

<b>JRPP No.</b>	Item No.
<b>DA No.</b>	DA-2013/666
<b>Proposal</b>	The construction of an eighteen storey building over three levels of basement comprising ground floor retail with 2 levels of commercial above with 15 levels of residential incorporating 4 levels of infill affordable housing, a landscaped podium with a total of 116 apartments.
<b>Property</b>	14-18 Auburn Street, Wollongong
<b>Applicant</b>	Baker Kavanagh Architects
<b>Responsible Team</b>	City Planning City Centre Team

## Executive Summary

### Reason for consideration by Joint Regional Planning Panel

The proposed development must be considered by the Joint Regional Planning Panel (JRPP) as it has a capital investment value of more than \$20 million [Clause 3 in Schedule 4A of the Environmental Planning and Assessment Act 1979].

### Proposal

The proposal is for the construction of an eighteen storey building over three levels of basement comprising ground floor retail with 2 levels of commercial above. 15 levels of residential incorporating 4 levels of infill affordable housing, a landscaped podium containing a total of 116 apartments. Parking for 126 cars within a split level car park.

### Permissibility

The site is zoned B3 Commercial Core pursuant to Wollongong Local Environmental Plan 2009. The proposal is categorised as ‘shop top housing’ and is permissible in the zone with development consent.

### Consultation

The proposal was notified in accordance with Council’s Notification Policy and received 3 submissions which are discussed at section 3.9 of the assessment report.

### Main Issues

The main issues are:

- Application of State Environmental Planning Policy (Affordable Rental Housing) 2009
- Non-compliant FSR based on the inability to apply SEPP (Affordable housing) 2009
- Variation to internal circulation requirements contained within SEPP 65.
- The number of single aspect units and natural ventilation required by SEPP65.
- Minor variations to the WDCP 2009 are proposed including driveway width.

In terms of the first two bullet points, the proposed development is defined as ‘shop top housing’ and whilst permissible within the B3 Commercial Core the provisions of Clause 10 within the SEPP Affordable Rental Housing are not applicable. Specifically, ‘shop top housing’ is not listed in Clause 10(1) as a type of applicable residential accommodation. The implications of this are significant as the proposal does not benefit from bonus FSR. If this point of law could be overcome the proposal would be acceptable as it has regard to the provisions of Wollongong Local Environmental Plan 2009 and is consistent with the requirements of Wollongong Development Control Plan 2009. This report provides an assessment of the proposal on merit having regard to the applicable planning controls assuming the point of law can be overcome. If it cannot the proposal must be refused as WLEP 2009 is not considered to be the appropriate mechanism to consider a variation of 20%.

### RECOMMENDATION

It is recommended that the application be refused for the reasons contained at attachment 4 to this report.

## 2. APPLICATION OVERVIEW

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### 2.1 PLANNING CONTROLS

The following planning controls apply to the development:

State Environmental Planning Policies:

- SEPP No. 55 – Remediation of Land
- SEPP No. 65 – Design Quality of Residential Flat Development
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Infrastructure) 2007
- SEPP (Affordable Rental Housing) 2009

Local Environmental Planning Policies:

- Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans:

- Wollongong Development Control Plan 2009

Other policies

- Wollongong Section 94A Development Contributions Plan 2012

Other comments / matters to be addressed

Sydney Water Act

### 2.2 PROPOSAL

The application involves the demolition of the existing concrete slab and the construction of an 18 storey building over 3 levels of basement parking.

There are three levels of retail/commercial floor space from the ground floor up comprising 1,123sq.m of retail floor space and 1,017sq.m of commercial space. Parking behind the ground floor and first floor retail/commercial space is also provided.

The residential component of the building is over 15 levels comprising a total of 116 units. Of the 116 units 98 are 1 bedroom units, 11 are 2 bedroom units and 7 are 3 bedroom units. The first four levels of residential are nominated as affordable rental housing providing for 60 units equating to an allocation of 50% of the gross floor area as affordable housing.

Located above the affordable housing on level 7 is the communal open space being the landscaped podium. This landscaped podium is accessible for all residents and comprises a total of 1,270sq.m of different landscaped spaces. The remaining 56 residential units are located from level 8 to the top floor being level 17.

Additional landscaping has also been located on level 17 providing for a total of 151sq.m accessible only for the residents located above the affordable rental housing.

The basement parking levels are a split level construction with part floors. These part floors extend above the basement and are also located behind the retail/commercial space on the ground and first floors. The car park contains a total of 129 parking spaces.

Access to the parking is via two separate driveways for the residential and commercial spaces from Dean Street.

The photomontage of the building can be seen below taken looking at the north eastern corner of the building.



## 2.3 BACKGROUND

Council's records are incomplete with regard to historical uses of the site over the years. The research undertaken as part of the Environmental Site Assessment indicates that Lot A has been occupied by a building since at least 1948. Sometime between 1955 and 1966, a medium sized structure possibly a workshop was located on Lot B. This coincides with a tyre merchant being the registered proprietor of Lot B from 1950.

As part of previous Environmental Site Assessment reports undertaken on the site it was discovered that an underground storage tank (UST) was located within Lot 4. In this regard there a number of gaps in the site history information specifically additional information about the UST including date of installation, product history, location of the former bowser and the exact historical activities carried out at the site have not been confirmed.

A pre-lodgement meeting was held on the 28 November 2012 regarding the current development application.

### Customer service actions

The property does not have any outstanding customer service actions.

## 2.4 SITE DESCRIPTION

The subject site is located on the south western corner of Auburn and Dean Street and is legally described as Lot A & B DP 366270 and Lot 4 Sec. B DP4203 and is known as 14 – 18 Auburn Street, Wollongong.

The site has an area of approximately 2,171m<sup>2</sup> and is rectangular in shape. The site has an eastern boundary to Auburn Street of approximately 54.865m and a common western boundary of approximately 55.475m. The northern and southern boundaries are 39.355m and 39.350m respectively.

The site adjoins the railway corridor the west and an open drainage channel to the south. Whilst there is an open drainage channel it not a recognised creek and as such is not considered as an Integrated Development application where an activity approval is required for work affecting the creek.

There are numerous low scale commercial buildings surrounding along Auburn Street.

#### Property conditions

Council records list the site as being affected by the following constraints:

- flooding
- Coastal zone

There are no restrictions on the title

## **2.5 CONSULTATION**

### **2.5.1 INTERNAL CONSULTATION**

#### **Stormwater Engineer**

Council's Stormwater Engineer has reviewed the application and given a satisfactory referral subject to conditions of consent.

#### **Landscape Architect**

Council's Landscape Architect has reviewed the application and given a satisfactory referral subject to conditions of consent.

#### **Traffic Engineer**

Council's Traffic Engineer has reviewed the application and given a satisfactory referral subject to conditions of consent.

#### **Heritage Officer**

Council's Heritage Officer has reviewed the application and given a satisfactory referral subject to conditions of consent

#### **Environment Officer**

Environment Officer has reviewed the application and given a satisfactory referral subject to conditions of consent.

#### **Community Services - Social Planner**

Social Planning supports in principle the following:

- the proposal including a mix of housing tenure namely a number of Affordable Housing units; and
- the proposal providing the required number of adaptable housing units and meeting the appropriate DDA, BCA and Access to Premises standards.

#### **Safer Community Action Team (SCAT) Officer**

Council's SCAT Officer has reviewed the application and raised issues in regards to the building design and mix in affordable housing units throughout the complex, .

The number of 1 bedroom apartments, opposed to a mix of different sized apartments, and the number of unit entries to the hallway, in the affordable housing section,.. The applicant has indicated that the proposed affordable housing has been designed and is intended to accommodate students of the University of Wollongong. The target demographic is so specific a separation is recognised as appropriate both by the applicant and the University. The mix and layout of affordable units reflects the specific needs for affordable student housing.

The design review panel also raised similar issues and the applicant addressed the matter by allowing for a void that extends between the four floors. Additionally the plans have been amended by widening the ends of the corridors and have provided wide corridors in excess of 2m as suggested by the design review panel. The proposal is now considered acceptable.

## 2.5.2 EXTERNAL CONSULTATION

### Rail Corp

Rail Corp provided their concurrence on the 28 October 2013 after assessing the application in accordance with section 86(4) of State Environmental Planning Policy (Infrastructure) 2007. The Rail Corp concurrence can be found at ATTACHMENT 6 to this report.

### Sydney Water

The proposed development contains 116 residential dwellings within the residential flat building and as such under the requirements of Section 78 of the *Sydney Water Act 1994* the consent authority must give the Corporation notice of the application.

Sydney Water provided comments on the 11 October 2013 indicating that services are available to the site and a condition for Section 73 Certificate is to be placed on the consent.

## 3. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

### SECTION 79C ASSESSMENT

#### (1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) <i>the provisions of:</i>	
(i) <i>any environmental planning instrument, and</i>	See section 2.1
(ii) <i>any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and</i>	See section 2.2
(iii) <i>any development control plan, and</i>	See section 2.3
(iiia) <i>any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and</i>	See section 2.4
(iv) <i>the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,</i>	See section 2.5
(v) <i>any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),</i>	See section 2.6
<i>that apply to the land to which the development application relates,</i>	
(b) <i>the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</i>	See section 2.7
(c) <i>the suitability of the site for the development,</i>	See section 2.8
(d) <i>any submissions made in accordance with this Act or the regulations,</i>	See section 2.9
(e) <i>the public interest.</i>	See section 2.10

### 3.1 SECTION 79C 1(A)(I) ANY ENVIRONMENTAL PLANNING INSTRUMENT

#### 3.1.1 STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND

#### 7 Contamination and remediation to be considered in determining development application

(1) *A consent authority must not consent to the carrying out of any development on land unless:*

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*

- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*
- (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 subclause (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 subclause (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,*
  - (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).*

An Environmental Site Assessment has been carried out by Environmental Investigations Australia and submitted with the application. This Stage –I (Preliminary Site Investigation) report has referred to past environmental site assessments (Stage – I & II) were carried out by Coffey Geotechnics and Coffey Environments in 2007. Based on the Stage II recommendations asbestos contaminated vinyl tiles and fibro fragments, underground storage tank (UST) and associated structures were removed.

The applicant did not submit the Coffey Environments Stage – I & II assessment report nor the validation report after removal of UST & asbestos contaminated material. However based on the current site assessment results, the consultant concludes soil and groundwater results were generally within the relevant criteria.

The proposed development involves in excavation of soils up to a depth of 7metres below the ground level, and report has recommended classification of the excavated soils prior to disposal than undertaking site remediation work.

In this regard, it is considered that the application adequately addresses SEPP55 and the site is considered suitable for the proposed use.

### 3.1.2 STATE ENVIRONMENTAL PLANNING POLICY NO. 65 – DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT

The application is subject to the provisions of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65). Residential flat buildings are defined:

*"residential flat building" means a building that comprises or includes:*

- (a) *3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*
- (b) *4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops),*

The Policy came into effect on 26 July 2002.

Clause 50 of the Environmental Planning and Assessment Regulation 2000 states:

*(1A) A development application that relates to a residential flat development, and that is made on or after 1 December 2003, must be accompanied by a design verification from a qualified designer, being a statement in which the qualified designer verifies:*

- (a) *that he or she designed, or directed the design, of the residential flat development, and*
- (b) *that the design quality principles set out in Part 2 of State Environmental Planning Policy No 65- Design Quality of Residential Flat Development are achieved for the residential flat development.*

The application was accompanied by a Design Verification Statement in accordance with Clause 50 of the Environmental Planning and Assessment Regulation 2000. The proposal must be evaluated in accordance with the design quality principles, and the Residential Flat Design Code.

Clauses 9-18 of the SEPP set out ten (10) design quality principles which must be considered in the preparation of the design of the building (Schedule 1(2)(5)(a) EP&A Regulation 2000).

These principles are addressed below in relation to the proposed building:

#### **Principle 1: Context**

The proposal is considered to be consistent with the desired future character of the area as identified through the development standards and controls applicable to the land.

#### **Principle 2: Scale**

Whilst the development is significantly larger than adjoining developments and some others in the locality, the bulk and scale of the development is consistent with the applicable planning controls for the area. The development is not considered to be out of context with regard to the desired future character of the area and the likely impacts of the development on the locality and adjoining development.

#### **Principle 3: Built form**

The design of the development is considered to positively contribute to the public domain and provides an acceptable level of amenity for the occupants by way of landscaped areas, private open space and the like.

#### **Principle 4: Density**

The density of the development does not comply with the maximum FSR permitted for the land under WLEP2009. The application relies on the application of SEPP Affordable Rental Housing and the 20% bonus FSR which Council is of the opinion does not apply. This is further discussed below.

However, the development is not of a scale that is expected to place unreasonable strain on local infrastructure. Contributions applicable to the development will go towards local infrastructure and facilities. The site is well situated with regard to existing public open space and services.

#### **Principle 5: Resource, energy and water efficiency**

The proposal is considered acceptable with regard to sustainable design as follows:

- BASIX Certificates provided indicating minimum requirements are met.
- A Site Waste Management and Minimisation Plan have been provided indicating recycling of materials from the demolished dwellings.
- The proposal is an efficient use of land in a location that is close to services and public open space.

#### **Principle 6: Landscape**

The proposal provides suitable landscaped areas and communal open space that will improve the amenity of the occupants and soften the appearance of the development from adjoining properties and the public domain.

#### **Principle 7: Amenity**

The proposal meets the minimum requirements for solar access, private and communal open space, storage, visual and acoustic privacy, access and the like. In terms of ventilation and access, variations to the RFDC are discussed in detail below.

#### **Principle 8: Safety and security**

The proposal is satisfactory with regard to safety and security.

#### **Principle 9: Social dimensions**

The proposal includes provides for a significantly large number of 1 bedroom units, given the location to public transport this is not considered unreasonable. There are a small number of 2 and 3 bedroom units proposed. Council was originally raised with the concentration of the affordable housing within one location. The applicant has indicated that the proposed affordable housing has been designed and is intended to accommodate students of the University of Wollongong. The applicant states “while it may in some instances be appropriate to mix in affordable housing throughout the complex, where the target

demographic is so specific a separation is recognised as appropriate both by the applicant and the University. The mix and layout of affordable units reflects the specific needs for affordable student housing". This is considered acceptable in this case.

### **Principle 10: Aesthetics**

The proposal is considered to be of a high quality with regard to its appearance. A mixture of materials and finishes is provided and the bulk of the development is suitably articulated.

#### 30 Determination of development applications

(2) *In determining a development application for consent to carry out residential flat development, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):*

- (a) the advice (if any) obtained in accordance with subclause (1), and*
- (b) the design quality of the residential flat development when evaluated in accordance with the design quality principles, and*
- I the publication Residential Flat Design Code (a publication of the Department of Planning, September 2002).*

An assessment of the application against the Residential Flat Design Code is contained within the Compliance table at ATTACHMENT 5. Variations to the RFDC are discussed in detail below:

#### Internal Circulation

SEPP 65 indicates that in general, where units are arranged off a double loaded corridor, the number of units accessible from a single core/corridor should be limited to eight. Exceptions may be allowed:

- For adaptive re-use buildings
- Where developments can demonstrate the achievement of the desired streetscape character and entry response
- Where developments can demonstrate a high level of amenity for common lobbies, corridors and units (cross over, dual aspect apartments)

In this case levels 3 to 7 which contain the affordable rental housing units provide for 15 units accessing one corridor. This does not comply with suggested maximum of 8 units.

The design review panel also raised this as an issue and the applicant addressed the matter by allowing for a void that extends between the four floors. Additionally the plans have been amended by widening the ends of the corridors and have provided wide corridors in excess of 2m as suggested by the design review panel.

With the inclusion of the voids the amenity of the lobbies has been improved. Additionally the corridor also acts a breezeway where fixed louvers have been placed in three sections along the corridor allowing for natural ventilation and light. In this regard 14 units located off this single corridor are considered acceptable.

#### Natural Ventilation

The applicant has indicated that 100% of units are naturally ventilated. There are however a significantly large number of single aspect units particularly within the affordable housing levels. Within the affordable housing there are 15 units per floor of which 10 units are single aspect.

The applicant has provided a SEPP 65 Compliance Report prepared by Stephen King dated 27 November 2013. An extract of the report is provided below:

"The proposed development is located on a site of with relatively unobstructed access to summer cooling winds, and is designed for natural ventilation compliance taking due note of this condition. Specifically, in this situation, a high proportion of single aspect apartments will achieve natural ventilation equivalent to cross ventilation, due either to:

- a. exposure to higher wind speeds at elevated locations in the building, or
- b. enhanced single sided ventilation performance resulting from a combination of suitable exposure and appropriate façade design.



The likely ventilation amenity of a proportion of the single aspect apartments is further enhanced by:

- c. the provision of a ventilated ceiling plenum, which connects the apartment to the open common access gallery. This arrangement provides those apartments with a suitable air flow path between opposing facades of the building, and therefore achieves cross ventilation as described in the Best Design Practice recommendations of the RFDC.

In 3.0 NATURAL VENTILATION COMPLIANCE I discuss the categorization of natural ventilation compliance under the Residential Flat Design Code, and note the basis for applying the categories noted in (a), (b) and (c) above to the subject development.

I confirm that 93.1% of the proposed apartments can be described as complying with the RFDC for cross ventilation. This proportion includes simply cross ventilated apartments, all apartments above a specified elevated position in the building(s) where ventilation of single aspect apartments is not an issue, and those single aspect apartments cross ventilated by the plenum referred to above.

In my considered opinion, the development may be considered fully compliant for natural ventilation under the Residential Flat Design Code.”

In light of the submission of the report and the use of the ventilated ceiling plenum it is considered that the application satisfies the natural ventilation requirements.

### 3.1.3 STATE ENVIRONMENTAL PLANNING POLICY NO. 71 – COASTAL PROTECTION

State Environmental Planning Policy No. 71 – Coastal Protection does not apply to land within the Wollongong City Centre pursuant to Clause 1.9(2A) of WLEP 2009.

### 3.1.4 STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

SEPP BASIX applies to the development.

In accordance with Schedule 1 of the Regulations and SEPP 2004 a BASIX Certificate has been submitted in support of the application demonstrating that the proposed scheme achieves the BASIX targets.

### 3.1.5 STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

The proposed development is adjacent to the rail corridor and as such is required to be assessed against the requirements contained within the SEPP.

#### Clause 86 Excavation in, above or adjacent rail corridors

Specifically clause 86 applies to development that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land, within 25m (measured horizontally) of a rail corridor. In this regard the application was referred to RailCorp and their concurrence was issued on 28 October 2013.

#### Clause 87 Impact of rail noise or vibration on non-rail development

*(1) This clause applies to development for any of the following purposes that is on land in or adjacent to a rail corridor and that the consent authority considers is likely to be adversely affected by rail noise or vibration:*

- (a) a building for residential use,*
- (b) a place of public worship,*
- (c) a hospital,*
- (d) an educational establishment or child care centre.*

*(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.*

(3) If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- (a) in any bedroom in the building—35 dB(A) at any time between 10.00 pm and 7.00 am,
- (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

The applicant submitted an acoustic report prepared by Renzo Tonin & Associates that considered the DoPI publication “Development Near Rail Corridors & Busy Road, 2008. AS per the guidelines long and short term noise levels were measured and predicted. The rail vibration levels were also measured and calculated. The Report recommended glazing selection for facades of proposed development to minimise the airborne noise impact and comply with the guidelines. Additionally the report indicated that the ground-borne noise and train vibration are well below the criteria therefore no attenuation measures were recommended.

### 3.1.6 STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING) 2009

The proposed development incorporates 4 levels of affordable rental housing and as such the application is required to be considered under the provisions of the SEPP. The applicable controls are addressed below:

#### Clause 10 Development to which Division applies

Specifically, Clause 10 of SEPP Affordable Rental Housing states the following:

##### *10 Development to which Division applies*

*(1) This Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if:*

*(a) the development concerned is permitted with consent under another environmental planning instrument, and*

*(b) the development is on land that does not contain a heritage item that is identified in an environmental planning instrument, or an interim heritage order or on the State Heritage Register under the Heritage Act 1977.*

In regards to Clause 10, pursuant to the provisions contained within the Wollongong Local Environmental Plan 2009 the subject site is zoned B3 Commercial Core. Within the B3 Commercial Core zone ‘residential flat buildings’ are prohibited. Residential development within the Commercial Core is only permissible when it forms part of a retail/commercial building thus being identified as ‘shop top housing’. The definition of ‘shop top housing’ is defined as follows:

***shop top housing*** means one or more dwellings located above ground floor retail premises or business premises.

Shop top housing is a form of residential accommodation. The residential accommodation definition individually lists each type accommodation as seen below:

***residential accommodation*** means a building or place used predominantly as a place of residence, and includes any of the following:

***(h) residential flat buildings,***

***(m) shop top housing,***

*but does not include tourist and visitor accommodation or caravan parks.*

As indicated above ‘residential flat buildings’ and ‘shop top housing’ are separately defined uses. In this regard the proposed development is defined as ‘shop top housing’ and whilst permissible within the B3 Commercial Core the provisions of Clause 10 within the SEPP Affordable Rental Housing are not applicable. Specifically, ‘shop top housing’ is not listed in Clause 10(1) as a type of applicable residential accommodation.

The applicant submitted their own legal opinion in this regard

An extract of the opinion states:

*“In my opinion, simply because the proposed development is characterised as “shop top housing” under the WLEP, does not mean that for the purposes of the SEPP it must adopt the same characterisation for all of its components. The proposed development has separate and independent purposes. One such purpose is residential in the form of a residential flat building, and the other purpose has a retail/business at ground level below the residential flat building. Even though the residential components, when considered in isolation, would be prohibited under the WLEP, the fact is that under that instrument, the proposal, when properly characterised, is mane permissible because it satisfies the definition of “shop top jousting”, which is a permissible form of development in the relevant zone. That definition inherently includes residential purposes as well as separate and independent retail/business purposes.”*

Council’s General Counsel reviewed the submitted legal opinion and advised that nothing has caused Council to change its view in regards to the application of *State Environmental Planning Policy (Affordable Rental Housing) 2009* and the subject development.

The implications of this are significant as discussed below in Clause 13, if the application was classified as affordable rental housing then bonus FSR is allowable. In this regard SEPP Affordable Rental Housing is not applicable as discussed above and Council cannot support the application and recommends that it be refused subject to the draft conditions provided at ATTACHMENT 4 to this report.

#### Clauses 11, 12 (Repealed)

#### Clause13 Floor space ratios

Clause 13 provides for FSR bonuses

*(1) This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent.*

*(2) The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus:*

*(a) if the existing maximum floor space ratio is 2.5:1 or less:*

*(i) 0.5:1—if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or*

*(ii) Y:1—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent,  
where:*

***AH** is the percentage of the gross floor area of the development that is used for affordable housing.*

$$Y= AH \div 100$$

*or*

*(b) if the existing maximum floor space ratio is greater than 2.5:1:*

*(i) 20 per cent of the existing maximum floor space ratio—if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or*

*(ii) Z per cent of the existing maximum floor space ratio—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent,  
where:*

***AH** is the percentage of the gross floor area of the development that is used for affordable housing.*

$$Z= AH \div 2.5$$

*(3) In this clause, **gross floor area** does not include any car parking (including any area used for car parking).*

**Note.** Other areas are also excluded from the gross floor area; see the definition of **gross floor area** contained in the standard instrument under the Standard Instrument (Local Environmental Plans) Order 2006.

The proposed development includes bonus FSR allowed by SEPP Affordable Rental Housing. The maximum FSR the subject site and the proposed residential/commercial arrangement of the development generate under WLEP 2009 is 4.058:1 (as indicated in the SEE). With the inclusion of the 20% bonus for affordable housing the allowable FSR increases to 4.901:1. The proposed development has an FSR of 4.862:1.

As the proposed development is defined as 'shop top housing' and not a 'residential flat building' SEPP Affordable Rental Housing does not apply to the proposal and therefore the inclusion of bonus FSR is not applicable. In this regard the proposed development does not comply with the maximum allowable FSR being 4.058:1 and in this regard Council cannot support the application in its current form.

#### Clause 14 Standards that cannot be used to refuse consent

##### **(1) Site and solar access requirements**

*A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:*

*(a) (Repealed)*

##### **(b) site area**

*if the site area on which it is proposed to carry out the development is at least 450 square metres,*

Comment: The site area of the subject site is greater than 450sq.m

##### **(c) landscaped area**

*if:*

*(i) in the case of a development application made by a social housing provider—at least 35 square metres of landscaped area per dwelling is provided, or*

*(ii) in any other case—at least 30 per cent of the site area is to be landscaped,*

Comment: Significant landscaping on podium has been proposed that has an area of 2,263.56sq.m which equates to 104% landscaping. Well above the required 30%.

##### **(d) deep soil zones**

*if, in relation to that part of the site area (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed:*

*(i) there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15 per cent of the site area (the **deep soil zone**), and*

*(ii) each area forming part of the deep soil zone has a minimum dimension of 3 metres, and*

*(iii) if practicable, at least two-thirds of the deep soil zone is located at the rear of the site area,*

Comment: The applicant has indicated that deep zones equate to 719sq.m which is 33% and as such complies with the minimum 15%.

##### **(e) solar access**

*if living rooms and private open spaces for a minimum of 70 per cent of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.*

Comment: 80.2% of units receive the minimum 3 hours direct sunlight between the hours of 9am and 3pm in mid-winter.

##### **(2) General**

*A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:*

##### **(a) parking**

*if:*

*(i) in the case of a development application made by a social housing provider for development on land in an accessible area—at least 0.4 parking spaces are provided for each dwelling containing 1 bedroom, at least 0.5 parking spaces are provided for each dwelling containing 2 bedrooms and at least 1 parking space is provided for each dwelling containing 3 or more bedrooms, or*

*(ii) in any other case—at least 0.5 parking spaces are provided for each dwelling containing 1 bedroom, at least 1 parking space is provided for each dwelling containing 2 bedrooms and at least 1.5 parking spaces are provided for each dwelling containing 3 or more bedrooms,*

Comment: The parking required to be provided to the affordable housing units is 32 spaces and 32 spaces has been provided.

***(b) dwelling size***

*if each dwelling has a gross floor area of at least:*

- (i) 35 square metres in the case of a bedsitter or studio, or*
- (ii) 50 square metres in the case of a dwelling having 1 bedroom, or*
- (iii) 70 square metres in the case of a dwelling having 2 bedrooms, or*
- (iv) 95 square metres in the case of a dwelling having 3 or more bedrooms.*

Comment: The units comply with the minimum size requirements for the 1 and 2 bedroom units and there are no 3 bedroom units proposed.

*(3) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).*

Clause 15 Design requirements

*(1) A consent authority must not consent to development to which this Division applies unless it has taken into consideration the provisions of the Seniors Living Policy: Urban Design Guidelines for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004, to the extent that those provisions are consistent with this Policy.*

Comment: The proposed affordable housing is not proposed to be nominated as housing for seniors.

*(2) This clause does not apply to development for the purposes of a residential flat building if State Environmental Planning Policy No 65—Design Quality of Residential Flat Development applies to the development.*

Clause 16 Continued application of SEPP 65

*Nothing in this Policy affects the application of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development to any development to which this Division applies.*

Comment: The SEPP 65 Design Quality of Residential Flat Development has been discussed earlier within this report.

Clause 16A Character of local area

*A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.*

Comment: The surrounding area contains relatively low scale commercial building in comparison the proposed 18 storey building. In this regard until the surrounding area develops to it full potential the proposed development will be out of character however this is not uncommon in areas of transition.

Clause 17 Must be used for affordable housing for 10 years

*(1) A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that:*

*(a) for 10 years from the date of the issue of the occupation certificate:*

*(i) the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and*

*(ii) all accommodation that is used for affordable housing will be managed by a registered community housing provider, and*  
*(b) a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, that will ensure that the requirements of paragraph (a) are met.*

*(2) Subclause (1) does not apply to development on land owned by the Land and Housing Corporation or to a development application made by, or on behalf of, a public authority.*

Comment: In light of Council's recommendation that the application be refused this provision is not relevant. However, should the application be further considered such conditions could be placed on any consent.

#### Clause 18 Subdivision

*Land on which development has been carried out under this Division may be subdivided with the consent of the consent authority.*

Comment: The application does not include subdivision.

### 3.1.7 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

#### **Part 2 Permitted or prohibited development**

##### Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned B3 Commercial Core

##### Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To strengthen the role of the Wollongong city centre as the regional business, retail and cultural centre of the Illawarra region.*
- *To provide for high density residential development within a mixed use development if it:*
  - (a) is in a location that is accessible to public transport, employment, retail, commercial and service facilities, and*
  - (b) contributes to the vitality of the Wollongong city centre.*

The proposal is satisfactory with regard to the above objectives.

The land use table permits the following uses in the zone.

#### **2 Permitted without consent**

*Building identification signs; Business identification signs*

#### **3 Permitted with consent**

*Advertising structures; Amusement centres; Boarding houses; Car parks; Child care centres; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Exhibition homes; Function centres; Helipads; Hostels; Hotel or motel accommodation; Information and education facilities; Medical centres; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Self-storage units; Seniors housing; Service stations; Sex services premises; Shop top housing; Tourist and visitor accommodation; Veterinary hospitals; Wholesale supplies*

#### **4 Prohibited**

*Any development not specified in item 2 or 3*

The proposal is categorised as a 'shop top housing' as described below and is permissible in the zone with development consent.

#### Clause 1.4 Definitions

**shop top housing** means one or more dwellings located above ground floor retail premises or business premises.

**Note.** Shop top housing is a type of **residential accommodation**—see the definition of that term in this Dictionary.

### **Part 4 Principal development standards**

#### Clause 4.3 Height of buildings

The proposed building height of 59.6m does not exceed the maximum of 60m permitted for the site.

#### Clause 4.4A Floor space ratio – Wollongong city centre

The maximum FSR permitted for a wholly residential building is 3.5:1 and for a wholly commercial building the permitted FSR 6:1. When a development combines the two uses then the formula contained with the LEP applies. The FSR is determined by way of percentage of each component.

The proposed development incorporates 78.2% residential and 21.8% commercial. In this regard the formula for devising the maximum permitted FSR for the site is as follows:

$$(6 \times 21.8/100) + (3.5 \times 78.2/100) = 4.067:1$$

An FSR of 4.067:1 allows for a maximum of 8,829.457sq.m of gross floor area.

The site has an area of 2,171sq.m and the proposed development has a gross floor area of 10,556sq.m which equates to an FSR of 4.862:1:1 which does not comply with the maximum allowable.

The proposal is relying on the application of SEPP Affordable Rental Housing 2009 and the inclusion of a bonus 20% FSR. As discussed earlier within the report Council is of the opinion that the SEPP is not applicable and therefore the bonus 20% cannot be applied to the application.

The FSR and height controls for the site contained with the WLEP are considered to be commensurate with the high density location. WLEP 2009 is not considered to be the appropriate mechanism to consider a variation of 20% which equates to an additional 0.795:1 of floor space.

#### 4.6 Exceptions to development standards

The application has not been accompanied by a written request from the applicant that seeks to justify the contravention of the development standard

### **Part 5 Miscellaneous provisions**

#### Clause 5.5 Development within the coastal zone

Whilst the site is located within the Coastal Zone the land is not identified as being impacted by coastal hazards. However, consent cannot be granted to development on land within the coastal zone unless the consent authority has considered the following matters:

Consent must not be granted unless Council has considered clause (2) and (3) of clause 5.5.

(2) *Consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:*

(a) *existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:*

- (i) *maintaining existing public access and, where possible, improving that access, and*
- (ii) *identifying opportunities for new public access, and*

The proposal will not affect public access to the foreshore.

(b) *the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*

- (i) *the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
- (ii) *the location, and*
- (iii) *the bulk, scale, size and overall built form design of any building or work involved, and*

The site is zoned B3 Commercial Core. The surrounding area contains relatively low scale commercial building in comparison the proposed building. In this regard until the surrounding area develops to its full potential the proposed development will be out of character however this is not uncommon in areas of transition

The design of the bulk and scale of the residential flat building is compatible with other development in the locality.

- (c) the impact of the proposed development on the amenity of the coastal foreshore including:*
  - (i) any significant overshadowing of the coastal foreshore, and*
  - (ii) any loss of views from a public place to the coastal foreshore, and*

The proposal would have minimal impact on the amenity of the coastal foreshore.

- (d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and*

It is considered the proposal would have minimal impact on the visual amenity and scenic quality of the coast.

- (e) how biodiversity and ecosystems, including:*
  - (i) native coastal vegetation and existing wildlife corridors, and*
  - (ii) rock platforms, and*
  - (iii) water quality of coastal waterbodies, and*
  - (iv) native fauna and native flora, and their habitats, can be conserved, and*

The proposal would have minimal impact on biodiversity and ecosystems. The proposal does not involve any tree removal and is not known to contain any areas mapped Natural Resource Sensitivity – Biodiversity. The proposal would have no impact on ecosystems within the beach environment.

- (f) the effect of coastal processes and coastal hazards and potential impacts, including sea level rise:*
  - (i) on the proposed development, and*
  - (ii) arising from the proposed development, and*

The site is not mapped Coastal Hazards.

- (g) the cumulative impacts of the proposed development and other development on the coastal catchment.*

The proposal would have minimal cumulative impact on the coastal catchment.

*(3) Consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:*

- (a) the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*

The proposal will not affect public access to or along the coastal foreshore.

- (b) if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*

The site is sewerage.

- (c) the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform.*

Stormwater drainage from the development will be connected to existing drainage system.

## **Part 6 Urban release areas**

N/A

## **Part 7 Local provisions – general**

### Clause 7.1 – Public Utility Infrastructure

Development consent must not be granted on unless the consent authority is satisfied that suitable arrangements can be made for the supply of water, electricity and disposal of sewage. The site is connected to Sydney water and as such has access to water supply and sewage disposal. Electricity is also available to the site.



### Clause 7.3 Flood planning area

Before determining an application for consent to carry out development on flood prone land, the consent authority must consider a number of matters relating to flooding including the impact of the proposed development on flood behaviour, the risk of flood damage to property and persons, the safety in time of flood of the site of the development and of any buildings or works intended to be erected or carried out, and the provisions of any floodplain management plan adopted by the Council that apply to the land. These matters have been considered by Council's Stormwater Section and no concerns are raised. Appropriate conditions of consent are recommended in this regard

### Clause 7.5 Acid Sulphate Soils

The proposal is identified as being affected by class 5 acid sulphate soils. Council's Environment Officer has reviewed the Acid Sulphate Soil Management Plan and is satisfied with the recommendations made. Appropriate conditions of consent are recommended in this regard.

### Clause 7.13 Ground floor development on land within business zones

As the site is located within the B3 Commercial Core developments are required to ensure active uses are provided at the street level to encourage the presence and movement of people. Specifically this clause requires that development consent must not be granted for development for the purpose of a building unless the consent authority is satisfied that the ground floor of the building:

- (a) will not be used for the purpose of residential accommodation, and*
- (b) will have at least one entrance and at least one other door or window on the front of the building facing the street other than a service lane.*

The proposed development orientates the ground floor retail to the street to allow for the active interface. It is considered that the proposed development satisfactorily addresses this clause.

## **Part 8 Local provisions—Wollongong city centre**

### **Clause 8.1 Objectives for development in Wollongong city centre**

The objectives of this part are as follows:

*(a) to promote the economic revitalisation of the Wollongong city centre,*

The proposal is considered to contribute to revitalisation of the Wollongong city centre by providing efficient use of space for a mixture of compatible uses in close proximity to services.

*(b) to strengthen the regional position of the Wollongong city centre as a multifunctional and innovative centre that Encourages employment and economic growth,*

The proposal will contribute to employment and economic growth through construction and Eventual use.

*(c) to protect and enhance the vitality, identity and diversity of the Wollongong city centre,*

The proposal provides a mixture of commercial and residential uses and is considered satisfactory With regards to this objective.

*(d) to promote employment, residential, recreational and tourism opportunities within the Wollongong city centre,*

The proposal provides employment opportunities and a range of residential dwelling types.

*(e) to facilitate the development of building design excellence appropriate to a regional city,*

The design of the building is considered to be of high quality. The site is considered to be a significant site due to its location as the gateway to the main retail area of the Wollongong CBD and the corner elements of the building suitably define the importance of the site and location. The design was critiqued by the design review panel and is considered to exhibit design excellence.

*(f) to promote housing choice and housing affordability,*

The proposal provides a mixture of 1, 2 and 3 bedroom units that are expected to contribute towards housing choice and affordability in Wollongong.

*(g) to encourage responsible management, development and conservation of natural and man-made resources and to ensure That the Wollongong city centre achieves sustainable social, economic and environmental outcomes,*

The proposal is an efficient use of space in an accessible location that is considered to encourage use of public transport and existing services.

*(h) to protect and enhance the environmentally sensitive areas and natural and cultural heritage of the Wollongong city Centre for the benefit of present and future generations.*

The proposal is not expected to result in any negative impacts on natural or cultural heritage.

### **Clause 8.4 Minimum building street frontage**

Development consent must not be granted to the erection of a building that does not have at least one street frontage of 20 metres or more on land within the Zone B3 Commercial Core. The site has at least one frontage of 55m and as such complies.

### **Clause 8.5 Design excellence**

Consent must not be granted unless, in the opinion of the consent authority, the proposed development exhibits design excellence.

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.*

Consideration has been given to these matters. In relation to (a), it is considered that the development provides for a high standard of design, materials and detailing appropriate for the building type and its location. In relation to (b), it is considered that the form and appearance of the development will improve the quality of the public domain. In relation to (c), the development does not detrimentally impact on view corridors as discussed further within this report. In relation to (d), the development will not overshadow any location shown on the map. In relation to (e), the site is considered to be suitable for the development, it provides for appropriate uses, the setbacks required to create the continuous retail frontage have been met. The surrounding area contains relatively low scale commercial buildings in comparison to the proposal. Until the surrounding area develops the proposed development will be out of character however this is not uncommon in areas of transition. The bulk, mass and modulation of the building are considered to be reasonable. The street frontage height of the building complies with relevant controls. In relation to (vi), the proposal will not have an unreasonable environmental impact. Overshadowing impacts are not unreasonable.

#### Design Review

In addition to the design excellence criteria outlined above, Clause 8.5.5 stipulates that development consent must not be granted to a building that is, or will be, greater than 35 metres in height unless a design review panel has reviewed the design of the proposed development:

The design review panel meeting was held on the 9 October 2013. .

The applicant provided amended plans and details in regards to the above requirements that were considered during the assessment of the application. The current plans have incorporated the recommendations of the Panel and it is now considered that the development adequately satisfies the design excellence criteria contained within this clause of the WLEP 2009.

### **3.2 SECTION 79C 1(A)(II) ANY PROPOSED INSTRUMENT**

#### Merge of Wollongong Local Environmental Plan (West Dapto) 2010 with Wollongong Local Environmental Plan 2009

This planning proposal seeks to transfer all land currently under the Wollongong (West Dapto) LEP 2010 (to be repealed) to the Wollongong LEP 2009 so that there will be a single principal Local Environmental Plan covering the Wollongong Local Government Area.. The planning proposal was publicly exhibited from 29 September 2012 until 29 November 2012. This matter has been considered and has no bearing on the proposal.

### **3.3 SECTION 79C 1(A)(III) ANY DEVELOPMENT CONTROL PLAN**

#### **3.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009**

##### **CHAPTER B1 – RESIDENTIAL DEVELOPMENT**

Whilst ‘shop top housing’ is a form of residential accommodation it is not required to be assessed against the controls contained within this chapter as identified in the introduction

*This chapter contains residential development controls for dwelling-house, secondary dwelling, semidetached dwelling, dual occupancy, attached dwelling, multi-dwelling housing (villas and townhouses), residential flat building developments in standard residential zones.*

*This chapter of the DCP applies to all residential zoned land within the City of Wollongong Local Government Area (L.G.A.) including E4 Environmental Living.*

The requirements for the subject development, being a 'shop top housing' within the city centre are contained within Chapter D13, assessment to follow.

### **CHAPTER B3: MIXED USE DEVELOPMENT**

Whilst 'shop top housing' is a mixed use development it is not required to be assessed against the controls contained within this chapter as identified in the introduction

*This chapter of the DCP outlines the development standards which specifically apply to mixed use development. This chapter relates to mixed use development to lands outside the Wollongong City Centre. Where mixed use development is proposed within the Wollongong City Centre reference should be made to the Part D of the DCP which provides the specific controls for mixed use development within the Wollongong City Centre.*

The requirements for the subject development, being a 'shop top housing' within the Wollongong City Centre are contained within Chapter D13, assessment to follow.

### **CHAPTER B4 – DEVELOPMENT IN BUSINESS ZONES**

Whilst Chapter B4 applies to development within business zones Clause 5.1 states that *the specific planning requirements for development upon any land within the Wollongong City Centre are contained in Part D (Locality Based/ Precinct Plan) of this DCP*. In this regard the controls contained within Chapter B4 do not apply to the city centre and only Chapter D13 applies.

### **CHAPTER D13 – WOLLONGONG CITY CENTRE**

The site is located within the Wollongong City Centre, as defined in WLEP 2009 and WDCP 2009. Chapter D13 applies to the development and prevails over other parts of the DCP where there is any inconsistency.

#### Section 2.3 Street Frontage height in Commercial Core

The street frontage height of buildings in the Commercial Core are required to be no less than 12m or greater than 24m above mean ground level on the street front. The street frontage height is 24m however due to the slope of the land this extends to 26m along the Auburn Street frontage. This is above the maximum allowable 24m. However, this is considered acceptable given the slope of the land and allowance for the impact of flooding. The ground floor street interface maintains as directly an accessible link as possible to the street In this case is considered satisfactory.

#### Section 3.6 Vehicle Crossing

The driveway widths are required to be no greater than 5.4m. In the proposed development there are two driveways that access the car park with one of these driveways is 6m in width. Council's Traffic section has reviewed the plans and has agreed that the driveway in this case is suitable at 6m in width. In this regard the variation to the maximum width of the driveway is considered acceptable in this case.

#### Section 6.11 Natural Ventilation

As discussed within the SEPP 65 section in this report the applicant submitted an expert report regarding the large amount of single aspect units and how compliance with natural ventilation is achieved. Natural ventilation is considered satisfactory.

### **CHAPTER E1: ACCESS FOR PEOPLE WITH A DISABILITY**

This application has been considered against the requirements of this chapter and found to be acceptable. The application will be conditioned to comply with the BCA and relevant Australian Standards in regards to access.

### **CHAPTER E2: CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

Council's Safe Community Action Team has provided comments as outlined above. In this regard the requirements contained within this chapter have been considered.

### **CHAPTER E3: CAR PARKING, ACCESS, SERVICING/LOADING FACILITIES AND TRAFFIC MANAGEMENT**

The proposed development requires the provision of

	Cars	bicycle	motorcycle	visitor
Residential	46	19	4	12
Affordable (SEPP)	32			

Retail	17	13	2	2
Commercial	17			2
Total Required	112	37		
Provided	113	37	6	16

The proposed car parking complies with the minimum parking control contained within the DCP/

#### **CHAPTER E5: BASIX (BUILDING SUSTAINABILITY INDEX)**

A BASIX Certificate was submitted with the application.

#### **CHAPTER E6: LANDSCAPING**

Council's Landscape section has assessed the application and provided conditions should the application be approved. In this regard the requirements contained within this chapter have been considered.

#### **CHAPTER E7: WASTE MANAGEMENT**

Council's Traffic section has assessed the application and provided conditions should the application be approved. In this regard the requirements contained within this chapter have been considered.

#### **CHAPTER E12 GEOTECHNICAL ASSESSMENT**

The application has been reviewed by Council's Geotechnical Engineer in relation to site stability and the suitability of the site for the development. Appropriate conditions have been recommended.

#### **CHAPTER E13 FLOODPLAIN MANAGEMENT**

Council's stormwater section has assessed the application and provided conditions should the application be approved. In this regard the requirements contained within this chapter have been considered.

#### **CHAPTER E14 STORMWATER MANAGEMENT**

Council's stormwater section has assessed the application and provided conditions should the application be approved. In this regard the requirements contained within this chapter have been considered.

### **3.3.2 WOLLONGONG SECTION 94A DEVELOPMENT CONTRIBUTIONS PLAN (2012)**

The development is subject to the provision of section 94A Development Contribution as the proposed development has a construction value of greater than \$200,000. Within the B3 Commercial Core zone in the Wollongong City Centre an additional 1% levy is applied to all development with a cost of more than \$250,000 and that increases the gross floor area (i.e. total levy of 2%). In this regard the section 94A contribution payable is \$659,320.

### **3.4 SECTION 79C 1(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 93F, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 93F**

There are no planning agreements entered into or any draft agreement offered to enter into under S93F which affect the development.

### **3.5 SECTION 79C 1(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)**

92 What additional matters must a consent authority take into consideration in determining a development application?

(1) *For the purposes of section 79C (1) (a) (iv) of the Act, the following matters are prescribed as matters to be taken into consideration by a consent authority in determining a development application:*

- (a) *in the case of a development application for the carrying out of development:*
  - (i) *in a local government area referred to in the Table to this clause, and*
  - (ii) *on land to which the Government Coastal Policy applies,*  
*the provisions of that Policy,*

(b) *in the case of a development application for the demolition of a building, the provisions of AS 2601.*

The site is located within the Coastal Zone however the NSW Coastal Policy 1997 only applies to the seaward part of the LGA.

### 93 Fire safety and other considerations

- (1) *This clause applies to a development application for a change of building use for an existing building where the applicant does not seek the rebuilding, alteration, enlargement or extension of a building.*
- (2) *In determining the development application, the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building's proposed use.*
- (3) *Consent to the change of building use sought by a development application to which this clause applies must not be granted unless the consent authority is satisfied that the building complies (or will, when completed, comply) with such of the Category 1 fire safety provisions as are applicable to the building's proposed use.*  
*Note. The obligation to comply with the Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in relation to the relevant development consent.*
- (4) *Subclause (3) does not apply to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4).*
- (5) *The matters prescribed by this clause are prescribed for the purposes of section 79C (1) (a) (iv) of the Act.*

N/A

### 94 Consent authority may require buildings to be upgraded

*(cf clause 66B of EP&A Regulation 1994)*

- (1) *This clause applies to a development application for development involving the rebuilding, alteration, enlargement or extension of an existing building where:*
  - (a) *the proposed building work, together with any other building work completed or authorised within the previous 3 years, represents more than half the total volume of the building, as it was before any such work was commenced, measured over its roof and external walls, or*
  - (b) *the measures contained in the building are inadequate:*
    - (i) *to protect persons using the building, and to facilitate their egress from the building, in the event of fire, or*
    - (ii) *to restrict the spread of fire from the building to other buildings nearby.*
  - (c) *(Repealed)*
- (2) *In determining a development application to which this clause applies, a consent authority is to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the Building Code of Australia.*  
*(2A), (2B) (Repealed)*
- (3) *The matters prescribed by this clause are prescribed for the purposes of section 79C (1) (a) (iv) of the Act.*

N/A

## **3.6 SECTION 79C 1(A)(V) ANY COASTAL ZONE MANAGEMENT PLAN (WITHIN THE MEANING OF THE COASTAL PROTECTION ACT**

There is no Coastal Zone Management Plan currently applicable to the land. Whilst being in the coastal zone, the land is not identified as being impacted by coastal hazards and there are not expected to be any adverse impacts on the coastal environment arising from the development.

## **3.7 SECTION 79C 1(B) THE LIKELY IMPACTS OF DEVELOPMENT**

### Context and Setting:

The building is much higher than existing development immediately surrounding the site to the north, south and east, however the height is consistent with the controls contained within the City Centre LEP. However the proposal does not comply with the maximum allowable FSR in light of the inability to apply SEPP Affordable Rental Housing.

Access, Transport and Traffic:

The proposal is generally satisfactory with regard to these matters. Access is suitable, there is sufficient car parking provided within the site and manoeuvring complies with relevant standards.

Public transport is available within reasonably close proximity of the site. Wollongong Railway station is located within 400m of the site, in addition to taxi ranks and bus stops.

Public Domain:

The development will not have an unreasonable impact on the public domain.

Awnings are proposed across the Burelli, Corrimal and Crown Street footpaths.

Utilities:

The proposal is not envisaged to place an unreasonable demand on utilities supply. Existing utilities are adequate to service the proposal.

Heritage:

No heritage items will be adversely impacted by the proposal.

Other land resources:

The proposal is considered to contribute to orderly development of the site and is not envisaged to impact upon any valuable land resources.

Water:

The site is presently serviced by Sydney Water, which can be readily extended to meet the requirements of the proposed development.

The proposal is not envisaged to have unreasonable water consumption.

Soils:

Conditions Could be imposed in relation to the implementation of erosion and sedimentation controls.

Air and Microclimate:

The proposal is not expected to have any negative impact on air or microclimate.

Flora and Fauna:

There is no significant vegetation removal or landscaping proposed other than shown on the submitted plans...

Waste:

A condition Could be attached to any consent granted that an appropriate receptacle be in place for any waste generated during the construction.

Energy:

The proposal is not envisaged to have unreasonable energy consumption.

Noise and vibration:

A condition Could be attached to any consent granted that nuisance be minimised during any construction, demolition, or works.

Natural hazards:

There are no natural hazards affecting the site that would prevent the proposal.

Council records list the site as flood affected Council's stormwater engineer has indicated that the proposed development is considered satisfactory in regards to flooding.

<u>Technological hazards:</u> There are no technological hazards affecting the site that would prevent the proposal.
<u>Safety, Security and Crime Prevention:</u> This application does not result in any opportunities for criminal or antisocial behaviour.
<u>Social Impact:</u> The proposal is not expected to create any negative social impact.
<u>Economic Impact:</u> The proposal is not expected to create any negative economic impact.
<u>Site Design and Internal Design:</u> The application results in a departure to the FSR as discussed throughout this report. .
<u>Construction:</u> Conditions of consent could address construction impacts such as hours of work, erosion and sedimentation controls, works in the road reserve, excavation, demolition and use of any crane, hoist, plant or scaffolding.
<u>Cumulative Impacts:</u> The proposal is not expected to have any negative cumulative impacts.

### 3.8 SECTION 79C 1(C) THE SUITABILITY OF THE SITE FOR DEVELOPMENT

#### Does the proposal fit in the locality?

The proposal is considered appropriate with regard to the zoning of the site and is not expected to have any negative impacts on the amenity of the locality or adjoining developments if the point of law issue could be overcome

#### Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal.

### 3.9 SECTION 79C 1(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

The application was notified to adjacent/adjoining from 26 July to 21 August 2013 in accordance with WDCP 2009 Appendix 1: Public Notification and Advertising. 3 submissions were received with 1 objection, 1 submission from the access reference group and 1 submission in support of the application and the main issues identified are discussed below.

**Table 1: Submissions**

Concern	Comment
1. <u>Access reference Group</u>	
a. Ensure that the ramps gradients comply with the relevant access standards. Difficult to gauge from DA drawings.	Should the application be approved relevant conditions relating the compliance with Australian Standards could be placed on the consent.
b. No floor plans of the DA available on Council's Development Application exhibition page.	As part of Council's policy residential floor plans are not available for public viewing during notification. The basement and the retail/commercial floor plans are available during notification.
c. Insufficient information and no floor plan of adaptable units to provide	



Concern	Comment
comment.	
<p>2. <u>Fire safety</u></p> <p>My main concern and what has prompted this submission is one of Fire Safety/Security.</p> <p>I do note that FS/S is really more the realm of the next stage of proceedings (CC/CDC).</p> <p>SEPP65 page 12, Figure 10 "Typical Section demonstrating single facing units for natural ventilation" is my main concern. Dual high level louvres are shown with no indication of how these are designed to work (or better still close) under fire conditions from say a kitchen fire. I am a believer in the KISS principle of keeping things simple and where possible to be of a passive nature. Are the louvres say spring loaded and designed to close by activation arising from heat (or better smoke detection) at the local site.</p>	<p>All matters relating to fire safety and types of materials for construction are matters for the Construction Certificate. Any application will be required to comply with the BCA.</p>
<p>3. Another concern is the breezeway fixed louvres at the lift lobby. At the back of the lifts there are the only fire escape set of stairs covering the higher levels (L8-17). Mention was made of Wind Tunnel tests on page 193 in Statement of Environmental Effects Construction of infill affordable housing by Mersonn Pty Ltd but there was no indication of any smoke tests being involved.</p> <p>The automatic weather station at the Illawarra Regional Airport often reports calm conditions as does the Bellambi station but on a less frequent basis. At the other extreme being in coastal area we also get strong winds as noted on plan DA 001 A (Site Analysis). The Elevations seem to indicate floor to ceiling louvres. If any smoke tests were done were there any other designs considered such as a one third height wall and upper two thirds open to perhaps alter the re-entry pattern of smoke from another (possibly lower) level. From my own observations it can sometimes take a while for fire to take hold and before it is sufficiently hot to generate its own chimney effect from rising hot gases. In the meantime there is a lot of billowing smoke which is at the critical time for successful evacuations of occupants. A recent example of trapped people would be the Bankstown fires.</p>	<p>All matters relating to fire safety and types of materials for construction are matters for the Construction Certificate. Any application will be required to comply with the BCA.</p>
<p>4. On the three commercial/retail floors (G, L1 &amp; L2) there is a separate lift lobby but</p>	<p>Matters relating to egress are matters for the Construction</p>

Concern	Comment
there does not appear to be any stairs available other than what I would describe as the escape stairs. Again speaking from experience to reduce waiting times for short inter-floor journeys people can be influenced to save time and electrical energy by "using the stairs". Even at my advanced years five floors were no problem. There is also a fitness factor promotion here as well.	Certificate. Any application will be required to comply with the BCA.
5. If the intention is to use the "escape" stairs around this level for normal circulation what security steps will be in place to prevent movement by undesirables up to the residential areas. I hope it is more than having no handles on the stairway side of the doors!	The applicant has indicated that access to the residential floors is by security key only and intercom. This arrangement is common in most multi use buildings and is considered satisfactory in this case.

#### Submissions from public authorities

Discussed earlier within the report

### **3.10 SECTION 79C 1(E) THE PUBLIC INTEREST**

The application is not expected to have any negative impacts on the environment or the amenity of the locality. It is considered appropriate with consideration to the zoning and the character of the area. However the significant non-compliance with the FSR of a variation of 20% is not considered acceptable and is not in the public interest.

## **4. RECOMMENDATION**

This application has been assessed having regard to the relevant matters for consideration prescribed by Section 79C (1) of the Environmental Planning & Assessment Act 1979. The proposed development is defined as 'shop top housing' and whilst permissible within the B3 Commercial Core the provisions of Clause 10 within the SEPP Affordable Rental Housing are not applicable. Specifically, 'shop top housing' is not listed in Clause 10(1) as a type of applicable residential accommodation. The implications of this are significant as the proposal does not benefit from bonus FSR. If this point of law could be overcome the proposal would be acceptable as it otherwise has regard to the provisions of SEPP65, WLEP 2009 and is consistent with the requirements of Wollongong Development Control Plan 2009. If not WLEP 2009 is not considered to be the appropriate mechanism to consider a variation of 20% which equates to an additional 0.795:1 of floor space.

Submissions received during the notification and assessment of the application have been considered within the report and addressed through recommended conditions through any consent issued

There being no outstanding issues or unreasonable additional impacts from the proposal, it is recommended that the application be refused pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, for the reasons at ATTACHMENT 4.

#### **Attachments**

1. Aerial photograph
2. Wollongong Local Environmental Plan 2009
3. Plans
4. Draft conditions
5. Compliance Table
6. Rail Corp concurrence