

Panel Reference	PPSSTH-245
DA Number	DA-2023/284
LGA	Wollongong City Council
Proposed Development	Seniors housing development - demolition of existing structures, construction of 85 independent living units and amenities, including a neighbourhood shop with café and resident clubhouse and proposed staged development - three (3) stages
Street Address	Towradgi Park Village 17a Murranar Road Towradgi – Lot 1 DP 704687 & Lot 300 DP 571212 17 Murranar Road Towradgi - Lot 177 DP 13182/SP 11647 3 Edgar Street Towradgi - Lot 39 DP 27386 1 Edgar Street Towradgi - Lot 100 DP 776493/SP 19209 Vacant land Murranar Road - Lot 505 DP 833242
Applicant/Owner	IRT Group – owner MMJ – applicant
Accepted date	19 April 2023
Total number of Submissions Number of Unique Objections	14 submissions, all objections
Recommendation	Refusal
Regional Development Criteria (Schedule 6 of the SEPP (Planning Systems) 2021	Clause 2 of Schedule 6, General development that has an estimated development cost of more than \$30 million.
List of all relevant s4.15(1)(a) matters	<p>s4.15(1)(a)(1) any relevant environmental planning instruments:</p> <p><u>State Environmental Planning Policies</u></p> <ul style="list-style-type: none"> SEPP (Biodiversity and Conservation) 2021 SEPP (Resilience and Hazards) 2021 SEPP (Sustainable Buildings) 2022 SEPP (Transport and Infrastructure) 2021 SEPP (Housing) 2021 SEPP (Planning Systems) 2021 <p><u>Local Environmental Plans</u></p> <ul style="list-style-type: none"> Wollongong Local Environmental Plan 2009 <p><u>Other Policies</u></p> <ul style="list-style-type: none"> Wollongong City-Wide Development Contributions Plan (2023) Wollongong Community Participation Plan 2019 <p>s4.15(1)(a)(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> <ul style="list-style-type: none"> N/A <p>15 (1)(a)(iv) the relevant regulations</p>

	<ul style="list-style-type: none"> Environmental Planning and Assessment Regulation 2021 s61 demolition Wollongong Coastal Zone Management Plan
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> Architectural plans by Gardner Wetherill Associates Clause 4.6 statement by MMJ Design Review Panel notes 7 June 2023 SEPP (Housing) 2021 and WDCP 2009 assessment Draft reasons for refusal
Clause 4.6 request	Wollongong Local Environmental Plan 2009 - the clause 4.6 application relates to clause 4.3(2) Height of Buildings
Summary of key issues	<ul style="list-style-type: none"> Sydney Water does not support the application in its current form. Sydney Water approval is required. Non-compliance with SEPP (Housing) 2021 – compliance is a precondition of granting consent. Non-compliance with SEPP (Sustainable Buildings) 2022 – compliance is a precondition of granting consent Non-compliance with flood planning controls – not supported by Council's stormwater engineer. Compliance is a pre-condition of granting consent. Architectural design - not supported by Design Review Panel and Council's architect. Incompatibility of use having regard to flooding site constraint Raised height of boardwalks, road and buildings contributing to visual bulk, CPTED, privacy, amenity, and acoustic impacts. Revised plans and clause 4.6 development standard departure statement not publicly exhibited due to late submission. The neighbourhood shop exceeds the maximum 100m2 size permitted in WLEP 2009 clause 5.4 Vegetation Management Plan does not provide for the revegetation/restoration and management of weeds within the vicinity of the works and does not provide for minimum required 5-year maintenance program Remediation Action Plan does not provide detailed information on methodology, quantities, location of containment cells or Long-Term Environmental Plan Extensive tree removal Privacy impacts on adjoining residential neighbours Public submissions (objections)
Report prepared by	Anne Starr Senior Planner City Centre & Major Development
Report date	24 June 2024

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction.

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

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? No

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

Conditions

Have draft conditions been provided to the applicant for comment? No

EXECUTIVE SUMMARY

Proposal

Demolition or existing structures and construction of a seniors living development including a neighbourhood shop and resident clubhouse.

Subject site

The 27493m² site is comprised of six allotments owned by Illawarra Retirement Trust (IRT). The title references are:

- Towradgi Park Village 17a Murrnar Road Towradgi – Lot 1 DP 704687 & Lot 300 DP 571212
- 17 Murrnar Road Towradgi - Lot 177 DP 13182/SP 11647
- Edgar Street Towradgi - Lot 39 DP 27386
- 1 Edgar Street Towradgi - Lot 100 DP 776493/SP 19209
- Vacant land Murrnar Road - Lot 505 DP 833242

Permissibility

The site is zoned R2 Low Density Residential pursuant to Wollongong Local Environmental Plan 2009. The proposal is categorised as 'seniors housing' and 'neighbourhood shop' under the LEP and is permissible with development consent.

Main issues

- Sydney Water does not support the application in its current form. Sydney Water approval is required.
- Non-compliance with SEPP (Housing) 2021 – compliance is a precondition of granting consent.
- Non-compliance with SEPP (Sustainable Buildings) 2022 – compliance is a precondition of granting consent.
- Non-compliance with flood planning controls – not supported by Council's stormwater engineer. Compliance is a pre-condition of granting consent.
- Architectural design - not supported by Design Review Panel and Council's architect.
- Incompatibility of use having regard to flooding site constraint
- Raised height of boardwalks, road and buildings contributing to visual bulk, CPTED, privacy, amenity and acoustic impacts.
- Revised plans and clause 4.6 development standard departure statement not publicly exhibited due to late submission.
- The neighbourhood shop exceeds the maximum 100m² size permitted in WLEP 2009 clause 5.4.
- Vegetation Management Plan does not provide for the revegetation/restoration and management of weeds within the vicinity of the works and does not provide for minimum required 5-year maintenance program.
- Remediation Action Plan does not provide detailed information on methodology, quantities, location of containment cells or Long-Term Environmental Plan
- Extensive tree removal
- Privacy impacts on adjoining residential neighbours
- Public submissions (objections)

RECOMMENDATION

It is recommended that the application is refused for the reasons detailed in Attachment 6.

1.1 DETAILED DESCRIPTION OF PROPOSAL

The proposal comprises the following:

Use

- Housing for seniors and people with a disability development ('in-fill self-care housing') including neighbourhood shop and clubhouse.

Site preparation

- Demolition of all structures
- Earthworks to facilitate basement and culvert construction.
- Tree removal
- Remediation works – a Remediation Action Plan has been provided however it does not give details of methodology, quantities, location of containment cells or include a Long-Term Environmental Management Plan.

Works / Construction / building details

- Construction in stages A1, A2 and B as shown on plan A0401
- Total 85 residential dwellings, in one or two storey buildings
 - 49 x 2 bedroom
 - 36 x 3 bedroom
- Total gross floor area 11373m² / floor space ratio 0.413:1
 - Residential 10610m²
 - Shop 118m²
 - Clubhouse 645m²
- Relocation of Murranar Road bus stop and shelter to south of proposed access road
- Closure of Edgar Street vehicular access
- Construction of new culvert approximately east-west through the site from Marlo Road
- Through-site pedestrian link provided on western boundary between Marlo and Murranar Roads
- Response to flooding:
 - All buildings above flood planning level RL5.45 AHD, which is approximately 2-2.65m above existing ground level.
 - Shelter in place strategy – the clubhouse acts as place of refuge in a flood event
 - Buildings have suspended slabs to allow flood water to flow underneath.
- New landscaping
- New substation Murranar Road

An alternative design for the 2-storey concourse building in Stage A was submitted on 31 May 2024, and is in the form of a two storey building over one basement level. This design is shown on plans SK200-202. This alternative building has not been assessed in this report, as it relies upon using the basement for flood storage, which is not supported.

Traffic, parking and servicing

- Vehicular access and egress via Murranar Road
- 120 onsite resident car parking spaces (inc. in driveways) plus 19 resident visitor spaces
- Servicing
 - bin collection on site

Amended plans and reports were provided:

DA-2023/284 / PPSSTH-245 17 & 17a Murranar Road and 1-3 Edgar Street Towradgi

- 2023 – 18 January, 7 February, 11 May
- 2024 – 25 January, 23 & 27 February, 25 March, 30 April and 31 May

The revised clause 4.6 statement was provided 31 May 2024, which did not allow enough time for exhibition prior to publishing Council's assessment report.

1.2 BACKGROUND

Development application DA-2021/1313 *'Demolition of the existing structures and construction of a seniors housing development of 81 independent living units and amenities including a neighbourhood shop with café and resident clubhouse'* was withdrawn by the applicant on 23 September 2022.

The initial consent which established an IRT facility on the site is DA-1971/407 'Nursing Home and Retirement Centre', which was approved 7 March 1972.

Customer service actions

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

1.3 SITE DESCRIPTION

The 27493m² site is comprised of six allotments owned by IRT. The title references are:

- Towradgi Park Village 17a Murranar Road Towradgi – Lot 1 DP 704687 & Lot 300 DP 571212
- 17 Murranar Road Towradgi - Lot 177 DP 13182/SP 11647
- Edgar Street Towradgi - Lot 39 DP 27386
- 1 Edgar Street Towradgi - Lot 100 DP 776493/SP 19209
- Vacant land Murranar Road - Lot 505 DP 833242

The site has frontage to Edgar Street, Marlo Road, Murranar Road and public open space. The site is relatively level at approximately 2.8m to 3.6m Australian Height Datum (AHD), with a slight fall to the southeast. A channelised drainage line adjoins the site on the eastern boundary and drains to the south into Towradgi Arm and subsequently into Fairy Creek and the South Pacific Ocean.

The site contains IRT Towradgi Park Village, which is a residential aged care facility in partial operation. The facility formerly comprised 114 aged care beds and 68 one- and two-bedroom independent living units for people aged over 55. The aged care facility is currently vacant, and only some of the independent living units are occupied. The independent units are progressively being vacated in line with the planned staging of the redevelopment. A vacant lot previously owned by Wollongong City Council and now in the ownership of Illawarra Retirement Trust forms the southeastern boundary of the site.

Vehicle access to the site is currently available via Edgar Street and Murranar Road.

The original development consent in 1972 for the subject site contained a condition that required IRT to maintain a pedestrian access route through the subject site between Marlo Road and Murranar Road. The pedestrian access route was maintained by IRT until it decommissioned the aged care facility, and the access route was temporarily closed. The closure of the access route led to a number of objections from members of the community. In response to those objections and after consultation with Council, IRT made a commitment to the community to ensure that a permanent pedestrian access route between Marlo Road and Murranar Road would be incorporated into the redevelopment of the subject site. A pathway adjoining the western boundary is shown on the proposed plans.

Adjoining development is low density residential on Murranar Road, Marlo Road and Edgar Street.



Figure 1 Aerial photograph

Property constraints

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

- Flood affected – medium flood risk precinct (WLEP 2009)
- Acid sulfate soils – class 3 (WLEP 2009)
- Coastal zone – coastal environmental area, coastal use area, proximity area for coastal wetlands (State Environmental Planning Policy (Resilience and Hazards) 2021)
- Ecological sensitive land - biodiversity (WLEP 2009)
- Contaminated land
- Aboriginal heritage in vicinity
- Easements (refer survey plan):
 - easement for sewerage purposes 12.19 wide – burdens DPs 27386, 571212 and 704687; benefits Sydney Water
 - right of carriageway 9.14 wide – burdens DP 571212, benefits 19 Murrar Road
 - easement to drain water 7.62 wide - burdens DP 552253 and benefits Council

The site contains riparian zone.

1.4 SUBMISSIONS

The application was notified 3 May-2 June 2023 in accordance with Council's Community Participation Plan. Later revisions were not notified.

Fourteen submissions (all objections) were received. Concerns raised in submissions are discussed below. All submissions have been referred to the Southern Regional Planning Panel for consideration.

Table 1: Submissions

Concern	Comment
<u>Current state of the site</u> <ul style="list-style-type: none"> Neglected and in disrepair. Previous fires and vandalism. 	Noted.
<u>Use</u> <p>The development is for independent living, over 55s. These occupants may be working and might have 2 cars per dwelling. This is more cars than the previous IRT facility and traffic impacts would be greater.</p>	A traffic report has been submitted, which uses the RMS seniors housing trip generation rate of 0.4 trips per dwelling. The report does not assess impact of 2 cars per dwelling.
<u>Building form</u> <ul style="list-style-type: none"> Upper level on Murranar Road should be removed. The last application [DA-2021/1313] had single storey facing Murranar Road. Intrusive streetscape impact of 2 storeys on Murranar Road. The 2-storey element should be relocated within the site. Why is floor level RL545 instead of RL433, which is floor level of neighbouring properties? Floor level means 1 storey buildings are like 2 storeys. Driveway crest Murranar Road will cause headlight intrusion on properties opposite. Privacy and acoustic impacts on western neighbours due to raised floor level height. 	<p>Withdrawn development application DA-2021/1313 proposed single storey dwellings along Murranar Road.</p> <p>The proposed floor level RL 545 is the minimum required by Council's policies being 1% PMF plus 0.5m freeboard.</p> <p>The elevations and sections show the relationship between adjoining properties and proposed buildings.</p> <p>All internal roads are elevated above existing ground level. A detailed section showing the driveway and neighbours opposite has not been provided.</p>
<u>Views</u> <p>Pathway to the beach should be clear with lots of trees, not buildings.</p>	Sheets A0201 and A0203 show the existing and proposed conditions.
<u>Tree removal</u> <ul style="list-style-type: none"> Replacement trees will take 30-40 years to grow. The eucalyptus on Murranar Road should be kept. 	A landscape plan has been provided, showing proposed vegetation.
<u>Density</u> <p>Too big a population increase.</p>	The type of development is permissible in the zone

Concern	Comment
<u>Traffic and parking</u> <ul style="list-style-type: none"> Removal of Edgar Street access will increase traffic on Murrnar Road. Secondary access should be provided on Edgar or Marlo Roads. Do emergency services need another access point? Trip generation in traffic report is low. RMS trip rate for seniors aged care is not appropriate. Increased parking demand on Murrnar Road, which is already busy especially in summer. IRT should require residents to have electric or hybrid cars. Existing IRT residents park on the street, instead of on IRT land. 	<p>Council's traffic engineer has no objection to the applicant's use of the seniors housing RMS rate.</p> <p>The number of on-site parking spaces meets legislative requirements.</p>
<u>Demolition and construction</u> Strict monitoring of demolition and removal of asbestos is needed.	<p>A construction environmental management plan has not been provided, however could be conditioned.</p>
<u>Waste collection</u> <ul style="list-style-type: none"> Bins should not be on the street. Noise impact of so many bins being collected 	<p>All waste collection is proposed to occur on-site.</p>
<u>Pedestrian walkway between Marlo and Murrnar Roads</u> <ul style="list-style-type: none"> Council should require a public pathway in perpetuity. The walkway should be suitable for disabled persons and minimum 2m wide. The walkway should not be affected by flooding or drainage. 	<p>Sheet A1653 provides a section of the proposed 1.5m wide path with landscaping either side, adjoining 19 Murrnar Road.</p> <p>An 88e restriction on title would ensure public access in perpetuity.</p>

1.5 CONSULTATION

1.5.1 INTERNAL CONSULTATION

No objection subject to recommended conditions of consent

Council's landscape architect, geotechnical engineer, heritage officer and property officer have advised they have no objection to the development, subject to recommended conditions of consent.

Does not support

Council's stormwater engineer architect and environment officers have outstanding concerns with the proposal. These matters include:

- Flooding and stormwater - inadequate or outstanding flooding information
 - details of structures adjacent drainage easements.
 - catchment data and DRAINS modelling.

- location of drainage easements inconsistent with Council's records; and
- insufficient width of proposed drainage easement.
- these matters prevent approval in accordance with WLEP 2009 clause 5.21 and therefore cannot be conditioned.
- Architectural design
 - The excessive use of raised walkways, boardwalks, bridges, ramps, and stairs significantly contributes to the perceived bulk and scale of the overall development. It compromises the integrity of potential view corridors and open green landscaped areas. They also connect each of the built forms, thereby compromising the effect of building separation for visual relief. This is of particular concern around the bridges and walkways connecting the 2 level concourse villas and the club house.
 - Pedestrian walkway through site link potential CPTED concerns, poor interface and level of privacy to 19 Murranar Road and the rear private open space of villas 1, 3, 5, 7 & 9
 - Equitable access to the proposed shop is not provided from Murranar Road
 - Marlo Road landscaping occurs on Council land, rather than on-site, which creates a maintenance burden for Council.
 - View analysis demonstrating impacts of WLEP 2009 height breach has not been provided.
 - The Edgar Street apartments should have a building entry provided directly to the street. The Murranar Road apartments has a central stair entry, however barrier free access is not provided in a central location.
 - The two-level concourse arrangement for the 'villa-style apartments' creates an undercroft which has poor amenity, solar access, security and safety. Dwellings The bin store on the upper level is not supported.
 - Some ground floor concourse villas have habitable rooms facing what will be a shadowed area because of the road overhead. This results in poor solar access and amenity.
 - Due to the various built forms being raised significantly higher than natural ground, this has resulted in an extensive amount of large unsightly undercroft areas being exposed to adjacent outdoor spaces. This creates a poor presentation to the street and raises potential safety and security concerns by providing possible areas of concealment. It is unclear how maintenance of these areas will be addressed.
 - A poor interface results from the internal road adjacent 1 Marlo Road being significantly higher than Marlo Road (refer sheet A1655).
 - Apartment building lift cores service 10 dwellings per floor, whereas 8 is the recommended maximum for apartments subject to the Apartment Design Guide.
 - Apartment visitor parking should be provided at grade if it cannot be separated from resident parking by security shutters/intercom etc.
 - Perimeter boardwalk/walkways are located within the riparian zone and in some locations are close to private open space of dwellings.
 - Failure to adopt recommendations of the Design Review Panel.
 - These matters require significant redesign and therefore cannot be conditioned.
- Environment
 - The revised Vegetation Management Plan does not provide for the revegetation/restoration and management of weeds within the vicinity of the works and does not provide for minimum required 5-year maintenance program. This matter may be suitable for condition of consent.
 - The Remediation Action Plan prepared Douglas Partners does not contain methodology, justification for preferred option, quantities required for site remediation

in each lot, containment cell locations or Long-Term Environmental Management Plan. This information is considered necessary to allow a thorough assessment under 4.15(1)(b) of the EP&A Act.

1.5.2 EXTERNAL CONSULTATION

The revised plans submitted 31 May 2024 have not been referred to any external agencies.

Department of Planning and Environment – Water (DPE)

The application was referred to DPE Water as development requiring a controlled activity approval under the Water Management Act 2000. DPE provided General Terms of Approval dated 6 June 2024.

Endeavour Energy

The application was referred to Endeavour Energy in accordance with clause 2.48 of State Environmental Planning Policy (Transport and Infrastructure) 2021. Endeavour Energy provided conditions of consent on 2 March 2024.

Heritage NSW

Heritage NSW was advised of the application pursuant to section 90 of the National Parks and Wildlife Act 1974. Heritage NSW advised on 20 May 2024 that the application is not integrated development and General Terms of Approval are not able to be issued. Notwithstanding, conditions of consent were recommended relating to cultural heritage management.

Sydney Water

The application was referred to Sydney Water under section 78 of the Sydney Water Act 1994. Sydney Water in a letter dated 22 May 2024 that the application is not supported in its current form. Specifically, no structure (e.g., road or building) would be permitted above Sydney Water's sewer trunk line. It is understood the applicant is negotiating with Sydney Water, however no further correspondence from Sydney Water has been received.

Design Review Panel (DRP)

The application was referred to the DRP on 7 June 2023. The DRP expressed areas of concern warranting redesign, and the DRP's notes form attachment 3. Many of the deficiencies raised by the DRP have not been adequately resolved in the final proposal:

- Alternatives to raising all roads, habitable structures and pedestrian paths to RL 5.45 has not been thoroughly explored. The proposal is detached from its adjacent built and landscape contexts.
- The decision to raise streets, communal spaces and built form approximately 2-2.65m above existing ground level creates open areas underneath for flood storage. These areas will be open to vermin, rubbish and intruders, and will be a constant safety and security risk.
- Raised levels create privacy impacts on neighbouring properties, necessitating high retaining walls and screens. This is especially concerning for western neighbours who will be overlooked by rear private open space.
- The concourse has been retained, which results in poor amenity for residents of the ground level dwellings (lack of solar access, ventilation, exposure to car noise and fumes, CPTED) and poor pedestrian access to the upper levels.
- Site planning has been compromised by using the sewer and drainage easements as spines, rather than explore other options. Placement of buildings is a response to the location of

these spines, rather than having regard to existing setbacks, patterns and alignment of neighbouring properties.

- Extensive tree removal is not considerate of the existing landscape context or environmental qualities of the site. Site planning should aim locate communal open space around retained trees.
- The elevation to Edgar Street fails to visually connect with the street.
- The application does not make reference to Designing with Country or Designing for Country.
- Pedestrian paths are poorly designed, have excessively long accessibility ramps and have a steep interface with Murrar Road.
- The interface between required flood levels and existing ground levels creates level differences which are problematic, requiring balustrades or safety barriers.
- Poor access and accessibility from local streets.
- Lack of parking for boats, caravans etc. which might be expected of the demographic.

2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Order 2023

This contribution does not apply to applications lodged before 1 October 2023.

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

2.1.1 COASTAL MANAGEMENT AMENDMENT ACT 2021

The Wollongong Coastal Zone Management Plan (CZMP) ceased certification under the Coastal Management Act 2016 on 31 December 2023.

The Coastal Management Programme (CMP) for Wollongong LGA (open coast and estuaries excluding Lake Illawarra) is in development and is currently in Stage 2 (technical study stage). The process to develop this CMP requires significant technical studies to be undertaken and comprehensive community engagement.

2.1.2 APPLICATION OF PART 7 OF BIODIVERSITY CONSERVATION ACT 2016 AND PART 7A OF FISHERIES MANAGEMENT ACT 1994

The Environmental Planning and Assessment Act 1979 has effect subject to relevant terrestrial and aquatic environment provisions of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994.

NSW BIODIVERSITY CONSERVATION ACT 2016

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

Clause 7.2 of the Biodiversity Conservation Regulation 2017 provides the minimum lot size and area threshold criteria for when the clearing of native vegetation triggers entry of a proposed development into the NSW Biodiversity offsets scheme.

The proposal does not trigger the requirement for a biodiversity offset scheme.

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

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.

2.1.3 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

Chapter 4 Koala habitat protection 2021

DA-2023/284 / PPSSTH-245 17 & 17a Murrar Road and 1-3 Edgar Street Towradgi

Clause 4.9 applies as the site is greater than 1 hectare and there is no approved koala plan of management applying to the land. Given the established development on the site, it is unlikely that the development would adversely impact on koalas or koala habitat.

2.1.4 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 2 Coastal management

Clause 2.8 - Development on land in proximity to coastal wetlands or littoral rainforest

SEPP mapping indicates the site is located in close proximity to coastal wetlands. Matters for consideration are satisfactory.

Clause 2.10 Development on land within the Coastal Environment Area

The site is located on land within coastal environment area. Matters for consideration are satisfactory.

Clause 2.11 Development on land within the Coastal Use Area

The site is identified as being located within the coastal use area. Matters for consideration are satisfactory.

Clause 2.12 Development in coastal zone generally – development not to increase risk of coastal hazards

The proposed development is unlikely to increase the risk of coastal hazards on the site or surrounding area.

Clause 2.13 Development in coastal zone generally – coastal management programs to be considered Wollongong Coastal Zone Management Plan

A review of Council's CZMP mapping identifies that the site is not impacted by coastal geotechnical risk, ocean inundation or reduced foundation capacity.

Chapter 4 Remediation of land

4.6 Contamination and remediation to be considered in determining development application

The site is known to be contaminated and contamination was considered during assessment of development application DA-2021/1313.

The applicant has provided a Detailed Site Investigation and Remediation Action Plan (RAP), prepared by Douglas Partners. Council's environment officer has advised that the RAP is general in nature, and does not detail the remediation methodology, quantities, location of proposed containment cells, nor provide a Long-Term Environmental Management Plan. Whilst the information provided satisfies clause 4 of the SEPP, further information is recommended to be obtained to allow thorough assessment under section 4.15 of the EP & A Act.

2.1.5 STATE ENVIRONMENTAL PLANNING POLICY (SUSTAINABLE BUILDINGS) 2022

Chapter 2 Standards for residential development - BASIX

The proposal is BASIX affected development to which this policy applies. 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.

Chapter 3 Standards for non-residential development

The club house is a non-residential building for the purpose of Chapter 3. Clause 3.2 requires the consent authority to consider certain environmental performance criteria. The clause states that consent must not be granted unless the consent authority is satisfied the embodied emissions attributable to the development have been quantified. A method of quantifying embodied emissions is to include on the BASIX certificate; however, this information does not appear to be provided on the revised BASIX submitted 25 January 2024.

2.1.6 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

The application was referred to Endeavour Energy in accordance with clause 2.48 of the SEPP. Endeavour Energy provided recommended conditions of consent on 2 March 2014.

2.1.7 STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

Chapter 3 Diverse housing

Part 5 Housing for seniors and people with a disability

The development is 'in-fill self-care housing' for the purpose of the SEPP. A compliance table forms Attachment 4. Significantly, the development fails to satisfy some design criteria which are pre-conditions for granting of consent.

2.1.8 STATE ENVIRONMENTAL PLANNING POLICY (PLANNING SYSTEMS) 2021

Chapter 2 State and regional development

The application is required to be determined by the Southern Regional Planning Panel in accordance with Clause 2 Schedule 6 as the proposed general development exceeds \$30 million.

2.1.9 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

The provisions of the 1 December 2022 LEP version which applied at date of lodgement are addressed below.

Clause 1.4 Definitions

The development is categorised as 'seniors housing' and 'neighbourhood shop'. The clubhouse including allied health spaces is considered ancillary to the seniors housing primary land use.

seniors housing means a building or place that is—

- (a) a residential care facility, or
- (b) a hostel within the meaning of [State Environmental Planning Policy \(Housing\) 2021](#), Chapter 3, Part 5, or
- (c) a group of independent living units, or
- (d) a combination of any of the buildings or places referred to in paragraphs (a)–(c),
and that is, or is intended to be, used permanently for—
- (e) seniors or people who have a disability, or
- (f) people who live in the same household with seniors or people who have a disability, or
- (g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place,

but does not include a hospital.

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

neighbourhood shop means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, but does not include neighbourhood supermarkets or restricted premises.

Note— See clause 5.4 for controls relating to the retail floor area of neighbourhood shops.

Neighbourhood shops are a type of **shop**—see the definition of that term in this Dictionary.

Clause 1.8A Savings provision relating to pending development approvals

None relevant.

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.



Figure 2 WLEP 2009 zoning plan – R2 Low Density Residential

Clause 2.3 – Zone objectives and land use table

The objectives of the 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 the above objectives.

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

2 Permitted without consent

Home occupations

3 Permitted with consent

Attached dwellings; Bed and breakfast accommodation; 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; Home businesses; Home industries; 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

4 Prohibited

Any development not specified in item 2 or 3

The proposal is categorised as a 'seniors housing' and 'neighbourhood shop' and is permissible in the zone with development consent.

Clause 2.7 Demolition requires development consent

Demolition of all structures is proposed.

Part 4 Principal development standards

Clause 4.3 Height of buildings

The maximum permitted building height is 9m.

Sheet A1802 shows parts of the development that exceed 9m. The highest proposed building height is approximately 9.7m. A clause 4.6 statement has been provided.

Clause 4.4 Floor space ratio

The maximum permitted floor space ratio is 0.5:1 (maximum 13746m² on a 27493m² site).

The proposed floor space ratio is 0.41:1 (11373m² gross floor area).

Clause 4.6 Exceptions to development standards

(Note: Changes were made to clause 4.6 on 1 November 2023 however savings applied and the previous wording of clause 4.6 applies to applications lodged prior to this date.)

A development departure is sought to building separation under Clause 4.3 of the LEP. The applicant's Clause 4.6 statement forms Attachment 2.

WLEP 2009 clause 4.6 proposed development departure assessment	
Development departure	The departure relates to clause 4.3 Height of buildings. A 9m limit applies to the site, and varying non-compliances are proposed. Sheet A1802 by Gardner Wetherill shows those parts of the buildings that exceed 9m. The exceedances are approximately 100mm-700mm.
Is the planning control in question a development standard	Yes
4.6 (3) Written request submitted by applicant contains a justification:	
that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	Yes, a request is provided in 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 supporting the development departure to building height with regard to the specifics of the proposed development and unique site circumstances.
4.6 (4) (a) Consent authority is satisfied that:	
the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	The applicant's written request justifying why compliance with the building height control is unreasonable and unnecessary is based on the First Way under <i>Wehbe v Pittwater Council</i> [2007] NSWLEC827 (<i>Wehbe</i>), specifically that the objectives 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	The objectives of clause 4.3 Height of buildings are: <i>(a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,</i>

standard and the objectives for development within the zone in which the development is proposed to be carried out, and	<p>(b) <i>to permit building heights that encourage high quality urban form,</i></p> <p>(c) <i>to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.</i></p> <p>The proposed development is not considered to embody high quality urban form, particularly when viewed from public areas external to the site. The Design Review Panel and Council's architect have noted the raised floor level contributes to building bulk and adverse privacy impacts on adjoining neighbours. Submissions have expressed concern with the height of the building on Murrnar Road, and this building incorporates a height breach.</p> <p>As outlined above the proposal is satisfactory with regard to the objectives of the zone.</p> <p>In the circumstances of the case, there are insufficient environmental planning grounds specific to the site to justify contravening the development standard.</p>
the concurrence of the Secretary has been obtained.	The SRPP can exercise assumed concurrence in this instance.

Part 5 Miscellaneous provisions

5.4 Controls relating to miscellaneous permissible uses

A maximum 100m² applies to neighbourhood shops.

The proposed shop has a floor area of 118m² as noted on Sheet A0001, which exceeds the permitted size.

Clause 5.10 Heritage conservation

The land is within the vicinity of known Aboriginal heritage. Council's heritage officer has advised the application is satisfactory with respect to cause 5.10.

Clause 5.21 Flood planning

The land is identified as flood affected medium risk. Council's stormwater engineer has previously requested additional flooding information. This remains outstanding.

The clause requires the consent authority to be satisfied of certain flooding impact criteria prior to granting consent. In the absence of the requested information, consent cannot be granted.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

- Endeavour Energy - A substation is proposed on Murrnar Road. Endeavour Energy has provided conditions of consent.
- Sydney Water – approval from Sydney Water is required pursuant to section 78 of the Sydney Water Act 1994. Sydney Water has advised the application is not supported as they do not permit roads or buildings over their trunk wastewater main and easement. A significant redesign would be required to relocate the access road away from the Sydney Water asset.

Clause 7.2 Natural resource sensitivity – biodiversity

Part of the site along the eastern boundary of is mapped as being affected by "Natural Resource Sensitivity – Biodiversity" on the Natural Resource Sensitivity – Biodiversity Map.

Council's environment officer has no concern regarding impact on biodiversity values.

Clause 7.4 Riparian lands

The site adjoins land identified as riparian land and the site plan shows riparian offset distances. The application was referred to DPE – Water for concurrence. General Terms of Approval were granted.

Clause 7.5 Acid Sulfate Soils

The site is identified as being affected by class 3 acid sulfate soils. An acid sulfate soils management plan has been provided.

Clause 7.6 Earthworks

The proposal comprises earthworks for stormwater infrastructure and basement construction. The earthworks as proposed will have a detrimental impact on environmental functions and processes, neighbouring uses and features surrounding land.

Clause 7.14 Minimum site width.

The site width exceeds the minimum required.

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

None relevant.

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

The development has been assessed against the relevant chapters of WDCP 2009. The full table of compliance can be found at Attachment 5 of this report. Non-compliances relate to flooding and stormwater requirements.

2.4 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN

The development is subject to Wollongong City Wide development contributions plan, which levies a contribution based on the estimated cost of development. An exemption has been approved by Council's Contributions Officer – contributions do not apply.

2.5 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.

2.6 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.

6 Determination of BASIX development

A BASIX certificate has been provided for the residential buildings.

35B Additional requirements for development applications involving contravention of development standards

Not applicable.

61 Additional matters that consent authority must consider

Conditions of consent are recommended with regard to demolition.

62 Consideration of fire safety

Not applicable

63 Considerations for erection of temporary structures

Not applicable.

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

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

Matters raised by the Design Review Panel have not been adequately addressed, and these concerns primarily relate to site layout, flooding response and architectural design as well as other matters identified in this report.

Sydney Water has indicated they do not support the application as structures are proposed over the main sewer trunk infrastructure. Approval from Sydney Water is required.

The proposal does not meet certain design requirements of SEPP (Housing) 2021, and therefore would result in adverse impacts on residents and neighbouring properties.

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

Does the proposal fit in the locality?

Flooding conditions specific to the site result in a design which is elevated, bulky and dominant in the streetscape. Alternative land uses which do not require such a high floor level may be more appropriate on the site. This was raised by the DRP in their comments 7 June 2023.

Are the site attributes conducive to development?

The proposal fails to respond sensitively to the site attributes and constraints. Primary constraints of flooding and easements have not been adequately addressed in the final design.

Approval from Sydney Water has not been obtained.

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

Submissions have been reviewed above and referred to the SRPP for consideration.

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

Approval of the development in its current form is not considered consistent with the public interest.

3 CONCLUSION

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

The application has been reviewed by the Wollongong Design Review Panel and specialist Council staff and external agencies and amended on several occasions. Concerns remain with the final form of the development.

The proposal has the following deficiencies:

- Sydney Water does not support the application in its current form. Sydney Water approval is required.
- Non-compliance with SEPP (Housing) 2021 – compliance is a precondition of granting consent.
- Non-compliance with SEPP (Sustainable Buildings) 2022 – compliance is a precondition of granting consent.
- Non-compliance with flood planning controls – not supported by Council's stormwater engineer. Compliance is a pre-condition of granting consent.
- Architectural design - not supported by Design Review Panel and Council's architect.
- Incompatibility of use having regard to flooding site constraint
- Raised height of boardwalks, road and buildings contributing to visual bulk, CPTED, privacy, amenity, and acoustic impacts.

DA-2023/284 / PPSSTH-245 17 & 17a Murrar Road and 1-3 Edgar Street Towradgi

- Revised plans and clause 4.6 development standard departure statement not publicly exhibited due to late submission.
- Neighbourhood shop exceeds the maximum 100m² size permitted in WLEP 2009 clause 5.4
- Vegetation Management Plan does not provide for the revegetation/restoration and management of weeds within the vicinity of the works and does not provide for minimum required 5 year maintenance program
- Remediation Action Plan does not provide detailed information on methodology, quantities, location of containment cells or Long Term Environmental Plan
- Extensive tree removal
- Privacy impacts on adjoining residential neighbours
- Public submissions (objections)

The proposal also features non-compliances in respect of LEP and DCP controls which cannot be supported based on the information at hand.

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

The outstanding matters cannot be resolved via conditions of consent.

4 RECOMMENDATION

It is recommended that the development application is refused for the reasons specified in Attachment 6:

Attachments

1. Architectural plans by Gardner Wetherill and other supporting documents submitted 31 May 2024.
2. Clause 4.6 statement by MMJ submitted 31 May 2024
3. Design Review Panel notes 7 June 2023
4. SEPP (Housing) 2021 compliance table
5. WDCP 2009 compliance table
6. Recommended reasons for refusal