

COUNCIL ASSESSMENT REPORT

SOUTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSTH-294 – DA10.2023.40336.1
PROPOSAL	Seven (7) Storey Mixed Use, Shop Top Housing Development - Comprising of Thirty Two (32) Apartments, Two (2) Commercial Tenancies, Swimming Pool, Carpark, Demolition of Three (3) Residences (including Heritage Item 164 and 166) & Thirty Four (34) Lot Strata Title Subdivision and Consolidation of Existing Titles
ADDRESS	Lot PT20 DP 780123 located at 481 Swift Street, Albury Lot PT20 Sec 24 DP 780123 located at 485 Swift Street, Albury LOT 1 DP 912511 located at 487 Swift Street, Albury
APPLICANT	Mr Craig McPartland from Habitat Planning
OWNER	481 Swift Street Pty Ltd
DA LODGEMENT DATE	14 August 2022
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Item 2 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> for general development that has a capital investment value of more than \$30 million
CIV	\$42,570,000 (including GST)
CLAUSE 4.6 REQUESTS	N/A
KEY SEPP/LEP	SEPP (Planning Systems) 2021 SEPP (Transport and Infrastructure) 2021 SEPP (Resilience and Hazards) 2021 SEPP (Biodiversity and Conservation) 2021 SEPP (BASIX) 2004 SEPP No 65 – Design Quality of Residential Apartment Development Albury Local Environmental Plan 2010
TOTAL & UNIQUE SUBMISSIONS	The application was publicly notified between 14 August 2023 and 1 September 2023

KEY ISSUES IN SUBMISSIONS	<p>3 x submissions received supporting the proposed development</p> <p>The submissions identifying support for the proposal welcome higher density housing within central Albury, noted the design of the development will beautify the CBD and that the development will create employment opportunity.</p> <p>3 x submissions received opposing the proposed development</p> <p>The opposing submissions raise concerns in relation to the loss of Albury's history through the demolition of 2 x heritage items, overshadowing impact to existing surrounding development, the development being inconsistent with the zone objectives of the Albury LEP 2010 (i.e., commercial development should be favoured rather than residential), insufficient onsite car parking and the design of the development failing to comply with the setback requirements of Albury DCP 2010 and Apartment Design Guidelines.</p>
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ol style="list-style-type: none"> 1. Development Plans 2. Statement of Environmental Effects 3. Heritage Impact Statement 4. Acoustic Report 5. Arborist Report 6. Traffic Impact Assessment 7. Preliminary Site Investigation Report 8. BASIX Certificate 9. Essential Energy referral response 10. Applicant response to Submissions 11. Urban Design Review – Smith & Tzannes 12. Draft Determination of Consent 13. Apartment Design Guide – Council Assessment 14. Design Verification Statement & Design Quality Principles 15. Redacted Submissions
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes

SCHEDULED MEETING DATE	9 April 2024				
PLAN VERSION	Approved plans				
	Plan number	Revision number	Plan title	Drawn by	Date of plan
	5.01	F	Existing Conditions & Survey	CohenLeigh	1/11/2023
	5.02	F	Existing Conditions & Demolition Plan	CohenLeigh	1/11/2023
	5.03	F	Site - Proposed	CohenLeigh	1/11/2023
	5.10	E	Plan – Level Basement	CohenLeigh	5/7/2023
	DA-11	P	Plan – Level Ground	CohenLeigh	21/11/2023
	5.12	F	Plan – Level 1	CohenLeigh	1/11/2023
	5.13	F	Plan – Levels 2-4	CohenLeigh	1/11/2023
	5.14	F	Plan – Level 5	CohenLeigh	1/11/2023
	5.15	F	Plan – Level 6	CohenLeigh	1/11/2023
	5.16	F	Plan – Roof Terrace	CohenLeigh	1/11/2023
	5.17	F	Plan - Roof	CohenLeigh	1/11/2023
	5.22	E	Area Analysis – FSR Summary	CohenLeigh	5/7/2023
	5.30	F	Elevation - North	CohenLeigh	1/11/2023
	5.31	F	Elevation - East	CohenLeigh	1/11/2023
	5.32	F	Elevation - South	CohenLeigh	1/11/2023
	5.33	F	Elevation - West	CohenLeigh	1/11/2023
	5.40	F	Section 1	CohenLeigh	1/11/2023
	5.41	F	Section 2	CohenLeigh	1/11/2023
	5.42	F	Section 3	CohenLeigh	1/11/2023
	5.43	F	Section 4	CohenLeigh	1/11/2023
	5.44	F	Section 5	CohenLeigh	1/11/2023
	5.45	F	Section 6	CohenLeigh	1/11/2023
	5.50	F	Site Section 7 – Sheet 1	CohenLeigh	1/11/2023
	5.51	F	Site Section 8 – Sheet 2	CohenLeigh	1/11/2023
	1	A	Level One Landscaping	Yonder	18/07/2023
	2	A	Level Five Landscaping	Yonder	18/07/2023
	3	A	Roof Level Landscaping	Yonder	18/07/2023
	4	A	Plant selection 1	Yonder	18/07/2023
	5	A	Plant selection 2	Yonder	18/07/2023
	Sheet 1	3	Location Plan	Spiire	17/07/2023
	Sheet 2	3	Floor Plan Basement Level	Spiire	17/07/2023
	Sheet 3	3	Floor Plan Ground Level	Spiire	17/07/2023
	Sheet 4	3	Floor Plan Level One	Spiire	17/07/2023
	Sheet 5	3	Floor Plan Level Two	Spiire	17/07/2023
	Sheet 6	3	Floor Plan Level Three	Spiire	17/07/2023
	Sheet 7	3	Floor Plan Level Four	Spiire	17/07/2023
	Sheet 8	3	Floor Plan Level Five	Spiire	17/07/2023
	Sheet 9	3	Floor Plan Level Six	Spiire	17/07/2023
	Sheet 10	3	Floor Plan Level Seven	Spiire	17/07/2023
PREPARED BY	Sharna Holland				
DATE OF REPORT	27 March 2024				

EXECUTIVE SUMMARY

The Development Application (DA) 10.2023.40336.1 seeks consent for a seven (7) storey mixed use, shop top housing development, which is permissible with consent in the E2 Commercial Centre zone.

The subject land is located at 481, 485 & 487 Swift Street and the application seeks to demolish the three existing buildings on site, two of which are locally listed heritage items I164 (485 Swift Street) and I166 (487 Swift Street), and remove one established street tree (adjacent to 481 Swift Street), to facilitate the construction of a multi-storey mixed-use development comprising two (2) ground floor commercial tenancies, thirty-two (32) apartments, a roof top swimming pool and common area, basement and ground level car parking, and a thirty-four (34) lot Stratum title subdivision.

The project is for general development that has a Capital Investment Value (CIV) greater than \$30 million. Under the provisions of *State Environmental Planning Policy (Planning Systems) 2021* the development is a Regionally Significant Development (RSD).

The key issues associated with the development relate to the demolition of two (2) locally listed heritage items, the removal of one mature street tree, noise impacts associated with the use of the adjoining land and the requested variations to the Apartment Design Guide (ADG). These matters have been further discussed within this report, where Council is satisfied concerns can be resolved through recommended conditions of consent.

The development was publicly notified between 14 August 2023 and 1 September 2023 and six (6) submissions have been received to date, three (3) supporting and three (3) opposing the development. The submissions identifying support for the proposal welcome higher density housing within central Albury, noted the design of the development will beautify the CBD, and that the development will create employment opportunity.

The opposing submissions raise concerns in relation to the loss of Albury's history through the demolition of two heritage items, overshadowing impact to surrounding development, the development being inconsistent with the zone objectives of the Albury LEP 2010 to encourage commercial development rather than residential, insufficient onsite car parking and that the design of the development fails to comply with the setback requirements of Albury DCP 2010 and Apartment Design Guidelines. All matters raised within the received submissions are considered further in this report.

It is considered that the works are consistent with the public interest as the proposed development satisfactorily addresses the strategic objectives of the Albury CBD Masterplan and the envisioned growth path/future character for the precinct.

Council staff have assessed the proposed development in accordance with Section 4.15 of *Environmental Planning and Assessment Act 1979*. This involved consideration of the submitted information and planning controls and requirements contained within Albury LEP 2010, Albury DCP 2010, and the relevant State legislation. It is the role of Council staff to objectively weigh and consider the submitted information.

Overall, it is concluded that the impacts of the proposed mixed use development on the environment and neighbouring properties are reasonable, with the development representing significant investment and an increase to the permanent population of Albury's commercial centre. The development is considered appropriate to the commercial context and setting of the locality and is consistent with the objectives of the E2 Commercial Centre zone; consequently, the assessment has concluded that the proposed development provides a suitable and satisfactory planning outcome.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(a) of the EP&A Act 1979, DA 10.2023.40336.1 it is recommended for approval, subject to conditions contained within the Draft Development Consent at Attachment 12 of this report.

1. THE SITE AND LOCALITY

1.1 The Site

The subject land, 481, 485 & 487 Swift Street, Albury, identified in the locality map below (see Figure 1), comprises two allotments (1 lot in 2 parts) with three existing buildings (see Figure 2). The total site area of the subject land is 2023m². The site has road frontage to Swift Street, which is to the north, and Arnolds Lane, being west of the subject land. The existing site has three vehicle crossovers, with 481 & 485 Swift Street being accessed from Swift Street, and 487 Swift Street being a corner allotment and accessed from Arnolds Lane.

The subject land is zoned E2 Commercial Core under Albury LEP 2010 and is located within the Albury CBD.

The topography of the land is described as predominantly flat and there is no significant trees or vegetation within the site. There are three (3) established Plane trees (*Platanus acerifolia*) within the nature strip adjacent to the site, that is part of a corridor of tree plantings within Swift Street.

Two of the existing buildings on the subject land are identified as locally listed heritage items being Heritage Item I164, located at 485 Swift Street, and Heritage Item I166, located at 487 Swift Street.

The Statement of Significance for Heritage Item I164 describes the dwelling as an 'unusual design part of inner ring of housing around retail core'. The Statement of Significance for Heritage Item I166 describes the dwelling as 'relates to the Swift Street group in that it forms part of the inner ring of housing around the retail core'.



Figure 1 – Locality Plan



Figure 2 – Aerial map of subject site, 481, 485 & 487 Swift Street, Albury

1.2 The Locality

The site is zoned E2 Commercial Centre under *Albury Local Environmental Plan 2010* (Albury LEP 2010) and is located within the central business district of Albury where there is a variety of commercial uses within the surrounding locality.

The land to the north of the site is zoned MU1 Mixed Use and the adjacent land uses include a recreation facility (indoor) & retail premises (564 Olive Street), residential dwelling (486 Swift Street), beauty salon (482 Swift Street), registered club & carpark (576 Olive Street) and office premises (470, 468, 466, 464 Swift Street). The adjoining land to the east and south of the subject land is zoned E2 Commercial Centre and is developed as a shopping centre complex comprising a variety of retail premises, food and drink premises and car parking within the site (525 David Street). The land to the west of the subject land is zoned E2 Commercial Centre and is currently used as retail premises, recreation facility (indoor) and food and drink premises (548, 550, 552, 554 & 560 Olive Street).

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The DA 10.2023.40336.1 seeks consent for a seven (7) storey mixed use, shop top housing development, which is permissible with consent in the E2 Commercial Centre zone.

The subject land is located at 481, 485 & 487 Swift Street and the application seeks to demolish the three existing buildings on site (see Figure 3), two of which are locally listed heritage items 164 (485 Swift Street) and 166 (487 Swift Street) and remove one established street tree (adjacent to 481 Swift Street), to facilitate the construction of a multi-storey mixed-use development (see Figure 4 and Figure 5).

The proposed development comprises the following:

- two (2) commercial tenancies (ground floor)
- thirty-two (32) apartments (levels 1 to 6)
- a roof top swimming pool and common area (level 7)
- basement and ground level car parking (total of 58 spaces)
- thirty-four (34) lot Stratum title subdivision

Table 1: Development Data

Control	Proposal
Site area	487 Swift Street (Lot 1/DP912511) – 613.3m ² 485 Swift Street (PLT20/DP780123 – 705m ² 481 Swift Street (PLT20/DP780123 – 705m ²

	Total: 2,023.3m ²
Planning Attributes	<p>Zone: E2 – Commercial Centre</p> <p>Maximum Building Height: 35metres</p> <p>FSR: 3:1</p> <p>Natural Hazards: Nil</p> <p>Heritage Conservation: Locally listed items I164 and I166.</p>
GFA	<p>6,038 m² (max. allowed 6069 m²)</p> <p>Ground floor</p> <p>Tenancy 1: 381m²</p> <p>Tenancy 2: 356m²</p> <p>Gymnasium: 55m²</p> <p>Change room facilities: 28m²</p> <p>Meeting/activity room: 26m²</p> <p>Common area: 102m²</p> <p>Total: 948m²</p> <p>Upper floors</p> <p>32 residential apartments comprising:</p> <p>Level 1 – 6 apartments (2 x 3 bedroom, 4 x 2 bedroom)</p> <p>Level 2 – 6 apartments (2 x 3 bedroom, 4 x 2 bedroom)</p> <p>Level 3 – 6 apartments (2 x 3 bedroom, 4 x 2 bedroom)</p> <p>Level 4 – 6 apartments (2 x 3 bedroom, 4 x 2 bedroom)</p> <p>Level 5 – 4 apartments (3 x 3 bedroom, 1 x 2 bedroom)</p> <p>Level 6 – 4 apartments (3 x 3 bedroom, 1 x 2 bedroom)</p> <p>Level 7 – Rooftop swimming pool and amenities, landscaping, and PV Solar Panels.</p> <p>Total (including roof amenities/foyer) = 5,090m²</p>
FSR	2.98:1
Clause 4.6 Requests	Not applicable
No of apartments	32
Height	29 metres
Landscaped area	<p>Landscaping is proposed on the ground level, level 1, level 5, and roof top of the development. As the site has 100% site coverage, all landscaped areas will be provided via raised planters.</p> <p>The area of landscape provided on structure on site is 915m² (soft and hard) = 45% of site area.</p>
Car Parking spaces	<p>Basement: 52 carparks</p> <p>Ground level: 6 carparks</p> <p>Bicycle storage: 18m²</p>

Setbacks	<p>The main building proposes the following setbacks to allotment boundaries:</p> <p>Northern boundary (primary street frontage) Ground floor – 0m setback Levels 1 to 6 – 4.72m Rooftop – 7.07m (trafficable area)</p> <p>Eastern boundary (side) Ground floor – 0m setback Levels 1 to 6 – 3m Rooftop – 3m to building wall, 10.83m to trafficable area</p> <p>Southern boundary (rear) Ground floor – 0m setback Levels 1 to 6 – 5.925m Rooftop – 6.307m</p> <p>Western boundary (secondary street frontage) Ground floor – 0m setback Level 1 to 6 – 3m Rooftop – 3m to building wall, 10.83m to trafficable area</p>
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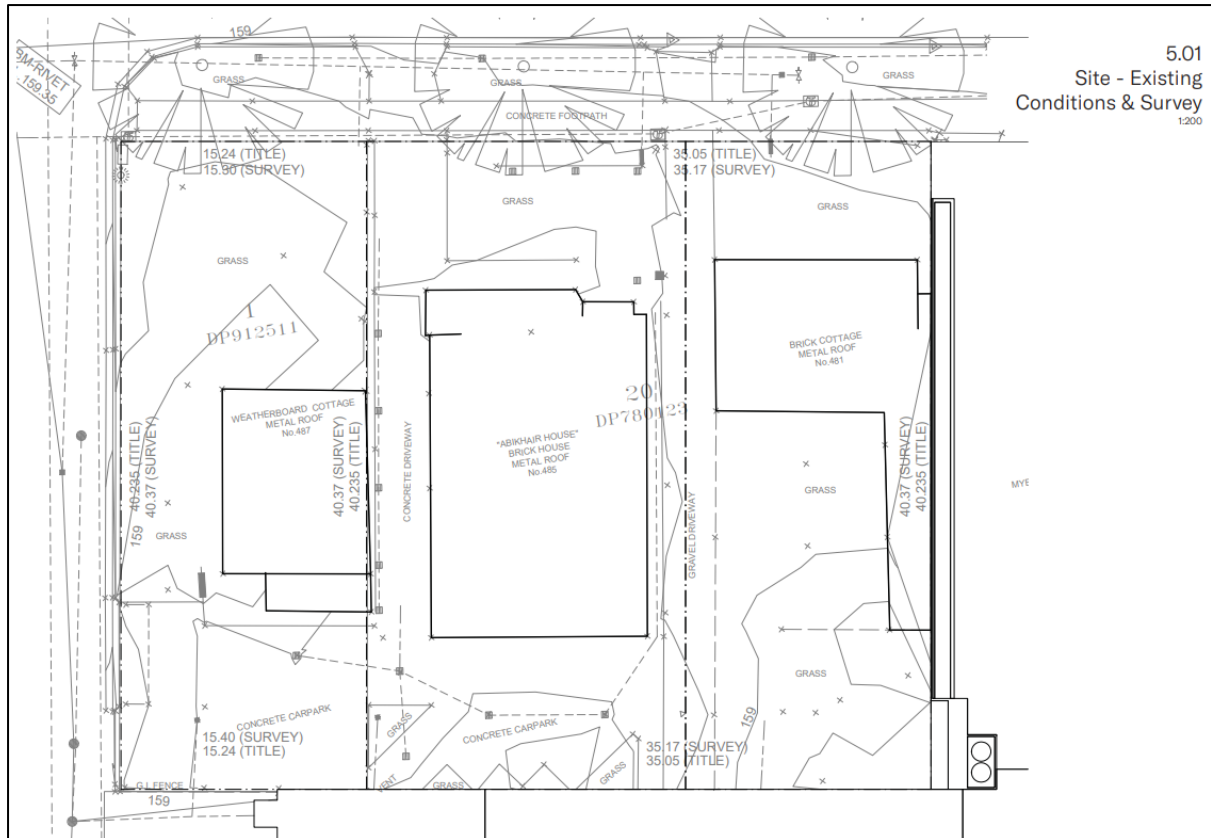


Figure 3: Existing Site Plan

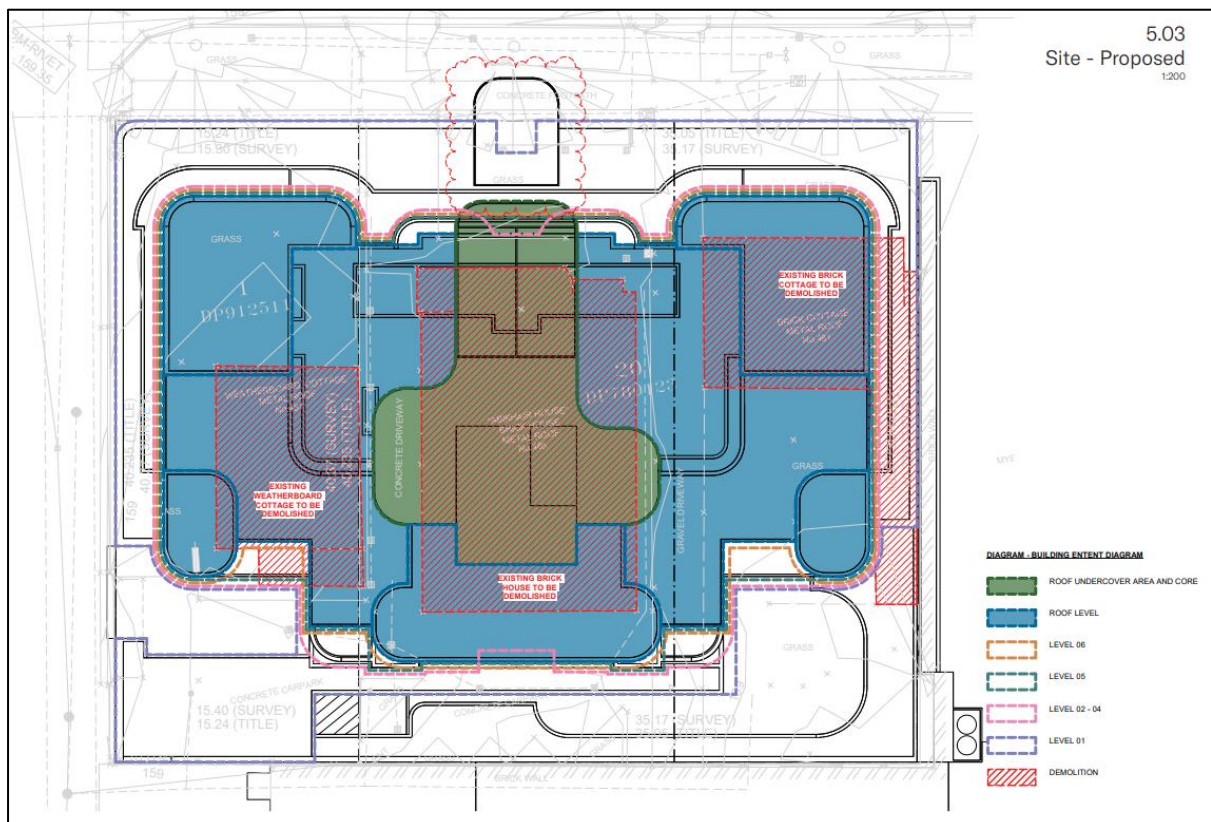


Figure 4: Proposed Site Plan



Figure 5: 3D northern facade

Full details of the proposal are shown in the development plans (included as Attachment 1) and described in the Statement of Environmental Effects (included as Attachment 2).

2.2 Background

The development application was lodged on 14 August 2023. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
14 August 2023	DA lodged
14 August 2023	Exhibition of the application
14 August 2023	DA referred to external agencies (Essential Energy & Albury Police)
27 September 2023	Panel briefing and Site Inspection

19 October 2023	Request for Information from Council to applicant (Preliminary Site Investigation, Electric Vehicle Charging Stations, Confirm Subdivision Type (Strata/Stratum), Response to Submissions, Noise Acoustic Assessment, Revised Car Parking & Bicycle Storage Plan, Consideration of recommendations made by Council's Independent Heritage Advisor)
13 November 2023	Applicant submitted a response to the further information request
7 December 2023	Meeting with Panel appointed Urban Designer (engaged to undertake independent review of development)
11 December 2023	DA presented to Councillors at Council meeting
4 March 2024	Urban Design Review received from Peter Smith
9 April 2024	Final Briefing with Panel

2.3 Site History

The subject land has had several Development Applications issued by Council, which are summarised below:

481 Swift Street

10.2013.32482.1: Demolition of Residence & Temporary Works/Materials Compound – Approved 3/10/2013

485 Swift Street

10.2010.30339.1: Commercial Signage – Approved 28/06/2010

10.2007.27567.1: Alterations & Additions – Commercial Premises – Approved 15/08/2007

10.2005.25574.1: Re-roof Residence & Demolish Shed – Approved 2/02/2005

429: Residence – Approved 7/02/1929

487 Swift Street

10.2013.32527.1: Demolition of Residence – Approved 5/11/2013

All buildings were initially approved as dwelling houses. Both 481 & 487 Swift Street remain as dwelling houses and are currently vacant in a deteriorated state; however, the building on 485 Swift Street has been altered to be used as a commercial premises and is currently occupied.

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of--*
 - (i) *any environmental planning instrument, and*
 - (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 (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (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, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is considered to be (which are considered further in this report):

- Requiring concurrence/referral (s4.13) – Referral to Essential Energy under SEPP (Transport and Infrastructure 2021). Referral received and attached (see Attachment 9)

3.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*

- *State Environmental Planning Policy (BASIX) 2004*
- *State environmental Planning Policy No 65 – Design Quality of Residential Apartment Development*
- *Albury Local Environmental Plan 2010*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 5: River Murray Lands	Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and regional development Section 2.19(1) declares the proposal regionally significant development pursuant to Item 2 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> for general development that has a capital investment value of more than \$30 million	Y
SEPP (Resilience & Hazards) 2021	Chapter 4: Remediation of Land Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions.	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions.	Y
BASIX SEPP	No compliance issues identified subject to imposition of conditions on any consent granted.	Y
SEPP 65	Section 30(2) - Design Quality Principles & Apartment Design Guide (ADG)	Satisfactory

	<p>The proposal is consistent with the design quality principles.</p> <p>The proposal generally satisfies the design requirements of ADG (see Attachment 13)</p>	
Albury Local Environmental Plan 2010	<p>Section 2.3 – Permissibility and zone objectives</p> <p>Section 2.6 – Subdivision – consent requirements</p> <p>Section 2.7 – Demolition requires development consent</p> <p>Section 4.3 – Height of buildings</p> <p>Section 4.4 – Floor space ratio</p> <p>Section 5.10 – Heritage conservation</p> <p>Section 7.1 – Earthworks</p> <p>Section 7.6 – Essential services</p>	Y
Albury Development Control Plan 2010	<p>Part 3 – Development Notification Policy</p> <p>Part 4 – Developer Contributions Plans</p> <p>Part 5 – Vegetation Protection</p> <p>Part 6 – Planning for Hazards</p> <p>Part 7 – Heritage Conservation</p> <p>Part 10 – Division F, Residential Flat Buildings</p> <p>Part 11 – Development in the Commercial Zones</p> <p>Part 17 – Off Street Car Parking</p>	Satisfactory

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 5 River Murray lands (formerly Murray REP2)

The subject site is located within an area to which Chapter 5 River Murray lands applies. The aim of Chapter 5 is to conserve and enhance the riverine environment of the River Murray for the benefit of all users.

In assessing this application, Council must take into consideration the principles listed under Section 5.8 General principles and 5.9 Specific principles of SEPP (Biodiversity and Conservation 2010).

The subject land is located within an established urban area, and it is considered that the only potential consequence of the development may be polluted stormwater which will be discharged into Council's drainage network; consequently, the risk of contaminating the river environment is low.

As the subject land does not have direct frontage to the Murray River and is not identified as flood affected, it is considered that the development is not contrary to the planning principles under Part 5.2 of SEPP (Biodiversity and Conservation 2010), it is found to be supportable by Council in this instance.

State Environmental Planning Policy (Planning Systems) 2021

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria of Item 2 *General Development over \$30 million* under Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*. The development seeks to demolish the existing three buildings on the subject land to construct a seven (7) storey mixed use, commercial & shop top housing development, which will comprise of thirty-two (32) residential apartments, two (2) ground floor commercial tenancies, a roof top swimming pool, basement and ground level carparking for a total of fifty-eight (58) vehicles, consolidation of existing titles and thirty-four (34) lot Stratum title subdivision. The application also seeks to remove an existing street tree to facilitate vehicle access to the site from Swift Street. The estimated cost of the development is \$42.57 million inclusive of GST. Accordingly, the Southern Regional Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

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

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* (SEPP Resilience and Hazards 2021) have been considered in the assessment of the development application. Section 4.6 of SEPP Resilience and Hazards 2021 requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The subject site is currently developed with three detached buildings, comprising three dwelling houses, one of which has been adapted to be used as a commercial premises.

The applicant has submitted a Preliminary Site Investigation prepared by Jones Environmental Consulting which provides the following conclusion and recommendation:

A layer of fill material (terminating between 0.5-0.9 m bgs) was encountered on site within all soil bores. Bricks and ash were observed within the fill material in two locations.

The soil investigation undertaken indicated levels of chemical of potential concern within the soil samples analysed were below the adopted risk screening criteria for both human health for a high density residential site with several samples exceeding the adopted criteria for the protection of ecological health for lead, zinc, and benzo(a)pyrene.

It is likely the elevated metals within the shallow soils on site were all within fill material and are associated with the weathering of the site buildings will the elevated concentration of benzo(a)pyrene is likely associated with the presence of ash within the fill of SB1.

A preliminary waste classification also identified lead concentrations exceeding restricted solid waste criteria. However, given the source of the lead within the shallow soils is associated with the site residential premises the impacted soils

would be pre-classified as General Solid Waste in accordance with NSW Waste Classification Guidelines.

It is understood that the footprint of the site will be excavated to a depth of 3.5 mbgs to allow for the construction of a basement carpark. This will result in the removal of the identified contamination within the fill material on site with the remaining natural material is not considered to be an unacceptable risk to the receptors related to the proposed site use.

Based on the findings of the PSI, JEC recommends that a more detailed site investigation is required following the demolition of the site dwellings to determine the extent of elevated metal and benzo(a)pyrene concentrations within the fill material on site. This will allow for the appropriate sampling frequency to meet EPA waste classification requirements as well as assist in developing an appropriate soil management plan in the disposal of the impacted material to a facility licenced to receive such waste.

Given the PSI has indicated that there is soil onsite exceeding the adopted criteria for the protection of ecological health for lead, zinc, and benzo(a)pyrene, a condition will be imposed on consent to require a detailed site investigation following the demolition of the existing buildings. A copy of the contamination report is included as Attachment 7 with this report.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 Infrastructure

Part 2.3 Development controls

Division 5 Electricity transmission or distribution

Subdivision 2 Development likely to affect an electricity transmission or distribution network

2.48 Determination of development applications – other development

The subject site is located within proximity to electricity infrastructure and has been referred to Essential Energy for comment. As a result, Essential Energy have imposed conditions to manage potential safety risks arising from the proposed works. See full referral response as Attachment 9.

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

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP) applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by BASIX Certificate Number 1398557M prepared by Energysavers dated 6 July 2023 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. A condition will be imposed on consent to ensure the compliance with the commitments listed on the submitted BASIX Certificate for the perpetuity of the development.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65)

Part 1 Preliminary

SEPP 65 applies to the proposed development as the proposal exceeds three storeys in height and contains more than four self-contained residential dwellings. SEPP 65 (Section 6A) takes precedence over Council's planning controls and if a development achieves the standards of SEPP 65, a conflicting or higher standard in Council's controls has no effect and cannot be taken into consideration in the assessment of the development. Specifically, this applies to in respect of the objectives, design criteria and design guidance set out in Parts 3 and 4 of the Apartment Design Guide for the following—

- (a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment size and layout,
- (e) ceiling heights,
- (f) private open space and balconies,
- (g) natural ventilation,
- (h) storage.

Part 4 Application of design principles

28 Determination of development applications

Clause 28 of SEPP 65 requires Council to consider the comments of a Design Review Panel (if one has been constituted) as well as the design quality principles under Schedule 1 of SEPP 65 and the Apartment Design Guide (ADG) in its determination of the application.

No panel has been constituted for the Albury Local Government Area (LGA) and therefore the assessment of compliance can be undertaken by a suitably qualified and experienced officer of Council.

For a residential apartment development, Section 29(2)(1A) of *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) requires a statement by a qualified designer to accompany the application. The statement must:

- (a) *verify that the qualified designer designed, or directed the design of, the development, and*
- (b) *explain how the development addresses—*
 - (i) *the design quality principles, and*
 - (ii) *the objectives in Parts 3 and 4 of the Apartment Design Guide*

The application includes a Design Verification Statement and an assessment against the nine (9) design principles (see Attachment 14), and an assessment of Parts 3 and 4 of the Apartment Design Guide is provided within the SEE (see Attachment 2).

The principles outlined within Schedule 1 of SEPP 65 are discussed as follows:

Principle 1: Context and neighbourhood character

The site is located within the E2 Commercial Centre zone. The site is consistent with the objectives of the zone as the development consists of a well-designed shop top housing development that provides commercial floor area on the ground level and apartments on levels 1-6, in an accessible, central location.

The mixed-use design will subsequently contribute to supporting the vitality of the CBD and encourage employment opportunities both during and post construction.

The area surrounding Albury's CBD comprises a mix of development ranging from retail, mixed-use development and residential. The proposal is compatible with the existing and desired future character of the area and will contribute to the quality and identity of the immediate locality whilst increasing the residential population of the commercial centre.

Principle 2: Built form and scale

The proposed development is compliant with the floor space ratio and height requirements under the Albury LEP 2010. Despite the requested setback variations to the ADG, the mixed use development is generally consistent with that envisaged by the relevant local planning controls and is of a suitable bulk and scale for the locality.

The façade has been articulated to address both street frontages by incorporating a curved north-west corner, a variety of exterior building materials and finishes and landscaping. The combination of these elements will positively contribute to the public domain and will add to the visual interest of Albury's commercial centre.

Principle 3: Density

As outlined within the body of this report, the proposed building design generally complies with the applicable development standards. Any variation proposed has been considered as part of this assessment and is considered acceptable on merit.

Overall, the design is considered to achieve a high level of amenity for residents. Furthermore, the proposed density is an appropriate response to the desired future character and built form of the locality and is consistent with the zone objectives.

Principle 4: Sustainability

A BASIX Certificate has been submitted to Council with this development application, which details the resource, energy and water efficiency measures that will be incorporated into this proposal. A condition will be imposed on consent to ensure BASIX commitments are complied with for the perpetuity of the development.

Principle 5: Landscape

The proposal incorporates landscaping on the ground level, level 1, level 5, and roof top communal open space area, which will add to resident amenity. The landscaped areas are designed to be visible from surrounding viewpoints which will soften the appearance of the development from the public domain.

The building design has resulted in 100% site coverage for the basement and ground level, which has resulted in constrained landscaping opportunity and no deep soil planting areas. A detailed Landscape Plan has been reviewed and accepted by Council's Urban Forest Officer, who is satisfied the raised garden beds will support a variety of vegetation.

The proposal provides a communal open space area on the rooftop, which is embellished with a swimming pool, landscaping, seating, tables, and a BBQ. The communal area is partially covered, which will increase the useability of this area year round, regardless of the weather and temperature, providing high amenity to building occupants.

All the proposed apartments have access to private open space in the form of balconies.

The proposal is generally consistent with the relevant landscaping requirements of the ADG and Albury DCP 2010.

Principle 6: Amenity

The proposed development does not comply with the minimum solar access requirements under the ADG; however, a variation is supportable as 68.75% of the apartments will receive at least 3 hours of direct solar access between 9am and 3pm on the winter solstice, and the remaining apartments are designed to maximise natural light within habitable rooms.

The proposed apartments will have considerable internal amenity. The open layout, high quality design and expansive windows/openings encourages natural ventilation and provides good quality amenity for residents.

As such, they will provide adequate space to meet the needs of future occupants.

Appropriate storage is provided within all apartments with additional secure storage opportunity located within the basement car park. The outdoor private balconies are of sufficient size to meet the minimum requirements of the ADG and recreational needs of residents.

Lift access has been provided from the basement throughout the building, thereby providing full accessibility for all residents and visitors.

The roof top swimming pool and communal open space area will provide high amenity to residents and visitors, year-round.

Principle 7: Safety

The proposed development has been designed with regard to safety and security of residents. The development incorporates a partially enclosed colonnade along the street frontages of the site, which provides a sheltered pedestrian path and protection of the ground level commercial tenancies.

The ground level entrance to the residential apartments is articulated through an extended awning, which creates an easily distinguishable visual cue for residents and visitors.

Residential entry and lobby areas are to be secured and well-lit and CCTV will be installed within the site to monitor communal areas, including the roof level, which will further increase the sense of safety for building residents.

The mixed use development will increase pedestrian activity within the area and passive surveillance of Swift Street and Arnolds Lane.

Principle 8: Housing diversity and social interaction

The proposed design incorporates various apartment configurations, which have been designed with luxury fittings and amenity inclusions to target downsizers and professionals, which is consistent with Council's *Local Housing Strategy*, endorsed in March 2023.

The proposal provides an acceptable mix of apartment types and sizes consisting of:

- 18 x 2-bedroom apartments, representing 56% of the total dwellings
- 14 x 3-bedroom apartments representing 44% of the total dwellings

The development will provide the opportunity to increase the inner city residential population where residents can take advantage of existing transport links and enjoy the convenience of being located within walking proximity to Albury's commercial centre.

The development proposes a rooftop communal open space area, inclusive of a swimming pool, BBQ and seating area, which will provide high amenity to building occupants, increasing social interaction between residents.

The development provides ground level access from the street into the main residential entrance and the communal open space may be accessed from the internal lift.

Principle 9: Aesthetics

The application is accompanied by a Design Verification Statement and confirms that the development satisfies the general design principles contained within SEPP 65. The articulation of the external façades through incorporating varying setbacks, columns, materials, and finishes lessens any perception of bulk, whilst maintaining internal and external amenity. These elements contribute to the desired future character of the commercial centre and will enhance the existing surrounding streetscapes and broader locality. A condition will be imposed on consent to require the developer submit to Council a materials and samples board for approval prior to the issue of a Construction Certificate.

Apartment Design Guide (ADG)

Whilst SEPP 65 establishes nine design quality principles to be applied in the design and assessment of residential apartment development, the ADG provides greater detail on how residential development proposals can meet these principles through good design and planning practice.

Council's assessment of the proposal against the Apartment Design Guide (ADG) is detailed in the compliance table included as Attachment 13. The development complies with the Apartment Design Guide, with the exception of six (6) requested variations, discussed below.

Part 3: Siting of the Development

3E Deep soil zones					
Objective 3E-1: Deep soil zones provide areas on the site that allow for and support healthy plant	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <tr> <td>Site area</td><td>Min. dimension</td><td>Deep soil</td></tr> </table>	Site area	Min. dimension	Deep soil	<p>Variation.</p> <p>The development does not propose any deep soil zones.</p>
Site area	Min. dimension	Deep soil			

and tree growth. They improve residential amenity and promote management of water and air quality.			zone (% of site area)	A variation to the ADG design criteria is supportable in this instance as the subject land is located in the commercial core of Albury and the development proposes 100% site coverage and non-residential uses at basement and ground floor level. The development incorporates several landscaped areas to soften the appearance of the building and raised garden beds to accommodate a variety of vegetation. A condition will be imposed on consent to require a stormwater management plan prior to the issue of a Construction Certificate.
	less than 650m ²	-	7%	
	650m ² - 1,500m ²	3m		
	greater than 1,500m ²	6m		
	greater than 1,500m ² with significant existing tree cover	6m		
3F Visual privacy				
Objective 3F-1: Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:			Variation. Figure 3F.3 identifies that new development should be setback a minimum of 6m from a side or rear boundary on levels 1-4, with level 5 and above setback a minimum of 9m. The main building proposes the following setbacks to allotment boundaries: Northern boundary (front) Not applicable, facing Swift Street (primary street frontage) Eastern boundary (side) Basement car park – 0m setback Ground floor – 0m setback Levels 1 to 6 – 3m Rooftop – 3m to building wall, 10.83m to trafficable area Southern boundary (rear) Ground floor – 0m setback Levels 1 to 6 – 5.925m Rooftop – 6.307m Western boundary (side) Not applicable, facing Arnolds Lane (secondary street frontage) The applicant has provided the following response: <i>The building separation is ample with streets on 2 sides, an open on grade carpark to the east side and a single storey shopping centre on the south side with a more than 18m separation to any adjacent building above first floor. These separations achieve the intent of this control with</i>
	Building height	Habitable rooms and balcony	Non-habitable rooms	
	Up to 12m (4 storeys)	6m	3m	
	Up to 25m (5-8 storeys)	9m	4.5m	
	Over 25m (9+ storeys)	12m	6m	
Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)				

	<p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties</p>	<p><i>respect to visual and acoustic privacy, outlook, daylight, sunlight, and natural ventilation both within the site and to surrounding sites.</i></p> <p>In relation to privacy impacts, Council considers that the proposed side and rear setbacks of this development is supportable given the existing surrounding built form and land uses.</p> <p>The development will be conditioned to incorporate controllable louvres which will provide screening on the eastern and western facades and will assist to provide greater privacy to east and west facing habitable rooms.</p> <p>The north and south facing apartments feature open balconies and floor to ceiling windows, which allows for good natural light but may result in privacy impacts. It is noted that the future occupants of these apartments may opt to utilise other mitigation measures not tied to the construction of the building i.e., blinds, to improve privacy and amenity.</p> <p>In relation to separation distances between buildings being equitably shared, it is considered that the land to the east and south of the subject site is currently developed for the purpose of a large-scale shopping centre and ancillary car park.</p> <p>The development does not meet the 6m setback to the east; however, there is no significant privacy or overlooking concerns given the adjoining land is currently used as a car park and visual screening has been incorporated on this façade to minimise potential impacts.</p> <p>It is noted that though the rear setback to the outer building wall is 5.925m on levels 2 to 6, the setback to habitable south facing rooms is 8.95m, which is only 500mm from meeting compliance with the ADG. Therefore, the minor noncompliance for the reduced rear setback is deemed to be an acceptable outcome in this instance.</p> <p>Further, it is considered that should the adjoining landowners wish to redevelop in future, there is ample area on site to facilitate a design outcome that is appropriate in scale, bulk, and setback, and that acknowledges the surrounding built form without significantly compromising the amenity of residents living in east or south facing apartments.</p> <p>A variation to the ADG is found to be supportable in this instance as the reduced setbacks are not anticipated to result in any significant visual or privacy impacts to residents or the surrounding locality.</p>
3J Bicycle and car parking		
Objective 3J-1: Car parking is provided based on	1. For development in the following locations:	Variation.

<p>proximity to public transport in metropolitan Sydney and centres in regional areas.</p>	<ul style="list-style-type: none"> • on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or • on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre. <p>2. The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>3. The car parking needs for a development must be provided off street</p>	<p>Albury is considered to be a regional centre as identified within the ADG.</p> <p>Part 17 of Albury DCP 2010 requires resident parking to be provided at the rate of 1 space per 1 or 2 bedroom dwelling and 2 spaces per 3 or more bedroom dwellings. In addition, the DCP also requires visitor parking for more than 8 dwellings at the rate of 3 spaces plus 1 space for every 3 dwelling and 1 space per 40m² of GFA for the commercial tenancies.</p> <p>The proposal includes a total of 32 apartments, with 18 x 2 bedroom and 14 x 3 bedroom. This results in a requirement for 46 spaces. The proposal also requires a further 11 visitor spaces and 18 spaces for the commercial tenancies.</p> <p>Based on Part 17 of Albury DCP 2010, the development generates a demand for a total of 75 spaces on site.</p> <p>When assessing the development under the <i>Guide to Traffic Generating Developments</i>, the use of site is classified as 'high density residential flat building' as more than 20 apartments are proposed, and requires the following car parking spaces:</p> <p>Metropolitan Regional (CBD) Centres 0.7 spaces per 2 bedroom unit 1.20 spaces per 3 bedroom unit 1 space per 7 units</p> <p>Office and commercial 1 space per 40m² gross floor area</p> <p>Using the above car parking rates, 34 spaces are required for the residential component being 12.6 spaces for the 2 bedroom apartments, 16.8 spaces for the 3 bedroom apartments and 4.5 spaces for visitor parking, and an additional 18 spaces for the commercial component of the development.</p> <p>Based on the <i>Guide to Traffic Generating Developments</i>, the development generates a demand for a total of 52 car spaces on site.</p> <p>The development proposes 52 spaces within the basement, and 6 spaces on ground level, being a total of 58 spaces on site. The applicant has expressed their intention to allocate all basement car parking spaces to the apartments and that no visitor car parking is proposed on site. It is anticipated that the ground level car spaces will be used to service the commercial tenancies.</p> <p>As the ADG states the lesser car parking calculation is to be applied, which in this instance is the calculation under the <i>Guide to Traffic Generating Developments</i>. Though the development provides an excess of residential apartment allocated car parking, the development proposes a shortfall of 12 commercial spaces, and 5 visitor spaces.</p>
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		<p>A variation is considered to be supportable as the subject land is located within central Albury where there are several multi-level public car parking facilities within walking proximity to the site which may accommodate customers visiting the commercial tenancies and residential apartment visitors.</p> <p>Additionally, the development proposes a bicycle storage area on ground level which will accommodate a minimum of 10 x bicycles, providing an alternate mode of transport to the site.</p>
<p>Objective 3J-2: Parking and facilities are provided for other modes of transport.</p>		<p>Variation.</p> <p>There is no dedicated parking for motorcycles or scooters. A variation is considered to be supportable as each apartment has allocated basement car parks based on the number of bedrooms and individual secure storage areas, which may provide opportunity for motorcycle or scooter parking.</p> <p>Additionally, given the central location of the development, particularly noting a large-scale shopping centre is adjoining the site, it is envisaged that walking will be the preferred method of transport for residents of this building.</p> <p>The development provides a bicycle storage area which will accommodate a minimum of 10 x bicycles.</p> <p>The applicant has confirmed the basement car spaces will have the ability to charge electric vehicles.</p>

Part 4: Designing the Building

4A Solar and daylight access		
<p>Objective 4A-1: To optimise the number of apartments receiving sunlight to habitable rooms, privacy windows and private open space.</p>	<ol style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas. In all other areas, living rooms and private open spaces of at least 	<p>Variation.</p> <p>The applicant has provided the following response:</p> <p><i>At least 68.75% of (22) apartments living rooms and private open space (POS) areas receive a minimum of 3 hours of solar access between 9am and 3pm mid-winter. Whilst this is marginally less than 70%, another 8 apartments receive 3 hours of mid-winter sunlight if times between 7.30am and 9am and 3pm and 5pm are included.</i></p> <p><i>Furthermore, the rooftop amenity provision extends the availability of all-day winter sun to the amenity common amenity areas of the residential apartments.</i></p>

	<p>70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter.</p> <p>3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</p>	<p><i>No more than 15% of apartments receive no direct sunlight between 9am and 3pm in the winter solstice.</i></p> <p>The proposed variation is considered to be acceptable as the apartments are designed to maximise natural light within habitable rooms and the rooftop communal area will provide high amenity to residents year-round.</p>
4D Apartment size and layout		
Objective 4D-2: Environmental performance of the apartment is maximised	<p>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p> <p>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	<p>Variation.</p> <p>The ceiling height is 2.7, which would require a maximum habitable room depth of 6.75 metres ($2.7 \times 2.5 = 6.75$) or a maximum depth of 8 metres for open plan layouts.</p> <p>Residences 101, 104, 105, 106, 201, 204, 205, 206, 301, 304, 305, 306, 401, 404, 405, 406, 502 & 602 propose open plan primary living areas that exceed 8m in depth, measured from the external wall window.</p> <p>The variation is acceptable in this instance as the apartments incorporate floor to ceiling windows, which will allow for suitable natural light. Further, the inclusion of balconies will provide good quality amenity (light and ventilation) for the future residents.</p>

Given the requested variations to the Apartment Design Guide and noting Albury City Council do not have a Design Review Panel, the SRPP requested an independent review of the development by a Panel appointed urban designer, Peter Smith from Smith & Tzannes.

The review of the development found the proposal “provides an architecturally robust response to the streetscape and overall provides for a positive contribution to the redevelopment of the Retail Core”.

The urban designer recommended several design amendments, which are included below with a response from Council.

- A. Review street tree canopy to investigate whether an awning could be provided to the full street frontage in lieu of a colonnade.*

Planning Comment: Council are satisfied with the existing design outcome and the retention of the established street trees.

- B. Increase colonnade depth along Arnolds Lane to 1.8m behind the columns.*

Planning Comment: Arnolds Lane is a service lane which predominately provides vehicle access to the rear of commercial properties facing Olive Street and the adjoining

shopping centre. Given there are no retail land uses that are accessed solely via Arnolds Lane and that Council's preference is for pedestrian traffic to be directed along Swift Street, Council are satisfied the proposed depth of the colonnade as shown on the submitted plans is suitable in this instance.

- C. Review louvres to east and western facades to ensure a balance is provided that allows summer sun protection in the afternoon and winter solar access. Consideration of operable / sliding screens, or angle screens with larger blades / spacing – particularly at the upper levels.*

Planning Comment: Council agree with this recommendation and will impose a condition to require operable louvres on the east and west facades of the building to ensure residents have the opportunity to control solar access.

- D. Amend kitchen layout in units 504 / 604 and adjacent services room so that kitchen can better integrate with dining room and have improved daylight access.*

Planning Comment: The design review report was provided to the applicant who have considered the recommendation to redesign but would like to proceed with the current design. Council has no objection and are satisfied the existing layout in apartments 504 and 604 will provide suitable amenity to future residents.

- E. Review opportunity to reduce front setback at upper levels to 3m and increase rear setback to at least 7.7m.*

Planning Comment: The design review report was provided to the applicant who have considered the recommendation to redesign but would like to proceed with the current design. Council has no objection and are satisfied the current setbacks provide a suitable outcome within the streetscape and to adjoining landowners.

- F. No apartments are provided with Universal Design features. Apartments have sufficient space to incorporate features. Recommend condition of consent that requires 20% of the apartments incorporate the Silver Level Liveable Housing Universal Design Features.*

Planning Comment: Council agree with this recommendation and will impose a condition to require 20% of the apartments incorporate the Silver level design requirements under Liveable Housing Guidelines.

- G. Provide additional architectural details in section or 3d view as required by the Regulations to support the design quality this includes:*
- Nomination of materials and finishes*
 - Details of parapets*
 - Balustrades, screens, and awnings*
 - Slab edges – finish and colour*
- This can be in the form of annotated 1:50 sections / elevations or annotated 3d views that communicate the design intent*

Planning Comment: To address this recommendation, Council will condition the developer to provide a materials and samples board and an amended plan addressing the above

criteria, which will be subject to Council approval prior to the issue of the Construction Certificate.

H. Further detailing around the residential entry could include incorporation of some of the architectural elements salvaged from the existing dwellings – such as the milk bottle columns and kookaburra finials.

Planning Comment: The application has been independently reviewed by Council's Heritage Advisor who also included a recommendation to salvage and incorporate the materials from the demolished heritage items into the proposed development; however, it is considered the proposed development has a coordinated design form consistent with Council's expectations and this recommendation will not be required by Council.

Albury Local Environmental Plan 2010

The relevant local environmental plan applying to the site is the *Albury Local Environmental Plan 2010* (Albury LEP 2010). The aims of the Albury LEP 2010 include:

(1) This Plan aims to make local environmental planning provisions for land in Albury in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.

(2) The particular aims of this Plan are as follows -

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to give effect to the desired outcomes, principles and actions contained in the Council's adopted strategies and policy documents, and*
- (b) to promote sustainable urban development by providing for efficient management of urban growth and resource utilisation, and*
- (c) to promote a city for the people, with a high level of social and physical amenity and a diversity of activities and uses, and*
- (d) to maintain or improve biodiversity across Albury, and to avoid significant impacts on matters of environmental significance*

The development is consistent with these aims as the proposal promotes sustainable urban development, which will provide a high level of amenity, which will add to the diversity of land uses within the commercial centre.

General Controls and Development Standards (Part 2, 4, 5, and 7)

Section 2.3 Zone objectives and Land Use Table

The site is located within the E2 Commercial Centre zone pursuant to Section 2.2 of the Albury LEP 2010 (see Figure 6).

use of the ground floor tenancies to a 'shop', as defined under Albury LEP 2010. Any changes to this land use will be subject to meeting the requirements of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* or the lodgement of a Development Application to Council.

Section 2.6 Subdivision—consent requirements

Section 2.6 of the Albury LEP 2010 states that land may be subdivided, but only with development consent. The proposal seeks approval to consolidate the existing lots and Stratum subdivide the mixed use development as part of this application. A condition will be imposed on consent to require the lots to be consolidated once demolition works have been completed.

Section 2.7 Demolition

Section 2.7 of the Albury LEP 2010 states that demolition of a building or work may be carried out only with development consent. This proposal involves demolition of all existing buildings on the subject land, as identified in the attached plan set. The demolition is required to facilitate the proposed mixed use commercial and shop top housing development and conditions will be imposed to minimise the impact of these works within the commercial locality.

Section 4.3 Height of buildings

(1) *The objectives of this clause are as follows—*

- (a) *to ensure the height of buildings complement the streetscape or the historic character of the area in which the buildings are located,*
- (b) *to protect the heritage character and significance of buildings and not adversely affect the heritage integrity of heritage items and heritage conservation areas identified in this Plan,*
- (c) *to ensure the height of buildings protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight and privacy,*
- (d) *to nominate heights that will provide a transition in built form between varying land use intensities.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*

Comment: Complies. The *Height of Buildings Map* identifies the maximum building height for the site as 35 metres. The proposed maximum height of the building is 29 metres.

Section 4.4 Floor space ratio

(1) *The objectives of this clause are as follows—*

- (a) *to ensure that the density, bulk and scale of development is appropriate for a site,*

- (b) to ensure that the density, bulk and scale of development integrates with the streetscape and character of the area in which the development is located,
- (c) to facilitate development that contributes to the economic growth of the Albury and Lavington Central Business Districts.

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).

Comment: Complies. The maximum FSR for the site is 3:1. The proposed FSR is 2.98:1.

Section 4.5 Calculation of floor space ratio and site area

(2) Definition of “floor space ratio”. The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

Comment: The site area is 2023m² which requires a maximum floor space area of 6069 m². The development proposes a total gross floor area of 6,038m².

The floor space area is calculated based on the ‘Area Analysis – FSR Summary’, submitted with this development application.

Ground floor

Tenancy 1: 381m²

Tenancy 2: 356m²

Gymnasium: 55m²

Change room facilities: 28m²

Meeting/activity room: 26m²

Common area: 102m²

Total: 948m²

Upper floors

32 residential apartments comprising:

Level 1 – 6 apartments (2 x 3 bedroom, 4 x 2 bedroom)

Level 2 – 6 apartments (2 x 3 bedroom, 4 x 2 bedroom)

Level 3 – 6 apartments (2 x 3 bedroom, 4 x 2 bedroom)

Level 4 – 6 apartments (2 x 3 bedroom, 4 x 2 bedroom)

Level 5 – 4 apartments (3 x 3 bedroom, 1 x 2 bedroom)

Level 6 – 4 apartments (3 x 3 bedroom, 1 x 2 bedroom)

Level 7 – Rooftop swimming pool and amenities, landscaping, and PV Solar Panels.

Total (including roof amenities/foyer) = 5,090m²

Section 5.10 Heritage Conservation

Section 5.10(2) of the Albury LEP 2010 states that development consent is required to demolish a heritage item. The application seeks consent to demolish two (2) locally listed heritage items to facilitate the proposed mixed use development.

Heritage Item I164 located at 485 Swift Street (Lot PT20 Sec 24 DP 780123), and Heritage Item I166, located at 487 Swift Street (LOT 1 DP 912511).

The applicant has submitted a Heritage Impact Statement (HIS) addressing the proposed demolition of these items (see Attachment 3). The HIS explores the significance of the

existing buildings on the subject land including their history of development, ownership, and use.

Heritage Item I164, located at 485 Swift Street is an Inter-War California Bungalow established circa 1929 by Saad Abikhair. The HIS provides the following information, summarised below:

The subject site at 485 Swift Street is known to be associated with people or a group of people of interest, with 485 Swift Street built as the residence of the Abikhair family and associated with their store, the Abikhair Emporium which was approximately 50m away on the corner of Swift Street and Olive Street. However, the dwelling at 485 Swift Street itself does not tangibly demonstrate any association with the Abikhair family in terms of design, the family have provided correspondence that they do not hold any historical regard for the property. The family is significant for their commercial contribution to Albury and this association is more significantly demonstrated on the nearby commercial shop group on the corner of Swift St which was their commercial stores and property. As such, 485 Swift Street does not demonstrate association with a particular family any more than a typical dwelling.

The dwelling at 485 Swift Street features characteristics typical of the Inter-War California Bungalow style, including low pitched roof and gables, a wide eave overhang, and leadlight glazing features. The dwelling features some variations of traditional elements, such as featuring columns rather than tapered pylons, and a variation of the typical flat top chimney.

485 Swift Street is the only example of an Inter-War Bungalow within the Albury CBD, with all other examples located in more residential areas. This shows that while 485 Swift Street is located within what is identified as the 'inner city core' in the establishment statement of significance, the inner city ring of housing is primarily late Victorian and Federation in character, with the Inter-War Bungalow therefore not making a substantial contribution to the inner city ring.

The HIS has included numerous examples of the Inter-War California Bungalow style dwelling, and notes that Inter-War Bungalows are not rare within the Albury LGA.

It is therefore considered that the demolition of 485 Swift Street is supportable.

Heritage Item I166, located at 487 Swift Street, is a late Victorian weatherboard cottage constructed circa 1890 by local builder John Henry Bell. The HIS provides the following information, summarised below:

The dwelling is associated with a key period of growth in Albury which occurred from the late 1800s to the turn of the century and Federation.

The dwelling at 487 Swift Street has a loose association with the Abikhair family who purchased the property in the 1950s, however no other comparative examples are known to have any association with people of significance. The comparative analysis

above shows that the majority of buildings of this style are typically constructed of brick regardless of construction date, with few examples constructed of timber or weatherboard. As such, many of the brick examples are in substantially better condition and feature more decorative elements than the timber examples.

487 Swift Street is heavily degraded both structurally and cladding. Due to the structural safety issues and internal inspection was not possible. Due to the substantial condition issues and loss of original fabric or decorative elements, 487 Swift Street is comparatively a poor example of late Victorian cottages within the Albury district. As above, there are numerous examples of this style of architecture within the LGA and therefore this type of dwelling is not rare.

It is therefore considered that the demolition of 487 Swift Street is supportable.

Further, the application was externally referred to Council's heritage advisor who has considered and approved the demolition of the local heritage items, subject to the imposition of conditions, discussed below.

Recommended conditions are as follows:

The existing cottages

- *A photographic archival record of all three cottages is undertaken and submitted and approved to/by council prior to demolition.*
- *No demolition is to be undertaken prior to a construction certificate for the proposed redevelopment being issued.*
- *The verandah columns and finials of the central cottage (No 485) are to be salvaged and made available to the second hand building market.*
- *The joinery items of the two brickwork cottages (Nos. 481 and 485), such as doors and windows, both internally and externally should be salvaged and made available to the second hand building market where other building owners in the town can assess them for incorporation into their properties for conservation or restoration works.*
- *A permanent interpretation panel displaying an image of each of the three cottages along with a brief history of the cottages and their association with the Abikhair family is to be included and located in a publicly accessible part of the new building. The design and location of the panel is to be subject to Council approval.*

The proposed development

- *The high solid masonry wall element to the east side around the landscaped area at the rear of the building is to be reduced to a maximum 1m high solid wall element such that the landscaping is visible from the carpark area to the east.*
- *The solid masonry wall along the east side of the rampway to the basement carpark is to be modified to be a wall featuring columns at min 5m centres with full height openings between, with the openings infilled with minimum 75% open screen panels similar to the shutters as proposed on this elevation at the upper floor levels.*

- *The podium building has effectively two highly visible street corners, the north-east corner facade of the podium element is to be modified to better acknowledge its corner visibility and be curved to match that of the north-west corner.*
- *The entry to the residential component of the building off Swift St is to be better articulated and should be redesigned to feature either an expressed raised or heightened parapet over, or a curved parapet/building line treatment matching the north-west corner of the podium, and a lower level awning out over the footpath.*

Council's independent heritage advisor also included a recommendation to salvage and incorporate the materials from the demolished heritage items into the proposed development; however, upon further internal discussion of the application, this recommendation will not be required by Council.

The applicant has been provided a copy of these recommendations and accepts all conditions, subject to the following:

- *The high solid masonry wall element to the east side around the landscaped area at the rear of the building is to be reduced to a maximum 1m high solid wall element such that the landscaping is visible from the carpark area to the east.*

Applicant comment: *It is firstly noted that it will not be possible for the (future) landscape area and its features to be visible from the adjoining carpark due to the presence, location height and bulk of the existing shopping centre structures, infrastructure housing and screen fencing. These structures are located on the adjoining property and cannot be removed, altered or relocated, and result in complete visual obstruction to the proposed landscape area when viewed from the carpark. This is evident in the revised and additional Plans at Attachment D; Pages 51-53, 56, 65, and 68.*

The proposed solid masonry wall element to the east side around the landscaped area at the rear of the building will not result in greater visual obstruction and is an important element which is necessary for a number of reasons outlined below:

Noise mitigation

The wall is an important feature in mitigating noise emitted from the mechanical service plant and carpark exhaust fans of the adjoining shopping centre located directly abutting the site at the south-east corner and common boundary of the site. A Noise Impact Assessment prepared by Marshall Day Acoustics undertaken at the site indicated that the existing mechanical services plant, particularly the carpark exhaust fans, significantly exceed the applicable environmental noise limits during all time periods. The report recommends noise control treatment measures that could be implemented to enable compliance with the applicable noise limits at the proposed apartments including localised screening with the provision of a parapet wall that would screen the south-east carpark exhaust fan. According to Marshall Day, the parapet would need to be at least one metre higher than the carpark exhaust louvre and include sound absorptive treatment. This treatment has been incorporated into the design response and is included at Attachment D.

Fire Safety

The wall will provide a fire safety feature from the fire source at the boundary. It is submitted that the wall is required to satisfy the applicable requirements of the National Construction Code. The adjoining carpark is a Class 7A structure and represents a significant fire loading and risk in the event of a fire. The proposed wall is required to mitigate the fire safety risk to the proposed habitable building.

Private amenity

The 3metre high wall is to be located inside the common side boundary and will ensure the private amenity of the common landscape areas can be preserved from a highly trafficked and significant noise generating carpark area.

Visual amenity

It is noted that the request seeks to ensure the (future) landscaping is visible from the neighbouring carpark. Here we refer to the Landscape Plan submitted with the application and advise that the proposed landscaping will not be visible above a 1metre high fence, with the exception of the deciduous trees (x2) proposed to be located in two (2) planter boxes. Suggested tree species are Acer palmatum 'Dissectum Seiryu' and Cercis chinensis 'Forest Pansy' which have mature heights of four and five metres respectively and with or without the acoustic fire rated wall fence will offer little to no visual amenity to the carpark setting. It is contested that the existing Colorbond fence with attached creeping vine (Trachelospermum jasminoides, Star of Jasmine) offering a white flowering green wall effect makes a greater contribution to the visual amenity of the carpark than the proposed at-grade (159.45m) landscaping 1.19metre above the carpark level (158.26m) and behind a 1m high wall.

Further to the above the proposed wall is located within the subject property and behind the existing eastern side boundary fence. This eastern side boundary fence remains in-situ and will be 2.43m in height above the finished ground level of the proposed development site, meaning the finished height of the proposed (3m) wall will be only 0.56metre above the existing and retained Colourbond fence which is not proposed to be removed as part of the development.

Overall, the proposed wall plays multiple important roles in the building design and function including noise mitigation, fire safety features and creating private amenity areas. The wall will not be a dominant feature and will not be detrimental to the visual amenity when viewed from the carpark.

The retention of the existing east facing 'green wall' fencing will preserve existing green landscape features and achieve the sought-after visual outcome in the context of the below grade carpark.

In addition to the eastern boundary wall, precast walling has been added on the southern boundary wall at the west end where another adjacent site exhaust fan discharges close to the boundary. This wall will deflect fan noise away from the site and is proposed in accordance with noise mitigating measures recommended by the Noise Impact Assessment.

- The solid masonry wall along the east side of the rampway to the basement carpark is to be modified to be a wall featuring columns at min 5m centres with full height openings between, with the openings infilled with minimum 75% open screen panels similar to the shutters as proposed on this elevation at the upper floor levels.

Applicant comment: *As discussed above, the boundary treatment has been designed to achieve compliance with the applicable fire safety requirements of the National Construction Code (NCC) and must remain solid to comply. The wall will provide a, important fire safety feature from the adjoining carpark which is a significant fire source feature at the common boundary. Being on a side boundary and for a Classification 2 Type A Construction building the wall must have a Fire Resistance Rating of 90 minutes and cannot have openings in it. Please refer to the Landscape Plans for treatment to this wall which includes landscape spilling from the podium and landscape on wires growing from the ground as per the current fence solution. This is evidenced in the 3D representation of the east wall in the submitted plans.*

- The podium building has effectively two highly visible street corners, the north-east corner facade of the podium element is to be modified to better acknowledge its corner visibility and be curved to match that of the north-west corner.

Applicant comment: *This has purposely been avoided so that the podium expresses a strong orthogonal/cartesian base as a continuation of the street frontage (rather than corner) and to provide strong contrast with the tower form. The base allows stronger expression/contrast of the tower curves.*

Council has considered the applicant's response to the heritage recommendations and accepts the justification provided. Consequently, the three conditions will not be included on the development consent.

Section 5.10(4) of the Albury LEP 2010 states that the consent authority must consider the effect of the proposed development on the heritage significance of the item or area concerned.

The site is near Heritage Items/Conservations Areas (see Figure 7) including:

- Heritage Item I118 – Shops “Abikhair’s” at 558-560 Olive Street
- Heritage Item I163, House “Torlochan” at 482 Swift Street
- Heritage Item I162, Terrace Houses at 466-470 Swift Street
- Heritage Item 161, House at 464 Swift Street
- Heritage Item I165, Funeral Parlour and Residence at 486 Swift Street
- C15 – Swift Street Conservation Area



Figure 7: Aerial map identifying heritage items and conservation area

The HIS includes the following statement in relation to the impact of the development to the surrounding heritage items and conservation area (HCA),

The proposed new mixed-use apartment building is of a sympathetic bulk, height, scale and materials, colours and finishes which would be appropriate within the streetscape and not result in any adverse visual impacts to the vicinity heritage items and HCA.

It is considered that adequate separation between the development site and surrounding heritage items and heritage conservation area is provided by way of roads (Swift Street and Arnolds Lane) to reduce potential impacts such as interruption of important views/sightlines from the public realm to heritage buildings.

Whilst the development differs from the established built form, it is compliant with the local planning controls applicable to the area, which provides for redevelopment at higher densities. The proposal is compliant with the floor space ratio and maximum height requirements of Albury LEP 2010, is generally consistent with the Apartment Design Guidelines (ADG) and satisfactorily addresses the planning criteria of Albury DCP 2010; therefore, is considered appropriate in terms of the desired future character for the commercial centre.

Section 5.10(8) of the Albury LEP 2010 states that the consent authority must consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment. A search of Heritage NSW AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that there is no Aboriginal sites or Aboriginal places recorded or declared within 200m of 485 Swift Street, Albury.

Section 7.1 Earthworks

Section 7.1 of the Albury LEP 2010 relates to earthworks and applies in this instance as the excavation works are not classified as exempt development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. Consequently, consent is required for the earthworks and the provisions of this clause require consideration.

Before development consent can be granted, the following matters must be considered:

- a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,*
- b) the effect of the development on the likely future use or redevelopment of the land,*
- c) the quality of the fill or the soil to be excavated, or both,*
- d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*
- e) the source of any fill material and the destination of any excavated material,*
- f) the likelihood of disturbing relics,*
- g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.*

The proposed development is consistent with these matters for consideration as follows:

- The development is not anticipated to adversely affect existing drainage conditions or soil stability in the area. Furthermore, the development will be undertaken in accordance with a sediment and erosion control plan which will be required to be submitted to Council prior to any works commencing on site.
- The purpose of the works is to facilitate a basement car park which is ancillary to the proposed mixed use, commercial and shop top housing development.
- The submitted PSI identifies the proposed excavation is likely to be suitable, following further soil investigation prior to the issue of a Construction Certificate.
- The works are not expected to have an adverse amenity impact on adjoining properties post excavation. Conditions will be imposed to implement measures to mitigate impacts whilst constructions works are occurring on site.
- Where excavation is required as part of the demolition and/or construction works, all excavated material will be stockpiled on site. Any material to be removed from the site will be taken to a registered landfill (Albury Waste Management Centre).
- The likelihood of disturbed relics is considered low given the developed nature of the site.

- The subject land is not classified as an environmentally sensitive area, nor will it adversely affect a drinking water catchment.

Section 7.6 Essential services

Clause 7.6 of the Albury LEP 2010 refers to essential services and aims to ensure that all relevant services are available to the site. Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required:

- a) the supply of water,*
- b) the supply of electricity,*
- c) the disposal and management of sewage,*
- d) stormwater drainage or on-site conservation,*
- e) suitable road access.*

As confirmed above, the site is within an established urban area of Albury with existing suitable access and connection to reticulated water, sewer and electricity infrastructure, urban stormwater drainage and public road access. Internal services may be realigned and connected where necessary within the allotment boundaries.

The Albury LEP 2010 contains no other specific controls relating to the site or proposed development. Notwithstanding, the proposal is considered to be generally consistent with the Albury LEP 2010.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no proposed instruments which have been the subject of public consultation under the EP&A Act, which may be relevant to the proposal.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The *Albury Development Control Plan 2010* (Albury DCP 2010) provides specific a guideline for development within the Albury City Local Government Area (LGA), including the subject site. Section 4.15(3A) of the EP&A Act requires a consent authority to apply its DCP provisions flexibly and allow reasonable alternative solutions that achieve the objects of those standards.

The following chapters of the Albury DCP 2010 are applicable to the proposed development:

- Part 3 – Development Notification Policy
- Part 4 – Developer Contributions Plans
- Part 5 – Vegetation Protection
- Part 6 – Planning for Hazards

- Part 7 – Heritage Conservation
- Part 10 – Division F, Residential Flat Buildings
- Part 11 – Development in the Commercial Zones
- Part 17 – Off Street Car Parking

The below details provide an assessment of the proposal against the relevant chapters of the DCP.

Part 3 – Development Notification Policy

Part 3 of the Albury DCP 2010 identifies public notification is an essential component of the development assessment process and that it should be undertaken in accordance with the Community Participation Plan under Albury DCP 2010 Appendices.

Council's Community Participation Plan required the application to be notified to adjoining and adjacent landowners, advertised within the local newspaper, The Border Mail, and listed on Council's website (Application Tracker). The public notification period was between 14 August 2023 and 1 September 2023.

Six (6) submissions have been received to date, three (3) supporting and three (3) opposing the development. Submissions are further discussed under Section 4.15(1)(d) – Public Submissions of this report.

Part 4 – Developer Contributions

Part 4 of the DCP provides details regarding the payment of developer contributions under Section 7.11 or 7.12 of the *Environmental Planning and Assessment Act 1979* and/or Section 64 of the *Local Government Act 1993*, to provide Council with funds to provide coordinated infrastructure and services for the City. Developer Contributions will be levied in accordance with the requirements of the *Albury Infrastructure Contributions Plan 2014* (Albury ICP 2014).

Section 2.2 of the Albury ICP 2014 states that all newly developed and redeveloped properties subject for payment of water supply and sewerage charges are liable for paying Developer Contributions and that an Equivalent Tenement (ET) is the basic unit of measure to quantify the demand or loading on water supply or sewerage systems respectively. The Plan states that ETs for commercial and industrial development will be charged in accordance with NSW Water Directorates Guidelines for Determining Water and Sewer ET Figures.

The amount of Developer Charges payable for a development is calculated as follows:

- Water supply: Demand in ETs x Developer Charge per ET
- Sewerage: Loading in ETs x Developer Charge per ET

Section 3.6(b) of the Albury ICP 2014 states the Plan applies to development that has a proposed cost of \$100,000 or more, insofar a Section 7.12 (formerly Section 94A) contribution is applicable.

Based on the above, the following Section 7.12 and Section 64 contributions are applicable to the proposed development, calculated as follows:

Section 7.12 (formerly Section 94A)

Calculated at 1% of cost of works as per the Quantity Surveyor Cost Summary Report (TRIM DOC23/333177). The cost summary report identifies the cost of development at \$42,570,000.00.

$$1 \% \times \$42,570,000.00 = \$425,700.00$$

Note: The cost summary report has been prepared and signed by a registered Quantity Surveyor with the Australian Institute of Quantity Surveyors (AIQS).

Section 64:

As per the Water Directorate Guidelines 2017, the contributions are calculated as follows:

- *Ground Floor Tenancies*

'Single Retail Shop' – standard unit of measure is based on floor area m²

Retail 1 = 381m²

Retail 2 = 356m²

Total = 737m²

= Water: 7.37 ET (0.01 x 737m²)

= Sewer: 7.37 ET (0.01 x 737m²)

- *Levels 1 - 6 (32 apartments)*

18 x 2-bedroom apartments

14 x 3-bedroom apartments

Calculated based on 'Multi-Residential Apartments (2 bedroom)'

Water: 0.50 x 18 = 9 ET

Sewer: 0.75 x 18 = 13.5 ET

Calculated based on 'Multi-Residential Apartments (3 bedroom)'

Water: 0.67 x 14 = 9.38 ET

Sewer: 1 x 14 = 14 ET

Credit

2 ET for Water and 2 ET for Sewer as the application is proposed across two (2) allotments:

- LOT: 1 DP: 912511 (487 Swift Street ALBURY)

- Lot PT20 Sec 24 DP 780123 (485 Swift Street ALBURY) & Lot PT20 DP 780123 (481 Swift Street ALBURY)

Summary:

A condition is imposed on consent requiring \$641,155.42 to be paid to Council prior to the issue of a Construction Certificate.

Part 5 – Vegetation Protection

Part 5 of Albury DCP 2010 guides the management and preservation of trees, vegetation, and native vegetation across the Albury LGA.

The subject land is clear of trees and vegetation. There are three (3) mature *Platanus x acerfolia* (Plane Trees) within the nature strip, adjacent to the site.

The development proposes the removal of one (1) Plane Tree to facilitate access to the basement level from Swift Street.

The applicant has submitted a 'Tree Assessment Report', prepared by Local Tree Care, which evaluates the health and maturity of the existing street trees and provides recommendations to minimise the impacts of the proposed development (included as Attachment 5).

Though the street tree forms part of an established corridor of tree plantings in Swift Street, the removal of the tree is considered necessary to ensure safe vehicle access into the mixed use development, noting the proximity of existing access points into the adjoining shopping centre complex and the nature of Arnolds Lane, being to predominately provide rear access and loading/unloading to commercial properties fronting Olive Street and the adjoining shopping centre.

The street tree removal has been reviewed and approved by Council's Streetscapes and Gardens team, subject to conditions requiring the following:

- compensatory planting of two (2) super advanced Plane trees (which have a minimum height of 6 metres and minimum width of 4 metres at the time of planting),
- the removal of the street tree and the replacement planting of the trees are at the developer's expense, and
- that the existing street trees are protected whilst construction works are occurring on site.

Part 6 – Planning for Hazards

Part 6 of Albury DCP 2010 seeks to minimise the risks associated with natural hazards, including bushfire, flooding, and land contamination. The subject site is not known to be contaminated, bushfire prone or flood affected.

Part 7 – Heritage Conservation

Part 7 of Albury DCP 2010 is supplementary to Section 5.10 of Albury LEP 2010 and provides objectives and controls for the management and conservation of heritage items and heritage conservation areas.

The proposal seeks to demolish Heritage Item I164 located at 485 Swift Street (Lot PT20 Sec 24 DP 780123), and Heritage Item I166, located at 487 Swift Street (LOT 1 DP 912511).

7.2 Objectives

The general objectives of Albury's heritage controls are:

- 1. To identify heritage buildings and areas within Albury, and encourage the conservation and enhancement of these items.*
- 2. To maintain and enhance the overall streetscape and environmental quality of the city.*
- 3. To promote public awareness of the significance of heritage items.*
- 4. To provide for public involvement in matters relating to the conservation of Albury's environmental heritage.*
- 5. To identify heritage conservation areas and to seek to conserve and enhance these areas.*
- 6. To preserve and maintain landscaping and vegetation, which contributes to the heritage significance of particular heritage items and heritage conservation areas.*
- 7. To ensure that alterations, additions and infill developments are sympathetic and respectful of the values of the heritage sites.*
- 8. To control the demolition of heritage items or buildings located within a heritage conservation area and archivally record these buildings in circumstances of demolition.*
- 9. To have regard to the recommendations of the Albury Mainstreet Study, the Albury City Wide and Lavington Heritage Studies, and to relevant provisions of Part 11 of this DCP, which relates to Development in Commercial Zones.*

Comment: It is considered that the existing three buildings on the subject land do not make a substantial contribution to the streetscape, with both 481 and 487 Swift Street being in very poor dilapidated condition. Though the existing building at 485 Swift Street is in good condition, it is considered that there are several examples of the Inter-War California Bungalow style dwelling in the broader central Albury area and therefore the demolition of this building is supportable in this instance.

The proposed mixed use, commercial and shop top housing development is considered to be a sympathetic addition to the streetscape. The design incorporates an appropriate setback, bulk, scale, and height, as well as recessive, neutral materials, colours and finishes, which will add to the value of the streetscape.

The proposal is not anticipated to result in any visual impact to the vicinity heritage items and heritage conservation areas and will not obstruct or detract from any significant views along Swift Street.

The application has been publicly notified to enable community involvement where only one (1) submission was received objecting to the application based on heritage concerns.

As discussed under Section 5.10 of this report, a condition will be imposed on consent to require a permanent interpretation panel displaying an image of each of the three cottages along with a brief history.

7.4.2 Matters for Consideration

In assessing a development proposal, Council will consider the following:

- i. The heritage significance of the building, work or Aboriginal object to Albury.*
- ii. The extent to which the carrying out of development in accordance with the consent would affect the significance of the building, work or Aboriginal object and its setting.*
- iii. Whether the application relates to an item located within a heritage conservation area, and the extent to which carrying out of development in accordance with the consent would affect the heritage significance of the area.*
- iv. Whether any stylistic, horticultural or archaeological features of the building or work or its setting should be retained.*
- v. Whether the building or work constitutes a danger to the users or occupiers of that item or to the public.*
- vi. The colour, texture, style, size and type of finish of any materials (or signage) to be used on the exterior of the building compared to other period buildings in the vicinity.*
- vii. The style, proportion and position of openings for any windows and doors which will result from, or be affected by, the carrying out of the development.*
- viii. The pitch and form of any roof.*
- ix. The appropriate management, establishment or reinstatement of landscape features; and the style, type and height of any fencing.*

Comment: It is considered that the demolition of two locally listed heritage items do not reach the threshold of local significance or require retention. The proposed mixed use development is designed to be sympathetic to the subject site, streetscape, and vicinity heritage items.

The application has been referred to Council's independent heritage advisor who does not object to the demolition of these items, subject to conditions of consent which are included under Section 5.10 of Albury LEP 2010, of this report.

7.4.3 Demolition

Objectives

1. To control demolition of heritage items and buildings and works within heritage conservation areas and archivally record these buildings in circumstances of demolition.

Controls

i. An application to demolish a heritage item or a building or work within a conservation area must be accompanied by detailed plans of the building which is proposed to take its place. Council will have regard to this proposal in considering the application for demolition.

ii. An application for demolition shall also address in the statement of environmental effects:

- *The historic, aesthetic and/or social significance of the building, its nature and degree, and its relationship to the overall character and significance of the locality.*
- *The impact of the removal of the building or work on the overall significance of the area.*
- *The reason for the proposed removal, especially why it is considered, and to what extent, the building/site can no longer be used in its existing form or with appropriate adaptation.*

Comment: Complies. The development application includes the submission of plans, a Statement of Environmental Effects (SEE) and a Heritage Impact Statement (HIS), which appropriately considers the significance of the subject heritage items and the surrounding heritage items and conservation areas, and the impact of the proposed demolition works.

Part 10 – Development in Residential Zones

Part 10 of Albury DCP 2010 contains the controls applicable to residential development. Though the subject land is zoned E2 Commercial Centre, the shop top housing component must be considered against the Guidelines and Performance Criteria of Part 10, Division F – Residential Flat Buildings.

1. Objectives

Objectives for development to which Division F applies are to be considered by Council when a development application is determined. The objectives are, to:

- Ensure residential flat buildings respond to the environmental conditions of the site and the locality.*
- Enable residential flat buildings to be compatible with the streetscape and to contribute positively to the character of the locality in which development is proposed.*
- Create reasonable amenity for occupants of residential flat buildings without causing unreasonable impacts on the amenity of neighbours.*

4. Residential flat buildings to which SEPP 65 applies

- This clause applies to erection of and alterations and additions to a residential flat building(s) and adaptation of an existing building(s) to create a residential flat building(s), to which the provisions of SEPP 65 apply.*
- This clause applies to the residential component(s) of mixed use buildings, such as shop top housing.*
- The purpose of this clause is to supplement the applicable provisions of SEPP 65 and the objectives and design criteria/guidance of the Apartment Design Guide.*
- This clause applies to ancillary development, as defined by the Codes SEPP, that is not exempt or complying development under that policy or any other environmental planning instrument.*
- Satisfaction of performance criteria is to be demonstrated to justify departures from numerical guidelines and non-numerical guidelines as set out in the Development Guidelines Table to this clause.*
- Where there is no guideline for a design element, information is to be provided with a development application to demonstrate that relevant performance criteria are satisfied.*

Development Guidelines Table

Division F cl. 4 Residential flat buildings SEPP 65 applies

Design elements	Guidelines	Performance criteria	Response
a. Site Planning.			
<p>i. Location of residential flat buildings.</p> <p>This guideline does not apply to development of land zoned R3 or B4.</p>	<p>Residential flat building sites are to be at least 500m apart. The separation distance is measured between the closest point of each site along the street frontage.</p> <p>Variation of this guideline may be considered when the proposed development is within 400m of a B1, B2, B3 or a B4 zone, measured along a street or streets, from the site to the closest point of the B1, B2, B3 or B4 zone.</p>	<p>A variety of housing stock is maintained in residential localities.</p> <p>Distribution of multi-dwelling housing is compatible with the streetscape and the character of the locality.</p> <p>Concentration of multi-dwelling housing is able to occur within a 400m walk of a B1, B2, B3 or a B4 zone.</p>	<p>Complies.</p> <p>The subject land is zoned E2 and there are no residential flat buildings within 500m of the site.</p>
<p>ii. Development on a battle-axe lot.</p>	<p>Development guided by this clause is not favoured on a battle-axe lot, unless:</p> <ul style="list-style-type: none"> The lot adjoins or has an outlook to public open space or another type of public reserve, or land in an environmental protection zone, and, Access to the lot is suitable for the development. 	<p>Development on a battle-axe lot:</p> <ul style="list-style-type: none"> Provides reasonable amenity for occupants and neighbours, Is compatible with the public domain and the character of the locality, Addresses public open space or another type of public reserve, or land in an environmental protection zone, and Is provided suitable access. 	<p>Not applicable.</p>
b. Building Height.			
<p>i. Max. no. storeys.</p>	<p>Nil.</p>	<p>Number of storeys is compatible with the streetscape and the character of the locality.</p> <p>Number of storeys reasonably maintains acceptable relationships with adjoining development, in terms of bulk and scale, and resident-amenity.</p>	<p>Complies.</p> <p>The proposed development is considered to be compatible with the desired future character of the locality.</p> <p>As previously discussed, the maximum building height set out in the Albury LEP 2010 is</p>

Division F cl. 4 Residential flat buildings SEPP 65 applies

Design elements	Guidelines	Performance criteria	Response
			complied with and is considered acceptable.
ii. Earthworks, retaining walls & related structures. Refer to Figures 14 & 15 in the Schedule.	<p>Development is to be stepped to align as closely as possible with the slope of the lot.</p> <p>Earthworks and related structures are not to result in finished ground levels that differ by more than 600mm from existing ground levels at any boundary with adjoining land.</p> <p>If the lot was benched when the land was subdivided, earthworks and related structures are not to further increase or decrease finished ground levels at any boundary with adjoining land.</p> <p>All earthworks and related structures are to be properly drained and not direct surface water onto adjoining land.</p>	Adverse impacts of earthworks and related structures on adjoining land, resident-amenity, streetscape and the character of the locality are avoided, or acceptably minimised or mitigated.	<p>Variation.</p> <p>Earthworks are required for basement carparking and services, which will exceed 600mm in cut from the existing ground levels.</p> <p>A variation is considered to be supportable as the basement level car park will provide for off street car parking, which will assist with traffic management within the immediate area.</p> <p>Concept drainage plans have been provided as part of the application. Details will be required as part of the Construction Certificate.</p>
	Structures related to earthworks that differ by more than 600mm from existing ground levels, including any retaining, drainage works or other works, are to be designed by a suitably qualified and experienced engineer.	Earthworks and related structures and infrastructure are properly designed.	<p>Noted.</p> <p>A condition will be imposed on consent to ensure that the development is designed by a suitably qualified engineering professional.</p>
	<p>Appropriate construction techniques, including minimising removal of vegetation where possible, are to be implemented to assist in erosion and sediment control during and post construction.</p> <p>An erosion and sediment control plan is to be submitted with a development application, except when development does not involve soil disturbance or when soil disturbance is insignificant.</p>	Construction of earthworks and related structures does not adversely impact stormwater flows and the environment.	<p>Noted.</p> <p>A condition will be imposed on consent requiring erosion and sediment measures to be in place prior to works commencing on site.</p>
c. Setbacks.			

Division F cl. 4 Residential flat buildings SEPP 65 applies

Design elements	Guidelines	Performance criteria	Response
i. Min. primary street setback. Refer to Figure 16 in the Schedule.	Average setback of the two buildings closest to the lot, in the same street and on the same side of the street. 6m when averaging as set out above is impractical.	Setbacks are compatible with the setback of neighbouring buildings. Setbacks contribute to a consistent streetscape and character in the locality.	Satisfactory. The adjoining lot to the east is a car park, with Arnolds Lane to the west. Further west is a commercial building with 0m setback. The proposed 0m setback is considered to be consistent with the character of the streetscape and appropriate given the commercial zoning of the land.
ii. Min. secondary street setback on a corner lot.	50% of the primary road setback.		Satisfactory. Given the 0m setback to the front boundary, a 0m setback to the secondary boundary is suitable in this instance.
iii. Min. garage setback from a rear lane.	0m, provided there is adequate area for access into and egress from a garage. Entry to and exit from a garage is to be demonstrated by plans of swept paths of vehicles, if required.	Safe and practical entry to and exit from a garage off a rear lane is provided.	Not applicable. Not access is proposed from a rear lane.
iv. Exceptions to the primary street setback.	In areas undergoing change in their character due to various circumstances (e.g. a change in zoning or land economics), a site and context analysis is to be carried out to establish an appropriate setback to the street, when an exception is sought to the primary street setback. Applicants are to consult with Council regarding the appropriate application of this guideline when preparing a development application.	The primary street setback is established in accordance with a site and context analysis, that has considered the area's character and specific circumstances related to the site and its development.	Noted. Area undergoing change.
d. Vehicle parking.			

Division F cl. 4 Residential flat buildings SEPP 65 applies

Design elements	Guidelines	Performance criteria	Response
i. Min. no. parking spaces.	Specified by Part 17.	The number of on-site parking spaces is adequate and acceptably impacts parking supply on local streets.	Variation. See comments under Part 17 of this report.
e. Utility infrastructure.			
i. Access to the development and associated road works.		Access to the development and associated road works are consistent with Council's Engineering Guidelines for Subdivisions and Development Standards. On bush fire prone land, access is provided in accordance with RFS guidelines.	Complies. Basement level vehicle access to the site is via Swift Street, with ground level parking accessed via Arnolds Lane. Pedestrian access is via Swift Street. Council's Transport Team has reviewed the access arrangements and does not object to the proposal.
ii. Water and sewer supply.		If required, arrangements are made with Council, the water and sewer authority, for provision of water and sewer services. Such arrangements are consistent with Council's Engineering Guidelines for Subdivisions and Development Standards. On bush fire prone land, water supply is provided in accordance with RFS guidelines.	Complies. Reticulated water and sewer will be available to the site.
iii. Stormwater management.	A stormwater management concept plan is to be submitted with a development application.	Stormwater management is consistent with Council's Engineering Guidelines for Subdivisions and Development Standards.	Complies. Concept stormwater plans provided. Details to be submitted prior to issue of a Construction Certificate.
iv. Electricity, gas, and telecommunications services.		Evidence is provided to Council, that these services are available, before	Complies. The site is located within an established urban area

Division F cl. 4 Residential flat buildings SEPP 65 applies			
Design elements	Guidelines	Performance criteria	Response
		issue of an occupation certificate.	and these services are provided to the site.
f. Master plans & concept development applications.			
i. Min. number of dwellings when a master plan is required.	20.	Large developments are planned, designed, and developed to make a positive and compatible contribution to Albury's urban environment.	<p>Complies.</p> <p>Thirty-two (32) apartments proposed.</p> <p>A masterplan is not deemed to be required as the DA seeks approval for 100% site coverage as part of this application.</p>

Part 11 – Development in Commercial Zones

Part 11 of Albury DCP 2010 contains the controls applicable to commercial development. The subject land is zoned E2 Commercial Centre (previously known as B3 Commercial Core) and proposes two (2) ground floor commercial tenancies as part of this application.

11.2 Broad Development Objectives

The main objective of the Commercial Zones is to identify land for commercial and commercial compatible uses, whilst the specific objectives of each Commercial Zone are contained within the LEP. This Part of the DCP provides controls for commercial and commercial compatible uses in the Commercial Zones.

11.3 Subdivision in the Commercial Zones

The development seeks to demolish the existing buildings on 481, 485 & 487 Swift Street, Albury and consolidate the land so it can be developed for the purpose of a seven storey, mixed use development, comprising two ground floor commercial tenancies and thirty-two apartments. The application seeks to Stratum subdivide the development to enable separate ownership of each apartment and commercial tenancies, and to formalise common property.

The mixed use development, and subsequent 34 lot Stratum subdivision, is considered to be compatible with the locality and consistent with the desired future character of the area. All essential services are available to the site and conditions will be imposed to require any augmentation of these services to enable connection, to be at the developer's expense.

11.4 Residential Development in the Commercial Zones

Objectives

- 1. To allow for a diversity of housing types and forms within Commercial Zones.*
- 2. To ensure that residential uses are compatible with surrounding land uses.*
- 3. To increase the permanent population within certain Commercial Zones.*
- 4. To integrate and promote the occurrence of mixed use, shop top and other like residential and commercial compatible uses within close proximity to services and facilities.*

Comment: The proposed development is consistent with the above objectives and will allow for greater housing diversity and an increased permanent population within the commercial centre. The mixed use development is generally consistent with the Guidelines and Performance Criteria of Part 10, Division F – Residential Flat Buildings.

11.7.1 Development in the B3 Commercial Core and B4 Mixed Use Zones

General objectives

- *To maintain and enhance Albury and Lavington's economic, social and cultural role in the region.*
- *To reinforce the structure and legibility of Albury and Lavington through a clear street hierarchy and urban form.*
- *To promote and encourage a high design quality of buildings.*
- *To ensure that the siting of new developments are appropriate to their setting and use, particularly in regards to overlooking and overshadowing of residential areas.*
- *To manage the transition in building use and scale within low-scale residential and multi-use areas.*
- *To provide a high level of pedestrian amenity to create vibrant, safe and easy-to-navigate streets.*
- *To promote the amalgamation of small sites to deliver better quality development and adequate on-site parking.*
- *To respect the existing scale and view corridors of heritage streetscapes in regards to new development.*
- *To improve and promote the use and safety of laneways for both vehicle service access and pedestrian access to building frontages.*
- *To promote and encourage safer public spaces.*
- *To promote landmark buildings at gateways and entry points.*
- *To simplify visual clutter, enhance tree planting and identify areas for public art and new public spaces.*
- *To create a destination for tourists from which to experience and enjoy Albury.*

Planning comment: The proposed development is consistent with the above general objectives.

11.7.2 Land Use Precincts - Albury

Controls

*i. Land uses are to comply with the Land Use Plan contained in Figure 11.7 and the Land Use Table contained within the LEP. **Complies. The development proposes two ground floor commercial tenancies and the shop top housing component is permissible in the zone under the Albury LEP 2010.***

*ii. Any form of residential development, shall comply with Part 10 of this DCP, which relates to Development in the Residential Zones. **Noted – assessment provided above.***

*iii. Mixed-use developments shall provide retail and commercial uses at ground floor level and residential uses above this. **Complies.***

iv. In areas characterised by heritage listed detached residential dwellings, land uses shall continue the trend of adapting buildings for commercial use/s such as professional offices

or small businesses and single office home office (SoHo). **Satisfactory. The development proposes to demolish all existing buildings on site, two of which are locally listed heritage items. Demolition is further addressed under Section 5.10 of Albury LEP 2010 and Part 7 Heritage of Albury DCP 2010, within this report.**

11.7.3 Building Heights - Albury

Controls

i. *Building heights are to comply with the Building Height Plan contained in Figure 11.8.* **Complies.**

ii. *Detached houses should retain a single storey building form to the street with a maximum two storey height permitted to the rear.* **Not applicable.**

iii. *Midblock infill site areas shall achieve an overall maximum height of 7 storeys permitted that a minimum site frontage of 24m exists to accommodate parking.* **Complies.**

iv. *Terrace houses should be 2 to 3 storey with a pitched and/or parapet roof.* **Not applicable.**

v. *Buildings shall not obstruct radio transmissions between local transmission structures. Albury City Staff may be consulted regarding the location of radio transmission structures and associated height limitations.* **Noted.**

vi. *All buildings and structures must comply with the Obstacle Limitation Surface Plan as contained within Part 18 of this DCP, which relates to the Albury Airport. This Plan indicates the height that buildings and other structures must not exceed to ensure the safe operation of the Albury Airport.* **Complies. The subject land is identified as being within the 'Inner Horizontal Surface' on the Obstacle Limitation Surface Map under Albury LEP 2010; however, the development is not anticipated to have any impact upon the effective operation of Albury Airport.**

vii. *Overall building heights shall be compliant with the Street Wall Heights and Upper Level Setback requirements contained within Section 11.7.4 below.* **Complies.**

11.7.4 Street Wall Heights and Upper Level Setbacks - Albury

Controls

i. *Street wall heights shall comply with the Street Wall Height Plan contained within Figure 11.9.* **Complies. The street wall height is 4.87m; however, is single storey.**

ii. *Upper level setbacks shall comply with the following:*

- *Along Dean Street – minimum 6 metres.* **Not applicable.**
- *Along other streets – minimum 3 metres.* **Complies.**

11.7.5 Floor Space Ratio (FSR) - Albury

Controls

i. *Floor Space Ratios shall comply with the FSR Plan contained within Figure 11.10.* **Complies. The FSR of the development is less than 3.1.**

ii. *Large or consolidated sites are subject to the following maximum FSR's:*

- *Maximum of 2:1 for sites between 5000m² and 10,000m².* **Not applicable.**
- *Maximum of 1.5:1 for sites between 10,000m² and 15,000m².* **Not applicable.**

- *Maximum of 1:1 for sites greater than 15,000m². Not applicable.*
- iii. *FSR's for the railway precinct have been deferred and will be subject to special consideration by the Council. Not applicable.*

11.7.6 Building Design - Albury

Controls

- i. *New building facades shall include articulation such as punctuations, openings and repetition of architectural elements that contribute to the streetscape. **Complies. The articulation of the external façades through incorporating varying setbacks, columns, materials, and finishes, lessens any perception of bulk, whilst maintaining internal and external amenity. These elements contribute to the desired future character of the commercial centre and will enhance the existing surrounding streetscapes and broader locality.***
- ii. *Buildings shall comply with the relevant requirements of this Section in regards to setbacks, heights, FSR, landscaping, open space and other like requirements relating to building design. **Satisfactory. The development is generally compliant with the requirements of Albury DCP 2010.***
- iii. *Buildings shall create interest and activity along street edges through the use of mixed land uses. **Complies. The mixed use development proposes two ground floor commercial tenancies and residential apartments on Levels 1 to 6. As previously addressed within this report, a condition will be imposed to limit the use of the ground floor tenancies to a 'shop', as defined under Albury LEP 2010.***
- iv. *New buildings edging public open spaces shall incorporate active edges to increase the vibrancy of these spaces and to provide opportunities for passive surveillance. **Complies. The development proposes a 0m setback, which will provide for enhanced interaction with the pedestrian network.***
- v. *Buildings on corner sites shall be articulated to address each street frontage and are to define prominent corners as shown in Figure 11.1. **Complies. The building is designed to address each street frontage, focusing pedestrian activity along Swift Street, where entries to the commercial tenancies and residential building is located.***

11.7.7 Building Setbacks - Albury

Controls

- i. *Street wall setbacks and build to lines are to comply with the Street Setback and Build to Lines Plan as contained within Figure 11.11. **Complies. The development proposes 100% site coverage and there is a 0m setback proposed to Swift Street and Arnolds Lane, which is consistent with Figure 11.11.***
- ii. *Street setbacks where appropriate should follow the predominant setback along the street. **Complies. Given the commercial nature of the locality, the predominant building setback is 0m for commercial buildings within the surrounding area.***
- iii. *Buildings setback within landscaped settings shall provide associated open space and landscaping. **Not applicable. No setback proposed nor required from the street boundary. A landscape plan has been submitted with the application identifying suitable landscaped areas within the site, some of which will be visible from the public domain.***

iv. Where there is not a predominant setback (i.e. large sites or where a significant change in building use/type) is present, a 3 metre street setback should be provided. **Not applicable. The 0m setback is acceptable.**

v. Terrace houses should have a 2 metre landscape street setback or ground floor level up to 1 metre above the footpath, with a 2 metre landscaped terrace. **Not applicable.**

vi. Party wall construction methods should be incorporated for terraces, retail streets and street wall building types where it is consistent with the adjacent context. **Noted. A condition will be imposed requiring the development to comply with the requirements of the National Construction Code (NCC).**

vii. Terrace house party wall lengths should not exceed 12 to 14 metres. **Not applicable.**

viii. For additions to residential houses, a minimum side setback of 1.2 metres and minimum rear setback of 6 metres shall apply. **Not applicable.**

ix. For residential apartments and residential components of mixed-use buildings, the following rear setbacks apply:

- Minimum 6 metres, where building height is 4 storeys or less. **See below comment.**
- Minimum 9 metres, where building height is 5 storeys or greater. **Variation.** The development proposes the following setbacks from the rear (southern) boundary:

- Ground floor – 0m setback
- Level 1 – 0m setback
- Levels 2 to 6 – 5.925m
- Rooftop – 6.307m

The proposed setbacks to the rear are considered to be suitable given the adjoining site is developed as a shopping centre complex where there are no unreasonable impacts anticipated by the proposed development.

x. For commercial uses with windows facing the front and rear of a lot, a minimum 3 metre side setback applies. **Variation.** A 1.72m setback is proposed from Arnolds Lane to the commercial tenancy 1. The setback proposed is considered to be suitable as the partially enclosed colonnade along the street frontages of the site will provide a sheltered pedestrian path and protection for the windows of the ground level tenancies.

xi. Bulky good premises may be built to one side and to the rear boundary of a lot, where the adjoining property is not a house, mixed use development or commercial office building with facing windows. **Not applicable.**

xii. Buildings built to the secondary street boundary should cover a minimum distance of 50% of the length of the site. **Complies.**

11.7.8 Building Depth - Albury

Controls

i. Residential buildings are limited in depth to 18m from glass line to glass line. Narrower buildings are encouraged to improve natural daylight access and energy performance/efficiency. **Complies. The applicant has stated within the SEE that the apartments contained within the building do not exceed 18 metres in depth.**

ii. Building depths for commercial office uses are limited in depth to 30m as this limits the distance from the core to glass and improves energy performance/efficiency. **Complies. The applicant has stated within the SEE that the ground floor commercial tenancies are less than 30m in depth.**

11.7.9 Building Separation - Albury

Controls

- i. For commercial buildings with windows to offices, a minimum building separation of:
- 12 metres is required between buildings facing each other on a site, where the building height is 4 storeys or less. **Not applicable.**
 - 18 metres is required between buildings facing each other on a site, where the building height is 5 storeys or greater. **Not applicable.**
 - 9 metres for commercial buildings perpendicular to each other, where the maximum façade of one building does not exceed 20 metres. **Not applicable.**
- ii. Where building separation cannot be met due to existing adjacencies or site configurations the following applies:
- For free standing residential buildings on narrow sites, side setback controls regulate building separation. In these, instances habitable rooms should be oriented to the front and rear of a lot. **Variation.** The development proposes a mixed use development which incorporates windows to all habitable rooms, facing all elevations. Though the development does not comply with the side and rear setbacks of Albury DCP 2010 and ADG, a variation is supportable as the subject land has street frontage to Swift Street and Arnolds Lane, and the site adjoins a large scale shopping centre; therefore, the reduced setbacks are not anticipated to have any significant amenity impacts upon the adjoining landowner.
 - For terraces, orientate rooms and windows to maximise building separation and utilise other details such as louvered screens, translucent windows, and high-set windows to minimise overlooking and increase privacy. **Not applicable.**

11.7.10 Open Space and Landscaping - Albury

Controls

- i. Public open space areas shall be developed in a cohesive and coordinated manner for the benefit of the public. **Variation.** No public open space areas proposed; however, the development proposes suitable communal open space areas within the site which will provide high amenity to residents.
- ii. Development adjoining public open spaces shall address and overlook these areas to encourage use and provide passive surveillance. **Complies.** The development will increase passive surveillance of Swift Street and Arnolds Lane.
- iii. Communal open spaces for mixed use buildings, commercial offices and residential buildings shall be provided for those occupants of the building. Communal open space areas above ground level (green roofs) are desirable for mixed use residential buildings. **Complies.** The development proposes both a ground level and rooftop communal open space area.
- iv. Where car parking structures are proposed it is encouraged that communal open space may be located above these on a podium. **Not applicable.** The majority of onsite car parking is located in the basement level. The proposed parking arrangement has been reviewed by Council's Transport team who have not objected to the proposal.
- v. Any development or redevelopment of a site shall seek to retain significant existing trees, where possible. **Satisfactory.** No significant trees are located on the site. One street

tree is proposed to be removed which has been approved by Council, subject to conditions which require the compensatory planting of two super advanced plane trees adjacent to the site in the nature strip.

vi. Landscape plantings shall be provided for large scale developments and incorporated within the front setback, particularly for residential type developments. Notation The Albury CBD Masterplan, 2009 and Lavington CBD Masterplan, 2009 provide guidelines for the enhancement of existing public open spaces, as well as, the creation of new public open spaces, which shall be consulted in the development of these areas. Satisfactory. The application includes a landscape plan which identifies landscaping is proposed on the ground floor, level 1, level 5, and the roof top. The proposed landscaping has been reviewed and approved by Council's Urban Forest Officer and it is considered that the landscaped areas will assist to maintain visual privacy and add to resident amenity.

11.7.11 Car Parking, Traffic and Access – Albury

Controls

i. Future car parking should be concentrated into consolidated off-street locations and accessed primarily from internal circulation streets. Refer to the Albury CBD Masterplan 2009 and Lavington CBD Masterplan 2009 for guidance regarding desired locations and access arrangements. Complies. Car parking is proposed to be off street and is located predominately within the basement of the building.

ii. Future car parking should consist of a combination of spaces provided specifically to service new development with both private spaces and publicly accessible spaces, which maximise shared parking opportunities at different times of the day. Satisfactory. The car parking spaces on site are predominately to cater for building residents and the employees of the ground floor commercial tenancies. Given the central location of the subject land, and that several public all day parking facilities are within walking proximity to the site, the car parking provided on site is considered suitable in this instance.

iii. Car parking areas shall be landscaped to provide shade. Satisfactory. All resident car parking is located within the basement level. The ground level car parking is located to the rear of the site, which will be partially shaded by the proposed development given the orientation of the site.

iv. Advertising, signage, landscaping and physical barriers shall be provided for the efficient movement of pedestrians. Not applicable. The development does not include any public areas with exception to the ground floor commercial tenancies; consequently, no signage is required to direct pedestrians within the site.

v. On-grade parking shall be provided at the rear of properties and should incorporate stormwater collection and re-use into their design. Satisfactory. Six (6) car spaces are located at the rear of the site to service the ground floor commercial tenancies. Given the development is BASIX compliant and the rear carpark is relatively small in area, it is not considered necessary to require stormwater collection and re-use for this section of carparking.

vi. On sites with a minimum 24m frontage, parking above ground level or underground may be possible. Complies. The subject land has a 50m width (facing Swift Street) and basement level car parking is proposed.

vii. Terrace buildings shall have garages located along a rear laneway or if viable under the building footprint. **Not applicable.**

viii. Developments, which are likely to be significant customer attractors, must provide a minimum of two-thirds of the required parking on-site. The remaining one-third may be provided by a monetary contribution. Developments, which are likely to be specific customer “attractors” are as follows:

- Office complexes and shopping centres over 1,500m² gross floor area (including malls).
- Supermarkets.
- Department stores.
- Shopping centres containing supermarkets or department stores.
- Retail bulky goods, warehouses or like retail premises.
- Freestanding take-away food restaurants.
- Hotels, motels and clubs.
- Reception/conference centres.
- Industrial uses.
- Places of public worship.
- Hospitals and schools.
- Similar land uses as determined by the Council. **Not applicable.**

ix. Multi-level parking (basement or deck) may be appropriate provided that it:

- Supports the objective of keeping the centre compact.
- Is attractively designed.
- Reinforces continuity of pedestrian activity rather than creating or exacerbating any sense of separation between commercial uses. **Complies. The development proposes majority of the parking spaces within the basement level car park. Six spaces are proposed on ground level, which will be accessed via Arnolds Lane and predominately screened from active pedestrian areas.**

x. Car parking should be provided in accordance with the standards and rates provided for in Part 17 of this DCP, which relates to Off Street Car Parking for various uses. Council may consider a reduction in the ratio of car parking provision if satisfactory evidence is provided to indicate that one or more of the following circumstances apply:

- The ability to “share” spaces between different land uses at different times.
- It can be demonstrated that the use in question will not generate the numbers required.
- The use proposed is currently not represented in the precinct and is desirable from the point of view of economic activity or community need but to apply the full car parking requirement would make it unviable. **Satisfactory. The development does not meet the required on site car parking; however, a reduction is supportable as there are several public car parking facilities within walking proximity to the site and given the central location, it is considered that alternative modes of transport may be preferred i.e. walking, bicycle and public transport.**

11.7.12 Streetscape – Albury

Controls

i. New buildings shall avoid extensive blank walls to street frontages by incorporating display windows and landscaped street setbacks for mixed use and commercial developments. **Complies. The development incorporates a high level of articulation.**

At ground level, the development proposes a partially enclosed colonnade which will add to the visual interest of the streetscape and provide good pedestrian amenity.

ii. Continuous box awnings are to be provided at the same height and depth as adjoining buildings in commercial areas, if applicable. Not applicable.

iii. Active frontages are to be located on the primary street frontage and for a minimum of 50% of the secondary street frontage. Complies. The development proposes two ground floor commercial tenancies which will suitably activate the street frontage of the site.

iv. Building height, bulk and setbacks shall be consistent with the surrounding structures.

Variation. The building height and bulk is not consistent with surrounding structures; however, is consistent with policy requirements in the Albury LEP 2010 and ADG. The broader commercial area of Albury is in transition and the proposed outcome is consistent with the preferred future character and scale of the commercial centre. The setbacks proposed are considered to respond appropriately to the surrounding built form and streetscape.

v. Ground level retail and commercial uses shall be maintained through vertical articulation. Complies. The entrances of the ground floor commercial tenancies are suitably articulated to direct pedestrian traffic.

vi. For detached residential dwellings, developments should maintain the pattern of front setbacks, porches and verandahs typically located on the street facade. Not applicable.

vii. New development should retain the use of face brick, timber details, doors and windows. Complies. The development will be constructed from a variety of exterior materials and finishes, including earthy coloured brickwork, bronze tinted glazing and timber look clad balcony soffits.

11.7.13 Urban Design and Pedestrian Circulation – Albury

Controls

i. Any breaks in the continuity of active shop fronts and services, including those created by car parks or activities with low public interaction, shall be avoided. Complies. The development proposes two ground floor commercial tenancies which will enhance pedestrian activity in Swift Street and provide connection from existing retail uses within Olive Street and the shopping centre complex.

ii. All public and pedestrian areas shall be designed in a manner that maximises view lines between destinations and is embellished with highly attractive and consistent paving, lighting and planting (including shade-providing trees in unsheltered areas). Complies. The development is designed to provide safe access from Swift Street into the commercial ground floor tenancies. The existing street trees will provide shade to the pathway in the nature strip.

11.7.14 Outdoor Advertising – Albury

Comment: Not applicable. No signage is proposed as part of this application.

11.7.15 Key Sites – Albury

Comment: Not applicable. No signage is proposed as part of this application.

11.7.16 Opportunity Sites – Albury

‘Opportunity Sites’ are sites where the existing development or on-grade parking areas could be redeveloped or adapted over time to improve their relationship to the streetscape, pedestrian environment and function of the public realm.

Comment: Satisfactory. The subject land is adjoining an identified ‘Opportunity Site’, being the Myer City Centre. Though the proposed mixed use seven storey development will have impacts upon the future developability of the Myer City Centre site, it is considered that should the adjoining landowners wish to redevelop in future, there is ample area on site to facilitate a design outcome that is appropriate in scale, bulk, and setback, and that acknowledges the surrounding built form.

11.7.17 Masterplan Requirement – Albury

Comment: Not applicable. The site area is less than 10m².

11.7.18 Future Character Areas – Albury

Albury is comprised of many different ‘character’ areas. The zoning for the CBD of Albury and its surrounds allows for a variety of uses from residential to commercial. Character areas that contribute to Albury’s identity are a result of:

- *Consistent street setbacks either built to the street or landscape setbacks.*
- *Consistent elements such as roof forms and pitch, or the use of parapets and awnings.*
- *Consistent scale and form, resulting from building envelopes; height, width, depth floor to floor heights.*
- *Consistent building expression such as any vertical or horizontal articulation, materials and colours.*

The intent of the Future Character Areas are to:

- *Protect the intact streetscapes that contribute to the identity of Albury, such as Heritage Conservation Areas and Dean Street.*
- *Improve streetscapes under transition such as the fringe of the CBD.*
- *Create new streetscapes where opportunities exist, such as the railway land along Young Street.*

As change occurs over time, the infill strategy will manage the contribution of new buildings to existing streetscapes. Refer to Figure 11.13 for Future Character Areas.

Comment: Figure 11.13 identifies the site as being within ‘Dean Street and Retail Core Character Area’. The proposal provides two ground floor commercial tenancies, which are designed to maintain a consistent street setback and height at ground level with the surrounding built form, which will add to the visual appeal of the streetscape.

11.7.19 Heritage – Albury

Controls

i. Refer to Part 7 of this DCP, which relates to Heritage Conservation as well as the provisions of the Albury Mainstreet Study and the AlburyCity Wide Heritage Study 2004. Applicants should contact AlburyCity to obtain copies of these documents in preparing development applications. **Noted. Assessment has been undertaken against Part 7 – Heritage Conservation.**

ii. In some cases, a conservation report on a heritage item may be required in order to detail its significance and reuse, and the curtilage required to adequately maintain its setting. **Noted. A Heritage Impact Statement (HIS) has been submitted with this application.**

11.7.20 Awnings, Verandahs and Balconies – Albury

Comment: The development is wholly contained within the subject site, with exception to the extended awning over the ground level main entrance, which is proposed to clearly define the front entrance of the building for residents and visitors. The extended awning was specifically requested by Council and the amended design is considered to appropriately direct pedestrian traffic flows to and within the site.

The applicant has been advised that they will need separate approval from Council in relation to the structure overhanging the public footpath, which will be required prior to the issue of the Construction Certificate.

Part 17 – Off-street parking

17.2 Parking provision by land use

Comment: Chapter 17 of the Albury DCP 2010 relates to car parking, and sets the requirements for various land uses, as well as other design related requirements for the operation and embellishment of car parking. However, SEPP 65 (Section 6A) takes precedence over Council's planning controls and if a development achieves the standards of SEPP 65, a conflicting or higher standard in Council's controls has no effect and cannot be taken into consideration in the assessment of the development.

Consequently, the ADG requires carparking to be provided at the following rates, as per the *Guide to Traffic Generating Developments*:

Metropolitan Regional (CBD) Centres

0.7 spaces per 2 bedroom unit

1.20 spaces per 3 bedroom unit

1 space per 7 units

Office and commercial

1 space per 40m² gross floor area

Using the above car parking rates, 34 spaces are required for the residential component, being 12.6 spaces for the 2 bedroom apartments, 16.8 spaces for the 3 bedroom apartments and 4.5 spaces for visitor parking, and an additional 18 spaces for the commercial component of the development.

Based on the *Guide to Traffic Generating Developments*, the development generates a demand for a total of 52 car spaces on site.

The development proposes 52 spaces within the basement, and 6 spaces on ground level, being a total of 58 spaces on site. The applicant has expressed their intention to allocate all basement car parking spaces to the apartments; therefore, no visitor car parking is proposed on site. It is anticipated that the ground level car spaces will be used to service the commercial tenancies.

Though the development provides an excess of residential apartment allocated car parking, the development proposes a shortfall of 12 commercial spaces, and 5 visitor spaces, being a total of 17 car spaces.

A variation is considered to be supportable as the subject land is located within central Albury and other modes of transport may be utilised by residents.

Further there are several multi-level public car parking facilities within walking proximity to the site, should on site car parking be fully occupied. Additionally, the development proposes a bicycle storage area on ground level which will accommodate a minimum of 10 x bicycles, which complies with the requirements of Albury DCP 2010.

17.3 Car parking controls

17.3.1 Car parking design

Comment: The basement level and ground level car parking manoeuvring areas will be finished in a fully sealed surface and connected to an approved stormwater drainage plan. Conditions will be imposed on consent to ensure all car parking spaces are line marked and inclusive of an appropriate wheel stop, and that the vehicle aisles and car parks are compliant with AS2890.

17.3.2 Disabled persons parking

Comment: The development will be conditioned to require two accessible parking spaces, one within the basement level and one within the ground level parking area. All car parking spaces will be designed to comply with AS2890.

17.3.3 Bicycle racks and motorcycle parking spaces

Comment: The development proposes 10 bicycle parking spaces within a dedicated bicycle storage room, which satisfies the bicycle parking requirements of this part.

No dedicated motorcycle parking spaces are proposed within the site. A variation is considered to be supportable as each residence has allocated basement car parks based on the number of bedrooms and individual secure storage areas, which may provide opportunity for motorcycle or scooter parking.

17.3.4 Off street loading facilities

Comment: The development proposes two ground floor commercial tenancies, and it is envisaged that loading/unloading will occur from the rear of the site via the ground level car parking area, accessed from Arnolds Lane.

A condition will be imposed on consent requiring loading and unloading to occur wholly within the allotment boundaries of the site to maintain clear access within Arnolds Lane.

17.3.5 Pedestrian movements

Comment: It is considered that the development is suitably designed to ensure pedestrian safety.

17.3.6 Contributions in lieu of physical provision of car parking

Comment: As addressed above, the development proposes a shortfall of onsite parking by 17 spaces.

A condition will be imposed on consent to require the preparation of a Draft Planning Agreement to assist in offsetting the impacts of the shortfall of car parking on this site.

The Draft Planning Agreement will require the developer to financially contribute to Council a maximum sum of \$255,000.00 in recognition of a shortfall in the provision of 17 onsite car parking spaces (\$15,000 per space). The contribution is to offset the impacts that a development of this size and intensity will have on the surrounding area. It is the intention of Council to utilise the contribution to provide additional public parking.

(d) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act

The adopted *Albury Infrastructure Contributions Plan 2014* does not provide for contributions toward car parking shortfalls as part of development proposed within Albury. Consequently, if Council is not prepared to accept that shortfall without some form of payment or provision, an applicant must seek Council's agreement to enter into a Planning Agreement either prior to lodging the development application or via a condition of consent.

Council adopted the *Albury Planning Agreements Policy* on 30 January 2012 to enable the use of such agreements under the provisions of Section 7.4 of the EP&A Act 1979. As outlined in Section 2.5 of the *AlburyCity Council Policy on Planning Agreements*, Council may consider negotiating a Planning Agreement with a developer to:

- a. *Meet the demands created by the development for new public infrastructure, amenities and services,*
- b. *Compensate for the loss of, or damage to, a public amenity, service, resource or asset caused by the development through its replacement, substitution, repair or regeneration,*
- c. *Address a deficiency in the existing provision of public facilities in the Council's area,*
- d. *Achieve recurrent funding in respect of public facilities,*
- e. *Prescribe inclusions in the development that meet specific planning objectives of the Council,*

- f. *Monitor the planning impacts of development, or*
- g. *Securing planning benefits for the wider community so that the development delivers a net community benefit.*

The applicant has agreed to enter into a Planning Agreement with Council to make a contribution toward the provision of car parking in the CBD, in lieu of providing the car parking on-site.

A condition is proposed to require the preparation of a Planning Agreement by Council's legal representatives in accordance with the template adopted by Council for such agreements. The Draft Planning Agreement will be required to be reviewed and will also require notification to ensure the Agreement satisfies the requirements of Section 7.4 of the EP&A Act 1979. The preparation and execution of the Planning Agreement will be required to be undertaken prior to the issue of a Construction Certificate.

Council has considered Planning Agreements for car parking in relation to previous Development Applications, where the Council adopted contribution per parking space has consistently been \$15,000. This contribution was to be directed toward the cost of future multi deck car parks at a number of locations around the CBD. Council staff consider this rate appropriate and relevant for the proposed development.

The condition to require a Planning Agreement is consistent with the strategic objectives of *AlburyCity Council Policy on Planning Agreements*.

The Draft Planning Agreement will be required to be submitted to Council and notified to the public to enable the community to be informed of the proposed contribution toward parking, owing to a shortfall of parking provided as part of the development.

The assessment of the application throughout the report has been undertaken objectively, with the principles of Part 2.2 of the *AlburyCity Council Policy on Planning Agreements* requiring that the decision to enter into a Draft Planning Agreement should not influence the planning assessment and consideration of the application under the relevant planning instruments.

The Planning Agreement becomes a legally binding Agreement and must be actioned by the applicant to enable them to undertake the development as proposed. The Planning Agreement will require the payment of the contribution prior to the release of the Occupation Certificate for the proposed development. The Draft Planning Agreement is required to specifically reference the subject site and the proposed development and is related only to this development which will be required to be outlined in the Draft Planning Agreement.

It is considered that the development is located in an area which would benefit from any public car park provided by Council as part of its Capital Works Program. It is located within the CBD of Albury and a nexus between the site and proposed public car parks in the CBD can be established.

By proposing to enter into the Planning Agreement process as part of the Development Application, Council considered whether the contribution would assist in offsetting the impacts of the shortfall of parking on this site and considered that it would be appropriate to include a condition requiring the preparation of a Draft Planning Agreement. Final acceptance of the Planning Agreement is required by Council to enable this legal agreement to be effective and for the Development Consent to be complied with. An appropriate recommendation to adopt the condition requiring the preparation of a Draft Planning Agreement with the agreement being executed prior to the issue of a Construction Certificate is included in the draft determination.

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- *If demolition of a building proposed - provisions of AS 2601;*

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

3.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- **Context and setting**
The subject land is zoned E2 Commercial Centre and the mixed use development has been designed to contribute to the visual interest of the streetscape and identity of the locality. Though the development is inconsistent with the surrounding built form in terms of bulk and scale, the proposal incorporates a variety of exterior finishes and materials, which are considered to be compatible with the surrounding buildings.

The development will provide two ground floor commercial tenancies and thirty-two apartments, which will increase the permanent population of the Albury CBD. The proposal will provide for quality CBD living and an active street interface, which is consistent with the Albury LEP 2010 zone objectives and desired future character described by the Albury CDB Masterplan.
- **Access and traffic**

The development proposes two vehicle crossovers, one from Swift Street to provide access into the basement level car park, and one from Arnolds Lane, to provide access to the ground level car park. It is considered that the proposed access points into the site are suitable and will not result in an adverse traffic outcome.

As outlined in the report, there is a shortfall of car parking spaces on site; however, a variation is considered to be supportable as the subject land is located within central Albury and other modes of transport may be utilised by residents. Further, the development proposes a bicycle storage area and there are several multi-level public car parking facilities within walking proximity to the site, should on site car parking be fully occupied.

A condition will be imposed on consent to require the preparation of a Planning Agreement to assist in offsetting the impacts of the shortfall of car parking on this site.

- **Public Domain**

The proposed development requires an alteration to the traffic calming vehicle island and the removal of 1 street tree within Swift Street to facilitate access into the proposed basement level carpark. Though the proposed works will impact upon the public domain, they are considered necessary to facilitate the mixed use development and are found to be supportable in this instance.

Conditions will be imposed on consent to require compensatory planting of 2 super advanced plane trees and that the proposed traffic island alterations in Swift Street are completed prior to the issue of an Occupation Certificate.

- **Utilities**

The subject site is located in an established urban area where the development has access to all necessary reticulated infrastructure and services including water, sewerage, gas, telecommunications, electricity and stormwater drainage. It is understood that there is adequate capacity within these networks to accommodate the development.

- **Heritage**

The application seeks consent to demolish two (2) locally listed heritage items to facilitate the proposed mixed use development, Heritage Item I164 located at 485 Swift Street (Lot PT20 Sec 24 DP 780123), and Heritage Item I166, located at 487 Swift Street (LOT 1 DP 912511).

The applicant has submitted a Heritage Impact Statement (HIS) addressing the proposed demolition of these items (see Attachment 3). The HIS explores the significance of the existing buildings on the subject land including their history of development, past ownership, and use.

Following review of the HIS and referral of the application to Council's external heritage advisor, the demolition of the local heritage items is supported, subject to conditions.

A review of the Aboriginal Heritage Information Management System (AHIMS) database was undertaken, and it is confirmed that there are no recorded items of Aboriginal cultural significance within 200 metres of the subject site.

Heritage impacts are further addressed under Section 5.10 of Albury LEP 2010 and Part 7 – Heritage Conservation under Albury DCP 2010 of this report.

- Other land resources
The proposed development will have no significant impact on any land resources.
- Water/air/soils impacts
The subject land has been subject to previous site disturbance with the development of the existing three buildings. The applicant has submitted a preliminary site investigation outlining that the site is suitable for the proposed development, subject to the submission of a detailed site investigation prior to the issue of a Construction Certificate.

In order to avoid impacts of sediment loss or erosion, an Erosion and Sediment Control Plan (ESCP) will be prepared in accordance with Council guidelines and will be implemented throughout the life of the project to minimise impacts. The erosion and sediment control plan shall demonstrate the capacity of drainage infrastructure to service the development, treat and retard stormwater, and reduce any impacts on soil and water downstream of the proposed development.

Matters regarding erosion and sediment control are considered to be satisfactorily addressed conditions of consent.

- Flora and fauna impacts
The subject land is clear of trees and vegetation; however, there are three (3) mature *Platanus x acerfolia* (Plane Trees) within the nature strip, adjacent to the site. The development proposes the removal of one (1) Plane Tree to facilitate access to the basement level from Swift Street.

The applicant has submitted a 'Tree Assessment Report', prepared by Local Tree Care, which evaluates the health and maturity of the existing street trees and provides recommendations to minimise the impacts of the proposed development.

Though the street tree does form part of an established corridor of tree plantings in Swift Street, the removal of the tree is considered necessary to ensure safe vehicle access into the mixed use development, noting the proximity of existing access points into the adjoining shopping centre complex and Arnolds Lane.

The street tree removal has been reviewed and approved by Council's Streetscapes and Gardens team, subject to conditions, which are detailed under Part 5 – Vegetation Protection of Albury DCP 2010 within this report.

- Natural environment

The development proposes significant earthworks to facilitate the proposed basement level and building footings to support the seven storey mixed use development. The applicant has undertaken a geotechnical investigation of the site which has concluded the land is suitable to support the proposed development (see Attachment 10).

Conditions will be imposed on consent in relation to the management of earthworks and any excavated soils, along with the requirement of a Construction Management Plan, which is considered to appropriately address any potential impacts that may arise when site works commence.

- Noise and vibration

The adjoining subject land is developed for the purposes of a shopping centre complex and there are several noise generators associated with the use of this site. The applicant has engaged Marshall Day Acoustics, who have prepared a letter providing acoustic design advice to address the shopping centre noise impacts (see Attachment 4).

Whilst the letter appropriately identifies noise sources from the adjoining open air car park, basement level car park exhaust fans, roof mounted refrigeration plant and loading dock, it does not provide detailed design advice on how the development will reduce noise to acceptable levels or provide assurance that the recommended measures will be effective.

The letter did recommend that the rear wall on the southern boundary be extended 1m higher than the basement car park exhaust vent, which was raised by Panel members during the site inspection; however, went on to note that this wall alone will not effectively reduce noise levels to comply with NSW EPA *Noise Policy for Industry (2017)*.

To address this concern, a condition is recommended on consent to require a detailed Acoustic Assessment Report which at a minimum addresses the following criteria:

- the name and qualifications or experience of the person(s) preparing the report
- the project description, including proposed or approved hours of operation
- assessment is to be guided by the NSW EPA *Noise Policy for Industry (2017)* and/or other applicable legislation for the development
- results of background and any other noise measurements
- meteorological conditions and other relevant details at the time of the measurements

- details of instruments and methodology used for noise measurements (including reasons for settings and descriptors used, calibration details)
- a site map showing noise sources, measurement locations and potential noise receivers
- noise criteria applied to the project
- noise predictions for the proposed development, at a minimum to include traffic noise including deliveries and waste collection, loading dock noise, supermarket carpark noise and mechanical plant and equipment noise, use of the rooftop swimming pool and other recreation facilities within the building and other noise associated with the development.
- a comparison of noise predictions against noise criteria
- a discussion of proposed mitigation measures, the noise reduction likely and the feasibility and reasonableness of these measures
- how compliance can be determined practically.

In regard to noise impacts during construction, whilst it is expected some noise will be generated during the construction phase of the development, a condition will be included on the consent to limit construction and demolition works between the hours of 7am and 6pm Monday to Friday and 8am and 1pm on Saturdays. No work is permitted on Sundays and Public Holidays.

Once constructed, it is expected that only minimal noise from mechanical equipment to service the mixed use development will be generated.

- **Natural hazards**
The subject land is not identified as contaminated, bushfire prone or flood affected.
- **Safety, security, and crime prevention**
The proposed development has been designed with regard to safety and security of residents. The development incorporates a partially enclosed colonnade along the street frontages of the site, which provides a sheltered pedestrian path and protection for the ground level commercial tenancies.

The ground level entrance to the residential apartments is articulated through an extended awning, which creates an easily distinguishable visual cue for residents and visitors.

The applicant has identified within the SEE that the residential entry and lobby areas are to be secured and well-lit and CCTV will be installed within the site to monitor communal areas, including the roof level, which will further increase the sense of safety for building residents.

The mixed use development will increase pedestrian activity within the area and passive surveillance of Swift Street and Arnolds Lane.

- **Social impact**

The site is suitable for the purpose of the development as demonstrated through site analysis and justification of the development provided with the application.

The development will deliver a mix of two and three bedroom apartments which will increase the diversity of residential accommodation available in the Albury area.

The development is consistent with Albury's Local Housing Strategy, in that it will deliver high quality apartments within a central location.

It is considered that the future occupants of the apartments will benefit from excellent amenity, with access to public transport and public open space, and through the inclusion of quality communal open space within the building, encouraging social interaction between residents.

- Economic impact

The proposal represents continued investment in high quality development in Albury's commercial centre. The proposed mixed use commercial and shop top housing development will deliver additional commercial floor space via two separate ground floor tenancies, and thirty-two residential apartments, which will increase the permanent population and add to the vitality of the CBD. The positive flow-on effects to the regional economy include economic benefit through trades and services during construction in the short term, and additional job opportunities via employment of staff in the commercial tenancies and maintenance of the development in the long term.

- Site design and internal design

The Statement of Environmental Effects identifies the following:

The building has been designed to respond to the varied character of the Swift Street, between David Street and Olive Street utilising upper-level setbacks and a flowing, rhythmic style that does not detract from the heritage significance of surrounding heritage listed buildings. The development achieves a mix of apartment sizes with practical and flexible features that optimises safety and security within the development and the public domain, and achieve a positive relationship between public, communal and private spaces.

The apartments have also been designed to prioritise access to solar and natural cross ventilation. Emphasis has been placed on the liveability of the apartments and passive thermal comforts for heating and cooling reducing reliance on technology and operational costs.

Overall, the development achieves high-quality living arrangements with design excellence. The proposal positively contributes to the character of the CBD's periphery and will activate commercial and retail spaces at street level and support the economic growth in the CBD. The development designs improve safety and surveillance in the locality and will activate 24-hour liability.

Council considers that that the application is accompanied by a Design Verification Statement which satisfactorily addresses the general design principles contained within SEPP 65. The articulation of the external façades through incorporating varying setbacks, columns, materials, and finishes, lessens any perception of bulk, whilst maintaining internal and external amenity.

The inclusion of ground floor commercial floor space will activate the public domain and encourage pedestrian activity and connection to the surrounding retail premises. The extended awning and articulation of the main entrance provides a clear visual cue of the building entry.

The development is considered to be consistent with the desired future character of the area, will add to the visual interest of the streetscape and will contribute to the identity of the immediate locality.

- **Construction**
The potential impacts from construction have been adequately mitigated in recommended conditions or consent.
- **Cumulative impacts**
The proposal will not result in any adverse cumulative impacts. It is generally consistent with the planning controls and key issues have been satisfactorily addressed through design and recommended conditions of consent.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

3.3 Section 4.15(1)(c) - Suitability of the site

The proposed mixed use, commercial and shop top housing development has been designed in response to a detailed site analysis which identified the seven storey building is an appropriate form of development within the locality.

The development, in the form of ground floor commercial tenancies and shop top housing, is permissible with consent in the E2 zone and will add to the vitality of the commercial core. The development is not considered to result in unreasonable adverse impacts on the amenity of nearby properties. Accordingly, the site is considered suitable for the development and is consistent with the desired future character of the area.

3.4 Section 4.15(1)(d) - Public Submissions

Six (6) submissions have been received during the assessment of the application. Submissions are considered in Section 4.3 of this report.

3.5 Section 4.15(1)(e) - Public interest

The public interest is best served by the orderly and economic use of land for appropriate and permissible land uses. In this instance, the proposal represents a land use which is

permissible in the E2 zone and is generally consistent with the relevant planning policy. Though the bulk and scale of the development is out of character within the immediate locality, the Albury CBD is currently under transition, where the multi-level building is considered to be compatible with the desired future character of the area.

The development will deliver economic and social benefits to the broader community through the creation of job opportunities, both during and post construction, and will support the vitality of the commercial core through increased permanent residential population.

The development is designed in a form which is responsive to the existing built form and the surrounding context of the area. The development is considered to be of a high-quality design that proposes a variety of exterior materials and finishes, including earthy coloured brickwork, bronze tinted glazing and timber look clad balcony soffits, which will positively contribute to the streetscape and public domain.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5.

There are no outstanding issues arising from these referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 4: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act) – Not applicable			
Referral/Consultation Agencies			
Electricity supply authority	<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Section 2.48 – Development near electrical infrastructure	Conditions to be imposed on consent to require a minimum safe distance of 1 metre from the existing underground powerline(s) adjacent to the subject land.	Y
Integrated Development (S 4.46 of the EP&A Act) – Not applicable			

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 5: Consideration of Council Referrals

Officer	Comments	Resolved
Transport	<p>Council's Transport officer reviewed the proposal and requested car spaces to be allocated to apartments, the inclusion of an accessible parking space within the basement level car park, and amendments to the bicycle storage area.</p> <p>Further information was also requested in relation to the modification to the pedestrian refuge blister on Swift Street, to enable vehicle access into the basement, and how vehicle queuing in Arnolds Lane will be managed.</p> <p>Amended plans and information has been submitted by the applicant, which has appropriately addressed the concerns raised above.</p>	Y
Engineering	No significant concerns raised. Several conditions recommended to address stormwater discharge rate and treatment, and removal of the existing sewer main at the rear of the site.	Y
Building	No significant concerns raised. Condition recommended to ensure compliance with the National Construction Code (NCC).	Y
Plumbing	No significant concerns raised. Standard conditions recommended.	Y
Environmental Health	No significant concerns raised. Several conditions recommended to manage potential environmental impacts of the development both during construction and post construction.	Y
Environmental Planning	No significant concerns raised in relation to proposed on site landscaping. Several conditions will be imposed on consent to ensure landscaping is maintained in perpetuity of the development.	Y
Water and Wastewater	No significant concerns raised. Several conditions will be imposed on consent to advise of water and wastewater design requirements.	Y
Contributions	Developer contributions have been calculated and applied via condition of consent.	Y
Streetscapes and Gardens	One (1) mature street tree is proposed to be removed. The removal of the plane tree is supportable subject to conditions	Y

	requiring compensatory planting, and that the removal and replacement trees are at the developer's expense.	
Resource Recovery	No significant concerns raised. Several conditions are recommended to ensure the three bin system is implemented on site for both residents and ground floor tenancies once occupied.	Y
Heritage	Council's independent review of the application by Robin Graham resulted in a further information request to the applicant in relation to several matters. Heritage assessed under Section 5.10 of Albury LEP 2010 and Part 7 of Albury DCP 2010 within this report. The applicant has submitted a response agreeing to all recommendations subject to three matters, which have been justified appropriately. See copy of applicant's justification under Section 5.10 of Albury LEP 2010 within this report.	Y
Community Safety Officer	No significant concerns raised. Several general considerations recommended to increase sense of safety for building occupants i.e., inclusion of CCTV, appropriate vegetation within landscaped areas, easily identifiable entrances and exits into the site, etc.	Y

There are no outstanding matters raised within internal referrals that require further comment.

4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 14 August 2023 to 1 September 2023. The notification included the following:

- An advertisement in the local newspaper, The Border Mail;
- Notification on Albury City Council website (Application Tracker);
- Notification letters sent to adjoining and adjacent properties.

The Council received a total of six (6) unique submissions, comprising three (3) objections and three (3) submissions in favour of the proposal. The issues raised in these submissions are considered below. A copy of the redacted submissions is included as Attachment 15.

Council is satisfied that the application has been suitably notified to adjoining landowners to provide the opportunity for any concerns to be raised and considered prior to the determination of the application.

Submissions in favour of the development

Creation of jobs

Submissions received highlighted that the development would result in employment opportunities.

Improvement of the streetscape

Submissions received highlighted that the proposed development would improve the appearance of the streetscape through the demolition of the existing buildings and redevelopment of the site.

Transition of Albury CBD

Submissions received identify that the development will update the 'Central Albury landscape'.

Increased residential density in the centre of the city

One submission highlighted the benefit of increased housing density and welcomed the 'well planned multi storey development' in the commercial centre.

Submissions opposing the development

Loss of heritage buildings

One submission received raised concerns in relation to the loss of heritage buildings, specifically the Abikhair house (485 Swift Street).

Planning comment: The applicant has submitted a heritage impact statement (HIS) which contains the following response in relation to 485 Swift Street:

The subject site at 485 Swift Street is known to be associated with people or a group of people of interest, with 485 Swift Street built as the residence of the Abikhair family and associated with their store, the Abikhair Emporium which was approximately 50m away on the corner of Swift Street and Olive Street. However, the dwelling at 485 Swift Street itself does not tangibly demonstrate any association with the Abikhair family in terms of design, the family have provided correspondence that they do not hold any historical regard for the property. The family is significant for their commercial contribution to Albury and this association is more significantly demonstrated on the nearby commercial shop group on the corner of Swift St which was their commercial stores and property. As such, 485 Swift Street does not demonstrate association with a particular family any more than a typical dwelling.

Following consideration of the HIS and proposed development, the demolition of the heritage buildings is found to be supportable. A condition will be imposed on consent to require a permanent interpretation panel displaying an image of each of the three cottages along with a brief history of the cottages and their association with the Abikhair family, which will be located within an a publicly accessible part of the new building.

Better use of the existing building

One submission has suggested that should the buildings be retained; they could be used for a variety of other land uses.

Planning Comment: Though the request to maintain the existing buildings on the site is acknowledged, it is noted that the subject land is currently underutilised with the existing development on site, with two of the existing dwellings uninhabitable and in a state of disrepair. The submitted HIS contains a detailed analysis of the existing development, and comparison of other similar heritage items within the Albury LGA, and Council has concluded the demolition of these buildings is considered to be supportable.

Overshadowing

One submission raised concerns in relation to the development overshadowing existing roof top solar panels.

Planning comment: The applicant has submitted Shadow Diagrams, which identify the overshadowing impact to surrounding property owners. Following review of these plans, the affected property will receive sunlight access from 11am to 3pm during the winter solstice; consequently, the proposed development will not unreasonably overshadow surrounding development.

Inconsistent with Albury LEP 2010

One submission states the proposal is inconsistent with the objectives of the Albury LEP 2010.

The applicant has prepared the following response:

The proposal:

- *Provides a mix of residential and non-residential land uses which are compatible with each other and surrounding land uses*
- *Facilitates a mixed-use medium density residential development in an appropriate location with access to employment, day to day services and public transport*
- *Proposes mix use living with high amenity values*
- *Strengthens the role of the commercial centre by providing increased employment opportunities both during the construction and future occupation and operation of the commercial tenancies*
- *Ensures a building form, type and scale that is compatible with the desired future character and surrounding built environment and does not detract from the amenity enjoyed by the nearby workforce and residents or the existing quality of the environment*
- *Responds to the changing character of the area and addressing the public domain and activating the streetscape with residential uses above*

Planning comment: The proposal is considered to be compatible with the context of the area. The development is consistent with the Albury CBD Masterplan and Local Housing

Strategy. Further, the development is permissible and is considered to be consistent with the objectives of the E2 zone.

Failure to provide for equitable development opportunities

One submission raises concerns in relation to the side and rear setback of the proposed development to the adjoining land to the east and south of the subject site.

The applicant has prepared the following response, summarised below:

It is firstly important to note that the development complies with all applicable development standards of the LEP including building height and FSR controls applicable to the site, indeed, it is of a lesser build height and scale than that anticipated by Councils planning instruments. It is representative of the scale and design of development appropriate in the context of the CBD an anticipated for the outer commercial core.

The development design followed a detailed site analysis that identified the surrounding land uses and any sensitive private spaces and was designed to protect these areas with appropriate building separation and on structure fixed screening that ensures that the development would not adversely impact any of the areas identified and similarly provide high levels of amenity to the proposed apartments.

A request to vary a development control of the ADG's and/or Councils DCP, in this, and many other instances is generally a representation of the design responding to the site conditions and its context. With specific reference to the Table provided at Page 3 of Submission 6, the setbacks outlined in the ADGs seek to achieve visual privacy in apartment development and the private spaces on adjacent properties. The ADGs provides that visual privacy is achieved with site and context specific design solutions on balance with views, outlook, ventilation and solar access. Setbacks also provide transition between different land uses and building typologies.

The developments design response provides adjoining properties equitable development opportunities and the ability to satisfy the current guidelines for commercial and mixed use development within the core business area of Albury. No assertions have been made regarding any indefinite land uses of surrounding properties and the proposal will not hinder any redevelopment opportunity on those sites.

Planning comment: In relation to separation distances between buildings being equitably shared, it is considered that the land to the east and south of the subject site is currently developed for the purpose of a large-scale shopping centre and ancillary car park.

The development does not meet the 6m setback to the east; however, there is no significant privacy or overlooking concerns given the adjoining land is currently used as a car park and visual screening has been incorporated on this façade.

It is noted that though the rear setback to the outer building wall is 5.925m on levels 2 to 6, the setback to the exterior wall of habitable south facing rooms is 8.95m, which is only 500mm from meeting compliance with the ADG. Therefore, the minor noncompliance for the reduced rear setback is deemed to be an acceptable outcome in this instance.

To ensure the development is an appropriate outcome in the locality, the SRPP appointed an independent Urban Designer to review the development and provide a comment in relation to the proposed reduced setbacks, see below:

The scale of the proposed building is appropriate for the site. The adjacent site is more than 2ha in area. There are no current buildings that require privacy separation. Although the ADG encourages privacy setbacks to be equally shared between sites – given the substantial difference between the areas of the respective sites it is considered that the unequal setback can be supported, and would not in this instance disadvantage redevelopment on the adjacent site or reduce their development potential.

Consequently, Council considers that should the adjoining landowners wish to redevelop in future, there is ample area on site to facilitate a design outcome that is appropriate in scale, bulk, and setback, and that acknowledges the surrounding built form without significantly compromising the amenity of residents living in east or south facing apartments.

Shortfall of onsite car parking

One submission raises concern in relation to insufficient car parking within the site to cater for the anticipated demand, and the adverse impact on other users in central Albury.

The applicant has prepared the following response:

The proposals carparking arrangement has been designed in consultation with Councils planning and traffic engineering officers. It is designed to provide secure and accessible parking for its residents and facilitate and encourage alternate modes of transport. It includes at-grade commercial spaces and back-of-house loading and waste collection areas for improved access and low conflict points. It achieves this through and active and accessible frontages for pedestrian and end of trip facilities including change rooms and shower facilities, and bicycle storage and through site selection to ensure public transport modes including buses are easily accessible. The most significant vehicle generator on the site will be the occupants of the residences. In this regard the development provides satisfactory carparking spaces and a safe and functional point of access.

Planning comment: Chapter 17 of the Albury DCP 2010 relates to car parking, and sets the requirements for various land uses, as well as other design related requirements for the operation and embellishment of car parking. However, SEPP 65 (Section 6A) takes precedence over Council's planning controls, and if a development achieves the standards of SEPP 65, a conflicting or higher standard in Council's controls has no effect and cannot be taken into consideration in the assessment of the development.

The proposal includes a total of 32 apartments, with 18 x 2 bedroom and 14 x 3 bedroom, and two ground floor commercial tenancies. Based on the *Guide to Traffic Generating Developments*, the development generates a demand for a total of 52 car spaces on site.

The development proposes 52 spaces within the basement, and 6 spaces on ground level, being a total of 58 spaces on site. The applicant has expressed their intention to allocate all basement car parking spaces to the apartments; therefore, no visitor car parking is proposed on site. It is anticipated that the ground level car spaces will be used to service the commercial tenancies.

Though the development provides an excess of residential apartment allocated car parking, the development proposes a shortfall of 12 commercial spaces, and 5 visitor spaces, being a total of 17 car spaces.

A variation is considered to be supportable as the subject land is located within central Albury and other modes of transport may be utilised by residents. Further, there are several multi-level public car parking facilities within walking proximity to the site, should on site car parking be fully optimised. Additionally, a condition of consent is imposed requiring the applicant to enter into a Planning Agreement for the provision of off-site carparking.

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

5.1 Noise

The adjoining subject land is developed for the purposes of a large scale shopping centre and there are several noise generators associated with the use of this site. The applicant has engaged Marshall Day Acoustics, who have prepared a letter providing acoustic design advice to address the shopping centre noise impacts (see Attachment 4).

Whilst the letter appropriately identifies noise sources from the adjoining open air car park, basement level car park exhaust fans, roof mounted refrigeration plant and loading dock, it does not provide detailed design advice on how the development will reduce noise to acceptable levels or provide assurance that the recommended measures will be effective.

The letter did recommend that the rear wall on the southern boundary be extended 1m higher than the basement car park exhaust vent, which was raised by Panel members during the site inspection; however, went on to note that this wall alone will not effectively reduce noise levels to comply with NSW EPA *Noise Policy for Industry (2017)*.

Following review from Council's Environmental Health team, a condition is recommended on consent to require a detailed Acoustic Assessment Report prior to the issue of a Construction Certificate which identifies design measures to appropriately reduce noise levels within apartments to acceptable levels. The report will be subject to approval by Council.

Resolution: The issue has been resolved through recommended conditions of consent as outlined in Attachment 12.

5.2 Heritage

As addressed within the report, the application seeks to demolish two locally listed Heritage Items, to facilitate the mixed use commercial and shop top housing development. The applicant submitted a Heritage Impact Statement (HIS) which explores the significance of the existing buildings on the subject land including their history of development, past ownership, and use. Following review of the HIS and referral of the application to Council's external heritage advisor, the demolition of the local heritage items is supported, subject to conditions.

Resolution: The issue has been resolved through recommended conditions of consent as outlined in Attachment 12.

5.3 Non-compliance with Apartment Design Guide

The application proposes several variations to the Apartment Design Guide (ADG) as detailed within the report. The variations related to the following ADG objectives:

- *Objective 3E-1: Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.*
- *Objective 3F-1: Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.*
- *Objective 3J-1: Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.*
- *Objective 3J-2: Parking and facilities are provided for other modes of transport.*
- *Objective 4A-1: To optimise the number of apartments receiving sunlight to habitable rooms, privacy windows and private open space.*
- *Objective 4D-2: Environmental performance of the apartment is maximised*

Following consideration of the requested variations, as detailed within the ADG Compliance Table attached to this report, (see Attachment 13), the development is found to be supportable.

Resolution: The variations proposed are considered to be supportable and they are not anticipated to result in an unreasonable impact to surrounding property owners, the locality, or the future occupants of the building.

5.4 Street tree removal

As addressed within the report, the development requires the removal of one mature street tree to facilitate vehicle access into the basement level car park. Though the street tree forms part of an established corridor of tree plantings in Swift Street, the removal of the tree is considered necessary to ensure safe vehicle access into the mixed use development, noting the proximity of existing access points into the adjoining shopping centre complex and Arnolds Lane. The street tree removal has been reviewed and supported by Council's Streetscapes and Gardens team, subject to conditions.

Resolution: The issue has been resolved through recommended conditions of consent as outlined in Attachment 12.

6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the planning controls and requirements contained within Albury LEP 2010, Albury DCP 2010 and relevant State legislation, and the key issues identified in this report, it is considered that the application can be supported.

It is considered that the key issues as outlined in Section 5 can be resolved with conditions, as shown on the recommended draft conditions at Attachment 12.

Overall, it is concluded that the impacts of the proposed development on the environment and neighbouring properties are reasonable with the development representing investment in Albury's commercial centre, adding to the vitality of the immediate area.

The development is considered appropriate to the context and setting of the site. The proposed development is considered consistent with the objectives of the E2 Commercial Centre zone and the assessment has concluded that the proposed development provides a suitable and satisfactory planning outcome.

7. RECOMMENDATION

That the Development Application 10.2023.40336.1 for Seven (7) Storey Mixed Use, Shop Top Housing Development - Comprising of Thirty Two (32) Apartments, Two (2) Commercial Tenancies, Swimming Pool, Carpark, Demolition of Three (3) Residences (including Heritage Item 164 and 166) & Thirty Four (34) Lot Stratum Title Subdivision and

Consolidation of Existing Titles located at 481 Swift Street (Lot PT20 DP 780123), 485 Swift Street (Lot PT20 Sec 24 DP 780123), 487 Swift Street (Lot 1 DP 912511, Albury, be **APPROVED** pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979*, subject to the draft conditions of consent attached to this report.

The following attachments are provided:

1. Development Plans
2. Statement of Environmental Effects
3. Heritage Impact Statement
4. Acoustic Report
5. Arborist Report
6. Traffic Impact Assessment
7. Preliminary Site Investigation Report
8. BASIX Certificate
9. Essential Energy referral response
10. Applicant response to Submissions
11. Urban Design Review – Smith & Tzannes
12. Draft Determination of Consent
13. Apartment Design Guide – Council Assessment
14. Design Verification Statement & Applicant Assessment of Apartment Design Guide
15. Redacted Submissions