

# COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	2019HCC002
<b>DA Number</b>	DA/1483/2018
<b>LGA</b>	Central Coast
<b>Proposed Development</b>	Masterplan development application for mixed use development comprising 102 residential units, retail space and car parking
<b>Street Address</b>	10 Denning Street & 1-5 Short Street, The Entrance Lots D, E, F & G DP 348224, Lot 1 DP 102735, Lot 11 DP 17376, Lots 1 & 2 DP 1219145
<b>Applicant/Owner</b>	Central Coast Council
<b>Date of DA lodgement</b>	14 December 2018
<b>Total number of Submissions Number of Unique Objections</b>	<ul style="list-style-type: none"> <li>• 1st notification: 3 individual submissions</li> <li>• 2nd notification: 17 individual submissions</li> <li>• 3rd notification: 13 individual submissions</li> </ul>
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	Clause 3 –Development with a CIV exceeding \$5 million and Council related
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979</li> <li>• State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings</li> <li>• State Environmental Planning Policy – Coastal Protection 2018</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>• State Environmental Planning Policy 55 – Remediation of Land</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• Draft Central Coast Local Environmental Plan 2018</li> <li>• Wyong Local Environmental Plan 2013</li> <li>• Wyong Shire Development Control Plan 2013 <ul style="list-style-type: none"> <li>- Chapter 2.11 - Parking and Access</li> <li>- Chapter 2.4 - Multiple Dwelling Residential Development</li> <li>- Chapter 3.4 – Denning/Short St Key Site</li> <li>- Chapter 2.15 - Public Art</li> <li>- Chapter 5.1 - Retail Centres</li> <li>- Chapter 5.3 - The Entrance Peninsula</li> <li>- Chapter 3.7 - Heritage and Conservation</li> <li>- Chapter 6.1 - Key Sites</li> <li>- Chapter 3.1 Site Waste Management</li> </ul> </li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	Annexure A – GLN Planning Assessment Report Annexure B – Draft Refusal Annexure C – Development Plans Annexure D – Urban Design Review Attachment 1 – Numerical Compliance Table Attachment 2 – WDCP Chapter 2.4 Attachment 3 - WDCP Chapter 6.1 Clause 3.4 Denning/Short St Checklist Attachment 4 - Clause 7.11 Checklist Attachment 5 – SEPP Coastal Protection 2018 Checklist

(contd)+

	Attachment 6 - WDCP Chapter 5.3 Checklist
Clause 4.6 requests	No
Summary of key submissions	<ul style="list-style-type: none"><li>• Height of the Proposal</li><li>• Size and Bulk of the proposal</li><li>• Larger than previously refused application</li><li>• Overshadowing</li><li>• Loss of views</li><li>• Reduction in Privacy</li><li>• Increase in traffic and noise</li><li>• Lack of parking</li><li>• Non-compliance with DCP</li><li>• Non-compliance with ADG</li><li>• Demand for retail floorspace</li><li>• Reduced residential amenity</li><li>• Out of date traffic report</li><li>• Width of and deliveries from Theatre Lane</li><li>• Access for garbage truck from Short Street</li></ul>
Report prepared by	GLN Planning
Report date	19 October 2020

**Summary of s4.15 matters**

Have all recommendations in relation to relevant s4.15 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?

Not applicable

**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

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

Not applicable

**Conditions**

Have draft conditions been provided to the applicant for comment?

*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*

No

## Assessment Report and Recommendation

PREPARED BY GLN PLANNING FOR CENTRAL COAST COUNCIL

For The Hunter Central Coast Regional Planning Panel (HCCRPP)

### SUMMARY

An application has been received for a masterplan development application for a mixed-use development containing retail (1,075m<sup>2</sup>) and residential floor space (102 Units) with associated car parking. The application has been examined having regard to the matters for consideration detailed in section 4.15 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

Applicant	Central Coast Council
Owner	Central Coast Council
Application No	DA/1483/2018
Description of Land	10 Denning Street & 1-5 Short Street, The Entrance
Proposed Development	Staged mixed use development (under Section 4.22) Masterplan development application for a mixed-use development containing retail (1,075m <sup>2</sup> ) and residential floor space (102 Units) with associated car parking
Site Area	4302m <sup>2</sup> including closed roads
Zoning	B2 Local Centre Wyong LEP 2013
Existing Use	Carpark and road with existing closed road
Estimated Value	\$48,790,383

### RECOMMENDATION

- 1 That the Hunter and Central Coast Regional Planning Panel accept the amendment of the application under Clause 55 of the Environmental Planning and Assessment Regulation 2000, as detailed in amended plans and documentation dated June 2020.*
- 2 That the Hunter and Central Coast Regional Planning Panel refuse the application subject to appropriate reasons for refusal detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979 and other relevant issues.*
- 3 That those who made written submissions be notified of the Panel's decision.*
- 4 That the relevant public authorities be notified of the Panel's decision.*

PRECIS:

Proposed Development	Staged mixed use development (lodged under Section 4.22) Masterplan development application for mixed use development comprising 102 residential units (in a connected tower element), retail space and car parking
Permissibility and Zoning	The site is zoned B2 Local Centre and the proposal is permissible as shop top housing and retail premises under WLEP 2013
Relevant Legislation	<p>State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings</p> <p>State Environmental Planning Policy – Coastal Protection 2018</p> <p>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</p> <p>State Environmental Planning Policy 55 – Remediation of Land</p> <p>State Environmental Planning Policy (Infrastructure) 2007</p> <p>Wyong Local Environmental Plan 2013 (WLEP 2013)</p> <p>Draft Central Coast Local Environmental Plan 2018 (CCLEP)</p>
Current Use	Carpark and road
Integrated Development	No
Submissions	<ul style="list-style-type: none"> <li>- 1st notification: 3 individual submissions</li> <li>- 2nd notification: 17 individual submissions</li> <li>- 3rd notification: 13 individual submissions</li> </ul> <p>from a total of nineteen submitters.</p>

## VARIATIONS TO POLICIES

DCP	DCP Chapter 6.1 – Key Sites
Clause	2.11 – Other Public Benefits
Standard	Provision of significant public benefits in return for bonus development potential (being building height) based on a calculation of public benefit as follows (S94 x 2)
Departure basis	100% variation is proposed. The proposal does not demonstrate that significant public benefit is provided as part of the development. The proposal does not comply with the DCP clause containing a calculation formula for the provision of significant public benefit.

DCP	WDCP 2013 – Chapter 5.3 – The Entrance Peninsula
Clause	Section 3.2.5.1 – Streetscape
Standard	For buildings taller than six storeys, tower elements to be set back from building lines by a minimum of 10 metres.
Departure basis	Variable setback not clearly identified -Variation not supported.

DCP	WDCP 2013 – Chapter 5.3 – The Entrance Peninsula
Clause	4.2.3v - New Public Open Spaces
Standard	A new town square approximately 2,000m <sup>2</sup> in size with a minimum width of 30m.
Departure basis	No dedication of plaza area is proposed on the site. Denning Street is not intended to be closed in the short term.

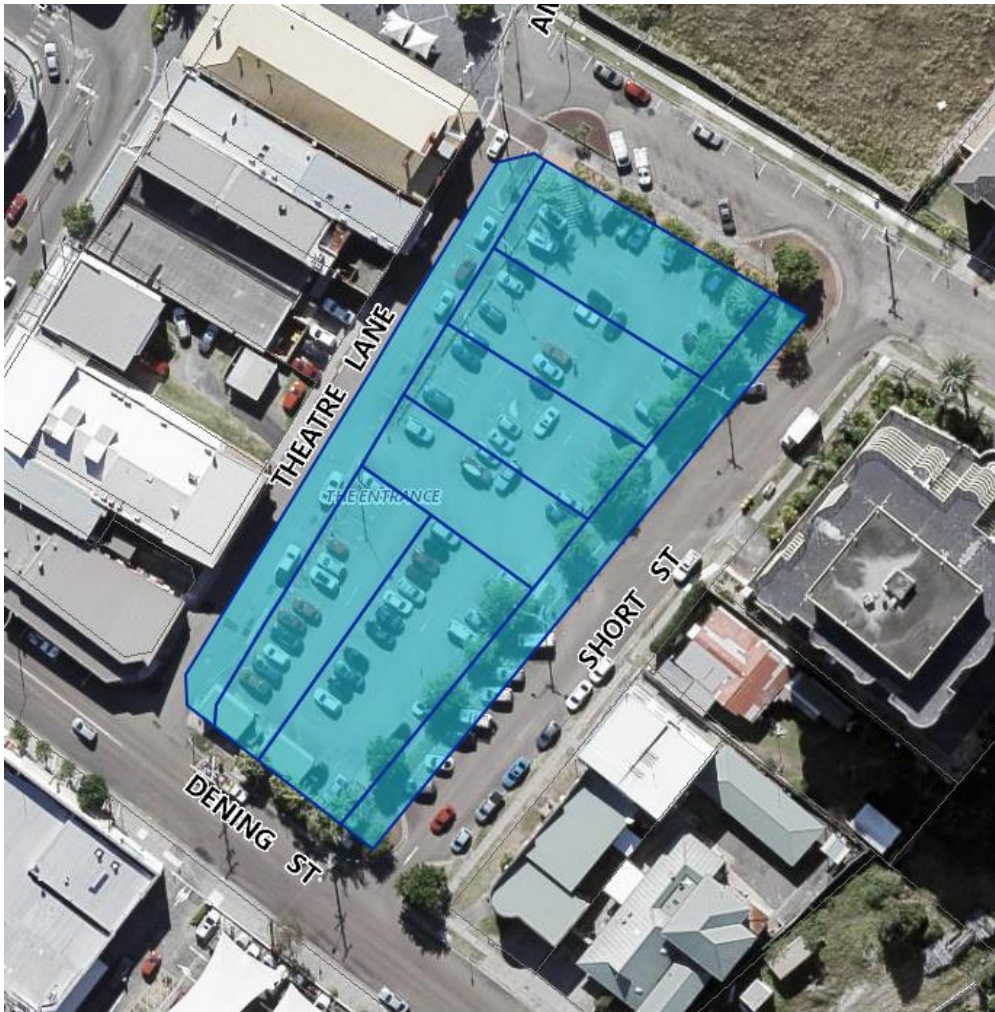
DCP	WDCP 2013 – Chapter 5.3 – The Entrance Peninsula
Clause	5.1 – Key Sites – Concept plans/ Site Specific Development Control Plans: General Design Principle Requirements
Standard	Slender towers maximum longitudinal dimension of approximately 35m.
Departure basis	Northern Tower element has a length of 38.4m. Overall perceived length of tower is 74.8m Variation is not supported.

The proposed variations are discussed in further detail later in the report.

## THE SITE

The subject site has four street frontages and operates as a public car park, and is known as the Short Street car park. The site is bounded by Short Street (generally east), Bayview Avenue

(generally north), Theatre Lane (generally west) and Denning Street (generally south. Theatre Lane serves as the rear access to the shops fronting The Entrance Road one block to the west.



*Figure 1 – Aerial photograph of subject site*

The main portion of the site is 3266.7m<sup>2</sup> comprising the land currently used for carpark and identified on the key sites map. The site involves an increase to the site area to 4302m<sup>2</sup> by inclusion of portions of the existing road reserves along the length of the site of Theatre Lane and Short Street, which have been closed. The existing roads within Theatre Lane and Short Street remain constructed within the portions of closed road reserve.

## SURROUNDING DEVELOPMENT

The subject site is located within a commercial and residential setting, primarily characterised by a mix of multi-level developments, with a parcel of undeveloped land located directly to the north of the site. Surrounding land use includes residential, retail and commercial developments.

Development Consent No. DA/1080/2014 was granted by the then Hunter and Central Coast Joint Regional Planning Panel on 14 December 2015 for a Section 83B (now Section 4.22) staged mixed use development comprising shop top housing (residential tower), a hotel tower with multi-

purpose function space, a restaurant, a shopping centre and parking, including demolition of existing structures on the Lakeside Plaza Site located at 8-118 The Entrance Road; 1-3 Glovers Lane; 19-23 Taylor Street, The Entrance. Further development consent is required for each of the three subsequent operational stages. A Section 96 (now Section 4.55) Modification Application was approved by Council on 20 April 2017.

## THE PROPOSED DEVELOPMENT

The development application has been lodged under Section 4.22 of the *Environmental Planning and Assessment Act 1979*, now seeking concept approval for a staged mixed-use development comprising a connected residential tower element and including:

- Retail (1,075 m<sup>2</sup>)
- Residential floor space (10,944m<sup>2</sup>) (102 units)
- Associated car parking (321 spaces).

The main body of the site is identified as a 'key site' under WLEP 2013 key site maps. The application has been lodged under these provisions which allow for a bonus building height in return for significant public benefits to be provided to the community and to stimulate further development and viability of town centres. The development has a maximum height of less than 50 metres above ground level (RL 64.4 AHD). The site includes two portions of closed road adjoining the site to the east and west of the main body of the development site. The ground floor access and plaza elements extend into the portions of closed road. The residential tower elements are contained within the main body of the site subject to the Key Site provisions. The height of the development complies with the Key Site provisions.

A ground floor retail/commercial level is proposed above 4 levels of resident basement carparking. A public level of carparking is proposed within the first floor podium level. The residential levels are contained within two tower elements which share a common lift lobby located between the two towers. The southern tower is nine storeys and the northern tower 12 storeys in height. The proposed development will present as a 14 storey development to Bayview Street and 11 storeys to Denning Street.

The SEE indicates that public domain improvements proposed include areas of public domain at ground level to connect adjoining areas and filter pedestrian activity. The plaza includes seating and opportunity for outdoor dining and events. The plaza is indicated as being an attractive space and will complement the Lakeside Plaza redevelopment to the north by providing a forecourt link. The public domain plan submitted with the application provides an indication of the treatment and connection to the Lakeside Plaza site and Piazza as proposed as a fundamental building block for the Town Square envisaged in Council's adopted Masterplan.



## STAGING

The staged application seeks 'concept approval only' for the works in two (2) stages. The application indicates this current Masterplan as Stage 1 and the detailed design and construction of the development is Stage 2.

There are no operational stages included under the current development application as it is seeking 'concept only' approval and a separate future development application will need to be made detailing the proposed second stage of the development in order to obtain an operational consent for construction purposes.



Figure 2 – Proposed Site Plan



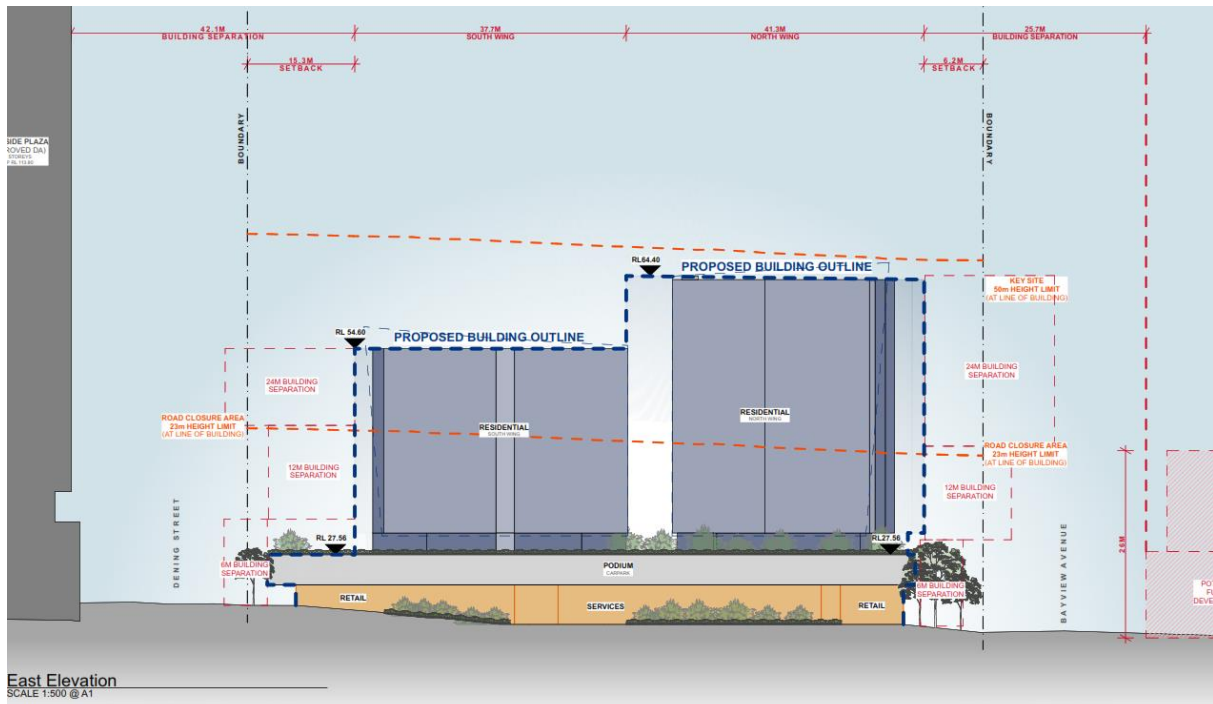


Figure 3 – East Elevation

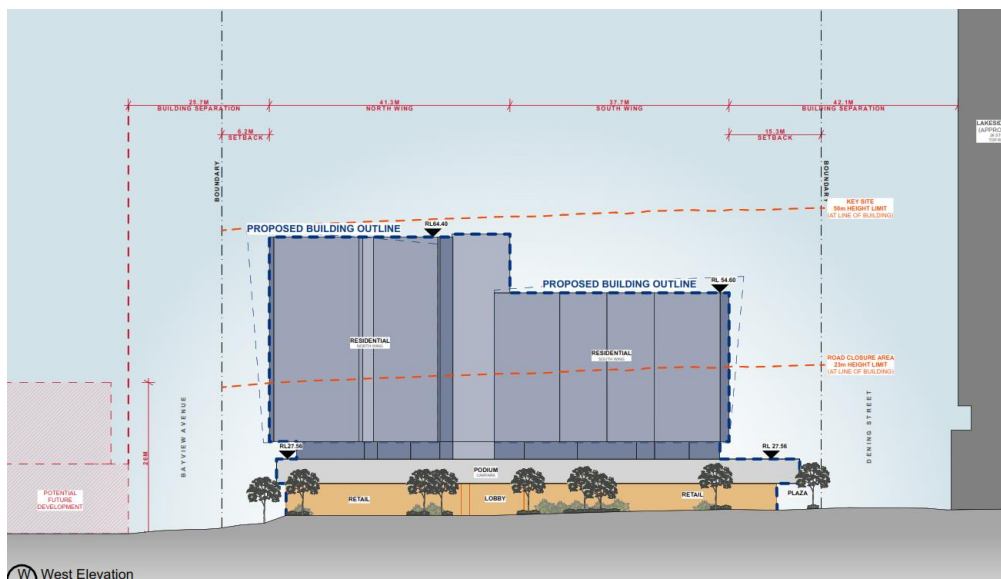


Figure 4 – West Elevation

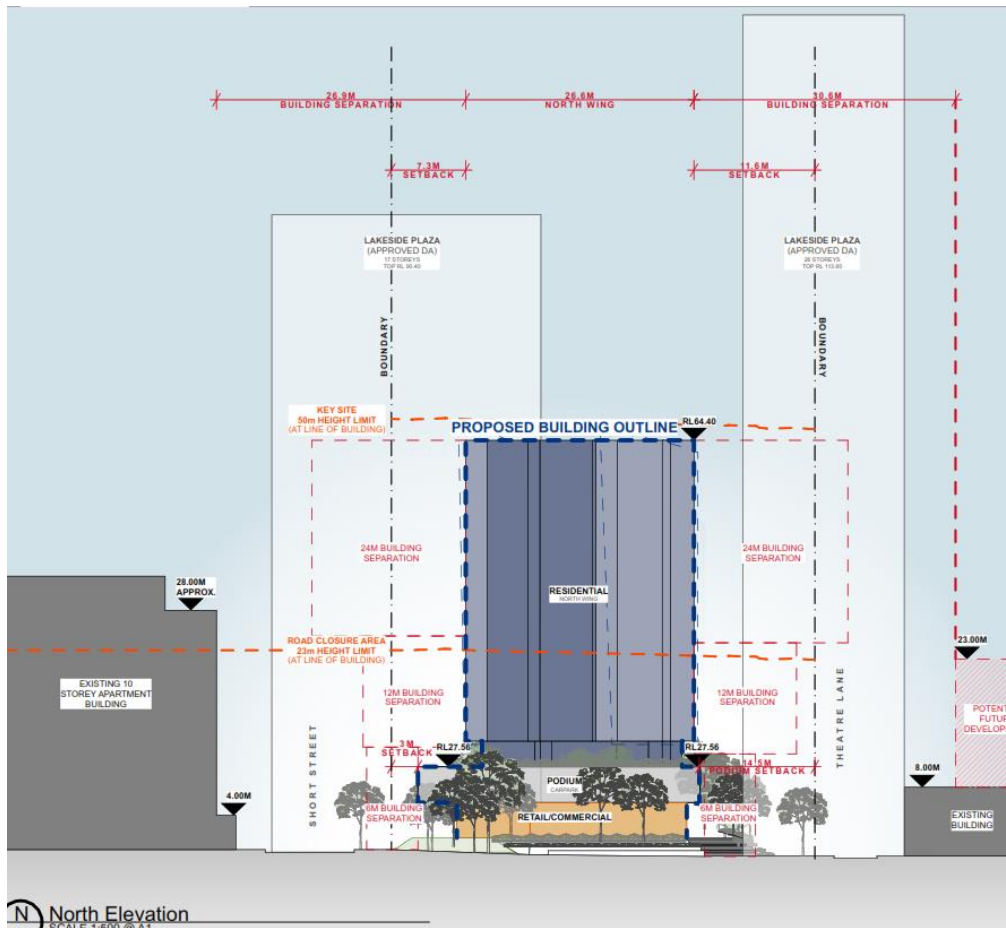


Figure 5 – North Elevation

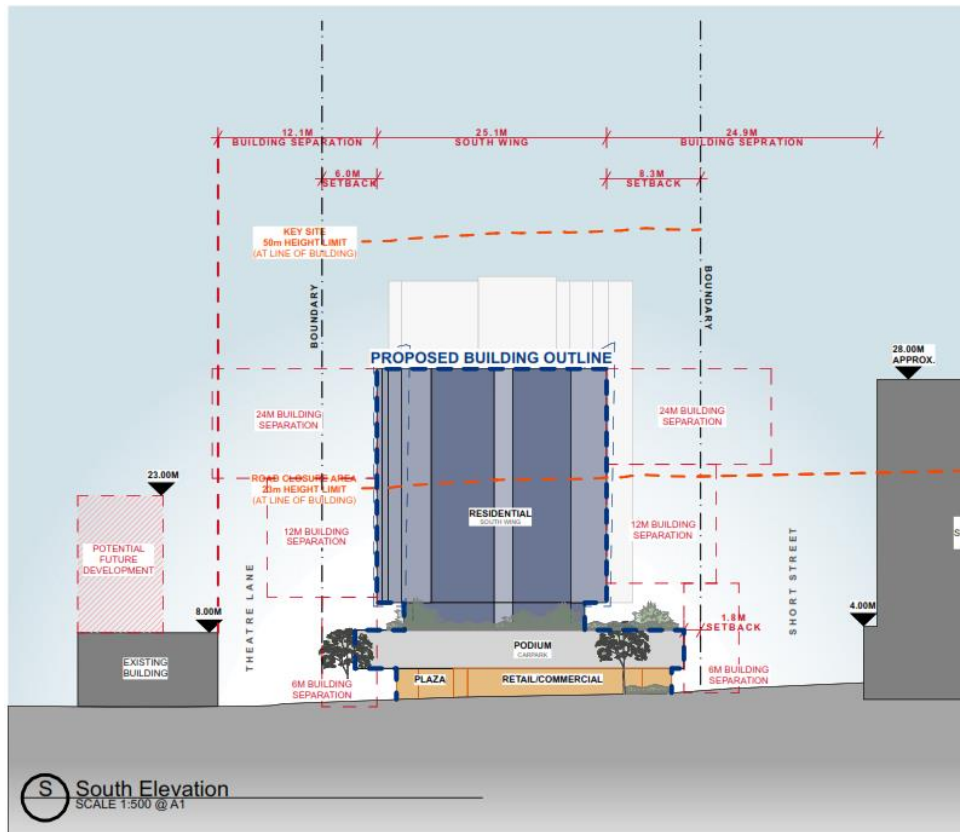


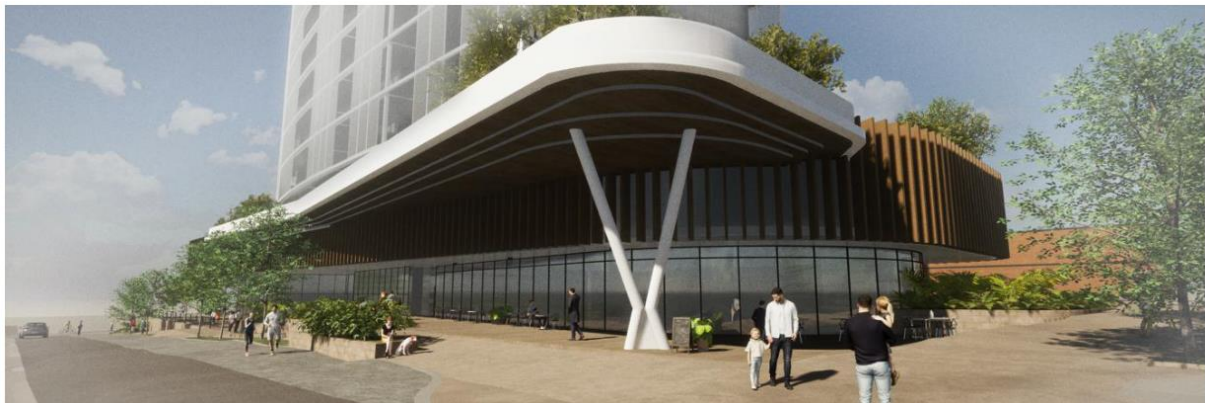
Figure 6 – South Elevation



Figure 7 – Photomontage from corner of Bayview Avenue and Theatre Lane



*Figure 8 – Photomontage from corner of Bayview Avenue and Short Street*



*Figure 9 – Photomontage from corner of Denning Street and Theatre Lane*

## HISTORY

The site currently contains an at grade car parking facility (currently owned by Central Coast Council) with 93 car parking spaces and public toilets and an electrical kiosk in the south western corner. On-street angle car parking also exists along Short Street (21 spaces), Bayview Avenue (7 spaces) and Theatre Lane (10 spaces).

The site has a gentle slope from south to north, with a total fall of 4.5m over the length of the site.

The site is identified as a 'key site' under the *Wyang Local Environmental Plan 2013 (WLEP 2013)* key site maps. The proposed development intends to utilise these provisions which allow for a bonus building height in return for significant public benefits to be provided to the community. The site has a maximum permitted height of 50 metres under the Key Sites height map (referred to under Wyong Local Environmental Plan 2013 – Clause 7.11(2)). Ordinarily the applicable height for development of the site would be 31 metres for the main development site occupied by the existing carpark. 23 metres is the applicable maximum permitted height for the portions of closed road within the site.



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In order to rely on the Key Site provisions pertaining to building height, Wyong LEP 2013 (Clause 7.11) requires the preparation of a site specific Development Control Plan (DCP). A site specific DCP addressing Clause 7.11 of WLEP has not been prepared and as an alternative, the application has been lodged as a staged Development Application under Sections 4.22 and 4.23 of the *Environmental Planning and Assessment Act 1979*.

## BACKGROUND

Development Application DA/624/2016 on the subject site was refused by the then Hunter and Central Coast Joint Regional Planning Panel on 31 May 2018 for the following reasons:

- exceedance of the maximum building permitted height,
- an unfounded Clause 4.6 application,
- owner's consent not provided for part of site,
- prevention of rear access to properties fronting The Entrance Road,
- inadequate information and failing to provide an appropriate level of public amenity, public art, urban design relationship and consistency with the requirements of Wyong Development Control Plan 2013 Chapter 5.3 The Entrance Peninsula.

The current development application was lodged 14 December 2018 for a Masterplan application Mixed Use Retail & Residential Development Incorporating 80 Residential Units. The application since lodgment in December 2018 has been identified as being deficient in a number of areas. Amended plans have been submitted three times and during the course of the assessment, more detailed and comprehensive details have been provided. The plans and supporting details the subject of this report represent the fourth submission. The application has been the subject of HCCRPP briefings in March 2019, March 2020, May 2020 and August 2020. The Panel requested that the application be reported due to the extensive time given for amendments to be prepared.

This report is prepared in response to the application as amended June 2020.

As Central Coast Council are the owners and applicants of the proposed development, an independent assessment of the development application has been undertaken. This report has been prepared by GLN Planning Pty Ltd. GLN Planning undertook the assessment of the prior development application for the site.

## SUBMISSIONS

The application was notified on three occasions in accordance with DCP 2013 – Chapter 1.2 Notification of Development Proposals with three submissions being received for the first notification period (January 2019), 17 submissions received for the second notification period (January/February 2020) and 13 submissions for the third notification period (July/August 2020). The general issues raised in relation to the proposal are discussed below.

- Height of the Proposal

Comment:

The proposed development complies with the maximum height of building when making use of the key sites provisions of Clause 7.11 of WLEP. This development application was lodged prior to the five year sunset clause operating and so a maximum height of 50m applies to the main body of the site. The applicant has sought to modify the proposal during the course of the assessment to address matters raised. This is a common practice in the assessment of Development Applications. It is be noted that three opportunities have been granted to address the issues raised and the application is now being reported to provide a conclusion to the assessment.

- Size and Bulk of the proposal

Comment:

The independent urban design assessment and consideration of the proposal against the provisions of WDCP indicate that the overall built form of the proposal does not provide or guarantee an appropriate built form for a Stage two DA.

- Larger than previously refused application

Comment:

The current development application (see Figures 10 and 11 below) provides for a greater built form located opposite the site in Short Street being the Atlantis residential flat building at 1 – 5 Bayview Street. This is a result of relocation of the taller tower element to the northern part of the site to limit overshadowing of the proposed Town Square and adjoining properties to the south. Further there is an approximate reduction (50%) in the amount of commercial floor space, an introduction of podium parking level and an increase in residential unit numbers and floor space. The relative size of the two proposals is not a relevant consideration to the assessment of the application but rather compliance with the relevant controls. Both proposals fail to satisfactorily address the built form and urban design outcomes as identified in WDCP.



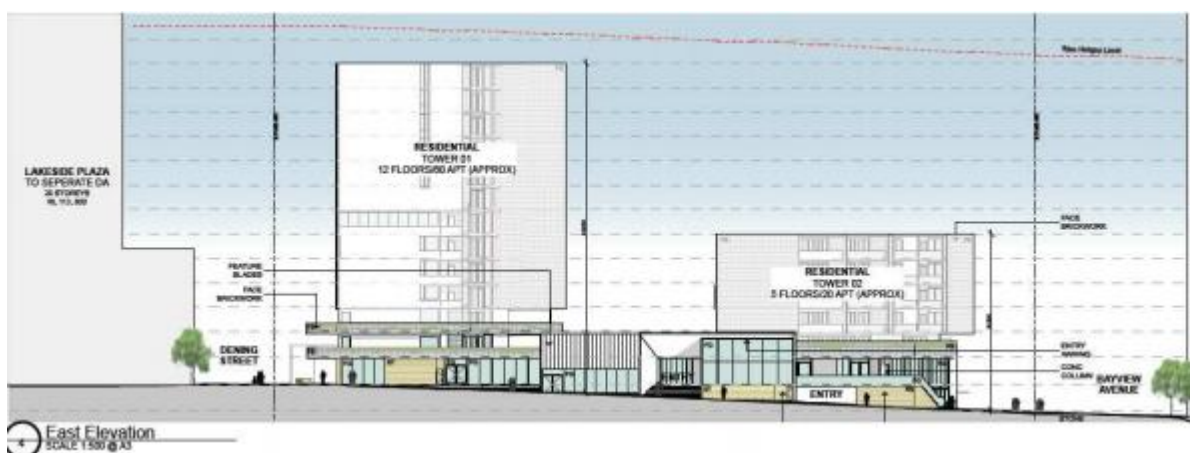


Figure 10 – Previously refused DA/624/2016 East Elevation

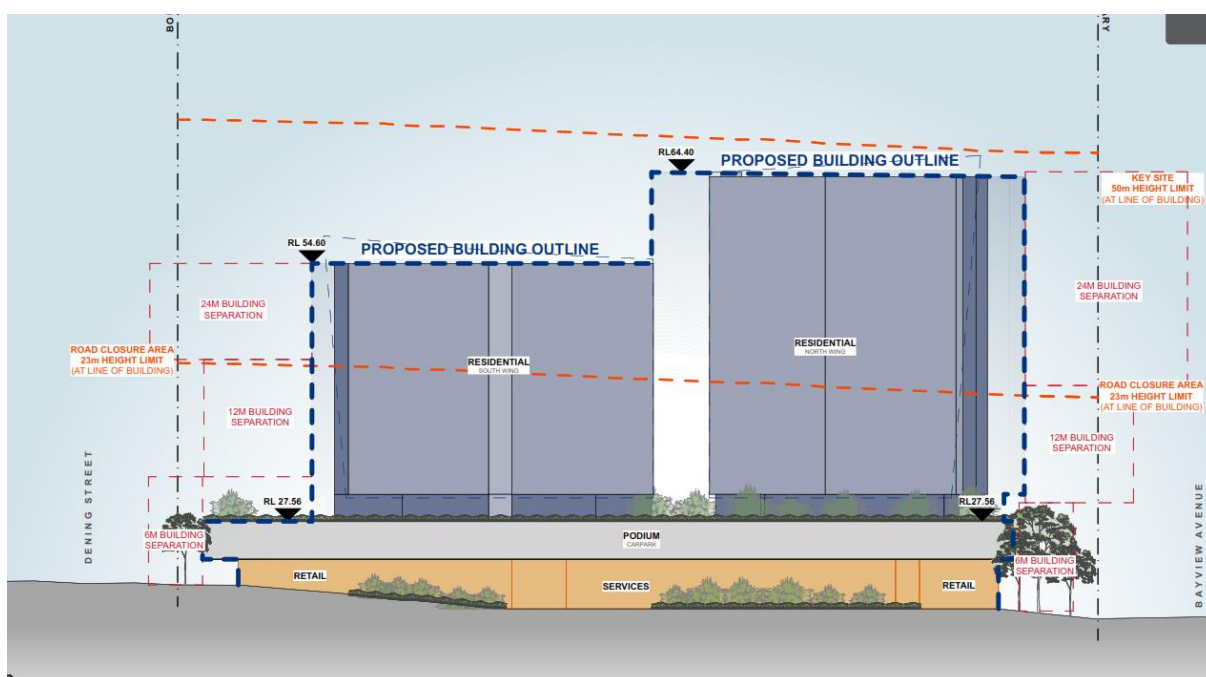


Figure 11 – Current Proposal East Elevation

- Overshadowing

Comment:

Shadow diagrams have been prepared for the development at 9:00am, midday and 3:00pm, on 21 June and 21 September. The diagrams indicate the scenario mid-winter on the shortest day of the year as well as the solstice in order to ascertain shadowing impacts from the development throughout the year. DCP Chapter 2.4 (6.3.1) requires a minimum of three hours of unobstructed solar access to a minimum of 75% of the private open space (POS) area for a dwelling on an adjoining site between 9am and 3pm midwinter. The POS for the dwellings will continue to achieve solar access mid-winter at the early morning and mid-afternoon periods of the day.

Detailed shadow diagrams would be required with a Stage 2 DA should the proposal proceed.

- Comment:

- Reduction in Privacy

This application will not of itself result in a loss of privacy as it does not provide for construction. A future Stage 2 DA will require detailed assessment to ensure compliance with ADG setbacks. WDCP requires the tower setbacks of 10m from building lines. The tower elements identified do not indicate compliance. The SEE does not provide any justification for the variation of the identified setbacks which have been established on the basis of the earlier urban design investigations and reports to inform the WDCP requirements. Inadequate setbacks could impact upon privacy of nearby residential development.

- Comment:

- Lack of parking

Comment:

As discussed within the body of this report there is inconsistency as to the application of the parking rates and some errors in the identification of overall parking requirements. It is considered that there would be capacity within the parking levels to accommodate all parking as required to comply with WDCP parking requirements.

- Non-compliance with DCP

Comment:

These matters have been addressed within this assessment report and are contained within the reasons for refusal.

- Non-compliance with ADG

Comment:

The assessment of the proposed residential component of the development relevant to the controls of the ADG is a matter that will be considered in more detail within a Stage 2 DA. It is however noted that the proposed building envelope as identified has been assessed by Council's Urban Design Expert as not being sufficiently resolved to ensure an appropriate Stage 2 DA design solution. It is agreed that the building with a central lift core will present a single tower and provides for a building of excessive length.

- Demand for retail floorspace

Comment:

The proposed development will increase the amount of retail/commercial floorspace within The Entrance Town Centre. The economic viability of nearby and future operations is not a matter for consideration in this application, although it is noted that the additional dwellings within the Town Centre will contribute to demand for retail and commercial uses. Further, the development requires a commercial or retail component for the development to be permissible development in the B2 Local Centre zone.

- Out of date traffic report

Comment:

It is agreed that the traffic counts have been undertaken over 6 years ago, and should be updated. A detailed Traffic and Parking Assessment would be required with the Stage 2 DA.

- Width of and deliveries from Theatre Lane

Comment:

The proposal has been amended to ensure access is available to the rear of The Entrance Road Properties with access from Theatre Lane. Other more practical requirements relating to parking and loading areas and signage can be dealt with in conjunction with a Stage 2 DA.

- Access for garbage truck from Short Street

Comment:

It is proposed to reduce the width of the Short Street from approximately 9m to 5m. The access of the garbage truck to 1- 5 Bayview Street is a matter that requires consideration by Council's Traffic Engineer.

#### ECOLOGICALLY SUSTAINABLE PRINCIPLES:

The proposal has been assessed having regard to ecologically sustainable development principles and is considered to be consistent with the principles.

The proposed development is considered capable of incorporating satisfactory stormwater, drainage and erosion control and the retention of vegetation where possible and is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

#### CLIMATE CHANGE

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the application. This assessment has included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope / combat / withstand these potential impacts. In this particular case, the following matters are considered to warrant further discussion, as provided below:

**Sustainable building design:** The residential part of the proposal includes initiatives for energy and water efficiency under the submitted BASIX Certificate. Sustainability measures for the design of the ground floor tenancies (food and drink premises and neighbourhood shop) have also been provided for via lighting, glazing, insulation and construction materials.

**Reduced Car Dependence:** The proposal includes parking for bicycles and motorcycles as alternative modes of transport to the car

**Rising Sea Level:** The site is located within an area subject to flooding from overland flow rather than flooding from the lake.

## ASSESSMENT:

Having regard for the matters for consideration detailed in Section 4.15 of the *EP&A Act 1979* and other statutory requirements, Council's policies and Section 10.7 Certificate details, the assessment has identified the following key issues, which are elaborated upon for the Panel's information. Any tables relating to plans or policies are provided as an attachment.

## PROVISIONS OF RELEVANT INSTRUMENTS/PLANS/POLICIES:

### (a) Wyong Local Environmental Plan 2013

#### Permissibility

Under the provisions of Wyong Local Environmental Plan 2013 (WLEP 2013), the site is zoned B2 Local Centre.

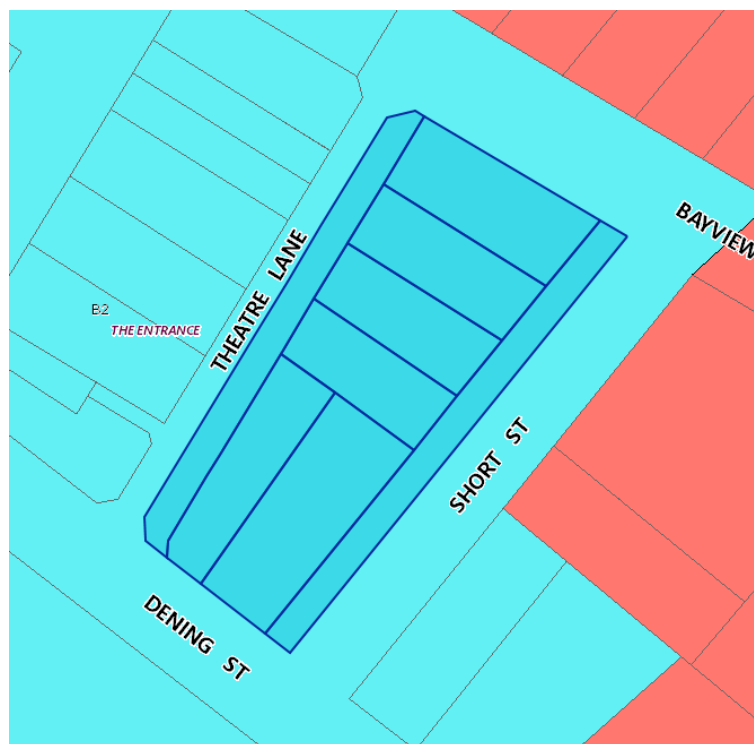


Figure 12 – Extract of zoning map (light blue: B2 Local Centre, pink: R3 Medium Density Residential)

The proposal includes as permissible uses a number of land uses including, 'retail premises' and 'shop top housing'. The proposed development is to contain a mix of retail and shop-top residential housing all of which are permissible with development consent. The development is defined in WLEP as a "mixed use development". Despite Mixed use development being defined term, a mixed-use development is not a landuse and therefore permissibility is dependent upon the uses proposed. '

The following land use definitions are relevant:

*"mixed use development which means "a building or place comprising 2 or more different land uses."*

*"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."*

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

*"shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop, but does not include food and drink premises or restricted premises."*

The objectives for the B2 zone are as follows:

- *"To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To permit residential accommodation while maintaining active retail, business and other nonresidential uses at street level.*
- *To minimise conflict between land uses within the zone and land uses within adjoining zones".*



The proposal is considered to be consistent with the B2 zone objectives for the purposes of Clause 2.3(2). Under the proposal a range of future business and retail opportunities are created that will serve the needs of visitors to, and residents of, the local area. The proposal would create new employment opportunities in an accessible location and the residential accommodation is provided above ground floor level.

Additional housing will help in meeting Central Coast Regional Growth targets and will contribute additional adaptable housing supply in the locality.

### Height of Buildings

Under Clause 4.3 of Council's LEP and the Height of Buildings Map, the maximum height of buildings that applies to the site is 31 metres for the main body and 23 metres for the closed road portions of the development site. Council GIS system indicates that the Theatre Lane portion of closed road has a height limit of 31m and the Short Street portion has a 23m height limit. The Council GIS system is believed to be a mapping error that has occurred at the time of the creation of the closed road lots in August 2016 (Lots 1 & 2 DP 1219145).

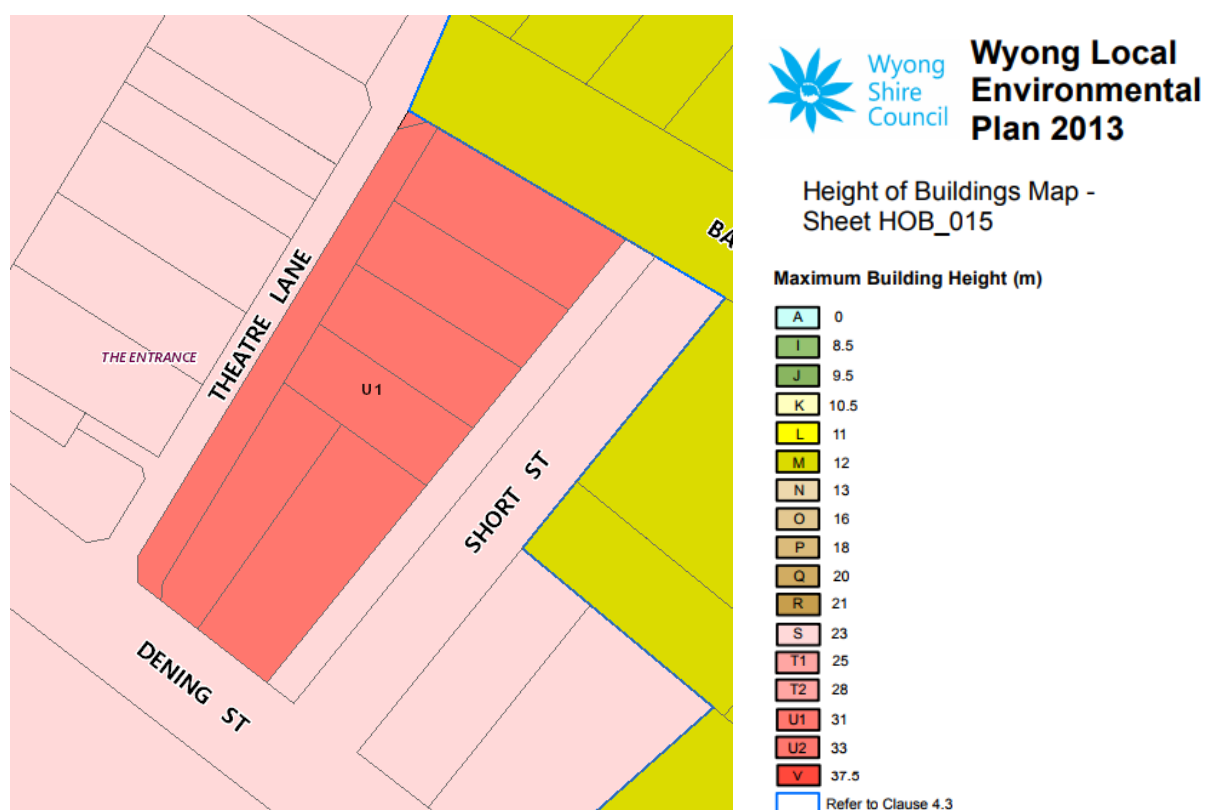


Figure 13 – Extract of Height of Buildings Map Source Council GIS

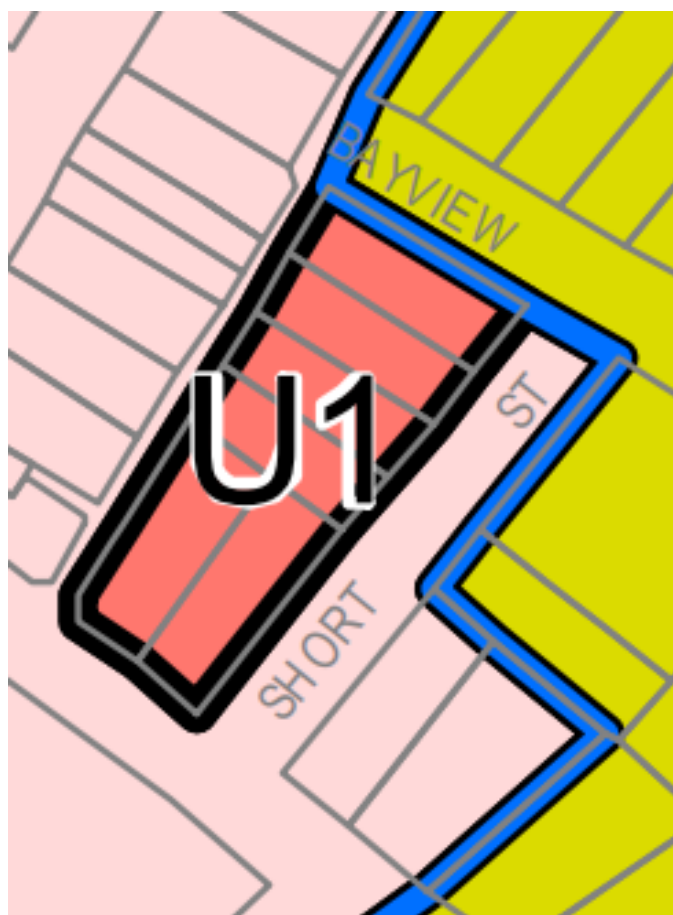
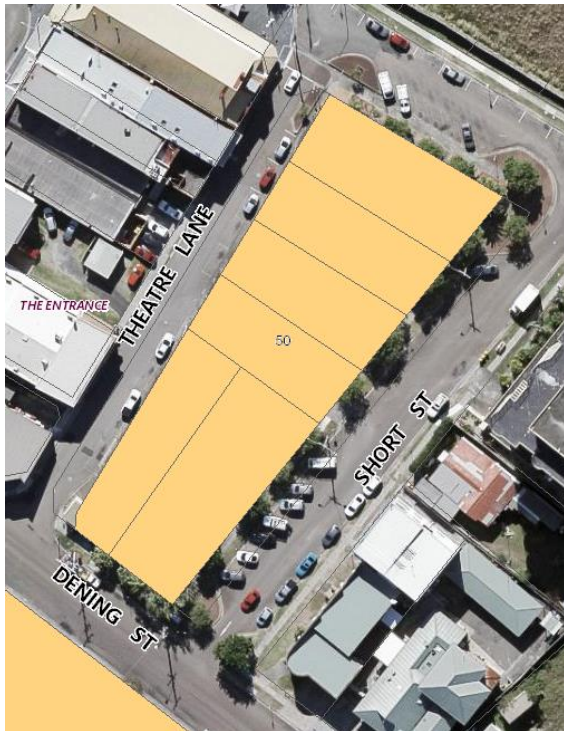


Figure 14 – Extract of Height of Buildings Map Source WLEP Legislation NSW

The published maps do not identify the portions of closed road (Lots 1 & 2 DP 1219145) on the cadastre which predates the creation of the lots. Map 15 has been effective since 3 February 2017 and the earlier map was published at the time of the WLEP commencing. (Refer [https://www.legislation.nsw.gov.au/maps/a3b26416-d437-4851-894c-d119c7446700/8550\\_COM\\_HOB\\_015\\_020\\_20151116.pdf](https://www.legislation.nsw.gov.au/maps/a3b26416-d437-4851-894c-d119c7446700/8550_COM_HOB_015_020_20151116.pdf)). The original map indicates the same height of building controls as the current published maps.



## Wyong Local Environmental Plan 2013

### Key Sites Map - Sheet KYS\_015

#### Key Site - Maximum Building Height (m)

 Key Site

*Figure 15 – Extract of Key Sites Map*

The site is identified as a key site and a greater height applies in some circumstances. Under Council's Key Sites Maps (Clause 7.11(3)) the site is permitted a maximum building height of 50m.

Clause 7.11(4) provides that this clause does not apply to "a development application made 5 years after the commencement of this Plan" Clause 1.1AA provides that WLEP commences on the date on which it is published on the NSW legislation website which was 23 December 2013. DA/1483/2018 was lodged 14 December 2018 prior to the five year sunset clause 7.11 (4) and so the key site provisions remain active for the consideration of this application.

The subject site includes portions of closed road within the development site. The Key Sites Map does not identify the areas of closed road within the key site. As a result, there is a split maximum height of buildings. The effect of the key sites identification enables the development of a building with the maximum height of buildings that applies to the site is 50 metres for the main body and 23 metres for the closed road portions (Lots 1 & 2 DP 1219145) of the development site.

#### Floor Space Ratio

The maximum floor space ratio (FSR) for a building (under clause 4.4) on any land is not to exceed the FSR shown for the land on the FSR map which for this site is 3:1. The site has an area of 4302.1m<sup>2</sup> and therefore an allowable FSR of 12,906.3m<sup>2</sup>. The development has a GFA of 12,019 m<sup>2</sup> being 2.79:1 FSR and the proposal therefore complies with the maximum FSR.



Figure 16 – Extract of Floor Space Ratio map (v= 3.0:1)

#### Heritage Conservation

The site is located in the vicinity of the identified local heritage item No I89 – Police Station opposite the subject site in Short Street under WLEP 2013:



Figure 17– Extract of Heritage map (item 189 is The Entrance Police Station building)

In relation to this item, Council's heritage Inventory Sheet states:

- "Item 89 - A typical and representative example of a late inter-war functionalist building on a prominent corner site. It demonstrates the development of a community infrastructure in the locality and is a fine example of the capacity of listed heritage buildings for adaptive re-use. The Police Station has undergone many modifications over the years, however the original station and house can still be seen. After the Ambulance Station next door closed in 1990 the police station expanded onto this site and in 2004 an addition was added to the rear of the former Ambulance Station".

Clause 5.10(5) states that prior to granting consent to any development on land within the vicinity a heritage item, information to assess the impacts of the development on the heritage significance of the item may be required. The applicant provided information in accordance with the Clause. The proposal will have a visual impact on the heritage item as it is located directly opposite the development site. The proposal will generate more pedestrians and allow for greater exposure and enjoyment of the historic items. The development does however, sit within the commercial centre of one of the Central Coast's main town centres, The Entrance. Within the setting of The Entrance, large buildings and residential flat buildings



contribute to establishment of a diverse urban fabric which draws from its picturesque seaside location and has potential to grow. Information will be required to accompany future DA's to identify and mitigate any potential adverse impact the proposal may have on the heritage significance of the item

Council's Heritage Officer advised concerns during the earlier versions of the proposal. In response to the June 2020 plans Council's Heritage advisor advised:

*"The proposed development is adjacent to the heritage building located at 12 Denning Street, The Entrance. The proposed development has appropriately responded to the key features of the heritage listed building being the curved bay window on the street corner. In this regard the proposed development has incorporated curved elements into the street façade and this prominent corner location. The use of curves reinforces the character of the heritage building. Importantly it also provides opportunities for sympathetic setbacks from the street corner, increased areas for appropriate landscaping, and the retention of views for those motorists using Denning Street. The retention of these views are demonstrated in drawing DA- 8004 (Rev 01) of the architectural plans.*

*The proposed amendments to the development application are supported. They are sympathetic to the overall character of the Police Station and allow views to and from the heritage item along the Denning Street streetscape."*

#### Key Sites -Clause 7.11- Development requiring preparation of a development control plan)

Clause 7.11 relates to the development of land identified as a 'key site' on the Key Sites Map and states:

#### *7.11 "Development requiring the preparation of a development control plan (key sites)*

*(1) The objectives of this clause are as follows:*

- (a) to deliver a high standard of design excellence for certain key sites in Wyong,*
- (b) to encourage the amalgamation of those key sites to provide opportunities for the expansion of, and improvements to, the public domain,*
- (c) to provide a catalyst for the social and economic development of centres within Wyong,*
- (d) to deliver significant public benefit to the community.*

*(2) This clause applies to land identified as "Key Site" on the Key Sites Map.*

*(3) Despite clause 4.3, the maximum height for a building on land to which this clause applies is the height shown on the Key Sites Map in relation to that land if the consent authority is satisfied that a development control plan that provides for the following matters has been prepared for the land that is the subject of the development application:*

- (e) the application of the principles of ecologically sustainable development,*
- (f) green building solutions,*



- (g) design excellence, including a high standard of expertise in urban and landscape design, interior design, construction and historic preservation,*
- (h) a high standard of architectural design, materials, unique facade treatment and detailing appropriate to the type and location of the development,*
- (i) encouraging sustainable transport, including increased use of public transport, walking and cycling,*
- (j) road access, including the circulation network and the provision of car parking,*
- (k) the impact on, and improvements to, the public domain,*
- (l) environmental constraints, including acid sulfate soils, flooding, contamination and remediation,*
- (m) the relationship between the development and neighbouring sites, including urban and natural environments,*
- (n) the relationship between the development and any other development that is, or may be, located on or near the site in relation to overshadowing, privacy, setbacks and visual amenity."*

The clause allows for bonus development potential - being a greater height than ordinarily permitted – subject to the consent authority being satisfied that a site specific development control plan that provides for the above nominated matters has been prepared.

A site specific DCP has not been prepared and adopted for the site that provides for the above specified matters. However, the applicant submitted that under Section 4.23 of the EP&A Act, the concept development application lodged under these provisions of the Act satisfies this requirement. Section 4.23 states:

*"4.23 Concept development applications as alternative to DCP required by environmental planning instruments (cf previous s 83C)*

- (1) An environmental planning instrument cannot require the making of a staged development application before development is carried out.*
- (2) However, if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a staged development application in respect of that land.*

*Note. Section 3.44 (5) also authorises the making of a development application where the relevant planning authority refuses to make, or delays making, a development control plan.*

- (3) Any such staged development application is to contain the information required to be included in the development control plan by the environmental planning instrument or the regulations."*

The development concept, as a masterplan for the site, is not considered to express:

- (g) design excellence, including a high standard of expertise in urban and landscape design, interior design, construction and historic preservation,*

- .....
- .....
- (h) *a high standard of architectural design, materials, unique facade treatment and detailing appropriate to the type and location of the development,,*
- (j) *the impact on, and improvements to, the public domain,*

A table of compliance for the proposal against the requirements of Clause 7.11 is attached to the report (Attachment No. 4).

As has been Council's practice in determining previous key site proposals, a significant public benefit will need to be offered and accepted before the granting of approval of any operational DA's that seek the bonus height. This is discussed later in the report under the section on public benefit.

Application of s. 4.23 in this instance is beyond the intent of the applicable planning controls and if approved it is considered that the subsequent operative DA's will not have the capacity to address and meet the provisions appropriately.

#### Acid Sulphate Soils

Clause 7.1 requires consideration to be given to certain development on land being subject to actual or potential acid sulphate soils. The site is identified as Class 5 on the Acid Sulphate Soils (ASS) Planning Map and the proposal does include works that are proposed within 500 metres of adjacent Class 3 land and that are below 5 metres Australian Height Datum.

With the proposed excavation in the order of 13 metres, an Acid Sulphate Soils Assessment Report and Management Plan will be required to be prepared by a suitably qualified person for the future developments. The current application is for concept approval only and appropriate information to address this matter will need to be provided with the operational development applications lodged for subsequent stages for the basement car park construction.

#### Essential Services

Clause 7.9 requires that services that are essential for the development are available or that adequate arrangements have been made to make them available when required prior to consent being granted. These services include water supply, electricity supply, sewage management and disposal, stormwater drainage or on site conservation and suitable road access.

Water service is available for the proposed development from The Entrance Road and Taylor Street. Council's existing system is adequate to provide water supply to the proposed development, with localised upgrades and renewals required as part of the development.

The site is sewered, as the proposal is for a concept application, Council could review the adequacy of the proposed connection points in more detail and determine if upgrades may be required.

In accordance with Clause 7.9, the future stages of the proposed development will need to demonstrate the manner in which the development can be adequately serviced. Water and sewer contributions will be applicable to the future operational stages of the development. In the event that approval was recommended, conditions of consent could be imposed in this regard.

## Draft Central Coast Local Environmental Plan 2018

Draft Central Coast Local Environmental Plan 2018 (CCLEP) was exhibited from 2 December 2018 to 28 February 2019 and will replace the planning instruments relating to the former local government areas. Under Draft CCLEP, the site retains its B2 Local Centre, maximum FSR and height of buildings and the proposed development remains a permissible use within the zone. The key site provisions of Clause 7.13 under WLEP are maintained in Draft CCLEP. It is noted that the provisions of Clause 7.13(4) limit the operation of the clause to 5 years after the commencement of WLEP so will have no practicable effect once the plan is made.

### (b) Relevant State Environmental Planning Policies (SEPP)

#### State Environmental Planning Policy 65 – Design Quality of Residential Apartment Buildings

State Environmental Planning Policy 65 – Design Quality of Residential Apartment Buildings applies to the development and requires the design quality of the residential flat development to be taken into consideration and evaluated against the nine design quality principles, and the Apartment Design Guide (ADG). The proposal is accompanied by a Design Verification Statement as required by Clause 50(1A) of the Regulations (Regs). The SEE states:

The following summary of the response to the principles is provided:

##### Context

The proposed development occupies a prominent site in The Entrance Town Centre. The site is identified as a Key Site in Wyong LEP. The proposed mixed-use development responds to the opportunities of this site, with intent of providing several high-quality retail or commercial spaces and residential apartments in this significant location and contributing the local community and economy.

##### Built Form and Scale

The two storey podium of the proposed development relates to the scale of the surrounding developments, and to the podiums of proposed future developments in the area. The residential above are setback from the podium footprint creating a visual distinction between the two, working to reduce the perceived scale of the development. The towers vary in height which provides visual interest and allows for solar access to the south. The towers are slender in the east/west direction enabling view retention. The ground level/ podium level has been sited and proportioned to provide human scale with the new public space and streetscape.

##### Density

The proposed development is within the town centre and close to many amenities making it ideal for higher density residential development. The development is consistent with The Entrance Town Centre Masterplan strategy for development in the immediate precinct and The Entrance Peninsula.

##### Sustainability

The following elements under sustainability have been considered:

#### Density and Location

The proposed development is strategically located to enable more people to live within a high-amenity area within the town centre and close to public transport, helping to reduce reliance on private transport.

#### Apartment Design

The apartments utilise passive design strategies wherever possible to reduce the reliance on artificial means of controlling thermal comfort. Consideration given to the orientation and operation of glazed facades to maximise natural daylight, solar heating and cross ventilation.

#### Outdoor Spaces

The proposed development includes a large amount of landscaping, both surrounding the buildings and on structures to minimise hard surfaces and stormwater run-off. The proposal encourages communal interaction through a series of private and public communal spaces.

#### Street Frontage

The proposed retail/commercial tenancies on the ground level and facing the street aim to encourage community interaction and economic growth. Passive surveillance of the street from the residential towers as well as the associated increase in foot traffic in the area will help contribute to a safe neighbourhood.

#### Landscape

The proposed development includes deep soil areas to allow for substantial plantings along the Theatre Lane and Bayview Avenue frontages. There are also substantial on-structure planters with extensive landscaping on the podium roof. The landscaping will improve the street amenity with street trees proposed along the road frontages.

#### Amenity

The apartments have been designed in accordance with SEPP 65 principles and provide a high level of amenity exceeding the base requirements. The large landscaped common open spaces provided on the podium contribute to resident amenity and provide for a range of activities.

#### Safety

Majority of the parking areas are contained within basement levels. Passive surveillance of the surrounding streets and common open spaces is provided by the towers and the podium retail/commercial areas. Access to the residential levels of the development is to be restricted to residents and their visitors via secure lift access.

#### Housing Diversity

There is a mix of apartment sizes in 1, 2 and 3 bedroom configurations. Various communal open spaces are provided for resident use.

## Aesthetics

Careful consideration has been given to the scale, form, and materials of the proposed design to ensure a pleasing aesthetic that suits the developments context. The podium and its features are kept to a human scale, with a variety of textures and generous landscaping to create an inviting space. The tower above the podium has been designed to respond to the coastal character of the location.”

The independent Urban Design Assessment (**Attachment 9**) provides consideration of WDCP Section 6.1 – 2.2: design quality considerations for Key Sites which in effect, adopt the SEPP No. 65 design quality principles. The independent Urban Design Assessment concludes that the proposal does not warrant support and should be refused.

Clause 70A of the Regs enables information for concept DA's to be deferred to a subsequent development application.

Concept development applications—residential apartment development

*Clause 50 (1A) applies in relation to a concept development application only if the application sets out detailed proposals for the development or part of the development.*

The proposal provides indicative floor plans and a SEPP 65 Design Verification Statement has been submitted. The subsequent Stage 2 DA would be submitted for the detail of the residential tower and construction of the development. The applicant intends to provide greater details will be provided with the Stage 2 DA addressing compliance with SEPP 65 and Apartment Design Guide.

It is considered that the form of this Stage 1 Concept DA does not support nor guarantee that the Stage 2 DA will be able to achieve compliance. Whilst it is noted that the typical residential levels are identified as for indicative purposes only, there are areas of non-compliance for example the maximum number of units per floor, it being noted that the towers are joined by a central lift lobby. Whilst these are matters to be dealt with at a subsequent DA, the indicative layouts do not indicate that there is an alternate solution. The building envelopes are not clearly identified on the plans, with the proposed building outline reflecting the indicative layouts directly. The plans do not identify the extent of the building envelope that is anticipated to comprise gross floor area, articulation zones. On the basis of the plans as detailed, the only option to ensure compliance with the FSR and anticipated yield is the indicative layouts for which a detailed assessment isn't provided nor can be undertaken on the available details.

A new urban context is being established by recent development approved and this proposal which will modify the character, scale and place that currently exists in The Entrance town centre. Future development must be consistent with the adopted desired future character and form. The concept proposal does not ensure consistency with the intent of the provisions of SEPP 65.

## State Environmental Planning Policy (Coastal Management) 2018

The provisions of State Environmental Planning Policy (Coastal Management) 2018 require Council consider the aims and objectives of the SEPP when determining an application within the Coastal Management Areas. The Coastal Management Areas are areas defined on maps issued by the NSW Department of Planning & Environment and the subject property falls within the mapped coastal management area and coastal use area.

The provisions of State Environmental Planning Policy (Coastal Management) 2018 requires Council consider the aims and objectives of the SEPP when determining an application within the Coastal Management Area. The Coastal Management Area is an area defined on maps issued by the NSW Department of Planning Industry & Environment and the subject property falls within this zone. The proposed development which does not provide for any

Division 3 'Coastal environment area' of State Environmental Planning Policy (Coastal Management) 2018 states:

### *'13 Development on land within the coastal environment area*

*(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

*2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*



*(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

The proposed development which does not provide for any physical works will and it is not considered that the future stage 2 DA would cause an adverse impact on the matters required to be considered under Clause 13 (1) (a) – (g) or Clause 13 (2) (a) – (c) of SEPP (Coastal Management) 2018, as follows:

The proposed development has no adverse impact on the integrity or resilience of the biophysical, hydrological or ecological environment.

The proposed development has no adverse impact upon coastal environmental values or natural coastal processes.

The proposed development has no adverse impact on the water quality of the marine estate.

- The proposed development has no adverse impact on marine vegetation; native vegetation/fauna and their habitats; undeveloped headlands; or rock platforms.
- The proposed development has no adverse impact on the public amenity of any existing public open space or public access to the coastal foreshore.
- The proposed development has no adverse impact on any known Aboriginal cultural heritage, practices or places.
- The proposed development is far removed from the “surf zone” and does not adversely impact its use by the public.
- Drainage, nutrient and erosion control measures will be installed to protect the adjoining reserve and water way.

Division 4 ‘Coastal use area’ of State Environmental Planning Policy (Coastal Management) 2018 states:

*14 Development on land within the coastal use area*

*(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*

*(a) has considered whether the proposed development is likely to cause an adverse impact on the following—*

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
- (iv) Aboriginal cultural heritage, practices and places,*
- (v) cultural and built environment heritage, and*

*(b) is satisfied that—*

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*

- (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.
- (2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

- The proposed development will not cause an adverse impact to access along the foreshore and public reserve.
- The proposed development will not cause overshadowing, wind funneling or loss of view from a public place.
- The proposal is sufficiently distanced from the coast to minimize visual amenity and scenic qualities.
- The proposal will not cause an adverse impact to and known Aboriginal cultural heritage or cultural and built environment heritage.

*'15 Development in coastal zone generally—development not to increase risk of coastal hazards  
Development consent must not be granted to development on land within the coastal zone 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.*

*'16 Development in coastal zone generally—coastal management programs to be considered*  
*Development consent must not be granted to development on land within the coastal zone unless*  
*the consent authority has taken into consideration the relevant provisions of any certified coastal*  
*management program that applies to the land.'*

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

## State Environmental Planning Policy 55 – Remediation of Land

Clause 7(1) of State Environmental Planning Policy 55 requires that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and if contaminated that the land is suitable in its contaminated state (or will be suitable, after remediation) for the development proposed to be carried out. Clause 7(2) requires where there has been a change of use on any of the land (as specified under subclause 7(4)), that Council consider a report specifying the findings of a preliminary investigation of the land in accordance with the contaminated land planning guidelines.

A Preliminary Geotechnical Assessment was undertaken by Cardno dated March 2014. The assessment included a review of readily available information in relation to the current and past uses of the site as well as a site walkover. There is no evidence of any site contamination issues nor of the presence of acid sulphate soils. The site is currently utilised as an at grade carpark, however basement car parking will require detailed geotechnical investigations prior to the preparation of future detailed DA's for physical works on the site. In the event that the application was recommended for approval, a condition of consent could be imposed in this regard.

## State Environmental Planning Policy 64 - Advertising and Signage

There are no details for advertising or signage proposed or approved under the concept application.

## State Environmental Planning Policy (State and Regional Development) 2011

The proposal constitutes regional development under Part 4 of the SEPP and as identified under Schedule 7 of the SEPP, due to the estimated value of the development (exceeding \$30 million). The proposal is also identified as Council related development over \$5 million. As such, the determining authority for the development application is the Hunter and Central Coast Regional Planning Panel.

## State Environmental Planning Policy (Infrastructure) 2007

Clause 104 and Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007 do not apply to the development (under Column 3). This portion of The Entrance Road is not part of the classified road network. The application was referred to the RMS for comment and is detailed later in this report.

### c) Relevant DCP's

## Wyong Development Control Plan 2013

### Chapter 2.11 – Parking and Access

The existing carparking located on the site provides 131 parking spaces. The proposed development generates the need for on-site parking under Chapter 2.11 of WDCP as follows:

Land Use	DCP Parking Rate
Multi Dwelling Housing and Residential Flat Buildings	1 space per 1 bedroom dwelling 1.2 spaces per 2 bedroom dwelling

	<p>1.5 spaces per 3 (or more) bedroom dwelling</p> <p>Note: The above requirements may be reduced to 1 space per dwelling if development is in the Regional Centre or a District Centre, subject to submission of a Transport Management Plan and approval by Council.</p> <p>In addition, 1 space per 5 units for visitor parking with a minimum of 1 visitor space per development 1 visitor space is to be available for car washing</p> <p>On average, only one space per unit is to be allocated as resident parking. The remaining spaces are to be provided as separate parking and available for common use at all times</p>								
Shops in District Centre	<p>For GFA (m<sup>2</sup>) Spaces/100m<sup>2</sup> (GFA) #</p> <table> <tr> <td>Up to 13,000m<sup>2</sup></td><td>4.7</td></tr> <tr> <td>13,000-26,000m<sup>2</sup></td><td>4.3</td></tr> <tr> <td>26,000-40,000m<sup>2</sup></td><td>3.3</td></tr> <tr> <td>Over 40,000m<sup>2</sup></td><td>3.1</td></tr> </table> <p>Note: Apply the requirement from the GFA grouping for the previous group that the development suits, then apply the remainder at the rate for the appropriate grouping e.g. a 28,000m<sup>2</sup> centre would require 4.3 spaces per 100m<sup>2</sup> up to 26,000m<sup>2</sup> then 3.3 spaces per 100m<sup>2</sup> for the remaining 2,000m<sup>2</sup>.</p> <p># Parking rates may be reduced subject to approval of a TMP by Council</p> <p>Service Requirements: 1 space per 500m<sup>2</sup> GFA up to 2,600m<sup>2</sup> GFA then 1 space per 1,300m<sup>2</sup> GFA thereafter</p>	Up to 13,000m <sup>2</sup>	4.7	13,000-26,000m <sup>2</sup>	4.3	26,000-40,000m <sup>2</sup>	3.3	Over 40,000m <sup>2</sup>	3.1
Up to 13,000m <sup>2</sup>	4.7								
13,000-26,000m <sup>2</sup>	4.3								
26,000-40,000m <sup>2</sup>	3.3								
Over 40,000m <sup>2</sup>	3.1								

321 parking spaces for retail and residential use are proposed to be provided including 131 (including 38 street parking spaces) to replace the existing spaces lost as a result of the development.

The carparking for the development is provided as follows:

- Basement Carparking – 4 levels consisting of:
  - 131 public car parking - basement
  - 102 residential car parking – basement
  - 21 visitor spaces
- Podium Carparking

- 60 retail/commercial spaces – podium

Parking (Chapter 2.11)	Details of development	DCP rate	Required Spaces	Parking provision
Residential				
- 1 bed	18	1 x 1 Bed	18	
- 2 bed	63	1.2 x 2 Bed	75.6	
- 3 bed	21	1.5 x 3 Bed	31.5	
- Visitor		1 per 5 units	20.4	
Total Residential			145.5	132
Retail	1075sqm	4.7 spaces/100sqm GFA	50.52	51
Existing spaces lost	131 spaces		131	131
TOTAL			327	321

As identified above, the application seeks to provide a quantum of carparking that will meet the needs of the development. There is some inconsistency between the SEE, Architectural Plan calculations and Traffic Assessment as to the quantum of retail floor area, unit numbers, it is noted that on the basis of the proposed development, parking is marginally deficient of the minimum requirements of Chapter 2.11 of WDCP. The SEE indicates that it is intended to seek a variation of the residential component to provide one space for each unit. This is a matter for which Council's Traffic Engineer to provide direction. It is however noted that the additional six spaces could be located within the existing layouts with some minor amendments.

The residential and public car parks are proposed to have separate access ramps with entry from Bayview Avenue. Service vehicles will enter and exit the loading area from the Bayview Avenue driveway and travel in a forward direction to exit in Short Street.

## MOVEMENT STRATEGY

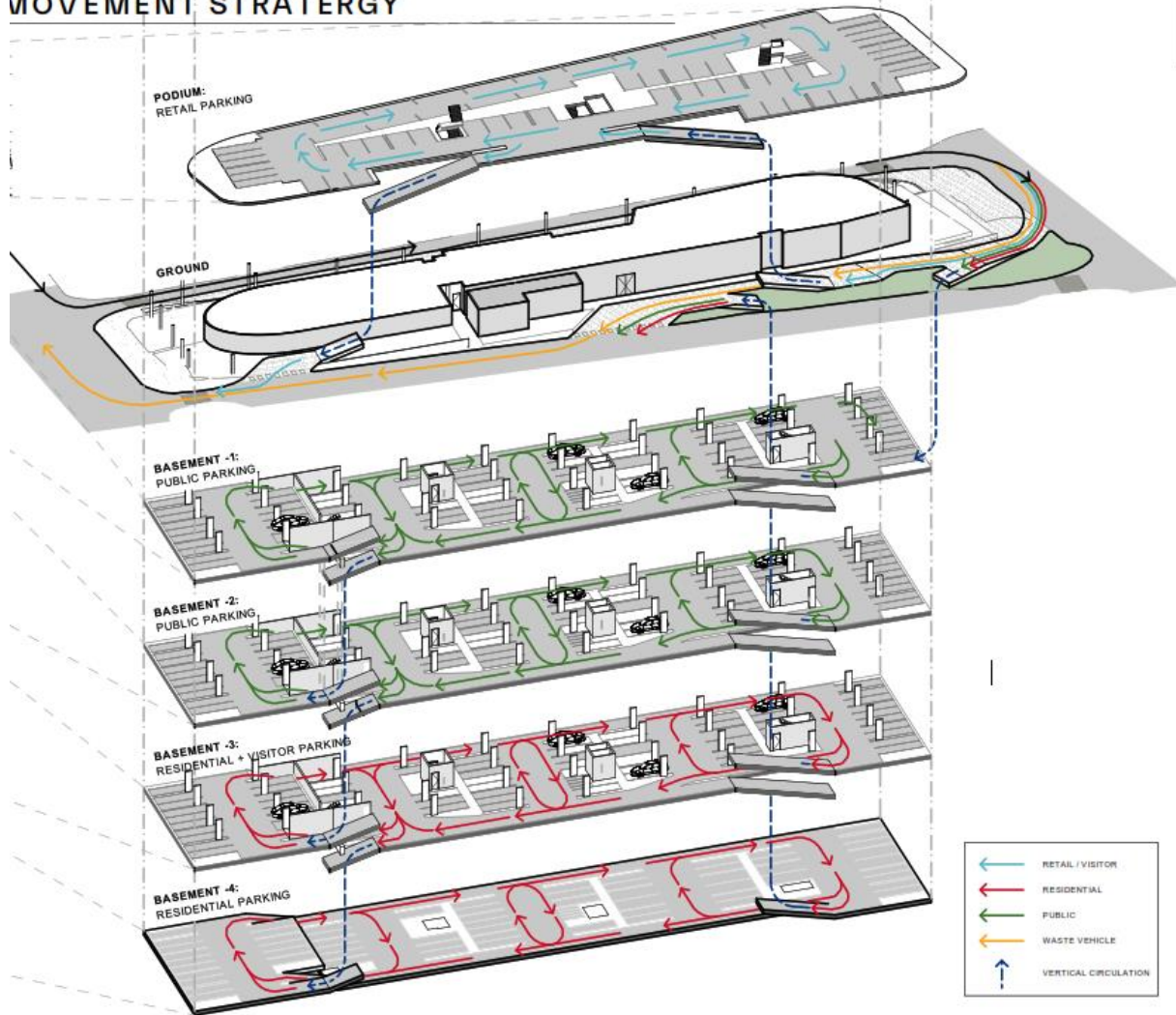


Figure 18– Proposed Parking Levels Dwg No DA-4005

The location of carparking is proposed to reflect to the different users of the mixed-use development. The residential and visitor parking is proposed in the two lower basement levels. The public car parking is located in the two upper basement levels. This eliminates any public access of the residential parking component.

The upper podium level contains the retail/commercial car carparking associated with ground level retail/commercial space.

### Chapter 2.15 – Public Art

DCP Chapter 2.15 requires major development to implement public art as part of the development. The DCP defines 'major development' as referring to commercial, public administration, and retail (shops) development valued at \$5 million or greater in terms of total development cost. The estimated value of the non-residential component for each stage exceeds \$5 million. The application does not provide specific details of public art proposed for the site



other than to indicate the public art will be integrated into the façade of the podium levels. This is not an appropriate design response as the public art provisions of WDCP seek to enhance the public domain. The proposed screens to the carparking podium are necessary to ensure the visual presentation of the podium is acceptable.

## Chapter 2.4 – Multiple Dwelling Residential Development

As a concept DA, the bulk of the assessment cannot be undertaken until subsequent stages of the proposal have been developed. Future stages will be the subject of assessment against the detailed provisions of the ADG. As discussed earlier, the building envelope identified is a reflection of the indicative floor plans and concern is raised as to the ability for the Stage 2 DA to achieve compliance with both requirements of the ADG and remain consistent with the concept DA Stage 1 approval. A checklist of the proposal against the Chapter 2.4 provisions is contained in Attachment 2.

## Chapter 3.1 Site Waste Management

In the event that the application was recommended for approval, a Waste Management Plan would need to be submitted with the operational development applications for each stage of the development. The Plan would be required to outline the waste disposal, reuse and recycling (on and off site) for the construction and operational stages of the development.

### a) Concept Waste Servicing

Council's waste management requirements outline that the provision on-site waste servicing is required where there are 12 or more residential units proposed. Council's Waste Management Officer has provided the following advice on the waste servicing aspect of the proposal:

- *The development is to designed to accommodate residential and commercial waste storage and waste servicing in accordance with the former Wyong Shire Council Waste Control Guidelines.*
- *Architectural plans are to indicate separate, fully dimensioned Residential and Commercial waste storage enclosures.*
- *Travel paths from the residential and commercial waste storage enclosures to the bulk waste bin servicing location are to be clearly indicated. No obstructions to the wheel out of the waste bins are permitted including grills, grates, kerbs, steps etc.*
- *Travel paths for bulk waste bins must not require bin transfer through conflicting use waste enclosures.*
- *The Residential waste enclosure must be sized to accommodate minimum 7 x 1.1 cubic metre mixed waste bulk bins and 6 x 1.1 cubic metre recyclables bulk waste bins based on 113 residential units.*

- *Residential waste will be serviced twice weekly to assist with waste enclosure size and general amenity issues.*
- *A fully dimensioned garbage chute/interim recyclables storage room to each residential floor to be clearly identified.*
- *It is recommended that the Commercial waste enclosure is sized beyond current Guidelines for Retail waste generation to provide for flexibility for likely future uses.*
- *Swept turning path overlays onto submission plans prepared and certified by a practising Traffic Engineer to AS 2890.2 for all residential waste vehicle manoeuvring are required.*
- *Swept turning path design are to be designed for a 12.5 m HRV consistent with the former Wyong Shire Council Waste Control Guidelines.*
- *A waste truck servicing location a minimum of 13.5 m long x 4.0m wide is to be indicated.*
- *A maximum gradient of 3% is required and is to be indicated in all waste vehicle manoeuvring area/s.*
- *A minimum 4.0m vertical height clearance is to be indicated in all waste vehicle manoeuvring area/s.*
- *Forward entry/forward exit of the waste collection vehicle/s without crossing the centre line of the road to be indicated.*
- *The road surface used by the waste truck to be constructed of reinforced concrete and be capable of withstanding a truck loading of minimum 23.0 tonnes.*
- *Submission of a comprehensive Waste Management Strategy for the proposed mixed use development and a Loading Dock Management Plan to identify how the waste truck servicing location and Loading Dock will be managed. Note: Commercial waste servicing and/or other uses of the area must not conflict with residential waste servicing times.*
- *Submission of a revised Waste Management Plan at DA stage for the proposed development.*
- *The Waste Management Plan dated December 2019 requires revision to provide details re- all waste materials generated during Demolition and Construction.*
- *Demolition and Construction details appear underestimated and /or not provided for a development of the scale and nature proposed.*
- *On-Going Operation details are to be consistent with the final number of residential occupancies proposed and be assessed at the waste generation rates referred to above under Item 2.*

This information could be required and addressed with the Stage 2 DA to ensure suitable waste management and servicing arrangements complying with Council's requirements.

## Chapter 3.7 - Heritage and Conservation

The site is located opposite the identified local heritage items under WLEP 2013:

- The Entrance Police Station - Item 189 – 12 Denning Street (corner of Short Street).

Council's Heritage Consultant has advised that:

*"the proposed development has appropriately responded to the key features of the heritage listed building being the curved bay window on the street corner. In this regard the proposed development has incorporated curved elements into the street façade and this prominent corner location. The use of curves reinforces the character of the heritage building. Importantly it also provides opportunities for sympathetic setbacks from the street corner, increased areas for appropriate landscaping, and the retention of views for those motorists using Denning Street."*

And concludes that the proposal as amended is

*"sympathetic to the overall character of the Police Station and allows views to and from the heritage item along the Denning Street streetscape".*

## Chapter 6.1 Key Sites

The site is identified as a key site under DCP Chapter 6.1 - Key Sites to which Clause 3.4 (Denning / Short Streets Carpark) and Clause 3 (Generic Development Controls) apply. The proposal has been assessed against the DCP objectives and the following generic development controls:

Controls	Proposal
Design Excellence	These matters are addressed in the advice of Council's Urban Design Member Review undertaken by Brett Newbold as detailed within this report. See Attachment D.
Design Quality	
Green Building Design	The design has not addressed Green Building Design in any manner that would be binding on a future application.
Livability	A broad assessment against the ADG and SEPP 65 has been undertaken by the applicant. This is a matter to be addressed in Stage 2 DA. Although concerns are raised as to the ability of the Stage 2 DA to achieve compliance.

Employment Generation	The proposal will result in the creation of commercial/retail floor space and construction employment.
Pedestrian Access	Pedestrian links proposed are consistent with The Entrance Master Plan.
Traffic/Public Transport/Vehicular Access	The proposal is located within an existing town centre location where public transport is available in the form of bus services and taxis. There will be an increase in traffic generation associated with the proposal and the potential impacts associated with the increased traffic generation have been assessed. Further details would be required at future stages to demonstrate that the vehicle turning paths for the access points to/from the development are satisfactory.
Carparking	General compliance with the carparking requirements has been achieved. The current proposal is concept only and the parking provision on site will be further refined in future applications for the operational stages.
Natural Hazards	The proposal is not subject to any natural hazards that would constrain the development of the site as proposed.
Public Domain	The concept DA provides public domain plan consistent with The Entrance Masterplan or WDCP and other recent approvals. Further details could be provided at Stage 2 DA
Other Public Benefits	The application does not provide for, or detail, any potential public benefits. No VPA has been offered for the proposal for the provision of public benefit and the proposal does not strictly comply with the intent of the DCP requirements. However, the proposal is concept only with the operational stages being the subject of future DA's and Section 94 contributions and public benefit contributions will be applicable to the future operational stages. This is discussed in greater detail immediately below.

There are specific controls under Clause 3.4 (Denning/Short Street) of the DCP that apply to the site and proposed development. The proposal is generally consistent with the objectives and requirements that specifically apply to the subject site as outlined in the attached table (Attachment No. 3)

## Public Benefit

Clause 2.11 of Chapter 6.1 requires significant public benefits to be provided to the community in return for bonus height potential and to stimulate further development, vitality and viability of town centres. The objective of the clause specifies:

- "To facilitate the provision of public domain improvements and other public benefits through iconic development of the key sites".

At this concept stage, the proposal does not comply with the objective of this clause in that 'public domain improvements and other public benefits' in the order envisaged by the DCP have not been provided. Under the requirements, Clause 2.11 specifies: *"The Masterplan and site specific DCP for each Key Site must provide a detailed proposal for significant public benefit. Such public benefit will be in addition to any development contributions levied in accordance with an adopted Section 94 or Section 94A contribution plan"*.

The detailed proposal for significant public benefit in addition to any development contributions levied in accordance with an adopted Section 7.11 contribution plan has at this stage not been provided. The application is therefore seeking a 100% variation to the DCP requirement. There is no levying of Section 7.11 contributions at the concept stage proposed under the current DA. The clause requires the following criteria to be satisfied prior to the granting of development consent for development utilising the bonus height provision.

*"A The following criteria must be satisfied prior to the granting of development consent:*

- *A contributions plan must apply to the land, or an appropriate Voluntary Planning Agreement has been entered into in respect to the development of the land; and*
- *Any consent granted must be subject to a condition that requires developer contributions having a value no less than the public benefit value ("PB") calculated in accordance with the following formula:*

*$PB = (s.94 \times PBR)$ , where:  $s.94$  is the value of  $s.94$  contributions generated, excluding any contribution for carparking; and  $PBR$  is the Public Benefit Ratio, which is:*

- *2.0, where the maximum height of the development exceeds 70 metres or the ratio of the height of the development to the maximum height that would be permitted under cl. 4.3 of the WLEP, 2013, is equal to or greater than 3.0; or*
- *1.5 in all other circumstances."*

The proposal is required to demonstrate that significant public benefit will be delivered by the proposal and accordingly that the additional building height permitted under Clause 7.11 is acceptable. Under this clause, a Public Benefit of 1.5 (PBR) x S7.11 is applicable as the proposal does not exceed 70 metres in height.

There has been no VPA negotiated for the proposal for the provision of a public benefit contribution. As the DA is a concept application only, no contributions can be levied.

The Denning Street frontage has been identified as having potential for a Town Square in The Entrance Peninsula Masterplan and the DCP. The Lakeside Plaza DA/1080/2014 has provided this through sculpture, artwork, landscaping, play areas, seating, and informal performance spaces. Some of these features are indicated in the public domain be mirrored in the proposal to complete the northern edge of the town square. No specific information was submitted to address these issues.

Contributions would apply to the relevant operational stage that generates the demand for the contribution. The applicant has requested that these matters are more appropriately dealt with in conjunction with the Stage 2 DA. A similar approach was adopted in relation to the The Lakeside Plaza DA/1080/2014. A condition of consent to this effect could be included in the event that the application was recommended for approval.

## Chapter 5.1 - Retail Centres

Under WDCP Chapter 5.1, the site is located within a 'town centre' (ie. The Entrance Town Centre) under the retail network plan. New retail floorspace is included under the proposal. Assessment of the economic impacts and benefits of the additional floorspace have been previously considered in identifying the site as an iconic site, and as such a net community benefit test is not required for the application.

## Chapter 5.3 - The Entrance Peninsula

The concept proposal does seek to meet the relevant aims and requirements of WDCP Chapter 5.3. The DCP identifies Denning Street as being a significant frontage for the design of the development. The proposal does not address the following requirements identified under the DCP and can be described in broad terms as urban design:

- Part 2.7.2 – stimulate highest levels of pedestrian and business activity – the proposed development relies on internal arcades, which will detract from active street frontages
- Active streetscapes are restricted by walls and access to the building.

A table of compliance with the relevant provisions of DCP Chapter 5.3 is included under Attachment 6. As the proposed building fails to adequately address the applicable development standards of height further assessment against the provisions of DCP Chapter 5.3 is not necessary for this assessment.



## LIKELY IMPACTS OF THE DEVELOPMENT:

### a) Built Environment

A thorough assessment of the aspects of the proposed development on the built environment has been undertaken in terms of DCP compliance and the submissions received. The form of the proposed development does not meet the stated and desired outcomes for development of the Short Street Carpark site and would result in a deleterious effect upon nearby and adjoining development. The site is identified as an "Iconic Development Site" It is stated that "The sites have been chosen on their ability to provide a significant economic benefit to the community, stimulate further development and provide a significant public domain benefit. The Iconic development sites have the benefit of realising additional development potential than the base development standards and the responsibility of providing significant public domain benefit.

Whilst the proposed development achieves compliance with the applicable development standards, this compliance has been achieved at an expense. Notably, in achieving the overall FSR, there is a significant reduction in the retail/commercial floor space proposed now representing 25% of the ground floor area and 8.9% of the overall floor area proposed. The absence of a more substantive ground floor retail/commercial footprint requires the podium carpark to achieve a sufficient base to locate the residential tower development and associated communal open space. The podium which is not counted in GFA or FSR has the effect of raising the overall height, bulk and scale of the development which has impacts upon shadows cast and appearance of the building.

A review of the application was undertaken by Brett Newbold a member of Council's Urban Design Panel, (Attachment D) the following comments were made:

*From the perspective of urban design, the amended stage one development proposal remains unsatisfactory:*

- i. Due to absence of a comprehensive and compelling design rationale;*
- ii. Due to insufficiency of information and details which have been presented as a framework for a detailed stage two application;*
- iii. Due to qualitative shortcomings which relate directly to the proposed stage one development;*
- iv. Due to non-conformities with significant requirements that are specified by the local controls.*

*The amended stage one proposal demonstrates a number of urban design shortcomings:*

- i. Shortcomings relate to public frontages which are unlikely to generate vibrant activity within the town centre, insufficiently-coherent building forms which would have undesirable visual impacts, poor amenity of common areas within the residential component of the proposed mixed development, and public benefits which are unsatisfactory or insufficient.*

- ii. *Documents do not present a comprehensive or compelling design rationale, and fail to provide sufficient dimensions or 'structured' details which are necessary to guide any future stage two development application.*

*Consequently, design excellence considerations of the local controls have not been addressed by the current proposal, and are highly-unlikely to be satisfied by any future stage two application which might follow this stage one proposal.*

The proposal does not meet the requirements of WDCP and does not warrant support and should be refused.

i) Site context and local setting

The site is located at the south of The Entrance town centre with the waterfront and memorial park being the northern extent. Significant pedestrian traffic is expected to be generated between north and south which will benefit surrounding businesses located between these sites. Concern is raised as to the ability of the general arrangements of the ground floor and surrounding terraces to generate optimum levels of street level activity. Insufficient consideration is given to the impacts of level changes and visual separation of shopfronts or retail terraces from public places – for example, the future Denning Street plaza which was approved as an element of the Lakeview Plaza stage one development application, and the existing Bayview Mall.

Street activity would be compromised by the absence of active uses within the podium at level one as the current proposal devotes the entirety of the podium level would be allocated to carparking. The extent of proposed above-ground carparking would limit the extent of visible activity which is essential to the vibrance of town centre streets and public places.

The architectural design of the building requires modification to achieve appropriate urban design outcomes. The location of key sites has been designed to draw the main development components to the north as an integral part of the town centre retail core. The Entrance Town Centre Masterplan defines the vision and direction for the development of the locality. The site context is planned to undergo substantial change under the revised controls adopted for a number of key sites within The Entrance. The potential redevelopment of surrounding sites has also been identified under Council's planning controls. The proposal is not sufficiently consistent with the planning controls that apply to the site to warrant support

ii) Energy efficiency, green solutions and sustainability

Council's Key Site planning controls require development to clearly identify all the sustainability commitments to be provided as part of the development (other than those that would typically be required under BASIX for the residential component and Section J of the BCA for the commercial component) that would satisfy Clause 7.11 of WLEP and the DCP. This is necessary to demonstrate consistency with the objective of the clause to deliver a high standard of design excellence for the site. The limited details indicated on Dwg DA-0015 nominate a limited range of measures which do not appreciably extend BASIX requirements.

iii) Public Domain

Resolution of some of the public domain issues have been addressed in the current proposal submitted from earlier applications and prior schemes. As a Concept application the broad public domain of the ground floor has been developed to provide a more effective connection with adjoining and nearby development. However, matters raised as result of the Urban Design Review contained in Attachment 9 indicate that significant areas remain unsatisfactory. The failure to address these issues results in the application being recommended for refusal.

iv) Traffic and Parking

Council's Traffic Engineer has not provided comments on the current proposal to date as the comments from Transport for NSW were outstanding at the time of writing this report.

v) Engineering

Council's Development Engineer has advised that:

*"The redesign addresses some of the service relocation issues with respect to the sewer main in Theatre Lane by essentially maintaining the pavement width. This also is in keeping with the minimum pavement width of 6.5m required for aerial fire fighting appliances to utilise Theatre Lane.*

*There is an electrical substation Kiosk in Denning Street that possibly powers the underground power through the Entrance Road area. The Applicant has indicated that they have had discussions with Ausgrid to relocate this substation kiosk within the development with suitable access for Ausgrid. This may be logistically difficult to relocate as the existing substation kiosk is within the basement footprint. In order to construct the basement the substation kiosk needs to be relocated but where it is to be located won't be available until excavation and construction of 4 levels of basement and the ground floor. If that is not feasible another site will need to be found that is not part of this development site so it can be relocated prior to commencement of construction of the development.*

*There are two properties in Short Street that are service power from the existing overhead supply. This supply is proposed to be relocated (probably underground) as part of the development. These poles are located within the area of the closed road section of Short Street. The poles will be impacted by the construction of the podium parking level. Alternate power supplies to the affected lots would be required prior to commencing construction of the podium parking level as a minimum or sooner if they impact by other construction processes. One of the affected lots is The Entrance Police Station.*

*The intersection of Theatre Lane and Denning Street will need to be widened to enable the specialist fire fighting vehicle access in accordance with NSW Fire and Rescue Fire Safety Guideline – Access for fire brigade vehicles and firefighters'."*

These matters could be addressed in a subsequent Stage 2 DA for construction.

vi) Earthworks

The proposed four storey basement will involve excavation generating a significant number of truck movements required to remove the material. This will impose a significant impact upon the surrounding road network and reduce pavements durability and quality. In the event that the application was recommended for approval, a plan detailing the preferred route could be provided outlining movement times and restricted areas as part of the Stage 2 DA. A Construction and Traffic Management Plan could be prepared for the Stage 2 DA that includes suitable truck routes with due consideration of the surrounding road network. Further geotechnical investigation will be necessary as recommended in the applicant's submitted preliminary report.

vi)i Groundwater

Preliminary geotechnical investigation in the area has revealed observed to contain groundwater ranging from about 0.7 to 2.6m deep. The report stated that it is expected that the permanent groundwater level would be of considerable depth below excavation level and that the water observed during drilling was simply seepage from either the overlying fill material or along the residual soil / weathered rock boundary. Notwithstanding this statement, similar existing developments within The Entrance involving basement carparks have required continuously operated pump-out systems to cater for movement of groundwater in this area. During construction, de-watering systems will need to be provided to ensure that discharge to the public drainage system is appropriately controlled with any contaminants removed. In the event that approval was recommended, further information could be provided as part of the Stage 2 DA.

vii) Stormwater

There have been no concept stormwater drainage plans provided as part of this development application. An on-site stormwater detention and drainage system will be required to control the rate of runoff leaving the site. The detention system must be designed to attenuate post developed flow rates to predevelopment flow rates for a full range of storm durations for the 5, 20 and 100 year average reoccurrence interval (ARI) design storms. Council has recently upgraded the downstream drainage system as part of The Entrance Town Centre works. Pump-out systems will be required to facilitate the likelihood of groundwater flows and underground basement carparks. The provision of stormwater quality control facilities to treat stormwater will be required prior to entering Council's stormwater drainage system, and shall incorporate Water Sensitive Urban Design (WSUD) techniques. In the event that the application was recommended for approval, these matters could have been addressed in future built form DA's.

viii) Noise and vibration

This proposal is for concept only and as does not require consideration of noise or vibration impacts.

ix) Whether the development provides safety, security and crime prevention.

The principles of Crime Prevention Through Environmental Design (CPTED) have been considered in relation to the design of the December 2019 proposal. An updated report has not been submitted with the current (June 2020) proposal. The December 2019 CPTED report has identified

a number of strategies to be included with the proposal to discourage anti-social behaviour and minimise the opportunities for criminal activities. An updated report would be required to be submitted with a Stage 2 DA if approved. As noted within the Urban Design Assessment, some areas of the ground floor would create safety and security issues.

#### b) Natural Environment

The site is an infill development site, currently used as an open at grade carpark. There will be no significant impact upon the natural environment as a result of the proposal.

The proposed development has been assessed and determined to represent an inappropriate response to the applicable development controls and resultant built form and public domain. It is for these reasons that the application is recommended for refusal.

#### SUITABILITY OF THE SITE FOR THE DEVELOPMENT:

The site is identified as a "Key Site" and the design of the proposal seeks to utilise the bonus height provisions. The site is situated within an established town centre location which is well serviced with a high level of amenity. The site context is undergoing a transition and the proposal is consistent with the planned future character and higher density form of development on the identified key sites located within The Entrance Town Centre. The relevant planning controls that apply to the site encourage a higher density of development on each of the nominated key sites.

A review of Council's records identifies the following constraint:

- *Acid Sulfate Soils* - The subject site has been identified as containing Class 5 acid sulfate soils. Given the proposed extent of excavation proposed, an acid sulfate soils management plan would be required to be submitted. A preliminary geotechnical assessment report was submitted with the application which concluded that it is unlikely that potential or actual acid sulfate soils would be encountered on site.

There are no other constraints that would render the site unsuitable for development.

Any submission from public authorities.

#### Transport for NSW (formerly RMS)

Transport for NSW were advised of the submission of the application and amended plans. At the time of writing this report a response on the current plan had not been received. In relation to the earlier refused application (2018) the RMS advised that the following matters should be considered by Council in determining this development:

- Roads and Maritime has no proposal that requires any part of the property.

- Council should ensure that appropriate traffic measures are in place during the construction phase of the project to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity.
- Council should have consideration for appropriate sight line distances in accordance with the relevant Australian Standards (i.e. AS2890.1:2004) and should be satisfied that the location of the proposed driveway promotes safe vehicle movements.
- Council should satisfy itself that the cumulative impact from other surrounding approved yet to be constructed development does not have implications on the signalised intersection of The Entrance Road and Denning Street, and does not alter the outcomes of the traffic assessment submitted as part of this application.

As advised in the previous assessment these remain matters that are capable of being and would be ordinarily conditioned in the event of approval being recommended.

#### THE PUBLIC INTEREST: (s4.15(1)(e)):

Any Federal, State and Local Government interests and community interests.

The site is owned by Council and represents an opportunity to provide best practice development within The Entrance whilst the locality is transitioning to higher density development. The proposal will create additional employment (predominantly during the construction phase) and retail opportunities for the Central Coast Region.

#### OTHER MATTERS FOR CONSIDERATION:

*Environmental Planning and Assessment Act 1979*

Division 2A – Special procedures concerning staged development applications.

The application is a staged development application having been lodged under the provisions of Sections 4.22 and 4.23 of the EP&A Act (reads:

##### 4.22 Concept development applications

(cf previous s 83B)

- (1) *For the purposes of this Act, a concept development application is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.*
- (2) *In the case of a staged development, the application may set out detailed proposals for the first stage of development.*
- (3) *A development application is not to be treated as a concept development application unless the applicant requests it to be treated as a concept development application.*
- (4) *If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site concerned unless:*
  - (a) *consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or*



• • • • •  
• • • • •  
*(b) the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.*

*The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.*

- (5) The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.*

*Note.*

*The proposals for detailed development of the site will require further consideration under section 4.15 when a subsequent development application is lodged (subject to subsection (2)).*

### *Environmental Planning and Assessment Regulation 2000*

Clause 70A identifies that information required for a staged DA may be deferred to a subsequent DA and states:

*Despite clause 50 (1) (a), the information required to be provided in a staged development application in respect of the various stages of the development may, with the approval of the consent authority, be deferred to a subsequent development application.*

The current application seeks concept approval only with no operational works to be approved under the current DA. In the event that the application was recommended for approval, all construction works would be the subject of separate development applications in the future Stage 2 DA.

Section 4.23(2) provides “if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a concept development application in respect of that land.”

The concept plan submitted is inconsistent with the provisions of the WDCP, it is considered that approval of the concept proposal as submitted would compromise the ability to ensure an appropriate development outcome for the site and the adjoining public domain.

### Contributions

As the application is seeking concept approval only, with no operational works under the application, Section 7.11 contributions are not applicable to this application. Section 7.11 contributions will be applicable to the Stage 2 DA that includes physical works and additional demand on existing infrastructure.

## Water and Sewer Contributions

As the application is seeking concept approval only, with no operational works under the application, Water and sewer contributions are not payable at this stage but will be applicable for the proposal under the future stages of the development wherein approval under the *Water Management Act 2000* and will need to be obtained.

## GOVERNANCE

Central Coast Council have provided documentation that indicates the land the subject of the application is held by Council as operational land under the *Local Government Act 1993*.

## CONCLUSION:

The application seeks concept approval for the construction of a staged mixed-use development. The application has been lodged under Sections 4.22 and 4.23 of the Act. The construction stage is to be provided in the Stage 2 DA.

The proposal includes a retail ground floor, first floor podium carpark and two connected towers which seek utilise the bonus LEP height of 50 metres (rather than the applicable 31 and 23 metres) as a portion of the site is identified as a 'key site' under LEP 2013. The bonus building height is permitted where a proposal demonstrates significant public benefits. The submitted application does not identify a significant public benefit offer confirmed for this initial concept development application and is seeking the deferral of the significant public benefit to be determined in connection with the Stage 2 DA. There is, opportunity to secure significant public benefit through later stage development applications when the height bonus and additional infrastructure demand is triggered. The operation of the Key Sites provision to permit additional height is supported at this concept DA stage. The proposal however fails to adequately address the built form and urban design outcomes as required by WDCP and approval of the proposed development is not recommended on this basis.

Clause 70A of the Regulation 2000 allows for the information required to be provided in a staged development application to be deferred to a subsequent application. In this instance, the development application seeks approval for concept only approval with no operational works. One operational stage has been identified to be the subject of a future development application. Concerns are raised as to the ability of the current Concept Stage to enable a satisfactory resolution of the urban design and built form matters in the subsequent Stage 2 DA and the application is recommended for refusal on this basis.

In assessment of the application, as a concept development application, the decision of the Court of Appeal in *Bay Simmer Investments v NSW* [2017] NSWCA 135 and subsequent amendment to the then ss. 83B and 83C (now Section 4.22 and 4.23) have been considered. The assessment is consistent with the applicable case law and recent amendments to the Act. This assessment is not seeking the determination of all construction-related and other operational impacts, but seeks to ensure the resultant form of the development will be consistent with the operation and intent of the applicable planning controls. It is considered that the concept DA if approved would

compromise the ability of a future DA to achieve the built form and public domain outcomes as contained in WLEP 2013 and WDCP.

The proposal has been assessed using the heads of consideration in Section 4.15 and under 4.22 and 4.23 of the *Environmental Planning and Assessment Act 1979*. It is considered the proposed development does not warrant support. The proposal is recommended for refusal.

## Attachments

### Annexure A – Recommended Reasons for Refusal

Attachment 1 – Numerical Compliance Table

Attachment 2 – WDCP Chapter 2.4

Attachment 3 – WDCP Chapter 6.1 Clause 3.4 Dening/Short Street – Table of Compliance

Attachment 4 - Clause 7.11 – Table of Compliance

Attachment 5 – SEPP (Coastal Management) 2018– Table of Compliance

Attachment 6 – WDCP Chapter 5.3 – Table of Compliance

Attachment 7 - Development Plans

Attachment 8 Landscaping Plans

Attachment 9 - Review of urban design quality Brett Newbold, Member, Central Coast Urban Design Panel

## Annexure A – Recommended Reasons for Refusal

1. The application does not provide an appropriate framework for a subsequent detailed stage two development application, specifically;
  - a. The proposed stage one envelope does not provide sufficient dimensions for footprint and floorplate elements
  - b. For residential levels, setbacks are measured to the perimeters of extensive balconies, and do not identify exterior walls or include articulation zones which might offer flexibility to accommodate detailed floor-planning solutions by a future stage two DA.
  - c. The basement 'envelope' is not identified, and no clear indication of deep soil areas is provided that are critical elements of sustainability and public domain improvements.
  - d. Proposed public domain areas are not dimensioned or clearly defined.
2. The application does not demonstrate comprehensive analysis, and reveal unsatisfactory outcomes in relation to:
  - a. the ground floor, logic of 'perimeter' walls and the interior layout
  - b. Rationale of the podium form has not been demonstrated, and the associated envelope is undesirable
  - c. Uncertainty of the residential element of the proposed envelope.
3. The Concept Development application as "an alternative to DCP" as enabled by Section 4.23 of the *Environmental Planning and Assessment Act 1979* fails to indicate that the requirements of Clause 7.11(3) of Wyong LEP 2013 would be capable of satisfaction in a later stage development application.
4. The provisions of Wyong Development Control Plan 2013 have not been addressed and satisfied in the following areas:
  - i. Urban Design, including built form, relationship to adjoining development and public spaces.
  - ii. Public Art
  - iii. Tower Setbacks as detailed in WDCP Chapter 5.3 - The Entrance Peninsula.
5. The development fails to provide address the built form and urban design considerations required for iconic development sites identified in Wyong Local Environmental Plan 2013 and of Wyong Development Control Plan 2013.