

SOUTHERN REGIONAL PLANNING PANEL

JRPP No	2019STH001 DA
DA Number	DA-2018/1638
Local Government Area	Wollongong City
Proposed Development	Mixed use development – fourteen (14) storey building comprising of one hundred and two (102) residential units and eight (8) commercial tenancies over two (2) levels of basement parking
Street Address	71-77 Kembla Street, WOLLONGONG Lot 502 DP 845275
Applicant/Owner	Applicant – ADM Architects; Owner – City Investments Pty Ltd
Number of Submissions	Initial notification period - six (6) submissions in objection to the proposal Second notification period – 45 submissions in objection to the proposal
Regional Development Criteria	Clause 3, Schedule 4A of the Environmental Planning & Assessment Act 1979; general development over \$30 million. The applicant's CIV estimate for the project is \$43,270,000.
List of All Relevant s4.15(1)(a) Matters	<ul style="list-style-type: none"> ▪ List all of the relevant environmental planning instruments: s4.15(1)(a)(i) – <p><u>State Environmental Planning Policies (SEPPs):</u></p> <ul style="list-style-type: none"> ▪ SEPP No. 65 – Design Quality of Residential Apartment Development ▪ SEPP (Coastal Management) 2018 ▪ SEPP (Building Sustainability Index: BASIX) 2004 ▪ SEPP No. 55 – Remediation of Land ▪ SEPP (Infrastructure) 2007 ▪ SEPP (State and Regional Development) 2011 <p><u>Local Environmental Planning Policies:</u></p> <ul style="list-style-type: none"> ▪ Wollongong Local Environmental Plan 2009 <p><u>Other policies</u></p> <ul style="list-style-type: none"> ▪ NSW Apartment Design Guide ▪ Wollongong Development Contributions Plan 2018 ▪ List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s4.15(1)(a)(ii) <ul style="list-style-type: none"> ▪ Nil of relevance to the proposal ▪ List any relevant development control plan: s4.15(1)(a)(iii) <p>Wollongong Development Control Plan 2009</p> <ul style="list-style-type: none"> ▪ List any relevant planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4: s4.15(1)(a)(iv)

	<p>Nil</p> <ul style="list-style-type: none"> List any coastal zone management plan: s4.15(1)(a)(v) <p>Nil</p> <ul style="list-style-type: none"> List any relevant regulations: s4.15(1)(a)(iv) - Environmental Planning & Assessment Regulation 2000 Clauses 92, 93, 94, 94A, 288 <p>Clause 92 - AS 2601 in respect of any demolition.</p>
List all documents submitted with this report for the panel's consideration	<p>Architectural plans by ADM Architects</p> <p>Landscaping plans by Ochre Landscape Architects</p> <p>Traffic documentation by Northrop Consulting Engineers</p> <p>Arborist report by Allied Tree Consultancy</p> <p>Stormwater plans and flooding analysis and response by Northrop Consulting Engineers</p> <p>Planning documents by TCG Planning</p> <p>Aboriginal Cultural Heritage Due Diligence Assessment by Biosis</p> <p>Access Report – Accessible Building Solutions</p> <p>Acoustic Report - Northrop Consulting Engineers Pty Ltd (Northrop Acoustics)</p> <p>Contamination investigation - Douglas Partners</p>
Recommendation	It is recommended that DA-2018/1638 be approved subject to the conditions contained within Attachment 7 .
Report by	Theresa Whittaker, Senior Development Project Officer

Summary of s4.15(1) 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? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **Not Applicable**

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

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

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

Assessment Report and Recommendation Cover Sheet

Executive Summary

Reason for consideration by Joint Regional Planning Panel

The proposal has been referred to Joint Regional Planning Panel as it involves general development with a capital investment value of more than \$30 million. The CIV estimate for the project is \$43.27 million.

Proposal

The proposal is a mixed use development comprising a fourteen (14) storey building housing 102 residential units and eight (8) commercial tenancies over two (2) levels of basement parking.

Permissibility

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

Consultation

The proposal was notified on two (2) occasions in accordance with Council's Advertising & Notification Procedures. In response to the initial notification, there were six (6) submissions in objection to the proposal including one (1) from Neighbourhood Forum 5. Following the submission of amended plans and additional information, the application was re-notified; there were 45 submissions received in response to this notification period.

Main Issues

The main issues arising from the preliminary assessment pertain to: -

- Flooding and stormwater management matters;
- Development departure in respect of building separation (Clause 8.6) of Wollongong Local Environmental Plan (LEP) 2009 to the eastern and northern boundaries;
- Apartment Design Guide (ADG) 3F Visual Privacy setback variations to the northern boundary for part of the building (L7 and above);
- Design quality. The proposal has been considered by the DRP twice (once post-lodgement) and required some changes. Revised plans were been submitted by the applicant responding to the recommendations of the Panel. These have been reviewed by the Chair of the DRP and are now acceptable;
- Public domain interface and street trees;
- Shared access, manoeuvring and servicing arrangements across the neighbouring site to the north;
- Heritage considerations;
- Wollongong DCP variations – setbacks; street frontage height; building depth/ bulk.

RECOMMENDATION

It is recommended that DA-2018/1638 be approved subject to the conditions outlined in **Attachment 7**.

1 APPLICATION OVERVIEW

1.1 PLANNING CONTROLS

The following planning controls apply to the development:

State Environmental Planning Policies:

- SEPP 65 - Design Quality of Residential Apartment Development
- SEPP (Coastal Management) 2018
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP 55 – Remediation of Land
- SEPP (Infrastructure) 2007
- SEPP (State and Regional Development) 2011

Local Environmental Planning Policies:

- Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans:

- Wollongong Development Control Plan 2009

Other policies

- Wollongong Development Contributions Plan 2018

1.2 PROPOSAL

The proposal comprises the construction of a fourteen (14) storey building, comprising two levels of commercial tenancies and twelve (12) levels of residential apartments housing a total of 102 residential apartments, over two storeys of basement car parking.

The taller tower (Building A) is orientated predominantly towards the west and is positioned adjacent to Kembla Street while a seven (7) storey tower (Building B) occupies the eastern portion of the site and is generally orientated towards the north and south. The two elements are attached.

There are 4 commercial spaces on the ground floor of the building totalling 684sqm in area, with a further 4 at first floor level. The tenancies will have areas of between 154sqm – 516sqm. The residential units occupy the remainder of the towers. There are communal open space areas on the rooftops, with the primary communal open space (COS) positioned on Level 2 which will provide active and passive recreation opportunities including a swimming pool, communal room (for functions/ gatherings), BBQ areas and seating. The secondary COS is located on the rooftop of Building B.

There are 102 residential units proposed with the mix of units being:

- 21 x 1 bedroom units
- 59 x 2 bedroom units
- 22 x 3 bedroom units

There is a large penthouse unit on Level 13 of the western tower (Building A) which is serviced by a private lift and car lift. This unit will have a large private car park within the basement along with storage areas for boats, jet skis and a wine cellar.

A total of 167 car parking spaces are provided, with residential car parking to be located within two dedicated basement parking levels accessed from Stewart Street (southern boundary). The commercial and residential visitor car parking will be provided in part on the ground floor level and within a mezzanine parking level and within part of Level 1, sleeved by commercial tenancies. Vehicular access will be obtained via two (2) separate driveways; the commercial car park will be accessed via a shared driveway positioned adjacent to the northern boundary of the site (shared with the neighbouring IMB bank headquarters under construction) and one adjacent to the eastern boundary servicing the residential car park. A right of carriageway has been registered to facilitate this shared access arrangement. This is illustrated in Figures 3 & 4 in **Attachment 2**.

Paving and landscaping works are proposed within the site and adjacent footpath. The paving and stairs have been designed to provide for appropriate transitions from the public footpath into the building, which is elevated above street level for flood mitigation reasons. Public domain works inclusive of paving are proposed; these will be carried out in accordance with Council's Public Domain Technical Manual. The building was redesigned to ensure the retention of established significant existing street trees (Brushbox Trees) within the Kembla Street road reserve adjacent to the site. It is noted however that during the course of recent works to upgrade the intersection of Stewart and Kembla Streets, it was determined in consultation with the NSW Roads & Maritime Services (RMS) that the Brushbox Tree closest to the intersection needed to be removed to prevent visual obstruction to the traffic signals being installed at that intersection. The other remaining street tree (Brushbox) will be retained and the design of the building will accommodate this tree.

Demolition of all structures on Lot 502 was approved under DA-2017/1462; this included the demolition of the former Department of Main Roads (DMR) building and the removal of vegetation within that site.

The site is situated within a medium flood risk precinct which has necessitated raising the ground floor level of the building for flood mitigation reasons.

A detailed schedule of finishing materials and colours forms part of **Attachment 1** along with rendered photomontages.

1.3 BACKGROUND

Development History

BA-1997/920: Commercial Office Alterations - approved 24 June 1997

CD-2001/5: Internal Fitout - approved 8 February 2001

DA-1981/125: Erection of Carport – approved 9 March 1981

DA-2007/675: Demolition of existing structures; construction of a seven (7) storey commercial building comprising of ground floor retail tenancies, six (6) levels of commercial tenancies and three (3) levels of basement parking for 104 vehicles and boundary rationalisation - approved 9 January 2008.

DA-2007/675 (Modifications A & B) - approved 16 April 2008 and 5 October 2012 respectively. It appears that this consent was never enacted.

DA-2010/1682: Demolition of existing commercial building and construction of a multi-storey commercial/residential building and land subdivision (rationalisation of existing allotment boundaries) - deferred commencement issued 2 December 2011; consent issued 20 November 2012. This consent was enacted through some demolition works.

DA-2017/1462: Demolition of all structures, and the construction of a seven (7) storey office building for IMB bank with two basement car parking levels for 89 car parking spaces – approved by the SRPP on 27 June 2018. This consent mainly relates to the lot to the immediate north of the site, however approved a right of carriageway with shared substation and access arrangements, a temporary car park and retaining structures etc. within the subject site along with the demolition of the existing structures within the subject site. The two developments will share the common driveway and manoeuvring areas which cross the common boundary between the sites. This consent has been enacted and the building has been topped out.

Pre-lodgement meetings

A formal pre-lodgement meeting was held for the proposal on 17 January 2018 (PL-2017/228). The main issues discussed were -

- Design quality
- Numerous DCP non-compliances and possible WLEP 2009 Clause 8.6 departure
- Flood management and mitigation
- Traffic, access and servicing
- Public domain interface and resolution of levels

Design Review Panel (Pre-lodgement)

The applicant voluntarily met with the Design Review Panel prior to finalising the plans ready for DA submission, on 6 December 2017 (DE-2017/161). The Panel was generally supportive of the development.

Customer service actions

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

1.4 SITE DESCRIPTION

The site is located at the western end of the block bounded by the intersections of Kembla and Burelli Streets and Kembla and Stewart Streets, Wollongong (refer Figure 1). The site comprises a single allotment situated at the corner of the intersections of Kembla and Stewart Streets, Wollongong, with an area of 3350sqm.



Figure 1 – aerial photograph identifying the subject site, outlined with the red dashed line (source: SEE prepared by TCG Planning).

The site is legally identified as Lot 502 DP 845275. Land to the immediate north of the site is owned by IMB Ltd and has approval for a 7 storey office building which is currently under construction (DA-2017/1462).

The site has a frontage length of 56.37m to Stewart Street and a frontage measuring 58.68m to Kembla Street (plus corner splay of 4.275 metres).

The site is currently occupied by a two storey commercial building (which was formally occupied by Mission Australia), a separate single storey building and associated car parking. Consent has been granted for the demolition of these buildings, associated structures and all vegetation under DA-2017/1462. The proposed development has been designed to integrate with the approved bank building via a shared driveway accessed via the Kembla Street frontage of the site. A Right of Carriageway benefiting both properties for vehicular access has been registered on title.

The site is located within the B3 Commercial Core, at the south-eastern edge of the retail and commercial area of the Wollongong CBD. Land to the north-east of the site is occupied by a 6 storey commercial building ('Corporate Square') fronting Burelli Street which houses a range of government social services and businesses, including CentreLink, Hearing Australia, Family Courts, and Medicare. Also adjoining the property to the east is a substation that gains access from Lot 301 DP 709353 fronting Stewart Street. Land to the immediate east is occupied by a driveway accessing the substation and Corporate Square.

Land to the west (fronting Burelli, Kembla and Stewart Streets) is occupied by a Woolworths supermarket, a restaurant and multi-deck car park. Land to the south of the site on the opposite side of Stewart Street is occupied by an Illawarra Retirement Trust (IRT) seniors living development. A number of the buildings in the immediate vicinity are heritage listed and there are also items of landscape heritage value including a small leafed Fig adjacent to the south-western corner of the intersection of Kembla and Stewart Streets.

Aerial photographs of the site and locality, zoning extract and a copy of the deposited plan are provided at **Attachment 2** to this report.

Property constraints

- Council records identify the land as being located within a medium flood risk precinct;
- The site is identified as being classified as Class 5 acid sulfate soils;
- Council records identify the land as being located within the Coastal zone. No impacts are expected on the coastal environment as a result of the development and there are no coastal hazards affecting the land which would preclude the development.
- Site location within close proximity to numerous heritage items including the Art Gallery and Town Hall, St Andrew's Presbyterian Church and hall, a row of Hills Figs (trees) adjacent to Woolworths and a small leafed Fig adjacent to the south-western corner of the intersection of Kembla and Stewart Streets.

1.5 SUBMISSIONS

The application was notified twice to adjacent and adjoining property owners in accordance with WDCP 2009 Appendix 1: Public Notification and Advertising Procedures. Advertisements were published in the local newspaper during the notification periods and notification letters were sent to neighbours.

First notification period

At the conclusion of the initial notification on from 26 February 2019 there were six (6) submissions received in relation to the proposed development. The submissions raised the following summarised issues:-

1. The existing building on the site formerly housed the DMR and should be considered to have some local heritage significance as the "birthplace" of many significant road infrastructure projects in the Illawarra & beyond. A number of the submissions make mention of a mosaic attached to the front of the existing building at 71-77 Kembla Street which they consider has significant heritage value and should either be incorporated into the existing building or handed back to Roads & Maritime Services to be catalogued as a heritage item;

Comment: Consideration has been given by Council's Heritage Officers to the possible heritage significance of the mosaic within the existing building on site as referenced in a number of the submissions. Council's Heritage Officer initially recommended that conditions be imposed requiring the developer to include the mosaic and a brief interpretive sign in an appropriate location in the foyer of the new development, as well as photographic recording of the existing building prior to demolition. It is noted however that the demolition of the existing building was approved under an earlier consent (DA-2017/1462). Council officers wrote to the applicant in relation to this matter and the property owner initially agreed, as a gesture of goodwill, to the retention of the mosaic and its incorporation in the new development as well as photographic recording of the existing building prior to its demolition. However, the retention of the mosaic has been further considered and it has been determined that this is not feasible. Council's Heritage Officer has recommended conditions in relation to photographic recording of the existing building and mosaic and the provision of a brief interpretive sign in an appropriate location in the foyer of the new development; these conditions are included in those listed at **Attachment 7**.

2. The height is out of scale with nearby buildings and completely disregards its context and as a result will be an 'urban design disaster' and a missed opportunity to consolidate and harmonise the streetscape on this side of Kembla Street;

Comment: the height of the building is consistent with the applicable height limit for the site. The design of the development has in part been revised to address some concerns raised by the DRP, as discussed above and the revised design is now considered to be appropriate for the site and is consistent with applicable planning instruments with regard to floor space ratio and height.

3. Concerns around the removal of the trees in Kembla Street;

Comment: the development has been redesigned in part to ensure the existing street trees in Kembla Street can be retained. It is noted that the street tree closest to the intersection of Stewart and Kembla Streets has been removed as required by the RMS due to the need to ensure adequate visibility of the newly installed traffic signals.

4. Concerns around apparent limited notification, in particular to residents of the IRT development on the opposite side of Stewart Street.

Comment: notification and advertising of the application was carried out in accordance with the requirements of Council's Public Notification & Advertising Procedures. At the request of IRT, detailed shadow diagrams and solar access plans were provided by the applicant to allow IRT to examine the overshadowing impacts of the proposal on IRT Parkside.

Second notification period

Following the receipt of amended plans and additional information, re-notification of the application took place, with a notice being placed in the local newspaper on 12 June 2019. At the conclusion of this second notification period on 27 June 2019, there were 45 submissions received, many of which took the form of pro-forma letters signed by residents of the IRT development. The submissions raised the following summarised issues:-

1. Retention of the mosaic within the existing former DMR building.

Comment: as above. As previously noted, demolition of the existing buildings on the site was approved under DA-2016/1462. Relocation of the mosaic has been deemed unfeasible and conditions including photographic recording and inclusion of interpretive signage have been agreed to by the applicant/property owner.

2. Overshadowing impact on the northern façade of the IRT development on the southern side of Stewart Street

Comment: It is noted that the vast majority of the submissions received in relation to the development were from residents of the IRT development on the southern side of Stewart Street directly opposite the subject site. A submission was also written by the IRT which raised concerns in regards to the impact of the proposed development on solar access to the apartments located on the northern side of the 'Parkside' component of the IRT development (being the more contemporary building located on the north-western portion on the IRT site fronting Stewart and Kembla Streets). The submissions claim that 6 apartments on the northern façade of Parkside will not continue to receive the required minimum 3 hours of solar access between 9am and 3pm in mid-winter. Suggestions for re-design of the development were made to reduce the overshadowing impact.

The applicant has provided shadow analysis plans and solar impact study plans which are included in the plans attached to this report.

In terms of the applicable development controls, Section 6.9 of Chapter D13 of Wollongong Development Control Plan (DCP) 2009 states that new development must have regard to the existing and proposed level of sunlight which is received by living areas and private open space areas of adjacent dwellings; and that adjacent residential buildings and their public spaces must receive at least 3 hours of direct sunlight between 9am – 3pm on June 21.

The applicant has provided a statement in relation to the overshadowing impacts of the proposed development which is discussed within Section 2.3.1 of this report in relation to the solar access requirements of Chapter D13 of WDCP 2009. The shadow diagrams have been analysed and it is evident that the main seating area of the ground level café and the Level 5 communal open space will both receive at least 3 hours of sunlight in mid-Winter as will the 'Howards Court' building (eastern portion of the IRT site, located to the south-east of the site). Some of the units within the 'Parkside' building (western portion of the IRT site, located to the immediate south of the site) will not receive the full 3 hours of required solar access.

Further discussion on this issue is contained within Section 2.3.1 of this report below.

3. Concerns that the development has an excessive height, bulk and scale and the impact of this on the character and amenity of the area

Comment: bar some variations in respect of the building separation requirements of the LEP with the neighbouring sites to the east and north (resulting largely from the location of the existing structures within those sites), and a variation in respect of the DCP bulk/ building depth control, the development complies with the building height and floor space ratio controls contained within the LEP and DCP. Neighbouring and nearby sites for the most part have not yet reached their full development potential in terms of building height, however this may change in future. The development has been reviewed by the DRP on 2 occasions and the Panel was of the view that the development is appropriate with regard to height, bulk and scale. Included within the plans at Attachment 1 are city sections and contextual plans illustrating the proposal in relation to existing and approved nearby development.

4. The height and scale of the development and number of residential units proposed exceeds the needs of the inner city precinct which has seen large numbers of apartments and mixed

use developments approved in recent years. Approval of the development will lead to congestion and degradation of the general amenity of the area. The development fails to satisfy the design excellence requirements of WLEP 2009.

Comment: there has been a number of residential units and mixed use developments approved within the city centre. This is envisaged by the planning controls which permit higher density mixed use development within close proximity of the core to allow ready accessibility to the city centre services, amenities and employment. The development has been assessed with regard to the design excellence requirements of WLEP 2009; this assessment is outlined in Section 2.1.5 of this report. The proposal is satisfactory to the DRP.

5. The traffic report failed to consider the increased pedestrian and vehicle traffic associated with approved development in the locality.

Comment: the traffic impact statement and development overall have been considered by both the RMS and Council's Traffic Section and no objection was raised in regards to increased vehicular and pedestrian traffic associated with the proposed development. Intersection works are being carried out at the intersection of Kembla & Stewart Streets to improve the capacity and safety of that intersection for traffic and pedestrians. There will be improvements to the public domain associated with this development which will improve pedestrian accessibility around the southern and western edges of the site.

6. The development involves a variation to the building depth and bulk controls contained within the DCP and this is unjustifiable. The development will impact on important view corridors within the CBD.

Comment: the variation sought is discussed in Section 2.3.1 of this report and is considered supportable in this instance.

7. A building separation departure is sought which is unjustifiable.

Comment: a development departure is sought in relation to Clause 8.6 of WLEP 2009 with regard to building separation; this is discussed at length in Section 2.1.5 of this report and is considered supportable in this instance.

1.6 CONSULTATION

1.6.1 INTERNAL CONSULTATION

Council's Geotechnical Officer, Environmental Scientist, Traffic Engineer, Landscape Architect, Heritage Officers and Stormwater Engineers have reviewed the application and have provided satisfactory referrals including recommended conditions which are included in those listed in **Attachment 7**.

Council's Strategic Project Officer raised concerns that the Stewart Street interface of the development is compromised by the raised basement parking below and the amount of steps and raised landscape beds to manage this level change. This coupled with the fact that the street trees are proposed to be planted hard up against this area compromises the public domain for pedestrians. It is noted in this regard that the floor level of the commercial premises and lobbies is dictated by the flood planning level. The applicant considered whether there was any way the number of stairs and height of the planter boxes on this frontage could be reduced and advised that this was not possible. A proposed street tree which was planned to be sited closest to the most-western bank of stairs (Stewart Street frontage) was deleted from the plans at Council's request as this would pose an obstruction to pedestrian movement.

1.6.2 EXTERNAL CONSULTATION

Design Review Panel (DRP) (Post-lodgement)

The proposal was formally reviewed by the DRP on 19 February 2019. The DRP were overall quite supportive of the scheme however required improvements in a number of ways including:

- in regard to limiting potential privacy issues associated with relationship between the IMB building to the north and the residential units within Levels 1 – 8 of Building A;
- resolving levels from the footpath into the building/ site to improve the streetscape interface;
- the massing/proportions of the lower levels of Building B fronting Stewart Street;

- resolution of the penthouse in the overall form of the building (two options were proposed, either the penthouse be incorporated into the general form of the building or its footprint significantly reduced to express itself as a lightweight pavilion setback from a consistent terrace parapet);
- provision of detail in relation to the louvres proposed on the western façade of the development.

In response to the above matters, the applicant provided detail on the privacy measures to be applied to the northern facade of Building A Levels 1 – 8 to ensure the privacy of the residential units within these floors whilst still maintaining solar access to these units; the footpath levels were resolved, the double height expression at the lower levels of Building B was reduced to better respond to the character of this streetscape; further detail was provided in relation to the penthouse unit on Level 13 of Building A and detail including rendered perspectives of the louvre systems and western façade of Building A was provided. Further rendered perspectives and photomontages of the development have also been provided – these are included in Attachment 1.

The revised plans were reviewed by the Chair of the Design Review Panel (DRP) in response to the feedback previously provided by the DRP. Most of the earlier outstanding issues identified by the DRP were resolved however the Chair identified matters which were conveyed to the applicant and discussed during a subsequent meeting. The applicant raised concerns about the perceived inconsistency between the earlier Panel commentary and the matters now raised by the Chair and the recommendations for re-design in response to that concern. Those matters revolved around the design and treatment of the Level 13 penthouse (Building A); the following outlines the original Panel commentary on this issue (in italics), the DRP Chair's review of the revised plans with regard to that original commentary and the applicant's response:-

Earlier DRP comment:-

“As proposed, the penthouse is not successfully resolved within the form of the building; its footprint is too big to be expressed as a “pavilion” and its distinction is blurred by the building’s flush façade screening, which currently extends full height. Either the penthouse should be incorporated into the general form of the building – set back perhaps from the northern edge to create a large north facing terrace - or its footprint should be significantly reduced to express itself as a lightweight pavilion setback from a consistent terrace parapet.”

Chair comment (June 2019):-

“The Panel was concerned that the penthouse was not well integrated into the built form and in such a prominent “public” locality, required further thought. Two design strategies were suggested for further study in order to provide a more resolved and amenable built form. In response to this comment, the top floor has been redesigned to maximize its site coverage, without stepping the building at its northern end to create a large open terrace (as suggested by the Panel). Hence, much greater physical and visual bulk is now proposed, exacerbating the non-compliance with the ADG’s setback requirements and its compatibility with the approved built form on its adjoining site (which as stated above, is not shown at all). Clearly, the Panel was seeking a more amenable built form to better integrate with its context: limiting its bulk, introducing landscape at its upper level, cutting back its roof where not required, introducing stepping and so on. The proposal instead increases its bulk and fails to demonstrate compatibility with adjoining properties and streetscape. It is therefore not acceptable. The redesigned penthouse also illustrates that additional bulk is not even necessary; the top level is dominated by large service and internal rooms, virtually every room is over sized and all perimeter balconies have been increased in depth. All the outdoor space – including the very deep north facing al fresco space – is proposed as covered space. This gives the penthouse a deep and internal character, dominated by a long corridor and deeply recessed living spaces. It is therefore not supported.

To address issues of bulk as well as ADG compliance and internal and external amenity, the Level 13 floor plate must be reduced in size. Balconies should be narrowed to match the floor below. Service and storage rooms should be greatly reduced in size and number. Habitable rooms too - reduced in size and all must have windows.

The rationalization of internal and external areas at the southern portion of the plan should allow for a large north facing landscaped terrace – of approximately 10m depth - as previously suggested by the Panel. The unit’s new north facing glazing should have a cantilevered roof eaves of no more than 2.5m to allow adequate solar penetration to living spaces. The northern edge of the terrace must have a 2m constructed landscaped planter to prevent overlooking to its adjoining boundary. The landscape treatment of the new private terrace must be thoughtfully

considered and designed to integrate tree planting to ameliorate the issues of bulk and separation identified above. The terrace at level 13 (described above) should extend south as far as the first structural bay (approximately ten metres from the northern façade on lower levels). The level 13 roof eaves should project no further north than the north side of the slot below.”

Applicant's response

The applicant has not re-designed Level 13 any further in response to the above recommendations but has provided a written response in relation to the issue. The applicant refers to the two options for potential amendment which were originally presented by the Panel:-

It's footprint is too big to be expressed as a “pavilion” and its distinction is blurred by the building's flush façade screening which currently extends full height. Either the penthouse should be incorporated into the general form of the building – set back perhaps from the northern edge to create a large north facing terrace - or its footprint should be significantly reduced to express itself as a lightweight pavilion setback from a consistent terrace parapet.

The applicant contends that the proponent agreed with the option of incorporating the penthouse within the general form of the building, as suggested by the Panel. ADM Architects subsequently amended the elevation to continue and integrate the penthouse level of the building with the same architectural language as the lower levels. This is demonstrated within the following extracts of the elevations which show the western and southern façade before and after the amendments: -

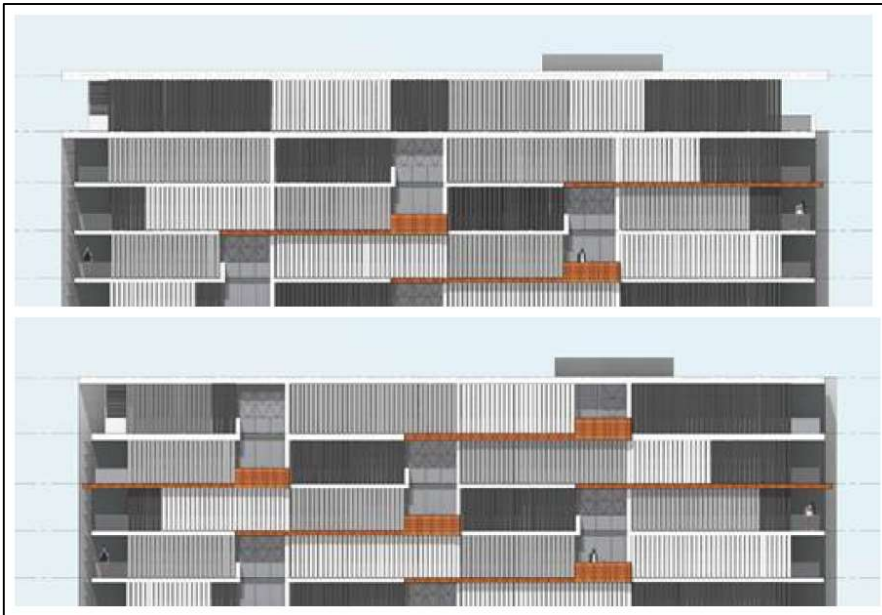


Figure 2 – extract of western elevation comparing original plans (upper) to revised plans (lower)

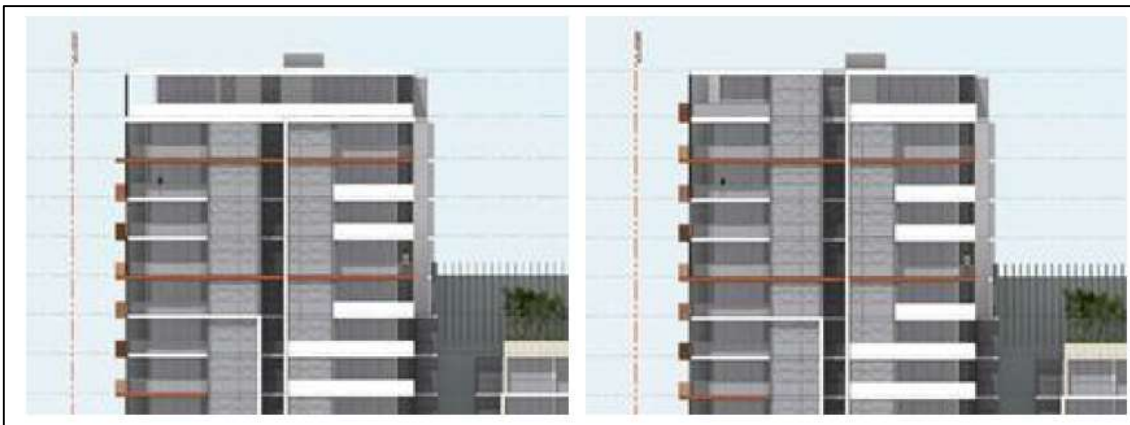


Figure 3 - South façade before and after amendments by ADM Architects

The applicant continues,

“...following reconsideration by the DRP on 3 June 2009, the DRP’s original suggestion of “perhaps” setting back the penthouse level “from the northern edge to create a large north facing terrace” has now been expressed to indicate that the Level 13 floor plate “must be reduced” in size. Whilst we appreciate the amended plans being considered electronically, this did not provide us with opportunity to further discuss the amendments with the DRP. Hence, we are extremely concerned that the DRP’s most recent comments have adopted a more stringent approach to the Level 13 floor plate, which does not reflect the discussions of 19 February and the minutes from the meeting.

We therefore request that the DRP reconsider its position with respect to this penthouse level to more closely reflect the panel’s comments of 19 February and the discussions which were held on that day. We believe that the revised design meets the DRP’s suggestion that the penthouse should be incorporated into the general form of the building. However, the reduction in footprint is not supported by the proponent for the following reasons:

- a) The penthouse plan has been designed in accordance with the proponent’s brief noting that the proponent intends to live within the apartment.
- b) The Chair (in minutes of 3 June 2019) has raised a number of concerns regarding habitable room sizes and has specified that all rooms should be reduced in size and must have windows. However, we note that room functions, size and layout has been based on the proponent’s specific requirements and amendment to room configuration is unreasonable and unnecessary given that the penthouse level has been designed to suit a specific user.
- c) A review of the plan will show that the internal rooms are not wasted space, rather are required utility areas and rooms that do not need to be on the perimeter glazed walls, such as cellars and storage areas.
- d) The rooms are sized appropriately given the client’s brief which the DRP does not have detailed knowledge of.
- e) Reducing the extent of the northern side of the apartment will significantly compromise the client’s brief, whilst gaining little in terms of bulk and scale, noting the building remains compliant within both gross floor area (GFA) and height controls.
- f) Whilst the terrace area on the northern side of the penthouse level has not been extended, we note that the design includes a semi enclosed alfresco area on the northern side, which is protected from expected wind, to allow for outdoor use all year round. An unprotected open 10m terrace area would not be practical due to the expected wind currents at that level.
- g) A reduction of penthouse footprint along the northern side would do little to reduce the overshadowing to the south. The overshadowing is significantly reduced to the south by the lower scale smaller building to the east side of the “L” shaped footprint. The design could extend to 48m in height across the southern frontage but instead provides a significant reduction in building height in the eastern portion of the site.
- h) It is unreasonable for the proponent to compromise on the penthouse plan to reduce bulk and scale, when the building being constructed by him on the adjoining northern property is significantly under the maximum GFA (-3750sqm) and height permissible (-16m). We would purport that this alone constitutes a significant contribution to the streetscape in terms of bulk and scale reduction.

Accordingly, we request that the DRP reconsider its position of 3 June 2019, which requires a reduction in the floor plate of the penthouse level. This apartment has been specifically designed to meet the living requirements of its intended use and a reduction in footprint will impact on residential amenity, given our client’s very specific project brief. Further, the penthouse has been incorporated into the general form of the building, thereby meeting the design solution as discussed with the DRP at its meeting of 19 February 2019.”

Council officers have considered the above response along with the earlier Panel commentary and consider that the applicant has adequately addressed the DRP’s earlier recommendation. The DRP provided 2 options for re-designing the penthouse to overcome the concern raised, and as iterated by the applicant, one of these options was taken up by the applicant – being to integrate the penthouse

level of the building with the remainder of the building below by continuing the same architectural language through that floor as is evident on the lower levels. This is clearly depicted in the plan extracts above. The applicant is correct in saying that the DRP suggested that consideration be given to “perhaps” setting back the penthouse level “from the northern edge to create a large north facing terrace” while in the most recent review, the Chair insists that the Level 13 floor plate “must be reduced” in size. The applicant’s justification for not further amending the plans is considered to be adequate and the development in its current form is supported from a planning perspective. The scale of the penthouse unit does not give rise to any LEP or ADG departures at that level nor any off-site impacts as outlined in this report.

Endeavour Energy

The proposal was referred to Endeavour Energy for comment. Endeavour Energy advised that it had no objection to the DA.

Roads and Maritime Services

The RMS advised that it considers that the development will not have a significant impact on the State Road Network (Corrimal Street being the nearest classified road to the site) and on this basis, does not object to the development application. The RMS did not require or recommend any conditions for imposition.

2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 – 4.15(1) EVALUATION

2.1 SECTION 4.15(1)(A)(I) ANY ENVIRONMENTAL PLANNING INSTRUMENT

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

The proposed development has been assessed with regard to the requirements of Clause 7 of SEPP 55 and the matter has been reviewed by Council’s Environmental Scientist with regard to SEPP 55 and the relevant provisions of Wollongong DCP 2009.

The subject site has a history of commercial office use in recent years and prior to that was occupied by the Southern Regional Office of the Department of Main Roads (DMR) from around 1957. A preliminary site investigation (PSI) was supplied with the application which analyses the history of the site in order to determine potential site contamination risks. The PSI states:-

“Based on the findings of the site history investigation, DP’s previous geotechnical investigation, HLA’s previous contamination assessment and the site walkover, it is considered that potential for contamination exists at the site primarily through the progressive development and use of the site as the RTA’s Southern Regional Office since the 1950’s. The former site use is known to have included the operation and decommission of a UST. The progressive development of the site is considered to have included the construction of site structures, potentially including hazardous building materials, across most of the site, the subsequent demolition of site structures in the eastern portion of the site, and the historic construction of asphaltic concrete pavements potentially containing coal tar binder.”

The PSI concludes that the site exhibits a low to moderate potential for contamination to be present, and this would be associated with:-

- the former underground storage tank;
- fill in the eastern portion of the site potentially impacted by hazardous building material; and
- fill underlying car park areas that may be impacted by coal tar from old asphaltic concrete pavement materials.

On the basis of the investigation findings, it is considered that the site can be rendered suitable for the proposed development on the basis that the proposed excavation will remove the top 6m of material across most of the site including the area surrounding the former location of the UST. As such, a waste classification assessment will be required prior to removal of any surplus material from the site. This should specifically target identified potential sources of contamination for the purpose of waste classification.

The PSI recommends the following:-

- Following the complete removal of all fill, a validation assessment be carried out to assess the potential for hydrocarbon impacted material to remain and to assess whether residual soil

vapours or potential for groundwater contamination remains on site. As part of the off-site disposal or reuse classification for the site natural materials, assessment will be required to validate that natural materials have not been impacted by former site activities.

- A visual walkover inspection of the exposed natural surface at the final basement level be undertaken to assess for signs of potential contamination prior to further construction.
- As a matter of due diligence and given the current buildings and hardstand areas precluding visual and physical access to the entire site, it is recommended that an unexpected finds protocol be implemented as part of a construction environmental management plan for any future proposed earthworks or development.
- A pre-demolition hazardous building materials survey and testing of the asphaltic concrete for the potential presence of coal tar be undertaken prior to the demolition of the site structures.

The PSI has been reviewed by Council's Environmental Scientist who has recommended conditions for imposition in regards to the above recommendations including the requirement for a site validation report. These are included in the list of conditions at **Attachment 7**. Subject to conditions of consent the site is considered to be suitable for the intended use of the land with regard to Clause 7 of this policy.

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

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

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

Clause 28 provides that the application must be referred to the relevant design review panel (if any) for advice concerning the design quality of the development while Clause 28(2) provides that a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):-

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

The proposal has been reviewed by a Design Review Panel convened for the purposes of the SEPP as outlined above in Section 2.5.2 of this report. As discussed, at its last meeting on 19 February 2019, the DRP raised some concerns with regard to outstanding matters; the notes from this review are attached to this report at **Attachment 6**. The applicant submitted revised plans in response to these comments which have been reviewed by the Chair of the DRP. The Chair raised some outstanding matters which they considered had not been sufficiently addressed and this was conveyed to the applicant as discussed above at length in Section 1.6.2 of this report. Further revised plans were provided which satisfactorily address all outstanding issues raised by the DRP.

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

Principle 1: Context and neighbourhood character

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

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

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

Comment:

The locality is characterised by a mixture of development types and densities, being at the southern periphery of the B3 zone and adjacent to B4 zoned land. Nearby development is highly mixed in nature; commercial to the north and east, seniors housing to the south, church and other commercial/ retail to

the east and retail to the west. The height and FSR permitted for the locality under the planning controls will likely see further substantial transformation of the area in future towards higher density development. The proposal is considered to be satisfactory with regard to both the current and likely future contexts.

The DRP advised that the Applicant has made a number of positive changes, especially with regards to the interface with the public domain on the two street frontages and in regards to building massing in response to the different character of the Stewart Street streetscape.

Principle 2: Built form and scale

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

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

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

Comment:

The proposal is considered to be of a suitable bulk and scale considering the applicable controls and both existing and likely future development on adjoining land.

The articulation and materials and colour palette are considered to positively contribute to the streetscape. The setbacks to accommodate the existing street tree assist in improving the building's mass and provide for an appropriate streetscape response.

Residential amenity in respect of outlook is acceptable.

The DRP advised that the massing and scale of the proposal generally responds well to its context. Some recommendations were made in relation to the design which have been largely adopted by the applicant in the revised plans. The DRP note that, given its alignment with the building further south, the Panel support the alternative setback proposed to the Kembala Street frontage of the site and with the screening proposed, can support the non-compliance the site's northern boundary (where a variation is sought in relation to building setbacks, discussed further below). This was contingent on the applicant giving further consideration to how the privacy of the residential units within Building A levels 8 and below can be secured (where there is a direct interface between the residential units and the approved IMB building to the north). The applicant has indicated that vertical louvres will be provided on the northern elevation of the units to prevent direct overlooking from the IMB whilst still maintaining solar access to the units. This is an appropriate response.

The double height expression at the lower levels of Building B (fronting Stewart Street) was reduced at the recommendation of the DRP to create a better proportioned façade and allow for a more appropriate response to the streetscape to the south.

The DRP had concerns around the resolution of the L13 penthouse within the overall form of the building; it was recommended that either the penthouse be incorporated into the general form of the building or its footprint significantly reduced to express itself as a lightweight pavilion setback from a consistent terrace parapet. This issue is discussed at length in Section 1.6.2 above and it is concluded that the design treatment now proposed to the penthouse is appropriate.

Details around the louvre system to the western façade were requested as this will have a significant bearing on the finish and appearance of the western elevation of the development. The details provided by the applicant were reviewed by the DRP and are satisfactory.

Principle 3: Density

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

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

The density of the development complies with the maximum FSR permitted for the land. Local infrastructure is capable of supporting the proposed development. The site is well situated with regard to existing public open space, public transport, employment and services, being within ready walking

distance of the city centre and foreshore recreation areas. Adequate parking facilities have been provided on site to cater for the number of units proposed. Contributions applicable to the development will go towards local infrastructure and facilities.

The FSR of the development is compliant with WLEP 2009 and the design of the development provides for an appropriate built scale measured in terms of floor space, height and setbacks. The proposed density was considered acceptable by the DRP. The proposal is therefore satisfactory when considered with regards to Principle 3.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes.

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

The proposal is considered acceptable with regard to sustainability. The proposal is satisfactory with regard to solar access and natural ventilation and is accompanied by BASIX certificates which indicate that the BASIX thermal comfort, water and energy efficiency targets can be achieved. The development is considered to be an efficient use of land in an appropriate location.

The most recent review by the DRP Chair advised that the development is satisfactory with regard to ADG solar access and natural ventilation compliance. There is sufficient planting on structure including roof terraces and retention of the large existing street tree and new street planting will offer some urban greening.

Principle 5: Landscape

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

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

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

The proposal is satisfactory in respect of landscaping. The proposal involves renewal of the footpath and retention of one large street tree. Large landscaped communal areas will be provided on the roofs of the building and the development will incorporate landscape treatment of the footpaths.

The development is considered to therefore be satisfactory with regard to Principle 5.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours.

Achieving good amenity contributes to positive living environments and resident well being.

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

The development is acceptable in regard to controls relating to residential amenity. The units feature good internal layouts, compliant solar access, compliant cross ventilation and acceptable balcony and communal open space areas. Setbacks are reasonable and in most areas achieve compliance with the ADG. Heat gain of the west-facing units will be managed through the use of shading devices. The residential and commercial components of the development are well separated which will assist in improving amenity.

The development is considered to therefore be satisfactory with regard to Principle 6.

Principle 7: Safety

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

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

The design of the development is considered satisfactory with regard to the principles of CPTED and it is considered that the development is unlikely to result in additional criminal or antisocial behaviour in the locality.

Access to the carpark and residential entry points will be secured and commercial and residential access, waste management areas and the like are well separated and secured.

The development is considered to therefore be satisfactory with regard to Principle 7.

Principle 8: Housing diversity and social interaction

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

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

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

The proposal is considered to be acceptable with regard to this Principle. The development provides a good mixture of unit types and sizes including adaptable units and Livable units designed to achieve compliance with the features of Silver level of the Livable Housing Guidelines. The development features a range of recreation spaces to facilitate social interaction among residents.

The development is considered to therefore be satisfactory with regard to Principle 8.

Principle 9: Aesthetics

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

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

The building is considered to incorporate suitable articulation and a mix of materials and finishes and is acceptable in regard to aesthetics. The form and finishes proposed are considered to be appropriate and the DRP have indicated its support of the design.

The development is considered to therefore be satisfactory with regard to Principle 9.

Apartment Design Guide

A full assessment of the proposal against the ADG is provided at **Attachment 3**. The development has been assessed against the provisions of the ADG and was found to be compliant, with the exception of a variation in respect of 3F Visual Privacy in regards to the northern setback to Building A for that part of the building above 25m in height (being Levels 7 and above where a 12m setback is required to habitable rooms; a setback of 10.450m has been provided) and in relation to the eastern setback to Building B. The variations sought are discussed within the table at **Attachment 3** and are considered to be supportable.

2.1.3 STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

The development application was referred to Endeavour Energy for comment in accordance with Clause 45 as it may involve works within proximity of electricity infrastructure including an existing substation located within the south-eastern corner of the property (with access obtained via Lot 301 DP 709353 fronting Stewart Street).

Endeavour Energy has advised that it has no objection to the proposed development.

Clause 104 'Traffic Generating development' refers to certain development of a certain size or capacity that requires referral to the Roads and Maritime Services (RMS). The site does not have frontage to a classified road (with the nearest classified road being Corrimal Street to the east) and the development is not of a size that would necessitate formal referral to the RMS. The proposal was nonetheless referred to the RMS for comment and the RMS advised that it had no concerns with the proposal.

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

The Southern Regional Planning Panel is the determining authority for the development pursuant to Part 4 'Regional development' of State Environmental Planning Policy (State and Regional Development) 2011 as the proposal is "Development that has a capital investment value of more than \$30 million". The cost estimate submitted indicates that the capital investment value of the project is over \$30 million.

2.1.5 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

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

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

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

The proposal is entirely consistent with the above objectives.

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

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

The proposal is categorised as **Shop top housing** as defined below. The proposal is permissible in the zone with development consent.

Clause 1.4 Definitions

The following definitions are relevant to the proposed development:-

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

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

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

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

Clause 2.7 Demolition requires development consent

Consent has already been granted for the demolition of the existing structures on the site to facilitate the construction of the proposed development (DA-2017/1462).

Part 4 Principal development standards

Clause 4.3 Height of buildings

This clause prescribes a maximum height of 48 metres for the Site, as shown on the Height of Buildings Map. The proposal has a maximum overall height of 47.97m to the top of the lift overrun which is compliant.

Clause 4.4 Floor space ratio

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

Clause 4.4A Floor space ratio – Wollongong city centre

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

In the case of the Site and the proposal, subclause (4) applies.

The maximum FSR for a mixed use building is $(NRFSR \times NR/100) + RFSR \times R/100$:1.

Using this formula and the proportions of the building to be used for residential (82%) and non-residential purposes (18%) arrives at a maximum allowable FSR of $(6 \times 18/100) + (3.5 \times 82/100) = \mathbf{3.95:1}$.

The proposed FSR is **3.944:1** which is compliant with Clause 4.4A.

Clause 4.6 Exceptions to development standards

Clause 4.6 of the Wollongong LEP “Exceptions to development standards” provides that development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument, where certain matters are met.

In this instance, a departure is sought in respect of Clause 8.6 Building Separation which is detailed below in the discussion around Clause 8.6. The applicant has provided a statement prepared with reference to Clause 4.6 in relation to this development departure; this is attached in full at **Attachment 4**.

Part 5 Miscellaneous provisions

Clause 5.10 Heritage Conservation

The site is not heritage listed nor is it located within a heritage conservation area. As detailed elsewhere within this report, there are numerous listed items of environmental heritage within the vicinity of the site identified in Figure 2 below. These are:-

- No. 6228 'St Andrew's Presbyterian Church and Hall', located to the north-west of the subject site;
- No. 6381 'Wollongong Town Hall and former council chambers (now art gallery)' located on the northern side of Burelli Street;
- No. 6284 'Row of Hills Figs', located to the west of the site on the Burelli Street frontage of the Woolworths site and
- No.6288 'Small leafed fig' at 94 Kembla Street, diagonally opposite the site.



Figure 4 – locality plan identifying heritage items near to the subject site which is partly outlined in red (source: TCG Planning SEE)

It is noted that the site to the immediate north was identified as having a high to moderate potential for archaeological significance pertaining to structures constructed dating from around c.1838 onwards. The works within that site have required excavation permits under the Heritage Act 1977.

Consideration has been given to the impact of the proposed development on any potential archaeology at the site by Council's Heritage Officers having regard to the relevant provisions of Clause 5.10 of WLEP 2009. The proposed development was supported by a Historic Heritage Assessment which concludes that no further historical archaeological assessment of the site is required on the basis that it remained vacant until the 1930's. The recommendation is supported by Council.

It is noted that an Aboriginal object was uncovered on the adjacent site by BIOSIS during the archaeological investigation. In order to ensure that there are no potential Aboriginal objects / relics within the subject site which could be impacted by the proposed works, the applicant submitted an Aboriginal Due Diligence Assessment and Archaeological survey. This report concluded that the site has a low archaeological potential and considers that no further archaeological work is required to be undertaken at the site. The Due Diligence process acts as a defence; if any Aboriginal Objects are discovered during construction all works must cease and an Aboriginal Heritage Impact Permit under the NSW National Parks and Wildlife Act 1974 will be required. Conditions to that effect have been included in those listed at Attachment 7.

Consideration has also been given to the impact of the proposed development on the heritage significance of the nearby listed items and no concerns were raised.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

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

The site is already serviced by electricity, water and sewerage services. It is expected that the existing utility services can be augmented to support the proposed development. If approved, conditions should be imposed upon the development consent requiring approval from the relevant authorities for the connection of electricity, water and sewerage to service the site.

Separate provision has not been made for a substation within the site as the adjacent development to the north accommodates a substation on the ground floor of the building adjacent to the Kembla Street frontage which will also service this site.

Clause 7.3 Flood planning area

The site is flood affected and is located within a medium flood risk precinct. The site, being at or below the flood planning level, is subject to Clause 7.3 of the LEP.

The objectives of Clause 7.3 are:-

- (a) *to maintain the existing flood regime and flow conveyance capacity,*
- (b) *to enable evacuation from land to which this clause applies,*
- (c) *to avoid significant adverse impacts on flood behaviour,*
- (d) *to avoid significant effects on the environment that would cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses,*
- (e) *to limit uses to those compatible with flow conveyance function and flood hazard.*

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

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

Comment: All habitable floor levels of the proposed development will have a suitable freeboard above the adjacent 100 year ARI flood level.

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

Comment: The development will not adversely affect flood behaviour and will not increase flooding of adjoining properties.

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

Comment: The proposed development will not significantly alter flow distributions and velocities to the detriment of other properties or the environment of the floodplain.

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

Comment: The proposed development will not affect evacuation from the land.

- (e) the development will not significantly detrimentally affect the floodplain environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses,

Comment: The development will not significantly detrimentally affect the floodplain environment or give rise to any of these impacts.

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

Comment: The proposed development will not result in unsustainable social and economic costs to the community as a consequence of flooding,

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

Comment: The proposed development is not within a floodway area.

Clause 7.5 Acid Sulfate Soils

The site is identified as being affected by Class 5 acid sulphate soils. The Geotechnical Assessment submitted with the DA included testing for the presences of ASS and concluded results were below the threshold of the action criteria and therefore an acid sulfate soils management plan is not required. This matter has been considered by Council's Environmental Officers.

Clause 7.6 Earthworks

The proposal involves excavation to facilitate the provision of the building's two levels of basement car parking. The earthworks have been considered in relation to the matters for consideration outlined in Clause 7.6 and are not expected to have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features of surrounding land. Council's Geotechnical Engineer has considered the application and has provided a satisfactory referral subject to conditions.

Clause 7.13 Ground floor development on land within business zones

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

- (a) will not be used for the purpose of residential accommodation, and
- (b) will have at least one entrance and at least one other door or window on the front of the building facing the street other than a service lane.

The requirements of this clause are satisfied to both the Stewart Street and Kembla Street frontages of the site.

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

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

Development consent must not be granted to development to which this clause applies unless, in the opinion of the consent authority, the proposed development exhibits design excellence. In considering whether development to which this clause applies exhibits design excellence, the consent authority must have regard to the following matters:-

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

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

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

The development is considered to positively contribute to the public domain through an aesthetically pleasing façade, appropriate bulk, scale and form, appropriate street setbacks, good resolution of levels between the site and the pedestrian footpath, appropriate landscaping, retention of an existing street tree and provision of new street trees, and upgraded footpaths to the two street frontages of the site.

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

No significant view corridors are impacted. The site is located outside of the nominated distant panoramic view corridor identified in Figure 3.12 (Clause 3.10) of Chapter D13 of Wollongong DCP 2009 and does not exceed either the maximum height or floor space ratio permitted for the site.

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

The site is not identified as being affected by the sun plane controls but will not overshadow an area identified on the Sun Plane Protection Map.

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

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

The land is zoned for the type of development proposed and the development complies with the relevant planning controls with the exception of some minor variations which are supported. There are no site constraints that would prevent the proposal, and the building is appropriately designed with regard to flooding.

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

The development is considered to be consistent with current and desired future development in the locality. The proposed use is consistent with the B3 zone objectives.

- (iii) *heritage issues and streetscape constraints,*

The development has been appropriately designed with regard to heritage issues and streetscape constraints. The proposal will not have an adverse impact on the heritage significance of any nearby heritage items.

- (iv) *the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*

Setbacks, amenity and urban form matters have been satisfactorily addressed as discussed elsewhere in this report. The proposal provides for an appropriate relationship with the neighbouring commercial buildings to the north and east of the site. There are some variations sought in respect of some required setbacks; these are discussed in detail below and are supported.

The proposed development is considered to also have been satisfactorily designed with regard to the approved development under construction to the immediate north, noting however that building separation distances are not compliant with Clause 8.6 of WLEP or the ADG. The variations sought are considered to have merit in this instance and are supported.

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

The bulk and scale of the development is considered to be acceptable when measured in terms of building height, floor space ratio and setbacks. The Design Review Panel advised that the development is acceptable with regard to bulk, massing and modulation; see **Attachment 6**.

- (vi) *street frontage heights,*

The proposed building does not provide for a compliant street frontage height to the Kembla Street frontage of the site, however the setbacks proposed is considered appropriate by the Design Review Panel who was asked to comment specifically on this issue. The DRP has advised that it considers the location appears to suit more "flush" buildings with wider footpaths rather than a podium and tower expression as required by the street frontage height controls in Wollongong DCP 2009. The adopted expression is similar to the building to the south and further north.

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

The development incorporates sustainable design measures as outlined below. The proposal will not give rise to unreasonable overshadowing impacts in the locality and is not expected to result in uncomfortable wind conditions for pedestrians. Conditions have been recommended in relation to limitations on material reflectivity.

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

The proposal is considered satisfactory with regard to objectives of ESD. The site is well placed with regard to access to key transport nodes, within ready walking distance of bus stops and Wollongong train station and the main retail/ commercial core. The development has been designed to provide for good internal amenity with appropriate provision for energy and water efficiency and thermal comfort. BASIX certificates accompanied the DA in relation to the 102 residential units.

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

The proposal provides the necessary car parking, motorcycle and bicycle parking and suitable manoeuvring areas. Satisfactory waste servicing arrangements have been provided, with all waste to be managed from within the site. Provision has also been made for appropriate delivery/ loading facilities within the building along with adequate vehicular manoeuvring areas.

Appropriate arrangements have been made for safe, direct, practical and equitable pedestrian access to and throughout the building and along the pedestrian footpaths adjacent to the site.

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

Street trees and footpath upgrades are to be provided to the two street frontages of the site in compliance with the requirements of the Public Domain Technical Manual. The development provides for a good resolution of site levels between the public footpath and the building on both frontages as well as retention of one significant Brush Box street tree on the Kembla Street frontage of the site.

A review of the design of the proposed development has been undertaken in accordance with the requirements of Clause 7.18(5) and SEPP 65. The DRP's comments are discussed in Sections 1.6.2 and 2.1.2 of this report.

The proposal as amended is satisfactory and exhibits design excellence as required by Clause 7.18 of WLEP 2009.

The DRP meeting notes and recommendations from the last review are provided at **Attachment 6**.

Part 8 Local provisions—Wollongong city centre

The site is located within the area defined as the Wollongong city centre by the LEP and accordingly the provisions within this part of the LEP are of relevance to the proposal.

Clause 8.3 Sun Plane Protection

The objective of this clause is to protect specified public open space from excessive overshadowing by restricting the height of buildings. The subject site is within the general vicinity of a number of sites protected by sun plane controls including Civic Square, MacCabe Park and Pioneer Park. The site itself is not identified as being affected by the sun plane controls and thus this clause does not apply.

Clause 8.4 Minimum building street frontage

This clause requires that consent must not be granted to the erection of a building that does not have at least one street frontage of 20 metres or more on land within Zone B3 Commercial Core. This site satisfies this standard, with a street frontage width exceeding 20m on both frontages.

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

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

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

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

The proposed development does not comply in full with Clause 8.6 and an exception to the standard has been sought by the applicant addressing Clause 4.6 of the LEP. The submission forms **Attachment 4**.

For the purpose of considering compliance with the separation controls, only buildings to the east and north of the site are relevant as the buildings to the south and west are sufficiently distant from the proposed building being separated by roads.

The proposed building is required to have:

- A zero (0m) separation to neighbouring buildings to the north and east up to the 'street frontage height'; and
- 16m separation between buildings to the north (commercial buildings with no dwellings) at Levels 2-13 for Block A and east (single storey Sacred Heart Church) at Levels 2-7 for Block B.

The applicant has summarised the proposal's compliance with the separation control in the following table:-

Level	Functions	Height	Relevant Clause	Separation Distance required	Separation Distance provided	Compliance
Separation to North (to IMB and Corporate Square)						
Ground & Level 1	Commercial and Carpark	Below street frontage height/24m	8.6(2)(a)	Nil	Generally nil setback to carpark and 11m setback to northern commercial space.	Variation sought (to allow increased separation beyond the nil required)
Levels 2 - 13	Residential	Above street frontage height	8.6(3)(b)	16m	14.26m setback to IMB building (10.54m setback for proposed development + 3.97m for IMB), which is less than the required 16m separation. Separation to Corporate Square is compliant.	Variation sought to IMB
Separation to East (Sacred Heart Church)						
Ground & Level 1	Commercial	Below street frontage height/24m	8.6(2)(a)	Nil	Nil setback at the NE corner of the site, increasing to 3.4m to the Ground Level service area in the SE corner of the site on the Stewart St frontage.	Variation sought (to allow increased separation beyond the nil required)
Levels 2 - 7	Residential and Rooftop Communal Open Space	Above street frontage height/24m	8.6(3)(b)	Nil	Approx. 25m setback to the Sacred Heart Church, which exceeds the required 16m separation.	Complies

To the north:

There is no adopted street frontage height (as defined by Clause 8.6) as no part of a building is proposed to be built to the street alignment. The development provides for building separation to the neighbouring building to the north (the under construction IMB building), where no separation is required. In this space, a shared access driveway servicing both properties will be provided. The right of carriageway has been registered on title to allow for shared access and manoeuvring for service vehicles. The separation distance provided between the proposed building and the approved IMB building is a minimum of 14.7m to the ground floor.

Further, variation to the 16m separation to the IMB building, as specified by clause 8.6(3)(b) is also sought. Levels 2 – 13 of the development contain residential units and are setback between 14.260m from the southern wall of the approved IMB building/ 10.6m from the northern boundary. The departure in respect of Clause 8.6 (3)(b) pertains to that part of the building up to the equivalent height of the IMB building (ie levels 2 – 7 of Building A):-

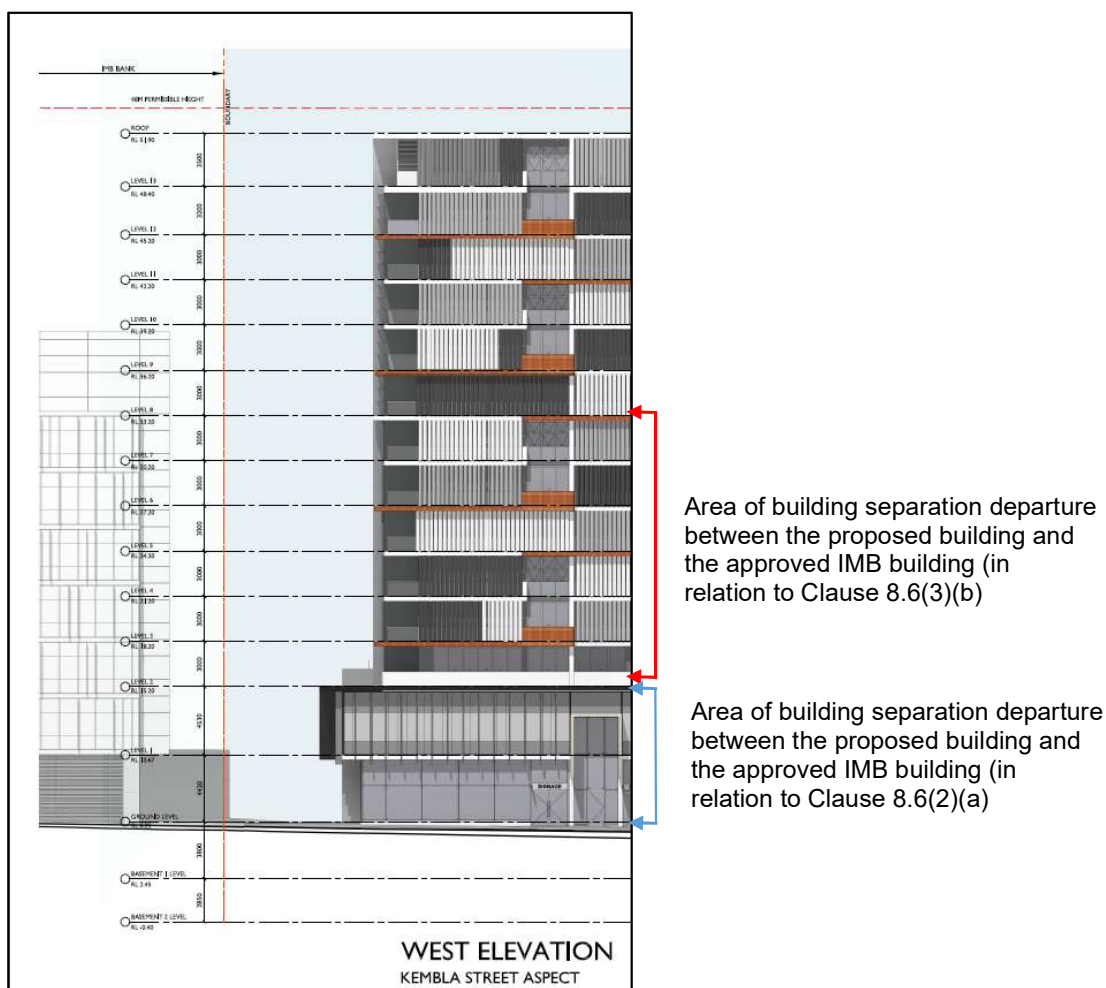


Figure 5 – building separation development departure to northern boundary

To the east:

The development cannot provide for a compliant setback to the buildings to the east of the site (where no separation between neighbouring buildings up to the street frontage height is required by Clause 8.6) as the closest building (Sacred Heart Church) is sited some distance away. The space between the eastern boundary and the Church comprises the surface car park to the Church property and an access driveway servicing the building known as 'Corporate Square' fronting Burelli Street. The development is setback between 0m in the north-eastern corner of the site, increasing to 3.4m to the south-eastern corner of the ground floor.

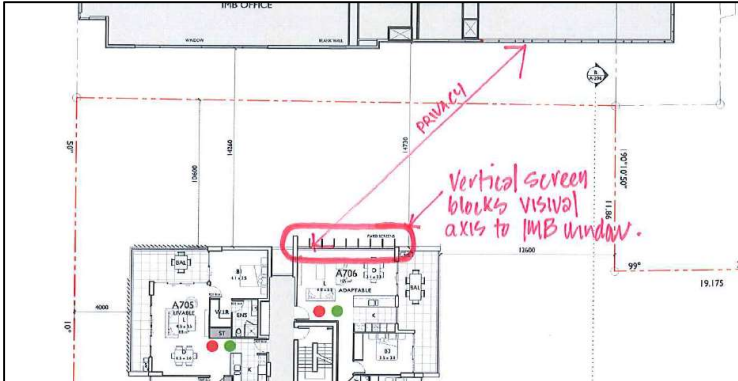
The development can achieve compliance with the 16m separation distance required to the east for the residential units contained within Levels 2 – 7. In this direction there is a setback of approx. 25m available between the proposed eastern wall of the development and the Church.

The applicant has provided a written request prepared in accordance with Clause 4.6 *Exceptions to Development Standards* seeking variation to the requirements of Cause 8.6. This request is attached in full at **Attachment 4**.

The development departure in relation to Clause 8.6 is dealt with in the table below:-

Clause 4.6 proposed development departure assessment	
Development departure	Clause 8.6 Building Separation
Is the planning control in question a development standard?	Yes
4.6 (3) Written request submitted by applicant contains a justification:	

<p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p>	<p>Yes. The applicant's request contains this justification.</p> <p>In summary the justification relies on compliance with the building separation standard in this instance being unnecessary as there are no unreasonable impacts arising from the non-compliance and the development is consistent with the objectives of the standard despite the non-compliance.</p> <p>The non-compliant building separation distances provided better respond to the character of the precinct and thus the setbacks proposed provide a superior outcome. In terms of the separation distance to the northern boundary, the separation provided (when one is normally not required) will facilitate the shared vehicular access arrangement which is an efficient use of space/ facilities and is sited in the best location from a traffic management perspective.</p> <p>In terms of building separation to the east, compliance with the standard to the eastern buildings cannot be physically achieved in any event and the setback proposed will respond better to the streetscape. The setback also provides for some site services to be located on the side of the building rather than on the frontage, which improves the aesthetic quality of the building. Landscaping is also proposed inside the eastern boundary which is appropriate for the streetscape.</p>
<p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	<p>Yes, the applicant's request contains this justification.</p>
<p>4.6 (4) (a) Consent authority is satisfied that:</p>	
<p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p>	<p>The applicant's request has adequately addressed the matters required to be addressed by subclause (3).</p> <p>The applicant's request is based on the rationale that the variation to Clause 8.6 is considered to be consistent with the objectives of the clause and, that in the specific circumstances of the site, a better and more appropriate development outcome is achieved by allowing flexibility to the development standard.</p> <p>Generally speaking, the development better responds to the pattern of development in the immediate locality where continuous street walls are not evident.</p> <p>The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access. It is considered that strict compliance with Clause 8.6 would hinder the achievement of this objective. If strict compliance was insisted upon within the site, this would result in reduced separation between buildings to the north and east at Ground Level and Level 1 which would preclude the ability to provide the proposed shared driveway arrangement between the 2 adjoining sites. A zero setback to the north would not reflect the existing streetscape pattern nor allow for appropriate placement of service areas. Further, a nil separation to the east would result in a 2 storey blank wall when viewed from the east, which would not meet the objective of the clause with regard to visual appearance.</p> <p>Separation between the IMB building and the residential units sited on Levels 2 – 7 is marginally below the required 16m (at 14.51m). Given the design proposed, it is considered that there is sufficient physical separation available between the buildings. The design adequately addresses solar access and privacy to the residential</p>

	<p>units through the inclusion of blank walls in places and fixed louvres as indicated in the below plan extract.</p> 
<p>(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</p>	<p>The proposed development will be in the public interest because (a) it is consistent with the objectives of the building separation standard; (b) the objectives for development within the B3 zone will be achieved; (c) the development is not expected to compromise the development potential of neighbouring sites and will provide for an improved relationship with neighbouring and nearby buildings.</p> <p>The objectives of the standard are to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access. The development, despite the non-compliance with the building separation standard, will be consistent with the objectives of that standard.</p> <p>The variation of the standard provides for a building which better responds to its context. In relation to visual appearance, as noted above, the building setbacks to the boundaries reflect the prevailing built form character of development in the civic/ governance precinct where buildings are setback from Burelli, Kembla and Stewart Streets and from their side boundaries. There is no continuous street wall to either Burelli, Kembla or Stewart Streets and insistence on adherence with the separation controls in Clause 8.6 would result in a built form outcome at odds with nearby buildings including nearby heritage items.</p> <p>The departure will not have any adverse impacts on the amenity of nearby developments, the streetscape or public domain. There will be no additional overshadowing impacts arising from the development departure, no view impacts, no privacy impacts, no adverse impacts on the streetscape or any heritage items.</p> <p>Part of the non-compliance arises due to the position of the neighbouring buildings to the east and north of the site so strict compliance could not be achieved in any event. The provision of the shared driveway is an efficient use of space in the safest distance from nearest intersections.</p> <p>There is not considered to be a public benefit served in this instance by insisting on strict compliance with the standard.</p> <p>As outlined in section 2.1.5 the proposed development has regard to the objectives for development within the zone.</p> <p>The development will remain consistent with the objectives of the B3 zone despite the non-compliance with Clause 8.6.</p>
<p>(b) the concurrence of the Secretary has been obtained.</p>	<p>Yes; Council can exercise its assumed concurrence in this instance.</p>

In conclusion, it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, there are sufficient environmental planning grounds to justify contravention of the standard, the objectives of the standard and the B3 zone will be maintained despite the non-compliance, and the public interest will be served despite the non-compliance with Clause 8.6. The applicant's exception request adequately addresses Clause 4.6.

The development departure is supported.

2.2 SECTION 4.15(1) (A)(II) ANY PROPOSED INSTRUMENT

None applicable.

2.3 SECTION 4.15(1) (A)(III) ANY DEVELOPMENT CONTROL PLAN

2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

The development has been assessed against the relevant chapters of WDCP 2009 and found to be satisfactory. The full table of compliance can be found at **Attachment 5** to this report. It is noted that the development departs from some of the design controls in Chapter D13. These are dealt with in the compliance tables and in detail below. The variations are supported from a planning perspective.

Chapter A1, Clause 8 Variations to development controls in the DCP

The applicant has sought variations in respect of the following matters:-

- Building to street alignment and street setbacks (Clause 2.2 of Chapter D13 *Wollongong City Centre*)
- Street frontage heights in the commercial core (Clause 2.3 of Chapter D13)
- Building depth and bulk (Clause 2.4 of Chapter D13)
- Side and rear building setbacks and building separation (Clause 2.5 of Chapter D13)
- Awnings (Clause 3.5 of Chapter D13)
- Overshadowing (Clause 6.9 of Chapter D13)

The applicant has provided 'justification statements' as required by Chapter A1 of the DCP. The variations are discussed below:-

1. Clause 2.2 of Chapter D13 *Wollongong City Centre* - Building to street alignment and street setbacks and Clause 2.3 of Chapter D13 - Street frontage heights in the commercial core

Clause 2.2 requires:

- a) *Build to street alignment or specified setback with 4m further setback above street frontage height.*

Clause 2.3 states:

"The street frontage height of buildings in the Commercial Core are not to be less than 12m or greater than 24m above mean ground level on the street front as shown in Figure 2.3."

Applicant's justification:

The applicant's justification for the variation to Clause 2.2 is integrated within the broader discussion around street frontage height as these design aspects are intertwined. It is noted in this regard, that the proposal also seeks a variation to the street frontage height control contained in Clause 2.3. The two clauses are related.

Extent of variation:

In summary, the DCP requires that part of the building from Ground to Level 6 (or the adopted street frontage height in the particular circumstance) to have a zero setback and, for that part of the building above the street frontage height (being Level 7 and above), a setback of 4m. The building is setback from the street edge for its full height. A variation is therefore sought to the street frontage setbacks and street frontage height/alignment from the Ground Level to Level 6 inclusive. All levels above Level 6 comply.

The following specific setbacks are proposed:

Kembla Street:

- Ground floor: 3.8m (does not comply)
- Level 1: 2.8m (does not comply)

- Level 2-13: 4m (does not comply up to Level 6, complies above bar some minor encroachments for balconies)

Stewart Street:

- Ground floor: 4.21m (does not comply)
- Level 1: 2.91m (does not comply)
- Level 2-13: 4m (does not comply up to Level 6, complies above level 6)

Applicant's justification for the variation:-

"As confirmed by the Design Review Panel when a similar design was presented, it is considered that the proposed street frontage heights are appropriate for the setting and context within the City Centre, including having regard to the existing surrounding buildings and desired future character of the zone. The Panel commented that it *"support(s) the minor setbacks from both street frontages – which do not comply with Council's setback requirements – as they appear not to impact on future development, allow for large street trees and provide spacious footpaths, which would otherwise be severely constrained"*. In addition, the setbacks enable increased pedestrian amenity having regard to the challenges of level changes of the site, disabled access and flood/floor level requirements as detailed in the objectives of the controls.

The building setbacks still provide a strong corner statement of the building and it is not considered to be detrimental to the street alignment objectives of the DCP. It also has no adverse impact on pedestrian amenity, overshadowing, wind conditions or view corridors. Hence, the variation is considered to be acceptable and Council's support in this instance is requested."

Response

The scale, massing and spatial separation of buildings on the block bounded by Burelli, Kembla, Stewart and Corrimal Streets is significantly different to the character of buildings in other parts of the B3 Commercial Core where there are predominantly continuous street walls, zero setbacks and awnings projecting over footpaths. Buildings in this block vary significantly in height however the most significant buildings are taller, tower forms with less modulation and a vertical emphasis, along with substantial setbacks to the street and boundaries and wider footpaths. There is no defined consistent street frontage height evident. This carries across Stewart Street to the recent IRT building fronting Kembla Street which also has no identifiable street frontage height. The form proposed responds reasonably well to its context.

The DRP was satisfied with the height, scale and massing of the development. The DRP commented specifically on the issue of street setbacks, "as stated at the last meeting, the massing and scale of the proposal generally responds well to its context. Given its alignment with the building further south, the Panel support the alternative setback proposed."

The applicant's justification is considered satisfactory and a variation is warranted in this instance.

2. Clause 2.4 of Chapter D13 Wollongong City Centre - Building depth and bulk

The control at Clause 2.4.3 stipulates a maximum building depth (excludes balconies) of 18m for that part of residential buildings above street frontage height in the commercial core.

Extent of variation:

The ceiling level of Building B is approximately 24.5m above street level height and therefore only Level 6 of Building B is affected by this control. The north-south building depth ranges from 16.2m to 20m, with approximately half of the floor plate complying with the 18m building with. The east-west building width is 22m. The range of building widths confirms the articulation objectives are achieved for this building.

In the case of Building A, the control applies only to Levels 6 and above. The annotated plan below illustrates the extent to which the building depth exceeds 18m at various points on each floor level (in yellow highlighting). As indicated, these areas are minor and represent only a small percentage of each floor and the overall building. The remainder of the building complies with the depth controls.



Figure 6 – building depth – areas of non-compliance identified in yellow

The objectives of this Clause are as follows:

- a) To promote the design and development of sustainable buildings.
- b) To achieve the development of living and working environments with good internal amenity and minimise the need for artificial heating, cooling and lighting.
- c) To provide viable and useable commercial floor space.
- d) To achieve usable and pleasant streets and public domain at ground level by controlling the size of upper level floor plates of buildings.
- e) To achieve a city skyline sympathetic to the topography and context.
- f) To allow for view sharing and view corridors.
- g) To reduce the apparent bulk and scale of buildings by breaking up expanses of building wall with modulation of form and articulation of facades.

The applicant contends that the proposed development achieves the internal amenity (including ventilation and solar access) requirements of the ADG and the energy efficiency targets of the BASIX SEPP and as such will provide for a sustainable and energy efficient building. At the upper levels of the building, there is articulation through use of a range of materials, horizontal and vertical elements, 'stepping' of the building for balconies and window treatments/shading structures and indentation for corridor light wells and the like. The differing building heights and depths of Buildings A and B also add interest to the skyline.

The non-compliant portions of the building identified in the above diagram will not increase overshadowing, visual bulk or give rise to any other identifiable adverse off-site impacts including on neighbours, the streetscape or within the site. The DRP are satisfied with the bulk of the building. The objectives of the control are met despite the minor departures to the building depth sought in this instance.

This variation is supported.

3. Clause 2.5 Side and Rear Building Setbacks and Building Separation

The requirements in this clause reflect the separation distances outlined in Clause 8.6 of Wollongong LEP 2009.

Zone	Building condition	Minimum	Minimum
		side setback	rear setback
Commercial Core	Up to street frontage heights	0m	0m
	Residential uses (habitable rooms) between street frontage height and 45m	12m	12m
	All uses (including non-habitable residential) between street frontage height and 45m	6m	6m
	All uses above 45m	14m	14m

Extent of variation:

The controls require zero setbacks to the properties to the east and north (IMB office building under construction) up to the street frontage height (ie for that part of the building from Ground level to 12-24m in height). A 12m setback is also required between Level 7 of the building and the IMB building, which is not met, with a setback of at least 10.6m provided. Justification for the variation has been provided within the Clause 4.6 submission appended at **Attachment 4** and discussed at length in Section 2.1.5 of this report.

Response:

As discussed in Section 2.1.5 in relation to the building separation development departure, the setback variation sought is supported and it is considered that the development provides a superior outcome in this setting to a building that strictly complies with the prescribed separation distances.

4. Clause 3.5 Awnings

This clause requires continuous street awnings to be provided for all new developments in certain parts of the CBD including along the Kembla Street frontage of the site. This assumes that buildings are not setback from the street edge, allowing for awnings to project over the width of the pedestrian footpath.

In this case, the development is setback from Kembla Street as discussed above. The ground floor commercial spaces are set further in to the site from the commercial space of Level 1 above which creates a narrow awning for the street below. While this is not a continuous awning built to the street frontage, it achieves the same outcome consistent with the approved IMB building to the north. The IMB building incorporates an awning to part of the Kembla Street ground floor frontage, adjacent to the building entrance, however this does not continue along the remainder of the street frontage of that building. A continuous awning could not be achieved in any event given the driveway entry on Kembla Street. It is noted that the recently developed Woolworths site on the opposite side of Kembla Street to the west does not provide a continuous awning, nor does the existing building on the subject site or buildings fronting Stewart Street, which are all setback from the street edge. The variation sought is supported.

5. Clause 6.9 Overshadowing

The objectives of this Clause are as follows:

- a) Minimise the extent of loss of sunlight to living areas and private open space areas of adjacent dwellings.

Clause 6.9 requires:

- The design of the development must have regard to the existing and proposed level of sunlight which is received by living areas and private open space areas of adjacent dwellings.
- Adjacent residential buildings and their public spaces must receive at least 3 hours of direct sunlight between 9.00am and 3.00pm on 21 June.
- In areas undergoing change, the impact of overshadowing on development likely to be built on adjoining sites must be considered, in addition to the impacts on existing development.

As discussed above in relation to the submissions received following notification of the proposed development, a number of submissions raised concerns in regards to the overshadowing impacts of the proposed development on the nearby IRT seniors housing development located to the immediate south/ south-east of the site on the southern side of Stewart Street. The recently constructed IRT 'Parkside' building and adjacent IRT 'Howard Court' buildings are the only residential properties that will be affected by overshadowing as a result of the proposed development.

Extent of the variation

The applicant submitted detailed shadow diagrams and solar access diagrams which have been supported by detailed written analysis. In summary, the units most greatly affected by overshadowing are the three (3) eastern facing units at Levels 5-7 of the Parkside building, which overlook the communal open space and which receive approximately 1.5 hours of sunlight on June 21. Further, five (5) the six (6) northern facing units within the lower, eastern portion of the building will not receive the required 3 hours of sunlight on June 21.

Detailed Analysis provided by the applicant

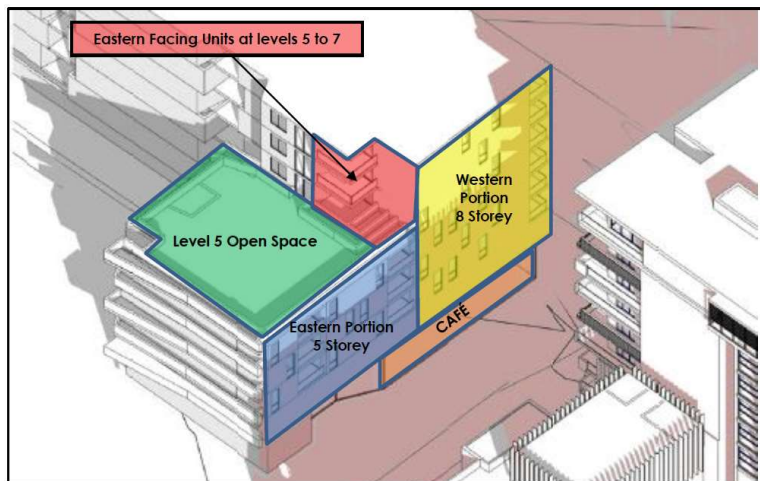


Figure 7 – IRT Parkside building – provided by TCG Planning

As illustrated above, the 'Parkside' building located to the immediate south of the site comprises two linked elements being an 8 storey west-facing block closest to the intersection of Stewart and Kembla Streets. This section is occupied by residential units on Levels 2-7 generally oriented to the east/west and south; and a ground floor café along the Stewart Street frontage. The second portion comprises a 5 storey north-facing block with frontage to Stewart Street – this is occupied by residential units at Levels 2-4 oriented to the north or south. There is also a communal open space located at Level 5 in this eastern section of the building.

The Solar Impact Study diagrams indicate:

- The main seating area of the ground level café will receive 3 hours of sunlight in mid-Winter.
- The Level 5 communal open space will receive 3 hours of sunlight in mid-Winter.
- The primary living room windows and balconies of the units in the 8 storey section of the building will receive 3 hours of sunlight, due to their western orientation.
- The western portion of the building contains three (3) eastern facing units on Levels 5-7s (highlighted pink on Figure 7), which have balconies and main living room windows oriented over the L5 communal open space. Bedroom windows are generally located on the northern façade of the building (except one narrow secondary living room window at Level 5). These east-facing units receive morning sunlight between 9am and approximately 10.30am. Whilst afternoon sun is impacted by the proposed development, it should be noted that the 'Pioneer Place' building itself overshadows such units in the afternoon period. These are the units most greatly affected by overshadowing are the three (3) east-facing units at Levels 5-7 of the

building, which overlook the communal open space and which receive approximately 1.5 hours of sunlight on June 21.

- Five (5) of the six (6) north-facing units within the lower, eastern portion of the building (highlighted blue in Figure 7) will not receive the required 3 hours of sunlight on June 21. Specifically, on L4 in this portion of the building, the majority of this level will be clear of shadow at 9am, with the living room and balcony of the eastern unit receiving sunlight through until approx. 11.30am. The balcony and primary living room window of the western unit will receive sunlight between 9am and 10.30am and will again receive sunlight between 1.30pm and 3pm. The living room and POS of the units at Level 4 in the eastern portion of the building will receive between approximately 2.5 to 3.0 hours of sunlight on June 21. On L3, the living room and POS of the eastern unit will receive sunlight between approximately 9.30am - 11.30am and between approximately 2.30pm - 3.00pm. The balcony and primary living room window of the western unit will receive sunlight between approximately 1.30pm - 3.00pm. Hence, the living room and POS of the units at Level 3 in the eastern portion of the building will receive between approximately 1.5 to 2.5 hours of sunlight on June 21. On L2, the living room and POS of the eastern unit will receive sunlight between approximately 2.30pm and 3.00pm. The balcony and primary living room window of the western unit will receive sunlight between approximately 1.30pm - 3.00pm. Hence, the living room and POS of the units at Level 2 in the eastern portion of the building will receive between approximately 0.5 to 1.5 hours of sunlight on June 21.
- 'Howards Court' will be overshadowed after 1pm and will therefore continue to receive more than 3 hours of sunlight in the morning period.

Applicant's Justification

The applicant has provided the following justification in relation to the units which will not receive the required full 3 hours of solar access on 21 June:-

"It is considered that the level of overshadowing is acceptable for the following reasons:

- The subject site is located within an inner city location containing increasingly high-density development. The site has a 48m permissible building height, and the north/south relationship of the site to the Parkside development will inevitably result in a level of overshadowing, even if a lower building was proposed. Further, it is noted that the proposed development essentially mirrors the 'Parkside' building located directly to the south in terms of stepping down in height from the higher building located in the corner position. The proposed lower building on the eastern façade allows for greater sunlight access to the lower levels of the 'Parkside' building to the south.
- Whilst a number of units within the Parkside development will not achieve the 3 hours of sunlight specified in WDCP 2009, it is noted that 3 of the 6 northern facing units at Levels 2-4 of the building will receive a minimum of 2 hours of sunlight on June 21, which is the accepted standard for sunlight access into new developments under the Apartment Design Guide.
- Whilst the 3 eastern facing units at Levels 5-7 of the building do not provide the required 3 hours, it should be noted that the 'Pioneer Place' building itself overshadows the eastern facing units in the afternoon period."

In summary, it is considered that the level of sunlight access obtained by the IRT development is reasonable in an inner city, high density context. The permitted 48m height and the site's north/south orientation will inevitably result in a level of overshadowing, however the level of overshadowing created by the proposed development is less than that which would occur if a 48m high building extended along the full frontage of the site. Whilst the northern orientation of a number of apartments in the Pioneer Place development will inevitably experience a level of overshadowing, it is noted that all units within the Pioneer Place development will continue to receive some sunlight on June 21, with the majority of units on the northern façade of the building continuing to receive a minimum of 2 hours of sunlight to their main living room window and balcony on June 21. Accordingly, Council support for the development in its current form is sought."

Planning Comment:

Having regard to the permissible building height and density permitted within the city centre and the design of the IRT Parkside building (particularly its northern elevation which does not maximise opportunities for solar access), the level of overshadowing impact of the proposal on balance is considered to be acceptable.

2.3.2 WOLLONGONG CITY-WIDE DEVELOPMENT CONTRIBUTIONS PLAN 2018

A cost estimate report accompanied the DA. The cost of works on which the applicable Section 7.12 levy is to be applied is \$43,269,630 and a levy of 2% is applicable under this plan, being \$865,400.

2.4 SECTION 4.15(1)(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4

There are no planning agreements entered into or any draft agreement offered to enter into under 7.4 which affect the development.

2.5 SECTION 4.15(1) (A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

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

(1) *For the purposes of section 4.15 (1) (a) (iv) of the Act, the following matters are prescribed as matters to be taken into consideration by a consent authority in determining a development application:*

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

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

(ii) *on land to which the Government Coastal Policy applies,
the provisions of that Policy,*

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

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

There is no demolition proposed in this application, therefore AS 2601-1991 is not a relevant consideration.

2.6 SECTION 4.15(1)(A)(V) ANY COASTAL ZONE MANAGEMENT PLAN (WITHIN THE MEANING OF THE COASTAL PROTECTION ACT

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

Whilst being in the coastal zone, the land is not identified as being impacted by coastal hazards and there are not expected to be any adverse impacts on the coastal environment arising from the development. Coastal Processes have, however, been previously considered in response to Clause 5.5 of WLEP 2009 and draft SEPP (Coastal Management)/ SEPP (Coastal Management) 2018.

2.7 SECTION 4.15(1) (B) THE LIKELY IMPACTS OF DEVELOPMENT

Context and Setting:

Context and setting has been addressed with reference to the principles of SEPP 65 and the design excellence matters prescribed by Clause 7.18 of Wollongong LEP 2009 (see Sections 2.1.2 and 2.1.5) and in relation to the impact of the proposed development on nearby heritage items. The development is considered to appropriately respond to its setting.

Vehicular Access, Transport and Traffic:

The proposal is satisfactory with regard to carparking, vehicular access, manoeuvring and servicing. Provision has been made for sufficient car parking, appropriate arrangements for on-site servicing and deliveries. Adequate bicycle parking, motorcycle parking and end of trip facilities are proposed.

A traffic impact statement was supplied with the application which indicates that the traffic generating impacts of the development will not be unreasonable in the locality when considered in conjunction with nearby approved and under construction development. The proposed access arrangements are satisfactory to Council and the RMS.

Pedestrians will be safely accommodated. The public domain works and appropriate resolution of site levels will provide for an appropriate interface between the development site and the public domain.

Public Domain:

One existing street tree within the Kembla Street frontage of the site will be retained, while the other has been removed as required by the RMS to ensure the visibility of traffic signals at the intersection of Stewart and Kembla Streets. Public domain works inclusive of footpath paving will be required to be provided to both street frontages in accordance with the Wollongong City Centre Public Domain Technical Manual. Conditions of consent should be imposed in regards to these matters if the proposal is approved.

Utilities:

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

The development will share the substation within the neighbouring IMB building.

Heritage:

There are a number of significant nearby heritage items as detailed above. The proposal is not expected to have an unreasonable impact on the significance of nearby items. Refer to discussion in Sections 1.6.1 and 2.1.5 of this report.

Other land resources:

The proposal is not expected to impact upon any valuable land resources.

Water:

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

Consumption - The proposal is not expected to involve excessive water consumption. The application was accompanied by BASIX certificates in regards to the residential component demonstrating that the development can achieve the water conservation targets of the BASIX SEPP.

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

Soils:

It is expected that, with the use of appropriate erosion and sedimentation controls during construction, soil impacts will not be unreasonably adverse. Conditions should be imposed in this regard if the proposal is approved; see **Attachment 7**.

Air and Microclimate:

The proposal is not expected to have any negative impact on air or microclimate, and is not expected to give rise to uncomfortable wind conditions for pedestrians.

Flora and Fauna:

No adverse impacts on significant flora or fauna is expected as a result of the proposed development. The proposal has been redesigned to provide for the retention of one of the existing Brush Box street trees within the Kembla Street frontage of the site. An arborist report was supplied with the application which provides numerous recommendations to ensure that the works are conducted in such a way to ensure the long term health and vigour of the tree.

It is noted that Council's Landscape Officer was satisfied with the submitted landscape plan and development generally.

Waste:

Refer to Wollongong DCP compliance table at **Attachment 5**.

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

On-going waste management arrangements are satisfactory and comply with the relevant provisions of Wollongong DCP 2009 as detailed within this report.

Energy:

The proposed development is not expected to involve unreasonable energy consumption. Conditions will be imposed requiring compliance with the BCA which will include provisions relating to energy efficiency within the commercial component of the development.

The BASIX certificates provided with the application demonstrate that the residential units will achieve compliance with the energy efficiency and thermal comfort targets of the BASIX SEPP.

Noise and vibration:

Noise and vibration impacts during excavation and construction are unavoidable. If the development is approved, a suite of conditions is recommended for imposition (see Attachment 7) to minimise nuisance during excavation and construction.

There are no external sources of unreasonable nuisance noise within the immediate locality. An Acoustic Report was supplied with the application which considers noise transmission and its impacts from outside and within the development (inclusive of the loading dock, vehicle entry/ exit points, and communal open space areas) and provides recommendations for mitigation to ensure appropriate internal acoustic amenity including a recommendation that the use of the L2 communal open space be limited to 10pm. Conditions of consent are recommended for imposition in this regard.

The commercial uses proposed are not expected to give rise to adverse noise impacts in the locality.

Natural hazards:

The site is flood affected however the building is appropriately designed with regard to flooding and stormwater management.

Technological hazards:

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

Safety, Security and Crime Prevention:

Refer to Wollongong DCP compliance table at **Attachment 5**. The proposal is not expected to provide increased opportunities for criminal or antisocial behaviour and is considered to be reasonably well designed with regard to CPTED principles.

Social Impact:

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

Economic Impact:

There are not expected to be any adverse economic impacts arising from approval of the proposed development. The development is expected to create employment opportunities during and after the construction period.

Construction:

Construction impacts have the potential to impact on the amenity of the neighbourhood including existing businesses and the public domain inclusive of traffic and pedestrian impacts. If approved, it would be appropriate to impose a suite of conditions to reduce the impact of construction works including those relating to hours of work, tree protection, traffic controls, erosion and sedimentation controls, vibration, dust mitigation, works in the road reserve, excavation, groundwater management, waste management, and use of any crane, hoist, plant or scaffolding, amongst others. These are included in the recommended conditions at Attachment 7.

Cumulative Impacts:

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

2.8 SECTION 4.15(1)(C) THE SUITABILITY OF THE SITE FOR DEVELOPMENT

Does the proposal fit in the locality?

The proposal is considered appropriate with regard to the zoning of the site and is not expected to have any negative impacts on the amenity of the locality or adjoining developments.

Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal.

2.9 SECTION 4.15(1)(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

Refer to discussion at Section 1.5 of this report.

Submissions from public authorities

Endeavour Energy

The matter was referred to Endeavour Energy for comment. Endeavour Energy advised that it had no objection to the proposal.

NSW Roads & Maritime Services (RMS)

The proposal was referred to the RMS for comment. The RMS considers that the development will not have a significant impact on the State Road Network (the key state road being Corrimall Street) and on this basis, does not object to the development application.

2.10 SECTION 4.15 (1)(E) THE PUBLIC INTEREST

The application is not expected to have any unreasonable impacts on the environment or the amenity of the locality. It is considered appropriate with consideration to the zoning and the character of the area and is therefore considered to be in the public interest.

3 CONCLUSION

The proposed development has been assessed with regard to the relevant prescribed matters for consideration outlined in Section 4.15(1) of the Environmental Planning & Assessment Act 1979.

The proposal has been assessed with regard to all applicable environmental planning instruments and is satisfactory. The proposed development is permissible with consent and is reflective of the objectives of the B3 Commercial Core zone. The development is consistent with the applicable provisions of the relevant planning instruments including Wollongong LEP 2009 with the exception of the building separation variation sought in respect of the eastern and northern boundaries of the site. A Clause 4.6 Statement has been submitted by the applicant and has been assessed as satisfactory in the circumstances.

The development also involves variations to Wollongong Development Control Plan 2009 with regard to street setbacks, street frontage heights in the Commercial Core, building depth and bulk, side and rear building setbacks/ building separation, awnings and overshadowing. These variations have been adequately justified, and as they are not considered to lead to adverse impacts, have been found worthy of support in this instance.

Earlier concerns raised by the DRP and in internal referrals have now been resolved and the proposal as amended is generally supported by the Design Review Panel. The concerns raised in objections to the proposal have been addressed within this report and appropriate conditions are recommended where necessary.

4 RECOMMENDATION

It is recommended that the Southern Regional Planning Panel approve DA-2018/1638 pursuant to Section 4.16(1) of the Environmental Planning & Assessment Act 1979 subject to the conditions provided at **Attachment 7**.

5 ATTACHMENTS

- 1 Plans
- 2 Aerial photograph, WLEP 2009 zoning map and deposited plan
- 3 Apartment Design Guide Assessment
- 4 Applicant's Clause 4.6 Exception to Development Standards submission in relation to Clause 8.6 of WLEP 2009
- 5 Wollongong DCP 2009 Assessment
- 6 Design Review Panel minutes 19 February 2019 and most recent design review 3 June 2019
- 7 Recommended conditions