

JRPP No.	2014STH012
DA No.	DA-2014/503
Proposal	Demolition of the existing building and structures and construction of mixed use development comprising of 317 residential units within 4 towers over ground floor retail and 4 levels of parking for 621 vehicles
Property	31 Crown Street and 16 Burelli Street, Wollongong
Applicant	ADM Architects
Responsible Team	Development Assessment and Certification - City Centre Team (RH)

1 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 demolition of the existing vacant Salvation Army building and the construction of a mixed use development. The development comprises ground floor retail containing 14 retail tenancies fronting Crown, Corrimal and Burelli Streets. Residential component of the development contains a total of 317 residential units comprising residential units at podium level that wrap around a centrally located above ground car park; and four residential towers generally located at each corner of the site. The towers range in height between 9 and 15 storeys above street level.

Permissibility

The site is zoned B4 Mixed Use and SP2 Infrastructure pursuant to Wollongong Local Environmental Plan 2009. The proposal is categorised as 'shop top housing' and is permissible in the B4 mixed use zone with development consent.

Consultation

The proposal was notified in accordance with Council's Notification Policy and received 6 submissions which are discussed at section 3.9 of the assessment report.

Main Issues

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

- A variation is sought in relation to Clause 4.4A of WLEP 2009 which provides for the maximum allowable FSR for the site a maximum of 2.61:1. Two parts of the proposal put the FSR over the maximum, firstly surplus car parking (including any access to that parking) and secondly the exclusion of the SP2 Infrastructure zoned land (where 'shoptop housing' is not permitted). With the inclusion of these two areas the FSR of the proposed development increases to 3.15:1.

The applicant has submitted a submission under clause 4.6 seeking a departure in relation to Clause 4.4A. The concurrence of the Secretary of the Department of Planning and Environment has been obtained in accordance with the requirements of the LEP (see attachment 5).

- A variation is sought in relation to Clause 8.6 of WLEP 2009 which provides minimum building separation distances. The LEP allows for a building to be built to the boundary up to the street frontage height or a maximum of 24m whichever is the lesser, should the development be proposing commercial space. However once there are residential components below the street frontage height that are at the same level as residential on adjoining properties then part (3) of this Clause is required to be met. In this regard, the proposed residential section of the building that has an interface with an adjoining residential development is required to be setback 20m. The proposed development does not comply with this control due to the location of the existing residential buildings along the eastern boundary.

The applicant has submitted a submission seeking a departure in relation to Clause 8.6. The concurrence of the Secretary of the Department of Planning and Environment has been obtained in accordance with the requirements of the LEP (see attachment 5).

- Archaeological heritage
- Road widening and the intersection upgrade.
- Variation to building depth and open space requirements contained within SEPP 65.
- Minor variations to the WDCP 2009 are proposed including building depth.
- The majority of the issues raised by the 3 objections are considered to be adequately addressed either through design or conditions of consent. Any remaining issues are not considered to be well founded or grounds to refuse the application.

RECOMMENDATION

It is recommended that deferred commencement approval be granted to DA-2014/503 subject to the draft conditions at attachment 4.

2. APPLICATION OVERVIEW

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 71 – Coastal Protection
- SEPP (Infrastructure) 2007
- SEPP (Building Sustainability Index: BASIX) 2004
- 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

DoPE - Concurrence

RMS

Sydney Water

Endeavour Energy

1.2 PROPOSAL

The development will involve the demolition of the existing vacant Salvation Army building and the construction of a mixed use development.

The proposal consists of the following main elements:

- Fourteen street level retail tenancies fronting Crown, Corrimal and Burelli Streets
- Residential townhouse style apartments and units at podium level that wrap around a centrally located three level above ground car park plus an additional level of basement car park; and
- Four residential towers generally located at each corner of the site. The towers range in height between 9 and 15 storeys above street level.
- Establishment of a pedestrian midblock access way running between Crown and Burelli Streets.

The development will comprise a total of 317 residential units comprising 97 x one bedroom units, 196 x two bedroom units, and 24 x three bedroom units.

Each tower has separate street access for pedestrians at its respective street/laneway frontage. Access to the car park for pedestrian access is via the main foyer on the corner of Corrimal and Crown Streets.

All vehicle access to the site is via a dedicated access laneway/driveway located along the entire eastern boundary of the site. Ingress is via Burelli Street only and egress via Crown Street.

The car park consists of a four level car park comprising one basement level and three above ground levels. The three above ground levels are sleeved by the retail and residential components that are located along the perimeter of the frontages to Crown, Corrimal and Burelli Streets and as such the car park is not visible. A total of 621 car parking spaces has been provided on site. Located on the two lower car park levels is the retail and visitor spaces containing 267 car spaces with a small component of secure residential parking located on the ground floor comprising 28 spaces. The remaining secure car parking contains 326 car spaces for the residences of the development. A total of 142 bicycle spaces and 31 motorcycle spaces are also proposed within the car park.

Above the car park and centrally located between the four residential towers is the communal landscaped podium which consists of 2,101sq.m in area. This area is for exclusive use by the residents of the development.

The following photomontage shows the proposed development within the context of the site. It is the view looking south from the intersection of Crown and Corrimal Streets looking south-east.



Plans can be found at ATTACHMENT 3 to this report.

1.3 BACKGROUND

Whilst the site now contains 3 lots the site history is discussed below:

16 Burelli Street – Salvation Army Site

Council's records for this site indicate that the site has been used as a 'club' from approval in 1958. Numerous applications for additions and alterations to the 'club' occurred until two development applications for conversion of the 'club' into a library and office accommodation was undertaken in 1984.

In 1988 applications for a change of use to restaurant and function rooms were approved by Council. In 1994 development application DA-1994/819 for use of the building by the Salvation Army Wollongong for worship and Community Facilities was approved.

The site had been used by the Salvation Army up until the completion of the new Salvation Army Centre was completed which is located on the opposite side of Burelli Street.

The existing building is currently vacant and in a dilapidated state.

31 Corrimal Street

The site known as 31 Corrimal Street is the large property (main area of the site) that has frontage to Corrimal, Burelli and Crown Streets.

The Cricketer's Arms Hotel

The corner of Crown and Corrimal Street is known to have contained Cricketer's Arms Hotel from around 1859 – 1908, and it is understood that following 1908, the building may have served a period as a guesthouse. The date of demolition is unknown.

Car Garage/Workshop and Dealership

Council's records indicate that the site has been operating since at least 1950 as a car garage. Numerous applications over the decades for car workshops, panel beating and motor showrooms on the site were approved by Council. The site operated a motor vehicle repair station and motor showroom up until its demolition approved via DA-2006/1100.

Council operated commuter car park

Council currently operates a temporary commuter car park (via SEPP Infrastructure) on the south western corner of the site at the intersection of Burelli and Corrimal Street.

DA-2004-1565

On the 1 August 2005, Council approved DA-2004/1565 on the subject site for "Demolition of existing buildings and the subsequent erection of a seven (7) storey (plus basement car park) leisure, entertainment, commercial office and retail centre complex

A third party appeal was lodged with the Land and Environment Court against the validity of the consent. The Court subsequently set the consent aside..

On the 21 August 2006, Council granted deferred commencement consent to DA-2004/1565.

A third party appeal was lodged in the Land and Environment Court seeking a declaration that the development consent was void and of no effect. This application was dismissed.

The appealant appealed to the Court of Appeal. The appeal was successful, with an order to "remit the matter to the Land and Environment Court for determination. On 11 December 2008 the Land and Environment Court declared the consent to be void and of no effect.

MP-2006/0257

In November 2006, a proposal, involving both the Oxford Tavern site and the Dwyer's sites, (subject site), was declared a major project under Part 3A of the *Environmental Planning and Assessment Act 1979*.

The Major Project sought approval for concept plan approval for a mixed use development for:

Dwyer's site

- Stage 1 – a 5 level mixed use entertainment and leisure retail centre, and
- Stage 2 – an 8-level hotel, conference and restaurant facility above the Dwyer's podium.

Oxford Tavern site (Stage 3)

- comprising of a podium with mixed use tavern, retail and offices; and

- an office tower and residential tower above the podium.

The application was reported to the Planning Assessment Commission (PAC) for determination. The PAC refused the application on the 21 September 2011.

DA-2006/1100

Council on the 28 July 2006 approved the demolition of all structures (excluding the Salvation Army building) and remediation of the site.

Customer service actions

The property does not have any outstanding customer service actions.

1.4 SITE DESCRIPTION

The site is located on the eastern side Corrimal Street between Crown and Burelli Streets and the title reference is Lot 1, DP 1078311 and Lot 5 and 6, DP 32538.

The land has a total site area of 11,913sq.m. However a portion of the western side of the property of Lot 1, fronting Corrimal Street is zoned SP2 Infrastructure and is required for road widening purposes. This portion of land has an area of 635.7sq.m therefore reducing the overall total area of the lot to 11,227.3sq.m. Once the area of road widening has been dedicated the remaining site will be rectangular in shape.

The site is generally level, but there is a slight grade that runs south from Crown towards Burelli Street.

The Salvation Army building is the only structure that currently exists on the site and the site is devoid of vegetation.

The site has three street frontages, each of which has its own character. Crown Street is the city's main retail street, and is characterised to the west by a fine grain of 2 – 4 storey buildings with zero front setbacks, some more recent with significantly higher setbacks, massing and continuous street activities at street level. Corrimal Street is a busy north-south vehicular route through the city, limiting its scope for vehicular access and continuous active uses at ground level. Burelli Street contains many of the city's civic buildings (Council offices, theatre, and art gallery) and is thereby dominated by buildings with larger setbacks punctuated by wide spaces between its various buildings.

The location plan/aerial photograph can be found at ATTACHMENT 1 to this report. The WLEP 2009 zoning map can be found at ATTACHMENT 2 to this report.

Property constraints

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

- contaminated land
- acid sulphate soils
- flooding
- Coastal hazards

There are no restrictions on the title

1.5 CONSULTATION

1.5.1 INTERNAL CONSULTATION

Geotechnical Engineer

Council's Geotechnical Engineer has reviewed the application and advised that the geotechnical information provided by Coffey Geosciences is sufficient to confirm that the development is feasible from a geotechnical perspective subject to conditions of consent.

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 assessed the application and indicated that the proposed footpath treatment on the Corrimal Street frontage was unsatisfactory. The applicant made minor changes to the proposed development but did not amend the Corrimal Street frontage as requested by Council's Landscape section.

Council's Landscape Architect considered the proposed footpath treatments on the Corrimal Street frontage unsatisfactory. It was considered that the provision of a 1.2m wide concrete pathway was inadequate and did not provide for high pedestrian usage and was not in keeping with the Wollongong City Council Public Domain Technical Manual (WCCPDTM).

This development lies within the city core and therefore high quality surface finishes will be required within the public domain. The footpath on Corrimal Street (north of Crown Street) has been recently refurbished with high quality basalt pavers, new bins and new street trees. This refurbishment has enhanced this popular dining area. It was considered that the Corrimal Street frontage of this development would be an extension of the recently refurbished Corrimal Streetscape and therefore should be treated with the same finishes to cater for high pedestrian usage.

It is acknowledged that part of this area is to be dedicated to the RMS and eventually the southern portion will become part of the road when the intersection of Corrimal and Burelli Street is upgraded. However, in light of the dedication to the RMS, rather than the upgrade of the intersection, the timing of such an upgrade is unknown as it will now become an RMS matter. Additionally, the northern portion of the strip that will not form part of the intersection upgrade is based upon the status of the road widening further north of the subject site. This section requires demolition of the existing Comelli Bros Building, being a heritage item located on opposite corner of Crown and Corrimal Streets'.

In light of this, it is considered that the road widening may take many years possibly decades to occur and as such the grassed strip with a 1.2m wide footpath is not considered satisfactory. Conditions of consent including the requiring the inclusion of full width pavement construction to the frontage of Corrimal Street have been provided.

Traffic Engineer

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

Heritage Officer

The subject site whilst not listed as a heritage item is located within the vicinity of two heritage items being the Comelli Bros Building at 48-50 Crown Street and the California Flats located at 7-9 Burelli Street. A Heritage Impact Statement (HIS) was submitted with the application. Council's Heritage Officer assessed the HIS and advised that the proposed development is unlikely to have an impact on the heritage items

New information regarding the site has since been discovered noting that this site was home to the Cricketer's Arms Hotel from around 1859 – 1908 and it is understood that following 1908, the building may have served a period as a guesthouse. The date of demolition is unclear.

Council's Heritage Officer considers that this site (similar to the Oxford Tavern site) may have archaeology relating to a former hotel that would trigger the archaeological requirements of the NSW Heritage Act 1977.

Given the archaeological potential of Hotel sites, as evidenced by the Oxford Tavern Site across the street, and the archaeological evidence found on the GPT site related to the old Hotel on that site (including a buried Well), it seems reasonable to expect that this site may also retain archaeology below surface level. Given the early date of the hotel, (being from 1859), this archaeological evidence has the potential to have at least local significance and would trigger the archaeological requirements of the NSW Heritage Act 1977 (Section 139-140). However, unlike the Oxford Tavern site where the building above ground still remained (significantly altered) this building was demolished before 1950 and as such the potential is significantly reduced.

Given this, Council's Heritage Officer originally recommended that this application be referred to the NSW Heritage Branch of the Office of Environment and Heritage, in accordance with Part 7 of Clause 5.10 of the Wollongong LEP 2009.

However Clause 5.10(7) of the WLEP 2009 does not strictly apply to the site, as there is no clear evidence that the site contains 'relics' and is therefore a 'potential archaeological site' and not a 'known archaeological site'.

Based on the above and following discussions with Council's Planning Officers, Council Heritage Officer agreed to provide the following draft conditions for inclusion in any consent that may be issued for the site:

a. HERITAGE EXCAVATION PERMIT

The development site is known to include the site of the former Cricketer's Arms Hotel (1859), situated on the south east corner of Crown and Corrimal Street Wollongong. It is considered likely that the site may contain archaeological evidence of this period of occupation and that this archaeology will have significance that would identify these remains as 'Relics' under the NSW Heritage Act 1977. Given this, the developer is required to obtain an Excavation Permit, under the NSW Heritage Act 1977, prior to the commencement of any works on site. The developer must then ensure full compliance with any conditions and other requirements of the Excavation Permit. The developer is to provide a copy of any and all correspondence, reports, and other documentation, relating to the obtaining of, and compliance with, the Heritage Excavation Permit, to Wollongong City Council.

b. HERITAGE INTERPRETATION

Prior to the release of the Occupation Certificate, the developer is to prepare a Heritage Interpretation Plan, which details a suitable strategy to incorporate interpretation of the history of the site into the completed works. This should provide interpretive information in relation to the past location on the site of both the Cricketer's Arms Hotel (1859 – 1943), and the Dwyer's Motor Vehicle enterprises. The interpretation plan is to be prepared by a suitably experienced heritage consultant and include consideration to the conservation, and display, of any archaeological finds, as interpretive devices. The interpretation outcomes should include on-site interpretive devices that are accessible to the public. A copy of the Interpretation plan is to be provided to Council for written approval prior to the implementation of recommended interpretive works. All agreed interpretive works and installations must also be completed prior to the release of the Occupation Certificate.

Environment Officer

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

Safer Community Action Team (SCAT) Officer

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

Community Services and Access Reference

Council Community Services and Access Reference Officer has raised concerns with the standard of the current design for this significant site. For such a significant site it should be a much more 'considered' design. The development does not appear to have considered the site within the context of the whole area, the issue of transition between adjacent sites such as the public housing area and interaction and connection with the city and foreshore.

The application has been considered by the Design Review Panel and found to be acceptable in regards to its context and its relationship to the surrounding area.

Design Review Panel

The application was considered by Councils Design Review Panel on two occasions and considered the proposal to exhibit design excellence. The Pales report can be found at attachment 9 to this report.

1.5.2 EXTERNAL CONSULTATION

Department of Planning and Infrastructure

The proposed development does not comply with FSR the building separation controls contained with clause 4.4A and clause 8.6 of the Wollongong Local Environmental Plan 2009 (WLEP 2009). This variations have been discussed further within this report. The Secretary of the DoPE granted concurrence to the building separation and FSR controls on the 6 August 2014 (ATTACHMENT 5).

Roads and Maritime Services

The application was referred to RMS as it has a frontage to Corrimal Street being a classified road and is also considered traffic generating development pursuant to the provisions of clause 102 and 104 of SEPP Infrastructure.

After initial assessment of the application RMS raised concerns with the Traffic Report. They specifically had concerns regarding the traffic distribution assumptions used in the analysis of the development. RMS did not consider that the report or the associated modelling adequately addressed how traffic would access the site from the south. As a result of this the RMS advised that they did not support the application in its current form. However, RMS indicated that they considered that the provision of a right turn bay on Corrimal Street to facilitate the movement north to east would satisfactorily address the aforementioned distribution concerns and provide appropriate access arrangements for the development.

A meeting was held between the applicant, RMS and Council on the 21 July 2014 to discuss the intersection and traffic distribution. At this meeting it was discussed that the assumptions contained in the report were still incorrect and that it is likely that when the correct data was input into the traffic modelling the surrounding intersections required to be used will have exceeded maximum capacity and the impact of which is not acceptable.

The correct traffic modelling was undertaken and the amended Traffic Report submitted to Council and RMS for assessment.

RMS provided its advice to Council on 5 August 2015. Whilst the intersection of Burelli Street and Corrimal Street requires future upgrade as a result of this development the RMS has agreed that in lieu of the upgrade works being undertaken concurrently with the development, the strip of land affected by road widening (equating to 635.7sq.m) must be dedicated as public road at no cost to RMS. The strip must be dedicated either before, or at the same time that the strata plan is finalised. This matter is discussed further later within the report. The proponent has provided a written agreement to this.

As part of the RMS advice to Council on the 5 August 2015 conditions were provided.

Endeavour Energy

The proposed development is within 5m of an exposed overhead electricity power line. Pursuant to the provisions of Clause 45 of SEPP Infrastructure, before determining an application a consent authority must advise the electricity supply authority of the application. Endeavour Energy advised in writing on the 30 May 2014 that they raised no objection to the application and indicated that whilst they have many electricity assets affected by the proposal any required rearrangement of the electricity network will be the subject of discussion and consultation with the developer.

Sydney Water

The proposed development contains 317 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 27 May 2014 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

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

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

SEPP 55 requires that, when assessing a development application, the consent authority must give consideration to whether the land to which the development application relates is contaminated. If so, consideration must be given to whether the land is suitable (in either its contaminated state or after remediation), for the purpose for which the development is proposed to be carried out.

The SEPP requires the consent authority to consider a preliminary investigation of the land as there may have been previous land uses which may have resulted in contamination. In this case the western portion of the site was previously operating as a car yard and service centre with UST for fuels and waste oil which is considered a use that has the potential for contamination. It is noted that the UST were removed few years ago, and an Environmental Site Assessment report (Phase- I & II investigation) prepared by Parsons Brinckerhoff has been submitted with the application.

The environmental assessment found that soil analytical results for heavy metals (As, Cd, Cr, Cu, Ni, Pb, Zn and Hg), TPH, BTEX, PAHs, OCPs, PCBs and OPPs returned results that were either below detection limits or below the adopted site assessment criteria, with the exception of lead concentrations at three locations to a maximum depth of 0.5 m BGL and benzo(a)pyrene at one location to a maximum depth of 0.1 m BGL.

Based on the investigation results, Parsons Brinckerhoff considers there is a low potential for significant widespread site and offsite contamination at the site. Minimal excavation works would be required for remedial purposes, in order to make the site suitable for future residential land use. The consultants recommendations were soil in the vicinity of TP03, TP07 and TP21 should be excavated to prevent any impact to users of the site. It is estimated the excavations will result in a maximum of 200 m³ of waste soils based on excavations to a depth of 0.5 mBGL in TP03 and TP07 and 1.0 mBGL in TP21.

Parsons Brinckerhoff concludes that if the contaminant concentrations exceeding the residential guidelines are excavated and removed off-site to an appropriate landfill facility, the site would be in a suitable condition for the proposed residential land use.

This issue has been considered by Council's Environment Division who indicated that the proposed development involves excavation of soils up to a depth to accommodate one basement level carpark and report has recommended to classify the excavated soils prior to disposal than undertaking site remediation work. Appropriate conditions relating to waste classification has been placed on the consent.

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.*
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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

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 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. The siting of the buildings responds to its main road corner location, specific topographic situation and site context.

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.

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

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 of the development is considered to positively contribute to the public domain and provide high level of amenity for the occupants by way of landscaped areas, private open space and the like. The street level is activated at each frontage with retail uses and building entry points. Additionally the mid block pedestrian link proposed between Crown and Burelli Streets increases permeability of the site. The residential building form is evenly distributed around the site over the podium at varying heights. The building form provides a strong address to the primary corners of the site being Crown, Corrimal and Burelli Streets.

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 proposal meets the density objectives of the site as defined in the WLEP 2009. 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

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 Certificates provided indicating minimum requirements are met.
- A Site Waste Management and Minimisation Plan has been provided indicating recycling of materials from the demolished dwellings.
- Louvres have been provided to the western elevation to shield from the units from harsh western sun.
- The proposal does not impact on any heritage items or environmentally sensitive areas
- 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.

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 proposal meets the minimum requirements for solar access, private and communal open space, storage, visual and acoustic privacy, access and the like.

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. The apartment layouts have been designed to provide overlooking of the public and communal spaces whilst providing privacy for the occupants.

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 a mix of unit sizes and layouts appropriate to the locality. The building reinforces that dominant street corners and public entries are provided at the corners and along the main street frontages.

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.

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 7.

In summary, over the entire development:

- 70% of the dwellings achieve direct sunlight access;
- 60% of the dwellings achieve cross-ventilation;
- 25% of the dwellings have natural ventilation;
- 3% of the units are south-facing.

Variations to the rules of thumb are discussed in detail below:

Building depth

Proposed Blocks A and C being the larger two building are greater than the maximum depth requirement of 18m. Block A has a depth of up to 22m and Block C has a depth of up to 19m. These depths are only marginally greater than the suggested 18m.

Whilst this is above the maximum all apartments have good access to natural light and ventilation with the maximum depth of largest apartment is 10m. In addition satisfactory daylight access is available to all units assisted by the orientation of the towers coupled with building separation between them.

The proposal is within the maximum height limit and the bulk of the development is considered to be consistent with the zoning and relevant planning controls. There are not expected to be unreasonable impacts arising from the proposal on adjoining developments.

The application was considered by Councils Design Review Panel on two occasions and considered the proposal to exhibit design excellence.

Open Space

The RFDC requires the area of communal open space (includes landscaping) should generally be at least between 25 and 30% of the site area. Larger sites and brownfield sites may have potential for more than 30%. Where developments are unable to achieve the recommended communal open space, such as those in dense urban areas, they must demonstrate that residential amenity is provided in the form of increased private open space and/or in a contribution to public open space.

The site is located within the mixed use zone supporting the adjoining commercial core and as such 25% of the site being 2,819sq.m is unachievable. The site is to be built boundary to boundary and as landscaping and communal open space can only be provided at podium level.

The proposed development provides a podium level with total area of 2,101sq.m for landscaping and communal open spaces. This area has been assessed by the Design review Panel and Council's Landscape Architect and found to be a quality space which clearly defined and functional. This reduced amount of open space is considered acceptable and achieves the desired outcome of the objectives of this clause.

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

Division 5 Electricity Transmission or Distribution

The following provision of this division applies to this application:

Clause 45

Before determining an application a consent authority must advise the electricity supply authority of the application where development proposed is within 5m of an exposed overhead electricity power line. Endeavour Energy advised in writing on the 30 May 2014 that they raised no objection to the application and indicated any electricity assets affected by the proposal any required rearrangement of the electricity network will be the subject of discussion and consultation with the developer.

Division 17 Roads and Traffic

The following provisions of this Division apply to the application

Clause 101(2) Development with Frontage to Classified Road

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

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

Section 104 Traffic Generating Development

The application is also subject to the provisions contained with section 104 of State Environmental Planning Policy (Infrastructure) 2007 relating to traffic generating development. Schedule 3 of the SEPP indicates that a development having ancillary parking accommodation 200 or more motor vehicles is considered a traffic generating development. The proposed development provides parking for a total 621 car parking spaces has been provided on site.

RMS provided its advice to Council on 5 August 2015.

The intersection of Burelli Street and Corrimal Street requires future upgrade as a result of this development. RMS has agreed that in lieu of the upgrade works being undertaken the strip of land affected by road widening (equating to 635.7sq.m) must be dedicated as public road at no cost to RMS. The strip must be dedicated either before, or at the same time that the strata plan is finalised.

It should be noted that all past development of the subject property has consistently required an upgrade to the existing signalised intersection of Corrimal Street and Burelli Street. The two previous development applications, one being DA-2004/1565 and the major project being MP-2006/0257 required the applicant to undertake the same intersection upgrade work for the inclusion of right turn bays off Corrimal Street as part of the construction of the development.

As part of the RMS advice to Council on the 5 August 2015 the following conditions were provided.

- a. *The subject development is affected by a road widening strip affecting as shown in the attached copy of DP 1078311. This strip of land must be dedicated as public road at no cost to RMS. The strip of land must be dedicated either before or at the same time that the strata plan is finalised.*
- b. *The awning between the ground floor and level 1 which encroached on the road widening strip must be freestanding and must not extend into the road widening strip by more than 3.0m*
- c. *Prior to occupation, the internal access road between Burelli Street and Crown Street must be appropriately restricted, by signposting and line marking, to a one way road that requires entry to the development at Burelli Street and exit from the development at Crown Street.*
- d. *Prior to occupation, the existing unused driveways on Corrimal Street between Burelli Street and Crown Street must be physically closed by reinstating the kerb and gutter to Council's Satisfaction.*

Note: RMS issues its concurrence under Section 138 of the Roads Act, 1993 for these works. The developer must obtain Council consent under Section 138 of the Roads Act, 1993 prior to any works.

- e. *Detailed plans of any landscaping adjacent to Corrimal Street within the existing road reserve or land affected by road widening must be submitted to RMS for concurrence prior to any works being undertaken. All landscaping structures and non frangible tree plantings (ie large trees) must be setback a minimum of 9.0m from the existing face of kerb on Corrimal Street or as otherwise agreed to with RMS.*

Note: A frangible planting being defined as planting which breaks under the impact of a motor vehicle.

- f. *Any proposal for outdoor dining on Corrimal Street must be submitted to RMS for concurrence under Section 125 of the Roads Act, 1993. A design showing the proposed arrangements would need to be submitted to RMS. The outdoor dining must be setback a minimum of 9.0m from the existing face of kerb on Corrimal Street or as otherwise agreed to by RMS.*
- g. *The developer shall apply for, and obtain a Road Occupancy Licence (ROL) from the RMS Traffic Operations Unit (TOU) prior to commencing roadwork's on a State Road or any other works that impact a travel lane of a State Road. The application will require a Traffic Management Plan (TMP) to be prepared by a person who is certified to prepare Traffic Control Plans. Should the TMP require a reduction of the speed limit, a Speed Zone Authorisation will also be required from the TOU. The developer shall submit the ROL application 10 business days prior to the commencing work. It should be noted that receiving an approval for the ROL within this 10 business day period is dependent upon RMS receiving an accurate and compliant TMP.*

3.1.6 STATE ENVIRONMENTAL PLANNING POLICY (STATE AND REGIONAL DEVELOPMENT) 2011

State Environmental Planning Policy (State and Regional Development) 2011 applies to certain development that is considered to be of significance to the state. For the purpose of clause 89C of the Environmental Planning and Assessment Act, 1979 development is declared to be of state significance if:

- 8(1)(a) the development on the land concerned is, by the operation of an environmental planning instrument, not permissible without development consent under Part 4 of the Act, and*
- (b) the development is specified in Schedule 1 or 2.*

Schedule 1 of SEPP (State and Regional Development) 2011 lists the types of development that are regarded as state significant development. The proposed development is captured by either Schedule 1 or 2 and hence is not identified as state significant development.

However, the application will be referred to the Joint Regional Planning Panel for determination pursuant to Part 4 'Regional development' of State Environmental Planning Policy (State and Regional Development) 2011 as the proposal is listed within Schedule 4A of the Environmental Planning and Assessment Act 1979 as "Development that has a capital investment value of more than \$20 million". The application submitted to Council nominates the capital investment value of the project as \$70 million.

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 B4 Mixed Use and SP2 Infrastructure. No development is occurring on the SP2 Infrastructure zoned portion of the site.

Clause 2.3 – Zone objectives and land use table

The objectives of the B4 Mixed Use zone are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.*

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; Environmental facilities; Exhibition homes; Function centres; Hostels; Hotel or motel accommodation; Information and education facilities; Medical centres; Multi dwelling housing; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Roads; Self-storage units; Seniors housing; Service stations; **Shop top housing**; Tourist and visitor accommodation; Vehicle body repair workshops; Vehicle repair stations; 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.

Clarification from Councils Counsel was sought regarding the above definition. Counsel advised that the definition merely requires dwellings above ground floor retail or business premises. It does not require, at least from the definition, ancillary or related uses, such as parking or residential lobbies, to be also located above retail or business premises. There are many examples of shop top housing with ground level lobbies and car parking.

Clause 4.3 Height of buildings

The proposed building height at the tallest point has a height of 47.75m (of Block C) does not exceed the maximum allowable height of 48m permitted for the site.

Clause 4.4A Floor space ratio – Wollongong city centre

The maximum FSR permitted for a wholly residential building is 2.5:1 and for a wholly commercial building the permitted FSR 3.5:1. When a development combines the two uses then the formula contained within the LEP applies. The FSR is determined by way of percentage of each component.

The proposed development incorporates 89% residential and 11% commercial. In this regard the formula for devising the maximum permitted FSR for the site is as follows:

$$(2.5 \times 89/100) + (3.5 \times 11/100) = (2.225) + (0.385) = \mathbf{2.61:1}$$

The subject site contains three (3) allotments, one of which (Lot 1 DP 1078311) is primarily sited within the B4 Mixed Use zone but also contains a section of land in the north-western corner which is sited within the SP2 Infrastructure zone. Whilst the development will be wholly sited within the B4 Mixed Use zone, the development seeks to utilise the floor space ratio to include the area of the site which is located within the SP2 Infrastructure zone, being 11,913m². The western portion of Lot 1 DP 107311 (fronting Corrimal Street and zoned SP2 Infrastructure) is to be dedicated for road widening purposes is 635.7m² in area. The remaining site area (zoned B4 Mixed Use) will be consolidated and will comprise 11,277.3m².

Clause 4.5 (4)(a) prevents the inclusion of that area of the site on which the development is prohibited. Hence, as shop top housing is prohibited in the SP2 Infrastructure zone, this portion of the site cannot ordinarily be included in the site area for the purpose of calculating floor space ratio.

Additionally the application includes surplus basement car parking equating to 201 spaces. The surplus is above the required amount and specified in the development control and as such is required to be considered as additional gross floor area affecting the FSR of the development. However, it should be noted that the additional car parking, whilst contributing numerically to FSR, will have no visual impact on the bulk and scale of the building.

If the surplus car parking is not included in the FSR calculations the proposed development has an FSR of 2.76:1 (if the land zoned SP2 is deleted from the site area calculation), which exceeds the allowable FSR of 2.61:1.

With the surplus car parking (including any access to that parking) is included in the FSR calculations, the FSR of the proposed development increases to 3.15:1.

Accordingly, a Clause 4.6 Variation Statement (Attachment 6) was submitted seeking support for the departure from the permissible FSR of 2.61:1. As can be seen below, an extract of the variation request, the applicant explains that compliance with the development standard is unreasonable and unnecessary.

Flexibility is sought for the application of the FSR for the proposed development so that a better outcome is achieved for the site. The particular circumstances for this are as follows:

- The subject site is effectively a 'semi island' site with no directly adjoining privately owned lands and buffered by roads on three frontages.*
- The variation to the FSR is partly a result of the SP2 Infrastructure zoning of a portion of the subject site, which has precluded the use of this land for the purpose of calculating site area.*
- The balance of the variation is a result of the inclusion of 621 car parking spaces, rather than the 420 required by WDCP 2009. The additional 201 spaces are provided at the basement level and will have not be visually apparent and will have no impact on the bulk, scale or height of the development. Further, the inclusion of the additional level will have no greater environmental impacts, subject to suitable engineering design.*
- The site is a "super-amalgamated" site and is a major site, which has gone beyond council's amalgamation plan for the precinct. This has enabled the site to accommodate optimum FSR utilisation which still meeting the design intent and outcomes for the site.*

On review of the current controls and objectives for the mixed use zone and the applicant's justification it is agreed that compliance with the development standard in this case is considered unreasonable and unnecessary.

In light of the applicant's written request and when considering all aspects of the development standard and the exception clause it is considered that a variation in this case is acceptable.

The Secretary of the DoPE granted concurrence to the FSR and building separation controls on the 6 August 2014 (see ATTACHMENT 5).

Clause 4.6 Variation to a Development Standard

The subject site does not comply with two development standards contained in within the WLEP of which a clause 4.6 variation to a development standard was required to be lodged. These two being:

- a. Clause 4.4A - The proposed development does not comply with the maximum allowable FSR of 2.61:1.
- b. Clause 8.6 - The proposed development does not comply with the building separation within B4 Mixed Use zone control.

The applicant submitted a Clause 4.6 request as required and been assessed as per clause 4.6 as detailed below:

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

The Department of Planning and Infrastructure provided their concurrence on the 6 August 2014. The discussion of the variation to the development can be found in the retrospective clauses within this report.

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 B4 Mixed Use. The surrounding area is in transition with a mix of new and old commercial and residential buildings. The proposed shop top housing is considered suitable for the site in regards to bulk and scale and comparable with the surrounding area.

The design of the bulk and scale of the shop top housing development 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.

Heritage 5.10

The subject site is located within the vicinity of two heritage items being the Comelli Bros Building at 48-50 Crown Street and the California Flats located at 7-9 Burelli Street. A Heritage Impact Statement (HIS)

was submitted with the application. Council's Heritage Officer assessed the HIS and advised that the proposed development is unlikely to have an impact on those heritage items.

The site is not a listed heritage item, however the site was home to the Cricketer's Arms Hotel from around 1859 – 1908, and it is understood that following 1908, the building may have served a period as a guesthouse. The date of demolition is not certain. However unlike the Oxford Tavern site where the building above ground still remained (significantly altered) this building has been demolished since before 1950 and as such the potential is significantly reduced. It is considered that Clause 5.10(7) of the WLEP 2009 does not strictly apply to the site, as we have no clear evidence that the site contains 'relics' and is therefore a 'potential archaeological site' and not a 'known archaeological site'.

See comments in section 1.5.1 above for a further detailed discussion.

In this regard this clause is considered satisfactorily addressed.

Part 6 Urban release areas

Not applicable

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.

Clause 7.5 Acid Sulfate Soils

The proposal is identified as being affected by class 5 acid sulphate soils. Council's Environment Officer has reviewed the application and 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 B4 Mixed Use 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 B4 Mixed Use zone. The site has a frontage of 99m to Corrimal Street and as such complies.

Clause 8.5 Design excellence

The objective of this clause is to deliver the highest standard of architectural and urban design.

This clause applies to development involving the construction of a new building or external alterations to an existing building.

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.

In considering whether development to which this clause applies exhibits design excellence, the consent authority must have regard to the matters outlined in Clause 8.5.4 as follows:

- (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 part of land on the sun plane map. In relation to (e), the site is considered to be suitable for the development, it provides for appropriate uses, the site is located within the Heritage precinct of lower Crown Street and the setbacks required to create the continuous retail frontage have been met. The height, form and design is considered to appropriately relate to the streetscape. The tower has an appropriate relationship with the neighbouring residential buildings, noting that a building separation variation is proposed. The bulk, mass and modulation of the building is 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.

Clause 8.5.5 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 19 December 2013. This meeting was held as part of the pre-lodgement process. The panel made recommendations that were required to be addressed and form part of the design for the lodgement of the development application.

Once the application was lodged the Panel was referred the development application which incorporated the revised design. A Panel meeting was held on the 27 May 2014. The panel made further recommendations that were required to be addressed as part of amended plans

Amended plans were received and the Panel provided the following conclusion and recommendation in regard to the application on the 8 September 2014.

The distribution of built form across the site is generally well resolved. The treatment of the base of the building and its interface at street level contribute to active appropriately scaled streets. A well resolved podium design will now provide functional spaces for residents.

The aesthetic treatments of the towers are considered adequate.

Some significant improvements have made during the design review process, in general terms the proposal responds appropriately to its immediate context and will provide a reasonable level of amenity to its occupants.

Further development of the levels 1 and 2 corridors is recommended to reduce travel distances and provide more natural light / ventilation.

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 suggestions raised the Panel and the development adequately satisfies the design excellence criteria contained within this clause of the WLEP 2009.

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

The proposed development does not comply with the building separation requirements contained within Clause 8.6 of the Wollongong Local Environmental Plan 2009. An extract of this clause can be seen below:

(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
(b) there is a distance of at least 12 metres from any other building above the street frontage height and less than 45 metres above ground level, and

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

(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.

(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.

It is understood that the intent of Clause 8.6 is to encourage commercial development and in this regard allows building to the boundary up to the street frontage height or a maximum of 24m, whichever is the lesser, should the development be proposing commercial space. However once there are residential components on adjoining properties (to the east) that also contain residential at the same level then part (3) of this Clause is required to be met.

As the commercial component is only located on the ground floor and does not extend above the height of the adjoining residential buildings then the residential components of the building do not enjoy such a reduced setback. In this regard, the proposed residential section of the building that has an interface with an adjoining residential development is required to be setback 20m.

The proposed development does not comply with this control with the building adjoin the sites eastern boundary. The south eastern portion of the development with an interface with the adjoin 4 storey building located at 10 Burelli Street and has a building separation of 15.48m. The north eastern portion has an interface with the adjoin 2 storey building located at 21 Crown Street and has a building separation of 15.3m

In this regard the requirements contained with clause 4.6 'exceptions to development standards' are required to be undertaken. The concurrence of the Department of Planning and Environment (DoPE) was requested to allow a variation to this control. The Secretary of the DoPE granted concurrence to the building separation controls on the 6 August 2014 (see ATTACHMENT 5).

The applicant submitted a written request (Attachment 6). As can be seen below that applicant explains that compliance with the development standard is unreasonable and unnecessary.

"Compliance with the applicable building separation distances are considered to be unreasonable and unnecessary in the circumstances of the case as the consolidation of all allotments on the site provide the opportunity for an alternative (and satisfactory) site planning and built form outcome to that anticipated by the formal planning controls (as demonstrated below).

Further, it is considered that the building separation requirements are excessive and conflict with the recommendations of the Residential Flat Design Code which is referenced within State Environmental Planning Policy No. 65 (Design Quality of Residential Flat Development) and which should be considered as the relevant planning document when measuring design outcomes of residential development.

The recommendations of the Residential Flat Design Code require separation distances of only 12m between habitable rooms, for up to 4 storeys. Both Block B and D are fully compliant with this requirement providing separation distance of in excess of 15m.

Further, the setbacks provided are also compliant with the provisos of Chapter D13: Wollongong City Centre of WDCP 2009."

On review of the current controls and objectives for the mixed use zone and the applicant's justification it is agreed that compliance with the development standard in this case is considered unreasonable and unnecessary.

The application complies with the setback controls contained within SEPP 65 and Residential Flat Design Code at the interface level with the adjoining residential development for all other aspects of the development. The application also complies with setback requirements contained within the DCP at the interface level to the adjoining residential development for all other aspects of the development.

In light of the applicant's written request and when considering all aspects of the development standard and the exception clause it is considered that a variation in this case is acceptable.

8.7 Shops in B4 Mixed Use

This clause seeks to limit the size of shops in Zone B4 Mixed Use to ensure that land within Zone B3 Commercial Core remains the principal retail area.

Subclause (2) specifies that Development consent must not be granted for development for the purpose of a shop on land in Zone B4 Mixed Use if the gross floor area of the shop is to be more than 400 square metres.

The proposed retail premises within the development will have a gross floor area ranging from 140m² to 337m² and complies with this clause.

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

At the time of lodgement of the DA the merge of Wollongong (West Dapto) LEP 2010 to the Wollongong LEP 2009 was still an exhibited planning proposal. The merge of the above two LEP's was notified/gazetted on the 6 June 2014. 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 (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. Variations to the WDCP 2009 and other relevant matters are discussed in detail below:

2.4 Building Depth

Section 2.4 of Chapter D13 of Wollongong DCP 2009 recommends a maximum depth for residential buildings of 18m. Blocks A and C are greater than the maximum depth requirement of 18m. Block A has a depth of up to 22m and Block C has a depth of up to 19m. These depths are only marginally greater than the suggested 18m.

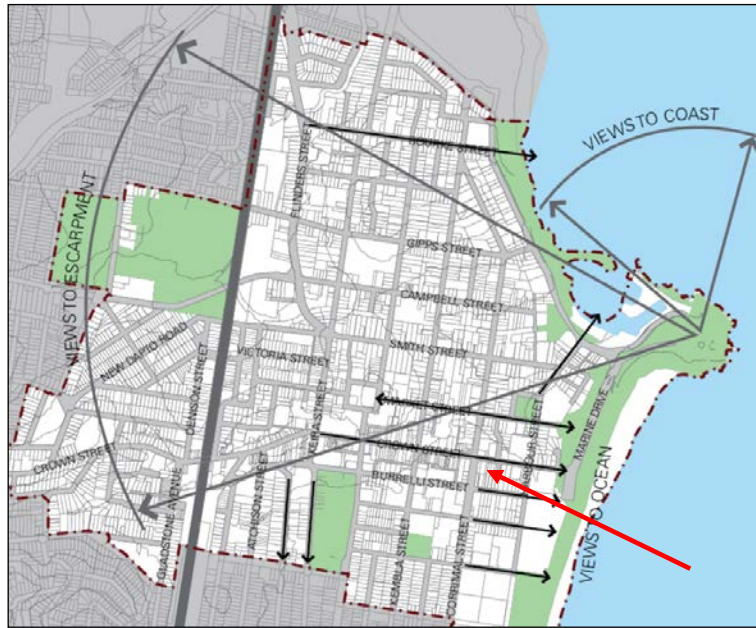
Whilst this is above the maximum all apartments have good access to natural light and ventilation with the maximum depth of largest apartment is 10m. In addition satisfactory daylight access is available to all units.

The bulk of the development is considered to be consistent with the zoning and relevant planning controls. There are not expected to be unreasonable impacts arising from the proposal on adjoining developments.

The bulkiness of the building is minimised by separating the construction into 4 distinct towers. The architectural articulation and the extensive balconies also give lightness to the building and minimise visual bulk. The façade treatment avoids any expansive building wall and provides visual interest.

Section 3.10 Views and View Corridor

The objective of this clause is to maintain and enhance views from the city centre to the foreshore, escarpment and significant objects (such as the lighthouse) wherever possible. The existing views to be protected are shown in the picture below.



As can be seen from the above extract of the DCP the subject site is located outside of the view corridor of the lighthouse through to the escarpment. However the street corridor view from the top of Crown Street and towards the ocean is required to be maintained. The setbacks required by the DCP are compliant and as such it is considered that the view corridor extending from the top of Crown Street to the ocean is maintained.

Section 6.2 Housing choice and mix

The proposed development provides for 1, 2 and 3 bedroom units. Of the 317 units, there are 97 x 1 bedroom units equating to 30.6%, 196 x 2 bedroom units equating to 61.8% and 24 x 3 bedroom units equating to 7.6%.

The 3 bedroom units do not equate to 10%, being a shortfall of 6 units, and as such does not comply. This does not strictly accord with the DCP numeric controls, nevertheless, the B4 zone objectives to provide for a wide range of other suitable land uses that serves the needs of the local and wider community are achieved.

The applicant has indicated that it is anticipated that the mix of units which are proposed will meet the changing market demands in this location and will complement the number of one, two and three bedroom units provided in the Wollongong location.

In this location the reduced number of 3 bedroom apartments is considered acceptable in this case.

Section 6.9 Shadows

The requirement of the DCP is that adjacent residential buildings and their common spaces must receive at least 3 hours of direct solar access between 9am and 3pm on the 21 June. The shadow diagrams to follow indicate that the surrounding buildings will receive 3 hours over the period between the hours of 9am and 3pm.

Section 6.12 Visual Privacy

The development has been designed with compliant setbacks where there are openings and in this regard visual privacy is achieved and will not be impacted on within the development or on the surrounding developments.

Section 6.13 Acoustic Privacy

The proposed development is surrounded by busy roads and located in night time entertainment precinct and any residential apartments must comply with the NSW liquor licensing noise criteria as minimum. The noise assessment report prepared by Day Design has recommended the construction material to be used for retail/commercial spaces and glazing for residential unit to comply with the various noise criteria. Appropriate conditions have been placed on the consent.

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 32 of the 317 residential units are nominated as adaptable (10%) and the subsequent car parking spaces have been allocated to the adaptable units designed in accordance with applicable standards. An Accredited Access Consultant has provided an Adaptable Housing Statement of Compliance which confirms that the units can comply with the spatial requirements of AS4299 for Adaptable Housing. 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 assessed the application and provided conditions. In this regard the requirements contained within this chapter have been considered.

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

Number of car spaces

The proposed development requires the provision of a total of 621 spaces as indicated in the table below.

Category	Rate	Quantity	Requirement
Retail	1 space per 60m ²	3,386m ²	57 spaces
Residential < 70m ²	0.75 space per unit	97 units	72.75 spaces
70m ² /110m ²	1 spaces per unit	196 units	196 spaces
> 110m ²	1.25spaces per unit	24 units	34.5 Spaces
Residential Total -			304 spaces
Residential (visitors)	0.2sp per unit	317units	63.4 spaces
TOTAL REQUIRED			425 spaces
TOTAL PROVIDED			621 spaces

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

<u>Motorcycle:</u>	Rate:	Calculation:	Requirement:	Provision:	Compliance:
Residential	1 space per 15 dwellings	317/15	21.2 spaces + 2.16 spaces = 24 spaces	31 spaces	Yes
Retail	1 space per 25 car spaces	57/25			
<u>Bicycle:</u>	Rate:	Calculation:	Requirement:	Provision:	Compliance:
Retail	1 per 750m ² for staff 1 per 1,000m ² for shoppers	3386/750 3386/1000	4.5 ports + <u>3.4 ports</u> 7.9 ports	142	Yes
Residential	1 per 3 dwellings	317/3	105.6 ports		Yes
Visitor	1 per 12 dwellings	317/12	26.4 ports		Yes

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 generally consistent with the requirements of the DCP with the exclusion for the Corrimal Street frontage, and is considered satisfactory by Council's Landscape Architect. Relevant conditions of consent have been provided

CHAPTER E7: WASTE MANAGEMENT

Council's Traffic section has assessed the application and provided conditions. 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; no objection is raised.

CHAPTER E13 FLOODPLAIN MANAGEMENT

Council's Stormwater Section has assessed the application and provided conditions. In this regard the requirements contained within this chapter have been considered.

CHAPTER E14 STORMWATER MANAGEMENT

A stormwater drainage plan was submitted with the DA. The stormwater drainage plan incorporates on-site detention as required by the DCP. The stormwater plan has been considered by Council's Stormwater Division and is considered to be acceptable subject to conditions.

CHAPTER E15 WATER SENSITIVE URBAN DESIGN

WSUD is a holistic approach to the planning and design of urban development that aims to minimise negative impacts on the natural water cycle and protect the health of aquatic ecosystems. A WSUD report prepared by KF W has adopted WSUD measure such as rainwater harvesting and use for Level 3 Communal open space, water efficient appliances, water efficient fittings, Gross Pollutant / Nutrient Capture and Education. In this regard the requirements contained within this chapter have been considered.

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 E20 CONTAMINATED LAND MANAGEMENT

See SEPP 55 – Remediation Of Land in Sections 3.1.2.

CHAPTER E21 DEMOLITION AND ASBESTOS MANAGEMENT

A demolition plan was provided with the DA. A site waste minimisation and management plan has been provided as required.

It is recommended that conditions be imposed, if consent is granted to the development, requiring a hazardous materials survey prior to demolition of the existing structures and requiring appropriate handling and disposal of any hazardous building materials such as asbestos.

CHAPTER E22 SOIL EROSION AND SEDIMENT CONTROL

If approved, conditions should be imposed in relation to the employment of erosion and sedimentation controls during construction.

3.3.2 WOLLONGONG SECTION 94A DEVELOPMENT CONTRIBUTIONS PLAN (2013)

The estimated cost of works is \$70,063,00.00 and a Section 94A levy of 1% equating to \$700,630.00 is therefore applicable as the threshold figure is \$100,000. A condition of consent is included in the recommended conditions requiring payment of a Section 94A levy.

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 application involves demolition and as such the provisions of AS 2601-2001: The Demolition of Structures apply. A condition will be attached to the consent in this regard.

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.*

Not applicable

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.*

Not applicable

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:

In regard to the matter of context, the planning principle in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 is relevant in that it provides guidance in the assessment of compatibility. The two major aspects of compatibility are physical impact and visual impact. In assessing each of these the following questions should be asked:

- Are the proposals physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.
- Is the proposals appearance in harmony with the buildings around it and the character of the street?

In response to the first question, matters such as overshadowing, privacy concerns, bulk scale and setbacks are relevant. The development will result in some overshadowing of development to the south. This is not however considered unacceptable given the circumstances of the case. The development is within the allowable height for the site. The affected sites will still receive the 3 hours of sunlight required by the DCP.

In regard to the visual impact, the development is considered to be largely in harmony with the surrounding buildings and character of the street. The area is characterised by a mixture of low to high density residential developments. It is likely that more high density developments will occur in future given the height and FSR maximums for the area.

In summary, the proposal has been assessed with regard to the amenity impacts from the development, the zoning, permissible height and an acceptable FSR for the land, and existing and future character of the area, and is considered to be compatible with the local area.

Context and Setting:

The building is much higher than existing development immediately surrounding the development to the north, south, west and east, however the height is consistent with the controls contained within the City Centre LEP.

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.
<p><u>Public Domain:</u></p> <p>The development will not have an unreasonable impact on the public domain. Awnings are proposed across the Burelli, Corrimal and Crown Street footpaths.</p>
<p><u>Utilities:</u></p> <p>The applicant indicates that existing utility services are available to the subject site and will be adequate to service the proposal.</p>
<p><u>Heritage:</u></p> <p>There are heritage items and conservation areas within proximity of the site. However these items will not be impacted by the proposal. Conditions of consent are proposed for any heritage uncovered on the site during construction.</p>
<p><u>Other land resources:</u></p> <p>The proposal is not envisaged to impact upon any valuable land resources subject to appropriate management being employed during construction.</p>
<p><u>Water:</u></p> <p>The site is presently 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 will be required prior to construction.</p> <p>No adverse water quality impacts are expected as a result of approval of the proposed development subject to soil and water management measures being implemented during construction. If approved, conditions can be imposed in this regard.</p> <p>The proposal is not expected to involve excessive water consumption. The applicant indicates that rainwater collection and reuse are proposed, and water efficient fixtures will be used. This will assist in reducing reliance on potable water.</p>
<p><u>Soils:</u></p> <p>The site is known to be contaminated and contain acid sulphate soils. Impacts on soil resources through erosion and sedimentation during construction can be mitigated. If approved, conditions should be imposed in relation to the implementation of erosion and sedimentation controls.</p>
<p><u>Air and Microclimate:</u></p> <p>The proposal is not expected to have any negative impact on air or microclimate.</p>
<p><u>Flora and Fauna:</u></p> <p>There is no vegetation removal or landscaping proposed or required.</p>
<p><u>Waste:</u></p> <p>A condition will be attached to any consent granted that an appropriate receptacle be in place for any waste generated during the construction. A waste storage room is proposed at ground floor area with sufficient capacity.</p>
<p><u>Energy:</u></p> <p>The proposal is not expected to involve unreasonable energy consumption.</p>
<p><u>Noise and vibration:</u></p> <p>The proposal will only generate noise and vibration impacts during construction. These will be limited in duration and can be mitigated through compliance with consent conditions. Conditions should be imposed in this regard if consent is granted.</p> <p>The subject site is located within an area that has an active nightlife ie cafes, restaurants and licensed premises. Council's Environmental Officer reviewed the acoustic report and provided conditions for construction specifications for the units so that the noise generated at night will not impact on the residents.</p>

Natural hazards:

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

The site is within uncategorised flood risk precinct. Assessment has been undertaken by Council's Stormwater Section who has provided conditions.

Technological hazards:

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

Safety, Security and Crime Prevention:

The application was considered by Council Safe Community Action Team who have provided conditions to the application

Social Impact:

The proposal is not expected to create any negative social impacts.

Economic Impact:

The proposal is not expected to result in any negative economic impacts. The proposal will provide additional commercial floor area within the CBD of Wollongong which will support economic growth and the creation of additional employment opportunities.

Site Design and Internal Design:

The application seeks consent for a number of departures from the WLEP2009 and WDCP2009, as outlined previously within this report. The variations sought relate to building separation, FSR, and other minor variations. The variations sought are considered to be reasonable in this instance.

A condition will be attached to any consent granted that all works are to be in compliance with the Building Code of Australia.

Sufficient arrangements appear to have been made in relation to access/egress, car parking, servicing and waste management.

Construction:

Construction impacts are likely to be significant given the size of the site and the scale of development proposed. Construction impacts can be managed however and if approved, it is recommended that conditions be imposed in relation to matters such as hours of work, implementation of erosion and sedimentation controls, impacts on the road reserve, protection of excavations, impacts on neighbouring buildings, and the like.

If consent is granted, an additional condition will be attached to any consent granted that WorkCover be contacted for use of any crane, hoist, plant or scaffolding.

Cumulative Impacts:

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.

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 land owners and occupiers and in the advertiser from 23 May 2014 to the 19 June 2014 in accordance with WDCP 2009 Appendix 1: Public Notification and

Advertising. 6 submissions were received 3 submissions in support of the application and 3 objecting to the proposal. The issues raised in the objections are discussed below.

Table 1: Submissions

Concern	Comment
<p>Council makes and sets up environmental standards for buildings, developments etc so both residents and Developers are aware what is considered best for this community and its residents. These are our elected officials and if we did not agree with their standards we would not elect these individuals. I totally object that a Developer comes in and wants the change these standards for their personal benefit. I would object even more if our Council changed these standards at the wish of each Developer.</p>	<p>Whilst the WLEP sets rigorous planning standards it also has to allow for flexibility in certain cases. Clause 4.6 allows an opportunity for an application to vary development standards where they can demonstrate the variation does not undermine the objective of that clause. Each application with a request for variation is assessed on a case by case basis.</p> <p>In this case, a clause 4.6 variations to a development standard was submitted due to two non-compliances. The Department of Planning and Environment were also involved and provided concurrence for the variation.</p>
Parking	
<p>Will the 4 levels of parking be sufficient to cater for 318 units (some of which will be multi bedrooms and would require more than one parking spot), visitor parking and parking for the workers and clients of the proposed retail spaces. If not, it is then a token gesture, which the Council will be required to address. As a long term rate paying resident I can say there is already an acute and chronic shortage of parking in this area and the streets that surround the area.</p>	<p>The Council car park currently in operation on the south western corner of the subject site is and has only ever been a temporary car park. Prior to the demolition of the Dwyer's car yard and garage and the cessation of the Salvation Army building the site was not used as public car park. Council's main commuter car park is located at Stewart Street</p>
<p>The car parking provided in the DA documentation amounting to a total of 625 (420 required) is inadequate. The car parking needs in this area are clearly shown by the current use of part of this development area which provides parking for 150 cars. This car parking is already inadequate during business hours.</p> <p>As a business proprietor and property owner in the area, the car parking shortage is a detriment to my business and surrounding businesses. Anecdotally, I am aware from friends and acquaintances that they no longer come into central Wollongong because of the current parking problems. This is to the detriment of the retailers in Wollongong City.</p> <p>To allow a development of this size, including the 318 residential units, to have only 352 parking spaces provided (300 parking spaces required) we find amazing.</p> <p>Firstly, the requirements for this many units, in the belief that each residential unit will only have 1.1 cars, in these days of affluence and dependence on the motor vehicle are wildly out of date.</p> <p>Secondly, the already inadequate parking in the immediate area will be compounded by visitors and residents clogging the surrounding area. This will be detrimental to the residential and retail ratepayers who are already using the area and are struggling with the current situation let alone a lessening of parking facilities.</p>	<p>Car parking number requirements are contained within the Wollongong Development Control Plan 2009. The application provides for additional parking above Council's required standards. In this case the application requires the provisions of 425 spaces. The applicant has provided a total of 621 car spaces being an additional 196 above the required standard.</p> <p>Within the WLEP 2009 additional parking provided above the required rate has been required to be included in the calculation for the floor space ratio (FSR). In this regard the additional parking has been included within the non-compliance FSR and a variation has been considered by Council and the Department of Planning and Environment.</p>

Concern	Comment
<p>The almost complete lack of parking for the WIN Stadium and the Entertainment Centre, again in the immediate area, are already a huge problem when these facilities are in use. While this development might be complying with WCC requirements, car parking in this area is already a major problem. This development will only increase traffic flow and parking which is already in a position of undersupply.</p>	
Access	
<p>A development of this magnitude will increase the traffic flow in this area to a level which is not reflected in the current traffic study. The Crown St - Corrimal Street corner is already very heavily utilized and this development will increase it to a level that will make that intersection unmanageable.</p>	<p>As discussed earlier within the report the intersection of Corrimal Street and Burelli Street requires upgrading to cater for the development.</p>
<p>What provisions and changes will be made to access/leave the building when it is complete? Corrimal Street is a major artery into the city. During peak hours it is a major artery to/from the works at Port Kembla, the CBD and the Northern a Suburbs. This leaves Crown and Burelli Streets which have one lane of traffic each way. Take into account entry/exit from McDonald's the new high rise at the corner of Burelli/Habour Sts the traffic when there is a major event on at the WIN Stadium or Entertainment Centre and the nightmare of residents and those using the areas just gets a whole lot worse.</p>	<p>In lieu of the installation of the right turn bays in Burelli Street from Corrimal Street the RMS has accepted the dedication at no cost to the RMS the strip of land required for Road widening across Corrimal Street.</p>
During Construction	<p>In this regard the upgrade and timing of this intersection upgrade will become the responsibility of the RMS.</p>
<p>What closures to the above areas will need to be made while it development is being build and trucks need to enter and leave the site</p>	
<p>Parking while the development is being built. At present you are lucky to find any parking spots east of Corrimal St. to Flagg Staff Hill and surrounding areas due to lack of all day parking, parking by CBD workers not willing to pay for parking or use the free bus, students from the girls college (most long term parking on Marine Drive is taken up by these two groups) and workers from the developments that are occurring in the area.</p>	<p>The application involves major construction, a requirement of the consent is that a traffic management plan is undertaken and road occupancy license are issued.</p>

Submissions from public authorities

See External Referral Section within this report

3.10 SECTION 79C 1(E) THE PUBLIC INTEREST

The application is not expected to have any unreasonable 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 and is therefore considered to be in the public interest.

4. RECOMMENDATION

This application has been assessed having regard to the Heads of Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979, the provisions of Wollongong Local Environmental Plan 2009 and all relevant Council DCPs, Codes and Policies. The proposal is permissible with consent in the B4 Mixed Use zone in the Wollongong Local Environmental Plan 2009. It is also consistent with the requirements of the relevant state planning policies and Wollongong Development Control Plan 2009 subject to the departures and variations discussed in this report

Submissions received during the notification and assessment of the application have been considered within the report.

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

Attachments

1. Aerial photograph
2. Wollongong Local Environmental Plan 2009
3. Plans
4. Draft conditions
5. Secretary concurrence
6. Clause 4.6 variation
7. RFDC Compliance Table
8. WDCP 2009 Compliance Table
9. Design Review Panel comments