage significance.</p>
10	<p>Structural engineering detail for the retained existing building facade at 108 Summer Street</p> <p>Prior to demolition works commencing, a structural engineering detail for the support of the existing building facade that is to remain, is to be submitted to Council for approval.</p> <p>Condition reason: To ensure structural adequacy of the building facade during and after demolition works.</p>
11	<p>Site specific management plan - Demolition waste</p> <p>Prior to demolition works commencing, the applicant is to submit a site-specific 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 licenced or approved waste disposal site.</p> <p>Condition reason: To ensure the demolition waste is disposed of properly.</p>
12	<p>Dilapidation report</p> <p>Prior to demolition works commencing, a dilapidation report prepared by a suitably qualified engineer is to be submitted to Council addressing the current condition of the buildings that are adjoining the development site.</p> <p>Condition reason: To record the condition of adjoining buildings.</p>

During demolition work

13	<p>Discovery of relics and Aboriginal objects</p> <p>While site work is being carried out, if a person reasonably suspects a relic or Aboriginal object is discovered:</p> <p>a. the work in the area of the discovery must cease immediately;</p>
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	<p>b. the following must be notified</p> <ul style="list-style-type: none"> i. for a relic – the Heritage Council; or ii. for an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the <i>National Parks and Wildlife Act 1974</i>, section 85. <p>Site work may recommence at a time confirmed in writing by:</p> <ul style="list-style-type: none"> a. for a relic – the Heritage Council; or b. for an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the <i>National Parks and Wildlife Act 1974</i>, section 85.
	<p>Condition reason: To ensure the protection of objects of potential significance during works.</p>
14	<p>Handling of asbestos during demolition</p> <p>While demolition work is being carried out, any work involving the removal of asbestos must comply with the following requirements:</p> <ul style="list-style-type: none"> 1. Only an asbestos removal contractor who holds the required class of Asbestos Licence issued by SafeWork NSW must carry out the removal, handling and disposal of any asbestos material; 2. Asbestos waste in any form must be disposed of at a waste facility licensed by the NSW Environment Protection Authority to accept asbestos waste; and 3. Any asbestos waste load over 100kg (including asbestos contaminated soil) or 10m² or more of asbestos sheeting must be registered with the EPA on-line reporting tool WasteLocate.
	<p>Condition reason: To ensure that the removal of asbestos is undertaken safely and professionally</p>
15	<p>Tree protection during work</p> <p>While site work is being carried out, all required tree protection measures must be maintained in good condition in accordance with:</p> <ul style="list-style-type: none"> 1. the construction site management plan <Insert required/approved> under this consent; 2. the relevant requirements of AS 4970 Protection of trees on development sites; 3. PO 0.4-2 Planning Outcomes - Tree Preservation of Council's relevant development control plan (in force as at the date of determination of this consent); and <p>This includes maintaining adequate soil grades and ensuring all machinery, builders refuse, spoil and materials remain outside tree protection zones.</p>
	<p>Condition reason: To protect trees during the carrying out of site work.</p>
16	<p>Adjustments to utility services</p> <p>Any adjustments to existing utility services that are made necessary by the demolition</p>

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	work are to be at the full cost of the developer.
	Condition reason: To comply with Council's Development and Subdivision Code.
17	Demolition - in accordance with AS 2601:2001
	Building demolition is to be carried out in accordance with Australian Standard 2601:2001 - The Demolition of Structures and the requirements of SafeWork NSW.
	Condition reason: To ensure compliance with relevant statutory requirements.
18	Hours of work - demolition
	All 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 Chief Executive Officer of Orange City Council to vary these hours.
	Condition reason: To ensure compliance with relevant statutory requirements.
19	Road opening permit required
	A Road Opening Permit in accordance with Section 138 of the <i>Roads Act 1993</i> 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.
	Condition reason: To ensure compliance with relevant statutory requirements.

On completion of demolition work

20	Post-construction dilapidation report
	After completion of all site work a post-construction dilapidation report must be prepared by a suitably qualified engineer, to the satisfaction of the principal certifier , detailing whether: <ul style="list-style-type: none"> a. after comparing the pre-construction dilapidation report to the post-construction dilapidation report required under this condition, there has been any structural damage to any adjoining buildings; and b. where there has been structural damage to any adjoining buildings, that it is a result of the work approved under this development consent; and c. a copy of the post-construction dilapidation report must be provided to Council (where Council is not the principal certifier or a principal certifier is not required) and to the relevant adjoining property owner(s).
	Condition reason: To identify any damage to adjoining properties resulting from site work on the development site.
21	Preservation of survey marks

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	<p>After completion of all site work, documentation must be submitted by a registered surveyor to the principal certifier , which demonstrates that:</p> <ol style="list-style-type: none"> a. no existing survey mark(s) have been removed, damaged, destroyed, obliterated or defaced, or b. any survey mark(s) that were damaged, destroyed, obliterated or defaced have been re-established in accordance with the Surveyor General's Direction No. 11 – Preservation of Survey Infrastructure.
	<p>Condition reason: To protect the State's survey infrastructure.</p>
22	<p>Waste disposal verification statement</p> <p>On completion of demolition work:</p> <ol style="list-style-type: none"> a) a signed statement must be submitted to the certifier verifying that demolition work, and any recycling of materials, was undertaken in accordance with the waste management plan approved under this consent, <p>and</p> <ol style="list-style-type: none"> b) if the demolition work involved the removal of asbestos, an asbestos clearance certificate issued by a suitably qualified person, must be submitted to the certifier within 14 days of completion of the demolition work.
	<p>Condition reason: To provide for the submission of a statement verifying that demolition waste management and recycling has been undertaken in accordance with the approved waste management plan</p>

Building Work

Before issue of a construction certificate

23	<p>Construction Site Management Plan</p> <p>Before the issue of a Construction Certificate, a construction site management plan must be prepared, and provided to the certifier . The plan must include the following matters:</p> <ol style="list-style-type: none"> a. The location and materials for protective fencing and hoardings on the perimeter of the site; b. Location of dedicated washdown areas (located away from drainage lines, stormwater drains and water bodies); c. Provisions for public safety; d. Pedestrian and vehicular site access points and construction activity zones; e. Details of construction traffic management including: <ol style="list-style-type: none"> i. Proposed truck movements to and from the site; ii. Estimated frequency of truck movements; iii. Construction vehicles will be required to enter and exit the site in a
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	<p>forward direction;</p> <ul style="list-style-type: none"> iv. Queuing or marshalling of trucks will not be permitted on any public road; and v. Measures to ensure pedestrian safety near the site; <ul style="list-style-type: none"> f. Details of bulk earthworks to be carried out; g. The location of site storage areas and sheds; h. The equipment used to carry out works; i. The location of a garbage container with a tight-fitting lid; j. Dust, noise and vibration control measures; k. Details of chemical storage and management; l. The location of temporary toilets; m. The protective measures for the preservation of trees on-site and in adjoining public areas including measures in accordance with: <ul style="list-style-type: none"> i. AS 4970 – Protection of trees on development sites; ii. An applicable Development Control Plan; iii. An arborist’s report approved as part of this consent <p>A copy of the construction site management plan must be kept on-site at all times while work is being carried out.</p> <p>Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
24	<p>Design amendments</p> <p>Before the issue of a construction certificate, the proponent must submit amended plans, details and specifications detail to the Manager Development Assessments at Orange City Council for approval for the following required amendments to the approved plans and documents:</p> <p><u>All elevations of the new building</u></p> <ul style="list-style-type: none"> 1. The use of BRK-2 Austral Venetian Glass Brick "Smokey Quartz" and "Golden Amber" is not approved. 2. All brick is to be dry pressed face brick 'Bowral Gertrudis Brown' 3. Fake aluminium and timber look cladding is not supported in the heritage conservation area. Aluminium materials in a timber colour without faux texturing is acceptable. 4. The use of Black and Monument colours are not supported colours in the heritage conservation area. Basalt as a Grey is supported for key elements such as awning fascia. 5. The base of the walls to the north, south, east and west elevations of the new building are to be clad where solid, with gloss ceramic subway tiles and standard tile capping piece to a height of 750mm or equal to one uniform shopfront cill level. 6. Capping detail condition <p>Northern Elevation - Summer Street frontage</p> <ul style="list-style-type: none"> 1. Tree removal and replacement condition <p>Western Elevation</p> <ul style="list-style-type: none"> 1. Add one additional new tall parapet bay at the northern end to create three tall

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	<p>parapet bays</p> <ol style="list-style-type: none"> 2. Add one additional new tall parapet bay centrally located with entry doors to Tenancy 1 3. All tilt up concrete panels to be equal width on the full face of the elevation 4. Landscape planter details are required to illustrate that the planter elements on the footpath will not reduce the capacity of an accessible footpath 5. Replacement tree condition in strata vault cells in parking bays <p>Southern Elevation</p> <ol style="list-style-type: none"> 1. Delete all highlight windows in plain concrete walls 2. All tilt up concrete panels to be equal width on the full face of the elevation 3. Public art condition 4. Landscape planter condition 5. New tree planting in strata vault cells. Provide three (3) new medium sized trees planted in three new strata vault cells 11 m³ to 16 m³ size be constructed at the developers cost in three (3) parking bays <p>Eastern Elevation- Sale Street frontage</p> <ol style="list-style-type: none"> 1. Retain existing Sale Street tree 2. Minor pruning by Manager City Presentation 3. Amend awning design to accommodate retained and protected street tree <p>Condition reason: To require minor amendments to the plans endorsed by the consent authority following assessment of the development.</p>
25	<p>Equal access to the premises</p> <p>Before the issue of a construction certificate, plans which demonstrate that adequate access to the premises will be provided for persons with disabilities in accordance with the Commonwealth Disability (Access to Premises – Buildings) Standards 2010. These plans must be submitted to the certifier.</p> <p>Condition reason: To ensure safe and easy access to the premises for people with a disability</p>
26	<p>Comply with Council's sewer infrastructure services policy</p> <p>Prior to the issue of a Construction Certificate structural engineers' details shall be provided for piers / footings of any building located adjacent to the sewer main. Piers shall extend below the invert of the main / zone of influence and shall be located a minimum of 1.0m clear of the centreline of the main.</p> <p>Condition reason: To comply with Council's Sewer Infrastructure Services policy.</p>
27	<p>Contributions - payment of water and sewer contributions (obtain section 307 Certificate)</p> <p>Submit an application to Council under section 305 of the <i>Water Management Act 2000</i> to obtain a section 307 Certificate of Compliance. The <i>Application for a 307 Certificate under section 305 Water Management Act 2000</i> form can be found on Council's website.</p>

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	<p>A section 307 Certificate must be obtained prior to the issue of any Construction Certificate.</p> <p>Condition reason: Obtain a section 307 Certificate of Compliance.</p>
28	<p>Road opening permit required</p> <p>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.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>
29	<p>Section 68 application - hoarding</p> <p>Prior to the issue of a construction certificate, the applicant is to obtain an approval under Section 68 of the <i>Local Government Act</i> 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 <i>Occupational Health & Safety Act 2000</i>, Australian Standard AS3798-1996 (Guidelines on Earthworks for Commercial and Residential Developments) and SafeWork NSW.</p> <p>Note: On corner properties, particular attention is to be given to the provision of adequate sight distances.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>
30	<p>Section 68 application - water and sewer</p> <p>An approval under Section 68 of the <i>Local Government Act</i> is to be sought from Orange City Council, as the Water and Sewer Authority, for water, sewer and stormwater connection. Details concerning the proposed backflow prevention between the nominated water tank supply and the potable system are to be provided. No plumbing and drainage is to commence until approval is granted.</p> <p>Condition reason: To ensure the utility services are available to the site and adequate for the development.</p>
31	<p>Stormwater detention design</p> <p>The development's stormwater design is to include the incorporation of stormwater detention within the development, designed to limit peak outflows from the land to the pre-existing natural outflows up to a 1% AEP storm event, 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.</p> <p>The design of the detention storage is to be undertaken using the DRAINS rainfall-runoff hydrologic model (or an approved equivalent capable of assessing runoff volumes and their temporal distribution as well as peak flow rates) based on the most recent version of Australian Rainfall and Runoff calculations allowing for applicable climate change factor(s). The model is to be used to calculate the flow rates for the</p>

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	<p>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:</p> <ul style="list-style-type: none"> • 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, <p>are to be submitted for approval upon application for a Construction Certificate.</p> <p>Condition reason: To comply with Council's Development and Subdivision Code.</p>
32	<p>Engineering plans for service vehicle access and loading area</p> <p>Engineering plans providing complete details of the proposed service vehicle access and manoeuvring areas are to be submitted to the Certifier upon application for a Construction Certificate.</p> <p>These plans are to provide details of levels, cross falls of all pavements, proposed sealing materials, proposed drainage works and ensure that an 8.8m medium rigid vehicle can enter and exit the service vehicle laneway in a forward direction while ensuring compliant AS/NZS 2890.2 swept path clearances to all buildings and other fixed objects.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
33	<p>Traffic plan for service vehicle access onto Sale Street</p> <p>Plans detailing the pedestrian safety improvements to be undertaken where the service vehicle laneway meets Sale Street are to be submitted for approval upon application for a Construction Certificate. The plans shall detail the following:</p> <ul style="list-style-type: none"> • Signage noting a 10km/h speed limit within the laneway; and • Signage noting maximum length vehicle permitted to enter the laneway is 8.8m; and • Adequate lighting along the laneway; and • A stop line and signage for vehicles exiting the laneway onto Sale Street; and • Provision of convex mirror(s) on the exit to Sale Street to improve driver's sightlines to the footpath. The mirror(s) should allow a minimum of 2.2m headroom underneath: and <p>detail compliance with AS/NZS 2890.1:2004 section 3.2.4(b) and ensure that there are no obstructions located within the required sight triangles.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>

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34	<p>Stormwater treatment system design</p> <p>All stormwater from the service vehicle access areas shall be collected and piped to an on-site stormwater treatment system. The design and construction of the stormwater treatment system shall ensure that the quality of stormwater leaving the developed site achieves the following stormwater quality targets:</p> <ul style="list-style-type: none"> • 90% reduction in the post development average annual gross pollutant (>5 millimetres) load; and • 85% reduction in the post development mean annual load of Total Suspended Solids (TSS); and • 65% reduction in the post development mean annual load of Total Phosphorus (TP); and • 45% reduction in the post development mean annual load of Total Nitrogen loads (TN). <p>Engineering plans for this stormwater treatment system shall be submitted for approval prior to the issuing of a Construction Certificate. The applicant shall undertake comprehensive water quality modelling on for the site, using an accredited assessment tool (recommended using Music™ or other approved assessment tool) and shall include copies of the electronic data files. Modelling shall be undertaken for both pre and post development scenarios.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
35	<p>Stormwater drainage plans</p> <p>All stormwater from the proposed stormwater treatment system is to be piped beneath proposed Tenancy 3 to the existing on-site stormwater pit(s) located within the carpark adjacent to the Sale Street carpark entrance.</p> <p>Stormwater shall not be piped within the Sale Street road reserve or Sale Street footpath.</p> <p>Engineering plans for this internal stormwater system shall be submitted for approval prior to the issuing of a Construction Certificate.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
36	<p>Obtain approval for footpath awnings under s138 Roads Act 1993</p> <p>Approvals for the Summer Street and Sale Street footpath awnings must be obtained under Section 138 of the Roads Act 1993 from both Orange City Council and TfNSW prior to a Construction Certificate being issued or any intrusive works being carried out within the public road or footpath reserve.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>
37	<p>Engineering plans to be prepared for sewer main diversion</p> <p>The existing sewer main serving the rear of properties 110 – 122 Summer Street shall be diverted around the proposed building and connected via Sale Street into a suitable downstream sewer main located in either Summer Street or rear 26-30 Sale Street.</p> <p>Prior to the issue of a Construction Certificate engineering plans for the sewer main diversion and reconnection of properties 110 – 122 Summer Street shall be submitted</p>

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	to and approved by Orange City Council.
	Condition reason: To comply with Councils Sewer Infrastructure Services policy.
38	<p>Approval under section 138 of the Roads Act</p> <p>Prior to the issue of a construction certificate, an approval under Section 138 of the Roads Act 1993 must be obtained from Orange City Council to erect a structure on or over a public road or footpath reserve (encroachment of cantilevered awnings over the footpath in Summer and Sale streets. The application must include engineering design and certification, and public liability insurance.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements, and maintain adequate public health and safety measures.</p>
39	<p>External colours and finishes - requirements of Council</p> <p>Amended plans must be submitted with an application for a construction certificate. External materials and finishes must be comprised of the following changes to ensure the new building is visually recessive:</p> <ol style="list-style-type: none"> 1. The use of BRK-2 Austral Venetian Glass Brick "Smokey Quartz" and "Golden Amber" is not approved. 2. The base of the walls to the north, south, east and west elevations of the new building are to be clad where solid, with gloss ceramic subway tiles and standard tile capping piece to a height of 750mm or equal to one uniform shopfront cill level. 3. All brick is to be dry pressed face brick 'Bowral Gertrudis Brown' 4. Fake aluminium and timber look cladding is not supported in the heritage conservation area. Aluminium materials in a timber colour without faux texturing is acceptable. 5. The use of Black and Monument colours are not supported colours in the heritage conservation area. Basalt as a Grey is supported for key elements such as awning fascia. 6. Amended materials and finishes are to be nominated. Or equal is not approved. 7. All materials and finishes are to be keyed to elevations. 8. Submit amended materials and finishes schedule with specifications to Council for approval. <p>Condition reason: To ensure the exterior of the development is appropriate in the setting.</p>
40	<p>Landscaping - amended plan showing landscaping</p> <p>Prior to the issue of a construction certificate, a detailed landscape plan prepared by a qualified landscape architect showing all landscaping must be submitted to, and approved by Council.</p> <p>The landscape plan, drawn to scale, is to include at a minimum:</p> <ol style="list-style-type: none"> 1. landscape drawings, setout and planting plans 2. details for all retained trees, replacement trees on the northern and western elevation in stratavault cells and new trees in stratavault cells on the southern elevation, low planting in raised planters, tree planting details

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	<ol style="list-style-type: none"> 3. plant schedule with mature height and spread of trees, pot sizes, quantities, 4. details of watering systems, 5. technical specification; and 6. ongoing landscape maintenance plan.
	<p>Condition reason: To ensure a quality urban design for the development which complements the surrounding environment.</p>
41	<p>Summer Street tree - removal and replacement</p> <p>The existing street tree <i>Pyrus ussuriensis</i> (Manchurian pear) on the Summer Street frontage shall be removed.</p> <p>The tree must be replaced in a strata vault cell 16 m3 size is to be constructed in the parking lane of Summer Street immediately south of the bus zone sign and at full cost by the applicant. Replacement tree to be minimum 200L pot size at installation with tree species to be nominated by Council's Manager City Presentation.</p> <p>Prior to issue of a construction certificate, submit amended plan and tree details to Council for approval.</p>
	<p>Condition reason: To ensure no net loss in urban canopy in the CBD.</p>
42	<p>Sale Street tree retain and protection</p> <p>The removal of the existing mature <i>Quercus palustris</i> (Pin Oak) inroad planting in Sale Street is not approved.</p> <p>Prior to the issue of a construction certificate, submit amended plans and details to Council for approval, that depict the following design outcome on the Eastern Elevation:</p> <ol style="list-style-type: none"> 1. Retain existing Sale Street tree <i>Quercus palustris</i> (Pin Oak) 2. Minor canopy pruning to be carried out by Council's Manager of City Presentation 3. Amended awning design that makes allowance for mature street tree retention
	<p>Condition reason: To ensure no net loss of mature canopy trees in the CBD.</p>
43	<p>Southern Elevation planters</p> <p>Proposed nine (9) new <i>Pyrus calleryana</i> 'Capital' trees at 3m centres in three (3) 550mm tall planters on the southern elevation of the building is not approved.</p> <p>Prior to construction certificate, submit amended plans and details to Council for approval that depict the following design outcome on the Southern Elevation:</p> <ol style="list-style-type: none"> 1. Retain the planters with low groundcovers and shrubs species selected for clear sightlines and microclimate 2. Provide three new medium sized trees planted in three new strata vault cells 16 m3 size be constructed at the developers cost in three parking bays to be constructed at the developers cost 3. The location of the strata vault cells shall be to the satisfaction of Councils

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	<p>Manager City Presentation.</p> <p>Condition reason: To improve the visual presentation of the southern elevation and increase greening of the site.</p>
44	<p>Replacement tree planting on western elevation</p> <p>The removal of three (3) existing trees within the Village carpark on the Western Elevation is supported.</p> <p>The three (3) trees of suitable species and heights must be replaced in a strata vault cell 11 to 16 m³ size at 8m centres are to be constructed in the parking bays at the developers cost.</p> <p>Prior to construction certificate, submit amended plans and details to Council for approval.</p> <p>Condition reason: To improve the visual presentation of the Western Elevation and ensure no net loss of canopy trees in the Village carpark.</p>
45	<p>Capping detail</p> <p>Prior to works commencing submit plans and details to Council for approval for a capping detail with a minimum height of 150mm and 15mm recessed shadow line below between it and the panel, is to be provided at the parapet of all the new plain concrete panel walls.</p> <p>Condition reason: To improve the visual presentation of the new building.</p>
46	<p>Highlight windows</p> <p>All highlight window panels in the plain concrete wall panels on the Southern Elevation are to be deleted.</p> <p>Condition reason: To improve the visual presentation of the new building.</p>
47	<p>Heritage interpretation plan</p> <p>Prior to works commencing, submit an interpretation plan to Council for approval.</p> <p>The interpretation plan is to be prepared by the consulting heritage architect and related to the Barretts cordial business.</p> <p>The plan is to include a cast bronze plaque on the Summer Street retained facade and two interpretive panels with text and images at a minimum of 450x1200mm and mounted on selected solid walls on the West Elevation at a suitable height.</p> <p>Condition reason: To ensure appropriate heritage interpretation of the former building and uses on the site.</p>
48	<p>Public art zone</p> <p>Final details of the public art to be delivered by and at the developers cost. Public art plan is to be developed in consultation with the Manager of the Orange Regional Art Gallery and submitted to Council's heritage advisor and the Manager of Development Services for approval, prior to a construction certificate.</p>

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	<p>Condition reason: To ensure the “Public Art Zone” to a blank façade on the southern elevation is a high quality design outcome.</p>
49	<p>Public domain plans</p> <p>Public domain plans prepared by a qualified engineer based on an accurate survey, drawn to scale, including details for footpath and trafficable pavements, pits, edges, and a technical specification be submitted to Council and the principal certifier for approval prior to the issue of a construction certificate.</p> <p>Condition reason: To ensure the public domain surrounding the new building is high quality and ties into existing levels and services.</p>
50	<p>Site specific waste management plan</p> <p>A site specific waste management plan (SSWMP) is to be prepared and submitted to Council for approval prior to construction certificate.</p> <p>The SSWMP is to nominate the estimated volumes of waste, recyclables and FOGO waste that will be generated by the specialised retail (bulky goods) and retail premises. The SSWMP must quantify the appropriate allocation of suitable waste receptacles for each occupancy with storage space, a methodology of waste retrieval and nominated collection point(s) within the loading area. The plan must nominate the proposed contractor(s) and identify the number of receptacles for each waste category to be serviced on an ongoing basis from within the site.</p> <p>Condition reason: To ensure that waste generated by the three new tenants is managed and disposed of in an acceptable manner.</p>
51	<p>Revised drawing for pitched roof behind the retained facade of 108 Summer Street</p> <p>Prior to construction certificate, submit a revised drawing to Council's heritage advisor for approval, prepared by a qualified heritage architect that reconstructs the pitched roof in galvanised corrugated steel behind the retained facade to a length of 5m and to match the existing in pitch and flashings which corresponds on the West Elevation with the width of the first new retail bay and its module.</p> <p>Condition reason: To ensure the structural support for the retained facade is housed and improve the visual presentation of the building on the Western Elevation and approach to the CBD.</p>

Before building work commences

52	<p>Dilapidation report</p> <p>Before any site work commences, a dilapidation report must be prepared by a suitably qualified engineer detailing the structural condition of adjoining buildings, structures or</p>
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	<p>works and public land, to the satisfaction of the the principal certifier.</p> <p>Where access has not been granted to any adjoining properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and demonstrate, in writing, to the satisfaction of the the principal certifier , that all reasonable steps were taken to obtain access to the adjoining properties.</p> <p>No less than 7 days before any site work commences, adjoining building owner(s) must be provided with a copy of the dilapidation report for their property(ies) and a copy of the report(s) must be provided to Council (where Council is not the principal certifier) at the same time.</p> <p>Condition reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and Council are provided with the dilapidation report.</p>
53	<p>Tree protection measures</p> <p>Before any site work commences, Councils Manager City Presentation and the principal certifier the principal certifier, must be satisfied the measures for tree protection detailed in the construction site management plan are in place.</p> <p>Condition reason: To protect and retain trees.</p>
54	<p>Appoint PC</p> <p>Appoint Principal Certifier. The person having the benefit of the development consent and a construction certificate shall:</p> <ul style="list-style-type: none"> (a) Appoint a Principal Certifier and notify Council of the appointment (if Council is not appointed) and, (b) Notify Council of their intension to commence the erection of the building (at least two (2) day's notice is required) <p>The Principal Certifier shall determine when inspections and compliance certificates are required.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>
55	<p>Construction certificate required</p> <p>A construction certificate must be obtained from Council or an accredited certifier at least two (2) days prior to any building or ancillary work commencing. Where the construction certificate is obtained from an accredited certifier, the determination and all appropriate documents must be notified to Council within seven (7) days of the date of determination.</p> <p>Condition reason: To ensure compliance with Section 6.7 of the Environmental Planning and Assessment Act 1979, and Part 3 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.</p>
56	<p>Erosion and sediment control - implementation</p>

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	<p>Erosion and sediment controls shall be implemented onsite in accordance with Managing Urban Stormwater: Soils and Construction - Volume 1 (4th edition).</p> <p>Condition reason: To prevent site erosion and sediment loss, and protect waterways from sediment pollution.</p>
57	<p>Location and depth of sewer</p> <p>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.</p> <p>Condition reason: To ensure the utility services are available to the site and adequate for the development.</p>
58	<p>No commencement until details received</p> <p>The construction works the subject of this development consent MUST NOT be commenced until:</p> <ul style="list-style-type: none"> (a) Detailed plans/specifications of the building have been endorsed with a construction certificate by: <ul style="list-style-type: none"> (i) the Council, or (ii) a registered certifier, and (b) The person having the benefit of the development consent: <ul style="list-style-type: none"> (i) has appointed a Principal Certifier, and (ii) has notified the Council of the appointment, and (c) The person having the benefit of the development consent has given at least two (2) day's notice to the Council of the person's intention to commence the erection of the building; and (d) Builder's name and licence number has been supplied to Council or the Principal Certifier; or (e) Owner Builder's permit issued by Department of Fair Trading to be supplied to Council or the Principal Certifier; and (f) Home Building Compensation Fund (HBCF) has been paid and a copy of the Certificate supplied to Council or the Principal Certifier; and (g) A sign has been erected onsite in a prominent position containing the information prescribed by Clause 98A(2) and (3) of the EP&A Regulations, being the name, address and telephone number of the Principal Certifier for the work, name of the principal contractor for the work and telephone number on which that person may be contacted outside working hours, and stating that unauthorised entry to the site is prohibited. This sign must be maintained onsite while work is being carried out and removed when the work has been completed.

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	Condition reason: To ensure compliance with relevant statutory requirements.
59	Structural engineering drawings
	Prior to works commencing, submit full structural engineering drawings, details and specifications for the support of the existing building façade at 108 Summer Street that is to remain to ensure the structural adequacy of the building façade during and after demolition works to Council for approval.
	Condition reason: To ensure the structural adequacy of the building façade during and after demolition works.
60	Appointment of a heritage architect
	A heritage architect is to be appointed to advise on the construction drawings and during the construction period.
	Condition reason: To ensure that the works are appropriate and sufficient to retain the heritage significance of the structure.
61	Test excavation in accordance Section 139 or Section 140 of the Heritage Act 1977 (NSW)
	Test excavation in accordance Section 139 or Section 140 of the Heritage Act 1977 (NSW) be undertaken before any major works are carried out, in accordance with the recommendations in the Statement of Heritage Impact report prepared by Everick Heritage dated 21 August 2025.
	Condition reason: To satisfy the obligations of the developer under the Heritage Act 1977 (NSW)

During building work

62	Implementation of the site management plans
	While site work is being carried out:
	<ol style="list-style-type: none"> 1. the measures required by the construction site management plan and the erosion and sediment control plan (plans) must be implemented at all times; and 2. a copy of these plans must be kept on site at all times and made available to Council officers upon request.
	Condition reason: To ensure site management measures are implemented during the carrying out of site work.
63	Tree protection during work
	While site work is being carried out, all required tree protection measures must be maintained in good condition in accordance with:

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	<ol style="list-style-type: none"> 1. the construction site management plan <Insert required/approved> under this consent; 2. the relevant requirements of AS 4970 Protection of trees on development sites; and 3. PO 0.4-2 Planning Outcomes - Tree Preservation of Council's relevant development control plan (in force as at the date of determination of this consent) <p>This includes maintaining adequate soil grades and ensuring all machinery, builders refuse, spoil and materials remain outside tree protection zones.</p> <p>Condition reason: To protect trees during the carrying out of site work.</p>
64	<p>Adjustments to utility services</p> <p>Any adjustments to existing utility services that are made necessary by this development proceeding are to be at the full cost of the developer.</p> <p>Condition reason: To comply with Council's Development and Subdivision Code.</p>
65	<p>Asbestos material removal and disposal</p> <p>Any asbestos material must be removed and disposed of in accordance with the provisions of the <i>Work Health & Safety Act 2011</i> and any guidelines or Codes of Practice published by SafeWork NSW.</p> <p>Condition reason: To ensure asbestos materials are handled and disposed of in a safe manner.</p>
66	<p>Protection of the Environment Operations Act - material delivery</p> <p>All materials onsite or being delivered to the site are to be contained within the site. The requirements of the <i>Protection of the Environment Operations Act 1997</i> 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.</p> <p>Condition reason: To protect waterways from pollution by stockpiled or placed construction materials.</p>
67	<p>Unexpected finds - Aboriginal, relics, historical items</p> <p>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 must cease; and the NSW Office of Environment and Heritage (OEH), and representatives from the Orange Local Aboriginal Land Council must be notified. Where required, further archaeological investigation must 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.</p> <p>Condition reason: To ensure any unexpected or significant finds are investigated, recorded and conserved where necessary.</p>
68	<p>Unexpected finds - contamination</p>

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	<p>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 onsite must cease immediately. The beneficiary of the consent must discuss with Council the appropriate process that should be followed therein. Works onsite must not resume unless the express permission of Council's Director Development Services is obtained in writing.</p> <p>Condition reason: To ensure any unexpected finds of contamination are notified to Council and managed appropriately.</p>
69	<p>Provision of services</p> <p>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.</p> <p>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.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
70	<p>Driveway and parking areas</p> <p>All driveway, service vehicle manoeuvring and parking areas are to be sealed with hot mix or concrete and are to be designed for all expected loading conditions and be in accordance with the Orange City Council Development and Subdivision Code.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
71	<p>Heavy-duty kerb and gutter layback and footpath crossing</p> <p>A heavy-duty concrete kerb and gutter layback and footpath crossing is to be constructed on the Sale Street frontage (service vehicle laneway) to suit the turn path of an 8.8m Medium Rigid Vehicle. The works are to be carried out to the requirements of the Orange City Council Development and Subdivision Code and Road Opening Permit.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
72	<p>Stormwater drainage requirements</p> <p>All stormwater from the site is to be collected and piped to the existing stormwater drainage system located within the site. No stormwater pipes are permitted within the public footpath or Sale Street road reserve.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>

Before issue of an occupation certificate

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73	<p>Post-construction dilapidation report</p> <p>Before the issue of an Occupation Certificate a post-construction dilapidation report must be prepared by a suitably qualified engineer, to the satisfaction of the principal certifier, detailing whether:</p> <ol style="list-style-type: none"> a. after comparing the pre-construction dilapidation report to the post-construction dilapidation report required under this condition, there has been any structural damage to any adjoining buildings; and b. where there has been structural damage to any adjoining buildings, that it is a result of the work approved under this development consent; and c. a copy of the post-construction dilapidation report must be provided to Council (where Council is not the principal certifier or a principal certifier is not required) and to the relevant adjoining property owner(s). <p>Condition reason: To identify any damage to adjoining properties resulting from site work on the development site.</p>
74	<p>Preservation of survey marks</p> <p>Before the issue of an Occupation Certificate, documentation must be submitted by a registered surveyor to the principal certifier, which demonstrates that:</p> <ol style="list-style-type: none"> a. no existing survey mark(s) have been removed, damaged, destroyed, obliterated or defaced; or b. any survey mark(s) that were damaged, destroyed, obliterated or defaced have been re-established in accordance with the Surveyor General's Direction No. 11 – Preservation of Survey Infrastructure <p>Condition reason: To protect the State's survey infrastructure.</p>
75	<p>Removal of waste upon completion</p> <p>Before the issue of an Occupation Certificate:</p> <ol style="list-style-type: none"> a. all refuse, spoil and material unsuitable for use on-site must be removed from the site and disposed of in accordance with the approved waste management plan; and b. written evidence of the waste removal must be provided to the satisfaction of the principal certifier. c. Any chemical waste generated throughout construction must be disposed of to an approved waste management facility or otherwise lawfully managed. <p>Condition reason: To ensure waste material is appropriately disposed or satisfactorily stored.</p>
76	<p>Completion of works on public land and services</p> <p>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</p>

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	<p>infrastructure assets.</p> <p>Condition reason: To comply with Council's Development and Subdivision Code.</p>
77	<p>Completion of works relating to road opening permit</p> <p>A Road Opening Permit Certificate of Compliance is to be issued for the works by Council prior to any Occupation Certificate being issued for the development.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>
78	<p>No use or occupation without occupation certificate</p> <p>No person is to use or occupy the building or alteration that is the subject of this approval with the prior issuing of an occupation certificate.</p> <p>Condition reason: To ensure compliance with the Building Code of Australia.</p>
79	<p>Section 68 final - water and sewer</p> <p>Where Orange City Council is not the Principal Certifier, a final inspection of water connection, sewer and stormwater drainage shall be undertaken by Orange City Council and a compliance certificate issued, prior to the issue of an occupation certificate.</p> <p>Condition reason: To ensure the utility services are available to the site and adequate for the development.</p>
80	<p>Stormwater detention certification</p> <p>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 issue of an Occupation Certificate.</p> <p>Condition reason: To comply with Council's Development and Subdivision Code.</p>
81	<p>Stormwater treatment system certification</p> <p>A Certificate of Compliance, from a Qualified Engineer, stating that the stormwater treatment system complies with the approved engineering plans is to be submitted to the Principal Certifying Authority prior to the issuing of an Occupation Certificate.</p> <p>Condition reason: To comply with Council's Development and Subdivision Code.</p>
82	<p>Stormwater treatment system maintenance agreement</p> <p>Prior to the issuing of an Occupation Certificate the applicant shall enter into a service agreement with the stormwater treatment system manufacturer / distributor for the ongoing maintenance of the unit. The service agreement shall not be amended or deleted without the agreement of Orange City Council.</p> <p>Condition reason: To ensure the stormwater treatment system is operating satisfactorily.</p>

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83	<p>Easements for sewer mains to be registered</p> <p>An easement, to drain sewage and to provide Council access for maintenance of sewerage works; a minimum of 2.0 metres wide is to be created over the existing and any new sewer mains located within the site. Evidence of the registration of the sewer easement shall be provided to the certifier prior to the issuing of an Occupation Certificate.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
84	<p>Waste collection agreement to be in place</p> <p>Prior to the issuing of an Occupation Certificate the applicant shall enter into a service agreement with a waste contractor for the collection of garage, recycling and organic waste in association with the Tenancies 1-3 from within the common loading area. The waste service agreement shall not be amended or deleted without the agreement of Orange City Council.</p> <p>Condition reason: To ensure that waste servicing occurs within the site.</p>
85	<p>Maximum size vehicle</p> <p>The maximum sized delivery vehicle permitted to enter the development is an 8.8 metre length Medium Rigid Vehicle.</p> <p>Condition reason: To comply with Councils Development and Subdivision Code.</p>
86	<p>Public art delivery</p> <p>Approved public art is to be delivered and approved by Council's heritage advisor and the Principal Certifier prior to Occupation Certificate.</p> <p>Condition reason: To ensure delivery of approved public art on the Southern Elevation.</p>

Occupation and ongoing use

87	<p>Graffiti removal</p> <p>During ongoing use of the premises, ensure graffiti is removed from the exterior of the building or associated structures, including any site services and retaining/planter bed walls.</p> <p>Condition reason: To protect and preserve the visual amenity of the surrounding public domain</p>
88	<p>Annual fire safety statement</p> <p>The owner is required to provide to Council and to the NSW Fire Commissioner an Annual Fire Safety Statement in respect of the fire-safety measures as required by Part 10 of the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation</i>.</p> <p>Condition reason: To ensure compliance with relevant statutory requirements.</p>

Attachment 1 DRAFT Notice of Determination

89	Stormwater treatment system certification
	Copies of maintenance records for servicing of the stormwater treatment system shall be forwarded to Orange City Council on 1 December annually.
	Condition reason: To ensure the stormwater treatment system is operating satisfactorily.
90	Maintain on-site stormwater detention system
	No works or modifications are to be carried out on site that affect the continued operation of the on-site storm water detention system. The stormwater detention system shall be maintained to ensure the system operates in accordance with the approved engineering design.
	Condition reason: To comply with Orange City Councils Development and Subdivision Code.
91	Waste servicing
	Waste bins for each commercial tenancy shall be placed in the nominated bin collection area within the common loading area. Bins shall not be stored in the access laneway area at any time.
	Kerbside placement of waste bins on Sale Street is not permitted.
	Condition reason: To ensure that waste servicing occurs within the site.
92	Maximum size vehicle
	The maximum sized delivery vehicle permitted to enter the development is an 8.8 metre length Medium Rigid Vehicle.
	Condition reason: To comply with Councils Development and Subdivision Code.

General advisory notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the [Conditions of development consent: advisory notes](#). The consent should be read together with the *Conditions of development consent: advisory notes* to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a construction certificate or subdivision works certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.

DRAFT

Dictionary

The following terms have the following meanings for the purpose of this determination (except where the context clearly indicates otherwise):

Approved plans and documents means the plans and documents endorsed by the consent authority, a copy of which is included in this notice of determination.

AS means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

Building work means any physical activity involved in the erection of a building.

Certifier means a council or a person that is registered to carry out certification work under the *Building and Development Certifiers Act 2018*.

Construction certificate means a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation and *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

Council means ORANGE CITY COUNCIL.

Court means the Land and Environment Court of NSW.

EPA means the NSW Environment Protection Authority.

EP&A Act means the *Environmental Planning and Assessment Act 1979*.

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Independent Planning Commission means Independent Planning Commission of New South Wales constituted by section 2.7 of the EP&A Act.

Occupation certificate means a certificate that authorises the occupation and use of a new building or a change of building use for an existing building in accordance with this consent.

Principal certifier means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

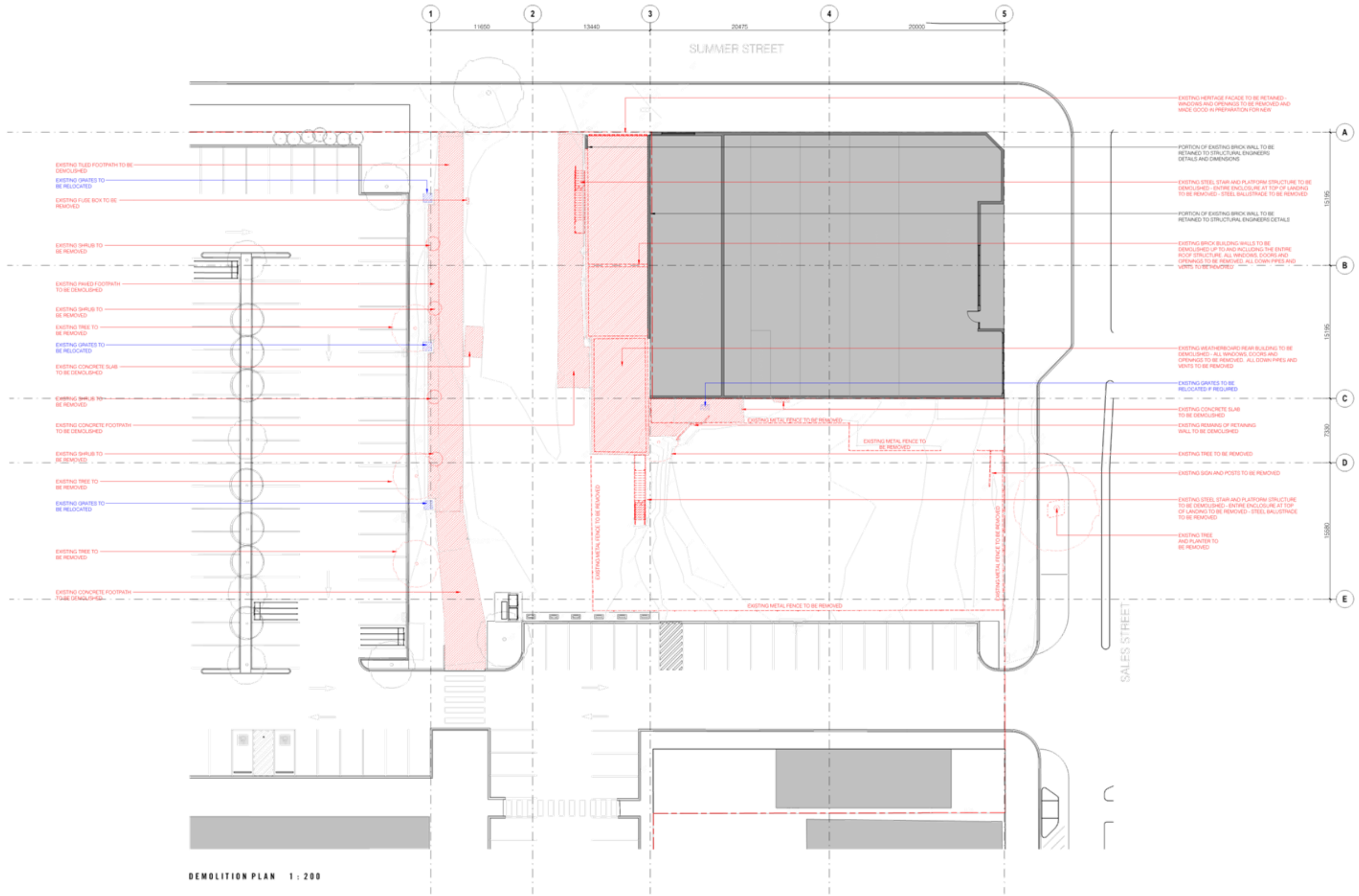
Site work means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

Stormwater drainage system means all works and facilities relating to:

- the collection of stormwater,
- the reuse of stormwater,
- the detention of stormwater,
- the controlled release of stormwater, and
- connections to easements and public stormwater systems.

Strata certificate means a certificate in the approved form issued under Part 4 of the *Strata Schemes Development Act 2015* that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

Sydney district or regional planning panel means Western Regional Planning Panel.

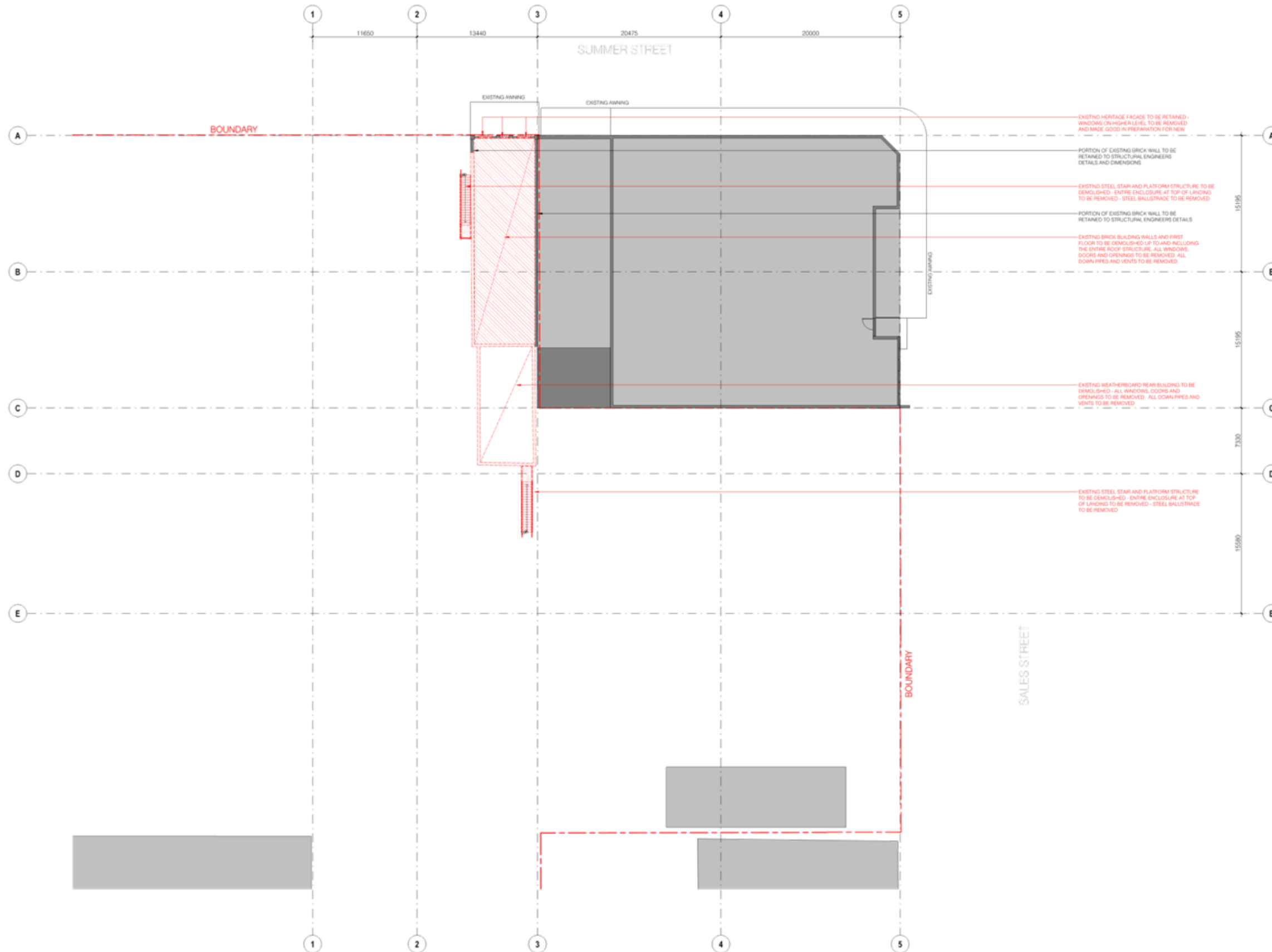


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8	10/01/2024	MD	MD
9	10/01/2024	MD	MD
10	10/01/2024	MD	MD

ORANGE - RETAIL DEVELOPMENT
 86-102 SUMMER STREET, ORANGE, NSW 2800



CONFIRM POSITIONS OF ALL EXISTING STRUCTURE & SERVICES ON SITE - ALL DIMENSIONED AREAS AND ELS ARE TO BE VERIFIED.			
Project	2024-325	Issue	R08
Scale	1:200	Checked	BVI
Designed	MD	Issue	R08



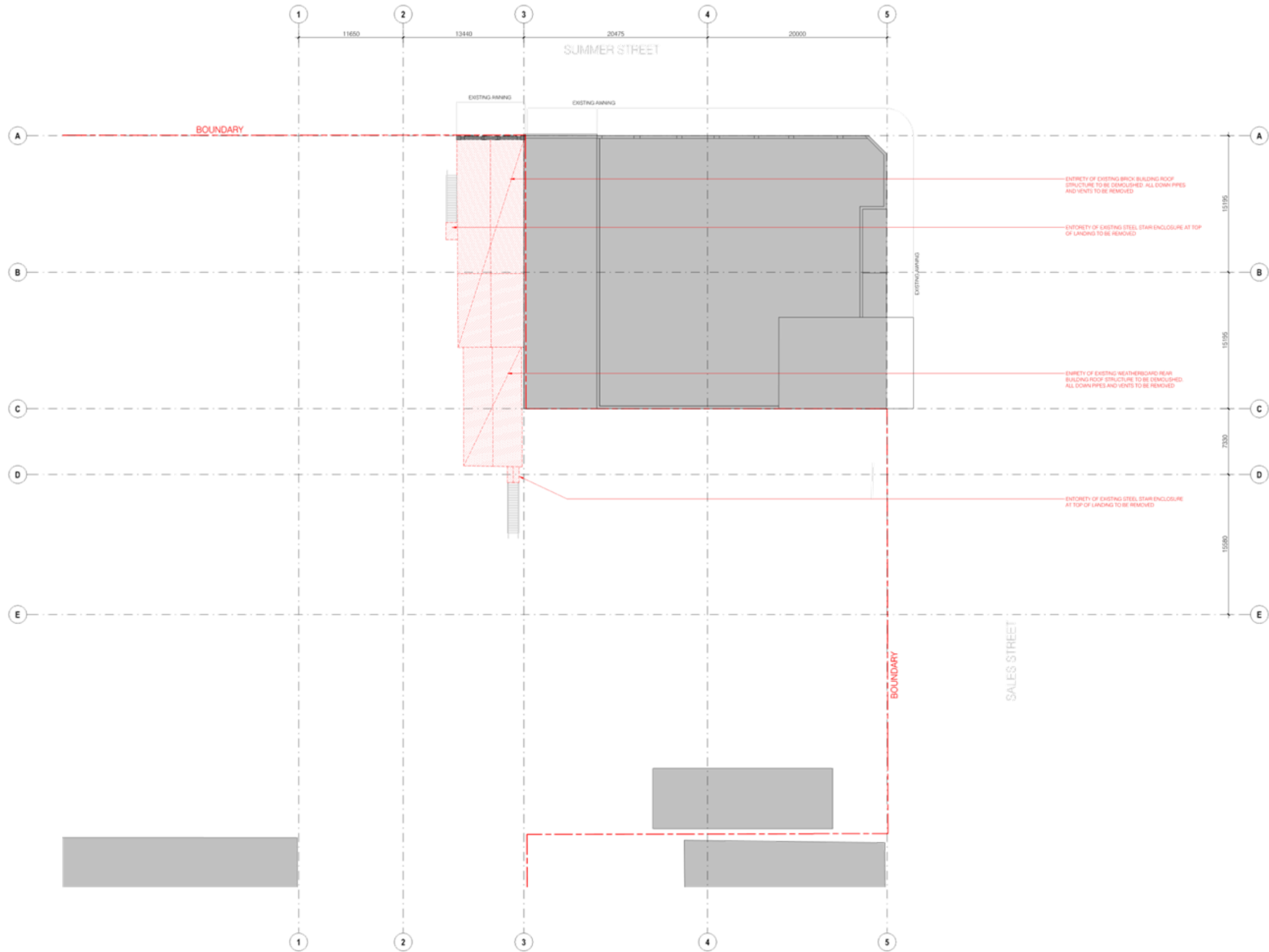
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4	2024-03-25	DA17	BVI
5	2024-03-25	DA17	BVI

ORANGE - RETAIL DEVELOPMENT
86-102 SUMMER STREET, ORANGE, NSW 2800



DEMOLITION LEVEL 01 FLOOR PLAN
DEVELOPMENT APPLICATION

CONFIRM POSITIONS OF ALL EXISTING STRUCTURE & SERVICES ON SITE - ALL DIMENSIONED AREAS AND RL'S ARE TO BE VERIFIED.		
Project	2024-325	Issue
Scale	1:200	Issue
Designed	TBA	Checked
Drawn	TBA	By



NO.	DATE	DESCRIPTION	BY
1	15/03/2024	ISSUED FOR PERMIT	DA18
2	15/03/2024	ISSUED FOR PERMIT	DA18
3	15/03/2024	ISSUED FOR PERMIT	DA18
4	15/03/2024	ISSUED FOR PERMIT	DA18
5	15/03/2024	ISSUED FOR PERMIT	DA18

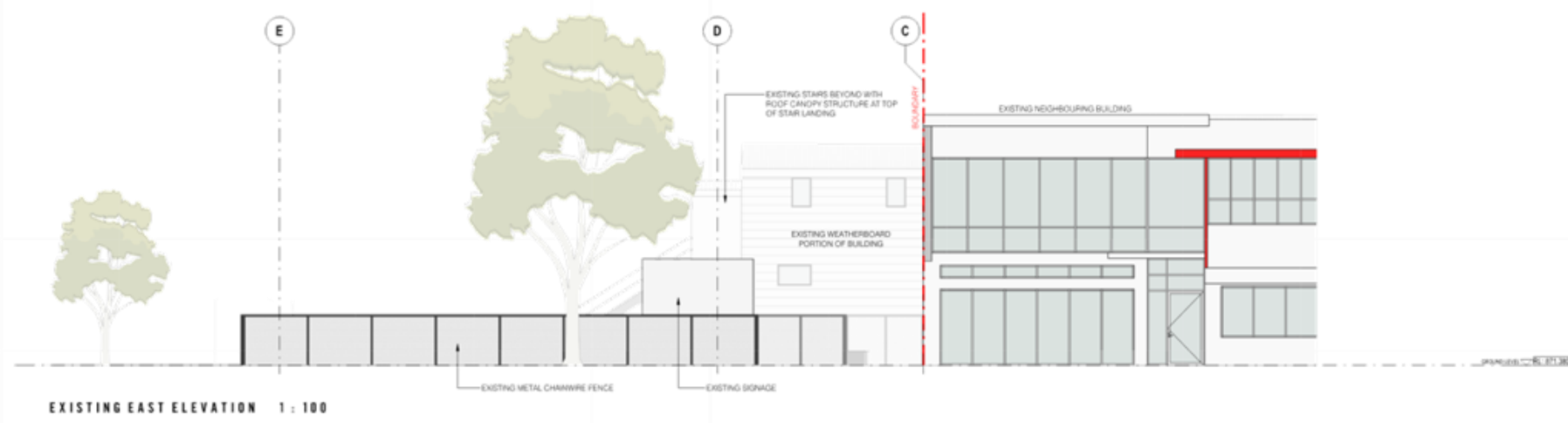
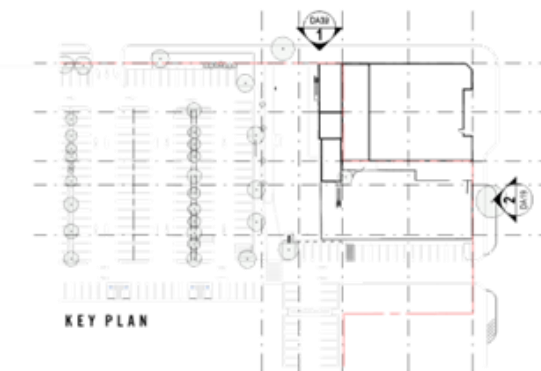
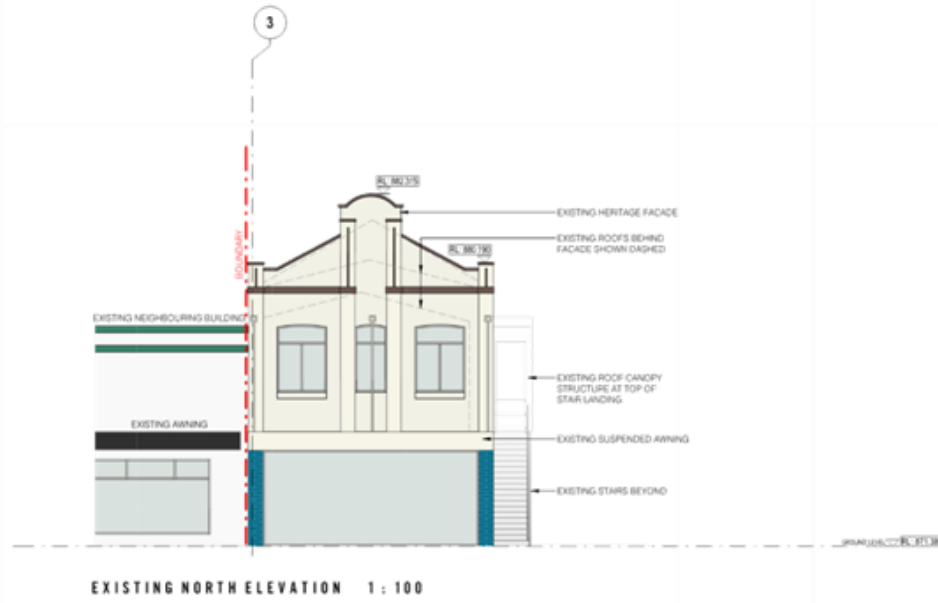
ORANGE - RETAIL DEVELOPMENT
86-102 SUMMER STREET, ORANGE, NSW 2800



DEMOLITION ROOF LEVEL FLOOR PLAN
DEVELOPMENT APPLICATION

CONFIRM POSITIONS OF ALL EXISTING STRUCTURE & SERVICES ON SITE - ALL DIMENSIONED AREAS AND RL'S ARE TO BE VERIFIED.

Project	2024-325	Drawing no.	DA18	Issue	R03
Scale	1:200	Designed	TBA	Checked	BVI



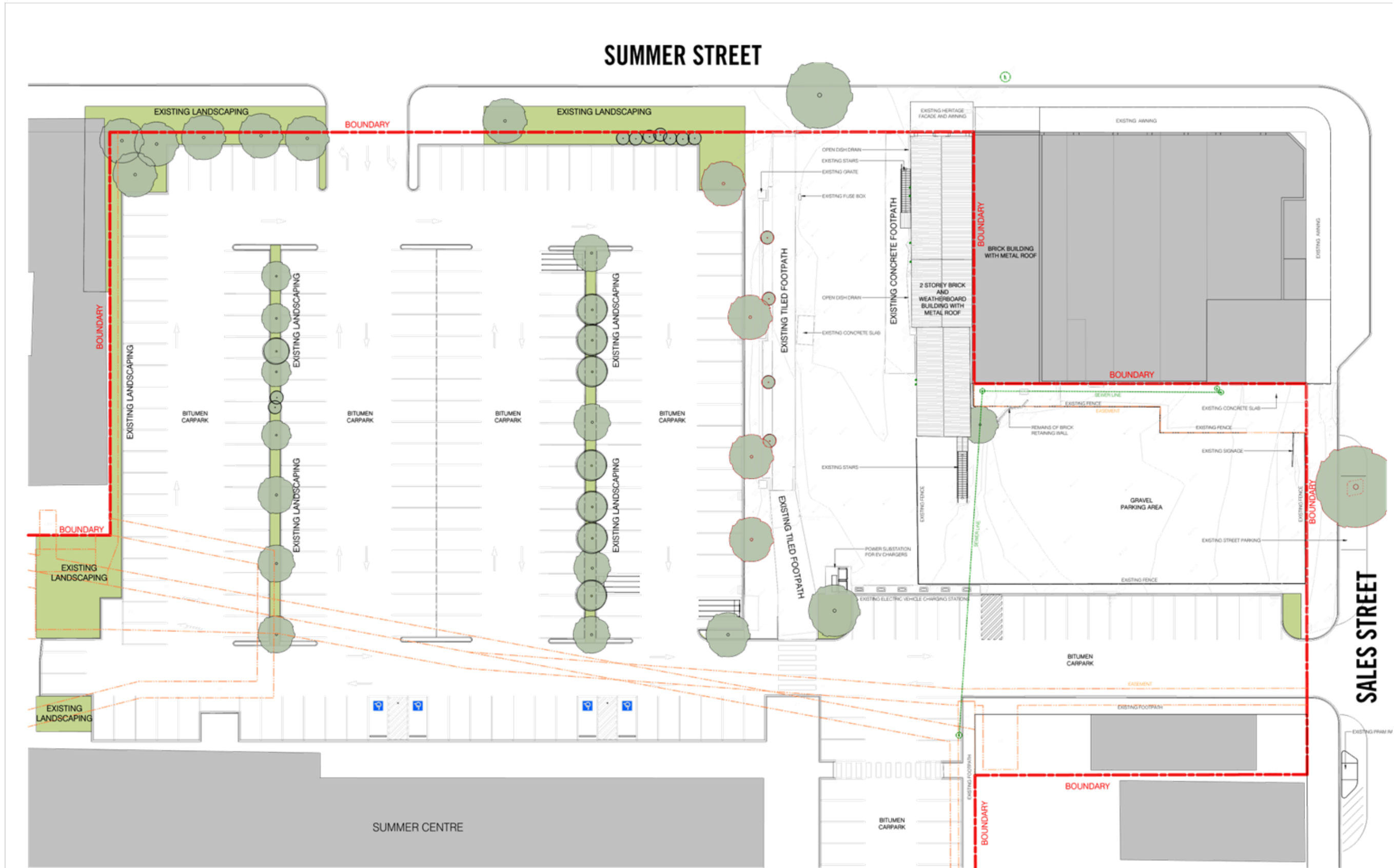
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5	2024-03-25	MD	BVI

ORANGE - RETAIL DEVELOPMENT
86-102 SUMMER STREET, ORANGE, NSW 2600



EXISTING ELEVATIONS
DEVELOPMENT APPLICATION

Project	2024-325	Drawing no.	DA19	Issue	R05
Scale	As indicated	Designed	MD	Checked	BVI



NO.	DESCRIPTION	DATE
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2	REVISION	2024-03-25
3	REVISION	2024-03-25
4	REVISION	2024-03-25
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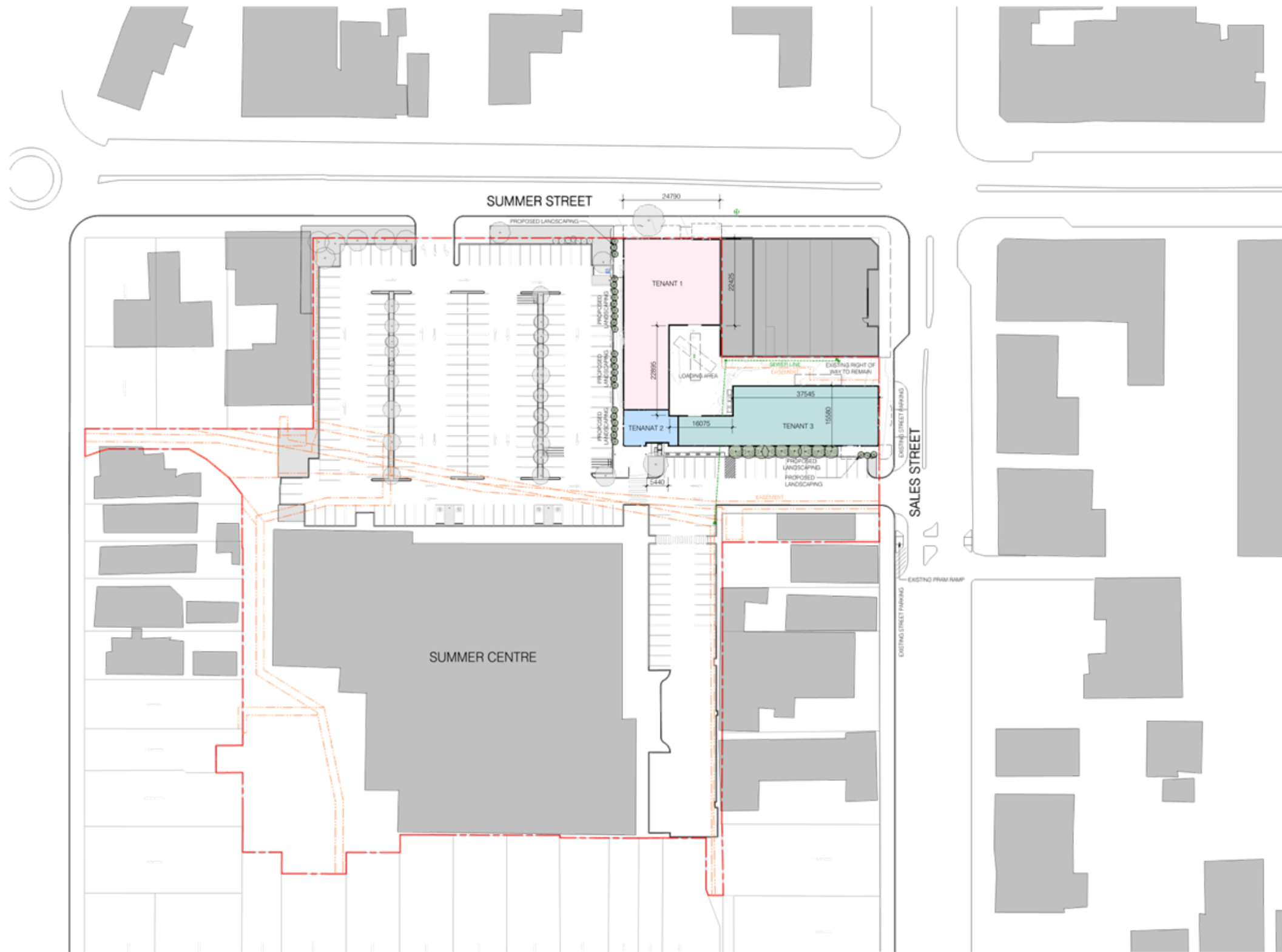
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EXISTING SITE PLAN
DEVELOPMENT APPLICATION

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Scale	0:41	Designed	MD	Checked	BVI
Scale	1:200				



NO.	DATE	DESCRIPTION
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2	15/02/2024	REVISED FOR PRELIMINARY REVIEW
3	20/03/2024	REVISED FOR PRELIMINARY REVIEW
4	25/04/2024	REVISED FOR PRELIMINARY REVIEW
5	30/05/2024	REVISED FOR PRELIMINARY REVIEW
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7	10/07/2024	REVISED FOR PRELIMINARY REVIEW
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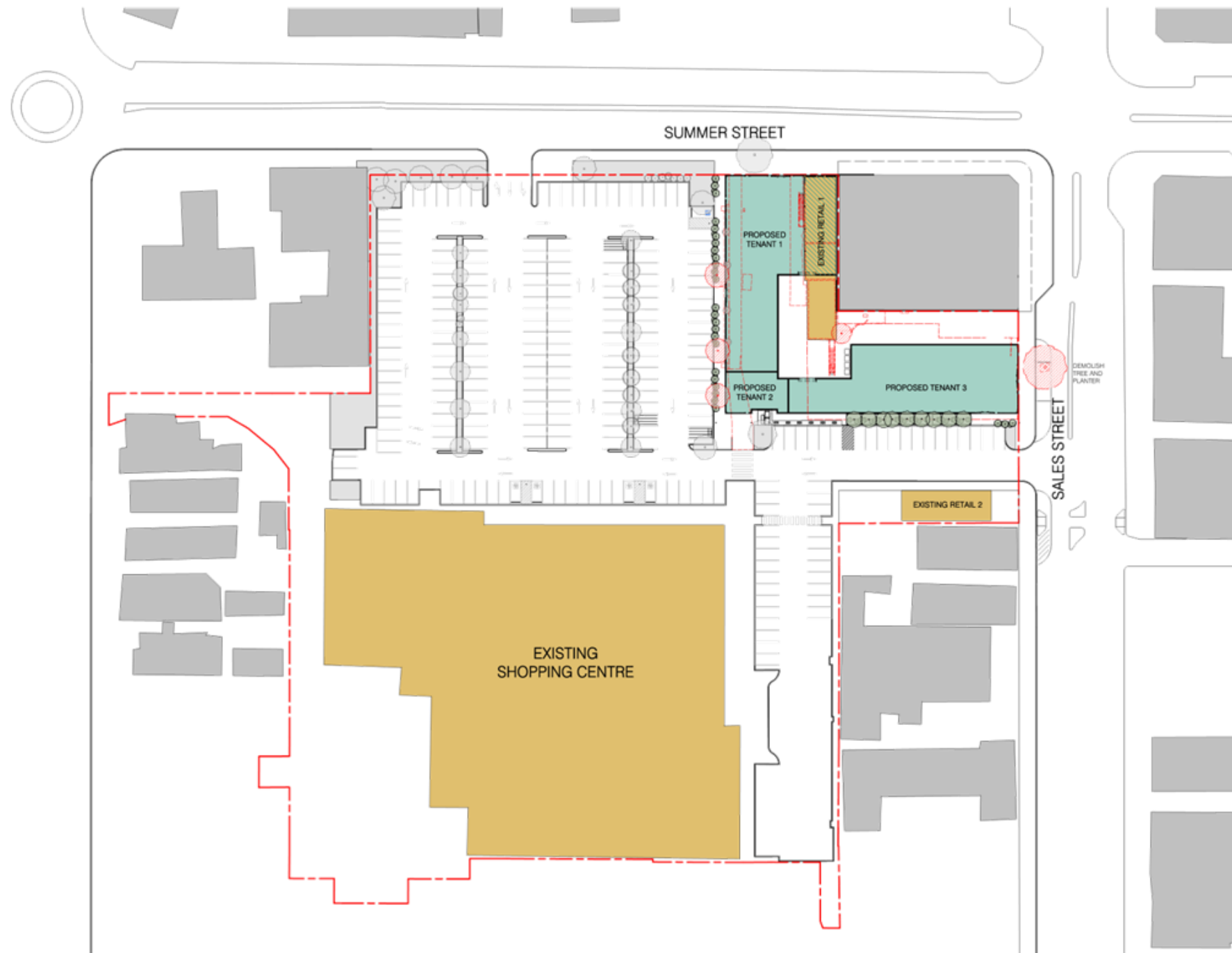
ORANGE - RETAIL DEVELOPMENT
86-102 SUMMER STREET, ORANGE, NSW 2800



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PROPOSED SITE PLAN
DEVELOPMENT APPLICATION

Project	2024-325	Drawing no.	DA21	Issue	R07
Scale	1:500	Designed	MD	Checked	BVI



GROSS FLOOR AREA (GFA) ANALYSIS SCHEDULE

EXISTING SHOPPING CENTRE = 3006 m ²	NOTE: ALL AREAS HAVE BEEN CALCULATED USING THE SAME APPROACH i.e. EXCLUDING PLANT ROOMS, LOADING DOCKS / AREAS AND ANY OTHER NON-GFA COMPONENTS. ALL EXISTING AREAS ARE SUBJECT TO MINOR DISCREPANCIES RESULTING FROM UNSURVEYED OR UNDETERMINED AREAS.
EXISTING RETAIL 1 = 260 m ²	
EXISTING RETAIL 2 = 130 m ²	
TOTAL = 3401 m²	
OVERLAPPING EXISTING / PROPOSED AREA = 190 m ²	
PROPOSED TENANT 1 = 800 m ²	
PROPOSED TENANT 2 = 120 m ²	
PROPOSED TENANT 3 = 678 m ²	
TOTAL = 1598 m²	
3401 (EXISTING TOTAL) - 260 (EXISTING RETAIL 1) + 1598 (PROPOSED)	
TOTAL NEW GFA = 4739 m²	
NET CHANGE IN GFA = 4739 - 3401 = +1338 m²	
TOTAL SITE AREA = 25000 m ²	
PERCENTAGE = 32%	

NO.	DATE	BY	CHKD.
1	10/04/2024	MD	MD
2	10/04/2024	MD	MD
3	10/04/2024	MD	MD
4	10/04/2024	MD	MD
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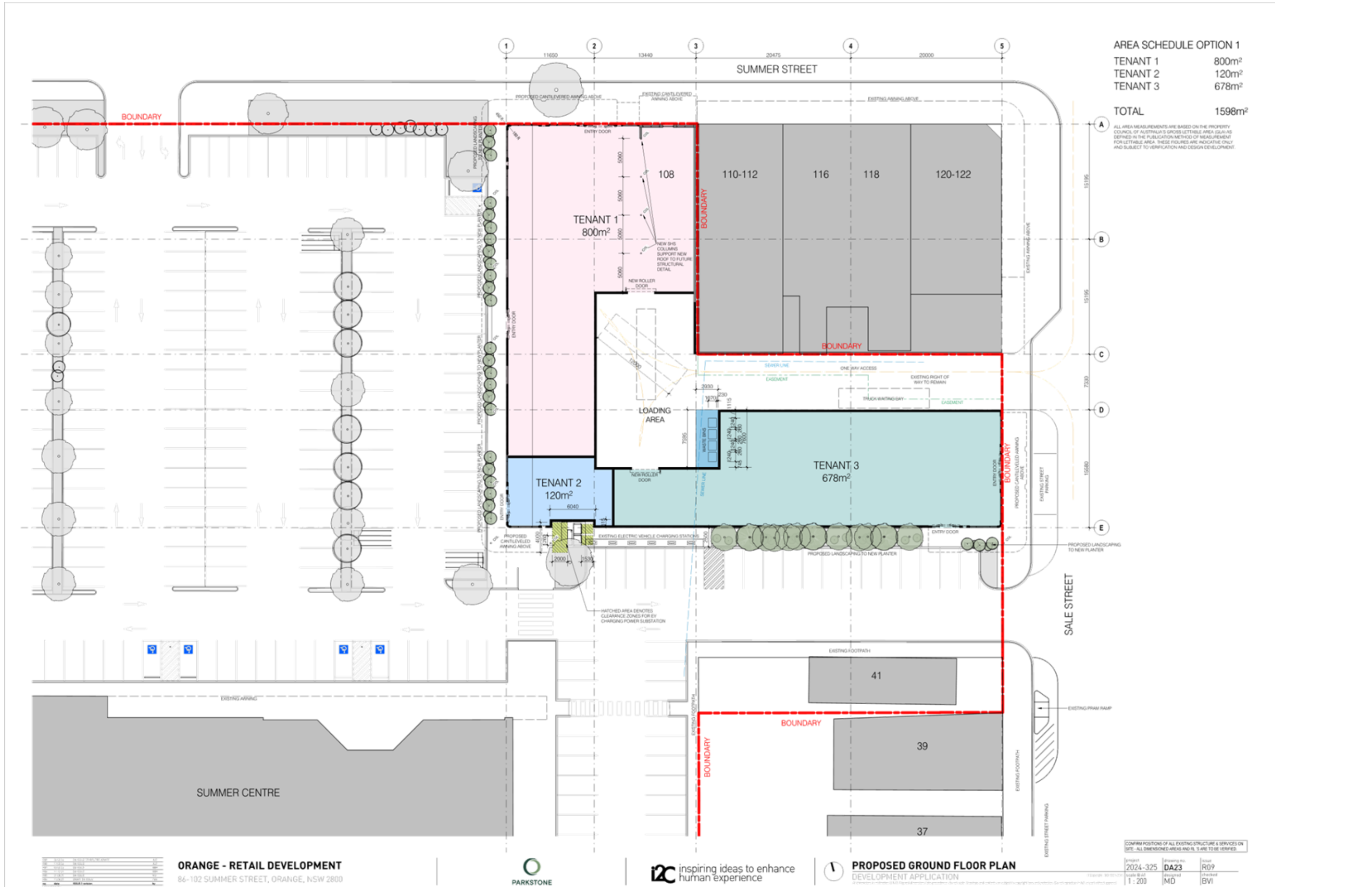
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GFA ANALYSIS PLAN
DEVELOPMENT APPLICATION

Project	2024-325	Drawing no.	DA22	Issue	R06
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Scale	1:500				



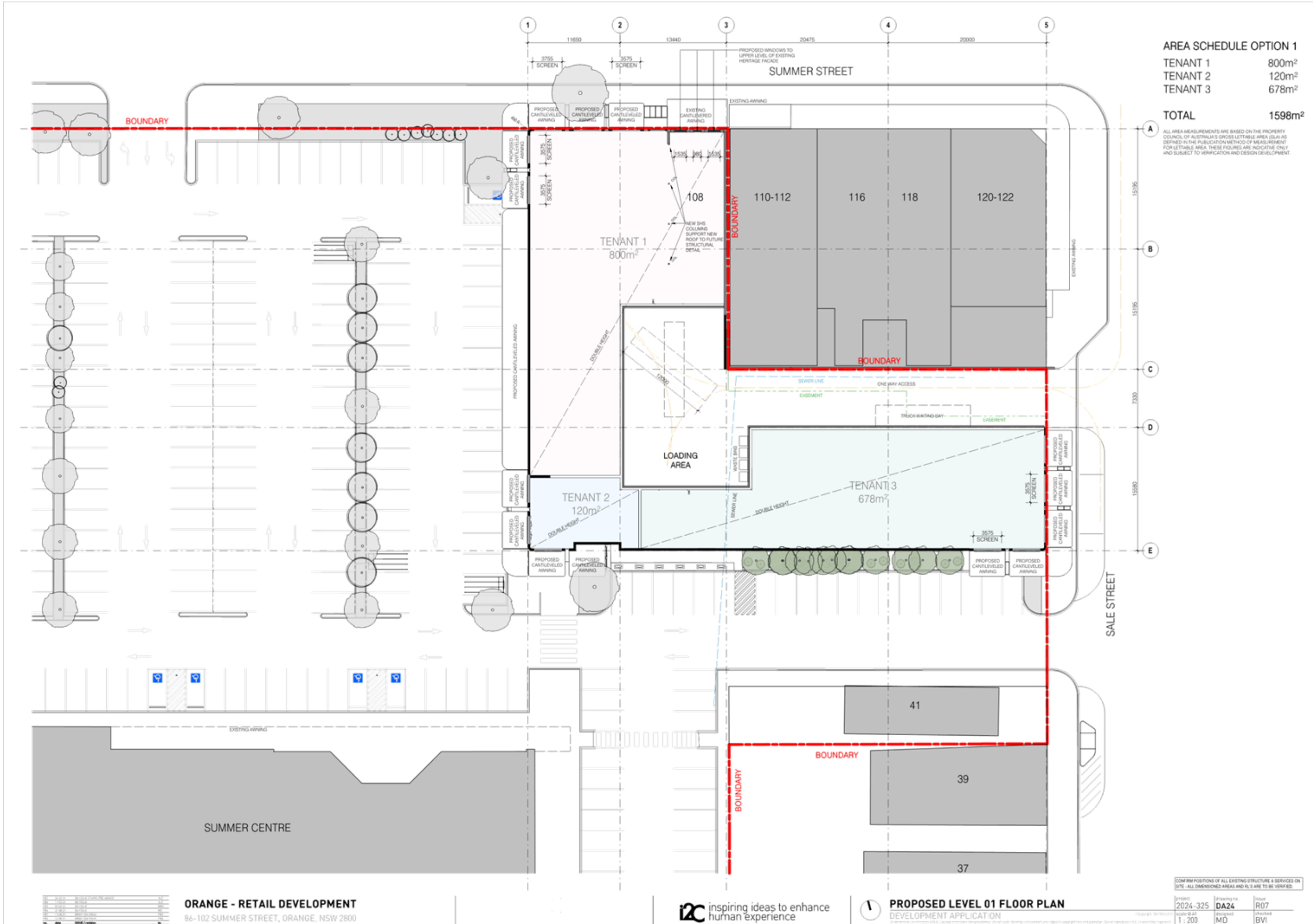
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4	10/04/2024	MD	ISSUED FOR PERMIT
5	10/04/2024	MD	ISSUED FOR PERMIT

ORANGE - RETAIL DEVELOPMENT
86-102 SUMMER STREET, ORANGE, NSW 2800



PROPOSED GROUND FLOOR PLAN
DEVELOPMENT APPLICATION

Project	Drawing No.	Issue
2024-325	DA23	R09
Scale: 1:200	MD	BVI



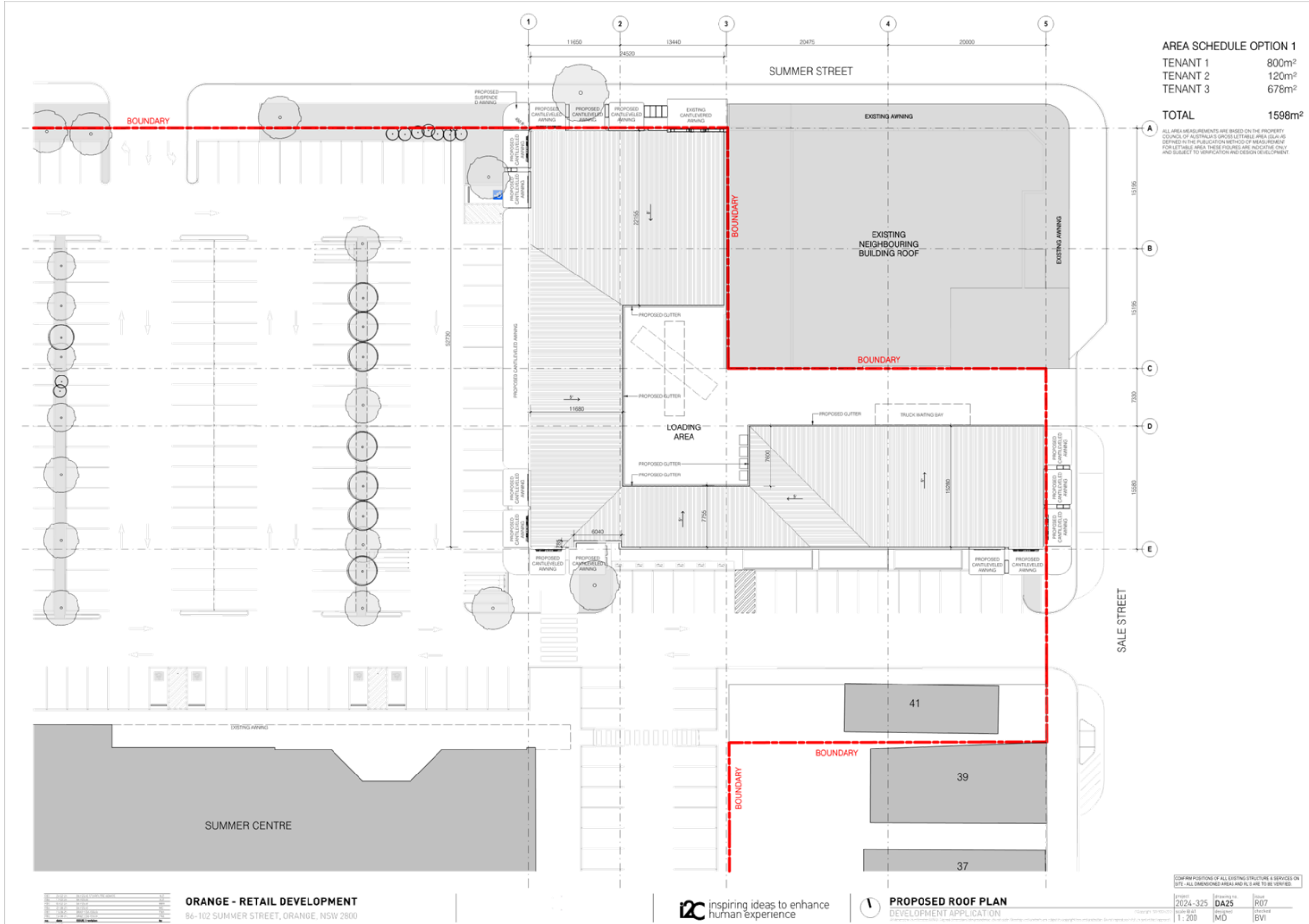
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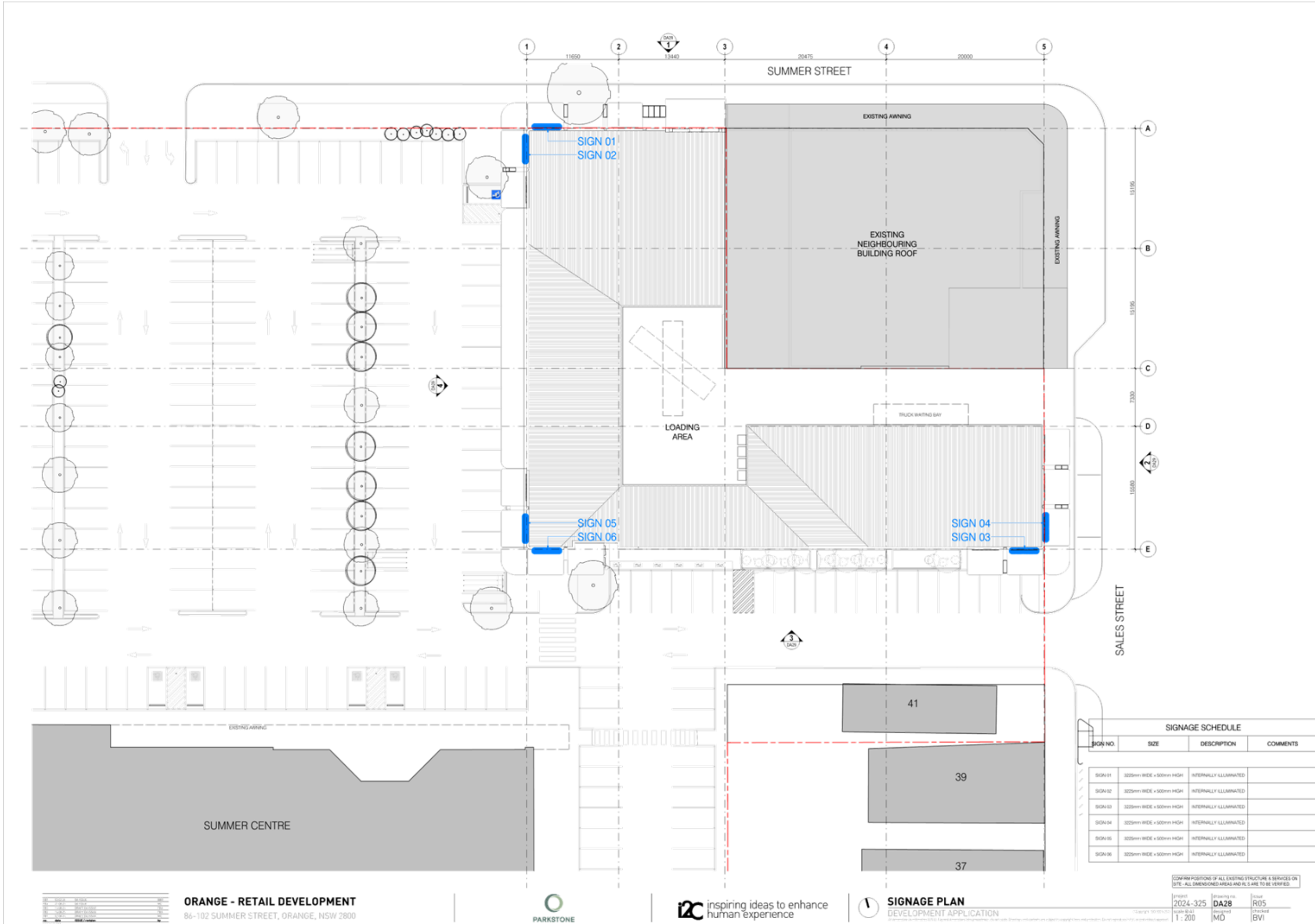
ORANGE - RETAIL DEVELOPMENT
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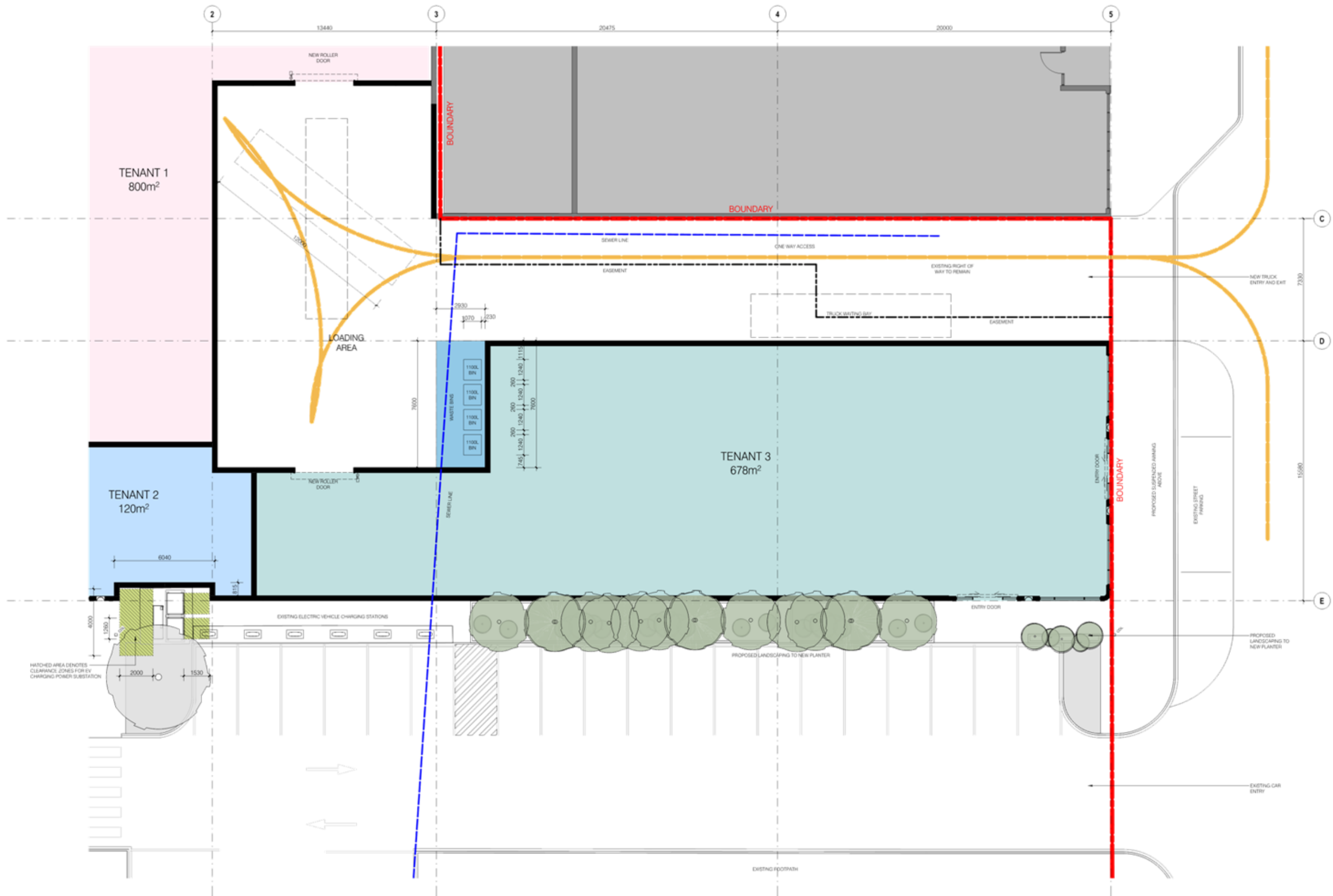
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PROPOSED LEVEL 01 FLOOR PLAN
 DEVELOPMENT APPLICATION

Project	2024-325	Drawing no.	DA24	Issue	R07
Scale	0:1	Designed	MD	Checked	BVI
Scale	1:200				







ORANGE - RETAIL DEVELOPMENT
 86-102 SUMMER STREET, ORANGE, NSW 2800



PROPOSED WASTE MANAGEMENT PLAN
 DEVELOPMENT APPLICATION

CONFIRM POSITIONS OF ALL EXISTING STRUCTURE & SERVICES ON SITE - ALL DIMENSIONED AREAS AND RL'S ARE TO BE VERIFIED.

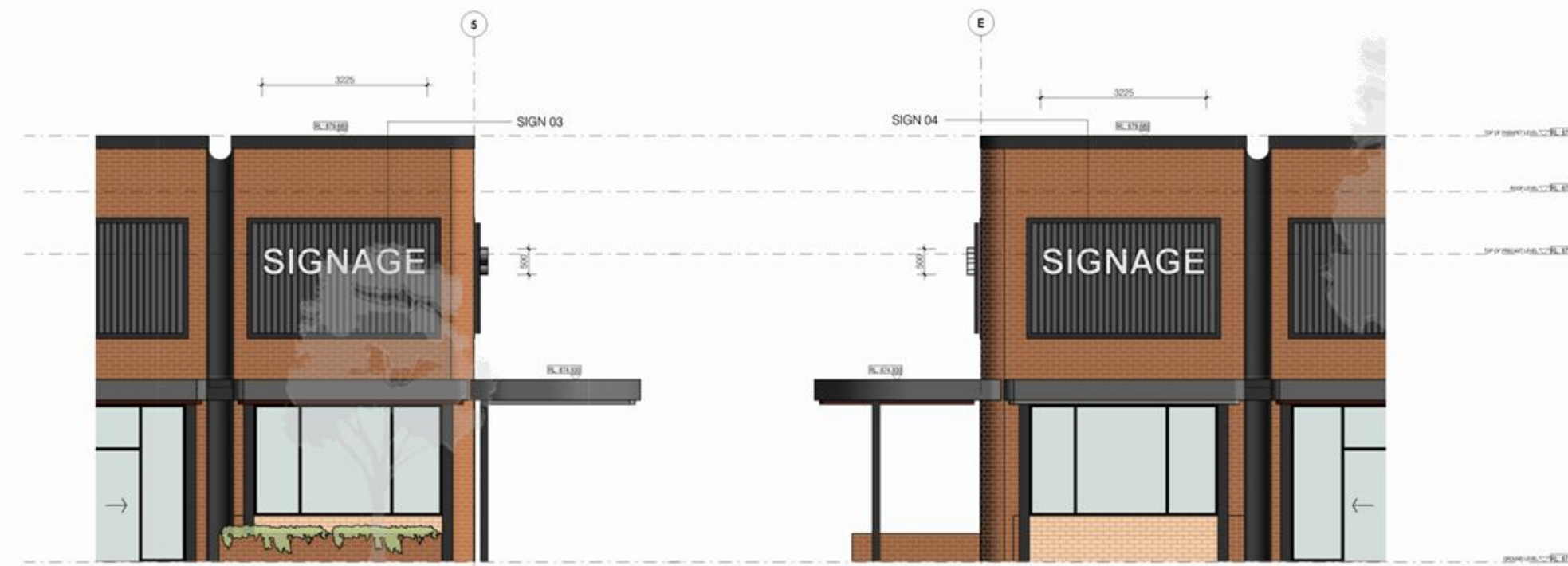
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Scale	As at	Designed	MD	Checked	BVI
Scale	1:100				





NORTH ELEVATION SIGNAGE 1 : 50

WEST ELEVATION SIGNAGE 1 : 50



SOUTH ELEVATION SIGNAGE 1 : 50

EAST ELEVATION SIGNAGE 1 : 50



SIGNAGE SCHEDULE			
SIGN NO.	SIZE	DESCRIPTION	COMMENTS
SIGN 01	3025mm WDE x 1500mm HIGH	INTERNALLY ILLUMINATED	
SIGN 02	3025mm WDE x 1500mm HIGH	INTERNALLY ILLUMINATED	
SIGN 03	3025mm WDE x 1500mm HIGH	INTERNALLY ILLUMINATED	
SIGN 04	3025mm WDE x 1500mm HIGH	INTERNALLY ILLUMINATED	
SIGN 05	3025mm WDE x 1500mm HIGH	INTERNALLY ILLUMINATED	
SIGN 06	3025mm WDE x 1500mm HIGH	INTERNALLY ILLUMINATED	

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMIT	10/04/2025
2	REVISED PER COMMENTS	15/04/2025
3	REVISED PER COMMENTS	20/04/2025
4	REVISED PER COMMENTS	25/04/2025
5	REVISED PER COMMENTS	30/04/2025
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ORANGE - RETAIL DEVELOPMENT
86-102 SUMMER STREET, ORANGE, NSW 2800



i2c inspiring ideas to enhance human experience

SIGNAGE ELEVATIONS
DEVELOPMENT APPLICATION

CONFIRM POSITIONS OF ALL EXISTING STRUCTURE & SERVICES ON SITE - ALL DIMENSIONED AREAS AND RL'S ARE TO BE VERIFIED.

Project	2024-325	Drawing no.	DA31	Issue	R06
Scale	As indicated	Author	MD	Checked	BVI



FINISHES SCHEDULE	
BRK-1	BONNIE T1 GERTUOS BROWN
BRK-2	AUSTRALBRICKS GLASS BRICK
GL-01	CLEAR GLASS
POC-1	POWDERCOAT FINISH - BLACK
PF-01	PAINT FINISH - DARK GREY
PF-02	PAINT FINISH - DARK BROWN RED
PF-03	PAINT FINISH - CREAM Y34
PF-04	PAINT FINISH - WHITE N14
PF-05	PAINT FINISH - PASTEL GREEN
PF-06	PAINT FINISH - BASALT



EXISTING SUMMER STREET ELEVATION 1:200



PROPOSED SUMMER STREET ELEVATION 1:200

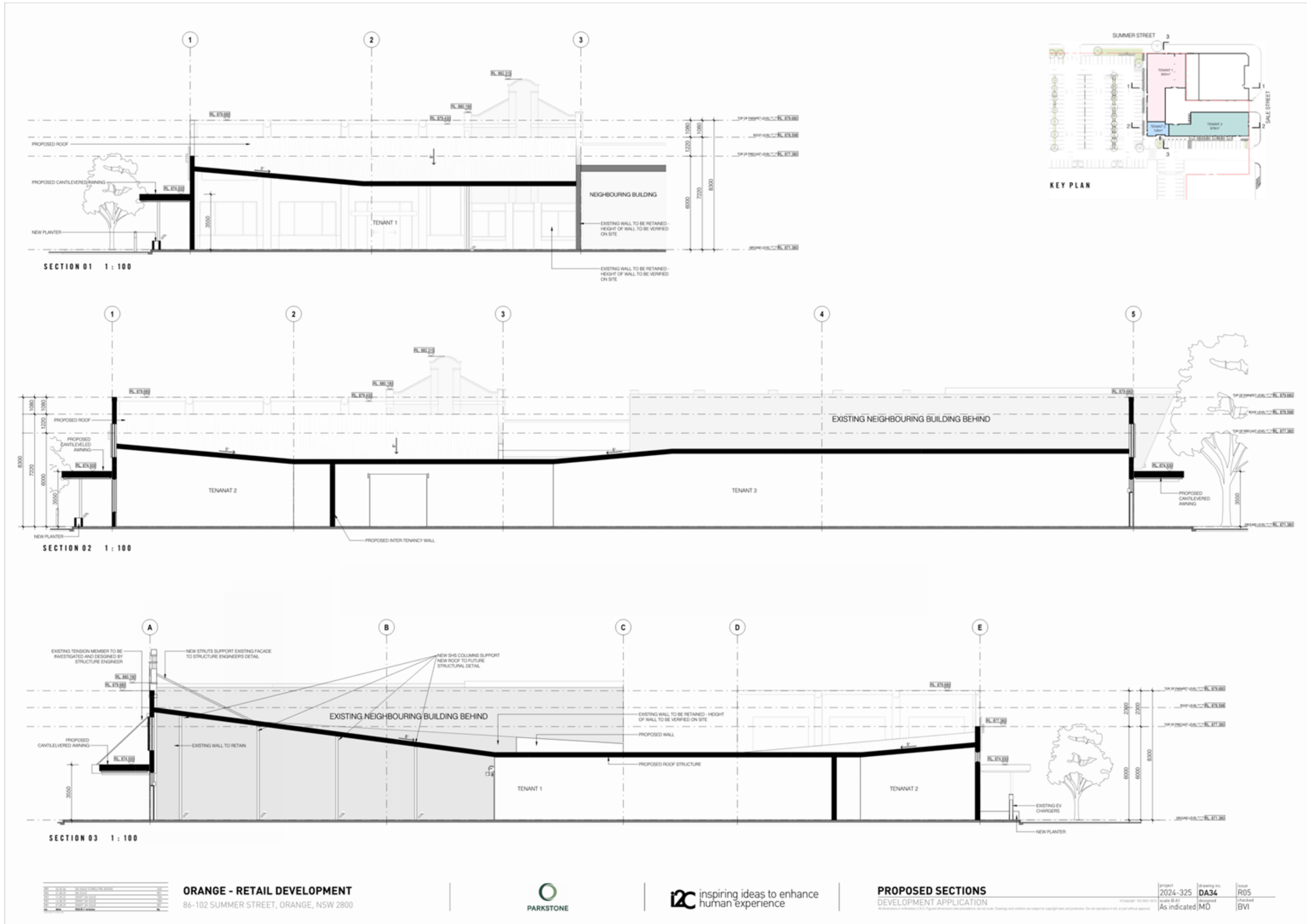
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9	ISSUED FOR DA	15/04/2025
10	ISSUED FOR DA	15/04/2025

ORANGE - RETAIL DEVELOPMENT
86-102 SUMMER STREET, ORANGE, NSW 2800



STREETSCAPE ELEVATION
DEVELOPMENT APPLICATION

CONFIRM POSITIONS OF ALL EXISTING STRUCTURE & SERVICES ON SITE - ALL DIMENSIONED AREAS AND RL'S ARE TO BE VERIFIED.		
Project	Drawing No.	Issue
2024-325	DA32	R06
Scale	As indicated	Checked
	TBA	BVI



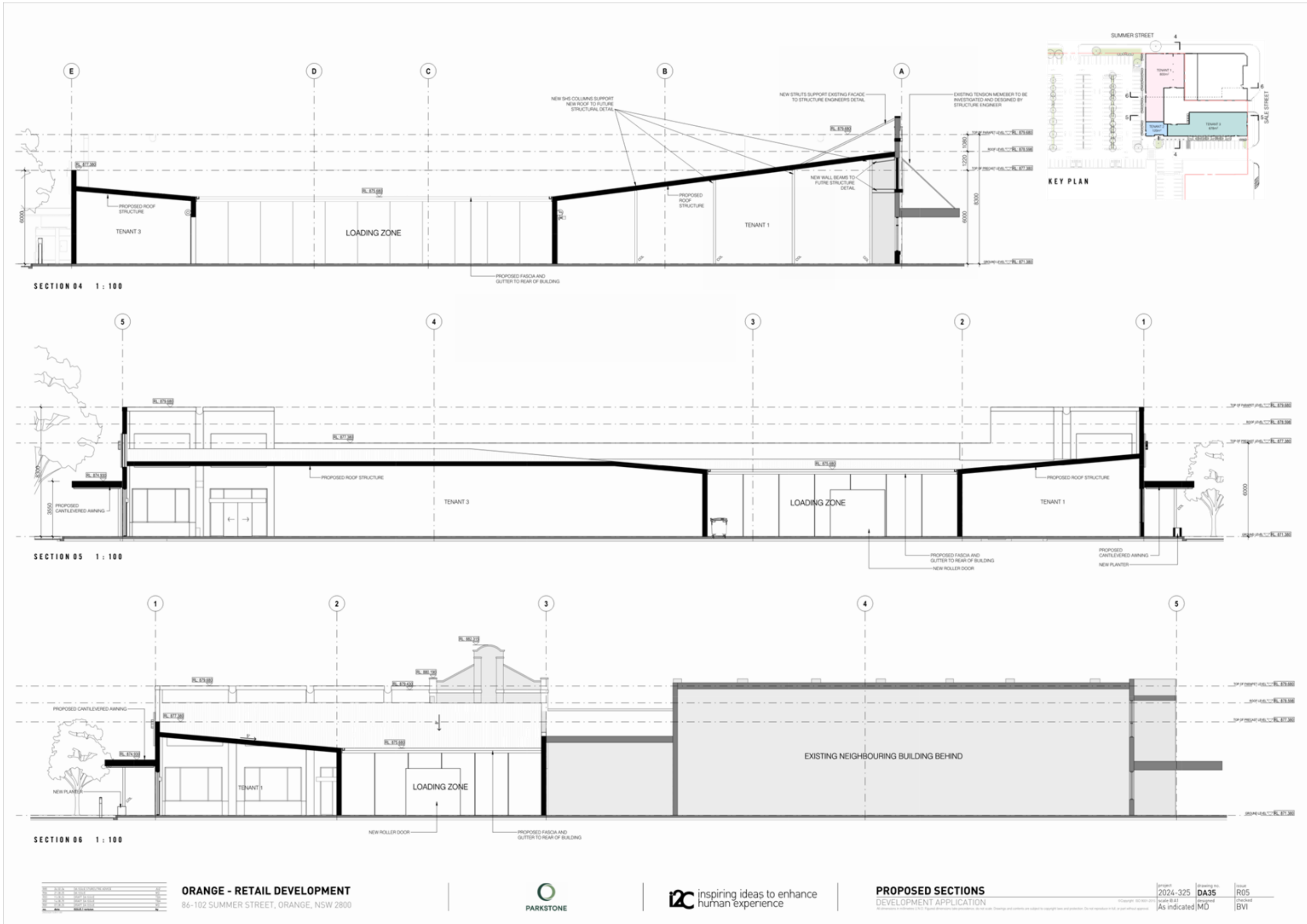
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10	12/12/2024	MD	ISSUED FOR PERMIT

ORANGE - RETAIL DEVELOPMENT
86-102 SUMMER STREET, ORANGE, NSW 2800



PROPOSED SECTIONS
DEVELOPMENT APPLICATION

Project	2024-325	Drawing no.	DA34	Issue	R05
Scale	B A1	Designed	MD	Checked	BVI
As indicated		MD			



NO.	DATE	DESCRIPTION	BY	CHECKED
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2	10/01/2024	REVISED PER PERMIT CONDITIONS	MD	BVI
3	10/01/2024	REVISED PER PERMIT CONDITIONS	MD	BVI
4	10/01/2024	REVISED PER PERMIT CONDITIONS	MD	BVI
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10	10/01/2024	REVISED PER PERMIT CONDITIONS	MD	BVI

ORANGE - RETAIL DEVELOPMENT
 86-102 SUMMER STREET, ORANGE, NSW 2800



PROPOSED SECTIONS
 DEVELOPMENT APPLICATION

Project	2024-325	Drawing no.	DA35	Issue	R05
Scale	B A1	Designed	MD	Checked	BVI
As indicated					

Submission 1

From: [REDACTED]
Sent: Sunday, 5 October 2025 1:37 PM
To: Orange City Council <council@orange.nsw.gov.au>
Cc: [REDACTED]
Subject: DA 353/2051(1) Lot 100 DP 1291348- 86 Summer Street, Orange Your ref Benjamin Hicks

[REDACTED]
Dear Benjamin,

I refer to a letter from Paul Johnston of Council dated 24 September 2025 addressed to Statspan Pty Ltd as owner of 120-122 Summer Street.

I am a director of [REDACTED]

We have read the information provided by the Applicant which is on exhibition.

The section of the proposed development which most directly affects us is the new construction proposed for the Sale Street frontage [REDACTED]
[REDACTED]

We do not oppose the proposed development however we do seek some further information and wish to make a submission going to the conditioning of the DA so far as the construction works are concerned.

Attachment 3 Submissions

First, we could not find a proposed Sale Street elevation showing the streetscape and adjoining buildings such as the elevation shown at page 25 of the documents on exhibition. Is it possible to have access to that full elevation in addition to the proposed east elevation of the proposed building itself shown within the drawing at page 23?

Secondly, can we please have a specification of the construction of the pavement proposed for the right of way [REDACTED] [REDACTED]

Thirdly, given there will be construction at the Sale Street frontage of the site, we wish to ensure that the construction has minimal impact on the tenants of our building. Accordingly, we would like to see conditions of consent which:

1. Define hours and days of work.
2. Define decibel levels of noise during all nominated work periods.
3. Require the developer to take measures to minimise and monitor dust created by the development.
4. Require the developer to make good all damage to surfaces.
5. Require the developer not to obstruct or impede access or customer traffic to our tenants premises.

We await your response.

Yours sincerely,

[REDACTED]

[REDACTED]

Submission 2

-----Original Message-----

From: [REDACTED]
Sent: Thursday, 16 October 2025 4:56 PM
To: Paul Johnston <pjohnston@orange.nsw.gov.au>
Subject: Development Application DA 353/2025 (1) PAN 565647

[REDACTED]

Hello Paul,

Thank you for your time today as discussed the following submission is made in regards to DA 353/2025 (1) - PAN-565647

We are the owners of [REDACTED] which is in close proximity to the proposed development and the following matters are raised in regards to this.

Right of Access Rear Lane.

How will access be maintained to the rear of the building during and after construction.

This is a single lane for the majority of its length and is required by the tenant each day to be able to support the management of their retail business [REDACTED].

It is imperative that this access continues as this will severely constrict their ability to trade in line with their retail offering to the community.

Is there a need for a traffic management plan to avoid undue congestion or impose safety risks to the tenant & their employees.

Structural Engineers Report

Attachment 3 Submissions

As there will be construction which is adjoining my building will there be certification of the ability of the existing building to withstand proposed works & provided details of vibration emissions.

Provisions of measures required to be implemented to avoid damage to this adjoining property.

Dilapidation Report

Requirement to provide a dilapidation report prior to any works commencing that also includes photos of both internal walls & ceilings and external walls/ fascade as well as the external roof.

Final Dilapidation Report

Completion of construction works to receive condition of structure along with similar photos of both internal external photos taken prior to the commencement.

I also request a copy of this report to review prior to the Occupation Certificate being issued by Council / Principal Certifier.

Construction Management Plan

Provisions to provide a construction management plan that will address both noise to applicable standards and the abatement of dust.

Parking Customer Access

Ensure customers are not restricted from parking in front of [REDACTED] and that pedestrian access to the retail premises will be maintained throughout this construction period.

Sewer Main

Confirm no such works will impede on the ability to access the sewer main for [REDACTED].

I would appreciate if you could keep me updated on the outcomes of my submission and considerations to these matters are raised with the developer, Patch Planning.

[REDACTED]

[REDACTED]

2.4 Post Exhibition Report - Amendment to Orange Local Environmental Plan 2011 and Orange Development Control Plan 2004 Rural Lot Boundary Adjustment

RECORD NUMBER: 2026/659

AUTHOR: Lucy Aveyard, Town Planner

EXECUTIVE SUMMARY

The proposed amendment to Orange Local Environmental Plan (LEP) 2011 seeks to enable landowners within certain zones (RU1 Primary Production and C3 Environmental Management) to undertake lot boundary adjustments through subdivision. The amendment proposes the introduction of a new local clause to allow boundary realignments to be considered under a development application, having regard to primary production and ecological values during assessment.

Council considered the Planning Proposal at the Planning and Development Committee meeting held on 5 August 2025. A Gateway Determination was subsequently issued by the Department of Planning, Housing and Infrastructure on 26 November 2025.

The Planning Proposal (**Attachment 1**) was publicly exhibited in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* and the Department's *Local Environmental Plan Making Guideline* (August 2023). In support of the Planning Proposal, the amendment to Orange Development Control Plan (DCP) 2004 (**Attachment 2**) and supporting information was also placed on exhibition (**Attachments 3-5**). Public exhibition occurred for 29 days between 19 January 2026 and 16 February 2026, satisfying the minimum exhibition requirements. One submission was received from the Department of Primary Industries and Regional Development, and no public submissions were made.

LINK TO DELIVERY/OPERATIONAL PLAN

The recommendation in this report relates to the Delivery/Operational Plan strategy "7.3 Plan for growth and development that balances liveability with valuing the local environment".

FINANCIAL IMPLICATIONS

Nil.

POLICY AND GOVERNANCE IMPLICATIONS

Sub Regional Rural and Industrial Lands 2008 actions check – Draft Subregional Rural and Industrial Lands Strategy 2019 (was not adopted).

RECOMMENDATION

1. That Council endorse the Planning Proposal as exhibited and authorise the Chief Executive Officer to formally make the plan in accordance with the Environmental Planning and Assessment Act 1979 (Part 3, Division 3.4, Section 3.36), and
2. That once the plan is notified on the NSW Legislation website, Council adopts the amendment to Orange Development Control Plan 2004, and
3. That a copy of the Development Control Plan be provided to the Planning Secretary and a notice be placed on Council's website of the adoption of the amendment to Orange Development Control Plan 2004 in accordance with the Environmental Planning and Assessment Regulation 2021 (Part 2, Division 2, Section 20) within 28 days of adoption.

2.4 Post Exhibition Report - Amendment to Orange Local Environmental Plan 2011 and Orange Development Control Plan 2004 Rural Lot Boundary Adjustment

FURTHER CONSIDERATIONS

The recommendation of this report has been assessed against Council’s key risk categories and the following comments are provided:

Service/Project Delivery	Decisions to proceed/not proceed may affect community expectations. The project is consistent with the recommendations of the Draft Sub Regional Rural and Industrial Lands Strategy (2019).
Financial	Decisions may lead to financial implications through legal appeals or compensation claims.
Reputation/Political	The outcome may attract public or political scrutiny, especially if perceived as inconsistent or contentious.
Environment	The application may have environmental impacts - positive or negative - depending on the nature of the development.
Compliance	The decision must align with planning legislation, regulation and controls and Council policies to avoid legal risk.
People & WHS	Development activities may introduce safety risks for workers, residents or the broader community.
Information Technology/ Cyber Security	Systems used to assess and manage the application must ensure data integrity and secure handling of sensitive information.

SUPPORTING INFORMATION

Background Information

Council is increasingly receiving enquiries from landowners located in rural and conservation zones regarding simple lot-boundary realignments. Currently Council has no mechanism for determining boundary adjustments in these zones that fall outside of the Exempt and Complying Development Code.

Orange Local Environmental Plan 2011 (LEP) sets a fixed 100 hectares minimum lot size across the RU1 Primary Production and C3 Environmental Management zones. The Orange Local Government Area has very few lots that reach the 100 hectares lot size. Due to this, proposed realignments that are considered acceptable and would not create extra lots or dwellings opportunities are prohibited unless they to meet the subjective “minor change” test in the Exempt and Complying Development Code. This forces Council staff to adjudicate case-by-case without clear standards, creates processing delays, and exposes Council to inconsistency and legal risk.

The introduction of the rural boundary adjustment clause and associated development controls seeks to provide further guidance and introduce a mechanism for which alignment can be rectified that allows for ongoing sustainable agricultural operation.

Application

The proposal applies to the Orange Local Government Area specifically for land that is zoned RU1 Primary Production and C3 Environmental Management under the LEP. These zones are intended to support ongoing agricultural activities while protecting environmental values, and they are characterised by large landholdings and low residential development.

Objectives and Intended Outcomes

The objectives of this planning proposal are to:

2.4 Post Exhibition Report - Amendment to Orange Local Environmental Plan 2011 and Orange Development Control Plan 2004 Rural Lot Boundary Adjustment

- To close these gaps and align Orange with accepted regional practice, this Planning Proposal seeks to amend the LEP by inserting a new Clause 4.2D allowing boundary adjustments to proceed with consent in zones RU1 and C3, provided no extra lots or dwelling entitlements arise and land-use conflict is avoided.

The objectives of this Planning Proposal will be achieved by:

- Inserting the new Clause 4.2D into the Orange LEP,
- Introducing a numeric and qualitative criteria within the DCP. This will involve a sliding-scale “minor change” threshold – to guide when a realignment may proceed as exempt development, and
- Providing guidance within the DCP that will ensure suitable buffer and separation distance standards to reflect contemporary agricultural guidelines.

Strategic Merit

Local Strategic Planning Statements

The Orange Local Strategic Planning Statement (LSPS) 2020 outlines a 20-year vision for land use planning in Orange, with a focus on sustainable growth, community wellbeing and environmental protection.

The LSPS recognises that agricultural land in Orange is highly valued for its productive soils and must be protected to support ongoing primary production. At the same time, it acknowledges increasing pressure for rural lifestyle development near the city, which can consume agricultural land without contributing to food production. To respond to these competing pressures, the LSPS identifies the need to support agricultural innovation, including smaller and more flexible landholdings, to enable diverse farming practices and reduce barriers for new entrants. Importantly, the LSPS recognises that not all agricultural enterprises require a minimum landholding of 100 hectares to remain viable.

The Planning Proposal responds directly to this strategic direction by facilitating minor boundary adjustments that allow smaller or reconfigured landholdings without creating additional lots or dwelling entitlements. This approach encourages agricultural innovation and adaptability while continuing to protect rural land from excessive fragmentation. The proposal enables sensible boundary realignments that can assist new and existing farmers to optimise land use in a manner consistent with the LSPS’s objectives of supporting primary production and removing unnecessary regulatory barriers.

This proposal aligns with the objectives outlined in the Orange LSPS 2020:

Environmental Challenges	Proposal Response
With highly valued agricultural soils, particularly to the south of the city, Orange must protect and support primary production. We face strong pressure for rural lifestyle properties close to the city that consume significant amounts of land and typically have negligible food production. Balanced against this is a need to foster innovation	Rigid 100 hectare parcel sizes are not always necessary for productive farming and that some flexibility in lot sizing can remove barriers for new farmers or diversified farming approaches. The Planning Proposal directly responds to this strategic direction by allowing smaller or reconfigured holdings without creating additional lots - thereby encouraging the “innovation in agriculture” and adaptability the LSPS envisions, while still upholding the protection of rural land from excessive fragmentation (since no new lots or dwellings are permitted).

2.4 Post Exhibition Report - Amendment to Orange Local Environmental Plan 2011 and Orange Development Control Plan 2004 Rural Lot Boundary Adjustment

<p>in agriculture, including smaller holdings, to ensure the sector can respond to changes in demand for different types of produce, as well as avoiding barriers to entry for new farmers with different land management approaches. Not all farming enterprises need 100ha of land to be viable</p>	<p>The proposal effectively enables the kind of sensible adjustment of boundaries that can help new or existing farmers optimize land uses, consistent with the LSPS’s vision of supporting primary production and removing unnecessary barriers.</p>
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Central West and Orana Regional Plan 2041

Planning for the wider Central West and Orana region is undertaken in accordance with the *Central West and Orana Regional Plan 2041* (“CW&ORP 2041”):

Goal/Direction	Response
<p>Protect agricultural land and industries from land use conflicts and fragmentation.</p>	<p>In accordance with Agriculture innovation strategy 19.1, enabling boundary adjustments without creating new rural residential lots or dwellings, this proposal directly supports that goal.</p> <p>Boundary adjustments allow the opportunity for farmers and landholders to reorganize land holdings in a way that can improve agricultural productivity and resolve land use conflicts.</p> <p>Examples of these types of conflicts are caused by poorly aligned boundaries, and boundary adjustment does not increase fragmentation or rural-residential development.</p> <p>The amendment will protect and enhance agricultural operations (through more practical lot configurations) while preventing outcomes that would conflict with agriculture.</p>

Blayney, Cabonne and Orange City Sub-Regional Rural and Industrial Land Use Strategy (Final Strategy, July 2008)

In accordance with the Blayney, Cabonne and Orange City Sub-Regional Rural and Industrial Land Use Strategy (Final Strategy, July 2008), Council’s strategic role in protecting agricultural land is closely linked to the management of settlement patterns and subdivision provisions under the Local Environmental Plan. The strategy emphasises the importance of maintaining viable agricultural landholdings while avoiding fragmentation that can undermine agricultural productivity and increase land use conflict.

The Planning Proposal responds directly to this strategic direction by facilitating minor boundary adjustments that allow smaller or reconfigured landholdings without creating additional lots or dwelling entitlements. This approach supports agricultural innovation and adaptability while continuing to protect rural land from excessive fragmentation. The proposal enables sensible boundary realignments that can assist new and existing farmers to optimise land use in a manner consistent with the objectives of the Sub-Regional Rural and Industrial Land Use Strategy.

Sub-Regional Rural and Industrial Lands Strategy 2019–2036 (Draft)

Additionally, Orange City Council, in collaboration with Cabonne and Blayney councils, prepared a Draft Sub-Regional Rural and Industrial Lands Strategy 2019–2036, which provides strategic

2.4 Post Exhibition Report - Amendment to Orange Local Environmental Plan 2011 and Orange Development Control Plan 2004 Rural Lot Boundary Adjustment

guidance for rural land use across the sub-region. While the draft strategy has not been formally adopted, it prioritises the retention of rural land for agricultural purposes and discourages subdivision outcomes that fragment land or facilitate the proliferation of non-agricultural uses.

Strategic Action A2-1 of the draft strategy supports enabling minor boundary adjustments where they do not result in increased rural land fragmentation or additional dwelling opportunities within the RU1 Primary Production and C3 Environmental Management zones. By implementing the proposed LEP clause, Council will be acting consistently with this strategic direction, balancing the protection of rural land with the need to remove unnecessary impediments to effective and sustainable land management.

This amendment to the LEP will align Orange with many neighbouring and comparable councils, including Cabonne and Blayney, who have virtually identical provisions in place with Bathurst, Cowra, Forbes and Mid-Western Regional Council.

By introducing this clause, Orange LEP 2011 will be brought into line with established planning practice across NSW, ensuring that Orange’s farmers and landholders have access to the same level of flexibility as those in surrounding local government areas. This provides clear strategic merit, as the amendment forms part of a coordinated and consistent approach to rural planning across the State and will not undermine any regional or State interests; rather, it supports them in a controlled and balanced manner.

Section 9.1 Local Planning Directions

The Planning Proposal was assessed against the applicable Ministerial Directions (issued under Section 9.1 of the Environmental Planning and Assessment Act) and is found to be consistent as follows:

Ministerial Direction	Response
Directions 1.2 - Rural Zones:	This direction requires planning proposals in rural areas to protect the agricultural productivity and character of rural lands. The proposal is consistent with this direction as it does not rezone or allow new uses in rural zones – rather, it facilitates a planning outcome (boundary adjustment) that can improve agricultural parcel layout without introducing any new incompatible uses or additional development. The clause will operate only to adjust boundaries; it expressly prevents any increase in dwelling opportunities or lot numbers. Thus, the rural character and productivity are maintained.
Directions 1.5 - Rural Lands:	This direction reflects the state’s <i>Rural Planning Principles</i> , which include minimizing fragmentation of rural land and ensuring economic prosperity of rural industries. The proposal is consistent with these principles. It explicitly prohibits additional fragmentation (no new lots) and aims to enhance the viability of existing farms by allowing boundary changes that for example could give a farm better access to water, consolidate farming land, or align boundaries with fences or natural features (improving management). By helping farmers resolve impractical lot configurations, the proposal supports the economic use of rural land while avoiding rural-residential sprawl. In essence, it strengthens “right to farm” outcomes and efficient land use – a core intent of the Rural Lands direction.

2.4 Post Exhibition Report - Amendment to Orange Local Environmental Plan 2011 and Orange Development Control Plan 2004 Rural Lot Boundary Adjustment

Directions 2.1 - Environment Protection Zones	This direction ensures that C3 and other environmental zones are appropriately managed. The proposal maintains the protective intent of environmental zones: any boundary adjustment in zone C3 would still require that zone objectives are met and no new development rights are created. If anything, allowing minor adjustments could help achieve environmental objectives (for instance, by realigning a lot boundary to follow a ridgeline or watercourse, it may simplify conservation management). The clause criteria (e.g. no increased land use conflict, consideration of viability/impact) will ensure environmental values are considered in each case. Therefore, the proposal does not undermine environmental protection; it provides a mechanism to achieve those protections in a more practical way.
Directions 5.10 - Implementation of Regional Plans:	As noted above, the proposal is consistent with and gives effect to the Central West and Orana Regional Plan’s objectives regarding agricultural land and managing land use conflict. By facilitating boundary adjustments without new dwellings, it helps implement the regional policy of protecting productive agricultural lands and maintaining rural landscape values. No inconsistency with any Regional Plan action has been identified.

No other Section 9.1 Directions are adversely affected. The proposal does not seek to increase urban development, affect hazard policies, or create site-specific provisions contrary to Direction 6.3. It has been determined that the proposal is broadly consistent with all relevant State policies and Directions; or if any minor inconsistency were arguable, it is justified by the significant strategic merit of the outcome.

State Environmental Planning Policies

The amended proposal has resulted in no changes to the commentary provided in the report to the Planning and Development Committee on 5 September 2023.

State Environmental Planning Policy (Primary Production) 2021 (Primary Production SEPP) – Chapter 2 contains the aims of:

- a) to facilitate the orderly economic use and development of lands for primary production,*
- b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,*
- c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- d) to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,*
- e) to encourage sustainable agriculture, including sustainable aquaculture,*
- f) to require consideration of the effects of all proposed development in the State on oyster aquaculture,*
- g) to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.*

2.4 Post Exhibition Report - Amendment to Orange Local Environmental Plan 2011 and Orange Development Control Plan 2004 Rural Lot Boundary Adjustment

The proposal is in accordance with the Primary Production SEPP as it supports the economic use and development of land for primary production. The proposal promotes balance of agricultural land for primary production purposes and protects this land from additional residential development.

Gateway Conditions

Conditions	Response
Condition 1(a) - Remove reference to C2 and C4 land use zones on page 4 in the 'background' section.	The conditions were resolved through the amended proposal prior to public exhibition.
Condition 1(b) - Page 5 Minimum Subdivision Lot Size Standards for Rural and Conservation Zones under (c) C2 and C4 Zones, clearly state the new clause will not be applied to these zones.	The conditions were resolved through the amended proposal prior to public exhibition.
Condition 1(c) - Remove reference to C2 and C4 land use zones on page 15 in the 'Supporting amendments to the Orange DCP 2004'.	The conditions were resolved through the amended proposal prior to public exhibition.
<p>Condition 2 - Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:</p> <p>(a) the planning proposal is categorised as standard as described in the <i>Local Environmental Plan Making Guideline</i> (Department of Planning and Environment, August 2023) and must be made publicly available for a minimum of 20 working days; and</p> <p>(b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in <i>Local Environmental Plan Making Guideline</i> (Department of Planning and Environment, August 2023).</p>	<p>The condition was met, where the Planning Proposal was placed on public exhibition for 29 days (20 working days), from 19 January 2026 to 16 February 2026.</p> <p>No public submissions were received.</p>
Condition 3 - Consultation is required with Department of Primary Industries and Regional Development under section 3.34(2)(d) of the Act. Department of Primary Industries and Regional Development is to be provided with a copy of the planning proposal and any	The condition was met, where the Department of Primary Industries and Regional Development Agency was consulted. The Department was supplied with a copy of the Planning Proposal and all relevant supporting material. The agency was given over 30 days to make a submission to the planning proposal, which was between the 15 January 2026 to 2 March 2026.

2.4 Post Exhibition Report - Amendment to Orange Local Environmental Plan 2011 and Orange Development Control Plan 2004 Rural Lot Boundary Adjustment

Conditions	Response
relevant supporting material and given at least 30 working days to comment on the proposal.	Council received one late submission from the Department of Primary Industries and Regional Development - Agricultural Land Use Planning after consultation with staff.
Condition 4 - A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).	As the gateway determination determined that a public hearing was not required, a public hearing did not occur.

SUBMISSION

Following the public exhibition from 19 January 2026 to 16 February 2026. One late submission was received from the Department of Primary Industries and Regional Development - Agricultural Land Use Planning after consultation with staff.

Submitter Concern
<p>The Department has reviewed the supporting documentation and provides the following advice.</p> <p><i>Maintaining large lot sizes in rural areas is generally considered beneficial for agriculture. Larger lot sizes enable economies of scale to be achieved in agricultural production and land management and deter the purchase of rural land solely for rural lifestyle purposes. A large Minimum Lot Size (MLS) benefits not only agricultural operations but also minimises the burden on local government of providing services and infrastructure to rural dwellings, as well as limiting land use conflict between residential and agricultural uses.</i></p> <p><i>Regardless, it is recognised that a similar clause to that proposed for boundary adjustments is used in other LEPs across the State and can facilitate better agricultural outcomes in some circumstances The Department therefore does not object to its inclusion in the Orange LEP 2011; however, we note that other Councils have experienced difficulty in determining what constitutes 'agricultural viability'.</i></p> <p><i>The Department suggests that, should the final Clause 4.2D be consistent with similar provisions applied in other LGAs, the term 'agricultural viability' could be defined in the Council's Development Control Plan.</i></p> <p><i>In this regard, 'agricultural viability' should not be based solely on stated economic values in supporting documentation. There is an increasing emergence of applications arguing that reducing the MLS does not affect the land's agricultural viability, due to current economic returns on a per hectare basis.</i></p> <p><i>However economic returns alone do not mean the land can sustain 'agricultural viability' in the longer term.</i></p> <p><i>Other considerations include:</i></p> <ul style="list-style-type: none"> • <i>Examining industry and market trends.</i> • <i>Whether suitable land remains, free of physical constraints, to mitigate the impacts of</i>

2.4 Post Exhibition Report - Amendment to Orange Local Environmental Plan 2011 and Orange Development Control Plan 2004 Rural Lot Boundary Adjustment

natural hazards and adapt to climate change. For example, does flood free land remain for livestock or equipment refuge?

- *Land required for buffer areas to mitigate impacts any production and expected intensification may have on neighbouring properties.*
- *Land that may be required for the expansion of farming operations or for diversification or value-adding operations.*

Any required separation distance between agricultural land uses necessary to address biosecurity risks.

Councils' response

Council requested that the Department provide an adequate definition in relation to agricultural viability, in order for Council to have a better understanding of the term agricultural viability.

Department's Response

Defining agricultural viability is an issue globally. There is currently no accepted definition, which is why we raised it in our letter.

A narrow definition, historically considered, was 'the ability of a farmer or group of farmers to maintain an economically viable farm business'. However, this doesn't reflect community expectations for sustainable land management for future generations. Another definition could be:

Google gives a definition of: The ability of a farming system to maintain productivity and sustainability over time while adapting to changing environmental conditions.

This definition actually doesn't seem terrible; it captures community expectations, climate change, productivity and sustainability. On this basis, we suggest your DCP could include the following:

Agricultural viability is defined as:

The ability of a farming system to maintain productivity and sustainability over time while adapting to changing environmental conditions.

*In considering **agricultural viability**, the considerations include:*

Productivity: *This involves the capacity of land to produce crops or livestock efficiently. A viable agricultural enterprise should be able to yield sufficient produce to meet economic needs. Land use conflict can result in changed practices or reduced land practically available for farming operations.*

In determining productivity, consideration should be given to:

- *The land and soil capability and potential for sustainable agriculture on each lot*
- *Existing and approved land uses in the vicinity that might be impacted by, or impact, the proposed operations or alternative means of productivity.*
- *Recommended separation distance between land uses necessary to address biosecurity risks.*
- *The location of agricultural infrastructure, including water extraction points, pumps, bores, irrigation offtakes and channels and the like, including shared water arrangements, livestock facilities, laneways, machinery sheds, chemical/fuel storage, or farm access points, and*
- *The maintenance or improvement of vehicular access arrangements.*

2.4 Post Exhibition Report - Amendment to Orange Local Environmental Plan 2011 and Orange Development Control Plan 2004 Rural Lot Boundary Adjustment

Sustainability: Viability must consider sustainable practices that ensure the long-term health of the agricultural ecosystem. A farm business might appear economically sustainable while depleting the natural resource base, ultimately leading to failure. Sustainability includes maintaining soil health, conserving water, having the capacity to rest paddocks, and minimising chemical inputs to protect the environment.

In determining farm sustainability, consideration should be given to:

- Whether the proposed allotments have sufficient land to rest areas, if that is part of normal farming operations for that commodity,
- Natural features that will limit use, such as setbacks from waterways, and avoiding rocky features
- Using natural features to reduce future costs, such as rivers as boundaries or natural escarpments.

Economic Factors: Viability also refers to the economic sustainability of farming operations. This means that farmers must be able to maintain a profitable business while managing costs and adapting to market demands.

In determining economic viability, consideration should be given to:

- A business case demonstrating that it generates enough income to cover expenses and support the farmer's livelihood,
- Industry and market trends within the Local Government Area (LGA) to demonstrate consistency with trends within existing and emerging industries, and
- The presence and importance of transport, processing, utilities and other infrastructure are essential for agricultural operations.

Resilience: The ability to adapt to changing environmental conditions, such as climate change, pest pressures, and market fluctuations. This adaptability can be achieved through practices like crop diversification and the use of resilient crop varieties.

In determining resilience, consideration should be given to

- Economic viability of farming considering long-term climate change scenarios, including seasonality of rainfall versus the proposed commodity.
- Infrastructure needs, such as protected cropping structures, to adapt to the changing climate.
- Future expansion, intensification, diversification or value-adding operations needed to address climate change impacts, and

Whether suitable land is available on each proposed lot, free of physical constraints, to mitigate the impacts of natural hazards. (For example, does flood-free land remain for livestock or equipment refuge?).

Council's Response

In response to the provided information from the Department of Primary Industries and Regional Development - Agricultural Land Use Planning, Council staff have amended the DCP to include a section which identifies how Council would assess agricultural viability of the subject site.

2.4 Post Exhibition Report - Amendment to Orange Local Environmental Plan 2011 and Orange Development Control Plan 2004 Rural Lot Boundary Adjustment

Next Steps

If Council resolves to support the finalisation of the amendment, Council staff will request that the amendment be finalised by the local plan making authority. The draft DCP provisions will be inserted into the current version of the DCP and notification of Council's decision in relation to the DCP will be provided on Council's website.

ATTACHMENTS

- 1 Attachment 1 - Planning Proposal - Rural Boundary, [D26/4366](#)
- 2 Attachment 2 - FOR ADOPTION - Amendment to Orange Development Control Plan, [D26/43638](#)
- 3 Attachment 3 - Appendix A - Case Law Summary, [D25/154290](#)
- 4 Attachment 4 - Appendix B - Summary of Clauses by Other, [D26/4416](#)
- 5 Attachment 5 - Appendix C - Draft Boundary Adjustment Clause, [D26/4425](#)
- 6 Attachment 6 - Department's Letter to Council for Exhibition, [D26/4649](#)
- 7 Attachment 7 - Gateway Determination, [D26/4650](#)
- 8 Submission, [D26/44609](#)

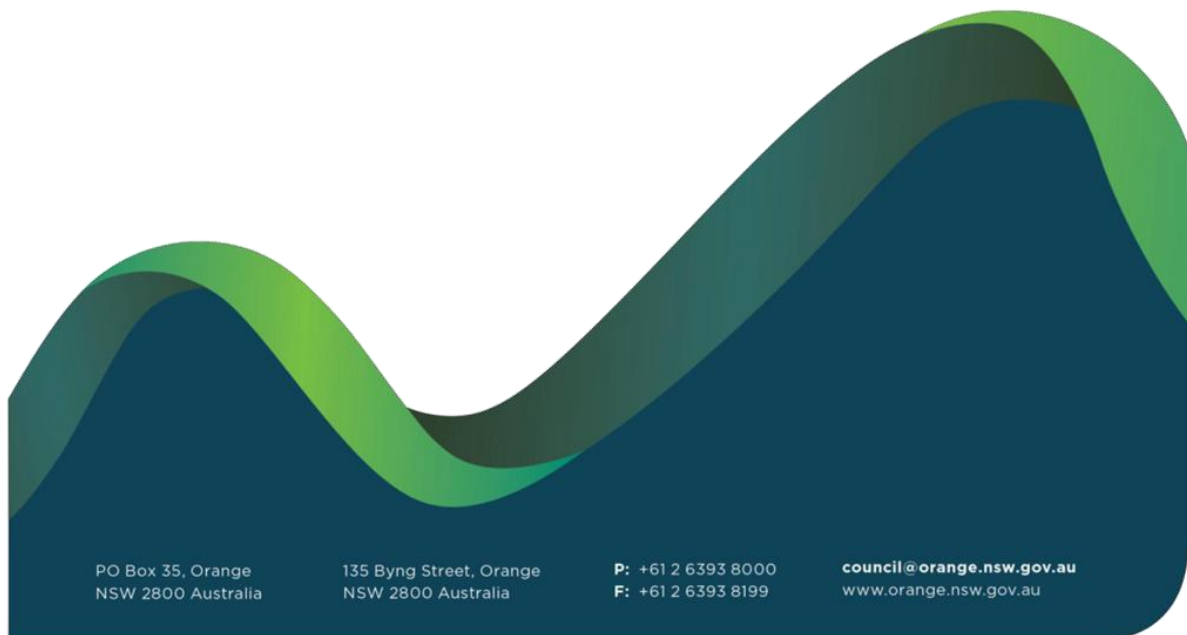


Planning Proposal

Instrument amendment to Orange Local Environmental Plan 2011 - Boundary Adjustments in Certain Rural and Conservation Zones

Prepared by Orange City Council under s. 3.33 of the Environmental Planning and Assessment Act 1979

August 2025



Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

Document Control

Version	Status	Date of Issue
A	FINAL—For Gateway submission	11 August 2025
-	-	-

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

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Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

Introduction

This Planning Proposal has been prepared by Orange City Council in accordance with Division 3.4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the Local Environmental Plan Making Guideline (August 2023) issued by the NSW Department of Planning and Environment.

The proposal seeks to introduce a new local clause to allow consideration of boundary realignments in rural and conservation zones subject to a development application that will allow consideration of primary production and ecological values during the assessment.

Background

Council is increasingly asked by rural and conservation land-owners to approve simple lot-boundary realignments, yet the current planning framework makes most of these requests impossible. Orange Local Environmental Plan 2011 (LEP) sets a rigid 100 ha minimum lot size across the RU1 Primary Production and C3 Environmental Management zones, and, unlike neighbouring LGAs, contains no “lot-boundary adjustment” clause. Consequently, even wholly sensible realignments that would not create extra lots or dwellings are prohibited unless they happen to meet the subjective “minor change” test in the NSW Exempt and Complying Development Code. This grey area forces Council staff to adjudicate case-by-case without clear standards, creates processing delays, and exposes Council to inconsistency and legal risk.

To close these gaps and align Orange with accepted regional practice, this Planning Proposal seeks to amend the LEP by inserting a new Clause 4.2D. Mirroring clauses already operating in Bathurst, Blayney and Cabonne, the amendment would let boundary adjustments proceed with consent in zones RU1, and C3 provided no extra lots or dwelling entitlements arise and land-use conflict is avoided. Parallel updates to the Orange Development Control Plan will:

1. Introduce numeric and qualitative criteria—such as a sliding-scale “minor change” threshold—to guide when a realignment may proceed as exempt development, and
2. Refresh buffer and separation-distance standards to reflect contemporary agricultural guidelines.

By drafting the new clause and delivering a clear, consistent and strategically aligned pathway for genuine boundary adjustments Council will safeguard the primary-production objectives of Orange’s rural lands but still allow for logical adjustments that can enhance land management and better protect ecological values.

What is a Lot Boundary Realignment?

A lot boundary realignment involves altering the shared boundary between two or more adjoining lots without creating any additional lots. It is effected via subdivision but is distinct from other forms of subdivision in that it replaces existing lots with new ones configured to the revised boundary alignment.

Landowners in rural and environmental zones may seek realignments for various practical reasons, such as improving access to resources, aligning boundaries with natural features, correcting encroachments, or better aligning with zoning.

While straightforward in concept, the legal definition of a “lot boundary adjustment” is more complex. Numerous NSW Land and Environment Court decisions have drawn a clear distinction between minor, legitimate adjustments and more substantial alterations that amount to the consolidation and re-subdivision of lots.

These rulings form the legal foundation for “lot boundary adjustment” clauses in many LEPs across NSW—clauses which the Orange LEP currently lacks. Not all proposals to realign boundaries will meet the legal test for

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

an “adjustment,” particularly where the resulting lot configuration bears little resemblance to the original subdivision pattern.

Minimum Subdivision Lot Size Standards for Rural and Conservation Zones

This Planning Proposal is supported by DCP amendments informed by the relationship between existing subdivision patterns in rural and conservation zones and the land use controls in Orange LEP 2011—particularly the application of minimum lot size standards.

(a) Rural and Conservation Zones under Orange LEP 2011

The LEP applies five rural and conservation zones in the LGA:

- RU1 Primary Production
- RU5 Village
- C2 Environmental Conservation
- C3 Environmental Management
- C4 Environmental Living

Zone RU5 (covering Lucknow and Spring Hill) operates under distinct planning criteria and is excluded from this proposal. The extent and characteristics of the remaining zones are shown in **Table 1** and **Figure 1**.

Table 1 Distribution of lots located within rural and conservation land use zones under the Orange LEP 2011*

Land Use Zone	Number of Lots	Share of Total	Total Area (ha)	Share of Total	Average Lot Size (m2)
RU1 Primary Production	411	1.6%	4,400.1	15.5%	107,058
C2 Environmental Conservation	34	0.1%	49.2	0.2%	14,469
C3 Environmental Management	1,128	4.3%	15,595.5	54.8%	138,258
C4 Environmental Living	76	0.3%	341.2	1.2%	44,892
All Other Land Use Zones	24,459	93.7%	8,060.7	28.3%	3,296
Total	26,108	100.0%	28,446.7	100.0%	10,896

* **Note:** Lots subject to more than one land use zone may be counted more than once.

(b) Minimum Subdivision Lot Sizes

Clause 4.1 of the LEP sets minimum lot sizes for subdivision, mapped across the LGA. All land in RU1, C2, C3, and C4 zones is subject to these controls. **Figure 2** illustrates the distribution of applicable lot size standards.

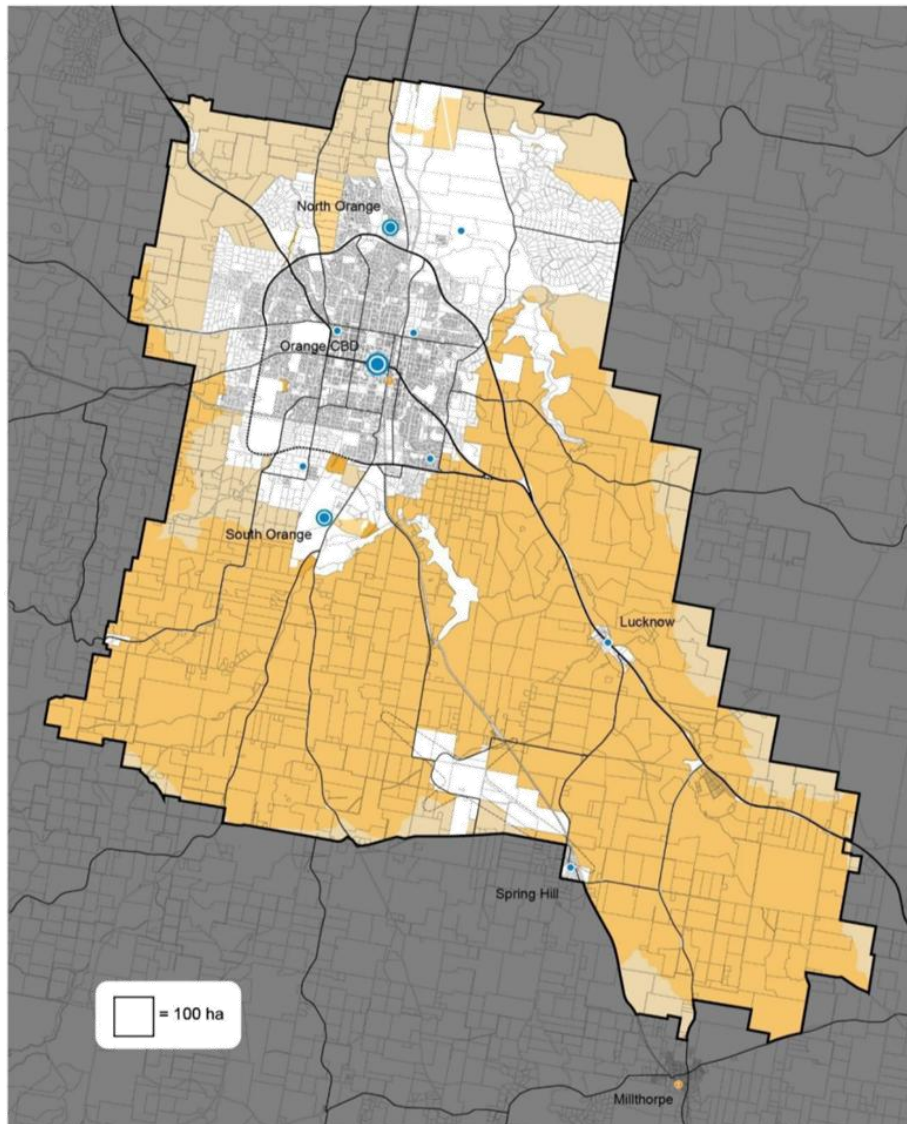
(c) C2 and C4 Zones

Although C2 and C4 zones are subject to similar minimum lot size restrictions as RU1 and C3, the impact is less pronounced due to:

- A relatively small number of affected lots
- Existing non-agricultural land uses and more diverse lot sizes
- Greater variability in mapped minimum lot size standards (ranging from 1,000m² to 100ha)

Zone C2 typically applies to public or conservation land, rarely the subject of realignment requests. Zone C4 accommodates rural residential development and exhibits mixed subdivision characteristics. These areas are less constrained in practice.

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments



Key

RU1 Primary Production	Commercial Core
C2 Environmental Conservation	Local Centre
C3 Environmental Management	Neighbourhood or Village Centre
C4 Environmental Living	

0 1 2 4km

Figure 1 Land zoned as RU1, C2, C3 and C4 under the Orange LEP 2011

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

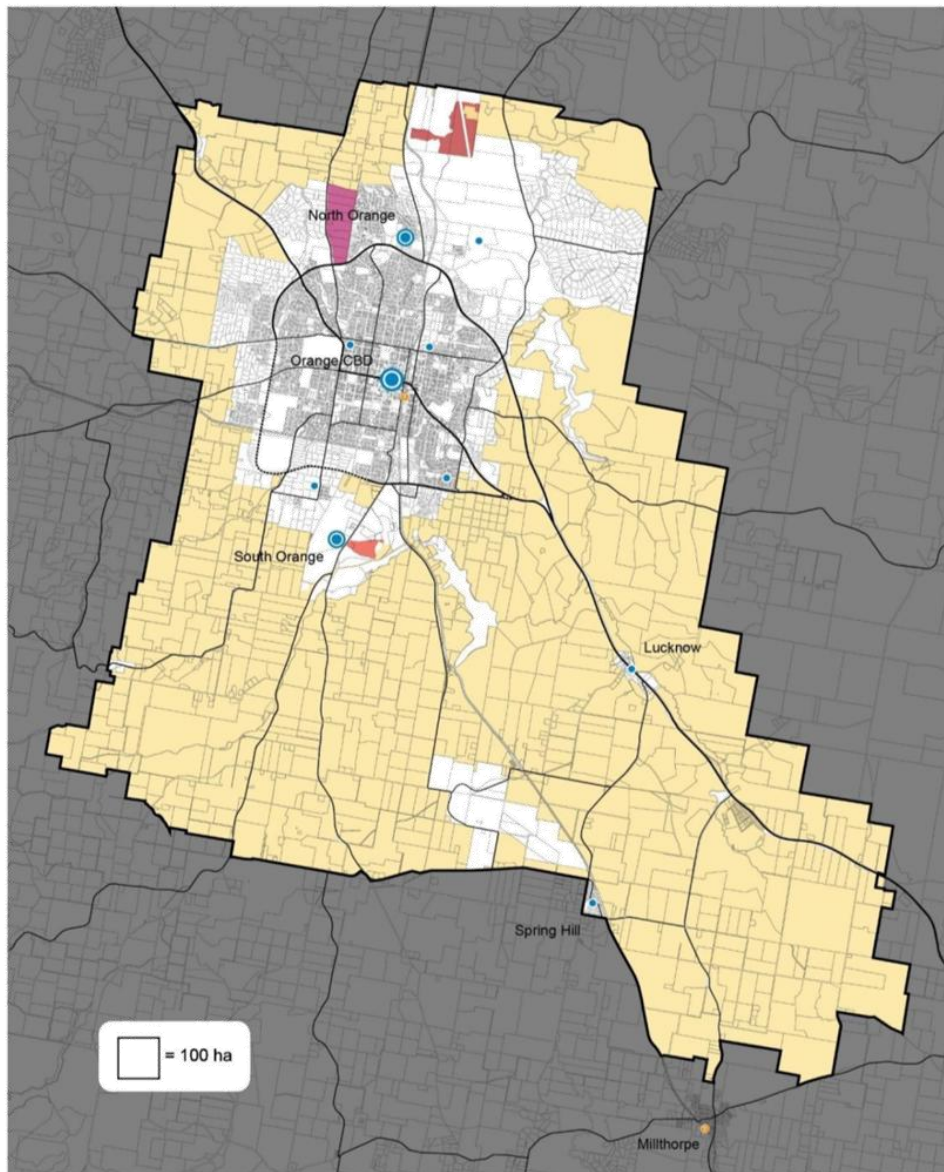


Figure 2 Minimum subdivision lot size standards for land located within rural and conservation zones under the Orange LEP 2011

Attachment 1 Attachment 1 - Planning Proposal - Rural Boundary

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

(d) RU1 and C3 Zones

The greatest need for flexibility exists in the RU1 and C3 zones, which contain the bulk of Orange’s productive rural land (**Figure 1**). RU1 protects agricultural potential, while C3—although a conservation zone—covers land used similarly for primary production within the city’s drinking water catchment.

Both zones are broadly subject to a 100-hectare minimum lot size (referred to as “AD 100 ha” on the LEP map), which severely restricts boundary realignments due to widespread non-compliance with this standard. Notably:

- 99.2% of land subject to the 100ha standard is zoned RU1 or C3
- 98.8% of lots in these zones are smaller than 100ha (Table 2 and Figure 3)
- 98.4% are smaller than 90ha—limiting eligibility for Clause 4.6 exceptions
- 54.9% are smaller than 5ha, and 41.1% are 2ha or less

This highly fragmented historical pattern means most realignment requests cannot proceed under current consent pathways, even where they support agricultural outcomes or resolve practical issues. Nonetheless, the 100ha standard plays a vital strategic role: it exists to discourage further subdivision and encourage land consolidation in support of rural production objectives.

Table 2 Distribution of lot sizes for land subject to the 100-hectare minimum subdivision lot size standard (Clause 4.1, Orange LEP 2011)

Lot Size	No. Lots		Total Area (ha)	
	No.	%	Area	%
<10ha	896	61.5%	1,842.86	8.6%
10-20ha	211	14.5%	3,191.20	14.9%
20-30ha	91	6.3%	2,146.94	10.0%
30-40ha	73	5.0%	2,582.04	12.0%
40-50ha	98	6.7%	4,272.98	19.9%
50-60ha	29	2.0%	1,600.06	7.4%
60-70ha	22	1.5%	1,413.37	6.6%
70-80ha	7	0.5%	516.43	2.4%
80-90ha	6	0.4%	522.71	2.4%
90-100ha	6	0.4%	553.69	2.6%
≥100ha	17	1.2%	2,835.95	13.2%
Total	1,456	100.0%	21,478.22	100.0%

Existing Provisions

Subclause 4.1(1) of the LEP prescribes the following objectives in relation to the LEP’s minimum subdivision lot size standard:

Orange Local Environmental Plan 2011

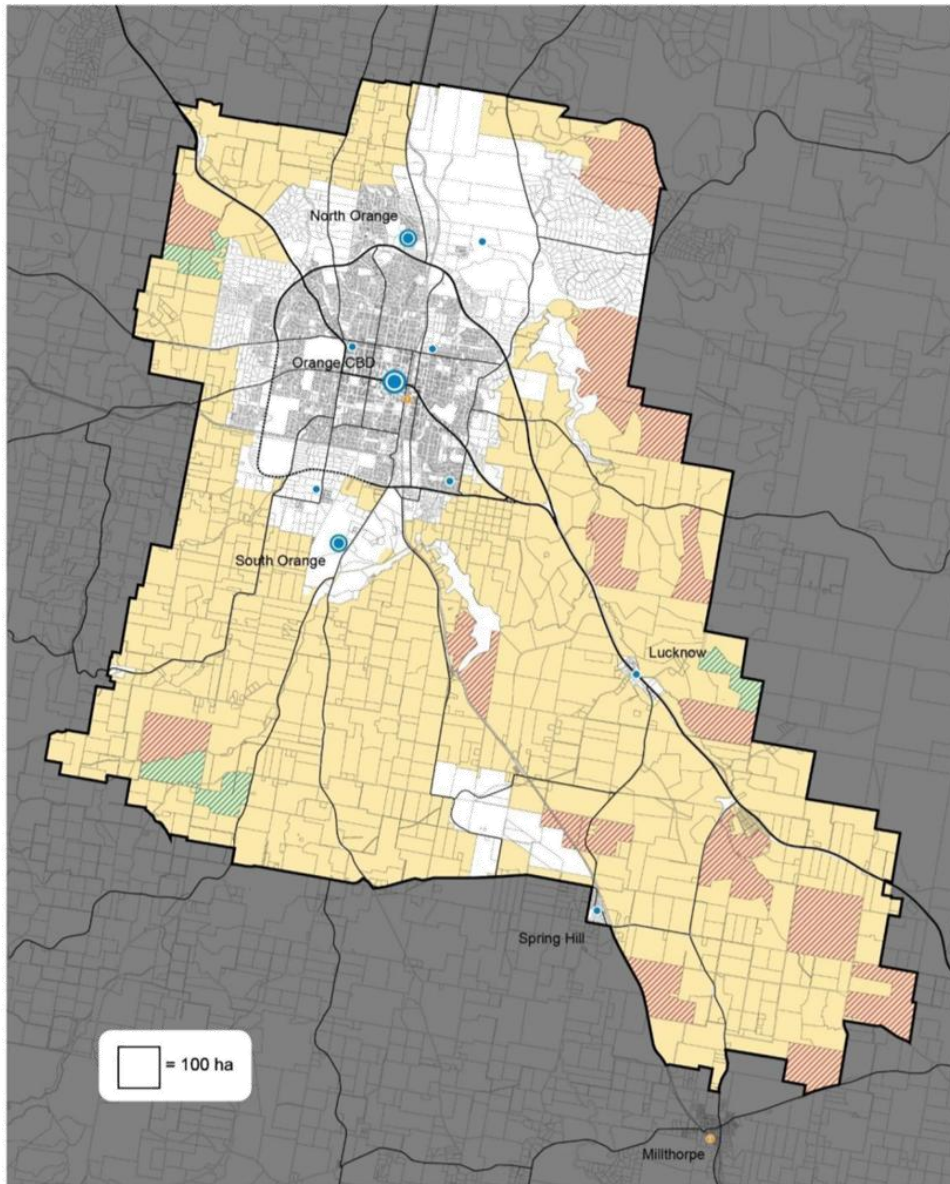
4.1 Minimum subdivision lot size

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

- (a) to ensure that new subdivisions reflect existing lot sizes and patterns in the surrounding locality,
- (b) to ensure that lot sizes have a practical and efficient layout to meet intended use,
- (c) to ensure that lot sizes do not undermine the land’s capability to support rural development,
- (d) to prevent the fragmentation of rural lands,
- (e) to provide for a range of lot sizes reflecting the ability of services available to the area,

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

(f) to encourage subdivision designs that promote a high level of pedestrian and cyclist connectivity and accommodate public transport vehicles.



Key

- AD 100 ha (Orange LEP 2011)
- Lots ≥ 100 hectares in size
- Lots ≥ 90 hectares in size
- Commercial Core
- Local Centre
- Neighbourhood or Village Centre



Figure 3 Lots subject to the 100-hectare minimum subdivision lot size standard (AD 100 ha) under the Orange LEP 2011 that are equal to or greater than 90 hectares and 100 hectares in size

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Of the objectives (c) and (d) are the most pertinent for land located within the RU1 and C3 zones. These objectives are consistent with both the strategic objectives of the Draft Sub-Regional Rural and Industrial Lands Strategy and the LEP's zone objectives for the RU1 and C3 zones. In this regard, key zone objectives include (among other things): *"To minimise the fragmentation and alienation of resource lands"* (Zone RU1), and *"To maintain the rural function and primary production values of the area"* (Zone C3).

The LEP's minimum subdivision lot size standard does not generally act as a barrier to the achievement of lot boundary realignments for land primarily used for agricultural purposes. The key barrier emerges in relation to the considerable number of smaller lots located within the RU1 and C3 zones that are predominantly residential in character. As discussed in the *"exceptions to minimum size standard"* section below, this combination of non-compliant lot sizes and non-agricultural land use significantly constrains the ability to undertake lot boundary realignments for those properties, even where the proposed subdivision is intended to benefit an adjoining agricultural parcel.

Exceptions to Minimum Size Standard

The Orange LEP 2011 contains several clauses that permit subdivision below the mapped minimum lot size in limited circumstances. While Clause 4.6 ("Exceptions to development standards") is the primary mechanism, other clauses provide zone-specific pathways. Each has constraints that limit their application to lot boundary realignments, particularly in rural and conservation zones.

Clause 4.6 – Exceptions to Development Standards

Clause 4.6 allows variation to development standards, including minimum lot size, under certain conditions. However, Subclause 4.6(6) restricts its use for subdivisions in rural and conservation zones unless at least one resulting lot is no smaller than 90% of the required minimum (i.e., 90ha where the standard is 100ha). As most existing lots in RU1 and C3 zones fall well below this threshold, Clause 4.6 rarely applies in practice.

Clause 4.1D – Split-Zoned Land

This clause applies to lots split between residential and non-residential zones. It allows subdivision to rationalise zone boundaries, provided the resulting residential lot meets the relevant minimum lot size. The non-residential component may be smaller. While useful in certain edge cases, its application is narrow and generally not relevant to standard rural lot boundary realignments.

Clause 4.2 – RU1 Subdivision for Primary Production

Permits subdivision in RU1 where land is used for primary production, even if lots are smaller than the minimum size. However, no dwelling may be located on any resulting non-compliant lot, and existing dwellings cannot be included on such lots. This clause only supports realignments between agricultural parcels without dwellings.

Clause 4.2B – Subdivision for Intensive Plant Agriculture

Applies to RU1 and C3 zones, allowing subdivision for intensive plant agriculture (e.g. viticulture), with specific criteria for lot size (≥ 25 ha), land suitability, water access, infrastructure availability, and dwelling necessity. It expands on Clause 4.2 by permitting associated dwellings but is still limited to intensive plant agriculture scenarios.

Clause 4.2C – Subdivision in C3 Zone

Permits subdivision for extensive or intensive agriculture or aquaculture in C3 zone, subject to similar restrictions as Clause 4.2. Resulting non-compliant lots cannot contain a dwelling, nor may a dwelling be built on them. This clause supports certain rural activities but excludes many realignment scenarios involving existing residences.

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

Summary

Clauses 4.1D, 4.2, 4.2B, 4.2C, and 4.6 collectively allow limited subdivision flexibility where zone objectives are met. However, their scope is narrow—particularly where small lots or existing dwellings are involved, as is often the case in RU1 and C3. As a result, many legitimate boundary realignments that enhance land management or reduce land use conflict cannot proceed via development consent, leaving exempt development (under the NSW General Exempt Development Code) as the only pathway—despite its own ambiguities and limitations.

Lot Boundary Realignments as Exempt Development

The NSW General Exempt Development Code applies to all land within the City of Orange LGA and is prescribed under Part 2 of State *Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. Subdivision 38, Clause 2.75 of the Code provides for the subdivision of land to be carried out without development consent in certain circumstances. Clause 2.75 provides the following:

NSW General Exempt Development Code

2.75 Specified development

The subdivision of land, for the purpose only of any one or more of the following, is development specified for this code—

- (a) widening a public road,
- (b) a realignment of boundaries—
 - (i) that is not carried out in relation to land on which a heritage item or draft heritage item is situated, and
 - (ii) that will not create additional lots or increase the number of lots with a dwelling entitlement or increase the opportunity for additional dwellings, and
 - (iii) that will not result in any lot that is smaller than the minimum size specified in an environmental planning instrument in relation to the land concerned (other than a lot that was already smaller than that minimum size), and
 - (iv) that will not adversely affect the provision of existing services on a lot, and
 - (v) that will not result in any increased fire risk to existing buildings, and
 - (vi) if located in Zone RU1, RU2, RU3, RU4, RU6, E1, E2, E3 or E4—that will not result in more than a minor change in the area of any lot, and
 - (vii) if located in any other zone—that will not result in a change in the area of any lot by more than 10%,
- (c) (Repealed),
- (d) rectifying an encroachment on a lot,
- (e) creating a public reserve,
- (f) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public toilets.

Other exempt subdivision purposes include rectifying encroachments, creating public reserves, or excising land for public uses.

Importantly, any exempt subdivision must meet both Clause 2.75 and the general requirements under Clause 1.16 of the Code. While Subclause 2.75(b) directly addresses boundary realignments, other subclauses—such as 2.75(d) for encroachment rectification—may also apply to relevant scenarios.

For rural and environmental zones (excluding RU5), Sub-subclause 2.75(b)(vi), which limits exempt realignments to “minor changes” in lot area, is particularly significant and is explored in the following section.

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

Interpreting “a Minor Change in the Area of Any Lot”

(Sub-subclause 2.75(b)(vi) of the NSW General Exempt Development Code)

To qualify as exempt development in RU1, C2, C3 or C4 zones, boundary realignments must not result in “more than a minor change in the area of any lot.” However, neither the Code nor case law provides a clear definition of what constitutes a “minor” change.

By contrast, the same clause for other zones (sub-subclause 2.75(b)(vii)) defines “minor” as no more than a 10% change in area—highlighting the absence of a numeric threshold for rural and conservation land. This likely reflects the much greater variability in rural lot sizes, which makes fixed benchmarks difficult to apply uniformly.

Three key issues arise when interpreting the term:

(i) Defining “Minor”

Exempt development must be low-impact in both scale and effect. Accordingly, “minor change” should consider both:

- **Quantitative factors** — the size of the area being transferred, and
- **Qualitative factors** — impacts on land use, functionality, and environmental values.

A combined approach is recommended: a sliding numeric benchmark to guide initial assessment, supported by broader DCP controls to consider cumulative or site-specific effects.

(ii) Variation in Lot Sizes

Lots in RU1 and C3 zones are highly variable, with 61.5% smaller than 10ha. A fixed 10% threshold may have vastly different outcomes depending on context. For example, transferring 5ha from a 50ha lot to a 2ha lot increases the smaller lot by 250%, despite appearing minor for the donor lot. (See **Figure 4**.)

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

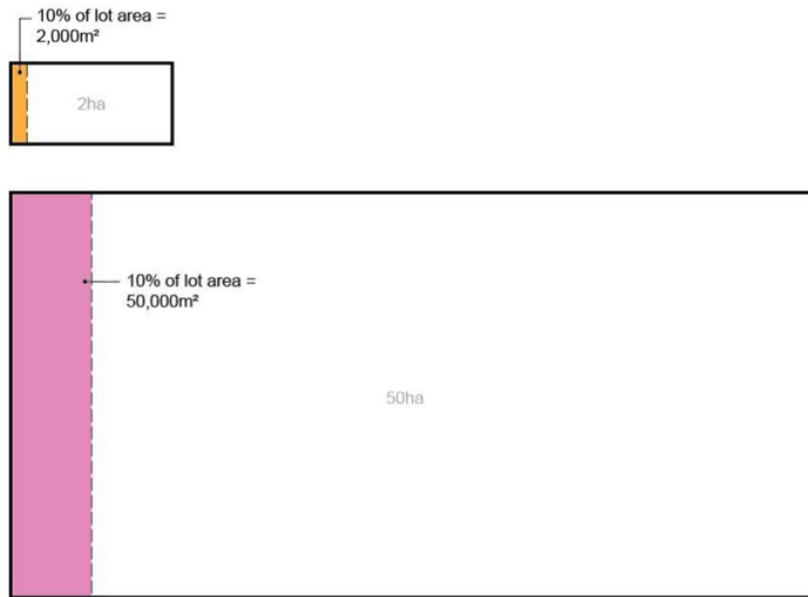


Figure 4 Comparable effects of lot size for determining a “minor change in the area of any lot” due to a boundary realignment

This disproportionality illustrates why a single benchmark is inadequate.

(iii) Variation in Lot Shapes

The impact of boundary shifts also depends on lot geometry. Adjusting a 10m strip from a square 1ha lot may reduce area by 10%, while the same adjustment on a long narrow lot may change area by 5% or 20%, depending on boundary orientation (Figure 5).

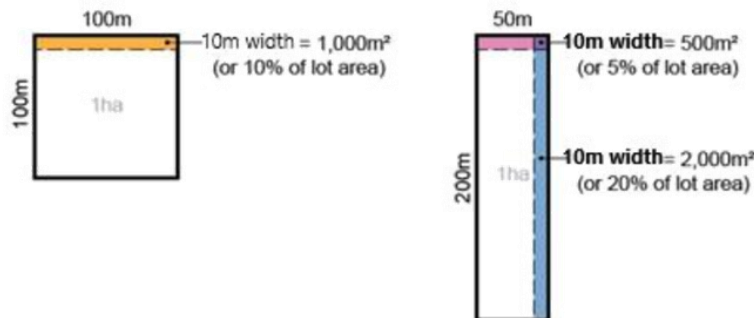


Figure 5 Comparable effects of lot boundary dimensions for determining a “minor change in the area of any lot” due to a boundary realignment

This further supports a graduated approach that accounts for shape and context, rather than applying a rigid percentage.

To manage these complexities, a sliding scale is proposed—tailoring the allowable change to lot size. This provides a clear quantitative guide while remaining sensitive to the diversity of rural land holdings. It should be

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

used as an initial screen, with final determinations considering DCP objectives to ensure no material environmental or functional impact arises from the realignment.

Interpreting “Rectifying an Encroachment on a Lot”

(Subclause 2.75(d), NSW General Exempt Development Code)

Subclause 2.75(d) allows subdivision as exempt development where the purpose is to rectify an encroachment on a lot. This provision applies across all zones, not just rural or conservation areas. However, like the “minor change” provision, the Code provides no definition or parameters for what constitutes an “encroachment” or how rectification should be assessed.

Given this ambiguity, it is recommended that the Orange DCP 2004 be updated—through its current comprehensive review—to include interpretive guidance. This would assist both applicants and Council staff in consistently determining whether a proposal reasonably qualifies under this provision.

Summary of Recommended Measures

To support consistent and defensible decision-making regarding exempt boundary realignments, the following actions are proposed:

1. **Introduce a quantitative benchmark** into the DCP for determining what constitutes “a minor change in the area of any lot,” tailored to rural and conservation zones.
2. **Apply broader DCP objectives and controls** to assess whether a proposal is genuinely “minor” and “low-impact” from a qualitative perspective.

These measures will be most effective when paired with a new LEP clause enabling “lot boundary adjustments” via development consent, offering a fallback pathway for proposals that cannot qualify as exempt development due to size or land use constraints.

Comparative Examples and Legal Context

Across NSW, more than 50 regional and outer-metropolitan councils have inserted specific “lot boundary adjustment” clauses into their Local Environmental Plans (LEPs). These provisions allow boundary realignments between existing lots, even where resulting lots fall below the standard minimum lot size—provided no new lots or dwelling entitlements are created, and land use conflict is avoided.

Local examples include Bathurst, Blayney, and Cabonne. The Cabonne and Blayney LEPs contain near-identical clauses (e.g., Clause 4.2B), which permit boundary adjustments in rural zones (typically RU1 and RU2) where zone objectives can still be met. The Bathurst LEP (Clause 4.2D) expands on this format by introducing additional assessment criteria, such as compatibility with surrounding land uses, environmental constraints, and agricultural viability. These clauses ensure boundary adjustments remain low-impact and consistent with strategic planning goals.

In contrast, the Orange LEP 2011 currently lacks a similar provision, meaning such adjustments are either prohibited outright or only permissible as exempt development under restrictive and ambiguous Code criteria.

Legal Considerations

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

NSW Land and Environment Court cases have helped clarify what qualifies as a “lot boundary adjustment” under LEPs. Key principles from decisions such as:

- *Ousley Pty Ltd v Warringah Shire Council (1999)*
- *McCabe v Blue Mountains City Council (2006)*
- *Barnes v Dungog Shire Council (2012)*
- *Johnson v Coffs Harbour City Council (2018)*

establish that:

- The resulting lots must bear a clear “resemblance” to the original configuration;
- Adjustments must not involve major reconfiguration or effectively constitute consolidation followed by re-subdivision;
- Significant changes in shape, size, or function may exceed what the courts deem a legitimate “adjustment.”

These rulings reinforce the need for LEP clauses to include clear, legally robust criteria to distinguish true adjustments from more complex land reconfigurations.

Supporting Amendments to the Orange DCP 2004

Review of DCP Controls

The Orange DCP 2004 is undergoing a comprehensive review, creating an opportunity to strengthen provisions relevant to lot boundary realignments. The revised DCP should aim to:

1. Update relevant subdivision controls to reflect current benchmarks and guidelines—particularly separation distances between agricultural and residential uses;
2. Introduce specific provisions to support the administration of a future “lot boundary adjustment” clause in Orange LEP 2011;
3. Ensure consistency with zone objectives across RU1 and C3;
4. Establish clear criteria for exempt development under the NSW General Exempt Development Code, including interpretation of “a minor change in the area of any lot” and “rectifying an encroachment”; and
5. Align with NSW case law by ensuring that exempt or consent-based adjustments retain a clear resemblance to the original subdivision pattern and demonstrate a relationship to existing boundaries.

Separation Distances and Buffers

PO 6.5-1 of the current DCP requires buffers between dwellings and agricultural uses where chemical spraying is likely—specifically, a 150m biological buffer. While this supports a “right to farm” approach, the standard is less stringent than others in force.

By comparison, the NSW Inland Code (SEPP 2008) requires a 250m setback for dwellings near intensive agriculture, rural industries, or mining (Clause 3D.13). This aligns with the NSW DPI's 2018 interim buffer guidelines, which specify tailored minimum distances based on land use type (see Appendix D). The Orange LEP also mandates a 500m buffer from intensive livestock agriculture (Clause 5.18(4)).

Two key implications for boundary realignments are:

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Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

1. Realignments should not reduce a lot’s capacity to comply with relevant buffer or separation distance requirements under the LEP or DCP.
2. Existing DCP provisions should be revised to reflect DPI’s evidence-based benchmarks as part of the current review.

Numeric Criteria for “Minor Change in Area”

A second DCP update should introduce a numeric benchmark to support consistent interpretation of “a minor change in the area of any lot” under Sub-subclause 2.75(b)(vi) of the Code.

Table 4 Proposed numeric standards for determining a “minor change in the area of any lot” for the purposes of undertaking a lot boundary realignment as exempt development

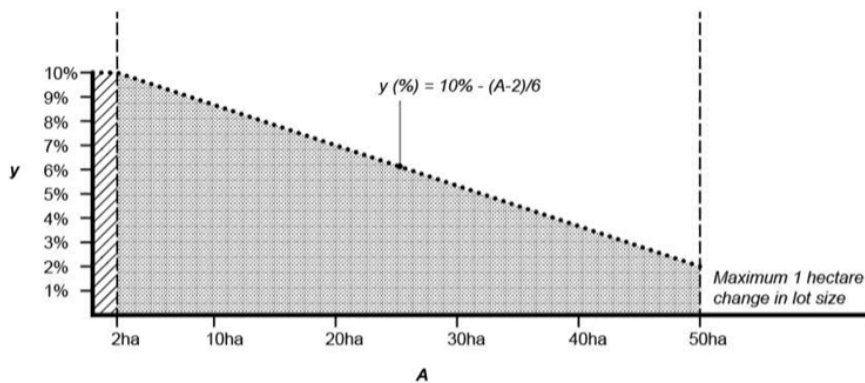
Original Lot Size (A)	Minor Change in Lot Area is Equal to or Less Than:
2 hectares or less	10% of Original Lot Size
Greater than 2 hectares but less than 50 hectares	10% of Original Lot Size - (A-2)/6 (%)
50 hectares or greater	1 hectare

where A = original lot size (hectares)

Table 4 and **Figure 6** set out a recommended sliding scale:

- For lots ≤2ha: up to 10% area change (consistent with non-rural zones);
- For lots >2ha and <50ha: allowable change decreases as lot size increases;
- For lots ≥50ha: capped at 1ha absolute area change.

This approach ensures that larger realignments cannot be classified as exempt while preserving flexibility across diverse rural lot sizes. It balances proportional fairness with the need to avoid high-impact changes proceeding without oversight.



where:

y = maximum % change in lot size

A = original lot size (hectares)

Figure 6 Proposed sliding scale for determining a “minor change in the area of any lot” for the purposes of undertaking a lot boundary adjustment as exempt development

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

Summary Table

Planning Proposal name	Instrument amendment to Orange Local Environmental Plan 2011 - Boundary Adjustments in Certain Rural and Conservation Zones
Purpose	To facilitate boundary adjustments in certain rural and conservation zones
Land to which proposal applies	All land within the C3 and RU1 zones in the Orange LGA
LEP to be amended	Orange Local Environmental Plan 2011
Proposal type	Standard
Gateway Determination sought	Yes
Author	Orange City Council

Part 1 – Objectives and Intended Outcomes

OBJECTIVES:

The objective of this Planning Proposal is to facilitate lot boundary adjustments (boundary realignments) on land within Orange’s rural and environmental zones – specifically Zone RU1 Primary Production and Zone C3 Environmental Management – by permitting such subdivisions with development consent even if resultant lots are below the normal minimum lot size.

INTENDED OUTCOMES:

This change is intended to provide flexibility for rural and conservation landowners to adjust or realign property boundaries for legitimate purposes (such as aligning boundaries with natural features or improving agricultural management) without creating new lots or dwelling entitlements. The intended outcome is an amendment to Orange Local Environmental Plan 2011 (Orange LEP 2011) to insert a new clause that explicitly allows boundary adjustments in the above zones (with Council consent), overcoming current prohibitions due to minimum lot size standards. This will enable sensible boundary reconfigurations while ensuring the objectives of the zones are upheld and no additional fragmentation or dwellings occur.

In summary, the proposal seeks to achieve a balance between protecting Orange’s productive agricultural land and environmental values and allowing minor boundary changes that improve land use efficiency, resolve encroachments or anomalies, and support rural land viability. By clearly permitting lot boundary adjustments (subject to strict criteria), the LEP amendment will give landowners greater opportunity to manage their landholdings effectively without undermining rural land protection goals or zone objective.

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

Part 2 – Explanation of Provisions

The objectives of the Planning Proposal will be achieved by amending the LEP to include a new clause (proposed as Clause 4.2D) under Part 4 “Principal development standards”, or in an appropriate location, titled along the lines of “*Boundary adjustments in certain rural and conservation zones*”.

The proposed new clause will be drafted to comply with the Standard Instrument (Local Environmental Plans) Order 2006. The clause will be inserted in Part 4 “Principal development standards” of the LEP and will adopt standard wording and structure consistent with equivalent clauses in other NSW LEPs, ensuring legal consistency and ease of interpretation.

ZONE CHANGES

- None

MAP CHANGES

- None

CLAUSE CHANGES

Objective of Clause: A new clause will include an objective that reflects its intent, e.g. “*to facilitate boundary adjustments between lots in certain rural and environmental zones where one or more resultant lots are below the minimum lot size, provided the adjustment better achieves zone objectives and does not result in additional fragmentation or dwellings.*” This signals that the purpose is to allow flexibility while still upholding the zone purposes (such as protection of rural land from fragmentation, conservation of environmental land, etc.).

Land to Which Clause Applies: The clause will apply to land in the rural and conservation zones RU1 and C3 within the Orange LGA (being the zones where currently minimum lot size requirements effectively prohibit boundary adjustments).

Development Permitted: The clause will state that, *despite the minimum lot size standard in clause 4.1 of the LEP*, the consent authority (Council) may grant development consent to a subdivision of land for the purpose of a boundary adjustment between adjoining lots in those zones even if one or more resultant lots are smaller than the minimum lot size shown on the Lot Size Map, provided certain criteria are satisfied.

Consent Criteria (Development Standards): The clause will include specific criteria that must be met for a boundary adjustment to be approved. Based on similar clauses in other NSW LEPs, the criteria will ensure that the boundary adjustment is minor and has no adverse planning impacts. For example, a typical set of criteria (drawn from Blayney LEP 2012 clause 4.2B) would require the consent authority to be satisfied that:

- (a) No additional lots or dwelling entitlements are created by the subdivision (i.e. the number of lots remains the same and no new lot is created that could have a dwelling where it could not before)
- (b) The number of dwellings (or potential dwellings) on each lot after the subdivision is the same as before the subdivision. In other words, the adjustment does not create any new opportunity for a dwelling on land that did not already have a dwelling right.
- (c) The potential for land use conflict is not increased as a result of the subdivision. (For example, an adjustment should not result in a dwelling being placed closer to adjoining agricultural operations or environmental areas in a way that would cause conflict.)
- (d) The subdivision will not have any significant adverse effect on the agricultural viability of the land (ensuring that the boundary change does not compromise the ability of agricultural land to be used productively, or, for environment zones, does not adversely affect environmental values).

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Exclusions/Additional Safeguards: In line with common practice across NSW, the clause may also include additional subclauses to prevent misuse. For instance, it typically excludes adjustments involving strata or community titled lots (making clear the clause applies only to standard Torrens title lots). It may also clarify that the clause cannot be used to create a lot that itself could be further subdivided under normal rules (this prevents a scenario where a boundary adjustment might create a larger lot that could then be split into additional lots, indirectly circumventing the “no new lots” rule). These details will be refined during drafting with Parliamentary Counsel, but the intent is to tightly confine the clause to genuine boundary realignments only.

The final wording of the clause will be subject to drafting by Parliamentary Counsel, but the above provisions illustrate the intended effect that Orange LEP 2011 will explicitly permit Council to consider and approve a boundary realignment in zones RU1 and C3 that would otherwise violate minimum lot size rules, as long as the adjustment is purely reconfiguring existing lots and does not increase development potential.

Draft Clause for Illustration: a draft clause reflecting the above could be structured as follows:

4.2D Boundary adjustments in certain rural and conservation zones (Draft)

- (1) The objective of this clause is to facilitate boundary adjustments between lots where 1 or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land but the objectives of the relevant zone can be achieved.
- (2) This clause applies to land in any of the following zones—
 - (a) Zone RU1 Primary Production,
 - (b) Zone C3 Environmental Management.
- (3) Despite clause 4.1, development consent may be granted to subdivide land by way of a boundary adjustment between adjoining lots where 1 or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that—
 - (c) the subdivision will not create additional lots or the opportunity for additional dwellings, and
 - (d) the number of dwellings or opportunities for dwellings on each lot after the subdivision will be the same as before the subdivision, and
 - (e) the potential for land use conflict will not be increased as a result of the subdivision, and
 - (f) the agricultural viability of the land will not be adversely affected as a result of the subdivision.
- (4) Before determining a development application for the subdivision of land under this clause, the consent authority must consider the following—
 - (g) the existing uses and approved uses of other land in the vicinity of the subdivision,
 - (h) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
 - (i) whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),
 - (j) whether or not the subdivision is likely to be incompatible with a use on land in any adjoining zone,
 - (k) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),
 - (l) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land, and
 - (m) whether or not the subdivision is likely to have an adverse impact on the environmental values, heritage vistas or landscapes or agricultural viability of the land.
- (5) This clause does not apply—
 - (n) in relation to the subdivision of individual lots in a strata plan or a community title scheme, or
 - (o) if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.

SCHEDULE CHANGES

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

- None

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

Part 3 – Justification of Merit

SECTION A – NEED FOR THE PLANNING PROPOSAL

Q1. IS THE PLANNING PROPOSAL A RESULT OF AN ENDORSED LSPS, STRATEGIC STUDY OR REPORT?

Yes. It implements actions from the Draft Sub-Regional Rural and Industrial Lands Strategy 2019–2036 and aligns with Orange LSPS 2020, both of which identify the need for flexible boundary adjustment provisions in rural zones.

Q2. IS THE PLANNING PROPOSAL THE BEST MEANS OF ACHIEVING THE OBJECTIVES OR INTENDED OUTCOMES OR IS THERE A BETTER WAY?

Yes. An LEP amendment is the only lawful mechanism to override the minimum lot size in clause 4.1 for boundary adjustments while maintaining controls on subdivision. Reliance on State Policy provisions is inadequate due to ambiguity and limited scope

Q3. WILL THE PLANNING PROPOSAL GIVE EFFECT TO THE RELEVANT REGIONAL OR DISTRICT PLAN(S)

Yes – see Strategic Merit section; it supports Directions in the Central West and Orana Regional Plan 2041 to protect agricultural land and manage land use conflict.

Q4. WILL THE PLANNING PROPOSAL GIVE EFFECT TO THE LOCAL STRATEGIC PLANNING STATEMENT OR OTHER LOCAL STRATEGIES?

Yes – it implements LSPS 2020 priorities on rural land flexibility and agricultural viability.

Q5. IS THE PLANNING PROPOSAL CONSISTENT WITH APPLICABLE STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS)?

Yes – see Part 3 for analysis of SEPP (Primary Production) 2021 and others.

SECTION B –RELATIONSHIP TO THE STRATEGIC PLANNING FRAMEWORK

Q6. IS THE PLANNING PROPOSAL CONSISTENT WITH APPLICABLE SECTION 9.1 DIRECTIONS?

Yes – see Part 3 for detailed compliance table.

Q7. WILL THE PLANNING PROPOSAL HAVE ANY ENVIRONMENTAL, SOCIAL OR ECONOMIC IMPACTS?

Environmental – Neutral to positive; see Part 3. Social – Neutral to positive; resolves land management issues. Economic – Positive; supports agricultural efficiency.

SECTION C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

Q8. IS THERE ADEQUATE PUBLIC INFRASTRUCTURE FOR THE PLANNING PROPOSAL?

Yes – no increase in demand as no new lots or dwellings created.

Q9. WHAT ARE THE VIEWS OF STATE AND COMMONWEALTH AUTHORITIES CONSULTED?

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Relevant agencies (e.g. DPI Agriculture, DPE Biodiversity) will be consulted post-Gateway; based on precedent in other LGAs, support is anticipated.

 Q10. HAS THE PLANNING PROPOSAL ADEQUATELY ADDRESSED ANY OTHER RELEVANT MATTERS?

Yes – risk mitigation, precedent, and zone objectives considered.

SECTION D – IS THERE ADEQUATE PUBLIC INFRASTRUCTURE FOR THE PLANNING PROPOSAL?

 Q11. HOW WILL THE PLANNING PROPOSAL BE IMPLEMENTED?

Via standard LEP amendment process, post-Gateway, including public exhibition and drafting by Parliamentary Counsel.

 Q12. HAS THE PLANNING PROPOSAL CONSIDERED OPTIONS FOR STAGING?

Not applicable; clause will apply immediately upon gazettal.

STRATEGIC MERIT

 CONSISTENCY WITH REGIONAL/DISTRICT STRATEGIC PLANS

The Planning Proposal is consistent with the Central West and Orana Regional Plan 2041, specifically:

Goal/Direction	Proposal Response
<i>protect agricultural land and industries from land use conflicts</i>	By enabling boundary adjustments without creating new rural residential lots or dwellings, this proposal directly supports that goal – it allows farmers and landholders to reorganize land holdings in a way that can enhance agricultural productivity and resolve land use conflicts (like poorly aligned boundaries) without any increase in fragmentation or rural-residential development. In short, the amendment will <i>protect and enhance agricultural operations</i> (through more practical lot configurations) while preventing outcomes that would conflict with agriculture.

 CONSISTENCY WITH LOCAL STRATEGIC PLANNING STATEMENTS (LSPS) AND STRATEGIES

This proposal aligns with the objectives outlined in the Orange LSPS 2020:

Environmental challenges	Proposal Response
Agriculture: With highly valued agricultural soils, particularly to the south of the city, Orange must protect and support primary production. We face strong pressure for rural lifestyle properties close to the city that consume significant amounts of land	Rigid 100-hectare parcel sizes are not always necessary for productive farming and that some flexibility in lot sizing can remove barriers for new farmers or diversified farming approaches. The Planning Proposal directly responds to this strategic direction by allowing smaller or reconfigured holdings without creating additional lots – thereby encouraging the “innovation in agriculture” and adaptability the LSPS

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Environmental challenges	Proposal Response
<p>and typically have negligible food production.</p> <p>Balanced against this is a need to foster innovation in agriculture, including smaller holdings, to ensure the sector can respond to changes in demand for different types of produce as well as avoiding barriers to entry for new farmers with different land management approaches. Not all farming enterprises need 100ha of land to be viable</p>	<p>visions, while still upholding the protection of rural land from excessive fragmentation (since no new lots or dwellings are permitted).</p> <p>The proposal effectively enables the kind of sensible adjustment of boundaries that can help new or existing farmers optimize land uses, consistent with the LSPS's vision of supporting primary production and removing unnecessary barriers.</p>

Additionally, Orange (in collaboration with Cabonne and Blayney councils) prepared a Draft Sub-Regional Rural and Industrial Lands Strategy 2019–2036, which guides rural land use. That draft strategy (though not yet formally adopted at the time of the Council report) contains actions prioritizing the retention of rural land for agriculture and discouraging subdivisions that fragment land or facilitate proliferation of non-agricultural uses.

Strategic Action A2-1 of the draft sub-regional strategy calls for enabling such boundary adjustments while still prioritizing the prevention of rural land fragmentation and the proliferation of dwellings in RU1 and C3 zones. By implementing this LEP clause, Council will be directly acting on that strategic recommendation, reconciling the strategic aim to protect rural land with the need to remove an impediment to good land management.

 CONSISTENCY WITH STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS)

This proposal has considered and is consistent with relevant SEPPs including:

- **State Environmental Planning Policy (Primary Production) 2021** – chapter 2 contains the aims of:
 - (a) to facilitate the orderly economic use and development of lands for primary production,
 - (b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,
 - (c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,
 - (d) to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,
 - (e) to encourage sustainable agriculture, including sustainable aquaculture,
 - (f) to require consideration of the effects of all proposed development in the State on oyster aquaculture,
 - (g) to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.

The proposal directly relates to and supports aims (a), (b), (c) and (e) above, by allowing for the more efficient and orderly use of agricultural land for primary production and protects these lands from additional residential development. The proposal is unrelated to aquaculture generally and will have no effect on oyster aquaculture.

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- **State Environmental Planning Policy (Exempt and Complying Development Codes) 2008** part 2 Division 1 subdivision 38 allows a range of minor subdivisions without consent – however clause 2.75(b)(vi) relies upon a vague term of “minor change” in the area of any lot. Interpretation of this term is subjective and lacks consistency of application. The proposal does not alter the SEPP but creates an approval pathway for those scenarios that may not fully align with the exempt pathway.

 CONSISTENCY WITH MINISTERIAL DIRECTIONS (SECTION 9.1 DIRECTIONS)

This Planning Proposal has been prepared against the applicable Ministerial Directions (issued under Section 9.1 of the Environmental Planning and Assessment Act) and is found to be consistent as follows:

Ministerial Direction	Proposal Response
<u>Direction 1.2 – Rural Zones:</u>	This direction requires planning proposals in rural areas to protect the agricultural productivity and character of rural lands. The proposal is consistent with this direction as it does not rezone or allow new uses in rural zones – rather, it facilitates a planning outcome (boundary adjustment) that can improve agricultural parcel layout without introducing any new incompatible uses or additional development. The clause will operate only to adjust boundaries; it expressly prevents any increase in dwelling opportunities or lot numbers. Thus, the rural character and productivity are maintained.
<u>Direction 1.5 – Rural Lands:</u>	This direction reflects the state’s <i>Rural Planning Principles</i> , which include minimizing fragmentation of rural land and ensuring economic prosperity of rural industries. The proposal is consistent with these principles. It explicitly prohibits additional fragmentation (no new lots) and aims to enhance the viability of existing farms by allowing boundary changes that for example could give a farm better access to water, consolidate farming land, or align boundaries with fences or natural features (improving management). By helping farmers resolve impractical lot configurations, the proposal supports the economic use of rural land while avoiding rural-residential sprawl. In essence, it strengthens “right to farm” outcomes and efficient land use – a core intent of the Rural Lands direction.
<u>Direction 2.1 – Environment Protection Zones:</u>	This direction ensures C3 and other environmental zones are appropriately managed. The proposal maintains the protective intent of environmental zones: any boundary adjustment in Zone C3 would still require that zone objectives are met and no new development rights are created. If anything, allowing minor adjustments could help achieve environmental objectives (for instance, by realigning a lot boundary to follow a ridge line or watercourse, it may simplify conservation management). The clause criteria (e.g. no increased land use conflict, consideration of viability/impact) will ensure environmental values are considered in each case. Therefore, the proposal does not undermine environmental protection; it provides a mechanism to achieve those protections in a more practical way.
<u>Direction 5.10 – Implementation of Regional Plans:</u>	As noted above, the proposal is consistent with and gives effect to the Central West and Orana Regional Plan’s objectives regarding agricultural land and managing land use conflict. By facilitating boundary adjustments without new dwellings, it helps implement the regional policy of protecting productive agricultural lands and maintaining rural landscape values. No inconsistency with any Regional Plan action has been identified.

No other Section 9.1 Directions are adversely affected. The proposal does not seek to increase urban development, affect hazard policies, or create site-specific provisions contrary to Direction 6.3. In summary, the proposal is broadly consistent with all relevant State policies and Directions, or if any minor inconsistency were arguable, it is justified by the significant strategic merit of the outcome.

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

PRECEDENT

Orange is not alone in pursuing such a clause. Throughout NSW, at least 55 other non-metropolitan and outer-metropolitan local government areas have already implemented LEP clauses to allow lot boundary adjustments in rural and/or environmental zones. The Department of Planning and Environment has accepted and approved those clauses through the Gateway process, indicating that this kind of amendment is considered good practice for addressing the issue of inflexible lot size standards in rural areas.

Many neighbouring or comparable councils (e.g. Cabonne, Blayney, Bathurst, Cowra, Forbes, Mid-Western Regional, and others in the Central West) have virtually identical provisions. By introducing this clause, Orange LEP 2011 will come into line with standard practice in NSW, ensuring Orange's farmers and landholders have access to the same flexibility that others do. This also suggests an implicit strategic merit: the amendment is part of a coordinated approach to rural planning across the state, and will not undermine any regional or state interests – on the contrary, it helps fulfill them in a controlled manner.

SITE-SPECIFIC MERIT

The Problem in Orange: This amendment is driven by a clear local issue: under Orange LEP 2011's current rules, even minor boundary adjustments between rural lots are effectively prohibited if the resulting lot areas don't meet the minimum 100-hectare lot size standard (which applies to most rural and environmental lands).

Orange's RU1 Primary Production and C3 Environmental Management zones are almost entirely subject to a 100 ha minimum lot size, yet almost all (98.5%) of existing lots located within these zones are smaller than 100 hectares. Meaning the vast majority of rural lots in Orange are already well below the nominal minimum size. As a result, any boundary change at all (no matter how sensible or minor) will inevitably involve at least one lot that is under-sized.

Council currently has no power to approve such adjustments in most cases, because they fail the LEP's subdivision standards and there is no exception clause. This leads to many situations where a boundary realignment would make good planning sense (e.g., to better align lot boundaries with natural features) but Council is unable to approve the realignment via development consent due to the non-compliance with the LEP's minimum lot size standard.

This is not simply a theoretical concern – Council staff receive frequent enquiries from landowners about boundary adjustments in rural and environmental zones, and without a clear LEP provision, staff must attempt to determine if the proposal can fit under the State Policy's exempt development criteria or otherwise deny the request.

The exempt development route (via the State Environmental Planning Policy for exempt boundary adjustments) is very limited and undefined (terms like "minor change in area" are not quantified), causing confusion and inconsistent outcomes. The lack of an LEP clause thus creates delays, uncertainty, and inefficiencies for both landholders and Council.

In summary, there is a well-documented planning gap that needs to be addressed. The community and Council have identified that the inability to approve logical boundary adjustments is hindering effective land management – examples include cases where a farmer cannot adjust a boundary to follow a fence or water pipeline, or two neighbours cannot swap small equal portions of land to straighten a boundary, simply because one lot might become a few hectares smaller while the other grows larger. Currently, unless those changes qualify as "exempt development" (which is ambiguous and very restrictive), they cannot proceed legally, even if both parcels remain well below 100 ha as they were before. This Planning Proposal directly responds to that local need by creating a controlled approval pathway.

IMPROVED AGRICULTURAL VIABILITY

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Farmers can adjust lot boundaries to consolidate arable land or improve access to resources (such as incorporating a water source into one lot) without needing 100 ha per lot. This can enhance the productive capacity of holdings. Importantly, the clause requires that agricultural viability is not adversely affected, ensuring that any adjustment that might seriously hurt a farm's viability would not be approved. In many cases, the opposite is true – viability is improved by a better configuration (for instance, one farm might shed a small awkward corner to a neighbour in exchange for another section, resulting in more logically shaped fields for both).

AVOIDANCE OF FRAGMENTATION

The strict “no additional lots or dwelling opportunity” rule means this amendment will not trigger rural residential growth or more houses in the countryside. Every adjustment must leave the number of potential dwellings exactly the same as before. As such, the rural landscape and population density remain unchanged by these subdivisions.

The proposal, therefore, cannot be used as a back-door way to create new small rural lots for sale – it simply allows re-shuffling of land between existing lots. This addresses any concern that the change could undermine rural land protection: it will not create any new lot that didn't exist already, and thus no further fragmentation of ownership occurs.

ANOMALIES AND LAND USE CONFLICTS

Over time, many rural properties have boundaries that do not align well with how the land is actually used (e.g., fences built off the legal boundary, houses or sheds encroaching slightly into the neighbour's lot, lots split by a road, etc.). The current inflexibility means such issues often remain unresolved. With this clause, landowners can seek approval to swap small areas of land to “rectify encroachments” or follow physical features, thereby reducing conflicts and clarifying land ownership boundaries.

Landowners may seek realignments to rectify a historical encroachment over a boundary or better align lot and zone boundaries, among other reasons. These reasons lead to more logical and peaceful use of the land. The criteria requiring no increased land use conflict ensures that if a proposed adjustment would, say, bring a non-agricultural use closer to a farming operation and increase conflict, Council can refuse it. Only adjustments that maintain or improve the land use harmony should be approved.

EFFICIENCY AND TRANSPARENCY

Currently, Council staff must often rely on Clause 4.6 (variation of development standards) or ambiguous State Policy criteria to handle requests, which is time-consuming and legally uncertain. By embedding a clear clause in the LEP, the rules become transparent to everyone. Landowners will know upfront what is permissible and what the requirements are. Council's assessment process will be more straightforward, with defined criteria to check. This will save time and resources for both Council and applicants, and lead to more consistent decision-making. Essentially, it moves these lot adjustments from a grey area into a well-regulated development consent pathway.

REGIONAL CONSISTENCY

Locally, most adjacent councils (Cabonne, Blayney, etc.) have had such clauses for a number of years. Orange landowners are aware of this and have sometimes questioned why Orange cannot do the same. Implementing this amendment not only addresses fairness, but it also ensures Orange's rural policies do not put its farmers at a competitive disadvantage. For example, a farmer owning land on both sides of the Orange–Cabonne LGA boundary currently could adjust boundaries on the Cabonne side (with approval) but not on the Orange side – an inconsistency this proposal will eliminate.

ENVIRONMENTAL IMPACTS

This proposal is not expected to have any significant adverse environmental impacts. As detailed, the clause will likely improve environmental outcomes in some cases by allowing boundaries to align with environmental

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Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

features (streams, ridgelines, vegetation communities), thereby placing management of those features with the appropriate landholder.

Each boundary adjustment application will undergo environmental assessment at the DA stage – if an adjustment were to adversely affect, for example, a wildlife corridor or threatened species habitat, Council can refuse or require measures to mitigate such impact. However, since no additional development is allowed, no direct clearing or new construction is inherent in merely adjusting a lot boundary.

Any subsequent development (e.g. fencing new boundaries or relocating a farm driveway) would be minor and also subject to normal controls. The environmental zone (C3) included is already protected by the zone objectives and permissible use tables; those protections remain unchanged.

The proposed clause explicitly requires that zone objectives can be met, meaning an adjustment that undermines (for instance) the conservation purpose of C3 would not meet the criteria. In practice, similar clauses in other councils have not led to environmental harm – rather, they include safeguards such as *“the adjustment must not result in environmental harm or increase risk to environmental assets”* in some cases. Orange Council can similarly ensure that any potential environmental issues are addressed through consent conditions (like requiring regeneration of a transferred area if appropriate).

In the environmental zone (C3), concerns could be raised if smaller lots lead to neglect or sale for hobby farms. However as no new lots or houses are created, the same land stays in the same use as before. If anything, a boundary adjustment in an environmental zone might transfer a piece of high-value habitat to an adjoining conservation lot or align boundaries with ecosystem edges, which could improve environmental management. The consent process will allow Council to impose any conditions needed (e.g., requiring fencing along a new boundary to protect an environmental feature). As such, environmental values will be safeguarded through the development assessment stage.

SOCIAL AND ECONOMIC IMPACTS

Socially, the proposal is expected to be neutral to positive. It does not enable any new housing or population increase, so it will not put additional demand on community services or alter the social fabric of rural areas. It may positively impact rural landowners’ wellbeing and fairness – enabling neighbours to amicably resolve boundary issues or family farms to adjust internal lot lines for succession purposes, etc., which can reduce disputes and increase satisfaction.

The economic effect on the agricultural sector is beneficial as described: more flexibility for farm businesses to configure their land for efficiency can support the local economy (agriculture remains a key sector in Orange’s economy). The broader community should not experience any detriment; indeed, by supporting agriculture and environmental management, the community benefits through sustained rural productivity and landscape values.

Some stakeholders might worry that allowing any leeway on lot size could later be exploited to push for more dwellings or rural subdivision. However, the draft clause is explicitly written to prevent that outcome (it is limited to boundary adjustments only, no new lots, no new dwellings). It actually reinforces the prohibition on additional subdivision by making clear that even if a lot becomes smaller, it gains no right to additional dwelling development. In fact, many LEPs including the model from Bathurst LEP 2014 reiterate that the clause cannot be used to create a lot that could itself be subdivided further under the normal rules. Orange’s clause will similarly be crafted to close any loophole. Therefore, the rural subdivision standard (100ha) remains intact for its primary purpose – controlling dwelling permissibility – and is only relaxed in these exceptional cases where no planning harm is done.

HERITAGE IMPACTS

The proposal does not specifically target any heritage-related provisions. Any adjustment affecting a heritage item or within a heritage conservation area would still need to comply with heritage controls in the LEP (and

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

likely would be minor enough not to cause physical impact). There is no anticipated negative impact on Aboriginal or European heritage items from simply altering lot boundaries, as long as any on-ground works (survey marking, fencing) are managed with care. Standard consultation with heritage bodies would occur if required for a specific case.

INFRASTRUCTURE CAPACITY

As no new lots or dwellings will result, the proposal has negligible impact on infrastructure demand. No additional roads, water or electricity connections, or services are required because the number of households remains the same. A boundary adjustment might slightly shift where a farm access driveway meets a road or which lot is serviced by an existing power line, but these are minor rearrangements that do not burden public infrastructure.

The rural road network, utilities, and community facilities will see no increase in usage due to this proposal. In fact, by potentially allowing, for example, two substandard lots to become one larger lot (in cases where owners swap land and perhaps even choose to consolidate titles after adjustment), the infrastructure burden could even decrease marginally in some scenarios.

The only potential infrastructure consideration is ensuring that after a boundary adjustment, each lot still has legal and practical access (e.g., if one lot's frontage is reduced, it must still have adequate right-of-way). The consent authority will check this during assessment and can impose conditions (such as easements) to maintain access if needed. This is a standard subdivision consideration and will be handled on a case-by-case basis.

Overall, there are no known infrastructure capacity issues arising from this proposal – it essentially reshuffles existing land ownership boundaries with no change in land use intensity.

RISKS AND MITIGATION

Because the proposal maintains the status quo in terms of land use intensity, risks to the environment or infrastructure are minimal. The main "risk" if any, is procedural – ensuring that the clause is applied correctly and does not inadvertently allow something beyond a genuine boundary adjustment. This will be managed by the careful wording of the clause and staff training in its implementation. Council may also update or create Development Control Plan (DCP) guidelines to support this LEP clause. The DCP can provide additional criteria or design considerations for boundary adjustments (for instance, maintaining adequate buffers between differing land uses. By having both LEP and DCP controls, Council can ensure each proposal is rigorously assessed and any environmental or infrastructure-related concerns are addressed at the development application stage.

In conclusion, the justification for this Planning Proposal rests on being strategically sound, locally needed, and responsibly safeguarding environmental and rural interests. The amendment offers a practical solution to a documented problem, with widespread precedent and support in policy. It enables Orange to uphold its commitments to both agricultural productivity and environmental protection, by using a targeted, well-regulated approach to lot boundary adjustments.

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

Part 4 – Mapping

No LEP map changes are required for this proposal. The amendment does not rezone any land nor alter the minimum lot size mapping. The affected lands are already zoned RU1 and C3 under Orange LEP 2011, and those zones have established minimum lot size controls (typically 100 ha for RU1 and C3). Refer to Figure 2 for a map of where these zones occur within the Orange LGA. The proposal is textual in nature, adding a clause to permit certain subdivisions as an exception to the mapped lot size standards.

For clarity, the area to which the new clause will apply is all land within the Orange Local Government Area that is zoned RU1 or C3 on the Orange LEP Land Zoning Map. This includes the rural hinterland of Orange and certain environmental protection lands.

A map illustrating these zones can be provided in supporting documents if needed (for example, showing all RU1/C3 lands) to identify the extent of where boundary adjustments could be contemplated. However, since the clause's effect is broad and policy-based, no specific map amendments or site-specific maps form part of the LEP instrument changes.

If required by the Department of Planning as part of the LEP drafting process, Council will ensure that any spatial data or references (such as a list of relevant zone names) in the clause are accurate and consistent with the Standard Instrument. We note that a list of the zones will be embedded in the clause text (as per the draft in Part 2 above), so stakeholders can easily see which lands are included. In summary, Part 4 – Maps is not applicable, other than referencing the existing zone and lot size maps for context.

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

Part 5 – Community Consultation

Consultation Approach: This Planning Proposal will undergo public exhibition and consultation in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the Department’s Local Environmental Plan Making Guideline (August 2023). The proposal is anticipated to be categorized as a “Policy” amendment of local significance (not a Principal LEP), which typically warrants the standard public exhibition period (minimum 28 days exhibition is expected, given the proposal applies across multiple rural zones and will be of interest to rural landowners).

Public Exhibition: Following Gateway determination, Council will publicly exhibit the Planning Proposal package, including the explanation and justification, the draft clause, and any supporting information (such as FAQs to help explain the change). The exhibition will be advertised in local media and on Council’s website/Planning Portal. Notices will likely be placed in the *Central Western Daily* newspaper and on Council’s official social media or newsletters to reach the community. The exhibition materials will be accessible through the NSW Planning Portal (as required for all planning proposals).

During the exhibition, Council will directly notify key stakeholders, including:

- Affected landowners in the RU1 and C3 zones (notification letters or emails to all owners of land in these zones, where practicable).
- Relevant local community groups, such as any farmers’ associations, or environmental conservation groups active in Orange, to inform them of the opportunity to comment.
- Local planning consultants who frequently field enquiries from landowners on the feasibility of a rural boundary adjustment.
- Adjoining councils (Cabonne and Blayney Shire Councils) for information (as the rural land issues often cross borders, though no adverse impact on them is foreseen).
- NSW Government agencies as required by the Gateway determination (likely agencies such as NSW Department of Primary Industries – Agriculture and possibly Department of Planning and Environment (Biodiversity and Conservation) because the proposal touches on agricultural and environmental land management). These agencies can provide expert input on any conditions or considerations for the LEP amendment. It is noted that DPI Agriculture has in other cases supported such clauses as they help preserve farmland by preventing fragmentation while allowing farm consolidation; we will seek their feedback to ensure alignment with broader agricultural policy.

The community will be invited to submit written comments on the proposal. Given this amendment is relatively targeted and technical, we anticipate that most submissions may be supportive (particularly from landowners who see the benefit) or seeking clarifications, rather than outright objections. However, all feedback will be carefully considered.

Consultation with Aboriginal Communities: The proposal does not directly affect specific sites or involve rezoning; therefore, it is unlikely to have particular impacts on Aboriginal heritage or require separate consultation under the Aboriginal community engagement guidelines for plan making. Nonetheless, as part of exhibition, local Aboriginal land councils or representatives will be notified (e.g., Orange Local Aboriginal Land Council) to allow input if they wish, especially since rural land adjustments might intersect with interests in land.

Post-Exhibition: After the exhibition period, Council staff will compile and review all submissions. A consultation report will be prepared summarizing the feedback and Council’s response. If the submissions raise substantial issues, Council may consider amendments to the Planning Proposal (for instance, if there is a strong view that additional safeguards are needed, those can be included before finalizing). However, given similar proposals in other LGAs have generally been non-controversial, it is expected the community consultation will affirm the need for the change, perhaps with questions on how it works in practice. All those who make submissions will be notified of the next steps and how their input was considered.

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

The Gateway determination will also specify if consultation with any State or Commonwealth authorities is required aside from those anticipated. Council will comply with any such requirements – for example, if Transport for NSW needs to be consulted (unlikely since no transport impact) or if NSW Rural Fire Service should be consulted (since rural subdivision can have bushfire implications, albeit here no new lots, but we will engage RFS if directed).

Community Interest: Overall, the level of community interest is expected to be moderate and focused on the rural community. We will ensure the intention and limits of the proposal are clearly explained to avoid any misunderstanding (for instance, making it clear that this is *not* allowing additional subdivision for dwellings). This clarity will help avoid unfounded objections and instead solicit constructive feedback on the implementation. The Planning Proposal document itself (this report) will be made available, and a plain-language summary may be provided for ease of understanding.

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

Part 6 – Project Timeline

Project Stage	Start Date	End Date
Gateway Determination	July 2025	August 2025
Post-Gateway Actions	August 2025	September 2025
Government Agency Consultation	September 2025	October 2025
Public Exhibition Period	September 2025	October 2025
Public Hearing (if required)	N/A	N/A
Submission Analysis and Reporting	November 2025	December 2025
Council Finalisation/Adoption	December 2025	February 2026
Legal Review by Parliamentary Counsel	February 2026	March 2026
Submission to Department for Finalisation	February 2026	March 2026
LEP Notification (Gazettal)	March 2026	April 2026

Gateway Determination (July – Aug 2025): The NSW Department of Planning and Environment (or delegate of the Minister) will assess the proposal. A Gateway determination is anticipated within ~4–6 weeks of submission (potentially by August 2025). A favourable Gateway is anticipated given the strong justification, possibly with conditions such as consulting certain agencies or minor clarifications. Upon receiving Gateway approval (with or without conditions), Council will proceed as authorized.

Post-Gateway Actions (Aug – Sept 2025): Council will satisfy any Gateway conditions prior to public exhibition. This may include: preparing any additional documentation (e.g., a section 9.1 Direction compliance checklist, mapping verification), consulting relevant agencies pre-exhibition if required, and updating the Planning Proposal if needed. We anticipate this step to be completed by early October 2025 at the latest. Concurrently, Parliamentary Counsel may be requested to begin drafting the actual legal instrument (draft LEP clause) if Gateway requires an early draft – however, usually the drafting happens after exhibition unless a complex matter needs early input. In this case, the clause is straightforward and modelled on existing ones, so significant drafting issues are not expected.

Public Exhibition Period (Sept – Oct 2025): The Planning Proposal will be placed on public exhibition for 28 days, tentatively from mid-October 2025 to mid-November 2025. Council will implement the consultation strategy as outlined in Part 5. During this time, any scheduled public events or meetings with stakeholders will occur. If required by Gateway, agency consultation may run in parallel (agencies are typically given the same timeframe to comment). By late November 2025, the exhibition will conclude.

Submission Analysis and Reporting (Nov 2025 – Dec 2026): Council staff will review all submissions received and prepare a report on the outcomes of the exhibition. This will include any proposed changes to the Planning Proposal in response to issues raised (though none may be needed if broad support is received). This report, along with the revised Planning Proposal (if amended), will be presented to the Council for final endorsement. The aim is to have this completed by January 2026. (Note: If the volume of submissions is low and largely supportive, this could be done sooner, in December; however, allowing extra time over the holiday period is prudent.)

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

Council Final Approval (December 2025 or February 2026): The final Planning Proposal (post-exhibition) is expected to go to a Council meeting either in December 2025 or in February 2026 for a resolution to proceed with making the LEP amendment. Council will consider the community feedback and if satisfied, will resolve to formally make the plan in liaison with Parliamentary Counsel. However, if plan-making delegations are withheld by the Gateway process then Council would (if satisfied) resolve to forward the Planning Proposal to the Department (Planning Secretary) with a request to draft and make the LEP.

Drafting by Parliamentary Counsel (Feb–Mar 2026): Following Council’s final approval, the documentation will be sent to the Parliamentary Counsel’s Office (PCO) to prepare the legal instrument (an Amendment to Orange LEP 2011) in the precise wording. Because a model clause from other LEPs will be used as a template, we anticipate the drafting process to be relatively quick. By March 2026, a draft instrument (LEP amendment) should be ready. The Department and Council will review the draft to ensure it reflects the intended clause (Clause 4.2D allowing boundary adjustments) accurately.

LEP Making (Gazettal) (Mar 2026): Once the draft instrument is agreed upon, the Department’s plan-making delegate (or the Minister) will sign off on the LEP amendment. The amendment is then notified (published) on the NSW Legislation website, at which point it becomes law. We estimate this could occur by April 2026. The exact timing may depend on PCO workload and any final clearances, but given the relatively minor nature of the amendment, it should not be delayed significantly.

Update of LEP and DCP (May 2026 and onwards): After gazettal, Orange LEP 2011 will include the new clause. Council will publicize the new rules to the community (through information on our website and direct engagement with the planning/development community).

In parallel, Council will finalise complementary updates to the Orange Development Control Plan (DCP) 2004 or its replacement (the comprehensive DCP under review) to provide guidance on assessing boundary adjustments (as recommended in the RLB Report). The DCP amendments can likely be done on a similar timeline or shortly after the LEP is made, ensuring a cohesive policy framework.

Contingencies: The above timeline targets an overall completion (gazettal) in approximately 8-10 months from initiation. This is an achievable timeframe for a planning proposal of this scope (the LEP Making Guideline’s benchmarks for a “standard” proposal are around 12 months). If unexpected delays occur (for example, if significant objections require re-exhibition or additional studies), the timeline could extend. However, such delays are not anticipated due to the nature of the proposal and precedents elsewhere. Council will keep the Department informed of progress at key stages and seek to expedite wherever possible, including using the Planning Portal’s tracking tools to ensure accountability to timeframes.

Throughout the process, Orange City Council remains committed to thorough consultation and robust justification, such that by the end of this timeline the amendment will be ready for implementation with community understanding and support. Around Q2 of 2026, landowners in Orange’s rural and conservation zones should have the benefit of this new provision, enabling practical lot boundary adjustments to be assessed on their merits – a positive step for local planning and land management.

Planning Proposal OLEP 2011 – Rural Lot Boundary Adjustments

Attachments

Appendix A – Case Law Summary

Appendix B – Summary of LEP clauses by other non-metropolitan Councils

Appendix C – Draft LEP clause for inclusion in Orange LEP 2011

Appendix D – Proposed supporting changes to Orange DCP 2004

Appendix D - Proposed Amendment to Orange Development Control Plan 2004**Chapter 6: Rural Development****Add: 6.1 Rural Subdivision – General Farming Areas – Zones 1(A) and Zone 7****Clarification of Exempt Development**

The NSW General Exempt Development Code applies to all land within the City of Orange LGA and is prescribed under Part 2 of State *Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. Subdivision 38, Clause 2.75 of the Code provides for the subdivision of land to be carried out without development consent in certain circumstances.

Defining “Minor”

Exempt development must be low-impact in both scale and effect. Accordingly, “minor change” should consider both:

- **Quantitative factors** — the size of the area being transferred, and
- **Qualitative factors** — impacts on land use, functionality, and environmental values.

Variation in Lot Sizes

Lots in RU1 Primary Production and C3 Environmental Management zones are highly variable, with 61.5% smaller than 10ha. A fixed 10% threshold may have vastly different outcomes depending on context. For example, transferring 5ha from a 50ha lot to a 2ha lot increases the smaller lot by 250%, despite appearing minor for the donor lot. (See **Figure 4.**)



Figure 4 Comparable effects of lot size for determining a “minor change in the area of any lot” due to a boundary realignment

This disproportionality illustrates why a single benchmark is inadequate.

(iii) Variation in Lot Shapes

The impact of boundary shifts also depends on lot geometry. Adjusting a 10m strip from a square 1ha lot may reduce area by 10%, while the same adjustment on a long narrow lot may change area by 5% or 20%, depending on boundary orientation (Figure 5).

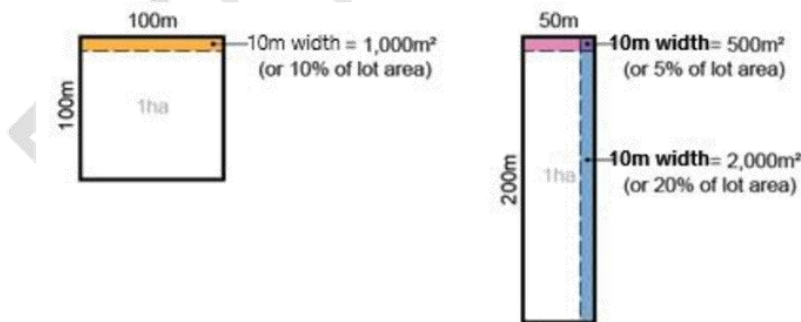


Figure 5 Comparable effects of lot boundary dimensions for determining a “minor change in the area of any lot” due to a boundary realignment

This further supports a graduated approach that accounts for shape and context, rather than applying a rigid percentage.

To manage these complexities, a sliding scale tailoring the allowable change to lot size is outlined. This provides a clear quantitative guide while remaining sensitive to the diversity of

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rural land holdings. It should be used as an initial screen, with final determinations considering planning objectives to ensure no material environmental or functional impact arises from the realignment.

Numeric Criteria for “Minor Change in Area”

The following can be utilised to assist in determining “a minor change in the area of any lot” under Sub-subclause 2.75(b)(vi) of the Code.

Table 4 Proposed numeric standards for determining a “minor change in the area of any lot” for the purposes of undertaking a lot boundary realignment as exempt development

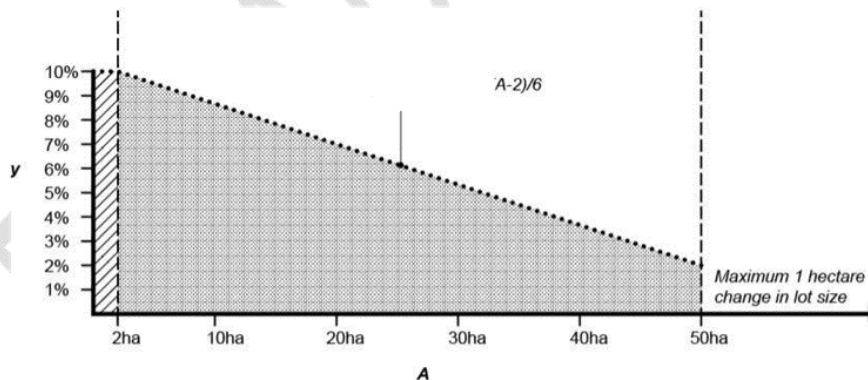
Original Lot Size (A)	Minor Change in Lot Area is Equal to or Less Than:
2 hectares or	10% of Original Lot Size
Greater than 2 hectares but less than 50	% allowable (y) = 10% - ((A-2)/6)
50 hectares or greater	1

where A = original lot size (hectares)

Table 4 and **Figure 6** set out a recommended sliding scale:

- For lots ≤2ha: up to 10% area change (consistent with non-rural zones);
- For lots >2ha and <50ha: allowable change decreases as lot size increases;
- For lots ≥50ha: capped at 1ha absolute area change.

This approach ensures that larger realignments cannot be classified as exempt while preserving flexibility across diverse rural lot sizes. It balances proportional fairness with the need to avoid high-impact changes proceeding without oversight.



where:

y = maximum % change in lot size

A = original lot size (hectares)

Figure 6 Proposed sliding scale for determining a “minor change in the area of any lot” for the purposes of undertaking a lot boundary adjustment as exempt development.

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For example, a lot constituting 48 hectares and a neighboring lot constituting 3.8 hectares would represent an allowable percentage change of 2.3% (representing 1.1 hectares) and 9.7% (representing 3686 square metres) respectively.

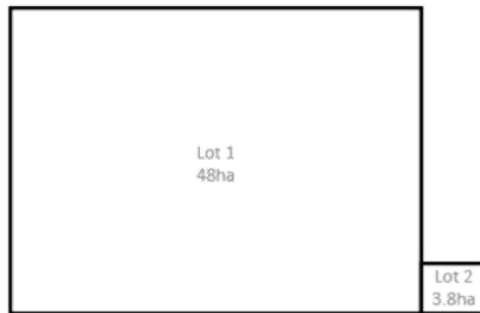


Figure 7 Example Scenario

Under the following scenarios:

1. If the owner of the 48 hectare lot was trying to gain an additional 3 hectares this would not be considered minor as both lots exceed the allowable percentage. The applicant may then proceed with a Development Application as a rural boundary adjustment if considered appropriate under the clause and relevant case law.

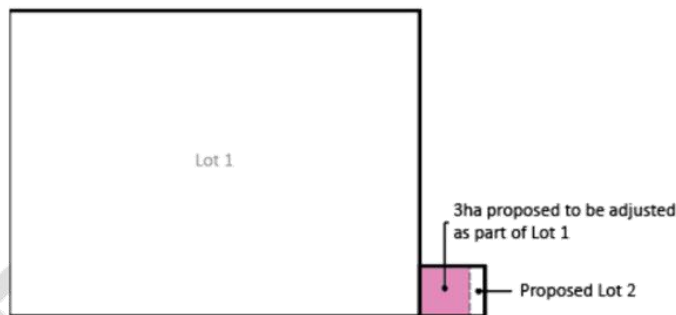


Figure 8 Example Scenario 1

2. If the owner of the 48 hectare lot was trying to gain an additional 1 hectare this would not be considered minor as it exceeds what would be considered as minor for the 3.8 hectare. The applicant may then proceed with a Development Application as a rural boundary adjustment if considered appropriate under the clause and relevant case law.

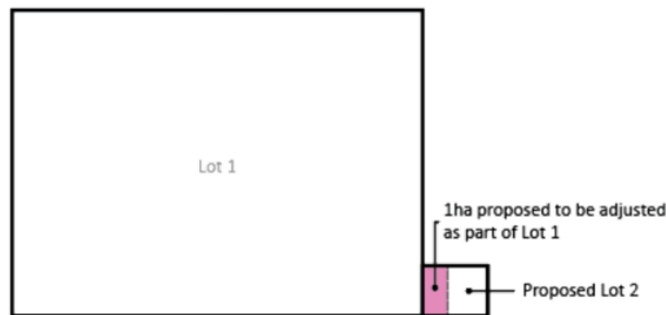


Figure 9 Example Scenario 2

3. If the owner of the 3.8 hectare property was adjusting the boundary gaining 3000 square metres this would be considered minor under the above methodology for both lots and could proceed as an exempt development.

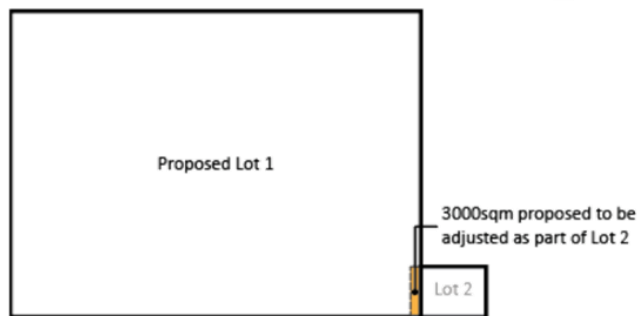


Figure 10 Example Scenario 3

Development Applications under 4.2D of the Orange Local Environmental Plan 2011

Legal Considerations when assessing lot boundary adjustments.

NSW Land and Environment Court cases have helped clarify what qualifies as a “lot boundary adjustment” under LEPs. Key principles from decisions such as:

- *Ousley Pty Ltd v Warringah Shire Council (1999)*
- *McCabe v Blue Mountains City Council (2006)*
- *Barnes v Dungog Shire Council (2012)*
- *Johnson v Coffs Harbour City Council (2018)*

which establishes:

- The resulting lots must bear a clear “resemblance” to the original configuration;
- Adjustments must not involve major reconfiguration or effectively constitute consolidation followed by re-subdivision;

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- Significant changes in shape, size, or function may exceed what the courts deem a legitimate “adjustment.”

Control	Relevant Provisions	Application
PO 6.1-1	Planning Outcomes for Rural House Sites Amend 1. House sites are located in a manner that does not inhibit normal farming practice either on the land or on land in the vicinity, in order to minimise potential agricultural/residential conflicts, refer to table PO 6.3-1(5) .	Zones RU1 and C3
PO 6.2-1	Planning Outcomes for 40 ha+ Subdivisions Amend 5. Applications identify suitable house sites with adequate separation from agricultural activities or other primary industries and not reduce a lot’s capacity to comply with relevant buffers or separation distances in accordance with table PO 6.3-1(5) .	Zones RU1 and C3
PO 6.3-1	Planning Outcomes for 16-40 ha Horticulture Subdivisions Amend 5. Applications identify suitable house sites with adequate separation from agricultural activities or other primary industries and not reduce a lot’s capacity to comply with relevant buffers or separation distances in accordance with table PO 6.3-1(5) . <i>(refer table of recommended separation distances between agricultural and non – agricultural land uses)</i>	Zones RU1 and C3
PO 6.4-1	Planning Outcomes for Concessional Lots Amend 1. Applications identify suitable house sites with adequate separation from agricultural activities or other primary industries and not reduce a lot’s capacity to comply with relevant buffers or separation distances in accordance with table PO 6.3-1(5) . <i>(refer below for information on buffers)</i> .	Zones RU1 and C3
PO 6.5	Buffer Areas For Dwellings In Close Proximity To Agriculture Remove Restrictions are applied to aerial spraying within 150 metres of the curtilage of a dwelling house in accordance with the Pesticides and Allied Chemicals Act. Separation distances may vary depending on the scale, type and times of operations. Add Separation distances are outlined within table PO 6.3-1(5) in accordance with NSW DPI’s 2018 interim buffer guidelines, which specify tailored minimum distances based on land use type.	Zones RU1 and C3

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Control	Relevant Provisions	Application
PO 6-10-2	Planning Outcomes for Rural Dwelling Houses Remove 1. The dwelling house complies with Council's Energy Smart Homes Code.	Zones RU1 and C3

Include as table to PO 6.3-1(1) - Table of Recommended Separation Distances Between Agricultural and Non-Agricultural Land Uses

Agricultural Land Use	Distance (metres)	Source
Pig Farms (indoor)	(1)1000 ^a (2) 500	(1) Living and Working in Rural Areas Handbook (2007) (2) For facilities holding less than 200 pigs - Draft Standard Instrument LEP (2017)
Pig Farms (outdoor)	500	National Environmental Guidelines for Outdoor Rotational Piggeries - Revised: Australian Pork Limited (2013)
Poultry (broiler & eggs) indoor and outdoor	(1)1000 ^b (2) 500	(1) Living and Working in Rural Areas Handbook (2007) and Level 1 Odour Modelling case study (2) For facilities holding less than 1,000 birds - Draft Standard Instrument LEP (2017)
Dairies	500 ^c	Including for facilities holding less than 50 head - Draft Standard Instrument LEP (2017)
Cattle Feedlots	1000 ^d 500	Living and Working in Rural Areas Handbook (2007) For facilities holding less than 50 head - Draft Standard Instrument LEP (2017)
Sheep or goat Feedlots	500	Living and Working in Rural Areas Handbook (2007)
Rabbits	150 ^e	Rabbit Farming: Planning and Development Control Guideline: NSW DPI (2002)
Other intensive livestock	250	SEPP (Exempt and Complying Development Codes) 2008
Stock grazing	50	Living and Working in Rural Areas Handbook (2007)
Stock yards	200	SEPP (Exempt and Complying Development Codes) 2008 – Inland Code
Outdoor Cropping/sugar cane/turf farms	300	Living and Working in Rural Areas Handbook (2007)
Outdoor horticulture	250	SEPP (Exempt and Complying Development Codes) 2008
Protected cropping (greenhouses)	250	SEPP (Exempt and Complying Development Codes) 2008
Silos/grain storage bunkers	100	SEPP (Exempt and Complying Development Codes) 2008 – Inland Code
Fan assisted silos (Macadamia nuts)	300	Living and Working in Rural Areas Handbook (2007)

Source: Buffer Zones to Reduce Land Use Conflict with Agriculture: An Interim Guideline (NSW Department of Primary Industries, November 2018, Primefact 1624, 1st Edition)

Notes:

- In circumstances where the distances cannot be achieved, the maximum possible separation distance is to be observed in conjunction with a biological buffer, which is already established or currently being established in accordance with the requirements of this chapter.
- Subject to environmental assessment in accordance with the Australian Pork Limited AUSTRALIAN PORK LIMITED National Environmental Guidelines for Indoor Piggeries (NEGIP) May 2018.
- Subject to environmental assessment in accordance with Best Practice Management for Meat Chicken Production in NSW - NSW DPI (2012).
- Subject to environmental assessment in accordance with Environmental Management Guidelines for the Dairy Industry. NSW DPI (2008) if the dairy can accommodate 50 head or more.

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- e) Subject to environmental assessment in accordance with the National Guidelines for Beef Cattle Feedlots in Australia, 3rd edition. Meat and Livestock Australia (2012).
- f) Subject to environmental assessment in accordance with Rabbit Farming: Planning and Development Control Guideline. NSW DPI (2002).

Insert - GUIDANCE MATERIAL - ASSESSMENT OF AGRICULTURAL VIABILITY FOR RURAL LOT BOUNDARY ADJUSTMENTS

In assessing rural lot boundary adjustments, agricultural viability must be demonstrated having regard to the following key considerations:

Productivity

The extent to which each lot can support viable agricultural production without land use conflict. Consideration must be given to:

- Land and soil capability and suitability for sustainable agriculture
- Surrounding land uses and potential impacts on, or from, existing and approved agricultural activities
- Required separation distances to address land use and biosecurity risks
- The location and functionality of agricultural infrastructure (including water supply, livestock facilities, access, and storage)
- The adequacy of vehicular access arrangements

Sustainability

The capacity of farming practices to maintain the long-term health of the land and natural resources. Consideration must be given to:

- Whether allotments retain sufficient land to support normal farming practices, including paddock rest where relevant
- Environmental constraints such as waterways, setbacks, and rocky or unusable land
- The use of natural features to support efficient and cost-effective farm management

Economic Viability

The ability of the agricultural enterprise to operate as a profitable and viable business. Consideration must be given to:

- Evidence that the enterprise can generate sufficient income to meet operating costs and support livelihoods
- Consistency with current and emerging agricultural trends within the LGA
- Access to essential transport, processing, utilities and supporting infrastructure

Resilience

The capacity of the agricultural enterprise to adapt to environmental, climate and market change. Consideration must be given to:

- Long-term viability in the context of climate change and rainfall variability
- Infrastructure needs to support adaptation, including protected cropping where relevant
- Opportunities for future expansion, diversification or value-adding activities
- Whether each lot retains suitable, unconstrained land to manage natural hazards (e.g. flood-free refuge areas)

Table: Agricultural Viability Assessment Checklist**Rural Lot Boundary Adjustments**

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Assessment Area	Assessment Criteria	Yes / No	Comments
Productivity	The proposed lots are capable of supporting productive agricultural use		
	Land and soil capability are suitable for sustainable agriculture on each lot		
	Surrounding existing or approved land uses will not result in land use conflict		
	Recommended separation distances are achieved to manage land use and biosecurity risks		
	Agricultural infrastructure remains functional and appropriately located (water supply, livestock facilities, sheds, storage)		
	Shared agricultural infrastructure and access arrangements are not adversely affected		
	Vehicular access arrangements are retained or improved		
Sustainability	Each allotment retains sufficient land to support normal farming practices		
	Adequate land is available for paddock rest where relevant		
	Environmental constraints (e.g. waterways, buffers, rocky land) have been identified and managed		
	Natural features are used where possible to support efficient farm management		
Economic Viability	A business case demonstrates sufficient income to cover operating costs		
	The proposal supports a viable agricultural livelihood		
	The proposal is consistent with existing or emerging agricultural trends in the LGA		
	Access to essential infrastructure (transport, processing, utilities) is available		
Resilience	Long-term viability has been considered in the context of climate change		
	Rainfall patterns and seasonality are suitable for the proposed agricultural use		
	Infrastructure needed to support climate adaptation can be accommodated		
	Opportunities for future expansion, diversification or value-adding are retained		

Attachment 2 Attachment 2 - FOR ADOPTION - Amendment to Orange Development Control Plan

	Each lot retains suitable, unconstrained land to manage natural hazards (e.g. flood-free land)		
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FOR ADOPTION

Appendix A Case Law Summary

Key cases related to boundary adjustments are *Ousley Pty Ltd v Warringah Shire Council* (1999) NSWLEC 143, *McCabe & Others v Blue Mountains City Council* (2006) NSWLEC 176, *Barnes v Dungog Shire Council* (2012) NSWLEC 1021 and *Johnson v Coffs Harbour City Council* (2018) NSWLEC 1094.

Key determinations resulting from these cases are:

1. In *Ousley Pty Ltd v Warringah Shire Council* (1999) NSWLEC 143, Talbot J found that the “adjustment” to a lot boundary sought in that case “must be construed as being a re-arrangement of a boundary so that no significant changes are made to the configuration of any existing allotments”. Talbot J also found that:

The extent of any changes must pay respect to the existing subdivision design and fit the prescription of an adjustment to a boundary between allotments so that the resulting parcels of land bear some resemblance to the lots which existed before the subdivision.

2. In *McCabe & Others v Blue Mountains City Council* (2006) NSWLEC 176, Jagot J considered the scope of the Blue Mountains LEP 1991’s provision for development consent to be granted for the subdivision of land if “it is for a boundary adjustment where no additional lots are created”. In that case, Jagot found that the “ordinary and grammatical meaning” of the phrase “lot boundary adjustment” does not embrace “any and all alterations of a boundary that make land suitable for an applicant’s requirements”. Jagot J found that in reaching this conclusion, “questions of [both] fact and degree are involved”. Jagot J agreed with Talbot J’s finding that “the resulting parcels of land [must] bear some resemblance to the lots which existed before the subdivision”. Jagot J dismissed the applicant’s appeal after finding (among other things) that:

The plan shows that the overall configuration of the proposed lots bears no resemblance to that of the existing lots. The new boundary between [the] proposed lots has no relationship to the existing boundary.

3. The principles established above are also applied in *Barnes v Dungog Shire Council* (2012) NSWLEC 1021. In dismissing the applicant’s appeal in that case, Commissioner Tuor found that:

The overall configuration of the proposed lots bears no resemblance to the existing lots. The new boundary between the proposed lots has no relationship to the existing boundary There will be a real physical change in conditions as the proposed Lot 41 will have sole frontage to Chichester River, thereby extinguishing the riparian right currently afforded to existing Lot 4 The subdivision is not for the purpose of a ‘boundary adjustment’ but the proposed development may accurately be described as the consolidation of [the original lots], and the subsequent subdivision of the consolidated lot into two lots.

4. In *Johnson v Coffs Harbour City Council* (2018) NSWLEC 1094, the findings of Commissioner Gray closely correlate with the principles established in the cases cited above. This matter revolved around the applicability of a lot boundary adjustment clause (Clause 4D) in the Coffs Harbour LEP 2013 which enables lot boundary adjustments to be undertaken with consent in certain rural and conservation zones where the subdivision of land would otherwise be prohibited due to non-compliance with the LEP's minimum subdivision lot size standard. The version of Clause 4D considered at the time of the case is almost identical to the lot boundary clauses currently included in the Blayney LEP 2012 and Cabonne LEP 2012. The clause is reproduced below.

Coffs Harbour LEP 2013

4.2D Boundary adjustments of land in certain rural, residential and environment protection zones

- (1) The objective of this clause is to facilitate boundary adjustments between lots if one or more lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land and the objectives of the relevant zone can be achieved.
- (2) This clause applies to land in the following zones -
 - (a) Zone RU2 Rural Landscape,
 - (b) Zone R5 Large Lot Residential,
 - (c) Zone E2 Environmental Conservation.
- (3) Despite Clause 4.1, development consent may be granted to subdivide land by adjusting the boundary between adjoining lots if one or more lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land, and the consent authority is satisfied that -
 - (a) the subdivision will not create additional lots or the opportunity for additional dwellings, and
 - (b) the number of dwellings or opportunities for dwellings on each lot after the subdivision will be the same as before the subdivision, and
 - (c) the potential for land use conflict will not be increased as a result of the subdivision, and
 - (d) if the land is in Zone RU2 Rural Landscape, the agricultural viability of the land will not be adversely affected as a result of the subdivision.
- (4) Before granting consent to development to which this clause applies the consent authority must be satisfied that the subdivision will not compromise the continued protection and long-term maintenance of any land in Zone E2 Environmental Conservation.

In the case, Commissioner Gray found that:

The present application is consistent with the notion of an ***alteration of a boundary*** to reflect the physical features of the land, as the current configuration of the lots bears no resemblance to the physical features of the land.

Similarly, it renders the use more feasible or practical by aligning the historical use, or planning units, with the proposed configuration. In favour of its planning merits, it results in a better pattern of subdivision across the site and a lot size consistent with the neighbouring lot sizes (*emphasis added*).

While this finding explicitly acknowledges the broad planning merits attached to the proposal, it does at the same time imply that Commissioner Gray does not in this instance consider an “alteration of a boundary” to necessarily be the same thing as a “lot boundary adjustment” as permitted under the LEP’s lot boundary adjustment clause. This is reflected in the commissioner’s finding that:

However, in considering the degree of the alteration required to achieve this alignment, it is in my view out of scope of a subdivision “by adjusting the boundary”, for three reasons. The first is that the change to the boundary is so significant that I do not accept it can be considered “adjusting” In the context of the site as a whole, that degree of alteration to the boundaries of Lot 200 is so substantial that it cannot be considered to fall within the ordinary meaning of “adjusting” the boundary.

The second reason is that the resulting lots do not bear sufficient resemblance to the lots currently in existence Accordingly, I accept that the description of the proposal is more akin to a consolidation of the two lots and subsequent subdivision.

The third reason is that the size of Lot 200 is increased through the proposal so significantly that it is more than simply a slight or marginal adjustment to boundaries. Lot 200 would go from comprising 6.6% of the total site area to 50% of the total site area.

(a) Summary of implications

The court judgements referred to above specify the limits currently established in NSW case law around just what a lot boundary realignment does and does not entail when it is to be considered in the context of a “lot boundary adjustment” clause in an LEP. The cases are also useful in that they (albeit only incidentally) appear to establish a broad principle that, for a given “realignment of lot boundaries” to qualify as exempt development under the NSW General Exempt Development Code, it also needs to meet the basic tests established in these judgements.

A key consideration in both cases, and one that recurs throughout the judgements reviewed above, is whether a given proposal may reasonably be characterised as a simple “lot boundary adjustment” on the one hand, or is more akin to the more elaborate consolidation of existing lots and the subsequent re-subdivision of this new (consolidated) lot on the other. Taken together, the judgements cited above imply the following implications:

1. Not all proposals to change (ie, “alter” or “realign”) a lot boundary will automatically qualify as a “lot boundary adjustment”, even if the proposal satisfies LEP requirements to avoid creating additional lots or dwelling entitlements.

2. Determination of whether a given subdivision equates to a “lot boundary adjustment” (as opposed to an alteration of lot boundaries or some other form of subdivision) is not automatically tied to its overall planning merits or to the benefits it may confer on the landowners. While such merits and benefits may well stem from a proposal, they are not in and of themselves determinants of whether the proposal qualifies as a “lot boundary adjustment” in the legally recognised sense of the phrase.
3. In order to qualify as a lot boundary adjustment, and regardless of its other merits or degree of compliance with applicable planning controls, a given subdivision must demonstrate that:
 - (i) The resulting subdivision pattern will bear “*some resemblance*” to the original subdivision pattern, and
 - (ii) The resulting lot boundary alignment will demonstrate a “*relationship*” to the original boundary alignment.
4. In considering whether a given proposal meets these requirements, the *degree of change* (in both quantitative and qualitative terms) is relevant. While there are no codified criteria for determining this, the judgements referred to above indicate that the following matters are relevant:
 - (i) Whether the proposal entails “a real physical change in conditions”, such as closing off or opening access to a natural resource or road frontage,
 - (ii) The magnitude of change in the linear extent of the resulting lot boundaries when compared to the original boundaries, and
 - (iii) The magnitude of change in the area of each resulting lot when compared to the original lots.

In crude terms, and outside the specific requirements of any lot boundary adjustment clause to be included in the Orange LEP 2011, the basic test that these judgements collectively establish is whether the proposed boundary realignment retains the same basic configuration and characteristics of the original lots, or instead alters these to the degree that the work is better characterised as the creation of a distinctly new lot configuration with lots expressing distinctly new functional and physical characteristics. It is this basic test that should inform any additional development controls that may need to be included in an updated or revised Orange DCP 2004 should these be deemed to be required (see Section 8 below).

In the absence of any codes or guidelines to the contrary, it is considered appropriate to apply this same test to the question of whether a given lot boundary realignment qualifies as exempt development under the NSW General Exempt Development Code. Development control criteria recommended to be considered as part of the current comprehensive review of the Orange DCP 2004 in this regard are described in the Orange DCP 2004 Requirements section.

Attachment 4 Attachment 4 - Appendix B - Summary of Clauses by Other
Appendix B Non-Metropolitan and Outer Metropolitan Boundary Adjustment Clauses

LEP		Clause	
1	Armidale LEP 2012	4.1E	Exceptions to minimum subdivision lot size for boundary adjustments
2	Ballina LEP 2012	4.2B	Exceptions to minimum subdivision lot size for boundary adjustments
3	Bathurst Regional LEP 2014	4.2D	Boundary changes between lots in certain rural and environmental protection zones
4	Bega Valley LEP 2013	4.2E	Exceptions to minimum subdivision lot size for boundary adjustments
5	Bellingen LEP 2010	4.1AB	Boundary changes between lots in certain rural, residential, environmental protection and waterways zones
6	Blayney LEP 2012	4.2B	Boundary adjustments between lots in certain rural zones
7	Byron LEP 2014	4.1C	Minimum subdivision lot size for boundary adjustments in certain rural and residential zones
8	Cabonne LEP 2012	4.2B	Boundary adjustments in certain rural zones
9	Cessnock LEP 2011	4.2C	Boundary adjustments in certain rural and environmental protection zones
10	Clarence Valley LEP 2011	4.1B	Boundary adjustments between lots in certain rural, residential and environmental protection zones
11	Coffs Harbour LEP 2013	4.2D	Boundary adjustments of land in certain rural, residential and environmental protection zones
12	Cootamundra LEP 2013	4.2B	Boundary changes between lots in certain rural and environmental protection zones
13	Cowra LEP 2012	4.1D	Boundary changes between lots in certain rural, residential and environmental protection zones
14	Deniliquin LEP 2013	4.2D	Boundary changes between lots in certain rural, residential and environmental protection zones
15	Dungog LEP 2014	4.1B	Exceptions to minimum subdivision lot size for lot boundary adjustments in Zone RU1
16	Eurobodalla LEP 2012	4.2C	Boundary changes between lots in certain rural and environmental protection zones
17	Forbes LEP 2013	4.2E	Boundary adjustments in certain rural zones
18	Glen Innes LEP 2012	4.1C	Boundary changes between lots in Zone RU1
19	Gloucester LEP 2010	4.1A	Boundary adjustments between lots in Zones RU1 and C3
20	Gosford LEP 2014	4.2B	Boundary adjustments in certain rural and environmental protection zones
21	Goulburn Mulwaree LEP 2009	4.1D	Boundary adjustments in certain rural and environmental protection zones
22	Great Lakes LEP 2014	4.1C	Exceptions to minimum subdivision lot size for boundary adjustments
23	Greater Taree LEP 2010	4.1D	Exceptions to minimum subdivision lot size for boundary adjustments
24	Griffith LEP 2014	4.2G	Boundary adjustments in certain rural and environmental protection zones
25	Gunnedah LEP 2012	4.2C	Boundary changes between lots in Zones RU1 and E3
26	Guyra LEP 2012	4.2C	Boundary adjustments in Zone RU1
27	Hawkesbury LEP 2012	4.1H	Boundary changes between lots in certain rural, residential and environmental protection zones
28	Inverell LEP 2012	4.1E	Boundary changes between lots in Zone RU1
29	Kempsey LEP 2013	4.2C	Boundary changes between lots in certain rural, residential and environmental protection zones

Attachment 4 Attachment 4 - Appendix B - Summary of Clauses by Other

LEP		Clause	
30	Lake Macquarie LEP 2014	4.2C	Boundary adjustments in certain rural and environmental protection zones
31	Lismore LEP 2012	4.2D	Boundary adjustments of land in certain rural, residential and environmental protection zones
32	Liverpool LEP 2008	4.2A	Boundary changes between lots in certain rural, residential and environmental protection zones
33	Liverpool Plains 2012	4.1C	Boundary adjustments in certain rural, residential and environmental protection zones
34	Mid-Western Regional LEP 2012	4.2C	Boundary changes for farm adjustments
35	Murray LEP 2011	4.2D	Boundary adjustments in Zones RU1 and C3
36	Nambucca LEP 2010	4.1C	Boundary changes between lots in certain rural, residential and environmental protection zones
37	Narrabri LEP 2012	4.1C	Boundary adjustments of land in certain zones
38	Narromine LEP 2011	4.2E	Boundary adjustments in certain rural and environmental protection zones
39	Oberon LEP 2013	4.2C	Boundary changes between lots in certain rural, residential and environmental protection zones
40	Port Macquarie-Hastings LEP 2011	4.2C	Boundary adjustments of land in certain rural, residential and environmental protection zones
41	Port Stephens LEP 2013	4.1E	Boundary adjustments of land in certain rural, residential and environmental protection zones
42	Richmond Valley LEP 2012	4.2C	Exceptions to minimum subdivision lot size for boundary adjustments
43	Shoalhaven LEP 2014	4.1G	Minimum subdivision lot size for boundary adjustments
44	Snowy River LEP 2013	4.2E	Boundary changes between lots in certain rural and environmental protection zones
45	Tamworth Regional LEP 2010	4.2D	Boundary changes between lots in certain rural zones
46	Tenterfield LEP 2013	4.2F	Exceptions to minimum subdivision lot size for boundary adjustments
47	Tumut LEP 2012	4.2C	Boundary adjustments of land in certain zones
48	Upper Hunter LEP 2013	4.1D	Boundary changes between lots in certain rural, residential and environmental protection zones
49	Uralla LEP 2012	4.2C	Boundary changes between lots in certain rural, residential and environmental protection zones
50	Wagga Wagga LEP 2010	4.6A	Boundary changes between lots in certain rural and environmental protection zones
51	Walcha LEP 2012	4.2D	Boundary adjustments in certain rural zones
52	Weddin LEP 2011	4.1A	Boundary changes between lots in certain rural zones
53	Wingecarribee LEP 2010	4.2B	Boundary changes between lots in certain rural, residential and environmental protection zones
54	Wollondilly LEP 2011	4.2B	Boundary adjustments of land in certain rural, residential and environmental protection zones
55	Wyang LEP 2013	4.2C	Boundary adjustments in certain rural and environmental protection zones

Appendix C Draft Clause 4.2D of Orange LEP 2011

Orange Local Environmental Plan 2011

4.2D Boundary adjustments between lots in certain rural and conservation zones

- (1) The objective of this clause is to facilitate boundary adjustments between lots where 1 or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land but the objectives of the relevant zone can be achieved.
- (2) This clause applies to land in any of the following zones—
 - (a) Zone RU1 Primary Production,
 - (b) Zone C3 Environmental Management.
- (3) Despite clause 4.1, development consent may be granted to subdivide land by way of a boundary adjustment between adjoining lots where 1 or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that—
 - (a) the subdivision will not create additional lots or the opportunity for additional dwellings, and
 - (b) the number of dwellings or opportunities for dwellings on each lot after the subdivision will be the same as before the subdivision, and
 - (c) the potential for land use conflict will not be increased as a result of the subdivision, and
 - (d) the agricultural viability of the land will not be adversely affected as a result of the subdivision.
- (4) Before determining a development application for the subdivision of land under this clause, the consent authority must consider the following—
 - (a) the existing uses and approved uses of other land in the vicinity of the subdivision,
 - (b) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
 - (c) whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),
 - (d) whether or not the subdivision is likely to be incompatible with a use on land in any adjoining zone,
 - (e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),
 - (f) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land, and
 - (g) whether or not the subdivision is likely to have an adverse impact on the environmental values, heritage vistas or landscapes or agricultural viability of the land.
- (5) This clause does not apply—
 - (a) in relation to the subdivision of individual lots in a strata plan or a community title scheme, or
 - (b) if the subdivision would create a lot that could itself be subdivided in accordance with clause 4.1.

Department of Planning, Housing and Infrastructure



Our ref: PP-2025-1742/IRF25/2514

Barry Omundson
Interim CEO
Orange City Council

To: aweir@orange.nsw.gov.au

19 November 2025

Subject: (PP-2025-1742) to amend Orange Local Environmental Plan 2011

Dear Mr Omundson

I am writing in response to the planning proposal you have forwarded to the Minister under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to introduce a new clause related to boundary adjustments in certain rural and conservation zones.

As delegate of the Minister for Planning and Public Spaces, I have determined that the planning proposal should proceed subject to the conditions in the enclosed gateway determination.

The proposed local environmental plan (LEP) is to be finalised on or before 19 September 2026. Council should aim to commence the exhibition of the planning proposal as soon as possible. Should Council seek to make a proposed LEP, the request to draft the LEP should be made directly to Parliamentary Counsel's Office well in advance of the date the LEP is projected to be made. A copy of the request should be forwarded to the Department of Planning, Housing and Infrastructure.

The NSW Government has committed to reduce the time taken to complete LEPs. To meet these commitments, the Minister may appoint an alternate planning proposal authority if Council does not meet the timeframes outlined in the gateway determination.

The Department's categorisation of planning proposals in the *Local Environmental Plan Making Guideline* (Department of Planning, Housing and Infrastructure, August 2023) is supported by category specific timeframes for satisfaction of conditions and authority and Government agency referrals, consultation, and responses. Compliance with milestones will be monitored by the Department to ensure planning proposals are progressing as required.

Should you have any further enquiries about this matter, I have arranged for Kimberley Beencke to assist you. Ms Beencke can be contacted on (02) 9274 6053.

Yours sincerely

Chantelle Chow
Director, Southern, Western and Macarthur Region
Local Planning and Council Support

Encl: Gateway determination



Department of Planning, Housing and Infrastructure

Gateway Determination

Planning proposal (Department Ref: PP-2025-1742): introduce a new clause related to boundary adjustments in certain rural and conservation zones.

I, the Director, Southern, Western and Macarthur Region at the Department of Planning, Housing and Infrastructure, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Orange Local Environmental Plan 2011 to introduce a new clause related to boundary adjustments in certain rural and conservation zones should proceed subject to the following

The Council as planning proposal authority is authorised to exercise the functions of the local plan-making authority under section 3.36(2) of the Act subject to the following:

- (a) the planning proposal authority has satisfied all the conditions of the gateway determination;
- (b) the planning proposal is consistent with applicable directions of the Minister under section 9.1 of the Act or the Secretary has agreed that any inconsistencies are justified; and
- (c) there are no outstanding written objections from public authorities.

The LEP should be completed on or before 19 September 2026.

Gateway Conditions

1. Prior to exhibition the planning proposal is to be updated as follows:
 - (a) Remove reference to C2 and C4 land use zones on page 4 in the 'background' section.
 - (b) Page 5 Minimum Subdivision Lot Size Standards for Rural and Conservation Zones under (c) C2 and C4 Zones, clearly state the new clause will not be applied to these zones.
 - (c) Remove reference to C2 and C4 land use zones on page 15 in the 'Supporting amendments to the Orange DCP 2004'.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal is categorised as standard as described in the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, August 2023) and must be made publicly available for a minimum of 20 working days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local*

Attachment 7 Attachment 7 - Gateway Determination

Environmental Plan Making Guideline (Department of Planning and Environment, August 2023).

3. Consultation is required with Department of Primary Industries and Regional Development under section 3.34(2)(d) of the Act. Department of Primary Industries and Regional Development is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 30 working days to comment on the proposal.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

Dated 19 November 2025

Chantelle Chow
Director, Southern, Western and
Macarthur Region
Local Planning and Council Support
Department of Planning, Housing and
Infrastructure

Delegate of the Minister for Planning and
Public Spaces

PP-2025-1742 (IRF25/2514)

Submission 1

OUT26/2048

Mr Scott Maunder
Chief Executive Officer
Orange City Council

Attention: Lucy Aveyard
laveyard@orange.nsw.gov.au

Planning Proposal PP2025-1742 - Proposed Amendment to Orange Local Environmental Plan (LEP) 2011 and Development Control Plan (DCP) 2004 – Proposed Clause 4.2D Boundary Adjustments

Dear Mr Maunder,

Thank you for your referral email on 15 January 2026 of the above Planning Proposal, and the opportunity to provide advice on the proposed LEP and DCP amendments.

██████████ collaborates and partners with our stakeholders to protect and enhance the productive and sustainable use and resilience of agricultural resources and the environment.

We understand that Council is seeking advice on agricultural considerations relevant to:

- the proposed introduction of Clause 4.2D – Boundary adjustments in certain rural and conservation zones, into the LEP.
- the updating of the DCP to include numeric and qualitative criteria relating to 'minor change' to guide when a boundary adjustment may proceed as exempt development, and updating of buffer and separation distances in accordance with contemporary agricultural guidelines.

██████████ has reviewed the supporting documentation and provides the following advice.

Maintaining large lot sizes in rural areas is generally considered beneficial for agriculture. Larger lot sizes enable economies of scale to be achieved in agricultural production and land management and deter the purchase of rural land solely for rural lifestyle purposes. A large Minimum Lot Size (MLS) benefits not only agricultural operations but also minimises the burden on local government of providing services and infrastructure to rural dwellings, as well as limiting land use conflict between residential and agricultural uses.

Regardless, it is recognised that a similar clause to that proposed for boundary adjustments is used in other LEPs across the State and can facilitate better agricultural outcomes in some

circumstances. [REDACTED]; herefore does not object to its inclusion in the Orange LEP 2011; however, we note that other Councils have experienced difficulty in determining what constitutes 'agricultural viability'.

[REDACTED] suggests that, should the final Clause 4.2D be consistent with similar provisions applied in other LGAs, the term 'agricultural viability' could be defined in the Council's Development Control Plan.

In this regard, 'agricultural viability' should not be based solely on stated economic values in supporting documentation. There is an increasing emergence of applications arguing that reducing the MLS does not affect the land's agricultural viability, due to current economic returns on a per hectare basis.

However economic returns alone do not mean the land can sustain 'agricultural viability' in the longer term. Other considerations include:

- Examining industry and market trends.
- Whether suitable land remains, free of physical constraints, to mitigate the impacts of natural hazards and adapt to climate change. For example, does flood free land remain for livestock or equipment refuge?
- Land required for buffer areas to mitigate impacts any production and expected intensification may have on neighbouring properties.
- Land that may be required for the expansion of farming operations or for diversification or value-adding operations.
- Any required separation distance between agricultural land uses necessary to address biosecurity risks¹.

[REDACTED] would be happy to assist on any subsequent advisory material.

Should you require clarification on any information contained in this response, please do not hesitate to contact the team by email at [REDACTED]

Sincerely

[REDACTED]

[REDACTED]

2 March 2026

¹ https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0010/1417258/Planning-for-Agriculture-in-Rural-Land-Use-Strategies-May-2022.pdf

[REDACTED]