

DATE OF DETERMINATION	Friday, 12 March 2021
PANEL MEMBERS	Gordon Kirkby (Chair), Renata Brooks, Tim Fletcher, David Thurley
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 19 February 2021.

MATTER DETERMINED

PPSSTH-38 – Albury City – DA10.2020.37386.1 at 580 - 584 Smollett Street & 470 Wodonga Place, Albury NSW 2640 – Eight-storey Mixed Use Development and Five-storey Car Park (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Development application

The panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was 4:1 in favour, against the decision was Tim Fletcher.

REASONS FOR THE DECISION

The panel determined to approve the application for the reasons outlined in the council assessment report.

In addition, the majority of the panel was of the view that:

- The proposed development is permissible with consent in the B3 Commercial Core Zone under Albury Local Environmental Plan 2010.
- The proposed development is consistent with the 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 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.*
- With regard to potential impacts of the development on the reasonable operation of the right-of-way across the site in favour of the adjoining property (473 Townsend Street), Clause 1.9A of Albury LEP 2010 (Suspension of covenants, agreements and instruments) states the following:

(1) For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.

Notwithstanding this, the Panel notes that the adjoining landowner has provided written agreement that a practical height of 3.5m for the Right-of-way is acceptable at the rear of their property. Accordingly, a condition of consent has been included that the pedestrian footbridge has a minimum clearance of 3.5m from the ground level and that revised plan be submitted for the approval of Council that demonstrates that the amended pedestrian footbridge height will provide amenity, security and wayfinding for pedestrians and is accessible to people with disabilities.

- Notwithstanding that the development application was not accompanied by a Heritage Impact Statement, the majority of the Panel was satisfied that the proposed development is not in a Heritage Conservation Area and the inclusion of a new condition of consent requiring, prior to the issue of a construction Certificate for the mixed use building and car park, advice be obtained from a suitably qualified heritage expert on the proposed finishes schedule in the context of the compatibility of the with the surrounding heritage buildings including Item I173(shop), I174 (Kia Ora) and Item I153 (Australian Tax Office) in Schedule 5 of Albury LEP 2010. Should the expert require revisions to the building finishes, a revised plan shall be submitted for Council endorsement (recommended Condition B14). The condition also requires that any measures recommended by the heritage expert regarding mitigation measures to protect the adjoining building at 173 Townsend Street be included in the Demolition and Construction Management plans.
- The Panel has also included a condition of consent requiring that a dilapidation report, prepared by a suitable qualified structural engineer be prepared for the adjoining heritage item at 473 Townsend Street be submitted to the Council prior to demolition.
- The proposed development is generally in compliance with the Apartment Design Guide.
- The non-compliance with Section 11.7.3 of Albury DCP (exceedance of the 7-storey height limit) is acceptable for the residential component of the building, given the lower floor to ceiling height for residential development and that the building height is still compliant with 35m height limit under Albury LEP 2010.
- Potential impacts of the proposed waste management arrangements can be acceptably managed through the inclusion of a revised condition of consent (B13) requiring the preparation and submission of a Waste Management Plan which is required to include storage and handling measures to minimise the impact of kerbside pick-up.
- The amenity of residents adjoining the proposed car park is able to be addressed through the inclusion of a condition of consent requiring advice from a noise expert on measures to be employed to minimise noise associated with the operation of the car park.
- The potential for residents to lose access to carparking as a result of subsequent subdivision can be addressed through imposition of conditions requiring that carparking spaces are exclusively allocated to residents, that access cannot be removed through subdivision and that the carpark and mixed use building are on the same allotment.

Panel Member Tim Fletcher disagreed with the majority decision for the following reasons:

1) Inadequate heritage assessment - neither the applicant nor Council have provided a Heritage Impact Statement prepared by a suitably qualified heritage specialist even though 4 listed heritage items are in close proximity to the subject development proposal. In this regard, there is inadequate information available to undertake an informed and proper heritage assessment as required by clause 7.45 "Development in the vicinity not a Heritage Item" in Albury DCP 2010.

2) The proposed servicing and waste disposal arrangements do not provide for a larger service or garbage disposal collection vehicle to enter and leave the site in safe and efficient manner, due to the proposed one-way directional traffic flow and egress through a multi-storey carpark with restricted height. These arrangements are contrary to the objectives of relevant provisions of DCP 2010 including clauses 11.2.3 "to

ensure convenient and safe space is provided for the loading and unloading of goods” and 11.7.1 “to improve and promote the use and safety of laneways for both vehicle servicing access and pedestrian to building frontages”.

3) The design of the multi-storey carpark generates an unacceptable amenity impact on neighbouring properties especially to the south and west, in terms of loss of solar access, privacy, noise and excessive visual bulk and overshadowing. It is noted that there was no independent noise assessment undertaken. As such the proposed development is contrary to the objectives of clause 11.7.3 Building Height (DCP 2010) specifically: “to ensure the height of buildings protect the amenity of neighbouring properties in terms of visual bulk, access to sunlight and parking” The current design will contribute to an unacceptable urban design outcome.

4) The legal rights associated with the existing vehicle right-of-way to the rear of the adjoining heritage building/property are potential compromised and/or extinguished by the proposed development. Insufficient independent expert advice has been provided to enable a proper decision to be made in terms of the impact of the development on the R-o-W.

5) Insufficient information has been provided to demonstrate how exclusive parking allocations for residents and their visitors, of the proposed apartments, will be provided for in the adjoining multi-storey carpark, especially when the development is subsequently subdivided to facilitate sale of the apartments.

CONDITIONS

The development application was approved subject to the conditions in the council assessment report with the following amendments.

- **New Conditions:**

1. A new condition requiring that the nominated car parking spaces in the multi-storey carpark are exclusively allocated to residents of the apartments and their visitors, irrespective of any subsequent subdivision.
2. A new condition requiring that the car park and mixed-use building are on the same allotment.
3. A new condition requiring the applicant to obtain advice from a suitably qualified noise expert on potential noise impacts of carpark use on adjacent residential receivers and community centre and recommendations regarding measures to mitigate those impacts. Any measures recommended shall be implemented by the Applicant.
4. A new condition requiring that, prior to demolition, a detailed dilapidation report be prepared by a suitably qualified structural engineer for the adjoining building at 473 Townsend Street. The report is to be supported with suitable photographic records and shall be submitted to Council.
5. A new Condition requiring that, prior to the issue of a Construction Certificate for the Car Park component of the development, the Applicant shall submit a revised plan(s) for Council approval that show:
 - Pathways for pedestrian movement within the car park and across the site
 - Landscaping for the 3m setback area between the car park and the residential development to the west.
6. A new condition requiring that, prior to the issue of a Subdivision Certificate that includes construction of the proposed footbridge, the Applicant shall submit revised dimensioned plans for Council approval demonstrating:
 - that the pedestrian footbridge has a minimum clearance of 3.5m from the ground level
 - that the proposed footbridge and right of way will provide amenity, security and wayfinding for pedestrians, and is accessible to people with disabilities.

- **Amended Conditions:**

1. Amend Condition A2 to include the following:
 - **Drawing No. 580DA06 (Leffler Simes)**

- Direct access can be provided from the bin storeroom to the exterior by way of the sprinkler room.
 - Drawing No.L4A (Nicholas Bray Landscapes)
 - Additional planting treatment and alternative surface treatment in place of the artificial lawn to improve the amenity of the rooftop area.
2. Reword Condition B4 to clarify its intent.
3. Replace Condition B13 with the following words:

(B13) Garbage Storage and collection

The Applicant shall prepare and submit a Waste Management Plan for the approval of Council prior to the issue of an Occupation Certificate for the mixed use building. The plan shall be in accordance with any requirements of Council’s Waste Management Team and specify storage and handling measures to minimise the duration and impact of kerbside storage and collection.

4. Amend Condition B14 by inserting the words in **bold**:

(B14) Heritage finishes

Prior to the issue of a Construction Certificate for the mixed use building **and car park**, advice to be obtained from a suitably qualified heritage expert on:




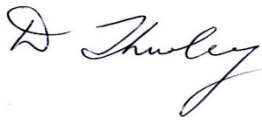
- the proposed finishes schedule (Plan 580DA23, **Plan 584DA10 and Plan 584DA11**) in the context of the compatibility with surrounding heritage buildings including items I173 (Shop), I174 (Kia Ora) and item I153 (Australian Tax Office) in Schedule 5 of Albury LEP 2010. Should the expert require revisions to the building finishes, a revised plan shall be submitted for Council endorsement; **and**
- **measure which should be taken to mitigate the potential impacts of the development on the adjacent Item I173 (Kia Ora, 173 Townend Street) arising from the development. Any recommended measures are to be incorporated in the Demolition Management Plan. (Condition A17), Construction Management Plan (Condition A18) and are to be implemented.**

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition. The panel notes that issues of concern included:

- potential overshadowing and loss of privacy on adjacent properties.

The panel considers that concerns raised by the community have been adequately addressed in the assessment report.

PANEL MEMBERS	
 Gordon Kirkby (Chair)	 Tim Fletcher
 Renata Brooks	 David Thurley

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-38 – Albury City – DA10.2020.37386.1
2	PROPOSED DEVELOPMENT	Eight-storey Mixed Use Development and Five-storey Car Park
3	STREET ADDRESS	580 - 584 Smollett Street & 470 Wodonga Place, Albury NSW 2640
4	APPLICANT/OWNER	Blueprint Planning/ 590 Smollett Street Pty Ltd on behalf of Zauner Construction Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ Environmental Planning & Assessment Act 1979 ○ Albury Local Environmental Plan 2010 (Albury LEP 2010) and ○ 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) ○ State Environmental Planning Policy No. 55 – Remediation of Land • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Albury Development Control Plan 2010 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Environmental Planning and Assessment Regulation 2000 • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 16 September 2020 • Applicants legal advice: received 12 February 2021 • Written submissions during public exhibition: 2 <p>Total number of unique submissions received by way of objection: 2</p>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection: Tuesday, 6 October 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Henk van der Ven, David Thurley • Final briefing to discuss council’s recommendation: Wednesday, 7 October 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Gordon Kirkby (Chair), Renata Brooks, Tim Fletcher, Henk van der Ven and David Thurley ○ <u>Council assessment staff</u>: Matt Wilson, Marius Shepherd • Final briefing before electronic determination: Wednesday, 16 December 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Gordon Kirkby (Chair), Renata Brooks, Tim Fletcher, Henk van der Ven and David Thurley ○ <u>Council assessment staff</u>: Marius Shepher, David Christy and Matthew Wilson

		<ul style="list-style-type: none"> ○ <u>Applicant representatives</u>: James Laycock (Blueprint Planning) ● Electronic Determination via circulation of papers: Friday, 19 February 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Gordon Kirkby (Chair), Renata Brooks, Tim Fletcher, Henk van der Ven and David Thurley
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report