

SOUTHERN REGIONAL PLANNING PANEL

Panel Reference	PPSSTH-159
DA Number	DA-2022/469
Local Government Area	Wollongong City Council
Proposed Development	Multi-dwelling housing development including the construction of 5 individual buildings with a total of 42 dwellings and 96 car parking spaces with associated earthworks, tree removal, construction of an internal private accessway, landscaping, Asset Protection Zone (APZ), stormwater drainage, new electrical substation and strata subdivision of dwellings
Street Address	14 Cosgrove Ave, Keiraville NSW 2500 Lot 90 DP 1086429
Applicant/Owner	Surewin Parkview Pty Ltd
Date of DA Lodgement	23 May 2022
Recommendation	Refusal
Total number of Submissions Number of Unique Objections	<ul style="list-style-type: none"> 102 submissions 102 submissions
Regional Development Criteria Schedule 6 of the SEPP (Planning Systems) 2021	<p>The proposal is regionally significant development as the proposal is general development with a capital investment value over \$30 million.</p> <p>The applicant's CIV estimate for the project is \$30,089,565.</p>
List of All Relevant s 4.15(1)(a) Matters	<p><u>Acts of Legislation</u></p> <ul style="list-style-type: none"> NSW Biodiversity Conservation (BC) Act 2016 Commonwealth Environmental Protection and Biodiversity Act (EPBC) 1999 <p><u>s4.15 (1)(a)(i) Any environmental planning instruments:</u></p> <p><i>State Environmental Planning Policies (SEPPs):</i></p> <ul style="list-style-type: none"> State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning (Resilience and Hazards) 2021 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Planning Systems) 2021 <p><i>Local Environmental Planning Policies:</i></p> <ul style="list-style-type: none"> Wollongong Local Environmental Plan (WLEP) 2009 <p><i>Other policies:</i></p> <ul style="list-style-type: none"> Wollongong City-Wide Development Contributions Plan 2022

	<ul style="list-style-type: none"> Wollongong Community Participation Plan 2019 <u>s4.15(1)(a)(ii) Any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority:</u> <ul style="list-style-type: none"> Nil <u>s4.15 (1)(a)(iii) Any development control plan:</u> <ul style="list-style-type: none"> Wollongong Development Control Plan (WDCP) 2009 <u>s4.15 (1)(a)(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4:</u> <ul style="list-style-type: none"> Nil <u>s4.15 (1)(a)(iv) the regulations: e.g Regs 92, 93, 94, 7.12, 288</u> <ul style="list-style-type: none"> Nil
List all documents submitted with this report for the panel's consideration	Attachment 1 - Aerial Photographs Attachment 2 - WLEP 2009 zoning map Attachment 3 - Plans Attachment 4 - Council's letter to the applicant – 11 October 2022 Attachment 5 - Clause 4.6 Exception Request Attachment 6 - WDCP 2009 Compliance Table
Clause 4.6 request	<ul style="list-style-type: none"> Clause 7.14 Minimum site width of Wollongong Local Environmental Plan 2009
Summary of key submissions	<ul style="list-style-type: none"> Geotechnical concerns -slope instability/risk of landslip Traffic, parking, access arrangements and safety Stormwater run-off impacts/inadequate drainage design Bushfire risk Inappropriate scale and density of development for the location/overdevelopment Inconsistent with existing context and desired future character of the locality
Report prepared by	Vivian Lee, Senior Development Project Officer
Report date	18 October 2022

Summary of s4.15 matters

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

Yes

Legislative clauses requiring consent authority satisfaction

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

Yes

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

Clause 4.6 Exceptions to development standards

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

Yes

Special Infrastructure Contributions

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

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

**Not
applicable**

Conditions

Have draft conditions been provided to the applicant for comment?

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

No

Assessment Report and Recommendation Cover Sheet

Executive Summary

Reason for consideration by Regional Planning Panel

The proposal has been referred to the Regional Planning Panel as the consent authority pursuant to Section 2.15 of the Environmental Planning and Assessment Act (EP&A) 1979, as it involves general development with a capital investment value of more than \$30 million that is defined as Regionally Significant Development under State Environmental Planning Policy (Planning Systems) 2021, Schedule 6, Part 2.

Proposal

The proposal comprises of a multi-dwelling housing development comprising the construction of five (5) buildings with a total of 42 dwellings, 96 car parking spaces, with associated earthworks, tree removal, construction of an internal private accessway, landscaping, Asset Protection Zone (APZ), stormwater drainage, new electrical substation and strata subdivision.

Permissibility

The site is zoned R2 Low Density Residential and C2 Environmental Conservation under the provisions of Wollongong Local Environmental Plan (WLEP) 2009. The proposal is categorised as multi-dwelling housing and is permissible with consent in the R2 zone. Multi-dwelling housing is prohibited in the C2 zone.

Consultation

The proposal was exhibited in accordance with the Wollongong Community Participation Plan 2019. 102 total submissions were received with 102 unique submissions.

Main Issues

The main issues arising from Council's assessment are:

- The proposed scale and design of the development has not appropriately responded to the inherent site constraints, natural landform features or the unique context and character of the locality and is an overdevelopment of the site.
- Stormwater - The development proposes to divert a significant catchment area (approximately 19,000m²) to Council's existing stormwater system in Andrew Avenue and Cedar Grove where this runoff currently does not drain.
- Environment – Biodiversity impacts: The proposal has not been designed to avoid or minimise adverse impacts on the environment. The proposed vegetation removal involves areas containing Illawarra Subtropical Rainforest (Endangered under the BC Act and Critically Endangered under the EPBC Act) and hollow-bearing trees. It is considered that the proposed development is likely to represent a Serious and Irreversible Impact on Illawarra Subtropical Rainforest.
- Heritage – Lack of consideration of the potential heritage impacts in the Heritage Impact Statement with regard to visual analysis and against the Illawarra Escarpment Conservation Area a heritage item under WLEP 2009. The Aboriginal Cultural Heritage Assessment Report does not adequately consider the cultural significance of Mount Keira to the local Aboriginal Community.
- Geotechnical – Risk of slope instability during and after construction.
- Bushfire - Non-compliance with Planning for Bushfire Protection 2019 relating to proposed acceptable solutions and inaccurate vegetation assessment.
- Clause 7.14 Minimum site width of Wollongong Local Environmental (WLEP) 2009.

- Non-compliances with requirements of Chapter B1 Residential Development in Wollongong Development Control Plan (WDCP) 2009.
- No owners consent provided for adjoining properties to the north with the proposed stormwater drainage design and the west associated with Biodiversity Management Plan (BMP) works and geotechnical extent of the building area.

Conclusion

The proposed development has been assessed with regard to the relevant prescribed matters for consideration outlined in Section 4.15 of the Environmental Planning & Assessment Act 1979. The proposed development is inconsistent with the relevant planning instruments.

The proposed development is considered to result in adverse impacts on the character and amenity of the surrounding area, environment and adjoining development. The site is not suitable for the proposed development and the approval would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.

RECOMMENDATION

DA-2022/469 be **Refused**.

1 APPLICATION OVERVIEW

1.1 PLANNING CONTROLS

The following planning controls apply to the development:

Relevant Acts of Legislation:

- NSW Biodiversity Conservation Act (BC) 2016
- Commonwealth Environmental Protection and Biodiversity Act (EPBC) 1999

State Environmental Planning Policies

- SEPP (Biodiversity and Conservation) 2021
- SEPP (Resilience and Hazards) 2021
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Planning Systems) 2021
- SEPP (Transport and Infrastructure) 2021

Local Environmental Planning Policies:

- Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans:

- Wollongong Development Control Plan (WDCP) 2009

Other policies:

- Wollongong City-Wide Development Contributions Plan 2022
- Planning for Bushfire Protection 2019

1.2 DETAILED DESCRIPTION OF PROPOSAL

The proposal seeks consent for a multi-dwelling housing development including the construction of 5 individual buildings with a total of 42 dwellings and 96 car parking spaces with associated earthworks, tree removal, construction of an internal private accessway, landscaping, Asset Protection Zone (APZ), stormwater drainage, new electrical substation and strata subdivision of dwellings. Refer to **Attachment 3** for Plans for the proposed development.

Multi-dwelling housing

This development comprises of 42 dwellings (including 5 adaptable dwellings) over 5 buildings of:

- 31 x 3-bedroom dwellings; and
- 11 x 4-bedroom dwellings.

The breakdown of the 5 buildings is:

Building	Dwelling Nos.	Total no. of dwellings	Details
1	1-3	3	3 x 3 bedrooms
2	4-16	13	10 x 3 bedrooms, 3 x 4 bedrooms
3	17-29	13	10 x 3 bedrooms, 3 x 4 bedrooms
4	30-40	11	8 x 3 bedrooms, 3 x 4 bedrooms
5	41-42	2	2 x 4 bedrooms
Total	42 dwellings		

Parking, access and servicing

- A total of 96 parking spaces comprising of:
 - 84 residential car parking spaces (double garage for each dwelling), located in a basement area for Buildings 1-4
 - 12 visitor car parking spaces (at grade)
 - 6 motorcycle parking spaces
 - 10 residential and 4 visitor bicycle parking spaces
- A service bay is provided adjacent to the utility and waste management area towards the front of the site to provide parking for service contractors and removalist vehicles. Any bulky goods will then be required to be transported up the access driveway by light vehicles or vans.
- A turning bay area for NSW RFS vehicles is provided north of Building 5.
- A large vehicle turning bay is provided adjacent to the waste/recycling utility area.
- Vehicular access is provided by an internal loop driveway however, for residents a two-way driveway along the NE side of the dwellings only may be used. The majority of the SW length of the loop road is one way and locked only for the use of emergency vehicles e.g. Fire & Rescue and Rural Fire Service therefore no resident access. The driveway is partially suspended north of Buildings 3 and 4 and a portion of the southern part of the S bend.
- Pedestrian access provided along the SW length of the road, only a portion of the NE length and between buildings.
- The bin storage area is located towards the front the site within the utility and waste management area. Council waste collection is proposed.

Site preparation

- Significant bulk earthworks including up to approximately 10m of cut and 3.5m of fill.
- Tree removal with all existing trees within the developable area to be removed totalling 261 trees.
- Geotechnical Remediation works

Vegetation Management & Landscaping

- Landscaping works associated with the buildings including main communal open space south of building 5 (Eagle Nest Park), between the buildings on the podium level and green roofs.
- Vegetation management works within the SW corner of the site corresponding with the C2 zoned land.

Stormwater drainage/Water Sensitive Urban Design

- The stormwater drainage system designed to divert flows from the site to towards Cosgrove Avenue and Council's existing stormwater drainage system in Andrew Avenue and Cedar Grove.
- Drainage infrastructure and easement on 2 adjoining properties, Lot 100 DP 1257652 and 2 Cosgrove Avenue
- WSUD measures proposed including a bio-retention pond near the 'S' bend of the driveway.

Integrated Development

The proposal has been nominated as Integrated Development for a Special Fire Protection Purpose under section 4.46 of the EP& A Act 1979 and section 100B of the Rural Fires Act 1997 as the development seeks subdivision on bushfire prone land requiring a Bush Fire Safety Authority from the NSW RFS.

The proposal has also been nominated as Integrated Development requiring General Terms of Approval from NSW Department of Planning and Environment – Water as the proposal involves work with 40m from the top of bank of a watercourse, pursuant of the *Water Management Act 2000*.

1.3 BACKGROUND

Development History

The site has been vacant historically with a number of applications lodged for the property.

DA-2009/180 – Construction of site shed/garage – Refused – 5 January 2010

DA-2009/838 – Construction of dwelling house and access driveway – Refused – 19 April 2010

RD-2009/838/A – Review of DA-2009/838 – Approved – 9 March 2011

DA-2012/545

Development consent was granted by Council on 29 November 2012 for a Torrens title subdivision of the site into three (3) residential lots including the construction of an access driveway and tree removal.

An associated Construction Certificate was issued on 12 October 2017 (PC-2017/1443) for the access driveway. It is unclear if works have been carried on site to demonstrate the consent has been acted upon.

Pre-lodgement meetings

PL-2017/105

On 12 July 2017, a pre-lodgement meeting was held for a proposed 24 community title lot subdivision. Council Officers were not supportive of the proposal considering that the proposed subdivision design did not appropriately respond to the inherent site constraints and natural landform features. This was due to the proposed extent of bulk earthworks, access roads grades, height and length of retaining walls required and likely associated batter to accommodate the proposed number of lots and developable area for future dwellings. A development application was not lodged with Council for this proposal.

PL-2019/39

On 1 April 2019, a pre-lodgement meeting was held in relation to the subject development for a multi-dwelling housing development comprising a total of 53 dwellings. Council Officers were not supportive of the proposal, considered to be an overdevelopment of the site.

The advice provided that an alternative design response/development outcome should be explored that better reflects the known outcomes for the site from past development assessments, that have considered both the visual prominence and attributes of the site in both the immediate and wider locality.

If it remained the opinion of the applicant to continue with the current design presented, it was suggested a voluntary Design Review Panel process occur prior to the lodgement of the application and followed by a further pre-lodgement meeting with Council if further revisions were made to the proposal.

DA-2020/4

DA-2020/4 was lodged with Council on 7 January 2020. The proposal sought the consent for a multi-dwelling development comprising the construction of five (5) buildings with a total of 47 dwellings, 109 car parking spaces, associated earthworks, tree removal, internal accessway, landscaping, APZs, stormwater drainage, substation and strata title subdivision. The application was subject to a voluntary Design Review Panel process. The proposal was considered by the DRP on 26 March 2020 that did not support the proposal. Council staff recommended the refusal of the application and the application was determined by SRPP on 30 September 2020 by way of refusal.

Class 1 proceedings

A Class 1 Proceedings filed with NSW LEC against refusal of DA-2020/4 and the documents filed proposed a 42 Multi dwelling housing development of a similar design as determined by SRPP. A s34 Conciliation Conference was held on the 19 August 2021. On 26 October 2021 the Class 1 proceedings were discontinued by the proponent.

Subject Development Application – DA-2022/469

A timeline of the assessment of the application:

23 May 2022	Development application lodged with Council.
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29 June 2022	The application was notified between the 29 June 2022 to 29 July 2022. A total of 102 submissions have been received.
27 July 2022	SRPP Briefing held for application at Council.
25 August 2022	Class 1 proceedings filed with the Land and Environment Court against the deemed refusal of DA-2022/469. The documents lodged for the Class 1 proceedings are the same as for the DA-2022/469.
30 August 2022	Teleconference briefing with SRPP. Council notified SRPP of the Class 1 Appeal.
19 September 2022	Council requests delegation to defend the Appeal from the Panel Secretariat.
4 October 2022	Panel Secretariat provides Council with delegation to defend Appeal.
5 October 2022	The Statement of Facts and Contentions was filed with Court.
11 October 2022	Council sent a letter to the applicant requesting the consideration for the application be withdrawn and a more complete application be re-lodged at a future time due to the re-design of the proposal required to address the extensive list of matters for the development. Council's letter is presented at Attachment 4 .
1 May 2023	Court hearing dates have been set to commence in May 2023. No s34 conciliation conference is to be held as requested by the proponent and agreed to by Council.

Summary comparison of current DA (DA-2022/469) with previous DA-2020/4

Site Area = 36,753sqm (excluding C2 land)

	Previous DA (DA-2020/4)	Current DA (DA-2022/469)
No. of dwellings	47 dwellings	42 dwellings
GFA	9332sqm	7864sqm
FSR	0.25:1	0.21:1
Bulk earthworks	Cut and fill only associated with building footprints and internal loop road	Additional cut and fill across the entire development site with an increase to the bulk earthworks across the site
Cut	Up to 12m	Up to 10m
Fill	Up to 6m	Up to 3.5m
Levels/Height	Building 1 - RL 104.20 Building 2 – RL 117.70 Building 3 – RL 128.90 Building 4 – RL 137.10 Building 5 – RL 140.60	No changes to the levels of the buildings from the previous proposal Remains below the maximum 9m height limit

Fundamentally, the proposal is almost the same design to the previous application (DA-2020/4) with some of the more notable changes being:

- Reduction in total number dwellings by 5, from 47 to 42 dwellings.

- An attempt to try and break up the massing of the buildings 2-4 by not having all the dwellings continuously attached on the upper levels however, it is noted that each building still remains to be constructed over a common podium and basement car park.
- Increase in amount and extent of bulk earthworks across the site (the previous DA was restricted to the road and building footprint).
- A proposed easement and stormwater outlet pipe potentially on 2 adjoining northern properties Lot 100 DP 1257652 and 2 Cosgrove Avenue. Biodiversity Management Plan works on adjacent western lots.
- Changes to the pedestrian access within the site and retaining walls within the development.

Draft Wollongong Housing Strategy

Relevant to the site is the Draft Wollongong Housing Strategy that is currently on exhibition from 10 October to the 2 December 2022. This Draft Wollongong Housing Strategy was presented in Item 1 of Council's Business Paper of the Ordinary Meeting of Council on the 29 August 2022 where it was resolved to be placed on public exhibition

Item 1 indicates that the R2 zoned portion of the site is under review because the current zoning does not reflect the site constraints.

'Key location changes – Housing growth in the right locations' that 'proposes the modification of the planning for housing controls in the following locations due to environmental and infrastructure constraints including, the Illawarra Escarpment Foothills (Farmborough Heights to Stanwell Park) – decrease residential development potential due to environmental constraints. An ancillary review of large residential lots in the escarpment foothills is in preparation.

It is considered the Site will form part of a review that has identified properties over 1 hectare with a R2 residential zoning located within the escarpment foothills. This review is listed as key priority in the Draft Wollongong Housing Strategy to be implemented by a draft Planning Proposal for large lots in the Illawarra Escarpment foothills to be prepared by Council.

The Council Business Paper for item 1 identifies site specific rezoning proposals and submissions received during and after the exhibition of the draft Options Paper, nominated sites for review that included the Site as outlined by the following:

'14 Cosgrove Avenue, Keiraville

This site is privately owned and has an area of 4.19 hectares. The property was created in 1960 as part of the subdivision of land to the west of Robsons Road, which created 105 lots in Georgina Ave, Andrew Ave and Cedar Grove. The majority of the site is zoned R2 Low Density Residential (3.52 hectares), with the remaining portion zoned C2 Environmental Conservation.

The site has been subject to a number of historic development applications, and the following 2 recent development applications –

DA-2020/4 for 47 multi-unit dwellings was refused by the Local Planning Panel and an appeal to the Land and Environment Court was withdrawn by the applicant.

DA-2022/469 for 42 multi-unit dwellings which is currently under assessment

Neighbourhood Forum 5 submitted a request to rezone this privately owned site and a second request for Council to rezone it.

This site is one of a number of large properties zoned R2 Low Density Residential along the foothills of the Illawarra Escarpment where the zoning does not reflect the site constraints. Previous reviews including the Illawarra Escarpment Commission of Inquiry (1999) and Illawarra Escarpment Strategic Management Plan (2008, 2015) excluded land with a residential zone. The current zoning of this site and a number of other properties are relics from the Illawarra Planning Scheme Ordinance (1968) where the zoning aligned with property boundaries and does require review. Due to high land prices and

reduced land supply these larger steep lots are under increasing development pressure. The draft Housing Strategy includes the review of planning controls of this and other similar sites. Work on this review has commenced and will be separately reported to Council.'

Customer service actions

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

1.4 SITE DESCRIPTION

The subject site is located at 14 Cosgrove Avenue, Keiraville and the title reference is Lot 90 DP 1086429. The lot is situated on the western side of Cosgrove Avenue, close to the T- junction with Andrew Avenue. Cosgrove Avenue is a cul-de-sac.

The land is irregular in shape with a narrow access handle from Cosgrove Avenue with a width of 18.62m. The site has a total area of approximately 41,934sqm. The R2 zoned portion of the site is approximately 36,753sqm. The C2 zoned land is located in the south west corner of the lot.

The site is vacant lot and partially cleared that generally coincides with the centre ridgeline of the site. The remainder of the site is significantly vegetated. A watercourse traverses the edge of the south west corner of the site.

The Site occupies land at and beyond the urban fringe. It is located on the foothills of the Illawarra Escarpment, along a ridgeline that runs from Mount Keira to Cosgrove Avenue. A crest is located in the north west corner of the Site. The Site falls from this crest to the north to a watercourse located on the adjoining properties, to the east to the Cosgrove Avenue Road Reserve and to the C2 zoned area of the Site and beyond to the south.

The topography of the land contains ridgeline that runs approximately from the crest at RL 139 in the north west corner downhill south east of the Site towards the frontage at Cosgrove Avenue at RL 64. The Site falls steeply of approximately 75m. The Site falls from this crest to the north to a watercourse located on the adjoining properties, to the east to the Cosgrove Avenue Road Reserve and to the C2 zoned area of the Site and beyond to the south.

Development south of the site comprises of the rear yards of the residential lots along Cedar Grove and to east the rear yards of properties along the western side of Cosgrove Avenue both with predominantly detached dwellings. To the north of the site is land that forms part of University of Wollongong that is heavily vegetated and immediately west is an unformed road with the foothills of Mount Keira beyond that forms part of the Illawarra Escarpment. At the frontage of the site at Cosgrove Avenue, to the south east is a small lot containing an electricity substation. Immediately south is 2 Andrew Avenue and north 12 Cosgrove Avenue with a two storey dwelling house.

To the immediate west of the Site is an historic 'paper' road reserve. There are no improvements within this area and the reserve area is heavily vegetated. To the immediate west of the road reserve is the Illawarra Escarpment State Conservation Area zoned C1 National Parks and Nature Reserves.

Generally, development in the vicinity of the site comprises of low-density development with a mix of single to two storey detached dwellings with associated outbuildings.

Aerial photographs of the site are presented as **Attachment 1**.

Property constraints

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

- Flood affected – uncategorised flood risk precinct
- Bushfire prone land
- Unstable land
- Natural resource sensitivity – biodiversity
- Illawarra Escarpment Area
- Heritage conservation area – Illawarra Escarpment Landscape Area

There are no restrictions on the title.

1.5 SUBMISSIONS

The application was exhibited in accordance with Council's Community Participation Plan 2019. A total of 102 total submissions with 102 unique submissions were received, and the main issues identified are discussed below.

Table 1: Submissions

Concern	Comment
1. Geotechnical concerns - slope instability - increased risk of landslip - site safety and stability due to the extent of proposed earthworks, tree removal and design of the proposal	<p>Council records list the site as unstable land affected. Concerns are raised on the risk assessment carried out in the submitted Geotechnical Site Investigation Report and risk of instability both during construction and after completion of the development. Refer to discussion in Chapter E12 of WDCP 2009 at Attachment 6.</p>
2. Traffic, access, parking, safety - increase in traffic generation - adverse impact on local road network, - congestion - insufficient parking - safety of pedestrians, - traffic impact assessment is deficient and has not considered the draft Keiraville Access and Movement Study - inadequate access within and ingress/egress to the site and in the event of an emergency - driveway grades non-compliant	<p>A Traffic Impact Assessment (TIA) was submitted with the application and was reviewed by Council's Traffic Officer who considered the methodology used satisfactory including traffic volumes and RTA guideline rates. Overall, it is considered the proposal is unlikely to generate traffic that will adversely impact the local road network and the development design will not adversely impact pedestrian safety external to the site.</p> <p>However, concerns have been raised with pedestrian access, emergency services access, grades and internal road design provided with the development that are discussed further in Chapter B1 and E3 of WDCP 2009 at Attachment 6.</p> <p>It is noted that the parking proposed the development complies with the rates in Chapter E3 of WDCP 2009.</p>
3. Stormwater/Flooding matters - stormwater runoff impacts - Inadequate stormwater drainage proposed for development	<p>Council records identify the site to be flood hazard affected and within an uncategorised flood risk precinct. The application has been reviewed by Council's Stormwater Officer where it has been provided the flooding within the vicinity of the site is confined to the watercourses within valleys to the north and south of the development. The development itself is located wholly above the flood planning level and is unlikely to result in adverse flooding impacts.</p> <p>However, significant concerns have been raised with regard to the proposed stormwater design for the development that results in the diversion of water from existing catchment areas that is inconsistent with Council's Policies and unsatisfactory referral advice has been provided by Council's Stormwater Officer. Refer to further discussion on the matter in section 3.2.6 of the report and Chapter E14 Stormwater Management of WDCP 2009 at Attachment 6.</p>
4. Bushfire impacts	The site is identified as bushfire prone land and the development is Integrated Development under the

Concern	Comment
<ul style="list-style-type: none"> - increased risk - non-compliance with Planning for Bushfire Protection 	<p>Rural Fires Act 1997. No response has been received from the RFS to date however, it is considered the proposal has not demonstrated compliance with the requirements of Planning for Bushfire Protection (PFBP) 2019.</p> <p>Refer to further discussion about the matter is provided in section 1.6.2 and Chapter E16 Bush Fire Management in WDCP 2009 at section 3.4.1 of the report.</p>
5. Visual amenity impacts on the Illawarra Escarpment/ adequacy of visual impact assessment	<p>It is considered there are deficiencies in the visual impact assessment submitted and the proposal has not demonstrated it will not result in adverse visual impacts within on the Illawarra Escarpment.</p> <p>Refer to further discussion on the matter provided at section 3.2.6 under Clause 5.10 of WLEP 2009 and in Chapter B6 Development in the Illawarra Escarpment and Chapter E11 of WDCP 2009 at Attachment 6.</p>
6. Aboriginal cultural heritage impacts on Mount Keira	<p>Mount Keira is considered to be of high cultural landscape significance to the local Aboriginal Community and the submitted Aboriginal Cultural Heritage Assessment Report does not adequately consider this cultural significance.</p> <p>The application was reviewed by Council's Heritage Officer and unsatisfactory referral advice was provided. Refer to further discussion on the matter at Chapter E10 Aboriginal Heritage in WDCP 2009 at Attachment 6.</p>
7. The proposal is inconsistent with the objectives of the R2 and C2 zoning for the land	The proposal is considered inconsistent with objectives of the R2 Low Density Residential and C2 Environmental Protection zoning for the land as discussed in clause 2.3 of WLEP 2009 at section 3.2.6.
8. Inappropriate scale and density of the development for the location /Overdevelopment of the site	<p>The design and density of the development is not considered appropriate for the site, being located in a prominent location with significant site constraints. The proposal presents as an overdevelopment of the site and would likely result in adverse environmental, cultural; amenity impacts and is therefore inconsistent with the character of the locality.</p> <p>This matter is discussed throughout the report</p>
9. Inconsistent with the existing and desired future character of the locality <ul style="list-style-type: none"> - gated community - loss of neighbourhood and community for Keiraville 'village' 	The proposed development is considered to be inconsistent with the existing character of Keiraville. However, whilst it is noted the development type is supported as desired future character, the design of the development is not considered appropriate for the site context. Refer to discussion in Chapter D1 Character Statements at Attachment 6.
10. Not within public interest and will a set a precedent	The application is likely to have unreasonable impacts on the environment and the amenity of the locality. The proposal is considered inappropriate with consideration to site constraints, contrary to the relevant planning controls and in the current form, would not be considered in the public interest and approval of the development would set an undesirable precedent.

Concern	Comment
11. Reasoning for zoning changes of the site prior to WLEP 2009	Previously under WLEP 1990 the site was zoned 2a Low Density Residential and 7b Environmental Protection Conservation Zone. This would translate to the same portions of the site with the current zoning of the land under WLEP 2009 as R2 Low Density Residential and C2 Environmental Protection under WLEP 2009. Whilst submissions have raised concerns to the reasoning of potential zoning changes prior to WLEP 2009. The application requires to be assessed under the current zoning of the land under WLEP 2009.
12. Poor design and unacceptable internal amenity for future occupants	It is considered the design of the proposal has not appropriately responded to the inherent site constraints, natural landform features or the unique context and character resulting in adverse environmental and amenity impacts. In addition, poor amenity of the future occupants of the development and in the non-compliances of the proposal with WDCP 2009 at Attachment 6.
13. Amenity impacts on adjoining properties relating to privacy, noise, overshadowing	It is considered that the proposal has not adequately demonstrated that will not be adverse amenity impacts on the adjoining properties. Refer to discussion on this matter in WDCP 2009 at Attachment 6.
14. Strain on existing road and infrastructure in the locality	The application has been reviewed by Council's Traffic Officer and it is considered there that there is capacity within the local road network to cater for the proposed development.
15. Inadequate/inappropriate waste disposal and collection	The proposal seeks Council's waste collection within the site from the utility and waste area. Concerns are raised with regards the waste management arrangements within the site, discussed in Chapter E7 Waste Management at Attachment 6.
16. Light pollution	The application has not provided information that has adequately addressed the potential impacts of light pollution for the proposal with the site being situated in such a prominent location. Due to insufficient information being provided, it is considered the proposal could have potential amenity impacts on the locality and surrounding area in this regard.
17. Construction impacts	It is considered there could be potential construction impacts for the proposal due to the topography of the site, limited access and design of the development. Noise construction impacts related to the extensive amount of excavation and associated machinery and truck movements were also raised by Council's Environment Officer. This matter has not been adequately addressed.
18. Environmental impacts on biodiversity, flora and fauna, loss of habitat	The proposal fails to demonstrate compliance with a number of relevant policies and plans and therefore considered the development will likely result in adverse environmental impacts. This is discussed throughout the report, refer to sections 2.1, 3.1 regarding the assessment under the Biodiversity Conservation Act, relevant state policies 3.2.1 and relevant clauses and chapters in WLEP 2009.

Concern	Comment
19. Not ecologically sustainable development/inadequate consideration of climate change impacts	The proposal is considered to be inconsistent with the principles of Ecologically Sustainable Development, refer to discussion in Chapter A2 of WDCP 2009 at Attachment 6.

1.6 CONSULTATION

1.6.1 INTERNAL CONSULTATION

Details of the proposal were referred Council's Stormwater, Landscape, Traffic, Environment, Heritage, Strategic, Subdivision, and SCAT Officers raised a number of concerns and provided unsatisfactory referral advice that is discussed throughout the report on the relevant sections. Whilst Council's Geotechnical Officer provided satisfactory referral advice, based on previous consultant advice on the court proceedings for the appeal to the previous DA-2020/4 it is considered concerns are raised with regard to risk of land stability.

It is noted that unsatisfactory referral advice from the internal referrals is presented in Council's letter to the applicant at **Attachment 4** which remains outstanding.

1.6.2 EXTERNAL CONSULTATION

NSW Rural Fire Service (RFS)

The proposal is Integrated Development for a Special Fire Protection Purpose under section 4.46 of the EP& A Act 1979 and section 100B of the Rural Fires Act 1997 as the development seeks subdivision on bushfire prone land requiring a Bush Fire Safety Authority from the NSW RFS. No response has been received to date.

Department of Planning and Environment – Water (formerly Natural Resource Access Regulator)

The proposal seeks works within 40m from the top of bank of the watercourse associated with asset protection works. The application was considered Integrated Development pursuant to the Water Management Act 2000 requiring a Controlled Activity Approval under section 91(2). The development application was referred to NRAR for their General Terms of Approval. No response has been received to date.

Heritage NSW

The application was referred to Heritage NSW for concurrence with regard to the whether the proposal requires an Aboriginal heritage impact permit (AHIP) under section 90 of the National Parks and Wildlife Act 1974 and General Terms of Approval (GTAs) to be issued. Correspondence received from Heritage NSW dated 18 August 2022 has indicated that the application does not require an AHIP or GTAs however, the advice did identify a number of matters that should be considered with regard to Aboriginal cultural heritage assessment and were noted to be addressed in the application as provided below:

Heritage NSW notes that there are significant Aboriginal cultural heritage values associated with this area and concerns have been raised by the local Aboriginal community about the potential impact of the development.

While there has been some engagement with the cultural values of the space within the Aboriginal Cultural Heritage Assessment (ACHA), the values are not clearly articulated and there has been limited assessment of the impact to these values were the development to proceed. A cultural values assessment or alternative community engagement approach to support the ACHA developed by or in close consultation with the local Aboriginal community may help assist Council to make a decision on the appropriateness of the development.

While the measures proposed by the developers commit to engaging with these values, designing with Country should occur prior to the DA being approved to ensure design is appropriate and sympathetic to the landscape and appropriately avoids or mitigates impact to values. To consider approving the development before understanding how the development will impact values limits the ability for Council to influence positive outcomes for Aboriginal communities.

The application was also referred to Heritage NSW for comment under Clause 5.10 of Wollongong Local Environment Plan (WLEP) 2009 with regard to the site being located in the vicinity of the State Heritage listed item Glennifer Brae. Correspondence was received from Heritage NSW dated 22 August 2022 and number of comments were raised for considered with regard to heritage assessment of the proposal.

- The proposal is removed from the SHR listed *Glennifer Brae* and a line of trees partially occlude the views towards Mount Keira.
- Aerial photographs and site pictures indicate that the subject place is highly vegetated. This dense vegetation provides the *topographical setting* that allowed Sorensen to *incorporate the surrounding landscape and flora into the overall design and to capture and extend the dramatic effect of the natural landscape* within the gardens for which *Glennifer Brae* is listed on the SHR.
- The visual impact assessment indicates that there is a potential for minor amendment in the views from *Glennifer Brae* due to the location on the proposed development upon higher ground.
- Majority of this visual impact would be created due to clearing of mature trees within the subject place. It is noted that proposed landscape diagrams indicate that while new planting is proposed it would take up to 10 years for landscape maturity.
- It is recommended that mature, significant tree specimens should be identified within the subject place and as much as possible, be retained and protected. If retention in situ is not possible, there should be some consideration given to transplanting trees to alternate locations to maintain some density in tree cover.
- In addition, it is also recommended that more mature specimens specific to the Illawarra Escarpment should be planted within the development to provide additional green cover and ensure that the views towards Glennifer Brae are retained as much as possible.

Sydney Water

Details of the application submission were referred to Sydney Water for comment. Advice provided to Council dated 30 June 2022 indicate water servicing should be available however amplifications may be required and wastewater services although extensions will be required to be undertaken to service the development where full details would be provided at the Section 73 application stage.

Endeavour Energy

The application was referred to Endeavour Energy under section 2.48 of State Environmental Planning Policy (Transport and Infrastructure) 2021 as development likely to affect an electricity transmission or distribution network. Correspondence was received from Endeavour Energy dated the 5 July 2022. There was no objection to the development application subject to the recommendation and comments that primarily related to the design requirements of the proposed new padmount electrical substation on the site towards the frontage of the site north of the driveway.

Illawarra Local Aboriginal Land Council

A submission was received from the Illawarra Local Aboriginal Land Council on 21 September 2022, referring to their submission that was provided for previous development application on the site DA-2020/4 where their concerns and objections remain the same. Fundamentally they object to the development due to the visual impacts that it will have on Djeera (Mount Keira - a place of immense significance to the Aboriginal community) its cultural values, visual amenity and the landscape to which is central.

2 OTHER ACTS OF LEGISLATION

2.1 COMMONWEALTH ENVIRONMENTAL PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

The site is identified as containing native vegetation listed as a Critically Endangered Ecological Community (CEEC) under the Commonwealth Environmental Protection and Biodiversity Conservation (EPBC) Act 1999 known as Illawarra-Shoalhaven subtropical rainforest in the Sydney Basin Bioregion (Illawarra Subtropical Rainforest).

The Biodiversity Assessment Report (BDAR) submitted with the application has numerous deficiencies including significant discrepancies and errors throughout the report. The proposal does demonstrate that it has been designed to avoid or minimise adverse impacts on the environment. The proposed vegetation removal involves areas containing Illawarra Subtropical Rainforest (Endangered under the BC Act and Critically Endangered under the EPBC Act) and hollow-bearing trees

Local vegetation mapping (NPWS 2002) indicates approximately 3 hectares of the CEEC within the locality. The proposed removal of 0.2 hectares of Illawarra Subtropical Rainforest represents impacting upon more than 5% of the ISR within the locality. The proposal is therefore considered likely to represent a Serious and Irreversible Impact (SAIL) on Illawarra Subtropical Rainforest under the Biodiversity Conservation Act.

The application was reviewed by Council's Environment Officer, and it is considered the proposal will have a Serious and Irreversible Impact on Illawarra Subtropical Rainforest and will also require a referral to the Commonwealth for approval from the Australian Government Minister for the Environment and Energy. This referral has not been sent.

3 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.

3.1 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 identified to have native vegetation of NSW plant community type Illawarra Subtropical Rainforest (ISR). This plant community type on the site is listed as an Endangered ecological community (EEC) under the BC Act as Illawarra Subtropical Rainforest.

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 has been triggered by clearing 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).

A total area of 0.25 hectares of 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 triggers the requirement for a biodiversity offset scheme.

Part 6 of the BC Act outlines the details of the NSW Biodiversity offset scheme and details the requirements of the biodiversity development assessment report (BDAR).

A BDAR prepared by Biosis was submitted with the application. The key objective of the BDAR process is to avoid impacts as much as practicable. This has not been demonstrated in the BDAR.

The proposed vegetation removal involves areas containing Illawarra Subtropical Rainforest (Endangered under the BC Act and Critically Endangered under the EPBC Act) and hollow-bearing trees. The exact area that will be impacted is uncertain due to significant errors and discrepancies in the BDAR.

The assessment states that 0.02ha of ISR will be directly impacted and 0.6ha will be indirectly impacted. Local vegetation mapping (DPIE 2010) indicates approximately 8.25 ha of the CEEC within the locality. Indirect impacts to ISR from the proposal represent approximately 5.3% of the community within the locality. As the proposal does not include the recommended buffers outlined in the conservation advice, the assumptions made in the impact assessment are considered inaccurate.

Overall, the proposed development has not demonstrated it has been designed and sited to avoid impacts with the extent of native vegetation removal sought to minimise adverse environmental impacts.

Council's Environment Officer has reviewed the application and considered the proposal unsatisfactory with regards the requirements of the BC Act and is considered likely to be a Serious and Irreversible Impact on ISR.

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

3.2.1 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

Chapter 4 Koala habitat protection 2021

Section 4.9 Development assessment process – no approved koala plan of management for land

The site is more than 1 hectare and does not have an approved koala plan of management applying to the land. Accordingly, as this is a Development application for consent to carry out development on the land, it must be assessed whether the development is likely to have any impact on koalas or koala habitat.

BDAR submitted states that:

“Seven records of Koala have been recorded within 5 kilometres of the study area, between 1998 and 2020. A habitat based assessment was undertaken within the study area to determine Koala activity. No signs (Scats, urine stains, scratches, fur) and/or individual Koala's were located during survey. Therefore, the vegetation in the study area does not constitute core Koala habitat as defined under SEPP Koala Habitat Protection 2019. No further consideration is required.”

It is noted that the BDAR ~~as~~ references the incorrect SEPP, as *SEPP Koala Habitat Protection 2019* has been repealed. However, as the site contains Koala use tree species identified in the Schedule 3 of the South Coast koala management area that are proposed to be removed, and due to the recent sightings of Koalas in the immediate vicinity, it cannot be certain that the proposal will not have a higher level of impact on this species. Therefore, a Koala Assessment Report is required to be submitted with the application. As no Koala Assessment Report was provided it is considered the requirements of Chapter 4 Koala habitat protection of this policy have not been satisfied.

3.2.2 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 4 Remediation of land

A desktop audit via Council's land information system database for property constraints and previous uses was undertaken to understand the likelihood of contamination issues.

A Preliminary Site Investigation (PSI) has been provided where the following potential sources of contamination, areas of environmental concern (AEC) were identified: AEC 1 with potential localised fill within the eastern portion of the site near Cosgrove Avenue and AEC 2 with potential former herbicide or pesticide use within the south western corner where the tributary passes through the site.

The submitted PSI concluded that based on the site history and site observation result, the potential for contamination to be present at these AECs was assessed as low. As there is considered to be a low potential for contamination from previous site uses, no further investigation with respect to contamination is considered necessary.

Council's Environment Officer has reviewed the history of the site in conjunction with the submitted documents and considers the site presents low risk for contamination and that the site can be made suitable for the proposed residential use subject to conditions including an unexpected finds protocol. It is considered that the matters in Chapter 4, section 4.6 of this policy can be satisfied and site will be suitable for the intended use.

3.2.3 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.

3.2.4 STATE ENVIRONMENTAL PLANNING POLICY (PLANNING SYSTEMS) 2021

The proposal is Regionally Significant Development to be determined by the Regional Planning Panel pursuant to clause 2.15 of the Act and Schedule 6, Part 2 of this policy as the development has a capital investment value of more than \$30 million.

3.2.5 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

Chapter 2, Part 2.3, Division 5, Subdivision 2 Development likely to affect an electricity transmission or distribution network

Section 2.48 Determination of development applications – other development

The development is likely to affect an electricity transmission or distribution network with the site being adjacent a substation located on the adjoining property Lot 1 in DP 419934 south east of the Cosgrove Avenue frontage. Correspondence provided by Endeavour Energy dated 5 July 2022 raised no objection to the development application subject to the recommendation and comments that primarily related to the design requirements of the proposed new padmount electrical substation on the site towards the frontage of the site north of the driveway.

3.2.6 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Clause 1.4 Definitions

multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

Note—Multi dwelling housing is a type of **residential accommodation**—see the definition of that term in this Dictionary.

Subdivision is not specifically defined within the Plan. Section 6.2 of the Environmental Planning and Assessment Act 1979 however defines the ‘subdivision of land’ as the division of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition. The division may (but need not) be affected:

- by conveyance, transfer or partition, or
- by any agreement, dealing, plan or instrument rendering different parts of the land available for separate occupation, use or disposition.

The proposal falls within these definitions.

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 R2 Low Density Residential and C2 Environmental Conservation. Refer to **Attachment 2** for the Zoning Map.

Clause 2.3 – Zone objectives and land use table

The objectives of the R2 zone are as follows:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal is satisfactory with regard to providing for housing needs of the community. However, the design of the development is not considered appropriate for the site as discussed throughout the report.

It is noted that the subject site, while large, is a battle-axe shaped block, with the residential zoned portion of the site located on a prominent spur, well above the level of the surrounding residential area.

The subject site is located on the edge of the residential area, adjoining the Illawarra Escarpment and with the C2 portion of the site being mapped as part of the Illawarra Escarpment area. The general approach to development near the Illawarra Escarpment is to have a decreasing gradient of density as the development area moves west toward the escarpment.

While the R2 zoning permits a range of dwelling types and densities, to provide flexibility in dwelling types and densities to suit the variety of landforms and conditions to which the R2 zone applies, a large proportion of the site is undevelopable due to the constraints and topography. That has resulted in buildings located into the central portion of the site where large groupings of dwellings are proposed with relatively tight spaces created between dwellings. This results in a distinctly urban building typology, which is at odds with the natural environment and scenic quality of site. Presenting the proposed multi dwelling development of 42 dwellings is an overdevelopment of this particular site and would be more appropriate located closer to a small commercial hub or public transport route.

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

*Attached dwellings; Bed and breakfast accommodation; Boarding houses; Boat launching ramps; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental facilities; Exhibition homes; Exhibition villages; Group homes; Health consulting rooms; Home-based child care; Hospitals; Hostels; Information and education facilities; Jetties; **Multi dwelling housing**; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Shop top housing; Signage; Tank-based aquaculture; Veterinary hospitals*

The proposal is categorised as a multi-dwelling housing as defined above and is permissible in the R2 zone with development consent.

The objectives of the C2 zone are as follows:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*
- *To retain and enhance the visual and scenic qualities of the Illawarra Escarpment.*
- *To maintain the quality of the water supply for Sydney and the Illawarra by protecting land forming part of the Sydney drinking water catchment (within the meaning of State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011) to enable the management and appropriate use of the land by Water NSW.*

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

Environmental facilities; Environment protection works; Extensive agriculture; Oyster aquaculture; Recreation areas

Whilst the proposed works and built form are primarily located within the R2 zone, environment/ecological impacts from the development with regard to the diversion of the catchment area away from existing vegetated areas that include the E2 zoned site have not been considered. In addition, it is considered the proposal presents an inadequate assessment of the potential visual and cultural impacts of the proposal in the Illawarra Escarpment. Overall, the proposal is considered inconsistent with the objectives of the C2 zone.

Clause 2.6 Subdivision—consent requirements

Land may be subdivided, but only with development consent.

Part 4 Principal development standards

Clause 4.1 Minimum subdivision lot size

The proposal seeks the strata subdivision of the dwellings. The minimum subdivision lot size does not apply in relation to the subdivision of any land by strata plan under clause subclause (4)(a).

Clause 4.3 Height of buildings

The proposed building does not exceed the maximum of 9m permitted for the site.

Clause 4.4 Floor space ratio

Maximum FSR permitted for the zone: 0.5:1

Site area: 36,753m² (R2 zone)

GFA: 7864m²

FSR: $7864/36753 \text{ m}^2 = 0.21:1$

Clause 4.5 Calculation of floor space ratio and site area

The site contains R2 and C2 zoned land and multi-dwelling housing is prohibited in the C2 zoned therefore under subclause (4)(a) the land that is zoned C2 is excluded from the site area as reflected above. The total site area of the lot is 41,934sqm and the C2 zoned portion of the site is 5181sqm with the remaining R2 zoned portion 36,753sqm considered to be site area for the purposes of calculating floor space ratio.

Clause 4.6 Exceptions to development standard

The subject development seeks an exception to a development standard:

- Clause 7.14 Minimum site width

The applicant has submitted a Clause 4.6 Statement addressing the requested exception that is included as **Attachment 5** of this report.

The minimum site width for a multi dwelling housing development required to be at least 18 metres. A portion of the site, along the length at the access handle towards the frontage of site has a minimum width of 16.88m when measured perpendicular the site boundaries. This is a variation of 1.12m (6.2%).

The table below outlines Council's assessment of the exception sought:

Table 1: Clause 7.14 Minimum site width of WLEP 2009

Development Departure	Clause 7.14 Minimum site width of WLEP 2009
Is the planning control in question a development standard?	Yes
4.6(3) Written request submitted by an applicant contains a justification:	
(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	<p>The applicant has provided a written request justifying the exception to the site width development standard as provided at Attachment 5 to this report.</p> <p>The justification provided is summarised below:</p> <ul style="list-style-type: none">• <i>The minor variation occurs because of the irregular shape of the lot and is limited to the site access handle only. The subject site has a street frontage of 18.62 metres and at the proposed building line the width of site measures approximately 70 metres.</i>• <i>The area on which the housing is proposed to be carried out (i.e. the area inside the proposed ring road) has dimensions of approximately 73m (width) and 261m (depth).</i>• <i>Such dimensions are clearly generous and can easily accommodate residential development without unreasonable amenity impacts on the proposed and surrounding residences. The reduced minimum site width does not prevent a suitable development from being designed for the site with all minimum setbacks, parking, deep soil and landscaping requirements being exceeded.</i>• <i>The extent of built form within the non-complying portion of the site is extremely minor and is limited to a 2-way</i>

	<p><i>driveway, stairs, retaining walls, substantial landscaping as well as ancillary items such as a substation, letterboxes and drainage. Such elements would not result in any unreasonable impacts to the streetscape or to the amenity of the proposed or surrounding dwellings. The actual street frontage width is 18.62 metres and complies.</i></p> <ul style="list-style-type: none"> <i>The subject site provides sufficient area to avoid unreasonable impacts on the subject site, as well as to existing development on adjoining allotments.</i> <p><u>Council comment:</u></p> <p>It is recognized that there is flexibility in assessing the site width control, provided the WDCP 2009 objectives for site width are addressed in the clause 4.6 written request, and the following is ensured:</p> <ul style="list-style-type: none"> all other WDCP 2009 controls are accommodated, any consequential non-compliance of WDCP controls are mitigated, and an accumulation of non-compliance of controls does not occur. <p>It is considered the justification provided does not demonstrate the request meets the relevant tests as discussed throughout the report and discussed further below.</p>
<p>(b) That there are sufficient environmental planning grounds to justify contravening the development standard.</p>	<p>No.</p> <p>The applicant has noted environmental planning grounds to justify the departure include:</p> <ul style="list-style-type: none"> <i>The objects of the Act (EP&A Act 1979) are satisfied:</i> <i>It promotes the orderly and economic development of the R2 zoned portion of the subject site by providing pedestrian and vehicular access;</i> <i>It does not result in any unreasonable impacts to the environment, including the natural, built, economic and social environment. Instead, it is likely to result in positive impacts, such as increasing housing opportunities; and,</i> <i>Good design and amenity of the built environment' will be achieved on the portion of the site which does not comply with the standard. This is achieved with landscaping and low scale-built form (i.e. retaining walls, substation, letterbox wall, stairs and front fencing/walls) which provides an improved sense of address and presentation to the street compared to the current offering</i> <i>Minor exception</i> <p><i>The proposal does not satisfy the standard by 1.12m when measured perpendicular to the property side boundaries at the front portion of the site (up to a depth of approximately 45 metres). This is a minor quantity and would not fundamentally undermine the intent of the standard or set an undesirable precedent. The street frontage width complies as does the width of area identified suitable for development.</i></p> <ul style="list-style-type: none"> <i>No unreasonable impacts</i> <p><i>The variation sought does not result in any unreasonable impacts. The portion of the site on which the variation is sought does not contain any habitable floor space and is limited to</i></p>

	<p><i>retaining walls, a substation, letterbox wall, stairs, driveway, front fencing/walls and extensive landscaping. As a result, there will be no impacts in terms of bulk and scale, overlooking, overshadowing or the like, to any adjoining properties from that portion of the site on which the variation is sought</i></p> <ul style="list-style-type: none"> • <i>Orderly and economic development of land</i> <p><i>If compliance with the standard is enforced, development of the subject site for the purposes of multi dwelling housing, as is permitted in the subject R2 - Low Density Residential zone, cannot be delivered. As such, the exception will facilitate the orderly and economic use of the land.</i></p> <ul style="list-style-type: none"> • <i>Wollongong DCP 2009 is satisfied</i> <p><i>The development complies with the setbacks, private open space, visual amenity, solar access, built form and landscaping requirements of the DCP.</i></p> <p><u>Council comment:</u></p> <p>It is considered that the proposal has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as discussed throughout the report.</p> <p>The proposal presents a number non-compliances with the WDCP 2009 controls for private open space, visual amenity, solar access, built form and landscaping as discussed at Attachment 6 of the report.</p>
4.6(4)(a) Consent authority is satisfied that:	
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	The applicant's written request has not adequately addressed the matters required to be demonstrated by subclause (3) as outlined above.
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and	<p>There are no objectives for the minimum site width standard provided in clause 7.14 of WLEP 2009. However, Section 5.1 Minimum site width requirement Chapter B1 Residential Development in WDCP 2009 provides objectives in section 5.1.1 as follows:</p> <p><i>(a) To allow for development of sites which are of sufficient size to accommodate the required building envelope, car parking and landscaping requirements.</i></p> <p><i>(b) To encourage amalgamation of allotments to provide for improved design outcomes.</i></p> <p>The development controls in section 5.1.2 are as follows:</p> <p><i>1. The Wollongong LEP requires a minimum site width of 18 metres for multi-dwelling development. Site width is measured for the full width of the site, perpendicular to the property side boundaries.</i></p> <p><i>2. A minimum site width of 18m is required for attached dwelling development. Site width is measured for the full width of the site, perpendicular to the property side boundaries. This control may be varied for irregular shaped lots or where the development meets the requirements of setbacks, private open space, visual amenity, solar access, built form and landscaping.</i></p> <p><i>3. Sites should be amalgamated, where required, to achieve the minimum site width requirement.</i></p>

	<p>It is considered that sections 5.1.1 and 5.1.2, provides objectives and relevant development controls for achieving cl7.14 (1) of the WLEP 2009. This is consistent with <i>Blasi v Wollongong City Council [2018] NSW 1074</i>. This has been provided in the applicant's request and Council concurs.</p> <p>The objectives of the R2 zone as follows:</p> <ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a low density residential environment.</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> <p>The development is considered to be inconsistent with the above objectives.</p> <p><u>Section 5.1.1 of Chapter B1 of WDCP 2009</u></p> <p>Whilst it is recognised that notionally there is sufficient space on the site to accommodate a multi-dwelling development, the development itself has not demonstrated that the proposed site is suitable for the proposed building envelope and adequate landscaping provision.</p> <p><u>R2 zone</u></p> <p>The proposal is satisfactory with regard to providing for housing needs of the community. However, the design and density of the development is not considered appropriate for the site, located in a prominent location with significant site constraints and would likely result in adverse environmental, cultural, amenity impacts and is inconsistent with the character of the locality as discussed in other sections throughout the report.</p> <p>The development is not considered to be in the public interest.</p>
(b) the concurrence of the Planning Secretary has been obtained.	
The concurrence of the Secretary has been provided via delegation to the Panel.	

It is considered the exception to the development standard is not capable of support.

Part 5 Miscellaneous provisions

Clause 5.10 Heritage conservation

Part of the site is identified as a Heritage Conservation Area shown on the Heritage Map and described under Part 2, Schedule 5 of WLEP 2009, being the C2 zoned portion of the land located within the Illawarra Escarpment Landscape Area, item no. 6480 is required for works within a heritage conservation area and subdividing of land. Vegetation management works are proposed within the C2 zoned land.

In addition, the subject land is within the vicinity of the State general and landscape heritage item no. 5904 "Gleniffer Brae" and surrounding garden located at Wollongong Botanic Garden, Keiraville on Lot 3 DP 252694 and locally listed Kemira Colliery at Mount Keira Road, on Part Lot 31, 32 DP 751299 and Lot 1 DP 852788.

A Heritage Impact Statement (HIS) was submitted with the application and reviewed in conjunction other documents by Council's Heritage Officer. It was considered that the proposal will have significant visual and cultural impacts on Gleniffer Brae and the Illawarra Escarpment State Heritage Conservation Area as well as on Mount Keira. There are a number of deficiencies in the submitted HIS however, it has not adequately assessed the potential heritage impacts with regard visual impact of the proposal on the Illawarra Escarpment and Gleniffer Brae.

The proposal sought is considered an overdevelopment of the site and will have significant visual and cultural impacts on Gleniffer Brae and the Illawarra Escarpment State Heritage Conservation Area as well as on Mount Keira. It is considered the heritage assessment submitted is inadequate and the

proposal has not demonstrated it will conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.

Clause 5.21 Flood planning

Council records identify the site to be flood affected in uncategorised flood risk precinct. The application has been reviewed by Council's Stormwater Officer where it has been provided the flooding within the vicinity of the site is confined to the watercourses within valleys to the north and south of the development. The development itself is located wholly above the flood planning level and satisfies the requirements of this clause.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

The site is not currently serviced by electricity, water and the disposal and management of sewage. Advice received from Sydney Water indicates that water servicing should be available however amplifications may be required and wastewater services although extensions will be required to be undertaken to service the development where full details would be provided at the Section 73 application stage.

There has been no further investigation undertaken to determine what works would be required to 'amplify' the system to the extent that it will be able to service the Site. Given the steep grade from the road reserve at Cosgrove Avenue and the dwelling sites, more than 70m to Building 5, it is unclear whether there is sufficient pressure within the existing water system to service the Site and therefore whether any additional infrastructure may be required to be constructed, and what additional environmental impact this infrastructure may have.

Advice from Endeavour Energy received indicates an adequate supply of electricity can be made to service the development with the proposed new padmount substation on site.

Clause 7.2 Natural resource sensitivity – biodiversity

Council records indicate the site is affected by "Natural Resource Sensitivity – Biodiversity". Approximately 1.5 hectares of the mapped lands will be directly impacted as a result of the proposal.

Clause 7.2 reads as follows:

(1) The objective of this clause is to protect, maintain or improve the diversity and condition of the native vegetation and habitat, including—

- (a) protecting biological diversity of native flora and fauna, and*
- (b) protecting the ecological processes necessary for their continued existence, and*
- (c) encouraging the recovery of threatened species, communities, populations and their habitats.*

(2) This clause applies to land that is identified as "Natural resource sensitivity—biodiversity" on the Natural Resource Sensitivity—Biodiversity Map.

(3) Development consent must not be granted for development on land to which this clause applies unless the consent authority has considered the impact of the development on—

- (a) native terrestrial flora and fauna and its habitat, and*
- (b) native aquatic flora and fauna and its habitat, and*
- (c) the ecological role of the land, waterways, riparian land or wetland, and*
- (d) threatened species, communities, populations and their habitats.*

(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development is consistent with the objectives of this clause and—

- (a) the development is designed, sited and managed to avoid potential adverse environmental impact, or*
- (b) if a potential adverse environmental impact cannot be avoided, the development—*
 - (i) is designed and sited so as to have minimum adverse environmental impact, and*

- (ii) incorporates effective measures so as to have minimal adverse environmental impact, and*
- (iii) mitigates any residual adverse environmental impact through the restoration of any existing disturbed or modified area on the site.*

The application was referred to Council's Environment Officer and it was considered the proposal fails to demonstrate compliance with the requirements of this clause.

The proposal is inconsistent with the objectives of clause 7.2 as the amount and extent of native vegetation that will be impacted does not result in native vegetation being protected, maintained or improved. Further, rather than supporting its recovery, the proposal will result in direct and indirect impacts on Illawarra Subtropical Rainforest ('ISR'), a vegetation community listed as endangered under the BC Act and Critically Endangered under the EPBC Act.

As well as containing land with high conservation value in its own right, part of the ecological role of the Site is the provision of buffering and linkage functions to and between riparian corridors, communities and habitats within the adjoining E1 zoned land.

The proposal has not demonstrated that it has been designed to avoid or minimise adverse impacts on the environment, particularly Natural Resource Sensitivity–Biodiversity mapped lands, with the sole constraint to the design appearing to be the geotechnical capability of the site.

As discussed above in section 2.1 and 3.1 of the report the proposal does not comply with the requirements of Biodiversity Conservation Act 2016 with significant deficiencies in the submitted BDAR.

It is considered that significant opportunity exists to further avoid impacts to biodiversity across the site and the proposal does not respond to meeting the objectives of the clause.

Clause 7.4 Riparian lands

There are two watercourses that run to the north and south-west of the site. These are both identified as Riparian land and Category 1 watercourses in Chapter E23 of WDCP 2009, requiring a 50m riparian corridor. A portion of the proposed APZ falls within a section of the corridor along the north of the site that will require vegetation removal.

In addition, it is noted that the design of the proposed easement and stormwater outlet pipe from the northern catchment does not extend to the watercourse situated within 2 Cosgrove Avenue. Therefore, the details of the design within the riparian land is unclear.

It is noted that no response has been received from the DPI - Water proposal as the application is nominated to be Integrated Development under the Water Management Act 2000 as discussed in section 1.6.2.

It is considered the proposal has not demonstrated that the development will not adversely impact upon riparian lands.

Clause 7.6 Earthworks

The proposal involves significant landform modification across the site to accommodate the proposed design with a maximum cut of up to 10m and fill up to 3.5m predominantly along the ridgeline of the property. This will result in the built form to be associated with significant podium areas, a series of high retaining walls and parts of the driveway cantilevered above ground level for the development. The site is located on a prominent ridgeline and is highly visible from numerous vantage points. The works are considered to impact the visual amenity of from adjoining properties, surrounding area and the wider locality.

The earthworks with the associated built form will also result in the indirect impacts with the diversion of a significant catchment area (approximately 16,500sqm) to the existing drainage system in Andrew Avenue and Cedar Grove where this runoff currently does not drain. This will remove a significant portion of natural surface and subsurface flows from existing vegetated area within the site and within the natural valley and watercourses north and south of site. There has been limited to no consideration of the impacts of this diversion. The proposal will disrupt and have a detrimental effect on the existing drainage patterns in the locality and the potential for adverse impacts on a watercourse or

environmentally sensitive areas. Concerns are also raised over the significant tree removal impacting on the existing outlook and potentially land stability for the site.

The application has been reviewed by Council's Stormwater and Environment Officers and unsatisfactory referral advice has been provided with regard to this matter. It is considered the earthworks associated with the proposal will have a detrimental impact on environmental functions and processes, neighbouring uses and features of the surrounding land.

Clause 7.8 Illawarra Escarpment area conservation

Council's records identify the site corresponding with the C2 zoned portion of the site to be within the Illawarra Escarpment area. Vegetation management works are proposed within this area.

Whilst most of the development with the built form located in the R2 zoned portion, the land is affected by this constraint and is immediately adjacent to the escarpment and on the foothills below Mt Keira. As such, the site forms part of the escarpment vista at this location due to the topography of the site and is an important interface between the developed residential areas of Keiraville, and the vegetated backdrop of the escarpment.

The site slopes steeply up from Cosgrove Avenue and adjoins large tracts of bushland leading up to Mt Keira. The development is proposed for the prominent ridgeline area of the site and is highly visible from all surrounding areas. The proposal is not sympathetic to the environmental values of the escarpment and does not present a gradual transition to environmentally sensitive areas within the escarpment.

Council is not satisfied that the development of the land will be located so as to minimise any adverse impact on the natural features and environment of the Illawarra Escarpment, and will incorporate on the land, conservation and rehabilitation measures to enhance the Illawarra Escarpment.

Clause 7.14 Minimum site width

The minimum site width for a multi dwelling housing development required to be at least 18 metres. A portion of the site at the access handle towards the frontage of site has a minimum width of 16.88m when measured perpendicular the site boundaries. A Clause 4.6 variation request has been provided and it is considered that the proposed development has not demonstrated that it will achieve a better outcome for the site to the meet the objectives of clause 4.6 of WLEP 2009 to support a departure to the minimum site width. Refer to further discussion under Clause 4.6 above.

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

N/A

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

3.4.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

DCP controls relevant to the proposal are addressed in the Table as provided at **Attachment 6** to this report. The proposed variations are sort in relation to:

CHAPTER A1 – INTRODUCTION

The applicant has identified and sought a number of variations in WDCP 2009.

The WDCP 2009 variations sought by the applicant relate to:

- Section 4.17 of Chapter B1 Residential Development - Retaining wall heights;
- Section 5.1.2 of Chapter B1 Residential Development – Minimum site width; and
- Section 10.2(2) of Chapter E14 Stormwater Management– On-site stormwater detention design requirements

It is noted that the applicant has not provided variation request statements in accordance with clause 8 of Chapter A1 of WDCP 2009. Notwithstanding, the variations sought are not supported and discussed in the relevant chapters in WDCP 2009 at **Attachment 6**.

In addition to those variations identified by the applicant, a number of non-compliances have been identified in Council's assessment of the application that are discussed in **Attachment 6** where no variation request has been provided by the applicant.

3.4.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN 2022

The estimated cost of works is \$30,089,565 and a levy of 1% is applicable under this plan as the threshold value is \$200,000.

3.5 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.

3.6 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

2 Savings

Any act, matter or thing that, immediately before the repeal of the 2000 Regulation, had effect under the 2000 Regulation continues to have effect under this Regulation.

2000 Regulation means the Environmental Planning and Assessment Regulation 2000 as in force immediately before its repeal on 1 March 2022.

6 Determination of BASIX development

BASIX Certificate has been submitted with the application and satisfies the requirements of the SEPP.

23 Persons who may make development applications

The SEE states that to facilitate the stormwater drainage design, a drainage easement will be required within 96 Cosgrove Avenue or on University of Wollongong land. The Stormwater Management Plans indicate 2 Cosgrove Avenue, Lot 96 DP 30903 and Lot 100 DP1257652 will contain a stormwater pipe and outlet.

The Biodiversity Management Plan (BMP) that forms part of the BDAR includes mitigation measures on land that extends approximately 50m beyond the Site boundary to the west, onto public lands. This land consists of a 'paper' road and Lot 2 DP 852788, recorded as being in the ownership of Department of Premier & Cabinet.

The Civil Plans indicate that the Geotechnical Extent of Building Area as per the Geotechnical Report extend outside of the property boundaries to the west, within the 'paper' road and University of Wollongong land.

Section 23 of the *Environmental Planning and Assessment Regulation 2021* outlines who can make a development application and provides that an application can only be made by a person other than the owner of the land, with the consent of that person. No evidence of owner's consent has been provided from the owners of Lot 96 DP 30903, Lot 100 DP1257652, Lot 2 DP 852788 or the 'paper' road reserve.

61 Additional matters that consent authority must consider

No demolition is proposed.

62 Consideration of fire safety

N/A

63 Considerations for erection of temporary structures

N/A

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

Context and Setting:

The design of the proposal has not appropriately addressed the significant environmental constraints and visual prominence of this site including the steep topography. The proposed large flat building footprints impose themselves upon the natural topography of the site, creating building forms that appear far too dense and urban for the visually sensitive context both of the site and its immediate surrounds. Whilst the proposal is compliant with the FSR and height controls, there are a number of non-compliances with WDCP 2009 that will result in environmental, visual and amenity impacts.

In summary, the proposal has been assessed with regard to the amenity impacts from the development, the zoning, and existing character of the area, and is considered to be incompatible with the local area.

Access, Transport and Traffic:

Emergency services access, servicing and some parking matters are considered to be unresolved.

Public Domain:

The proposal is not considered to be conducive the site and would set an undesirable precedent for development within the local area. The cumulative impact of similar development could likely have an adverse impact upon the public domain of the locality and wide environs.

Utilities:

The proposal is not envisaged to place an unreasonable demand on utilities supply though utility infrastructure will be required to service the development.

Heritage:

The proposal will likely have visual and cultural impacts on heritage items. The Illawarra Escarpment, Gleniffer Brae and Aboriginal cultural heritage associated with Mount Keira are impacted by the proposal.

Other land resources:

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

Water:

The site is presently serviced by Sydney Water, which can be provided that can be extended meet the requirements of the proposed development subject to augmentation works. It is unclear whether there is sufficient pressure within the existing water system to service the Site and therefore whether any additional infrastructure may be required to be constructed, and what additional environmental impact this infrastructure may have.

Soils:

The proposal could have negative impacts on the soil profile from the diversion of catchment area that will impact ground water and subsurface flows. Significant earthworks and landform modification area proposed to facilitate the development.

Air and Microclimate:

The proposal could have potential negative impact on the microclimate with indirect impacts from the diversion of catchment area that will impact ground water and subsurface flows.

Flora and Fauna:

The proposal is likely to have negative impacts on flora and fauna.

Waste:

The proposal could have the potential impacts with regard to adequate waste storage for the development.

Energy:

The proposal is not envisaged to have unreasonable energy consumption.

Noise and vibration:

No construction noise/acoustic assessment and management plan was submitted with the application. It is considered the proposal could result in potential noise impacts related to the extensive amount of excavation and associated machinery and truck movements.

Natural hazards:

Council records list the site as bushfire affected the proposal has not demonstrated compliance with the requirements for Planning for Bushfire Protection 2019.

Technological hazards:

Council records list the site as unstable land affected. Council records list the site as unstable land affected. Concerns are raised on risk of instability for during and after the construction of the development refer discussion in Chapter E12 of WDCP 2009 at Attachment 6.

Safety, Security and Crime Prevention:

This application could give rise to opportunities for criminal or antisocial behaviour due to the building design and lack of natural sightlines and surveillance opportunities.

Social Impact:

The proposal may create negative social impact by poor amenity for future residents within the development by way of privacy and overlooking concerns and limited accessibility to communal open space.

Economic Impact:

The proposal is not expected to create negative economic impact.

Site Design and Internal Design:

The proposal results in non-compliances to WLEP 2009 and WDCP 2009 which have not been appropriately addressed by the development proposal. The site and internal design are therefore considered to be unsatisfactory.

Construction:

It is considered there could be potential construction impacts for the proposal due to the topography of the site and limited access.

Cumulative Impacts:

In consideration of the matters outlined throughout this report, the proposal is considered likely to result in adverse cumulative impacts.

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

Does the proposal fit in the locality?

It is considered the proposal is likely to have negative impacts on the amenity of the locality and adjoining developments.

Are the site attributes conducive to development?

The proposal has not adequately addressed the constraints of the site. Item 1 of Council's Business Paper of the Ordinary Meeting of Council on 29 August 2022 and the Draft Wollongong Housing Strategy indicate that the zoning of the Site is under review because the current zoning does not reflect the site constraints. As such, it is considered that the site attributes are not conducive to the proposed development and it is therefore the application is not supported.

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

Refer to section 1.5.

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

The application is likely to have unreasonable impacts on the environment and the amenity of the locality. The proposal is considered inappropriate with consideration to site constraints, contrary to the relevant planning controls. The current zoning of the R2 portion of the land is currently under formal review as it is recognised as being unsuitable having regard to the environmental constraints and attributes of the land: Item 1 of Council's Business Paper of the Ordinary Meeting of Council on 29 August 2022 and draft Wollongong Housing Strategy. In the current form, approval would not be considered in the public interest.

4 CONCLUSION

The proposed development has been assessed with regard to the relevant prescribed matters for consideration outlined in Section 4.15 of the Environmental Planning & Assessment Act 1979. The proposed development is inconsistent with the relevant planning instruments. Having regard to the above information, the application is considered to be unsatisfactory.

The proposed development has not been designed appropriately give the constraints and characteristics of the site and has the potential to result in significant adverse impacts. The development as proposed is considered to be an overdevelopment of the site and has the potential to set an undesirable precedent. Approval of the development would not be considered in the public interest.

5 RECOMMENDATION

DA-2022/469 be refused pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979, subject to the reasons for **Refusal** as follows:

1. Amended plans and additional information requested by Council to enable it to properly assess the application pursuant to the provisions of Section 4.12 of the Environmental Planning and Assessment Act 1979 were not submitted. In this regard under Clause 54 of the Environmental Planning and Assessment Act Regulation, 2000, additional details were requested in Council's letter dated 11 October 2022 and the information that has been provided to Council does not adequately address the matters raised. The determination has been made on the basis of information submitted to date.
2. Pursuant to section 1.7 of the Environmental Planning and Assessment Act 1979, likely impact of the proposed development on biodiversity values as assessed in the biodiversity assessment report are unacceptable having regard to the provisions of Part 7 of the Biodiversity Conservation Act 2016.
3. Pursuant to Clause 4.47(4) of the Environmental Planning and Assessment Act 1979, no General Terms of Approval have been granted by the relevant approval bodies, the NSW Rural Fire Service and NSW Department of Planning and Environment – Water. Therefore, the Panel, as the consent authority is not satisfied that the proposed development conforms to the specifications and requirements of and fails to demonstrate consistency with the provisions of the Planning for Bushfire Protection 2019 and the Water Management Act 2000.
4. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered the application submission fails to demonstrate the development proposal is consistent with State Environmental Planning Policy (Biodiversity and Conservation) 2021 – Koala Habitat.
5. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered the development proposal is inconsistent with the objectives of the R2 Low Density Residential and C2 Environmental Conservation zone of Wollongong Local Environmental Plan 2009.

6. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered the proposal is unacceptable and inconsistent with Wollongong Local Environmental Plan 2009 with respect to:
 - Clause 4.6 Exceptions to development standard
 - Clause 5.10 Heritage conservation
 - Clause 7.1 Public Utility Infrastructure
 - Clause 7.2 Natural resource sensitivity – biodiversity
 - Clause 7.4 Riparian Lands
 - Clause 7.6 Earthworks
 - Clause 7.8 Illawarra Escarpment area conservation
 - Clause 7.14 Minimum site width
7. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered the development proposal is unacceptable and inconsistent with the following Chapters of Wollongong Development Control Plan 2009:
 - Chapter A2 Ecologically Sustainable Development
 - Chapter B1 Residential Development
 - Chapter B6 Development in the Illawarra Escarpment
 - Chapter D1 Character Statement
 - Chapter E2 Crime Prevention through Environmental Design
 - Chapter E3 Car Parking, Access, Servicing/Loading Facilities and Traffic Management
 - Chapter E6 Landscaping
 - Chapter E7 Waste Management
 - Chapter E10 Aboriginal Heritage
 - Chapter E11 Heritage Conservation
 - Chapter E12 Geotechnical Assessment
 - Chapter E14 Stormwater Management
 - Chapter E16 Bush Fire Management
 - Chapter E17 Preservation and Management of Trees and Vegetation
 - Chapter E19 Earthworks (Land Reshaping Works)
 - Chapter E22 Soil Erosion and Sediment Control
 - Chapter E23 Riparian Land Management
8. Pursuant to the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, it is considered the built form, scale and visual impact of the proposed development, together with the extent of modification of the natural landscape, will have a significant impact in the locality.
9. Pursuant to the provisions of Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979, it is considered the site is suitable for the development proposal.
10. Pursuant to the provisions of Section 4.15 (1) (d) and (e) of the Environmental Planning and Assessment Act 1979 it is considered that in the circumstances of the case and with submissions received, approval of the development proposal would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.
11. No evidence of owner's consent, whether in writing or otherwise, has been provided from the owners of Lot 96 DP 30903, Lot 100 DP1257652 for the proposed stormwater works and

drainage easement; Lot 2 DP 852788 and the 'paper' road reserve for the proposed Biodiversity Management Plan works and the paper' road reserve geotechnical extent of building area in accordance with Section 23 of the Environmental Planning and Assessment Regulation 2021.

6 ATTACHMENTS

- 1 Aerial Photographs
- 2 WLEP 2009 zoning map
- 3 Plans – Architectural, Landscape, Engineering Plans
- 4 Council's letter to the applicant – 11 October 2022
- 5 Clause 4.6 Exception Request
- 6 WDCP 2009 Compliance Table