

<b>JRPP No.</b>	2013STH032
<b>DA No.</b>	DA-2013/1419
<b>Proposal</b>	Construction of a 30 level mixed use development incorporating retail, commercial, hotel, function, recreational and residential uses inclusive of 4 basement levels
<b>Property</b>	10-18 Regent Street Wollongong No. 10 – Lot 1 DP 13990 No. 12 – Lot 2 DP 13990 No. 14 – Lot 3 DP 13990 No. 16 – Lot 4 DP 13990 No. 18 – Lot 91 DP 1118346
<b>Applicant</b>	General Infrastructure Group Pty Ltd
<b>Responsible Team</b>	City Planning City Centre Team (AS)

## 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 exceeding \$20 million [Clause 3 Schedule 4A of the Environmental Planning and Assessment Act 1979 and clause 21 of State Environmental Planning Policy (State and Regional Development) 2011].

### Proposal

The proposal is for the construction of a 26 level mixed use building over 4 levels of basement parking. The building incorporates a hotel comprising 190 rooms/suites, 23 residential apartments and commercial floor space. The hotel comprises approximately 58.5% of the overall floor space, commercial 20.6% and residential 20.9%. The hotel is situated on levels 1-18, the commercial floor space on levels 1 & 4-6 and residential on levels 19-25. Parking for all three components is segregated across the basement levels. Vehicle access is via Regent Street. A porte cochere for hotel guests is located on Rawson Street.

### Permissibility

The site is zoned B3 Commercial Core pursuant to Wollongong Local Environmental Plan 2009. The proposal is defined 'shop top housing' and 'tourist and visitor accommodation' and is permissible with development consent.

### Consultation

The proposal was notified in accordance with Council's Notification Policy and received seven submissions which are discussed at section 2.9 of this report.

### Main issues

The main issues are:

- Achievement of design excellence required by WLEP 2009
- Variation to maximum height permitted by WLEP 2009
- Variation to building separation required by WLEP 2009

## RECOMMENDATION

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

## 1. APPLICATION OVERVIEW

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### 1.1 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
- State Environmental Planning Policy (Building Sustainability Index : BASIX) 2004
- SEPP (Infrastructure) 2007
- SEPP (State and Regional Development ) 2011

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 2013

Other comments / matters to be addressed

Design Review Panel

### 1.2 PROPOSAL

The plans submitted to the Joint Regional Panel represent the third design iteration of this application. The two earlier versions were both non-complying in terms of floor space ratio (FSR) and height and were both referred to Council's Design Review Panel for comment. The applicant was advised Council did not support a scheme which proposed non-complying FSR and height.

The final version has reduced the FSR to a level which complies with the maximum although this has been achieved via internal loss of space rather than reducing the building footprint. As a result, there is little change to the proposed bulk and scale. The proposal seeks consent for:

- Construction of a 25 storey/88.80 metres mixed use building comprising nineteen levels (inc. mezzanine) of hotel and commercial floor area, seven levels of residential apartments and four basement levels.
- Proposed gross floor area = 19980.2m<sup>2</sup>
- Proposed floor space ratio = 5.48:1 (3648.3m<sup>2</sup> site)
- Total residential units = 23 (20 x 3 bedroom and 3 x 3+ bedrooms (2 x 3 bedroom sub penthouse + 1 x 5 bedroom penthouse))
- Total hotel rooms = 190 (163 rooms + 27 suites)
- Total car parking spaces = 329
- Vehicle entry and exit to basement car park on Regent Street
- Vehicle entry/port cochere for hotel on Rawson Street

### 1.3 BACKGROUND

The proponent has lodged several recent applications for development on the land. These are:

DA-2006/1700

DA-2006/1700 sought consent for *'Construction of a 27 storey mixed use development comprising 9 levels of commercial space, 1 restaurant level, 1 level for recreation purposes of the residents, 16 residential levels over 3.5 levels of*

*basement parking*'. The application proposed non-complying FSR (5.225:1) and height (89m). A deferred commencement consent was issued on 28 September 2007. An operational consent was not issued and the consent lapsed.

#### DA-2009/750 (as modified)

On 18 December 2009, Council granted consent to *Construction of a 23 level mixed use building comprising of 9 levels commercial space, 1 restaurant level, 1 residential recreation level and 12 residential levels over 3.5 levels basement car parking*'. The development incorporated FSR (5.12:1) and height (80m) that complied with the relevant controls. The consent was modified on 16 May 2014 (DA-2009/750/A). The modification related to payment of section 94A contributions. This consent has not lapsed and may be implemented.

#### PL-2013/81

A pre-lodgement meeting was held on 25 September 2013 (PL-2013/81) for the development. The FSR and height both exceeded the permissible maximum. The applicant was advised compliance with both controls would be expected in a forthcoming development application.

#### Customer service actions

The property has does not have any outstanding customer service actions.

### **1.4 SITE DESCRIPTION**

The 3648m<sup>2</sup> corner site is located at 10-18 Regent Street Wollongong and is comprised of five allotments; Lots 1-4 DP 13990 and Lot 91 DP 1118436. A 106m<sup>2</sup> area of the Rawson Street road reserve adjoining Lot 91 DP 1118346 is intended to be acquired from Council and has been included in the estimated site area.

The site is currently vacant. Excavation works on the site approved under DA-2009/750 have commenced.

The land slopes down from the southern boundary (Rawson Street) to the northern boundary. The survey plan shows existing levels of RL35.01 in the south to RL30.19 in the north-east.

The site is located within the Wollongong City Centre central business district and approximately 135m east of the Illawarra Railway and 80m north of Crown Street.

Adjoining development is commercial and seven storeys (north), three storeys (west) and roads Regent Street (east), Rawson Street (south). The land immediately to the west of the site has approval for a seventeen storey integrated care facility, which has not been constructed. Other development in the vicinity of the site includes commercial, retail and medium to high density residential buildings

#### Property constraints

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

- acid sulfate soils Class 5
- NSW coastal zone
- Road widening

There are no restrictions on the title.

### **1.5 CONSULTATION**

#### **1.5.1 INTERNAL CONSULTATION**

##### **Environment Officer**

On 14 January 2014, Council's Environment Officer advised they have no objection, subject to conditions of consent.

**Geotechnical Engineer**

On 16 December 2013, Council's Geotechnical Engineer advised they have no objection, subject to conditions of consent.

**Health Inspector**

On 16 December 2013, Council's health inspector advised they have no objection, subject to conditions.

**Heritage Officer**

On 16 December 2013, Council's Heritage Officer advised they have no objection, subject to conditions of consent.

**Landscape Architect**

On 11 December 2013, Council's Landscape Architect advised they have no objection, subject to conditions of consent.

**Property Officer**

On 4 February 2014, Council's Property Officer advised they have no objection, subject to finalisation of part road closure of Lot 91 DP 1118346 and transfer to the applicant. This matter can be addressed via conditions of consent.

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

On 17 December 2013, Council's SCAT Officer advised they have no objection, subject to conditions of consent.

**Social Planner**

On 12 December 2013, Council's social planner advised they have no objection, subject to further assessment by an Access Consultant. These matters can be addressed via conditions of consent.

**Stormwater Engineer**

Council's Stormwater Engineer viewed the multiple versions of the application and advised they had concerns with several aspects of the proposal. These matters can be addressed via conditions of consent.

**Traffic Engineer**

Council's traffic engineer viewed the multiple versions of the application and provided comment. In relation to the final plans, they advised they had concerns with several aspects of the proposal, including the number of on-site parking spaces. These matters can be addressed via conditions of consent.

**1.5.2 EXTERNAL CONSULTATION****Department of Planning**

The initial suite of plans was referred to the Department of Planning in accordance with clause 4.6 of WLEP 2009, as departures to development standards (height and floor space ratio) were proposed. The relevant departures were height 85.7m where 80m is the maximum and floor space ratio 5.85:1 where 5.5:1 is the maximum. The Department advised on 23 December 2013 that the Director General granted concurrence to these departures.

It is noted that the final version proposes a revised roof level with a top RL of 120.500 where the Department provided comment on a maximum RL of 119.000. The Department advised on 8 October 2014 that concurrence extended to the RL120.500 scheme.

The plans show non-complying building separation (WLEP 2009 clause 8.6) with regard to the northern boundary. This was not addressed by the applicant and consequently concurrence has not been obtained.

The revised plans have reduced the floor area to a level which now complies with the maximum permitted. Accordingly, concurrence for FSR is not required.

## Endeavour Energy

On 3 March 2014, Endeavour Energy advised Council they have no objection to the development. Conditions of consent were not recommended.

## Roads and Maritime Services

On 14 January 2014, RMS advised Council that they had concerns with several aspects of the proposal and requested the applicant provide further information. The final plans were submitted to RMS on 27 August 2014. In correspondence received 30 September 2014, the RMS advised they have no objection. No conditions of consent were recommended.

## 2. 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

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

### 2.1.1 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).*

A desktop audit of previous land uses does not indicate any historic use that would contribute to the contamination of the site. No concerns are raised in regard to contamination.

## 2.1.2 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. 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 the ten design quality principles. These are:

### Principle 1: Context

*Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area. Responding to context involves identifying the desirable elements of a location’s current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.*

The applicant has provided contextual analysis in support of the application, however Council's Design Review Panel suggest more detailed study is required. In their comments (Attachment 6), they express reservations with the proposed connection to the public domain, especially at the Rawson Street/Regent Street intersection.

### **Principle 2: Scale**

*Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.*

*Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.*

The development proposes a height in excess of that permitted in WLEP 2009. The proposed gross floor area has been reduced in the final version, however this has been achieved via internal loss of space rather than reducing building footprint. As a result, there is little change to the proposed bulk and scale. The Design Review Panel recommends refinements to the profile and proportion of the tower.

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

*Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.*

*Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.*

The Design Review Panel provide detailed comments in relation to building form and suggest improvements to the tower profile and alignment of the façade. Internal amenity for commercial tenants is questionable as a result of the reduced floor space ratio and potential redevelopment of the western property.

### **Principle 4: Density**

*Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).*

*Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.*

The density of the development complies with the maximum FSR permitted for the land, however the changes made to the initial proposal in order to achieve FSR compliance are considered to occur at the expense of quality design and a useable floorplan. The final proposal reduces the gross floor area to a figure which complies with the FSR controls by inserting a 12m deep balcony into the commercial areas facing Regent Street on Levels 4, 5 and 6 and creating voids on Level 3. Council's Design Review Panel assessed all three versions of the proposal, and concluded:

*Massive areas of voids and deep narrow balconies that will not contribute meaningfully to the amenity of the commercial spaces and compromise workable layouts within these floors, are now proposed within commercial levels. These areas appear to be an attempt to comply with FSR controls, rather than a meaningful strategy to distribute the form of the building in a manner that improves the building form and creates quality spaces within the building. It is suggested that a more considered approach to the distribution of building form could improve the proportions of the tower or create a better interface with adjoining sites to the west, rather than create an excessive areas of void and balcony within the commercial space.'*

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

*Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.*

*Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.*

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

- BASIX Certificate has been provided indicating minimum requirements are met.

- A Site Waste Management and Minimisation Plan has been provided
- The proposal is an efficient use of land in a location that is close to services and public open space.

### **Principle 6: Landscape**

*Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.*

*Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.*

*Landscape design should optimise useability, privacy and social opportunity, equitable access and respect for neighbours' amenity, and provide for practical establishment and long term management.*

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. Consideration could be given to providing communal open space areas exclusively for residents.

### **Principle 7: Amenity**

*Good design provides amenity through the physical, spatial and environmental quality of a development.*

*Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.*

The amenity for commercial tenants appears to have been compromised by changes to the floorplate in order to reduce the floor space ratio. The insertion of deep balconies and creation of voids results in areas which may be problematic to use.

Amenity of residential tenants is generally good, with no adjoining buildings at a comparable height.

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

*Good design optimises safety and security, both internal to the development and for the public domain.*

*This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.*

The proposal is satisfactory with regard to safety and security. Secure access is provided to parking areas associated with each of the hotel, commercial and residential uses.

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

*Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.*

*New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.*

*New developments should address housing affordability by optimising the provision of economic housing choices and providing a mix of housing types to cater for different budgets and housing needs.*

The proposal provides 3 and 5 bedroom units. Three adaptable housing apartments are provided.

### **Principle 10: Aesthetics**

*Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.*

As noted by the Design Review Panel, the proposed building does not adequately embody design excellence. Further refinement of the eastern elevation is required.

The proposed external finishes are satisfactory.

### 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 in Attachment 8.

#### **2.1.3 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

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

The residential apartments are subject to the SEPP. BASIX certificate 502459M dated 20 November 2013 has been submitted for the apartments and is satisfactory.

#### **2.1.5 STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007**

Clause 104 refers to traffic generating development identified in Schedule 3 of the SEPP. The proposal incorporates shops and commercial premises exceeding 1000m<sup>2</sup> and therefore requires referral to Roads and Maritime Services. In correspondence received 30 September 2014, the RMS advised they have no objection. No conditions of consent were recommended.

#### **2.1.6 STATE ENVIRONMENTAL PLANNING POLICY (STATE AND REGIONAL DEVELOPMENT) 2011**

The development is required to be referred to the Joint Regional Planning Panel pursuant to clause 21 of the SEPP.

#### **2.1.7 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009**

Wollongong Local Environmental Plan 2009 was gazetted on 26 February 2010. Savings provisions set out in clause 1.8A have the effect of making the relevant version that which applied at date of lodgement. The relevant provisions are addressed below.

### **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 generally satisfactory with regard to the above objectives. Whilst the inherent land use proposal for mixed use development has the potential to contribute to the vitality of the city centre, further refinements are required to achieve a higher quality design.

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 mixed use building comprising three separate land uses; hotel ('tourist and visitor accommodation'), commercial, and residential apartments ('residential flat building'). Where residential units are provided above commercial floor space, together they are defined 'shop top housing'.

Shop top housing and tourist and visitor accommodation are described below and are permissible in the B3 Commercial Core zone with development consent.

### Clause 1.4 Definitions

Residential apartments:

***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.

The ground floor plan (Level 1) shows 'commercial' floor space including a shop in addition to the hotel. Commercial, including Level 1 shop:

***commercial premises*** means any of the following:

- (a) business premises,
- (b) office premises,
- (c) retail premises.

Hotel:

***tourist and visitor accommodation*** means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

*but does not include:*

- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities.

**hotel or motel accommodation** means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that:

(a) comprises rooms or self-contained suites, and

(b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles,

but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

**Note.** Hotel or motel accommodation is a type of **tourist and visitor accommodation**—see the definition of that term in this Dictionary.

## Part 4 Principal development standards

### Clause 4.3 Height of buildings

The maximum permitted height for the land is 80 metres.

The plans initially submitted proposed maximum RL 119.190 (a pool roof), with maximum 'building height' indicated as 85.74 metres (west elevation). The 85.74m was shown as existing ground to maximum RL 116.250. It is Council's view that the definition of building height requires the pool roof to be included. The applicant provided a justification for the proposed height as required by clause 4.6 and these plans were referred to the Department of Planning. On 23 December 2013 the Director General provided concurrence to the development departure, noting the concurrence related to the proposed maximum height of 85.70 metres.

The final version has altered the sweeping curves at the edge of the roof and extended the roof area over the pool terrace, including incorporating vertical elements whilst retaining the lifts, toilet, machine room and stair wells. The vertical elements occur at RL120.500 and the pool roof remains at RL119.000.

In the Statement of Environmental Effects, the applicant refers to all elements exceeding 80m as an architectural roof feature, however the area in question is effectively half of Level 25 (i.e. a horizontal band through the top floor) and the entire roof level and therefore cannot be described as such.

For the purpose of defining building height, the vertical columns/galvanised steel framed structures are considered to be an architectural roof feature and excluded and the pool roof included.

Taking into account the above matters, the proposed building height is considered to be 88.80 metres (west elevation) which exceeds the maximum of 80m permitted for the site.

For avoidance of doubt, the revised plans showing RL 120.500 notations received 7 October 2014 were referred to the Department. Advice was provided on 8 October 2014 confirming concurrence is granted.

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

The application when submitted proposed a non-complying FSR of 5.85:1, which was not supported by Council. In the final version the proposed gross floor area has been reduced to 5.48:1.

The maximum FSR permitted on the land for a building only used for residential purposes is 3.5:1 and 6:1 where it is used only for non-residential purposes. Where a proposed building incorporates a mixture of residential and non-residential floor space, the formula detailed in subclause 4 applies.

The proportion of land use mix is 20.9% residential and 79.1% commercial.

The formula for devising the maximum permitted FSR for the site is as follows:

$$(6 \times 79.1/100) + (3.5 \times 20.9/100) = 4.746 + 0.731 = 5.477 = \text{FSR } 5.48:1$$

A FSR of 5.48:1 allows for gross floor area of 19992.68m<sup>2</sup>. The proposed gross floor area is 19980.2m<sup>2</sup>, which does not exceed the maximum.

Whilst the 5.48:1 FSR numerically complies with clause 4.4A, the manner in which the FSR has been reduced to this figure is questionable. The applicant has achieved compliance with the FSR standard by making changes to commercial levels including creating voids, enlarging terrace areas and inserting deep balconies into the commercial floor space. Council's Design Review Panel has expressed concerns with

this approach and Council is also of the view that more cohesive, deliberate design solutions could have been adopted to reduce the floor area.

#### Clause 4.6 Exceptions to development standards

As noted above, the proposal incorporates a building height of 88.80m, where 80m is the maximum permitted for the land. Accordingly, the development departure process specified in clause 4.6 applies. The applicant submitted a variation statement at lodgement (which also refers to a non-complying FSR, which has now been eliminated), and supplementary details dated 14 August 2014. The statement was referred to the Department of Planning. The statement and supplementary details form Attachment 7. On 23 December 2013, the Department advised the Director-General granted concurrence to the two departures. The revised plans received 7 October 2014 were referred to the Department as they show the highest element at RL 120.500 where the Department viewed only the initial plans showing RL 119.000. On 8 October 2014 the Department advised that Director General's concurrence has been granted to the proposed height.

Clause 4.6 specifies that prior to consent being granted, Council must be 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 satisfactorily addresses matters raised in subclause (3). In particular, they adequately demonstrate that compliance with the 80m building height is unreasonable or unnecessary in the circumstances of the case. The land has a significant slope, which restricts the building form at the height limit. The applicant has selected a uniform floorplate throughout most of the building, and consequently at the upper floor (Level 25), the building height partly complies and partly exceeds the 80m limit. It is noted that the part of the building height located in the north-western corner and all of the roof level exceeds the height limit.

In relation to (a)(ii), it is noted that the height limit for the site is considerably greater than on nearby sites, reinforcing Council's intention to support a development which emphasises the natural landform and topography. The site is the highest point in the City Centre, and the 80m height limit has been imposed to reflect the visual primacy of the location. It is also noted that shadowing impacts of the additional height is negligible.

In addition to building height variation, the proposal incorporates building separation to the northern neighbour which does not comply with the requirements of clause 8.6. The applicant is required to provide justification for this departure, however this has not been addressed. As a consequence the necessary concurrence has not been obtained.

### **Part 5 Miscellaneous provisions**

#### Clause 5.5 Development within the coastal zone

The land is located within the NSW Coastal zone, however is not identified in Council's hazard mapping as being impacted by coastal hazards. The proposal is considered to comply with matters noted in subclause 3(d), namely.

- (3)(d) the proposed development will not:
  - (i) be significantly affected by coastal hazards, or
  - (ii) have a significant impact on coastal hazards, or
  - (iii) increase the risk of coastal hazards in relation to any other land.

#### Clause 5.6 Architectural roof features

In their Statement of Environmental Effects and supplementary details dated 14 August 2014, the applicant refers to the entire roof floor as comprising architectural roof features. Whilst architectural roof feature is not separately defined, not all elements of the roof level meet a general application of that term.

For example, the roof level contains an enclosed toilet room (refer Attachment 3). Notwithstanding, the structures located on the roof level are considered visually acceptable and concurrence has been granted to the proposed height.

#### Clause 5.9 Preservation of trees or vegetation

The proposal does not involve removal of trees.

#### Clause 5.10 Heritage conservation

There are no heritage items in the vicinity of the site.

Part of the site, (no. 18 Regent Street) was at one time identified as an item of local heritage significance. Council's heritage officer has advised that Schedule 5 of Wollongong Local Environmental Plan 2009 was amended prior to lodgement of the application and 18 Regent Street is no longer identified as having heritage significance.

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

#### Clause 7.1 Public utility infrastructure

The application was referred to Endeavour Energy for comment. On 3 March 2014 Endeavour Energy advised they have no objection. Former development on the land was connected to utilities and it is expected that the proposed development would be able to be serviced.

#### Clause 7.5 Acid Sulfate Soils

The Acid Sulfate Soils Map indicates the site as being affected by acid sulfate soils Class 5. Council's environment officer has reviewed the application and recommended conditions of consent relating to soil quality, water and sediment management.

#### Clause 7.6 Earthworks

The proposal involves excavation of approximately 8 metres and construction of a four-level basement. Council's geotechnical engineer has advised that *'most of the excavation will be in hard bedrock and difficulty is expected. The depth of rock excavation will also result in some stress relief in the exposed face. Geotechnical advice will be required to assess this and to advise on appropriate treatments to avoid adverse effects to adjoining properties'*.

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

As the site is located within the B3 Commercial Core zone, development is required to ensure active uses are provided at the street level to encourage pedestrian movements between the development and the public streets. Council must be 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 ground floor/Level 1 (refer Attachment 3) satisfies both requirements.

#### Clause 7.14 Minimum site width

The minimum required site width for development in the B3 Commercial Core zone is 24 metres. The survey plan shows the site has approximate dimensions of 60.49m along Rawson Street and 68.73m on Regent Street.

### **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,*
- (b) to strengthen the regional position of the Wollongong city centre as a multifunctional and innovative centre that encourages employment and economic growth,*
- (c) to protect and enhance the vitality, identity and diversity of the Wollongong city centre,*
- (d) to promote employment, residential, recreational and tourism opportunities within the Wollongong city centre,*

- (e) to facilitate the development of building design excellence appropriate to a regional city,
- (f) to promote housing choice and housing affordability,
- (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,
- (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 application generally meets these objectives. The proposal is for a permissible mixed use commercial and residential building in a business zone. The site is well located in relation to transport options. One concern is whether the building achieves design excellence appropriate to its context. As discussed in relation to clause 8.5, there are some improvements recommended by Council's Design Review Panel, which are yet to be made.

#### Clause 8.2 Wollongong City Centre – land to which Part applies

The land is located within the Wollongong City Centre

#### Clause 8.4 Minimum building street frontage

The development provides the minimum 20m street frontage required by this clause.

#### Clause 8.5 Design excellence

The objective of this clause is 'to deliver the highest standard of architectural and urban design' and applies to the development. Clause 8.5.4 sets out specific design matters.

Clause 8.5.5 specifies that a Design Review Panel must consider applications for buildings exceeding 35 metres.

Council's Design Review Panel provided comments dated 11 September 2014, which address the requirements of clause 8.4.5 and 8.5.5. Their comments forms Attachment 6. In their correspondence, they conclude:

*Some significant improvements have been made during the design review process, it can be said that the proposal now has the potential to meet the design excellence criteria set out under Clause 7.18 of Wollongong Local Environmental Plan. However before the requirements of this clause are fully met, the following issues must be addressed:*

- *Contextual study*  
*The proposal is generally of an appropriate form and scale, however a complete contextual study showing how the proposal is viewed from distant vantage points and how the proposal relates to future built form is yet to be provided. These studies are essential tools that will inform potential refinements of the building form.*
- *Connection to public domain*  
*An improved strategy has now been adopted that creates the potential to allow vehicles to access and service the building, whilst allowing the building to connect to the street, unfortunately the detail treatment of the building at street level does not fully realise this potential.*
- *Building form (bulk / massing)*  
*The revised treatment of the commercial area is a missed opportunity. The quality of spaces provided by the introduction of additional voids and balconies is questionable. The reduction in floor area could have been used to address issues previously raised by the panel such as improving the proportions and profile of the tower or providing more space between the commercial and the neighbouring site to the west.*
- *The eastern elevation to be further developed to break up the overall width and massing of the building with a greater difference in the glazed screens and different alignments as well as fully expressing the wings in the expression at the top of the building.*

The specific design requirements are set out in subclauses 3-4. In their comments, the Design Review Panel advise the development fails to comply with subclauses (a), (e), (iv), (e), (v) and (x). Other aspects are considered satisfactory.

- (3) Development consent must not be granted to development to which this clause applies unless, in the opinion of the consent authority, the proposed development exhibits design excellence.*
- (4) 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.*

#### Clause 8.6 Building separation within Zone B3 Commercial Core or B4 Mixed Use

The Statement of Environmental Effects does not address clause 8.6 requirements.

The proposed building is built to the Regent Street boundary at levels 1-6 (approximately 23.8m above existing ground) and Rawson Street boundary at levels 1-5 (approximately 17.3m above existing ground). Therefore, a street frontage height of 23.8m is proposed.

- (1) The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.*
- (2) Buildings on land within Zone B3 Commercial Core or B4 Mixed Use 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*

For the purpose of this clause, the only adjoining building is 6-8 Regent Street, which is built to the shared boundary (ie. the proposed building's northern boundary). The proposed building complies with this clause.

- (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*

For the purpose of this clause, 'above street frontage height and less than 45 metres' refers to Levels 7-15. The buildings on the western elevation (2-4 Rawson Street and 1 Governor's Lane) are separated further than 12 metres from the proposed building.

The building at 6-8 Regent Street does not extend higher than proposed Level 8. Plan DA32-C (east elevation) shows the separation between the proposed building and the adjoining building at 6-8 Regent Street. On proposed level 7, there would be a nil setback (and consequently nil separation) where the proposed fire stairs adjoin the boundary. Other parts of the building are set back 3.349m (therefore 3.349m separation). On Level 8 the stairs are removed and a setback of 3.349m (3.349m separation) is proposed. In this regard, non-compliance with this clause is proposed.

Whilst the impacts of the non-compliance on Levels 7 and 8 are not considered significant in relation to the existing adjoining building, a future redevelopment of 6-8 Regent Street would inherit a setback of only 3.349m to the boundary, which may unreasonably constrain development potential.

The applicant's clause 4.6 variation statement does not address this non-compliance. Consequently, the required concurrence from the Director General has not been obtained.

*(c) there is a distance of at least 28 metres from any other building at 45 metres or higher above ground level.*

Not applicable

*(3) Despite subclause (2), 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.*

Not applicable

*(4) For the purposes of this clause, a separate tower or other raised part of the same building is taken to be a separate building.*

*(5) In this clause:*

***street frontage height*** means the height of that part of a building that is built to the street alignment.

## **2.2 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 proposal was exhibited in 2012 and gazetted on 6 June 2014. The planning proposal does not raise any concerns with regard to the subject application.

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

### **2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009**

Several chapters of WDCP 2009 apply to the development. Chapter D13: Wollongong City Centre provides the majority of specific design guidelines for the development. Attachment 8 details compliance with these provisions. Matters which are not satisfactory or where amendments are recommended include:

- Clause 2.5 Side and rear setbacks
- Clause 3.3 Active street frontages
- Clause 3.5 Awnings
- Clause 3.10 Views and view corridors

- Clause 4.2 Pedestrian access and mobility
- Clause 4.4 On-site parking

## **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 (LGA.) including E4 Environmental Living.*

The requirements for the subject development, being a ‘shop top housing’ within the city centre are contained within Chapter D13.

## **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.

## **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.

An assessment of the application against the WDCP 2009 is contained within the Compliance table at Attachment 8.

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

This application has been considered against the requirements of this chapter and found to be acceptable. A total of 3 of the 23 residential units are nominated as adaptable (13%) and the subsequent car parking spaces have been allocated to the adaptable units.

In addition, 9 adaptable hotel rooms/suites and associated car parking spaces have been provided.

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

Crime prevention has been addressed in the Statement of Environmental Effects. Measures implemented to reduce crime and provide personal safety include separation of car parking, building access control, signage in public areas, elimination of blindspots and places of entrapment and lighting and CCTV.

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

A Traffic Impact Assessment has been provided. As noted earlier, the RMS has no objection to the development.

Car parking is provided in the four basement levels, with ingress and egress from Regent Street. Basement Level 1 (the upper basement level) includes loading dock/delivery areas with a vehicle turntable. The Rawson Street frontage contains a drop-off/valet parking area for hotel guests.

#### Number of car spaces

Council's traffic engineer has identified there is a shortfall in spaces. In its current form, the proposed development requires the provision of a minimum of 401 spaces as indicated in the table below. There may be scope for multiple deployment of hotel staff across some of the areas, however this has not been fully resolved.

Category	Rate	Quantity	Requirement
Hotel (tourist and visitor accommodation)	1 space per unit plus 1 space per 2 staff	190 units	190 spaces plus staff
Hotel function room	1 space per 5m <sup>2</sup> plus 1 space per 2 staff	545m <sup>2</sup>	109 spaces plus staff
Hotel restaurant	Not specified for city centre	153m <sup>2</sup>	nil
Commercial	1 space per 60m <sup>2</sup>	4124.5m <sup>2</sup>	68.74 spaces
Residential > 110m <sup>2</sup>	1.25 spaces per unit	23 units	28.75 spaces
Residential (visitors)	0.2 spaces per unit	23 units	4.6 spaces
<b>TOTAL REQUIRED</b>			401 plus staff spaces
<b>TOTAL PROVIDED</b>			329

In regard to motorcycle and bicycle parking provision, the following applies:

<u>Motorcycle:</u>	Rate	Quantity	Requirement
Hotel	1 space per 10 units	190 units	19
Hotel function room	1 space per 25 car spaces	109 car spaces	4.36
Hotel restaurant	1 space per 25 car spaces	Not specified for city centre	nil
Commercial	1 space per 25 car spaces	68.74 car spaces	2.74
Residential	1 space per 15 dwellings	23 dwellings	1.53
<b>TOTAL MOTORCYCLE REQUIRED</b>			27.63
<b>TOTAL PROVIDED</b>			13
<u>Bicycle</u>	Rate	Quantity	Requirement

Hotel	Not required		Nil
Hotel function room	1 space per 25m <sup>2</sup>	545m <sup>2</sup>	21.8
Hotel restaurant	1 space per 200m <sup>2</sup> GFA	153m <sup>2</sup>	0.76
Commercial	1 space per 200m <sup>2</sup> GFA for staff plus 1 space per 750m <sup>2</sup> for visitors	4124.5m <sup>2</sup> GFA	20.6 staff 5.49 visitors
Residential	1 space per 3 dwellings for residents plus 1 space per 12 dwellings for visitors	23 dwellings	7.6 residents 1.91 visitors
<b>TOTAL BICYCLE REQUIRED</b>			58.16
<b>TOTAL PROVIDED</b>			64

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

A BASIX Certificate was submitted with the application.

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

A landscape plan was submitted with the development application prepared by a qualified landscape architect. The landscaping plan is consistent with the requirements of the DCP with the exclusion for the Corrimal Street frontage, and is considered satisfactory by Council's landscape officer.

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

A waste storage room is located on Basement Level 1. All tenants would be required to take waste to the storage room, from where collection would be by private contractor.

Council's traffic engineer has not objected to the proposed waste arrangements.

#### **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; no objection is raised.

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

Council's Stormwater Section has assessed the application and advised they have no objection.

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

A stormwater drainage plan was submitted with the DA. The stormwater plan has been considered by Council's Stormwater Division and is considered to be acceptable.

#### **CHAPTER E19 EARTHWORKS (LAND RESHAPING WORKS)**

Earthworks proposed to facilitate construction of the basement car park have been considered with regard to the objectives and provisions of Chapter E19 and are considered to be acceptable.

#### **CHAPTER E22 SOIL EROSION AND SEDIMENT CONTROL**

Methods to mitigate erosion and sedimentation dispersal can be implemented.

### 2.3.2 WOLLONGONG SECTION 94A DEVELOPMENT CONTRIBUTIONS PLAN (2013)

Contributions are payable in accordance with Council's section 94A development contributions plan, which came into effect on 16 September 2013. Clause 1 specifies that all development exceeding \$200,000 shall pay a 1% levy and where development is proposed in the B3 Commercial Core, an additional levy of 1% applies.

The applicant has sought a reduction in the total amount payable, based on a 'credit' for payment made in relation to the earthworks component of DA-2009/750 (as modified).

### 2.4 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.

### 2.5 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.*

Not applicable – no demolition is proposed.

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 (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.*

Not applicable.

94 Consent authority may require buildings to be upgraded

*(cf clause 66B of EPA 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.*

Not applicable.

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

The land is located within the NSW Coastal Zone, however is not identified in Council's hazard mapping as being impacted by coastal hazards.

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

### Context and Setting

The proposed development is considerably higher than existing development in the vicinity, however the current planning controls permit development up to 80 metres in height. In terms of compatibility with the existing neighbourhood, height is only one element. The proposed setbacks, floor space ratio, building form and connection with surrounding streets are also to be considered. Council's Design Review Panel have provided comment on three occasions since the application was lodged, in response to three versions of the development. The final plans were reviewed and the Panel advised that a comprehensive contextual analysis had not been provided and there were still deficiencies in the building design, which would need to be rectified before the design excellence provisions of WLEP 2009 could be satisfied. The Panel's comments forms Attachment 6.

### Access, Transport and Traffic:

Roads and Maritime Services has advised they have no objection to the development. Council's traffic engineer has raised several matters which would be able to be addressed via conditions of consent. Council's Design Review Panel have suggested improvements could be made to vehicle access in the Rawson Street frontage.

### Public Domain:

Council's Design Review Panel advised the final plans do not demonstrate an adequate connection to the public domain.

### 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 impacted by the proposal.

### Other land resources:

Geotechnical conditions have been addressed and Council's geotechnical engineer has no objection to the proposed development. No adverse impact upon valuable land resources is anticipated.

#### Water:

The site has previously been serviced by Sydney Water. It is expected that services can be extended and augmented to meet the requirements of the proposed development. Sydney Water approval would be required prior to construction.

Methods of reducing water consumption are addressed in the BASIX Certificate.

#### Soils:

The site contains acid sulfate soils however is not known to be contaminated. The proposed development involves excavation of soils to a depth to accommodate four basement levels. Impacts on soil resources through erosion and sedimentation during construction can be mitigated through appropriate controls.

#### Air and Microclimate:

The proposal is not expected to have any negative impact on air or microclimate. Wind effects have been considered by the applicant and are satisfactory.

#### Flora and Fauna:

There is no vegetation removal proposed. Landscaping has been proposed and is satisfactory.

#### Waste:

A waste storage room is proposed on Basement 1. Tenants would be required to take their garbage to the waste storage room and collection would be via private contractor.

#### Energy:

The proposal is not expected to result unreasonable energy consumption. Methods to reduce energy consumption are detailed in the BASIX certificate.

#### Noise and vibration:

The proposal would result in noise and vibration impacts during construction, which could be mitigated through consent conditions. There is a potential for noise impacts on nearby development emanating from private open space areas and the outdoor terraces, however this is not considered significant.

#### Natural hazards:

There are no natural hazards affecting the site that would prevent the proposed development. The land is not located within a known flood risk precinct.

#### Technological hazards:

There are no technological hazards affecting the site that would prevent the proposed development.

#### Safety, Security and Crime Prevention:

Council's Safe Community Action Team officer reviewed the application and recommended conditions of consent.

#### Social Impact:

The proposal is not expected to result in adverse social impact.

#### Economic Impact:

The proposal is not expected to result in adverse economic impact. The proposed building incorporates commercial, hotel and residential floor space in the Wollongong City Centre.

#### Site Design and Internal Design:

The application seeks consent for development incorporating a number of departures from Council's planning controls. Council's Design Review Panel identified several areas requiring refinement in order to satisfactorily demonstrate design excellence as required by WLEP 2009.

### Construction:

Construction impacts are likely to be significant given the size of the site and scale of the development proposed. Notwithstanding, these impacts can be adequately managed by conditions of consent relating to hours of work, protection of adjoining properties during excavation, impacts on public roads and sediment and erosion controls.

### Cumulative Impacts:

In its current form, the proposal would have a negative impact upon the public domain and unreasonably restrain future development on the adjoining northern property. The proposed commercial areas in the western part of the building may be adversely impacted by future development given the proposed side setbacks.

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

### Does the proposal fit in the locality?

In its current form, the proposal is not considered appropriate with regard to the building design, site layout and setbacks and connection with Rawson and Regent Streets. Refinements identified by Council's Design Review Panel are recommended.

### Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal, however a comprehensive contextual analysis has not been prepared which would otherwise test the appropriateness of the proposed building form, height floor space ratio, land use etc. The topography of the site has been taken into account and is acknowledged as a site constraint, however the site's location in a prominent position in the City Centre also creates an opportunity for significant community and commercial benefits.

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

The application was notified to neighbouring development and local newspaper in accordance with WDCP 2009 Appendix 1: Public Notification and Advertising. The initial plans were notified 6 December 2013-14 January 2014 and the second set of plans notified 28 July 2014- 13 August 2014. The final set of plans lodged 22 August 2014 were not advertised as the potential impacts on neighbouring development were not considered to have increased as a result of the amendments.

In total, seven submissions have been received. Matters raised are discussed in the Table 1 below:

**Table 1: Submissions**

Concern	Comment
1. Errors on plans	Matters raised include typographical errors, misspellings, inconsistencies with sections, no access to fire stairs etc. These matters are not considered significant and are able to be rectified in final construction drawings.
2. Height The variation to 80 metre height limit isn't a minor variation to those people living next door. There is no need to build the tallest building in Wollongong on this site. Height limit is too high. No building should protrude above the natural sightline from	The maximum permitted height for the land is set by WLEP 2009. Consent is sought for the building height which exceeds the 80m maximum. This matter is discussed in detail above.

Concern	Comment
foreshore to escarpment.	
3. Land use There is already an abundance of vacant office floor space in the CBD	Vacancy rates have not been provided. The current LEP 2009 zoning table permits commercial (inc. office, business and retail) uses in the B3 Commercial Core zone.
4. Character / context The development would be out of character for the area.	The design criteria are addressed earlier in this report in relation to statutory controls. Several variations are proposed which are generally not supported.
5. Traffic Traffic will get worse. Council's requirements are well below demand. The applicant has provided more residential parking than the controls require but is woefully below requirements for commercial components, especially the conference centre. Council should restrict on-site parking and require contributions towards construction of major car parks in accessible locations. A Planning Agreement should be required.	RMS have no objection to the proposal. Council's traffic engineer has identified several unresolved matters, which could be addressed via conditions. Although the Design Review Panel has raised additional concerns as discussed above.
6. Overprovision of floor space in the CBD These concerns were raised in the Civitas Report and confirmed by the Council sponsored review of that Report.	Council's current planning controls currently allow provision of new commercial space.
7. Notification period Minimum should be 28 days due to complexity and Christmas closure.	The application was notified as required by WDCP 2009, including the extended Christmas advertising period.
8. Floor space ratio The proposed floor space ratio is too high.	The maximum permitted floor space ratio is specified in clause 4.4A of WLEP 2009. The floor space ratio initially proposed has been reduced to a level which does not exceed the maximum permitted for the development. However, concerns are raised as to how compliance has been achieved which is discussed above.

#### Submissions from public authorities

The Department of Planning, RMS and Endeavour Energy responses have been discussed earlier in this report.

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

Having regard to matters discussed earlier in this report and as required by Section 79C of the Environmental Planning and Assessment Act, approval of the proposal in its current form is not considered to be in the public interest.

Council's Design Review Panel considered all three iterations of the proposal and provided comment on each. In relation to the final set of plans, the Panel advises the design excellence criteria of WLEP 2009 remain unsatisfied. A number of non-compliances with planning controls are proposed, which of itself is not a reason for refusal. However, the manner in which the formerly non-complying floor space ratio has

been brought into compliance is not adequate. The resulting external appearance and internal floorplan is not satisfactory. The proposal incorporates a development departure to the building separation requirement in WLEP 2009, which has not been identified by the applicant and not addressed as required by clause 4.6 of WLEP 2009. As a consequence, the concurrence of the Director General required by WLEP 2009 has not been obtained. In addition, the changes made to the roof level in the final version have slightly increased the building height. Whilst the marginal increase is not considered to result in adverse impacts, the concurrence of the Director General provided in response to the initial plans does not extend to the proposed building height. The requirements of clauses 4.6 and 8.5 of WLEP prevent granting of consent where council is not of the opinion that design excellence has been achieved and where the concurrence of the Director General has not been obtained.

### **3. RECOMMENDATION**

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This application has been assessed having regard to Section 79C(1) of the Environmental Planning and Assessment Act 1979, the provisions of Wollongong Local Environmental Plan 2009 (WLEP 2009), relevant State Environmental Planning Policies, and all Council DCPs, Codes and Policies.

The application involves a variation to the maximum permitted building height, which has been supported by satisfactory justification, however as noted above the concurrence of the Director General has not been obtained. In addition, a variation to the minimum building separation required by WLEP 2009 is proposed however justification has not been provided and concurrence has not been granted.

Council's Design Review Panel has identified matters which in their opinion prevent the proposed building from demonstrating design excellence as required by clause 8.5 of WLEP 2009.

Therefore, it is recommended that in its current form, the proposed development be refused for the reasons detailed in Attachment 4.

### **ATTACHMENTS**

1. Aerial Photograph
2. Zoning Map Wollongong Local Environmental Plan 2009
3. Plans
4. Draft reasons for refusal
5. Director General concurrence
6. Design Review Panel comments
7. Clause 4.6 variation request
8. Compliance table