

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSTH-38
DA Number	10.2020.37386.1
LGA	Albury City
Proposed Development	Eight-storey Mixed Use Development and Five-storey Car Park
Street Address	580 - 584 Smollett Street & 470 Wodonga Place, Albury NSW 2640
Applicant/Owner	Blueprint Planning/ 590 Smollett Street Pty Ltd on behalf of Zauner Construction Pty Ltd
Date of DA lodgement	25 February 2020
Total number of Submissions	Two
Number of Unique Objections	
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	General development over \$30 million
List of all relevant s4.15(1)(a) matters	Any EPIs - Environmental Planning & Assessment Act 1979; - Albury Local Environmental Plan 2010 (Albury LEP 2010); and - Albury Development Control Plan 2010 (Albury DCP 2010); Section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4 - Nil Coastal Zone Management Plan - N/A Relevant regulations e.g. Regs 92, 93, 94, 94A, 288 - Environmental Planning and Assessment Regulation 2000 State Environmental Planning Policies - Deemed State Environmental Planning Policy - Murray Regional Environmental Plan No.2 – Riverine Land (MREP2); - State Environmental Planning Policy (Infrastructure) 2007; - State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings (SEPP 65); - State Environmental Planning Policy (SEPP) – Building Sustainability Index (BASIX); and - State Environmental Planning Policy No. 55 – Remediation of Land. Other - Nil
List all documents submitted with this report for the Panel's consideration	- Assessment Report - Councillor's submission - Development Plans - Statement of Environmental Effects - Traffic Impact Assessment - Submissions received - Draft Determination

	- Referral Responses – Traffic for NSW; Essential Energy - Site photographs
Clause 4.6 requests	Nil
Summary of key submissions	- Overlooking/loss of privacy - Overshadowing - Impact on adjoining Heritage item - Access - Loss of views - Construction impact
Report prepared by	Marius Shepherd, Senior Planner Albury City Council
Report date	10 July 2020

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

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

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?

Not applicable

Special Infrastructure Contributions

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

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

Yes

Conditions

Have draft conditions been provided to the applicant for comment?

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Yes

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DATE 10 July 2020

FIL REFERENCE AF18/00683

CONFIDENTIAL No

FURTHER ENQUIRIES David Christy
City Development

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**SOUTHERN REGIONAL PLANNING PANEL - Development Application 10.2018.37386.1
Eight-storey commercial and residential building and five-storey carpark building – Lots 201
and 203 in DP 1243276 and Lot 60 in DP 1115982 addressed as 580 – 584 Smollett Street
and 470 Wodonga Place, Albury (AF18/00683)**

1.0 Executive Summary

Development Application No. 10.2018.37386.1 was lodged by Blueprint Planning on behalf of Zauner Construction Pty Ltd on 25 February 2020. The development proposes the construction of an eight-storey mixed-use building and a five-storey carpark building including demolition and vegetation removal works, landscaping works and lot consolidation. Copies of the plans and Statement of Environmental Effects are included in this report and marked as attachments 1 and 2, respectively.

The development application was publicly exhibited between 18 March 2020 and 14 April 2020. Two (2) submissions were received during this period. Copies of the submissions are included with this report as attachment 3.

After initial assessment, Council requested further information from the applicant. This was in relation to:

- The NSW Apartment Design Guide;
- Traffic and Parking; and
- Waste Management

An amended Statement of Environmental Effects and amended plans were subsequently lodged on 2 June 2020 and now form the basis of this application.

The site is zoned *B3 Commercial Core* under Albury Local Environmental Plan 2010 (Albury LEP 2010). The proposed development is permitted with consent in the zone. The proposal is to construct an eight-storey mixed-use building, containing Commercial Space over seven levels (total 4,414m² GFA) and 25 x Residential apartments over seven levels comprising 12 x one-bedroom apartments and 13 x three-bedroom apartments. The mixed-use building provides 18 car parking spaces including one for people with disabilities. The development further proposes the construction of a five-storey car park building with open to semi-open side walls. The carpark provides for 457 car parking spaces including 20 disabled spaces, bicycle racks and storage lockers. An above-ground suspended weather-proof pedestrian walkway connects the building at Level 1 to the associated mixed-use building at its first floor.

To implement the development, the Development Application also proposes the consolidation of 580 Smollett Street Albury (Lot 201 in DP1243276) and 584 Smollett Street Albury (Lot 203 in DP1243276), the demolition of all existing at-grade carpark facilities, fencing, landscaping, redundant underground infrastructure, the Council reticulated sewer above-ground vent pipe and part of the Essential Energy

electrical substation. One exotic tree in the north-western corner of the Site (part of existing car park landscaping) requires removal.

Key issues identified during assessment include:

1. Overlooking

Overlooking and a loss of privacy from both the proposed carpark building and mixed-use building was raised as a concern in a submission. The proposed carpark building is approximately 33m away from the property. This separation, the partial screening by metal fencing on all levels of the carpark facing east and the anticipated intermittent and sporadic use of the car park does not present a significant risk of overlooking into the property. The risk of a person arriving at or leaving his vehicle overlooking into a property 33m away is considered very low.

The residential component of the mixed-use building is predominantly directed away from Kia Ora. The shape and location of the proposed balconies are more than 25m away and are not conducive to intrusive views back toward Kia Ora. Windows from the third floor and higher have very limited views, if any, down into Kia Ora windows.

However, it is acknowledged that the ground, first and second floors of the commercial component of the mixed-use building have direct line of sight to Kia Ora's southern windows. Whilst the first-floor terrace proposes some screening in the form of shrubs in planter boxes, there would be potential overlooking from these three floors. It is however noted that the Kia Ora windows in question are relatively small, fitted with metal bars and blinds and they do not present significant overlooking opportunity. It is further noted that the use of Kia Ora as a private, single dwelling is highly unusual in the B3 *Commercial Core* zone and its continued use as such is not anticipated to continue in the long term. It is therefore not considered reasonable to require significant modifications to the proposed design to mitigate the limited overlooking risk that may exist.

2. Impact on adjoining Heritage Item

Whilst the subject site is not located in a heritage conservation area nor is it a heritage item, Heritage Item I174 adjoins the site to the north-east at 473 Townsend Street (known as 'Kia Ora'). Furthermore, Heritage Items I154 (known as 'House: Green Court') and I173 (simply known as a 'Shop') is located directly opposite Smollett Street to the south and Heritage Item I153 (known as 'Australian Tax Office') is located diagonally across the Smollett/Townsend Streets intersection. These items and their heritage values are discussed in detail later in this report.

In assessing a development proposal, Council must consider the impact of the development on the heritage significance of the heritage item.

The identified Heritage Items are mostly noted for their streetscape value and in some cases to their individual features. In fact, both items I173 'Shop' and I153 'Australian Tax Office' are corner buildings as is the proposed mixed-use building. Having regard to the fourth corner at this intersection comprising the featureless back walls of a large retailer, the proposed development is considered to have due respect for the prominence of the intersection and its corner developments. The proposed development will not impact upon the stated significance of these buildings nor their future re-use opportunities.

The character statement for Item I174 'Kia Ora' describes it as a very early commercial building in Townsend Street - when it was the main street. It is considered to require reasonable care to protect the external architectural integrity and the character of key internal spaces and structural systems as well as having strong architectural and streetscape values.

The development has been designed with due regard to the importance and heritage values of Kia Ora. The building is set back as far as possible from the boundary (1.88m) which in addition to the 2.85m setback Kia Ora is enjoying from its own boundary results in a total separation of 4.7m. This is considered a generous setback in the B3 *Commercial Core* zone within the CBD. In keeping with the principles of the Burra Charter, the development respects the adjoining heritage item through clear distinction between new and old and avoiding copying or imitating the heritage item. The contemporary design highlights and even emphasizes the neighbouring heritage item and allows the two developments to stand side by side, each with its own distinct visual attraction.

It is considered that the scale, proportion, and form of the proposal is compatible with the adjoining Kia Ora Heritage Item at 473 Townsend Street due to the location of the proposed mixed-use building affording adequate new-from-old separation and built form and fabric disassociation.

3. Access

A number of issues regarding access to the site are of note:

- a) Due to the increased traffic anticipated for the proposed development in conjunction with the proximity of the access cross-over to the intersection, left-in only access will be permitted from Smollett Street. No right-turn entry from Smollett Street will be allowed and a Condition of Consent is recommended to this extent, including a requirement that the developer construct a median island to regulate this right-turn prohibition should the development be approved.
- b) Rear access to neighbouring Lot 21 (Kia Ora) was raised in a submission as being potentially threatened by the proposed development. Currently, this lot benefits from a right of access easement across the subject site, with one-way entry from Smollett Street and egress to Townsend Street. The proposed development necessitates that such traffic will have to travel through the carpark building and therefore through access control structures ('boom gates'). The overall access arrangement will not change and Lot 21 will continue to have free entry from Smollett Street and egress to Townsend Street, however it is noted that the route will now have a height clearance limit of 3m as a result of the route through the proposed carpark building.
- c) The car parking layout as proposed on the development plans included in Attachment 1 is considered a draft design and it is anticipated that some modification will be made to fully comply with Australian Standard 2890.1–2004 and *Austroads Guide to Traffic Management Part 11: Parking*, with specific reference to turning manoeuvres, sightlines, pedestrian access and motorcycle and bicycle parking. Conditions of Consent have been recommended to ensure compliance with AS 2890 and Austroads, should the development be approved.

4. Variation to planning controls

The following variations to planning controls are proposed:

- a) Exceeding 7-storey height limit (Albury CBD Masterplan)
Section 11.7.3 of the Albury DCP refers to Figure 11.8 which is the Building Height Map from the Albury CBD Masterplan. The Building Height Map nominates a height of seven storeys for this site. The proposed residential component of the mixed-use building is eight storeys in height, whilst the commercial component has minor protrusions above the roof level for the plant, including elevator equipment rooms. This variation is considered supportable as the building is well below the 35m height limit (30.5m) as set out in the Albury LEP 2010. The design complies with the requirements for street wall heights and largely with upper level setbacks, as well as with the Obstacle Limitation Surface Plan of the Albury Airport. The proposed car park building is five storeys high and complies fully with these controls.
- b) Exceeding upper level street setback (Albury CBD Masterplan)

Section 11.7.4 of the Albury DCP require an upper level setback of 3m. The development has a upper levels set back of 2.69m from the Townsend street boundary. This variation is considered supportable because, notwithstanding the variation is relatively minor (10%), the upper levels also slant inwards causing the setback to increase the closer it gets to the corner. The upper levels setback at the corner is approximately 6m, which is well within the control. The building design is considered to satisfy the intent of this part.

c) No deep soil planting areas (variation to Apartment Design Guidelines)

It is noted that no deep soil planting areas are available on the site. This “non-compliance” is considered supportable in the context of the CBD locality of the site, its *B3 Commercial Core* zoning, the mixed-use nature of the proposal and the impracticality of providing deep soil zones as a part of roof level communal open space design. Achieving deep soil zones is not possible within the site because the site is located within the Albury CBD and not only does deep-soil zones not currently exist on the site, it also has associated building typology and floor space expectations and the proposal does not include any residential apartments at ground-floor level. An acceptable storm-water management solution is provided together with raised planter landscaping provision at various levels

d) Insufficient storage space (variation to Apartment Design Guidelines)

Whilst it is noted that the Apartment Design Guidelines (ADG) is not intended to be and should not be applied as a set of strict development standards, it remains a valuable guide to improve the planning and design of residential apartment development in NSW. Having regard to the setting of the proposed development in the CBD and Council’s drive to increase sustainable transport and promote the use of bicycles especially in the inner city, as well as promoting in general a healthy active lifestyle, it is considered prudent that residential apartments would require more than the minimum storage space for items such as bicycles, kayaks and other activity equipment. As a result, the ADG recommended storage space of 6m³ for one-bedroom apartments and 10m³ for three bedroom apartments is considered insufficient in this instance, and storage of at least 10m³ for every apartment is recommended.

2.0 Introduction

The aim of this report is to assist the Southern Regional Planning Panel in its consideration and determination of the subject application.

Development Application 10.2020.37386.1 was received by Council on 25 February 2020. The proposed development comprises the following:

1. Construction of an eight-storey mixed-use building, containing:
 - Commercial Space over seven levels (total 4,414m² GFA);
 - 25 x Residential apartments over seven levels (12 x one-bedroom apartments and 13 x three-bedroom apartments)
 - 18 x car parking spaces on ground floor
 - ‘Green’ roof with common passive recreation areas for residents
2. Construction of a five-storey car park building, containing 458 car parking spaces.

Copies of the plans and Statement of Environmental Effects are included in this report and marked as attachments 1 and 2, respectively.

The development application was publicly exhibited between 18 March 2020 and 14 April 2020. Two (2) submissions were received during this period. Copies of the submissions are included with this report as attachment 3.

Following an initial assessment and the public submission period, Council staff requested further information from the applicant. This was in relation to:

- The NSW Apartment Design Guide;
- Traffic and Parking; and
- Waste Management

An amended Statement of Environmental Effects and amended plans were lodged on 2 June 2020.

2.1 Development Description

The Development Application proposes the construction of an eight-storey mixed-use building containing office premises and residential apartments and a separate five-storey carpark building.

More specifically, the proposed construction comprises the following:

- Construction of an eight-storey mixed-use building, containing:
 - Commercial Space over seven levels (total 4,414m² GFA) with entry from Smollett Street and exit from Townsend Street;
 - 25 x Residential apartments over seven levels
 - Ground floor containing:
 - 2 x commercial tenancies (138m² NLA and 741m² NLA);
 - Commercial lobby;
 - Residential lobby;
 - Service rooms including sprinkler room, store and garbage room;
 - Lifts and stairwell landings;
 - Amenities including staff kitchen and bathrooms; and
 - Car parking (18 spaces including one accessible by people with disabilities)
 - First floor containing:
 - 1 x commercial tenancy (511m² NLA);
 - Accessible terrace (272m²);
 - 1 x Office Annex (122m²);
 - 3 x residential apartments (1 x 3-bedroom (170m²) and 2 x 1-bedroom (72m² & 76m²));
 - Public lobby;
 - Residential lobby;
 - Lifts and stairwells;
 - Amenities including staff kitchen and bathrooms; and
 - Bridge walkway connecting to car park building
 - Second to Sixth floors containing:
 - 1 x commercial tenancy (560m² NLA);
 - Office balcony (16.5m²);
 - 4 x residential apartments (2 x 3-bedroom (170m² & 178m²) and 2 x 1-bedroom (72m² & 76m²));
 - Lifts and stairwells; and
 - Amenities including bathrooms;

- Seventh floor containing:
 - Lawn & roof planted spaces (560m² NLA);
 - BBQ area with pergola (16.5m²);
 - 2 x 3-bedroom residential apartments (200m²);
 - Lifts and stairwells; and
 - Photovoltaic solar panels on the roof
- Construction of a five-storey car park building with open to semi-open side wall void areas and an open upper level with shade structures. The carpark provides for 457 car parking spaces including 20 disabled spaces, bicycle racks and storage lockers. An above-ground suspended weather-proof pedestrian walkway connects the building at Level 1 to the associated mixed-use building at its first floor:
 - Ground floor 99 spaces, including 4 Accessible
 - Level 1 78 spaces, including 4 Accessible
 - Level 2 88 spaces, including 4 Accessible
 - Level 3 88 spaces, including 4 Accessible
 - Level 4 104 spaces, including 4 Accessible

Mixed-use building

The proposed mixed-use building is characteristic of a regional city centre high-quality multi-level commercial/residential building being an eight-storey building on a road corner with an active ground-level frontage and street interface. The commercial component of this building is contained within the ground floor and eastern part of the first to sixth floors (seven levels) while the residential component is contained within the western part of the first to seventh floors (seven levels).

The building provides 4,414 m² GFA of commercial space over the seven levels and 25 residential apartments over seven levels with 18 ground-level car parking spaces, including one accessible space for people with disabilities, bicycle racks and storage lockers. The building structure is of concrete construction with mechanical lifts and stairwells approximately 41 metres long, 48 metres wide and 30.8 metres high.

Residential visitor car parking is provided within the ground floor (and also at the ground floor of the carpark building). Residential car parking is provided at the ground floor of the mixed-use building and also at Level 1 of the carpark building, given pedestrian access will also be via the suspended walkway to Level 1.

The building elevation plans (included in attachment 1) show that external building cladding materials and colours are proposed to be a mix of painted precast concrete panels, double glazed powder coated aluminium window panels (with box frames for residential windows), colour painted fibre cement main and secondary walls, Colorbond steel upper walls, aluminium bi-fold sun screen panels, colour painted blockwork planter boxes, vertical slat fencing at 100mm centres, and powder coat colour finish aluminium louvres.

The key building development features of the mixed-use building include:

- active street frontages, with the principle pedestrian accessways for commercial and residential uses being from Smollett Street, with each access type being differentiated through design features and articulation hierarchy, with separated lobbies and internal lifts;
- lot boundary setbacks and stepped-back upper level building design consistent with design objectives and guidelines under Albury CBD Masterplan and north elevation void separation respect for the adjoining 'Kia-Ora' heritage item to the north fronting Townsend Street;

- partially open ground-level carpark to facilitate natural light ingress and ventilation;
- vehicle entry is only via Smollett Street; vehicle exit is only via Townsend Street, which carries forward existing conditions;
- awning weather-protection pedestrian access via Townsend Street and Smollett Street with bollard lighting;
- lockable storage provided for residents at ground level;
- secure carpark access sliding gates and vehicle queuing space available within the site at both the carpark entry from Smollett Street and exit to Townsend Street,
- internal waste management system and bin storage facilities with bin collection via Smollett Street by private contractors;
- upper level utilised for solar energy electricity generation; and
- incorporation of Safer-by-Design principles.

Carpark building

The proposed carpark building is characteristic of a regional city centre multi-level carpark building being with five carpark levels and with open to semi-open side wall void areas and an open upper level with shade structures. The carpark provides for 457 car parking spaces including 20 accessible spaces for people with disabilities, bicycle racks and storage lockers.

The building structure is of concrete construction with mechanical lifts and stairwells approximately 71 metres long, 47 metres wide and 16.5 metres high. An above-ground suspended weather-proof pedestrian walkway connects the building at Level 1 to the associated mixed-use building also at Level 1 (first floor). An above-ground pedestrian and disabled accessway also connects the building at Level 1 to the adjoining Gardens Medical Centre land to the west, noting that one existing car parking space within the Gardens Medical Centre site would need to be removed.

The building elevation plans show that external building cladding materials and colours are proposed to be a mix of alternating colour painted precast grooved concrete panels, powder coated metal fencing, steel framed alternating colour painted perforated steel panels (with fire shutters located behind), vertical rod fencing at 125mm centres, and 20% transparency perforated metal privacy screens.

The key building development features of the carpark building include:

- vehicle entry is only via Smollett Street; vehicle exit is only via Townsend Street, which carries forward existing conditions;
- pedestrian and bicycle access is via either road frontage, but if bicycle access is via Townsend Street then the bollard-protected pedestrian accessway must be used (as access will be against traffic flow),
- weather-protection pedestrian access via the above-ground suspended walkway connecting both buildings at first floor level, with a ground-level pedestrian walkway being underneath and therefore also weather protected and also with bollard lighting;
- lockable storage provided for residents of the associated mixed-use building at ground-level;
- the public road reserve of Golden Way utilised for fire escape egress (with no removal of any existing trees within the road reserve required);
- secure carpark access boom or gates and vehicle queuing space available within the site at both the carpark entry from Smollett Street and exit to Townsend Street;
- 1.8m-high privacy screens for adjoining residential property provided for Levels 1-3 along the western building elevation;
- a 3m wide setback afforded to the adjoining residential dwelling to the west;
- building siting and design in regard to overshadowing of adjoining residential property complies with relevant guidelines;

- upper level shade structures utilised for solar energy electricity generation;
- automatic fire shutters utilised for northern building elevation to avoid the requirement for mechanical ventilation of the building whilst also complying with fire safety requirements (all fire shutters remain open except if triggered to close by fire sensors);
- linking pedestrian and disabled accessway at Level 1 to the adjoining Gardens Medical Centre with security gate and lighting (landowner's consent provided with the application) facilitating the use of 20 car parking spaces as described at Sections 2.2 and 4.3 (Part 17), and
- incorporation of Safer-by-Design principles.

To implement the development, the Development Application also proposes the consolidation of 580 Smollett Street Albury (Lot 201 in DP1243276) and 584 Smollett Street Albury (Lot 203 in DP1243276), the demolition of all existing carpark facilities, fencing, landscaping, redundant underground infrastructure, the Council reticulated sewer above-ground vent pipe and part of the Essential Energy electrical substation. One exotic tree in the north-western corner of the Site (part of existing car park landscaping) requires removal. The tree is over 4.5 metres in height and 3 metres in spread.

The development plans are included as attachment 1 to this report, which are the plans considered in the assessment against *Albury Local Environmental Plan (LEP) 2010* and *Albury Development Control Plan (DCP) 2010* requirements.

2.2 Site and Locality Description

The subject site is within the western part of the Albury CBD and comprises three lots:

- Lot 201 in DP1243276 at 580 Smollett Street – the mixed-use building;
- Lot 203 in DP1243276 at 584 Smollett Street – the carpark building; and
- Part of Lot 60 in DP1115982 at 470 Wodonga Place – insofar a proposed pedestrian and disabled accessway connecting the carpark building with this lot will be located in the north-eastern corner (from south-western corner of Lot 203).

As stated above, Lots 201 and 203 in DP1243276 – 580 and 584 Smollett Street will be consolidated into one lot.

The combined site has an irregular shape with no general axis and has dimensions of approximately:

- 59.5 metres along its southern lot boundaries with Smollett Street;
- 49.8 metres along its eastern lot boundaries with Townsend Street;
- 122.8 metres along its northern lot boundaries with adjoining commercial land and Golden Way; and
- 101.2 metres along its western lot boundaries with adjoining commercial and residential land, with an overall area of approximately 6,601 square metres.

The main part of the site has existing improvements consisting of at-grade (ground level) car parking facilities, an electrical substation and carpark landscaping. The combined site is generally flat over its entire area with no discernible slope. The site's existing carpark, vehicle access and manoeuvring areas however have finished surface levels conducive to effective and efficient stormwater drainage to the southwest.

The title survey plan shows that the site has existing infrastructure easements, covenants, restrictions, and rights-of-way within the meaning of the Conveyancing Act 1919. Existing infrastructure easements

include water, sewer, stormwater and electricity. Existing covenants, restrictions and rights-of-way further include car parking space and access obligations described below:

Adjoining properties currently benefit from the use of certain car parking spaces within the existing ground-level carpark at 584 Smollett Street (Lot 203 DP1243276):

- adjoining land at 475 Townsend Street (Lot 204 DP1243276) currently benefits from the use of 26 car parking spaces;
- adjoining land at 590 Smollett Street (Lot 202 DP1243276) currently benefits from the use of 63 car parking spaces; and
- adjoining Kia Ora at 473 Townsend Street (Lot 21 DP1053711) currently benefits from the use of 8 car parking spaces.

These car parking space obligations total 97 car parking spaces and their provision carries forward in the proposed carpark building. A summary table of overall car parking space allocation is provided at Section 4.3 (Part 17) of this report.

An additional 20 car parking spaces will be provided benefitting the Gardens Medical Centre at 470 Wodonga Place (Lot 60 in DP1115982) in addition to the 97 car parking spaces mentioned above. The provision of this 20 car parking space obligation will serve to allow for a financial bank guarantee relating to 20 car parking spaces at the Gardens Medical Centre held by Council to be cancelled as the bank guarantee will serve no further purpose.

The existing storage building along the northern lot boundary of the site was approved for demolition via Development Consent No. 10.2019.36751.1 on 26 April 2019 however demolition is yet to take place. These works do not form a part of this application.

Reticulated water, sewer, stormwater, electricity, natural gas, and telecommunications services are connected to the site. The proposed carpark building requires a minor relocation of the existing Essential Energy electrical substation and an existing Council reticulated stormwater drainage pipe and easement location amendment to accommodate a proposed building pier. The mixed-use building part of the site contains a reticulated sewer aboveground vent pipe with diffuser tip in its southwest part. This infrastructure will be removed as a part of the proposal and an alternative location solution negotiated with Council. During the assessment of the application, Council's Wastewater Team have had the ageing sewer mains under the proposed development site condition-assessed. It was determined that the sewer mains will need to be structurally relined to ensure construction will not impact the mains.

The site is considered very accessible by road due to its prominent location within the Albury CBD, which is serviced by:

- Hume Freeway – a State Highway and major arterial route linking Sydney and Melbourne;
- Wodonga Place (Riverina Highway) and Hume Street (Riverina Highway) – a State road and sub-arterial route extending east-west through Albury;
- Young Street/Mate Street – a north-south collector road route; and
- Smollett Street/Townsend Street – collector roads connecting Wodonga Place (Riverina Highway) and Hume Street (Riverina Highway).

Smollett Street has two lanes in each direction with supplementary right and left turn lanes at the Townsend Street intersection. Townsend Street has two lanes in each direction with supplementary right and left turn lanes at the Townsend Street intersection. Existing traffic controls include traffic signals at the Young Street/Guinea Street and Borella Road/Hume Freeway on/off ramp intersections,

traffic signals at the Smollett Street/Townsend Street and Smollett Street/Wodonga Place (Riverina Highway) intersections and 50 km/h speed limits.

The site currently has vehicle and pedestrian access from Smollett Street and Townsend Street. These existing access arrangements carry forward in the proposal, however it is noted that vehicle entry to the site is proposed from Smollett Street only whereas vehicle exit from the site is proposed from Townsend Street only.

The subject site and surrounding lands to the North and East are zoned *B3 – Commercial Core*, whilst adjoining lands to the South and West are zoned *B4 – Mixed Use* under *Albury LEP 2010* and the local area displays a mixed character, with nearby uses including commercial and retail developments, medical centre, food and drink premises, dwellings converted to offices, Council depot and residential development (including single dwellings, townhouses and units). The site is also within close walking distance (approximately 200m) of the Albury Botanical Gardens and Albury Sports Ground (containing a football oval and swim centre) to the west. The Albury CBD main street (Dean Street) is just over 100m to the north. The area's mixed use character is reflective of its location on the western edge of the Albury CBD and proximity to recreational areas on the banks of the Murray River.

All required urban services are available to the subject site.

2.3 Request for further information

Following an assessment and the public submission period, Council staff requested further information from the applicant. This was in relation to:

- The NSW Apartment Design Guide
 - The applicant was requested to demonstrate how the proposed design meets the objectives of the Design Guide
- Traffic and Parking
 - Further information regarding traffic analysis, provision of parking and the car park layout was requested
- Waste Management
 - Further information regarding bin storage with particular emphasis on capacity and accessibility was requested

An amended Statement of Environmental Effects and amended plans were lodged on 2 June 2020. The amended reports and amended plans now form the basis of this application.

3.0 Council Plan and Council Policies

The following Council Policies are relevant to the application:

- *Albury Local Environmental Plan 2010 (Albury LEP 2010);*
- *Albury Development Control Plan 2010 (Albury DCP 2010);*
- *Albury Infrastructure Contributions Plan 2014;*
- *Encroachment on Council Land Policy 2016; and*
- *Albury City Council's Notification Policy.*

The town planning assessment of the proposal under Section 4.15 (formerly Section 79C) of the *Environmental Planning & Assessment (EP&A) Act 1979* has involved the consideration of *Albury LEP 2010* and *Albury DCP 2010*.

4.0 Environmental Assessment

An assessment of the application has been carried out under the provisions of the *Environmental Planning and Assessment Act (EP&A Act) 1979*. Relevant details are outlined below.

Development proposals within the B3 *Commercial Core* zone are assessed according to the zone objectives, the provisions of the LEP and DCP and the provisions of Section 4.15 of the *EP&A Act 1979*.

The relevant considerations under Section 4.15 are considered in this report and a response is outlined in the following section of this report.

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

4.1.1 State Environmental Planning Policy (SEPP) 55 – Remediation of Land

This State Environmental Planning Policy (SEPP) aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:

- (a) *by specifying when consent is required, and when it is not required, for remediation work, and*
- (b) *by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out remediation work in particular, and*
- (c) *by requiring that a remediation work meet certain standards and notification requirements.*

In determining development applications on potentially contaminated sites, Councils are required to consider whether previous uses on the site may have resulted in contamination and whether the site is suitable for the development proposed.

The Statement of Environmental Effects (SEE) lodged with the application suitably addresses this issue and a perusal of Council's records indicates that the site is not known to be contaminated.

The requirements of SEPP 55 have been considered and the site is suitable for the proposed use.

State Environmental Planning Policy (SEPP) – Building Sustainability Index (BASIX)

SEPP (*Building Sustainability Index: BASIX*) applies to the new dwellings. The development application has been accompanied by BASIX Certificates in accordance with this requirement.

The BASIX assessment tool is an online tool that developers use to assess their proposed developments and subsequently obtain a BASIX Certificate, based on the commitment of the developer to satisfy water and energy targets.

Based on the data that the applicant provides regarding building design, the BASIX tool assesses the anticipated water consumption and greenhouse gas emissions levels of the proposed development. The expected thermal performance of the proposed building is also assessed as part of BASIX. For the water and energy targets, the development is assessed on how it is likely to perform against existing dwellings of the same type.

The applicant has obtained a BASIX Certificate for the development which exceeds the pass scores required for such development.

State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings (SEPP 65)

4 Application of Policy

- (1) This Policy applies to development for the purpose of a residential flat building, shop top housing or **mixed use development with a residential accommodation** component if:
- (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
 - (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
 - (c) the building concerned contains at least 4 or more dwellings.

Comment:

SEPP 65 applies to the proposed development as the proposal exceeds three storeys in height and contains more than four self-contained residential dwellings. SEPP 65 takes precedence over Council's planning controls and if a development achieves the standards of SEPP 65, a conflicting or higher standard in Council's controls has no effect and cannot be taken into consideration in the assessment of the development.

Clause 30(2) of SEPP 65 requires Council to consider the comments of a Design Review Panel (if one has been constituted) as well as the design quality principles in Part 2 of SEPP 65 and the *Apartment Design Guide* (if applicable) in its determination of the application. No panel has been constituted for the Albury LGA and therefore the assessment of compliance can be undertaken by a suitably qualified and experienced officer of Council. An assessment against the Design Quality Principles is outlined in the consideration of the application under *Albury DCP 2010*, to enable all relevant controls to be assessed in a single location.

An application of this nature also requires the submission of a Design Verification Statement addressing the principles of the Code. In this case the Design Verification Statement has been provided by a suitably qualified architect (Georges Rich, Senior Architect of Leffler Simes Architects) and this statement has also been assessed by Council's Senior Town Planner.

Schedule 1 to the SEPP outlines nine (9) design principles which in summary are:

- Principle 1: Context and neighbourhood character;
- Principle 2: Built form and scale;
- Principle 3: Density;
- Principle 4: Sustainability;
- Principle 5: Landscape;
- Principle 6: Amenity;
- Principle 7: Safety;
- Principle 8: Housing diversity and social interaction; and
- Principle 9: Aesthetics.

Part 4 of SEPP 65 addresses the application of the design principles, and in particular Clause 28(2) states:

- (2) *In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):*
- (a) *the advice (if any) obtained from the design review panel, and*
 - (b) *the design quality of the development when evaluated in accordance with the design quality principles, and*
 - (c) *the Apartment Design Guide.*

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

An assessment against the nine Design Quality Principles is outlined below:

Design Quality Principles

1. **Context and neighbourhood character:** *Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.*

Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment: The SEPP 65 Design Verification Statement prepared by the architect of the project states: *"the mixed use proposal will have a strong impact by virtue of its height and substantial mass. The commercial use on the corner is in keeping with current street character, while the residential component adds a new and desirable community use to the locality; this will enhance the neighbourhood character in providing a diverse use that enlivens the area during the day and night."*

The site is located on a major street corner of Albury at the western edge of the Albury CBD and is zoned B3 Commercial Core. Under SEPP 65, responding to context involves identifying the desirable elements of a location's current character or, in the context of an area undergoing a transition, the desired future character as stated in planning and design policies.

The design includes a strong corner presentation with zero setbacks at the Townsend Street front at ground floor level. The design reinforces the mixed use nature of the building whilst also utilising a mix of traditional building materials found in this area and modern materials. The design will balance and bookend the existing Gardens Medical Centre to the west giving due respect to that landmark structure whilst also being sympathetic to the listed heritage item No I174 (Kia Ora) at 473 Townsend St to the northeast through setback.

Overall it is considered that the proposed development appropriately responds to the context and neighbourhood character.

2. **Built form and scale:** *Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.*

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment: The Design Verification Statement states: *The commercial and residential uses have been combined with a view to complement each other, despite their divergent uses. The commercial portion takes precedence by making a robust corner statement; an arc of glass and concrete spans across the corner of Smollett and Townsend Streets providing an individualistic architectural character that will be highly recognizable. The transformation into the residential portion on the South façade is gradual, not brutal. The arc is discontinued by a strong and colourful vertical element, reminiscent of masonry. As the building turns to the west, a different character is evolved that reflects its alternative use. We have attempted to make this transition a positive and desirable event in the Albury "Downtown" context. The height of the building is within the maximum height limit imposed and therefore abides by the desired character of the area.*

The development complies with height and FSR controls contained in *Albury DCP 2010* and satisfies the intent and objectives of the B3 Commercial Core Zone. The site is located within the CBD, where the Albury CBD Masterplan envisages buildings with greater bulk and scale, with street frontages consistent with the traditional zero setbacks of commercial areas. The design is consistent with the desired future character of the area. The location of this site warrants a development which makes a clear statement and visually signals the entry into the CBD. The form and scale of the building achieve the objectives and the controls for this area and for this form of development.

3. **Density:** *Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.*

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment: The Design Verification Statement states: *The entrance to the apartments is clearly defined by being located off the laneway, unambiguously separated from the commercial entry. While recessed, entry is still visible from Smollett St by being slightly forward of the main ground floor wall. A car drop-off zone is provided there, along with generous planters to isolate it from passing traffic accessing the carpark. The apartments face west primarily, north and south. They will benefit from good views to the west and glimpses of the east panorama will also be provided by the protruding balconies.*

The development proposes 25 apartments, comprising 12 x one bedroom apartments and 13 x three bedroom apartments. The proposal represents a new form of development in this part of the city and a higher density of development than previously constructed in the CBD and surrounds. Notwithstanding this, Council has a vision to encourage mixed use developments within and in close proximity to the CBD to increase the resident population in the CBD by providing housing choice and promoting sustainability through efficient use of existing services and infrastructure.

In addition to satisfying the controls and objectives of the zone and the precinct under *Albury LEP 2010* and *Albury DCP 2010*, the density and the apartment mix proposed is compatible with the following desired outcomes contained in *Albury 2030*:

- 1.3.1 Support and encourage a diversity of residential and commercial development in the Albury and Lavington CBDs.
 - 1.3.2 Support and promote sustainable growth through planning and infrastructure to provide employment opportunities, housing choice and community facilities
4. **Sustainability:** Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment: The Design Verification Statement states: *The proposal aims to set desirable benchmarks in sustainability, both in construction and in the continuing life of the building. A combination of passive design and active sustainable systems are proposed to minimise the environmental impact of the building while maximising the amenity of the occupants. These include meeting the requirements of BASIX, a generous photovoltaic cells roof landscape zone & planting of appropriate water hardy species. Features of the ESD inclusions are:*

- laundry facilities in each apartment and generous balconies for drying of clothes.
- passive solar design enhancing natural heating and cooling,
- solar collection devices contribute to energy input from natural sources
- generous window sizes to promote natural light usage, rather than electrical.

The BASIX certification for the development reveals that the development exceeds the water and energy targets applicable and as such, the dwellings are expected to perform adequately for future resident amenity. The development includes installation of photovoltaic solar energy system on the roof to provide power to common property and services.

The dimensions and therefore capacity of waste storage locations have been determined with reference to the Apartment Design Guide, consultation with a commercial waste contractor, and building management experience with similar mixed-use building projects. Commercial contractors will collect all waste (as previously advised). Any signs on public land which may be required will only be erected in consultation with Council.

The development includes the provision of a 'green roof' and landscaping at ground floor level.. The balconies and terraces include significant areas of landscaping to assist in reducing heat transfer from hard paved surfaces.

5. **Landscape:** Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment: The Design Verification Statement includes the following in support of this development: *The landscape design is appropriate for the urban context of this development. A generous roof top zone is earmarked for residents. It consists of a large open lawn area and a more intimate BBQ zone, facing north with a pergola and some lawn.*

Apart from the retention of existing street trees, ground-level landscaping throughout the development is limited to shrubs and groundcovers in garden beds at the Smollett Street/Townsend Street corner and building entrances of the mixed-use building. At first-floor level, the perimeter of the proposed terrace facing Smollett and Townsend Streets will be lined with shrubs and grasses. The rooftop will feature artificial lawn and a narrow landscaping strip containing shrubs facing north. The communal open space area and external circulation areas are provided with paving and materials which complement the landscaping and which can withstand seasonal climatic variations and continued use. Proposed balconies are also generous and provide opportunities for more localised landscaping for individual apartments. The overall landscaping of the development, albeit limited, is in keeping with its urban setting and is offset by the proximity of well landscaped public open spaces within close walking distance of the development. Furthermore, views of the Botanical Gardens and natural vegetation along the banks of the Murray River and Monument Hill further augments the landscape as experienced by future residents.

6. ***Amenity:*** *Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well-being.*

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment: The Design Verification Statement summarises the most important criteria met as follows:

1. **Size.** *The various minimum requirements for apartment sizes, storage volume, balcony sizes and depths have been exceeded for all apartments*
2. **Car parking facilities** *are provided in 2 locations; one on the site (20 cars) and the remainder on level 1 of the new proposed car parking station on Lot 203. Note that an enclosed bridge has been included to level 1, thereby providing convenient undercover secure access for residents*
3. **Daylight** *is a primary and essential element for the wellbeing and delight of the residents. A minimum of 3 hours of sunlight (to 70% of apartments) is required in any living room on the shortest day of the year (June 22). The project delivers this feature to 100% of apartments.*
4. **Natural ventilation** *is another important aspect of good design; the guide requires a minimum of 60% of apartments to be thus equipped. The proposal achieves this minimum; refer to Project Statistics drawing 580DA04.*

The suitability of the development to the site and the surrounding area are addressed in more detail later in this report. The assessment of the suitability of the development includes consideration of landscaping, energy efficiency, access, safety, privacy, and internal amenity. The development performs to the expected standards and in some instances, exceeds the requirements of the SEPP and *Albury DCP 2010*. As a result, amenity for future residents is considered to have been adequately provided for in the design of the development. The project is a high quality and generous proposal that will provide an enviable level of comfort and amenity to its residents.

7. **Safety:** *Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.*

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment: The Design Verification Statement states: *The proposal achieves a high level of personal security; a feeling of safety for residents in an essential prerequisite, consistent with Safety-By-Design principles. From car park to apartment, residents are sequestered within a monitored and enclosed environment both physical and electronic and have good visual surveillance from street to apartment door. As this project is a "high-end" type of development, security is a high priority. Details to be supplied at CC Stage.*

No significant security or safety issues have been identified during the assessment of the application. The entries to the ground floor tenancies and the lobbies for lifts and general access areas are clearly defined and front the public roads adjacent to the site. The proposed development provides for passive surveillance of surrounding areas, common areas and entries from both within the building and from the public domain.

8. **Housing diversity and social interaction:** *Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.*

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment: The Design Verification Statement states: *In apartment design a fair and reasonable mix of community and privacy must be achieved. A feeling of private security must be present while allowing for good community relations. The mix of 3 and 1 bedroom apartments will generate a good diversity of residents at various ends of the "spectrum".*

Council encourage mixed use developments in close proximity to the CBD to increase the resident population in the CBD by providing housing choice and promoting sustainability through efficient use of existing services and infrastructure. The development proposes 25 apartments, comprising 12 x one bedroom apartments and 13 x three bedroom apartments. Two of the three bedroom apartments are larger, 200m² "penthouse" apartments on the top floor to further the diversity on offer. The mix of one and three bedroom apartments and penthouse apartments contributes to housing diversity, which will attract different household types.

The apartment mix, coupled with the provision of retail spaces within the building and the social areas on the rooftop creates opportunities for social interaction between a number of different household types within the development.

9. **Aesthetics** *Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.*

The visual appearance of well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment: The Design Verification statement includes the following in support of the development: *In general, a classical approach to architecture has been taken, providing a base, a main body and a roof; this classical construct is interpreted to fit within a modern paradigm. A high degree of contrast contributes to a level of tension engendered by the dual uses on the site. Strong vertical “orange” piers stitch together the primary “white” horizontal elements. These balance the apparent height of the building. The floor to floor height necessary for the commercial portion, 3600mm has been continued in the residential building, resulting in pleasing high ceilings of 3 metres. A pitched roof plane completes that portion of the building stating that this is the residential part of the building. The proposed architectural statement is, in our opinion, an attractive building that will enhance the residents, proprietors and the City of Albury.*

The combination of building to the street frontage, activation of those frontages with retail uses and the use of different materials in a modern building provides for an appropriate aesthetic within the CBD and within an area undergoing renewal.

Overall the proposed development is considered to be satisfactory under the Design Quality Principles of SEPP 65.

Apartment Design Guide

Whilst SEPP 65 establishes nine design quality principles to be applied in the design and assessment of residential apartment development, the *Apartment Design Guide (2017)* provides greater detail on how residential development proposals can meet these principles through good design and planning practice.

The *Apartment Design Guide* (ADG) is a publication by the NSW State Government which further expands on the design quality principles above by providing some detailed practical guidance for the design of residential flat buildings and mixed-use buildings. The ADG also applies to developments of three (3) or more storeys that contain four or more dwellings and is therefore relevant to this application.

The applicant provided a detailed compliance table in response to the Request for Further Information on 2 June 2020, which is attached in full as part of the Statement of Environmental Effects at attachment 2 to this report. The conclusions contained within that compliance table in respect of the requirements of the ADG are concurred with and it is considered that the design and siting of the development has achieved the required outcomes, with the notable exception that no deep soil planting areas are available on the site. This “non-compliance” is considered supportable in the context of the CBD locality of the site, its B3 Commercial Core zoning, the mixed-use nature of the proposal and the impracticality of providing deep soil zones as a part of roof level communal open space design. Achieving deep soil zones is not possible within the site because the site is located within the Albury CBD and not only does deep-soil zones not currently exist on the site, it also has associated building typology and floor space expectations and the proposal does not include any residential apartments at ground-floor level. An acceptable storm-water management solution is provided together with raised planter landscaping provision at various levels.

The ADG addresses the design of residential apartment development at the site and individual building scale. It includes the following parts:

Part 1 - Identifying the context

This part introduces generic apartment building types to inform appropriate site, block and building design responses at a strategic level. It outlines the importance of understanding the context, setting, local character, size and configuration of a development site. It is to be used primarily during the design stage of a development and during the strategic planning process when preparing planning controls.

Part 2 - Developing the controls

This part explains the application of building envelopes and primary controls including building height, floor space ratio, building depth, separation and setbacks. It provides tools to support the strategic planning process when preparing planning controls.

Part 3 - Siting the development

This part provides guidance on the design and configuration of apartment development at a site scale. It outlines how to relate to the immediate context, consider the interface to neighbours and the public domain, achieve quality open spaces and maximise residential amenity. It is to be used during the design process and in the preparation and assessment of development applications.

Comment: This section provides guidance on a number of site elements to consider which would influence the design and placement of a Residential Flat Building on a parcel of land. This includes the following elements:

- 3A – Site Analysis
- 3B – Orientation
- 3C – Public domain interface
- 3D – Communal and public open space
- 3E – Deep soil zones
- 3F – Visual privacy
- 3G – Pedestrian access and entries
- 3H – Vehicle access
- 3J – Bicycle and carparking

The development has been designed to achieve the outcomes of this section of the ADG. It is considered that the development has appropriately addressed and responded to these elements and therefore satisfies the requirements of the ADG.

Part 4 - Designing the building

This part addresses the design of apartment buildings in more detail. It focuses on building form, layout, functionality, landscape design, environmental performance and residential amenity. It is to be used during the design process and in the preparation and assessment of development

Comment: This section provides more detailed guidance on a number of elements to consider which would influence the design of a Residential Flat Building on a parcel of land. This includes the following elements:

- 4A – Solar and daylight access
- 4B – Natural ventilation
- 4C – Ceiling heights
- 4D – Apartment size and layouts
- 4E – Private open space and balconies

- 4F – Common circulation and spaces
- 4G – Storage
- 4H – Acoustic privacy
- 4J – Noise and pollution
- 4K – Apartment mix
- 4L – Ground floor apartments
- 4M – Facades
- 4N – Roof design
- 4O – Landscape Design
- 4P – Planting on structures
- 4Q – Universal design
- 4R – Adaptive reuse
- 4S – Mixed use
- 4T – Awnings and signage
- 4U – Energy efficiency
- 4V – Water management and conservation
- 4W – Waste management
- 4X – Building maintenance

Each element contains a combination of design criteria and/or guidance to assess a proposed development against. A significant number of these provide design solutions without formal controls to be satisfied.

With consideration to the guidance provided in this section, the development has appropriately addressed and responded to these elements (where relevant) and therefore satisfies the requirements of the ADG. The minimum standards are satisfied by the proposal and in some cases exceeded such as minimum apartment and room sizes, storage and open space requirements.

An assessment against some of the key controls is provided below:

Control	Min. requirement	Provided	Complies
Unit size	1 bedroom: 50m ² 3 bedroom: 90m ²	Min 72m ² Min 170m ²	Yes
Balcony size	1 bedroom min: 8m ² 3 bedroom min: 12m ²	Min 9.5m ² Min 25m ²	Yes
and depth	1 bedroom: 2m 3 bedroom: 2.4m	Min 2.69m Min 2.4m	Yes
Solar access (i.e. 2 hours direct sunlight)	70%	100%	Yes
Habitable room floor to ceiling height	2.7m	3m	Yes
Storage facility (excl. kitchens, bedroom, bathrooms)	1 bedroom: 6m ³ 3 bedroom: 10m ³	Provided within apartments, communal storage room and in individual storage “lockers” in Ground-floor carpark	Yes
Locate vehicle entries away from pedestrian entries	Yes	Yes	Yes

It is noted for context, even though the proposal substantially complies with the ADG, consistent with Planning Circular PS 17-001 - *Using the Apartment Design Guide* (p. 1), that:

"The ADG is a guide containing design guidance to improve the planning and design of residential apartment development in NSW."

"...the ADG is not intended to be and should not be applied as a set of strict development standards."

Part 5 – Design review panels

This part explains the role of design review panels in the development assessment process, outlines administrative procedures and provides templates for the successful operation of a panel. It is to be used by councils to administer design review panels at all relevant stages of the development process. As noted earlier, AlburyCity does not have a constituted Design Review Panel and therefore this section is not applicable.

State Environmental Planning Policy (Infrastructure) 2007

The following provision of SEPP Infrastructure is considered relevant to assessment of the Proposal:

Clause 45: Development likely to affect an electricity transmission or distribution network

45 Determination of development applications—other development

(1) *This clause applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following—*

b) development carried out—

- (i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
- (ii) immediately adjacent to an electricity substation, or*
- (iii) within 5m of an exposed overhead electricity power line,*

(2) *Before determining a development application (or an application for modification of a consent) for development to which this clause applies, the consent authority must—*

- a. give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*
- b. take into consideration any response to the notice that is received within 21 days after the notice is given.*

Comment: Essential Energy was notified of the proposed development and they responded with standard technical advice. The advice was noted and will be heeded during detail design prior to the issue of a Construction Certificate.

Clause 104: Traffic-generating development

(1) *This clause applies to development specified in Column 1 of the Table to Schedule 3 that involves—*

- a. new premises of the relevant size or capacity, or*
- b. an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.*

Note: Schedule 3 lists Car parks (whether or not ancillary to other development) with 200 or more car parking spaces as traffic-generating development.

(2A) *A public authority, or a person acting on behalf of a public authority, must not carry out development to which this clause applies that this Policy provides may be carried out without consent unless the authority or person has—*

- a. *given written notice of the intention to carry out the development to RMS in relation to the development, and*
- b. *taken into consideration any response to the notice that is received from RMS within 21 days after the notice is given.*

Comment: The development was referred to Transport for NSW (formerly RMS), who responded as follows:

- *The submitted plans identify that vehicular access to the proposed development is to be via an entry only driveway from Smollett Street and an exit only driveway from Townsend Street. This is supported for road safety as this one-way operation will require vehicles to enter and exit the site in a forward direction. The proposed separate driveways and access arrangements should be clearly signposted to minimise conflict on the public road network.*
- *The Traffic Impact Assessment recommends construction of concrete kerb blisters adjacent to the exit driveway from the site onto Townsend Street to improve visibility and safety. Consideration should also be given to the removal of the last marked parking space west of the crossover of the driveway to Townsend Street to allow for the exit lane to be relocated to improve the sight distance to pedestrians on Townsend Street to the north of the exit driveway.*
- *Consideration should be given to all activities, including, loading and unloading associated with this development being within the subject development site to remove interference with vehicles and pedestrian movement on Smollett Street and Townsend Street. Notwithstanding the above any changes shall not interfere with current lane configuration for the signalised intersection.*
- *Council may also consider requesting that a management plan to address demolition and construction activity access and parking be prepared to ensure that suitable provision is available on site for all vehicles associated with the on-site works for the construction of the development so as not to impact operation of the nearby traffic signals.*
- *The proposed colour scheme for the building and any signage shall not include colours of red, green or amber as this may detract from the view of motorists to the lanterns on the traffic signals.*
- *As the development proposal does not appear to have any detrimental effects to the classified road network TfNSW would raise no objection to the development proposal subject to the Consent Authority ensuring that the development is undertaken in accordance with the information submitted subject to consideration to the issues outlined above.*

(A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and

Comment: The proposal does not change existing vehicle access arrangements (for existing car parking at the site). Vehicle entry is only via Smollett Street; vehicle exit is only via Townsend Street. The site is considered very accessible for efficient movement to and from the site and well located for multi-purpose trips.

(B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail,

Comment: Bicycle rack spaces are provided onsite and pedestrian footpaths connect to the surrounding public domain. The locality of the development encourages alternative modes of travel.

(iii) any potential traffic safety, road congestion or parking implications of the development.

Comment: Traffic generation arising from the development can be accommodated within the existing road network and proposed car parking facilities on site.

Deemed State Environmental Planning Policy - Murray Regional Environmental Plan No.2 – Riverine Land (MREP2)

This deemed State Environmental Planning Policy (MREP2) is applicable to the proposal. The aim of MREP2 is to conserve and enhance the riverine environment of the River Murray (meaning the Murray River, the waters and the bed and banks of its tributaries and associated water bodies, including related anabranches, creeks, lagoons, lakes, billabongs and wetlands) for the benefit of all users.

The objectives of MREP2 are:

- a) *to ensure that appropriate consideration is given to development with the potential to adversely affect the riverine environment of the River Murray;*
- b) *to establish a consistent and coordinated approach to environmental planning and assessment along the River Murray; and*
- c) *to conserve and promote the better management of the natural and cultural heritage values of the riverine environment of the River Murray.*

The development proposal is consistent with the intent and application of MREP2 as the site is some distance from the Murray River and will have no specific impact on the riverine environment. The type of development proposed in this application is not included in the list of specific developments for which MREP2 requires additional notification and referral.

4.1.2 Albury Local Environmental Plan 2010 (Albury LEP 2010)

The subject site is zoned B3 – *Commercial Core* under the *Albury LEP 2010* and is subject to the provisions of that LEP.

The particular aims of the *Albury LEP 2010* are set out below:

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

The site is located within the Albury CBD, which has been developed over many years for a range of different commercial, retail and service purposes. The surrounding area supports a variety of retail, commercial and residential uses and the proposed development provides for a mixed use development including commercial and residential development.

The proposed use is not contrary to the objectives of the LEP and the development is consistent with the desired outcomes of the *Albury CBD Masterplan* and *Albury DCP 2010*.

Specific clauses of the *Albury LEP 2010* relevant to the development include:

Part 2 Permitted or prohibited development

Land Use Zones

The subject development is proposed on a site zoned for commercial development. The proposed development is permissible with consent in this zone, as discussed below.

Clause 2.3 of *Albury LEP 2010* references the Land Use Table and Objectives for each zone in ALEP 2010. The objectives and permissible land uses in the B4 *Mixed Use* zone are as follows:

Zone B3 Commercial Core Zone

1. Objectives of zone

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To encourage development and investment in the Albury and Lavington central business districts.*
- *To increase the permanent population within the commercial cores by encouraging the development of shop top housing and mixed use developments.*

Comment: The objectives of the zone are broad and are aimed at encouraging a variety of commercial, retail, business and residential developments that will lead to investment in Albury. The development specifically satisfies the following objectives of the B3 Commercial Core zone:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To increase the permanent population within the commercial cores by encouraging the development of shop top housing and mixed use developments.*

as it provides a new mixed use development within the Albury CBD in a prominent and accessible location.

2. Permitted Without Consent

Home-based child care; Home occupations

3. Permitted with Consent

*Centre-based child care facilities; **Commercial premises**; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hotel or motel accommodation; Information and education facilities; Medical centres; Oyster aquaculture; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Sewage reticulation systems; **Shop top housing**; Tank-based aquaculture; Any other development not specified in item 2 or 4*

4. Prohibited

Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Bed and breakfast accommodation; Camping grounds; Caravan parks; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Farm stay accommodation; Forestry; Freight transport facilities; Heavy industrial storage establishments; Home occupations (sex services); Industrial

*retail outlets; Industrial training facilities; Industries; Marinas; Mooring pens; Open cut mining; Pond-based aquaculture; Recreation facilities (major); Research stations; **Residential accommodation**; Rural industries; Sewerage systems; Sex services premises; Storage premises; Truck depots; Vehicle body repair workshops; Warehouse or distribution centres; Waste or resource management facilities; Wharf or boating facilities*

The proposed development includes *commercial premises* which are defined in *Albury LEP 2010* as: **commercial premises** means any of the following:

- (a) *business premises,*
- (b) *office premises,*
- (c) *retail premises.*

and *residential accommodation* which is defined by *Albury LEP 2010* as:

residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) *attached dwellings,*
- (b) *boarding houses,*
- (c) *dual occupancies,*
- (d) *dwelling houses,*
- (e) *group homes,*
- (f) *hostels,*
- (g) *multi dwelling housing,*
- (h) *residential flat buildings,*
- (i) *rural workers' dwellings,*
- (j) *secondary dwellings,*
- (k) *semi-detached dwellings,*
- (l) *seniors housing,*
- (m) **shop top housing,**

but does not include tourist and visitor accommodation or caravan parks.

shop top housing means one or more dwellings located above ground floor retail premises or business premises.

Commercial premises (which includes *business premises* and *retail premises*) is specifically listed under Item 3 of the Land Use table as 'permissible with consent' in the zone. Despite *Residential Accommodation* being listed under item 4 as 'prohibited', *shop top housing* is specifically listed under item 3 as 'permissible with consent'.

A **mixed use development** is defined by *Albury LEP 2010* as a building or place comprising 2 or more different land uses.

The site is suitable for this type of development and the zoning encourages a range of retail, commercial, business and shop top housing within the Albury CBD.

Part 3 Exempt and Complying Development

The application is not Exempt or Complying Development.

Part 4 Principal Development Standards

4.3 Height of buildings - The subject site is located within an area where building heights are limited to 35m under *Albury LEP 2010*. The building height of both buildings is less than 35 metres (30.8 metres

and 16.5 metres).

4.4 Floor space ratio - The site is subject to a floor space ratio (FSR) of 3:1. The FSR is defined as the ratio of the gross floor area of all buildings within the site to the site area. To determine the FSR, gross floor area is defined as

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but **excludes**:
- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) **car parking** to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

The FSR for the Proposal is significantly less than 3:1, noting that the site is 6,601m² and parking does not comprise "gross floor area". The proposed mixed-use building has a gross floor area of 7,612m² and the site has an area of 6,601m², resulting in a FSR of 1.15:1, which is well within the allowable FSR on the site.

Part 5 Miscellaneous Provisions - There are no miscellaneous provisions applicable to this development.

Part 6 Urban Release Area - Not relevant to the application. The subject site is not located in an Urban Release Area.

Part 7 Additional Local Provisions

7.6 Essential services

1. This clause does not apply to land in an urban release area.
2. Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required:
 - a) the supply of water,
 - b) the supply of electricity,
 - c) the disposal and management of sewage,
 - d) stormwater drainage or on-site conservation,
 - e) suitable road access.

Essential services are currently available to the site and there is sufficient capacity for their extension and augmentation to meet the demands of the proposed development. New connections or reconnection of relevant capped water, sewer, and stormwater services where relevant will be carried out by licenced trades in accordance with relevant trade standards and guidelines. As mentioned earlier,

it was noted during assessment of the application that the proposed car park building will be constructed over ageing sewer mains, potentially impacting the practicality of future upgrades. Council's Wastewater Team determined that the sewer mains will need to be structurally relined to ensure construction will not impact the mains.

The Site has sealed road access to collector roads controlled by Council. It is however noted that due to the increased traffic anticipated for the proposed development in conjunction with the proximity of the access cross-over to the intersection, left-in only access will be permitted from Smollett Street. No right-turn entry from Smollett Street will be allowed and a Condition of Consent is recommended to this extent, including a requirement that the developer construct a median island to regulate this right-turn prohibition.

4.2 Provisions of any Draft Environmental Planning Instruments (Section 4.15(1)(a)(ii))

No draft environmental planning instrument affects the site or proposed form of development.

4.3 Provisions of Development Control Plans (Section 4.15(1)(a)(iii))

4.3.1 Albury Development Control Plan 2010 (Albury DCP 2010)

The application has been assessed against the provisions of *Albury Development Control Plan (DCP) 2010*. More specifically, the application has been assessed and commentary provided in regards to the following Parts of *Albury DCP 2010*.

Part 3 Development Notification Policy

The development application was publicly exhibited between 18 March and 14 April 2020. Two submissions were received during this period. Copies of the submissions received are included with this report marked as attachment 3.

Discussion on the issues raised in the submissions is included later in this report under Section 4.15 (d) **Submissions**.

Part 4 Infrastructure Contributions

The application was lodged after the adoption of the *Albury Infrastructure Contributions Plan 2014* and is therefore subject to consideration under that Plan.

Section 7.12 (formerly Section 94A)

The applicant lodged Cost Summary Reports prepared by a Quantity Surveyor which has estimated the cost of the development as:

Mixed use commercial and residential development = \$26,175,234.80

Carpark development = \$13,024,960.30.

TOTAL = \$39,200,195.10

Section 7.12 Contributions are calculated at 1% of the estimated cost, resulting in contributions of \$392,001.95 being applicable for the development.

Advice on Section 7.12 – Occupation Certificate

As per the *Albury Infrastructure Contributions Plan 2014*, contributions are due prior to the Construction Certificate. On 8 July 2020, Department of Planning, Infrastructure and Environment (DPIE) released a Ministerial Direction that takes effect from the date issued until 25 September 2020. The new Environmental Planning and Assessment (Local Infrastructure Contributions – Timing of Payments) Direction 2020 (Direction) relates to local contributions or levies (sections 7.11 and 7.12). This

temporarily requires councils to defer the payment of local infrastructure contributions and levies until at least the issuing of the first occupation certificate. As this development is a large scale development, and the estimated construction cost of more than \$10,000,000, the direction applies. As such, S7.12 will be deferred to prior to the first Occupation Certificate. A Condition of Consent was added for \$392,001.95 prior to the issue of an Occupation Certificate.

Section 64

Water and Sewer Contributions under Section 64 of the *Local Government Act 1993* are also applicable to the development.

As per the Water Directorate Guidelines 2017, the following is applicable:

Ground Floor

Tenancy 1 = 741m²

Tenancy 2 = 138m²

Level 1

Tenancy 1 = 511m²

Office Annex = 122m²

Apt 1 = 4 bed

Apt 2 = 2 bed

Apt 3 = 2 bed

Levels 2 – 6

Office Space = 560m² (on each level)

Apts 7, 11, 15, 19 and 23 = 4 bed

Apts 6, 10, 14, 18 and 22 = 1 bed

Apts 5, 9, 13, 17 and 21 = 1 bed

Apts 4, 8, 12, 16 and 20 = 4 bed

Level 7

Apt 24 = 3 bed

Apt 25 = 3 bed

Total

Office space = 4312 m²

'Offices' – standard unit of measure is based on floor area m²

Water: 4312 x 0.01 = 43.12 ET

Sewer: 4312 x 0.01 = 43.12 ET

1 bed = 10*

2 bed = 2*

3 bed = 2*

4 bed = 11* (note 4 bed calculated as 3 bed)

It is noted that these bedrooms have been calculated as per legislation and not what the Development Application stated are bedrooms (e.g. media rooms in some apartments have been reclassified as bedrooms if they have a door).

Credit

Development Application 10.2015.34215.1 proposed subdivision of 590 Smollett Street Albury into 4 allotments, and the demolition of all buildings on proposed Lot 1 in that subdivision.

Proposed Lot 1 contains a former pathology laboratory and sample collection facility which contained 8 toilets and 1 urinal (total of 9 facilities). As a result of the proposed demolition, these facilities will be removed, but in accordance with Council's standard practices, a credit for the water and sewer used by those facilities is applicable to the site.

The credit applicable to proposed Lot 1 is as follows:

Under the Standard ET Figures – Commercial User Categories table of the Water Directorate Guidelines dated January 2005, the toilets and urinal generate the following current demand on water and sewer

Water: $9 \times 0.4\text{ET} = 3.6\text{ET}$

Sewer: $9 \times 0.63\text{ET} = 5.67\text{ET}$.

As a result of the subdivision, a contribution of 1ET is payable for the new lot, resulting in credits as shown in the table below:

Lot	Existing ETs	Contribution payable (subdivision DA)	Credit for future development
1: Buildings to demolished	Water: 3.6ET Sewer: 5.67ET	1 lot = 1ET 1 lot = 1ET	Water = 2.6ET Sewer = 4.67ET

Given the above, the credit applicable is:

Water = 2.6 ET

Sewer = 4.67 ET

Therefore,

Section 64 – Water = \$191,629.44

Section 64 – Sewer = \$246,427.65

TOTAL: \$438,057.09

Advice on Section 64 – Construction Certificate

In relation to the above, the Ministerial Direction only applies to Section 7.12 of the Environmental Planning and Assessment Act 1979 and not Section 64 of the Local Government Act 1993. Given this, Section 64 contributions will be payable prior to the Construction Certificate. A Condition of Consent was added for \$438,057.09 prior to the issue of a Construction Certificate.

Part 5 Tree Preservation

5.2 Tree Preservation Order

Objectives

- To conserve and enhance the existing aesthetic character and public amenity of Albury.*
- To control the management and/or removal of unsuitable trees.*
- To assist the retention and ongoing protection of native vegetation that may have derived from endangered ecological communities and/or that may be habitat for threatened species.*

Controls

- An application for the Council's approval must be accompanied by an appropriately qualified specialist, that is; Arborist report outlining the following information:*

- *The location, size, species and condition that is diseased healthy, etc.).*
- *A statement that details any anticipated impacts on vegetation that may have derived from endangered ecological communities and/or that may be habitat for threatened species.*
- *The purpose of removal and whether the pruning of the tree would be a more practical and desirable alternative.*
- *Whether a replacement tree or trees should be planted.*
- *The location, size and species of any trees proposed to replace those intended for removal.*
- *The owner's consent to the application being lodged.*
- *Any other relevant information regarding the tree to be removed, that is; photographs.*

The one carpark landscaping tree that is proposed to be removed is exotic and is not heritage listed and therefore a specialist report is not considered warranted in this instance.

The proposed removal of the tree is considered to be supportable as part of this development, and the landscaping proposed to be provided to the development will provide for appropriate replacement and will contribute to the amenity of the future residents.

Part 6 Planning for Hazards

The site is not identified as being at risk from bushfire. The site is not identified as being impacted by flooding or overland flow under the 2016 Flood Study. As outlined earlier in this report, the site is not known to have been used for a purpose which may have resulted in contamination on the site.

Part 7 Heritage Conservation

The subject site is not located in a heritage conservation area nor is it a heritage item. However, Heritage Item I174 adjoins the site to the north-east at 473 Townsend Street (known as 'Kia Ora'). Furthermore, Heritage Items I154 (known as 'House: Green Court') and I173 (simply known as a 'Shop') is located directly opposite Smollett Street to the south and Heritage Item I153 (known as 'Australian Tax Office') is located diagonally across the Smollett/Townsend Streets intersection.

- Item I154 'Green Court' at 589 Smollett Street is described as a two-storey brick stuccoed residential building with two-storey verandah on three sides and a corrugated iron roof. It is known to have had renovations in 1925 and 1938. Historical notes include: *Converted by Abe Nathan into six flats in 1925 - architect, Louis Harrison (associations with I2, I42, I56, I110, I142 and I154).* It is significant as it represents an early Albury boarding house or brick flats. The building was originally constructed of rubble stone. It was subject to a fire prior to 1925. There is opportunity to replace wire with timber slats on first floor balcony.
- Item I173 'Shop' at 459 Townsend Street is described as a two storey brick (colonial 3 bond) building with rusticated piers and quoins and a detailed brick parapet. An earlier two-storey verandah has been removed. It is known to have had renovations in 1998 and 2003. Historical notes include: *Waugh moved to Albury in 1895. He leased and later bought this building which previously had been Thomson's saddlery and Fullers grocery. The upstairs residence was added in the 1900's.* It is an important corner site with historical associations with Alfred Waugh (Mayor of Albury 1926 – 1938 who also bought Kia Ora). The building is of architectural interest and streetscape value. There is an opportunity to restore the verandah if possible.
- Item I153 'Australian Tax Office' is described as a two- and three-storey brick building with interesting relief detailing. It is known to have had renovations in 1997. Historical notes include: *During 1950's it was the largest inland woolstore in Australia. Also used over the years for sheep shows and many kinds of Trade Fairs.* Its Statement of Significance states: *"Economically, very*

important to Albury. Very good example of a large country wool store." It is a landmark building of major streetscape importance. It is noted as a good example of recycling - sympathetic renovations of the facade during its conversion to office space.

- Item I174 'Kia Ora' adjoining the site at 473 Townsend Street is described as a two-storey building built in 1857 with elaborate neo-classic detailing to the main gate with an attractive iron fence and gates. The second storey verandah was a later addition and not part of the original design. It is a stone building constructed with stone quarried on Monument Hill. It is known to have had renovations in 1989. Historical notes include: *The original Bank of NSW building built in 1858 was destroyed by fire in 1879. It was rebuilt in 1882/3 but was never used as the bank again. Possibly based on a design of Blacket.*). Kia Ora requires reasonable care to protect the external architectural integrity and the character of key internal spaces and structural systems. It is considered to have strong architectural and streetscape values.

Albury DCP 2010 provides the following controls that must be considered in the assessment of a development application within the vicinity of a heritage item or conservation area:

7.4.5 Development in the vicinity of a Heritage Item or Conservation Area

In assessing a development proposal, Council will consider the impact of the development on the heritage significance of the heritage item, work, Aboriginal object or character, objectives and controls of the relevant heritage conservation area.

As stated above, the identified Heritage Items are mostly noted for their streetscape value and in some cases to their individual features. In fact, both items I173 'Shop' and I153 'Australian Tax Office' are corner buildings as is the proposed mixed-use building. Having regard to the fourth corner at this intersection comprising the featureless back walls of a large retailer, the proposed development is considered to have due respect for the prominence of the intersection and its corner developments. The proposed development will not impact upon the stated significance of these buildings nor their future re-use opportunities.

The character statement for Item I174 'Kia Ora' describes it as a very early commercial building in Townsend Street - when it was the main street. It is considered to require reasonable care to protect the external architectural integrity and the character of key internal spaces and structural systems as well as having strong architectural and streetscape values.

The development has been designed with due regard to the importance and heritage values of Kia Ora. The building is set back as far as possible from the boundary (1.88m) which in addition to the 2.85m setback Kia Ora is enjoying from its own boundary results in a total separation of 4.7m. This is considered a generous setback in the B3 *Commercial Core* zone within the CBD. In keeping with the principles of the Burra Charter, the development respects the adjoining heritage item through clear distinction between new and old and avoiding copying or imitating the heritage item. The contemporary design highlights and even emphasizes the neighbouring heritage item and allows the two developments to stand side by side, each with its own distinct visual attraction.

It is considered that the scale, proportion, and form of the proposal is compatible with the adjoining Kia Ora Heritage Item at 473 Townsend Street due to the location of the proposed mixed-use building affording adequate new-from-old separation and built form and fabric disassociation.

Part 10 Development in the Residential Zones

As the development includes residential development, Part 11.4 of Albury DCP 2010 *Residential Development in the Commercial Zones* requires that the development must be compliant with the relevant provisions of Part 10 relating to Residential Development.

However, as the residential component of this development comprises a *Residential Flat Building* within a *Mixed Use Development*, there are few controls of Part 10 which relate to this development. The relevant provisions are addressed below.

10.8 Residential Development – Residential Flat Buildings

Residential flat buildings have traditionally not been commonplace in Albury. Although the LEP allows for this type of development in some circumstances and the demand for such dwellings is likely to increase due to lifestyle and demographic changes. It is not however envisaged that they will dominate the urban landscape of the City.

Residential flat buildings contribute to:

- *The availability and diversity of housing types.*
- *The affordability of housing by easing the demand on available land supplies.*
- *The improved access of community and commercial facilities and transport options.*
- *If well located, a reduction on the reliance on the motor vehicle and related impacts on the environment.*

Residential flat buildings are permitted, with consent, only in the R1 General Residential, R3 Medium Density Residential, B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Core (as part of a mixed use development only), and B4 Mixed Use Zones.

Comment: The proposed development is permitted with consent in the B3 *Commercial Core* zone and contributes to the availability and diversity of housing types. The development is well located in central Albury and within the core commercial area which will assist to reduce reliance on motor vehicles to a certain extent.

Objectives

1. *To ensure residential flat buildings achieve:*
 - *A diversity of housing types.*
 - *Improved residential amenity.*
 - *Higher design quality and presentation to the street.*
2. *To ensure the design and development detail of residential flat buildings are consistent with established design codes.*
3. *To ensure that development sites have sufficient areas to provide adequate access, parking, landscaping and building separation.*
4. *To reduce any potential adverse impacts of development on adjoining lands.*

Comment: The development as proposed satisfies the objectives outlined above as the development provides a high level of amenity to future residents, provides for a variety of apartment sizes and types, is of suitable design quality, is generally consistent with design codes and site requirements and has limited impacts upon adjoining properties.

General Controls

- i. *Residential flat buildings shall be designed and assessed in accordance with the requirements of State Environmental Planning Policy No. 65: Design Quality of Residential Flat Buildings.*

The proposed development has been considered against the provisions of SEPP65 as outlined earlier in this report.

In addition to *State Environmental Planning Policy 65 (Design Quality of Residential Flat Development)* the following local controls in *Albury DCP 2010 Section 10.8 Residential Flat Buildings* must be satisfied:

Site Requirements

Controls

- ii. *Lot size must exceed 1000m² (larger and wider sites preferred to long narrow sites).*
- iii. *The minimum lot width must be 24m.*
- iv. *Ingress/egress by access handles or right of ways will not be permitted.*

Comment: The development satisfies the above requirements, as:

- The lot size is 6,601m²;
- The lot has frontages of 59.5m to Smollett Street and 49.8m to Townsend Street; and
- Ingress/egress is by standard driveway crossovers and not by way of an access handle or right of way.

Locational Requirements

Controls

- v. *Residential flat buildings shall be a minimum distance of 500m apart (the separation distance is measured by the closest point between each lot)*

Comment: It is noted under this part that Developments within the R3 Medium Density Residential, B1 Neighbourhood Centre, B2 Local Centre, **B3 Commercial Core**, and B4 Mixed Use Zones are exempt from complying with this control.

Part 11 Development in the Commercial Zones

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

General objectives

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

Comment: The proposed development is consistent with the above objectives, as it promotes the amalgamation of smaller sites to deliver better quality development and adequate on-site parking, will be a landmark building at a prominent location in the CBD and is of high design quality. The proposed development will not detract from the function of the CBD, but will provide housing options for additional population in close proximity to the CBD.

11.7.2 Land use precincts - Albury

Objectives

- *To promote a variety of uses within the CBD and its surrounds that increases its role as a regional retail, commercial and civic centre, while encouraging an active, liveable centre for all ages.*
- *To encourage where possible mixed use buildings that operate during the day and night.*
- *To consolidate the retail and commercial functions of the Albury CBD.*
- *To enhance and augment the cultural and civic uses centred around QEII Square.*
- *To protect and maintain the existing heritage streetscape of Dean Street and its surrounds.*
- *To create a vibrant, urban living precinct along the Murray River and its associated parklands with some supporting commercial suites.*
- *To promote the incremental change of the B4 Mixed Use Zone that surrounds and supports the CBD with complimentary uses, including, small commercial uses, mixed-use buildings and residential uses (townhouses/terraces and apartments).*
- *To promote the retention of and sensitive re-use of the Englehardt Street Heritage Conservation Area and the existing residential edge to the CBD in the form of the adaptive re-use of houses, low-scale infill for commercial suites and single office home offices (SOHO's).*
- *To encourage commercial development to the North-East of the Albury CBD for large floor plate commercial buildings that compliment and increase employment opportunities within the CBD.*
- *To concentrate showrooms and large format retail uses, outside of the existing shopping centres, along the former Riverina Highway to maximise their visibility and accessibility for motorists.*

Controls

- Land uses are to comply with the Land Use Plan contained in Figure 11.7 and the Land Use Table contained within the LEP.*
- Any form of residential development, shall comply with Part 10 of this DCP, which relates to Development in the Residential Zones.*
- Mixed-use developments shall provide retail and commercial uses at ground floor level and residential uses above this.*
- In areas characterised by heritage listed detached residential dwellings, land uses shall continue the trend of adapting buildings for commercial use/s such as professional offices or small businesses and single office home office (SoHo).*

Comment: The development is considered to achieve the following objectives of this Part of the DCP:

- *To promote a variety of uses within the CBD and its surrounds that increases its role as a regional retail, commercial and civic centre, while encouraging an active, liveable centre for all ages.*
- *To encourage where possible mixed use buildings that operate during the day and night.*
- *To create a vibrant, urban living precinct along the Murray River and its associated parklands with some supporting commercial suites.*

The site is identified within the *CBD Fringe* precinct in Figure 11.7 and as part of a *CBD Mixed Use* future character area in Figure 11.13 of the DCP. The proposed development is consistent with the precinct Land Use Plan and the Land Use Table in *Albury LEP 2010*.

The mixed use development comprises retail/commercial floor space at ground floor and the first floor and residential development on the seven levels above that. Compliance with the requirements of Part 10 of the DCP has previously been assessed above.

11.7.3 Building Heights - Albury

Objectives

- *To ensure the height of buildings complement the streetscape or the historic character of the area in which the buildings are located.*
- *To ensure the height of buildings protect the amenity of neighbouring properties in terms of visual bulk, access to sunlight and privacy.*
- *To nominate heights that will provide a transition in built form between varying land use intensities.*
- *To mediate between existing buildings and new buildings by defining a street wall datum.*
- *To ensure buildings do not create obstacles in the transmission of radio signals within and from the B3 Commercial Core and B4 Mixed Use Zones.*
- *To ensure buildings do not create obstacles in the operation of the Albury airport and its flight paths.*

Controls

- i. *Building heights are to comply with the Building Height Plan contained in Figure 11.8.*
- ii. *Detached houses should retain a single storey building form to the street with a maximum two storey height permitted to the rear.*
- iii. *Midblock infill site areas shall achieve an overall maximum height of 7 storeys permitted that a minimum site frontage of 24m exists to accommodate parking.*
- iv. *Terrace houses should be 2 to 3 storey with a pitched and/or parapet roof.*
- v. *Buildings shall not obstruct radio transmissions between local transmission structures.*
- vi. *All buildings and structures must comply with the Obstacle Limitation Surface Plan as contained within Part 18 of this DCP, which relates to the Albury Airport. This Plan indicates the height that buildings and other structures must not exceed to ensure the safe operation of the Albury Airport.*
- vii. *Overall building heights shall be compliant with the Street Wall Heights and Upper Level Setback requirements contained within Section 11.7.4 below.*

Notation

Clause 4.3 of the LEP stipulates the Height of Buildings requirements and the LEP Height of Buildings Map spatially depicts the designated heights.

Comment: The Building Height Map nominates a height of seven storeys for this site. The proposed residential component of the mixed-use building is eight storeys in height, whilst the commercial component has minor protrusions above the roof level for the plant, including elevator equipment rooms. This variation is considered supportable as the building is well below the 35m height limit (30.5m) as set out in the Albury LEP 2010. The design complies with the requirements for street wall heights and largely with upper level setbacks, as well as with the Obstacle Limitation Surface Plan of the Albury Airport. The proposed car park building is five storeys high and complies fully with these controls.

11.7.4 Street Wall Heights and Upper Level Setbacks - Albury

Objectives

- *To maintain the scale of streets as incremental change occurs.*
- *To protect the scale of Dean Street by requiring deeper upper level setbacks for the overall building heights.*

Controls

- i. *Street wall heights shall comply with the Street Wall Height Plan contained within Figure 11.9.*
- ii. *Upper level setbacks shall comply with the following:*
 - *Along Dean Street – minimum 6 metres.*
 - *Along other streets – minimum 3 metres.*

Comment: The street wall height nominated for this site in Figure 11.9 is a maximum of three storeys to Townsend Street. The development has a street wall height of one storeys to Townsend Street. The development has a upper levels set back of 2.69m from the Townsend street boundary. This variation is considered supportable because, notwithstanding the variation is relatively minor (10%), the upper levels also slant inwards causing the setback to increase the closer it gets to the corner. The upper levels setback at the corner is approximately 6m, which is well within the control. The building design is considered to satisfy the intent of this part.

11.7.5 Floor Space Ratio (FSR) - Albury

Objectives

- *To ensure that the density, bulk and scale of development is appropriate for a site and integrates with the streetscape and character of the area in which the development is located.*
- *To encourage lot consolidation to promote the efficient location of buildings and the minimisation of building bulk.*

Controls

- i. *Floor Space Ratios shall comply with the FSR Plan contained within Figure 11.10.*
- ii. *Large or consolidated sites are subject to the following maximum FSR's:*
 - *Maximum of 2:1 for sites between 5000m² and 10,000m².*
 - *Maximum of 1.5:1 for sites between 10,000m² and 15,000m².*
 - *Maximum of 1:1 for sites greater than 15,000m².*
- iii. *FSR's for the railway precinct have been deferred, and will be subject to special consideration by the Council.*

Comment: At 6,601m², the site is limited to a FSR of 2:1 under this part. As previously stated, the proposed development has a FSR of 1.15:1, which is well within this control.

11.7.6 Building Design - Albury

Objectives

- *To improve the built form of new buildings, whilst having regard to items and places of heritage significance and established residential areas.*
- *To promote design quality by promoting a loose fit between overall height, carparking, building envelope and floor space.*
- *To encourage the use of a combination of materials, articulation, fenestration and landscaping when designing buildings.*
- *To encourage energy efficiency, Environmentally Sustainable Development (ESD) and Safer by Design Principles.*

Controls

- i. *New building facades shall include articulation such as punctuations, openings and repetition of architectural elements that contribute to the streetscape.*
- ii. *Buildings shall comply with the relevant requirements of this Section in regards to setbacks, heights, FSR, landscaping, open space and other like requirements relating to building design.*
- iii. *Buildings shall create interest and activity along street edges through the use of mixed land uses.*

- iv. *New buildings edging public open spaces shall incorporate active edges to increase the vibrancy of these spaces and to provide opportunities for passive surveillance.*
- v. *Buildings on corner sites shall be articulated to address each street frontage and are to define prominent corners as shown in Figure 11.1.*

Comment: The proposed development provides for articulation in building walls (in the vertical plane and the horizontal plane), a variety of complementary external materials and fenestration which is appropriate to the design. Regular openings and activated frontages enable ease of access to the building and access points to the building are clearly identified.

Building design has carefully considered viewing from all directions and it achieves a well-proportioned, diverse and balanced spatial construct. The portioning of the vertical elements has been carefully considered to provide a pleasant appearance utilising the 'Golden Mean Proportion' wherever possible. In general, a classical approach to architecture has been taken, providing a base, a main body and a roof; this classical construct is interpreted to fit within a modern paradigm.

A high degree of contrast contributes to a level of tension engendered by the dual uses on the site. Strong vertical "orange" piers stitch together the primary "white" horizontal elements. These balance the apparent height of the building. The floor to floor height necessary for the commercial portion, 3600mm has been continued in the residential building, resulting in pleasing high ceilings of 3 metres (minimum) for habitable rooms. The upper floor consists of 2 generous penthouses (200m² each) with equally generous balconies of over 80m². A pitched roof plane completes that portion of the building stating that this is the residential part of the building. The proposed architectural statement is an attractive building that will enhance the residents, proprietors and the City of Albury.

The application considered *Crime prevention through environmental design (CPTED)*. Relevant design features include security lighting in accordance with Australian Standards, good visual surveillance and non-concealment building internal perimeter and accessway design. Landscaping has also been designed to provide acceptable CPTED outcomes, principally in relation to non-concealment opportunities. Security cameras will be installed. Carpark and pedestrian level construction materials and finishes have been selected for their durability and longevity. Generally, such materials have a low porosity and in graffiti-prone areas will be protected with a non-sacrificial protective coating that on application of graffiti can be easily removed with high pressure water (a new sacrificial protective coating would then need to be re-applied).

11.7.7 Building Setbacks - Albury

Objectives

- *To protect and enhance the existing streetscape character.*
- *To encourage buildings built to the street boundary, which provide better street definition, active frontages and awnings in the Dean Street area.*
- *To maintain predominant landscape setbacks on residential streets so as to manage change as it occurs.*

Controls

- i. *Street wall setbacks and build to lines are to comply with the Street Setback and Build to Lines Plan as contained within Figure 11.11.*
- ii. *Street setbacks where appropriate should follow the predominant setback along the street.*
- iii. *Buildings setback within landscaped settings shall provide associated open space and landscaping.*

- iv. *Where there is not a predominant setback (i.e. large sites or where a significant change in building use/type) is present, a 3 metre street setback should be provided.*
- v. *Terrace houses should have a 2 metre landscape street setback or ground floor level up to 1 metre above the footpath, with a 2 metre landscaped terrace.*
- vi. *Party wall construction methods should be incorporated for terraces, retail streets and streetwall building types where it is consistent with the adjacent context.*
- vii. *Terrace house party wall lengths should not exceed 12 to 14 metres.*
- viii. *For additions to residential houses, a minimum side setback of 1.2 metres and minimum rear setback of 6 metres shall apply.*
- ix. *For residential apartments and residential components of mixed-use buildings, the following rear setbacks apply:*
 - *Minimum 6 metres, where building height is 4 storeys or less.*
 - *Minimum 9 metres, where building height is 5 storeys or greater.*
- x. *For commercial uses with windows facing the front and rear of a lot, a minimum 3 metre side setback applies.*
- xi. *Bulky good premises may be built to one side and to the rear boundary of a lot, where the adjoining property is not a house, mixed use development or commercial office building with facing windows.*
- xii. *Buildings built to the secondary street boundary should cover a minimum distance of 50% of the length of the site.*

Comment: The site is located in an area where buildings are encouraged to be built to the street boundaries. The site has dominant frontage to Smollett Street and Townsend Street, and to a lesser extend frontage to Golden Way at the rear (north) of the site. The proposed mixed-use development will be built to the street boundary of Townsend Street and to at 2.94m setback to Smollett Street, with levels one to eight set back in accordance with Council's DCP requirements. Rear setbacks (to the north) of the mixed-use building is a minimum of 1.4m whilst the carpark building is proposed on a zero setback to its rear boundary, which is partially a front boundary (on Golden Way). This part of the car park building faces another ground-level car park on 481 Townsend Street, whilst the nearest residential dwellings opposite Golden Way have protruding and dominating garages fronting the street, limiting the impact from the proposed development on private living areas. The external cladding materials and colours of the carpark building are proposed to be a mix of alternating colour painted precast grooved concrete panels, powder coated metal fencing, steel framed alternating colour painted perforated steel panels (with fire shutters located behind), vertical rod fencing at 125mm centres, and 20% transparency perforated metal privacy screens to achieve a visually pleasing design limiting the impact of this zero boundary setback. The automatic fire shutters avoids the requirement for mechanical ventilation of the building whilst also complying with fire safety requirements (all fire shutters remain open except if triggered to close by fire sensors).

11.7.8 Building Depth - Albury

Controls

- i. *Residential buildings are limited in depth to 18m from glass line to glass line. Narrower buildings are encouraged to improve natural daylight access and energy performance/efficiency.*
- ii. *Building depths for commercial office uses are limited in depth to 30m as this limits the distance from the core to glass and improves energy performance/efficiency.*

Comment: The proposal is designed to comply with the overarching Apartment Design Guide and BASIX requirements which set aside any DCP guidelines in regard to natural light and energy-efficiency.

11.7.9 Building Separation - Albury

Controls

- i. *For commercial buildings with windows to offices, a minimum building separation of:*
 - *12 metres is required between buildings facing each other on a site, where the building height is 4 storeys or less.*
 - *18 metres is required between buildings facing each other on a site, where the building height is 5 storeys or greater.*
 - *9 metres for commercial buildings perpendicular to each other, where the maximum façade of one building does not exceed 20 metres.*
- ii. *Where building separation cannot be met due to existing adjacencies or site configurations the following applies:*
 - *For free standing residential buildings on narrow sites, side setback controls regulate building separation. In these instances habitable rooms should be oriented to the front and rear of a lot.*
 - *For terraces, orientate rooms and windows to maximise building separation and utilise other details such as louvered screens, translucent windows, and high-set windows to minimise overlooking and increase privacy.*

Comment: The development is an infill site, and proposes one habitable building on the site, with retail and commercial development on the entire ground floor and first to sixth floor on the eastern part of the building and residential apartments on the first to seventh floor on the western part of the building. Separation distances between windows and neighbouring uses are satisfactory.

11.7.10 Open Space and Landscaping - Albury

Objectives

- *To encourage the maintenance and enhancement of existing and proposed public open spaces within the City Centre and its surrounds.*
- *To ensure appropriate access to all public spaces is available and to 'activate' these spaces through passive surveillance.*
- *To promote green roofs and their use not only for the better environmental performance of buildings but also as communal open space/s.*

Controls

- i. *Public open space areas shall be developed in a cohesive and coordinated manner for the benefit of the public.*
- ii. *Development adjoining public open spaces shall address and overlook these areas to encourage use and provide passive surveillance.*
- iii. *Communal open spaces for mixed use buildings, commercial offices and residential buildings shall be provided for those occupants of the building.*
- iv. *Where car parking structures are proposed it is encouraged that communal open space may be located above these on a podium.*
- v. *Any development or redevelopment of a site shall seek to retain significant existing trees, where possible.*
- vi. *Landscape plantings shall be provided for large scale developments and incorporated within the front setback, particularly for residential type developments.*

Comment: The site is not located adjacent to any public open spaces, and new public open space is not required to be provided. Communal open space is provided on the roof level for the residents of the development. All apartments are provided with balconies. The development includes the removal of one

exotic tree, as assessed under Part 5 of the DCP, above. This tree is not considered significant and the proposed landscaping will enhance the site and the amenity of future residents.

11.7.11 Car Parking, Traffic and Access – Albury

Objectives

- *To consolidate car parking areas into a series of concentrated central locations as identified in the Albury CBD Masterplan 2009 and the Lavington CBD Masterplan 2009.*
- *To locate car parking areas on main transport links and to clearly inform and direct motorists as to the location of car parking facilities.*
- *To contribute to the provision of a compact, accessible and connected retail core.*
- *To ensure that developments that are known to produce significant parking demands, make sufficient car parking provision on the actual development site.*
- *To ensure car parking facilities are both pedestrian and motorist friendly.*

Controls

- i. *Future car parking should be concentrated into consolidated off-street locations and accessed primarily from internal circulation streets. Refer to the Albury CBD Masterplan 2009 and Lavington CBD Masterplan 2009 for guidance regarding desired locations and access arrangements.*
- ii. *Future car parking should consist of a combination of spaces provided specifically to service new development with both private spaces and publicly accessible spaces, which maximise shared parking opportunities at different times of the day.*
- iii. *Car parking areas shall be landscaped to provide shade.*
- iv. *Advertising, signage, landscaping and physical barriers shall be provided for the efficient movement of pedestrians.*
- v. *On-grade parking shall be provided at the rear of properties and should incorporate stormwater collection and re-use into their design.*
- vi. *On sites with a minimum 24m frontage, parking above ground level or underground may be possible.*
- vii. *Terrace buildings shall have garages located along a rear laneway or if viable under the building footprint.*
- viii. *Developments, which are likely to be significant customer attractors, must provide a minimum of two-thirds of the required parking on-site. The remaining one-third may be provided by a monetary contribution. Developments, which are likely to be specific customer “attractors” are as follows:*
 - *Office complexes and shopping centres over 1,500m² gross floor area (including malls).*
 - *Supermarkets.*
 - *Department stores.*
 - *Shopping centres containing supermarkets or department stores.*
 - *Retail bulky goods, warehouses or like retail premises.*
 - *Freestanding take-away food restaurants.*
 - *Hotels, motels and clubs.*
 - *Reception/conference centres.*
 - *Industrial uses.*
 - *Places of public worship.*
 - *Hospitals and schools.*
 - *Similar land uses as determined by the Council.*
- ix. *Multi-level parking (basement or deck) may be appropriate provided that it:*
 - *Supports the objective of keeping the centre compact.*
 - *Is attractively designed.*
 - *Reinforces continuity of pedestrian activity rather than creating or exacerbating any sense of separation between commercial uses.*

- x. *Car parking should be provided in accordance with the standards and rates provided for in Part 17 of this DCP, which relates to Off Street Car Parking for various uses. Council may consider a reduction in the ratio of car parking provision if satisfactory evidence is provided to indicate that one or more of the following circumstances apply:*
- *The ability to “share” spaces between different land uses at different times.*
 - *It can be demonstrated that the use in question will not generate the numbers required.*
 - *The use proposed is currently not represented in the precinct and is desirable from the point of view of economic activity or community need but to apply the full car parking requirement would make it unviable.*

Comment: The development proposes the creation of a car park building for 457 cars over five floors, of which 424 are allocated to commercial users and 33 to residential users. In addition, the mixed use building provides for 18 cars, of which four are allocated to commercial users and 14 are allocated to residential users. The proposal requires a total of 135 car parking spaces (110 commercial + 25 residential), which will be further detailed under Part 17 of this report. In summary:

- 135 car parking spaces, including 3 commercial spaces for persons with disabilities and 4 residential visitor spaces;
- 4 motorcycle parking spaces;
- 11 bicycle rack spaces; and
- unloading/drop off bay.

As explained earlier in the report, a further 118 offsite car parking obligations are also required to be provided (for 97 existing and 21 proposed obligations) and therefore total required car parking is 253 spaces. Therefore, as the Proposal provides a total of 475 car parking spaces and only requires 253, a surplus of 222 car parking spaces is provided.

The design of the building provides for all car parking to be located within the building, which provides shade to the majority of parking spaces. The car park is accessed via the existing driveway crossovers to Smollett Street and to Townsend Street for egress from the site.

As discussed later in this report, each dwelling is provided with car parking in accordance with the requirements of the Apartment Design Guidelines. It is however noted that, due to the significant surplus of parking spaces provided, car parking is in effect also provided in accordance with Part 17 of the DCP. Visitor parking is provided within the car park, with pedestrian bridge and lift access to the residential levels. Car parking accessible to people with disabilities is provided at the required rate near the entry lobbies and lifts on all levels.

11.7.14 Outdoor Advertising – Albury

Objectives

1. *To allow for the adequate identification of businesses.*
2. *To recognise that advertising signs can help express the character of the commercial environment.*
3. *To ensure there is an equitable distribution of signage and that the number of, and positioning of signs, does not detract from existing or proposed structures.*
4. *To improve legibility and reduce visual clutter associated with signage.*
5. *To provide signage that clearly identifies and directs pedestrians and motorists to car parking facilities/areas.*
6. *To minimise signage in established residential areas, and where proposed ensure they do not detract from the character of surrounding residential areas.*

Controls

- i. *Schedule 2 of the LEP provides that most advertisements do not require the consent of the Council (including some above-awning signs) provided that certain basic conditions can be met.*
- ii. *Refer to Part 16 of this DCP, which relates to Outdoor Advertising, for the design consideration of advertisements that require Council's consent.*
- iii. *Within the B3 Commercial Core and B4 Mixed Use Zones there are a large number of heritage items, and several conservation areas. Particular attention should be paid to advertisements in these areas to ensure that they do not detract from the style and character of individual buildings and places. Applicants should refer to Part 7 of this DCP, which relates to Heritage Conservation.*

Comment: No signs have been shown on the development plans or detailed in the SEE, however signage is anticipated for the retail and commercial tenancies. Many business identification signs and some under awning signs are exempt from requiring development consent. Any signage which requires the prior consent of Council will be the subject of a separate development Controls application.

11.7.20 Awnings, Verandahs and Balconies – Albury

Council's *Encroachment on Council Land Policy 2016* (adopted 24 October 2016) requires proposed encroachments to be considered under *Albury LEP 2010*, Clause 11.7.20 (for buildings located in streets other than Dean Street, to which the clause generally applies) of *Albury DCP 2010* and the provisions of the *Encroachment on Council Land Policy 2016*.

As the proposal includes the construction of an awning over the Townsend Street verge and the Smollett Street corner verge (but noting the Smollett Street awning is contained within the property boundary), this encroachment is required to be considered under the Policy and this part of the DCP.

The awning achieves the objectives of this Part of the DCP:

1. *To increase pedestrian amenity by the provision of weather protection.*
2. *To increase activity in roadside areas.*
3. *To enhance the appearance of buildings and developments .. to create a more vibrant urban environment.*

The awning design and height achieves the requirements of the DCP to ensure adequate clearance over the footpath, whilst providing weather protection. No advertising has been shown on the awning face, however future tenants will determine their advertising needs. If any signage proposed is not exempt, a further Development Application will be required.

The process to licence awnings is provided for in the *Encroachment on Council Land Policy 2016* and appropriate conditions regarding this are included in the draft Determination at attachment 5. The awning achieves the objectives of the Policy and will be subject to further approval and licencing under the Policy.

Part 17 Off street car parking

The DCP contains the following relevant provisions:

17.2 Parking provision by land use

Objectives

1. *To ensure that the provision of parking is appropriate for the proposed use or development of the land.*
2. *To protect amenity, enhance streetscapes and provide shade.*

3. To maintain traffic flow efficiency, improve safety and protect the environment.
4. To ensure convenient and safe provision of off street car parking for disadvantaged persons.
5. To allocate adequate bicycle and motorcycle standing areas.
6. To ensure convenient and safe space is provided for loading and unloading of goods.
7. To provide convenient and safe access to car parking areas, minimising disruption to traffic and maximising pedestrian safety.
8. To permit the payment of monetary contributions in certain areas for any short fall in off-street car parking.

Controls

- i. Car parking spaces are to be provided in accordance with the standards set out in Table 17.1. For land uses not specifically listed, the car parking must be provided as per the most similar use of equivalent intensity, or otherwise in accordance with the requirements of the Council and/or RTA (whichever is the greater).
- ii. Where a combination of uses is intended, the total parking requirements shall be the sum of the requirements for the various uses. This may be reduced at the Council's discretion in cases where the proponent can demonstrate that the lesser amount will satisfy the expected demand.

Table 17.1 Car Parking Provision by Land Use (extract)

Land Use	Minimum parking spaces required	Provided	Complies
Business/office/retail	1 per 40m ² of gross floor area (110 spaces)	310	Y
Residential flat building	1 car space per 1 or 2 bed dwelling (12 spaces)	12	Y
(see comments on ADG	2 car spaces per 3 bed dwelling (26 spaces)	26	Y
Requirements below)	More than 8 dwellings - 3 designated visitor space plus 1 visitor space for every 3 or part thereof additional dwellings (9 spaces)	9	Y
Motorcycle Parking	1 per 30 spaces (15 spaces)	Available	Y
Disabled Parking	1 per 33 commercial/retail spaces (15 spaces)	21	Y
Bicycle Parking	1 per 30 spaces (15 spaces)	5 provided, Partial/capacity not stated	Unclear

It is noted that the *Apartment Design Guidelines* recommends lower parking requirements, as it states under Objective 3J-1:

*1. For development on land zoned, and sites within 400 metres of land zoned, **B3 Commercial Core, B4 Mixed Use** or equivalent in a nominated regional centre (this includes Albury as per the Technical Note on SEPP 64) the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, **whichever is less** The car parking needs for a development must be provided off street.*

The *Guide to Traffic Generating Developments* defines "High density residential flat buildings" under Section 5.4.3 as follows:

A high density residential flat building refers to a building containing 20 or more dwellings. High density residential flat buildings are usually more than five levels, have basement level car parking and are located in close proximity to public transport services. The building may contain a component of commercial use.

It recommends the following parking to be provided off-street:

Metropolitan Regional (CBD) Centres:

- 0.4 spaces per 1 bedroom unit.
- 0.7 spaces per 2 bedroom unit.
- 1.20 spaces per 3 bedroom unit.
- 1 space per 7 units (visitor parking).

Metropolitan Sub-Regional Centres:

- 0.6 spaces per 1 bedroom unit.
- 0.9 spaces per 2 bedroom unit.
- 1.40 spaces per 3 bedroom unit.
- 1 space per 5 units (visitor parking).

Applying the CBD requirements to the proposed development (which is within the CBD of a nominated Regional Centre) the parking required would be:

12 one-bedroom units x 0.4 spaces = 5 spaces

13 three-bedroom units x 1.2 spaces = 16 spaces

1 visitors parking space per 7 units = 4 spaces

Total units required = 25 spaces

This is significantly less than the 47 spaces required by Part 17 of the Albury DCP and therefore prevails.

The development proposes, in total, parking for 475 cars, with 18 spaces at the mixed-use building and 457 spaces at the car park building. A total of 21 accessible spaces for people with disabilities are provided, whilst motorcycle parking is considered to be provided within the car parking spaces. Bicycle parking/storage are identified on the ground floor near the Smollett Street entrance and on the ground floor of the carpark building (the SEE refers to bicycles being able to be stored. The development is required to provide 165 parking spaces (inclusive of accessible and motorcycles spaces). However, it should be noted that adjoining land currently benefits from the use of certain car parking spaces within the existing ground-level carpark at 584 Smollett Street (Lot 203 DP1243276):

- adjoining land at 475 Townsend Street (Lot 204 in DP1243276) benefits from the use of 26 car parking spaces,
- adjoining land at 590 Smollett Street (Lot 202 in DP1243276) benefits from the use of 63 car parking spaces, and
- adjoining land at 473 Townsend Street (Lot 21 in DP1053711) benefits from the use of 8 car parking spaces.

Furthermore, an additional 21 car parking spaces will also be reserved for the adjoining Gardens Medical Centre at 470 Wodonga Place (Lot 60 in DP1115982) which is made up of:

- 20 car parking spaces arising from a Bank Guarantee arising from Development Consent No. 10.2007.27803.2 for \$300,000 relating to 20 car parking spaces; and
- 1 car parking space lost to make way for the pedestrian and disabled access link from the Carpark building to the Gardens Medical Centre.

Therefore the total reserved car parking space obligations total 118 (26+63+8+21). This brings the total of car parking spaces required to be provided within the development to 253. Given that 475 car parking spaces are provided, it is clear that the proposed development proposes a significant surplus of spaces (222 spaces).

17.3.1 Car parking design

Objectives

1. *To protect amenity, enhance streetscapes and provide landscaped areas that screen and shade parking and loading areas.*
2. *To provide convenient and safe access to parking areas, minimising disruption to traffic and maximising pedestrian safety.*

Controls

- i. *Access, car bay dimensions and orientation, and aisle width must comply with requirements for car parking areas contained in Austroads Guide to Traffic Management; Part 11: Parking.*
- ii. *Car parking areas are to be adequately finished with fully sealed surfaces, internal drainage systems, line markings, appropriate kerbing, paved aisle dividers and/or wheel stops compliant with the requirements contained in the AlburyCity Engineering Guidelines for Subdivisions and Development Standards and the Austroads Guide to Traffic Management; Part 11: Parking.*
- iii. *Appropriate landscaping which responds to the site conditions and surrounding context, particularly the transition between public and private spaces must be provided on-site. Landscaping shall include trees that provide shade, but do not have a growth characteristic that sheds limbs or significant fruit or nuts.*
- iv. *Pedestrian and vehicular connections with adjacent public roads and footpaths, and other adjacent private car parking areas shall ensure integration of vehicle and pedestrian configurations and movement patterns.*
- v. *Car parking entrances shall be located in consultation with AlburyCity staff, to ensure the safe and efficient integration with the local road network, and shall be configured and signposted, containing adequate site lines as outlined in Austroads Guide to Traffic Management; Part 11: Parking.*

Notation

Council reserves the right to depart from the Austroads Guide to Traffic Management; Part 11: Parking requirements where either the land use proposal merits and/or site circumstances warrant a departure.

The car parking layout and design complies with the requirements of this Part of the DCP. The design of the carpark building will comply with AS2890 and related standards and guidelines which will be resolved during detailed design for the construction certificate.

4.4 Any Planning Agreement (Section 4.15(1)(a)(iiia))

There are no planning agreements in place that affect the evaluation of the subject development application.

4.5 Provisions of Regulations (Section 4.15(1)(a)(iv))

Clauses 92-97A of the Regulations outline the matters to be considered in the assessment of a development application. The Regulations require that the provisions of AS 2601 *The Demolition of Structures* be considered for any demolition work. Standard conditions for demolition management are recommended. The Regulations also provide that BASIX affected development must fulfil its BASIX

commitments as a prescribed condition of consent. A standard condition regarding achievement of BASIX commitments is recommended in the draft Determination.

4.6 Likely Impacts of the Development (Section 4.15(1)(b))

Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, requires consideration of likely impacts of the development, including environmental impacts on both natural and built environments, and social and economic impacts in the locality. Key areas for consideration in respect to the subject application are:

Context and Setting

Located on a major street corner of Albury, the mixed-use building will have a strong impact by virtue of its height and substantial mass. The commercial use on the corner is in keeping with current street character, while the residential component adds a new and desirable community use to the locality. This will enhance the neighbourhood character in providing a diverse use that invigorates the area during the day and night. Visually, it will balance and bookend the existing Gardens Medical Centre to the west giving due respect to that landmark structure whilst also being sympathetic to the adjoining Heritage Item (Kia Ora) at 473 Townsend Street to the northeast through setback. The development will not have a detrimental impact on the character and amenity of the locality and streetscape.

Streetscape

The site is located on a major intersection at the western edge of the Albury CBD. The design includes a strong corner presentation to Townsend Street and Smollett Street that reinforces the location of the site within the CBD and presents an appropriate streetscape to surrounding developments. The proposal facilitates a desirable streetscape in terms of building bulk, height, setbacks and building design. The proposal does not include extensive blank walls to street frontages, provides a weather protection entranceway fronting Smollett Street and provides an active street frontage to the primary street frontage.

Site Design and Internal Design

The site and internal design has been considered previously in this report under SEPP 65 and is considered satisfactory.

Traffic, Access and Parking

As discussed in the report, the proposed development provides car parking in excess of the requirements of *Albury DCP 2010* and the *Apartment Design Guide*.

A Traffic Impact Assessment (TIA) submitted with the application. The assessment concluded that:

- *Parking surveys carried out on a typical weekday show that there is a high demand for on-street and off-street parking in the vicinity of the site, while demand is being adequately met by off-street parking;*
- *Traffic surveys and modelling of nearby intersections show that the intersections currently operate at a Level of Service of good (LOS B) or better, with midblock level of service on Smollett Street and Townsend Street near the site also being good (LOS B) or better;*
- *The proposed development will generate an additional 606 vehicle trips per day, with 121 of these in the AM peak period and 116 in the PM peak period, which will not have a significant impact on the performance of the surrounding road network (including site entry, exit and nearby intersections);*
- *The provision of 477 (sic. actual number is 475) off-street parking spaces meets the minimum requirements of the proposed development under Albury DCP Part 17, plus the requirement for*

provision of parking to service other nearby sites. Adequate provision has been made for persons with a disability;

- *Adequate provision has been made for parking for bicycles and motorcycles; and*
- *Adequate provision has been made for servicing and delivery vehicles.*

The assessment recommended that:

- *Raised concrete islands be constructed adjacent to the exit driveway from the site onto Townsend Street to improve visibility and safety; and*
- *Consideration be given by Council to provision of short term (15 minute) parking on-street in either Townsend Street or Smollett Street adjacent to the site to provide convenient access for servicing and delivery vehicles.*

The proposal was referred to Transport for New South Wales (formerly RMS) who did not raise any objection to the development, however emphasised the need to provide for safe access arrangements to the existing public road network and maintaining safety and efficiency on the public road network.

Public Domain

The proposal will provide active street frontages to Townsend Street and Smollett Street, with an awning provided over the shop fronts and footpath areas to Townsend Street. A licence is required for the encroachment over the road reserve is required and a condition to this effect has been included in the Draft Determination. The development is not expected to detrimentally impact the public domain.

Utilities

The area is presently serviced by all relevant utility services which will be extended to the building as required. The development includes the relocation of the Essential Energy substation to within the ground floor area of the proposed carpark building. Photovoltaic solar energy panels are proposed on both buildings' rooftops to provide power to common areas and services.

Council's Wastewater Team have had the ageing sewer mains under the proposed development site condition-assessed. It was determined that the sewer mains will need to be structurally relined to ensure construction will not impact the mains.

Construction

Standard conditions are included in the draft Determination should the development be approved. In addition, it is recommended that a Demolition and Construction Management Plan be provided for the development to ensure that construction impacts are suitably managed given the location and the size of the development. The Demolition and Construction Management Plan must detail aspects of the construction that may impact upon neighbouring sites, residents and businesses and the means that will be used to reduce potential impacts. It does not allow construction vehicles, equipment and materials to occupy adjacent private land, road reserves or Council's footpaths. Should hoardings be required on either street frontage, separate approval must be sought from Council.

Water Quality and Stormwater

Standard conditions are recommended should the development be approved.

Soils, Soil Erosion

Standard conditions are recommended should the development be approved.

Noise and Vibration

The proposed development has the potential to result in increased noise from construction works. The extent of the noise generated is not considered to be unreasonable and is of a temporary nature whilst construction works are carried out. Standard conditions would be imposed should the development be approved. It is also recommended that a Demolition and Construction Management Plan be required for the development to ensure that noise is suitably managed.

A condition regarding compliance with EPA noise requirements is contained in the Draft Determination.

Flora and Fauna

The application proposes the removal of one exotic tree from the site, which are located in the north-western area of the existing at grade carpark, planted as landscaping. The tree is not significant and do not provide habitat for threatened species. Removal of this tree is not considered to have any environmental impact.

Landscaping is proposed (mostly planter boxes) at ground floor as well as on the first floor and roof top levels on the common terraces. Given the context of the development the proposed landscaping is considered suitable within the area.

Natural Hazards

The site is not identified as a flood affected lot or bushfire prone land.

Safety, Security and Crime Prevention

An assessment has been undertaken in regards to the principles outlined in Crime Prevention Through Environmental Design (CPTED). This was considered adequate and Conditions have been included in the Draft Determination at attachment 5.

Overlooking

Privacy and overlooking concerns from the elevated terraces and balconies were raised in a submission. Low density residential development is located to the north of the proposed carpark building, however the screen panels and infrequent and sporadic use of the carpark building significantly reduces the risk of overlooking into private open space areas of those dwellings. The mixed-use building's setting on an active corner within the Albury CBD reduces its impact, real or perceived, from overlooking adjoining properties.

Balconies and terraces on the northern elevation have views toward the CBD and do not overlook any residential properties. Views to the north east to the rear yards of those dwellings are obscured by the existing buildings on the properties.

Overshadowing

Overshadowing was raised as an issue in the submissions. Shadow diagrams were submitted with the application that shows the majority of shadows to be cast within the road reserve of Smollett Street. Overshadowing impact on sensitive properties to the south appear limited to early mornings in winter, with ample sunlight becoming available at noon and in the afternoon. This is not considered to be an unreasonable impact on commercial premises in the mixed use zone adjacent to the CBD.

Waste

There are no significant issues identified in regards to waste or waste management.

As previously discussed, the *Waste Minimisation and Management Plan* lodged for the development details the measures proposed to minimise and manage waste during demolition, construction and operation of the development.

The commercial and retail premises will be provided with general and recycling waste receptacles and the residential portion of the development will be provided with separate waste receptacles, including a recycling skip.

Internal and external bin storage locations are identified on the development plans (refer to attachment 1). Internal building areas comprise a “bin store” and a “garbage room/chute” whilst the external building area comprises “garbage pickup”. The dimensions and therefore capacity of each area have been determined with reference to the *Apartment Design Guide*, consultation with a commercial waste contractor, and building management experience with similar mixed-use building projects. Commercial contractors will collect all waste. Any signs on public land which may be required will only be erected in consultation with Council.

It is noted that if the intent is to have the residents and the commercial occupants to have one contractor to pick up all the waste generated, (a commercial service) residents will not be eligible to receive vouchers to the Waste Management Centre. Only residents with a kerbside collection service paying a charge to be part of the domestic service will be eligible to receive vouchers.

4.7 Public Submissions (Section 4.15(1)(d))

The development application was publicly exhibited between 18 March 2020 and 14 April 2020. Two (2) submissions were received during this period. Copies of the submissions are included with this report as attachment 3.

The submissions raised the following issues in regard to the development:

1. “Concerns overshadowing of the property of the shop”

Planning Comment:

Unfortunately, the submission does not provide any further comment than this heading. There is no indication of which property is referred to either. It can only be assumed that this relates to one of the properties opposite Smollett Street. As discussed above, whilst it is acknowledged that there will be overshadowing impacts in the early morning, particularly in winter, this does not extend to noon or the afternoon when adequate sunlight becomes available. This is not considered to be an unreasonable impact on commercial premises in the mixed use zone adjacent to the CBD.

2. Overshadowing of Kia Ora

Concerns are raised regarding the impact of the carpark building in terms of overshadowing the private courtyard on the north side of Kia Ora as well as seriously diminished loss of sunlight to three western windows on the first floor, one a bedroom, one a living room, and one providing light to stairwell and ground floor hallway.

Planning Comment:

It is acknowledged that the private courtyard in question already suffers from limited solar exposure as it is significantly overshadowed by buildings to the north. From the shadow diagrams it is apparent that, especially in the afternoons during winter, there will be no respite. It is however unclear how much of the late afternoon shadow will be caused by the proposed carpark building and how much will be from

existing buildings. It is considered that the proposed carpark is not significantly exacerbating an already poor situation in this instance.

With regard to the western windows of the main building, the shadow diagrams indicate that shadows from the proposed carpark building fall well short of this wall even in the late afternoon during winter.

Concerns regarding overshadowing from the proposed mixed-use building to the south is not considered reasonable, not only because the mixed-use building will not cast a shadow to the north but also because the two-storey Kia Ora casts its own shadow to the south.

3. Loss of privacy

Concerns were raised regarding overlooking and a loss of privacy from both the proposed carpark building and mixed-use building. The carpark building has a line of sight to the private courtyard and western windows. The mixed-use building has line of sight to five southern windows (kitchen, dining room and living room on ground floor and bedroom and living room on first floor). The proposed garden terrace on the first floor and the offices on second floor and above will result in loss of privacy. One upstairs living room with western window will have loss of privacy from residential apartments and balconies.

Planning Comment:

The residential component of the mixed-use building is predominantly directed away from Kia Ora. The shape and location of the proposed balconies more than 25m away are not conducive to intrusive views back toward Kia Ora.

Only the ground, first and second floors of the commercial component of the mixed-use building have direct line of sight to Kia Ora's southern windows. Whilst the first-floor terrace proposes some screening in the form of shrubs in planter boxes, it is acknowledged that there would be potential overlooking from these three floors. It is however noted that the Kia Ora windows in question are relatively small, fitted with metal bars and blinds and they do not present significant overlooking opportunity. It is further noted that the use of Kia Ora as a private, single dwelling is highly unusual in the B3 *Commercial Core* zone and its continued use as such is not anticipated to continue in the long term. It is therefore not considered reasonable to require significant modifications to the proposed design to mitigate the limited overlooking risk that may exist.

Windows from the third floor and higher have very limited views, if any, down into Kia Ora windows.

The proposed carpark building is approximately 33m away from the property. This separation, the partial screening by metal fencing on all levels of the carpark facing east and the anticipated intermittent and sporadic use of the car park does not present a significant risk of overlooking into the property. That is, the risk of a person arriving at or leaving his vehicle overlooking into a property 33m away is considered very low.

4. Access

Concern was raised regarding ingress to and egress from Kia Ora, especially with regard to the rear roller door of the existing garage entry. The submission questioned the need to exit to Townsend Street via the proposed development and by implication exiting through boom gates. The submission further questioned rear access for construction vehicles should the Kia Ora property be redeveloped in future. Finally, the submission questioned the height limit for heavy vehicles such as removals trucks to enter and exit the site in the proposed directions.

Planning Comment:

Rear access to Lot 21 (Kia Ora) is currently via a right of access easement providing one-way access, entering from Smollett Street and exiting at Townsend Street. This arrangement will not change as a result of the development. The right of access is described in the Section 88B instrument and states:

The owner of the lot benefitted may:

- a. *By any reasonable means pass across the lot burdened, but only within the site of this easement:*
 - i. *To get to or from the lot benefitted; and*
 - ii. *If the owner of the lot benefitted also has benefit of the easement to park vehicles numbered 1 in the plan. To access the site of that easement; and*
- b. *Do anything reasonably necessary for that purpose, including:*
 - *Entering the lot burdened; and*
 - *Taking anything on to the lot burdened*

Lot 21 (Kia Ora) is therefore reasonably assured of access to and from the lot over the subject property (Lot 203) including "taking anything on to the lot". As stated earlier, Lot 21 is also entitled to eight (8) car parking spaces and access to those spaces are being provided in the proposed carpark building. The proposal will not be able to extinguish those rights of access without providing equal rights, albeit potentially in a slightly different configuration. It is noted that the clearance height for vehicles are 3.0m which will allow reasonably large vehicles to access and exit through the carpark building.

The clearance heights of the covered pedestrian bridge above the proposed kerb are 3.0m at the northern end near the carpark building and 3.6m at the southern end near the proposed mixed-use building. The existing height of the roller door is 2.85m and therefore any vehicles able to use the garage roller door will be able to pass underneath the pedestrian bridge.

5. Views

The submission was concerned about views of the Monument and tree tops from the Albury Botanic Gardens lost to the west, as well as general loss of any views of the sky to the south.

Planning Comment:

The retention of views is not a planning matter for consideration specifically listed under Clause 4.15 of the Environmental Planning and Assessment Act 1979. Unfortunately, views of the Monument from the CBD, especially from rear windows, cannot be guaranteed and cannot be considered to the detriment of a proposed development. It is acknowledged that the proposed seven-storey commercial component will significantly reduce if not eliminate views of the sky to the south from Kia Ora south-facing windows. Whilst regrettable, this is not unexpected in a B3 *Commercial Core* zone in the CBD, where height limits of 35m and zero setback allowances exist. Given the road layout and lot orientation, properties along Townsend Street will most likely have to rely on eastern and western sky views in the future.

6. Construction

Concern has been raised regarding the noise level generated from the services (air conditioning etc.) provided to the development.

Planning Comment:

Standard conditions to manage construction hours are included in the draft Determination should the development be approved. In addition, it is recommended that a Demolition and Construction Management Plan be provided for the development to ensure that construction impacts are suitably managed, given the location and the size of the development. The Construction Management Plan must detail aspects of the construction that may impact upon neighbouring sites, residents and businesses

and the means that will be used to reduce potential impacts. It does not allow construction vehicles, equipment and materials to occupy adjacent private land, the road reserves or Council's footpaths.

Demolition is subject to the provisions of AS2601-2001, which includes requirements for appropriate site management and control of demolition works. The recommended conditions include the requirement for a Demolition and Construction Management Plan be prepared and approved prior to any demolition work commencing on the site.

4.8 Public Interest (Section 4.15(1)(e))

The impacts of the proposal on the environment in general, and on adjoining properties, has been considered and addressed. Having regard to the issues raised and discussed in this report, it is considered that the proposal is not contrary to the public interest.

5.0 Conclusion

Overall it is concluded that the impacts of the proposed development on the environment and neighbouring properties are reasonable and satisfy the requirements of this consideration subject to remediation action as contained in Conditions of Consent.

The proposed development has been assessed against the requirements of Section 4.15C of the *Environmental Planning and Assessment Act 1979*. This has involved consideration of the requirements of relevant State Environmental Planning Policies, *Albury LEP 2010* and *Albury DCP 2010*. It is considered that the proposed development has adequately demonstrated it is appropriate for this site and that the development would not generate significant adverse impacts within the site and on neighbouring areas.

Accordingly, it is recommended that Development Application 10.2018.37386.1 for the extension of the currently operating Clay Mine to an area to the west within the property boundary of Lot 2 in DP 856969 addressed as 253 Shaw Street Springdale Heights, be approved subject to the conditions contained in the Draft Determination included at Attachment 9 to this report.

Recommendation:

That the Southern Regional Planning Panel:

- a. Receive and note the contents of this report; and
- b. Grant development consent to Development Application 10.2020.37386.1 being for the Construction of an eight-storey mixed use building and a five-storey carpark building on Lots 201 and 203 in DP 1243276 and Lot 60 DP1115982, being 580-584 Smollett Street and 470 Wodonga Place, Albury, subject to the conditions contained in the Draft Determination, included in this report at Attachment 4.

Attachments

1. Development Plans (DOC20/117951).
2. Statement of Environmental Effects, Design Verification Statement and Apartment Design Guide Compliance Matrix (DOC20/117956).
3. Submissions (DOC20/115227).
4. Draft Determination (DOC20/115233
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