

JOINT REGIONAL PLANNING PANEL

(Southern Region)

JRPP No	2016STH025
DA Number	DA-2016/1354
Local Government Area	Wollongong City
Proposed Development	Demolition of existing structures and construction of a shop top housing development containing 203 residential apartments, two (2) levels of commercial/retail floor space, four (4) basement parking and servicing levels and associated landscaping and services
Street Address	43 - 45 Atchison Street and 40 – 46 Kenny Street, Wollongong & a 10m wide section of the Ellen Street road reserve which is subject to a road closure application nearing completion
Applicant/Owner	<p>Applicant – Mark Dillon, BHI Architects; Owner – Astypalea Investments Pty Ltd</p> <p>Council remains the landowner of the portion of the Ellen Street road reserve which is in the process of being closed and acquired by the developer to form part of the development site.</p>
Number of Submissions	<p>The application has been notified on two occasions. During the initial notification period there were five (5) submissions objecting to the proposal and one submission in support of the proposal from Neighbourhood Forum 5.</p> <p>Following the second notification period there were five (5) submissions (objections) received.</p>
Regional Development Criteria (Schedule 4A of the Act)	Clause 3, Schedule 4A of the Environmental Planning & Assessment Act 1979; general development over \$20 million. The applicant's CIV estimate for the project is \$83,518,428
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; § 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 2009 <p><u>Other policies</u></p> <ul style="list-style-type: none"> § NSW Apartment Design Guide § Wollongong Section 94A Development Contributions Plan 2017

	<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) § Draft SEPP (Coastal Management) 2016 List any relevant development control plan: s79C(1)(a)(iii) Wollongong Development Control Plan 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) Nil List any coastal zone management plan: s79C(1)(a)(v) Nil List any relevant regulations: s79C(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288 Clause 92 matters for consideration being AS 2601-1991 in respect of any demolition works and the NSW Coastal Policy.
List all documents submitted with this report for the panel's consideration	<p>Architectural plans by BHI Architects</p> <p>Landscaping plans by Taylor Brammer Landscape Architects</p> <p>Stormwater plans and flooding documentation by Cardno</p> <p>Planning documents by Cardno</p> <p>Traffic Impact Assessment by Cardno</p>
Recommendation	It is recommended that DA-2016/1354 be determined by way of a deferred commencement consent subject to the conditions contained within Attachment 8 .
Report by	Theresa Whittaker, Senior Development Project Officer

Summary of s79C matters

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

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? **Yes**

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?

Yes

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

Assessment Report and Recommendation Cover Sheet

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

The proposal comprises the demolition of existing structures and construction of a *shop top housing development* containing 203 residential apartments, two (2) levels of commercial/retail floor space, four (4) basement parking and servicing levels and associated landscaping and services.

Permissibility

The majority of the site is zoned B3 Commercial Core pursuant to Wollongong Local Environmental Plan (LEP) 2009, whilst the portion of the Ellen Street road reserve to be closed to form part of the development site is zoned B6 Enterprise Corridor. The proposal is categorised as a *shoptop housing development* and is permissible in both zones with development consent.

Consultation

The proposal was notified in accordance with Council's Advertising & Notification Procedures on two occasions. There were 6 submissions received following the initial notification period (five objections and one in support of the proposal) and 5 submissions (all objections) received following the second notification period. The concerns raised are discussed in Section 2.9 of this report.

Main Issues

The main issues arising from the assessment pertain to:-

- Flooding and stormwater management matters. The site is located within a medium flood risk precinct and without appropriate management will potentially impact on neighbouring and nearby land. The proposal as amended now satisfactorily resolves earlier concerns raised in relation to flooding and stormwater management;
- Development departures are sought in respect of building height (Clause 4.3 of WLEP 2009), Floor Space Ratio (Clause 4.4 of WLEP 2009) in respect of the B6 zoned portion of the site and building separation (Clause 8.6) of Wollongong Local Environmental Plan (LEP) 2009 in relation to the northern boundary of the site for that part of the site abutting 41 Atchison Street) and between Blocks A and B;
- Split land use zoning and road closure;
- Design quality. The proposal has been considered by the Design Review Panel on numerous occasions prior to and following lodgement of the development application. The proposal as revised is now satisfactory to the Panel. The main issues arising from objections pertain to: -
 - Impacts on adjoining church and childcare operations
 - Overshadowing
 - Traffic/parking
 - Bulk and scale
 - Construction impacts

RECOMMENDATION

It is recommended that DA-2016/1354 be determined by way of a deferred commencement consent subject to the conditions outlined in **Attachment 8**.

1. APPLICATION OVERVIEW

1.1 PLANNING CONTROLS

The following planning controls apply to the development:

State Environmental Planning Policies:

- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy No.65—Design Quality of Residential Apartment Development
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No. 55 – Remediation of Land

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 2017

1.2 PROPOSAL

The proposal comprises the following:

1. Demolition of existing structures;
2. Construction of a mixed use development comprising:-
 - Four (4) basement levels accommodating car parking, servicing, plant rooms, bicycle and residential storage rooms, waste storage, loading zones, a building management office and storage for the supermarket. Access to the loading zone will be obtained from the Kenny Street frontage of the site whilst access for all domestic vehicles to the residential and commercial car parking areas will be obtained from the Atchison Street frontage of the site.
 - Ground floor retail space comprising a supermarket fronting Kenny Street, a deli/ café; and five other retail tenancies primarily fronting Ellen Street. A number of residential lift lobbies and 2 commercial lobbies are proposed along with a pedestrian arcade which traverses part of the site with access from the Atchison Street frontage. Ramps and lifts will provide access from the retail level to the car park below. The building will be setback from the street edge at this level with a generous pedestrian walkway to be provided along the street frontages of the site. The walkway will be elevated above the flood levels and will be ramped to follow the site levels, with stairs and a ramp providing access to the walkway from footpath level.
 - The first floor will be occupied principally by commercial space inclusive of large office spaces, a medical centre, medical imaging premises, and a gym/ fitness centre. A large atrium at this level will allow light to penetrate into the ground floor of the development over the pedestrian arcade.
 - Two towers housing the residential units. A total of 203 residential units are proposed. One longer 17 storey tower will be orientated towards the east, fronting Kenny Street. 15 storeys of this tower (above the commercial podium) will be occupied by residential units and there will be rooftop garden areas. The second tower will be positioned along the western side of the site fronting Ellen and Atchison Street. This will house residential units over 15 storeys with a rooftop garden area. Two levels of residential units will be accommodated in a shorter link building between the two towers, with frontage to Ellen Street.

- A large landscaped communal open space area will be provided on the northern side of the towers, accommodating a swimming pool, deck, paved and landscaped areas, a sauna, change rooms, and a BBQ with pergola. The rooftop communal open space areas will offer outdoor kitchens with BBQs, entertaining/ dining areas and passive recreation space. The two topmost rooftop gardens on the towers will include community food gardens.
- Public domain works inclusive of street tree planting will be required to the street frontages of the site in accordance with the requirements of the Wollongong City Centre Public Domain Technical Manual.
- Services inclusive of fire control rooms and a substation are proposed to be accommodated within the ground floor of the building.

The site is situated within a medium flood risk precinct which has necessitated raising the ground floor level of the building for flood mitigation reasons. The level changes required to lift the floor levels for flood proofing reasons have been accommodated within the site, with an elevated pedestrian walkway providing access around the base of the building along the length of the three street frontages of the site. Level thresholds will be available to each of the ground floor retail spaces, arcades, commercial and residential lobbies, with lift access available throughout each of the towers.

An awning is proposed to extend over most of the length of the pedestrian walkway but not across the public footpath.

Each of the residential units will be provided with private open space in the form of balconies and terraces while there are also a number of communal open space areas throughout the development.

The development will accommodate 203 residential units, with a mixture of unit types proposed including adaptable dwellings. The unit mix is as follows:

Unit type	Number	Proportion (%)
Studio	22	10.8%
1 BR	69	34%
2 BR	50	24.6%
3BR	58	28.6%
4 BR	4	2%

No stratum or strata subdivision is proposed at this time.

Consolidation of the allotments and closure of the portion of the Ellen Street road reserve will be required to facilitate the development.

1.3 BACKGROUND

Development History

There is a large volume of development and building consents over the subject parcels which are listed in the table at **Attachment 9**. No records of any recent approvals.

The site has been used for a variety of principally retail and commercial purposes inclusive of a large fruit shop/ deli/ supermarket, warehouse, metal workshop, existing single dwelling and existing hardstand car parking areas. A preliminary site investigation submitted with the Development application identifies the range of land uses occupied on the site since approximately 1935-1940s. The potentially contaminating activities which were known to have or may have occurred on the site are discussed in greater detail below in relation to SEPP 55.

Pre-lodgement meetings

A formal pre-lodgement meeting was held for the proposal on 13 May 2016 (PL-2016/54).

Design Review Panel

The applicant met with the Design Review Panel on 2 occasions prior to finalising the plans and lodgement of the DA submission, on 7 February and 10 May 2016 (DE-2016/12). Three further design review panel meetings were held post lodgement on 11 November 2016, 28 February 2017 and most recently on 1 September 2017.

Customer service actions

There are no outstanding customer service requests of relevance to the development.

Road closure

Council's Property Division is in the process of closing a portion of the Ellen Street road reserve on the northern side of the road. This includes a portion of the road reserve to the immediate south of the existing holding which is proposed to be acquired by the developer. The development extends into this land. A copy of the proposed plan of road closure forms **Attachment 4**.

Council resolved to close this portion of the road reserve at an ordinary meeting of Council on 24 May, 2011 (Council ref: CM63/11). This facilitated purchase negotiations however the sale did not proceed at that time.

Council's Property Officer has advised that the road closure process is nearing completion. The draft Section 88B instruments are awaiting signature of 2 outstanding servicing authorities after which the road closure plan and instruments will be forwarded to Crown Lands for registration and gazettal. Upon closure of the road, it will become operational land and can be acquired. The sale of the proposed road closure allotment to the developer has been negotiated and agreed upon.

1.4 SITE DESCRIPTION

The subject site comprises 5 allotments and a 10m strip of the Ellen Street Road reserve, as outlined above. The site is generally L shaped, is generally flat and has three direct road frontages, being Atchison Street to the west, Ellen Street to the south and Kenny Street to the east.

The landholdings are legally described as follows:

- Lot 82 DP 842265
- Lots 25 and 26 DP 745523
- Lots 26 and 27 Sec 2 DP 979376
- Draft Lots 103 and 104 of the Ellen Street Road reserve

The site, inclusive of the proposed road closure allotment, has a combined area of 6421sqm.

The site is currently occupied by a range of mixed residential, commercial and industrial uses including a fruit market / supermarket and warehouse on 40-46 Kenny Street; a residential dwelling on 43 Atchison Street and a metal workshop on 45 Atchison Street. All existing buildings are proposed to be demolished to facilitate construction of the proposed development. There are also a number of trees proposed to be removed inclusive of trees within the Ellen Street road reserve.

The site is located within the southern part of the city centre, with the above 5 allotments being located within the area identified in WLEP 2009 as the Wollongong City Centre. These allotments are zoned B3 Commercial Core as is land to the north, west and east. The road reserve and land to the south is zoned B6 Enterprise Corridor and is located outside of the identified Wollongong City Centre.

To the immediate north of the site exists a child care centre, a residential house and commercial/institutional properties being a chicken store and the Greek Orthodox Church. To the south there are commercial and industrial developments including the Salvation Army and a metal

Workshop, while the east and west there are a variety of commercial and light industrial activities.

Aerial photographs of the site and locality, zoning extract and a copy of the deposited plan are provided at **Attachment 3** to this report.

Property constraints

- Council records identify the land as being located within a medium flood risk precinct;

- 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 affecting the land which would preclude the development.

1.5 CONSULTATION

1.5.1 INTERNAL CONSULTATION

Geotechnical Engineer

Council's Geotechnical Officer has reviewed the application and supporting documentation inclusive of a geotechnical report prepared by Coffey Geotechnics and has provided a satisfactory referral. A number of specific conditions were recommended for imposition, these are included in those listed at **Attachment 8**.

Stormwater Engineer

Council's Stormwater Officer has reviewed the application with regard to relevant provisions of Wollongong LEP and DCP 2009 and has provided a satisfactory referral. A number of specific conditions were recommended for imposition, these are included in those listed at **Attachment 8**.

Landscape Architect

Council's Landscape Officer has reviewed the application and provided a satisfactory referral. Conditions of consent were recommended for imposition and these are included in those provided at **Attachment 8**.

Traffic Engineer

Council's Traffic Officer has reviewed the application and provided a satisfactory referral. A number of consent conditions were recommended for imposition; these are included in those listed at **Attachment 8**. These include deferred commencement conditions in relation to the management of the loading dock as the loading dock ramp has insufficient width to allow two larger vehicles to pass. Conditions are recommended requiring a signal to be provided at the entry of the loading dock ramp to indicate whether the dock is occupied, coupled with a management plan to ensure property forward planning of deliveries to minimise the likelihood of larger vehicles standing on the public road awaiting entry to the dock.

Heritage Officer

The subject site does not contain a heritage item nor is it located within a heritage conservation area. The development is however located within the vicinity of a row of heritage listed homes at 48-56 Atchison Street. Council's Heritage Officer has reviewed the application in accordance with Clause 5.10 of the Wollongong LEP 2009 and with respect to Chapters E10 and E11 of Wollongong DCP 2009.

Whilst the proposal is a very large development, due to the distance between the sites the proposal is not considered to have any significant heritage impact.

The proposal also involves the excavation of basement car parking across the site. A review of Council's files has not indicated a likelihood of the site containing significant archaeological evidence relating to either the European or Aboriginal history of the area. There are therefore no additional archaeological requirements relevant to the proposed development.

The proposed development is therefore considered to be satisfactory from a Heritage Perspective.

No specific conditions were recommended for imposition.

Health Officer

Council's Health Officer has reviewed the application and provided a satisfactory referral. A number of consent conditions were recommended for imposition in relation to the design and construction of food premises within the development. These are included in those listed at **Attachment 8**.

Environment Officer

Council's Environment Officer has reviewed the application and given a satisfactory referral subject to conditions of consent. It is noted that the assessment involved reviews of the SEE, Phase-1 site investigation prepared by Coffey Consultants; the Site auditor's Interim Advice prepared by David

Gregory, EPA accredited site auditor; WSUD report prepared by Cardno and the applicant's Hazardous Material Survey prepared by P Clifton & Associates.

A number of environmental conditions were recommended for imposition. These included conditions in relation to the following:-

- Requirement for a Site Validation Report and Site Audit Statement prior to the construction of the buildings. The validation report shall verify that:
 - all site remediation works have been satisfactorily completed;
 - the site is not affected by any soil strata and/or groundwater table contamination, above NSW EPA threshold limit criteria; and
 - the site is rendered suitable for the proposed development.
- The submission of a site audit statement (SAS) and site auditor's report (SAR) is required from an accredited auditor pursuant to the provisions of Part 4 of the Contaminated Land Management Act 1997 confirming that the site has been satisfactorily remediated and is suitable for the proposed development. The SAS and SAR must be submitted to Council.
- Requirement for a detailed Site Assessment Report and Remediation Action Plan under the CLM Act 1997 - to assess the nature and volumes of soil contamination and identify areas of environmental concern (AEC). Based on the Stage-II assessment report a stage III (remediation action plan - RAP) must be prepared so that site can be made suitable for proposed development. The Stage II and III reports must be prepared as per the Guidelines for Consultants Reporting on Contaminated Sites, published by NSW Office of Environment & Heritage. August 2011.

Conditions in relation to all of these matters are contained within those listed at **Attachment 8**.

Community Safety Officer

Council's Community Safety Officer has reviewed the development and has provided a satisfactory referral. It was noted that the application was supported by a comprehensive CPTED report and it was recommended that all the CPTED report recommendations be implemented. Conditions are recommended to this effect.

1.5.2 EXTERNAL CONSULTATION

NSW Roads & Maritime Services (RMS)

The proposal was referred to the NSW RMS for comment as required by Clause 104 of State Environmental Planning Policy (Infrastructure) 2007. The RMS responded on 1 November 2016 and advised that it has no objection to the development in principle. RMS noted that all access is directly via the local road network and the development is not considered to greatly impact on the classified road network. The amendments to the plans did not warrant re-referral to RMS.

Endeavour Energy

The proposal was referred to Endeavour Energy for comment however no response was provided. The proposed development makes provision for a substation and conditions have been imposed in line with the "Cumberland Protocol" developed by Endeavour Energy. The protocol provides a framework for affected Councils and Endeavour Energy to ensure that potential impacts of electricity substation development are considered and addressed at a preliminary design stage, either prior to or during the development application process, before development consent is granted.

Sydney Water

A satisfactory response was received from Sydney Water who advised that the trunk water and waste water systems are available for connection to the site. The drinking water main may require amplification to service the proposed development. Formal requirements will be determined as part of the Section 73 application. Conditions of consent have been recommended for imposition and these are included in the recommended conditions at **Attachment 8**.

2. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

SECTION 79C ASSESSMENT

(1) Matters for consideration—general

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

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

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

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

7 Contamination and remediation to be considered in determining development application

The proposal involves a change of use and accordingly the provisions of Clause 7 of the SEPP are triggered. In accordance with Clause 7(2), Council has considered a preliminary site investigation (PSI) of the land carried out in accordance with the requirements of the Contaminated Land Planning Guidelines. The applicant provided a Phase 1 contamination assessment (PSI) in relation to the site, prepared by Coffey Geotechnics Pty Ltd as required by Clause 7(3) of the SEPP. The application was also accompanied by interim advice from an EPA Accredited Site Auditor. The findings of the PSI are discussed below.

The PSI identified the following relevant (summarised) site history:-

Site history information indicated that prior to 1948 a sheet metal workshop operated in the south-western corner of the site, a residential house in the north-western corner and several smaller structures (likely residential use) were present in other parts of the site. Since 1948, the metal workshop and residential house remained relatively unchanged until the present time, with the exception of some extensions and demolitions noted to the east. In the 1960s, commercial redevelopment commenced within eastern portion of the site, starting with a fruit and vegetable market (prior to 1963) and then a vehicle mechanic, tyre repairer and auto electrician (post 1963).

Several previous environmental assessments occurred at the site between 1994 and 2007. Three former underground storage tanks and associated bowers were noted to be on the site, one was removed and validated within No. 44-46 Kenny Street in 2007. Bonded ACM was observed on the eastern side of 43 Atchison Street in a previous investigation. Based on the observations made during the site walkover and site history information, potential contaminating activities were identified across the site associated with of the following:

- Leakages from former fuel storage and mechanical workshop infrastructure;
- Fill materials of unknown origin and quality;
- Weathering of hazardous building materials from former and existing buildings on site; Suspected bonded ACM potentially present on the ground surface at Atchison Street;

Use and storage of chemicals/lubricants within the workshop; and Storage of various unknown materials outside of existing and former structures, depending on the exact activities carried out. The PSI concludes that it is unlikely that these potential soil contamination sources would not be able to be adequately managed / removed through the proposed development as it includes excavation of a multi-level basement car park, subject to further assessment. Further soil and groundwater assessment is required to assess the contamination status of the site prior to and during the development.

It is noted that the Interim Advice from the site auditor suggests that the site can be made suitable for the proposed development given the following aspects of the development:

- The development will see the entire site excavated to a depth of 11.5m below surface;
- The lower four floors are parking basements that will require engineered ventilation
- The ground floor and first floor are proposed for non-sensitive uses (commercial); and
- Other than potential exposure to chemical vapours that may intrude into the basement, there will be no other route of contaminant exposure to site users. There are many methods to manage vapour intrusion that can be considered should the condition exist.

The findings of the PSI have been closely considered by Council's Environmental Officer who considers, pursuant to Clause 7(3), that a detailed site investigation is not required to be provided in support of the application, however a number of conditions have been recommended for imposition requiring a detailed investigation and remediation work following that if required.

In accordance with Clause 7(1)(b), the land is expected to be contaminated having regard to the site history and investigations reported in the PSI and accordingly Council must be satisfied that the land is suitable after remediation for the purpose for which development is to be carried out. It is considered, on the basis of the PSI and the Site Auditor's interim advice, that the site will be suitable for the proposed development following remediation. A number of conditions of consent have been recommended (see **Attachment 8**) to this effect.

Pursuant to Clause 7(1)(c) of the SEPP, if any remediation is required to render the site suitable for the purpose proposed, the remediation must be carried out before the development commences use. The relevant recommended consent conditions ensure compliance with Clause 7(1)(c) will be achieved.

2.1.2 STATE ENVIRONMENTAL PLANNING POLICY NO. 64 – ADVERTISING AND SIGNAGE

There are no specific signs proposed in this application. Any signage will require separate development consent in the event such signage is not exempt development.

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

The provisions of the SEPP apply as the development includes a 'residential flat building', is more than 3 storeys in height and comprises more than 4 dwellings.

The application was accompanied by a statement by a qualified designer in accordance with Clauses 50(1A) & 50(1AB) of the Environmental Planning and Environment Regulation 2000.

Clause 28 provides that the application must be referred to the relevant design review panel (if any) 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):

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

The proposal has been reviewed by a Design Review Panel (DRP) convened for the purposes of the SEPP as outlined above in Section 2.5.2 of this report. This proposal was previously considered by the DRP prior to its lodgement on two occasions on 7 February 2016, 10 May 2016 (DE-2016/12). It was also considered post lodgement in its original iteration on 11 November 2016, 28 February 2017 and most recently on 1 September 2017 following amendment. At each of the meetings prior to the most recent, the Panel made a number of detailed urban design and architectural recommendations, which have progressively influenced the design outcome proposed in the current application. At the meeting of 28 February, the DRP recommended that the best way to assist the architect in addressing the Panel's ongoing concerns would be to have the scheme peer reviewed by an urban designer.

At its last meeting on 1 September 2017, the DRP considered the revised scheme and peer review and advised that the development is now satisfactory with regard to design excellence (Clause 7.18 of WLEP 2009) and with regard to the design quality principles of SEPP 65:-

“The Panel is delighted that – apart from some easily amended items and detail resolution of overland flow - the scheme is now well resolved, achieving “design excellence” and should make a valuable contribution to the locality.”

The following minor outstanding issues were identified by the Panel:

Table 1: Outstanding architectural issues and the applicant's response

Outstanding issues and suggested amendments:	Applicant response:	Resolved?
1. the heavy pillars along the steps should be removed and replaced with simple steel handrails (as suggested by the peer review urban designer)	The concrete pillars which allowed for stepping of stairs across the site and mounting of handrails have been replaced by small concrete plinths that deal with the level change, with open steel handrails so as to not obstruct views to the building from the public domain.	Yes
2. the heavy decorative piers along the internal face of the loggia are superfluous and often clash with the internal columns. The Panel believes that 850 – 1200mm face brick panels between glazing parallel to the street frontage will suffice. The brick panels should be coordinated with the internal column layout and external loggia; this may suggest a range of opening widths, which is fine.	The protruding columns that encroached into the pedestrian pathway have been removed and replaced by expressed brick panels which align with the brick panels in the residential podium above. This serves to ground the podiums where possible and integrate them with the overall building so that they are not perceived as floating masses separate from the commercial uses below.	Yes
3. The large void south of unit C407 (and below and above) appears like an error. The Panel suggests that square single or duplex units are inserted on each level to resolve this space. To resolve privacy issues, its east facing façade should not be further east than the glass	The identified void has been removed and filled with with 2 storey apartments. All privacy measures suggested by the Panel have been incorporated in the design of these apartments.	Yes

line of unit C407 (and below and above) and the bedroom to unit C408 (and below and above) should be pushed out into balcony and face east only. These changes must not push GFA over the density requirements for the site.		
4. To live up to the aspirations of the perspectives and to reflect honesty of materials, hardwood battens should be used on porch soffits. Timber composite sheet can be shiny and NOT natural looking (as often suggested) and would create a disappointing outcome. Although the soffit is a relatively small surface area, it will have immense impact on the whole.	The intent of the apartment balcony soffits is to express the timber materiality as suggested by the Panel. It is acknowledged that timber composite materials may not achieve the desired aesthetic in the constructed building.	Yes
5. The Panel was advised by Council's hydraulic engineer that the south-west corner steps may impede cross site flow. Therefore, open space under the steps must be provided to ensure that water flow can continue at street level. This may require the reallocation of detention elsewhere. To successfully resolve this issue, it is advisable to speak to Council ASAP.	Council's Stormwater Engineer has advised that this issue has been resolved.	Yes
6. An effective way of closing treads to vermin while allowing flood water to penetrate is still required. An automatically opening flap may be the way forward; council engineers know one such system. Treads and risers must be coordinated to achieve durable and beautiful finish.	<p>Cardno's Water Cycle Management Study dated 23rd June, Appendix H – Flood Channel Maintenance Plan states the following:-</p> <p>"Sufficient space for safe access is provided by the manhole entry and is maintained within the flood void. The safe access points allows maintenance staff to remove gross pollutants and for the management of vermin (if required)... A 50mm mesh will be installed to the rear of the openings within the stair case to further reduce the potential for litter and organic material to enter the flood void."</p> <p>The applicant has indicated that the above maintenance strategy has been included in the last three iterations of the Water Cycle Management Study reviewed by Council, without further comment on this issue. The proposed maintenance plan adequately addresses the concerns of the DRP. The DRP's concerns and</p>	Yes, with conditions

	suggestion pertains to the aesthetics of the proposed system. It is suggested in this regard that a condition be imposed requiring the submission of details of the system for Council approval prior to the issue of a Construction Certificate.	
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All outstanding matters identified by the DRP have been resolved by the most recent plans submitted. 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)(a) of the Policy and are discussed below.

Principle 1: Context and neighbourhood character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

The neighbourhood is one in transition, with a character changing as some nearby sites are redeveloped. The existing character of development in the locality is highly variable, with a combination of development types, scale and character evident. The site is positioned on the southern periphery of the Wollongong city centre and crosses the B3/ B6 zone boundary at the edge of the city centre area which is also the boundary at which there is a significant change in allowable building heights and densities. The development is significantly taller and larger than most others in the vicinity though there are a number of applications for nearby sites either approved and yet to be constructed or under consideration which, if approved, will alter the landscape significantly in line with the desired future character of the city centre.

The proposal is considered to be consistent with the desired future character of the commercial core of the Wollongong City Centre identified through the development standards and controls applicable to the land. The DRP considers that the proposal is a well resolved scheme. The DRP also noted that previous advice has been heeded providing a good outcome.

Principle 2: Built form and scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

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

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

The locality is one undergoing transition as is evidenced by the mix of development types and scales in proximity of the site. There are 2 other significant shoptop housing developments under consideration in close proximity of the site also with frontage to Atchison Street which are also taller and larger than most existing buildings but are generally consistent with applicable planning controls.

The bulk and scale of the development is consistent with the applicable planning controls for the area inclusive of building height, floor space ratio, street frontage heights, building setbacks and other built form controls with the exception of the portion of the development occupying the road reserve portion to be closed. It is anticipated that other allotments fronting Ellen Street to be consolidated with closed road allotments will adopt similar setbacks, allowable heights and densities to that provided for within the B3 zone (subject to individual site circumstances). On the basis of these considerations, the development is not considered to be out of context with regard to the desired future character of the area.

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

Further, the DRP advised that the built form and scale is acceptable subject to the amendments described above in Table 1 which have been incorporated into the plans.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

The density and height of the development overall is considered to be acceptable, noting the development departures in respect of that part of the site zoned B6. The development is not of a scale that is expected to place unreasonable strain on local infrastructure subject to augmentation. Contributions applicable to the development will go towards local infrastructure and facilities. The site is well situated with regard to existing public open space and services and residents will enjoy good amenity.

The DRP advised that the density proposed is acceptable.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes.

Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

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

- BASIX Certificates have been provided indicating minimum requirements with regard to energy and water efficiency and thermal comfort are met;
- A Site Waste Management and Minimisation Plan has been provided indicating appropriate management and disposal of any excavated materials;
- The development has been appropriately designed with regard to solar access and natural ventilation;
- The proposal will not have an unreasonable impact on any heritage items or environmentally sensitive areas;
- A water sensitive urban design strategy has been designed into the scheme; and
- The proposal is an efficient use of land in a location that is close to services and public open space.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

The proposal provides suitable landscaped areas on structure including vertical planting, 'deep soil planting' in on-structure planter beds and rooftop communal open space areas that will improve the amenity of the occupants and soften the appearance of the development from adjoining properties and the public domain. Street tree planting and footpath paving works will be required in accordance

with the requirements of the Wollongong City Centre Public Domain Technical Manual. These works are provided for on the landscape plans submitted with the application and conditions are recommended in regards to public domain works and general site landscaping matters.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

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

The proposal satisfies the requirements for solar access, private and communal open space, storage, visual and acoustic privacy, access and the like for future occupants of the development. Future occupants of the development are expected to enjoy reasonable amenity and the development will enjoy views of the ocean and coast to the east and escarpment views to the west.

In terms of off-site impacts, no nearby residences will be affected by the proposed development in terms of privacy or view loss. The development provides for generally compliant building setbacks to boundaries (with the exception of some minor variations) as required by the ADG in order to provide for equitable sharing of building separation distances with neighbouring sites when subject to future redevelopment - refer to the ADG assessment at **Attachment 5** in this regard.

In terms of solar access and overshadowing impacts, the shadow diagrams submitted with the application (which form part of **Attachment 1**) indicate lengthy shadows to the south, south-west and south-east. Given the provision of compliant setbacks and given allowable building heights and densities within the B3 Commercial Core, the extent of overshadowing impact is not considered to be unreasonable. It is noted in this regard that the overshadowing impacts of the development in terms of the length of shadow cast is not exacerbated by the exception from the height standard in respect of the B6 zoned portion of the site.

Principle 7: Safety

Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

The proposal is satisfactory with regard to safety and security and is generally consistent with the principles of crime prevention through environmental design. Refer to discussion in relation to Chapter E2 of WDCP 2009 in **Attachment 7**.

Principle 8: Housing diversity and social interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.

Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

The proposal provides a mix of unit sizes and layouts appropriate to the locality. Provision has also been made for adaptable units as per the requirements of the ADG and Wollongong DCP 2009. There are opportunities for informal social interaction within common areas including the communal open space, community gardens, lobbies, pedestrian walkways and the like.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

The proposal is considered to be of a high quality with regard to its appearance. The bulk, scale and form of the development is acceptable for the locality and a mixture of materials and finishes is provided. The bulk of the development is well resolved across the site and the buildings are suitably articulated and fenestrated. Appropriate treatment of the streetscape is proposed having regard to the desired future character of development in the locality. The proposal has been amended in response to the suggestions provided by the Design Review Panel and now demonstrates design excellence.

An assessment of the application against the Apartment Design Guide (ADG) is contained within **Attachment 5** to this report. The main areas of non-conformity with the design criteria of the ADG are as follows:

1. 3E Deep soil zones - there is no DSZ as the building will abut all boundaries of the site as is expected in the B3 Commercial Core zone. There is however extensive planting on structure. Variation to this control is considered acceptable as discussed in Attachment 5.
2. 3F Visual privacy - variation is sought in relation to the northern setback to part of the eastern tower (Block A) and in relation to the setback to the northern & western boundaries from the Level 2 communal open space. Variations are considered acceptable as discussed in Attachment 5.



Figure 1 - Extract of Level 3 floor plan with red line indicating area of ADG setback (3F Visual privacy) variation which occurs over Levels 2-5 within Block A.

2.1.4 STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

Clause 45, Division 5 Electricity transmission or distribution

The development application was referred to Endeavour Energy for comment in accordance with Clause 45 as it may involve works within proximity of electricity infrastructure.

Endeavour Energy has not provided a response. In any event, if the application were to be supported, standard conditions of consent could be imposed in regards to matters including the requirement to obtain approval from the relevant authorities for the connection of electricity and confirmation of the suitability of the substation design. Conditions have been proposed in line with the "Cumberland Protocol".

Division 17 Roads and Traffic

Clause 104

The proposed development is traffic generating development for the purposes of the SEPP. As per Clause 104(3), Council advised the NSW Roads & Maritime Service (RMS) of the application and received a response on 1 November 2016 advising that it had no objection to the development in principle. The amended plans did not require re-referral to the RMS.

Additionally, Council must take into account the accessibility of the site concerned, including (a) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and (b) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail. Council must also consider any potential traffic safety, road congestion or parking implications of the development. These matters have been considered in detail by Council's Traffic Section and the proposal is considered to be satisfactory with regard to these matters.

2.1.5 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.

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

The development has a capital investment value of more than \$20 million and accordingly the application is required to be determined by the Joint Regional Planning Panel pursuant to Clause 3 of Schedule 4A to the Environmental Planning & Assessment Act, 1979.

2.1.7 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map (see Attachment 3) identifies the land as being zoned largely **B3 Commercial Core**. The portion of the Ellen Street road reserve to be closed and consolidated to form part of the development site is zoned **B6 Enterprise Corridor**.

Clause 2.3 – Zone objectives and land use table

The objectives of the B3 zone are as follows:-

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To strengthen the role of the Wollongong city centre as the regional business, retail and cultural centre of the Illawarra region.

- To provide for high density residential development within a mixed use development if it:
 - (a) is in a location that is accessible to public transport, employment, retail, commercial and service facilities, and
 - (b) contributes to the vitality of the Wollongong city centre.

The proposal is satisfactory with regard to each of the above objectives.

The land use table permits the following uses in the **B3** zone:-

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** and is permissible in the B3 zone with development consent.

The objectives of the B6 zone are as follows:-

- To promote businesses along main roads and to encourage a mix of compatible uses.
- To provide a range of employment uses (including business, office, retail and light industrial uses).
- To maintain the economic strength of centres by limiting retailing activity.
- To encourage activities which will contribute to the economic and employment growth of Wollongong.
- To allow some diversity of activities that will not:
 - (a) significantly detract from the operation of existing or proposed development, or
 - (b) significantly detract from the amenity of nearby residents, or
 - (c) have an adverse impact upon the efficient operation of the surrounding road system.

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

The land use table permits the following uses in the **B6** zone:

Advertising structures; Bulky goods premises; Business premises; Car parks; Centre-based child care facilities; Community facilities; Depots; Entertainment facilities; Environmental facilities; Garden centres; Hardware and building supplies; Heavy industrial storage establishments; Hotel or motel accommodation; Industrial retail outlets; Landscaping material supplies; Light industries; Office premises; Passenger transport facilities; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (indoor); Recreational facilities (outdoor); Registered clubs; Respite day care centres; Roads; Service stations; Serviced apartments; Sex services premises; **Shop top housing**; Storage premises; Take away food and drink premises; Timber yards; Transport depots; Truck depots; Vehicle sales or hire premises; Veterinary hospitals; Warehouse or distribution centres

The proposal is categorised as a **shop top housing development** and is permissible in the B6 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.

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

There are a number of buildings on the site to be demolished to facilitate the construction of the proposed development. Consent is sought for this work pursuant to Clause 2.7.

Part 4 Principal development standards

Clause 4.3 Height of buildings

This clause prescribes a maximum height of 60 metres for the B3 zoned portion of the Site and a 9m height limit for the B6 zoned portion of the site, as shown on the Height of Buildings Map, an extract of which is provided Attachment 3.

The proposal has a maximum overall height of 60m which is compliant for that part of the building located within the B3 zoned portion of the site.

A development departure is sought in respect of the height of the building on the B6 zoned portion of the site. This is dealt with below with respect to Clause 4.6.

Clause 4.4 Floor space ratio

Clause 4.4 provides for a maximum floor space ratio of 0.5:1 in respect of the B6 zoned portion of the site. The applicant has indicated that the gross floor area of the development which occupies the road closure allotment is 2963sqm (comprising 701sqm of commercial/ retail GFA and 2262sqm residential GFA). The area of the road closure allotment is 1125.9qm, resulting in a FSR of 2.632:1.

A development departure is sought in respect of this standard as the FSR of the development within the B6 zone exceeds the maximum prescribed by Clause 4.4. This is dealt with below in regards to Clause 4.6.

Clause 4.4A applies to the B3 zoned portion of the site as it is located within the B3 Commercial Core Zone within the Wollongong City Centre. Clause 4.4A is considered below.

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 4.06:1 inclusive of the area of that part of the site zoned B6.

The proposed FSR of the development over the whole site inclusive of the road closure allotments is 3.91:1 which is compliant with Clause 4.4A.

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.

The objectives of Clause 4.6 are to:-

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

This clause allows for some flexibility in the application of certain development standards in circumstances where the applicant has provided sufficient justification satisfying the provisions of Clause 4.6 and where the consent authority is satisfied of certain prescribed matters.

In this instance, departures are sought in respect of:-

1. Clause 4.3 Building Height in relation to that part of the site zoned B6 which is subject to a 9m height limit. The remainder of the site is subject to a 60m height limit and the development complies with this height limit;
2. Clause 4.4 Floor Space Ratio (FSR) in relation to that part of the site zoned B6 which is subject to a maximum permissible FSR of 0.5:1. The FSR of the development occupying the road closure allotment is 2.632:1.
3. Clause 8.6 Building Separation.

The applicant has provided a statement prepared with reference to Clause 4.6 in relation to each of the above development departures. In relation to the departures to Clauses 4.3 and 4.4 with respect to the B6 zoned land, it is anticipated that once the road is closed and becomes operational land, it will be eventually re-zoned to B3. In this scenario the development would be fully compliant with these clauses.

1. Building height:

In this instance, the applicant has sought a development departure in respect of Clause 4.3 Building Height of WLEP 2009 in relation to the height of the building located within the B6 zoned portion of the site which is subject to a height limit of 9m. The height of the building is a maximum of 60m.

The applicant has provided a request for an exception to the standard prepared in accordance with the requirements of Clause 4.6. This is attached in full at **Attachment 2** to this report.

The contravention of the development standard at Clause 4.3 is examined in terms of the prescribed matters at Clause 4.6 in the following table:-

Table 2: Clause 4.6, WLEP 2009 development departure assessment – Building Height

Development departure	Clause 4.3 Building Height – maximum height limit 9m as per the Height of Buildings map
Is the planning control in question a development standard	Yes
4.6 (3) Written request submitted by applicant contains a justification:	
(a) that compliance with the development standard is unreasonable or unnecessary in	Yes. The applicant's request contains this justification. In summary the justification relies on compliance with the height

the circumstances of the case, and	<p>limit in this instance being both unreasonable and unnecessary. The applicant's submission notes that during the preparation of the LEP, it was anticipated that the road reserve would be used for a future road. Hence, the lower order zoning, height and FSR control applied to it. Now that the proposal forms part of a contiguous site that has higher order zone, height and FSR controls, it is appropriate that these controls apply to the road reserve area. Insistence on a compliant building form within the B6 zoned portion of the site would result in an inferior built form outcome, reduced streetscape amenity and have a significant adverse impact on the streetscape, potentially establishing an undesirable precedent which would not be in the public interest.</p> <p>Further, the applicant's exemption request asserts that there are no unreasonable impacts arising from the non-compliance and the development is consistent with the objectives of the standard despite the non-compliance.</p>
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.	Yes, the applicant's request contains this justification.
4.6 (4) (a) Consent authority is satisfied that:	
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	The applicant's request has adequately addressed the matters required to be addressed by subclause (3).
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and	<p>The consent authority can be satisfied that the proposed development will be in the public interest because (a) it is consistent with the objectives of the particular standard and (b) the objectives for development within the zone in which the development is proposed to be carried out will be achieved.</p> <p>The development, despite the non-compliance with the height limit, will be consistent with the objectives of the building height standard. As mentioned above, the departure will not give rise to any adverse impacts on the amenity of nearby developments, the streetscape or public domain. Insistence on strict compliance with the standard would produce an inferior built form outcome which would compromise the amenity of the streetscape and set an undesirable tone for similar development along Ellen Street.</p> <p>There is not considered to be a public benefit served in this instance by insisting on strict compliance with the standard.</p> <p>The zoning of road reservation is reflective of the anticipated future use as a road; this will no longer occur once the road is closed and acquired. In the particular unique circumstances of this case, application of the development standard is unreasonable and unnecessary.</p> <p>The development will be consistent with the objectives of the B6 zone despite the non-compliance with Clause 4.3.</p> <p>In conclusion, it is considered that the consent authority can be satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, there are sufficient environmental planning grounds to justify contravention of the standard, the objectives of the standard and the B6 zone will be achieved despite the non-compliance and the public interest will be served despite the non-compliance with</p>

	Clause 4.3.
(b) the concurrence of the Secretary has been obtained.	Yes; Council can exercise its assumed concurrence in this instance.

2. Floor Space Ratio (FSR)

In this instance, the applicant has sought a development departure in respect of Clause 4.4 Floor Space Ratio (FSR) in relation to that part of the site zoned B6 which is subject to a maximum permissible FSR of 0.5:1.

The floor space ratio of the development across the whole of the site inclusive of that portion of the site zoned B6 is 3.91:1. If the whole site were zoned B3, this FSR would be compliant. The applicant has advised that the GFA of the development occupying the road reserve allotment in isolation is 2963sqm which results in a FSR of 2.632:1 (GFA 2963qm: 1125.9sqm area of proposed Lots 103 and 104).

The applicant has provided a request for an exception to the standard prepared in accordance with the requirements of Clause 4.6. This is attached in full at **Attachment 2** to this report.

The contravention of the development standard at Clause 4.4 is examined in terms of the prescribed matters at Clause 4.6 in the following table:-

Table 3: Clause 4.6 WLEP 2009 development departure assessment - FSR

WLEP 2009 Clause 4.6 proposed development departure assessment	
Development departure	Clause 4.4 Floor Space Ratio– maximum FSR 0.5:1
Is the planning control in question a development standard	Yes
4.6 (3) Written request submitted by applicant contains a justification:	
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	<p>Yes. The applicant's request contains this justification.</p> <p>In summary the justification relies on compliance with the FSR limit in this instance being unnecessary as there are no unreasonable impacts arising from the non-compliance and the development is consistent with the objectives of the standard despite the non-compliance.</p> <p>Further, the applicant contends that compliance with the standard is unreasonable in this instance. The applicant's submission notes that during the preparation of the LEP, it was anticipated that the road reserve would be used for a future road. Hence, the lower order zoning, height and FSR control applied to it. Now that the proposal forms part of a contiguous site that has higher order zone, height and FSR controls, it is appropriate that these controls apply to the road reserve area. Insistence on a compliant building form within the B6 zoned portion of the site would result in an inferior built form outcome, reduced streetscape amenity and have a significant adverse impact on the streetscape, potentially establishing an undesirable precedent which would not be in the public interest.</p>
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.	Yes, the applicant's request contains this justification.
4.6 (4) (a) Consent authority is satisfied that:	
(i) the applicant's written request has adequately	The applicant's request has adequately addressed the matters required to be addressed by subclause (3).

addressed the matters required to be demonstrated by subclause (3), and	
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and	<p>The consent authority can be satisfied that the proposed development will be in the public interest because (a) it is consistent with the objectives of the particular standard and (b) the objectives for development within the zone in which the development is proposed to be carried out will be achieved.</p> <p>The development, despite the non-compliance with the FSR limit, will be consistent with the objectives of the FSR standard. The additional building bulk brought about by the increased GFA will not compromise the amenity of the streetscape or of nearby development, nor will it give rise to adverse impacts on the public domain or local road network.</p> <p>The public benefit would not be served in this instance by insisting on strict compliance with the standard as it would result in an unusual and inferior built form outcome.</p> <p>The zoning of road reservation is reflective of the anticipated future use as a road; this will no longer occur once the road is closed and acquired. In the particular unique circumstances of this case, application of the development standard is unreasonable and unnecessary.</p> <p>The development will be consistent with the objectives of the B6 zone despite the non-compliance with Clause 4.4.</p> <p>In conclusion, it is considered that Council as the consent authority can be satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, there are sufficient environmental planning grounds to justify contravention of the standard, the objectives of the standard and the B6 zone will be achieved despite the non-compliance and the public interest will be served despite the non-compliance with Clause 4.4.</p>
(b) the concurrence of the Secretary has been obtained.	Yes; Council can exercise its assumed concurrence in this instance.

3. *Clause 8.6 Building Separation.*

In this instance, the applicant has sought a development departure in respect of Clause 8.6 Building Separation of WLEP 2009 in four areas which are discussed in detail below in relation to Clause 8.6. These are summarised as follows:

1. The applicant states that there is a departure in respect of Levels 2 – 5 of Blocks A and C where they abut the northern boundary of the subject site [cl. 8.6(2)(b)]. Both towers have a small setback from the street alignment. Given the definition of street frontage heights is measured at the street alignment, this setback means the upper part of the podium is not technically part of the street frontage height. From a design perspective, this upper portion of the podium is treated as a part of the street frontage height, with a zero side setback provided to the northern properties as required by the Clause. Council considers that there is no departure in this area however as there are no buildings at the equivalent height of levels 2 – 5 on adjacent sites.
2. A separation distance of 10m is provided between Blocks A and B at Levels 2-4. As indicated in the point above, this portion of the building is not included within the Street Frontage height and results in a non-compliance.
3. The building separation distance provided to the dwelling located to the north of the site within Lot 25 Sec 2 DP 979376 (No.41 Atchison Street, Wollongong).

4. The separation distance between Blocks A and B as these are classified as separate buildings for the purposes of Clause 8.6. A 10m separation is proposed; Clause 8.6(3)(a) requires a 20m

In relation to (2) and (4) above, it is considered that the required separation distance between Blocks A and B is 20m as per Clause 8.6(3)(a) as Clause 8.6(3) states that, "despite subclause (2), if a building contains a dwelling, all habitable parts of the dwelling including any balcony must not be less than:...."

On the basis of this assessment, there are two areas of non-compliance with Clause 8.6, not four as identified by the applicant. In any event, the applicant has provided a request for an exception to the standard prepared in accordance with the requirements of Clause 4.6 which deals with all areas of non-conformity with Clause 8.6. This is attached in full at **Attachment 2** to this report.

The contravention of the development standard at Clause 8.6 is examined in terms of the prescribed matters at Clause 4.6 in the following table:-

Table 3: Clause 4.6, WLEP 2009 development departure assessment – Building Separation	
Development departure	Clause 8.6 Building Separation
Is the planning control in question a development standard	Yes
4.6 (3) Written request submitted by applicant contains a justification:	
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	<p>Yes. The applicant's request contains this justification in relation to each of the areas of identified departure from the requirements of Clause 8.6.</p> <p>In summary the justification relies on compliance with the building separation standard in this instance being unnecessary as there are no unreasonable impacts arising from the non-compliance and the development is consistent with the objectives of the standard despite the non-compliance.</p>
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.	<p>Yes, the applicant's request contains this justification.</p> <p>The applicant states in numerous areas of the submission that the design has been heavily influenced by the requirements of the Design Review Panel in arriving at an appropriate form for the site. In some cases the plan amendments recommended by the Panel (particularly in relation to street frontage heights and podium form) have resulted in contraventions of Clause 8.6.</p>
4.6 (4) (a) Consent authority is satisfied that:	
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	<p>The applicant's request has adequately addressed the matters required to be addressed by subclause (3).</p> <p>The applicant's request is based on the rationale that the variation to Clause 8.6 is considered to be consistent with the objectives of the clause and that in the specific circumstances of the site a better and more appropriate outcome for the proposed development is achieved by allowing flexibility to the development standard.</p> <p>The proposed building complies with the required ADG setback distances to boundaries (with the exception of minor variations) as identified within this report.</p> <p>The variation in respect of the northern boundary arises due to the position of the neighbouring dwelling within No.41 Atchison Street to the north.</p>
(ii) the proposed development will be in the public interest	The consent authority can be satisfied that the proposed development will be in the public interest because (a) it is

<p>because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</p>	<p>consistent with the objectives of the particular standard and (b) the objectives for development within the zone in which the development is proposed to be carried out will be achieved.</p> <p>The objectives of the standard is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access. The development, despite the non-compliance with the building separation standard, will be consistent with the objectives of that standard. It is noted that the development , with the exception of minor variations, is consistent with the building setback requirements of the ADG.</p> <p>Further, the departure will not have any adverse impacts on the amenity of nearby developments, the streetscape or public domain. There will be minimal additional overshadowing impacts arising from the development departure, no view impacts, no additional privacy impacts, no adverse impacts on the streetscape or any heritage items, and no additional overshadowing of nearby public places. The variation of the standard is also not expected to compromise the development potential of neighbouring sites and for this reason is also considered to be in the public interest.</p> <p>There is not considered to be a public benefit served in this instance by insisting on strict compliance with the standard.</p> <p>The development will remain consistent with the objectives of the B3 zone despite the non-compliance with Clause 8.6.</p> <p>In conclusion, it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, there are sufficient environmental planning grounds to justify contravention of the standard, the objectives of the standard and the B3 zone will be maintained despite the non-compliance and the public interest will be served despite the non-compliance with Clause 8.6.</p> <p>Further discussion on the Clause 8.6 variation is provided below.</p>
<p>(b) the concurrence of the Secretary has been obtained.</p>	<p>Yes; Council can exercise its assumed concurrence in this instance.</p>

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 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, conditions should be imposed upon the development consent requiring approval from the relevant authorities for the connection of electricity, water and sewerage to service the site.

The applicant has made provision for a future substation adjacent to the Kenny Street frontage of the site.

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.

Clause 7.3(3) states that development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied in relation to all the following matters:

- (a) all habitable floor levels of the development will be above the flood planning level,

Comment: - all habitable floor levels of the development will be above the flood planning level

- (b) the development will not adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties,

Comment: the applicant has provided detailed flood modelling to consider the impacts of the proposed development on flood behaviour in the locality. The modelling demonstrates that with the flood and stormwater management measures built into the development, it will not adversely affect flood behaviour in the area. The development will not result in detrimental increases in the potential flood affectation of other development or properties.

- (c) the development will not significantly alter flow distributions and velocities to the detriment of other properties or the environment of the floodplain,

Comment: the applicant's detailed flood modelling demonstrates that the development will not significantly alter flow distributions and velocities to the detriment of other properties or the environment of the floodplain.

- (d) the development will not affect evacuation from the land,

Comment: the applicant's detailed flood modelling demonstrates that the development will not affect evacuation from the land.

- (e) 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,

Comment: the consent authority can be satisfied of these matters.

- (f) the development will not result in unsustainable social and economic costs to the community as a consequence of flooding,

Comment: the development will not adversely alter flood behaviour in the locality accordingly is not expected to give rise to unsustainable social and economic costs to the community.

- (g) if located in a floodway area—the development will not be incompatible with the flow conveyance function of, or increase a flood hazard in, the floodway area.

Comment: the applicant's detailed flood modelling demonstrates that the development will not significantly alter the flow conveyance function or increase flood hazard where the development is located in a floodway.

The proposal has been assessed by Council's Stormwater Section with regard to Clause 7.3 and the applicable provisions of WDCP 2009 and is satisfactory. Further detail with regard to the applicable provisions of WDCP 2009 can be found at **Attachment 7**.

Clause 7.5 Acid Sulfate Soils

The proposal is not identified as being affected by acid sulphate soils.

Clause 7.6 Earthworks

The proposal involves excavation to facilitate the provision of the building's four levels of basement car parking. 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 of surrounding land. Council's Geotechnical Engineer has considered the application and has provided a satisfactory referral subject to conditions.

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 to each of the three street frontages 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,*

The design, materials and detailing are considered to be of high quality and are appropriate to the building type and location.

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

The development is considered to positively contribute to the public domain through an aesthetically pleasing façade and loggia treatment, an appropriate resolution of its bulk and scale, and provision of street trees and upgraded footpaths along the frontages of the site.

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

No significant view corridors are impacted. The site is located outside of the nominated distant panoramic view corridor 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,*

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,*

The land is zoned for the type of development proposed and the development generally complies with the relevant planning controls with the exception of the variations addressed above which have been considered in detail and are supported. There are no site constraints that would prevent the proposal, and the building is appropriately designed with regard to flooding, geotechnical issues and other pertinent environmental matters.

(ii) existing and proposed uses and use mix,

The development is considered to be consistent with current and desired future development in the locality. The proposed mix of uses within the development is consistent with the B3 and B6 zone objectives.

(iii) heritage issues and streetscape constraints,

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,

Setbacks, amenity and urban form matters have been satisfactorily addressed as discussed elsewhere in this report. The relationship between the two towers within the development is generally acceptable with regard to the requirements of the ADG and DCP, however that there is a variation sought in relation to the Clause 8.6 building separation between Blocks A and B – discussed in detail below. While there are no other nearby towers, the proposed towers are considered to have been satisfactorily designed with regard to possible future development of neighbouring sites as detailed in the contextual analysis provided with the application (see **Attachment 1**).

(v) bulk, massing and modulation of buildings,

The bulk and scale of the development is considered to be acceptable when measured in terms of building height, floor space ratio and setbacks, inclusive of the departures sought in relation to the B6 zone as discussed above which are considered to have merit. The Design Review Panel advised that the development is acceptable with regard to bulk, massing and modulation of buildings; see **Attachment 6**.

(vi) street frontage heights,

The street frontage height of the proposed building is appropriate.

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

The development incorporates some sustainable building design initiatives including the use of solar power and water sensitive urban design. BASIX Certificates have been provided demonstrating compliance with applicable energy efficiency, water efficiency and thermal comfort targets.

The proposal will have overshadowing impacts in the locality however these impacts are not unreasonable and are considered to be acceptable having regard to allowable building heights and densities permitted within the city centre. The configuration of the buildings and placement of the two towers with a shorter linking building (Block B), reduces the extent of overshadowing of land to the south of the site. The slimmer tower forms provide for a more desirable outcome than a wider built form (in terms of overshadowing impacts).

A Pedestrian Wind Environment Study has been provided in support of the development which recommends some amelioration measures. Conditions have been recommended in relation to the implementation of these recommendations and limitations on material reflectivity.

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

The proposal is considered satisfactory with regard to objectives of ESD. The site is well placed with regard to access to key transport nodes, and is within ready walking distance of

the CBD, employment opportunities and recreation facilities. The development will provide additional employment opportunities and services within the commercial core of the city centre which is a positive social outcome. The development has been designed to provide for good internal amenity with appropriate provision for energy and water efficiency and thermal comfort.

A water sensitive urban design scheme has also been incorporated into the development.

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

The proposal provides the necessary car parking, motorcycle and bicycle parking and suitable manoeuvring areas. Satisfactory waste servicing arrangements have been provided, with all waste to be managed from within the site. Provision has also been made for ample delivery/ loading facilities within the building to service the commercial and retail components of the development.

Appropriate arrangements have been made for safe, direct, practical and equitable pedestrian access to and throughout the development and the perimeter walkways.

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

Street trees and footpath upgrades are to be provided to the street frontages of the site in compliance with the requirements of the Public Domain Technical Manual.

As discussed in Section 2.1.3 above, a review of the design of the proposed development has been undertaken by the Design Review Panel in accordance with the requirements of SEPP 65 and Clause 7.18(5)(a). The proposed development as amended is supported by the DRP. The DRP meeting notes and recommendations form **Attachment 6**.

Part 8 Local provisions—Wollongong city centre

A large proportion of the site falls within the Wollongong city centre, the southern boundary of which aligns with the northern boundary of the existing road reserve. The B3 zoned portion of the site is located within the area defined as the Wollongong city centre by the LEP and accordingly the provisions within this part of the LEP are of relevance to that part of the proposal.

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 widths of greater than 20m on each street frontage.

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

The proposed development does not comply in full with Clause 8.6 and a variation statement has been provided by the applicant addressing Clause 4.6 of the LEP. The submission is attached in full at **Attachment 2**.

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

- (2) Buildings on land within Zone B3 Commercial Core or B4 Mixed Use must be erected so that:
 - (a) there is no separation between neighbouring buildings up to the street frontage height of the relevant building or up to 24 metres above ground level whichever is the lesser, and
 - (b) there is a distance of at least 12 metres from any other building above the street frontage height and less than 45 metres above ground level, and
 - (c) there is a distance of at least 28 metres from any other building at 45 metres or higher above ground level.
- (3) Despite subclause (2), if a building contains a dwelling, all habitable parts of the dwelling including any balcony must not be less than:
 - (a) 20 metres from any habitable part of a dwelling contained in any other building, and
 - (b) 16 metres from any other part of any other building.

- (4) For the purposes of this clause, a separate tower or other raised part of the same building is taken to be a separate building.
- (5) In this clause:
- street frontage height** means the height of that part of a building that is built to the street alignment.

The applicant has indicated that the development departs from the development standard in the following four ways:-

1. The applicant states that there is a departure in respect of Levels 2 – 5 of Blocks A and C where they abut the northern boundary of the subject site [cl. 8.6(2)(b)]. Both towers have a small setback from the street alignment. Given the definition of street frontage heights is measured at the street alignment, this setback means the upper part of the podium is not technically part of the street frontage height. From a design perspective, this upper portion of the podium is treated as a part of the street frontage height, with a zero side setback provided to the northern properties as required by the Clause.

Response

Council considers however that there is no departure in this area however as there are no buildings at the equivalent height of levels 2 – 5 on adjacent sites.

2. A separation distance of 10m is provided between Blocks A and B at Levels 2-4. As indicated in the point above, this portion of the building is not included within the Street Frontage height and results in a non-compliance.

Response

Clause 8.6(2) details the separation requirements between buildings at different heights. A key component of the application of this clause is the identification of the Street Frontage Height. As detailed elsewhere within this report, this proposal has undergone a number of reviews by the Design Review Panel. The outcome of this process has seen a reduction in the building's podium heights and the residential components of the building setback from the street alignment. This creates a Street Frontage Height ranging from 10-12 metres depending on the ground level.

3. The building separation distance provided to the dwelling located to the north of the site within Lot 25 Sec 2 DP 979376 (No.41 Atchison Street, Wollongong).

Response

In terms of the northern boundary, Clause 8.6(3)(b) requires that all habitable parts of a dwelling must not be less than 16 metres from any other part of any other building. To the north of the site, there exists within No. 41 Atchison Street an older single storey dwelling positioned towards the street frontage and a commercial building to the rear (Mavrikis Chickens). The neighbouring dwelling is setback approximately 7m from its southern boundary (ie. the common boundary with the subject site). The proposed building will be built to the northern boundary which is consistent with other controls pertaining to the city centre which seek to achieve a continuous street edge. This dwelling is wholly located below the Street Frontage Height of the proposed development and as such it is expected that as further redevelopment occurs, that this building will be redeveloped in conjunction with other adjacent sites to the north.

There is no potential to provide for a zero building separation to this adjacent building due to its setback from the common boundary between the two sites. However with any future re-development of that site, it is anticipated that a future building can be designed to achieve a continuous street wall to the commercial component of the development as required by the LEP and Chapter D13 of WCP 2009.

4. The separation distance between Blocks A and B as these are classified as separate buildings for the purposes of Clause 8.6. A 10m separation is proposed; Clause 8.6(3)(a) requires a 20m. In relation to (2) and (4) above, it is considered that the required separation distance between Blocks A and B is 20m as per Clause 8.6(3)(a) as Clause 8.6(3) states that, "despite subclause (2), if a building contains a dwelling, all habitable parts of the dwelling including any balcony must not be less than:...."

Response

Towers A and B are classified as separate buildings in accordance with Clause 8.6 (4). The separation distance available between Blocks A and B is 10m which does not comply with the above control but does comply with the ADG. In this location there are 2 levels of residential apartments which will have a direct relationship with one another. It is noted that there are no east-facing openings to the residential units within Block B, with the eastern wall of Block B being totally solid with no openings, inclusive of a solid screen to the edge of the balconies. This will minimise opportunities for direct overlooking and acoustic privacy impacts arising from the reduced separation distance available.

The applicant's exemption request in respect of the Clause 8.6 non-compliances is discussed above in relation to Clause 4.6. The non-compliance is supported.

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 7** to this report. It is noted that the development departs from some of the design controls in Chapter D13. These variations are dealt with in the compliance tables and are supported.

2.3.2 WOLLONGONG SECTION 94A DEVELOPMENT CONTRIBUTIONS PLAN (2016)

The estimated cost of works is \$83,518,428 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)

Clause 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 2.1.3 in relation to the SEPP 65 design principles and also with reference to the design excellence matters prescribed by Clause 7.18 of Wollongong LEP 2009 (see Section 2.1.7).

Vehicular Access, Transport and Traffic:

The proposal is satisfactory with regard to carparking, vehicular access, manoeuvring and servicing. Provision has been made for appropriate arrangements for on-site servicing and deliveries, though as discussed in Attachment 7 with regard to Chapter E3 of WDCP 2009, the ramp providing access to the loading dock from Kenny Street has insufficient width to enable passing of larger vehicles. A deferred commencement condition is recommended in relation to the submission and approval of a management plan in relation to the loading dock.

Traffic generation from the development can be readily absorbed into the existing street network. Pedestrians will be safely accommodated.

Public Domain:

Removal and replacement 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. Conditions of consent should be imposed in regards to these matters if the proposal is approved.

Utilities:

The proposal is not expected 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 building in an appropriate location. The design and finish of the substation cupboard is considered to be acceptable.

Heritage:

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

Other land resources:

The proposal is not 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 BASIX certificates provided in relation to the residential units demonstrate compliance with the water efficiency targets contained within the BASIX SEPP.

Water quality – the application was accompanied by a Water Sensitive Urban Design Strategy which demonstrates that the compliance with the water quality objectives outlined in Chapter E15 of WDCP 2009 – Water Sensitive Urban Design can be achieved.

Groundwater management - there are conditions recommended within Attachment 8 in regard to groundwater management.

Soils:

It is expected that, with the use of appropriate erosion and sedimentation controls during construction, soil impacts will not be unreasonably adverse. Conditions should be imposed in this regard if the proposal were approved; see **Attachment 8**.

Air and Microclimate:

The proposal is not expected to have any negative impact on air or microclimate. A Pedestrian Wind Environment Study was provided with the development application as required by Chapter D13 of WDCP 2009. The results of the study indicate that some ameliorative treatments are required in certain locations to achieve the desired criteria for pedestrian comfort and safety. With the inclusion of these treatments to the final design, the Study indicates that wind conditions for all outdoor trafficable areas within and around the proposed development are expected to be suitable for their intended uses. Conditions of consent have been recommended for imposition in relation to the implementation of the amelioration measures outlined in the wind study; see **Attachment 8**.

Flora and Fauna:

Tree removal is required to facilitate construction of the proposed development. No adverse impacts on 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 plans.

Waste:

Refer to WDCP compliance table at **Attachment 7**.

Waste management during construction can be managed through proper arrangements. A condition should be imposed if consent is 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 satisfactory and 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 is approved, a suite of conditions are recommended for imposition (see **Attachment 8**) to minimise nuisance during demolition and construction.

The only source of nuisance noise within the locality is the South Coast Railway line which is situated approximately 220m to the west of the site. It is recommended that conditions be imposed in relation to glazing treatment and the like to ensure that an appropriate level of internal amenity will be available within the proposed units as required by SEPP (Infrastructure) 2007; these are included in **Attachment 8**.

Natural hazards:

As discussed elsewhere within this report, the site is positioned within a medium flood risk precinct. The building is appropriately designed with regard to flooding and stormwater management, ensuring that there will be no adverse impacts on neighbouring properties or on land elsewhere within the locality. As discussed above in Section 2.1.1 with regard to SEPP 55, the site is potentially contaminated as a result of existing and historical landuses, however contamination can be resolved.

Geotechnical matters have been considered as part of the assessment and a number of conditions have been recommended for imposition – see **Attachment 8**. There are also conditions in regard to groundwater management recommended,

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 7**. The proposal is not expected to provide increased opportunities for criminal or antisocial behaviour and is considered to be reasonably well designed with regard to CPTED principles. It is noted that a comprehensive CPTED report was provided in support of the application which outlines numerous recommendations which should be implemented. Consent conditions in relation to this matter are recommended; see **Attachment 8**.

Social Impact:

No adverse social impacts are expected to arise from approval of the proposed development.

Economic impact:

The applicant has provided a Preliminary Supply and Demand Assessment of proposed non-residential component; Space User Identification and Pre-Lease Management report to substantiate the expanse of retail and commercial space within the development. This report does not however provide an analysis of the economic impacts of the proposed development on the locality.

There are however not expected to be any adverse economic impacts arising from approval of the proposed development. The uses proposed in the development are permitted with consent in the B3 and B6 zones and are considered to be consistent with the zone objectives.

Construction:

Noise and vibration impacts during demolition, excavation and construction are unavoidable and have the potential to impact on the amenity of the neighbourhood. If the development is approved, a suite of conditions are recommended for imposition (see **Attachment 8**) to minimise nuisance during demolition and construction.

Conditions are recommended including those relating to hours of work, erosion and sedimentation controls, dust mitigation, works in the road reserve, excavation, protection of neighbouring buildings, dilapidation requirements, demolition, hazardous materials management, waste management, and use of any crane, hoist, plant or scaffolding, amongst others. These are included in the recommended conditions at **Attachment 8**.

Cumulative impacts:

Approval of the proposal is not expected to give rise to any adverse cumulative impacts.

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 and is not expected to have any negative impacts on the amenity of the locality or adjoining developments.

Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal.

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

The application was notified to adjacent and adjoining property owners in accordance with WDCP 2009 Appendix 1: Public Notification and Advertising Procedures on two occasions. The initial notification period involved an advertisement being printed in the local newspaper on 26 October 2016 and notification letters were sent to neighbouring and adjacent property owners/ occupiers. At the conclusion of the initial notification period there was one submission in support of the project received from Neighbourhood Forum 5 and five (5) submissions of objection. The second notification period took place recently following the receipt of amended plans and additional information. At the conclusion of this notification period four of the same objectors again made submissions in addition to one new objector. Largely the same or similar issues were raised in submissions in response to both notification periods.

The key concerns raised are summarised and discussed below:-

1. Submission of objection from neighbouring Greek orthodox church – Greek Orthodox Community of Illawarra St Nektarios at 39 Atchison St, Wollongong:-

- Community-based Church has been conducting religious services since 1971. A Government funded Day Care facility operates from the community hall (at rear of property) catering for the elderly within our Community. Religious festivities are also regularly conducted in the community hall with music and entertainment provided for attendees.
- The applicant's site analysis does not identify/ acknowledge that an established church and day care facility exists.
- The residential component of the development must be aware of the church and its activities which include bell ringing, annual outdoor events at Easter with the Easter Friday road procession and Midnight Mass on Easter Saturday; complaints will not accepted to cease this practice
- Impact of the development on on-street car parking and position of the Atchison Street vehicular access (including large expected number of vehicular movements) will impact on pedestrian safety; particular concern in relation to elderly parishioners and day care clients regularly using street parking in Atchison and Ellen Streets while attending care or religious services.
- Suggest relocating the access point and strong consideration given to traffic calming measures in Atchison Street and a pedestrian crossing placed adjacent to the church for pedestrians to safely cross the road. We would also request modifying the existing street parking directly in front of the church to Wedding and Funeral Cars Only similar to Holy Cross Church, Stewart Street Wollongong. This will ensure hearse and wedding car parking availability at all times.
- Measures to prevent debris/ leaf litter from pool garden area at rear common boundary entering the Community Hall box gutter causing internal water damage.

Comments:-

- The Church is an established neighbour to the subject site and its operations should continue unimpeded despite the introduction of a large resident population at the site. Some acoustic treatment is proposed for the building and this should be implemented to ensure appropriate internal acoustic amenity but it is not known whether this would prevent noise transmission from bells.
 - The RMS has raised no objection to the development and Council's Traffic Section has advised that the position of the access driveways is not of concern from a traffic or pedestrian safety perspective. The development will not remove opportunities for on-street parking to the frontages of the site and sufficient car parking is to be provided within the development site to meet the needs of the development.
 - The Church may request that the Local Traffic Committee consider the implementation of an area for wedding car/ hearse parking on the street in front of the Church. This issue would be dealt with separately to the consideration of this development application.
2. Submission of objection from neighbouring child care centre, Grandma Rosie's Childcare centre situated to the immediate north of the site fronting Kenny Street. Signed by 19 families and prepared by the centre director:-

- Concerns about impact of the development on the service/ business, particularly during demolition and construction. Specific concerns were raised in relation to safety and certainty of access to the premises during its hours of operation; impacts of the development on the stability of the building and structures; pollution, noise, removal/management of asbestos and hazardous materials; the need for risk assessments in relation to dust and pollution, noise impacts on children, all machinery used during demolition and construction;
- Assurances that there will be no disruption to the service during demolition and construction;
- Development will overshadow the children's play area from 12 noon to 4pm; negative impacts arising from this;
- Importance of the service hasn't been acknowledged by the applicant – provides an important service within the city centre. The development may adversely impact on the service financially and cause parents to choose other services due to the high safety issues, noise and possible pollution concerns.

Comments:

- Noise and vibration impacts during demolition, excavation and construction are unavoidable. If the development is approved, a suite of conditions are recommended for imposition (see **Attachment 8**) to minimise nuisance and other impacts during demolition and construction. A number of conditions are also recommended in relation to the management of materials to be excavated or demolished from the site, requirements for consultation with SafeWork NSW, dust mitigation and soil erosion controls and the like.
- A condition is recommended to ensure that access to neighbouring and nearby properties is maintained during the course of construction. See **Attachment 8**.
- The site is to the south of the child care centre. The shadow diagrams indicates that the development will have minimal overshadowing impact on the child care centre however there are shadows already cast across the centre site by another building to the north-west.

3. Owner of industrial premises at 27 Ellen Street –

- Overshadowing impacts - loss of heat energy (additional cost will be incurred due to need for heating and lighting) and impact on wellbeing of workers;
- Traffic and parking impacts arising from the development; road network insufficient to accommodate additional vehicle movements associated with the development

Comments:

- This property is positioned to the immediate south of the site on the opposite side of Ellen Street. The shadow diagrams indicate overshadowing of this property for periods across the course of the day, particularly from the towers from around 11am. The reduction in the height of the shorter link building between the towers (Block B) has reduced the extent of overshadowing on this property. Given allowable height limits within the B3 Commercial Core, the extent of overshadowing to result from the development is not considered to be unreasonable. It is noted that even if the height of the building positioned within the B6 zoned portion of the site was compliant, the extent of overshadowing would not be reduced.
- No concerns have been raised by the RMS or Council's Traffic Section in relation to the traffic generating impacts of the proposed development on the local road network. Whilst it is acknowledged that on-street car parking within the area is heavily utilised, compliant car parking is proposed within the development site inclusive of visitor and customer car parking.

4. Nearby resident objectors

- Building bulk, scale, height – proposal exceeds the 9m height limit along the Ellen St frontage; height is considered excessive; at odds with the existing landscape. The building height will result in lengthy shadows being cast, affecting numerous residences fronting Atchison Street in mid-winter for a proportion of the day. The proposal should be reconfigured or redesigned to achieve a more sympathetic visual and height profile in the context of the older residential areas to the south and east.
- Concerns about shortcomings in the applicant's justification statement for the height variation for the B6 zoned portion of the site.
- Construction impacts in the locality – the likely duration of works period and associated noise impacts on residential areas is unacceptable. The SEE leaves the mitigation of these impacts to the development of a Construction Environmental Management Plan (CEMP). By then, the proposal would have been consented to and the CEMP may not adequately address these impacts. The SEE must clearly assess the potential impacts of noise on surrounding businesses and residential areas.
- Excavation impacts – the geotechnical report suggests that substrate within Kirsten classes 6 and 7 may be encountered which will require extremely hard ripping or blasting; this will have unreasonable impacts on nearby residences, a child care centre and surrounding residences and businesses would not be reasonable. A smaller development would not require as much substrate removal and would therefore reduce the time for construction and therefore exposure to these impacts.
- Lack of on-street parking in the area already; the proposal will exacerbate existing on-street parking issues, pushing all day city centre worker parking further out into fringe residential streets. The TIA is silent on this issue and this does not give confidence that the full extent of social impacts have actually been assessed appropriately.

- There are inconsistencies within the documents relating to the car parking requirements of the development as the plans have changed but the SEE hasn't been updated to reflect the latest plans.
- There is a shortfall in car spaces; many residences support more than one vehicle, it is likely that the overspill of resident vehicles of the proposed development would be parked in nearby residential streets. This would further exacerbate the already existing parking challenges in this area. The TIA largely ignores the demographic data for the area (in terms of resident transport notes and parking demands) and has therefore underestimated the impact of the proposal on traffic and parking.
- Groundwater extraction and discharge – the geotechnical report encountered groundwater at 3.4m. Basement excavation to a depth of at least 9m is proposed. The Geotechnical report has not assessed the effect of groundwater drawdown (pumping from drained or partially drained basements) and possible settlement effects on nearby structures;
- The geotechnical report also does not assess the impacts of GW disposal, which would be required given the depth of the proposed basement. The impact of discharge of GW into waterways or into the stormwater system must be assessed. The SEE is silent on GW issues and does not provide for any mitigation measures or ways to minimise potential impacts.
- Inconsistency with draft South Wollongong Strategy – which will consider the current FSR and height provisions on the fringes of the CBD. The current step from 9m to 60m building height is not consistent with the vision for South Wollongong.
- The elevations and plans should be updated to reflect the current situation not future building envelopes. This would demonstrate the enormous disparity in heights between the proposed development and neighbouring buildings.

Comments:

- See comments above in relation to the bulk, height, form and scale of the proposed development. These aspects of the proposal are considered to be reasonable and are supported by the Design Review Panel.
- Construction impacts in the locality are inevitable with any redevelopment. The scale of the development is generally consistent with applicable planning controls and construction to facilitate development of the scale envisaged by the planning controls will have impacts in the locality. The consent authority can however seek to mitigate or reduce the significance of these impacts through the application of appropriate consent conditions and there are a suite/ raft of conditions contained within Attachment 8 which seeks to deal with these impacts in a reasonable way. The timing and duration of construction is not something that can be limited by the consent.
- There is sufficient car parking within the development site, with required car, motorbike and bicycle parking provided to the residential, retail and commercial components of the development in accordance with the requirements of applicable planning controls. Supplementary written material was provided in support of the most recent amended plans which provide an updated assessment of the car parking requirements of the development.
- Excavation methods – Council's Geotechnical Engineer has reviewed the report supplied by the applicant and has provided a number of recommended conditions in relation to the method of excavation, support for neighbouring buildings, geotechnical supervision of works and implementation of the recommendations of the applicant's geotechnical report. Groundwater management – the applicant's geotechnical report outlines the site conditions and identifies that groundwater appears to be present across the site within the alluvial or residual clays and clayey sands above the weathered rock. Consideration will need to be given to management of groundwater during construction. This issue has been considered by Council's engineers and conditions are recommended in relation to this matter.
- The proposed development has been assessed with regard to all relevant planning instruments. The draft South Wollongong Strategy has no statutory weight currently.
- It is acknowledged that the height of the towers proposed in this development are substantially higher than most development within the vicinity of the site, however the height is consistent with the 60m height limit allowable in the B3 Commercial Core in this area and the area is in the process of transition, with a number of approved developments and applications under assessment for nearby sites proposing similar building heights to that proposed in this application.

5. Others

- Impact on line of sight from lighthouse to escarpment
- Provides no public space at ground level

- Inconsistent with strategic planning work done in 2016 and in the early 2000s

Comments:

- The towers will obstruct some views from the coastal foreshore to the escarpment however the site is located outside of the nominated view corridors identified in Figure 3.12 of the DCP. There are no direct view loss impacts on existing neighbouring developments.
- The development does not provide any public space at ground level nor is it required to. The walkway provided to the perimeter of the street frontage will fall within private property however this will effectively operate as publicly accessible space. Public domain works will be required to the street frontages inclusive of paving and street tree planting as required by the recommended consent conditions in accordance with the requirements of the Public Domain Technical Manual.
- The proposed development has been assessed with regard to all relevant planning instruments.

Submissions from public authorities

RMS

The RMS advised that it does not object to the development application in principle. RMS noted that all access is directly via the local road network and the development is not considered to greatly impact on the classified road network.

Endeavour Energy

The matter was referred to Endeavour Energy as discussed above.

Sydney Water

Sydney Water advised Council that it had no objection to the proposed development.

2.10 SECTION 79C 1(E) THE PUBLIC INTEREST

The proposed development is considered appropriate with consideration to the zoning and the character of the area. Approval of the proposed development is considered to be in the public interest.

3. CONCLUSION

The proposed development has been assessed with regard to the relevant prescribed matters for consideration outlined in Section 79C of the Environmental Planning & Assessment Act 1979. The proposed development is permissible with consent and is reflective of the objectives of the B3 Commercial Core and the B6 Enterprise Corridor zones. The development is consistent with most of the applicable provisions of the relevant state planning instruments including SEPP 65 and the Apartment Design Guide with the exception of some variations in relation to building separation distances which are considered to be supportable on merit.

In respect of Wollongong LEP 2009, there are 3 development departures sought as discussed in the body of the report. Satisfactory exemption requests have been provided in support of the proposal which satisfy the matters prescribed by Clause 4.6 and it is considered that these are worthy of support in this instance.

The design of the development is appropriate with regard to the controls outlined in the Wollongong DCP 2009 and the Apartment Design Guide.

All concerns raised in initial internal referrals have now been resolved and the proposal as amended is supported and has been commended by the Design Review Panel.

Submissions have been considered and there are no outstanding issues, with exception of the resolution of the road closure process which is nearing completion. As a result, the application should be determined by way of deferred commencement, with conditions to be satisfied in respect of the completion of the road closure process and consolidation of the road closure allotment with the 5 subject land parcels prior to the release of an operational consent. There is a second deferred commencement condition recommended in relation to the management of the loading dock.

4. RECOMMENDATION

It is recommended that the Joint Regional Planning Panel determine DA-2016/1354 pursuant to Section 80(3) of the Environmental Planning & Assessment Act 1979 by way of a deferred commencement consent subject to the conditions provided at **Attachment 8**.

5. ATTACHMENTS

- 1 Plans
- 2 Applicant's Clause 4.6 development departures
- 3 Aerial photograph, WLEP 2009 zoning map, site photographs and extract of deposited plan
- 4 Ellen Street road closure plan
- 5 Apartment Design Guide Assessment
- 6 Most recent design review
- 7 Wollongong DCP 2009 Assessment
- 8 Recommended conditions
- 9 Development history of subject sites