

Panel Reference	PPSSTH-225
DA Number	DA-2023/156
LGA	Wollongong
Proposed Development	Mixed use - demolition of existing structures and construction of a nineteen (19) storey shop-top housing development, including car parking and associated earthworks and landscaping
Street Address	2-4 Gladstone Avenue & 357-363 Crown Street Wollongong
Applicant/Owner	Charbel Kazzi – Level 33
DA Accepted date:	24 February 2023
Total number of Submissions Number of Unique Objections	Four (4) unique submissions
Recommendation	Approval
Regional Development Criteria - State Environmental Planning Policy (Planning Systems) 2021 – Schedule 6	Clause 2 of Schedule 6, general development over with a capital investment value (CIV) of more than \$30 million is identified as regionally significant development. The CIV values the proposed development at \$80,058,000 (excluding GST)
List of all relevant s4.15(1)(a) matters	<p>s4.15 (1)(a)(i) Any environmental planning instruments:</p> <ul style="list-style-type: none"> SEPP (Planning Systems) 2021 SEPP (Resilience and Hazards) 2021 SEPP 65 SEPP (Transport and Infrastructure) 2021 SEPP (Building Sustainability Index: BASIX) 2004 <p><u>Local Environmental Planning Policies:</u></p> <ul style="list-style-type: none"> Wollongong Local Environmental Plan (WLEP) 2009 <p><u>Other Policies:</u></p> <ul style="list-style-type: none"> Wollongong City-Wide Development Contributions Plan <p>s4.15(1)(a)(ii) (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority:</p> <p>N/A</p> <p>s4.15 (1)(a)(iii) Any development control plan:</p> <ul style="list-style-type: none"> Development Control Plan: Wollongong Development Control Plan 2009 <p>s4.15 (1)(a)(iia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4:</p> <p>N/A</p> <p>s4.15 (1)(a)(iv) the regulations</p> <ul style="list-style-type: none"> EPA Regulations 2021 (clause 61(1), clause 29)
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> As listed at Condition 1 of draft consent

Clause 4.6 requests	<ul style="list-style-type: none"> A clause 4.6 application has been made in relation to Wollongong Local Environmental Plan 2009, clause 8.6 Building separation.
Summary of key submissions	<ul style="list-style-type: none"> Car parking Traffic impacts to Parkinson and Osborne Street and Crown St traffic lights. Lack of local grocery shopping opportunities forcing all residents to use their cars. Insufficient building separation Variations to setbacks creates poor precedent Potential wind tunnelling impacts Overshadowing of streets Inadequate notification period in respect of neighbourhood forum meeting dates. Concern the building will protrude above the escarpment line as viewed from Flagstaff Hill.
Report prepared by	Nigel Lamb - Senior Development Project Officer
Report date	3 December 2024

Summary of s4.15 matters

Yes

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

Legislative clauses requiring consent authority satisfaction

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

Yes

Clause 4.6 Exceptions to development standards

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

Yes

Special Infrastructure Contributions

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

Not applicable

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

EXECUTIVE SUMMARY

Reason for consideration by Southern Regional Planning Panel

The proposal has been referred to Southern Regional Planning Panel (SRPP) in accordance with Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021, being development that has a capital investment value of more than \$30 million.

Proposal

Mixed use - demolition of existing structures and construction of a nineteen (19) storey shop-top housing development, including car parking and associated earthworks and landscaping

Permissibility

At the time of lodgement, the site was zoned B3 Commercial Core (now E2 Commercial Core) pursuant to Wollongong Local Environmental Plan 2009. The proposal is categorised as shop top housing which is permissible with consent.

Key assessment issues

- Overshadowing impacts to the heritage listed Morton Bay Fig tree on the site.
- Opportunity to reduce the depth of the western tower to increase solar access for the fig tree.
- Variation to building separation requirements under clause 8.6 of WLEP 2009 for Building A.
- Variation to setbacks under Wollongong Development Control Plan 2009 at the upper levels.
- Variation to maximum recommended building depth for building A under section 2E of the Apartment Design Guide.
- Design of communal residential storage on Lower Ground Floor level.

RECOMMENDATION

It is recommended that the application be approved subject to the conditions contained at **Attachment 10**.

1 APPLICATION OVERVIEW

1.1. DETAILED DESCRIPTION OF PROPOSAL

The proposal involves the following:

- Demolition of all structures on site
- Remediation works in accordance with the submitted Remediation Action Plan.
- Construction of a shop top housing development comprising
 - Two residential tower forms above 3-4 storey podium
 - 8 commercial tenancies with a total gross floor area of approximately 1,044m²
 - 252 units made up of:
 - 53 one bedroom units (21%)
 - 164 two bedroom units (65%)
 - 35 three bedroom units (14%)
 - Including 28 adaptable units (11%) and 55 liveable units (22%)
 - Four levels of car parking, one complete basement level and the remainder sleeved with residential units or commercial tenancies.
 - Total of 297 car parking spaces comprising:
 - 229 residential car spaces
 - 51 residential visitor car spaces
 - 15 commercial car spaces
 - 114 bicycle (84 resident, 22 visitor, 7 commercial)
 - 19 motorbike spaces (18 resident, 1 commercial)
 - Vehicular access to Parkinson Street via the right of carriageway
 - Retention of a large heritage listed Fig tree



Figure 1: Artist impression

1.2. BACKGROUND

A pre-lodgement meeting (PL-2022/48) was held on 20 June 2022.

One Design Review Panel meeting was held prior to DA submission (DE-2022/80) and two further meetings following lodgement (3 May 2023 and 14 December 2023). The DRP commentary from the 14 December is discussed at section 0 of this report.

Key revisions to the form of the proposal following additional information requests during the assessment include the following:

- A reduction in height and change in the aesthetic of the podium.
- Increase in separation between Building A (the western tower) and the tower form on the adjoining site in response to concerns regarding solar access to the tree, cross ventilation and solar access to units and bulk and scale concerns.
- Refinement to the materiality and expression of the tower form.
- Increased separation of built form from the heritage tree at the lower levels and amendment to the landscaped areas beneath the tree.
- Provision of compliant unit mix (the application was lodged without a compliant mix).
- General reconfiguration of basement levels and internal layout.

The SRPP were briefed by Council and the applicant on 23 March 2023, 10 October 2023 and on the 25th June 2024.

A further meeting was held with the Panel was held on 14 August 2024 where outstanding concerns regarding overshadowing impacts to the heritage tree on the site were discussed. The Panel determined to engage the services of another independent arborist to review the conflicting arborist advice on this matter. That advice has been received (see **Attachment 9**) and has informed the recommendation.

1.3. SITE DESCRIPTION

The proposal consolidates the following 4 adjoining lots on the corner of Gladstone Avenue and Crown Street:

- 1/363 Crown Street - Lot 1 SP 16167
- 357-359 Crown Street - Lot 2 DP 201949
- 2 Gladstone Avenue - Lot 6 DP 14480
- 4 Gladstone Avenue - Lot 7 DP 661845

The site is located at a key intersection in the E2 Commercial Core (zoned B3 Commercial core zone when lodged) within the city centre.

The site has falls approximately 10m from the northwest to southeast.

Adjoining development is as follows:

- North: Crown Street and low density commercial development opposite
- East: Gladstone Avenue and commercial development opposite
- South: 8 storey building containing Mantra serviced apartments
- West: Immediately to the west of the site is a multistorey shop top housing development approved under DA-2006/1698/J comprising two residential towers above a 4 story podium with 4 levels of basement car parking as illustrated at **Error! Reference source not found.** To the west of that, an application (DA-2022/938) for an 18 storey shop top housing development with a 4 storey podium with two tower forms was considered by the SRPP on 6 May 2024. The Panel deferred the determination at that meeting subject to a number of matters being addressed. Both these developments have dual frontage to Crown and Parkinson Streets with vehicular access onto Parkinson Street.

The site is located approximately 160m west of Wollongong Train Station and approximately 180m east of Wollongong Hospital and associated health precinct. The Wollongong City Centre (Crown Street mall) is approximately 600m to the east.

The locality is characterised by a mixture of low to high density commercial and mixed use development running along Crown Street and low to medium density residential development to the south west. In close proximity to the site, a number of large mixed use developments have either been built or are proposed marking a transition towards higher density development anticipated by the planning controls.



Figure 2: Adjoining development and number of storeys



Figure 3: WLEP height map



Figure 4: Aerial photograph

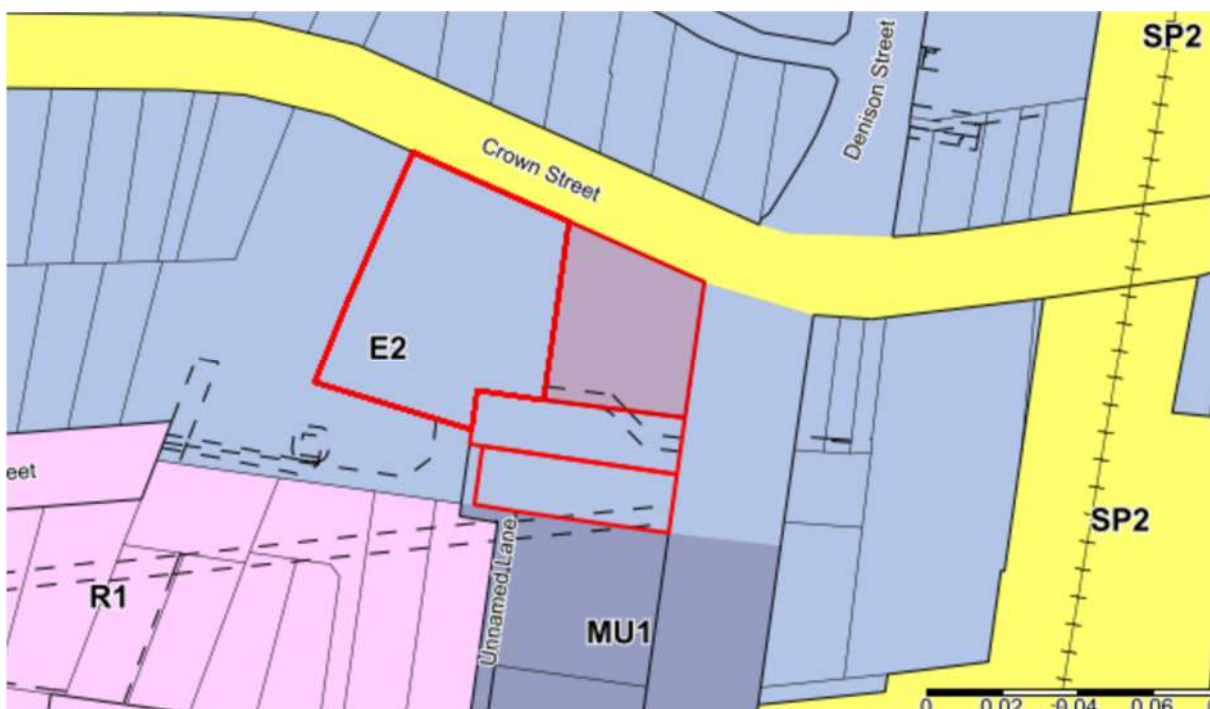


Figure 5: WLEP 2009 zoning map

Site photos from various vantage points are provided below.



Figure 6: Southern boundary looking west from Gladstone Avenue



Figure 7: Mantra building looking south from Gladstone Avenue



Figure 8: Adjoining development to the west as viewed from within the site beneath heritage tree



Figure 9: Hard stand area beneath base of heritage tree



Figure 10: Looking west along right of carriageway over adjoining property



Figure 11: View looking SE from within the site towards turning head on adjoining land

Property constraints

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

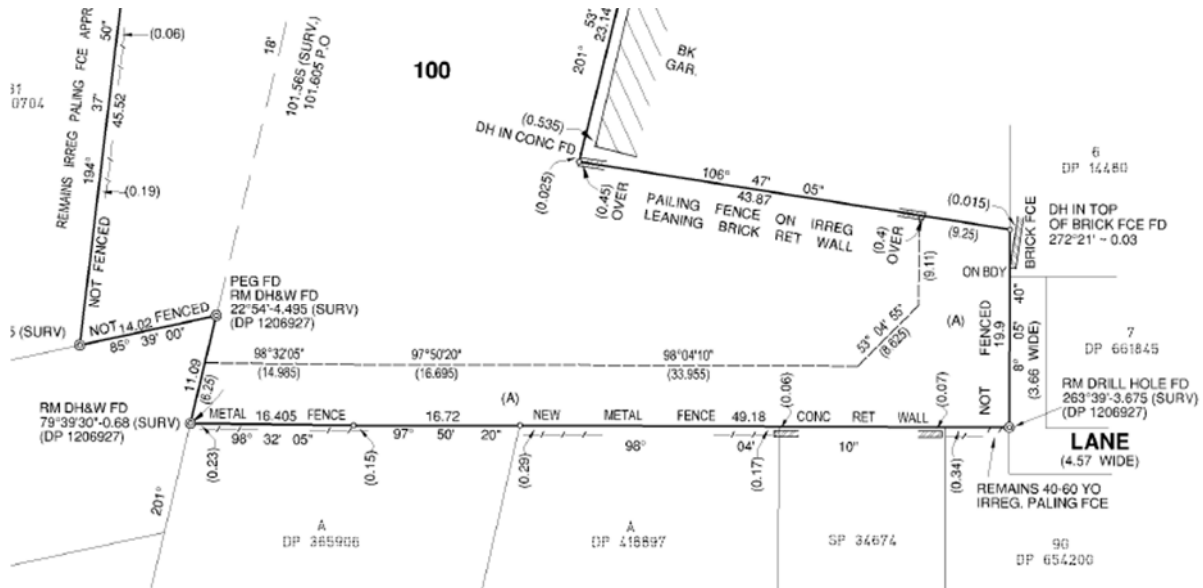
Contamination: The site is identified as potentially contaminated as a result of prior use of lot 2 for a service station. A Remediation Action Plan has been submitted that details the conditions to be satisfied to make the land suitable for the development.

Acid sulphate soils: Council records identify the land as potentially containing class 5 acid sulfate soils. The Remediation Action Plan submitted with the DA concluded that acid sulfate soils were not expected to be located in close proximity and that further acid sulfate soil assessment (e.g. preparation of an acid sulfate soil management plan) was not required. Conditions of consent would apply in this regard.

Flooding: The site is identified as being located within an uncategorised flood risk precinct. Council's Stormwater Officer has reviewed the application in this regard and has provided conditions of consent.

Vehicle access: Vehicular access to the site is available to Parkinson Street via a right of carriageway over Lot 100 DP 1214547 to the west as shown at figure 12. **Error! Reference source not found.**¹³

illustrates the eastern section of the site plan of the adjoining lot, the yellow arrow indicating the location of the driveway entry to the proposed development.



(A) RIGHT OF CARRIAGEWAY 6.095 & 9.145 WIDE (G531434)

Figure 12: Right of carriageway

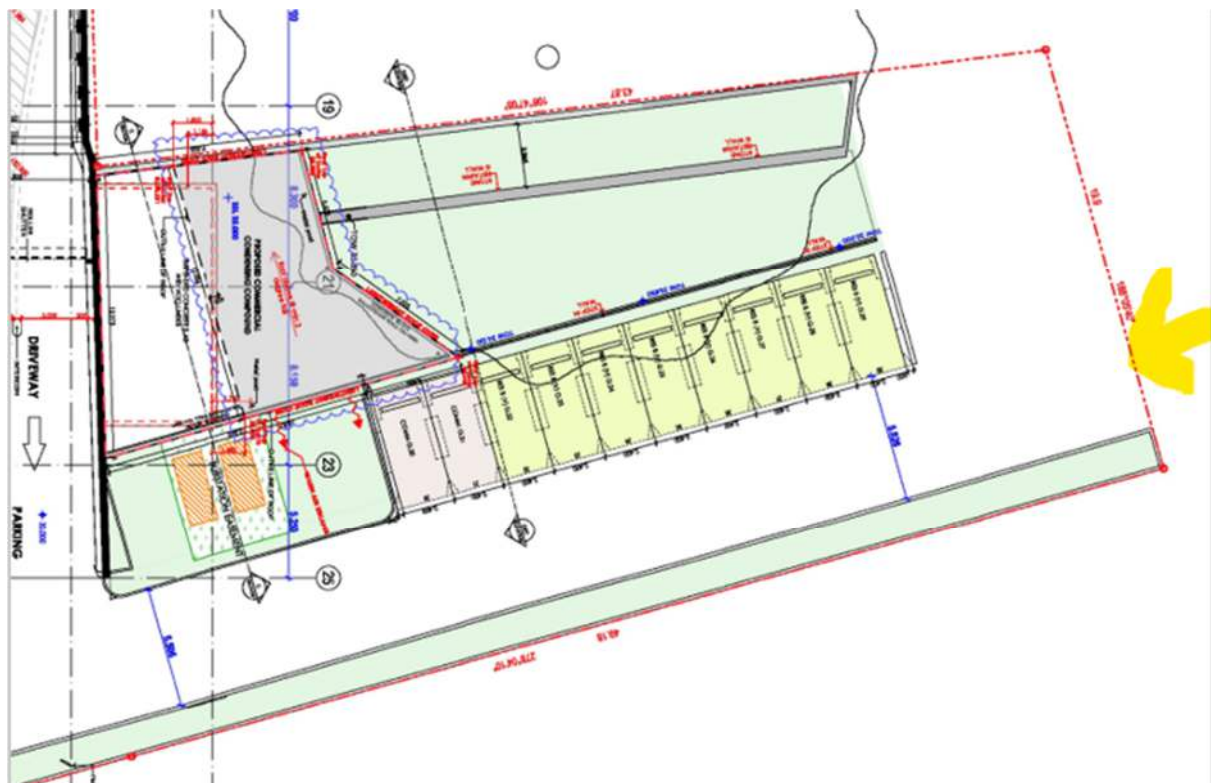


Figure 13: Ground floor plan Lot 100 DP 1214547

Heritage listed Morton Bay Fig: A key constraint for the site is a large Morton Bay fig tree located to the rear of the site as illustrated at **Error! Reference source not found.**4. The tree is identified as a heritage item of local significance under the LEP (Item no. 6290).

Preservation of the health and ongoing vitality of the tree has been identified as a key objective from the outset of the project. This includes achieving appropriate setbacks, ground treatment, irrigation and solar access.



Figure 14: Heritage Fig Tree

Description

- The NSW State Heritage Inventory notes “The Moreton Bay Fig adjoining the Masonic Temple is of significance for the local area as notable, aged, rare, and representative example of this tree species which presents a local landmark. It is alleged that the tree is associated with the early days of the Free Masonic movement in Wollongong”.
- The tree is approximately 200 years old, possibly planted as part of the landscaping associated with “Gladstone House” previously located on the land but demolished some time ago. Under current conditions, the tree could live for another 100 years.
- The tree is approximately eighteen (18) metres in height, with a canopy spread of twenty (20) metres to the north, fifteen (15) metres to the south, seventeen (17) metres to the east and fifteen (15) metres to the west. The extent of the canopy has been surveyed and is reflected on the plans. Morton Bay Figs generally can grow to up to 40m tall.
- The tree is observed in the supporting arborist reports as being of generally good health, however the south-eastern portion of the canopy is suffering minor defoliation (possibly due to either climatic condition or infestations of Fig psyllid (*Mycopsylla fici*)).
- The tree is currently encroached on by a bitumen car park up to the trunk, a single storey row of garages, and a retaining wall to the south.

Chronology of discussions regarding assessment of tree impacts

- June 2022: Pre-lodgement meeting held with Council staff, the notes of which state “the listed tree should be integrated into any future development, which ensures its health and longevity is not impacted. Shadow impacts should also be considered in terms of the tree’s viability in a new built form arrangement.”
- August 2022: Pre-lodgement Design Review Panel meeting, the notes of which stated, “Prior to the development of a design, an arborist should be commissioned to establish the required setbacks to the tree to maintain / protect its rootzone and ensure adequate solar access to its canopy”.
- February 2022: Development application lodged accompanied by Arborist Report (dated 16 December 2022 – see **Attachment 6**). The Arborist report noted the following:

- “Associated works proposed that may indirectly impact the tree are the construction of the 2 tall towers to the north and northeast of the tree that will have an effect on and likely reduce the amount of sunlight the tree will receive throughout the year.
- Fig trees are known to be tolerant of change including being tolerant of reduced light levels and less sunlight, and the fig will still receive reflective light as well as partial light through the newly proposed tall buildings (Shadow diagrams have been shown and assessed that show the tree still receives light for the majority of the year). The tree will also receive east/west sun and reflected light. Ultimately it is only possible to give an indication or estimate to assess the impact the tall buildings and less sunlight that will have on the tree, but the proposal is unlikely to significantly impact the health or condition of the tree long term. Mitigation strategies should be put in place which should include a drip irrigation system and mulched gardens beds/ turf areas under the drip line of the tree to improve growing conditions.”
- April 2023: An independent arborist report was commissioned by Council Landscape staff to review the proposed development and conclusions within the submitted arborist report. Key comments/findings of that report to note include the following:
 - It was noted that ficus species can grow in heavy shade in forest environments.
 - The age of tree would make it more susceptible to changes in solar access.
 - It was observed that the development would result in a sudden loss of most sun during the winter months.
 - The report makes the conclusion that “due to limited research in the area of shading but based on arboricultural industry knowledge and research, it can be expected that the proposed design will have a detrimental impact” on the subject tree.
- May 2023: Council additional information request issued to the applicant including a note that the “winter solar access to the tree would be all but eliminated. Greater solar access to the tree is required which will likely require reconsideration of the width and positioning of the tower form.”
- In response to the Council request for information, an amended design was prepared by the applicant. Of relevance to the solar access to the tree, the setback of Building A to the western boundary was increased at the lower levels as illustrated in the yellow areas below.



A supplementary letter was provided by the consultant arborist in support of the above changes.

- March 2024: The Council engaged arborist reviewed the amended design and noted that “Although there appears to be a slight increase in solar access to the canopy the impacts of this tall building being placed on the northern side of this tree are difficult to quantify.” The commentary concludes that there are outstanding concerns that the design does not appropriately protect the tree with regard to solar access.
- April 2024: The applicant arborist provided a number of illustrative examples of similar trees in built environments subject to overshadowing in support of the proposal.
- The Council engaged arborist reviewed the examples and advised they lacked detail and were of limited application to the current example (see **Attachment 7**).
- July 2024: A more detailed study of a row of Morton Bay Figs at Sydney University was provided by the applicant arborist (see Figures 15-19 and at Attachment 8).

- Specifics of the example include the following:
 - The example contains trees of the same species
 - The trees are of a relatively mature age (noting they are not as old as the current example).
 - The trees were recently subject to a sudden change in access to northern sun resulting from construction of a 7 storey building hard up against the canopy.
 - The impact occurred in late 2016 and resulted in overshadowing of the trees, particularly in winter months.
 - The arborist observes that the trees now appear in good health some 7 years after change to solar access.
 - The arborist concludes he is “extremely firm that subject tree is retainable in a viable condition, and pending excellent management of all development works by an experienced project arborist, will improve in overall health and condition”.

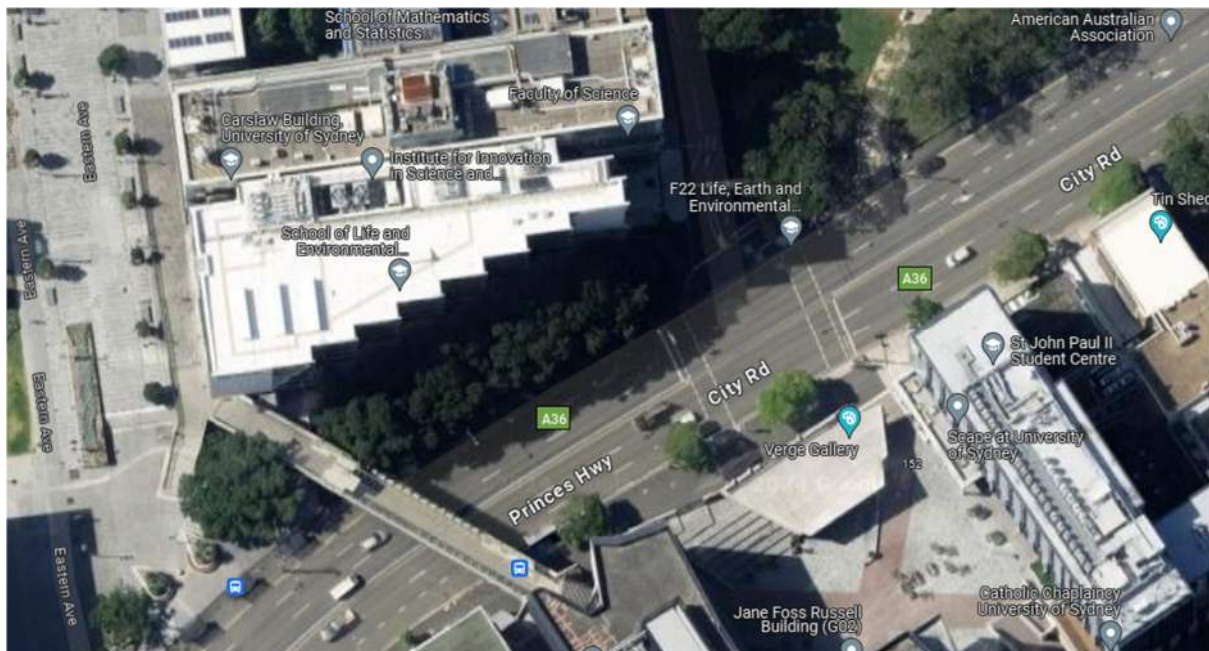


Figure 15: Aerial photograph of the row of trees

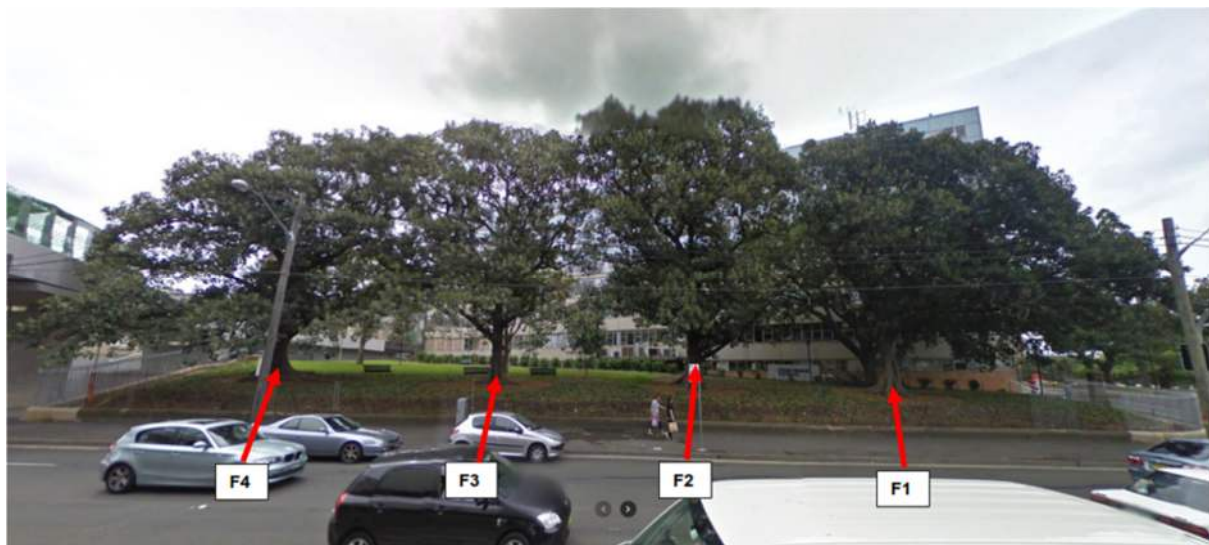


Figure 16: Street view of trees prior to building being constructed



Figure 17: Streetview post construction

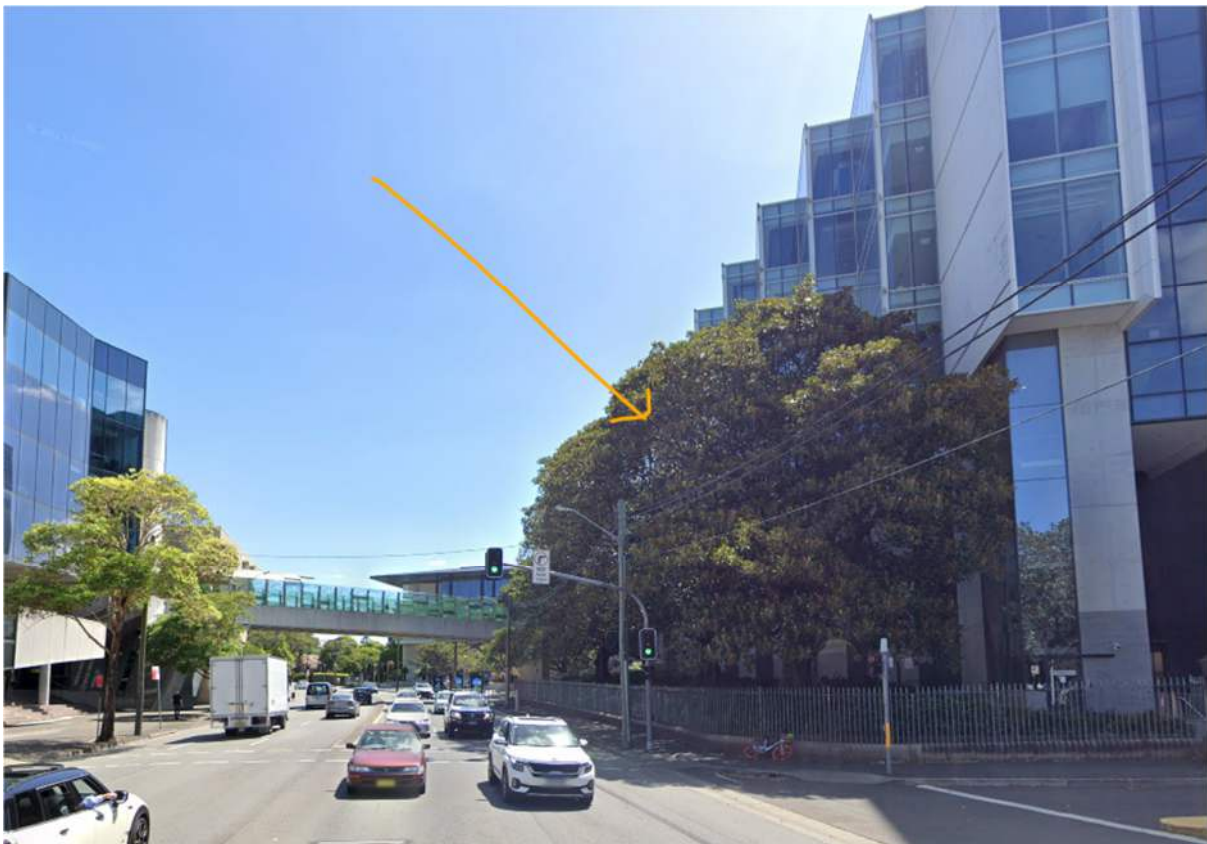


Figure 18: View towards row of trees looking south

- July 2024: Further commentary provided by the Council engaged arborist which included the following:
 - Previous references to Morton Bay Figs requiring “full sun” were clarified to mean 6-8 hours of direct sun throughout the entire year. In terms of how much of the canopy would require that solar access, it was advised this should reach most of the canopy.
 - The arborist generally remained unconvinced the example provided by the applicant arborist was a useful comparison to the current example.
 - The arborist acknowledged that Morton Bay Figs are a species that are resilient to change and grow in urban environments where there is overshadowing by built form.
 - The arborist was not able to identify what specific amendments they believed would achieve a suitable outcome with regard to solar access to the tree.

- It was suggested further detail should be provide demonstrating the amount of sun the tree would receive post development (e.g. a scale model).
- A further meeting with the Panel was held on 14 August 2024 where the conflicting arborist commentary regarding overshadowing impacts to the heritage tree on the site were discussed. The Panel engaged the services of an independent arborist to review the conflicting arborist advice on this matter. That advice has been received (see Attachment 9) and concludes that the tree is not likely to suffer long term decline solely on the basis of overshadowing. It was also recommended that a clear, staged methodology for removal of the pavement beneath the tree would need to be developed. This may be addressed by way of conditions of consent.

Overall conclusion regarding overshadowing of the tree

It is noted the proposed development responds positively to the tree in a number of ways. This includes the following:

- Generous setbacks of the tower form to the canopy (approximately 37m to the eastern tower and ~17m to the western tower)
- Excluding built form from the structural root zone such that no pruning of the canopy is required or significant impacts to roots result.
- Ongoing maintenance and monitoring of tree health by way of conditions.
- Building separation to the building on the adjoining site to the west exceeding the ADG requirements (at the lower levels).

It is noted that opportunities for increasing solar access that appear readily achievable through reducing the depth of the western tower (see Figure 19 below) have not been investigated. This is in the context of the building exceeding the recommended maximum depth of 18m under the ADG (being ~23m). Notwithstanding, the SRPP commissioned arborist has advised that the proposal as currently designed would unlikely result in overshadowing that would significantly compromise the health and vitality of the tree. On balance, the proposed development is a reasonable response to the tree given the CBD location where generous heights and FSR are applicable and in the context of delivery of a significant number of dwellings to address housing supply.




Figure 19: Opportunities for increased solar access

1.4. Submissions

The application was notified in accordance with Council's Community Participation Plan 2019. Four (4) submissions were received, and the issues identified are discussed below.

**Figure 20: Notification map****Table 1: Submissions**

Concern	Comment
Insufficient car parking	The proposal provides the number of car parking spaces required by Council. A reduction to the commercial car parking rate is supported in this instance due to the central location and close proximity to public transport routes.
Traffic impacts to Parkinson and Osborne Street and Crown St traffic lights.	A Traffic Impact Assessment Report has been provided by the applicant that has been reviewed by Council's Traffic Officer and Transport for NSW and found to be acceptable regarding likely impacts on the local road network.
No local grocery shopping opportunities forcing all residents to use their cars.	Noted. There are however no controls that would preclude the proposal on this basis. Availability of amenities/services such as this in the locality is a broader strategic consideration outside of the scope of this application to resolve.
Insufficient building separation (clause 4.6 variation sought)	The building separation has been amended to comply.
Variations to DCP setbacks creates a poor precedent	The proposal is generally compliant with DCP setback controls except for a minor variation at the upper level of the towers as discussed at Chapter A1. The impacts associated with this variation are not of a notably greater scale than that of a compliant form.
Potential wind tunnelling impacts	The proposal has been supported by a wind impacts assessment including wind tunnel modelling. That report found that the proposal would not result in pedestrian comfort levels being breached.
Overshadowing of streets	The site is not identified as being impacted by sun plane protection controls. The scale of the podium and tower form is acceptable regarding the applicable controls and overshadowing of the public domain surrounding the proposal is commensurate with the built form anticipated by the planning controls.

Concern	Comment
Inadequate notification period in respect of neighbourhood forum meeting dates.	The proposal was notified in accordance with Council's public participation policy.
Concern the building will protrude above the escarpment line as viewed from Flagstaff Hill	The building does not exceed the maximum height permitted for the site. A view analysis using Council's 3D software from Flagstaff Hill indicates the tower form will not exceed the line of the escarpment.
	
Query regarding cost of development and determination authority	The application was accompanied by a quantity surveyor report and is development is of a value that requires determination by the Regional Planning Panel.
Concern about a tunnel access along Crown Street	There is no vehicular access proposed or permitted to Crown Street
Query regarding the maximum height and whether the development complies	The building does not exceed the height limit.
Query about the way car parking has been calculated	The car parking has been calculated correctly as discussed at Chapter E3 of WDCP2009.
Query about necessary separation distances.	Separation distances under the Apartment Design Guide and DCP have been increased since lodgement and are now compliant apart from minor variations at the upper levels as discussed at Chapter A1 of WDCP2009.

1.5. CONSULTATION

1.5.1 INTERNAL CONSULTATION

Architectural

Council's in house architect has provided input at various stages throughout the assessment including engaging with the DRP at each of the Panel meetings. The proposal has been amended in response to concerns raised during the assessment. There are several concerns and suggested changes that have not been addressed or incorporated into the current design which includes the following:

- Differentiation between the tower forms to provide greater visual interest and relief to the overall bulk.
- Opportunities for more generous lift lobbies and hallways.
- Suggestion that unprotected full height glazed areas should be reconsidered with potential alternatives being windows in walls, or mitigation controls such as extended slab edge projections, louvres, screens, baguettes/slats or other solutions.
- Accessibility and program of communal open space areas
- Concern regarding direct access to the townhouse units from the parking level.

Whilst the above concerns are not considered determinative matters.

Geotechnical Engineer

Council's Geotechnical Officer has reviewed the application and has provided a satisfactory referral. Conditions of consent were recommended and are included in the consent.

Stormwater Engineer

Council's Stormwater Officer has reviewed the application and given a satisfactory referral. Conditions of consent were recommended and are included in the consent.

Landscape Officer

Council's Landscape Officer has reviewed the proposal and raised a variety of concerns regarding the impact of the development to the heritage listed Morton Bay Fig tree. The primary outstanding concerns related to the overshadowing impacts and an independent arborist was commissioned to review the proposal. See further discussion in section 1.3 in this regard.

Traffic Engineer

Council's Traffic Officer has reviewed the application and given a satisfactory referral. Conditions of consent were recommended and are included in the consent.

Heritage Officer

Council's Heritage Officer reviewed the proposal and raised a number of concerns. These are discussed below.

Solar access to the heritage tree

Solar access to the Fig Tree is discussed above.

Retention of views to the Fig along Crown Street and Gladstone Avenue

It is noted the tree is situated at the rear of the site and in the context of built form controls that anticipate street wall heights of 12-24m and a build to boundary treatment.

As is evident from the street view shots at **Error! Reference source not found.** and Figure below, a smaller 2 storey podium would largely obstruct any views towards the tree from street level. Preservation of views from street level towards the tree in this context are considered difficult to preserve.



Figure 21: View towards tree from Crown Street adjacent to western boundary



Figure 23: View towards tree further east from Crown Street

The proposal will afford glimpses of the tree through the setback of the built form from the southern boundary as illustrated below.



Figure 22: Existing views towards tree from Gladstone Avenue adjacent southern boundary



Figure 23: Proposed Gladstone Avenue elevation at southern boundary

Preparation of a Visual Impact analysis that considers views to Fig from key points

There is not considered necessary to prepare such an analysis given the discussion above.

Archaeological retention / interpretation

The site is not identified in the LEP as being of heritage significance regarding the European archaeology. The heritage listing of the tree is however interlinked with the built form history of the site ("Gladstone House"), the footings of which may be preserved below the bitumen car park.

The proponent has provided a Historical Archaeological Assessment (Sustainable Heritage, 8 March 2023) along with an overlay of heritage potential as illustrated at figure 26.



Figure 24: Heritage overlay

The Archaeological Assessment makes the following recommendations

- Historical archaeological test excavations are to be undertaken to identify if evidence of Gladstone House remains and to assess and determine if additional archaeological excavation and recording measures are required. The methodology for test excavations must be as per Section 9 of the Historic Archaeological Report (Sustainable Heritage Version 2 dated 8 March 2023).
- The stained-glass windows double hung timber windows, front timber door of 2 Gladstone Avenue must be salvaged before demolition.
- An Interpretation Plan must be developed for the site outlining its history involving the Gladstone House Estate and evolution of the site over the years. The Heritage Interpretation Plan must have provisions for the excavation of relics and artefacts and also for integrating if any relics or artefacts that may be found at the site.

With regard to the above, Council's heritage officer requested the following information:

- Advice from Sustainable Heritage on whether any testing can be undertaken prior to consent being issued in locations of moderate-high potential to understand nature of archaeological resource on site.
- Section 140 Permit under the Heritage Act and Test Excavation Report (as per above).
- Heritage Interpretation Strategy for the site that considers the management of Archaeology particularly in open space and landscaped areas and addresses the history of the Site including link of the Fig to Gladstone House and archaeology. This Strategy can be developed into a detailed plan as a condition of consent to allow for incorporation of final archaeological investigations etc. but a strategy will allow for plans to consider the delivery of conservation outcomes, signage, reuse of materials, artefact displays and images etc in publicly accessible areas.

- Updated Landscape Plan that addresses Heritage Interpretation Plan/Strategy and incorporates recommendations for onsite retention, salvage and interpretation of archaeology and history of Gladstone House and Fig.

The above are to be addressed by way of conditions of consent and as recommended in advice from Heritage NSW.

Environment Officer

Council's Environment Officer has reviewed the application and given a satisfactory referral subject to conditions of consent.

1.5.2 External consultation

Transport for NSW

Transport for NSW have issued General Terms of Approval under s2.119 and s2.122 of SEPP (Transport and Infrastructure) 2021. Their conditions are attached to the draft consent.

Endeavour Energy

Endeavour Energy have provided conditions of consent regarding clause 2.48 of SEPP (Transport and Infrastructure) 2021.


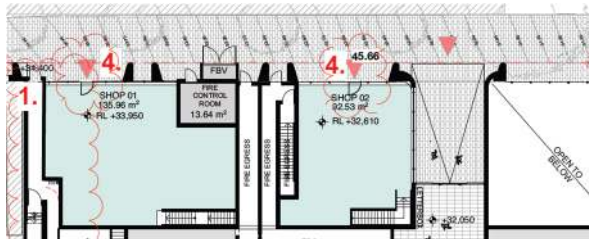

Heritage NSW


Heritage NSW have recommended conditions of consent regarding heritage interpretation and unexpected finds.

Design Review Panel

The application was reviewed by the Design Review Panel under the requirements of clause 7.18(5) of WLEP 2009 (design excellence) and clause 28(2)(a) of SEPP 65 (Design Quality of Residential Apartment Development). One meeting was held prior to submission of the DA and two subsequent meetings following lodgement, the most recent of which was on the 14 December 2023. The advice provide by the Panel has been suitably responded to by the applicant in amended plans and the proposal now demonstrates design excellence. How specific comments from the most recent DRP meeting have been responded to are outlined below.

Panel comment	Response / comment
Consideration be given to reconfiguring vehicular circulation and relocating the garbage room to allow each of the south facing townhouse units to be serviced with its own garage. This development would improve the amenity / value of these units.	Garages for the townhouse units have not been provided. Notwithstanding, each townhouse has an air lock / laundry room that provides separation between the car park and the unit in terms of amenity and safety.
Desire to provide a public link between Parkinson Street and Gladstone Avenue.	<p>Council's DCP identifies current and desired future pedestrian linkages within the city centre and there is not one identified over the subject site.</p> <p>A pedestrian link at this location would also be challenging regarding the significant grade change and equitable access concerns.</p> <p>A link in this location would not provide an obvious connection which is not already available along existing public streets.</p> <p>References to extending Parkinson Street through to Gladstone Avenue is a misnomer as Parkinson Street ends approximately 80m west of the subject site. Access to the subject site from Parkinson Street is over private land on which a right of carriageway sits. This is not an easement for public access.</p>

Panel comment	Response / comment
Conflicts with a stormwater pit from the adjoining property to the west	This is a matter that can be resolved through the construction process.
Recommended emphasis to corner tower through use of roof element to assist in corner expression	The tower form has been altered in several ways since lodgement including providing recesses in the form adjacent the lift lobbies and greater refinement of materials and finishes. The eastern tower includes a roof over the top floor that distinguishes it from the levels below. The form now proposed suitably addresses the corner.
Questionable street level spaces, particularly where columns are located closely together, that still create areas of concealment that may facilitate anti-social behaviour. Consideration could be given to maintaining the same expression of the columns but relocating the glass line closer to the site boundary, to reduce the depth of concealment spaces fronting the street.	<p>Columns at ground level have been reduced in number and curves introduced as shown below.</p> <p>Previous</p>  <p>Revised</p>  <p>The columns also create unusable balcony spaces for some apartments (e.g. Building A 301-303, 401-403 and 501-503), which will need to be further considered.</p> <p>The balcony spaces in question are illustrated below.</p>  <p>These column elements have not been changed. Whilst the concern regarding the void space behind the columns is noted. On balance, the architectural expression of the column elements contributes to the façade</p> <p>and do not result in unreasonable impacts to the amenity or functionality of the units.</p>
Greater resolution of the COS areas	<p>The communal open space area has been refined and now includes three separate areas accessible to all units as follows:</p> <ul style="list-style-type: none"> level 1: Gym with lockers and accessible toilet.

Panel comment	Response / comment
	<ul style="list-style-type: none"> Level 2: Open deck area with covered area, BBQ, kitchenette accessible toilet, landscaped planters and seating. Level 4: Larger area broken into different zones with a mixture of covered and open space, seating and a BBQ area. <p>The area exceeds the minimum required to meet the DCP and achieves suitable solar access along with providing a variety of environments for residents.</p>
Compliance with cross ventilation targets relies on openings to recesses in the building and evidence of how effective these are is to be provided. Those openings also result in acoustic and visual privacy concerns.	The width and depth of the openings complies with fire separation requirements and depth of the recesses is not so great as to compromise flow. Openings to the gaps are generous in size and acceptable air flow will be achieved.
<p>Building B corridors, levels 1 and 2 contain landscaped areas that are recessed into the circulation space, adjacent to the lifts. The landscaped areas are effective in breaking up the perceived length of the corridors. However, the crank points in the corridor disrupt sight lines and potentially create an awkward path for manoeuvring objects/ furnishings when moving into or out of the building. This could be improved by reducing the depth of the protrusion, increasing the amount of glazing (if structure allows) and chamfering of corners to reflect the curvilinear language of the building's exterior.</p>	 <p>The proponent has not altered this element. The corridor dog leg does not present any more of an obstacle than other paths of travel within the building and the units themselves for moving furniture. There is glazing to these sections that would allow for views through.</p>
Providing slight recess in the corridor to highlight unit entries and provide slightly wider corridor widths in selected locations.	The applicant has not amended this as it was not deemed necessary to satisfy any particular built form controls.
- using floor finishes wall finishes to identify entrances units.	This is not a requirement of any applicable controls.
- the glazing configuration at the northern and southern ends of the corridor. The southern glazing may be developed to capitalise upon the direct solar access that will be achieved at mid-day	Both towers have corridor/lift lobby areas with points of access to natural light and operable windows.
large scale details (1:20 recommended) to demonstrate how the design intent shown in the perspectives is realised.	1:20 sections are provided (see plan reference A350)
Tower forms appear to consist entirely of concrete and glass. It is a concern that this approach may present as too utilitarian if a fine detail resolution is not achieved. The material	There has been refinement of the materiality of the tower form to include a greater mix of materials and finishes.

Panel comment	Response / comment
select also appears to lack the detail finessing required to control solar access to each façade to provide an environmentally responsive design. The applicant is encouraged to reconsider the extent of glazing and develop a screening strategy that improves the proposals environment performance and contributes to the aesthetic quality of the towers.	
sections should show balcony / balustrade details, screens, balcony overflows, soffit finishes, street awning design and material junctions. All materials finishes must be clearly documented.	Provided
Servicing of the building must be considered at this stage of the design process. The location of service risers, car park exhausts, AC condensers, down pipes and fire hydrant boosters and substations should be shown.	These are shown on plans.
Elevation must clearly show all materials and material selection must be definitive. The word "or similar" should be removed form material legend, the type of brick should be specified, the street awning should be designed, and its materiality specified.	See plan references A202 and A203.

2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

1.7 Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 199.

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

NSW BIODIVERSITY CONSERVATION ACT 2016

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

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

The site is not identified as being of high biodiversity value on the Biodiversity Values Map.

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

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

2.1.1 STATE ENVIRONMENTAL PLANNING POLICY (PLANNING SYSTEMS) 2021

Schedule 6 Regionally significant development

Section 2.19(1) and Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 declares the proposal regionally significant development as: General development that has a capital investment value of more than \$30 million.

2.1.2 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 4 Remediation of land

4.6 Contamination and remediation to be considered in determining development application

Council records identify the site as previously being used for service station. A Remediation Action Plan has been submitted which concludes the site can be made suitable following the implementation of the recommendations and validation process outlined in the report. This has been reviewed by Council's Environment Officer and appropriate conditions are included in the draft consent. The Panel can be satisfied that the requirements of clause 4.6 have been met.

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

At the time of lodgement of the DA (23 February 2023), SEPP 65 applied. The provisions contained within this policy were transferred to SEPP (Housing) 2021 Chapter 4 on 1 October 2023. Under the savings and transitional provisions of Schedule 7A(8) of the Housing SEPP:

(1) An amendment made to this policy by the amending policy does not apply to the following—

(a) a development application made, but not determined, on or before 14 December 2023,

As the current development application was accepted on 24 February 2023, SEPP 65 applies

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

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

Schedule 1 of SEPP 65 sets out the design quality principles for residential apartment development. These must be considered in the assessment of the proposal pursuant to clause 30(2)(a) of the Policy and are discussed below.

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

Principle 1: Context and neighbourhood character

The proposal is designed in a way that generally responds appropriately to the unique characteristics of the site. The interface with adjoining development and the public domain is acceptable and the form is generally consistent with the form anticipated under the LEP and DCP. The locality is one experiencing a transition towards higher density development such as that proposed and will see further intensification into the future that realises the development potential within the controls.

Principle 2: Built form and scale

The proposal complies with the applicable height and FSR. The building separation is generally acceptable, and the form is a suitable response to the controls relating to bulk and scale. The street wall height is not excessive and is of a suitable proportion in terms of relationship to the tower form above. The architectural expression of the tower form is acceptable and provides a variety of materials and finishes and articulation.

Principle 3: Density

The density of the development complies with the maximum FSR permitted for the land. The development can be accommodated regarding infrastructure and servicing. Contributions applicable to the development will go towards local infrastructure and facilities. The site is well situated regarding existing services and the road network around the site can sustain the increased traffic movements without upgrades. The site is suitable for the higher density form proposed.

Principle 4: Sustainability

The proposal is considered acceptable with regard to sustainability as follows:

- BASIX Certificates provided indicating minimum requirements are met.
- The building achieves an average NaTHERS rating of 7.1 stars.

- Separation of waste streams to reduce amount of waste going to landfill.
- The proposal does not impact on any environmentally sensitive areas.
- Heritage matters are suitably addressed.
- PV panels are provided.
- EV charging infrastructure is to be provided.
- High quality bicycle and end of trip facilities are provided.
- The proposal is an efficient use of land in a location that is close to services and public open space.
- Overshadowing impacts are acceptable regarding the applicable built form controls and context.
- A wind tunnel test has been provided which found that the design did not result in wind speeds for Pedestrian Footpaths and Accessways, Building Entrances, and Balconies/Terraces exceeding target comfort levels. No wind mitigation measures were recommended.
- The facades of the tower do not contain large expanses of floor to ceiling glazing and for a large proportion, glass areas are recessed within balcony areas. Reflectivity is not expected to be a concern.

Principle 5: Landscape

The proposal generally provides suitable landscaped areas and communal open space that will improve the amenity of the occupants and improve the appearance of the development from adjoining properties and the public domain. The design improves the environmental conditions surrounding the heritage listed tree by virtue of removing the bitumen car park that currently covers the entirety of the ground surface beneath it, replacing it with mulch and soft landscaping. This adds to deep soil area for the site allowing stormwater infiltration and reducing stormwater runoff. Deep soil planting is also provided within the southern setback. Street trees are to be installed to improve the pedestrian environment and contribute to urban greening of the public domain. Likely impacts to the heritage listed tree are not expected to be fatal or require redesign of the proposal as discussed further at section 1.3.

Principle 6: Amenity

The proposal meets the minimum requirements for solar access, private and communal open space, storage, visual and acoustic privacy, access and the like. The design will provide good amenity for residents.

Principle 7: Safety

The proposal will rejuvenate a key site within the city centre. The ground level commercial spaces provide activation of the street, and the design allows for passive surveillance of public areas. Entry points to the building are well identified and do not include opportunities for concealment. Secure access is provided to the basement and private areas within the development.

Principle 8: Housing diversity and social interaction

The proposal provides a compliant mix of unit sizes. Opportunities for social interaction are provided within several communal open space areas.

Principle 9: Aesthetics

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

Apartment Design Guide

The full compliance table for the ADG is provided at **Attachment 3**.

Areas where the proposal is inconsistent with the ADG controls and guidance are discussed below.

<i>Standards/controls</i>	<i>Comment</i>
2E Building depth	
Use a range of appropriate maximum apartment depths of 12-18m from glass line to glass line when precinct planning and testing development controls. This will	The building depth for building A exceeds 18m, reaching ~23m as highlighted below.

*Standards/controls**Comment*

ensure that apartments receive adequate daylight and natural ventilation and optimise natural cross ventilation.

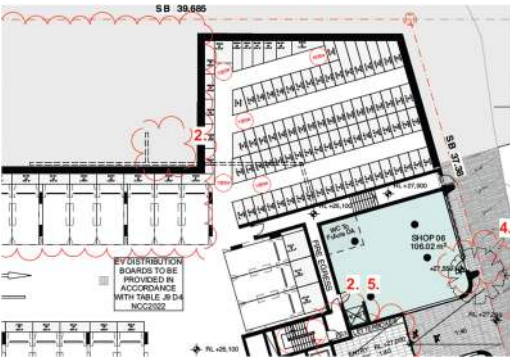

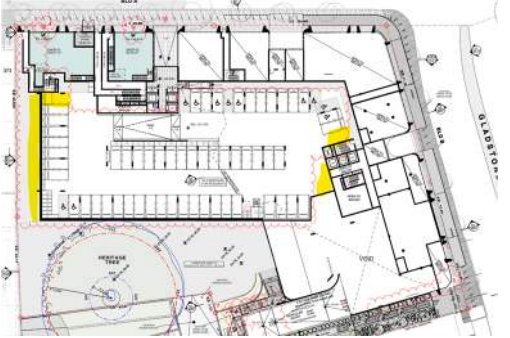
Where greater depths are proposed, demonstrate that indicative layouts can achieve acceptable amenity with room and apartment depths. This may require significant building articulation and increased perimeter wall length.



The room depths do not exceed 8m from a window and the variation does not compromise natural ventilation targets. The form remains consistent with the aims of this control which are as follows:

- *ensure that the bulk of the development relates to the scale of the desired future context.*
- *ensure building depths support apartment layouts that meet the objectives, design criteria and design guidance within the Apartment Design Guide.*

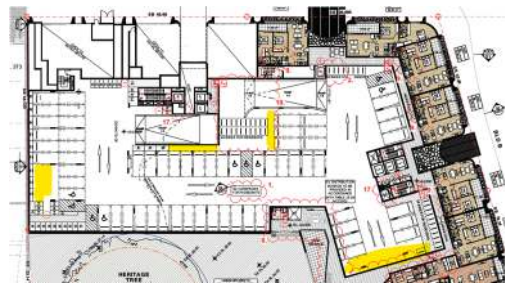
It is noted that provision of a compliant building depth would allow for increased solar access to the heritage listed tree. Whilst not directly relating to the objectives of this control, a reduction in the depth of the building would represent a more site responsive design.

Standards/controls	Comment
<p>Part 3 Siting the development</p> <p>4G Storage</p> <p>Objective 4G-2 Additional storage is conveniently located, accessible and nominated for individual apartments</p> <p>Design guidance</p> <p>Storage not located in apartments is secure and clearly allocated to specific apartments</p> <p>Storage is provided for larger and less frequently accessed items</p> <p>Storage space in internal or basement car parks is provided at the rear or side of car spaces or in cages so that allocated car parking remains accessible</p> <p>If communal storage rooms are provided they should be accessible from common circulation areas of the building</p> <p>Storage not located in an apartment is integrated into the overall building design and is not visible from the public domain</p>	<p>The proposal includes a large communal storage area on Lower Ground floor. This space has three blind aisles with one access point and is compromised in terms of safety, convenience and functionality (See image below).</p>  <p>It appears that storage for some units is also not located on the same floor as the related car space.</p> <p>There are several areas within the car parking levels however that could be utilised for additional storage as highlighted below. This would be resolvable via conditions of consent or amendments to the plans.</p> <p>Lower ground</p>  <p>Upper ground</p> 

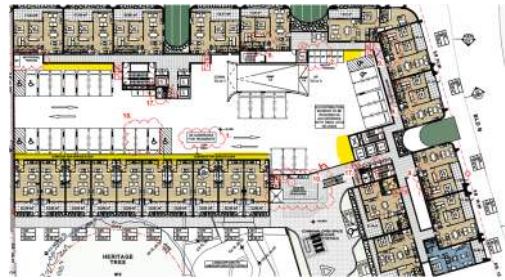
Standards/controls

Comment

Level 1



Level 2



Level 3



2.1.4 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

Chapter 2 Infrastructure

Subdivision 2 Development in or adjacent to road corridors and road reservations

2.119 Development with frontage to classified road

Crown Street is a classified road and Council controls identify vehicular access as being prohibited from that frontage. Access is proposed from Parkinson Street via a right of carriageway over the adjoining lot. The design mitigates impacts to residents from noise and emissions through design features (e.g. double glazing and mechanical ventilation).

2.120 Impact of road noise or vibration on non-road development

Crown Street is a road that carries an annual average daily traffic volume of more than 20,000 vehicles.

The submitted Acoustic Report addresses the requirements of the Guidelines issued by the Planning Secretary with respect to this clause and provides recommendations regarding noise attenuation measures in the construction to address traffic noise. Conditions of consent have been applied.

2.121 Excavation in or immediately adjacent to corridors

The proposal has been reviewed by Transport for NSW regarding excavation adjacent to the classified road (Crown Street) and found to be satisfactory subject to conditions.

2.122 Traffic-generating development

A Traffic Impact Assessment has been submitted with the proposal which has been reviewed by both Transport for NSW and Council's Traffic Officer. The report details the likely traffic generation arising

from the proposal and directions of travel and likely impacts to nearby intersections. Transport for NSW and Council's Traffic Officer have not objected to the proposal on traffic generating grounds.

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

The proposal is BASIX affected development to which this policy applies (note: the development application was lodged on 24 February 2023, prior to the adoption of SEPP (Sustainable Buildings) 2022). In accordance with Part 3 Division 1 Section 27 of the Environmental Planning and Assessment Regulation 2021, a BASIX Certificate has been submitted in support of the application demonstrating that the proposed scheme achieves the BASIX targets.

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

2.1.6 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Clause 1.4 Definitions

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

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned **B3 Commercial Core** at the time of lodgement (since changed to E2 Commercial Centre however the zoning at lodgement applies. The land use remains permitted in the E2 zone).

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

- *To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.*
- *To encourage investment in commercial development that generates employment opportunities and economic growth.*
- *To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.*
- *To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To encourage development that is consistent with the centre's position in the centres hierarchy.*
- *To strengthen the role of the Wollongong city centre as the business, retail and cultural centre of the Illawarra region.*

The proposal is satisfactory with regard to the above objectives.

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

*Advertising structures; Amusement centres; Artisan food and drink industries; Backpackers' accommodation; Boarding houses; Car parks; Centre-based child care facilities; Commercial premises; Community facilities; Entertainment facilities; Exhibition homes; Function centres; Helipads; Home businesses; Home industries; Hostels; Hotel or motel accommodation; Information and education facilities; Local distribution premises; Medical centres; Mortuaries; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Self-storage units; Service stations; Sex services premises; **Shop top housing**; Tank-based aquaculture; Tourist and visitor accommodation; Vehicle repair stations; Veterinary hospitals; Wholesale supplies*

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

Part 4 Principal development standards

Clause 4.3 Height of buildings

The proposed building height of 60m does not exceed the maximum of 60m permitted for the land.

Clause 4.4A Floor space ratio – Wollongong city centre

Site area: 6,514m²

Commercial GFA: 1,039.40m² (4.4)

Residential GFA: 22,484.94m² (95.6)

Total GFA: 23,527.79m²

Proposed FSR: 23,524.34/6,514 = **3.61:1**

Permitted maximum under clause 4.4A(4)

- (4) The maximum floor space ratio for a building on land within Zone E1 Local Centre, Zone E2 Commercial Centre, Zone E3 Productivity Support or Zone MU1 Mixed Use, that is to be used for a mixture of residential purposes and other purposes, is—

$$(NRFSR \times NR/100) + (RFSR \times R/100):1$$

where—

NR is the percentage of the floor space of the building used for purposes other than residential purposes. **4.4**

NRFSR is the maximum floor space ratio determined in accordance with this clause if the building was to be used only for purposes other than residential purposes. **6:1**

R is the percentage of the floor space of the building used for residential purposes. **95.6**

RFSR is the maximum floor space ratio determined in accordance with this clause if the building was to be used only for residential purposes. **3.5:1**

$$(6 \times 0.044) + (3.5 \times 0.96) = 0.264 + 3.36 = \mathbf{3.62:1}$$

Clause 4.6 Exceptions to development standard

A clause 4.6 variation is sought for building separation under clause 8.6.

The requirements of clause 8.6 are as follows:

- (1) *The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.*
- (2) *Buildings on land within Zone E2 Commercial Centre or MU1 Mixed Use must be erected so that—*
 - (a) *there is no separation between neighbouring buildings up to the street frontage height of the relevant building or up to 24 metres above ground level whichever is the lesser, and*
Complies
 - (b) *there is a distance of at least 12 metres from any other building above the street frontage height and less than 45 metres above ground level, and*
Complies
 - (c) *there is a distance of at least 28 metres from any other building at 45 metres or higher above ground level.*

Above 45m in height, the western tower has a separation of ~17m to the existing building to the west as shown below.

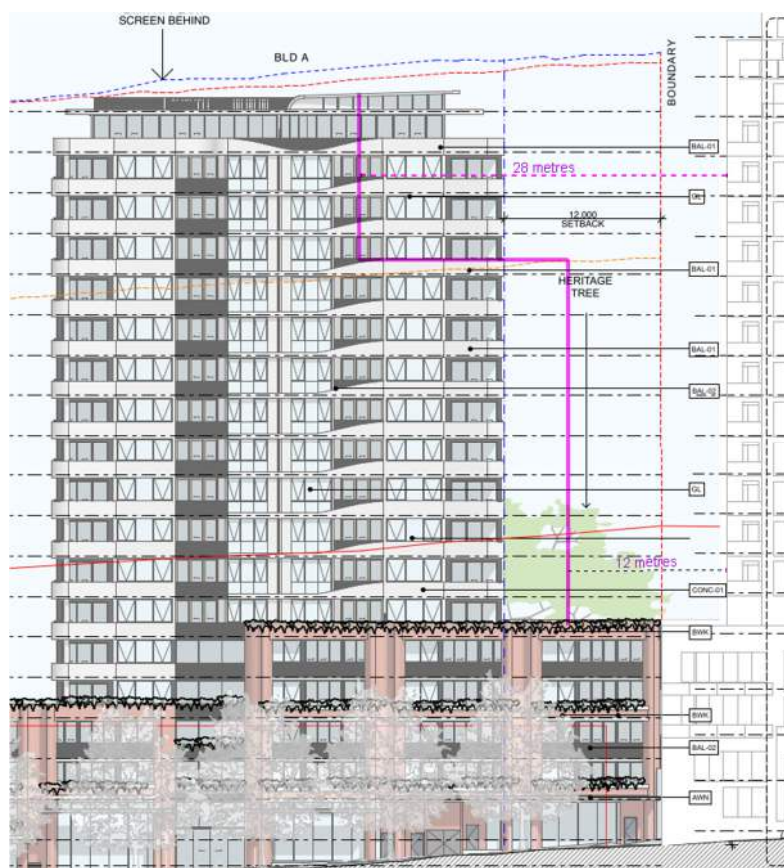


Figure27: Separation distances

(3) *Despite subclause (2), if a building contains a dwelling, all habitable parts of the dwelling including any balcony must not be less than—*

- (a) *20 metres from any habitable part of a dwelling contained in any other building, and*
- (b) *16 metres from any other part of any other building.*

The separation between the building and the adjoining building to the west is ~17m as shown above.

Note: Changes to Clause 4.6 commenced on 1 November 2023 through an amendment to the Standard Instrument LEP Order (Amending Order) and only apply to development applications lodged after this date. This application was lodged on 24 February 2023 therefore will be assessed under the previous clause.

WLEP 2009 clause 4.6 proposed development departure assessment	
Development departure	Clause 8.6 Building separation
Is the provision being varied a development standard?	Yes
4.6 (3) Written request submitted by applicant contains a justification:	
that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	The application is accompanied by a clause 4.6 variation request as contained at Attachment 2 .
that there are sufficient environmental planning grounds to justify contravening the development standard	Yes The applicant's Clause 4.6 Statement identifies the environmental planning grounds that are considered sufficient to support the development departure to building separation with regard to the specifics of the proposed development and unique site circumstances.

4.6 (4) (a) Consent authority is satisfied that:	
the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	In accordance with the Wehbe test, the applicant argues that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.
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>The proposed development will be in the public interest because it is consistent with the objectives of the building separation standard, the objectives for development within the E3 zone will be achieved.</p> <p>Objectives of E2 Commercial Centre Zone are</p> <ul style="list-style-type: none"> • <i>To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.</i> • <i>To encourage investment in commercial development that generates employment opportunities and economic growth.</i> • <i>To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.</i> <ul style="list-style-type: none"> • <i>To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area</i> • <i>To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces</i> • <i>To encourage development that is consistent with the centre's position in the centres hierarchy</i> • <i>To strengthen the role of the Wollongong city centre as the business, retail and cultural centre of the Illawarra region.</i> <p>These objectives have been discussed above. The development is considered to respond to the objectives of this zone despite the minor variations.</p> <p>The objective of clause 8.6 is as follows:</p> <p><i>(1) The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.</i></p> <p>The applicant's 4.6 Statement adequately demonstrates that compliance with the building separation requirements is unnecessary and unreasonable in the circumstances of the case, noting the objectives of Clause 8.6 are met.</p> <p>The following environmental planning grounds are considered relevant in this instance:</p> <ul style="list-style-type: none"> • The development achieves the applicable separation distances between residential apartment buildings under the Apartment Design Guide (ADG). • The variation does not result in adverse impacts in terms of visual privacy, noting the separation is consistent with 3F of the ADG. • The proposed separation is acceptable with consideration to the adjoining built form, noting the

	<p>setbacks of the adjoining tower to the west are much close than required under 8.6, placing increased burden on the subject site compensating for this.</p> <ul style="list-style-type: none"> The non-compliance will not compromise adjoining development achieving the requisite minimal solar access. <p>There are sufficient environmental planning grounds that are specific to the redevelopment of the site to justify contravening the development standard.</p> <p>There is not considered to be a public benefit served in this instance by insisting on strict compliance with the standard.</p>
the concurrence of the Secretary has been obtained.	<p>The concurrence of the Secretary can be assumed in accordance with the Department of Planning Circular PS 18-003 'Variations to development standards', dated 21 February 2018.</p> <p>The Secretary can be assumed to have given concurrence if the matter is determined by a Sydney district or regional planning panel in accordance with the Planning Circular</p>

Part 5 Miscellaneous provisions

Clause 5.10 Heritage conservation

The site contains a large Moreton Bay Fig which is listed as an item of local heritage significance under the LEP. This is discussed in detail at section **Error! Reference source not found.**

A variety of conditions are applicable regarding potential European archaeological finds.

Clause 5.21 Flood planning

The site is not identified as being flood affected.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

Endeavour Energy have reviewed the proposal and provided conditions of consent and standard construction guidelines.

Clause 7.5 Acid Sulfate Soils

The land is not identified as potentially containing acid sulfate soils.

Clause 7.6 Earthworks

The proposal comprises excavation for basement car parking.

A geotechnical report has been provided that has been reviewed by Council's Geotechnical Engineer and conditions of consent recommended.

The earthworks are not expected to have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features surrounding land.

It is noted that the locality is known to contain bedrock that will be hard to excavate. A Geotechnical Report and Noise & Vibration Management Plan have been prepared by the proponent contain discussion in this regard. A variety of conditions have been recommended to mitigate acoustic impacts to the locality during excavation.

Clause 7.13 Certain land within business zones

The proposal provides active frontages at ground floor level in accordance with this control.

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

(4) In considering whether development to which this clause applies exhibits design excellence, the consent authority must have regard to the following matters:

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

The proposal has been reviewed by the Design Review Panel on three occasions and by Council's in house architect. The proposal is considered to respond suitably to the commentary provided from both.

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

The subject land contains a vacant and dilapidated site along with small scale, unremarkable commercial buildings and associated at grade car parking. The site is situated on a key commercial core corner and the proposal will provide a significant uplift to the streetscape. The proposal is an appropriate response to the applicable planning controls and site constraints and opportunities, suitably addresses the public domain through awnings, podium heights, activation, aesthetics and suitably mitigates wind impacts without overshadowing key public domain sites. It will be a significant improvement to the public domain.

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

The site sits within a view corridor from Flagstaff Hill towards Mount Kembla as identified under section 3.10 of Chapter D13. This is also identified within the Urban Design Framework which identifies an objective of maximising continuous views of the ridgeline of the escarpment from Flagstaff Hill.

In this regard, the LEP sets maximum height limits for sites throughout the CBD and the subject view line from Flagstaff Hill to Mount Kembla dissects the middle of the CBD where the height limits are the most generous. Achieving this outcome would necessitate buildings significantly lower height than reflected in the existing LEP height controls. It is also noted that three approved towers within the city centre currently extend above the escarpment line as viewed from Flagstaff Hill.



Figure28: View corridor



Figure 29: View corridor extract from WDCP2009

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

N/A

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

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

The land uses are permitted. The proposal is a suitable response to the site constraints (e.g. grade changes, constrained access, contamination, relationship with adjoining development and the general locality).

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

The proposal responds appropriately to the existing and likely future land use mix in the locality.

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

The proposal is acceptable regarding European and Aboriginal archaeological heritage considerations and will not impact on any nearby listed heritage buildings.

The design of the proposal responds to the streetscape constraints

Heritage matters including the heritage listed tree and potential European archaeological finds are satisfactory or addressed via conditions of consent.

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

The tower forms comply with the building separation requirements to other tower forms under clause 8.6 of WLEP 2009 apart from the upper level of Building A as discussed in this report. Visual privacy controls under 3F of the ADG is compliant, and DCP set back requirements are acceptable, noting a variation at the higher levels discussed at Chapter A1. The form is compatible with adjoining development and the locality.

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

The podium provides an appropriate street wall height that complies with the DCP and is of a scale that complements the tower form above and has a comfortable relationship with adjoining development. The tower forms provide appropriate setbacks, and the external expression is suitably articulated. The exceedance of the recommended building depths for Building A contributes to overshadowing of the heritage listed tree.

(vi) street frontage heights,

The proposal complies with street frontage height requirements apart from the southern boundary where a setback is provided, rather than build to boundary approach to achieve a better interface with the adjoining building which is of a much smaller scale.

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

The proposal suitably addresses sustainable design as follows:

- BASIX Certificates provided indicating minimum requirements are met.
- The building achieves an average NaTHERS rating of 7.1 stars.
- Separation of waste streams to reduce amount of waste going to landfill.
- The proposal does not impact on any environmentally sensitive areas.
- Heritage matters are suitably addressed.
- PV panels are provided.
- EV charging infrastructure is to be provided.
- High quality bicycle and end of trip facilities are provided.
- The proposal is an efficient use of land in a location that is close to services and public open space.
- Overshadowing impacts are acceptable with regard to the applicable built form controls and context.
- A wind tunnel test has been provided which found that the design did not result in wind speeds for Pedestrian Footpaths and Accessways, Building Entrances, and Balconies/Terraces exceeding target comfort levels. No wind mitigation measures were recommended.
- The facades of the tower do not contain large expanses of floor to ceiling glazing and for a large proportion, glass areas are recessed within balcony areas. Reflectivity is not expected to be a concern.

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

See above discussion regarding sustainable design.

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

The entry points are accessible, clear and legible. Commercial and residential access and servicing areas are separated. Vehicular access is provided from the right of carriageway and away from the primary street frontages. Bicycle access is either via the residential lifts or the driveway access. Circulation and manoeuvring within the car parking levels is compliant. These matters are also discussed at Chapter E3 of the DCP.

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

The proposal rejuvenates a dilapidated site on a key CBD corner. Active frontages are provided to both street frontages and the proposal will upgrade the footpaths for the full frontage including provision of street trees. Aesthetically, the form and scale of the building will positively contribute to the streetscape.

The proposal has been reviewed on a number of occasions by the Design Review Panel and Council's in house architect and the commentary provided has informed the final design.

Part 8 Local provisions—Wollongong city centre

Clause 8.1 Objectives for development in Wollongong city centre

The proposal is satisfactory regarding this clause.

Clause 8.4 Minimum building street frontage

The minimum street frontage of 20m under this clause is satisfied.

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

The proposal varies the building separation required under this clause with respect to subclause 2(a) and 2(c) as discussed at clause 4.6.

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

None applicable

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

2.3.1 Wollongong Development Control Plan 2009

Compliance tables for the relevant chapters of the DCP are contained at **Attachment 4**. Variations to controls in the DCP are discussed below.

CHAPTER A1 – INTRODUCTION

8 Variations to development controls in the DCP

Building depth

(a) The control being varied;

Chapter D13, Section 2.4 Building depth and bulk: A maximum building depth of 18m is recommended.

(b) The extent of the proposed variation and the unique circumstances as to why the variation is requested; and

For building A, the depth reaches ~23m as indicated below. There are no particularly unique circumstances.



(c) Demonstrate how the objectives are met with the proposed variations; and

The objectives are as follows:

a) *To promote the design and development of sustainable buildings.*

The variation does not compromise the design or sustainability of the building.

b) *To achieve the development of living and working environments with good internal amenity and minimise the need for artificial heating, cooling and lighting.*

The variation does not compromise the achievement of the target amenity controls for ventilation, and solar access. The greatest exceedance is for the corner units that have dual aspect.

c) *To provide viable and useable commercial floor space.*

N/A

- d) *To achieve usable and pleasant streets and public domain at ground level by controlling the size of upper level floor plates of buildings.*

The variation to the depth does not impact on the amenity of the street / public areas surrounding the site. Being located on the southern side of Crown Street, the variation does not impact on solar access to the public domain. The depth variation does not impact on any key sight lines or aspect and does not detract from the visual amenity of the building.

- e) *To achieve a city skyline sympathetic to the topography and context.*

The variation does not impact on the skyline and is acceptable regarding the surrounding context.

- f) *To allow for view sharing and view corridors.*

The variation to the depth does not impact on key view corridors or significantly impact on adjoining occupant views.

- g) *To reduce the apparent bulk and scale of buildings by breaking up expanses of building wall with modulation of form and articulation of facades.*

The variation at the corners of the building is attributed to the balcony areas and the form of the tower is well articulated. The variation does not result in an overly bulky building appearance.

- (d) Demonstrate that the development will not have additional adverse impacts as a result of the variation.*

See discussion above.

Building setbacks

- (a) The control being varied;*

Chapter D13, 2.5 Side and rear building setbacks and building separation:

A 14m setback is required above 45m.

- (b) The extent of the proposed variation and the unique circumstances as to why the variation is requested; and*

On the southern elevation of the eastern tower, and the western elevation of the western tower, the building does not comply as illustrated at 30 and 31 below.

The extent of the variation is minor and does not result in notable adverse impacts beyond that of a fully compliant form.



Figure30: Crown Street elevation

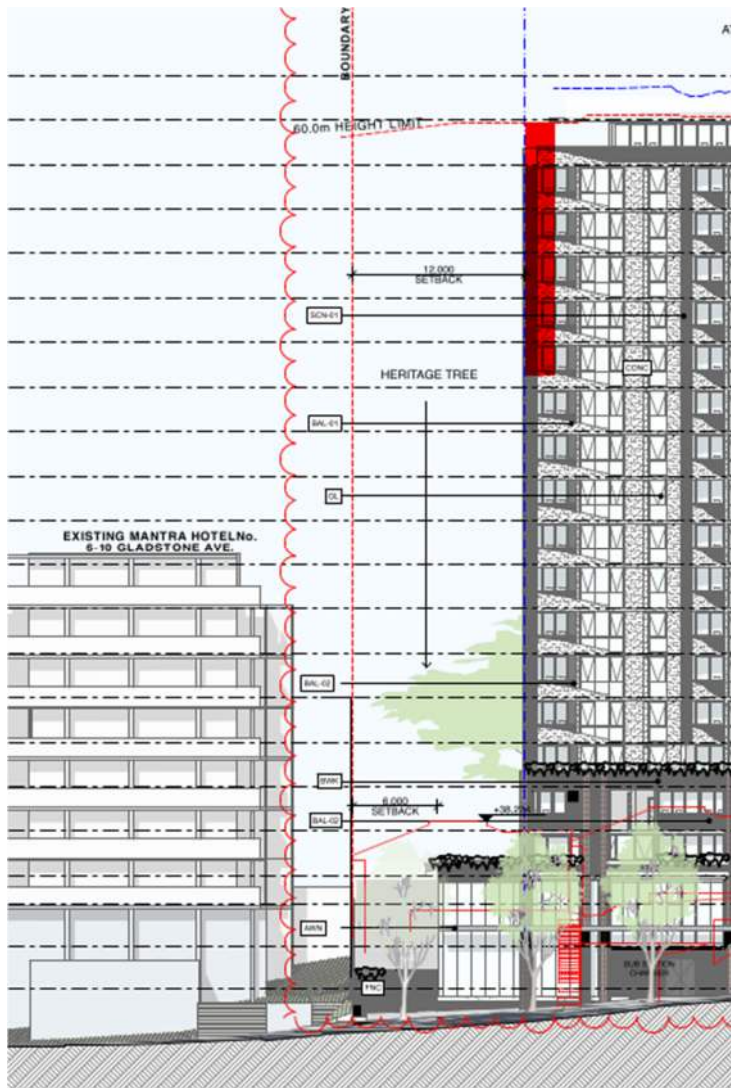


Figure31: Gladstone Avenue elevation

(c) Demonstrate how the objectives are met with the proposed variations; and

The objectives of the control are met as follows:

- a) *To ensure an appropriate level of amenity for building occupants in terms of daylight, outlook, view sharing, ventilation, wind mitigation, and privacy.*

The variation does not compromise the amenity of units within the development. It is noted that there is no built form adjacent the eastern tower and that the unit orientation for the western tower is generally away from the western boundary.

- b) *To achieve usable and pleasant streets and public domain areas in terms of wind mitigation and daylight access.*

The variation does not result in adverse wind impacts and has negligible impact to daylight access to the surrounding streets.

(d) Demonstrate that the development will not have additional adverse impacts as a result of the variation.

See discussion above.

2.3.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN

Wollongong City-Wide Development Contributions Plan (2023)

A contribution applies under Schedule 2 of this plan and has been captured in One Council.

Schedule 2 – Wollongong City Centre Commercial Core levy rates

2. Schedule 2 - Wollongong City Centre Commercial Core levy rates

In accordance with clause 209(1) of the EP&A Regulation, the rate of the levy for development carried out on land within the Zone E2 Commercial Centre in the Wollongong City Centre, as shown at Figure 2, is calculated as follows:

Proposed cost of carrying out development (Determined in accordance with Clause 19 of this Plan)	Levy Rate
Up to and including \$250,000	Nil
More than \$250,000	2%

Contribution Amount = Cost of Works \$80,058,000 x 2% levy rate = \$1,601,160

Housing Productivity Contribution

The Housing Productivity Contribution commenced on 1 October 2023. The application was lodged on 23 February 2023 and the contribution does not apply.

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

There is no planning agreements entered into, or any draft agreement offered to enter into under S7.4 which affect the development.

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

Environmental Planning and Assessment Regulation 2021

61 Additional matters that consent authority must consider

Conditions of consent are recommended regarding demolition.

29 Residential apartment development

- (1) A development application that relates to residential apartment development must be accompanied by a statement by a qualified designer.

Provided.

- (2) The statement must—

- (a) verify that the qualified designer designed, or directed the design of, the development, and
(b) explain how the development addresses—

- (i) the design principles for residential apartment development, and
(ii) the objectives in Parts 3 and 4 of the Apartment Design Guide.

Satisfied.

- (3) If the development application is accompanied by a BASIX certificate for a building, the design principles for residential apartment development do not need to be addressed to the extent to which they aim—

- (a) to reduce the consumption of mains-supplied potable water or greenhouse gas emissions related to the use of—
(i) the building, or
(ii) the land on which the building is located, or
(b) to improve the thermal performance of the development, or
(c) to quantify and report on the embodied emissions attributable to the development.

Satisfied

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

The proposal is considered acceptable regarding the likely impacts.

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

Does the proposal fit in the locality?

The proposal is an appropriate response to the applicable planning controls and unique characteristics of the site. Impacts arising from the development to adjoining land and the locality are acceptable.

Are the site attributes conducive to development?

The proposal responds suitably to the opportunities and constraints of the site.

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

See discussion at section 1.4.

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

The application is not expected to result in significant adverse impacts on the environment or the amenity of the locality. It is considered appropriate with consideration to the zoning and the character of the area is satisfactory with regard to the applicable planning controls. Submissions raised following notification do not warrant redesign and internal and external referrals are satisfactory subject to appropriate conditions of consent. Approval of the proposal is consistent with the public interest

3 CONCLUSION

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

The proposed development is permissible with consent and has regard to the objectives of the zone. Substantial compliance is achieved with the applicable controls. Where variations to the planning controls are proposed, these have been reasonably justified. The variations have been assessed as acceptable and achieve the relevant objectives of the control and the aims of Wollongong LEP 2009 including a Clause 4.6 Variation request in respect of building separation.

The recommendations of the DRP have been largely adopted in the revised plans and matters raised by the panel are satisfactorily resolved. The character and form of the development is consistent with the zoning and reasonably responds to the surrounding context and the applicable controls.

Submissions raised during public exhibition have been considered. The impacts arising from the built form outcome are largely anticipated by the current controls and refusal, or redesign of the development is not warranted on this basis.

Internal and external referrals are satisfactory apart from heritage/landscape matters relating to the heritage tree. Taking into consideration the additional arborist commentary, Council is satisfied that there is sufficient confidence that the development will not compromise the ongoing health and longevity of the tree. Where outstanding issues have been identified they are dealt with through suitable conditions of consent. The application is considered acceptable regarding the likely impacts as discussed above.

It is considered that the proposed development has been designed appropriately given the nature and characteristics of the site and is unlikely to result in significant adverse impacts on the character or amenity of the surrounding area.

4 RECOMMENDATION

It is recommended that the development application be approved subject to the draft conditions contained at **Attachment 10**.

Attachments

- 1 Plans
- 2 Clause 4.6 variation request (building separation)
- 3 ADG compliance table
- 4 WDCP 2009 compliance table
- 5 DRP notes (14 December 2023)
- 6 Arboricultural Impact Assessment Report - Seasoned Tree Consulting (16 December 2022)
- 7 Arborist advice Moore Trees (8 March 2024)
- 8 Study of Morton Bay Figs at Sydney University (9 July 2024)
- 9 Urban Forestry Peer Review (13 November 2024)
- 10 Draft conditions of consent