

JRPP No.	2010STH039
DA No.	<b>DA-2010/1682</b>
Proposal	Demolition of existing commercial building and construction of a multistorey commercial/residential building and land subdivision (rationalisation of existing allotment boundaries)
Property	Lot 201 DP 706250, Lot 1 DP 509597, Lot 301 DP 709353, Lot 10 DP 540641 and Lots 501 and 502 DP 845275; No.43-47 Burelli Street and 71-77 Kembla Street, Wollongong
Applicant	Martin Morris and Jones Pty Ltd
Responsible Team	City Centre & Major Development

## ADDENDUM REPORT AND RECOMMENDATION

### Executive Summary

Reason for consideration by Joint Regional Planning Panel

The JRPP is the determining authority pursuant to State Environmental Planning Policy (Major Development) 2005 as the proposed development has a capital investment value of more than \$10 million.

Background

The matter was previously considered by the JRPP on 4 August 2011. Refusal of the application was recommended for numerous reasons however the JRPP resolved to defer determination of the application pending a redesign of the development. The proposal has been redesigned by the applicant and is now ready for determination. The extent of re-design warranted a comprehensive re-assessment of the amended application, which incorporates the recommendations of the JRPP and is outlined below.

Proposal

This development application seeks consent for the demolition of existing buildings on the site and the construction of a multi-storey commercial/residential building housing commercial spaces over 10 levels and two residential units contained within the upper 2 storeys. The proposal also involves subdivision which will result in a rationalisation of existing allotment boundaries.

The proposal includes four (4) basement levels which will accommodate storage areas, shower and change room facilities; garbage storage; 206 car spaces, 8 motorcycle spaces and storage for 60 bicycles.

The development is to form a second stage in the overall 'Mid City Square' development scheme proposed for land located at the western end of the block bounded by Stewart, Kembla and Burelli Streets, identified in Attachment 1. The first stage of this scheme was approved by Council in 2008, involving an allotment to the south with frontage to Stewart Street. The application is not staged for the purposes of the Act. Once constructed, it is proposed that the buildings will be interconnected at the basement level to enable the provision of one large shared servicing area for loading/unloading and waste collection.

The proposed building comprises sixteen (16) storeys inclusive of 4 basement levels and a mezzanine level above the ground floor. The applicant indicates that the overall height from existing ground level is 44.7m which is within the maximum 48m height limit that applies to the site.

### Permissibility

The site is zoned B3 Commercial Core pursuant to Wollongong Local Environmental Plan (WLEP) 2009. The proposed development is defined as a 'shop top housing' development which is permissible with consent.

### Consultation

Neighbour notification and advertising of the original proposal was carried out in accordance with the requirements of the Council's Public Notification & Advertising Procedures. Re-notification of the amended proposal also occurred. Consultation with the NSW Roads & Traffic Authority, Department of Planning & Infrastructure and internal divisions of Council has also occurred.

There was one (1) submission received from a nearby business operator which raised concerns in relation to car parking and construction impacts. No submissions were received following re-notification of the redesigned proposal.

### Main Issues

The main issues arising from the assessment of the amended application are:-

- A variation is still sought in relation to Clause 8.6 of WLEP 2009 which provides minimum building separation distances. The development does not comply with this development standard to its eastern boundary where a nil setback is required to the building base. The base of the building is setback 5m from the eastern boundary of the site in order to enable the provision of the pedestrian plaza. The building observes a building separation to the east of 12m to the Corporate Square building.

The variation previously sought in relation to the southern boundary has been resolved through plan amendments.

The variation in respect of the setback provided to the eastern boundary is supported as it has merit and will provide the required pedestrian link. The applicant has submitted a submission seeking a departure in relation to Clause 8.6. The concurrence of the Director-General of the Department of Planning & Infrastructure been obtained in accordance with the requirements of the LEP.

- Whether the proposal exhibits design excellence as required by Clause 8.5 of WLEP 2009. As noted in the previous report to the JRPP on 4 August 2011, the Design Review Panel raised numerous concerns in relation to the original design and was of the view that the proposal at that time did not exhibit design excellence as required by the LEP. The proposal, as amended, has been considered again by the Design Review Panel and an independent urban designer and the design is now considered to be generally satisfactory subject to some minor amendments which can be dealt with via deferred commencement and consent conditions;
- DCP variations – the applicant still requests a number of variations in relation to some of the provisions of Chapter D13 of DCP 2009 which relates to the Wollongong City Centre. The variations requested relate to building depth and side setbacks/building separation. The variations proposed are considered to be acceptable; and
- Whether the development is safe having regard to Safer by Design principles. The proposal is now satisfactory in this regard.

### RECOMMENDATION

It is recommended that the Joint Regional Planning Panel determine Development Application 2010/1682 pursuant to Section 80(3) of the Environmental Planning & Assessment Act 1979 through the issuing of a deferred commencement consent, subject to the conditions recommended within Attachment 8.

## 1. BACKGROUND

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This proposal was reported to the Southern Region Planning Panel (JRPP) on 4 August 2011 where the Panel noted:-

- i) The current design warrants refusal having regard to the urban design issues raised by Council's independent urban designer, the Design Review Panel and the matters detailed in the report.
- ii) The applicant has now indicated a willingness to rethink the design approach to the site.

The Panel resolved to defer DA-2010/1682 for a redesign that appropriately addresses:

- i) the urban design comments contained in the assessment report;
- ii) closer compliance with the Wollongong LEP and DCP;
- iii) the lobby area being relocated to the street frontage;
- iv) some active use to Burelli Street and the plaza area;
- v) landscape and public domain; and
- vi) stormwater

It was recommended that the applicant consider an architectural peer review of the amended design.

The Panel resolved that the amended plans are to be submitted to Council within 4 weeks from the date of the meeting.

The applicant has met with Council officers and Council's independent urban designer initially within the 4 week period and on more than one occasion after this time to discuss design amendments to address the above concerns. The development has been redesigned, assessed and is now presented to the JRPP for determination.

## 2. ASSESSMENT OF AMENDED PROPOSAL

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### 2.1 PLANNING CONTROLS

As outlined in the previous assessment report, the following planning controls apply to the development:

- State Environmental Planning Policies:
  - SEPP (Major Development) 2005
  - SEPP No. 55 – Remediation of Land
  - SEPP (Infrastructure) 2007
  - SEPP (Building Sustainability Index: BASIX) 2004
- Local Environmental Planning Policies:
  - Wollongong Local Environmental Plan (WLEP) 2009
- Development Control Plans:
  - Wollongong Section 94A Development Contributions Plan 2010
  - Wollongong Development Control Plan 2009

### 2.2 OUTLINE OF AMENDED PROPOSAL

The proposal has been amended as required by the JRPP. The proposed amendments to the development relate primarily to the building's massing, facade design and the configuration of the two residential units situated in the two upper levels of the building.

The following is a summary of the amendments made to the development proposal:-

- Compliance with the 4m building setback to Burelli Street above the street frontage height;

- Alteration to the ground floor level to achieve at-grade entrances from both Burelli Street and Kembla Street with no external stairs;
- Re-positioning of the primary building lobby to the Burelli Street frontage;
- Provision of a splay corner to the lower levels of the building adjacent to the intersection of Burelli and Kembla Streets (as per the requirements of the DCP);
- Reconfiguration of ground floor access and tenancies to generate more active street frontages. This includes the provision of a small coffee shop within the north-eastern corner of the ground floor;
- Removal of every second column support to the Burelli Street awning and some design amendments to the awning structure to reduce clutter;
- Redesign of the two upper level dwellings to address solar access and amenity issues;
- Redesign of the external façade of the proposed development to provide a more appropriate design response for the locality;
- Redesign of the pedestrian plaza area situated on the eastern part of the site to address the concerns raised in relation to landscaping treatment, security and safety;
- Reduction in the width of the access crossing to Kembla Street; and
- Deletion of the proposed southern boundary adjustment from the scheme (between Lot 1 DP 509597 and Lot 502 DP 845275).

It is noted that, as a result of the redesign of the proposal, some key elements of the proposal's compliance with the relevant controls have changed:-

- The maximum height of the building has been reduced from 46 metres to 44.7 metres which is below the 48m height limit provided by the LEP;
- The removal of the boundary adjustment previously proposed for the southern boundary of Lot 1 results in the development site having an area of 1826sqm, resulting in the building now having a Floor Space Ratio (FSR) of 5.34:1 which is still below the maximum prescribed FSR of 5.6:1;
- The deletion of the boundary adjustment to the southern boundary of Lot 1 from the scheme removes the variation previously sought in respect of Clause 8.6 of WLEP 2009 in relation to building separation (to this boundary only). The building will provide a zero setback to this boundary up to street frontage height which is consistent with the building separation controls. The applicant has indicated that the proposed 6m wide right of carriageway to the south of this boundary will be limited in height (to 6m) thereby providing an opportunity to achieve a continuous street frontage to Kembla Street once the remainder of the site is developed.
- The redesign resolves a number of the non-compliances in respect of WDCP 2009 which were identified in the previous assessment report presented to the JRPP. These include:-
  - The proposal now provides for a minimum 8m building setback to Burelli Street to that part of the building above street frontage height (this is now compliant with Clause 2.2 of Chapter D13 of WDCP 2009);
  - The lower levels of the building now feature a splay corner to the intersection of Burelli and Kembla Streets (this is now compliant with Clause 2.2.3(e) of Chapter D13 of WDCP 2009);
  - At-grade access has been provided to the building entrances from both of the street frontages. External stairs within the building setbacks and road reserve have been deleted as have the previously proposed landscape planter beds. This is now in compliance with Clauses 3.3 and 4.2 of Chapter D13 of WDCP 2009;

- The width of the footpath crossing on the Kembla Street frontage of the site has been reduced to 7m which is considered acceptable;
  - The main building entries on each of the street frontages are now readily identifiable which is consistent with Clause 3.3 and 4.2 of Chapter D13 and other provisions;
  - The revision of the ground floor configuration and design (including the introduction of a coffee shop) will improve street activation and enhance the safety of the pedestrian plaza;
  - The reconfiguration of the residential units resolves concerns previously raised in relation to solar access to the units and their appurtenant private open space areas, their thermal comfort and environmental performance. Clauses 5.2, 6.8 and 6.10 of Chapter D13 are now satisfied by the residential units;
  - The landscaped treatment of the pedestrian plaza and road reserves adjacent to the site has been reviewed and is now satisfactory to Council's Landscape Section and is consistent with the applicable provisions of WDCP 2009;
  - Redesign of the development has largely resolved the concerns previously raised by the Design Review Panel and the independent Urban Designer engaged by Council to review the proposal. The concerns raised previously by Council's Heritage Officer have also been largely resolved, thereby addressing the non-compliances previously identified in relation to Chapter E11 (Heritage Conservation) and Clause 3.8 of Chapter D13 of WDCP 2009;
  - Redesign of the development has largely resolved the concerns previously raised by Council's Community Safety Officer in relation to Safer by Design matters and the concerns raised in relation to Chapter E2 (Crime Prevention Through Environmental Design) of WDCP 2009.
- The redesign of the proposal and deletion of the adjustment to the southern boundary of Lot 1 has resulted in a departure in respect of Clause 2.5 of Chapter D13 of WDCP 2009. The proposal will now provide for a boundary setback of 4m from the southern boundary to the commercial component of the building (for that part of the building above street frontage height), which is less than the 6m setback required by Clause 2.5 of Chapter D13 of the WDCP. The applicant has provided the following justification in regards to this departure:-
    - "This is less than the 6 metre minimum setback guideline within the DCP, although it should be noted that an appropriate building separation distance will be achieved in this instance with the existing 'Mission Australia' development to the south and any future redevelopment of this site as part of Stage 3 of 'Mid City Square'. Being mindful of the JRPP request not to compromise floor area, it is considered that this variation is acceptable for the benefit of achieving a continuous street frontage to Kembla Street in the future."

## 2.3 KEY ASSESSMENT ISSUES

As noted above, the amended proposal has largely resolved the areas of non-compliance outlined in the assessment report previously presented to the JRPP.

The following key assessment issues will be specifically commented on:-

1. Clause 8.5 of WLEP 2009 – Design Excellence;
2. Remaining areas of non-compliance in relation to WLEP 2009 and WDCP 2009:-
  - a) Clause 8.6 of WLEP 2009 – Building Separation – in respect of the eastern boundary setback. This variation was previously considered to be reasonable.
  - b) Clause 2.4 of Chapter D13 of WDCP 2009 – building depth and bulk – the depth of the commercial floor plates (for that part of the building above street frontage height) is between 25m (Level 5) and 26.8m (Levels 6-10) which exceeds the maximum 25m depth

required. The depth of the residential units is generally 15.4m apart from that section of the building measured through the deepest part of the building through the central core area which measures 21.4m. This exceeds the maximum 18m depth permitted.

- c) Clause 2.5 of Chapter D13 – side and rear setbacks – variations are sought in relation to the setback provided to the eastern boundary (from the building base) and the southern boundary (for Level 5 – 10), as well as the setbacks provided to the residential units from the eastern and southern boundaries.

Clause 2.5 of Chapter D13 requires 12m setback to side and rear boundaries from any dwellings. The proposal provides for a setback of 10.4m to the eastern boundary of the site measured from the edge of the terrace. The proposal provides for a setback of 6.86m from the wall of the unit and 4.0m from the terrace area to the southern boundary. The applicant has provided justification for the variations sought.

- 3. Crime Prevention Through Environmental Design in relation to the street frontages and the pedestrian plaza.
- 4. Landscape and Public Domain.
- 5. Stormwater Management.

### 2.3.1 CLAUSE 8.5 DESIGN EXCELLENCE

Clause 8.5 requires the consent authority to be satisfied that the proposal exhibits design excellence prior to granting development consent. The objective of this clause is to deliver the highest standard of architectural and urban design.

In considering whether development to which this clause applies exhibits design excellence, the consent authority must have regard to the following matters:

- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,
- (b) whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,
- (c) whether the proposed development detrimentally impacts on view corridors,
- (d) whether the proposed development detrimentally overshadows an area shown distinctively coloured and numbered on the Sun Plane Protection Map,
- (e) how the proposed development addresses the following matters:
  - (i) the suitability of the land for development,
  - (ii) existing and proposed uses and use mix,
  - (iii) heritage issues and streetscape constraints,
  - (iv) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,
  - (v) bulk, massing and modulation of buildings,
  - (vi) street frontage heights,
  - (vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,
  - (viii) the achievement of the principles of ecologically sustainable development,
  - (ix) pedestrian, cycle, vehicular and service access, circulation and requirements,
  - (x) impact on, and any proposed improvements to, the public domain.

The original proposal did not exhibit design excellence as required by Clause 8.5 of the LEP. The amended proposal has been considered in detail by the Design Review Panel and by an Urban Designer

engaged by Council to undertake an independent review of the development. The following comments have been extracted from the design reviews in relation to the above matters:-

***(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,***

The comments provided in relation to the design as initially presented to Council are contained within the previous report to the JRPP (Attachment 3).

The redesigned proposal has been reviewed by the independent Urban Designer who commented:-

“In broad terms this criterion is deemed to be satisfied. Specific issues which require clarification or refinement to achieve design excellence are detailed below.” These issues are commented upon within the table below. The outstanding issues requiring clarification or refinement can be adequately dealt with by deferred commencement and consent conditions if consent is granted.

***(b) whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,***

“The overall architectural expression of the building’s exterior has been altered significantly and is much enhanced. The proportions of the tower are improved by extending its glass frame to the top of the building. As seen in the perspective view from the northeast, openings in the roof slab and the upper facades allow views through the upper building mass to the sky beyond, adding visual interest. Facades are articulated by means of openings, recesses, exposed columns, sun blades and the colour scheme. Whilst the palette of elements is diverse, they have been composed in a relatively restrained manner. The awning along Burelli Street has been simplified, but the exposed framing as seen from above is not compatible with the visual character of the facades. Cladding of the top of the awnings to produce a wing-like form would resolve this issue.

In this reviewer’s opinion, the building now relates appropriately to the heritage items and civic buildings nearby. The scale of the framed elements of its base and the patterns of blades is compatible with the scale characteristics of these buildings. Importantly, the proposal now engages the office buildings to its east, as seen in the perspective view from the west, rather than eschewing them. By helping to draw these buildings into the total composition of Civic Plaza and achieving compatibility with the heritage items, the new building contributes to the design quality of the public domain as a whole.”

Cladding of the top of the awnings to produce a wing-like form, as recommended, could be required by a consent condition, if the proposal is approved.

In addition to the above comments, concerns were previously raised in regards to the relationship between the building and the public domain as well as in regards to the proposed public domain works. The plan amendments have largely resolved these:-

- The floor levels of the building now relate well to the existing footpath levels. At-grade access is available from the two adjoining footpaths;
- The revised landscape plan has been reviewed and now provides for appropriate treatment of the footpath in compliance with the Wollongong City Centre Public Domain Technical Manual (PDTM);
- The vehicular entry/exit on the Kembla Street frontage has been reduced in width to address concerns previously raised;
- It was noted in the previous report to the JRPP that the footpath design should accommodate the existing Magnolia located on the footpath adjacent to the intersection. The applicant has requested that this tree be removed; this has been reconsidered by Council’s Landscape Officer and is now considered to be reasonable given the public domain works, including street tree planting, proposed.
- The redesign of the tower has improved the massing of the building. It will now have an improved relationship with the heritage and civic buildings in the precinct and provide an appropriate building mass and form. Wind effects on the public footpaths near the site will be reduced.

***(c) whether the proposed development detrimentally impacts on view corridors,***

The proposal will not impact upon view sharing or view corridors. The site is located outside of the nominated distant view corridor identified in Figure 3.12 in the DCP (from the lighthouse to the escarpment) and there are no designated view corridors identified along Burelli or Kembla Street.

*(d) whether the proposed development detrimentally overshadows an area shown distinctively coloured and numbered on the Sun Plane Protection Map,*

The proposed development will not overshadow an area identified on the Sun Plane Protection map.

*(e) how the proposed development addresses the following matters:*

The following table provides a summary of the assessment of the proposal against the matters outlined in Clause 8.5(e) of WLEP 2009. The middle column includes some of the previous comments (where relevant) provided by the independent Urban Designer engaged by Council to review the proposal, along with some additional comments relating specifically to the redesigned proposal:-

	Urban Designer's comment	Additional Planner's Comments
<i>(i) the suitability of the land for development,</i>	"The site is considered suitable for development from an urban design perspective. There is a clear opportunity to improve the quality of built form on the site."	The land is appropriately zoned for the development type proposed.
<i>(ii) existing and proposed uses and use mix,</i>	<p><u>Previous comment:</u> -</p> <p>"The existing use on the site is commercial. The proposed development contains commercial, retail/commercial and residential uses. These uses are permissible under the zoning and are appropriate in urban design terms.</p> <p>Figure 3.4 of DCP 2009, Chapter D13 indicates that the Burelli and Kembla Street frontages of the site are to have "active street frontages". It is indicated in the application documents that the ground floor of the proposal may be occupied by a bank. This use will not contribute significantly to the vitality of Burelli and Kembla Streets. Whilst the difficulties associated with mandating uses are understood, it is noted that an agreement with the Applicant to provide active ground floor uses is highly desirable. A coffee shop on the northeast corner of the ground floor, opening out onto Burelli Street and the plaza would receive winter sun and significant commercial exposure.</p> <p>The inclusion of residential floor space, albeit only two penthouse units, is a positive feature of the development. Whilst its contribution to a more vibrant city centre will be marginal in itself, it is to be hoped that this gesture will encourage other developers to include residential floor space in their future projects."</p> <p><u>Comments on Revised Plans:-</u></p> <p>"A coffee shop is now located on the northeast corner of the ground floor, opening out onto Burelli Street and the plaza between the proposed</p>	<p>The mix of uses proposed is consistent with the B3 zoning of the site and the nature of land uses on neighbouring sites.</p> <p>The redesign of the development and reconfiguration of the ground floor has improved the relationship between the development, the street frontages and nearby development. Opportunities for street activation have been significantly enhanced. The placement of the primary entry lobby on the Burelli Street frontage of the site and introduction of a small coffee shop on the ground floor will activate the street frontages of the development.</p> <p>It is noted that the ground floor uses cannot be mandated via conditions with the exception of the coffee shop as it is now shown on the plans.</p>



	<p>development and the 'Corporate Square' building. It will receive winter sun and significant commercial exposure and contribute to the DCP's call for 'active street frontages'.</p> <p>Concerns about the uncertainty of other street front uses remain and it is again noted that an agreement with the Applicant to provide active ground floor uses is highly desirable."</p>	
<p><i>(iii) heritage issues and streetscape constraints,</i></p>	<p><u>Previous comment:-</u></p> <p>"There are two locally designated heritage items on Burelli Street opposite the proposed development -- St Andrews Presbyterian church and Wollongong City Gallery (formerly Council's offices). To the northeast are Civic Plaza and the Illawarra Performing Arts Centre. The proposed development, in its form and architectural expression, would draw attention to itself and thereby lessen the prominence of the heritage and civic items it faces."</p> <p><u>Comments on Revised Plans:-</u></p> <p>"In this reviewer's opinion, the building now relates appropriately to the heritage items and civic buildings nearby. The scale of the framed elements of its base and the patterns of blades is compatible with the scale characteristics of these buildings. Importantly, the proposal now engages the office buildings to its east, as seen in the perspective view from the west, rather than eschewing them. By helping to draw these buildings into the total composition of Civic Plaza and achieving compatibility with the heritage items, the new building contributes to the design quality of the public domain as a whole."</p>	<p>A number of concerns were previously raised in relation to the design by Council's Heritage Adviser. These have been largely resolved through the redesign of the development.</p>
<p><i>(iv) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</i></p>	<p>"The proposed development adjoins Corporate Square, an existing 6 storey building to the east, and a proposed 7 storey building to the south known as Mid City Square Stage 3.</p> <p>Clause 2.5.3 of DCP 2009, Chapter D13 requires a minimum side and rear setback above the building base for commercial uses of 6 metres. To the east the proposal provides 10.5 metres. For the residential uses at the top of the building to the east (which are above the top of the Corporate Square building) the requirement of 12 metres is also met. To the south the proposal just satisfies the 6 metre requirement for the commercial floors of the building. For the top two residential floors, however, where a 12 metre setback is required, the setbacks are approximately 10 metres and 11.5 metres. Given that each of the two units has two other aspects, this noncompliance is considered acceptable."</p>	<p>It is noted that the tower is now appropriately set back from the street in accordance with the requirements of the DCP.</p> <p>The applicant has sought a variation in respect of the building separation control contained within Clause 8.6 of WLEP 2009. This is outlined below in Section 2.3.2(a). The variation previously sought in relation to building separation to the south has been resolved through plan amendments.</p> <p>Building setbacks are addressed below in Section 2.3.2(c).</p>

	(The building setbacks have been modified since this comment was provided.)	
<i>(v) bulk, massing and modulation of buildings,</i>	<p><u>Previous comment:-</u></p> <p>“The proposed development complies with the Floor Space Ratio and Height controls of WLEP 2009. The general massing of the building takes the form of a base surmounted by a tower, consistent with the “build to” lines, street frontage heights and setbacks in Chapter 2 of DCP 2009, Chapter D13.</p> <p>There is an important non-compliance with the front setback control on Burelli Street, however, where the DCP controls require a 4 metre setback above the base. At the first level above the base (Level 5), the setback is 2.7 metres. At Level 6, it is 1.27 metres. It then increases consistently up to Level 10, where it is 3.59 metres. Substantially greater setbacks occur on the next two levels, which contain two penthouse apartments.</p> <p>The substantially reduced setback of the lower part of the tower on Burelli Street (1.27 metres versus the DCP’s 4 metres) blurs the distinction between base and tower and reduces the visual prominence of the base. In addition, the effect of the progressive setback from Burelli Street is to create a sloping facade, which is a prominent feature of the proposed development.</p> <p>Clause 2.4.3 of DCP 2009, Chapter D13 sets a maximum building depth for commercial floor plates of 27 metres. The proposal exceeds this standard by as much as 2.6 metres at Level 6. If the proposal complied with the 4 metre setback on Burelli Street it would satisfy the building depth standard.</p> <p>Apart from the sloping Burelli Street facade, the form of the building is relatively straightforward. The facades, however, are heavily modulated.”</p> <p><u>Comments on Revised Plans:-</u></p> <p>“This has been addressed under (b) above. The bulk, massing and modulation of the building is now considered to be satisfactory.”</p>	<p>The overall bulk, massing and modulation of the building is now considered to be reasonable. The tower is now set back from the street in accordance with the requirements of the DCP.</p> <p>Whilst some variations are sought in relation to building depth and building setbacks, these are generally minor and are supported.</p>
<i>(vi) street frontage heights,</i>	<p>“The proposed development has streetwalls fronting Burelli and Kembla Streets which are 4 storeys and 15 metres high. This height satisfies the DCP requirement for street frontage heights of between 12 and 24 metres (Clause 2.3.3 of DCP 2009, Chapter D13). It is an appropriate response to the civic buildings on the opposite side of Burelli Street.”</p>	The street frontage height proposed is compliant.
<i>(vii) environmental impacts such as</i>	<p><u>Previous comment:-</u></p> <p>“It is understood that the Applicant has</p>	The proposal is satisfactory with regard to sustainable design,

<p><i>sustainable design, overshadowing wind and reflectivity,</i></p>	<p>submitted an Energy Efficiency report which indicates that the building will achieve a 4 star rating. This satisfies Council's requirement under Clause 5.2.2 of DCP 2009, Chapter D13. It is proposed that rainwater will be retained on site for reuse. Council should urge the Applicant to aim for a higher star rating.</p> <p>Overshadowing, discussed in Clause (d) above, is not a significant concern.</p> <p>It is understood that a wind effects report has been submitted by the Applicant, but this has not been sighted. It is noted that 1.2 metre high glazed screens have been added to the outer edge of all sides of the building at the top of its base (Level 5). These screens are presumably intended to mitigate wind effects on the streets and ground level open spaces around the development. Whilst it would appear that the screens may be effective on the east, west and south sides of the building, where the tower is setback from the base 4 metres, their efficacy on the north side is a concern. Because the tower portion of the north facade slopes outwards and is setback only 1.27 metres at its bottom edge (Level 6), the proposed screen on Level 5 may have little effect in blocking wind blowing down the face of the building. This could have adverse consequences at ground level on Burelli Street.</p> <p>Reflectivity needs to be addressed, given the predominance of glass as a facade material. It is understood that reflectivity is to be limited to a maximum of 20%."</p> <p><u>Comments on Revised Plans:-</u></p> <p>"The concern expressed earlier that the sloping tower façade to Burelli Street may result in adverse wind effects is now resolved with the vertical 4 metre setback to this façade.</p> <p>With significant areas of glazing, limiting reflectivity to a maximum of 20% remains an important requirement."</p>	<p>overshadowing, wind and reflectivity. If approved, a condition should be imposed limiting reflectivity from building materials to a maximum of 20% in accordance with WDCP 2009.</p>
<p><i>(viii) the achievement of the principles of ecologically sustainable development,</i></p>	<p><u>Previous comments:-</u></p> <p>"Clause 2.4.3 of DCP 2009, Chapter D13 requires any residential floor plate to have a maximum depth of 18 metres. The proposal slightly exceeds this dimension, but because the building core is relatively large, this is not an issue. Depths from windows to core are typically 5 metres or less. In general, the proposal's two penthouse apartments enjoy high levels of internal amenity and follow accepted ESD principles. The exception is passive solar heat gain in winter. One unit faces south, with relatively minor exposure to the east and</p>	<p>The proposal is now satisfactory with regard to this issue, subject to deferred commencement and consent conditions being imposed in relation to the following issues raised by the Urban Designer:-</p> <ul style="list-style-type: none"> <li>• Design details of the spacing, orientation and depth of sun blades shall be provided for approval prior to the release of a Construction Certificate.</li> </ul>

	<p>west. This shortcoming can be addressed by reconfiguring the floor layout so that one unit occupies the eastern half of the floor plate and the other the western half. It is recognised that only one unit would then enjoy ocean views. One way to address this might be to flip the units over on the floor above.</p> <p>Lack of shading of glazed areas in summer is also a concern. A visually prominent canopy is provided on the north side of the building above the upper residential storey, but this would be entirely inadequate to exclude summer sun. There is no indication of screening to east and west facing glazed areas.”</p> <p><u>Comments on Revised Plans:-</u></p> <p>“The facade design of the building now relies strongly on shading devices for its expressive character. Whilst the configuration of these plays an important role in the aesthetic qualities of the building, it is important that they also function well as solar control devices. The spacing, orientation and depth of sun blades require confirmation. High performance glazing will be required in areas where shading devices are not employed (for example, the northeast and northwest corners of the tower). Confirmation of the environmental performance of the facades and details of the design that achieves this must be properly documented.</p> <p>The top two residential floors of the building have been completely reconfigured from two double storey units to two single level apartments one above the other. This resolves earlier problems to do with equitable view sharing and environmental performance, allowing each unit to achieve the same benefits of views and solar orientation. The outer skin of the tower extends up to the top of the residential floors, providing an additional layer of environmental protection for both solar gain and wind. Again, critical details of the design of this outer skin and the apartment facades behind it must be resolved and documented (for example, the solid balustrades to the roof openings on the northern side of the building, as seen in Section C-C, should be open railings, to admit more winter sun to the Living Area of the upper unit).”</p>	<ul style="list-style-type: none"> <li>• High performance glazing will be required in areas where shading devices are not employed (for example, the northeast and northwest corners of the tower).</li> <li>• Confirmation of the environmental performance of the facades and details of the design that achieves this must be properly documented.</li> <li>• Details of the design of the outer building skin and the apartment facades behind it must be documented. Details shall be submitted to Council for approval prior to the release of a Construction Certificate.</li> <li>• The solid balustrades to the roof openings on the northern side of the building, as seen in Section C-C, should be open railings, to admit more winter sun to the Living Area of the upper unit.</li> </ul> <p>It is considered that with these conditions being imposed, this issue is satisfactorily responded to.</p>
<i>(ix) pedestrian, cycle, vehicular and service access, circulation and requirements,</i>	<p><u>Previous comments:-</u></p> <p>“The base of the proposed building is set back 4 metres from the Burelli Street boundary. This results in a generous footpath which extends the existing wider footpath to the east of the site to Kembla Street. The enhanced width is compatible</p>	<p>The RTA and Council’s Traffic Section initially raised concerns in relation to vehicular access and traffic matters however these have been resolved through the submission of amended plans.</p>

	<p>with the civic uses and plaza on the other side of Burelli Street.</p> <p>A 12 metre wide plaza is proposed between the eastern facade of the new building and the Corporate Square building to its east. It is intended that the southern end of this plaza will connect to the lobby entrance on the north side of the approved Stage 1 development and then, via the lobby, to Stewart Street to the south. In addition, a drawing in the current Stage 2 application indicates a "Future pedestrian link in Stage 3", running north-south adjacent to Stage 1 and connecting the proposed plaza to Stewart Street. This north-south connection between Burelli and Stewart Streets accords with Figure 3.1 of DCP 2009, Chapter D13. A connection is logical and reasonable, but to be truly public it will need to be completed in Stage 3 as a pedestrian link which is open to the sky or a public arcade.</p> <p>The potential for an east-west connection to the south of the proposed development has also been raised. It is difficult to comment on this idea in the absence of any drawings depicting it, however it would seem in principle that this connection may be unnecessary and even unwise. It is not shown on Council's diagram. Its amenity may be questionable if it adjoins the vehicle ramp which is part of the current Stage 2 proposal.</p> <p>And it may pose a safety and security risk because of limited visibility.</p> <p>The current Stage 2 proposal includes a two storey high Lobby which runs along the full length of the eastern side of the ground floor and varies in width from 6 metres at its northern (Burelli Street) end to 7.5 metres at its southern end. It has single storey doors and an external canopy along its eastern edge adjoining the plaza. The value of this lobby is questioned. Whilst it would provide weather protection to pedestrians walking past the building, it is clearly not part of the public realm and will not animate the plaza. As shown on the Eastern Elevation (Drawing DA-18) it will present as a "closed" wall of glazing to the plaza. This may exacerbate the lifelessness of the ground floor facade of the Corporate Square building on the eastern side of the plaza. If the lobby space was allocated to active uses opening out directly onto the plaza a more dynamic public space would result. The proposed canopy along the eastern facade would still provide a measure of weather protection. An alternative approach would be to redesign the lobby as a colonnade, with two storey openings,</p>	<p>An interim service/waste collection arrangement is proposed until such time as the 'Stage 1' building is constructed fronting Stewart Street which will contain a large waste collection and service area to be shared by the 2 buildings. This arrangement is satisfactory.</p> <p>The north-south pedestrian link proposed is consistent with the requirements of WDCP 2009.</p> <p>The east-west link shown on the concept plan for the holding is problematic and is neither necessary nor desirable. This does not however form part of the current application under consideration.</p> <p>Previous concerns raised in relation to the footpath levels and treatment/ landscaping of the public domain adjacent to the site have been resolved. Accessibility will be improved as a result.</p>
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	<p>no external awning and active uses adjoining it. The plaza would be less activated, however.</p> <p>Only one entrance is provided to the main foyer, off the plaza and via the lobby discussed above. Whilst access from the plaza is desirable and should be retained, a main building entrance off Burelli Street or at the corner of Burelli and Kembla Streets should also be provided. Loss of ground floor commercial space would be compensated for if the eastern lobby were partially or totally allocated to active uses as suggested above. The main building core would need to be redesigned, but this appears feasible.</p> <p>It is proposed that access to the two penthouse apartments will be via the main foyer and one of the lifts which serve the commercial floors. Whilst this arrangement is not ideal, it is acceptable given that there are only two apartments in the development.</p> <p>Vehicular access onto the site occurs at one point only, off Kembla Street. A kerb crossing leads directly to a ramp along the southern boundary of the site which takes all vehicles down to the basement levels of the development. This arrangement is considered optimal. Bicycle riders must use the same ramp to access the bicycle parking area on Basement Level 1. Subject to applicable Australian Standards and any other relevant regulations, this arrangement is considered acceptable.”</p> <p><u>Comments on Revised Plans:-</u></p> <p>“The planning of the ground floor of the development has improved significantly:</p> <ul style="list-style-type: none"> <li>• A main entry to the lobby is now provided directly off Burelli Street</li> <li>• The fire passages exiting onto Kembla Street have been moved to the south face of the building, creating a longer uninterrupted frontage of commercial space to Kembla Street</li> <li>• An entry to this space is now provided at the corner of Burelli and Kembla Streets</li> <li>• Sight lines between the new plaza on the eastern side of the building and the lobby and elevators are maintained</li> <li>• The earlier two storey high lobby running along the full length of the eastern side of the ground floor of the development has been eliminated and replaced with a coffee shop opening directly onto the plaza and lettable</li> </ul>	
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	space to the south also accessible from the plaza. These improvements could result in a more dynamic public space. An external canopy along the eastern façade will provide a measure of weather protection.”	
<i>(x) impact on, and any proposed improvements to, the public domain.</i>	<p><u>Previous comments:-</u></p> <p>“A new plaza is located between the proposed development and the existing Corporate Square building to the east. The provision of this open space requires the waiver of the requirement in Clause 2.5.3 of DCP 2009, Chapter D13 for nil side setback for a building base, presumably intended to create a continuous streetwall. Because the Corporate Square building is set back from the common side boundary, a continuous streetwall on Burelli Street cannot be achieved. Waiver of the nil side setback control for the proposed development is necessary to create the new plaza and is considered to be justified. Although the plaza is located on private land, it will effectively become part of the public domain. It is noted that Drawing DA-01 shows “Security Gates” across the plaza at its northern (Burelli Street) end. Council will need to ensure that appropriate opening hours are maintained.</p> <p>The plaza includes large planters, trees, benches and steps which form a “spine” running down the centre of the space. It is understood that this device allows differing levels between the two buildings to be reconciled and that planters or other furniture cannot be placed against the Corporate Square building because its ground floor wall facing the plaza is fully glazed.</p> <p>The plaza is part of a full block pedestrian connection and will improve the public domain. Some of the elements furnishing it (most notably the planters which measure as much as 12 metres by 3.5 metres) are overscaled, however, and should be significantly reduced in size. It may also be possible to reduce the number of steps in some locations by regrading the plaza surfaces. It is also suggested that the planter which is currently located on the central axis of the foyer extended out into the plaza be replaced by steps, to allow unimpeded access from the foyer to the plaza area adjoining the Corporate Square building.</p> <p>Two narrow linear planters are located in front of the building along Burelli Street. These appear tokenistic and may attract litter. It is suggested that they be replaced with steps or low walls.”</p> <p><u>Comments on Revised Plans:-</u></p>	<p>Previous concerns regarding the treatment of the pedestrian footpath and difference in levels between the building and the adjacent public footpaths have been resolved.</p> <p>The proposed landscaping treatment of the plaza and public domain is now considered satisfactory by Council's Landscape Section.</p>

	<p>“Consistent with the changes recommended earlier, a number of improvements are proposed for the plaza on the east side of the development:</p> <ul style="list-style-type: none"> <li>• Planters have been reduced in size</li> <li>• Numbers of steps have been reduced where possible</li> <li>• Steps and a ‘sculptural element’ now occupy the central axis of the foyer extended out into the plaza.”</li> </ul>	
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#### Clause 8.5(5)

As the height of the building is greater than 35m, Clause 8.5(5) requires that consent must not be granted unless a Design Review Panel has reviewed the design. A Design Review Panel has reviewed the amended design and provided a number of comments. These are outlined in Attachment 6 to this report.

Council engaged an independent Urban Designer to conduct an urban design review of the proposed development having regard to the applicable controls contained within WLEP 2009 and WDCP 2009. The Urban Designer reviewed the amended plans and provided an updated Urban Design report which is attached in full at Attachment 7. The Urban Designer provided the following concluding comments regarding the proposal:-

“The two issues which remained to be resolved after the last review were the external architectural expression of the building and the poor design of the proposal’s two penthouse apartments. These issues have now in general been addressed satisfactorily. In order for design excellence to be achieved, the more detailed and specific refinements described above [refer Clause 8.5(e)(viii)] need to be resolved and documented.”

It is considered that the detailed and specific refinements requiring resolution and documentation described within the Urban Designer’s report can be addressed via deferred commencement and consent conditions. These are included within the set of draft conditions contained in Attachment 8.

In conclusion, having regard to the comments provided by the Design Review Panel and the independent Urban Designer who examined the proposal, the consent authority can now be generally satisfied, subject to conditions being imposed in relation to the matters identified above, that the development exhibits design excellence.

### 2.3.2(A) CLAUSE 8.6 OF WLEP 2009 - BUILDING SEPARATION

Clause 8.6(2) provides that buildings must be erected so that:-

- (a) there is no separation between neighbouring buildings up to the street frontage height of the relevant building or up to 24 metres above ground level whichever is the lesser, and
- (b) there is a distance of at least 12 metres from any other building above the street frontage height and less than 45 metres above ground level, and
- (c) there is a distance of at least 28 metres from any other building at 45 metres or higher above ground level.

Clause 8.6(3) provides that, despite the above provisions, if a building contains a dwelling, all habitable parts of the dwelling including any balcony must not be less than:

- (a) 20 metres from any habitable part of a dwelling contained in any other building, and
- (b) 16 metres from any other part of any other building.

For the purposes of this clause, **street frontage height** means the height of that part of a building that is built to the street alignment.



The development as originally presented to the JRPP did not comply with this development standard to its eastern and southern boundaries. The variation in relation to the southern boundary was previously objected to. This has been resolved through amendments to the plans and now is compliant with Clause 8.6.

The building is setback from the eastern boundary of the site in order to enable the provision of the pedestrian plaza. In relation to Clause 8.6(2)(a), the building observes a building separation to the east of 12m to the Corporate Square building and 5m to the eastern site boundary. A separation distance of 20m has been provided to the Mission Australia building to the south. The building will abut the southern boundary up to street frontage height which is consistent with Clause 8.6(2)(a).

In relation to Clause 8.6(2)(b), to the east the building is separated from the neighbouring Corporate Square building by 18m (above street frontage height and below 45m in height) and 18m for the upper level residential component. To the south, the building is separated from the neighbouring Mission Australia building by 24m (above street frontage height and below 45m in height) and 24m for the residential component (Levels 11 and 12).

In relation to Clause 8.6(3), to the east the residential dwellings are separated from the neighbouring Corporate Square building by 18m (measured to the eastern edge of the terrace areas). A separation distance of 21m is available between the walls of the habitable rooms of the units and the neighbouring Corporate Square building.

The applicant has provided a variation statement in respect of Clause 8.6(2)(a) as required by Clause 4.6 of the LEP. This variation statement is attached in full to this report (refer to Attachment 5). The applicant states that the primary reasons for the variation are as follows:-

- The buildings on the neighbouring sites are setback from their site boundaries and accordingly 'no separation between neighbouring buildings' cannot be physically achieved;
- The setback proposed to the eastern boundary of the site is to facilitate the pedestrian link which is required to be provided in accordance with Clause 3.2.3 of Chapter D13 of Wollongong DCP 2009;
- Buildings within the immediate locality feature side setbacks similar to that proposed in this development. Accordingly the proposal will be consistent with the pattern of development in this precinct.

The variation statement submitted has been considered in relation to the matters set out in Clause 4.6.

Clause 4.6(4) states:-

"Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and (b) the concurrence of the Director-General has been obtained."

In relation to (a)(i), the applicant's variation statement generally addresses the matters outlined in the clause and seeks to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

In relation to (a)(ii), the following comment is provided:

- The existing setbacks of neighbouring buildings preclude compliance with the standard in any event and the design of the Corporate Square building located to the immediate east of the site prevents a building being erected on the subject site with a zero eastern boundary setback. The proposed eastern setback enables the provision of an open pedestrian walkway as required by WDCP 2009. This will

also maintain solar entry to the western wall of the Corporate Square building. The eastern setback is also supported because it reflects the pattern of development fronting Burelli Street in this section of the city centre, where separation exists between buildings.

In accordance with Clause 4.6(4)(b), the concurrence of the Director-General has been obtained for the variation. The variation is supported.

### 2.3.2(B) CLAUSE 2.4 OF CHAPTER D13 OF WDCP 2009 – BUILDING DEPTH AND BULK

Clause 2.4 seeks to limit the depth of buildings. It provides for a maximum commercial floor plate depth of 25m and a maximum residential floor plate depth of 18m (for that part of the building above street frontage height). The proposed commercial floor plates from Levels 6 – 10 are 26.8m deep. The depth of the residential units is generally 15.4m, though when measured through the deepest part of the building, the depth measures 21.4m. This is for a length of 5.8m. This widest depth occurs through the service core where the core area is to be used for utility/storage rooms, laundries and bathrooms which will be non-habitable.

#### Commercial component

The variation sought in relation to the building depth of the commercial component was identified in the previous report presented to the JRPP and was considered to be acceptable. The applicant has provided the following justification for the variation:-

“The objectives of the development standard are:-

*a) To promote the design and development of sustainable buildings.*

*b) To achieve the development of living and working environments with good internal amenity and minimise the need for artificial heating cooling and lighting*

*c) To provide viable and useable commercial floor space*

*d) To achieve usable and pleasant streets and public domain at ground level by controlling the size of upper level floor plates of buildings.*

*e) To achieve a city skyline sympathetic to the topography and context.*

*f) To allow for view sharing and view corridors.*

*g) To reduce the apparent bulk and scale of buildings by breaking up expanses of building wall with modulation of form and articulation of facades.”*

The relevant development control to be considered in this instance is the need to maintain a maximum building depth for the non residential component of the development above street frontage height of 25 metres. The proposed development has depths above street frontage of between 27 metres to 29.5 metres which marginally exceed the stated development standard. (Note: the depth has been reduced since this variation statement was prepared.)

Variations to development controls can be considered by Council in accordance with Section 9 of Chapter A1 of the DCP and, in this regard, the following is advised:

- The building depths adopted for the proposed development provide for a suitable and reasonable use of available space within the site and reflects the angular urban design outcome sought for the Burelli Street façade [Planner’s note – this has since been modified]. This building depth will achieve a 12.5 metre light penetration for the proposed usable office space areas (exclusive of the infrastructure core) as detailed in the Daylight Penetration diagram as required. In doing so, the proposed building depths adopted will not compromise any of the stated objectives for this development standard identified above;
- The proposed development is to be situated within a commercial/ cultural based environment that does not contain any residential accommodation immediately adjacent. Therefore this proposal will have no adverse impact upon residential amenity;

- Support for the variation proposed will maintain consistency with the objectives of the B3 Commercial Core zone;
- The proposed development design, including the angular façade to Burelli Street, will accord with the stated DCP objective to "... encourage urban design excellence...". The exceedance of the 25 metre depth criteria assists this design excellence without compromising the building aesthetics and internal amenity to which this development standard applies; and
- Compliance with the 25 metre depth criteria in this instance will provide no perceivable benefits to the proposed development whilst the minor variation to this control will provide:
  - o Viable and usable commercial floor space;
  - o An appropriate working environment with good internal amenity; and
  - o A building having suitable bulk and scale to sit comfortably within the locational streetscape.

It is therefore considered that strict compliance with the 25 metre depth criteria is both unreasonable and unnecessary in this instance in accordance with the above justification."

*Comment:*

It is noted that the depth of the commercial floor plates above street frontage height have been reduced and are now less than that proposed in the application as previously presented to the JRPP. At that time the variation was considered to be reasonable.

Despite the depth of the building exceeding the maximum permitted by the DCP, plans have been provided demonstrating that all areas of the office floors will be within the required distance of a window and as such the requirement for artificial lighting should be reduced. It is considered that the proposal will satisfy the objectives of the standard and for this reason, the variation is supported.

Residential Component

The following justification has been provided by the applicant for the variation sought in relation to the depth of the residential units:-

"The relevant development control to be considered in this instance is the need to maintain a maximum building depth of 18m for the residential component of the development above street frontage height. The proposed residential floor plate (Levels 11 and 12) has a depth above street frontage of 18.95 metres, which marginally exceeds the stated development standard. In light of this minor variation, the following is noted:-

- The residential floor plate depth adopted provide for a suitable and reasonable use of available space within the units, and partly reflects the angular urban design outcome sought for the Burelli Street façade. The adopted depth will not compromise any of the stated objectives for this development standard identified above;
- The proposed floor plate is only over two levels (Levels 11 and 12) and will be visually softened by the existing floor plate depth of Level 10 below;
- The proposed development is to be situated within a commercial/cultural based environment that does not contain any residential accommodation immediately adjacent. Therefore this proposal will have no adverse impact upon residential amenity;
- Support for the variation proposed will maintain consistency with the objectives of the *Zone B3 Commercial Core* and
- Strict compliance with the 18 metre depth criteria in this instance will provide no perceivable benefits to the proposed development, whilst the minor variation to this control will provide:
  - o viable and usable residential floor space;
  - o an appropriate living environment with good internal amenity; and

- a unit layout having suitable bulk and scale to sit comfortably upon the building's top and within the locational streetscape.

Again, it is therefore considered that strict compliance with the development standard is both unreasonable and unnecessary in this instance in accordance with the above justification. Being mindful of the above, it is considered that this proposal is still in keeping with the provisions and objectives of Council's DCP and, therefore, will accord with the objectives and guidelines of the planning controls applying to the site. As such, we respectfully ask that Council give particular consideration in this instance and favourably consider the justification for these variations sought."

***Comment:***

This variation was evident in the proposal originally presented to the JRPP. At this time no objection was raised in relation to the variation, though there remained unresolved concerns regarding the configuration and orientation of the residential units. These configuration and amenity/ solar access issues have been resolved and it is noted that all habitable rooms have access to windows. Rooms located closer to the lift core are non-habitable and as such the amenity of these rooms (from the perspective of being close to natural light and ventilation) is not as critical.

The bulk of the building is considered to be acceptable and the objectives of the standard are considered to be met despite the variation sought.

The variation is supported.

### 2.3.2(C) CLAUSE 2.5 OF CHAPTER D13 OF WDCP 2009 – SIDE AND REAR BUILDING SETBACKS AND BUILDING SEPARATION

The amended proposal departs from Clause 2.5 in the following ways:-

- a) The setback to the eastern boundary up to street frontage height (ie Levels 1 – 4) is required to be 0m. A setback of 7.620m has been provided to enable the pedestrian link to be accommodated adjacent to the eastern boundary.
- b) The setback to the southern boundary from the commercial component of the building (above street frontage height – ie. Levels 5 – 10) is required to be 6m. A setback of 4.0m is proposed.
- c) The setback to the southern boundary from the residential component of the building (Levels 11 and 12) is required to be 12m. A setback of 4.0m is proposed.
- d) The setback to the eastern boundary from the residential component of the building (Levels 11 and 12) is required to be 12m. A setback of 10.4m is proposed.

Variations were previously sought in relation to the setbacks provided to the eastern boundary of the building (for the pedestrian plaza) and in relation to the setbacks provided to the residential units from the southern boundary. These were considered in the previous report presented to the JRPP and were considered to be acceptable. It is noted that the setback to the southern and eastern boundaries from the residential units has been reduced with the amended proposal.

***Variation (a) -***

A setback of 7.620m has been provided to enable the pedestrian link to be accommodated adjacent to the eastern boundary.

The applicant has provided justification for the reduced setbacks to the eastern boundary of the site within the variation statement relating to Clause 8.6 (building separation) of WLEP 2009. This is addressed above in Section 2.3.2(A).

The setback variation sought is supported.

***Variation (b)***

The proposal will now provide for a setback of 4m from the southern boundary to the commercial component of the building (for that part of the building above street frontage height, ie Levels 5 - 10), which is less than the 6m setback required by Clause 2.5 of Chapter D13 of the WDCP.

The applicant has provided the following justification in regards to this departure:-

“This is less than the 6 metre minimum setback guideline within the DCP, although it should be noted that an appropriate building separation distance will be achieved in this instance with the existing ‘Mission Australia’ development to the south and any future redevelopment of this site as part of Stage 3 of ‘Mid City Square’. Being mindful of the JRPP request not to compromise floor area, it is considered that this variation is acceptable for the benefit of achieving a continuous street frontage to Kembla Street in the future, as discussed above.”

The variation is considered to be generally reasonable. It is noted that as the same developer owns the land to the immediate south and intends on redeveloping it in the future, it is likely that any adjustments required to be made to facilitate the provision of compliant building separation to any future building can occur within the southern part of the overall development site without compromising its future development potential. The reduced setback provided will have a negligible effect on amenity and solar access to the neighbouring site to the south and is consistent with the objectives of the standard despite the non-compliance.

#### ***Variations (c) and (d)***

The controls require a 12m setback to the side and rear boundaries from the residential component of the development. The proposed development has a setback to the southern boundary of 4.0 metres (measured to the edge of the terrace and outer glazing). There is a setback of 6.86m measured to the unbroken southern wall of the proposed units. The residential units are setback 10.4m from the eastern boundary.

It is noted that the southern facing walls have limited openings and the terrace is enclosed by fixed and operable glazed screen walls.

The applicant has provided the following justification in relation to the setbacks provided to the residential component of the building, which are less than the minimum required by Clause 2.5:-

“The objectives of this development standard are:

*a) To ensure an appropriate level of amenity for building occupants in terms of daylight, outlook, view sharing ventilation, wind mitigation, and privacy.*

*b) To achieve usable and pleasant streets and public domain areas in terms of wind mitigation and daylight access.*

A variation to this control is also sought in accordance with Section 9 of Chapter A1 of the DCP and, in this regard, the following is advised:-

- The existing development to the south of the proposed building is a low level commercial building with no residential accommodation. The building setback for the upper levels only of the proposed building will have minimal impact upon the adjoining development;
- The orientation and internal design of the residential units will provide an appropriate level of amenity for building occupants in terms of daylight, outlook, view sharing, ventilation, privacy and the like;
- The proposed building line variation at the upper levels will have no adverse impact upon the existing streetscape and public domain areas;
- Support for the variation proposed will maintain consistency with the objective of the B3 Commercial Core zone aforementioned.

Again, it is therefore considered that strict compliance with the development standard is both unreasonable and unnecessary in this instance in accordance with the above justification.”

#### ***Comment:***

The above justification is considered to be reasonable and the variation is supported in this instance. The reduced building setback from the residential units to the southern boundary will have minimal impact on the amenity of the residential units and is unlikely to impact on either existing or future development of the neighbouring allotment to the south. As noted above, as the same developer owns the land to the

immediate south and intends on redeveloping it in the future, it is likely that any adjustments required to be made to facilitate the provision of compliant building separation to any future building can occur within the southern part of the overall development site without compromising its future development potential.

The variation sought in relation to the setback provided to the eastern boundary of the site is considered to also be reasonable. It is noted that compliant building separation distances are available between the proposed building (above street frontage height) and the neighbouring Corporate Square building. The residential units are situated at a much higher elevation than the neighbouring building and as such, their amenity will not be compromised in any way by the reduced setback proposed to the eastern boundary.

### 2.3.3 CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN IN RELATION TO THE STREET FRONTAGES AND PEDESTRIAN PLAZA

In the previous report presented to the JRPP, a number of concerns were raised in relation to Safer by Design/ Crime Prevention Through Environmental Design (CPTED) matters. The following elements of the redesigned proposal have addressed the concerns raised:-

- Activation of the adjacent streets and pedestrian plaza will be significantly enhanced through the following plan amendments:-
  - Removal of the lobby from the eastern side of the building and re-positioning of the primary building entrance to the Burelli Street frontage of the building;
  - Reconfiguration of ground floor and the provision of a small coffee shop within the north-eastern corner of the building opening onto the pedestrian plaza;
  - Relocation of the fire passages exiting onto Kembla Street to the south face of the building has created a longer uninterrupted frontage of commercial space to Kembla Street;
  - Provision of a splay corner to the lower levels of the building adjacent to the intersection of Burelli and Kembla streets and the introduction of a main building entry to this corner;
  - Introduction of design elements to ensure that the building entrances are readily identifiable.
- Maintenance of sight lines between the new pedestrian plaza and the lobby and elevators;
- Redesign of the pedestrian plaza area to address the concerns raised in relation to landscaping treatment. The changes include reduction in the size of the landscape planter beds; reduction in the number of steps and introduction of a sculptural element.

A plan has been provided by the applicant detailing the proposed treatment of the interface between the southern end of the pedestrian plaza proposed in this application and the pedestrian arcade to be provided within the approved building to the south (approved pursuant to DA-2007/675). This will provide a continuous pedestrian link between Burelli and Stewart Streets in accordance with the requirements of Chapter D13 of WDCP 2009. The applicant has indicated that all of the plaza area between 'Stage 2' building (current DA) & Corporate Square will be constructed to the southern boundary of 'Stage 2' at the one time. Similarly, all of the plaza area within 'Stage 1' will be done with the 'Stage 1' development, though it is likely that this current proposal will be constructed first. The flexibility is there to enable both stages to be constructed independently whilst the end result will be a co-ordinated outcome. It is noted that the approved plans appended to DA-2007/675 indicated that the extent of the landscaping to be undertaken within the interface between the two stages would occur within 'Stage 2', being the application currently under consideration. To ensure that this work occurs, it is recommended that, if consent is granted to the development, it be subject to a deferred commencement condition requiring modification to development consent DA-2007/675 to amend the approved ground floor plan so as to be consistent with that approved under this application. This condition can be applied pursuant to Section 80A(5) of the EP&A Act, 1979. This will bring the original consent (DA 2007/675) and the current consent into harmony.

The landscape and ground floor plans indicate that a security fence is to be provided at the southern end of the plaza, preventing movement through the plaza to the southern part of the site. The site analysis plan provided [which illustrates the concept development scheme sought to be achieved across the holding (inclusive of this proposed building, that approved fronting Stewart Street (referred to as 'Stage 1') and the third stage which will occupy the south-western corner of the holding)], indicates that an west-east arcade is proposed within the third stage. This east-west link is not considered to be either necessary or desirable and will render securing the north-south pedestrian plaza difficult. Whilst it may be possible to secure the proposed plaza through the use of gates and fencing, this will no longer be effective nor safe should access be available via another route. This arcade does not however form part of the proposal under consideration and the site analysis plan provided will not form part of the stamped plans if this development is approved.

The plans previously included security gates to be provided across the pedestrian plaza at its northern (Burelli Street) end. These are not indicated on either of the current ground floor or landscape plans however are considered necessary to ensure the security of the plaza outside of business hours. It is noted that the development approved to the south ('Stage 1' fronting Stewart Street) features an enclosed pedestrian arcade which will be open to general public access during normal business hours and will be secured at other times. The pedestrian plaza proposed in this DA will eventually connect into this approved arcade once constructed.

It is recommended that, if the proposal is approved, it be subject to the following conditions:-

- Security gates shall be provided at the northern end of the pedestrian plaza area. The gates shall be of an appropriate design and finish so as to be commensurate with the city centre position of the site. The gate shall be designed in such a manner that it is able to be concealed within the building when open. Details of the security gate shall be provided to Council for approval prior to the release of a Construction Certificate.
- The security gate(s) referred to above shall be closed and the pedestrian plaza rendered inaccessible from either its northern or southern ends or via the ground floor lobby of the building outside of the business hours of the adjacent ground floor tenancies.

In addition, conditions should be imposed requiring the use of durable finishes within the pedestrian plaza and the implementation of regular maintenance and cleaning to ensure that any graffiti or vandalism which may occur is quickly remedied.

It is considered that the proposal is now satisfactory in relation to Safer by Design/ CPTED matters subject to conditions being imposed in relation to a range of matters including those detailed above. The proposal now addresses the relevant provisions of Chapter E2 (Crime Prevention Through Environmental Design) of WDCP 2009.

### 2.3.4 LANDSCAPE AND PUBLIC DOMAIN

In the previous report presented to the JRPP, a number of concerns were raised in relation to the landscaping treatment of the site and the neighbouring public domain (ie Kembla and Burelli Street public footpaths) and the relationship between the proposed development and the street frontages. The following elements of the redesigned proposal have addressed the concerns raised:-

- Compliance with the 4m building setback to Burelli Street above the street frontage height has resulted in a built form more consistent with the bulk and massing controls provided within the DCP. Wind effects will be reduced;
- Alteration to the ground floor level to achieve at-grade entrances from both street frontages. Stairs and landscape beds within the street setbacks and footpath have been deleted from the plans, improving accessibility and reducing clutter;
- Re-positioning of the primary building lobby to the Burelli Street frontage will enhance street activation as will the repositioning of the fire passages exiting onto Kembla Street to the southern wall of the building;

- The introduction of a main building entry adjacent to the intersection of Burelli and Kembla Streets will enhance street activation;
- Removal of every second column support to the Burelli Street awning and design amendments to the awning structure will reduce clutter and provide an improved design outcome;
- Redesign of the pedestrian plaza has addressed the concerns raised in relation to landscaping treatment, security and safety; and
- Reduction in the width of the vehicular access crossing on Kembla Street will reduce potential vehicle/pedestrian conflict;
- Amendments to the landscape plan will improve the quality of the proposed pedestrian plaza and public footpaths adjacent to the site.

Council's Landscape Officer is now satisfied with the proposal.

It is considered that the redesigned development will improve the quality and amenity of the public domain.

### 2.3.5 STORMWATER MANAGEMENT

The proposal was previously considered to be unsatisfactory with regard to stormwater management. The redesigned proposal is considered to be generally reasonable with regard to stormwater management and flooding issues, subject to a number of matters being addressed via deferred commencement and consent conditions. These are outlined in the set of draft conditions contained at Attachment 8.

## 2.4 CONSULTATION

### 2.4.1 INTERNAL CONSULTATION

#### Landscape

The revised landscaping scheme for the site has been reviewed and is considered to be satisfactory subject to conditions.

#### Stormwater

The redesigned proposal is considered to be generally reasonable with regard to stormwater management and flooding, subject to a number of matters being addressed by deferred commencement and consent conditions. These are included in the list of draft conditions contained at Attachment 8.

#### Heritage

The Heritage Officer reviewed the amended proposal and considers that the proposal as modified now has an improved relationship to the adjacent heritage items and its adverse impact, as based on the bulk, scale and massing, is now within acceptable limits. Any outstanding matters such as "the external architectural expression of the building" can be resolved at planning assessment officer's and urban designer's discretion.

The outstanding issues identified have been considered by the independent Urban Designer engaged by Council in his review of the amended plans – refer to comments provided above at Section 2.3.1.

#### Safer Community Action Team

The amended design was reviewed and was considered to be an improvement in regards to public safety and security issues. The previous comments provided in relation to securing the pedestrian plaza outside of business hours were reiterated.

It was suggested that if approved, conditions should be imposed in relation to matters such as the finishing materials of the garden sculpture (so as to be durable and resistant to graffiti), the use of particular treatments to ensure visibility within the lift lobby areas within the basement car parking levels and physical separation and security of the residential units' car spaces. The recommended conditions are included in the list of conditions at Attachment 8.



Health

Council's Environmental Health Officer reviewed the plans of the proposed ground floor café and advised that the plans do not provide sufficient detail to enable an assessment of the proposal against the requirements of the Food Safety Standards and AS4674-2004: Design, construction and fit out of food premises.

It is considered that, if this development is approved, conditions should be imposed requiring separate consent to be obtained for the physical fitout of the coffee shop. At this time sufficient detail will be required to be submitted with a development application demonstrating compliance with AS 4674 and the Food Safety Standards.

Regulation & Enforcement (Civil Works)

The amended proposal was considered to be satisfactory subject to conditions.

Subdivision

The amended proposal was considered to be satisfactory subject to conditions.

Traffic

The amended proposal was considered to be satisfactory subject to conditions.

## 2.4.2 EXTERNAL CONSULTATION

The proposal as originally lodged was referred to the NSW Department of Planning & Infrastructure (DoP), NSW Roads & Maritime Services [formerly known as the NSW Roads & Traffic Authority (RTA)] and Integral Energy for comment, as outlined in the previous report to the JRPP. Re-referral of the amended proposal to these external agencies was not considered necessary.

Urban Design Review

As outlined in Section 2.3.1 above, a design review was conducted in accordance with the requirements of Clause 8.5(5) of WLEP 2009. The comments of the Design Review Panel are attached to this report. An independent review was conducted by an Urban Designer. The report outlining this review is also attached to the report at Attachment 7.

Public Notification

Neighbour notification and advertising of the original proposal was carried out in accordance with the requirements of the Council's Public Notification & Advertising Procedures. Re-notification of the amended proposal also occurred.

There was one (1) objection received at the conclusion of the first notification period from Aldi Stores, the owner of a nearby supermarket (see Attachment 9). There were no submissions received following re-notification of the amended plans.

The main issues identified in the submission to the original application are discussed below:-

**1. Car parking**

Car parking is limited within the CBD and the Aldi car park is often used by non-Aldi customers. Aldi seeks to ensure that sufficient car parking is provided within the development, and appropriately sign posted, to minimise any over flow parking car parking requirements that may result in the use of the nearby Aldi car park which may be considered as a convenient alternative. The submission notes that car parking provision within this development and that approved within 'Stage 1' is compliant with applicable controls. Aldi requests that a condition be imposed requiring the provision of 206 car spaces and that car parking conflicts be minimised within the car park through the appropriate allocation of car parking to separate uses, use of appropriate signage identifying car parking allocation and a car parking management plan.

## 2. Construction Impacts

Construction of the development will extend over a lengthy period of time and may impact on Aldi if insufficient provision is made for construction car parking. Aldi requests that a condition be imposed requiring a construction traffic management plan to be submitted to and approved by Council.

### *Comment:*

If the JRPP was of a mind to approve the application, the conditions requested by Aldi could be imposed.

## 3. CONCLUSION & RECOMMENDATION

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The proposal has been redesigned in accordance with the recommendations of the Southern Region Joint Planning Panel having regard to the previous concerns raised by Council. This report provides an overview of the proposal as amended and addresses the key assessment issues identified in the JRPP's recommendation.

The redesigned proposed has been assessed having regard to the relevant matters for consideration prescribed by Section 79C of the Environmental Planning & Assessment Act 1979. The proposed development is permitted with consent and is generally consistent with relevant environmental planning instruments with the exception of the variation sought in relation to Clause 8.6 (Building Separation). This variation is considered to be worthy of support and the concurrence of the Director-General of the Department of Planning and Infrastructure has been obtained in respect of this departure. The amended design is now considered to exhibit design excellence as required by Clause 8.5 of the LEP, subject to some details being confirmed through consent conditions.

The design amendments have largely resolved the concerns previously raised in relation to non-compliances with various provisions of Wollongong DCP 2009. Some variations are still sought, including variations in respect of building depth and boundary setbacks, however justification has been provided for these and the departures sought are considered to have merit.

The social, economic and environmental impacts of the proposed development have been considered in detail and the proposal is now worthy of support. Most of the issues raised in internal referrals have been resolved through plan amendments and the provision of additional information; the remainder can be resolved through deferred commencement and consent conditions.

There were no submissions received following the re-notification of the proposal and the concerns raised in the one submission received following the initial notification period can be addressed by consent conditions.

It is recommended that the Joint Regional Planning Panel now determine Development Application 2010/1682 pursuant to Section 80(3) of the Environmental Planning & Assessment Act 1979 through the issuing of a deferred commencement consent, subject to the conditions recommended within Attachment 8.

## 4. ATTACHMENTS

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1. Aerial Photograph of the Site and Surrounds
2. Zoning Extract
3. Report to the Southern Region JPP dated 4 August 2011
4. Plans
5. Applicant's Variation Statement in relation to Clause 8.6 of WLEP 2009 and WDCP 2009
6. Design Review Panel's comments
7. Independent Urban Design Reviews
8. Draft Conditions
9. Submission from Aldi Stores