

DA-2022/714 / PPSSTH – 253 37-39 Burelli Street Wollongong

Panel Reference	PPSSTH-253
DA Number	DA-2022/714
LGA	Wollongong City Council
Proposed Development	Mixed Use Development - demolition of existing structures and construction of 14 storey building, two (2) commercial spaces, 71 residential apartments, basement and podium sleeved parking, associated communal open space and landscaping
Street Address	37-39 Burelli Street Wollongong Lot 402 DP 715513
Applicant/Owner	Applicant: ADM Projects Australia Pty Ltd Owner: Burelli Investment Holdings Pty Ltd
Date of DA lodgement	19 July 2022
Total number of Submissions	Two submissions
Number of Unique Objections	Two unique objections
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Clause 2 of Schedule 6 - 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 (Building Sustainability Index: BASIX) 2004 SEPP (Biodiversity and Conservation) 2021 SEPP No. 65 (Design Quality of Residential Apartment Development) (Saved) SEPP (Planning Systems) 2021 SEPP (Resilience and Hazards) 2021 SEPP (Transport and Infrastructure) 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>s4.15 (1)(a)(iii) Any development control plan</p> <ul style="list-style-type: none"> Wollongong Development Control 2009 <p>s4.15 (1)(a) (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4.</p> <ul style="list-style-type: none"> N/A

	s4.15 (1)(a)(iv) the relevant regulations <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 ADM Architects Clause 4.6 statement by MMJ Design Review Panel notes 16.9.22 and 4.4.23 ADG assessment WDCP 2009 assessment Draft reasons for refusal
Clause 4.6 requests	Wollongong Local Environmental Plan 2009 - the clause 4.6 application relates to Clause 8.6 building separation.
Summary of key issues	<ul style="list-style-type: none"> Waste collection on the street may cause adverse amenity and traffic impacts Non-compliance with Apartment Design Guide Ground floor and podium levels design – building entry, accessibility and street activation Car parking – surplus and decision to locate parking above ground Level 3 communal open space – poor residential amenity, solar access and safety Housing mix – failure to provide 3 bedroom apartments Clause 4.6 development standard departure – building separation
Report prepared by	Anne Starr Senior Planner City Centre & Major Development
Report date	8 May 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)?

No

Conditions

Have draft conditions been provided to the applicant for comment?

N/A

EXECUTIVE SUMMARY

Proposal

The application seeks consent for demolition of all structures and construction of a 14 storey shop top housing development.

Subject site

The 2007m² site is located at 37-39 Burelli Street Wollongong and the title reference is Lot 402 DP 715513. The site is a corner allotment with frontage to Burelli and Corrimal Streets. The longest frontage is to Corrimal Street. The land is relatively flat, as shown in the survey plan.

Consultation

- Public exhibition - The proposal was notified in accordance with Council's Notification Policy and Council received two submissions which are discussed at section 1.4 of the assessment report.
- Council's landscape architect, environment officer, geotechnical engineer, heritage officer and property officer reviewed the application and have no objection. Council's architect, waste officer, stormwater engineer and traffic engineer do not support the application in its current form.
- Transport for NSW and Endeavour Energy – no objection subject to recommended conditions of consent

Permissibility

The site is zoned B3 Commercial Core pursuant to Wollongong Local Environmental Plan 2009. The proposal is categorised as a shop top housing development and is permissible in the zone with development consent.

Main Issues

- Waste collection on the street may cause adverse amenity and traffic impacts
- Non-compliance with Apartment Design Guide
- Ground floor design – building entry and street activation
- Car parking – surplus and decision to locate parking above ground
- Clause 4.6 development standard departure – building separation

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

- Shop top housing - commercial tenancies and residential apartments

Site preparation

- Demolition of all structures
- Earthworks to facilitate basement construction
- Remediation of contaminated soil

Works / Construction / building details

- 14 storeys
 - 2 x basement levels
 - 2 x commercial tenancies on ground floor (270m² and 253m²)
 - Residential apartments on levels 1-13
- 71 apartments, including 14 x 2 storey apartments
- 8 adaptable apartments and 7 designated Silver Liveable standard apartments
- Outdoor communal open space located Level 3
- Landscaped areas located on ground floor and Level 3 and street trees on Burelli and Corrimal Streets
- Residential foyer located Corrimal Street only – no residential pedestrian access via Burelli Street
- Commercial access directly via the tenancy doors on Burelli or Corrimal Street – no commercial lobby. Access to tenancies via platform chair lifts on Burelli and Corrimal Streets.
- Substation located Corrimal Street elevation

Traffic, parking and servicing

- Car parking in two basement levels and sleeved parking on Levels ground, 1 and 2.
 - 86 residential car spaces, including 8 disabled user spaces
 - 10 commercial car spaces, including 1 visitor and 1 disabled user space
 - 5 residential motorbike spaces
 - 1 commercial motorbike space
 - 6 residential bicycle spaces
 - 5 commercial bicycle spaces
- Vehicular access via Burelli Street
- Servicing
 - small rigid vehicle loading bay on ground floor for waste and delivery functions
 - separate commercial and residential waste rooms ground floor
 - bulky waste room on ground floor
 - bin collection Burelli Street - bins on footpath

Amended plans and reports were provided:

- 2023 – 28 February, 31 March, 4 April, 18 April, 1 June 2 August, 30 October and 9 November

DA-2022/714 / PPSSTH – 253 37-39 Burelli Street Wollongong

- 2024 – 1 February and 12 April

1.2 BACKGROUND

Council's records indicate the following applications have been approved in relation to the land

Application Number	Description	Decision Date
DA-1971/485	Service Station & Tunnel Type Car Wash (Min 542)	20-Dec-1971
BA-1971/3025	Filling Station & Car Wash	01-Feb-1972
BA-1971/17100	Installation Of 3 Underground Motor Spirit Storage Tanks	27-Aug-1973
DA-1981/537	Conversion Of Existing Office & Storeroom Into Extended Sales Area & Conversion Of Existing Car Wash Tunnel To Office, Store & Accessory Fitting Bay	24-Jul-1981
DA-1983/337	Use Of Existing Building For Car Detailing	08-Jul-1983
DA-1985/161	Subdivision And Consolidation	01-Apr-1985
DA-1988/24	Mobile Food Van	17-Mar-1988
RE-1995/7	Demolition of a service station	10-May-2006
DA-1995/180	Motor/Dealership Workshop ** Amended Consent See 9180/95 ** ** Amended Consent See 8180/95 **	21-Apr-1995
BA-1995/938	New Motor Vehicle Dealership - Da180/95	20-Jun-1995
DA-1995/180/A	Motor/Dealership Workshop	09-Aug-1995
DA-2010/1050	Conversion of service department into car showroom	17-Nov-2010
DA-2013/875	Signage - Pylon Sign and Fascia Sign	11-Sep-2013
CC-2013/160	Signage - advertisements	20-Sep-2013
PC-2013/971	Conversion of service department into car showroom	19-Aug-2013
DA-2020/1490	Commercial - demolition of existing structures and construction of a multi-level hotel development	31 August 2021

No pre-lodgement meeting was held for the proposal.

Customer service actions

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

1.3 SITE DESCRIPTION

The 2007m² site is located at 37-39 Burelli Street Wollongong and the title reference is Lot 402 DP 715513. The site is a corner allotment with frontage to Burelli and Corrimal Streets.

The site is rectangular in shape with dimensions excluding 33.59m x 60m, excluding the corner splay. The longest frontage is to Corrimal Street. The land is relatively flat, as shown in the survey plan.

The land contains a single storey metal vehicle showroom, built to the western and southern boundaries. The remainder of the site has a hardstand surface previously used to display vehicles.

Adjoining development is:

- North: Burelli Street
- East: Corrimal Street (a classified road under authority of Transport for NSW)

DA-2022/714 / PPSSTH – 253 37-39 Burelli Street Wollongong

- South and west: 6279m² L-shaped allotment owned by Wollongong City Council, containing an 11 storey administration and public library building and a five level public car park.

The locality is characterised by multi-storey commercial and shop top housing developments.

The Council property includes a paved walkway through to Burelli Street between Council's administration building and the site. Consideration of this public thoroughfare was an early concern of Council's and the applicant has responded with a public art design concept in this area.

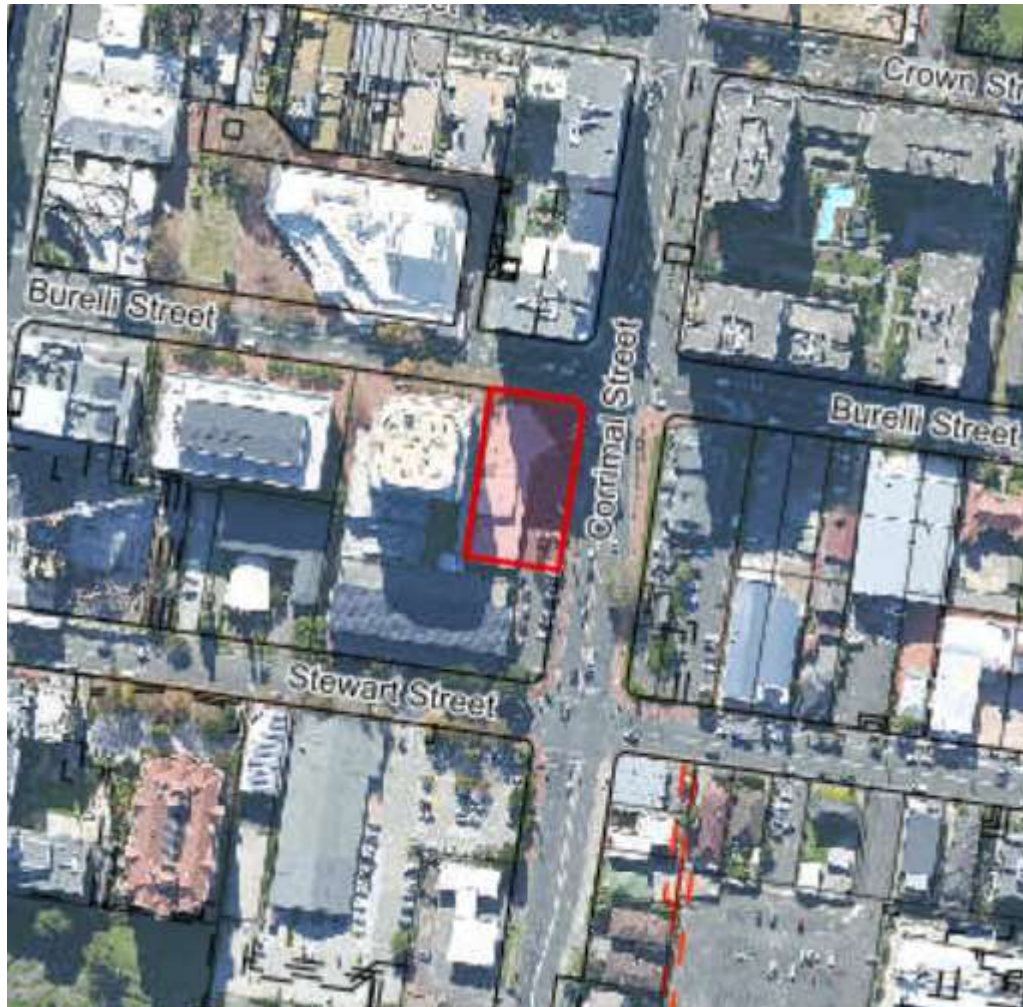


Figure 1 Aerial photograph

Property constraints

There are no restrictions on the title.

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

- Filled land
- Potentially contaminated due to previous uses
- Acid sulfate soils class 5
- Flood risk precinct classification under review (previously medium flood risk)

1.4 SUBMISSIONS

The application was notified 5-19 August 2022 in accordance with Council's Community Participation Plan. Two submissions (objections) were received and have been forwarded to the SRPP for consideration.

Table 1: Submissions

Concern	Comment
<u>Density</u> No need for more high rise development.	The type of development is permissible in the B3 Commercial Core zone
<u>Traffic impacts</u> Access into apartment building opposite on northern side of Burelli Street (30 Burelli Street) is currently difficult Current delays in peak time at intersection Burelli and Corrimal Street. Additional vehicles will make situation worse. Buses stopping at bus stop outside the Council building will make access to the building difficult.	The applicant has provided a traffic analysis which has been reviewed by Council's traffic engineer and Transport for NSW. The analysis modelled impacts on the local road network and intersection from vehicles entering and exiting the development and concludes the road performance would be satisfactory. The analysis did not consider impacts associated with waste collection. Consultation with bus companies and Transport for NSW indicate no impact on the bus zone. The proposed access arrangements will enable 4 x 12.5m buses that are spaced 1.5m apart to fit within the existing bus zone. Transport for NSW require vehicles to enter and exit the site via left in and left out movements only. All existing regulatory signage e.g., no stopping, bus zone etc would remain. Notwithstanding the above comments, the proposed waste collection remains unresolved.
<u>View loss</u> Impacts on views from 30 Burelli Street	The proposed height complies with WLEP 2009
<u>Waste collection</u> Bins on Burelli Street would create adverse amenity , traffic and access impacts	The proposed waste collection is not considered satisfactory.

1.5 CONSULTATION

1.5.1 INTERNAL CONSULTATION

No objection subject to recommended conditions of consent

Council's landscape architect, environmental officer, 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 architect, waste officer and traffic engineer have outstanding concerns with the proposal. These matters include waste collection on Burelli Street and ADG compliance.

Not finalised

Council's stormwater engineer previously advised that further information was required regarding flooding analysis. Documentation has been provided, however a full assessment has not been completed at this time.

Council's strategic planner previously requested public art documentation. Documentation has been provided, however a full assessment has not been completed at this time.

1.5.2 EXTERNAL CONSULTATION

Transport for NSW

Transport for NSW (TfNSW) was referred the application as required by Division 17 of State Environmental Planning Policy (Infrastructure) 2021. TfNSW provided comment on 5 September 2023 which indicated no objection subject to conditions of consent. TfNSW has advised that waste collection from Corrimal Street is prohibited. Their most recent advice was provided on 22 March 2024.

Endeavour Energy

The application was referred to Endeavour Energy in accordance with Division 5 of State Environmental Planning Policy (Infrastructure) 2021. Endeavour Energy advised on 7 August 2022 they have no objection, subject to conditions of consent.

Design Review Panel

The application was reviewed by the Design Review Panel on 16 September 2022. The DRP detailed areas of concern that, in the Panel's view, required amendment in order to achieve design excellence. The applicant revised the scheme in response to the DRP comments, and the DRP Chair issued new notes dated 4 April 2023. These are provided in Attachment 3. This advice also concluded that the development did not exhibit design excellence in its current form.

Revised plans later submitted by the applicant were referred to Council's architect for comment, rather than sending back to the DRP. The following general comments were provided in relation to the proposal overall:

- Tower form is supportable on this site
- Comments from DRP have not been adequately responded to
- Design deficiencies primarily relate to the design of the ground floor and podium levels; entrances (CEPTD accessibility, functionality); the amenity of spaces; poor relationships between public and private spaces; and the relationship and design of common open spaces.

2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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

COASTAL MANAGEMENT Amendment Act 2021

The 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, including with First Nations peoples. It is anticipated that the new CMP may be completed by 2026.

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

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

NSW BIODIVERSITY CONSERVATION ACT 2016

Section 1.7 of the Environmental Planning and Assessment Act 1979 (EP&A Act) provides that the EP & A 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, and contains additional requirements with respect to assessments, consents and approvals.

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 development is not required to participate in the NSW Biodiversity Offsets scheme.

2.1.1 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021

Chapter 4 Koala habitat protection 2021

There is no approved koala plan of management applying to the land. Clause 4.9 states that this section only applies to land greater than 1 hectare, and therefore this section does not apply.

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

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

The audit revealed there are property constraints and/or past uses that give rise to concerns or the need for further investigation regarding land contamination. The applicant provided the following specialist reports addressing the potential for contamination:

- Preliminary Site Investigation Report dated March 2021 by Douglas Partners
- Detailed Site Investigation Report dated March 2021 by Douglas Partners
- Contaminated Land Review dated 14 March 2022 by Douglas Partners

Douglas Partners recommends off-site disposal of contamination during proposed bulk earthworks. Following this, a validation investigation can occur which would determine whether all contaminated soils have been removed from the site. Subject to the successful removal of contaminants, the site would be considered suitable for the proposed residential and commercial use.

The consent authority could therefore be satisfied of matters detailed in clause 4.

Chapter 2 Coastal management

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

The site is not located in close proximity to coastal wetlands or littoral rainforest. No impacts are anticipated.

Clause 2.9 Development on land within the coastal vulnerability area

The site is not located on land within the coastal vulnerability area.

Clause 2.10 Development on land within the Coastal Environment Area

The site is not located on land within coastal environment area.

Clause 2.11 Development on land within the Coastal Use Area

The site is identified as being located within the coastal use area.

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

The proposed development is appropriate for the site, and 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 associated CZMP mapping identifies that the site is not impacted by coastal geotechnical risk, ocean inundation or reduced foundation capacity. Minimal adverse impact on the coastal environment is anticipated because of the proposed development. Minimal impacts on the development are expected because of coastal processes. The proposal is therefore considered satisfactory regarding the aims, objectives and matters outlined for consideration in the SEPP, including the Wollongong CZMP

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

The proposal is BASIX affected development to which this policy applies. As required by Part 3 Division 1 Clause 27 of the Environmental Planning and Assessment Regulation 2021, a BASIX certificate was submitted. The certificate demonstrates that the proposed scheme achieves the BASIX targets.

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

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

A statement has been prepared by a Registered Architect addressing the requirements of SEPP 65 and was submitted with the application at lodgement accordance with the Environmental Planning and Environment Regulation.

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.

Principle 1: Context and neighbourhood character

The proposal does not have due regard for the context of the site. Many of the design deficiencies relate to how the ground and podium levels relate to surrounding land. In particular, traffic and acoustic impacts, pedestrian access, non-complying setbacks, residential amenity and impacts of the solid elevations on the public walkway. .

Principle 2: Built form and scale

Apartments within the tower are generally well designed and a tower form is supportable at this location. Most identified issues relate to entrances (CPTD, accessibility, functionality), the amenity of spaces, the poor relationships between public and private spaces and the relationship and design of common open spaces. Building materials are generally pre-finished and of high quality.

Principle 3: Density

The proposed residential density does not exceed the permitted maximum floor space ratio for the site. Housing mix is inadequate, with no three bedroom apartments being provided.

Principle 4: Sustainability

A BASIX Certificate has been provided.

The use of awnings and louvres is noted, however extensive areas of glazing particularly on the western elevation will result in heat gain in summer.

Waste collection remains problematic, with no apparent allowance for FOGO system and unsuitable residential waste collection on Burelli Street.

Principle 5: Landscape

Landscaping is provided at ground level and Level 3 and is generally satisfactory.

Principle 6: Amenity

In its current form, the proposal would result in limited amenity for residents and the general public. Apartments located on lower podium levels and are likely to be impacted by vehicle noise and particulate matter. The communal open space located on Level 3 would receive poor solar access and be overlooked by surrounding buildings. Building entries do not provide a dignified means of access. Waste bins located on Burelli Street may impact pedestrian movement and are likely to be unsightly.

Principle 7: Safety

View lines within internal corridors and out to the Level 3 communal open space are compromised. The design of the podium levels results in very limited oversight of the walkway on the adjoining land.

The off-set driveway crossover reduces safety for the visually impaired.

Principle 8: Housing diversity and social interaction

The proposal provides a mix of 1 and 2 bedroom apartments. No 3 bedroom or affordable housing is proposed.

Principle 9: Aesthetics

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

An assessment of the application against the Apartment Design Guide (ADG) is contained in Attachment 4.

2.1.4 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

The application was referred to Transport for NSW in accordance with clauses 2.119 and 2.122 of the SEPP. Transport for NSW advised on 5 September 2023 that it had no objection, subject to recommended conditions of consent but TFNSW continues to object to access from Corrimal Street.

The application was referred to Endeavour Energy in accordance with clause 2.48 of the SEPP. Endeavour Energy advised on 17 March 2023 that it had no objection, subject to recommended conditions of consent.

The acoustic impact of the site's location has been considered by Council's environment officer.

2.1.5 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.

2.1.6 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Clause 1.4 Definitions

The proposal is a 'shop top housing' development, which is defined:

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

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

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 current zoning map identifies the land as being zoned E2 Commercial Centre however when the application was lodged the site was zoned B3 Commercial Core

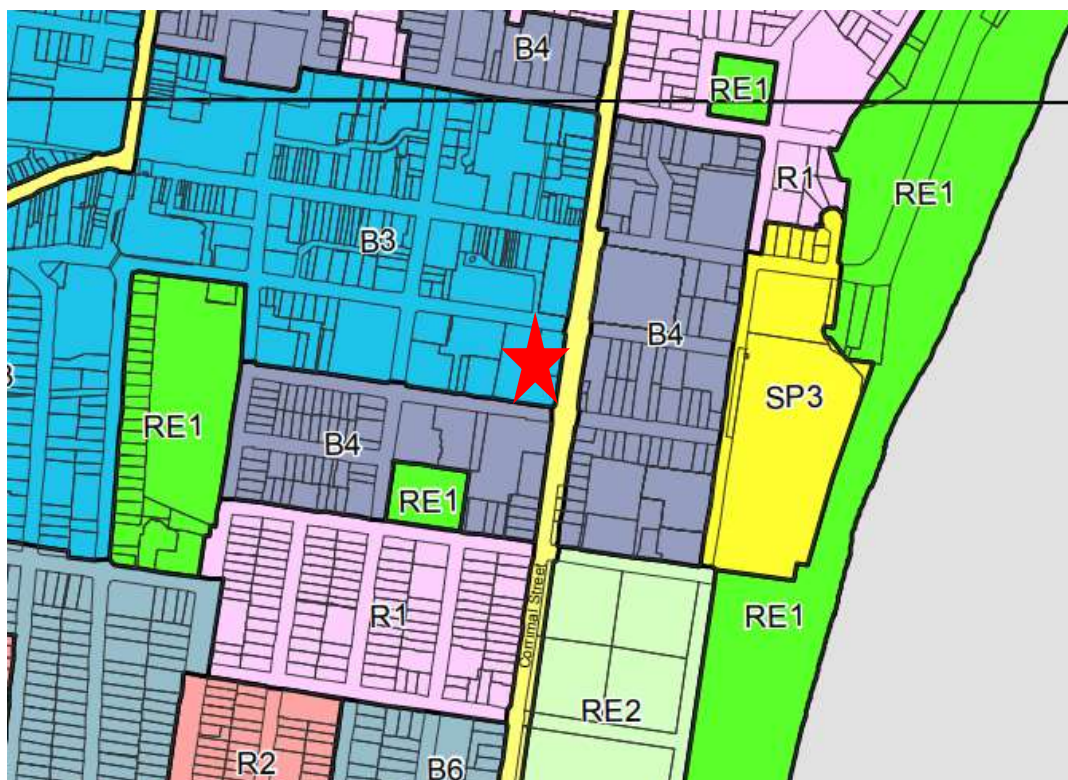


Figure 2 Zoning map (at lodgement)

Clause 2.3 – Zone objectives and land use table

The objectives of the B3 Commercial Core zone are as follows:

Zone B3 Commercial Core

1 Objectives of zone

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To strengthen the role of the Wollongong city centre as the regional business, retail and cultural centre of the Illawarra region.
- To provide for high density residential development within a mixed use development if it—
 - (a) is in a location that is accessible to public transport, employment, retail, commercial and service facilities, and
 - (b) contributes to the vitality of the Wollongong city centre.

The proposal is unsatisfactory with regard to the third objective relating to opportunities for walking and cycling. The proposed waste collection on Burelli Street would see bins placed on the footpath, with potential adverse visual amenity and traffic and pedestrian impacts.

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

2 Permitted without consent

Building identification signs; Business identification signs; Home occupations

3 Permitted with consent

Advertising structures; Amusement centres; Boarding houses; Car parks; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Exhibition homes; Function centres; Helipads; Home businesses; Hostels; Hotel or motel accommodation; Information and education facilities; Medical centres;

DA-2022/714 / PPSSTH – 253 37-39 Burelli Street Wollongong

Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Self-storage units; Seniors housing; Service stations; Sex services premises; Shop top housing; Tank-based aquaculture; Tourist and visitor accommodation; Veterinary hospitals; Wholesale supplies

4 Prohibited

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

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

Part 4 Principal development standards

Clause 4.3 Height of buildings

The maximum permitted building height is 48m . The proposed building height is 47.89m.

Clause 4.4A Floor space ratio – Wollongong city centre

The maximum permitted floor space ratio for the site is determined by the formula set out in clause 4.4A. For this proposal, the maximum permitted floor space ratio is 3.7:1.

The proposed gross floor area (GFA) is 6587m², (which includes GFA for 12 surplus parking spaces) resulting in a floor space ratio of 3.28:1.

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 8.6 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 8.6(3)(b):
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 – 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 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	<p>The applicant's written request justifying why compliance with the building separation control is unreasonable and unnecessary is based on the First and Fourth way under <i>Wehbe v Pittwater Council</i> [2007] NSWLEC827 (<i>Webhe</i>) which are:</p> <ul style="list-style-type: none">- that the objectives are achieved notwithstanding noncompliance with the standard (the First way); and- that the development standard has virtually been abandoned (the Forth way).

<p>the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</p>	<p>The objective of clause 8.6 is:</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 departure occurs on the southern elevation at Levels 1 and 2, where U115 is located 6m from the side boundary where the standard requires 8m. The adjoining land contains a multi-storey car park which has a height terminating between Levels 2 and 3 of the proposed building. Therefore, the departure relates to Levels 1 and 2 only. The southern elevation of the proposed building does not contain openings on this boundary, other than a minor corner return on the balcony at Corrimal Street. Therefore, there are no privacy implications of the departure. The visual appearance of both the southern and eastern elevations is considered satisfactory.</p> <p>The non-compliance with the building separation standard is considered to be consistent with the objectives of the development standard.</p> <p>The public interest component requires the consent authority to consider the objectives of the zone in which the development is proposed. The objectives of the B3 Commercial core are identified above. The proposal is unsatisfactory with the objectives as identified.</p> <p>After lodgement of this application, the site was rezoned to E2 Commercial Centre and the previous objectives have been updated as shown below.</p> <p>E2 Commercial Centre zone objectives</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> <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>The proposal is unsatisfactory with regard to the third objective relating to accessibility and amenity for pedestrians. The proposed waste collection on Burelli Street would see bins placed on the footpath, with potential adverse visual amenity and traffic and pedestrian impacts.</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>
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the concurrence of the Secretary has been obtained.	The SRPP can exercise assumed concurrence in this instance.
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Part 5 Miscellaneous provisions

Clause 5.21 Flood planning

The land is identified as flood affected. Council's stormwater engineer has previously requested additional flooding information. The applicant provided documentation in response to this request, however compliance has not yet been confirmed by Council's engineer.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

The land is currently serviced by electricity, water and sewerage services. Endeavour Energy has indicated it has no objection to the development, subject to certain conditions of consent.

Clause 7.5 Acid Sulfate Soils

The site is identified as being affected by class 5 acid sulfate soils.

Clause 7.6 Earthworks

The proposal comprises excavation to accommodate two basement levels. The earthworks are not expected to have a detrimental impact on environmental functions and processes. Satisfactory contamination reports have been provided.

Clause 7.13 Certain land within business zones

This Clause applies to the site as it is located within a Commercial Zone. The objective of Clause 7.13 is to ensure active uses are provided at the street level to encourage the presence and movement of people. The clause prevents development consent from being granted unless the consent authority is satisfied that the ground floor of the building:

- (a) will not be used for the purpose of residential accommodation, and*
- (b) will have at least one entrance and at least one other door or window on the front of the building facing the street other than a service lane.*

The ground floor would not be used for residential accommodation and both frontages contain an entrance and windows.

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

The Design Review Panel and Council's architect have reviewed the application. The proposal is not considered to exhibit design excellence, as detailed below:

- Adverse impacts on the public domain in Burelli Street arising from on-street waste collection.
- Above ground parking compromises options for on-site waste collection and an efficient floor plan
- Non-compliances with ADG
- Poor amenity for residents arising from exposure to vehicular noise and particulate matter.
- Poor amenity for residents resulting from overshadowing and overlooking of Level 3 communal open space.

Part 8 Local provisions—Wollongong city centre

Clause 8.1 Objectives for development in Wollongong city centre

The proposal is inconsistent with objective (e):

- (e) to facilitate the development of building design excellence appropriate to a regional city,*

Deficiencies in design include ground floor layout, sleeved above ground parking and on-street waste collection.

Clause 8.2 Wollongong city centre – land to which this Part applies

The land is located within the Wollongong City Centre.

DA-2022/714 / PPSSTH – 253 37-39 Burelli Street Wollongong

Clause 8.4 Minimum building street frontage

The land exceeds the minimum required 20m frontage distance.

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

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

- (1) *The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.*
- (2) *Buildings on land within Zone B3 Commercial Core or B4 Mixed Use must be erected so that—*
 - (a) *there is no separation between neighbouring buildings up to the street frontage height of the relevant building or up to 24 metres above ground level whichever is the lesser, and*
 - (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*
 - (c) *there is a distance of at least 28 metres from any other building at 45 metres or higher above ground level.*
- (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.*
- (4) *For the purposes of this clause, a separate tower or other raised part of the same building is taken to be a separate building.*
- (5) *In this clause—*
street frontage height *means the height of that part of a building that is built to the street alignment.*

A development standard departure is proposed and is discussed under clause 4.6. The proposal complies with the minimum building separation requirements except for subclause 3(b) as it relates to the southern boundary.

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

None applicable.

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

2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

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 housing mix, setbacks, CPTED, pedestrian access, parking, waste collection, solar access to communal open space and size of Level 1 balconies.

2.3.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN

A 2% contribution is payable in accordance with Council's City-Wide Contributions Plan. This Plan levies a contribution based on the estimated cost of development.

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

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

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

Environmental Planning and Assessment Regulation 2021

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.

61 Additional matters that consent authority must consider

The application proposes demolition of all structures.

62 Consideration of fire safety

Not applicable.

63 Considerations for erection of temporary structures

Not applicable.

2.6 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 communal open space, design of ground and podium levels and waste collection as well as other matters identified in this report.

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

Does the proposal fit in the locality?

The proposal is considered appropriate with regard to the zoning of the site, however likely impacts on the locality and adjoining land are not supported.

Are the site attributes conducive to development?

A shop top housing development could be established on the site, however would require greater regard for site constraints and neighbouring context.

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

Two submissions have been received and are discussed in section 1.4.

2.9 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 Wollongong Local Environmental Plan 2009 and all relevant Council DCPs, Codes and Policies. The proposal is not considered supportable in its current form.

The proposed development is permissible with consent in the zone. The development has been assessed with regard to all relevant SEPPs and supporting guidelines. The proposal has some deficiencies with regard to:

- Design of ground floor and podium levels – building entry, accessibility and street activation
- Insufficient property frontage for waste collection in Burelli Street

DA-2022/714 / PPSSTH – 253 37-39 Burelli Street Wollongong

- Visual amenity, pedestrian and traffic impacts arising from waste collection in Burelli Street
- Non-compliance with ADG
- Level 3 communal open space - poor amenity, solar access, privacy and safety for residents
- Car parking – surplus and decision to locate parking above ground.
- Poor housing mix – failure to provide 3 bedroom apartments

The proposal also features variations in respect of ADG, LEP and DCP controls which cannot be supported based on the information at hand.

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 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 detailed in Attachment 6:

Attachments

1. Architectural plans by ADM Architects
2. Clause 4.6 statement by MMJ
3. Design Review Panel notes 16.9.22 and 4.4.23
4. ADG compliance table
5. WDCP 2009 compliance table
6. Recommended reasons for refusal