

DA-2023/760/ PPSTH-306 –22-30 Kenny Street, Wollongong

Panel Reference	PPSSTH-306
DA Number	DA-2023/760
LGA	Wollongong City Council
Proposed Development	Mixed use development - demolition of existing structures, tree removal, construction of an 18 storey mixed use building consisting of a hotel with food and drink premises, commercial premises, 107 hotel suites, 105 residential apartments, ground and basement level parking and associated communal open space areas for both the hotel and residential apartments.
Street Address	22-30 Kenny Street, Wollongong
Applicant/Owner	TFR Pty Ltd
Date of DA lodgement	27 September 2023
Total number of Submissions	Three (3)
Number of Unique Objections	First round of notification between 13-27 October 2023 where two (2) submissions were received (including one (1) letter of support). Second round of notification following the submission of revised plans between 29 April – 13 May 2022 and received one (1) further submission.
Recommendation	Approval
Regional Development Criteria (State Environmental Planning Policy (Planning Systems) 2021 – Schedule 6 Regionally significant development)	Clause 2 of Schedule 6, general development over with a capital investment value (CIV) of more than \$30 million is identified as regionally significant development. The CIV values the proposed development at \$59,018,000 (excluding GST).
List of all relevant s4.15(1)(a) matters	<p><b>s4.15 (1)(a)(i) Any environmental planning instruments:</b></p> <p><u>State Environmental Planning Policies (SEPPs):</u></p> <ul style="list-style-type: none"> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>State Environmental Planning Policy No 65-Design Quality of Residential Apartment Development</li> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>State Environmental Planning Policy (Planning Systems) 2021</li> </ul> <p><u>Local Environmental Planning Policies:</u></p> <ul style="list-style-type: none"> <li>Wollongong Local Environmental Plan (WLEP) 2009</li> </ul> <p><u>Other Policies:</u></p> <ul style="list-style-type: none"> <li>Wollongong City-Wide Development Contributions Plan</li> </ul> <p><b>s4.15(1)(a)(ii) (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority:</b></p> <p>N/A</p> <p><b>s4.15 (1)(a)(iii) Any development control plan:</b></p> <p>Wollongong Development Control Plan 2009</p> <p><b>s4.15 (1)(a)(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4</b></p>

	N/A <b>s4.15 (1)(a)(iv) the regulations</b> Clause 61 Demolition
List all documents submitted with this report for the Panel's consideration	<b>Attachments</b> <ol style="list-style-type: none"> <li>1. Full set of architectural plans including landscape and stormwater plans</li> <li>2. DRP comments from 10 November 2023</li> <li>3. Applicant's response to DRP commentary</li> <li>4. Applicant's Clause 4.6 variation – Building separation</li> <li>5. ADG assessment</li> <li>6. Wollongong DCP 2009 assessment</li> <li>7. Recommended conditions of consent</li> </ol>
Clause 4.6 requests	Clause 8.6 Building separation
Summary of key submissions	<ul style="list-style-type: none"> <li>• View, outlook and overshadowing impacts</li> <li>• Traffic and parking</li> <li>• Cumulative impacts of high rise development</li> </ul>
Report prepared by	Rebecca Welsh – Senior Development Project Officer
Report date	17 July 2024

## Summary of s4.15 matters

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

## Legislative clauses requiring consent authority satisfaction

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

## Clause 4.6 Exceptions to development standards

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

## Special Infrastructure Contributions

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

## Conditions

Have draft conditions been provided to the applicant for comment? Yes

## EXECUTIVE SUMMARY

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### Proposal

The proposal is for an eighteen (18) storey mixed-use development comprising ground floor commercial tenancy, a 107 room hotel with ground floor food and drink premises, and 105 residential apartments above two (2) levels of basement parking with ancillary landscaping.

### Permissibility

The site is zoned E2 Commercial Centre pursuant to Wollongong Local Environmental Plan 2009. The proposal is a mixed-use development categorised as hotel or motel accommodation and shop top housing. Both land uses are permissible in the zone with development consent.

### Key assessment issues

- Flooding constraints. The site receives overland flow and floodwaters from adjoining sites, including from a substantial drainage channel that adjoins the rear boundary of the site. The design of the development accommodates the floodwaters received into and through the site by raising the ground floor of the building, providing flood doors to the entrances on Kenny Street, and constructing a defined overland flow path adjacent to the northern boundary to prevent offsite impacts.
- Ground level design and public domain impacts. The site is burdened by a drainage easement in the northern part of the site and must cater for significant overland flow paths through the site. Accommodating these constraints while presenting a positive streetscape outcome has been achieved through landscaping that is compatible with the flood function of the site in the form of a green wall.
- Interface with adjoining properties.
  - o The adjoining lot to the north at 20 Kenny Street is an at-grade car park which forms part of 25 Atchison Street (Haatch – commercial building). Beyond that at 18 Kenny Street is a single storey commercial building (Wollongong Yoga Centre) and at 16 Kenny Street is a single storey commercial building currently used as a retail premises. The development does not create any isolated lots to the north.
  - o The communal area at 27 Atchison Street adjoining the site to the rear is located at ground level (elevated for flooding reasons) in the north-eastern corner of the site.
  - o Shadowing impacts will occur to the neighbouring properties to the rear/west. The built form has been amended to provide chamfering of the northern part of the building to retain morning sunlight access to the adjacent buildings.
  - o Existing expansive views that have been enjoyed over time while the area undergoes a transition to higher density development will be impacted however, it is difficult to protect views in the context of the applicable city centre planning controls. The development as proposed is of a scale anticipated by Wollongong LEP 2009 and compliant with FSR and height controls. Some angled view corridors will be retained through the site noting that the 12m setback to the side boundaries is above the minimum 9m required at lower levels. To minimise the loss of north-easterly views from the western properties, the building is chamfered which will provide for reasonable view sharing.
  - o A condition is recommended to require the hotel operator to adhere to the Plan of Management to mitigate potential amenity impacts .
- Contamination and remediation of the site. Further sampling to address data gaps and a Remedial Action Plan will be required as recommended in the submitted Detailed Site Investigation report.
- Design excellence
- Clause 4.6 LEP development departure to building separation, see discussion at Section 2.1.6
- Public submissions.
- Separate approval under the Water Management Act will be required for basement dewatering.

### RECOMMENDATION

It is recommended that the application be approved subject to the recommended conditions in **Attachment 7**.

## 1 APPLICATION OVERVIEW

### 1.1 DETAILED DESCRIPTION OF PROPOSAL

Approval is sought for an eighteen (18) storey mixed-use development comprising a 107 room hotel with associated food and drink premises, with shop top housing above containing 105 residential apartments.



The proposal comprises the following:

#### Site preparation

- Demolition of all structures and surfaces on the site
- Tree removal is proposed (four (4) x trees in the north-western corner of the site) and the existing street tree is to be retained and protected during works.
- Earthworks for excavation of the construction of the two basement levels
- Further testing and classification of soil waste in accordance with recommendations of contamination report.

#### Works / Construction / building details

The proposed mixed-use building is eighteen (18) storeys with two (2) basement levels. A breakdown of each level is provided below:

Level	Details
Basement 2	87 resident parking spaces and associated storage
Basement 1	22 resident spaces and associated storage 21 residential visitor spaces 33 hotel spaces (accessed via secure boom gate) Separate hotel and residential lifts and lobbies Residential waste rooms
Ground floor	One (1) commercial tenancy Hotel lobby including reception, manager's office, staff room, toilets and storage areas. Hotel dining/lounge and associated commercial kitchen Residential lobby

	<p>Loading dock</p> <p>Commercial waste room</p> <p>Hotel parking (24 spaces) and commercial parking (3 spaces) sleeved behind the ground floor.</p> <p>A drop off zone for hotel guests and driveway access to basement along the northern side of the building</p>
Levels 1-3	<p>107 hotel rooms and ancillary areas:</p> <p>L1 – 35 hotel rooms with outdoor areas including pool and deep soil podium planting</p> <p>L2 – 36 hotel rooms</p> <p>L3 – 36 hotel rooms</p>
Level 4	<p>4 residential apartments</p> <p>Communal open space for residents, including a gym</p>
Level 5	7 residential apartments
Levels 6-15 (typical)	9 residential apartments per floor (90)
Level 16	<p>4 x two storey residential apartments</p> <p>Communal open space, including swimming pool</p>
Level 17	Upper floor of 4 x two storey apartments
Roof level	Non trafficable roof with solar panels

#### Traffic, parking, and servicing

- 190 parking spaces over the ground floor and two basement levels comprising:
  - 109 residential spaces
  - 21 residential visitor spaces
  - 3 Commercial spaces
  - 21 hotel spaces
  - 3 hotel staff spaces
- Motorbike and bicycle parking is also provided for residents and non-residential uses
- Vehicle access is via two driveways, the southern driveway providing access to the loading dock and the northern driveway accessing ground floor hotel and commercial parking, and access to basement parking for hotel guests and residents (each separated by secure boom gates)
- Servicing e.g. waste, deliveries will be carried out within the site at the ground level loading dock accessed from the southern driveway

#### Use and operational detail

##### *Food and drink premises*

- A hotel dining/lounge is proposed in association with the hotel providing access to food and drink for guests (no room service is proposed).
- Hours of operation 7am to 9pm daily

##### *Hotel*

- Operated as a 3 star hotel with 107 hotel rooms/suites
- Up to 20 employees (6-8 staff at any one time)
- Reception will operate during 8am-6pm with electronic swipe cards used to control guest movements outside these hours
- Outside reception hours guests will check in remotely

## DA-2023/760/ PPSTH-306 –22-30 Kenny Street, Wollongong

- Hotel rooms will not be serviced by food and drink, but guests can use the ground floor café
- A Plan of Management has been prepared that outlines operational responsibilities and requirements, dealing with issues including amenity impacts (e.g. noise and guest management), safety and security measures, ongoing maintenance, complaints management, and car parking.
- A Hotel operator will be appointed to manage all aspects of the hotel including reception, car parking, hotel rooms, communal areas, guest amenities and the street frontage. Management agreements between the food and drink premises and the hotel operator will be in place to cater for guests.

### Development detail

The following table provides a numerical overview of the development:

Use	Levels	Gross Floor Area (m <sup>2</sup> )	No. of dwellings/type
<b>Residential</b> (in the form of shop top housing)	Ground (lobby) and L4- L17	11,077	105 units comprising 1B – 12 (11%) 2B – 56 (53%) 3B – 34 (32%) 4B – 3 (4%)
<b>Hotel</b> (excludes non-residential)	Ground level - L3	5357.9	107 rooms
<b>Commercial premises</b> (excludes non-residential)	Ground	165.5	-
<b>TOTAL (Non-Residential)</b>	-	5523.4	-
<b>TOTAL</b>	18	16,601.15	-

## 1.2 BACKGROUND

### Known Development history

<b>24 Kenny Street</b>		
BA-1971/701	Offices And Showroom	Approved 03/05/1971
<b>30 Kenny Street</b>		
DA-1965/365	Mobile gantry	Approved 20/12/1965
DA-1966/264	Rent A Car Depot	Approved 25/7/1966
DA-1983/794	Warehouse & Office	Approved 10/02/1984
DA-1985/488	2 storey Commercial Office block	Approved 12/09/1985
DA-1988/295	Ground floor office fit-out	Approved 27/04/1988
DA-1988/382	Office fit-out/partitioning	Withdrawn 24/06/1988
DA-2015/166	Business Premises- use of ground floor for indoor recreation facility and associated signage	Approved 30/07/2015
<b>24-30 Kenny Street</b>		

## DA-2023/760/ PPSTH-306 –22-30 Kenny Street, Wollongong

PL-2021/91 (pre-lodgement meeting)	Mixed Use Development	08/07/2021
DE-2021/82 Pre-lodgement DRP	Mixed Use Development	07/07/2021
DA-2022/14	Demolition of existing building /structures and construction of an 18 storey mixed use development including hotel	Approved by SRPP on 21/12/2022
<b>22-30 Kenny Street</b>		
DE-2023/52 Pre-lodgement DRP	Mixed Use development for hotel, commercial and shop top housing development encompassing the additional lot at 22 Kenny Street.	Meeting was held on 16 June 2023

### DA-2023/760 Timeline

- DA-2023/760 was lodged on 27 September 2023 and publicly exhibited between 13 October and 27 October 2023.
- The Design Review Panel (DRP) was held on 10 November 2023 and the DRP commentary issued to the applicant on 21 November 2023.
- Council issued a letter requesting information on 22 December 2023, with a further letter outlining stormwater and flooding issues on 30 January 2023.
- A revised package of information was uploaded to the Planning Portal on 15 April 2024. The main changes to the design of the development was a chamfering of the tower form in response to DRP and Council comments. This design change led to changes to the setbacks of the tower to the western (rear) boundary.
- The revised plans were publicly exhibited between 29 April and 13 May 2024.
- Further revised plans were received on 12 June 2024 to address flooding, waste and design issues mainly relating to hotel servicing.

### 1.3 SITE DESCRIPTION

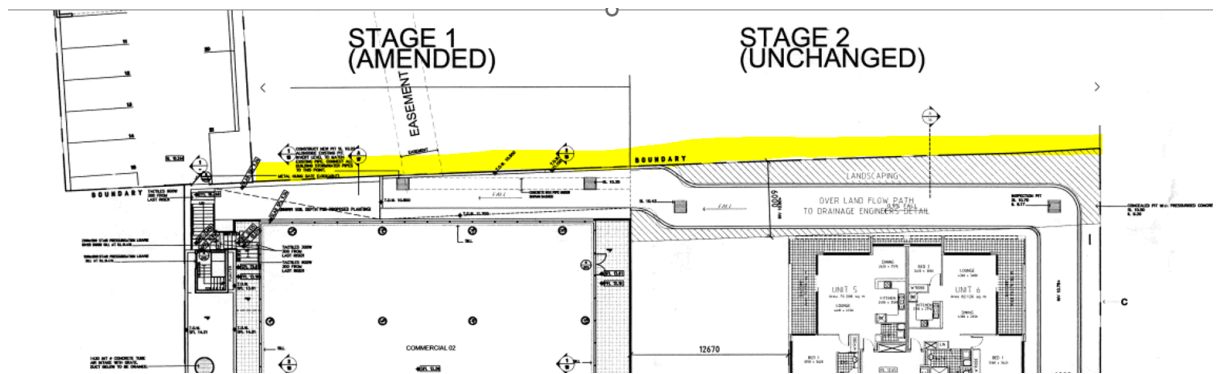
The site comprises three allotments described as 22, 24 and 30 Kenny Street, Wollongong (Lot 1 and Lot 2 in DP 543836, Lot A DP 154564 and Lots 2 and 3 in DP555229). The site is on the western side of Kenny Street, has an area of 3833.5sqm, with a combined frontage width of 76m. It is generally rectangular in shape with the northern and southern boundaries having a depth of 50m and a fall of approximately 1m from rear (west) to front (east).

22 Kenny Street is currently occupied by the Illawarra Aboriginal Corporation. 24 Kenny Street is a single storey commercial building currently occupied by a health services facility and 30 Kenny Street is a two storey commercial building occupied by a gymnasium and St Johns Ambulance.

Adjoining development is as follows:

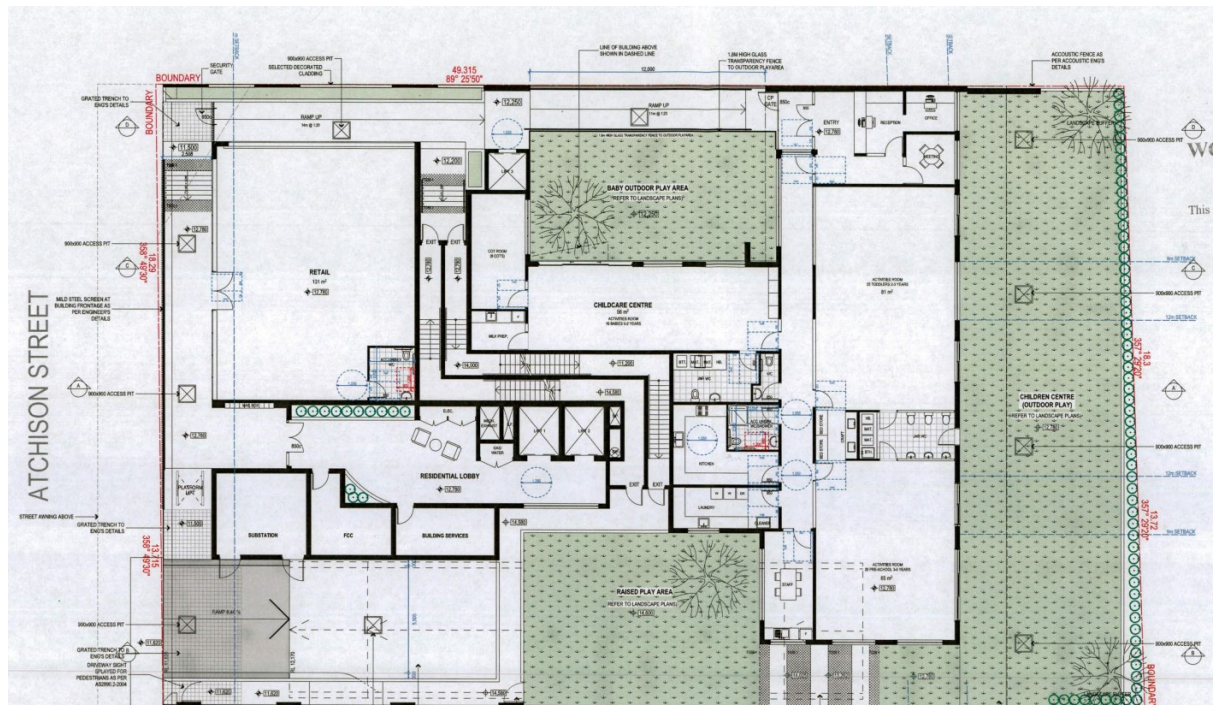
- North: At grade car park which services a commercial building at 25 Atchison Street
- East: Kenny Street road reserve, with a mix of commercial uses to the east including recently completed shop top housing at 35 Kenny Street and a (Court) approved shop top housing development opposite the site at 23 Kenny Street currently under construction.
- South: Vehicle repair station at 32 Kenny Street
- West: 27 Atchison Street is located directly to the rear of the site and is known as 'Stella Apartments'. This building was approved under DA-2004/2281 (as modified) and has a minimal~6m setback to the shared boundary. A formed concrete drainage channel located along the south of 27 Atchison Street and running along the rear of the site was incorporated into this development as shown in Figure 1 below. This drainage channel connects into a drainage easement burdening 22 Kenny St. The shared boundary is shown below (i.e. rear boundary of subject site highlighted):





**Figure 1:** Approved development at 25-27 Atchison Street under DA-2004/2281 (as modified). This ground floor plan shows the location of the drainage channel along the southern side of 27 Atchison Street and running north-south at the rear of the subject site.

31 Atchison Street is a thirteen (13) storey shop top housing development adjoining the site to the west and south-west, incorporating a childcare centre at podium level (Court approved DA-2016/10). The approved ground floor plan (RL12.8) is shown in Figure 2 below. Upper levels have a minimum 9m setback to the rear boundary.



**Figure 2:** Ground floor of 31 Atchison Street, to the south-west of the site

The locality is characterised by smaller scale older commercial uses with emerging higher density mixed use developments including residential towers.

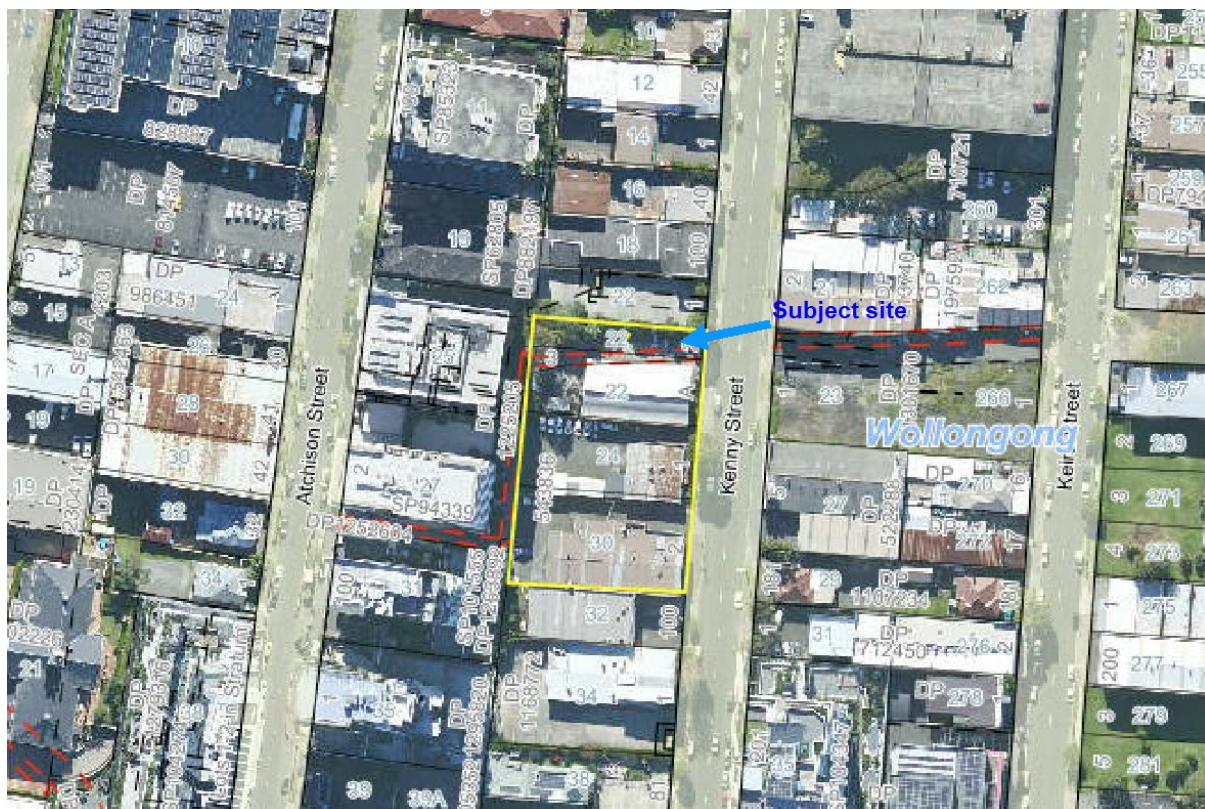


## DA-2023/760/ PPSTH-306 –22-30 Kenny Street, Wollongong

The site is zoned E2 Commercial Centre under Wollongong LEP 2009. An aerial photo and zoning map of the site are shown below:



**Figure 3:** Wollongong LEP zoning map



**Figure 4:** Aerial photo

### Property constraints

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

- **Flooding:** The site is identified as flood risk precinct classification under review. The flood report submitted identifies the site as being located within a medium flood risk precinct. Council's



## DA-2023/760/ PPSTH-306 –22-30 Kenny Street, Wollongong

Stormwater Officer has reviewed the application in this regard and has given a satisfactory referral subject to conditions.

- Lots 2 and 3 in DP 555229 (over 22 Kenny Street) are burdened by a 3m wide drainage easement traversing the site from west to east.



**Figure 5a.** View of 22 Kenny Street (Illawarra Aboriginal Corporation) looking south-west with adjoining car park to the north of the site on right hand side. This photo shows neighbouring sites to the rear (from right to left) as 25 Atchison Street (commercial building), 27 Atchison Street (residential apartments), 31 Atchison Street (shop top housing). 35 Atchison Street is on the far left of the photo which does not share a boundary with the subject site.



**Figure 5b.** View of 24 and 30 Kenny Street looking north-west with the street tree to be retained on right hand side of photo.



Figure 2. 25-29 Atchison Street Flood Mitigation Channel Weir.

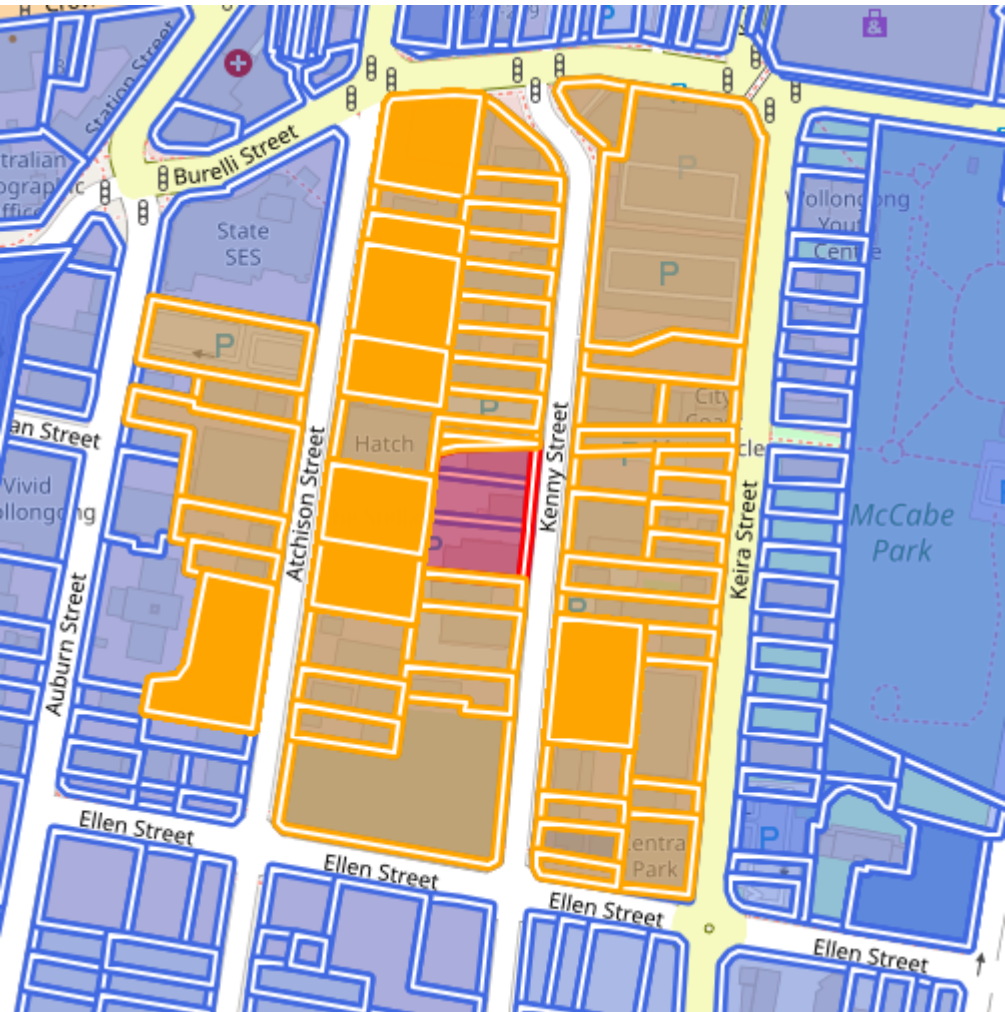
**Figure 5c.** Existing drainage channel at rear of 27 Atchison Street (Source: ATB Consulting Engineers flood report submitted with the current application)



1.4 SUBMISSIONS

The application was notified in accordance with Council’s Community Participation Plan 2019.

The notification between 13-27 October 2023 received two (2) submissions (including a letter of support). Revised plans were renotified between 29 April-3 May 2024 where one (1) further submission was received. The following affected properties were notified:



**Figure 6:** Notification map (subject site marked in red with properties notified shown in orange)

The issues raised in the submissions from both notification processes are discussed below.

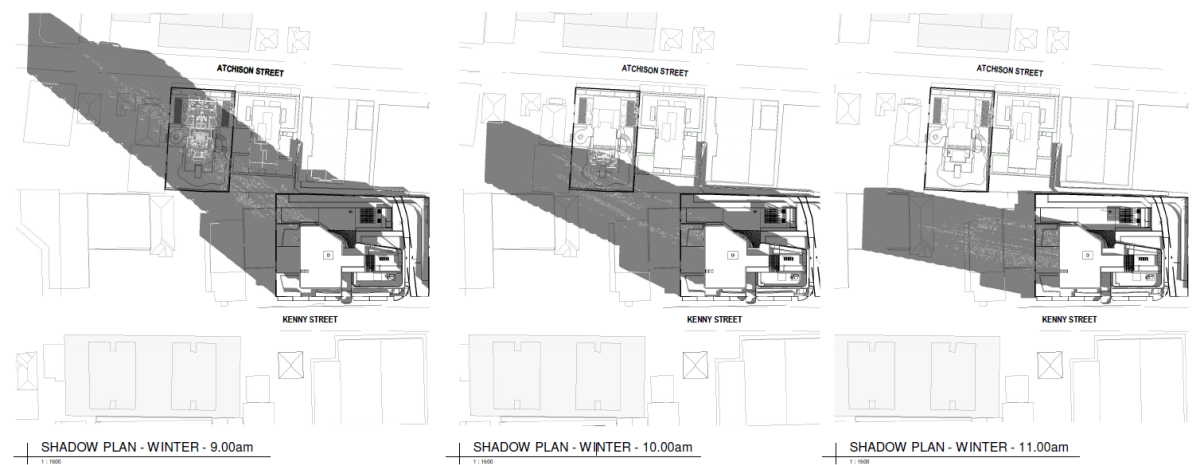
**Table 1: Submissions**

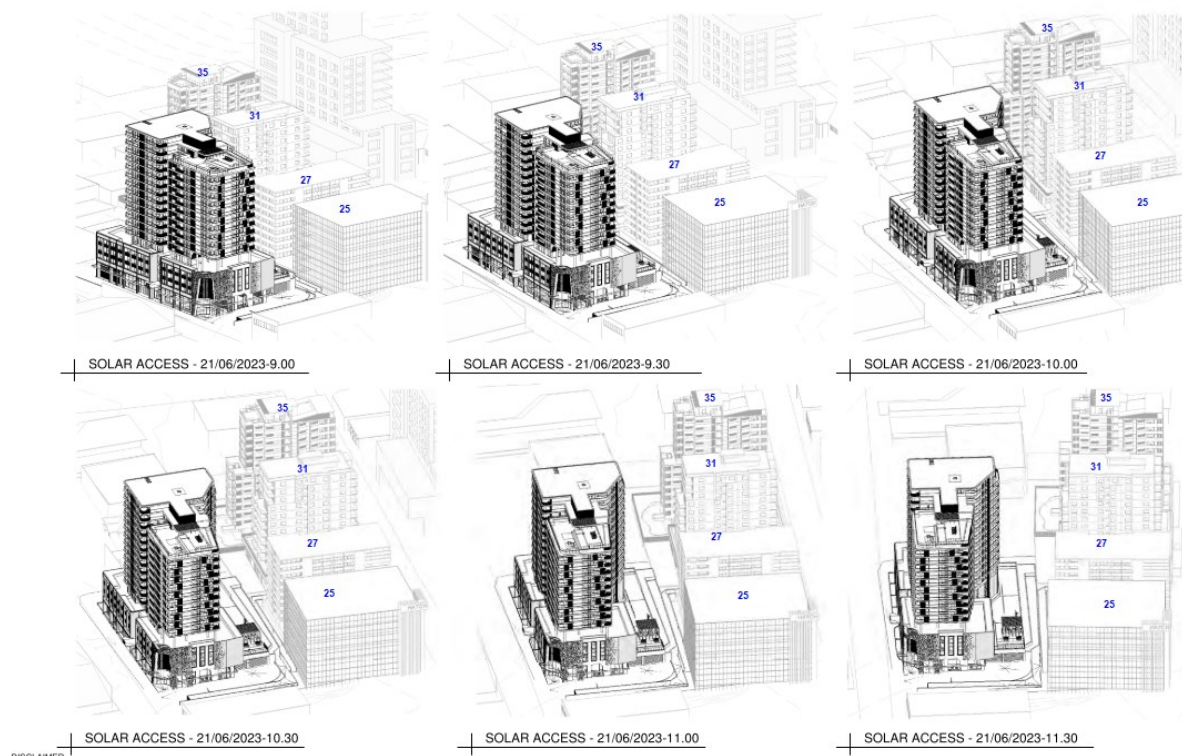
Concern	Comment
Concern over tall (21 storey and 18 storey) buildings and the devaluing of property.  This only adds to the approved bus terminal to be relocated in Atchison St.	<p>The surrounding area has undergone significant change in recent years with the construction of multiple high rise buildings. The emerging built form is consistent with the intended outcome as set by the planning controls under WLEP 2009.</p> <p>The proposed development does not exceed the maximum building height of 60 metres.</p> <p>It is unclear what specific concerns are associated with the bus terminal (appears to be a reference to devaluing of property), noting that this is not of relevance to the current application. Impact on property values are not a direct consideration under Section 4.15 of the Environmental Planning and Assessment Act.</p>

Concern	Comment
Concern with the number of high rise apartments  Impacts on views, outlook, natural light and shadowing for residents to the west.	<p>Concerns were raised in relation to impacts on buildings to the west but not directly adjoining the subject site. Easterly and north-easterly views towards the coast would be partly impacted by existing buildings at 31 and 35 Atchison Street.</p> <p>Given that a 60m height limit applies in this part of the city centre, impacts on outlook and views are inevitable. The proposed development will contribute further to view loss from apartment buildings in the vicinity of the site, noting these impacts are similar to the impacts affected buildings had at the time of their construction.</p> <p>With regard to the proposed development, overall bulk as expressed by floor space ratio, building height and setbacks comply. In this regard the impacts are considered reasonable as the proposed building reflects the anticipated built form.</p> <p>An assessment of overshadowing and view impacts from the development against the planning principle can be found below this table (for ease of reading).</p>
Traffic impacts and loss of on-street parking in adjacent streets, particularly when considered with surrounding developments approved & under construction.	<p>Council's Traffic Engineer has assessed the proposal in relation to traffic and parking impacts and no concerns have been raised, cumulative or specific to the proposed development. A minor increase in the number of vehicle trips will result from the development which can be readily accommodated on the road network.</p> <p>The development reduces the driveways from three vehicle access points (one per existing lot) to two driveways to service the development which will not reduce the available on-street parking along the frontage of the subject site.</p>

Overshadowing impacts

The applicant's shadow diagrams are included in full as part of **Attachment 1**. The plans indicate that the adjoining shop top housing developments to the west of the site at 27 and 31 Atchison Street and 35 Atchison Street further south will be overshadowed in the mornings in midwinter (i.e. when the worst overshadowing impacts occur):





**Figure 7:** Overshadowing impacts in midwinter

The sun-eye view diagrams indicate that overshadowing will impact east facing units at 27, 31 and 35 Atchison Street at 9am. By 9:30am there are no impacts to 27 Atchison Street, however 31 and 35 Atchison Street are still partly overshadowed. Windows to living areas will receive sunlight at 9:30 to 31 Atchison Street. By 10am, solar access to 31 Atchison Street is not overshadowed by the development and solar access is available to the majority of rear units at 35 Atchison Street noting they have living room windows facing north.

The shadowing impacts on the childcare centre at 31 Atchison Street indicate that from 10am, solar access is available (as shown above).

These buildings have units oriented to the west and to the east to receive either morning or afternoon sunlight access, as they are all overshadowed by the existing buildings to their north. In the city centre context sunlight access is more difficult to protect where the planning controls anticipate large buildings. Substantial changes to the proposed building would be required to remove overshadowing impacts entirely. Significant design changes have been made following Council and DRP comments, namely the chamfering of the northern tower which results in a more site responsive design that lessens the overshadowing impacts when compared to the original design. Given the building is consistent with the form of development and the building envelope largely anticipated by the planning controls for the site, requiring further design changes is not warranted.

#### View impacts

View loss was raised as a concern in one (1) submission, however no detailed discussion on the extent of the view impacts were outlined. The concerns related to the cumulative impact of view loss as recent approval or construction on a number of development sites were referred to in the submission.

The Land and Environment Court has set a Planning Principle to assess view sharing based on the court case *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140. This planning principle has adopted a four-step assessment which will be used to evaluate view loss arising from the proposed development.

#### *Tenacity principle*

The 4 step *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 planning principle assessment is outlined as follows:

#### *Step 1 – Assessment of views to be affected*

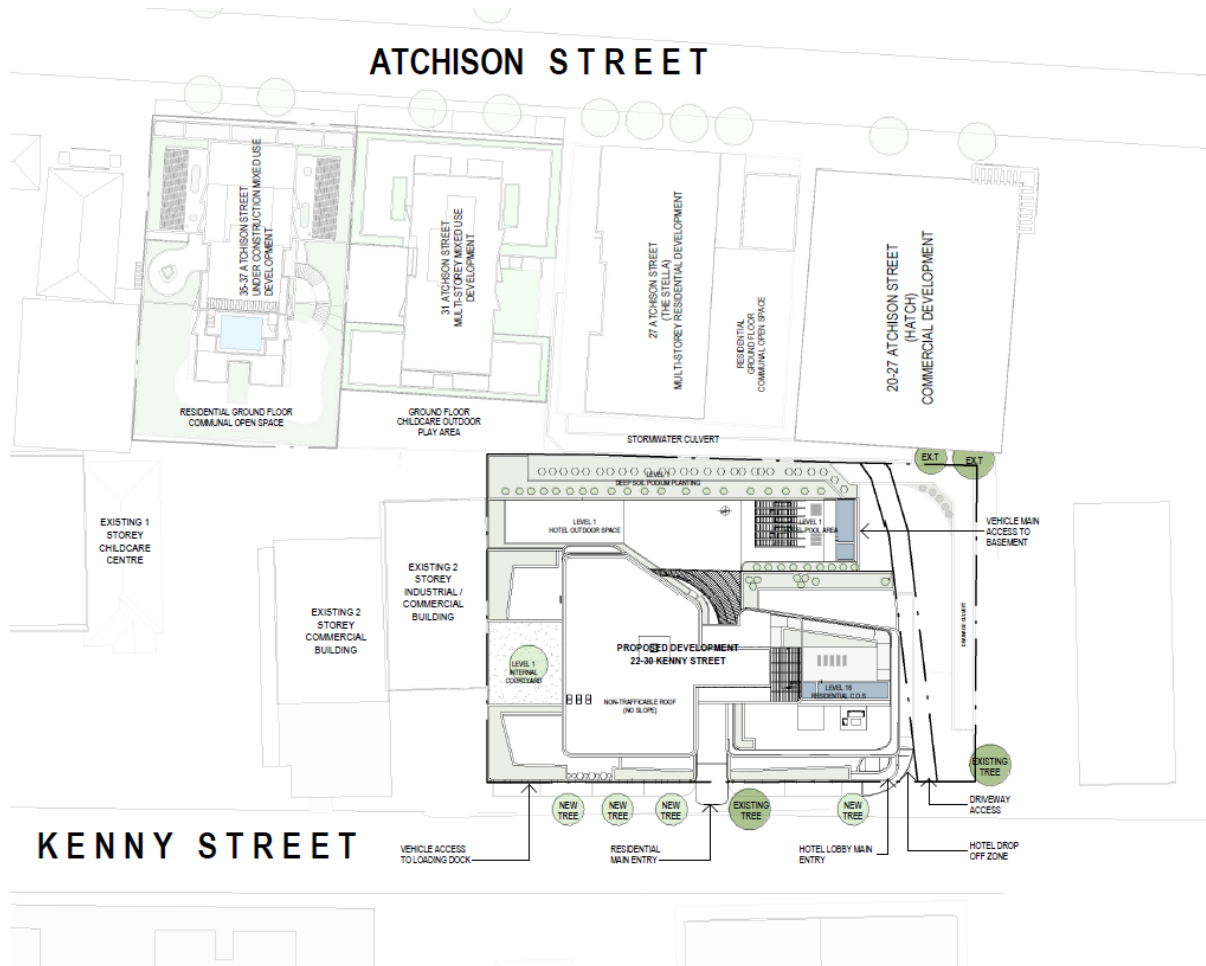


## DA-2023/760/ PPSTH-306 –22-30 Kenny Street, Wollongong

The proposed building will impact on existing available views from surrounding buildings, including distant views towards the coast from the adjoining buildings at 27, 31 and 35 Atchison Street (to a lesser degree) as well as further west on Atchison Street.

Affected views from the apartment building at 27 Atchison Street and 31 Atchison Street, Wollongong includes distant ocean views, noting that the site is over 1km from the coast.

The most affected views will be from the east facing units at 27 Atchison Street as the positioning of the building aligns with the proposed tower, as shown below:



**Figure 8:** Site plan showing the position of the proposed tower in relation to Atchison Street neighbouring buildings

### *Step 2 – What part of the property are the views obtained?*

The views most directly affected are obtained from the east facing balconies and living areas of 27 Atchison Street. It is noted that no submissions were received from this building. The typical floor layout for this building has two units oriented east with living areas and balconies in the north-east and south-east corners.

More oblique views are available from 31 Atchison Street, noting this site shares a small portion of the site's rear boundary (length of 8 metres) so will largely retain existing easterly views.

### *Step 3 – Assess the extent of the impact*

The proposed development will obstruct existing easterly views from 27 Atchison Street, with direct eastern views being blocked by the position of the tower as indicated by Figure 8 above. Existing views through the 12m side setbacks and partial views through the double height communal open space on Level 4 will be possible from some of these units. The chamfering of the northern part of the tower will facilitate some view sharing to the north-east.

As a proportion of the views lost, the impact on views lost will vary between surrounding buildings and will likely range from moderate to severe. Coastal views will continue to be impacted as redevelopment of sites east of the subject site occur over time where further view loss is likely to occur.

*Step 4 – Assess the reasonableness of the proposal that is causing the impact*

The development will result in a significant loss of distant coastal views from 27 Atchison Street and impacts are limited to north-easterly views from 31 Atchison Street to the south-west of the site. The site is located over 1km from the coast where large scale buildings are anticipated between the affected buildings and the coast. Existing expansive views that have been enjoyed over time while the area undergoes a transition to higher density development will be lost however, it is difficult to protect all views in the context of the applicable city centre planning controls.

The development as proposed is of a scale anticipated by Wollongong LEP 2009. The proposed development is compliant with the 60m height limit applicable to the site and the height is realised through consolidation of three existing allotments and the proportion of non-residential uses proposed (which is incentivised under the floor space ratio controls). The 60m building height exceeds the height of the adjoining buildings, despite the same height limit applying. The proposal is compliant with the floor space ratio for the site. The proposed 14m rear setback to western boundary is above the minimum required 9m setback under the Apartment Design Guide up to 25m (L4-7) which provides for some angled view corridors to be retained through the site (i.e., to the north-east and south-east).

To minimise the loss of eastern coastal views from the western properties, the side setbacks would need to be substantially increased. Given the development complies with these built form controls, requiring design changes would compromise the efficient use of the land to achieve the development potential available.

On balance the view impacts are acceptable.

## **1.5 CONSULTATION**

### **1.5.1 INTERNAL CONSULTATION**

#### **Geotechnical Engineer**

Council's Geotechnical Officer has reviewed the application, including the preliminary assessment report prepared by Aargus dated 19 September 2023. The designs of excavations will require supporting geotechnical advice and supervision. Conditions of consent were recommended and are included in **Attachment 7**.

#### **Stormwater Engineer**

Council's Stormwater Officer has reviewed the application, including the flood study submitted by ATB Consulting Engineers Pty Ltd dated 11 June 2024 and the Stormwater plans prepared by ATB Engineering. A satisfactory referral was given noting that design changes have been incorporated into the design to address flooding and stormwater matters, particularly in relation to the ingress of water from the adjoining drainage channel to the west of the site. Conditions of consent are recommended which have been included in **Attachment 7**.

#### **Traffic Officer**

Council's Traffic Officer has reviewed the application in relation to traffic, parking and vehicle manoeuvrability and waste collection and has been found satisfactory. Conditions of consent were recommended and are included in **Attachment 7**.

#### **Environment Officer**

Council's Environment Officer has reviewed the application in relation to site contamination, groundwater, acoustic matters (during works and operational), Water Sensitive Urban Design, wind impacts, sustainability and construction management.

Further information was required on contamination, groundwater assessment, noise and vibration impacts and sustainability issues. Where these issues have not been addressed, they are considered capable of being dealt with through appropriate conditions of consent. Relevant conditions include:

- Separate approval being obtained under the Water Management Act for basement dewatering;
- An Amended Detailed Site Investigation (DSI) and Remedial Action Plan to address data gaps as recommended in the submitted DSI;
- A site specific noise and vibration management plan that addresses the Geotechnical Report will be required to be submitted to Council prior to commencing any works;

- Recommendations requiring the commitments of the ESD Report to be met.

Conditions relating to the above environmental matters are included in **Attachment 7**.

#### **Landscape Officer**

Council's Landscape Officer has reviewed the application and given a satisfactory referral subject to conditions of consent, including suitable street tree protection measures and additional street tree planting. Tree removal in the north-western corner of the site has been supported. Conditions of consent were recommended and are included in **Attachment 7**.

#### **Heritage Officer**

The site is not an identified heritage item nor in the vicinity of a heritage item, aside from MacCabe Park which has frontage to Keira Street (one street away from Kenny Street to the east). No adverse impacts on MacCabe Park are anticipated from the development, noting that the building will not overshadow the park. No heritage conditions apply.

#### **Community Safety**

Council's Community Safety Officer has reviewed the application and made some recommendations regarding landscaping and sightlines to communal areas and lighting which are incorporated in the conditions of consent.

### **1.5.2 EXTERNAL CONSULTATION**

#### **Transport for NSW**

The application was referred to TfNSW under the provisions of Clause 2.122 and Schedule 3 of the SEPP (Transport and Infrastructure) 2021 – Traffic-generating development however it is noted that Kenny Street is not a classified road, nor does it connect to Crown Street, being the nearest classified road. No objections were raised by TfNSW in their response dated 19 October 2023, where they noted that the referral criteria under Schedule 3 are not met. No conditions were recommended.

#### **Endeavour Energy**

Endeavour Energy was referred the proposal and has provided a satisfactory response. Standard conditions regarding utilities and servicing form part of the recommended conditions identified in **Attachment 7**.

#### **Design Review Panel**

The application was reviewed by the Design Review Panel with regard to the LEP design excellence provisions and the requirements of the SEPP (Design Quality of Residential Apartment Development) 2002.

One DRP meeting was held prior to lodgement of the current application. A DRP meeting was held following lodgement on 10 November 2023 which forms **Attachment 2**. The Panel made the following recommendations:

*The brick base of the building has been developed to provide a positive contribution to the street, whilst responding to the program of the building and providing clearly defined entries to the hotel and residential tower.*

*The stepping of the tower form is also a positive initiative that assists in providing a more balanced tower composition. However, the tower form must be developed to respond to the finding of the site analysis. To meet Council's design excellence criteria the form of the tower must be modelled to reduce the extent of over shadowing of the western neighbours. Further consideration / development of the following issues are also recommended:*

- *The slot provided in the Kenny Street tower frontage is extended through to the western façade to create two clearly defined building forms.*
- *Further refinement of the northern and southern edges of the building base.*
- *Resolution of northern easement and forecourt space generally, to contribute to an amenable and active entry to the hotel and reduce the impact of the culvert on the aesthetic quality of the forecourt.*
- *Further development of the tower expression / materiality*
- *Detail refinement of all COS areas and hotel outdoor spaces.*

- Further refinement to provide ADG compliant natural cross ventilation.
- Further refinement to improve the amenity of residential units and hotel rooms / circulation areas.
- Alignment of openings in western façade (levels 1 to 3) with hotel lift lobby.
- Further information to document material finishes and services.
- Incorporation of environmental initiatives.

The applicant's response to the DRP commentary forms **Attachment 3**.

The revised design was not reviewed by the DRP however, consideration has been given to both the DRP commentary and the applicant's response. Council's in-house architect has reviewed the revised plans and provided the following comments:

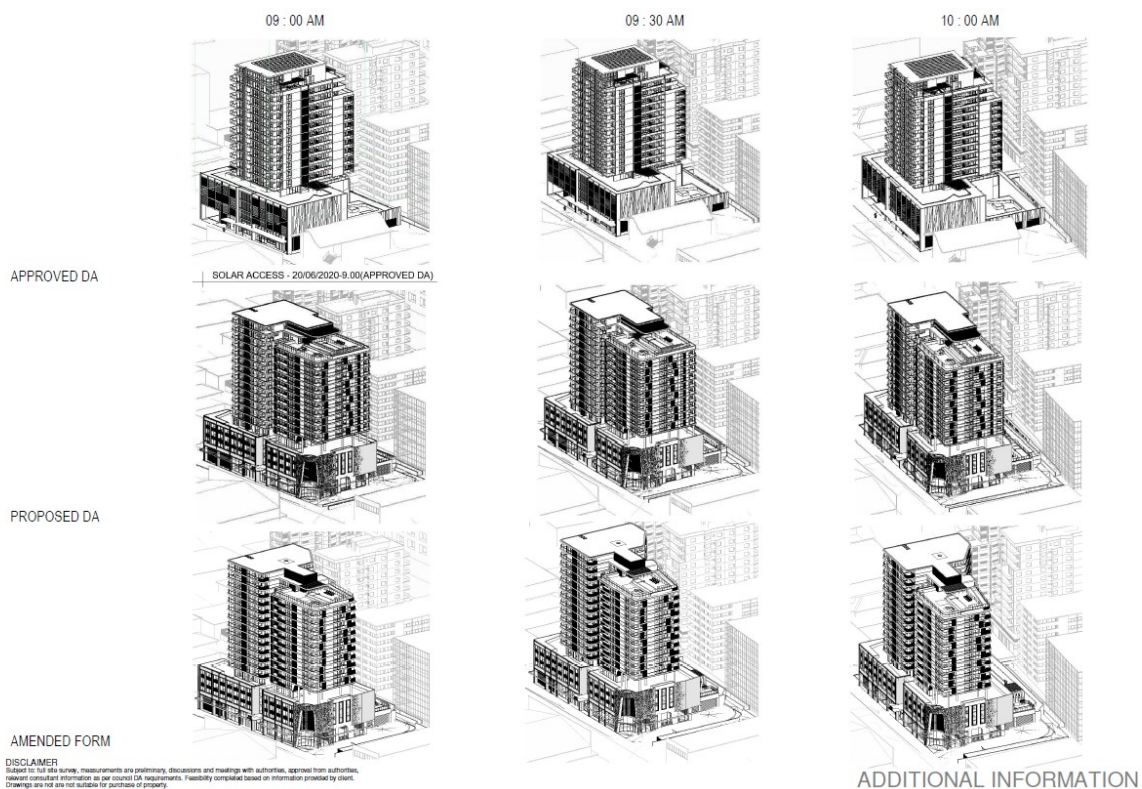
1. *The DRP commented on the lack of detail provided for the potential future built forms of neighbouring developments, with focus on the site immediately to the south, and how the proposal related to the future forms. Additional streetscape elevations and axonometric views (drawing numbers 05 to 08) were provided by the applicant, demonstrating how the future built forms including podium levels interface with the proposal in the broader streetscape. The additional drawings show how the podium could be continued at the street boundary towards Ellen St, and how ADG-compliant amenity objectives would be allowed to the neighbouring sites. No further issues have been noted. The provided information is considered sufficient and satisfies the concerns raised.*
2. *Solar access to the neighbouring developments (both existing and potential future forms) was noted by the DRP as a key concern. This included to residential units, as well as to the neighbouring childcare centre to the south-west of the site. The applicant submitted a significantly amended design following the DRP meeting of 10 November 2023, which included more sculptural and tapered tower forms. The amended tower design narrowed the northern portion of the tower, and tapered the wider southern portion of the tower, to allow greater solar access to the neighbouring developments to the south and west (refer to drawing 096 to 098 for comparisons). This is a significant design improvement and is welcomed and resolves the concerns.*
3. *The DRP commented on the entrance and access arrangements to the lobbies and hotel spaces, including the door spacing, access ramps, paths of travel, amount of steps, and flood response at the commercial frontage. The resubmitted application provided very minor amendments to doors and ramps only. In discussion with Council's flood engineers the commercial tenancy could not extend over the service entrance driveway - which was to remain clear for overland flow conditions. The amended proposal has therefore not captured all DRP recommendations however, it has allowed suitably functional and compliant paths of access to the building, and a resolved flooding response.*
4. *The DRP raised issues regarding the broad tower massing and bulky form. This included the statement "the residential tower presents as a very wide form with squat proportions" and is not in keeping with the established two-lot width tower development pattern on Kenny or Atchison Streets. The panel noted that a level of articulation had been provided to the eastern elevation, however, the tower remained an overtly dominant form. The resubmitted design from the applicant echoed the DRP comments and provided significant improvement in the aesthetic of the tower forms. Amendments included defining the northern and southern tower elements as linked though separated forms with strong articulation on both eastern and western facades; through stepping the northern portion of the tower in height; through introducing rounded curvilinear forms; including a feature COS area on Level 4; and introducing an oculus and rounded arch entrance feature. These moves created a strong aesthetic identity, whilst reducing the perceived bulk of the proposed development at street level.*
5. *The DRP noted that the floodway and easement will be the first point of arrival for most hotel guests and visitors, and that the design treatment of the northern elevation and vehicular entrance did not provide a functionally efficient space or present as aesthetically or stylistically resolved as the eastern elevation. The original proposal provided a utilitarian vehicular thoroughfare, with the hotel lobby faced away from the services road, and a highly visible flood drainage structure. The amended design includes a recessed and integrated drainage channel with landscaping treatments and feature paving to create a plaza-like space. The amended design also heavily amended the northern elevation inserting the feature arch and oculus element, and including large areas of glazing into the hotel lobby and bar areas to allow natural*

overlooking of the plaza. New materiality was also introduced including hit-and-miss brickwork, textured patterned concrete, and a variety of paving and stonework materials, alongside more considered and finer-grained detailing. These amendments are welcomed and supported, and are considered to resolve the concerns raised. It's also noted that additionally proposed landscaping of the plaza area was not considered appropriate by Council given the overland flow constraints.

6. Servicing of the building was raised as a key concern by Council, including building service and plant, waste servicing and handling, hotel deliveries and storage, and general hotel functionality. The applicant submitted revised plans and supporting statements (including POM and architect statement) outlining the operational functionality provided, and this included revision of services corridors, inclusion of a waste lift from basement, relocation of commercial waste store, relocation of the hotel manager's office and reception, and addition of FOGO and a dual-chute waste and recycling servicing the residential core. Clarification on internal services and ducting was also sought, with further detail on building services provided in the amended documentation.

However, concern remains around the inclusion of an inboarded air-conditioning plant room on Level 4, which immediately adjoins bedrooms to residential units. The architect's statement notes that this room is to be for the residential units and not for the hotel, however the location remains unsupported given the likely impacts on the adjoining units in terms of vibration and acoustics (both interior and exterior), and that the proposed functionality is provided elsewhere i.e. AC condensers shown being located on balconies. A condition of consent is recommended to remove or relocate the AC space to an appropriate external enclosure, with the internal space reallocated to Unit 402.

The design has evolved during assessment of the current application, the main change being the chamfering of the northern part of the tower to improve access to morning sunlight for the adjoining western neighbours and refine the tower form. This change is best reflected by the sun-eye view diagrams below which compare the impact of the original and revised design:



The ADG requirements have are addressed in **Attachments 5** and further discussed below.

## **2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

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

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

#### NSW BIODIVERSITY CONSERVATION ACT 2016

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

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

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

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

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

### **2.1.1 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021**

#### **Chapter 2 Coastal Management**

The proposed development is not located within land identified as the part of the Coastal Zone. The provisions of this chapter do not apply.

#### **Chapter 4 Remediation of Land**

The site is not identified as being contaminated land. A Detailed Site Investigation (DSI) prepared by Aargus Consulting dated 15 April 2024 accompanied the application and has been considered by Council's Environmental Division. The report concluded that:

*The following data gaps were identified with respect to the pollution linkages:*

- *To identify the primary source for TCE contamination.*
- *The extent of the TCE contaminated plume;*
- *Whether soil & groundwater within the footprint of the observed buildings are free of contamination or it doesn't pose risk to human health and surrounding environment.*
- *Review Council Records other than electronic records to identify other issues of concern.*

*Based on the results of this investigation, it is considered that the risks to human health and the environment associated with soil and groundwater contamination at the site are low within the context of the current use & layout and would be manageable for the proposed use of the site for a mixed use development with two basements for car parking.*

*With reference to Clause 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021, the site will be considered to be rendered suitable subject to the completion of a Remedial Action Plan to address the aforementioned data gaps and the contaminated groundwater (and after remediation and validation), for the proposed construction of a building of seventeen-storeys with two carpark basements for mixed use development.*

- *Any soils requiring removal from the site, as part of future site works, should be classified in accordance with the "Waste Classification Guidelines, Part 1: Classifying Waste" NSW EPA (2014).*

The potential source for any contamination is fill material from unknown origins, possible petroleum products and organic solvents from past commercial uses and asbestos containing material from existing buildings or fill material. Some groundwater contamination is also likely, noting the water table was identified approximately 5m below ground. In relation to groundwater, the application was not nominated as integrated development under the Water Management Act for basement dewatering and therefore not referred to Water NSW. A condition of consent is recommended in regard to separate approval under the Water Management Act being obtained prior to the issue of the Construction Certificate.



The DSI report noted that further investigations will be required following demolition of the buildings however concluded that the site can be rendered suitable for the proposed use subject to the matters outlined above.

To address the above, a condition is recommended for an Amended Detailed Site Investigation (DSI) to be prepared as well as a Remedial Action Plan (RAP). A Site Validation Report will also be required prior to issue of the Construction Certificate. An unexpected finds protocol (UFP) to be implemented. Subject to the recommended conditions, no concerns are raised in regard to contamination as it relates to the intended use of the land and the consent authority can be satisfied of matters under clause 4.6.

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

Note: SEPP 65 was incorporated into SEPP (Housing) 2021 as Chapter 4 under the SEPP Amendment (Housing) 2023. Under the savings and transitional provisions of Schedule 7A(8) of the Housing SEPP,

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

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

As the current development application was lodged on 27 September 2023, SEPP 65 applies.

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

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

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

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

### **Principle 1: Context and neighbourhood character**

The proposal is considered to be consistent with the desired future character of the area as identified through the development standards and controls applicable to the land.

### **Principle 2: Built form and scale**

Whilst the development is significantly larger than adjoining developments and some others in the locality, the bulk and scale of the development is consistent with the applicable planning controls for the area. The development is not considered to be out of context with regard to the desired future character of the area and the likely impacts of the development on the locality and adjoining development.

The design of the development is considered to positively contribute to the public domain and provide high level of amenity for the occupants by way of landscaped areas, private open space and the like.

### **Principle 3: Density**

The density of the development complies with the maximum FSR permitted for the land. The development is not of a scale that is expected to place unreasonable strain on local infrastructure. Contributions applicable to the development will go towards local infrastructure and facilities. The site is well situated with regard to existing public open space and services.

### **Principle 4: Sustainability**

The proposal is considered acceptable with regard to sustainable design as follows:

- BASIX Certificates provided indicating minimum requirements are met.
- A Site Waste Management and Minimisation Plan has been provided indicating recycling of materials from the demolished buildings.

- Shading to the western elevation will provide some relief from the western sun.
- The proposal does not impact on any heritage items or environmentally sensitive areas
- The proposal is an efficient use of land in a location that is close to services and public open space.

#### Principle 5: Landscape

The proposal provides suitable landscaped areas and communal open space that will improve the amenity of the occupants and soften the appearance of the development from adjoining properties and the public domain.

#### Principle 6: Amenity

The proposal meets the minimum requirements for solar access, private and communal open space, storage, visual and acoustic privacy, access and the like.

#### Principle 7: Safety

The proposal is satisfactory with regard to safety and security.

#### Principle 8: Housing diversity and social interaction

The proposal provides a mix of unit sizes and layouts appropriate to the locality noting that a wider range of adaptable unit types would improve housing diversity.

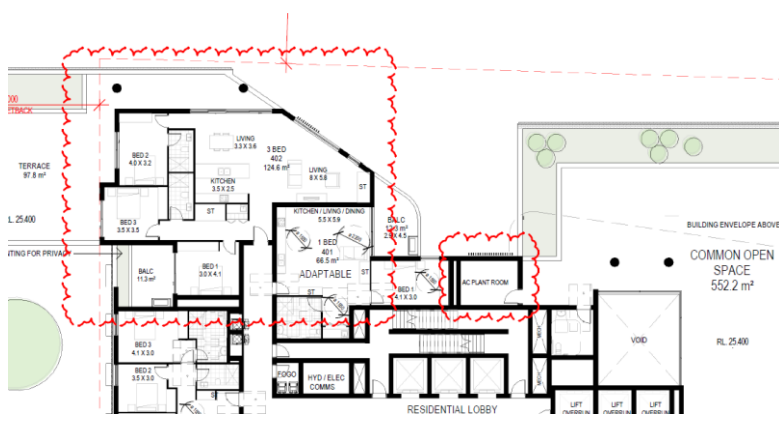
#### Principle 9: Aesthetics

The proposal is considered to be of a high quality with regard to its appearance. A mixture of materials and finishes is provided and the bulk of the development is suitably articulated. The chamfering of the tower form results in an interesting aesthetic which responds to the surrounding context.

#### Apartment Design Guide

An assessment of the application against the Apartment Design Guide (ADG) is contained in **Attachment 5** to this report. A number of design issues have been identified as discussed below:

3H VEHICLE ACCESS		
3H-1	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	<p>Council's architect has identified issues with the vehicle entries.</p> <p><i>There are three vehicular entrance paths servicing the hotel ground level parking, basement parking, and services/deliveries. Only the services/deliveries path is directly leading from the street frontage. The vehicle entrances require a large footprint to accommodate traffic movement paths on the ground floor level, and this is unfortunate as other ground floor uses could be accommodated. Further, there is little visual identification or distinction between the side-by-side hotel and basement parking routes, and this is likely to be problematic from a visitor or guest wayfinding perspective.</i></p> <p>A Traffic plan has been provided to indicate signage, stop signs and convex mirrors at ground level at various hold points to manage traffic flow and direct hotel guests and visitors to the appropriate parking areas. Council's Traffic engineer has not raised concerns with the proposed driveway arrangements, recommending conditions of consent for vehicular flow movements.</p> <p>Activation of Kenny Street is achieved and the driveway area cannot be built over due to easement and flooding constraints.</p>
4G STORAGE		
4G-1	<p>Adequate, well designed storage is provided in each apartment</p> <p>1. Storage required, of which 50% is in the apartment:</p> <ul style="list-style-type: none"> <li>- Studio 4m<sup>3</sup></li> <li>- 1 bed 6 m<sup>3</sup></li> <li>- 2 bed 8 m<sup>3</sup></li> </ul>	<p>Storage volumes are achieved to all units, though noting some unit types do rely on basement storage cages to achieve minimum volumes.</p> <p>The storage arrangements to unit type 501 and 502 are freestanding within rooms rather than being integrated with other building elements. The storage configuration is not considered to be well designed for these unit types.</p> <p>A condition of consent is recommended for storage to be better integrated into the unit layout with details submitted prior to issue of a Construction Certificate</p>

	- 3+ bed 10 m <sup>3</sup>	
<b>4H</b>	<b>ACOUSTIC PRIVACY</b>	
<b>4H-1</b>	Noise transfer is minimised through the siting of buildings and building layout	<p>Acoustic and vibrational concerns were raised due to the inclusion of an internalised mechanical plant room located on Level 4. The location of the plant room could significantly affect upon the amenity of Unit 402, including to two bedrooms. The inclusion of plant at this level is not supported, and consideration to locating elsewhere is required. It's feasible that the plant room could be relocated to where the table tennis table is located on the Level 4 communal open space. The applicant has provided revised plans to relocate the plant room noting updated calculations indicates the floor space ratio is compliant:</p> 
<b>4H-2</b>	Noise impacts are mitigated within apartments through layout and acoustic treatments	Refer to item above. Sufficient acoustic design detail has not been provided.

There are no other specific areas of concern in relation to ADG provisions that warrant discussion beyond the assessment table in **Attachment 5**.

## 2.1.3 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

### Division 17 Roads and Traffic

#### 2.122 Traffic-generating development

The proposal was referred to TfNSW under the traffic generating development provisions under Schedule 3 of the SEPP. TfNSW raised no objections, noting that Kenny Street is a local road which does not directly connect to the nearest classified road, being Crown Street and noted the development does not meet the referral criteria under Schedule 3.

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

Note: SEPP (Building Sustainability Index: BASIX) 2004 was repealed by SEPP (Sustainable Buildings) 2022 on 1 October 2023. Under section 4.2 Savings and transitional provisions of the SEPP (Sustainable Buildings) 2022,

(1) *This policy does not apply to the following—*

(a) *a development application submitted on the NSW planning portal but not finally determined before 1 October 2023,*

As the current development application was lodged on 27 September 2023, SEPP (Building Sustainability Index: BASIX) 2004 applies.

The proposal is BASIX affected development to which this policy applies. In accordance with Schedule 1, Part 1, 2A of the Environmental Planning and Assessment Regulation 2000, a BASIX Certificate has

been submitted in support of the application demonstrating that the proposed scheme achieves the BASIX targets.

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

## 2.1.5 STATE ENVIRONMENTAL PLANNING POLICY (PLANNING SYSTEMS) 2021

### Chapter 2 State and Regional development

Under Section 2.19(1) Development specified in Schedule 6 is declared to be regionally significant development for the purposes of the Act.

The proposed development has a capital investment value (CIV) exceeding \$30 million. Therefore, the application is considered Regionally Significant Development. The Southern Region Planning Panel is the consent authority for this application.

Note: CIV was replaced with Estimated Development Cost (EDC) to estimate development cost on 4 March 2024. Savings and transitional provisions under the Environmental Planning and Assessment Regulation 2021 have the effect that CIV applies for development applications submitted on the NSW Planning Portal before 4 March 2024.

## 2.1.6 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

### Clause 1.4 Definitions

**mixed use development** means a building or place comprising 2 or more different land uses.

**hotel or motel accommodation** means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that—

- (a) comprises rooms or self-contained suites, and
- (b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles, but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

Note—

**Hotel or motel accommodation** is a type of **tourist and visitor accommodation**—see the definition of that term in this Dictionary.

**tourist and visitor accommodation** means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following—

- (a) backpackers' accommodation,
  - (b) bed and breakfast accommodation,
  - (c) farm stay accommodation,
  - (d) hotel or motel accommodation,
  - (e) serviced apartments,
- but does not include—
- (f) camping grounds, or
  - (g) caravan parks, or
  - (h) eco-tourist facilities.

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

Note—

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

**food and drink premises** means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,

(d) a small bar.

Note—

**Food and drink premises** are a type of **retail premises**—see the definition of that term in this Dictionary.

**retail premises** means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following;

(a) (Repealed)

(b) cellar door premises,

(c) food and drink premises,

but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

Note—

**Retail premises** are a type of **commercial premises**—see the definition of that term in this Dictionary.

**commercial premises** means any of the following—

(a) business premises,

(b) office premises,

(c) retail premises.

## **Part 2 Permitted or prohibited development**

### Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned E2 Commercial Centre.

### Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

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

The proposal is satisfactory with regard to the above objectives.

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

## **2 Permitted without consent**

*Building identification signs; Business identification signs; Home occupations*

## **3 Permitted with consent**

*Advertising structures; Amusement centres; Artisan food and drink industries; Backpackers' accommodation; Boarding houses; Car parks; Centre-based child care facilities; Commercial premises; Community facilities; Entertainment facilities; Exhibition homes; Function centres; Helipads; Home businesses; Home industries; Hostels; Hotel or motel accommodation; Information and education*

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

#### **4 Prohibited**

*Any development not specified in item 2 or 3*

The proposal is categorised as a mixed use development comprising hotel or motel accommodation with ancillary food and drink premises, commercial premises and shop top housing, as defined above. All proposed land uses are permissible in the zone with development consent.

#### Clause 2.6 Demolition—demolition requires development consent

Demolition of all structures is proposed under the current application, thereby satisfying this clause.

### **Part 4 Principal development standards**

#### Clause 4.1 Minimum subdivision lot size

Not applicable – no subdivision is sought as part of the current application. Lot consolidation will be required as a condition of consent prior to issue of an Occupation Certificate.

#### Clause 4.3 Height of buildings

The proposed building height of 60m does not exceed the maximum of 60m permitted for the site (RL at roof is 69.00, RL at existing ground level is above RL9.0)

#### Clause 4.4 Floor space ratio

The objectives of this clause in relation to the floor space ratio are met, noting the proposal complies - Refer Clause 4.4A

#### Clause 4.4A Floor space ratio – Wollongong city centre

Site area = 3833.5m<sup>2</sup>

*Calculation of maximum FSR permitted:*

(4) The maximum floor space ratio for a building on land within a business zone under this Plan, that is to be used for a mixture of residential purposes and other purposes, is—

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

where—

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

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

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

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

$$NR = 33.27\% (5523m^2)$$

$$NRFSR = 6:1$$

$$R = 66.73\% (11077m^2)$$

$$RFSR = 3.5:1$$

$$(6 \times 0.333) + (3.5 \times 0.667)$$

$$(1.998) + (2.335) = 4.33$$

**Maximum FSR permitted = 4.33:1**

GFA proposed:

Total: 16,603m<sup>2</sup>

Residential: 11,077m<sup>2</sup> (66.7%)



Non-Residential: 5523m<sup>2</sup> (33.3%)**FSR proposed:**16,603/3833.5m<sup>2</sup> = **4.33:1 - complies**Clause 4.6 Exceptions to development standards

Note: Changes to Clause 4.6 commenced on 1 November 2023 through an amendment to the Standard Instrument LEP Order (Amending Order) and only apply to development applications lodged after this date. This application was lodged on 27 September 2023 therefore will be assessed under the previous clause.

A development departure is sought to building separation under Clause 8.6 of the LEP. The applicant's Clause 4.6 Statement forms **Attachment 4**.

WLEP 2009 clause 4.6 proposed development departure assessment	
Development departure	<p>Clause 8.6 Building Separation. The following building separation departures are sought:</p> <ol style="list-style-type: none"> <li>1. the ground level setback to the west with 25 Atchison Street requires a zero/0m setback where a 3.5m distance is proposed (commercial to commercial); and</li> <li>2. the ground and first floor setbacks require a 16m setback with 27 Atchison Street where a 5.88m distance is proposed (commercial to residential) representing a 63% variation; and</li> <li>3. the ground level setback requires a zero/0m setback to the northern site (at-grade car park which is part of 25 Atchison Street) where a 12m northern boundary setback is proposed due to the drainage easement.</li> </ol>
Is the planning control in question a development standard	Yes
4.6 (3) Written request submitted by applicant contains a justification:	
that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	A satisfactory clause 4.6 variation has been submitted.
that there are sufficient environmental planning grounds to justify contravening the development standard.	<p>Yes.</p> <p>The applicant's Clause 4.6 Statement identifies the environmental planning grounds that are considered sufficient to support the development departure to building separation with regard to the specifics of the proposed development and unique site circumstances.</p>
4.6 (4) (a) Consent authority is satisfied that:	
the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	<p>The applicant's Clause 4.6 Statement forms <b>Attachment 4</b>.</p> <p>The applicant's written request justifying why compliance with the building separation control is unreasonable and unnecessary is based on the First and Fourth way under <i>Wehbe v Pittwater Council</i> [2007]NSWLEC827 (<i>Wehbe</i>) which are:</p> <ul style="list-style-type: none"> <li>- that the objectives are achieved notwithstanding noncompliance with the standard (the First way); and</li> <li>- that the development standard has virtually been abandoned (the Fourth way)</li> </ul>

	<p><u>Objectives of Clause 8.6</u></p> <p><i>(1) The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.</i></p> <p>In response to these objectives the applicant states (in summary):</p> <p><i>Visual appearance</i></p> <ul style="list-style-type: none"> <li>- Well considered architectural design, materials and details</li> <li>- Northern setback is necessary to address flooding and easement constraints</li> <li>- Building envelope reflects the permissible yield</li> <li>- The podium and the tower form are distinct elements</li> <li>- Extensive landscape treatments and privacy screening at the interface with the western residential development softens and articulates the appearance.</li> </ul> <p><i>Privacy</i></p> <ul style="list-style-type: none"> <li>- No privacy concerns with northern interface as there is no existing building</li> <li>- Compliant setbacks to the rear/west have been provided above podium height</li> <li>- Internal room layouts for 2 rear western units are oriented to north and south, with screening to living and balconies at the western interface.</li> <li>- Extensive planting to the podium areas planters at upper levels provides appropriate privacy and interface</li> <li>- The Hotel's Plan of Management will limit manage privacy impacts</li> <li>- The proposal is consistent with the separation distances under the ADG</li> </ul> <p><i>Solar access</i></p> <ul style="list-style-type: none"> <li>- Northern setback will improve solar access</li> <li>- Tapering of the building improves solar access to affected buildings as compared to overshadowing impacts approved by DA-2022/14</li> </ul> <p>The applicant's justification also contends that the development has virtually been abandoned hence compliance with the standard is unnecessary and unreasonable (i.e. the 'Fourth way' under <i>Wehbe v Pittwater Council</i> [2007]NSWLEC827). The applicant has cited a number of developments in the city centre where Council has supported a development departure for building separation. It is noted that each development departure is assessed against the unique circumstances of the case, and the development standard has not been abandoned.</p> <p>The applicant notes the City Centre Review proposed in 2020 to remove the building separation requirement under Clause 8.6 noting SEPP (Housing) 2021 and the ADG include requirements for building separation.</p> <p><u>Sufficient planning grounds</u></p> <p>The development departures sought are shown below:</p>
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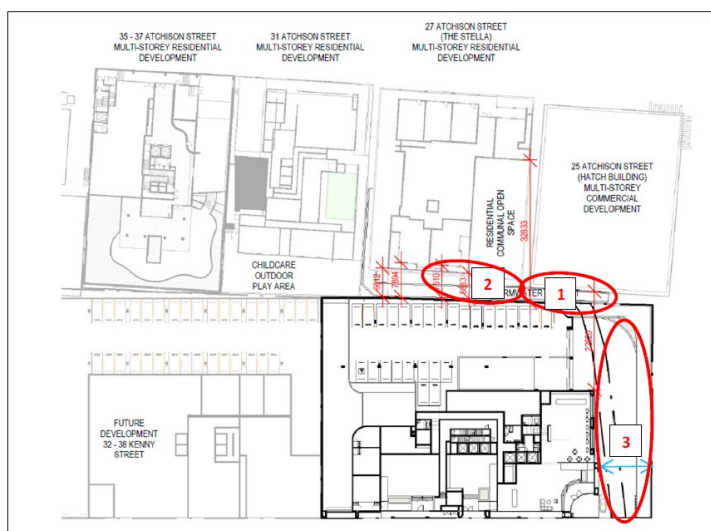
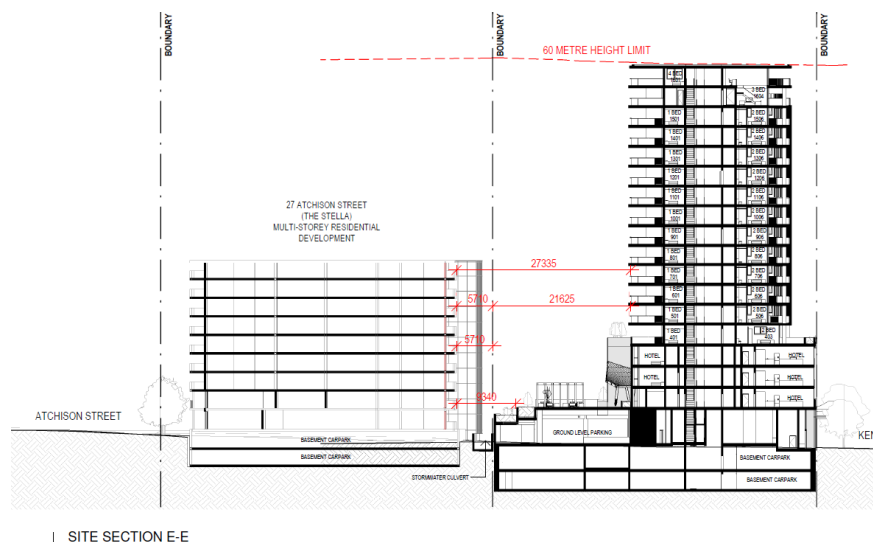


FIGURE 10 GROUND LEVEL CONTEXT ANALYSIS (DWA)

In relation to development departure 1 indicated above, the proposed building is built to the rear boundary. Clause 8.6(2(a)) requires a zero/0m development standard which cannot be achieved as the neighbouring building is setback from its rear boundary by ~3.5m.

In relation to development departure 2 indicated above, the building separation distance required under clause 8.6(3(b)) between habitable parts of a dwelling and any other building is 16m where a 5.88m distance to the residential flat building at 27 Atchison Street is proposed. The ground floor and Level 1 podium is built up to the rear (western) boundary for the majority of this boundary which is typical of a commercial building. However, to provide an appropriate interface with the adjoining residential buildings the podium has been stepped back with landscaped planters to minimise the visual impact as viewed from 27 and 31 Atchison Street as shown below:



In relation to development departure 3 indicated above, the building cannot be built to the northern boundary to achieve the zero/0m separation required by Clause 8.6(2(a)) as this part of the site is burdened by a drainage easement and is an overland flood path.

The planning grounds outlined in the Clause 4.6 Statement to demonstrate that there is an absence of environmental harm from the departure to

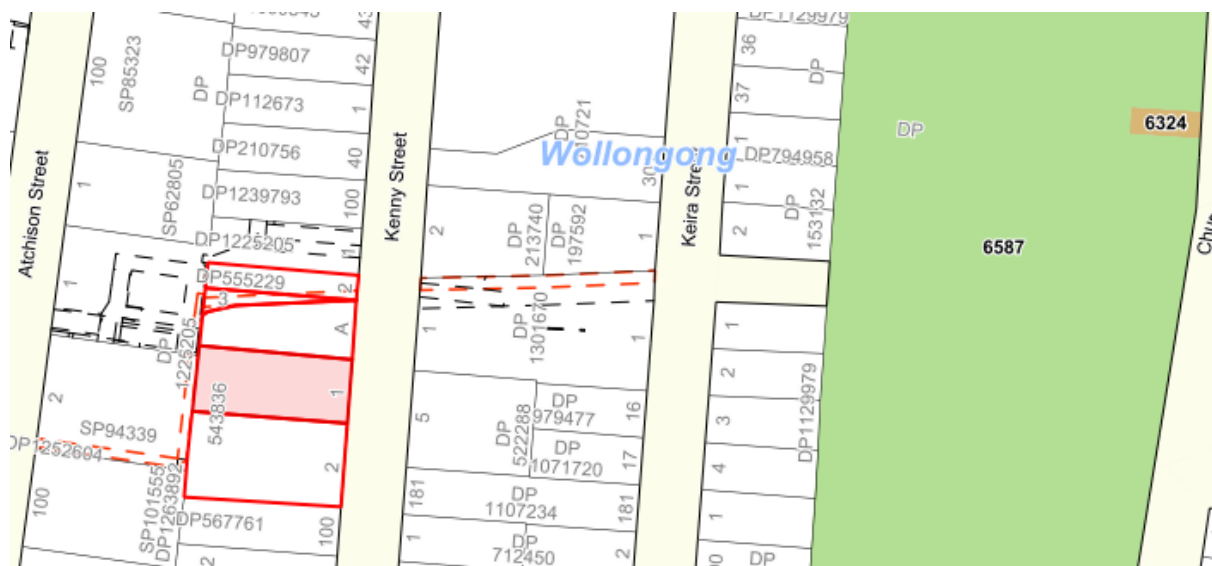
	<p>building separation includes (summarised): the development achieving design excellence, the design responding to the site specific context and being consistent with the scale envisaged in the E2 Commercial Centre zone.</p> <p>There are sufficient planning grounds for the departure .</p>
<p>the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</p>	<p>The proposed development will be in the public interest because it is consistent with the objectives of the building separation standard, the objectives for development within the E3 zone will be achieved; and the development achieves the applicable separation distances between residential apartment buildings under the Apartment Design Guide (ADG). These matters are discussed below.</p> <p><u>Clause 8.6 Building separation within Zone E2 Commercial Centre or Zone MU1 Mixed Use</u></p> <p><i>(1) The objectives of the standard are to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.</i></p> <p>These objectives have been discussed above. The development is considered to respond to the objectives of this clause despite the minor variations.</p> <p><u>Objectives of E2 Commercial Centre Zone</u></p> <p>The objectives for development within the E2 Commercial Centre zone are:</p> <ul style="list-style-type: none"> <li>• <i>To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.</i></li> <li>• <i>To encourage investment in commercial development that generates employment opportunities and economic growth.</i></li> <li>• <i>To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.</i></li> <li>• <i>To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.</i></li> <li>• <i>To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.</i></li> <li>• <i>To encourage development that is consistent with the centre's position in the centres hierarchy.</i></li> <li>• <i>To strengthen the role of the Wollongong city centre as the business, retail and cultural centre of the Illawarra region.</i></li> </ul> <p>The applicant's statement outlines the following means of the development satisfying the objectives of the E2 Commercial Centre zone (summarised):</p> <ul style="list-style-type: none"> <li>- Additional hotel space and dwellings will support the objectives for Wollongong City Centre and will service the wider and local community</li> <li>- Residential and tourist accommodation will revitalise this part of the city centre</li> <li>- An active ground floor will result</li> <li>- The high density residential use is within close proximity to the CBD precinct and public transport.</li> </ul>

	<p>- The development will create temporary and ongoing employment opportunities</p> <p>It is agreed that the above aspects of the development satisfy the E2 zone objectives.</p> <p>The applicant's 4.6 Statement adequately demonstrates that compliance with the building separation requirements is unnecessary and unreasonable in the circumstances of the case, noting the objectives of Clause 8.6 are met.</p> <p>There are sufficient environmental planning grounds that are specific to the redevelopment of the site to justify contravening the development standard.</p> <p>There is not considered to be a public benefit served in this instance by insisting on strict compliance with the standard.</p>
the concurrence of the Secretary has been obtained.	<p>The concurrence of the Secretary can be assumed in accordance with the Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018.</p> <p>The Secretary can be assumed to have given concurrence if the matter is determined by a Sydney district or regional planning panel in accordance with the Planning Circular.</p>

## Part 5 Miscellaneous provisions

### Clause 5.10 Heritage conservation

The site is not an identified heritage item or within a conservation area. The nearest heritage item in the vicinity of the site is MacCabe Park, as shown below:



**Figure 9:** Proximity of site to nearest heritage item (MacCabe Park)

Given the site is visually separated from MacCabe Park by Kenny and Keira Streets, no adverse impacts are anticipated.

### Clause 5.21 Flood planning

The site is flood affected (flood classification under review), with the flood report submitted with the application identifying the site as medium flood risk. The site receives overland flow and floodwaters from adjoining sites to the west/rear, including from a substantial drainage channel that adjoins the rear boundary of the site. The design of the development responds to the flooding constraint by accommodating the floodwaters received into and through the site along both the northern and southern boundaries of the site. The design also meets the minimum floor levels and provides flood doors where

required. These measures have been assessed by Council's Stormwater division as satisfactory subject to conditions. In this regard, the development satisfies the matters under subclause (2).

The impact of the development on projected changes to flood behaviour as a result of climate change, the design and scale of buildings, and the measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood, under subclause (3) have been assessed as satisfactory subject to conditions of consent.

## **Part 7 Local provisions – general**

### Clause 7.1 Public utility infrastructure

The site is serviced by all relevant utilities. Conditions of consent are recommended with regard to specific requirements of utility providers.

### Clause 7.6 Earthworks

The proposal comprises excavation for two levels of basement car parking. Subject to appropriate protection of adjoining property during excavation and construction, preparation of an updated construction noise and vibration report, suitable removal and disposal of any hazardous fill material, and separate approval for basement dewatering the earthworks are not expected to have a detrimental impact on environmental functions and processes, or on neighbouring uses or surrounding land.

### Clause 7.13 Certain land within business zones

The proposal provides an active use at ground floor level in accordance with this control, with entry to the hotel with clear glazing and bifold windows to the lobby. Similarly, clear glazing to the commercial tenancy is also provided. No residential accommodation is proposed at the ground floor.

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

The proposal is considered to be consistent with the provisions for design excellence as follows:

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

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

The Design Review Panel have reviewed the proposal and made recommendations with regard to the tower form and other design considerations. The revised plans have reasonably responded to the DRP feedback and the architectural design, materials and detailing is appropriate to the site. The proposal is satisfactory with regard to the ADG and Council's development controls.

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

The proposed building form is compatible with the emerging streetscape.

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

The site is outside the distant panoramic view corridor from Flagstaff Hill looking towards the escarpment however is identified as a framed view along the street looking south under the Wollongong DCP 2009. No adverse impacts on the identified views are anticipated noting the setbacks to Kenny Street are compliant.

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

The development does not overshadow any sun plane protection areas.

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

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

The site is considered suitable for the development. The DRP has noted that the site is constrained by flooding and stormwater issues however is well suited to accommodate the proposed development where these matters can be addressed. The design addresses these constraints.

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

The proposal is consistent with the desired future character of the area reflected in the applicable planning controls.



*(iii) heritage issues and streetscape constraints,*

The are no particular constraints that would preclude the development.

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

The proposed tower has an acceptable relationship with existing towers to the west fronting Atchison Street, noting that 27 Atchison Street adjoining the site to the west has a minimal 6m setback to its rear boundary for habitable rooms and balconies, which is partially non-compliant under the current controls (i.e. above 12m). The proposal has been designed with future development in mind with regard to setbacks and building separation to the north and south of the site. The DRP noted that the tower form required refinement to reduce the extent of overshadowing to the western neighbours which has been achieved by the chamfering the northern tower. The relationship with the neighbouring sites is acceptable.

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

The bulk and mass of the building is larger than some surrounding buildings and has been amended throughout the design process to provide chamfering along the northern part of the tower and is acceptable.

*(vi) street frontage heights,*

The proposal has a four (4) storey street frontage height, consistent with the emerging character of the area.

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

The proposal meets BASIX targets.

Overshadowing impacts are considered acceptable in the context of the applicable planning controls that anticipate a building of this height and scale.

An Environmental Wind Assessment indicates the proposal will satisfy the wind acceptability criteria for safety and comfort at pedestrian and public access locations within and around the development. The report notes that no significant additional wind flow is anticipated on neighbouring properties. The recommendations of the Wind report are reflected in the plans.

The proposal is not expected to result in adverse reflectivity.

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

The proposal is broadly acceptable with the principles of ecologically sustainable development. The proposal is an efficient use of land in an accessible location. The proposal will not directly impact on environmentally sensitive areas. The proposal satisfies the minimum energy and water efficiency requirements.

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

The proposal is satisfactory regarding access, servicing and parking as discussed under Chapter E3.

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

The proposal will upgrade the footpath along the street frontage, retain the existing street tree and provide additional street tree planting.

## **Part 8 Local provisions—Wollongong city centre**

### Clause 8.1 Objectives for development in Wollongong city centre

The proposal is satisfactory regarding these objectives.

### Clause 8.4 Minimum building street frontage

The site comprises two allotments that will have a frontage of over 76m. Lot consolidation will be required as a condition of consent. The provisions of this clause are satisfied.

### 8.6 Building separation within Zone E2 Commercial Centre or Zone MU1 Mixed Use

*(1) The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.*

*(2) Buildings on land within Zone E2 Commercial Centre or MU1 Mixed Use must be erected so that—*

*(a) there is no separation between neighbouring buildings up to the street frontage height of the relevant building or up to 24 metres above ground level whichever is the lesser, and*

*(b) there is a distance of at least 12 metres from any other building above the street frontage height and less than 45 metres above ground level, and*

*(c) there is a distance of at least 28 metres from any other building at 45 metres or higher above ground level.*

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

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

*(b) 16 metres from any other part of any other building.*

*(4) For the purposes of this clause, a separate tower or other raised part of the same building is taken to be a separate building.*

*(5) In this clause—*

***street frontage height*** means the height of that part of a building that is built to the street alignment.

The applicant is seeking a Clause 4.6 variation to building separation. The Applicant's 4.6 Statement forms **Attachment 4** and the building separation departures relate to:

1. the ground level setback under subclause 2(a) requires a zero/0m setback where a 3.5m distance is proposed to the west which is a commercial building at 25 Atchison Street; and
2. the ground level setback under subclause 2(a) requires a zero/0m setback where a 12m northern boundary setback is proposed due to the drainage easement; and
3. the ground and first floor setbacks under subclause 3(b) requires a 16m setback where a 5.883m distance is proposed to the residential flat building at 27 Atchison Street (63% variation).

The proposed separation distances identified as 1, 2 and 3 above are shown below:

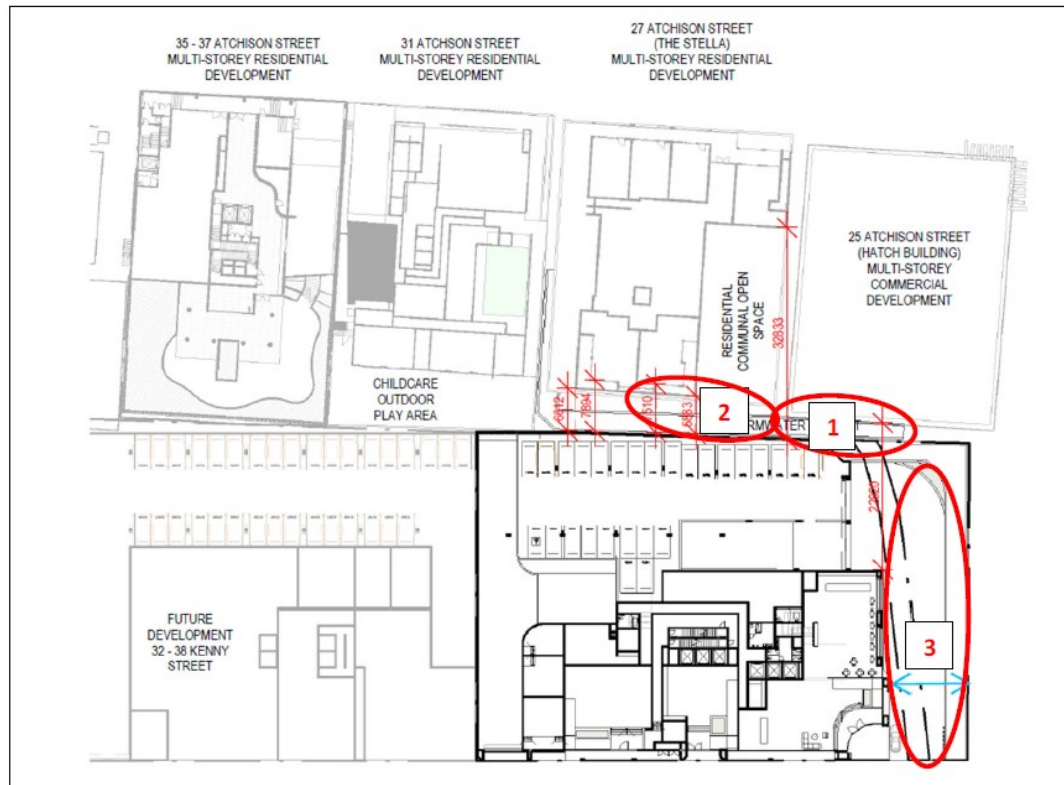
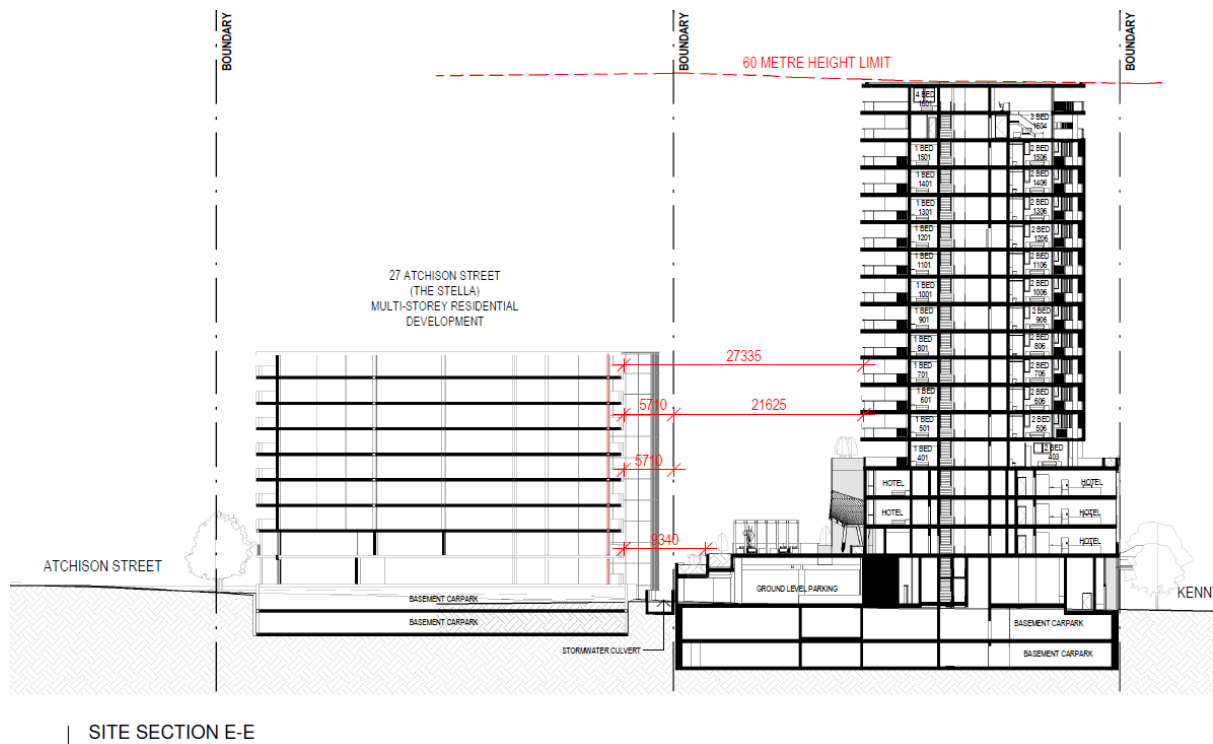


FIGURE 10 GROUND LEVEL CONTEXT ANALYSIS (DWA)

In relation to subclause 2(a) the building is built to the southern site boundary, however, cannot be built to the northern boundary to achieve the 0m separation as this portion of the site is burdened by a drainage easement and is an overland flood path. The clause 4.6 statement addresses this development departure.

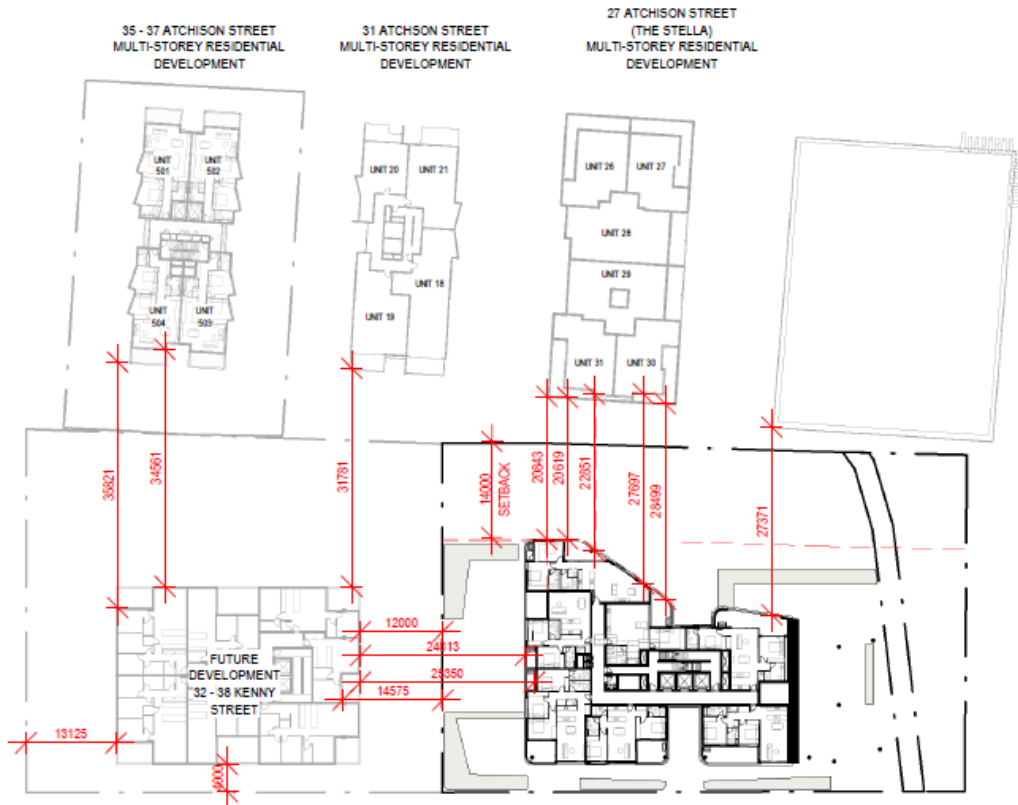
The ground floor and Level 1 podium is built up to the rear (western) boundary for the majority of this boundary which is typical of a commercial building. However to provide an appropriate interface with the adjoining residential buildings the podium has been stepped back with landscaped planters to minimise the visual impact as viewed from 27 and 31 Atchison Street as shown below:



**Figure 10:** Ground level separation distances to the western/rear boundary

In relation to subclause 2(c) which requires a 28m separation distance above 45m, there are no existing buildings to the north, south or west at 45m or above. For completeness it is reasonable to consider whether the setback equitably shares the building separation distance for future developments to the north and south. The 12m setback to the aligns with the building separation distances for buildings over 25m (+9 storeys) under the Apartment Design Guide. In this regard, no concerns are raised in relation to the proposed setback to the north and south above 45m.

In relation to clause 3(a) the minimum 20m separation distance between the proposed dwellings and any habitable part of any other dwelling is achieved, noting that a minimum 14m rear setback is proposed. The adjoining building to the west/rear at 27 Atchison Street was approved with balconies setback ~6m from its eastern boundary (DA-2004/2281). It is noted that this setback would not comply under the current controls for units above 4 storeys.



## SITE CONTEXT ANALYSIS - LEVEL 5

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**Figure 11** Setbacks and separation distances

The departures to building separation are also discussed under Clause 4.6 above.

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

None applicable.

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

#### 2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

A full assessment of the proposal against relevant DCP provisions are contained in **Attachment 6**. No variations are sought.

#### 2.3.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN

##### Wollongong City-Wide Development Contributions Plan - City Centre

The Wollongong City-Wide Development Contributions Plan applies to the subject property. This Plan levies a contribution based on the estimated cost of development. The proposed cost of development is over \$250,001 – a levy rate of 2% applies as the site is within the commercial core.

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

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

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

50(1A) and (1AB) Design verification statement

A design verification statement accompanied the application in accordance with this clause.

92 What additional matters must a consent authority take into consideration in determining a development application?

Conditions of consent are recommended with regard to demolition.

93 Fire safety and other considerations

N/A

**2.6 SECTION 4.15(1)(B) THE LIKELY IMPACTS OF DEVELOPMENT**

The proposal has been assessed with regard to the likely impacts within the body of this report. Generally speaking, impacts are acceptable in the context of the applicable planning controls. The proposed development will have a visual impact on the public domain and on surrounding properties. The building will result in additional overshadowing to the residential units to the west of the site. However, the design of the building reasonably responds to the adjoining buildings to the west by stepping the podium back to reduce its visual bulk and chamfering the northern part of the tower. As the design reasonably responds to the relevant planning controls, the impacts are considered acceptable.

There will be temporary amenity and environmental impacts associated with the excavation and construction of the development. These impacts can be reasonably dealt with through the imposition of suitable conditions of consent.

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

Does the proposal fit in the locality?

The proposal is considered appropriate with regard to the zoning of the site and is consistent with the anticipated built form outcome for the site and locality.

Are the site attributes conducive to development?

The site is constrained by flooding however this constraint has been adequately addressed through the design of the development.

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

Refer Part 1.4 of this report.

**2.9 SECTION 4.15(1)(E) THE PUBLIC INTEREST**

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

### 3 CONCLUSION

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

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

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

Submissions raised during public exhibition have been considered at section 1.4. The development is of a scale that will have some visual and amenity impacts from surrounding properties. However, these impacts arise from a built form outcome that is largely anticipated by the current controls and refusal, or redesign of the development is not warranted on this basis.

Internal and external referrals are satisfactory and where outstanding issues have been identified they are dealt with through suitable conditions of consent. The application is considered acceptable with regard to the likely impacts as discussed above. It is considered that the proposed development has been designed appropriately given the nature and characteristics of the site and is unlikely to result in significant adverse impacts on the character or amenity of the surrounding area.

### 4 RECOMMENDATION

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It is recommended that the development application be approved subject to appropriate conditions of consent outlined in **Attachment 7**.

#### **Attachments**

1. Plans
2. DRP commentary 10 November 2023
3. Applicant's response to DRP commentary
4. Applicant's Clause 4.6 Statement – Building separation
5. Apartment Design Guide Assessment
6. Wollongong Development Control Plan 2009 Assessment
7. Recommended conditions of consent