

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSTH-141
DA Number	DA-2022/14
LGA	Wollongong City Council
Proposed Development	Demolition of existing building /structures and construction of an 18 storey mixed use development including hotel
Street Address	24-30 Kenny Street, Wollongong
Applicant/Owner	TFR Pty Ltd
Date of DA lodgement	5 January 2022
Total number of Submissions	31
Number of Unique Objections	First round of notification between 2-17 February 2022 and received 22 submissions (including 1 letter of support) Second round of notification following the submission of revised plans between 13-27 July 2022 and received a further 9 submissions.
Recommendation	Approval
Regional Development Criteria (State Environmental Planning Policy (Planning Systems) 2021 – Schedule 6 Regionally significant development)	Clause 2 General development over \$30 million Under Schedule 6, general development over with a capital investment value (CIV) of more than \$30 million is identified as regionally significant development. The CIV values the proposed development at \$30,617,000 (excluding GST).
List of all relevant s4.15(1)(a) matters	<p>s4.15 (1)(a)(i) Any environmental planning instruments:</p> <p><u>State Environmental Planning Policies (SEPPs):</u></p> <ul style="list-style-type: none"> 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 (Planning Systems) 2021 <p><u>Local Environmental Planning Policies:</u></p> <ul style="list-style-type: none"> Wollongong Local Environmental Plan (WLEP) 2009 <p><u>Other Policies:</u></p> <ul style="list-style-type: none"> Wollongong City-Wide Development Contributions Plan <p>s4.15(1)(a)(ii) (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority:</p> <p>N/A</p> <p>s4.15 (1)(a)(iii) Any development control plan:</p> <p>Wollongong Development Control Plan 2009</p> <p>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</p> <p>N/A</p>

	s4.15 (1)(a)(iv) the regulations Clause 50 Clause 92(b) Demolition
List all documents submitted with this report for the Panel's consideration	Attachments 1 Aerial photograph 1 WLEP zoning map 3 Full set of architectural plans including landscape plans 4 DRP comments from 26 September 2022 5 Clause 4.6 variation – Building separation 6 ADG assessment 7 WDCP 2009 assessment 8 Draft conditions of consent
Clause 4.6 requests	<ul style="list-style-type: none"> • Clause 8.6 Building separation
Summary of key submissions	<ul style="list-style-type: none"> • Overshadowing • Height, bulk, and scale • Amenity impacts from hotel (privacy, noise) • Traffic generation • Inaccuracy of plans
Report prepared by	Rebecca Welsh – Senior Development Project Officer
Report date	14 December 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

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 (S7.24)? NA

Conditions

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

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

The proposal is for an eighteen (18) storey mixed-use development comprising a 56 room hotel, a ground floor cafe and 75 residential apartments above two (2) levels of basement parking with ancillary landscaping.

Permissibility

The site is zoned B3 Commercial Core pursuant to Wollongong Local Environmental Plan 2009. The proposal is a mixed-use development categorised as hotel or motel accommodation and shop top housing. Both land uses are permissible in the zone with development consent.

Consultation

The proposal notified in accordance with Council's Notification Policy received 31 submissions which are discussed at section 2.8 of the assessment report.

Key assessment issues

- Public submissions. See discussion at Section 1.5
- Relationship to, and impacts on adjoining properties.
 - o The applicant has indicated a future Right of Way burdening the subject site and benefitting 22 Kenny Street for vehicle access through the basement into a future basement to provide more flexibility for redevelopment options. The adjoining lot at 22 Kenny Street is not an isolated lot as it meets the minimum 20m building street frontage.
 - o The communal area at 27 Atchison Street adjoining the site to the rear is located at ground level (elevated for flooding reasons) in the north-eastern corner of the site.
 - o A condition is recommended to require the hotel operator to adhere to the Plan of Management.
 - o Shadowing is exacerbated by the east west orientation of the lots. Substantial changes to the proposed building would be required to remove overshadowing impacts. Given the building is consistent with the form of development and the building envelope expected on the site, requiring design changes is not considered reasonable.
 - o Existing expansive views that have been enjoyed over time while the area undergoes a transition to higher density development will be lost, however it is difficult to protect views in the context of the applicable city centre planning controls. The development as proposed is of a scale anticipated by Wollongong LEP 2009 and compliant with FSR and height controls. Some angled view corridors will be retained through the site noting that the 12m setback to the side boundaries is above the minimum 9m required at lower levels. To minimise the loss of eastern coastal views from the western properties, a substantial reduction in height and substantial increase to side setbacks would be necessary. Given the development complies with these built form controls, requiring design changes would compromise the efficient use of the land to achieve the development potential available. The DRP reviewed the development as acceptable in relation to design excellence.
- Flooding constraints. The site receives overland flow and floodwaters from adjoining sites, including from a substantial drainage channel that adjoins the rear boundary of the site. The design of the development accommodates the floodwaters received into and through the site by raising the ground floor of the building, providing flood doors to the entrances on Kenny Street, and constructing a solid wall on the northern boundary to prevent offsite impacts.
- Clause 4.6 LEP development departure to building separation, see discussion at Section 2.1.6
- A condition of consent is recommended in regard to the approval under the Water Management Act being obtained prior to the issue of the Construction Certificate.

RECOMMENDATION

It is recommended that the application be conditionally approved.

1 APPLICATION OVERVIEW

1.1 PLANNING CONTROLS

State Environmental Planning Policies:

- 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 (Planning Systems) 2021

Local Environmental Planning Policies:

- Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans:

- Wollongong Development Control Plan 2009

Other Policies:

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

1.2 DETAILED DESCRIPTION OF PROPOSAL

Approval is sought for an eighteen (18) storey mixed-use development comprising a hotel with associated food and drink premises, with shop top housing above.

The proposal comprises the following:

Site preparation

- Demolition of all structures and surfaces on the site
- No tree removal is proposed; however, the existing street is to be retained and protected during works.
- Earthworks for excavation of the construction of the two basement levels
- Further testing and classification of soil waste in accordance with recommendations of contamination report

Works / Construction / building details

The proposed mixed-use building is eighteen (18) storeys with two (2) basement levels. A breakdown of each level is provided below:

Level	Details
Basements 2	57 resident parking spaces and associated storage
Basement 1	11 resident spaces and associated storage 15 residential visitor spaces 31 hotel spaces (accessed via secure boom gate) Separate hotel and residential lifts
Ground floor	Café Hotel lobby including reception, office, and storage areas Residential lobby Loading dock with separate waste storage areas Commercial parking for 4 spaces and a drop off zone for hotel guests

Levels 1-3	56 hotel rooms and ancillary areas: L1 – 19 hotel rooms with outdoor areas including pool and deep soil podium planting L2 – 21 hotel rooms L3 – 16 hotel rooms
Level 4	Communal open space for residents, including a pool and gym with associated facilities
Levels 5-13	7 residential apartments per floor (63)
Level 14 & 15	5 residential apartments per floor (10)
Level 16 & 17	Two x 2 storey penthouse apartments (2)
Roof level	Non trafficable roof with solar panels

Traffic, parking, and servicing

- 118 parking spaces over the ground floor and two basement levels comprising:
 - 68 residential spaces
 - 15 residential visitor spaces
 - 4 Café/Commercial spaces
 - 28 hotel spaces
 - 2 hotel staff spaces
- Motorbike and bicycle parking is also provided for residents and non-residential uses
- Vehicle access is via a single driveway on the southern side of the site
- Servicing e.g., waste, deliveries will be carried out within the site at the ground level loading dock

Use and operational detail

Food and drink premises

- The café is intended to operate as a separate commercial entity to the hotel, but will provide access to food and drink for guests
- Hours of operation 7am to 9pm daily

Hotel

- Operated as a 3 star hotel
- Up to 10 employees (3-4 staff at any one time)
- Reception will operate during 8am-6pm with electronic swipe cards used to control guest movements
- Outside reception hours guests will check in remotely
- Hotel rooms will not be serviced by food and drink, but guests can use the ground floor café
- A Plan of Management has been prepared that outlines operational responsibilities and requirements, dealing with issues including amenity impacts (e.g. noise and guest management), safety and security measures, ongoing maintenance, complaints management, and car parking.

Development detail

The following table provides a numerical overview of the development:

Use	Levels	Gross Floor Area (m ²) and (%)	No. of dwellings/type
Residential	L5- L18	7223	75 units comprising

(in the form of shop top housing)			1B – 11 (15%) 2B – 58 (77%) 3B – 4 (5%) 4B – 2 (3%)
Hotel (excludes non-residential)	Ground level - L3	3266	56 rooms
Food and drink premises (excludes non-residential)	Ground	100	-
TOTAL (Non-Residential)	-	3366	-
TOTAL	18	10,589	-

1.3 BACKGROUND

Development history

<i>24 Kenny Street</i>		
BA-1971/701	Offices And Showroom	Approved 03/05/1971
<i>30 Kenny Street</i>		
DA-1965/365	Mobile gantry	Approved 20/12/1965
DA-1966/264	Rent A Car Depot	Approved 25/7/1966
DA-1983/794	Warehouse & Office	Approved 10/02/1984
DA-1985/488	2 storey Commercial Office block	Approved 12/09/1985
DA-1988/295	Ground floor office fit-out	Approved 27/04/1988
DA-1988/382	Office fit-out/partitioning	Withdrawn 24/06/1988
DA-2015/166	Business Premises- use of ground floor for indoor recreation facility and associated signage	Approved 30/07/2015
<i>Both sites</i>		
PL-2021/91 (pre-lodgement meeting)	Mixed Use Development	08/07/2021
DE-2021/82 Pre-lodgement design review panel meeting)	Mixed Use Development	07/07/2021
DA-2022/14	Demolition of existing building /structures and construction of an 18 storey mixed use development including hotel	Current application lodged on 05/01/2022

Pre-lodgement meetings

- PL-2021/91 was held on 8 July 2021. At this time the development included a childcare facility. The main issues discussed were flooding, particularly noting that the childcare facility would not be supported due to the flooding constraints of the site. Other issues included the impacts on the future development potential of the adjoining site at 22 Kenny Street, the streetscape interface, development departures to building separation and building height, Apartment Design

Guide issues and potential conflicts arising from the proposed land use mix. These issues have been addressed in the assessment of the current application, noting that the childcare facility was removed from the proposal at the time of lodgement.

- A pre-lodgement Design Review Panel meeting was held on 7 July 2021 for a mixed-use development comprising a 50 room hotel, childcare facility and 76 residential units.

Customer service actions

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

1.4 SITE DESCRIPTION

The site comprises two allotments described as 24 and 30 Kenny Street, Wollongong with title references Lot 1 and Lot 2 in DP 543836. The site is on the western side of Kenny Street, has an area of 2466sqm, with a combined frontage width of 47.8m. The site is generally square in shape with the northern and southern boundaries having a depth of 50m and a fall of approximately 1m from rear (west) to front (east).

Adjoining development is as follows:

- North: Single storey building occupied by the Illawarra Local Aboriginal Corporation at 20-22 Kenny Street
- East: Kenny Street road reserve, with a mix of commercial uses to the east including recently completed shop top housing at 35 Kenny Street and a recently (Court) approved shop top housing development diagonally opposite the site at 23 Kenny Street (the site extends through the Keira Street)
- South: Vehicle repair station
- West: 27 Atchison Street is located directly to the rear of the site and is known as 'Stella Apartments'. This building was approved under DA-2004/2281 (as modified) as part of a mixed-use development that included a separate commercial building to the north with a shared basement. A formed concrete drainage channel located along the south of 27 Atchison Street and running along the rear of the site was incorporated into this development as shown in Figure 1 below. This drainage channel connects into a drainage easement burdening 22 Kenny St (Illawarra Aboriginal corporation). Upper-level units maintain the 6m setback to habitable rooms and balconies.

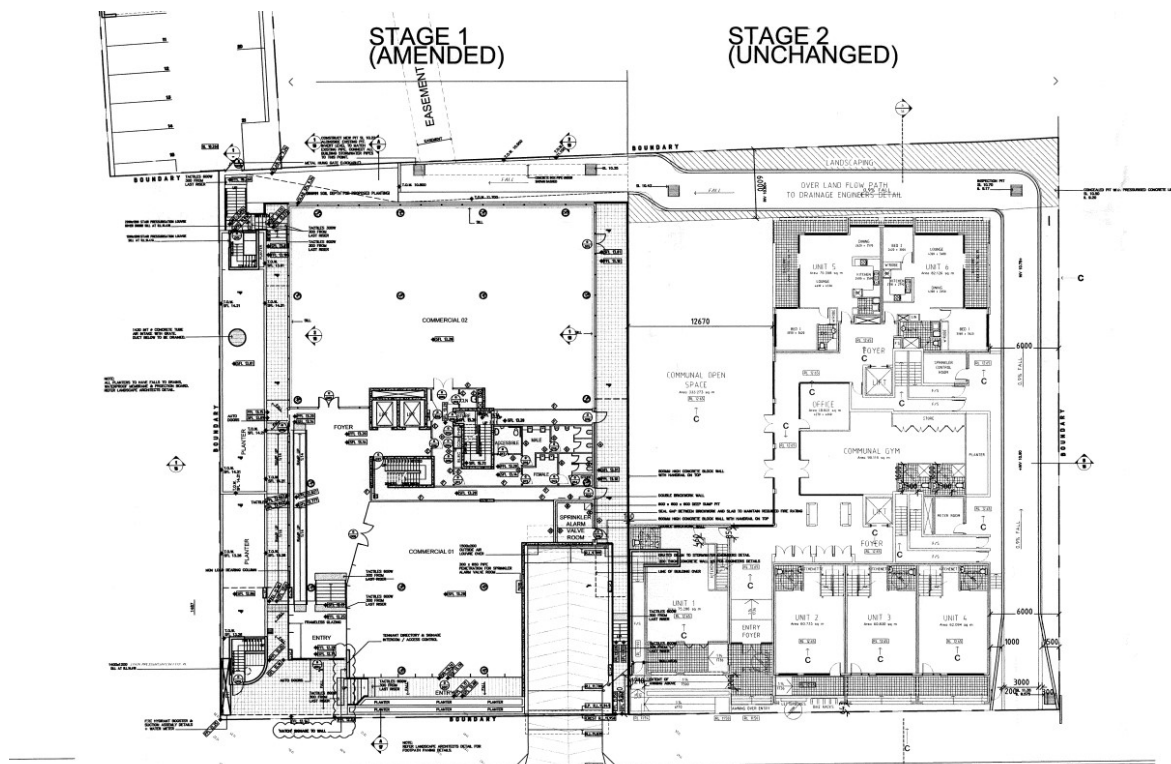


Figure 1: Approved development at 25-27 Atchison Street under DA-2004/2281 (as modified). This ground floor plan shows the location of the drainage channel along the southern side of 27 Atchison Street and running north-south at the rear of the subject site.

31 Atchison Street is a thirteen (13) storey shop top housing development adjoining the site to the west and south-west, incorporating a childcare centre at podium level (NB - DA-2016/1073 was refused but subsequently approved by the Court). The approved ground floor plan (RL12.8) is shown in Figure 2 below. Upper levels have a minimum 9m setback to the rear boundary.

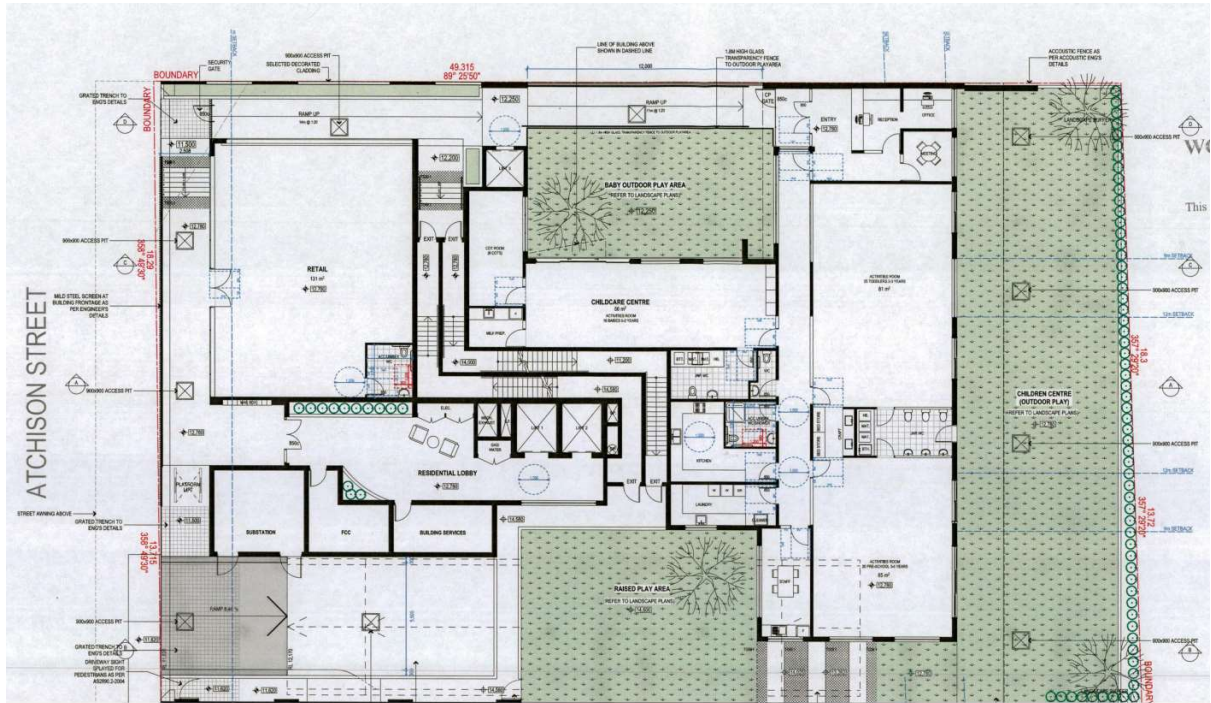


Figure 2: Ground floor of 31 Atchison Street, to the south-west of the site

The locality is characterised by smaller older scale commercial uses with emerging higher density mixed use developments including residential towers.

The site is zoned B3 Commercial Core under Wollongong LEP 2009. An aerial photo and zoning map form **Attachments 1 and 2**.

Property constraints

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

- Flooding: The site is identified as flood risk precinct classification under review, noting the flood report submitted with the application identifies the site as being located within a medium flood risk precinct. Council's Stormwater Officer has reviewed the application in this regard and has given a satisfactory referral subject to conditions.
- There are no restrictions on the title (Lots 1 and 2 of DP 543846).



Figure 3a. View of site (photo taken from Kenny Street looking west with (from left to right) 31 Atchison Street and 27 Atchison Street adjoining the subject site to the rear)

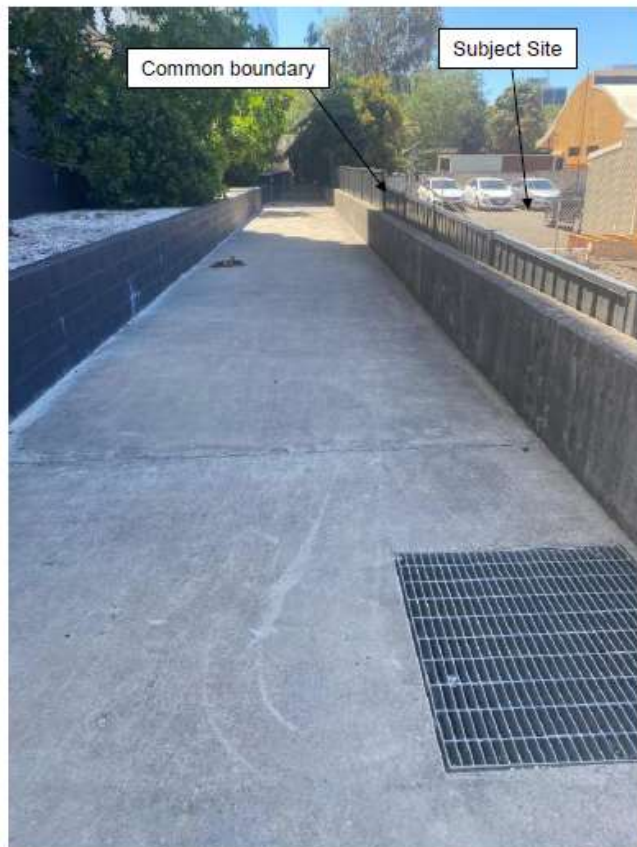


Figure 2.4-1 Existing Flood Mitigation Channel

Note: Photo taken looking north towards 25 Atchison Street.

Figure 3b. Existing drainage channel at rear of 27 Atchison Street (Source: Applicant's flood report)

1.5 SUBMISSIONS

The application was notified in accordance with Council's Community Participation Plan 2019.

The first round of notification between 2nd - 17th February 2022 received 22 submissions (including 1 letter of support). Revised plans were renotified between 13th- 27th July 2022 where a further nine (9) submissions were received.

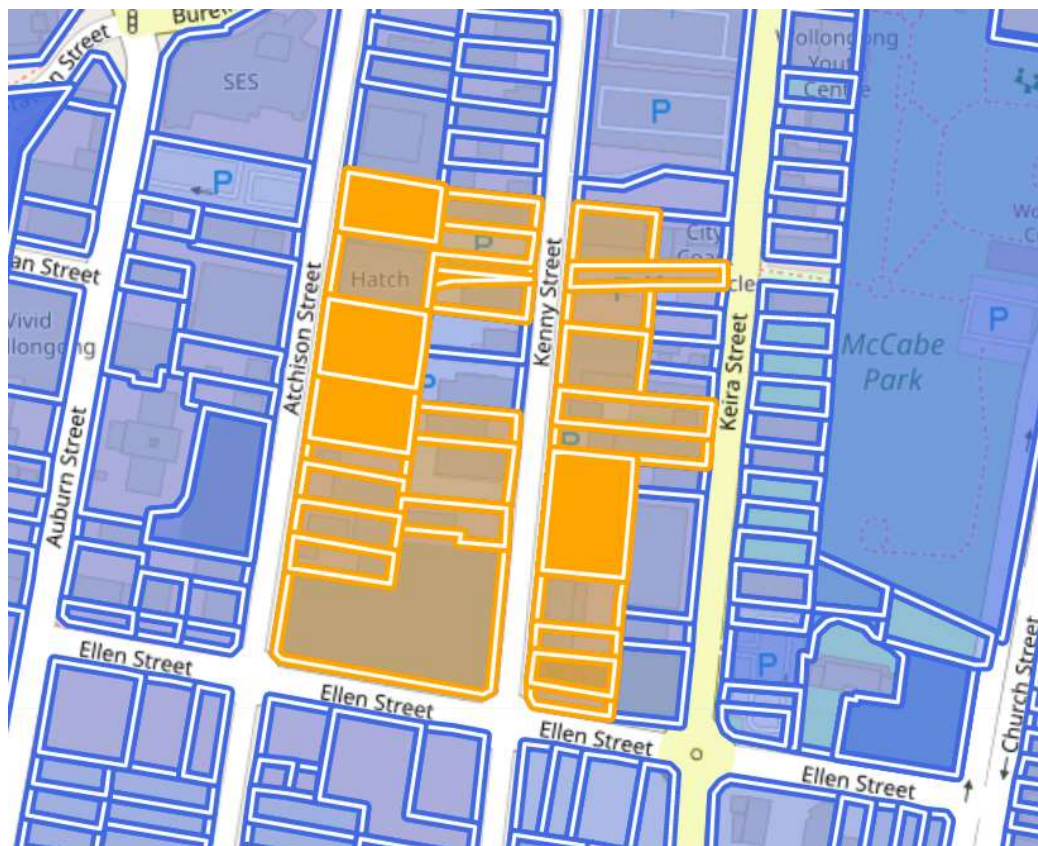


Figure 1: Notification map

The issues raised in the submissions from both notification processes are discussed below.

Table 1: Submissions

Concern	Comment
Impacts on adjoining 22 Kenny Street - Illawarra Aboriginal Corporation which is a non-for profit organisation (IAC) that provides cultural, educational, social services to the local community:	There will be a visual impact on the adjoining site at 22 Kenny Street from the development, given the change in scale between the buildings in the context of a city centre area that is transitioning from lower scale commercial uses to higher density developments.
- physical scale of the building, including non-compliance with building separation	The proposed podium height responds to Council's controls for a 12-24m street frontage height. The applicant has noted that the detailing of the northern podium façade will incorporate design detail to this elevation to break up the massing as much as practicable.
- no positive connection to the existing IAC building and streetscape	The building separation is compliant at the interface with 22 Kenny Street, requiring buildings to have a zero/0m side setback to create a continuous street wall in the B3 zone.
- Physical impacts during construction	Physical impacts are managed through suitable conditions of consent, including appropriate geotechnical supervision, dilapidation reports and standard construction management conditions.
- Flooding impacts	

Concern	Comment
<ul style="list-style-type: none"> - 22 Kenny Street should be incorporated into the development site - Concerns about applicant's modelling of future redevelopment options 	<p>Flooding impacts from the development have been considered as part of the assessment, with the inclusion of a low wall along the northern boundary to restrict any additional overland flow into the adjoining site.</p> <p>The applicant's initial modelling of the redevelopment potential of 22 Kenny Street was problematic, as it included a tall residential tower with a non-compliant 3m side setback to the subject site. The modelling has since been revised to show that a commercial development is feasible. In response to the redevelopment of 22 Kenny Street being constrained by the easement running through the site, the applicant has indicated a future Right of Way burdening their site and benefitting 22 Kenny Street for vehicle access through the basement into a future basement to provide more flexibility for redevelopment options. This is considered an acceptable response, noting that 22 Kenny Street is not an isolated lot as it meets the minimum 20m frontage width under Clause 8.4 of Wollongong LEP.</p>
<p>Clause 4.6 statement for building separation departure:</p> <ul style="list-style-type: none"> - unclear and does not illustrate which setbacks the non-compliance relates to - should be clearly illustrated - fails to address non-compliant building separation that would occur above street frontage height (Options A and Option B) 	<p>The applicant's 4.6 Statement has since been updated which identifies the building separation departures. This is discussed under Part 2.1.6 of this report.</p>
Chapter B3 Mixed Use Development of WDCP2009 has not been addressed.	Chapter D13 Wollongong City Centre applies to the development, which takes precedence over Chapter B3.
Lot isolation provisions have not been addressed	The adjoining lot at 22 Kenny Street is not an isolated lot as it meets the minimum 20m building street frontage required under Clause 8.4 of Wollongong LEP 2009. Notwithstanding this, the applicant has been asked to investigate the impacts from the proposal on the redevelopment potential of 22 Kenny Street given it is constrained by a drainage easement running through the site. This is further discussed in Part 2.1.6 of the report.
<p>Construction impacts</p> <ul style="list-style-type: none"> - impacts on child care centres - cumulative impacts of multiple sites - noise 	<p>Amenity impacts including noise, dust, increased traffic, reduced parking are inevitable during construction works. It is recognised that there have been many buildings recently approved in the vicinity of the site that give rise to these impacts which effects local residents and has a cumulative impact. However, these impacts are temporary and reasonably mitigated through conditions of consent relating to construction hours and site management.</p>
<p>Overshadowing impacts</p> <ul style="list-style-type: none"> - Overshadowing impacts on 27 and 31 Atchison St noting both buildings contain east facing units 	<p>An assessment of overshadowing impacts of the development is provided below this submissions table (for ease of reading).</p>
Building height	

Concern	Comment
<ul style="list-style-type: none"> - too tall - Building will be much higher than existing buildings - allowable building heights too great, in excess of heights put forward by Gehl architects about 5 years ago 	<p>The building complies with the maximum permitted 60m building height control.</p> <p>The floor space ratio controls under Clause 4.4A of the LEP are a sliding scale that incentivise non-residential uses within the B3 Commercial Core zone (i.e. the greater the non-residential uses are, the higher the maximum permitted floor space ratio is). For this development, the proportion of non-residential use (hotel) to residential use enables a higher floor space ratio to be achieved than surrounding buildings that are predominantly residential with one level of commercial or other non-residential use. This results in a development that can realise the maximum permitted 60m building height and floor space ratio.</p> <p>The 60m building height is the applicable control under Wollongong LEP 2009 and has been in place for numerous years. The current application must be assessed under the current controls which is compliant.</p>
View impacts	An assessment of view impacts of the development against the Tenacity Planning Principle is provided below this submissions table (for ease of reading).
Council must ensure separation distances are met under the LEP	A development departure to building separation is sought. Clause 4.6 of the LEP is the planning mechanism that allows consideration of development departures. The applicant's Clause 4.6 Statement has been assessed as satisfactory as discussed under Part 2.1.6 of the report.
Council must review its LEP	<p>The LEP and DCP controls for Wollongong City Centre are under currently under review. The On 21 September 2020 Council adopted the Urban Design Framework to guide the preparation of a draft Planning Strategy, including amendments to the Wollongong Local Environmental Plan 2009 and Wollongong Development Control Plan 2020.</p> <p>In December 2020 Council considered the Draft Wollongong City Centre Planning Strategy, Draft Planning Proposal (LEP) and Draft City Centre Development Control Plan (DCP) however this was deferred to allow further work being undertaken including (but not limited to) further LGA wide retail studies, access and movement study, mid-block pedestrian laneways. These documents are not exhibited drafts and are not statutory considerations for this application.</p>
<p>Amenity impacts from hotel:</p> <ul style="list-style-type: none"> - smoking - drunken behaviours - antisocial behaviour - noise (guests using common areas, pool pump) - privacy 	<p>The submissions raised concerns regarding amenity impacts from the hotel, which appears to be on the basis that the use was for a licensed premises, similar to a pub. The proposed Hotel is for temporary accommodation, rather than a licensed premises.</p> <p>A Plan of Management (PoM) has been submitted that outlines measures to manage guest behaviour to protect the amenity for residents both within and adjoining the site.</p>

Concern	Comment
<ul style="list-style-type: none"> - no staff to address problematic guest behaviour when Hotel is not staffed - Lighting impacts on neighbouring buildings. Restrict to 10pm, pool until 9pm - Noise from gym, music/exercise classes. Reduce or limit hours of use, ensure sound proofing walls - Impacts on nearby childcare facilities at 31 Atchison Street and 38 Kenny Street - safety and welfare - lack of sunlight - construction impacts 	<p>A single hotel operator will be appointed to manage all areas of the hotel</p> <p>This includes limiting the hours of access to the hotel communal areas (including pool) to between 8am and 6pm. Outside the staffed hours on-site security will enforce noise control.</p> <p>A condition is recommended to require the operator to adhere to the Plan of Management.</p>
Amenity impacts on adjoining residential properties including visual impacts, noise, natural light, views, and privacy	<p>Level 1 will largely present as a landscaped interface with the western neighbours, to limit lines of sight between the properties.</p> <p>The PoM outlines ongoing management measures to limit amenity impacts to surrounding residents.</p>
<p>Traffic impacts</p> <ul style="list-style-type: none"> - WIN Grand development will increase traffic - More units = more cars and more driveways which presents a danger for pedestrians 	<p>Council's Traffic Engineer has assessed the proposal in relation to traffic and parking impacts and no concerns have been raised, cumulative or specific to the proposed development. A minor increase in the number of vehicle trips will result from the development which can be readily accommodated on the road network.</p> <p>The development reduces the driveways from two vehicle access points (one per existing lot) to one driveway to service the development. No concerns regarding pedestrian safety have been raised by Council's Traffic Engineer.</p>
Plans incorrectly label 25 and 27 Atchison Street and should be renotified to correct this error	The plans have been revised to correct this error. It is relevant to note that despite the plans notified to adjoining properties having these incorrect labels, the assessment undertaken since lodgement has understood the relationship of the development to surrounding properties.
Pressure on existing sewage system	Sydney Water was consulted during the assessment process and did not raise any specific concerns. Conditions are recommended requiring the developer to consult with Sydney Water to ensure adequate servicing requirements are met.
Hotel does not comply with minimum side setback of 4.5m from a non-habitable building	A continuous street wall extending the side boundaries is anticipated by the LEP controls in the B3 Commercial core zone which the development complies with.
<p>The site is unsuitable for a hotel</p> <ul style="list-style-type: none"> - proximity to childcare centres - Licensed hotel located adjacent to Illawarra Aboriginal Cultural Centre 	<p>Some concerns raised appear to relate to the possible use of the hotel as a licensed premises. The hotel component of the development is as hotel accommodation and no unreasonable impacts on childcare facilities are anticipated.</p> <p>The site is zoned B3 Commercial Core. Residential development is permitted in the form of shop top housing developments; however, the area cannot be</p>

Concern	Comment
- A budget hotel within a residential area is not appropriate / out of character	characterised as residential. The hotel is a permitted use in the B3 Commercial Core zone under the LEP.
More high rises will contribute to 'concrete jungle'	The increase in higher density development in the vicinity of the site responds to the current planning controls.
Impacts during demolition and construction works	
- impacts to childcare centres (construction noise impacts/lack of fresh air and sunlight)	A condition is recommended for a Construction Environmental Management Plan (CEMP) to be prepared prior to issue of a Construction Certificate.
- Demolition impacts and remediation of land – protective measures to minimise impacts. Request for ongoing communication to residents and strata of neighbouring impacted buildings	Suitable conditions are also recommended in relation to managing any contaminants during works.
- Safety concerns during construction – use of crane noting previous crane issues from developer	
Restrict commercial delivery times	Commercial delivery will occur at the rear of the hotel and residential lobby. Given that some sections of the side boundary walls are open to address flooding, a condition is recommended for delivery times to be limited to between 6am-9pm Monday to Saturday and 7am to 7pm on Sundays and public holidays.
Views from neighbouring building's communal areas will be blocked by L4 south communal area	<p>The communal area at 27 Atchison Street adjoining the site to the rear is located at ground level (elevated for flooding reasons) in the north-eastern corner of the site.</p> <p>Protecting views within a city centre environment at this level is not realistic given the planning controls anticipate high density development and a continuous podium height of between 12m-24m high.</p> <p>The communal area at 31 Atchison Street faces west (fronting Atchison Street) which will have some view towards the level 4 communal area however this impact is acceptable given that the planning controls envisage a 12m-24m podium height extending to the side boundaries in the B3 Commercial Core zone.</p>
Suggested improvements:	
- pedestrian laneway between 27-31 Atchison through to Kenny and Keira St with possible access to MacCabe Park	Although the position of the existing drainage channel running along the rear of 27 Atchison Street appears as an opportunity for a pedestrian laneway, there is limited surveillance of this space and may present as a safety and security risk for users.
- courtesy communication with neighbouring residents in Atchison St during construction	During construction works, the contact details of the PCA are required to be displayed to enable any issues to be raised.
- recycle switch garbage chutes within building for residents and guests	Each residential floor is provided with chutes for general waste and recyclables.
- include solar lighting and incorporate sustainability into the design	

Concern	Comment
	Solar panels are proposed at the roof level which is likely to provide solar benefits to the communal areas of the development.
Decrease in property values	Decrease in property values is not a matter of consideration under S4.15 of the Act.

Overshadowing impacts

The applicant’s shadow diagrams are included in full as part of **Attachment 3**. The plans indicate that the adjoining eastern shop top housing developments at 27 and 31 Atchison Street will be overshadowed in the mornings in midwinter (i.e., when the worst overshadowing impacts occur):

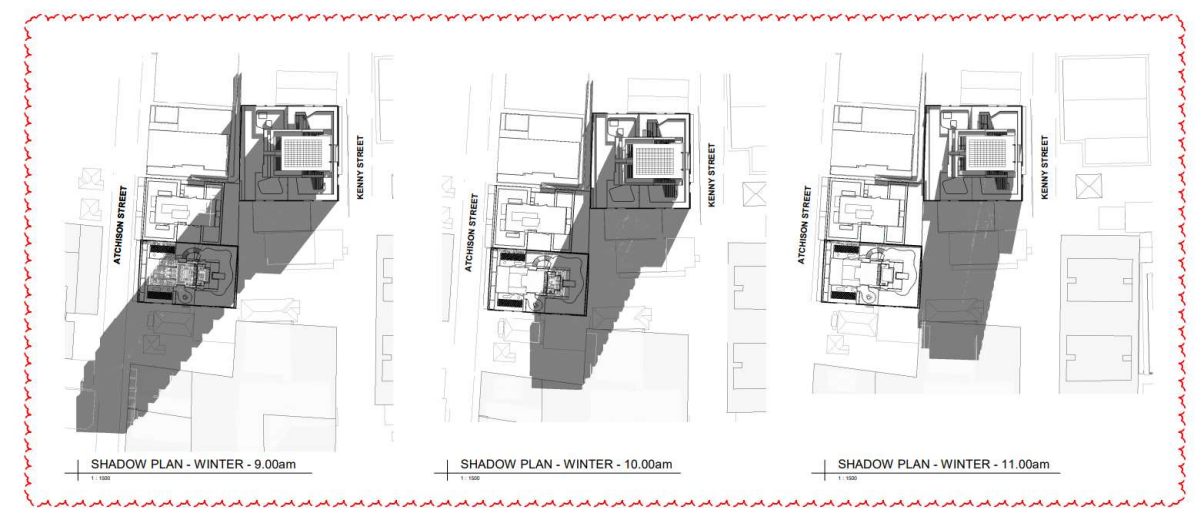


Figure 5: Morning shadow diagrams in midwinter

The plans show that by 11am, the shadows cast by the building will no longer impact these sites. It is recognised that the design of these buildings has units oriented to the west and to the east to receive either morning or afternoon sunlight access, given that they are currently overshadowed by the existing buildings to their north. However, in the city centre context sunlight access is more difficult to protect where the planning controls anticipate large buildings. This is exacerbated by the east west orientation of the lots. Substantial changes to the proposed building would be required to remove overshadowing impacts. Given the building is consistent with the form of development and the building envelope expected on the site, requiring design changes is not considered reasonable.

Concern was also raised in the submissions over the shadowing of existing childcare facilities in the vicinity of the site at 31 Atchison Street and 38 Kenny Street. The shadowing impacts on the childcare centre indicate that from 11am, the development no longer overshadows the rear outdoor area at 31 Atchison Street (as shown above). The existing childcare centre to the south at 38 Kenny Street will be overshadowed however sunlight access will be available to the outdoor areas along the northern part of the site at various times throughout the day, with no impacts after 2pm.

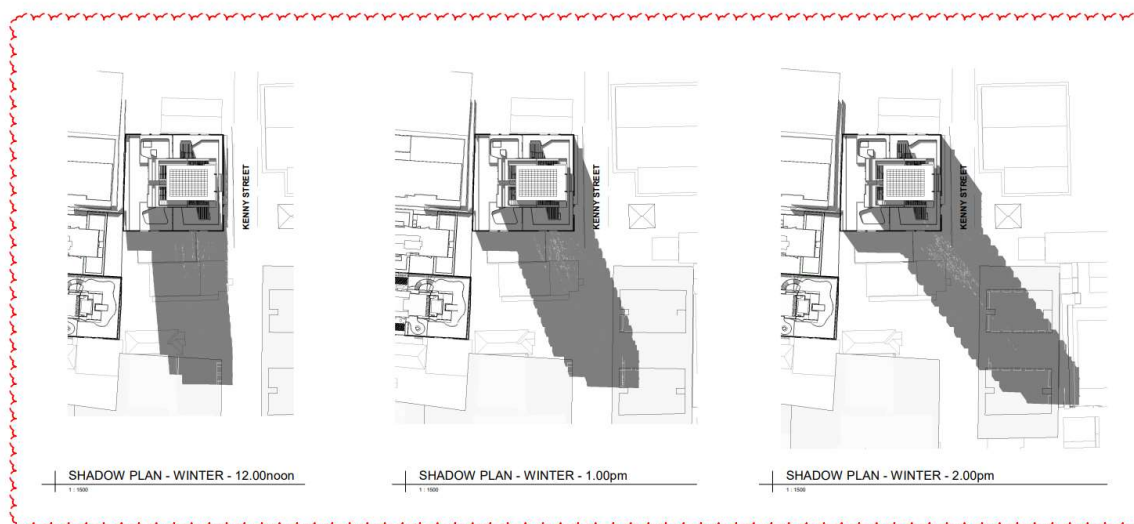


Figure 6: Afternoon shadow diagrams in midwinter



Figure 7: existing childcare facility at 38 Kenny St, noting that the majority of the outdoor areas are covered for sun protection.

View impacts

The submissions identified view loss as a concern, however no detailed discussion on the extent of the view impacts were outlined in any detail.

The Land and Environment Court has set a Planning Principle to assess view sharing based on the court case *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140. This planning principle has adopted a four-step assessment which will be used to evaluate view loss arising from the proposed development.

Although an assessment under this planning principle has not been undertaken by the applicant, the Statement of Environmental Effects (p42) notes:

The proposal will impact on existing view corridors to the north given that the proposal involves the construction of an eighteen (18) storey development in place of the existing single storey developments. However, these impacts are essentially unavoidable due to the orientation, topography and location of adjoining development, without effectively sterilising the site.

Tenacity principle

The 4 step *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* planning principle assessment is outlined as follows:

Step 1 – Assessment of views to be affected

The proposed building will impact on existing available views from surrounding buildings, including distant views towards the coast from the adjoining apartments at 27 and 31 Atchison Street (to a lesser degree).

Affected views from the apartment building at 27 Atchison Street and 31 Atchison Street, Wollongong includes distant ocean views, noting that the site is over 1km from the coast.

The most affected views will be from the east facing units at 27 Atchison Street as the positioning of the building aligns with the proposed tower, as shown below:



Figure 8: Site plan showing the position of the proposed tower in relation to 27 Atchison Street

Step 2 – What part of the property are the views obtained?

The views affected are obtained from the east facing balconies and living areas of 27 Atchison Street. More oblique views are available from 31 Atchison Street, noting this site shares a small portion of the site's rear boundary as compared to 27 Atchison Street.

The general floor layout for this building has two units oriented east with living areas and balconies in the north-east and south-east corners, with a typical layout shown below:

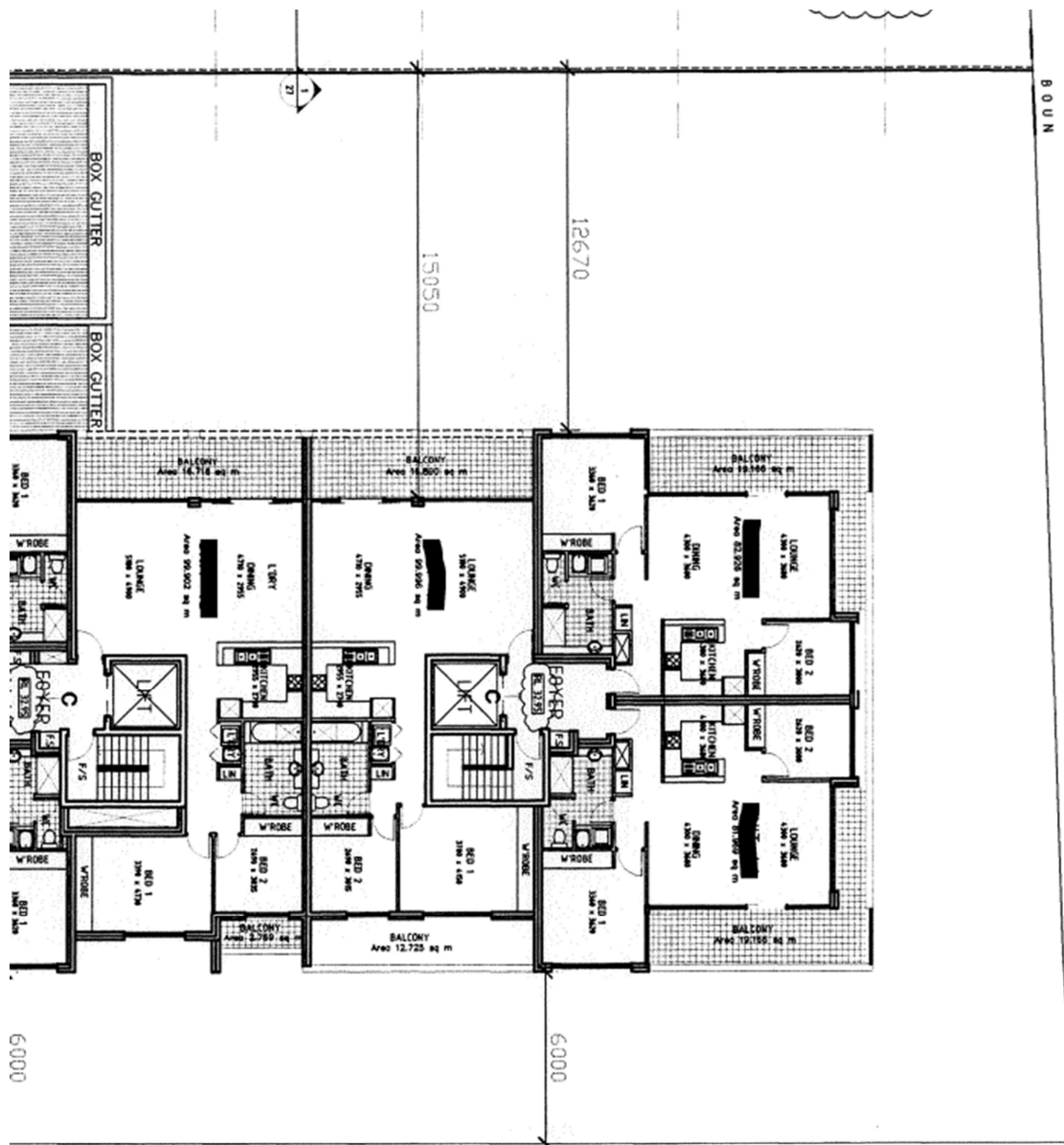


Figure 9: Indicative floor layout of 27 Atchison Street

Step 3 – Assess the extent of the impact

The proposed development will obstruct existing easterly views from 27 Atchison Street, with direct eastern views being blocked by the position of the tower as indicated by Figure 10 below. Existing views through the 12m side setbacks will be possible from these rear units.

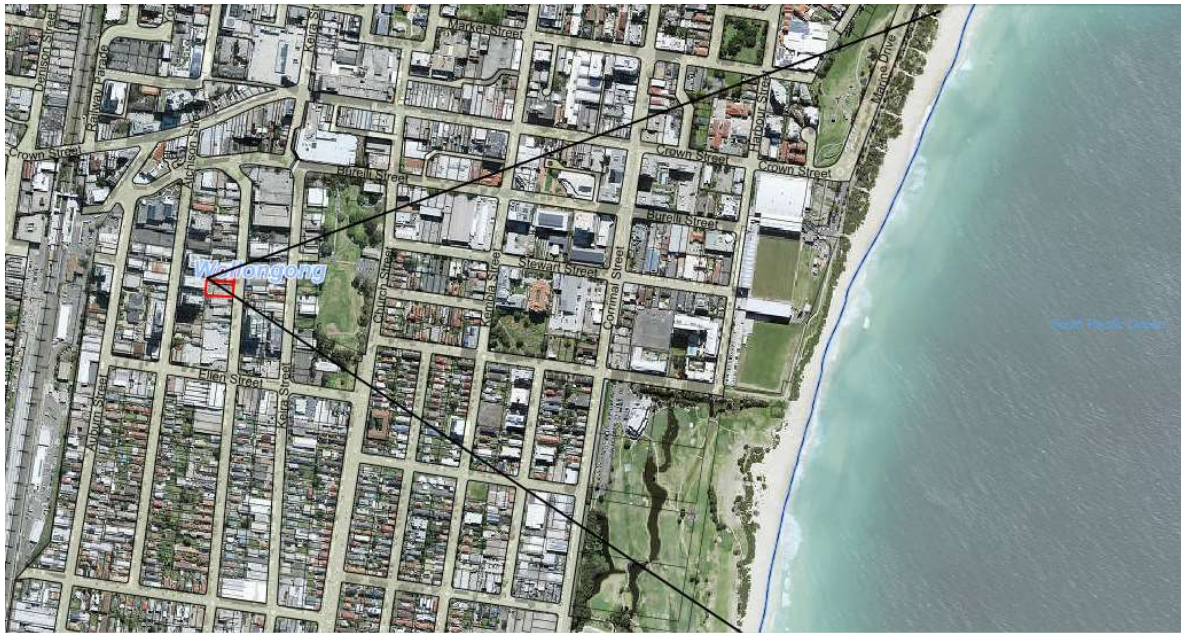


Figure 10: Indicative view arc from 27 Atchison Street impacted by the proposed tower

As a proportion of the views lost, the impact on views lost are likely to be moderate to severe. Some coastal views, including views in which the interface between land and water is visible, would be retained after construction of the proposed development based on the existing built form to the north and south of the site. However, redevelopment of sites in the vicinity of the subject site will occur over time and further view loss is likely to occur.

Step 4 – Assess the reasonableness of the proposal that is causing the impact

The development will result in a significant loss of distant coastal views from 27 Atchison Street and impacts are limited to north-easterly views from 31 Atchison Street to the south-west of the site. The site is located over 1km from the coast where large scale buildings are anticipated between the affected buildings and the coast. Existing expansive views that have been enjoyed over time while the area undergoes a transition to higher density development will be lost, however it is difficult to protect views in the context of the applicable city centre planning controls.

The development as proposed is of a scale anticipated by Wollongong LEP 2009. The proposed development is compliant with the 60m height limit applicable to the site and the height is realised through consolidation of two existing allotments and the proportion of non-residential uses proposed (which is incentivised under the floor space ratio controls). The 60m building height exceeds the height of the adjoining buildings, despite the same height limit applying. The proposal is compliant with the floor space ratio for the site. The proposed 12m setback to the northern and southern boundaries is above the minimum required 9m setback under the Apartment Design Guide up to 25m (L4-7) which provides for some angled view corridors to be retained through the site (i.e., to the north-east and south-east).

To minimise the loss of eastern coastal views from the western properties, the development would need to be substantially reduced in height and the side setbacks would need to be substantially increased. Given the development complies with these built form controls, requiring design changes would compromise the efficient use of the land to achieve the development potential available.

It is acknowledged that the development will block easterly views however the tower form complies with the anticipated building envelope for the site. At the levels relative to the adjoining properties to the west the side setbacks are compliant.

On this basis the view impacts are not considered unreasonable.

1.6 CONSULTATION

1.6.1 INTERNAL CONSULTATION

Geotechnical Engineer

Council's Geotechnical Officer has reviewed the application, including the geotechnical report prepared by Aargus dated 16 June 2021. It was noted that the report provided a good description of the site conditions and demonstrated the proposal is feasible from a geotechnical perspective. Conditions of consent were recommended and are included in **Attachment 8**.

Stormwater Engineer

Council's Stormwater Officer has reviewed the application, including the flood study submitted by Rienco dated 16 June 2022 and the Stormwater plans prepared by ATB Engineering. A satisfactory referral was given noting that design changes have been incorporated into the design to address flooding and stormwater matters, particularly in relation to the ingress of water from the adjoining drainage channel. Conditions of consent are recommended which have been included in **Attachment 8**.

Traffic Engineer

Council's Traffic Officer has reviewed the application and given a satisfactory referral. The Traffic Report identified that the additional vehicle trips resulting from the development would be minimal (44 compared to 39 existing), for which the road network can readily accommodate. Parking and manoeuvrability were assessed as satisfactory. A number of minor issues relating to hotel parking, bicycle parking and adaptable parking were raised which have been resolved through amended plans. Conditions of consent were recommended and are included in **Attachment 8**.

Environment Officer

Council's Environment Officer has reviewed the application in relation to site contamination, acoustic matters, Water Sensitive Urban Design, wind impacts and construction management.

The following reports were considered:

- Detail Site Investigation (DSI) prepared by Aargus Consulting dated 1 July 2021;
- Acoustic Assessment report for ISEPP Compliance prepared by Acoustic Noise & Vibration P/L dated November 2021;
- Concept WSUD information prepared ATB Engineering dated 2 December 2021; and
- Wind impact & tunnelling by ANA Civil P/L dated 28 Sept 2021. No wind impacted related conditions are required.

A satisfactory referral was received subject to conditions relating to the above environmental matters which are included in **Attachment 8**.

Landscape Officer

Council's Landscape Officer has reviewed the application and given a satisfactory referral subject to conditions of consent, including suitable street tree protection measures and additional street tree planting. Conditions of consent were recommended and are included in **Attachment 8**.

Health Inspector

Council's Health Officer has reviewed the application and requested additional information regarding the proposed food and drink premises. Conditions of consent have been included in **Attachment 8** to address these requirements.

Heritage Officer

The site is not an identified heritage item nor in the vicinity of a heritage item, aside from MacCabe Park which has frontage to Keira Street (one street away from Kenny Street to the east as shown in **Attachment 1**). No adverse impacts on MacCabe Park are anticipated from the development, noting that the building will not overshadow the park. No heritage conditions apply.

1.6.2 EXTERNAL CONSULTATION

Transport for NSW

The application was referred to TfNSW under the provisions of Clause 2.122 and Schedule 3 of the SEPP (Transport and Infrastructure) 2021 – Traffic-generating development however it is noted that Kenny Street is not a classified road, nor does it connect to Crown Street (the nearest classified road). No objections were raised by TfNSW in their response dated 16 February 2022, where they noted that Kenny Street is a local road, and the development will result in additional traffic generation of five (5) trips per hour during the AM peak. No conditions were recommended.

Endeavour Energy

Endeavour Energy was referred the proposal and has provided a response with standard conditions that will form part of the recommended conditions identified in **Attachment 8**.

Sydney Water

Sydney Water were referred the application for comment. A response was received on 16 February 2022 which noted that the site has existing water and wastewater servicing that may require amplifications, adjustments and/or minor extensions which will be the subject of a Section 73 Application. Conditions were recommended, including the requirement for a Section 73 Certificate which are included in the recommended conditions of consent in **Attachment 8**.


Design Review Panel

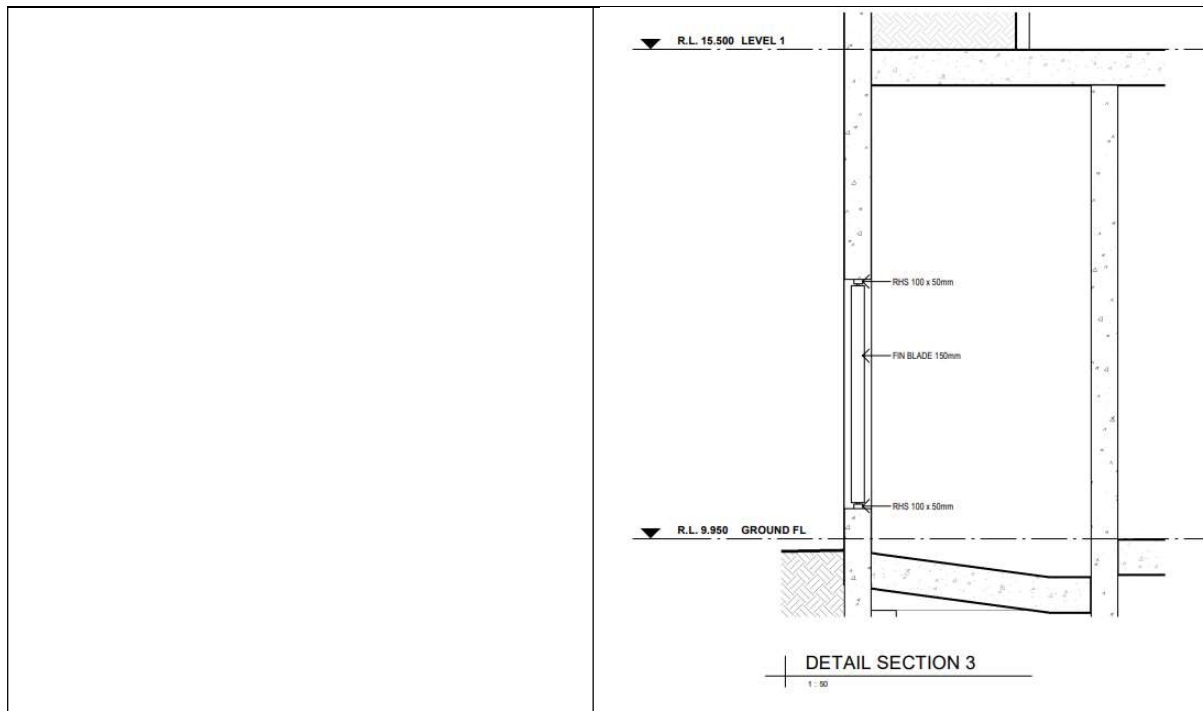
The application was reviewed by the Design Review Panel with regard to the LEP design excellence provisions and the requirements of the SEPP (Design Quality of Residential Apartment Development) 2002.

One DRP meeting was held prior to lodgement. Two (2) DRP meetings have been held since lodgement of the development application – 9 March 2022 and 16 September 2022. The latest DRP notes from **Attachment 4**. The Panel has found the development acceptable in relation to design excellence provisions under the LEP subject to some additional design detail, aside from the design of the residential lobby.

The Panel's detailed comments from the last meeting is outlined in the table below with relevant comments in response.

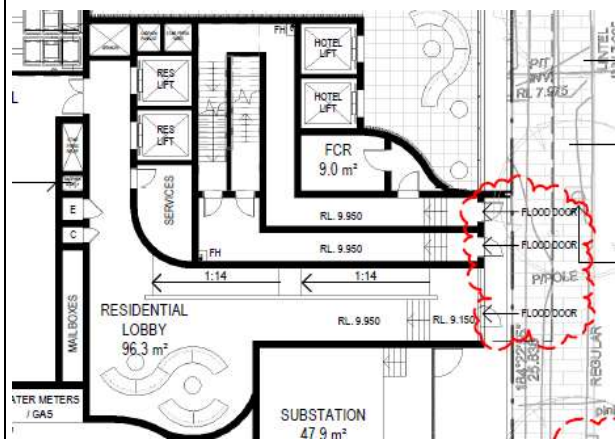
DRP comment	Comment
Concerns regarding development option for neighbouring site at 22 Kenny Street: <ul style="list-style-type: none"> - 3m setback to southern boundary - Investigations to reconfigure drainage easement to increase tower setbacks 	<p>The redevelopment option for 22 Kenny Street that was presented to the DRP included a 3m setback to residential units as part of a shop top housing development. Such a design would not be supported as the setbacks are minimal and would not meet ADG or LEP building separation requirements. As the site is zoned B3 Commercial Core, redevelopment for commercial uses only is feasible. Given the site is not technically isolated (as it meets the minimum 20m street frontage under the LEP), refusal of the application on this basis is not warranted. The applicant has indicated a future Right of Way burdening the subject site and benefitting 22 Kenny Street for vehicle access through the basement into a future basement to provide more flexibility for redevelopment options.</p> <p>Investigations for reconfiguring the drainage easement on the adjoining site are outside the scope of the current application and would need detailed assessment by Council as part of any future application for the adjoining site.</p>
Site and context analysis should identify key infrastructure constraints, opportunities that	An updated contextual analysis has been provided that provides additional detail identifying the

influence the design (including stormwater management/flooding, sewer diversion)	adjoining concrete drainage culvert and easement path.
Additional detail survey information is required to show existing levels and relationship with stormwater management. Plans, elevations, and sections should show levels and profiles of stormwater infrastructure	<p>A more detailed survey plan has been provided showing levels and adjoining concrete drainage channel.</p> <p>Updated elevation and section plans indicate the adjoining stormwater infrastructure.</p>
Height of fire booster and gas services should be reduced to allow visual connection between café and the street	<p>The height of the fire booster and gas services has not been reduced. It is noted that the café has windows adjoining the services to provide a direct connection with the street.</p>  <p>This interface could be improved by lowering the services by way of a condition if required, however the overall activation of Kenny Street is considered acceptable.</p>
The overland flow paths adjacent to side boundaries must be secured and concealed. Details of the garage door and gates / fences proposed fronting Kenny Street should be provided, together with finished levels, to demonstrate how overland flow is achieved, whilst providing a positive contribution to the aesthetic of the street. Direct views down the drainage passage, from the street must be minimized. Maintenance access should be indicated.	<p>Balancing the flooding constraints while providing an appropriate built form outcome, and minimising safety and security issues has been a recurring theme during the assessment.</p> <p>An appropriate response has been put forward that manages these issues in an acceptable way however, this will be subject to further detail being provided prior to issue of a Construction Certificate. The applicant's engineer has proposed a screening system to the western, northern, and southern boundaries that incorporates horizontal battens, and a sliding mechanism that incorporates a sensor trigger to open in the event of a flood. This will limit unauthorised access to the site, provide visual screening to these elevations while allowing for the flow of flood water when needed.</p> <p>A detailed section of the vertical blades to the front façade of the building has been provided, as shown below:</p>

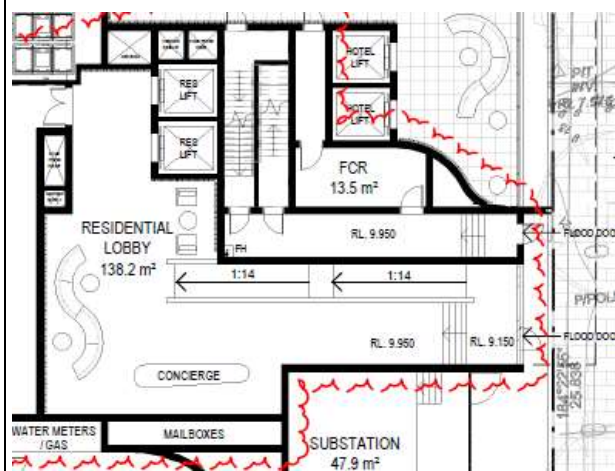


The residential entry and street/address presence is disproportionately constrained for the magnitude of the apartment use. It consists of a long narrow space that relates poorly to the lifts. It is recommended that the Fire Control Room be relocated further south (perhaps behind the substation), which would allow egress corridors to be located further north. This will create more space to accommodate a more generously proportioned residential lobby, that better relates to the lifts. The option of integrating the ramp and pedestrian entrances for at least some extent should be explored.

The residential lobby has had some design changes. The narrow, constrained lobby design that led to the Panel's concerns is shown below:



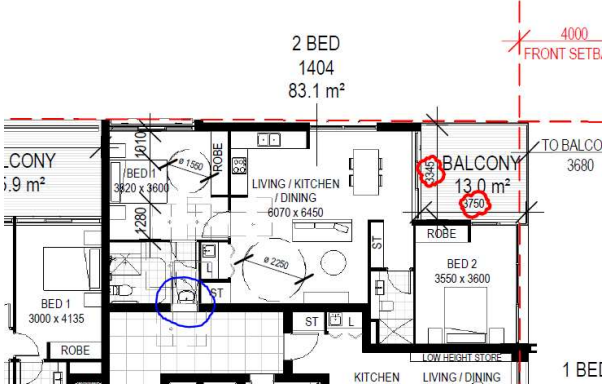
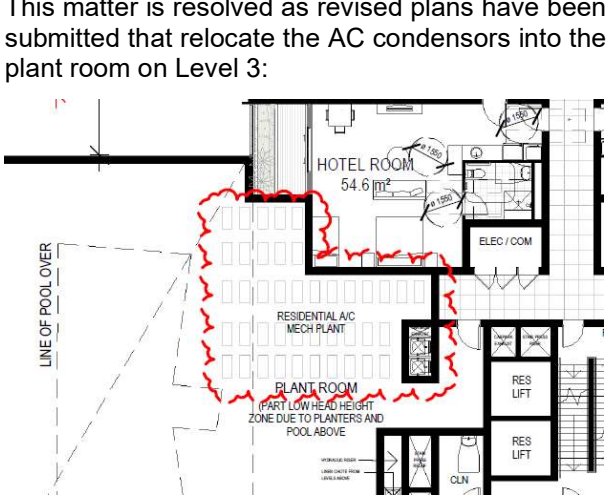
The lobby has been redesigned as follows:

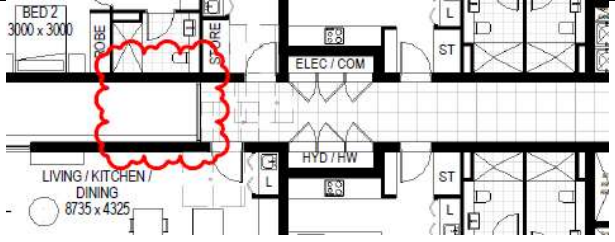
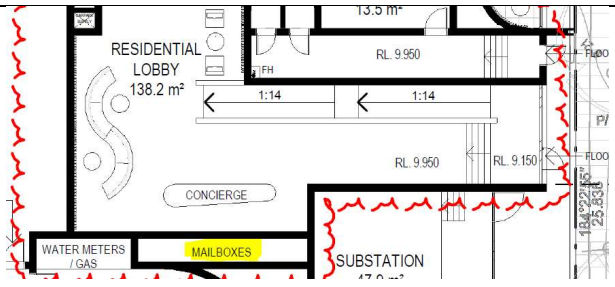


Although the lift location has not changed, the lobby has more generously proportioned circulation areas with direct lines of sight to seating now available.

	The lobby entrance has been widened slightly to improve the legibility of the residential entry point from Kenny Street.
<p><u>Expression of tower roof / upper two levels</u></p> <p>Revisions made in response to the Panel's previous comments have improved the expression of the top of the tower. The Panel remains uncomfortable with the symmetrical expression. However, it is acknowledged that this is a highly subjective issue and the form proposed by the applicant is a valid option that responds appropriately to site context.</p> <p>The tower appears to encroach into the dimensioned street setback.</p>	<p>The tower expression has incorporated minor changes incorporating thin blades/hoods to the upper levels as shown below:</p>  <p>It is recommended the drawings (e.g., Sections Dwg 055W) locate the boundaries, setbacks and describe and dimension any proposed encroachments.</p> <p>The elements of the tower that encroach into the 4m setback above street frontage height include balconies (minimum 3.68m setback for <50% of the façade width) and blade wall elements at 3.45m. Both these encroachments are minor and are permitted under the DCP (refer Attachment 7).</p> <p>The section and elevation plans have indicated these setbacks, however dwg 055BB has not identified the boundaries, setbacks and permitted encroachments. A condition is recommended for this detail to be reflected on this plan as part of the Construction Certificate documentation.</p>
<p>Confirmation is required that all screens are to be independently operable to ensure sustainable levels of natural light are available to hotel rooms.</p> <p>The extent of full height glazing to the apartment tower raises some thermal management concern, particularly in relation to the eastern (street) elevation. An expert review is recommended for advice on compliance and current best practice.</p>	<p>Confirmation has not been provided. A condition is recommended for the screens to be independently operable.</p> <p>The applicant has responded to this by including sun shading elements to the glazing on the eastern façade.</p>

<p>The use of solar power and water heating is strongly encouraged, particularly to service communal areas, carpark lighting, ventilation, and pumps. Confirmation as to the capacity and use of power provided by the roof PV panels indicated should be required, together with provisions for safe maintenance access.</p>	<p>This information has not been provided, however is capable of being conditioned if needed.</p>
<p>Proposed street trees require a more substantial species than Blueberry Ash given scale of street wall</p>	<p>Council's Landscape Officer has recommended suitable species for street tree planting (three (3) x Waterhousia 'Green Avenue')</p>
<p>Hotel COS Level 1</p> <p>The Panel queried two communal rooms, whether a single unisex toilet is adequate, tree selection & ongoing maintenance requirements noting trees are shown as extending over boundaries</p>	<p>It is unclear what purpose the two communal rooms for hotel users would serve. Given the proposed pool and gym areas at this level, it is considered that provision of additional toilets and change facilities would be of more benefit. A condition is recommended for one of the two communal room (closest to the pool area) be converted to toilets and change areas, with details to be provided with the Construction Certificate.</p> <p>The tree selection that shows canopy growth outside the site boundaries is noted. A condition is recommended for suitable species and ongoing maintenance to be submitted as part of the final landscape plan.</p>
<p>Level 4 COS</p> <p>The expansive undercroft spaces are problematic for amenity; they will require careful, high quality detailing, selection of materials and finishes. The Panel acknowledges that enclosing more of these spaces is constrained by FSR requirements but considers that they will only be acceptable if they are well lit and ventilated and finished with high-quality materials that integrate the indoor and outdoor spaces well. Dividing the spaces from the outdoor areas may not be the best option for achieving this.</p> <ul style="list-style-type: none"> - The function of the outdoor space on the southern side of the building is unclear. Why would anyone go there to sit on artificial turf when other spaces, including their own balconies, offer much higher amenity? Options for activities that invite residents to use this space should be explored (e.g., a community garden; outdoor gym or mini sports field; dog play area...) - The inclusion of numerous planters under the roof space is strongly questioned. They are very poor in terms of sustainability, requiring special lighting, artificial irrigation and frequent replacement of plantings that fail due to the poor growing environment. The lay-out of southern and northern plantings should be reconsidered and alternatives to the extensive plantings around the swimming pool explored. - The Panel does not support the use of artificial turf except for particular circumstances where no suitable alternatives are available. It is not clear that this is the case with the proposed design. 	<p>The landscape plans indicate reasonable treatment of the Level 4 areas. Additional detail will be required for the landscape screening along the western edge of the pool to address privacy between this space and western neighbours. A condition is recommended for suitable species and ongoing maintenance to be submitted as part of the final landscape plan.</p> <p>The southern area of COS is indicated as artificial turf proposed as a stretching area. Without some further detailing this space is unlikely to be highly utilised. Given this area will not receive much sunlight, an outdoor gym, sportsfield or dog play area would be possible uses that could work. A condition is recommended for additional detail identifying further passive or active recreational uses to be shown and included as part of the final landscape plan.</p> <p>Given the landscape screening around the pool may not thrive in these conditions, a solid screen along the western side should also be provided to address amenity and privacy between adjoining properties.</p> <p>See previous comments requiring additional detail on the programming of this space.</p>

<p>What is the role of the artificial turf? What other options are possible for the ground treatment in this location?</p> <p>The documentation should show all proposed boundary fencing and clearly indicate how the existing wall that is to be retained along the northern boundary will be treated.</p>	<p>A solid masonry wall is proposed along the northern boundary of the site to prevent overland flow into adjoining site. This wall is shown on the elevation plans.</p>
<p>Detail treatment of the pool perimeter is required to demonstrate how privacy issues with western neighbours are resolved</p>	<p>See previous comments – a condition for a solid screen is recommended to provide a design solution that addresses this issue.</p>
<p>Unit identification numbers are required on the plans. Adaptable and Livable apartments noted on the Summary sheet (Dwg 000 W) cannot be located.</p>	<p>Updated plans identify unit numbers.</p> <p>Adaptable units #06 are located in the north-eastern corner however are not clearly notated as such. Liveable units are #03 but are also not readily identified. A condition is recommended for the plans to identify the relevant units as adaptable and liveable prior to issue of the Construction Certificate.</p>
<p>The north-eastern corner units appear to be accessed via the bathroom. It is assumed that this is a drafting error, and that the entry door is located further east.</p>	 <p>This drafting error is required to be corrected as part of the Construction Certificate plans, noting that the units of Levels 5 and 6 with the same layout show the door positioned correctly.</p>
<p>Residential lobbies are serviced by a single window that will provide minimal outlook and natural lighting. AC condenser units have been located at the base of the lobby windows, further restricting natural light, outlook and creating a noise source that will further degrade the quality of the lobby spaces. The AC condensers should be housed in an alternative location, to maximise available natural light and ventilation.</p>	 <p>This results in natural light and outlook being available to the corridors:</p>

	
There appear to be no post boxes provided to residential units. This should be addressed concurrently with design finessing to provide a more generous apartment entry and street presence.	 <p>Mailboxes are provided within the residential lobby as shown above</p>
A plan of management should be developed to reduce potential conflicts between residents and visitors in the basement parking area.	The submitted Plan of Management (PoM) includes car parking, stating that allocation of hotel parking will be managed upon booking, with intercom access providing secure access. Basement 1 level provides parking for Hotel guests, with access restricted via boom gates. A condition is recommended that the PoM must be implemented.
The narrow strip of unbuilt upon land to the west boundary is a potential safety and health hazard to be addressed.	Addressed through increased width of wall to western boundary and further details of flood screen as discussed above.
The transition of the open flood water tunnel under the multi-storey residential building (27 Atchison St) to the southwest onto the subject site must be designed and managed to ensure safety and maintenance access.	As above, a noting sliding screen is proposed – a condition is recommended that this door can be manually opened when necessary to allow for maintenance access.
BCA egress compliance clearly will rely on 'Fire Engineered solutions'. Any consent needs to be supported by specialists' confirmation that compliance will not involve structural or planning change.	<p>BCA egress will be a matter for the Construction Certificate, with any design changes likely to require a S4.55 modification application.</p> <p>A letter from Building Code Assistance dated 24/11/22 has been submitted in relation to flood screening and basement openings, stating a performance solution by a Fire Engineer will be required.</p>

2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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

Section 1.7 of the Environmental Planning and Assessment Act 1979 (EP&A Act) provides that Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 (BC Act).

Part 7 of the BC Act relates to Biodiversity assessment and approvals under the EP&A Act where it contains additional requirements with respect to assessments, consents and approvals under this Act.

The site is not identified as being of high biodiversity value on the [Biodiversity Values Map](#).

The development would therefore not be considered to result in adverse impacts on biodiversity and is consistent with the provisions of the Biodiversity Conservation Act 2016.

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

2.1.1 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 2 Coastal Management

The proposed development is not located within land identified as the part of the Coastal Zone. The provisions of this chapter do not apply.

Chapter 4 Remediation of Land

The site is not identified as being contaminated land. A Detailed Site Investigation (DSI) prepared by Aargus Consulting dated 1 July 2021 accompanied the application and has been considered by Council's Environmental Division. The report concluded that:

The following data gaps were identified with respect to the pollution linkages:

- *Soil sampling beneath the existing buildings.*
- *The lateral and vertical extent of the identified VOCs in groundwater.*
- *NSW SafeWork records.*
- *Council Records.*

Therefore, the site can be considered to be rendered suitable for the proposed use, subject to the following:

- *Address the above-mentioned data gaps by undertaking an additional site investigation once site access is available.*
- *Notification to the NSW EPA under section 60(3)(a) of the CLM Act would be required following the assessment of the additional investigation to determine the primary source of contamination of identified chlorinated solvents as well as the extent of the contaminated plume.*
- *An appropriate remedial / management strategy is developed following the assessment of the additional investigation, culminating in preparation of a Remedial Action Plan (RAP) in accordance with EPA guidelines, in regard to the identified contaminated groundwater at BH8/GW3 and issues of concern arising from the additional investigation.*
- *Any soils requiring removal from the site, as part of future site works, should be classified in accordance with the "Waste Classification Guidelines, Part 1: Classifying Waste" NSW EPA (2014)."*

The potential source for any contamination is fill material from unknown origins, possible petroleum products and organic solvents from past commercial uses and asbestos containing material from existing buildings or fill material. Some groundwater contamination is also likely, noting the water table was identified approximately 5m below ground and the basement level is 1m below that. The application was not nominated as integrated development under the Water Management Act for dewatering and therefore not referred to Water NSW. A condition of consent is recommended in regard to the approval under the Water Management Act being obtained prior to the issue of the Construction Certificate.

The report noted that further investigations will be required following demolition of the buildings however concluded that the site can be rendered suitable for the proposed use subject to the matters outlined above.

Conditions have been recommended by Council's Environmental Officer based on the above, including requiring an Amended DSI to be submitted to Council as recommended in the Aargus Report. Additionally, and a Site Validation Report will be required to be submitted to Council prior to issue of the Construction Certificate. An unexpected finds protocol (UFP) to be implemented. Subject to the

recommended conditions, no concerns are raised in regard to contamination as it relates to the intended use of the land and the requirements and the provisions of clause 4.6 are satisfied.

2.1.2 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 in accordance with Clauses 50(1A) & 50(1AB) of the Environmental Planning and Environment Regulation 2000 (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.

Clause 6A clarifies that only one policy applies across the State for these key design issues. Where there is an inconsistency with the DCP controls, the provisions of the ADG prevail.

Principle 1: Context and neighbourhood character

The proposal is considered to be consistent with the desired future character of the area as identified through the development standards and controls applicable to the land.

Principle 2: Built form and scale

Whilst the development is significantly larger than adjoining developments and some others in the locality, the bulk and scale of the development is consistent with the applicable planning controls for the area. The development is not considered to be out of context with regard to the desired future character of the area and the likely impacts of the development on the locality and adjoining development.

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

Principle 3: Density

The density of the development complies with the maximum FSR permitted for the land. The development is not of a scale that is expected to place unreasonable strain on local infrastructure. Contributions applicable to the development will go towards local infrastructure and facilities. The site is well situated with regard to existing public open space and services.

Principle 4: Sustainability

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

BASIX Certificates provided indicating minimum requirements are met.

A Site Waste Management and Minimisation Plan has been provided indicating recycling of materials from the demolished buildings.

Louvres have been provided to the western elevation to shield from the units from harsh western sun.

The proposal does not impact on any heritage items or environmentally sensitive areas

The proposal is an efficient use of land in a location that is close to services and public open space.

Principle 5: Landscape

The proposal provides suitable landscaped areas and communal open space that will improve the amenity of the occupants and soften the appearance of the development from adjoining properties and the public domain.

Principle 6: Amenity

The proposal meets the minimum requirements for solar access, private and communal open space, storage, visual and acoustic privacy, access and the like.

Principle 7: Safety

The proposal is satisfactory with regard to safety and security.

Principle 8: Housing diversity and social interaction

The proposal provides a mix of unit sizes and layouts appropriate to the locality.

Principle 9: Aesthetics

The proposal is considered to be of a high quality with regard to its appearance. A mixture of materials and finishes is provided and the bulk of the development is suitably articulated.

Apartment Design Guide

An assessment of the application against the Apartment Design Guide (ADG) is contained in **Attachment 6** to this report. There are no specific areas of concern in relation to the proposal that warrant discussion beyond the assessment table.

2.1.3 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

Division 17 Roads and Traffic

2.122 Traffic-generating development

The proposal was referred to TfNSW under the traffic generating development provisions under Schedule 3 of the SEPP. The application was referred to TfNSW who raised no objections, noting that Kenny Street is a local road which does not directly connect to the nearest classified road, being Crown Street.

2.1.4 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 BASIX certificate was issued no earlier than 3 months before the date on which the development application was lodged.

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

Schedule 6 Regionally significant development

The proposed development has a capital investment value exceeding \$30million. Therefore, the application is considered Regionally Significant Development. The Southern Region Planning Panel is the consent authority for this application.

2.1.6 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Clause 1.4 Definitions

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

hotel or motel accommodation means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that—

- (a) comprises rooms or self-contained suites, and
- (b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles, but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

Note—

Hotel or motel accommodation is a type of **tourist and visitor accommodation**—see the definition of that term in this Dictionary.

tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following—

- (a) backpackers' accommodation,
 - (b) bed and breakfast accommodation,
 - (c) farm stay accommodation,
 - (d) hotel or motel accommodation,
 - (e) serviced apartments,
- but does not include—
- (f) camping grounds, or
 - (g) caravan parks, or
 - (h) eco-tourist facilities.

shop top housing means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

Note—

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

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

Note—

Food and drink premises are a type of **retail 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.

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.

commercial premises means any of the following—

- (a) business premises,
- (b) office premises,
- (c) retail premises.

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 satisfactory with regard to the above objectives.

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; Amusement centres; Boarding houses; Car parks; Centre-based child care facilities; **Commercial premises**; Community facilities; Educational establishments; Entertainment facilities; Exhibition homes; Function centres; Helipads; Home businesses; Hostels; **Hotel or motel accommodation**; Information and education facilities; Medical centres; Oyster aquaculture; 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**; Tank-based aquaculture; Tourist and visitor accommodation; Veterinary hospitals; Wholesale supplies*

4 Prohibited

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

The proposal is categorised as a mixed use development comprising hotel or motel accommodation with ancillary commercial premises (food and drink premises) and shop top housing, as defined above and is permissible in the zone with development consent.

Clause 2.6 Demolition—demolition requires development consent

Demolition of all structures is proposed under the current application, thereby satisfying this clause.

Part 4 Principal development standards

Clause 4.1 Minimum subdivision lot size

Not applicable – no subdivision is sought as part of the current application.

Clause 4.3 Height of buildings

The proposed building height of 60m does not exceed the maximum of 60m permitted for the site (RL at roof is 69.00, RL at existing ground level is above RL9.0)

Clause 4.4 Floor space ratio

The objectives of this clause in relation to the floor space ratio are met, noting the proposal complies - Refer Clause 4.4A

Clause 4.4A Floor space ratio – Wollongong city centre

Site area = 2466m²

Calculation of maximum FSR permitted:

(4) 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 x NR/100)+ (RFSR x R/100):1

where—

NR is the percentage of the floor space of the building used for purposes other than residential purposes.

NRFSR is the maximum floor space ratio determined in accordance with this clause if the building was to be used only for purposes other than residential purposes.

R is the percentage of the floor space of the building used for residential purposes.

RFSR is the maximum floor space ratio determined in accordance with this clause if the building was to be used only for residential purposes.

NR = 32% (3366sqm)

NRFSR = 6:1

R = 68% (7223sqm)

RFSR = 3.5:1

$(6 \times 0.32) + (3.5 \times 0.68)$

$(1.91) + (2.39) = 4.3$

Maximum FSR permitted = 4.3:1 (10,603sqm)

GFA proposed:

Total: 10589m²

Residential: 7223m² (72%)

Non-Residential: 3366m² (28%)

FSR proposed:

10589 /2466m² = 4.29:1 - **complies**

Clause 4.6 Exceptions to development standards

A development departure is sought to building separation under Clause 8.6 of the LEP. The applicant's Clause 4.6 Statement forms **Attachment 5**.

WLEP 2009 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:	
that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	A satisfactory clause 4.6 variation has been submitted.
that there are sufficient environmental planning grounds to justify contravening the development standard.	Yes. The applicant's Clause 4.6 Statement identifies the environmental planning grounds that are considered sufficient to support the development departure to building separation with regard to the specifics of the proposed development and unique site circumstances.
4.6 (4) (a) Consent authority is satisfied that:	
the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	The applicant's Clause 4.6 Statement forms Attachment 5 . The applicant's written request justifying why compliance with the building separation control is unreasonable and unnecessary is based on the First and Fourth way under <i>Wehbe v Pittwater Council</i> [2007]NSWLEC827 (<i>Webhe</i>) which are: - that the objectives are achieved notwithstanding noncompliance with the standard (the First way); and

	<ul style="list-style-type: none"> - that the development standard has virtually been abandoned (the Forth way) <p><u>Objectives of Clause 8.6</u></p> <p>(1) <i>The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.</i></p> <p>In response to these objectives the applicant states (in summary):</p> <p><i>Visual appearance</i></p> <ul style="list-style-type: none"> - Well considered architectural design, materials and details - Building envelope reflects the permissible yield - The building faces all directions - The podium and the tower form are distinct elements - Extensive landscape treatments and privacy screening at the interface with the western residential development softens and articulates the appearance. <p><i>Privacy</i></p> <p>Internal room layouts for 2 rear western units are oriented to north and south, with screening to living and balconies at the western interface.</p> <ul style="list-style-type: none"> - Extensive planting to the podium areas planters at upper levels - Limiting use of communal areas to daytime hours limits acoustic privacy - The above assessment is supported having regard to separation between buildings at ground level where the breaks provide a positive outcome for pedestrian links and provide visual relief to the building bulk in the context of the redevelopment of an entire city block. - The proposal is consistent with the separation distances under the ADG <p><i>Solar access</i></p> <ul style="list-style-type: none"> - Setbacks along the east-west axis are relatively compliant, with the primary reason for non-compliance at the western lower levels being due to the existing building being closer to the common boundary than the current controls allow <p>The applicant's justification also contends that the development has virtually been abandoned hence compliance with the standard is unnecessary and unreasonable (i.e. the 'Fourth way' under <i>Wehbe v Pittwater Council</i> [2007]NSWLEC827). The applicant has cited a number of developments in the city centre where Council has supported a development departure for building separation. It is noted that each development departure is assessed against the unique circumstances of the case, and that the development standard has not been abandoned altogether.</p> <p>The response to potential visual privacy impacts between habitable rooms and balconies is reasonably dealt with through the design, limiting openings between buildings where separation distances are not met, as discussed below.</p> <p><u>Sufficient planning grounds</u></p> <p>The planning grounds outlined in the Clause 4.6 Statement to demonstrate that there is an absence of environmental harm from the departure to building separation and that there are unique circumstances which warrant a reduced building separation.</p>
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The unique circumstances referenced in the applicant's statement relate to the 28m separation distance above 45m, whereas there are no buildings on adjoining sites to the north, south or west at this height, which does not technically represent a development departure.

However, the applicant's justification does discuss the western interface, noting that the non-compliant building separation at Levels 5-7 are a result of the minimal setbacks of the existing building at 27 Atchison Street (being ~6m). It is reasonable to consider this as a unique circumstance warranting consideration of a minor variation to the 20m separation distance (noting a minimum 18m distance is achieved which meets the ADG criteria).

At ground level, the proposed building is built to the rear boundary, resulting in a 6.55m separation distance where 16m is required. A Clause 4.6 variation has been provided for this development departure. The podium height is limited to 5.5m to provide a more sensitive landscaped interface with the residential buildings to the rear as shown in Figures a and b below:



Figure a: Northern elevation view of podium

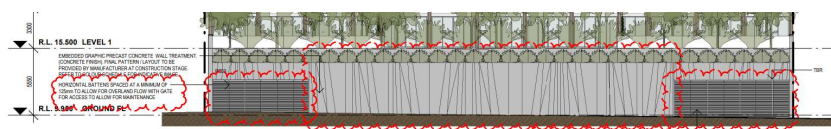


Figure b: Western elevation of podium

Given a compliant taller commercial building with blank walls could be constructed to the rear boundary, the impacts of the zero setback and podium design are considered acceptable. The DRP comments on this interface note:

An exposed podium base is presented to the neighbouring sites to the west. In response to the Panels previous comments the base has been stepped and planters introduced to the edge of the base, reducing the height of the wall presented to the neighbours, from 6m to approximately 4.5m. This is a positive development that provides an improved interface with the neighbour.

	<p>The non-compliant building separation are considered minor and the design response where the building separation is not achieved is considered acceptable in terms of mitigating amenity impacts.</p> <p>The internal layout of the apartments are designed so that visual privacy impacts do not arise where the 20m separation distances is not met, also noting the lesser separation distances under the ADG are achieved.</p>
<p>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 it is consistent with the objectives of the building separation standard, the objectives for development within the B3 zone will be achieved; and the development achieves the applicable separation distances between residential apartment buildings under the Apartment Design Guide (ADG). These matters are discussed below.</p> <p><u>Clause 8.6 Building separation within Zone B3 Commercial Core or Zone B4 Mixed Use</u></p> <p><i>(1) The objectives of the standard are to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.</i></p> <p>These objectives have been discussed above. The development is considered to respond to the objectives of this clause despite the minor variations.</p> <p><u>Objectives of B3 Commercial Core Zone</u></p> <p>The objectives for development within the B3 Commercial Core zone are:</p> <ul style="list-style-type: none"> <i>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.</i> <i>To encourage appropriate employment opportunities in accessible locations.</i> <i>To maximise public transport patronage and encourage walking and cycling.</i> <i>To strengthen the role of the Wollongong city centre as the regional business, retail and cultural centre of the Illawarra region.</i> <i>To provide for high density residential development within a mixed-use development if it—</i> <ul style="list-style-type: none"> <i>(a) is in a location that is accessible to public transport, employment, retail, commercial and service facilities, and</i> <i>(b) contributes to the vitality of the Wollongong city centre.</i> <p>The applicant's statement outlines the following means of the development satisfying the objectives of the B3 Commercial Core zone (summarised):</p> <ul style="list-style-type: none"> - The mix of permissible land uses will service the wider and local community - The ground floor café will activate the street edge - The hotel accommodation provides much needed tourist and visitor accommodation to help support the role of Wollongong City Centre as a regional business, retail and cultural centre

	<ul style="list-style-type: none"> - The high density residential use is within close proximity to the CBD precinct and public transport. - The development will create temporary and ongoing employment opportunities <p>It is agreed that the above aspects of the development satisfy the B3 zone objectives.</p> <p>The applicant's 4.6 Statement adequately demonstrates that compliance with the building separation requirements is unnecessary and unreasonable in the circumstances of the case, noting the objectives of Clause 8.6 are met.</p> <p>There are sufficient environmental planning grounds that are specific to the redevelopment of the site to justify contravening the development standard, namely that the development departures arise from the existing non-compliant minimal setback of the adjoining building to the west at 27 Atchison Street.</p> <p>There is not considered to be a public benefit served in this instance by insisting on strict compliance with the standard.</p>
the concurrence of the Secretary has been obtained.	<p>The concurrence of the Secretary can be assumed in accordance with the Department of Planning Circular PS 18-003 'Variations to development standards', dated 21 February 2018.</p> <p>The Secretary can be assumed to have given concurrence if the matter is determined by a Sydney district or regional planning panel in accordance with the Planning Circular.</p>

Part 5 Miscellaneous provisions

Clause 5.10 Heritage conservation

The site is not an identified heritage item or within a conservation area. The nearest heritage item in the vicinity of the site is MacCabe Park, as shown below:



Figure 11: Proximity of site to nearest heritage item (MacCabe Park)

Given the site is visually separated from MacCabe Park by Kenny and Keira Streets, no significant impacts are anticipated.

Clause 5.21 Flood planning

The site is flood affected (flood classification under review), with the flood report submitted with the application identifying the site is medium flood risk. The site receives overland flow and floodwaters from adjoining sites, including from a substantial drainage channel that adjoins the rear boundary of the site. The design of the development responds to the flooding constraint by accommodating the floodwaters received into and through the site, raising the ground floor of the building, providing flood doors to the entrances on Kenny Street, and constructing a solid wall on the northern boundary to prevent offsite impacts. These measures have been assessed by Council's Stormwater division as satisfactory subject to conditions. In this regard, the development satisfies the matters under subclause (2).

The impact of the development on projected changes to flood behaviour as a result of climate change, the design and scale of buildings, and the measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood, under subclause (3) have been assessed as satisfactory.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

The site is serviced by all relevant utilities. Conditions of consent are recommended with regard to specific requirements of utility providers.

Clause 7.6 Earthworks

The proposal comprises excavation for two levels of basement car parking. Subject to appropriate protection of adjoining property during construction, suitable removal and disposal of any hazardous fill material, the earthworks are not expected to have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features surrounding land.

Clause 7.13 Certain land within business zones

The proposal provides an active use at ground floor level in accordance with this control, with entry to the hotel and clear glazing and bifold windows to the café. No residential accommodation is proposed at the ground floor.

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

The proposal is considered to be consistent with the provisions for design excellence as follows:

(4) 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 Review Panel have reviewed the proposal and found the design, materials and detailing acceptable. The proposal is satisfactory with regard to the ADG and Council's development controls.

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

The proposed building form is compatible with the likely future streetscape.

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

The site is outside the distant panoramic view corridor from Flagstaff Hill looking towards the escarpment however is identified as a framed view along the street looking south under the Wollongong DCP 2009. No adverse impacts on the identified views are anticipated noting the setbacks to Kenny Street are compliant.

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

The development does not overshadow any sun plane protection areas.

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

(i) the suitability of the land for development,

The site is considered suitable for the development. The DRP has noted that the site is suitably proportioned and well located within Wollongong's commercial core.

(ii) existing and proposed uses and use mix,

The proposal is consistent with the desired future character of the area reflected in the applicable planning controls.

(iii) heritage issues and streetscape constraints,

There are no particular constraints that would preclude the development.

(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,

The proposed tower has an acceptable relationship with existing towers to the west fronting Atchison Street, noting that 27 Atchison Street adjoining the site to the west has a minimal 6m setback to its rear boundary for habitable rooms and balconies, which is partially non-compliant under the current controls (i.e. above 12m). The proposal has been designed with future development in mind with regard to setbacks and building separation to the north and south of the site. The DRP notes the relationship with existing or proposed towers on neighbouring sites as acceptable.

(v) bulk, massing and modulation of buildings,

The bulk and mass of the building is considered acceptable.

(vi) street frontage heights,

The proposal has a suitable four (4) storey street frontage height, consistent with the emerging character of the area.

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

The proposal meets BASIX targets.

Overshadowing impacts are considered acceptable in the context of the applicable planning controls that anticipate a building of this height and scale.

An Environmental Wind Assessment indicates the proposal will satisfy the wind acceptability criteria for safety and comfort at pedestrian and public access locations within and around the development. The report notes that no significant additional wind flow is anticipated on neighbouring properties. The recommendations of the Wind report are reflected in the plans.

The proposal is not expected to result in adverse reflectivity.

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

The proposal is broadly acceptable with the principles of ecologically sustainable development. The proposal is an efficient use of land in an accessible location. The proposal will not directly impact on environmentally sensitive areas. The proposal satisfies the minimum energy and water efficiency requirements.

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

The proposal is satisfactory regarding access, servicing and parking as discussed under Chapter E3.

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

The proposal will upgrade the footpath along the street frontage, retain the existing street tree and provide additional street tree planting.

Part 8 Local provisions—Wollongong city centre

Clause 8.1 Objectives for development in Wollongong city centre

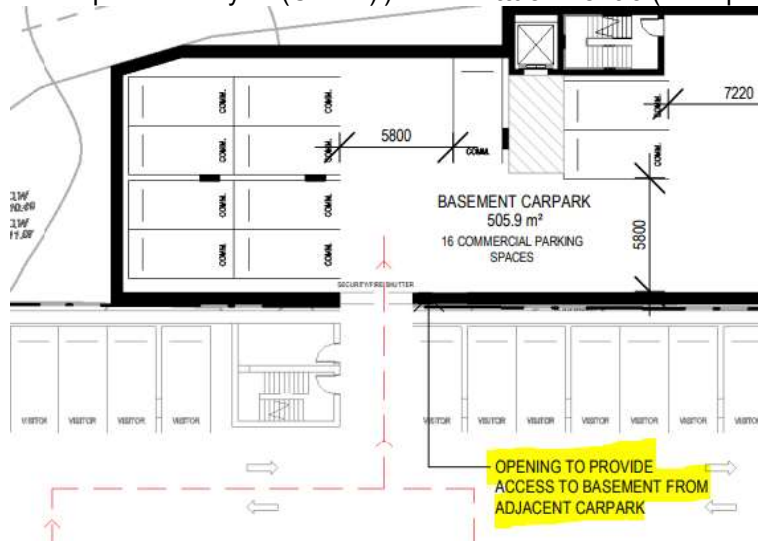
The proposal is satisfactory regarding these objectives.

Clause 8.4 Minimum building street frontage

The site comprises two allotments that will have a frontage of over 47m. Lot consolidation will be required as a condition of consent. The provisions of this clause are satisfied.

In relation to the adjoining northern lot at 22 Kenny Street, that site achieves the 20m site frontage which suggests that it has sufficient width to provide for the efficient development of land and design of buildings. Notwithstanding this, the development incorporates a future Right of Carriageway through the site into 22 Kenny Street at the basement levels to facilitate greater flexibility in design

given the adjoining site is significantly constrained by a drainage easement. A condition is recommended for the lot consolidation to incorporate a Right of Carriageway to facilitate a legal means of access through the site to access 22 Kenny Street, as shown on drawings 080BB ('Adjacent Development Analysis (Comm)') within **Attachment 3** (excerpt shown below).



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

The applicant is seeking a Clause 4.6 variation to building separation. Within the Applicant's 4.6 Statement in **Attachment 5**, the following table identifies the building separation departures:

Boundary	Proposed Level(s)	Development Standard	Min Proposed Setback/Separation	Compliance	% Variation
West (residential developed)	Ground Level (commercial)	16 metres (commercial / residential interface)	0 metres setback 6.55 metres separation	No	60% shortfall
West (residential developed)	Level 1 (commercial)	16 metres (commercial / residential interface)	12.58 metres setback 18.6 metres separation	Yes	
West (residential developed)	Levels 2-4 (commercial)	16 metres (commercial / residential interface)	12.02 metres setback 18.04 metres separation	Yes	
West (residential developed)	Levels 5-7 (residential)	20 metres (residential / residential interface)	11.94 metres setback 18.04 metres separation	No	9.9% shortfall
West (No building above Level 7)	Levels 8 and above (residential)	N/A – no building interface	N/A	N/A	
North (commercial under-developed)	Ground to Level 4 (commercial)	0 metres (commercial)	0 metres	Yes	
North (commercial under-developed)	Levels 5 to 13 (residential)	20 metres (above 45 metres)	12 metres 24 metres separation (allowance)	Yes	

North (commercial under-developed)	Levels 14 and above (residential)	28 metres (above 45 metres)	Min 12 metres Min 24 metres separation (allowance)	No	15% shortfall
South (commercial under-developed)	Ground to Level 4 (commercial)	0 metres (commercial)	0 metres	Yes	
South (commercial under-developed)	Levels 5 to 13 (residential)	20 metres (above 45 metres)	12 metres 24 metres separation (allowance)	Yes	
South (commercial under-developed)	Levels 14 and above (residential)	28 metres (above 45 metres)	Min 12 metres Min 24 metres separation (allowance)	No	15% shortfall

It is noted that the variations to the northern and southern boundaries above the 45m building height identified in the table above ('15% shortfall') are not technically development departures as there are no existing buildings at this level to the north or south.

The development departures relate to the western (rear) boundary only, as shown in Figure 12 below:

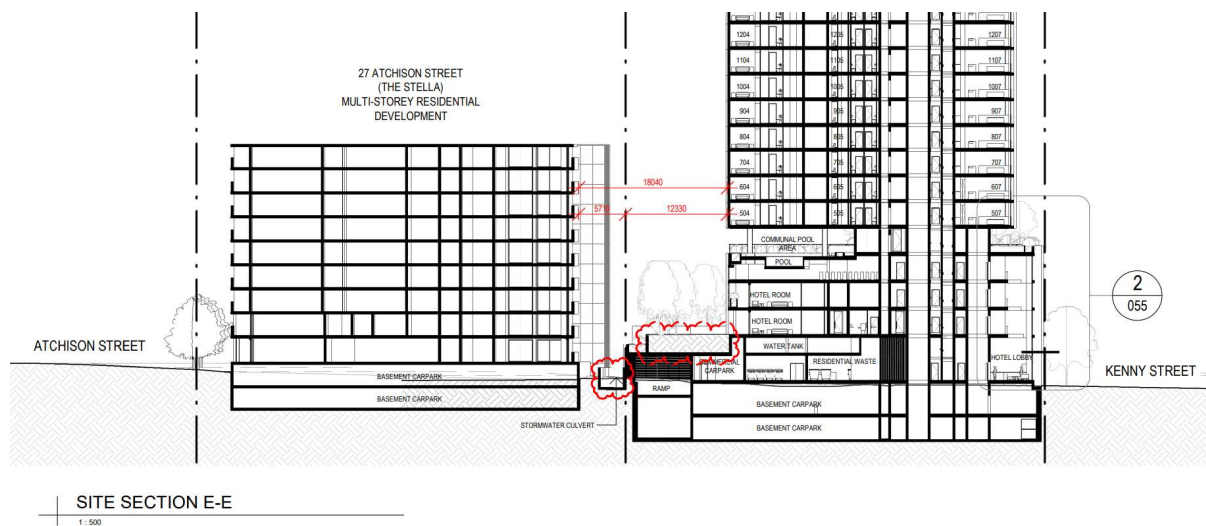


Figure 12: Section showing relationship of building to rear boundary and adjoining building at 27 Atchison Street

- (1) *The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.*
- (2) *Buildings on land within Zone B3 Commercial Core or B4 Mixed Use must be erected so that—*
- (a) *there is no separation between neighbouring buildings up to the street frontage height of the relevant building or up to 24 metres above ground level whichever is the lesser, and*

Northern and Southern boundaries

The building is built to both the northern and southern site boundaries, meeting this requirement.

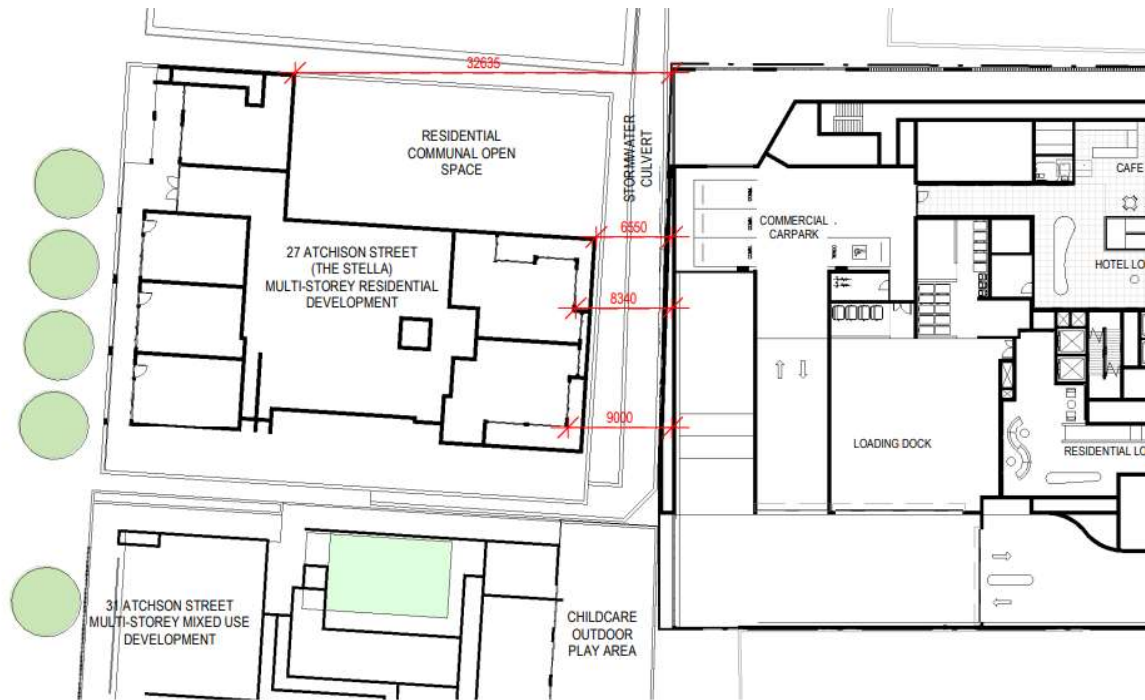


Figure 13: Ground level separation distances to the western/rear boundary

Western boundary

31 Atchison Street adjoins the site to the south-west for a length of ~8m along the rear boundary as shown below:

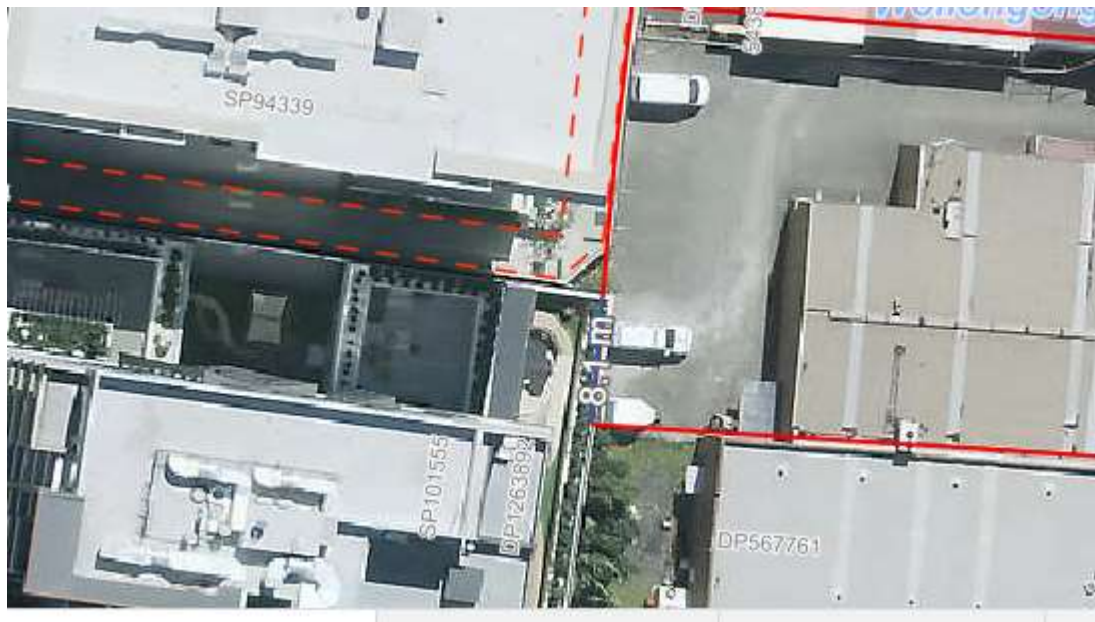


Figure 14: Aerial photo showing extent of rear boundary shared with 31 Atchison Street

At the (elevated) ground level of 31 Atchison Street, the outdoor play area associated with the childcare facility adjoins the boundary at RL 12.78:

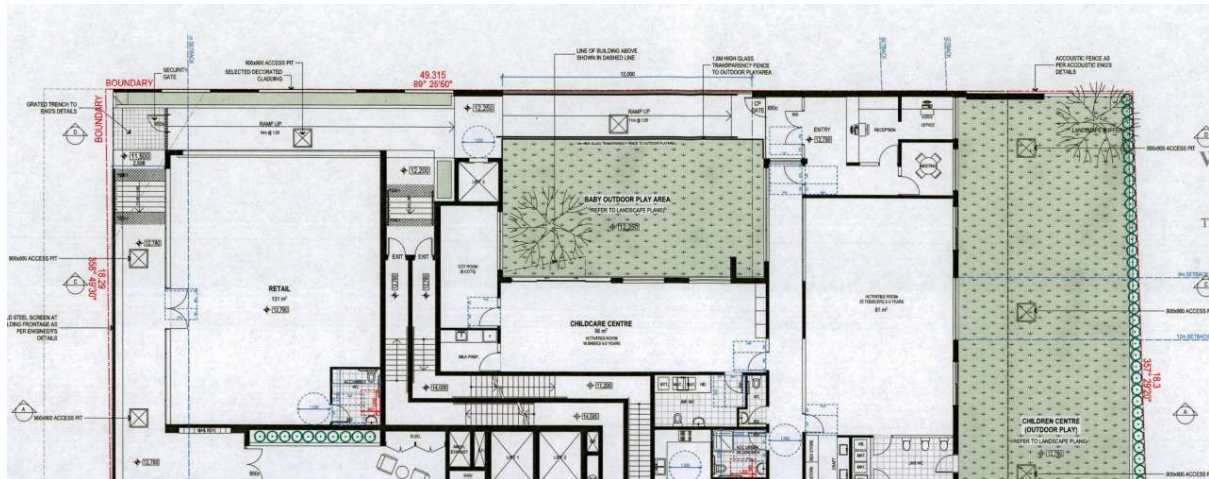


Figure 15: Partial ground floor plan of 31 Atchison Street

At this level the proposed building adjoins the rear (western) boundary with the podium wall. This complies with the zero/0m separation distance required under subclause 2(a).

27 Atchison Street

At ground level, the proposed building is built to the rear boundary, resulting in a 6.55m separation distance where 16m is required. A Clause 4.6 variation has been provided for this development departure.

(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

12m setbacks are proposed above the street frontage height to the northern, southern and western (rear) boundaries - complies

(c) there is a distance of at least 28 metres from any other building at 45 metres or higher above ground level.

At 45m above ground level, the proposed building is at RL 54, which is midway between Levels 13-14.

Western boundary - complies

There are no existing buildings to the west at 45m or above. However, for completeness it is reasonable to consider whether the setback equitably shares the building separation distance for a future development (i.e. 50% of 28m = 14m setback).

Levels 13 and 14 of the proposed building have a 12m rear setback, thereby not meeting the 14m required to share the 28m separation distance equitably between sites. However, as the existing buildings to the west have no units above 45m in height, the reduced setback does not represent a development departure. 27 Atchison Street (Stella Apartments) is a nine (9) storey building with the top of the building is at RL 39.95 and 31 Atchison Street is a 13 storey building, with no dwellings above 45m.

Northern and southern boundaries - complies

There are no existing buildings to the north or south at 45m or above. However, for completeness it is reasonable to consider whether the setback equitably shares the building separation distance for a future development. The 12m setback aligns with the building separation distances for buildings over 25m (+9 storeys) under the Apartment Design Guide. In this regard, no concerns are raised in relation to the proposed setback to the north and south above 45m.

(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

Western boundary

There are dwellings to the west of the site at both 27 and 31 Atchison Street in the form of shop top housing/apartment buildings:

31 Atchison Street (13 storeys) - complies

The minimum 20m separation distance is achieved for the rear neighbour to the south-west (31 Atchison Street - DA-2016/1073/C). This building has habitable rooms and balconies at Level 1 and above which are setback a minimum distance of 9m from its rear boundary ($12\text{m} + 9\text{m} = 21\text{m}$ which achieves the 20m).

27 Atchison Street – variation sought

The adjoining building to the west/rear is a nine (9) storey residential building known as 'Stella Apartments' with the communal open space at ground level. This building was approved with balconies setback ~6m from its eastern boundary (DA-2004/2281). It is noted that this setback would not comply under the current controls for units above 4 storeys.

The stamped approved ground floor plan for DA-2004/2281/C is shown below:

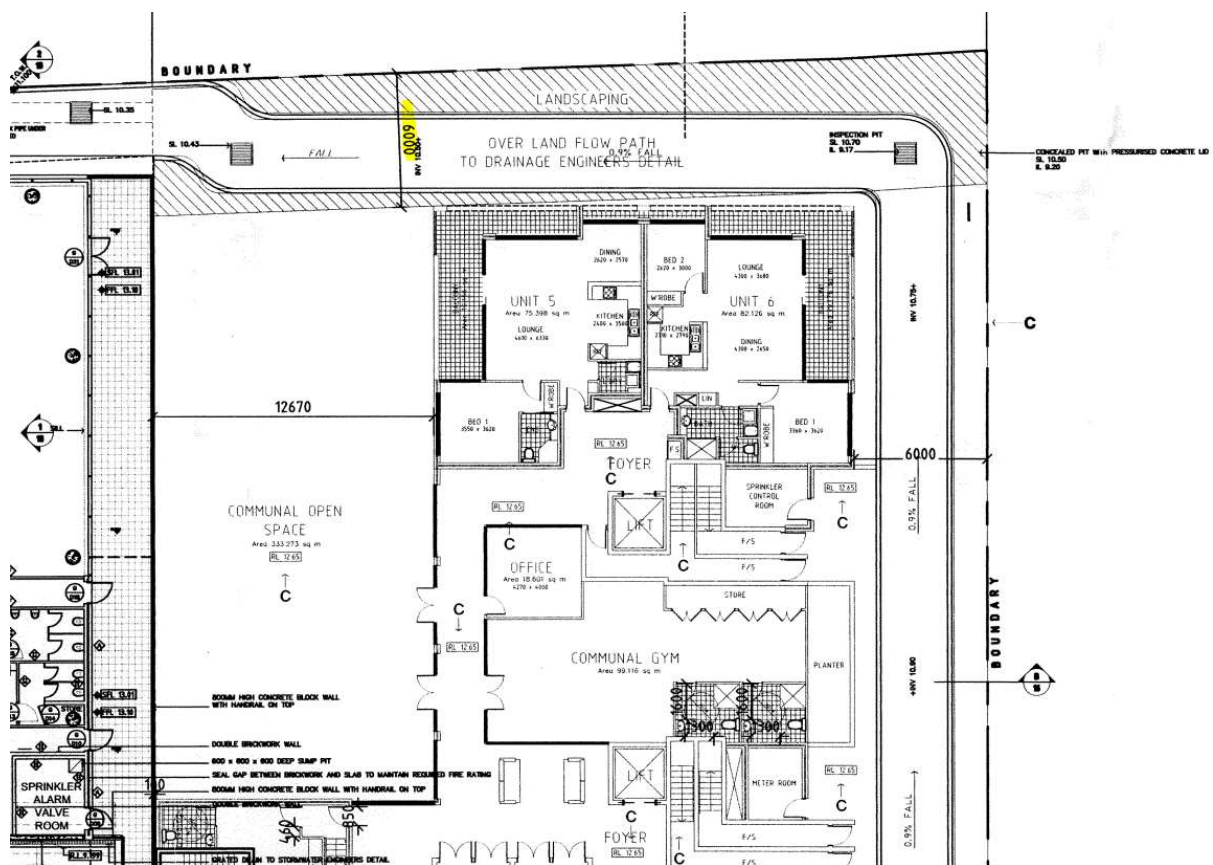


Figure 16: Partial floor plan of 27 Atchison Street showing 6m setback

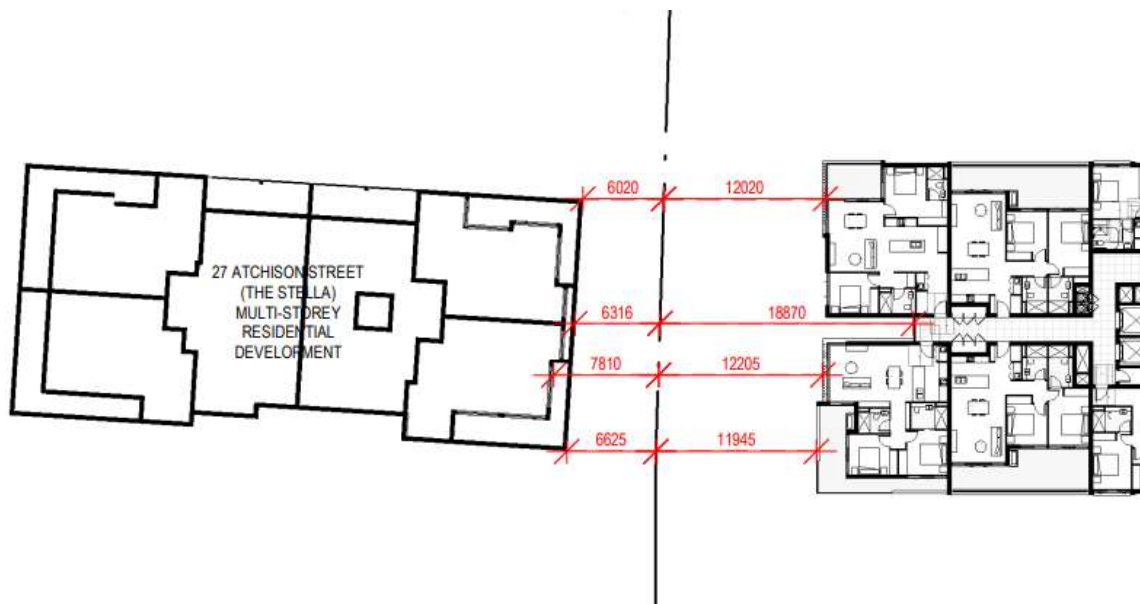


Figure 17: Separation distances between residential units and 27 Atchison Street (L6-7 Typical)

The ~6m setback of 27 Atchison St combined with the proposed minimum 12m rear setback of the proposed building results in a minimum 18m building separation distance between Levels 1-7, therefore not meeting the minimum 20m separation distance under subclause 2(a). A development departure is sought as discussed under Clause 4.6 above.

Northern and southern boundaries

N/A - There are no dwellings adjoining the site to the north or south of the site.

(c) 16 metres from any other part of any other building.

Western boundary - complies

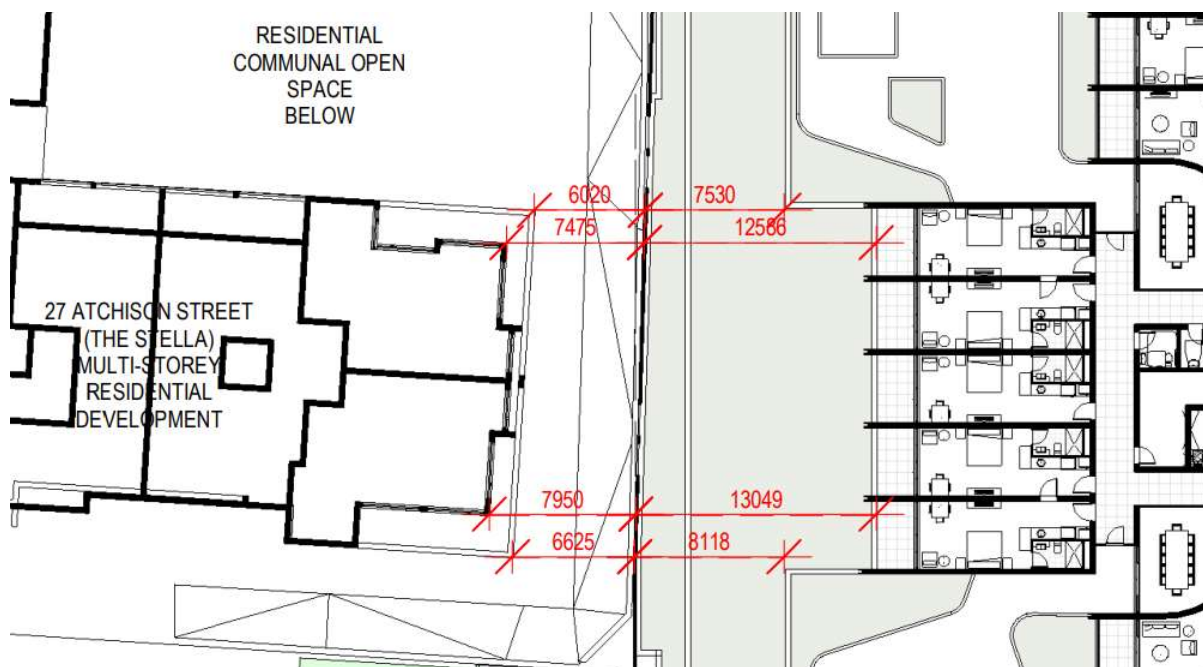


Figure 18: separation distances between hotel and 27 Atchison Street

Figure 20 above shows that the separation distance between the hotel component and the residential units at 27 Atchison Street exceeds the 16m. The Level 1 podium area is within this 16m, however is densely planted to present a landscaped interface between the sites.

Northern and Southern boundaries – complies

There are no buildings on adjoining sites to the north or south that have a direct interface at Levels 4 and above (i.e. where dwellings are proposed within the proposed building as ground level to Level 3 are non-residential uses)

(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.

N/A

(5) In this clause—

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

A Clause 4.6 Statement has been submitted in relation to the development departures identified above which forms **Attachment 5**.

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

A full assessment of the proposal against relevant DCP provisions are contained in **Attachment 7**. No variations are sought.

2.3.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN

Wollongong City-Wide Development Contributions Plan - City Centre

The Wollongong City-Wide Development Contributions Plan applies to the subject property. This Plan levies a contribution based on the estimated cost of development. The proposed cost of development is over \$250,001 – a levy rate of 2% applies.

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 S7.4 which affect the development.

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

The 2021 Regulations came into force on 1 March 2022. The 2000 Regulations continue to apply to development applications submitted but not finally determined before 1 March 2022.

50(1A) and (1AB) Design verification statement

A design verification statement accompanied the application in accordance with this clause.

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

Conditions of consent are recommended with regard to demolition.

93 Fire safety and other considerations

N/A

94 Consent authority may require buildings to be upgraded

N/A

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

The proposal has been assessed with regard to the likely impacts within the body of this report. Generally speaking, impacts are acceptable in consideration of the applicable planning controls. The proposed development will have a visual impact on the public domain and on surrounding properties. The building will result in additional overshadowing to the residential units to the west of the site. However, the design of the building reasonably responds to the adjoining buildings to the west by stepping the podium back to reduce its visual bulk when viewed from these adjoining properties. As the design reasonably responds to the relevant planning controls, the impacts are considered acceptable.

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

Does the proposal fit in the locality?

The proposal is considered appropriate with regard to the zoning of the site and is consistent with the anticipated built form outcome for the site and locality.

Are the site attributes conducive to development?

The site is constrained by flooding however this constraint has been adequately addressed through the design of the development.

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

Refer Part 1.5 of this report.

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

The application is not expected to result in significant adverse 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 is satisfactory with regard to the applicable planning controls. Submissions raised following notification do not warrant redesign and internal and external referrals are satisfactory subject to appropriate conditions of consent. Approval of the proposal is consistent with the public interest.

3 CONCLUSION

This application has been assessed as satisfactory having regard to the Heads of Consideration under 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 and has regard to the objectives of the zone. Substantial compliance is achieved with the applicable controls. Where variations to the planning controls are proposed, these have been reasonably justified. The variations have been assessed as acceptable and achieve the relevant objectives of the control and the aims of Wollongong LEP 2009 including a Clause 4.6 Variation request in respect of building separation. The recommendations of the DRP have been largely adopted in the revised plans and matters raised by the panel are satisfactorily resolved. The character and form of the development is consistent with the zoning and reasonably responds to the surrounding context and the applicable controls.

Submissions raised during public exhibition have been considered at section 1.5. The development is of a scale that will have some visual and amenity impacts from surrounding properties. However, these impacts arise from a built form outcome that is largely anticipated by the current controls and refusal, or redesign of the development is not warranted on this basis.

Internal and external referrals are satisfactory subject to conditions of consent. The application is considered acceptable with regard to the likely impacts as discussed above. It is considered that the proposed development has been designed appropriately given the nature and characteristics of the site and is unlikely to result in significant adverse impacts on the character or amenity of the surrounding area.

4 RECOMMENDATION

It is recommended that the development application be approved subject to appropriate conditions of consent outlined in **Attachment 8**.

Attachments

- 1 Aerial photograph
- 2 WLEP zoning map
- 3 Plans
- 4 DRP commentary 16 September 2022
- 5 Applicant's Clause 4.6 Statement – Building separation
- 6 Apartment Design Guide Assessment
- 7 Wollongong Development Control Plan 2009 Assessment
- 8 Draft conditions of consent