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| --- | --- | --- |
| Panel Reference | PPSSTH-150 | |
| DA Number | DA-2022/395 | |
| LGA | Wollongong City Council | |
| Proposed Development | Demolition of two (2) residential dwellings and construction of a seven (7) storey health services facility with four (4) basement parking levels | |
| Street Address | 411-417 Crown Street WOLLONGONG | |
| Applicant/Owner | Coveston Developments Pty Ltd | |
| Date of DA lodgement | 6 April 2022 | |
| Total number of Submissions  Number of Unique Objections | Ten (10)  Nine (9) | |
| Recommendation | Approval | |
| Regional Development Criteria (State Environmental Planning Policy (Planning Systems) 2021 – Schedule 6 Regionally significant development) | Schedule 6 Clause 5 Private infrastructure and community facilities over $5 million  Under Schedule 6, health services facilities with a capital investment value (CIV) of more than $5 million is identified as regionally significant development. The CIV values the proposed development at $27,158,626 (excluding GST). | |
| List of all relevant s4.15(1)(a) matters | |  | | --- | | **s4.15(1)(a)(1) any relevant environmental planning instruments:**  State Environmental Planning Policies (SEPPs):   * SEPP (Biodiversity and Conservation) 2021 * SEPP (Planning Systems) 2021 * SEPP (Resilience and Hazards) 2021 * SEPP (Transport and Infrastructure) 2021   Local Environmental Planning Policies:   * • Wollongong Local Environmental Plan (WLEP) 2009   Other policies   * Wollongong Development Control Plan 2009 (WDCP 2009) * Wollongong City-Wide Development Contributions Plan (2021)   **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:**  N/A  **s4.15 (1)(a)(iii) Any development control plan:**   * Wollongong Development Control Plan (WDCP) 2009   **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**  N/A  **s4.15 (1)(a)(iv) the regulations**   * Clause 61 (1) demolition * Clause 76 Deferred Commencement   **s4.15(1)(a)(v) any coastal zone management plan:**  There is no Coastal Zone Management Plan currently applicable to the land. | | |
| List all documents submitted with this report for the Panel’s consideration (attachments) | 1 Aerial photograph  2 WLEP zoning map  3 Full set of plans including Solar Access Diagrams  4 DRP comments from 26 September 2022  5 Legal advice  6 WDCP compliance table  7 Draft conditions of consent | |
| Clause 4.6 requests | N/A | |
| Summary of key submissions | * Public submissions * Overshadowing * Traffic/Parking * Stormwater Drainage * Contamination from previous landuses | |
| Report prepared by | Brad Harris – Development Project Officer | |
| Report date | 20 September 2023 | |
| 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?  *e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP* | | 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? | | N/A | |
| Special Infrastructure Contributions  Does the DA require Special Infrastructure Contributions conditions (S7.24)?  *Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions* | | N/A | |
| 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 health services facilities with a capital investment value (CIV) of more than $5 million.

**Proposal**

Demolition of two (2) residential dwellings and construction of a seven (7) storey health services facility with four (4) basement parking levels.

**Permissibility**

The proposed health service facility is a permissible use in the SP1 Special Activities zone.

**Consultation**

The proposal notified in accordance with Council’s Notification Policy received 10 submissions (9 objection 1 support) which are discussed at section 1.5 of the assessment report.

**Key assessment issues**

* Public submissions
* Overshadowing
* Stormwater Drainage
* Contamination from previous land uses

**RECOMMENDATION**

It is recommended that the application be conditionally approved.

1. Application overview
   1. Executive summary

State Environmental Planning Policies:

* SEPP (Biodiversity and Conservation) 2021
* SEPP (Planning Systems) 2021
* SEPP (Resilience and Hazards) 2021
* SEPP (Transport and Infrastructure) 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

Referrals

Council’s Traffic, Landscape, Geotechnical, Stormwater, Environment, and Urban Design officers have provided satisfactory referrals.

External comments have been provided from Transport for NSW.

* 1. DETAILED DESCRIPTION OF PROPOSAL

The proposal comprises the following:

Demolition of all structures on the site and construction of a seven storey health services facility building with four (4) levels of basement parking.

Vehicular access to the site is from Crown Street and will access four levels of basement car parking and a loading dock at ground level. Over the four levels, there will be a total of 191 car spaces, one ambulance bay, 13 motorcycle spaces, and 8 bicycle spaces. End of trip facilities are also provided on Basement Level 1. Waste storage areas, plant and equipment rooms are proposed within the basement and ground levels.

A 9m wide landscaped setback to the southern (rear) site boundary and it is proposed to drain stormwater to Staff Street via a proposed easement through No. 32 Staff Street at the rear of the subject property. Owner’s consent for the creation of the easement has not been provided and the applicant has requested that a Deferred Commencement consent be considered so as to allow the easement to be obtained by a court order pursuant to section 88K of the Conveyancing Act 1919 or by a court order pursuant to section 40 of the Land and Environment Court Act 1979. This issue is discussed in Section 1.6.1 of this report.

Each level of the proposed development is described below:

Basement 4

Split level basement provided with nil setbacks to all site boundaries;

Car park providing 57 car spaces (including 1 accessible space) and 8 motorcycle spaces;

Diesel tank room;

2 x passenger lifts and 2 x fire stairs; and

2-way vehicle entry ramp located on the northern side of the floor plate.

Basement 3

Split level basement provided with nil setbacks to all site boundaries;

Car park providing 57 car spaces (including 1 accessible space) and 2 motorcycle spaces;

Store room;

2 x passenger lifts and 2 x fire stairs; and

2-way vehicle entry ramp located on the northern side of the floor plate.

Basement 2

Split level basement provided with nil setbacks to all site boundaries;

Car park providing 57 car spaces (including 1 accessible space) and 3 motorcycle spaces;

2 x passenger lifts and 2 x fire stairs; and

2-way vehicle entry ramp located on the northern side of the floor plate.

Basement 1

Split level basement provided with nil setbacks to north, east and west site boundaries, and 9m setback to southern boundary;

Car park providing 20 car spaces (including 1 accessible space) and 1 motorcycle space;

Bicycle parking with 8 spaces and end of trip facilities;

Ambulance bay and stretcher zone;

Various mechanical plant and storage rooms;

2 x passenger lifts and 2 x fire stairs;

2-way vehicle ramp to floor below located on the northern side of the floor plate; and

2-way vehicle ramp to ground level located on the southern side of the floor plate.

Ground Level

Main entrance lobby off Crown Street with access to upper levels and rear landscaped area;

1 x health services tenancy (including bathrooms) accessed directly off Crown Street;

1 x future café/retail tenancy accessed from the lobby;

Substation, OSD, and mechanical plant rooms located on western side of floor plate;

Waste storage room on northern side of floor plate;

Vehicular access from Crown Street to basement car park levels, and loading dock and MRV turntable; and 3 x fire stairs to basement and upper levels.

Levels 1 to 4

Floor plates ready for fitout as health services tenancies;

Bathrooms located on western side;

Small outdoor terrace on southern side (and eastern side on Level 1); and

Lift and fire stair access.

Level 5

Floor plate ready for fitout as health services tenancy; bathrooms located on western side; outdoor terrace on all sides within setback area; and lift and fire stair access.

Level 6

Mechanical plant rooms; lift and fire stair access. In total, the proposal includes 6,613m2 of tenancy floor space for health services facilities tenancies. This includes:

715m2 at ground level (including an ancillary café and retail tenancy)

1,318m2 at Level 1

1,289m2 at Level 2

1,274m2 at Level 3

1,274m2 at Level 4

743m2 at Level 5

All tenancies are designed for health services facilities and the fit-out of the tenancies will be subject to future applications. Indicative fitout of Levels 2 and 3 is illustrated on the floor plans to demonstrate the potential use for a private hospital. The proposed specialist suites will have a typical floor area of 50m2 each and the proposed 3,762m2 of medical floor area can be expected to accommodate approximately 75 specialist suites.

The facility is proposed to operate 24 hours per day throughout the year.



Figure 1: Photomontage showing proposed building as viewed from Crown Street

(looking north)

1.3 Background

A Pre-DA meeting was held with Council staff on 6 August 2020.

The proposal was considered by the Design Review Panel (DRP) on 25 September 2020,14 December 2020, 22 May 2022 and 19 April 2023.

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

1.4 Site description

The site is located at 411-417 Crown Street WOLLONGONG and the title reference is Lots 7 & 8 DP 8682 and Lot B DP 355814.

The site is irregular in shape, has a frontage of 69.5m 74.8m to Crown Street, side boundaries of 35.6m (east) and 33.4m (west) and a site area of 2,358m2. The site slopes from the northeast corner to the southwest corner. The slope is gently for approximately 25m and then slopes steeply to the rear boundary. The level at the rear boundary is approximately 5m below street level.

The site and adjoining sites to the east, west and south are zoned SP1 Special Activities and is part of the Wollongong Hospital precinct in the Wollongong City Centre.

Directly to the north of the site is the eight (8) storey Wollongong Private Hospital fronting Crown Street. Wollongong Hospital is located due north-east of the site.

The site is adjacent to a residential area to the south that has previously been characterised by low density housing however, many sites are overgoing redevelopment. Significantly there is a recently constructed nine storey residential flat building at No. 28–30 Staff Street, directly adjoining the subject site to the rear.

Property constraints

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

Flooding: The site is identified as being located within an uncategorised flood risk precinct. Council’s Stormwater Officer has reviewed the application and provided a satisfactory referral.

There are no restrictions on the title.

1.5 Submissions

The application was notified in accordance with Council’s Community Participation Plan 2019. A separate email was sent to the owner of 32 Staff Street on 11 September 2023 regarding the proposal to create a drainage easement over that property to facilitate the development. A total of nine (9) objections have now been received and the issues identified are discussed below.

Table 1: Submissions

| Concern | Comment |
| --- | --- |
| **Architectural Merit**   1. The proposal fails to show any level of design excellence nor responds to the topography and the gateway location to the Wollongong CBD | The proposal has been considered by the Design review Panel on several occasions and a series of amendments made to improve the aesthetics and functionality of the building (see commentary by DRP in **Attachment 4**) |
| **Floor Space Ratio**  The proposal results in a non-compliant Floor Space Ratio (FSR) which has not been appropriately addressed nor has a Clause 4.6 Variation been provided | The proposed floor space ratio complies with the maximum floor space ratio that applies to Medical Facilities (3:1) |
| **Lack of Detail**  The submitted documentation provides minimal information in terms of how the proposed hospital will be operated. There are no details provided as to number of staff, patients, level of service, expected time of stay of patients or type of medical services to be provided. We would expect that a development of this scale would be required to provide the basic facts of how the hospital is planned to operate and the mitigation methods to be implemented to address such impacts. | The detailed operation of the health services facility is not provided but the floor plates are designed with opportunities to accommodate the proposed use. The impacts have been assessed based on the applicable controls. Parking rates have been determined by consulting rooms and staff numbers as per DCP requirements (see further comments on parking below) and accepted by Council’s traffic engineer. |
| **Parking**  The accuracy of calculations is questioned given the minimal details and empty floor plates provided.  It has been argued that in accordance with the Section E3 of Wollongong DCP 2009, the proposed development generates the need for 171 spaces. 191 car parking spaces are proposed (an excess of 20 spaces).  In accordance with the definition of GFA, any additional car parking above that as required by the consent authority are included as GFA.  It is argued that the additional spaces cause an exceedance of the GFA standard (3:1) which has not been addressed by a Clause 4.6 Variation request.  There will be considerable strain added to the area by the additional traffic this building will attract. There is already significant parking strain on Staff St and surrounds due to the high population in the area as well as the staff and patients of the two hospitals within a 100m radius. | It should be note that Chapter E3 – Car Parking of WDCP 2009 does not require car parking for medical centres to be provided as a ratio of GFA. The requirements are based on the need generated by the development as follows:  *Medical Centres:*  *4 car parking spaces per consulting room plus 1 car parking space per 3 employees*  The applicant’s traffic consultant has identified the method of calculating the parking requirements for the development as follows:  Day Surgery (18 beds, 20 staff) – 20 spaces.  Specialist Suites (35 suites in use on any given day) -140 spaces  Medical Centre (assume 7 suites, 9 staff) – 31 spaces.  TOTAL 191 spaces  The parking assessment assumes that approx. 30% of the specialist suites would be occupied because most specialists also have consulting rooms in other locations and will also perform surgery on 1 day per week at a nearby hospital.  Council’s Traffic Engineer has assessed the parking requirements and concurs with the recommendations made in the traffic consultant’s report.  Street parking is generally limited in areas associated with hospitals and medical facilities particularly where they are located alongside residential areas. The proposal provides appropriate parking within the site which should not place strain on street parking.  The level of parking proposed is considered acceptable. |
| **Landscaping**  Concerns have been raised in relation to tree removal (19 trees) and that the landscaping provided is not meaningful and will not tolerate shade being located mainly on the southern side of the building. | Council’s landscape officer has assessed the proposal and considers that the landscape scheme proposed is acceptable. Landscaping design has also been the subject of detailed review by the Design Review Panel. |
| **Setbacks**  The proposal results in non-compliant setbacks to the side and street setback controls which reduces the ability to provide adequate landscaping or street activation. | The proposed side and front setbacks are compliant with Council’s DCP and are considered acceptable by the Design Review Panel |
| **Traffic Generation**  The proposed hospital is expected to generate high traffic through all modes, including public transport, which would have implications on the residential housing and the existing public and private hospitals to the north. Furthermore, given the limited details of the proposed uses of the hospital and expected patient and staff numbers we question the accuracy of the provided Traffic Impact Assessment.  Traffic on Staff Street will increase and as it is a narrow street it will not be able to cope. | Development of his nature will result in additional traffic however the traffic generated by the development is unlikely to cause unacceptable impacts. Adequate parking is provided within the site and Transport for NSW have raised no concerns in relation to vehicular access to the site or impacts on traffic flows in Crown Street.  Impacts on traffic in Staff Street are not expected to be significant given that adequate parking provision is made on site. |
| **Overshadowing (28 Staff Street)**  Concern is raised by some residents within the residential flat building at 28-30 Staff Street won't receive any direct sunlight at any point in the day. This will lead to issues with mould and dampness. Not having any direct sunlight will cause the building to be colder in winter which means energy bills will increase.  Concerns are raised that trees and other various plants around the units will now not receive any sun and will likely die.  The shade/shadowing diagrams provided is only show shade/shadowing at one time of year and are not reflective of shade/shadowing patterns throughout a 12-month period. It is believed that the shadowing created by the proposed building will have a much greater impact on the residential properties in Staff Street than indicated in the proposal and may also include additional residential properties not identified in the current proposal. | It is acknowledged that the proposal will result in a significant level of overshadowing to the residential flat building located to the rear of the site at No. 28-30 Staff Street. The Overshadowing however is a factor of site topography and not a consequence of the design of the development.  Any development of the subject site would result in overshadowing of residential properties in Staff Street.  See further comment below in relation to overshadowing. |
| **Privacy**  Concerns are raised that the operation of a 24hour medical centre will affect privacy of adjacent residents and result in lights shining into residential properties. | The nature of the development is such that overlooking is not considered to be a significant concern nor is the lighting provided likely to affect adjacent residential properties. Appropriate conditions of consent will be imposed to ensure lighting complies with relevant Australian Standards to minimise any impacts. |
| **Height**  Concerns regarding to the height of the building are related to overshadowing impacts and success of landscape planting at the rear of the site. | The proposed building height is less than the building height permitted (32m). See comments below in relation to overshadowing |
| **Geotechnical impacts**  The proposed 4 level basement will mean extensive drilling into the bedrock below and may create cracks and destabilise the adjacent residential buildings. | Council’s Geotechnical engineer has reviewed the proposal and raised no concerns subject to imposition of conditions of consent |
| **Views/Property Values**  Every unit will have views impacted, and along with reduced sunlight for majority of residents, and the 24hr nature of the building, value of our building will be greatly reduced. | View impacts are not considered to be significant and property values are not a matter for consideration. See comments below in relation to overshadowing |
| **Noise**  Potential medical helicopter landing and noise this building may incur | The proposal does not include a rooftop helipad. This likely due to the helipad at the public hospital. |
| **Stormwater Drainage (proposed easement)**  The owner of No.32 Staff Street has raised concerns regarding the impacts of the proposed stormwater easement. These include duration of works, impact on trees and retaining wall at the Staff Street frontage. | Notwithstanding the concerns raised, the applicant is seeking to utilise the provisions of s.88K of the Conveying Act, 1919 or by a court order pursuant to section 40 of the Land and Environment Court Act 1979. The matters raised would be addressed in any legal negotiations with the property owner to ensure satisfactory arrangements are made for creation of the easement and construction of the drainage works with minimal impacts on the property. |
| **Submission in Support.**  One submission in support of the proposal notes that there is a need for specialist health professionals to be located in a large building central to both Wollongong Public and Private Hospitals rather than scattered in smaller buildings in residential streets. There is sufficient parking provided and the site is also well serviced by buses. | Noted |

Comments on overshadowing

The subject site slopes steeply to the rear and residential development in Staff Street to the south is at a level of approximately 12m below Crown Street. It should be noted that the rear properties in Staff Street are also zoned SP1 Special Activities (Hospitals, Medical Research and Development). Most severely impacted by overshadowing from the proposed development is a residential flat building at 28-30 Staff Street **(see Figure 2).**

The following photomontages demonstrate the relation of the proposed development to residential properties in Staff Street.



Figure 2: Views from Staff Street

Detailed solar access diagrams are provided at **Attachment 3.** These demonstrate that the proposal has a significant impact on the residential flat building at 28-30 Staff Street. The non-compliance with the requirements of WDCP 2009 in respect of solar access which are as follows:

*1. Windows to living rooms of adjoining dwellings must receive 3 hours of sunlight between 9.00am and 3.00pm on 21 June.*

*2. At least 50% of the private open areas of adjoining residential properties must receive at least 3 hours of sunlight between 9.00am and 3.00pm on June 21.*

*3. The primary balcony of at least 70% of the dwellings within a multi dwelling housing development shall receive a minimum of three hours of direct sunlight between 9.00am and 3.00pm on June 21.*

*4. Windows to north facing living rooms for each of the subject dwellings in the development must receive at least 3 hours of sunlight between 9.00am and 3.00pm on 21 June.*

*5. At least 50% of the private open space area for each of the subject dwellings in the development must receive at least 3 hours of sunlight between 9.00am and 3.00pm on 21 June.*

The detailed solar access diagrams confirm that the above standards for solar access are not achieved by the development however, it is unlikely that any development of the site would be able to maintain compliant solar access due to the topography of the site. It is noted that the proposal is 2.2m below the maximum permissible height with an FSR on 2.8:1 where the permissible FSR is 3:1. The proposal has been revised several times since lodgement on the recommendations of the DRP.

1.6 Consultation

1.6.1 Internal consultation

Council’s Geotechnical Engineer, Landscape Architect, Traffic Engineer and Environment Officers have provided satisfactory referrals and have recommended conditions of consent.

Stormwater Engineer

Council’s Stormwater Officer has reviewed the application and in regard to the initial stormwater design advised that the proposal to dispose stormwater from the rear of the site to the street frontage was not in accordance with Council’s requirements.

After several revised schemes were rejected the applicant has chosen to pursue disposal of stormwater from the rear landscaped portion of the site to Staff Street via a proposed easement to the drain water over one of the rear properties. The stormwater from the building and front portion of the site will be discharged to Crown Street via an OSD system.

The applicant has been unable to gain consent for an easement from any adjoining neighbour and has requested that Council consider supporting a Deferred Commencement consent recognising that if owner’s consent cannot be obtained this will be possible through the Court process.

The applicant’s preferred location for an easement for drainage is adjacent to the eastern side boundary of No.32 Staff Street. It is argued that this location will optimise the potential for amalgamated redevelopment of the land parcels to the south and west of the subject site.



Figure 3: Subject site with location of proposed easement indicated by green line

The applicant has provided a legal advice which confirms that there are two options available for the applicant to obtain an easement where owners consent cannot be obtained. These are:

1. A court order pursuant to section 88K of the *Conveyancing Act 1919* (NSW)); and

2. A court order pursuant to section 40 of the *Land and Environment Court Act 1979* (NSW).

Section 88K of the *Conveyancing Act* provides:

* + - 1. *The Court may make an order imposing an easement over land if the easement is reasonably necessary for the effective use or development of other land that will have the benefit of the easement.*

*Section 40 of the Land and Environment Court Act provides the Court with the power to make orders to impose an easement. It provides as follows:*

***40******Additional powers of Court—provision of easements***

*(1)  This section applies if—*

*(a)  the Court has determined to grant or modify a development consent pursuant to proceedings on an appeal under the*[*Environmental Planning and Assessment Act 1979*](https://legislation.nsw.gov.au/view/html/inforce/current/act-1979-203)*, or*

*(b)  proceedings on an appeal under the*[*Environmental Planning and Assessment Act 1979*](https://legislation.nsw.gov.au/view/html/inforce/current/act-1979-203)*with respect to the granting or modification of a development consent are pending before the Court (whether constituted by a Judge or by one or more Commissioners).*

*(2)  The appellant may make an application to the Court for an order imposing an easement over land.*

*(3)  The parties to an application under this section include the owner of the land to be burdened by the easement, and each other person having an estate or interest in the land, as evidenced by an instrument registered in the General Register of Deeds or the Register kept under the*[*Real Property Act 1900*](https://legislation.nsw.gov.au/view/html/inforce/current/act-1900-025)*.*

*(4)  In dealing with an application under this section, the Court may exercise the jurisdiction of the Supreme Court under section 88K of the*[*Conveyancing Act 1919*](https://legislation.nsw.gov.au/view/html/inforce/current/act-1919-006)*and, in that event, section 88K of the*[*Conveyancing Act 1919*](https://legislation.nsw.gov.au/view/html/inforce/current/act-1919-006)*applies to the Court’s exercise of that jurisdiction in the same way as it applies to the exercise of that jurisdiction by the Supreme Court.*

The applicant has provided a copy of a legal advice (refer **Attachment 5**) which provides examples where development consents have been granted subject to a deferred commencement condition requiring a drainage easement to be created. The applicant in each case pursued proceeding in the court to obtain the subject easement.

Although Council usually requires written consent from the adjoining owner to the grant of an easement for practical and administrative reasons, there is no requirement at law that consent first be given. Indeed, the Land and Environment Court Act 1979 effectively contemplates the grant of development consent without an easement in place (whether or not it is the subject of resistance from the downstream adjoining owner).

On 11 September 2023 Council advised the owner of No.32 Staff Street of the applicant’s intention to seek an easement over their property. On 12 September 2023 the owner advised that the property is leased and is concerned that the proposed works don’t unduly affect the tenants. Concerns are also raised in relation to impact on trees and retaining wall at the street frontage.

The key element from Council’s perspective is ensuring that the design, location and function of the drainage works is understood and appropriate. The land tenure question can be dealt with via a deferred commencement condition, or by an application by an applicant under sec 40 or S.88K of the Conveyancing Act 1919. In this instance the concept stormwater drainage plan which incorporates disposal of stormwater from the rear landscaped area to Staff Street only (the remainder of the development can drain to Crown Street) is considered satisfactory subject to a Deferred Commencement condition. This is incorporated into the Draft Conditions which for **Attachment 7**.

1.6.2 External consultation

Transport for NSW

Transport for NSW initially raised some concerns and requested a meeting with Council and the applicant to discuss access arrangements. Meetings were held to discuss access arrangements and following changes to the driveway crossover design TfNSW have provided their support to the Proposal and have recommended conditions be imposed. These form part of the Draft Conditions provided as **Attachment 7.**

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 7**.

Design Review Panel

The application was reviewed by the Design Review Panel on 25 September 2020,14 December 2020, 22 May 2022 and 19 April 2023. The final comments of the proposal by the DRP form **Attachment 4.**

Having considered several revisions to address concerns raised by the Panel, the Panel are now generally supportive of the proposal and have advised that it meets the criteria for exhibiting design excellence in accordance with Clause 7.18 Of WLEP 2009.

2 Environmental Planning and Assessment Act 1979

2.1 Section 4.15(1)(A)(1) any environmental planning instrument

COASTAL MANAGEMENT Amendment Act 2021

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

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

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

NSW BIODIVERSITY CONSERVATION ACT 2016

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](https://www.legislation.nsw.gov.au/#/view/act/2016/63) (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.

Clause 7.2 of the Biodiversity Conservation Regulation 2017 provides the minimum lot size and area threshold criteria for when the clearing of native vegetation triggers entry of a proposed development into the NSW Biodiversity offsets scheme. For the subject site, entry into the offset scheme would be triggered by clearing of an area greater than 0.25 hectares based upon the minimum lot size of the WLEP 2009 R2 zoned land (i.e. less than 1 hectare minimum lot size).

No native vegetation is proposed to be cleared for the development. The minimum subdivision lot size for the land under WLEP 2009 is 449sqm. Therefore the proposal does not trigger the requirement for a biodiversity offset scheme.

The site is not identified as being of high biodiversity value on the [Biodiversity Values Map](https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/biodiversity-offsets-scheme/entry-requirements/biodiversity-values-map).

Council’s Environmental Assessment Officer has considered whether the development site would potentially provide suitable habitat for any threatened species and the test of significance and has concluded that the proposed development is not expected to likely significantly affect threatened species or ecological communities, or their habitats.  The development proposed would not be considered a key threatened process.

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.

2.1.1 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

Chapter 3 Koala habitat protection 2020

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

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

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

12 Development assessment process—other land

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

*core koala habitat means—*

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

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

2.1.2 State Environmental Planning Policy (Resilience and hazards) 2021

Chapter 4 Remediation of land

4.6 Contamination and remediation to be considered in determining development application.

The site is identified as being contaminated land. A Detailed Site Investigation (DSI) prepared by Aargus dated 30 August 2023, and peer reviewed by a Certified Contaminated Land Specialist, has been considered by Council’s Environmental Division.

The potential source for any contamination is the importation of uncontrolled fill, pesticide use, former service station, car parking, metal corrosion and former building structures. Groundwater samples were tested for contaminants of concern and all results were below the selected site assessment criteria except for dissolved copper, nickel and zinc the concentrations of which were considered unlikely to pose unacceptable risks in groundwater to aquatic ecosystems and considered background levels.

The report concluded that the site can be rendered suitable for the proposed use subject to development of an appropriate remedial / management strategy, culminating in preparation of a Remedial Action Plan (RAP) in accordance with EPA guidelines and any soils requiring removal from the site, as part of future site works, being classified in accordance with the “Waste Classification Guidelines, Part 1: Classifying Waste” NSW EPA (2014).

Conditions have been recommended by Council’s Environmental Officer based on the above. A Site Validation Report will be required to be submitted to Council prior to issue of the Construction Certificate and an unexpected finds protocol (UFP) is to be implemented. Subject to the recommended conditions, no concerns are raised regarding contamination as it relates to the intended use of the land and the requirements and the provisions of clause 4.6 are satisfied.

2.1.3 State Environmental Planning Policy (Planning Systems) 2021

Chapter 2 State and regional development

The proposal falls under Schedule 6, health services facilities with a capital investment value (CIV) of more than $5 million and is identified as regionally significant development.

2.1.4 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

**Division 5, Subdivision 2, Clause 2.47** (formerly Clause 45) of the SEPP applies to developments that will have an impact on electricity infrastructure. An electricity substation is proposed at ground level within the development. Endeavour Energy, as the relevant electricity supply authority has been consulted on the proposal and relevant requirements have been provided which will be enforced by conditions of consent prior to the issue of a Construction Certificate.

**Division 10,** **Clause 2.60** (formerly Clause 57) of the SEPP provides that development for the purposes of a health services facility can be carried out by any person with consent in a prescribed zone, which includes the SP1 zone. A health services facility is defined as:

***health services facility*** *means a building or place used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons, and includes any of the following—*

*(a) a medical centre,*

*(b) community health service facilities,*

*(c) health consulting rooms,*

*(d) patient transport facilities, including helipads and ambulance facilities,*

*(e) hospital.*

The proposed development is a health services facility (with ancillary café), with the fitout of tenancies subject to future development or complying development certificate application. In light of Clause 57, the proposed development is permissible with consent.

**Division 17, Subdivision 2, Clause 2.119** (formerly Clause 101) of the SEPP applies to development with frontage to a classified Road. Crown Street is a classified road and therefore this Clause is applicable to the subject development. Clause 2.119 states the following:

*(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*

*(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*

*(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*

*(i) the design of the vehicular access to the land, or*

*(ii) the emission of smoke or dust from the development, or*

*(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

*(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The subject site only has one road frontage, being Crown Street and therefore there is opportunity for access to be provided from an alternative lower order road. The existing site includes three vehicle crossings to Crown Street. These will be removed and replaced with one new 2-way crossing providing to access the development.

A Traffic and Parking Impact Assessment has been prepared by Varga Traffic Planning Pty Ltd. The report addresses the traffic and parking impacts of the development and demonstrates that the development will not adversely impact the safety and efficiency of Crown Street.

In respect of impacts of noise and emissions on the proposed development, the proposal is for a health services facility which are common along this part of Crown Street. There is nothing to suggest that the proposed use will be unduly impacted by noise and emissions, however an acoustic report has been provided (see below in relation to the requirements of Clause 2.120).

**Division 17, Roads and Traffic, Subdivision 2,** **Clause 2.120** (formerly Clause 102 ) of the SEPP applies to certain developments on land that is adjacent to a road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 20,000 vehicles (based on the traffic volume data published on the website of TfNSW). The proposal is for a medical services facility, a definition which includes a hospital. Mapping for the section of Crown Street to the north of the site is between 20,000 and 40,000 AADT, and therefore assessment of traffic noise is required.

A Noise Impact Assessment prepared by Acoustic Logic has been provided. The SEPP does not specify internal noise levels for hospital/medical services facilities and therefore the recommended internal design sound levels from AS2107:2016 for health buildings have been adopted for the airborne traffic noise internal criteria at the site.

Council’s Environment Officer concurs with the recommendations of the acoustic report and has provided appropriate conditions of consent.

**Division 17, Roads and Traffic, Subdivision 2,** **Clause 2.122** (formerly Clause 104) of the SEPP applies to the proposed development as it includes a car park which has more than 50 car parking spaces and has direct access to a classified road (Crown Street). As such, pursuant to Schedule 3 of the ISEPP the development is classed as traffic-generating development.

The consent authority is therefore required to refer the development application to Transport for NSW and take into consideration any comments received from the referral, as well as the accessibility of the site and any potential traffic safety, road congestion or parking implications of the development.

The application was referred to TfNSW in accordance with this clause. TfNSW initially raised some concerns regarding access arrangements. Following a meeting with Council staff and the applicant’s traffic consultants and submission of amended plans which included an alternative driveway arrangement to prohibit right-turn movements to or from Crown Street and requiring No Right Turn signs facing eastbound traffic in Crown Street and facing exiting traffic within the site. TfNSW have subsequently provided its support for the proposal.

2.1.5 Wollongong Local Environmental Plan 2009

Clause 1.4 Definitions

***health services facility*** means a building or place used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons, and includes any of the following—

(a)  a medical centre,

(b)  community health service facilities,

(c)  health consulting rooms,

(d)  patient transport facilities, including helipads and ambulance facilities,

(e)  hospital.

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 SP1 Special Activities (Hospitals Medical Research & Development).

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

To provide for special land uses that are not provided for in other zones.

To provide for sites with special natural characteristics that are not provided for in other zones.

To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.

The proposal is satisfactory with regard to the above objectives.

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

Advertising structures; Aquaculture; Centre-based child care facilities; Community facilities; Information and education facilities; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Respite day care centres; **The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose**

The proposal is categorised as a **health care facility** as defined above and is permissible in the zone with development consent under SEPP (Transport and Infrastructure) 2021.

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 4.3 Height of buildings

The proposed building height of 29.8m does not exceed the maximum of 32m permitted for the site.

Clause 4.4 Floor space ratio

The site is mapped as having a maximum floor space ratio of 1.5:1 however Clause 4.4A – Floor Space Ratio Wollongong City Centre states:

*(5)  For a building on land within Zone SP1 Special Activities that is to be used for the purposes of hospitals, medical centres or other like uses or a combination of such uses, the maximum floor space ratio is 3:1.*

|  |  |
| --- | --- |
| Maximum FSR permitted for the zone: | 3:1 |
| Site area: | 2,358m2 |
| GFA: | 6,613m2 |
| FSR: | 6,613m² / 2,358m2 = 2.8:1 |

Part 5 Miscellaneous provisions

Clause 5.10 Heritage conservation

The site is not heritage listed nor is it located within a heritage conservation area, however it is located within the vicinity of a listed heritage item being Item 6243 – House located at 366 Crown Street Wollongong.

The heritage items are separated from the subject site by Crown Street and largely obscured by the Wollongong Private Hospital opposite the subject site. The proposed development is generally of a scale and form that is reasonably anticipated by the planning controls that apply to the site, complying with the maximum height and FSR prescribed by the LEP. Furthermore, the proposed development is located in an area undergoing transformation and is of a similar scale to other new developments in the locality where it was considered that the development would not prejudice the heritage significance of the nearby heritage items.

It is considered that the proposed development will have no adverse impact on the heritage significance of the item.

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 proposed health services facility includes 4 levels of basement car parking. The earthworks have been supported by a geotechnical report which has been reviewed by Council’s geotechnical engineer. The excavation is not expected to have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features surrounding land.

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

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

* The site is suitable for the development
* The use is compatible with the existing and likely future uses in the locality
* There are no heritage restrictions or impacts
* The proposal is not expected to result in any adverse environmental impacts.
* The proposal is satisfactory with regard to access, servicing and parking
* No adverse impacts are expected on the public domain.

Part 8 Local provisions—Wollongong city centre

Clause 8.1 Objectives for development in Wollongong city centre

The proposal is considered satisfactory with regard to these objectives.

2.2 Section 4.15(1)(a)(ii) any proposed instrument

Not applicable

2.3 Section 4.15(1)(a)(iii) any development control plan

2.3.1 Wollongong Development Control Plan 2009

An assessment of the proposal against the provisions of WDCP 2009 is provided at **Attachment 6.**

2.3.2 Wollongong City Wide Development Contributions Plan

Wollongong City-Wide Development Plan - City Wide

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 $200,001 – a levy rate of 1% applies.

***Contribution Amount*** *= Cost of Works $29,874,488 x 1% levy rate = $298,744.88*

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)

Environmental Planning and Assessment Regulation 2021

61 Additional matters that consent authority must consider.

Conditions of consent are recommended with regard to demolition.

62 Consideration of fire safety

Not applicable

63 Considerations for erection of temporary structures

1. Not applicable

2.6 Section 4.15(1)(b) the likely impacts of development

There are not expected to be adverse environmental impacts on either the natural or built environments or any adverse social or economic impacts in the locality. This is demonstrated through the following:

* The proposal is satisfactory regarding the applicable planning controls as detailed in the body of this report.
* Submissions raised following notification would not preclude the development.
* Internal and external referrals are satisfactory subject to appropriate conditions of consent

Context and Setting:

The physical impacts of the proposal (i.e. overshadowing, privacy, setbacks, bulk, and scale) on surrounding development have been considered. The proposal has been assessed with regard to the amenity impacts from the development, the zoning, permissible height and FSR for the land, and existing and future character of the area including heritage impacts and is considered to be compatible with the locality.

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

Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal.

2.8 Section 4.15(1)(d) any submissions made in accordance with this Act or the regulations

The submissions have been addressed in Section 1.5 of this report.

2.9 Section 4.15(1)(e) the public interest

The application is not expected to have any unreasonable impacts on the environment or the amenity of the locality. Whilst there will be a degree of overshadowing of the properties fronting Staff Street to the rear of the subject site, in particular the residential flat building at 28-30 staff Street, however this is considered to be a consequence of the topography of the site and not the design of the development as outlined in the report. The proposal is considered appropriate with consideration to the zoning and the character of the area and is therefore considered to be in the public interest.

3 conclusion

This application has been assessed having regard to the Heads of Consideration under Section S4.15(1) of the Environmental Planning and Assessment Act 1979. The proposed development is permissible with consent and has regard to the objectives of the zone and is consistent with the applicable provisions of the relevant planning instruments including Wollongong LEP 2009, relevant state policies, Council DCPs, Codes and Policies. The design of the development is appropriate regarding the controls outlined in these instruments.

The recommendations of the Design Review Panel have been adopted in the revised plans and matters raised by the Panel are satisfactorily resolved. Internal and external referrals are satisfactory, and submissions have been considered in the assessment. The development is of a scale that will have some visual and amenity impacts on surrounding properties. However, these impacts arise from a built form outcome that is largely anticipated (but below) by the current controls and refusal, or redesign of the development is not warranted on this basis.

It is considered that the proposed development has otherwise 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 which form **Attachment 7.**

**ATTACHMENTS**

1 Aerial photograph

1. WLEP zoning map
2. Plans including Solar Access Diagrams
3. DRP comments from 26 September 2022
4. Legal Advice
5. WDCP 2009 Compliance table

7 Draft Conditions