

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSTH-117
DA Number	DA-2021/1000
LGA	Wollongong City Council
Proposed Development	'Residential - demolition of existing structures, tree removal, remediation and construction of a 7 to 9 storey shop top housing development containing ground floor commercial tenancies and 201 apartments, above 2 basement levels containing 230 parking spaces'
Street Address	35-43 Flinders Street Wollongong
Applicant/Owner	Applicant - Mr George O'Donovan (Level 33)
Date of DA lodgement	6 September 2021
Total number of Submissions	8
Number of Unique Objections	7
Recommendation	Refusal
Regional Development Criteria (Schedule 6 of the SEPP (Planning Systems) 2021	Clause 2 Schedule 6 State Environmental Planning Policy (Planning Systems) 2021 – general development over \$30 million
List of all relevant s4.15(1)(a) matters	<p><u>s4.15 (1)(a)(i) Any environmental planning instruments:</u></p> <ul style="list-style-type: none"> State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development) State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Koala Habitat Protection) 2021 <p><i>Local Environmental Planning Policies</i></p> <ul style="list-style-type: none"> Wollongong Local Environmental Plan 2009 <p><i>Other Policies</i></p> <ul style="list-style-type: none"> NSW Apartment Design Guide Wollongong City Wide Development Contribution Plan 2021 <p><u>s4.15(1)(a)(ii) 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:</u></p> <ul style="list-style-type: none"> N/A <p><u>s4.15 (1)(a)(iii) Any development control plan</u></p> <ul style="list-style-type: none"> Wollongong Development Control Plan 2009 <p><u>s4.15 (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</u></p> <ul style="list-style-type: none"> N/A <p><u>s4.15 (1)(a)(iv) the regulations:</u> e.g. Regs 61, 62, 63, 64 and Part 5</p>

	<ul style="list-style-type: none"> AS 2601-1991 in respect of any demolition works and the NSW Coastal Policy. <p><u>s4.15(1)(a)(v) any coastal zone management plan</u></p> <ul style="list-style-type: none"> Wollongong Coastal Zone Management Plan 2020
List all documents submitted with this report for the Panel's consideration	Attachments <ul style="list-style-type: none"> 1 Aerial photograph 2 WLEP zoning map 3 Plans 4 Design Review Panel (DRP) Notes – 15 November 2021 5 ADG compliance table 6 WDCP 2009 Compliance Table 7 Draft reasons for refusal
Clause 4.6 requests	<ul style="list-style-type: none"> Not applicable
Summary of key submissions	<ul style="list-style-type: none"> Traffic and parking concerns Bulk and scale View loss and privacy impacts Environmental concerns The development does not comply with SEPP 65 Apartment Design Guide The development does not demonstrate design excellence as required by WLEP 2009 Transport for NSW does not support the proposal Information requested but not provided
Report prepared by	Anne Starr, Senior Development Project Officer
Report date	30 August 2022

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? Yes

Legislative clauses requiring consent authority satisfaction

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

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

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

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

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

Conditions

Have draft reasons been provided to the applicant for comment? Yes

Assessment Report and Recommendation Cover Sheet

EXECUTIVE SUMMARY

Reason for consideration by Southern Regional Planning Panel

The proposal has been referred to Southern Regional Planning Panel as it involves general development with a capital investment value of more than \$30 million.

Proposal

Demolition of all structures and construction of a shop top housing development.

Permissibility

The proposed shop top housing development is a permissible use in the R3 Medium Density Residential zone.

Consultation

The proposal was notified in accordance with Council's Community Participation Plan and received eight (8) submissions.

Main Issues

- Traffic and parking concerns
- Bulk and scale
- View loss and privacy impacts
- Environmental concerns
- The development does not comply with SEPP 65 Apartment Design Guide
- The development does not demonstrate design excellence as required by WLEP 2009
- Transport for NSW does not support the proposal
- Information requested but not provided

RECOMMENDATION

It is recommended that DA-2021/1000 be refused as detailed in **ATTACHMENT 7**.

1 APPLICATION OVERVIEW

1.1 PLANNING CONTROLS

The following planning controls apply to the proposal:

State Environmental Planning Policies:

- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Koala Habitat Protection) 2021

Local Environmental Plans:

- Wollongong Local Environmental Plan 2009

Development Control Plans:

- Wollongong Development Control Plan 2009

Other policies

- Wollongong City Wide Development Contributions Plan 2021
- Wollongong Community Participation Plan 2019

1.2 DETAILED DESCRIPTION OF PROPOSAL

The application seeks consent for the demolition of the existing structures on the site and the construction of a shop top housing development containing 201 units over one commercial level and two carparking levels for 230 vehicles.

The development works will involve the following:

Site preparation

- Demolition of existing buildings;
- Removal of 20 trees – Council's landscape architect has no objection to removal of the trees, due to their poor health.
- Earthworks to facilitate the provision of two basement levels.
- Remediation as per a Remediation Action plan (to be provided after determination).
- Site remains sloping up to the rear (east).

Works / Construction / building details

- Construction of a 7-9 storey shop top housing development containing 201 apartments (55 x 1 bed, 142 x 2 bed and 4 x 3 bed apartments), over one commercial level. The commercial floor contains 2 retail tenancies and rear servicing/loading/parking areas. The building is configured in a 'U' shape with 2 towers oriented north-south and a shorter tower east-west. All towers are connected. The site slopes up to the rear.
- Associated landscaping and stormwater drainage.
- The development will include 21 adaptable apartments and 41 liveable standard apartments.
- The external materials and finishes will comprise a combination of rendered and painted masonry walls, aluminium external cladding and aluminium screening.

Traffic, parking and servicing

- Parking for total 230 cars. The two basement levels contain 214 cars, 14 x motorcycles and 105 bicycles. The ground floor at east side of the building contains 16 car spaces and 1 motorcycle

space. Car parking includes 21 accessible spaces for the 20 adaptable units (with associated shared zones).

- Waste storage rooms are located on the ground floor east side (3 x residential rooms and 1 x commercial room) and Basement 1 (1 x residential room).
- Vehicular access will be obtained via a driveway on the northern side of the site.

The development is not integrated or designated development.

1.3 BACKGROUND

Pre-lodgement meeting

No pre-lodgement meeting with Council staff or voluntary Design Review Panel meeting were held for the proposal.

Historic applications relevant to the proposal:

- Light industrial and industrial uses: car and caravan sales, spray painting, installation of fuel tanks, plumbing contractor, workshop
- Commercial: restaurant, place of public entertainment, escort agency, office and carport, advertising sign.

These past consents indicate the potential for site contamination, which has been addressed in the application.

Customer service actions

There are no outstanding customer service requests relevant to the development.

1.4 SITE DESCRIPTION

The 6403m² site is comprised of five allotments collectively known as 35-43 Flinders Street Wollongong. The title references are:

- 35 Flinders Street Wollongong - Lot 30 DP 747164
- 37 Flinders Street Wollongong - Pt Lot 1 DP 657204
- 39 Flinders Street Wollongong - Lot 2 DP 538097
- 41 Flinders Street Wollongong - Lot 1 DP 126459
- 43 Flinders Street Wollongong - Lot 61 DP 635356

The site is an irregular shaped parcel of land located on the eastern side of Flinders Street. The site has a frontage length of 82.78m to Flinders Street which forms its western boundary, 86.43m northern boundary, 80.46m rear/eastern boundary and 69.07m to the southern boundary.

The site contains 4 businesses, three of which are vehicle sales and one is a function centre.

The site slopes up to the rear /eastern boundary.

Vehicle access to the site is currently achieved via five driveway crossings on Flinders Street.

Adjoining development is as follows:-

- **North:** two storey retail (33 Flinders Street); two storey residential apartments & dwellings (49-55 Gipps; 57 Gipps & 61 Gipps Street ;
- **South** – car sales yard with single storey office building (47-49 Flinders Street);
- **East** – residential development including dwellings and residential flat buildings (45 & 47 Gipps; 44, 46-48 and 52 Keira Street).

Property constraints

Council records identify the land as being impacted by the following constraints:

- Contamination: A Preliminary Site Investigation and Detailed Site Investigation reports have been provided, addressing prior land uses. Preparation of a Remediation Action Plan is recommended.
- Acid sulfate soils: all 5 lots are identified as Class 5

- Flooding: all five lots are identified as being located within an uncategorised flood risk precinct. Council's Stormwater Officer has reviewed the application and requested further information demonstrating compliance with WDCP 2009. This has not been provided.
- Easement: A 1m easement to drain water burdens the site. Council's stormwater engineer has noted the proposed stormwater design does not accommodate this existing easement. Further stormwater and flooding information is required but has not been provided.

1.5 SUBMISSIONS

The application was exhibited between 5-20 October 2021 in accordance with Council's Community Participation Plan 2019. A total of eight submissions (seven objections and one in support) were received and the issues identified are discussed below.

Table 1: Submissions

Submission - Objection	Comment
Car parking <ul style="list-style-type: none"> - Lack of parking in the development - Some units will have 2-3 cars and will have to park on the street - Surrounding streets unable to absorb extra parking - No public car parks nearby - Not enough commercial spaces 	<p>Council's traffic engineer has reviewed the proposed number of on-site car parking spaces and advised they comply with the relevant standard.</p>
Traffic <ul style="list-style-type: none"> - Traffic study carried out during Covid and does not reflect typical traffic - Recent apartment development 'Parq' (Flinders, Keira and Campbell Streets) is not yet fully occupied - Traffic study modelled on 50% turning left and 50% turning right which is unrealistic as right turns are difficult across Flinders Street. Likely northbound vehicles will travel south to the Throsby/Campbell roundabout and then head north. This should be addressed in the traffic study. - The Statement of Environmental Effects claims the development is 'transit-oriented'. This is queried as Flinders Street offers poor pedestrian and bicycle amenity, has high number of vehicles, the development seeks to provide surplus car parking. Appears to be a 'car oriented' development. - How will increased traffic in the area be managed? - Extra traffic will delay access to Gipps and Campbell Streets 	<p>Transport for NSW has requested SIDRA modelling data and details of the connection to Flinders Street, which has not been provided.</p> <p>Council has requested further details regarding commercial vehicle size, waste vehicle turning paths, bicycle parking and compliance with AS 2890.1. This has not been provided.</p>
Building location <ul style="list-style-type: none"> - Plans show garden on boundary of 61 Gipps Street. Could this change without neighbour being informed? 	<p>A developer would need separate approval to make changes to approved development. Adjoining owners would need to authorise changes relating to their own land. This has not been provided.</p>
Solar access and overshadowing <ul style="list-style-type: none"> - Development does not comply with solar access requirements of WDCP 2009 chapters D13 and B3. - Overshadowing neighbouring residential properties - including some losing all available sunlight 	<p>Council's architect and the DRP have expressed concerns with proposed overshadowing. Amended plans have been requested but not provided.</p>

Submission - Objection	Comment
<ul style="list-style-type: none"> - Loss of sunlight will impact internal passive heating and thermal comfort - Report indicates shading up to 2pm, should assess longer time as it is only after 2pm that we receive sun. - Sun access plans should be prepared for neighbouring properties 	
Zone objectives <ul style="list-style-type: none"> - Development does not meet objectives of B6 Enterprise Corridor zone, as it is a majority residential development 	<p>The zone primarily encourages business and employment related activities, however, does allow shop top housing. No maximum percentage of residential floor area is specified.</p>
View loss and privacy <ul style="list-style-type: none"> - Development will obscure 100% of escarpment views of residents in 46-48 Keira Street and large proportion of view from 52 Keira Street. This detracts from amenity of residents and not consistent with Building Form controls in WDCP 2009 Chapter D13. - Significant loss of views to the west, especially for west-facing units in nearby apartment developments - New development will look directly into my unit 	<p>A view analysis is essential given the building's bulk and the topography of the surrounding streets, many of which contain residential properties with current views west to the escarpment. A view analysis has not been provided.</p>
Building density and size <ul style="list-style-type: none"> - Recent developments in the vicinity have been smaller scale. - Existing development to the east has same height limit but is of lower height, and the proposed development is a poor transition to these lower heights and densities. 	<p>Council's architect and the DRP have noted deficiencies in site planning, tower location and building design. Given the number of non-compliances with ADG and Council policy, it appears that the proposal is an overdevelopment of the site.</p>
Acoustic assessment <ul style="list-style-type: none"> - Survey carried out during covid lockdown period and not indicative of normal traffic. 	<p>Council's environmental officer noted that the traffic survey was done during Covid, and has requested amendments to the acoustic assessment. This has not been provided.</p>
Geotechnical <ul style="list-style-type: none"> - Vertical excavations are proposed on the site boundary, but no details of proposed method provided. This should be known at assessment stage. - Concerned construction may damage my property 	<p>The geotechnical report was reviewed by Council's geotechnical engineer, who advised it was satisfactory. It is not uncommon that a detailed geotechnical design is prepared for the Construction Certificate.</p> <p>Pre-and post-construction dilapidation reports would be recommended for development involving excavation.</p>
Flooding <ul style="list-style-type: none"> - Flood study does not account for climate change 	<p>Council's stormwater engineer has requested further flooding information, which has not been provided.</p>
Devalue property <ul style="list-style-type: none"> - Loss of view and privacy will devalue my property 	<p>Potential impact on property value is not a matter for consideration under s4.15.</p>

Submission - Objection	Comment
<p>During construction</p> <ul style="list-style-type: none"> - Dust and noise will make closing windows necessary which is not acceptable - Will I be compensated if there's damage to my property including fences? - Will I be given notice in advance before construction starts? - Will I be able to contact the site manager during construction? - What processes will be in place to minimise construction noise? 	<p>Where matters are within the scope of the EP&A Act, they are typically addressed via conditions of consent:</p> <ul style="list-style-type: none"> · pre- and post-construction dilapidation reports · construction environmental management plan · demolition neighbour notification · principal certifier appointment · acoustic controls <p>Compensation falls outside the EP&A Act and is a civil matter.</p>
<p>Tree removal</p> <ul style="list-style-type: none"> - Tree removal will lessen privacy 	<p>Three trees on the eastern boundary are to be retained. Removal of trees elsewhere in the site is supported by Council's landscape architect due to the poor health of the trees.</p> <p>A drainage swale is proposed on the northern boundary, limiting vegetation to ground cover and small shrubs. Eastern boundary planting includes large canopy trees and small trees. The southern boundary has a full-length drainage swale without vegetation.</p>
<ul style="list-style-type: none"> - Insufficient new planting and creation of green space, particularly as 20 trees are being removed. 	<p>Council's landscape architect has requested further information, which has not been provided.</p>
<p>Submission in Support</p>	
<p>NF5 'The Forum supports to this proposal'</p>	<p>Noted</p>

1.6 CONSULTATION

1.6.1 INTERNAL CONSULTATION

Geotechnical Engineer

Council's Geotechnical Officer has indicated the submitted geotechnical report satisfactorily demonstrates feasibility of the project. Detailed investigation will be required to support development of an earthworks plan to ensure adjoining properties are not adversely impacted by the development and to finalise structural designs. Conditions of consent were recommended.

Architect

Council's architect has advised there are many non-compliances and areas needing clarification or refinement with regard to SEPP 65 and the associated Apartment Design Guide. These include:

- 3A Site analysis
- 3B Orientation
- 3C Public domain interface
- 3D Communal and public open space
- 3E Deep soil zones
- 3F Visual privacy
- 3G Pedestrian access and entries
- 4A Soar and daylight access
- 4C Ceiling heights

- 4E Private open space and balconies
- 4F Common circulation and spaces
- 4G Storage
- 4H Acoustic privacy
- 4K Apartment mix
- 4N Roof design
- 4W Waste management
- 4X Building maintenance

These matters remain outstanding and are detailed in the SEPP 65 ADG assessment in **ATTACHMENT 5**.

The application is not supported in its current form.

Stormwater Engineer

Council's Stormwater Officer has advised that the application does not comply with WDCP 2009 Chapters E13 and E14. Further flooding, stormwater and on-site detention information is required but has not been provided. They note inconsistencies between the flood study, stormwater plans and architectural plans.

The application is not supported in its current form.

Landscape Architect

Council's Landscape Architect has advised that the Flinders Street works complies with Council's Public Domain Technical Manual. The proposed tree removal is supported due to the poor health of the trees.

However, several aspects of the development require further refinement:

- Communal open spaces should be provided with weather protection
- The narrow outdoor dining areas off Flinders Street will only receive limited late-afternoon sunlight and on some days none at all. There are also safety concerns for non-residents entering these spaces.
- It is unclear how trees on the northern and eastern boundaries will be retained.
- Stormwater and landscape plans are incompatible e.g., a drainage swale would interfere with the Tree Protection Zone of a tree located in the in south-east corner.
- Existing tree in the north-east corner currently provides privacy for 47 Gipps Street. The tree is located on an existing retaining wall which is failing. How will this tree be protected?
- Trees on adjoining land (53 Gipps Street and 50-52 Keira Street) have not been discussed in the arborist's report.
- Level changes on the boundary are significant and require retaining walls.

These matters remain outstanding. The application is not supported in its current form.

Traffic Engineer

Council's Traffic Officer has noted that vehicle access is proposed from Flinders Street, which is a State Classified Road under the control of Transport for NSW. Accordingly, Transport for NSW advice is required in relation to access arrangements and traffic generation.

Further information is required but has not been provided:

- Will large rigid vehicles need to enter the site to service the retail element? If this is the case, then revised swept paths would need to be submitted and modifications would need to be made to the headroom above the access ramp and loading dock (4.5 metres minimum).
- The submitted swept path plans do not use the correct waste vehicle size. It is unclear whether car parking areas can accommodate Council's mandatory 10.24-metre-long rear-loader waste collection vehicle. A revised swept path assessment is required noting that changes to the access and loading dock may be required to accommodate the larger vehicle.
- Residential and staff bicycle parking needs to be provided in secure cages with sufficient manoeuvring space internally, and self-closing doors and combination keypads for access to

meet the requirements of AS2890.3 and Council's standards. It is unclear if the bicycle parking areas meet these requirements.

- AS2890.1 requires all circulation aisles, vehicle ramps and critical corners to be tested with swept paths which show a B99 vehicle passing a B85 vehicle. The traffic impact assessment shows the travel paths of a B99 vehicle passing a vehicle waiting in front of the corners which does not comply with the above requirement. All the ramp entries, exits and circulation aisles must demonstrate passing.

The application is not supported in its current form.

Environment Officer

Council's Environment Officer has advised that contamination and water sensitive urban matters are satisfactory.

However, further information is required in relation to noise assessment:

- Noise loggers were recording during the covid lockdown period and resulting acoustic measurements were lower than would be typically recorded for that location.
- Recommended acoustic glazing is broad and the Rw rating for doors and windows is low.
- The acoustic report does not specify the noise modelling method used in determining the recommended Rw rating.
- Recommended acoustic attenuation should be presented in a table format clearly showing the specifications for doors, windows, and ceiling and wall insulation for each apartment.

These matters remain outstanding. The application is not supported in its current form.

1.6.2 EXTERNAL CONSULTATION

Transport for NSW

Transport for NSW were consulted in accordance with clauses 2.119 and 2.120 of SEPP (Transport and Infrastructure) 2021 (formerly clauses 101, 102 of SEPP (Infrastructure) 2007). Additional information was requested in relation to traffic modelling, strategic design and geotechnical matters. This information has not been provided.

Transport for NSW advised on 22 April 2022 that as the requested further information was not provided, it does not support the application.

Endeavour Energy

Endeavour Energy were referred the application in accordance with clause 2.48 of SEPP (Transport and Infrastructure) 2021 (formerly clause 45 of SEPP (Infrastructure) 2007). Matters raised included the proximity of proposed street trees to overhead powerlines and impact of flooding on the indoor substation. Conditions of consent were recommended.

Design Review Panel

The application was reviewed by the Design Review Panel under the requirements of SEPP 65 on 15 November 2021. The Panel expressed concern with several aspects of the development and recommended a redesign.

Amended plans have not been provided.

2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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

COASTAL MANAGEMENT Amendment Act 2021

The *Coastal Management Amendment Act 2021* commenced on 1 November 2021, to give coastal councils until 31 December 2023 to implement their CZMPs. By effect this enables a continuation of the current certified CZMP (20 December 2017) whilst Council undertakes further studies and community consultation for a transition to a new Coastal Management Plan.

1.7 Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994

This Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 that relate to the operation of this Act in connection with the terrestrial and aquatic environment.

NSW Biodiversity Conservation Act 2016

Under the provisions of Part 7 of the Act and relevant provisions of the Biodiversity Conservation Regulation 2017, the proposal does not trigger the requirement for a biodiversity offset scheme.

The site is not identified as being of high biodiversity value on the Biodiversity Values Map and none of the trees on the site proposed for removal have been identified as containing hollows. On this basis, the development will not result in adverse impacts on biodiversity and is consistent with the provisions of the BC Act 2016.

Fisheries Management Act 1994

Not applicable.

2.1.1 STATE ENVIRONMENTAL PLANNING POLICIES

2.1.2 STATE ENVIRONMENTAL PLANNING POLICY (PLANNING SYSTEMS) 2021

Part 2.4 (formerly Part 4) Regionally significant development.

The proposal is classified under schedule 6 as general development with a capital investment value exceeding \$30 million. The Southern Regional Planning Panel is the determining authority.

2.1.3 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

The SEPP commenced 1 March 2022, with transitional provisions making it applicable to the application. Previously, SEPP No. 55 (Remediation of Land) and SEPP (Coastal Management) 2018 applied.

Chapter 2 Coastal management

The land is located within the coastal zone. All five lots are identified on the SEPP map as being within the 'coastal environment area'.

Division 3 coastal environment area

Matters for consideration under clause 2.10 are considered satisfactory. No adverse impacts on the coastal environment are anticipated.

Chapter 4 Remediation of land

4.6 Contamination and remediation to be considered in determining development application

The potential for contamination has been considered in accordance with Chapter 4. The proposal has been reviewed by Council's environmental officer with regard to the SEPP and the relevant provisions of WDCP 2009.

The application was accompanied by preliminary site investigation (PSI) and detailed site investigation reports prepared by EIAustralia. The reports have been reviewed by Council's Environmental Officer who deemed them satisfactory. The reports indicate there is evidence of contamination at the site, and that management of underground storage tanks and hazardous material is required. The proposed development requires excavation of up to 10 metres below ground for the two levels of basement car parking, and excavated material will be removed off site. The reports recommend preparation of a remediation action plan (RAP) prior to excavation. Council's environment officer did not require any further information. A RAP has not been provided.

The proposal is not considered to be satisfactory with regard to the requirements of clause 4.6.

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

The development meets the definition of a 'residential flat building' as it is more than 3 storeys and comprises more than 4 dwellings. As such, the provisions of SEPP 65 apply. The proposal has been considered by Council's DRP in accordance with Clause 28 and Schedule 1, as reflected above.

A statement has been prepared by a Registered Architect addressing the requirements of SEPP 65 and was submitted with the application at lodgement accordance with Clauses 50(1A) & 50(1AB) of the Environmental Planning and Environment Regulation 2000 (as in force at time of lodgement).

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 30(2)(a) of the Policy and are discussed below

Principle 1: Context and neighbourhood character

The development site is located within a B6 Enterprise Corridor zone, where the objectives are primarily business and employment related. Permissible uses include specialised retail and light industrial e.g., recreation centres, car parks, places of public worship, childcare centres, hotels, storage premises, landscape and hardware supplies, offices, truck depots, warehouses, and vehicles sales. Shop top housing is the only permissible form of residential development in the zone.

The B6 zone applies east and west of Flinders Street, from North Wollongong train station in the north to Smith Street in the south. The site's rear boundary adjoins the R1 General Residential zone, which extends east to the coast. Objections came from these residential properties and included concerns at the development's height, loss of westerly escarpment views, privacy intrusion, traffic and car parking and loss of sunlight.

The B6 zone along Flinders Street has changed over the last decade from a traditional strip of car yards, retail and light industrial to an emerging shop top housing area. This has been encouraged by planning controls which permit shop top housing in the B6 zone without restricting the percentage of residential floor area. Council's draft planning policies have removed shop top housing from permissible development in B6 zones elsewhere in the LGA, however the Flinders Street B6 zone will continue to allow shop top housing. This is in large part due to the amount of shop top housing already in the locality and the resulting dilution of Flinders Street as a business and light industrial precinct.

The DRP note the context study provided by the applicant is lacking in solid analysis of the opportunities and constraints of the site and development patterns of the immediate precinct. Site planning principles should demonstrate the evolution of project, as each urban form study is amended and refined. This is not evident. It is also scant on detail about the purpose of the non-residential component of the development. The applicant has suggested the two retail tenancies would likely be occupied by bulky goods retail; however the floorplate, loading and parking areas are not typical for that type of retail.

Shop top housing is potentially consistent with the existing and desired future character of the area, subject to individual developments demonstrating design excellence. In its current form, the proposal is not considered an appropriate design response for the site.

Principle 2: Built form and scale

The DRP expressed concern about several aspects of the built form, as detailed in **ATTACHMENT 4**. These matters include wayfinding, CPTED, access, egress, ADG building separation, privacy and overshadowing, ground level interface and retaining walls and size of servicing areas. These concerns have been communicated to the applicant however no amended proposal has been provided.

Principle 3: Density

The DRP has recommended further analysis be undertaken to determine whether the proposal is an overdevelopment of the site.

Principle 4: Sustainability

Sustainability measures that could be employed but aren't evident include use of solar power and water heating, low embodied energy, judicious vegetation selection, and improved natural ventilation.

Principle 5: Landscape

The landscape plans do not provide sufficient detail to determine the RLs, access, maintenance, or planting type. Proposed drainage swales appear to compromise resident amenity and opportunities for landscaping and should be consistent with landscape plans. The communal open space on Level 1 requires further refinement. Trees overhanging the ground floor retail corridor are likely to reduce sunlight into the corridor below. The DRP comments includes consideration of landscaping and are provided at **ATTACHMENT 4**.

Principle 6: Amenity

The DRP noted deficiencies in access and circulation for residents and users of the retail tenancies; balconies directly adjacent to other balconies compromising privacy; and a lift servicing over 40 apartments. Further detail is required but has not been provided demonstrating compliance with the ADG.

Principle 7: Safety

The proposal is unsatisfactory with regard to safety and security, particularly in relation to the street entry corridors which are over 50m in length and have concealment and entrapment spaces.

Principle 8: Housing diversity and social interaction

Housing mix is minimal, with less than 2% of apartments having 3 or more bedrooms. The proposed apartment mix is 55 x 1 bedroom, 142 x 2 bedroom, and 4 x 3 bedroom. This does not offer the opportunity for a range of households to occupy the building.

Principle 9: Aesthetics

The proposal requires further refinement regarding selection of external materials, and use of screening and glazing appropriate to the orientation and proximity to noise sources. Detailed sections are required but have not been provided.

An assessment of the application against the Apartment Design Guide (ADG) is contained in **ATTACHMENT 5**.

2.1.5 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

Transport for NSW were consulted in accordance with clauses 2.119. 2120 (formerly clauses 101, 102 of State Environmental Planning Policy (Infrastructure) 2007). Additional information was requested but has not been provided. The consent authority is required to take into account correspondence received from Transport for NSW.

Council's environment officer has requested an amended acoustic report, however this has not been provided.

Endeavour Energy were referred the application in accordance with clause 2.48 (formerly clause 45 of *State Environmental Planning Policy (Infrastructure) 2007*). Minor concerns were raised regarding proximity of proposed street trees to overhead powerlines and impact of flooding on the indoor substation, however conditions of consent were provided. The consent authority is required to take into account correspondence received from Endeavour Energy.

2.1.6 STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

The proposal is BASIX affected development to which this policy applies. In accordance with Schedule 1, Part 1, 2A of the Environmental Planning and Assessment Regulation 2000, a BASIX Certificate has been submitted in support of the application demonstrating that the proposed scheme achieves the BASIX targets. The certificate is dated 9 June 2021 which is less than three months before DA lodgement.

2.1.7 STATE ENVIRONMENTAL PLANNING POLICY (KOALA HABITAT PROTECTION) 2021

The State Environmental Planning Policy (Koala Habitat Protection) 2021 applies to the Wollongong Local Government Area, identified as being in the South Coast koala management area.

11 Development assessment process—no approved koala plan of management for land

There is no approved koala plan of management applying to the land, and the land does not have an area of at least 1 hectare (including adjoining land within the same ownership). As such, Clause 11 does not apply to the land.

12 Development assessment process—other land

Consent can be issued for development on the subject land if Council is satisfied that the land is *not* core koala habitat.

core koala habitat means—

- (a) an area of land which has been assessed by a suitably qualified and experienced person as being highly suitable koala habitat and where koalas are recorded as being present at the time of assessment of the land as highly suitable koala habitat, or
- (b) an area of land which has been assessed by a suitably qualified and experienced person as being highly suitable koala habitat and where koalas have been recorded as being present in the previous 18 years.

The land has not been assessed by a suitably qualified and experience person as being highly suitable koala habitat, and Council has no record of the presence of koalas on the site currently or within the previous 18 years. The proposal does not include the removal of native vegetation. As such, the land is not considered to core koala habitat and consent can be granted for the proposed development in this regard.

2.1.8 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Clause 1.4 Definitions

The development is defined 'shop top housing':

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

Note—

*Shop top housing is a type of **residential accommodation**—see the definition of that term in this Dictionary.*

Subsidiary definitions of business premises and retail premises are:

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.

Note—

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

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

(a) (Repealed)

(b) cellar door premises,

(c) food and drink premises,

(d) garden centres,

(e) hardware and building supplies,

(f) kiosks,

(g) landscaping material supplies,

(h) markets,

(i) plant nurseries,

(j) roadside stalls,

(k) rural supplies,

(l) shops,

(la) specialised retail premises,

(m) timber yards,

(n) vehicle sales or hire premises,

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

Note—

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

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 **B6 Enterprise Corridor** zone (refer **ATTACHMENT 2**).

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

1 Objectives of zone

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

The proposal is unsatisfactory with regard to the above objectives, particularly in regard to the fifth objective: the proposal in its current form is considered to significantly detract from the amenity of nearby residents and Transport for NSW requested traffic modelling and road connection details which have not been provided.

The land use table permits the following uses in the zone.

2 Permitted without consent

Building identification signs; Business identification signs; Home occupations

3 Permitted with consent

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

4 Prohibited

Pond-based aquaculture; Any other development not specified in item 2 or 3

The proposal is categorised as ‘shop top housing’ as defined above and is permissible in the zone with development consent.

Clause 2.7 Demolition requires development consent

Demolition of all existing structures is proposed.

Part 4 Principal development standards

Clause 4.3 Height of buildings

The maximum permitted building height is 24m. The sections do not provide a height in metres, instead showing the roof on or near the 24m height plane. Lift overruns have not been indicated for all lifts. Council has requested that the height is confirmed in metres however this has not been provided.

Clause 4.4A Floor space ratio – Wollongong city centre

Clause 4.4A(4) provides that the maximum floor space ratio for a building on land within a business zone under this Plan, that is to be used for a mixture of residential purposes and other purposes, is $(NRFSR \times NR/100) + (RFSR \times R/100):1$.

This results in a maximum permitted floor space ratio of 2.54:1, or 16263.62m² gross floor area (GFA).

The proposed GFA is 16255m², which results in a FSR of 2.53:1, which is compliant.

Clause 4.6 Exceptions to development standards

The applicant has not indicated that development departures are proposed. However, it is unclear whether the building breaches the height standard.

Part 5 Miscellaneous provisions

Clause 5.10 Heritage conservation

There are no heritage items near the site.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

The land is currently serviced by electricity, water, and sewerage services. Endeavour Energy has reviewed the application and recommended conditions of consent. Utility connection is a matter for the developer with further consultation with the utility provider at Construction Certificate stage.

Clause 7.3 Flood Planning

The site is located within an uncategorised flood risk precinct. The consent authority must be satisfied of matters in subclause (3) before granting development consent. Council's stormwater engineer has advised that requested flooding and stormwater disposal information has not been provided. Therefore, this clause has not been satisfied.

Clause 7.5 Acid Sulfate Soils

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

Clause 7.6 Earthworks

The proposal comprises basement excavation. Council's geotechnical engineer has no objection.

A construction environmental management plan has not been provided.

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

The Design Review Panel and Council's architect have identified aspects of the building design and site planning which are unsatisfactory and result in the development failing to exhibit design excellence.

Further information and amended plans have been requested but not provided.

Part 8 Local provisions—Wollongong city centre

Clause 8.1 Objectives for development in Wollongong city centre

In its current form, the development is inconsistent with several objectives, namely:

- (c) *to protect and enhance the vitality, identity and diversity of the Wollongong city centre,*
- (d) *to promote employment, residential, recreational and tourism opportunities within the Wollongong city centre,*
- (e) *to facilitate the development of building design excellence appropriate to a regional city,*
- (f) *to promote housing choice and housing affordability,*

(g) to encourage responsible management, development and conservation of natural and man-made resources and to ensure that the Wollongong city centre achieves sustainable social, economic and environmental outcomes,

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

The land is located within the Wollongong City Centre.

Clause 8.4 Minimum building street frontage

The development site has a street frontage of at least 20m, which is compliant.

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

State environmental planning policies (SEPPs) were consolidated from 45 existing SEPPs into 11 new SEPPs commencing on 1 March 2022 with transitional provisions making them applicable to the application. The application was lodged prior to this date, however the provisions within the repealed SEPPs were transferred into the new SEPPs and the intent and provisions remain largely unchanged. The Department has advised that these changes do not affect applications that have already been lodged.

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

2.2.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

The application is not supported in its current form. It is noted that the development departs from design controls in the following chapters:

1. B1 Residential Development
2. B4 Development in Business Zones
3. D13 Wollongong City Centre
4. E2 Crime Prevention Through Environmental Design
5. E3 Car parking, Access, Servicing/loading Facilities and Traffic Management
6. E6 Landscaping
7. E7 Waste Management
8. E13 Floodplain Management
9. E14 Stormwater Management

The full table of compliance can be found at **ATTACHMENT 6**.

2.2.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN

Wollongong City-Wide Development Contributions Plan - City Centre

Wollongong City-Wide Development Contributions Plan applies to the subject property. This Plan levies a contribution based on the estimated cost of development. Contributions are applied for development exceeding \$100,000. A 1% levy is payable.

2.3 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 S7.4 which affect the development.

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

Environmental Planning and Assessment Regulation 2021

The 2000 Regulation continues to have effect as the application was lodged prior to 1 March 2022.

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

Conditions could address demolition.

93 Fire safety and other considerations

Not applicable

Not applicable

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

The proposal is considered unacceptable with regard to the likely impacts.

Context and Setting:

In its current form, the proposal is not considered to adequately respond to its context. The land is located within the B6 Enterprise Zone and adjoins the R1 General Residential zone.

The development provides a small amount of retail floor area despite the objectives of the B6 zone being primarily targeted to employment and business development. The design of the building unsatisfactorily relates to the adjoining residential neighbours, with retaining walls, blank walls and drainage swales at the ground level interface. The design of the building results in unacceptable privacy impacts, overshadowing and view loss.

The DRP and Council's architect have requested a further detailed context analysis however this has not been provided.

Access, Transport and Traffic:

Transport for NSW and Council's traffic engineer have requested further information in order to assess the application. This has not been provided.

Public Domain:

Council's landscape architect has indicated public domain works comply with Council's Public Domain Technical Manual.

Utilities:

Endeavour Energy has recommended conditions of consent.

Heritage:

No known heritage items will be impacted by the proposal.

Other land resources:

The proposal is not considered to contribute to orderly development of the site.

Water:

The site is presently serviced by Sydney Water. Water targets detailed in the BASIX certificate are satisfactory. The DRP recommended use of solar hot water for communal spaces.

Soils:

The land is identified as being affected by acid sulfate soils class 5. Council's geotechnical engineer has no objection, subject to preparation of a detailed geotechnical design.

Air and Microclimate:

The proposal is not expected to have any negative impact on air or microclimate.

Flora and Fauna:

No threatened species are known to exist on the site. Proposed tree removal is supported due to the poor health of the trees.

Waste:

It is unclear whether the standard contracted waste vehicle is able to service the site. Council's traffic engineer has requested amended swept paths however these have not been provided.

Energy:

A BASIX certificate has been provided and is satisfactory. The DRP have made several suggestions for improving sustainability, however these have not been implemented.

Noise and vibration:

A construction environmental plan has not been provided. It is unknown what methods are intended to minimise noise generated during construction.

Natural hazards:

Council records list the site as flood affected. Information requested by Council's stormwater engineer has not been provided.

Technological hazards:

Council records list the site as contaminated land affected. A Remediation Action Plan is required. Council records list the site as acid sulfate soil affected.

Safety, Security and Crime Prevention:

The application does not adopt CPTED principles. Of particular concern is the design of the corridors from Flinders Street. Amended plans have been requested but not provided.

Social Impact:

The development has not demonstrated a positive social impact. Council's architect and the DRP have noted the undesirable proposed housing mix.

Economic Impact:

The development has not demonstrated a positive economic impact consistent with the zone and Wollongong City Centre objectives in WLEP 2009.

Site Design and Internal Design:

The application results in many departures from the ADG, WLEP 2009 development standards and Council's development control plans. Amended plans have been requested but not provided.

Construction:

A construction environmental plan has not been provided. Construction impacts was raised as a concern in the public submissions.

Cumulative Impacts:

In its current form, the proposal is expected to result in adverse cumulative impacts.

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

Does the proposal fit in the locality?

The proposal is considered inappropriate with regard to surrounding development. In its current form, and based on the information at hand, the proposal is expected to result in adverse impacts on the amenity of the locality and adjoining developments.

Are the site attributes conducive to development?

Site attributes and constraints have not adequately been incorporated into the context analysis, as noted by the DRP and Council's architect. Numerous departures to the ADG and Council's policies suggest a redesign is required.

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

Yes, these have been considered at section 1.5 above.

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

In its current form, approval of the development is not consistent with the public interest.

- Consideration of likely impacts – adverse impacts have been identified, including potential traffic, flooding, overshadowing, view loss and safety.
- Zoning and applicable planning controls - numerous non-compliances have been identified.

- Character of the area - an adequate context analysis has not been provided. In its current form, the proposal appears an overdevelopment of the site.
- Submissions – the submissions include objection to matters of non-compliance with Council's planning policies or the ADG.
- Referrals - Transport for NSW, the DRP and Council's technical staff have expressed concern at aspects of the proposal.

Amended plans and further information addressing concerns have been requested but not provided.

3 CONCLUSION

This application has been assessed as unsatisfactory having regard to Section S4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of Wollongong Local Environmental Plan 2009 and all relevant Council DCPs, Codes and Policies.

The proposed development is permissible with consent in the B6 Enterprise Corridor zone. The development has been assessed with regard to all relevant SEPPs and supporting guidelines including the ADG and Managing Contaminated Land Guidelines. The proposal features numerous departures from the controls and design objectives of the ADG. The proposal is poorly designed with regard to the design quality principles of SEPP 65 and features variations in respect of numerous LEP and DCP controls which cannot be supported based on the information at hand.

In relation to WLEP 2009, the development does not exhibit design excellence as required by clause 7.18. Further details have been requested to support the applicant's position that the proposed height does not exceed the maximum permitted 24m. Inadequate documentation has been provided to enable Council's stormwater engineer to be satisfied that the development meets the requirements of clause 7.3 flood planning.

Internal and external referrals were unsatisfactory with Transport for NSW, the DRP and Council's Architect concluding that the proposal is not supportable in its current form and requires further redesign.

The concerns raised in submissions have been considered and there are unresolved matters arising which support the position that the proposed development is unsatisfactory in its current form and should not be supported.

4 RECOMMENDATION

It is recommended that the Southern Regional Planning Panel determine the application by way of refusal for the reasons contained in Attachment 7.

Attachments

1. Aerial photograph
2. WLEP zoning map
3. Plans
4. DRP meeting notes - 15 November 2021
5. ADG compliance table
6. WDCP 2009 compliance table
7. Draft reasons for refusal