



## Land and Environment Court New South Wales

**Medium Neutral Citation:**

**Legpro 70 Pty Ltd ATF Legpro Unit Trust v Wollongong City Council [2025] NSWLEC 1246**

**Hearing dates:**

Conciliation conference on 11 April 2025

**Date of orders:**

16 April 2025

**Decision date:**

16 April 2025

**Jurisdiction:**

Class 1

**Before:**

Porter C

**Decision:**

The Court orders:

- (1) The Applicant agrees to pay the First Respondent's costs in accordance with s 8.15(3) of the *Environmental Planning and Assessment Act 1979* up to maximum amount of \$7,000.
- (2) The appeal is upheld.
- (3) Development Application No. DA-2023/550, as amended, for construction of five residential flat buildings with basement parking, associated landscaping, construction of roundabout and internal roads at 27 Railway Street, Corrimal NSW 2518 is determined by the grant of development consent subject to the conditions of consent.

**Catchwords:**

DEVELOPMENT APPEAL – residential flat buildings – conciliation conference – agreement between the parties – orders

**Legislation Cited:**

*Environmental Planning and Assessment Act 1979*, ss 4.16, 8.7, 8.15

*Heritage Act 1977*

*Land and Environment Court Act 1979*, s 34

Water Management Act 2000

Environmental Planning and Assessment Regulation 2021, ss 23, 24, 38

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Biodiversity and Hazards) 2021, Ch 4, s 4.9

State Environmental Planning Policy (Housing) 2021, Ch 4, ss 8(2A), 144, 147, Sch 7A, Sch 9

State Environmental Planning Policy (Resilience and Hazards) 2021, Ch 2, ss 2.11, 2.12, 4.6

State Environmental Planning Policy (Sustainable Buildings) 2022

State Environmental Planning Policy (Transport and Infrastructure) 2021, ss 2.97, 2.99, 2.100

Wollongong Local Environmental Plan 2009, cll 2.3, 4.3, 4.4, 4.6, 5.1A, 5.10, 5.21, 6.1, 7.18, 7.20

**Texts Cited:**

Department of Planning and Environment, Apartment Design Guide, July 2015

**Category:**

Principal judgment

**Parties:**

Legpro 70 Pty Ltd ATF Legpro Unit Trust (Applicant)  
Wollongong City Council (First Respondent)  
Transport for NSW (Second Respondent)

**Representation:**

Counsel:

A Pickles SC (Applicant)  
H Irish (First Respondent)  
A Hemmings (Second Respondent)

Solicitors:

Mills Oakley (Applicant)  
Wollongong City Council (First Respondent)  
Hunt and Hunt Lawyers (Second Respondent)

**File Number(s):**

2023/460987

**Publication restriction:**

Nil

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## JUDGMENT

- 1 **COMMISSIONER:** This is a Class 1 Development Appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) being an appeal against the deemed refusal of DA-2023/550 for the construction of five (5) residential buildings with basement parking, associated landscaping, construction of roundabout and internal roads (DA) at the former Corrimal Coke Works site located at 27 Railway Street Corrimal, legally known as Lot 1 DP 795791, Lots 5 and 11 DP 749492, Lot 126 DP 598190 (site).
- 2 The proceedings commenced as a hearing on 20 March 2025. At the hearing, the parties agreed that the issues in dispute had been resolved, subject to receipt of a Satisfactory Arrangements Certificate (Certificate) from the Department of Planning,

Housing and Infrastructure. That Certificate has now been received and the parties requested a conciliation conference. The Court granted the request and arranged a conciliation conference under s 34 of *the Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 11 April 2025. I presided over the conciliation conference.

- 3 The Respondent, as the relevant consent authority, has agreed under s 38 of the Environmental Planning and Assessment Regulation 2021 (EPA Reg) to the Applicant amending DA-2023/550 in accordance with the documents listed at below (amended DA).

1	Schedule of Amendments to Architectural Plans, prepared by DKO Architects	12 February 2025
2	Schedule of Amendments to Landscape Plans, prepared by Flame Tree Landscape	•
3	Updated Plan of Subdivision prepared by SDG (Issue F)	20 February 2025
4	Heritage Impact Statement prepared by Urbis	10 February 2025
5	Letter regarding Heritage Maintenance Commitment prepared by Legacy Property	31 January 2025
6	Letter of offer to enter into VPA prepared by Mills Oakley	10 February 2025
7	Stage 5 (Existing Road) Road Safety Audit prepared by Traffic Engineering Centre	31 January 2025
8	Letter from Department of Planning, Housing and Infrastructure regarding Satisfactory Arrangements	17 February 2025

9	<p>Architectural Plans (Rev E) prepared by DKO Architecture</p> <p><b>Site Series</b></p> <ul style="list-style-type: none"> <li>• S1.1000 – Cover Page</li> <li>• S1.1000 – Drawing Registry</li> <li>• S1.1020 – Masterplan Site 1:2000</li> <li>• S1.1021 – Masterplan Staging 1:2000</li> <li>• S1.1022 – Masterplan Stage 1 DA 1:2000</li> <li>• S1.1400 – Existing Site Survey - 1:500</li> <li>• S1.1403 – TPZ Level 1 - 1:500</li> <li>• S1.1404 – TPZ Basement - 1:500</li> <li>• S1.1500 – Site Analysis 1:1000</li> <li>• S1.1501 – Site Plan 1:500</li> <li>• S1.1502 – Future Overpass Sketch &amp; Development Site Interface</li> <li>• S1.1503 – Weighted Setback Plan 1:300</li> </ul> <p><b>Plans</b></p> <ul style="list-style-type: none"> <li>• S1.2001 – Overall Basement Plan 1:300</li> <li>• S1.2002 – Overall Level 1 Plan 1:300</li> <li>• S1.2003 – Overall Level 2 Plan 1:300</li> <li>• S1.2004 – Overall Level 3 Plan 1:300</li> <li>• S1.2005 – Overall Level 4 Plan 1:300</li> <li>• S1.2006 – Overall Level 5 Plan – Roof Plan</li> <li>• S1.2007 – Overall Roof Plan</li> <li>• S1.2101 – B1.1 Level 1 Plan 1:100</li> <li>• S1.2102 – B1.1 Level 2 Plan 1:100</li> <li>• S1.2103 – B1.1 Level 3 Plan 1:100</li> <li>• S1.2104 – B1.1 Level 4 Plan 1:100</li> <li>• S1.2105 – B1.1 Roof Plan 1:100</li> <li>• S1.2201 – B1.2 Level 1 Plan</li> <li>• S1.2202 – B1.2 Level 2 Plan</li> <li>• S1.2203 – B1.2 Level 3 Plan</li> <li>• S1.2204 – B1.2 Level 4 Plan</li> </ul>	12 February 2025
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- S1.2205 – B1.2 Roof Plan
- S1.2301 – B1.3 Level 1 Plan
- S1.2302 – B1.3 Level 2 Plan
- S1.2303 – B1.3 Level 3 Plan
- S1.2304 – B1.4 Level 4 Plan
- S1.2305 – B1.3 Roof Plan
- S1.2401 – B1.4 Level 1 Plan
- S1.2402 – B1.4 Level 2 Plan
- S1.2403 – B1.4 Level 3 Plan
- S1.2404 – B1.4 Level 4 Plan
- S1.2405 – B1.4 Roof Plan
- S1.2500 – B1.5 Basement Plan 1
- S1.2501 – B1.5 Level 1 Plan
- S1.2502 – B1.5 Level 2 Plan
- S1.2503 – B1.5 Level 3 Plan
- S1.2504 – B1.5 Level 4 Plan
- S1.2505 – B1.5 Level 5 Plan
- S1.2506 – B1.5 Roof Plan

### **Elevations and Sections**

- S1.3001 – Elevation Overall North
- S1.3002 – Elevation Overall South
- S1.3101 – B.1.1 Elevations North
- S1.3102 – B.1.1 Elevations South
- S1.3201 – B.1.2 Elevation North-West
- S1.3202 – B.1.2 Elevation South-East
- S1.3301 – B.1.3 Elevation North-West
- S1.3302 – B.1.3 Elevation South-East
- S1.3401 – B1.4 Elevation North-West
- S1.3402 – B1.4 Elevation South-East
- S1.3501 – B1.5 Elevation North-West
- S1.3502 – B1.5 Elevation South-East
- S1.4001 – Overall Sections

- S1.4100.1 – Building 1.1 Section
- S1.4200.1 – Building 1.2 Section
- S1.4300.1 – Building 1.3 Section
- S1.4400.1 – Building 1.4 Section
- S1.4500.1 – Building 1.3 Section
- S1.4500.2 – Building 1.5 Section

**Shadow, Sun, Solar and Cross-Ventilation**

- S1.5001 – COS Level 1 – 1:500
- S1.5002 – COS Level 4 – 1:500
- S1.5010 – Deep Soil – 1:500
- S1.5020 – Landscaped Area Level 1 – 1:300
- S1.5022 – Landscaped Area Level 5 – 1:300
- S1.5100 – Shadows – 21st June
- S1.5101 – Shadows 21st June
- S1.5110 – Shadows 21st March
- S1.5111 – Shadows 21st March
- S1.5120 – Shadows 21st September
- S1.5121 – Shadows – 21st September
- S1.5130 – Shadows – 21st September
- S1.5131 – Shadows – 21st September
- S1.5140 – Heritage Plaza Shadows – 21st June
- S1.5141 – Heritage Plaza Shadows – 21st June
- S1.5105 – COS Shadows – 21st June
- S1.5106 – COS Shadows – 21st June
- S1.5150 – Eye of the Sun Diagrams June 21
- S1.5151 – Eye of the Sun Diagrams June 21
- S1.5160 – Eye of the Sun Diagrams June 21 9am
- S1.5161 – Eye of the Sun Diagrams June 21 10am
- S1.5162 – Eye of the Sun Diagrams June 21 11am
- S1.5163 – Eye of the Sun Diagrams June 21 12pm
- S1.5164 – Eye of the Sun Diagrams June 21 1pm
- S1.5165 – Eye of the Sun Diagrams June 21 2pm

- S1.5166 – Eye of the Sun Diagrams June 21 3pm
- S1.5200 – Solar Level 1 – 1:300
- S1.5201 – Solar Level 2 – 1:300
- S1.5202 – Solar Level 3 – 1:300
- S1.5203 – Solar Level 4 – 1:300
- S1.5204 – Solar Level 5 – 1:300
- S1.5205 – Solar Summary
- S1.5250 – Cross Vent Level 1 – 1:300
- S1.5251 – Cross Vent Level 2 – 1:300
- S1.5252 – Cross Vent Level 3 – 1:300
- S1.5253 – Cross Vent Level 4 – 1:300
- S1.5254 – Cross Vent Level 5 – 1:300
- S1.5255 – Cross Vent Summary

**GFA**

- S1.5300 – GFA Basement – 1:300
- S1.5301 – GFA Level 1 – 1:300
- S1.5302 – GFA Level 2 – 1:300
- S1.5303 – GFA Level 4 – 1:300
- S1.5304 – GFA Level 4 & 5 – 1:300
- S1.5350 – GFA FSR Compliance

**Adaptable and Liveable Unit Plans**

- S1.5401 – Unit Mix Level 1 – 1:300
- S1.5402 – Unit Mix Level 2 – 1:300
- S1.5403 – Unit Mix Level 3 – 1:300
- S1.5404 – Unit Mix Level 4 – 1:300
- S1.5405 – Unit Mix Level 5 – 1:300
- S1.5406 – Unit Mix Summary
- S1.5501 – Adaptable & Liveable Level 1
- S1.5502 – Adaptable & Liveable Level 2
- S1.5503 – Adaptable & Liveable Level 3
- S1.5504 – Adaptable & Liveable Level 4
- S1.5505 – Adaptable & Liveable Summary

- S1.5509 – Adaptable & Liveable Unit Layouts 4
- S1.5510 – Adaptable & Liveable Unit Layouts 5
- S1.5511 – Adaptable & Liveable Unit Layouts 13
- S1.5511 – Adaptable & Liveable Unit Layouts 6
- S1.5512 – Adaptable & Liveable Unit Layouts 7
- S1.5513 – Adaptable & Liveable Unit Layouts 8
- S1.5514 – Adaptable & Liveable Unit Layouts 9
- S1.5515 – Adaptable & Liveable Unit Layouts 10
- S1.5516 – Adaptable & Liveable Unit Layouts 11
- S1.5517 – Adaptable & Liveable Unit Layouts 12
- S1.5518 – Adaptable & Liveable Unit Layouts 13
- S1.5519 – Adaptable & Liveable Unit Layouts 14
- S1.5601 – Typical Apartment Storage Level 1
- S1.5602 – Typical Apartment Storage Level 2
- S1.5603 – Typical Apartment Storage Level 3
- S1.5604 – Typical Apartment Storage Level 4
- S1.5605 – Typical Apartment Storage Level 5

### **View Analysis**

- S1.5700.1 – Height Plane Diagram
- S1.5800.1 – View Analysis – Chimney Stix
- S1.5800.2 – View Analysis – Chimney Stix
- S1.5800.3 – View Analysis – Chimney Stix
- S1.5800.4 – View Analysis – Murray Road
- S1.5800.5 – View Analysis – North – South
- S1.5800.6 – View Analysis – North – South
- S1.5800.7 – B15 Overlay with Figure 4

### **Photomontage**

- S1.6001 – Render 1
- S1.6002 – Render 2
- S1.6003 – Render 3

### **Façade and Materials**

- S1.6101 – Façade Type Plan – Building 1



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| <ul style="list-style-type: none"><li>• S1.6102 – Façade Type Plan Building 1</li><li>• S1.6103 – Façade Type Plan Building 1</li><li>• S1.6104 – Façade Type Plan Building 1</li><li>• S1.6105 – Façade Type Plan Building 1</li><li>• S1.6200 – Façade Type 1.1 Building 1.1</li><li>• S1.6201 – Façade Type 1.2 Building 1.1</li><li>• S1.6203 – Façade Type 1.2 Building 1.1</li><li>• S1.6204 – Façade Type 1.2 Building 1.1</li><li>• S1.6205 – Façade Type 1.2 Building 1.1</li><li>• S1.6206 – Façade Type 4.1 Building 1.4</li><li>• S1.6207 – Façade Type 4.2 Building 1.4</li><li>• S1.6209 – Façade Type 5.1 Building 1.5</li><li>• S1.6210 – Façade Type 5.2 Building 1.5</li><li>• S1.6211 – Façade Type 5.3 Building 1.5</li><li>• S1.6301 – Materials Palette – Stage 1</li><li>• S1.6401 – Building 1.2 &amp; 1.3 Façade Detail</li><li>• S1.6402 – SCV &amp; Booster Detail</li><li>• S1.9000 – Development Schedule</li></ul> |  |
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10	<p>Landscape Plans (Rev F) prepared by Flame Tree Landscape Design</p> <ul style="list-style-type: none"> <li>• LA_DA100 – Stage 01 Site Plan</li> <li>• LA_DA101 – 1.1 – 1.4 GF Plan 01</li> <li>• LA_DA102 – 1.1 – 1.4 GF Plan 02</li> <li>• LA_DA103 – 1.1 – 1.4 GF Plan 03</li> <li>• LA_DA104 – 1.1 – 1.4 GF Plan 04</li> <li>• LA_DA105 – 1.1 – 1.4 GF Plan 05</li> <li>• LA_DA106 – 1.1 – 1.4 GF Plan 06</li> <li>• LA_DA107 – 1.5 GF Plan 01</li> <li>• LA_DA108 – 1.5 GF Plan 02</li> <li>• LA_DA109 – 1.5 Level 05 CoS Detail Plan</li> <li>• LA_DA110 – 1.5 Level 05 PoS Plan 01</li> <li>• LA_DA111 – 1.5 Level 05 PoS Plan 02</li> <li>• LA_DA112 – Tree Removal/Retention Plan 01</li> <li>• LA_DA113 – Tree Removal/Retention Plan 02</li> <li>• LA_DA114 – Tree Removal/Retention Plan 03</li> <li>• LA_CC-115 – 1.1 – 1.4 Fence Plan 01</li> <li>• LA_CC-116 – 1.1 – 1.4 Fence Plan 02</li> <li>• LA_CC-117 – 1.1 – 1.4 Fence Plan 03</li> <li>• LA_CC-118 – 1.1 – 1.4 Fence Plan 04</li> <li>• LA_CC-119 – 1.1 – 1.4 Fence Plan 05</li> <li>• LA_CC-120 – 1.1 – 1.4 Fence Plan 06</li> <li>• LA_CC-121 – 1.5 Fence Plan 01</li> <li>• LA_CC-122 – 1.5 Fence Plan 02</li> <li>• LA_DA200 – Landscape Sections 01</li> <li>• LA_DA201 – Landscape Sections 02</li> <li>• LA_DA202 – Landscape Sections 03</li> <li>• LA_DA203 – Landscape Sections 04</li> <li>• LA_DA204 – Landscape Sections 05</li> <li>• LA_DA205 – Landscape Sections 06 (Issue E)</li> </ul>	12 February 2025
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11	<p>Landscape Development Application Report (Rev 06) prepared by Flame Tree Landscape Design</p> <ul style="list-style-type: none"> <li>• Location Plan</li> <li>• Masterplan</li> <li>• Design Statement (sheet 1 of 2)</li> <li>• Design Statement (sheet 2 of 2)</li> <li>• DA-100 – Stage 01 Site Plan</li> <li>• DA-101 – 1.1 – 1.4 GF Plan 01</li> <li>• DA-102 – 1.1 – 1.4 GF Plan 02</li> <li>• DA-103 – 1.1 – 1.4 GF Plan 03</li> <li>• DA-104 – 1.1 – 1.4 GF Plan 04</li> <li>• Communal Open Space Design Principles</li> <li>• Industrial Heritage Response (sheet 1 of 2)</li> <li>• Industrial Heritage Response (sheet 2 of 2)</li> <li>• DA105 Detail Plan 01</li> <li>• 3D View A</li> <li>• 3D View B</li> <li>• 3D View C</li> <li>• 3D View D</li> <li>• 3D View E</li> <li>• DA-106 Detail Plan 02</li> <li>• DA-107 Detail Plan 03</li> <li>• DA-108 Detail Plan 04</li> <li>• DA-109 Detail Plan 05</li> <li>• Character Imagery (sheet 1 of 2)</li> <li>• Character Imagery (sheet 2 of 2)</li> <li>• DA-201 – Landscape Sections 01</li> <li>• DA-202 – Landscape Sections 02</li> <li>• DA-110 Building 1.5 GF Plan 01</li> <li>• DA-111 Building 1.5 GF Plan 02</li> <li>• DA-112 Building 1.5 Level 05 CoS Detail Plan</li> <li>• DA-203 – Landscape Sections 03</li> </ul>	7 February 2025
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	<ul style="list-style-type: none"><li>• DA-113 Building 1.5 Level 05 PoS Plan 01</li><li>• DA-114 Building 1.5 Level 05 PoS Plan 02</li><li>• Building 1.5 Character Imagery</li><li>• Landscape Finishes and Textures</li><li>• Tree Planting Diagram</li><li>• Planting Palette (sheet 1 of 3)</li><li>• Planting Palette (sheet 2 of 3)</li><li>• Planting Palette (sheet 3 of 3)</li></ul>	
12	Updated Design Verification Statement prepared by DKO Architects (plans Rev E)	19 February 2025
13	Letter from BASIX Consultant	19 February 2025

14	<p>Civil Engineering Drawings (Up to Rev 9) prepared by Makereng</p> <ul style="list-style-type: none"> <li>• MKR00452 – 10-C0000 - Cover Sheet and Drawing Schedule (Rev 8)</li> <li>• MKR00452 – 10-C0010 – General Notes (Rev 6) dated 9 Feb 2024</li> <li>• MKR00452 – 10-C0030 – Zoning Layout Plan (Rev 10) dated 14 Feb 2025</li> <li>• MKR00452 – 10-C0040 – Civil Key Plan (Rev 9) dated 20 Sep 2024</li> <li>• MKR00452 – 10-C0050 – Future Lot Layout Plan 1 of 2 (Rev 9) dated 14 Feb 2025</li> <li>• MKR00452-10-C0051 – Future Lot Layout Plan 2 of 2 (Rev 7) dated 14 Feb 2025</li> <li>• MKR00452-10-C0100 –Civil Works Layout Plan 1 of 2 (Rev 10) dated 14 Feb 2025</li> <li>• MKR00452-10-C0101 –Civil Works Layout Plan 2 of 2 (Rev 8) dated 14 Feb 2025</li> <li>• MKR00452-10-C0200 –Bulk Earthworks Layout Plan (Rev 10) dated 5 Feb 2025</li> <li>• MKR00452-10-C0250 –Bulk Earthworks Section Plan 1 of 2 (Rev 9) dated 19 Dec 2024</li> <li>• MKR00452-10-C0251 –Bulk Earthworks Section Plan 2 of 2 (Rev 10) dated 19 Dec 2024</li> <li>• MKR00452-10-C0251 Bulk Earthworks Section Plan 2 Of 2 (Rev 9) dated 5 Feb 2025</li> <li>• MKR00452 – 10-C0300- Typical Road Layout Plan (Rev 10) dated 14 Feb 2025</li> <li>• MKR00452 – 10-C0310- Typical Road Section Plan 1 of 3 (Rev 6) dated 9 Feb 2024</li> <li>• MKR00452 – 10-C0311- Typical Road Section Plan 2 of 3 (Rev 6) dated 9 Feb 2024</li> <li>• MKR00452 – 10-C0312- Typical Road Section Plan 3 of 3 (Rev 3) dated 14 Feb 2025MKR00452-10-C0350 – Civil Details (Rev 6) 9 Feb 2024</li> <li>• MKR00452-10-C0500 – Longitudinal Section Road 01 1 of 2 (Rev 6) dated 9 Feb 2024</li> </ul>	Up to 14 February 2025
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	<ul style="list-style-type: none"> <li>• MKR00452-10-C0501 – Longitudinal Section Road 02 2 of 2 (Rev 6) dated 9 Feb 2024</li> <li>• MKR00452-10-C1100 – Concept Stormwater Layout Plan 1 of 2 (Rev 10) dated 14 Feb 2025</li> <li>• MKR00452-10-C1101 – Concept Stormwater Layout Plan 2 of 2 (Rev 8) dated 14 Feb 2025</li> <li>• MKR00452-10-C1700 Conceptual Service Allocation Layout Plan 1 Of 2 (Rev 10) dated 14 Feb 2025</li> <li>• MKR00452-10-C1701 Conceptual Service Allocation Layout Plan 2 Of 2 (Rev 8) dated 14 Feb 2025</li> <li>• MKR00452-10-C1850 Erosion And Sediment Control Notes And Details (Rev 6) dated 9 Feb 2024</li> <li>• MKR00452-10-C1860 Erosion And Sediment Control Layout Plan (Rev 10) dated 14 Feb 2025</li> <li>• Mkr00452-10-C2100 Swept Path Layout Plan Design Vehicles (Rev 9) dated 4 Oct 2024</li> <li>• MKR00452-10-C2101 Swept Path Layout Plan Check Vehicles (Rev 9) dated 4 Oct 2024</li> <li>• MKR00452-10-C2102 Swept Path Layout Plan Driveway Entrances (Rev 1) dated 17 Dec 2024</li> <li>• MKR00452-10-C2103 Swept Path Layout Plan Driveways and Bus Stop (Rev 1) dated 16 Jan 2025</li> <li>• MKR00452-10-C2200 Signs And Lines Layout Plan (Rev 9) dated 16 Jan 2025</li> </ul>	
15	Proposed Subdivision & Development Staging Proposal prepared by Makereng (MKR00452)	Undated
16	Updated Clause 4.6 Variation request for height prepared by Urbis	February 2025
17	Updated Clause 4.6 Variation in relation to FSR prepared by Urbis	February 2025
18	Updated Clause 4.6 Variation in relation to overshadowing prepared by Urbis	February 2025
19	Supplementary Urban Design Report	24 February 2025

20	General Terms of Approval issued by Heritage NSW	21 February 2025
21	Satisfactory Arrangements Certificate	27 March 2025

- 4 As part of the conciliation conference process, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. This decision involved the Court upholding the appeal for the amended application and granting development consent to the amended DA subject to conditions of consent.
- 5 I note that as part of the s 34 agreement, the parties have submitted a jurisdictional statement setting out how the proposal has satisfied the jurisdictional requirements and other matters. Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision that the Court could have made in the proper exercise of its functions.

### **Jurisdictional Prerequisites**

- 6 There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties identified the jurisdictional prerequisites of relevance in these proceedings and explained how the jurisdictional prerequisites have been satisfied. I am satisfied that the parties' decision is one that the Court could have made in the proper exercise of its functions, as required by s 34(3) of the LEC Act, as set out below.
- 7 I am satisfied that owner's consent accompanied the DA as required by ss 23 and 24 of the EPA Reg. The Respondent notified the DA between 23 August 2023 and 22 September 2023. 28 submissions were received, with 26 objecting to the DA. A further 250 letters of support were received.
- 8 The Court and parties benefitted from hearing oral submissions on the first day of the hearing from community members objecting to the DA. As agreement has been reached, the Court's role is confined and the parties advised that they have considered the issues raised in the submissions.

### ***Heritage Act 1977***

- 9 The subject site contains a state heritage item. Heritage NSW have issued General Terms or Approval, which has been included in the conditions of consent at Annexure A. I accept the parties' agreement that the provisions have been met.

### ***Water Management Act 2000***

- 10 The DA has received General Terms of Approval for some aspects of the proposed development on 2 December 2024 and included in the conditions of consent. The Applicant has elected to defer the other *Water Management Act 2000* approvals. I

accept that the provisions of the *Water Management Act 2000* have been satisfied.

*State Environmental Planning Policy (Biodiversity and Conservation) 2021*

- 11 Chapter 4 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP BC) applies in relation to koala habitat protection. I accept the parties' agreement that the site does not contain any core koala habitat and the provisions of s 4.9 have been adequately addressed.

*State Environmental Planning Policy (Housing) 2021*

- 12 Chapter 4 of the Housing SEPP applies to the amended DA in accordance with Sch 7A s 8(2A) and s 144. Section 147 requires consideration of the design principles contained in Sch 9 and the Apartment Design Guide (ADG).
- 13 Relevantly, s 29 of the EPA Reg requires that residential apartment development must be accompanied by a statement prepared by a qualified designer in relation to the design principles within Sch 9 of the Housing SEPP and Parts 3 and 4 ADG.
- 14 The parties agree and I accept that the amended DA meets the provisions of the Housing SEPP on the basis of the updated Design Verification Statement completed by the nominated qualified designer David Randerson (registered architect number 8542) dated 19 February 2025, consideration of the advice from the Wollongong Design Review Panel and Urban Design Joint Expert Report and Supplementary Urban Design Joint Expert Report.

*State Environmental Planning Policy (Resilience and Hazards) 2021*

- 15 Chapter 2, ss 2.11 and 2.12 of State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP RH) in relation to coastal management applies to the site which is mapped within the coastal environment area. I accept the parties' agreement that the provisions are satisfied as the site is not affected by coastal hazards, Coastal Management Plan or Coastal Management Plan as set out in the jurisdictional statement.
- 16 The provisions of s 4.6 of SEPP RH apply to the site. The site has a history of contamination as a result of previous uses of the site. The amended DA is supported by a Remediation Action Plan (RAP) prepared by Reditus Consulting that finds that the site can be made suitable, alongside the RAPs for the related earthworks development applications that have been granted consent. The parties agree and I accept, that the provisions of s 4.6 of SEPP RH have been satisfied.

*State Environmental Planning Policy (Building Sustainability Index: BASIX)*

- 17 Due to the lodgement date of the DA, State Environmental Planning Policy (Sustainable Buildings) 2021 does not apply and the now repealed State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) applies instead. The



Amended DA is accompanied by a satisfactory BASIX Certificate and a Thermal Comfort and ESD Report prepared by Integreco Consulting. I accept the parties' agreement that the provisions of SEPP BASIX have been met.

*State Environmental Planning Policy (Transport and Infrastructure) 2021*

- 18 Sections 2.97 and 2.99 originally applied to the DA given the proposed development's proximity to the rail corridor. Sections 2.97(3) and 2.99(3) require concurrence from the rail authority prior to the grant of consent. The parties agree, on the basis that there is no significant increase in vehicle and trucks using the rail level crossing, that s 2.97(3) is not required to be satisfied. Section 2.99(3) remains engaged. The Second Respondent, Transport for NSW (TfNSW) have issued their concurrence on the basis of the Traffic Joint Expert Report and works included in the proposal relating to signage and planning agreement letter of offer, reinforced by conditions of consent that have been included at Annexure A.
- 19 Section 2.100 relating to rail noise and vibrations to residential development applies. The amended DA is accompanied by an Acoustic and Vibration Assessment prepared by Renzo Tonin & Associates dated 4 October 2024 that recommends measures that will achieve compliant acoustic and vibration attenuation.
- 20 I accept the parties' agreement that the provisions of the SEPP are met.

*Wollongong Local Environmental Plan 2009*

- 21 The subject site is zoned part R3 Medium Density Residential and part RE1 Public Recreation. The proposed development is located within the R3 zone and is permissible with consent. Pursuant to cl 2.3 of the Wollongong Local Environmental Plan 2009 (WLEP), I have had regard to the objectives of the zone.
- 22 Clause 4.3 height of buildings applies to the site, permitting a maximum height of 15m. The amended DA is 17.55m at its highest point and seeks a variation to the development standard. The amended DA is supported by a cl 4.6 written request to vary the building height prepared by Urbis dated 21 February 2025 (height written request). I accept the parties' agreement and am satisfied that the height written request addresses the preconditions of cl 4.6.
- 23 Clause 4.4 floor space ratio (FSR) applies to the site, permitting a mix of maximum FSR's of 1.2:1 and 1.5:1. Lot one proposes an FSR of 1.3:1 where 1.2:1 is permitted. Lot 3B proposes an FSR of 1.8:1 where 1.5:1 is permitted. The amended DA seeks to vary the development standard pursuant to cl 4.6 and is supported by a cl 4.6 written

request to vary FSR prepared by Urbis dated 21 February 2025 (FSR written request).

The parties agree and I am satisfied that the written request addresses the preconditions of cl 4.6.

- 24 Clause 5.1A development on land intended to be acquired for a public purpose applies as the site contains land on the associated land reservation map. The amended DA does not propose any works on that part of the site.
- 25 Clause 5.10 heritage conservation applies to the site. The site is a local heritage item (Former Corrimall Coke Works, Item No. 6607). The site is also listed on the State Heritage Register. General Terms of Approval from Heritage NSW were received 21 February 2025 and form part of the conditions of consent. I accept that the site's heritage significance has been adequately considered.
- 26 Clause 5.21 flood planning applies to the site. On the basis of the Flood Impact Report prepared by Maker ENG I accept the parties' agreement that the provisions are satisfied and that there are no flooding impacts as a result of the proposed development.
- 27 The now repealed cl 6.1 arrangements for designated State public infrastructure applies to the proposed development due to the lodgement date of the DA and proposed subdivision. The required Satisfactory Arrangements Certificate was issued by the Secretary of the Department of Planning, Housing and Infrastructure on 27 March 2025. The provisions have been satisfied.
- 28 Clause 7.18 Design excellence of key sites applies, as the site is identified as a key site. The Wollongong Design Review Panel (WDRP) has considered the proposed development on several occasions and the amended DA has considered and incorporated the feedback received. I accept that the urban design experts have considered and addressed the provisions through the Urban Design Joint Expert Report and Supplementary Urban Design Joint Expert Report.
- 29 Clause 7.20 applies to the site in relation to overshadowing of the heritage plaza. The proposed development seeks a variation to the extent of overshadowing permitted by the clause, pursuant to cl 4.6. The amended DA is supported by a cl 4.6 written request prepared by Urbis dated 21 February 2025 (FSR written request). The parties agree and I am satisfied that the written request addresses the preconditions of cl 4.6.

### **Planning agreement**

- 30 The amended DA includes a letter of offer to enter into a planning agreement with TfNSW in relation to the level crossing. I accept that the terms of the offer have been considered and agreed to be acceptable to the parties.

### **Section 4.15(1)**

- 31 On the basis of the material accompanying the Class 1 appeal and the jurisdictional statement, I accept that the relevant matters for consideration pursuant to s 4.15(1) of the EPA Act 1979 have been adequately considered.

## Conclusion

- 32 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.
- 33 In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues that were originally in dispute between the parties.
- 34 I have considered the jurisdictional prerequisites and I am satisfied on the basis of the evidence before me that the agreement of the parties is a decision that the Court could have made in the proper exercise of its functions.

## Orders

- 35 The Court orders:
- (1) The Applicant agrees to pay the First Respondent's costs in accordance with s 8.15(3) of the *Environmental Planning and Assessment Act 1979* up to maximum amount of \$7,000.
  - (2) The appeal is upheld.
  - (3) Development Application No. DA-2023/550, as amended, for construction of five residential flat buildings with basement parking, associated landscaping, construction of roundabout and internal roads at 27 Railway Street, Corrimal NSW 2518 is determined by the grant of development consent subject to the conditions of consent.

## S Porter

## Commissioner of the Court

## Annexure A

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Decision last updated: 16 April 2025