

JOINT REGIONAL PLANNING PANEL

(Southern)

JRPP No	2016STH021
DA Number	DA-2016/1073
Local Government Area	Wollongong City Council
Proposed Development	Demolition of an existing dwelling and structures and the construction of a “shop top housing” development comprising a fourteen storey building containing 2 retail/business premises, a 60 place child care centre and 50 residential apartments over two levels of basement car parking
Street Address	31 & 33 Atchison Street, Wollongong (Lot 1 DP 782358, Lot 1 DP 152994).
Applicant/Owner	Affinity Property Investment Pty Ltd
Number of Submissions	Nil.
Regional Development Criteria (Schedule 4A of the Act)	Clause 3 Schedule 4A General development with a capital investment value of more than \$20 million.
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> List all of the relevant environmental planning instruments: s79C(1)(a)(i): <p><u>State Environmental Planning Policies (SEPPs):</u></p> <ul style="list-style-type: none"> - SEPP No. 55 – Remediation of Land - SEPP 64 – Advertising and Signage - State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development - SEPP (Infrastructure) 2007 - SEPP (Building Sustainability Index: BASIX) 2004 - SEPP (State and Regional Development) 2011 <p><u>Local Environmental Planning Policies:</u></p> <ul style="list-style-type: none"> • Wollongong Local Environmental Plan (WLEP) 2009 <p><u>Other policies</u></p> <ul style="list-style-type: none"> - NSW Apartment Design Guide - Wollongong Section 94A Development Contributions Plan 2016 <ul style="list-style-type: none"> • List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s79C(1)(a)(ii) <ul style="list-style-type: none"> - Draft SEPP (Coastal Management) 2016 • List any relevant development control plan: s79C(1)(a)(iii) <ul style="list-style-type: none"> - Wollongong Development Control Plan (DCP) 2009 • List any relevant 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: s79C(1)(a)(iv) <ul style="list-style-type: none"> - No relevant planning agreement

	<ul style="list-style-type: none"> List any coastal zone management plan: s79C(1)(a)(v) <ul style="list-style-type: none"> There is no Coastal Zone Management Plan currently applicable to the land List any relevant regulations: s79C(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288 <ul style="list-style-type: none"> Clause 92 prescribes that consideration must be given to AS 2601 in relation to the demolition of any structures and the NSW Coastal Policy as the site is located within the NSW Coastal Zone.
Recommendation	It is recommended that DA-2016/1073 be refused for the reasons outlined in Section 4 of this report.
Report by	Theresa Whittaker, Senior Development Project Officer

Summary of s79C matters

Yes

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Not provided

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

Not Applicable

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

Not Applicable

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Executive Summary

Reason for consideration by Joint Regional Planning Panel

The proposal has been referred to Joint Regional Planning Panel pursuant to Clause 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 as it involves general development with a capital investment value of more than \$20 million.

Proposal

Demolition of an existing dwelling and structures and the construction of a “shop top housing” development comprising a fourteen storey building containing 2 retail/business premises, a 60 place child care centre and 50 residential apartments over two levels of basement car parking

Permissibility

The site is zoned B3 Commercial Core pursuant to Wollongong Local Environmental Plan (LEP) 2009. The proposal is categorised as a *shoptop housing development* and is permissible in the zone with development consent.

Consultation

The proposal was notified in accordance with Council’s Advertising & Notification Procedures on two (2) occasions. There were no submissions received.

Main Issues

The main issues are:-

- Flooding and stormwater management
- Development departures in respect of Floor Space ratio (Clause 4.4A) and building separation (Clause 8.6) of Wollongong Local Environmental Plan (LEP) 2009
- Servicing and waste collection
- Design quality
- Apartment Design Guide and DCP non-compliances

RECOMMENDATION

It is recommended that DA-2016/1073 be refused.

1. APPLICATION OVERVIEW

1.1 PLANNING CONTROLS

The following planning controls apply to the development:

State Environmental Planning Policies:

- SEPP No. 55 – Remediation of Land
- SEPP 64 – Advertising and Signage
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development
- 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 2016

1.2 PROPOSAL

The proposal involves the demolition of an existing dwelling and other structures and the construction of a “shop top housing” development comprising a fourteen storey building at 31 and 33 Atchison Street Wollongong (“the Site”).

The development will include 2 retail/business premises, a child care centre with places for 60 children and a total of 50 residential apartments comprising 12 x 1 bedroom units, 31 x 2 bedroom units and 7 x 3 bedroom units. Of these, 5 of the units are identified as being capable of adaptation for disabled or elderly residents [in compliance with the Australian Adaptable Housing Standard (AS 4299-1995)].

Car parking spaces for 69 cars are to be contained within two basement car parking levels. Resident parking will be provided primarily at the lower basement level, while the upper basement level will accommodate further residential and residential visitor car parking as well as car parking to meet the needs of the non-residential components of the development. This will include 2 pram spaces in conjunction with the child care centre, storage for bicycles and motorbike car parking. Storage for the apartments is also proposed within the lower car parking level in individual storage units.

Vehicular access and egress is proposed to be obtained from Atchison Street via a 7.5m wide driveway positioned near the northern boundary of the Site. Pedestrian access to the ground floor of the building, which is elevated due to the flooding constraint affecting the site, will be via a set of centrally located stairs and a chair platform lift. Two lifts are to be provided to service the residential apartments whilst a separate lift is available for the commercial users.

The principal communal open space is located on Level 3 on the roof of the podium on the western side of the tower. A community room is also proposed on Level 3 via which access to the outdoor terrace will be available. The communal open space incorporates perimeter landscaping beds, a BBQ area, picnic tables and passive recreation spaces.

1.3 BACKGROUND

Development History

- DA-2009/323 - Demolition of existing dwelling-house and construction of 2 levels of retail/commercial space and 6 levels of residential development over 2 levels of parking - Approved 8 June 2010

- DA-2001/1839 - Demolition of Existing Buildings and the Construction of a 3 storey building containing 11 X 2 bedroom units and 1 commercial tenancy over basement parking For 17 vehicles - Approved 16 May 2002
- DA-1994/650 - Change Of Use To Activity Centre For Visually Impaired – Approved 12 October 1994

Pre-Lodgement meeting

A formal pre-lodgement meeting was held on 25 November 2015 (PL-2015/114). Significant issues of concern were raised in relation to design quality, flooding, stormwater management and traffic. The applicant was encouraged to have a pre-lodgement Design Review Panel (DRP) meeting as at that time Council did not have a formally constituted DRP under SEPP 65. The applicant did not take up this opportunity.

Rejection of first DA

DA-2016/886 was lodged on-line on 1 July 2016 and rejected on 8 July 2016 for the following omissions:-

- A preliminary investigation of the land had not been carried out in accordance with the contaminated land planning guidelines.
- A BASIX certificate had not been provided.
- The flooding issues had not been addressed via a report from a suitably qualified civil engineer nor did the application contain a Stormwater Concept Plan
- The SEE did not contain legal advice requested in the pre-lodgement in relation to characterisation
- The application was not accompanied by a traffic report clarifying parking numbers required for residents, visitors and commercial component.
- In addition the following documents were not provided:
 - Photomontage
 - 3D Model plus prescribed fee
 - Arborist Report
 - ABSA Schedule, Certificate, NatHERS Summary Certificate
 - Adaptable Housing Certification and Checklist
 - Waste management plan
 - Demolition & Construction Waste Management
 - Operational Waste Management
 - QS Summary
- Advice was also provided that as Council's SEPP 65 Design Review Panel formally commenced on 1 July 2016, any future application would be need to be referred.

Additional information

1. The first additional information letter was sent 19 August 2017 requesting DRP fees and submission of a flood report from a suitably qualified civil engineer along with a Stormwater Concept Plan.
2. The second more comprehensive additional information letter was sent 18 November 2016 following detailed assessment, and included the flooding and drainage issues raised in Council's letter of 19 August 2017.
3. The third additional information letter was sent on 17 February 2017 reiterating the above letters and inviting withdrawal of the application.

The applicant subsequently responded by submitting amended plans concurrently with the appeal filed with the NSW Land & Environment Court on 16 March 2017. It should be noted that the density of the proposal now greatly exceeds the LEP requirements (especially once lobbies are included in the GFA calculations) where it previously complied and no clause 4.6 submission was required.

Customer service actions

There are no outstanding customer service requests that would preclude the development.

Appeals

The applicant filed an appeal with the NSW Land Environment Court on 16 March 2017 in respect of a deemed refusal of the development application. The Statement of facts and Contentions was filed with the Court on 27 April 2017 and a Section 34 Conference in respect of the matter has been set down for 13 July 2017.

1.4 SITE DESCRIPTION

The site comprises two allotments, the legal description of which is Lot 1 DP 7823578 and Lot 1 DP 1252994. The Site is situated on the eastern side of Atchison Street, is almost regular in shape with a frontage width of 32.005m. The northern boundary has a length of 49.315m while the southern boundary has a length of 50.065m.

The Site has an area of 1590.2sq.m and is zoned B3 Commercial Core pursuant to Wollongong LEP 2009.

The Site slopes generally from the west to east (front to rear) though there is a concrete basin in the northern portion of the site which was to be the basement of an approved development commenced on this portion of the site but never completed. The southern portion of the site is occupied by a single dwelling, outbuildings and a number of trees.

All of the existing structures are to be demolished and removed as part of the proposal. There are two street trees along the site's street frontage which are also proposed to be removed to facilitate the proposed development.

The site abuts a multi-storey mixed use development to its north (25 & 27 Atchison Street) which was approved in July 2005. The development as approved was described as 'Demolition of existing buildings and construction of a mixed use development comprising commercial spaces, home office apartments, 52 residential apartments with 3 levels of basement parking'. The consent includes two towers (one commercial, one residential) over three (3) levels of basement parking. The northern commercial tower is 6-storeys in height while the southern residential tower is 8 storeys (overall height 28.3m). The southern tower was approved with a 6 metre side setback to its south-facing balconies and living areas facing 31 Atchison Street.

To the south, the site abuts a single storey detached dwelling with rear car parking for four vehicles. Consent was issued in 2012 for the use of this car park in conjunction with a fitness studio to be operated from the property to the immediate south of that site. Neighbouring land to the immediate south (3 allotments in total with a combined area of 1605.9sqm) are in the same ownership.

Land to the rear fronting Kenny Street is similarly zoned B3 Commercial Core and contains two storey commercial development.

Land opposite the Site to its west is currently vacant though is used for car parking purposes. An application has been recently lodged with Council seeking consent for an 18 storey shop top housing development comprising commercial spaces at ground and mezzanine level with 92 residential apartments above.

Aerial photographs of the site and locality are provided at **Attachment 2** to this report.

Property constraints

- Council records identify the land as being located within a medium flood risk precinct.
- easement for drainage crosses the north-western corner of the most northern allotment in the holding (Lot 1 DP DP 7823578). The status of this easement is unknown and accordingly if it needs to be maintained, this may require amendments to the design.
- Council records identify the land as being located within the Coastal zone. No impacts are expected on the coastal environment as a result of the development and there are no coastal hazards that affecting the land which would preclude the development.

1.5 INTERNAL CONSULTATION

Geotechnical Engineer

Council's Geotechnical Officer has reviewed the application and has provided a satisfactory referral. Conditions of consent were recommended and are included in the consent.

Stormwater Engineer

The following matters were conveyed to the applicant throughout the assessment:-

1. Council's records indicate the site is coded as 'Flood Affected – Medium Flood Risk Precinct'.
2. Existing flood level information for the site can be obtained via Council's Flood Level Information Request Form found on Council's website www.wollongong.nsw.gov.au or via Council's online services.
3. The Flood Study for the Wollongong City catchment dated April 2013 is available on Council's website.
4. A report from a suitably qualified civil engineer is to be provided with the development application demonstrating how the proposal will meet the relevant requirements of Chapter E13 of the Wollongong DCP 2009, including the objectives, performance criteria, and prescriptive controls within Schedule 10 – Other Floodplains.
5. The key flooding issues for the subject proposal relate to: floor levels and flood affectation.
6. The proposed development needs to be designed such that it accepts and caters for upslope surface runoff from adjoining properties in a 'failsafe' manner without affecting any other property.
7. All stormwater overland flows including those from the OSD facility need to be clearly indicated on the Stormwater Concept Plan and designed to replicate natural overland flows.
8. The status of the existing drainage easement at the north-west corner of the site needs to be addressed with the Development Application.
9. Pump systems will not be permitted to discharge stormwater from sites grading away from the roadway, except for the specific purpose of draining underground/basement car parks. The stormwater being pumped from a basement car park shall be limited to sub-soil drainage and runoff from the driveway that drains towards the basement. Stormwater to be extracted from the basement car park will need to be pumped to a pit inside the property boundary and then gravity fed to the street kerb or nearby Council pit.

In addition to all the above, the comments below shall be addressed:

- The proposal does not satisfy Clause 7.3(3)(b) & (c) of Wollongong LEP 2009 and performance criteria 6.4.2(d) and Section 7 of Chapter E13 of Wollongong DCP 2009 in relation to flood storage. It is proposed to reduce the amount of flood storage on the site; however an analysis of the effect on flood levels of similar development on other sites in the area has not been undertaken. A cumulative impact assessment is NOT recommended to be undertaken. Rather, the development proposal shall be amended to ensure no net loss of flood storage on the site in any storm event (including the PMF event). Detailed pre and post development flood storage volume calculations should be provided to demonstrate compliance with this requirement.
- It appears there is an intention to fill the eastern side of the site to a maximum of 2.56m above the natural ground level. Reference is made to the provided stormwater plan - pit No. 2.1 has a TP RL12.80. Details of the retaining wall including a cross-section shall be provided for further assessment. There appears to be an intention to fill on the site within the floodplain, which is contrary to Section 7 of Chapter E13 of Wollongong DCP 2009. The proposal must ensure no net loss of flood storage on the site in any storm event. Detailed pre and post development flood storage volume calculations should be provided to demonstrate compliance with this requirement.
- The proposed zero building set-back from the southern boundary will obstruct the overland flow path from adjoining properties which is contrary to section 11.3.17 of Chapter E14 of Wollongong DCP 2009. No obstruction to the overland flow of stormwater runoff from adjacent properties is permitted. Allowance must be made for this overland flow component and adequately catered for on the subject property. The diversion of this overland flow to the street, the rear of the subject property or in any other direction other than that in which it would naturally flow will not be permitted. In addition, the proposed fillings will obstruct the overland flow of stormwater runoff which will cause ponding on the upslope property which is not supported.
- The proposed method of disposal from the development is contrary to section 11.3.2 of Chapter E14 of Wollongong DCP 2009. The capacity of the stormwater system into which stormwater from the development discharges into, must be checked in accordance with Section 9(b)(v). If part of

the stormwater system is found to not have the required capacity, then that part must be augmented/ amplified to take the additional flow.

- Paved areas and driveways falling towards Council's footpath must be provided with a full driveway width grated box drain at the property boundary as per Section 11.3.18. (4) of Chapter E14 of Wollongong DCP 2009.
- Demonstrate how the stormwater runoffs from the roof top terrace/ communal open spaces are managed.

In respect to all the above, a revised stormwater plan and calculations shall be provided for further assessment. Note: the revised stormwater plan shall be compatible with the Landscape and architectural plans as per Section 13.1(1)(a) of Chapter E14 of the Wollongong DCP 2009.

The applicant has not overcome these issues through the submission of amended plans or further supporting documentation and these are not matters that can be resolved through consent conditions. The flooding constraint has the potential to significantly alter the built form particularly the ground floor and accordingly must be resolved prior to any proposal for this site being supported. These are not matters that can be resolved through consent conditions.

Landscape Architect

Council's Landscape Officer has reviewed the application and has provided a satisfactory referral subject to recommended conditions of consent.

Traffic Engineer

Council's Traffic Officer has reviewed the application and has raised a number of concerns with regard to the lack of on-site servicing and waste collection; the width of the driveway and availability of appropriate sight lines to the pedestrian footpath. These matters have the potential to significantly alter the built form particularly the ground floor. The applicant has not overcome these issues through the submission of amended plans or further supporting documentation. These are not matters that can be resolved through consent conditions.

Safer Community Action Team (SCAT) Officer

Council's SCAT Officer has reviewed the application and has raised a number of concerns with regard to lack of information in relation to security and crime prevention matters including specifically security of mailboxes; details of any security systems to be employed throughout the building including CCTV, lift access restrictions and the like; methods for securing the residential lobby and residential lifts including proposed arrangements to allow safe visitor entry and exit without compromising residential security; basement car park safety for users and car security; physical separation of terraces to prevent unauthorised access from one to the other; and a concern regarding lack of equitable access to the child care centre raised play areas.

Environment Officer

Council's Environment Officer has reviewed the application and has raised a number of concerns with regard to shortcomings in the applicant's information with regard to the following matters:-

- Acoustic/ noise impact arising from the child care centre on future and existing nearby residents;
- A plan that shows the location of the rainwater tanks referred in the Statement of Environmental Effects;
- A water sensitive urban design concept report prepared in accordance with Chapter E15 of Wollongong DCP 2009 and information demonstrating that the required stormwater quality controls can be achieved for Gross Pollutants, Total Suspended Solids, Total Nitrogen and Total Phosphorus.

1.6 EXTERNAL CONSULTATION

Design Review Panel

The proposal has been considered by the Design Review Panel (DRP) constituted under SEPP 65 on two occasions – firstly on 15 September 2016 where a number of concerns were raised with regard to built form; boundary setbacks/ building separation; privacy and amenity impacts and issues internally; site planning generally; various ADG non-compliances; LEP and DCP non-

compliances; problematic floor planning; location of the communal open space; the poor amenity of the child care centre; the configuration of the ground floor and convoluted access arrangements; poor interface with the public domain; servicing, car parking and access difficulties; and concerns regarding the safety of the childcare centre.

Draft amended architectural plans (in response to previous DRP minutes not additional information letters) were considered by the DRP on 31 January 2017 where the Panel again raised numerous concerns with regard to lack of adequate contextual analysis; building setbacks; fenestration, composition and aesthetics; privacy and amenity concerns; general site planning issues; location of communal open space; highly problematic ground floor planning; poor access arrangements; lack of appropriate supporting documentation with regard to landscaping, contextual analysis and flooding; poor interface with the public domain; safety and practicality concerns with regard to the child care centre; and poor design quality overall. The Panel again advised that it could not support the proposal.

The applicant submitted amended plans concurrently with the appeal filed with the NSW Land & Environment Court on 16 March 2017. These plans have been reviewed by Brendan Randles, Senior Architect who was a member of the Design Review Panel which earlier reviewed the proposal. Mr Randles has advised that the amended plans have improved the proposal substantially, however the following problems remain unresolved or have arisen as a result of the plan amendments:-

- the density of the proposal now greatly exceeds the LEP requirements (especially once lobbies are included in the GFA calculations);
- the rear setback does not comply with the LEP/ DCP and side boundary setbacks are non-compliant;
- poor treatment of street frontage at ground levels and difficulties with access;
- the childcare entry and internal amenity is poor;
- poor resolution of side elevations, particularly the northern elevation which will be always visible; and
- various residential amenity issues.

The design review is attached in full to this report at **Attachment 4**.

2. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 SECTION 79C ASSESSMENT

(1) Matters for consideration—general

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

<i>(a) the provisions of:</i>	
<i>(i) any environmental planning instrument, and</i>	See section 2.1
<i>(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and</i>	See section 2.2
<i>(iii) any development control plan, and</i>	See section 2.3
<i>(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, and</i>	See section 2.4
<i>(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,</i>	See section 2.5
<i>(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),</i>	See section 2.6

<i>that apply to the land to which the development application relates,</i>	
<i>(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</i>	See section 2.7
<i>(c) the suitability of the site for the development,</i>	See section 2.8
<i>(d) any submissions made in accordance with this Act or the regulations,</i>	See section 2.9
<i>(e) the public interest.</i>	See section 2.10

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

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

7 Contamination and remediation to be considered in determining development application

A preliminary site investigation was provided with the DA which included a review of available site history. The site has historically been used primarily for residential purposes with a low potential for significant contaminating activities. Fire damaged materials to the main dwelling located at 33 Atchison St are suspected to consist of asbestos containing materials due to the age of the building.

The report concludes that no other sources of significant contamination have been identified and the site would be considered suitable for the proposed mixed use commercial/residential development subject to the following recommendations:-

- A hazardous materials assessment is undertaken of the fire damaged residential dwelling located at 33 Atchison St Wollongong to determine the location, condition, and extent of hazardous materials, in particular asbestos.
- A Remedial Action Plan / Asbestos Removal Scope of Works is prepared to remove any identified hazardous / asbestos containing materials including any asbestos impacted soils resulting from the fire damage.
- Preparation of a validation report / clearance certificate following satisfactory removal of asbestos materials.
- As a precautionary measure, consideration should be given to implementing an unexpected finds protocol as part of site environmental management procedures for future works at the site to deal with any potential future discovery of potentially contaminated materials.

The proposal has been considered by Council's Environmental Officer and no concerns were raised in relation to potential site contamination subject to compliance with certain consent conditions.

2.1.2 STATE ENVIRONMENTAL PLANNING POLICY NO 65—DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

The residential component of the development meets the definition of a 'residential flat building' because it is more than 3 storeys and comprises more than 4 dwellings. As such, the provisions of SEPP 65 apply.

Clause 28 provides that the application must be referred to the relevant design review panel for advice concerning the design quality of the development while Clause 28(2) provides that 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):

- the advice (if any) obtained from the design review panel, and
- the design quality of the development when evaluated in accordance with the design quality principles, and
- the Apartment Design Guide.

In relation to Clause 28(2)(a) of the SEPP, the proposal has been considered by a Design Review Panel on two occasions, being initially on 15 September 2016 and again on 31 January 2017. The Panel's concerns have been discussed above in Section 1.6 of this report. As noted, a further design

review has been conducted by Brendan Randles, Senior Architect who is a member of the Design Review Panel. Mr Randles advised that while some of the Panel's concerns had been resolved through the plan amendments made and the design overall improved, there remained a number of shortcomings.

Schedule 1 of SEPP 65 sets out the design quality principles for residential apartment development. These must be considered in the assessment of the proposal pursuant to clause 28(2)(b) of the Policy and are discussed below:-

- Principle 1: Context and neighbourhood character
- Principle 2: Built form and scale
- Principle 3: Density
- Principle 4: Sustainability
- Principle 5: Landscape
- Principle 6: Amenity
- Principle 7: Safety
- Principle 8: Housing diversity and social interaction
- Principle 9: Aesthetics

Planning Discussion:-

- The design quality of the development, when evaluated in accordance with the Design Quality Principles contained within SEPP 65, is unsatisfactory. Specifically, the proposal is inconsistent with the desired future character of the area as identified through the development standards and controls contained within Wollongong LEP and DCP 2009. In this regard the proposed development does not satisfy Principle 1 – Context and Neighbourhood Character, Principle 2 – Built Form and Scale and Principle 9 – Aesthetics.
- The proposed FSR of the development far exceeds that permitted by Clause 4.4A of Wollongong LEP 2009 and the side and rear boundary setbacks to the tower (for that part of the building above eight storeys in height) do not comply with the setbacks required by the Apartment Design Guide. In this regard the proposed development does not satisfy Principle 1 – Context and Neighbourhood Character, Principle 2 – Built Form and Scale, Principle 3 – Density and Principle 9 – Aesthetics.
- According to the proponent's area calculations, the gross floor area (GFA) of the development exceeds the LEP's maximum Floor Space Ratio by more than 300sqm. Additionally, the proponent has not included the lobby area on each level in their gross floor area calculations; once added, the GFA now proposed will far exceed the density requirements for this site. In this regard the proposed development does not satisfy Principle 1 – Context and Neighbourhood Character, Principle 2 – Built Form and Scale and Principle 3 – Density.
- The configuration of the ground floor level is problematic. Access to the building is highly constrained and the frontage of the building is dominated by stairs, an oversized vehicular ramp/driveway, a number of building egress points and services including spaces for a substation and fire services. Access to the main lobby and commercial spaces is highly constrained and lacking in amenity. Rather than introducing a clear frontage to the street, the childcare facility's entry is obscure and unpleasant. Access to the commercial component of the development including the child care centre is reliant on stairs and a single chair platform lift which does not provide for universal or practical access. Additionally, the frontage now features a number of places of concealment which increases safety and security concerns. In this regard the proposed development does not satisfy Principle 1 – Context and Neighbourhood Character, Principle 2 – Built Form and Scale, Principle 6 – Amenity, Principle 7 – Safety and Principle 9 – Aesthetics.
- It is not clear if the cupboard shown along the frontage of commercial space C2 is proposed for the storage of fire boosters or is adequately sized. Similarly, it is not clear if the larger service room along the frontage of commercial space C1 is intended to house a substation and also whether it is adequately sized in compliance with the requirements of the relevant servicing authority. Assuming these spaces need to be enlarged, they may reduce access of both commercial spaces to the street frontage and reduce the presence of the retail frontages to the street. The design of the development will not contribute positively to the public domain as a result and in this regard the proposed development does not satisfy Principle 9 – Aesthetics.
- No screening or louvres are proposed to west-facing windows and little consideration has been given to solar protection to the principal communal open space so it remains unclear how westerly

sun is addressed. This may lead to untenable levels of heat gain during the summer and make this space uncomfortable for users in Summer. In this regard the development does not satisfy Principle 4 – Sustainability and Principle 6 - Amenity. There are no other sustainability measures proposed, which, for a project of this scale is questionable. In this regard the development does not satisfy Principle 4 – Sustainability.

- The proposal is plagued by numerous amenity issues. Firstly, access from the lift lobby to the Level 3 communal open space is obtained via communal function rooms which will reduce the amenity of users of the spaces. Secondly, the acoustic and visual amenity of the internal living areas of Units 4 and 6 will be compromised by the proposed location of the skylights within the Level 3 communal open space area. Thirdly, the acoustic and visual amenity of Unit 50 will be compromised by its immediate proximity to the rooftop communal open space area. Furthermore, within Unit Types D (levels 4 – 12) and Type E (levels 1 – 8), the bathroom is directly accessed from the dining room, creating poor internal amenity. The bedroom windows on levels 1 and 2 (Units 3 and 10) also directly face the private open space of Unit 2, which will create severe privacy issues. Neither the architectural or landscape plans detail any proposed methods to secure the privacy of these bedrooms or courtyard spaces. In these regards the development does not satisfy Principle 6 – Amenity.
- There are severe privacy issues between adjacent habitable spaces on duplex levels. All bedrooms windows in Units Type Aa on levels 01 and 02 are very large and located adjacent to the south facing lobby. The bedroom windows are not screened or oriented away from the lobby. This means that the bedroom windows are very large and exposed to acoustic and visual privacy impacts. To address privacy concerns, “high level windows” have been introduced into the lobbies (the elevation suggests an openable glazed panel above obscure glazed panels) at each level. While greatly reducing the amenity of each lobby, this measure will not address acoustic privacy to the adjacent bedrooms.
- There are a number of internal rooms within the child care centre including the reception, administration, staff room and cot rooms which will have no access to natural light and ventilation. In this regard the development does not satisfy Principle 4 – Sustainability and Principle 6 – Amenity.
- The development's setbacks (to that part of the tower above eight storeys in height) do not comply with applicable controls and this has an impact on the building's form and its relationship with neighbouring development including potential development of land to the south and east. In this regard the proposed development does not satisfy Principle 1 – Context and Neighbourhood Character, Principle 2 - Built form and Scale, Principle 6 – Amenity and Principle 9 – Aesthetics. The reduced setbacks may impact on the development potential of neighbouring sites.
- The use of high sill/ highlight windows on the northern and southern elevations of levels 9 – 14 to overcome the visual and amenity impacts resulting from reduced building separation distances will impact on the internal amenity of these units. As well as being required because of reduced separation between buildings (and to those likely to be proposed in the future), the highlight windows and use of privacy screens and window treatment including obscured glazing will reduce access to sunlight and reduce opportunities to enjoy distant views, with consequential implications for design quality.
- In the absence of the skylights above units 4 and 6, the rear rooms of these units will not receive access to natural light or ventilation. Similarly, access to natural light and ventilation to the rear rooms within Unit 5 will be limited. In this regard the proposed development does not satisfy Principle 6 – Amenity.
- The design of the development will not contribute positively to the public domain due to:-
 - The elevation of the ground floor due to the flooding constraint affecting the site. The minimum required floor level (1% AEP plus 500mm freeboard) has not been accurately identified for the site and as such it is not known whether the chosen floor level is sufficient for flood mitigation or is excessively elevated. The elevated floor levels and the configuration of the ground floor result in an absence of appropriate resolution between floor and site levels resulting in lack of appropriate universal access from the street frontage to the commercial floor level and residential lobby;
 - The excessive width of the driveway;

- The treatment of the northern and southern elevations of the building, for that part built to or close to these boundaries, needs greater attention to material and composition, particularly to the north which will always be visible and exposed due to the position of the recently constructed building on the site to the immediate north. The north elevation is also compromised at ground level, with large openings exposing undercroft areas and the driveway to the street frontage. This is poorly resolved.
- The provision for cupboards within the facade of the building to presumably house a substation and fire services, however these appear to be under-sized based on known servicing requirements. If enlarged, these cupboards will further dominate the ground floor elevation of the development, reducing street activation.

In this regard the proposed development does not satisfy Principle 1 – Context and Neighbourhood Character, Principle 2 - Built Form and Scale, Principle 5 – Landscape, Principle 6 – Amenity and Principle 9 - Aesthetics.

- The waste management arrangements are unacceptable and will compromise resident and pedestrian amenity and reduce the availability of on-street car parking around collection times. This aspect of the development does not satisfy Principle 6 – Amenity.
- There are problems with the area of the communal open space and some balconies do not achieve the private open space requirements of the ADG which is contrary to Principle 6 - Amenity.

An assessment of the application against the Apartment Design Guide (ADG) is contained within **Attachment 3** to this report.

2.1.3 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 in respect of thermal comfort, energy and water efficiency.

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

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

2.1.5 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

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

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

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

The proposal is generally satisfactory with regard to the above objectives.

The land use table permits the following uses in the zone with consent:

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

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

Clause 1.4 Definitions

The following definitions are relevant to the proposed development:-

business premises means a building or place at or on which:

- (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or
- (b) a service is provided directly to members of the public on a regular basis,

and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

child care centre means a building or place used for the supervision and care of children that:

- (a) provides long day care, pre-school care, occasional child care or out-of-school-hours care, and
- (b) does not provide overnight accommodation for children other than those related to the owner or operator of the centre, but does not include:
 - (c) a building or place used for home-based child care, or
 - (d) an out-of-home care service provided by an agency or organisation accredited by the Children's Guardian, or
 - (e) a baby-sitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or
 - (f) a service provided for fewer than 5 children (disregarding any children who are related to the person providing the service) at the premises at which at least one of the children resides, being a service that is not advertised, or
 - (g) a regular child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium), by or on behalf of the person conducting the facility, to care for children while the children's parents are using the facility, or
- (h) a service that is concerned primarily with the provision of:
 - (i) lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or
 - (ii) private tutoring, or
 - (i) a school, or
 - (j) a service provided at exempt premises (within the meaning of Chapter 12 of the [Children and Young Persons \(Care and Protection\) Act 1998](#)), such as hospitals, but only if the service is established, registered or licensed as part of the institution operating on those premises.

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.

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

- (a) bulky goods premises,
- (b) cellar door premises,
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,
- (l) shops,
- (m) timber yards,
- (n) vehicle sales or hire premises,

but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

Note. Retail premises are a type of **commercial premises**—see the definition of that term in this Dictionary.

Clause 2.7 Demolition requires development consent

Consent is sought for the demolition of the existing structures on the site in accordance with this clause.

Part 4 Principal development standards

Clause 4.3 Height of buildings

This clause prescribes a maximum height of 60 metres for the Site, as shown on the Height of Buildings Map. The proposal has an overall height of 51.21m.

Clause 4.4A Floor space ratio – Wollongong city centre

Clause 4.4A of Wollongong LEP “Floor space ratio—Wollongong city centre” applies to land within the Wollongong city centre and provides formulae for determining the allowable maximum floor space ratio for sites depending on the site area, site frontage width, zoning and proportion of non-residential and residential gross floor area.

In the case of the Site and the proposal, based on the proportions of gross floor area dedicated to residential and non-residential uses, the resulting maximum permissible floor space ratio is 3.224:1. This provides for a maximum gross floor area of 5126.8qm. The proposed gross floor area indicated on the applicant’s gross floor area analysis plan is 5444sqm. However, the gross floor area analysis plan submitted by the applicant also excludes certain areas within the building which are included in the definition of gross floor area provided by the Dictionary to Wollongong LEP 2009. These includes the commercial lobby on the ground floor of the building and the lobbies on each of the residential floor levels, contributing significant areas of floor space to the overall total gross floor area of the building (approximately 345.5sqm). Accordingly the floor space ratio of the building and its bulk and scale are far greater than that anticipated could be achieved on the site.

Despite references to the applicant’s request for variation to the floor space ratio controls (prepared in accordance with clause 4.6 of Wollongong LEP 2009), this has not been supplied in support of the application and references to Clause 4.4A compliance refer only to the additional 318qm of GFA, not the **total additional 663sqm of GFA** inclusive of enclosed lobbies which should properly be included in the FSR calculations.

Clause 4.6 Exceptions to development standards

Clause 4.6 of the Wollongong LEP “Exceptions to development standards” provides that 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, where certain matters are met.

In this instance, departures are sought in respect of Clause 4.4A Floor Space Ratio and Clause 8.6 Building Separation. The applicant provided (with the original plans) a statement prepared with reference to Clause 4.6 in relation to Clause 8.6 Building Separation. The applicant makes references within the documentation to a Clause 4.6 statement in relation to the building's Floor Space Ratio, however the statement did not accompany the amended plans submitted on 14 March, nor was there an amended variation statement in relation to Clause 8.6 supplied in support of the amended plans. This is significant as there were substantial changes made to the plans which affect the proposal's extent of non-compliance with the separation standard.

The applicant's development departure in relation to Clause 8.6 is dealt with below.

Part 5 Miscellaneous provisions

Clause 5.5 Development within the coastal zone

Consideration has been given to matters prescribed by Clause 5.5 and no concerns are raised in relation to impacts of the proposed development on the coastal zone values. The site is some distance from the foreshore and is not identified as being impacted by coastal hazards. There are not expected to be any adverse impacts on the coastal environment or public access to the foreshore as a result of the application.

Council can be satisfied that the development will not impede or diminish access to the coastal foreshore; will be serviced by reticulated water and sewerage services; will appropriately manage stormwater and will not significantly be affected by coastal hazards, or either have a significant impact on coastal hazards, or increase the risk of coastal hazards in relation to any other land.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

This clause seeks to ensure that sufficient infrastructure is available to service development and requires that consent not be granted for development unless the consent authority is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.

The site is already serviced by electricity, water and sewerage services. It is expected that the existing utility services can be augmented to support the proposed development.

If approved, a condition could be imposed upon the development consent requiring approval from the relevant authorities for the connection of electricity, water and sewage to service the site.

The applicant has made provision for a future substation in the event that this is required by Endeavour Energy however the cupboard provided for any such purpose appears to be under sized. Comments are provided above and below in relation to the way in which the services are to be accommodated within the building and the impact this has on the built form outcome.

Clause 7.3 Flood planning area

This clause seeks to maintain the existing flood regime and flow conveyance capacity; to enable evacuation from flood prone land; to avoid significant adverse impacts on flood behaviour; to avoid significant effects on the environment that would cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses; and to limit uses to those compatible with flow conveyance function and flood hazard. The Site is flood affected and accordingly is subject to the objectives and provisions contained within this clause.

Development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that all habitable floor levels of the development will be above the flood planning level; the development will not adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties; the development will not significantly alter flow distributions and velocities to the detriment of other properties or the environment of the floodplain; the development will not affect evacuation from the land; the development will not significantly detrimentally affect the floodplain environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses; the development will not result in unsustainable social and economic costs to the community as a consequence of flooding; and if located in a floodway area—the development as

now proposed will not be incompatible with the flow conveyance function of, or increase a flood hazard in, the floodway area.

The proposal has been assessed by Council's Stormwater Section who has raised numerous concerns in relation to the proposal – refer to Section 1.5 in this regard.

Clause 7.5 Acid Sulfate Soils

The proposal is identified as being affected by Class 5 acid sulphate soils. An acid sulfate soils management plan is not required.

Clause 7.6 Earthworks

The proposal involves excavation to facilitate the provision of the building's basement. The earthworks have been considered in relation to the matters for consideration outlined in Clause 7.6 and are not expected to have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features surrounding land however it is not known what the impact of the development will be on flood behaviour in the area including whether any flooding impacts will be exacerbated by the development as proposed.

Clause 7.13 Ground floor development on land within business zones

The objective of Clause 7.13 is to ensure active uses are provided at the street level to encourage the presence and movement of people. The clause requires that development consent must not be granted for development for the purpose of a building on land to which this clause applies 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 proposal provides active uses at ground floor level in accordance with this control.

Clause 7.18 Design excellence in Wollongong city centre and at key sites

As the site is positioned within the Wollongong city centre, it is subject to this clause, the objective of which is to deliver the highest standard of architectural and urban design.

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 following matters:-

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

Comment:- the proposal does not currently provide for a high standard of architectural design, materials and detailing. A number of shortcomings have been identified by the Design Review Panel as outlined in Section 1.6 of this report.

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

Comment:- the form and external appearance of the development will not have a positive relationship with nor improve the public domain immediately adjacent to the site as detailed above in Section 2.1.2. Of particular concern is the treatment of the ground floor level which is dominated by the wide driveway, multiple egress points and services. The treatment of the northern and southern elevations are poorly resolved which will also impact on the views of the development from the public domain.

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

Comment:- the proposal will not unreasonably detrimentally impact on significant view corridors available from neighbouring properties. It is noted that the subject site is located outside of the nominated view corridors identified in Figure 3.12 (Clause 3.10 of Chapter D13 of WDCP 2009).

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

Comment:- the proposal will not overshadow an area identified on the Sun Place Protection Map.

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

- (i) the suitability of the land for development,

Comment:- the land is appropriately zoned for the proposed development however it is not known whether the development has been appropriately designed with regard to site constraints, particularly flooding.

- (ii) existing and proposed uses and use mix,

Comment:- the proposed mix of uses within the development is consistent with the B3 zone objectives. Some concerns have been raised in relation to the relationship between the proposed uses within the building – ie. will the child care centre have an impact on residential amenity via noise generation? Is the shared lobby appropriate?

- (iii) heritage issues and streetscape constraints,

Comment:- the development will not have an adverse impact on the heritage significance of any nearby heritage items. There are no significant 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,

Comment:- the proposed building does not comply with the applicable building separation and setback controls outlined in the ADG and WDCP 2009.

- (v) bulk, massing and modulation of buildings,

Comment:- the bulk and mass of the building does not comply, particularly when measured in terms of floor space ratio and building setbacks. Firstly, the gross floor area of the development exceeds the maximum FSR permitted by approximately 663sqm. Secondly the setbacks to parts of the building do not comply with the building separation requirements of the LEP, DCP and ADG.

- (vi) street frontage heights,

Comment:- the proposed street frontage heights are compliant.

- (vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,

Comment:- the development is appropriate with regard to wind impacts, reflectivity (subject to compliance with any consent conditions regarding material reflectivity), and will not have unreasonable overshadowing impacts having regard to allowable building heights and densities within the locality. The proposed units achieve compliance with BASIX targets. Some concerns are raised in relation to satisfaction of the solar access and cross ventilation requirements of the ADG as detailed in the table at Attachment 3.

- (viii) the achievement of the principles of ecologically sustainable development,

Comment:- BASIX certificates have been provided demonstrating that the units can achieve the minimum BASIX targets for energy and water efficiency and thermal comfort. No other sustainability measures have been outlined which the DRP considers to be a shortcoming of the development given its scale.

- (ix) pedestrian, cycle, vehicular and service access, circulation and requirements,

Comment:- the proposal is unsatisfactory with regard to these matters. Whilst adequate parking for cars, motorcycles and bicycles is provided for within the building and adequate provision has been made for standard domestic vehicular manoeuvring, no provision has been made for on-site waste collection and provision has only been made for a small rigid vehicle to access the site for loading, the adequacy of which is questionable having regard to the nature of the uses and scale of the development. Pedestrian access from the street frontage is obtained only via stairs or a platform lift which may not provide for universal access, particularly for people seeking to access the child care centre and commercial tenancies from the street frontage.

- (x) impact on, and any proposed improvements to, the public domain.

Comment:- the landscape plan provided with the application makes provision for public domain improvements including street tree planting. Council's Landscape Architect has reviewed the landscape plan and has recommended conditions in regards to the public domain works.

While not required by Clause 7.18(5), a review of the design of the proposed development has been undertaken in accordance with the requirements of SEPP 65 as detailed above.

Part 8 Local provisions—Wollongong city centre

Clause 8.2 Wollongong city centre – land to which this Part applies

The subject site is located within the Wollongong city centre.

Clause 8.4 Minimum building street frontage

This clause requires that 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 Zone B3 Commercial Core. This site satisfies this standard, with a street frontage width of 32.005m.

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

The proposed development does not comply with Clause 8.6.

The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.

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.

The building departs from the development standard in the following ways:-

- The building features residential units within Levels 1 and 2 (ie within the podium built to the street frontage) and this part of the building is built to the southern and northern (side) boundaries of the site which is consistent with other controls which seek to achieve a continuous street wall and appropriate street frontage height for streets within the B3 Commercial Core. This is however contrary to Clause 8.6(3)(b);
- The building separation distances to the tower do not comply with the separation controls in Clause 8.6(3). The building setbacks provided to the tower from the side and rear boundary setbacks are detailed elsewhere within this report and as noted above in relation to SEPP 65 and the Apartment Design Guide, the tower does not comply with the applicable setback and separation controls provided by the ADG nor Chapter D13 of Wollongong DCP 2009;
- The adjoining building to the north of the site at 27 Atchison Street is afforded a greater setback (6m) to its southern boundary as there is an overland flow path / drainage easement situated along that boundary. This building is 8 storeys/ 28.3m in height. The separation distances provided to the southern wall of the building vary upward from 6m measured to that part of the proposed building built to the boundary (ie levels 1 and 2) to 14.005m measured to the northern wall of the units on Levels 4 – 8. The adjoining building is 8 storeys in height and accordingly for that part of the proposed building above 8 storeys, there is no technical non-compliance with the standard. The extent of the departure is therefore between 5.995m and 14m for 8 storeys of the building.

- There is also a technical non-compliance in respect of the setback to the southern property which currently contains a single detached dwelling though it is expected that this land will be redeveloped in the future.

The applicant has provided the following discussion within the amended Statement of Environmental Effects submitted with the amended architectural plans:-

“The proposed development provides a street frontage height of 12m, being that part of the building built to the street alignment with 0m side setbacks, in accordance with the built form envisaged under the Wollongong LEP and DCP and as requested by the Design Review Panel. This results in a technical non-compliance with the separation standard given buildings to both the north and south contain dwellings that will be less than 16m from the street frontage height of the proposal. In addition, the proposed 0m side setback to the northern boundary results in a 14m variation to the 20m separation requirement between habitable to habitable, noting the adjoining development to the north only provides a 6m side setback. It is contended that compliance with these separation standards is unreasonable and unnecessary in the circumstances of the case as the objectives of the standards are achieved and strict compliance would lead to an unintended and undesirable outcome as follows:

1. The area is undergoing significant transition from existing low density to high density and there is a stark contrast from the existing streetscape character to the desired future streetscape character.
2. As defined, the desired street frontage height involves a building up to 12m to 24m in height built to the street alignment with 0m side setbacks. This urban form is the desired scale of development within the Wollongong city centre as envisaged under clause 7.18 and 8.1 of the Wollongong LEP 2009 and the Wollongong Development Control Plan 2009.
3. The approved development to the north at 29 Atchison Street does not provide any street frontage height and maintains a 6m side setback. The existing single story dwelling at 35 Atchison Street is ageing and is likely to be replaced in the short to medium term as a part of future development to the south.
4. The effect of strict compliance with the 16m separation distance from the existing dwelling at 35 Atchison Street and the residential units under construction at 29 Atchison Street would be to eliminate any potential for the desired and proposed street frontage height on the subject site. Noting the compliant street frontage of 33m, which is in excess of the minimum 20m street frontage under clause 8.4, this is clearly an unintended and undesirable outcome.
5. With respect to the 20m separation requirement to the north, the adjoining development with a 6m side setback encroaches by 4m within the required share of separation.
6. As noted above, the effect of strict compliance with the separation distance requirement of 20m would be to eliminate any potential for development on the subject site.
7. The proposed 0m podium side setback simply provides the built form contemplated by the Wollongong LEP and DCP and as requested by the Design Review Panel.
8. There are no adverse visual bulk impacts given it results in greater visual separation than the potential 24m street frontage height built to the street alignment with a 0m side setbacks i.e. the proposed 9m side setbacks provide an additional 15m in total separation as viewed from the street up to a height of 24m compared with the potential of no separation up to the street frontage height. The proposal results in 15m separation above street frontage height compared with the potential for only 12m visual separation beyond the street frontage height.
9. There are no adverse privacy or solar access impacts within the proposed development or on adjoining properties. The design of the proposed development has ensured that privacy and solar access is achieved generally in accordance with the requirements of SEPP 65 and the Apartment Design Guide.
10. In this regard, pursuant to Clause 6 of SEPP 65, in the event of an inconsistency between SEPP 65 and another environmental planning instrument, SEPP 65 prevails to the extent of the inconsistency. Objectives of this clause are achieved by virtue of compliance with the design quality principles of SEPP 65 and the Apartment Design Guide.
11. A Clause 4.6 variation request has been prepared and is attached at Appendix A.”

The Clause 4.6 variation statement was not received with the amended SEE. Appendix A to the SEE is the ADG assessment, not the Clause 4.6 variation.

Planning comments:-

The following comments are provided in relation to the building separation variation:-

- The objective of the standard is to provide for sufficient separation of buildings for reasons of visual appearance, privacy and solar access.
- Separation controls required by the ADG are largely favoured within the city centre; in the interests of achieving a reasonably consistent street frontage height and continuous street edge. That part of the building built to the street frontage with zero setbacks to the northern and southern boundaries of the site will assist in achieving a continuous street edge to the site's frontage and assist in defining the base of the building.
- The blank walls provide a defensive design response to the southern and northern boundaries for that part of the building built to the side boundaries; is there is no potential privacy impacts arising from these units towards either side boundary. No openings in these walls prevent potential visual and acoustic privacy impacts to or from the units in this part of the building. These elevations are blank and stark as a result and some concerns are raised by the DRP in relation to the unresolved treatment of these elevations, particularly to the north where the blank wall will remain readily visible on the approach from the north from Atchison Street. For this and several other reasons, the consent authority cannot be satisfied that the development exhibits design excellence as required by Clause 7.18 of LEP 2009.
- The separation and setback controls of the ADG should generally prevail to the residential components of the building. As noted elsewhere within this report, parts of the building do not achieve the building setbacks required by 4A – Visual Privacy. The tower does not achieve compliance with the setbacks outlined in the ADG or Wollongong DCP 2009 which may give rise to privacy impacts between the units within the proposed building and those occupying the existing building to the north. The reduced setbacks to the southern and eastern boundaries may also have an impact on the development potential of the neighbouring sites in these directions, as, when it is re-developed, greater side setbacks will need to be provided to ensure appropriate separation to any residential units planned for those site. This is inequitable.
- The reduced setbacks to boundaries has forced a more defensive design approach to be taken to the residential tower. For Levels 9-14 all units feature high sill windows to the side elevations to bedrooms. High sill windows are not accepted as the primary source of daylight by the ADG and also reduce availability to views and outlook. So whilst potentially reducing privacy impacts, the internal amenity of the units will be compromised as will the fenestration of the elevations.
- The development does not otherwise exhibit sufficient design quality to satisfy the objectives in Clause 7.18 of WLEP 2009 and substantially departs from the floor space ratio controls in Clause 4.4A. In sum the development appears to be an over-development of the site.
- The applicant has not provided updated justification demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard. In consideration of the above comments, it would appear that the development does not otherwise achieve the objectives of the standard.
- The consent authority cannot be satisfied, pursuant to Clause 4.6(4)(a) of WLEP 2009 that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) as a written request in support of the amended plans has not been provided.

2.2 SECTION 79C 1(A)(II) ANY PROPOSED INSTRUMENT

2.2.1 DRAFT STATE ENVIRONMENTAL PLANNING POLICY (COASTAL MANAGEMENT) 2016

At the time of undertaking this assessment, a draft State Environmental Planning Policy (Coastal Management) 2016 and associated maps had been exhibited. Also exhibited was a draft section 117 Ministerial direction and a draft Standard Instrument (Local Environmental Plans) Amendment (Coastal Management) Order.

The period consultation period was 11 November to 23 December 2016.

The real impact relates to certain development controls/ permissibility within the management zones of the maps and relationship to future changes to the standard instrument cl 5.5 In terms of coastal

zone management and planning, SEPP 71 remains applicable and provides the framework for assessing development.

The site is located within the coastal use area. Division 4 of the draft SEPP deals with the coastal use area.

Clause 15 states that development consent must not be granted to development on land that is wholly or partly within the coastal use area unless the consent authority:-

- (a) is satisfied that the proposed development:
 - (i) if near a foreshore, beach, headland or rock platform—maintains or, where practicable, improves existing, safe public access to and along the foreshore, beach, headland or rock platform, and
 - (ii) minimises overshadowing, wind funnelling and the loss of views from public places to foreshores, and
 - (iii) will not adversely impact on the visual amenity and scenic qualities of the coast, including coastal headlands, and
 - (iv) will not adversely impact on Aboriginal cultural heritage and places, and
 - (v) will not adversely impact on use of the surf zone, and
- (b) has taken into account the type and location of the proposed development, and the bulk, scale and size of the proposed development.

The proposal is satisfactory with regard to these matters.

Clause 16 applies to development in the coastal zone generally and states that development consent must not be granted to development on land within the coastal zone (other than land to which clause 13 applies) unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. As detailed elsewhere within this report, the proposal is not expected to increase the risk of coastal hazards on the subject land or any other land.

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

2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

The development has been assessed against the relevant chapters of WDCP 2009. Compliance tables can be found at **Attachment 4** to this report. The applicant has formally sought variations in relation to building side boundary setbacks and building depth however a number of non-compliances have been identified as detailed below. These are:-

- Chapter C5 – Child Care Centres – in relation to :-
 - Clause 7.4.7 as no nappy change areas have been shown on the plans;
 - Clause 7.5 Outdoor Areas – in that only one (1) sandpit has been provided for all age groups; there is nothing physically separating the individual play areas for the various age groups; and the insufficient provision of impermeable roof structure to the outdoor areas to allow its use during inclement weather;
 - Clause 7.6 – Car Parking, Access and Pedestrian Safety – in that an inadequate number of pram parking spaces has been provided to service the child care centre; the lack of on-site waste collection and the requirement for any waste collection to occur outside of nominated business hours to minimise potential vehicular and pedestrian conflicts.
 - Clause 7.9 - Fencing and Gates – in that the plans do not make provision for two consecutive gates or doors to prevent unauthorised exit from the child care centre;
 - Clause 7.13 – Visual and Acoustic Privacy – in that there has been no acoustic report provided to demonstrate that noise from the child care centre's operations will not adversely impact on residents, particularly given that the proposed hours of operation extend outside of normal operating hours.

- Clause 7.14 - Accessibility & Mobility for People with a Disability – in that the raised outdoor plays areas can only be accessed via stairs which does not provide for equitable access.
- Chapter D13 Wollongong City Centre, specifically in relation to:-
 - Clause 2.5 of Chapter D13 - in relation to side building setbacks and building separation.
 - Clause 2.6 of Chapter D13 (Mixed used buildings) – due to the lack of clearly demarcated residential entries from the public street and clearly separate and distinguished commercial and residential entries; lack of detail in relation to appropriate security access controls; and concerns regarding users safety within the basement
 - Clause 3.1 of Chapter D13 (Pedestrian Amenity) – in relation to the excessive width of the driveway and potential impacts arising from on-street waste collection;
 - Clause 3.3 of Chapter D13 (Active street frontages) – in relation to the proportion of frontage of the development comprising glazed commercial shopfront and residential lobbies occupying being less than 50% of the street frontage and excessive dominance of the frontage of the building by the wide driveway, number of egress points and services;
 - Clause 3.4 of Chapter D13 (Safety and security) – in relation to lack of detail in regards to proposed security access controls between the commercial and residential uses; concerns regarding the safety of users within the basement having regard to the configuration and location of the lift lobbies; and potential concealment opportunities in the front façade of the building;
 - Clause 3.6 of Chapter D13 (Vehicular footpath crossings) in relation to the excessive width of the footpath crossing;
 - Clause 3.8 of Chapter D13 - Building exteriors having regard to the treatment of the northern and southern elevations; building bulk and form generally measured in terms of the building's compliance with the maximum FSR and building setbacks; dominance of the front facade of the development by the wide driveway, numerous egress points and services;
 - Clause 4.2 of Chapter D13 (Pedestrian access and mobility);
 - Clause 4.3 of Chapter D13 (Vehicular driveways and manoeuvring areas) in regards to the width of the driveway;
 - Clause 4.5 of Chapter D13 (Site facilities and services) - in relation to lack of on-site waste collection and concerns regarding the appropriateness of accommodating only a small rigid vehicle within the site for delivery and servicing purposes having regard to the nature of uses within the use and the scale of the development.
 - The development fails to comply with the provisions within Chapter E1 - Access for People with a Disability in the following respects:-
 - Universal access is not provided to the ground floor of the development.
 - There does not appear to be compliant or practical disabled persons' access from the nominated disabled persons' car parking spaces to the lifts, particularly within Basement 1 where users will need to cross the travel aisle then travel along a series of narrow corridors and through doorways to access the lift lobby.
- Chapter E3 - Car Parking, Access, Servicing/Loading Facilities and Traffic Management with regard to servicing and waste collection.
- Chapter E7: Waste Management – in the following respects:-
 - the development does not make provision for on-site waste collection. All bins associated with the commercial, residential and child care centre components of the development will need to be moved to the street frontage for collection which is

contrary to the requirements of Chapters E3 and E7. On-site servicing should be available within a development of this scale.

- Chapter E13 – Floodplain Management.
- Chapter E14 - Stormwater Management.
- Chapter E15: Water Sensitive Urban Design - the development fails to comply with the provisions in that a Water Sensitive Urban Design concept plan and report prepared in accordance with the requirements of Chapter E15 has not been supplied demonstrating compliance with the stormwater quality objectives and requirements of the DCP.

2.3.2 WOLLONGONG SECTION 94A DEVELOPMENT CONTRIBUTIONS PLAN (2016)

The estimated cost of works \$22,125,000 and a Section 94A levy of 2% is applicable. This includes the standard 1% development contribution plus an additional 1% levy which applies to development in the B3 Commercial Core. This latter contribution provides funding towards the Special City projects nominated in the Civic Improvements Plan for the Wollongong City Centre.

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

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

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

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

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

(a) in the case of a development application for the carrying out of development:

(i) in a local government area referred to in the Table to this clause, and

(ii) on land to which the Government Coastal Policy applies,

the provisions of that Policy,

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

If the development were to be approved, condition(s) of consent should be imposed in relation to demolition including compliance with AS 2601.

The site is located within the Coastal Zone however this policy only applies in the Illawarra to the offshore component of the coastal zone, extending three nautical miles seaward from the open coast high water mark.

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

The site is located within the NSW Coastal Zone however there is no adopted Coastal Zone Management Plan for the Wollongong LGA.

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. Coastal Processes have, however, been previously considered in response to Clause 5.5 of WLEP 2009.

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

Context and Setting:

Context and setting has been addressed in detail above in Section 2.1.2 in relation to the SEPP 65 design principles and also in relation to Clause 7.18 of Wollongong LEP 2009 (see Section 2.1.5).

Vehicular Access, Transport and Traffic:

The proposal is satisfactory with regard to numerical car parking standards. As noted elsewhere, the driveway width is excessive and whilst not a problem for access, creates public domain and other design concerns. Traffic generation from the development can be readily absorbed into the existing street network. Pedestrian safety from exiting vehicles requires further consideration. On-street waste collection is not supported for various reasons and it is questioned whether adequate provision has been made for loading facilities to support the development.

Public Domain:

Removal of the existing street trees will be required along with construction of footpath paving in accordance with the Wollongong City Centre Public Domain Technical Manual. If the development were to be approved, conditions of consent could be imposed in this regard.

The proposal will have some adverse impacts on the public domain as a result of its design quality and as a result of ongoing on-street waste collection.

Utilities:

The proposal is not envisaged to place an unreasonable demand on utilities supply. Existing utilities are likely to be capable of augmentation to service the proposal. If approved, conditions could be imposed on the consent requiring the developer to make appropriate arrangements with the relevant servicing authorities prior to construction.

The plans make provision for a substation within the façade of the building. The space provided appears to be under-sized and if enlarged will further detract from the quality of the ground floor façade of the building.

Heritage:

No nearby heritage items are expected to be unreasonably affected by the proposed development.

Other land resources:

The proposal is expected to impact upon any valuable land resources.

Water:

Supply & infrastructure - The site is presently serviced by Sydney Water's reticulated water and sewerage services. It is expected that these services can be extended/ augmented to meet the requirements of the proposed development.

Consumption - The proposal is not envisaged to involve excessive water consumption having regard to the uses proposed within the building. The BASIX certificates provided in relation to the residential units demonstrate compliance with the water efficiency targets contained within the BASIX SEPP.

Water quality – as detailed in Section 2.3.1, insufficient information has been provided with the application to demonstrate compliance with the water quality objectives outlined in Chapter E15 of WDCP 2009 – Water Sensitive Urban Design.

Soils:

It is expected that, with the use of appropriate erosion and sedimentation controls during construction, soil impacts will not be unreasonably adverse. Conditions of consent could be imposed in this regard.

Air and Microclimate:

The proposal is not expected to have any negative impact on air or microclimate. While there was no wind impact statement submitted with the application, it is expected that the development will not have an unacceptable impact on pedestrian comfort.

Flora and Fauna:

No adverse impacts on any significant flora or fauna is expected as a result of the proposed development. It is noted that Council's Landscape Officer was satisfied with the submitted landscape plan.

Waste:

Refer to WDCP compliance table at **Attachment 4**.

Waste management during construction can be managed through proper arrangements. A condition could be imposed if consent were granted requiring the use of an appropriate receptacle for any waste generated during the construction and compliance with the Site Waste Management and Minimisation Plan provided with the DA.

On-going waste management arrangements are unsatisfactory and do not comply with the relevant provisions of Wollongong DCP 2009 as detailed within this report.

Energy:

The proposal is not envisaged to have unreasonable energy consumption. The BASIX certificates provided demonstrate compliance with the energy efficiency and thermal comfort targets of the BASIX SEPP.

Noise and vibration:

Noise and vibration impacts during demolition, excavation and construction are unavoidable. If the development were to be approved, conditions could be attached to any consent granted requiring nuisance be minimised during demolition and construction and in relation to restricted working hours to reduce impacts on neighbours.

As detailed in this report, noise impacts from the proposed child care centre have not been quantified. In the absence of appropriate mitigation, the amenity of residents within the building and those adjoining, could be compromised.

Natural hazards:

The site is positioned within a medium flood risk precinct. In the absence of supporting documentation relating to flood management and mitigation, it is not known whether the development has been appropriately designed with regard to this constraint, for flood mitigation within the site and in terms of not adversely impacting on flooding on adjoining sites and within the broader locality.

Technological hazards:

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

Safety, Security and Crime Prevention:

Refer to WDCP compliance table at Attachment 4 and the concerns raised by Council's Community Safety Officer at Section 1.5.12. The proposal may potentially provide opportunities for criminal or antisocial behaviour as it has not been designed entirely with regard to CPTED principles. Specific concerns relate to the creation of potential concealment and entrapment opportunities.

Social Impact:

No significantly adverse social impacts arising from the development are expected to occur in the locality. The provision of an inner city child care facility to support local workers is a positive social outcome of the development subject to meeting the above requirements.

Economic Impact:

There are not expected to be any negative economic impacts arising from approval of the proposed development though as noted elsewhere, the development potential of neighbouring sites to the east and south may potentially be reduced by the reduced building setbacks proposed to the tower.

Construction:

Construction impacts have the potential to impact on the amenity of the neighbourhood. If approved, it would be appropriate to impose a suite of conditions to reduce the impact of construction works including those relating to hours of work, erosion and sedimentation controls, dust mitigation, works in the road reserve, excavation, demolition management, waste management, and use of any crane, hoist, plant or scaffolding, amongst others.

Cumulative Impacts:

Approval of the proposed development with its significant unsubstantiated development departures, lack of design excellence and variations in respect of numerous planning controls has the potential to give rise to an undesirable precedent. Also, as noted elsewhere, reduced setback provision may affect the development potential of neighbouring sites which is not fair or equitable.

2.8 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 however exceeds the allowable floor space ratio and fails to address numerous design controls. Accordingly it is considered to be an over development of the site and is inconsistent with the desired future character for the locality as provided for by the relevant development controls.

Are the site attributes conducive to development?

The site is located within a medium flood risk precinct. The applicant has not provided sufficient information in relation to flooding to determine whether the building has been designed in response to this constraint. This may have a bearing on the size and shape of the building and the floor levels adopted for the purposes of flood mitigation.

There are no other site constraints that would prevent the proposal.

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

The application has been notified on two occasions, in accordance with the requirements of the Wollongong DCP 2009 Appendix 1: Public Notification and Advertising Procedures. This comprised notification letters being sent to adjacent and adjoining land owners/ occupiers and the placement of a notice in the local newspaper.

The first notification period commenced on 22 August 2016 and a notice was placed in the local newspaper on 31 August 2016. There were no submissions received.

The second notification period commenced on 3 April 2017 following the submission of amended plans and additional information by the applicant. The notification period concluded on 5 May 2017 and this report was finalised prior to this date. Any submissions received will be detailed at the determination meeting.

Submissions from public authorities

Nil.

2.10 SECTION 79C 1(E) THE PUBLIC INTEREST

Approval of the development in the manner proposed would not serve the public interest.

3. CONCLUSION

The proposed development has been assessed with regard to the relevant prescribed matters for consideration outlined in Section 79C(1) of the Environmental Planning & Assessment Act 1979. The proposed development is permissible with consent and is generally consistent with the objectives of the B3 Commercial Core however there are significant development departures evident including of particular concern the significant exceedance of the site's allowable floor space ratio. The development also is not satisfactory when considered in light of the matters for consideration prescribed by Clauses 7.3 (flood planning) and 7.18 (design excellence) and on these grounds alone is unable to be supported. Further, the development does not appropriately respond to the design principles espoused in SEPP 65 nor does it address in full the requirements of the ADG. Whilst some

of the initial concerns raised by the Design Review Panel in its review of earlier iterations of the development have been resolved in part through the amended plans supplied, there are numerous matters remaining unresolved and some concerns arising through the plan amendments made.

The proposal exhibits various non-compliances in respect of the controls contained in the DCP which further bring into doubt the suitability of the development. Particular concerns relate to the building's non-compliant side boundary setbacks, lack of provision for on-site servicing, poor streetscape treatment and lack of due regard for potentially significant constraints including flooding. It is important to note that the building form may need to be amended considerably to account for proper flood mitigation.

The applicant has been provided with ample opportunity to respond to the concerns of Council and the Design Review Panel and has not attended to all of the required matters and has not provided crucial information to determine the appropriateness of the building having regard to flooding. The development in the form presented is unable to be supported and the application should be refused.

4. RECOMMENDATION

It is recommended that the Joint Regional Planning Panel refuse DA-2016/1073 pursuant to Section 80(1) of the Environmental Planning & Assessment Act 1979 for the following reasons:-

1. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the development is not acceptable when evaluated having regard to the design quality principles outlined in Schedule 1 of State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide.
2. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposal does not satisfy the relevant design criteria objectives of the Apartment Design Guide, particularly in regards to public domain interface; visual privacy; pedestrian access and entries; vehicle access; bicycle and car parking; solar and daylight access; natural ventilation; private open space and balconies; acoustic privacy; facades; universal design; mixed use; waste management and communal open space.
3. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development does not comply with Clause 4.4A of Wollongong Local Environmental Plan 2009. The applicant has not provided a written request adequately addressing the matters required to be demonstrated by Clause 4.6(3), and consent cannot be granted. In addition, Council is not satisfied that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.
4. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development does not satisfy the building separation requirements of Clause 8.6 of Wollongong Local Environmental Plan 2009. The applicant has not provided a written request adequately addressing the matters required to be demonstrated by Clause 4.6(3), and consent cannot be granted. In addition, Council is not satisfied that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.
5. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979, Council cannot be satisfied of the various matters required to be considered, as prescribed by Clause 7.3(3) – Flood Planning of Wollongong Local Environmental Plan 2009.
6. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979, in the opinion of Council, the proposed development does not exhibit design excellence and therefore consent cannot be granted pursuant to Clause 7.18 of Wollongong Local Environmental Plan 2009.
7. In accordance with Section 79C(1)(a)(iii) of the Environmental Planning & Assessment Act 1979, the proposed development does not comply with the provisions of Wollongong Development Control Plan 2009 in a number of areas:-

7.1 Chapter C5 Child Care Centres

- i. Clause 7.4.7 as no nappy change areas have been shown on the plans;
- ii. Clause 7.5 Outdoor Areas – in that only one (1) sandpit has been provided for all age groups; there is nothing physically separating the individual play areas for the

various age groups; and the insufficient provision of impermeable roof structure to the outdoor areas to allow its use during inclement weather;

- iii. Clause 7.6 – Car Parking, Access and Pedestrian Safety – in that an inadequate number of pram parking spaces has been provided to service the child care centre; the lack of on-site waste collection and the requirement for any waste collection to occur outside of nominated business hours to minimise potential vehicular and pedestrian conflicts.
- iv. Clause 7.9 - Fencing and Gates – in that the plans do not make provision for two consecutive gates or doors to prevent unauthorised exit from the child care centre;
- v. Clause 7.13 – Visual and Acoustic Privacy – in that there has been no acoustic report provided to demonstrate that noise from the child care centre's operations will not adversely impact on residents, particularly given that the proposed hours of operation extend outside of normal operating hours.
- vi. Clause 7.14 - Accessibility & Mobility for People with a Disability – in that the raised outdoor plays areas can only be accessed via stairs which does not provide for equitable access.

7.2 Chapter D13 Wollongong City Centre

- i. Clause 2.5 of Chapter D13 - in relation to side building setbacks and building separation.
- ii. Clause 2.6 of Chapter D13 (Mixed used buildings) – due to the lack of clearly demarcated residential entries from the public street and clearly separate and distinguished commercial and residential entries; lack of detail in relation to appropriate security access controls; and concerns regarding the safety of users within the basement;
- iii. Clause 3.1 of Chapter D13 (Pedestrian Amenity) – in relation to the excessive width of the driveway and potential impacts arising from on-street waste collection;
- iv. Clause 3.3 of Chapter D13 (Active street frontages) – in relation to the proportion of frontage of the development comprising glazed commercial shopfront and residential lobbies occupying less than 50% of the street frontage and excessive dominance of the frontage of the building by the wide driveway, number of egress points and services;
- v. Clause 3.4 of Chapter D13 (Safety and security) – in relation to lack of detail in regards to proposed security access controls between the commercial and residential uses; concerns regarding the safety of users within the basement having regard to the configuration and location of the lift lobbies; and potential concealment opportunities in the front façade of the building;
- i. Clause 3.6 of Chapter D13 (Vehicular footpath crossings) in relation to the excessive width of the footpath crossing;
- ii. Clause 4.2 of Chapter D13 (Pedestrian access and mobility);
- iii. Clause 4.3 of Chapter D13 (Vehicular driveways and manoeuvring areas) in regards to the width of the driveway;
- iv. Clause 4.5 of Chapter D13 (Site facilities and services) - in relation to lack of on-site waste collection and concerns regarding the appropriateness of accommodating only a small rigid vehicle within the site for delivery and servicing purposes having regard to the nature of uses within the use and the scale of the development.

7.3 Chapter E1 - Access for People with a Disability:-

- i. Universal access is not provided to the ground floor of the development.
- ii. There does not appear to be compliant or practical disabled persons' access from the nominated disabled persons' car parking spaces to the lifts, particularly

within Basement 1 where users will need to cross the travel aisle then travel along a series of narrow corridors and through doorways to access the lift lobby.

- 7.4 The development fails to comply with the provisions within Chapter E2: Crime Prevention Through Environmental Design in some areas.
 - 7.5 The development fails to comply with the provisions within Chapter E3 - Car Parking, Access, Servicing/Loading Facilities and Traffic Management with regard to servicing and waste collection.
 - 7.6 The development fails to comply with the provisions within of Chapter E7: Waste Management in that the development does not make provision for on-site waste collection. The waste management arrangements proposed do not comply with the requirements of Chapters E3 and E7. On-site servicing should be available within a development of this scale.
 - 7.7 The development fails to comply with the provisions within Chapter E13 – Floodplain Management.
 - 7.8 The development fails to comply with the provisions within Chapter E14 - Stormwater Management.
 - 7.9 The development fails to comply with the provisions within of Chapter E15: Water Sensitive Urban Design in that a Water Sensitive Urban Design concept plan and report prepared in accordance with the requirements of Chapter E15 has not been supplied demonstrating compliance with the stormwater quality objectives and requirements of the DCP.
8. In accordance with Section 79C(1)(b) of the Environmental Planning & Assessment Act 1979, inadequate provision has been made for waste management & deliveries. This will have an impact on the amenity of the streetscape, the pedestrian footpath and will preclude on-street parking in front of the site during collection times, which are likely to be frequent having regard to the nature of uses and scale of the development.
 9. In accordance with Section 79C(1)(b) of the Environmental Planning & Assessment Act 1979, the application has not been accompanied by sufficient information to enable a full and proper assessment of its impacts in relation to flooding and stormwater management. The development may have adverse impacts on flooding in the locality and may not have been appropriately designed with regard to flood mitigation, potentially subjecting the building and its occupants to risk.
 10. In accordance with Section 79C(1)(c) of the Environmental Planning & Assessment Act 1979, the suitability of the site for the development having regard to potential flooding is unknown due to the lack of supporting information provided in relation to flooding.
 11. In accordance with Section 79C(1)(e) of the Environmental Planning & Assessment Act 1979, having regard to the above matters, the development represents an over-development of the site and approval of the application would not be in the public interest.

5. ATTACHMENTS

- 1 Plans
- 2 Aerial photograph and WLEP 2009 zoning map
- 3 Apartment Design Guide Assessment
- 4 Most recent design review
- 5 Wollongong DCP 2009 Assessment