**SOUTHERN REGIONAL PLANNING PANEL**

|  |  |
| --- | --- |
| RPP No | PPSSTH-45 |
| DA Number | DA-2020/535 |
| Local Government Area | Southern Regional Panel - Wollongong |
| Proposed Development | Demolition of existing structures and construction of an eleven (11) storey mixed use development comprising basement parking, ground floor home business premises, 64 residential units and 73 parking spaces. |
| Street Address | 4-8 Parkinson Street, Wollongong |
| Applicant/Owner | Blaq Projects Pty Ltd |
| Lodgement date | 4 June 2020 |
| Recommendation | Refusal |
| Number of Submissions  Number of Unique Objections | Eight (first notification)  Four (second notification- amended plans) |
| Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011 | Proposed development (as lodged) has a Capital Investment Value exceeding $30 million. |
| List of All Relevant s S4.15(1)(a) Matters | s4.15 (1)(a)(i) Any [environmental planning instrument](http://www.austlii.edu.au/au/legis/nsw/consol_act/epaaa1979389/s4.html#environmental_planning_instrument)s:  State Environmental Planning Policies (SEPPs):   * State Environmental Planning Policy No. 55 – Remediation of Land * State Environmental Planning Policy (Infrastructure) 2007 * State Environmental Planning Policy (State and Regional Development) 2011 * State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development * State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004   Local Environmental Planning Policies   * Wollongong Local Environmental Plan 2009   *Other policies:*   * Wollongong City-Wide Development Contributions Plan 2019 * Wollongong Community Participation Plan 2019   s4.15(1)(a)(ii) Any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority:   * N/A   s4.15 (1)(a)(iii) Any [development control plan](http://www.austlii.edu.au/au/legis/nsw/consol_act/epaaa1979389/s4.html#development_control_plan):   * Wollongong Development Control Plan 2009   s4.15 (1)(a)(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4   * N/A   s4.15 (1)(a)(iv) the [regulations](http://www.austlii.edu.au/au/legis/nsw/consol_act/epaaa1979389/s4.html#regulation): e.g Regs 92, 93, 94, 7.12, 288   * N/A |
| List all documents submitted with this report for the panel’s consideration | **Attachments**  Attachment 1 Plans  Attachment 2 Aerial photograph, WLEP 2009 zoning map  Attachment 3 Clause 4.6 Exception Request – Building Separation  Attachment 4 Design Review Panel Comments of 30 June 2020  Attachment 5 Apartment Design Guide Assessment  Attachment 6 Wollongong Development Control Plan 2009 Assessment  Attachment 7 Draft Reasons for refusal |
| Clause 4.6 request | Yes Clause 8.6, building separation. |
| Summary of key submissions | * Variation under Clause 4.6 in relation to Building Separation * Non-compliance with ADG matters * Non-compliance with objectives of commercial zone and definition of shop top housing. |
| Report prepared by | Vanessa Davis – Senior Development Project Officer |
| Report Date | 13 April 2021 |

|  |  |
| --- | --- |
| **Summary of s4.15 matters**  Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? | **Yes** |
| **Legislative clauses requiring consent authority satisfaction**  Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? | **Yes** |
| **Clause 4.6 Exceptions to development standards**  If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? | **Yes** |
| **Special Infrastructure Contributions**  Does the DA require Special Infrastructure Contributions conditions (S7.24)? | **Not applicable** |
| **Conditions**  Have draft conditions been provided to the applicant for comment? | **No** |

**Assessment Report and Recommendation Cover Sheet**

Executive Summary

**Reason for consideration by Southern Regional Planning Panel**

The proposal has been referred to Southern Regional Planning Panel as it involves general development with a capital investment value of more than $30 million. The CIV estimate for the original application project was $47,930,103.00. However, the application has since been amended with the deletion of one of the proposed towers and the CIV has been reduced to $22,537,995.00. The Secretariat informed Council on 24 February 2020 that the application is to continue to be determined by the SRPP as regionally significant development.

**Proposal**

The application proposes demolition of existing structures and construction of an eleven (11) storey mixed use development comprising basement parking, ground floor home business premises, 64 residential units and 73 parking spaces.

**Permissibility**

The site is zoned B3 Commercial Core pursuant to Wollongong Local Environmental Plan (LEP) 2009. The proposal has been submitted as Shop Top Housing which is permissible in the zone with development consent.

**Consultation**

The proposal was notified in accordance with Council’s Community Participation Plan 2019. The original proposal received eight (8) submissions. Amended plans were submitted with the removal of the Crown Street tower and re-notification was carried out. In response, there were Four (4) submissions in objection to the amended plans.

**Main Issues**

The main issues arising from the assessment are -

* Variation under Clause 4.6 in relation to Building Separation
* Non-compliance with ADG matters
* Non-compliance with objectives of commercial zone and non-compliance with definition of *shop top housing.*

**RECOMMENDATION**

It is recommended that DA-2020/535 be refused for the reasons outlined in Attachment 7.

1. Application overview
   1. PLANNING CONTROLS

The following planning controls apply to the development

State Environmental Planning Policies

* State Environmental Planning Policy No. 55 – Remediation of Land
* State Environmental Planning Policy (Infrastructure) 2007
* State Environmental Planning Policy (State and Regional Development) 2011
* State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development
* State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

Local Environmental Plans

* Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans

* Wollongong Development Control Plan (WDCP) 2009

Other Policies/Regulations

* Wollongong Community Participation Plan 2019
* Wollongong City Wide Development Contributions Plan 2019
  1. DETAILED DESCRIPTION OF PROPOSAL

The proposal involves demolition of existing structures and construction of an eleven (11) storey mixed use development comprising basement parking, ground floor home business premises, 64 residential units and 73 parking spaces.

The development originally consisted of two towers with one commercial tower facing Crown Street (383 Crown Street) and one mixed use tower facing Parkinson Street (4-8 Parkinson Street). Due to access issues and site isolation issues associated with the Crown Street tower, this tower was removed from the proposal.

Amended plans were received on 24 November 2020 following the Design Review Panel meeting of 30 June 2020. As part of the amended plans (4-8 Parkinson Street), the following is proposed:

**Built Form**

* Maximum building height RL 69.974 (32m)
* Gross Floor Area: 6158m2 (residential floor area)
* Landscaped Areas: provided on levels 03 and 11
* Number of units: 64 units are proposed comprising 9x1b/r units, 45 x 2b/r units, 9x3b/r and 1 x4b/r units
* Retail/commercial component: The original application proposed ground floor retail/commercial premises. This has been removed and replaced with Soho units which are double storey residential units with the ground floor to be used as home business premises.

**Building composition by level:**

* Demolition works: The application involves demolition of 3 dwellings situated on 4-8 Parkinson Street.
* Basement 01: This level contains excavation works for basement parking for 37 residential spaces along with storage and motorbike parking. The proposed basement includes a future opening to 383 Crown Street for future development of the Crown Street tower which will gain access from Parkinson Street. The parking for this development is for the residential units There is no commercial parking proposed as part of this development.
* Level 01: This level contains parking for 13 visitor spaces, waste storage and loading zone. There is also a future commercial waste area proposed on this level for the redevelopment of 383 Crown Street. Three units are proposed fronting Parkinson Street and identified as being Soho residential units. The units are 60sqm, 45sqm and 109sqm in ground floor area. The intention of these units is for a live/work type of use where the ground floor will be used by residents of the unit to work from home. A substation and fire booster along the street frontage and driveway entry ramp is also proposed on this level.
* Level 02: This level contains 23 car parking spaces along with bicycle parking. Six units are proposed fronting the street.
* Level 03: This level comprises six units fronting the street with four units located to the rear along with a community room. Communal and private open space on ground level is proposed with deep soil planting and outdoor seating area.
* Level 04: Four units are proposed along street frontage with five units located behind these units.
* Level 05: Two units fronting the street and five units to the rear.
* Level 06 to 10: The floor plate comprises seven units per floor which will be serviced by two lifts.
* Level 11 and 12 comprises 2 and 3 b/r units which are double storey. Communal open space is located on level 11 and private open space is provided on level 12 for the both units.

Background

A pre-lodgement meeting (PL-2019/38) was held on 5 April 2019 for 4-6 Parkinson Street. At this stage, the development only comprised of two lots being No. 4 and No. 6 Parkinson Street. The main issues discussed at this meeting were setbacks, level transitions from the street level, isolated lot and increase in landscaped areas due to the lack of nearby public open spaces. No pre-lodgement was held for this application.

Design Review Panel 30 June 2020

On 30 June 2020, a Design Review Panel (DRP) meeting was held with Council Officers. This meeting discussed the original plans which incorporated two towers, one fronting Crown Street and the other fronting Parkinson Street. In summary, the Panel found that there were fundamental issues with the proposal including the following:

* Isolation of 385 Crown Street
* Provision of easement to 385 Crown street
* Development of appropriate street wall to Crown street
* Justification of non-compliant western side boundary set
* lack of commercial uses for Parkinson Street tower
* Parkinson street interface with 373 Crown Street
* Residential tower setbacks
* Compliance with ADG solar access and natural cross ventilation requirements

SRPP briefing

On 14 October 2020 the SRPP was briefed on the proposal via video link. At this stage, the development proposed the two towers on Crown Street and Parkinson Street. The key issues discussed were:

* Impact on adjoining site to the west (385 Crown Street) including potential isolated lot impacts and impacts on Right of Carriageway
* Building separation between the two towers and adjoining sites
* Non-compliant setbacks
* Design Review Panel Comments
* Drainage
* Traffic circulation
* Car Parking rates
* Ground floor use on Parkinson Street
* Design of private communal open space areas
* Apartment Design Guide compliance for building setbacks, solar access and natural cross ventilation
* Solar access to private communal open space areas
* Potential amalgamation of 381 Crown Street and review of development.

Following the briefing, the Applicant requested the removal of the Crown Street Tower component and for Council to continue assessing the application for the Parkinson Street tower only.

Customer service actions

There are no outstanding customer service requests of relevance to the development.

Site description

The site comprises three individual lots being described as Lot 81, 82 and 83 DP 10704, known as 4-8 Parkinson Street, Wollongong. The sites are regular in shape with a total area of 1929sqm. The sites have a combined width of 41.28m to Parkinson Street. The site has a fall of approximately 8m from the rear of the property towards Parkinson Street. Situated on the lots are three individual dwellings proposed to be demolished as part of this application. The site is not identified as accommodating any heritage listed items.

To the north of the site are commercial and residential buildings fronting onto Crown Street which is a classified road. The site directly to the north at 383 Crown Street was initially incorporated into this DA with a proposed commercial tower. However, this has since been removed from the application.

Directly to the east of the site at 373 Crown Street is a mixed-use development currently under construction and approved under DA-2006/1698/F. This development comprises construction of two tower buildings comprised of Building A - 20 storeys consisting of ground floor retail/commercial and parking, three storeys of commercial area and 16 storeys of residential units comprised of 104 units and Building B - 10 storeys consisting of ground floor parking and 8 storeys of residential units comprised of 40 units over three (3) levels of basement parking. Access to this development is also from Parkinson Street.

The site is located in close proximity to public transport and within close proximity to Wollongong Hospital. Land uses surrounding the site include medical, commercial, retail and low to high density residential development. The site is situated between two different land uses being commercial zone to the north, east and west and a residential zone located south of the site

The maximum height of this site is 32m. The sites directly to the north have a height limit of 60m. The land directly to the south is situated in a R1 General Residential Zone with a height limit of 16m and comprises residential development. Adjoining the site to the west is two storey building containing units fronting Osborne Street.

Property constraints

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

* Flooding: The site is located within an Uncategorised flood risk precinct. Council’s Stormwater Officer has reviewed the application in this regard and provided a satisfactory referral. The proposal does not represent an increased risk to life or property in regard to flooding.

There are no restrictions on the title that would preclude the proposal.

Submissions

The original application was notifiedin accordance with Council’s Community Participation Plan 2019 from 10 June to 25 June 2020. Eight (8) submissions were received objecting to the proposal. Following receipt of amended plans (with the deletion of the Crown Street tower) the application was re-notified and a further four (4) submissions were received. The issues identified in the objections specifically relating to the Parkinson Street tower are discussed below.

| Concern | Comment |
| --- | --- |
| **Compliance**  Does not comply with separation requirements, setbacks for residential tower  Does not comply with car parking standards  FSR (floor space ratio) to be checked | The development does not achieve compliance with side setbacks and building separation. A variation has been requested in this regard.  Parking for the Parkinson Street tower complies with Council’s parking controls as detailed in the submitted Traffic Report.  The FSR complies for the site for the Parkinson Street tower and is below the permissible FSR standards for this site. |
| **Heritage Concerns**  The dwelling at No. 8 Parkinson Street is an 1880s Federation style and would be lost to the Wollongong History with this proposed development. | Council’s Heritage Officer requested the submission of a Heritage Assessment. This report has been submitted and outlines the potential construction dates of the three houses to the 1920’s. The report concludes that the dwellings do not meet the criteria for a local listing.  This report has been reviewed by Council’s Heritage Officer and found to be satisfactory and does not objection to the development. |
| **Damage During Construction**  Damage may be caused to the dwellings within close proximity to the site. | This could be conditioned to ensure that there are no impacts to adjoining dwellings during construction. This is usually achieved through geotechnical reporting and supervision during the construction process. |
| **Construction impacts**  Large truck movements during construction as Parkinson Street is the only access point.  Loss of parking on Parkinson Street during construction  Increase in noise levels | A construction management plan could address this for the various construction stages of this development. This may entail a temporary loss of parking on Parkinson Street during construction to facilitate the movement of trucks entering and exiting Parkinson Street. Noise during construction will be required to comply with EPA and Council’s guidelines. |
| **Solar access**  Concern regarding loss of sunlight for dwellings on Parkinson Street and Osborne Street. | Shadow diagrams have been amended with the deletion of the Crown Street tower. The shadows cast from this development are orientated to the south along the residences fronting Parkinson Street. In accordance with Chapter D13 of Wollongong DCP, adjacent residential buildings and their public spaces are able to retain 3 hours of direct sunlight between 9am and 3pm on 21 June. |
| **Increase in traffic to Parkinson Street**  The development has only Parkinson Street as access. | The development will increase traffic to Parkinson Street given the increased in density to the site. A traffic report has been submitted detailing the proposed nett increase in traffic generated by this development. It is estimated that during the AM peak, the proposal will generate potential of an increased 32 vehicle trips per hour (vph) and 18 vph during the PM peak hour.  It is noted however, that access to the recently constructed towers at 373 Crown Street are also gaining access from Parkinson Street. The future redevelopment of the Crown Street tower (yet to be lodged) is anticipated to also gain access from Parkinson Street. Therefore, there will be a cumulative impact of traffic generation from all the developments gaining access from Parkinson Street in the future. |
| **Loss of privacy for residents**  Due to the buildings built too close to boundary. | There are concerns regarding potential privacy impacts given the reduced setbacks proposed. This matter was also raised by the Design Review Panel and is further discussed in detail in this report. |
| **Removal of trees**  Removal of Bangalow Palm close to Parkinson Street frontage.  Does not comply with Urban Greening Strategy | Removal of trees has been assessed by Council’s Landscape Department and found to be satisfactory. Street trees have been shown on the landscape plan along with the installation of a new footpath along the frontage of the site. |
| **View Loss** | View loss was raised as an issue particularly with regard to the Crown Street tower. This tower has since been removed from the proposal. The Parkinson Street tower is situated at a lower height than the Crown Street Tower and is also lower in height than the adjoining towers directly to the east at 373 Crown Street currently under construction which comprises a tower up to 20 storeys in height. |
| **Lack of nearby public recreation space** | Given the location of this site, there are no public recreation spaces within walking distance. The nearest public open space is MacCabe Park. Communal open space is proposed in accordance with Council’s controls for residents to utilise for recreation purposes. |

Consultation

Internal consultation

Council’s Geotechnical, Stormwater, Traffic, Environment and Landscape Officers reviewed the application and provided satisfactory referrals. There are no outstanding matters.

External consultation

Transport for NSW

The requirements of Clause 104 of *State Environmental Planning Policy (Infrastructure) 2007* (SEPP 2007) which previously required the DA to be referred to TfNSW are no longer applicable given the development has removed the Crown Street Tower.

Endeavour Energy

Endeavour Energy have no objection to the Development Application.

Design Review Panel

The application was reviewed by the Design Review Panel (DRP) on 30 June 2020 in accordance with clause 7.18 5 (a) of WLEP2009. The DRP notes are found in Attachment 4.

|  |  |
| --- | --- |
| **DRP comments** | **Council’s response** |
| **Parkinson Street Interface with 373 Crown street** | |
| The podium of the approved mixed-use building on the adjoining lot to the east is set back approximately 12m from the street boundary. The current proposal’s 4 storey base abuts (nil set back) its eastern boundary, leaving a largely blank façade exposed to the street.  A nil set back to a side boundary is acceptable where another building adjoins it or would in the future adjoin it to form a continuous street wall. Where this is not the case and the wall will remain exposed, a setback should be provided equivalent to that of the adjacent development. The south eastern corner of the podium should be developed in response to its context. The setback to the eastern boundary should be increased (suggest 3m) to provide opportunities for landscaping, an articulated façade and to enhance the amenity of the proposed residential units. | The proposed podium, while more appropriate than the previous blank wall, still poses issues to the neighbouring property including overlooking, privacy, and potential fireproofing issues which would require a DTS response, as well as poorer streetscape outcomes including a 4m blank wall. The DRP’s recommendation for a street front setback that is sympathetic to the approved setback at 373 Crown Street has still not been considered and would likely address many of these issues.  It would be appropriate to incorporate either a stepped or slanted street facade which is consistent with the neighbouring property’s setback to address these issues. This setback should include either landscaping or other open space use that contributes positively to the Parkinson St streetscape and the commercial spaces at ground level. This might include uses such as a café, public open space with seating, non-accessible landscaped area, or other commercial use. Any design in this area would need to address CPTED principles.  It is also required any residential development to this boundary be set back 6m, as per ADG requirements, to reduce issues of overlooking and privacy between neighbouring apartments. Currently apartments 1.06 and 4.04 do not meet ADG setback requirements of 6m. Resolving the eastern boundary to meet this 6m setback along the length of the development is likely to aid in addressing a number of other issues raised throughout the DRP process including privacy, solar access, balcony dimensions and usability, and facade articulation. |
| **Extent of ground floor retail** | |
| A relatively small portion of the Parkinson Street frontage is dedicated to retail usage. Consideration should be given to relocating some of the plant and visitor parking on the western side of the residential lobby to allow for additional street level retail. It is suggested that this could replace the 69sqm of commercial space located at podium level (lower ground 1) which will be largely inaccessible to anyone other than residents of this development. | Concern was raised by the DRP and by Council in regard to the amount of commercial floor space proposed to comply with the commercial zoning of the site. The revised plans show the ground floor retail has been converted into Soho units to allow people to live and work from these units. It appears that this arrangement does not facilitate the increase in commercial uses to the site nor does it meet the definition of shop top housing. Given the 100% GFA of residential proposed, the proposed plans are not satisfactory to satisfy this concern. |
| **Tower setbacks** | |
| The proposed tower does not comply with ADG setback requirements or council’s building separation requirements. The north facing balconies of the tower are of particular concern, as they are vulnerable to potential privacy issues from the proposed commercial building and future development of the adjoining site to the north. Consideration should be given to developing a smaller tower form with 6 units per level, this will assist with minimising potential privacy issues as well as assisting with compliance of ADG solar access and cross ventilation requirements. | The DRP raised concerns over non-compliance with setbacks and building separation and noted that perhaps the floor plate should be reduced in order to comply with setback controls.  The revised plans show a reduction of one unit and the floor plates remain largely the same. Non-compliance with setbacks and building separation remain as part of the revised design.  The recommendations from the DRP to develop a smaller tower with 6 units per floor plate in order to comply with the ADG has not been adopted. |
| **Density** | |
| Further refinement of the proposal’s interfaces with neighbouring buildings is required to prevent the proposal from presenting as an over-development of this site. | The density complies with the relevant controls however some increase in commercial GFA would be beneficial to the overall development. |
| **Sustainability** | |
| Solar Access  The DRP notes that the claim of 71% of units providing ADG compliant solar access was incorrect as a number of units do not comply. The DRP calculated that 58% of the units comply and does not meet the 70% minimum ADG requirements.  Natural Cross Ventilation  The DRP notes that the claim of 63% of units providing ADG compliant natural cross ventilation was incorrect as a number of units do not comply. The DRP calculated that 58% of the units comply and does not meet the minimum 60% ADG requirement. | Updated views from the sun diagrams have been submitted showing compliance with over 70% of units achieving solar compliance. However, redevelopment of the sites to the north will result in this not being achieved. This is due to change is height limits for the sites (60m north, 32m subject site) and change in topography as the site has fall from Crown Street to Parkinson Street.  A review of the submitted plans reveals a non-compliance with the natural cross ventilation. Units 2.02, 1.05, 4.02, 4.03, and 10.02 are not naturally cross ventilated despite being marked as such. This means the development achieves only 53%, rather than the 60%, requirement for cross ventilated apartments. |
| **Landscape** | |
| * The building should sit into the ground plane, rather than relying on a strip wall along the base of the commercial component * The setback of the development to the east from Parkinson Street should be complemented by a setback in the south-eastern portion of the building that enables an integrated, spatially harmonious landscape to be achieved for the two sites. * The Panel questioned the need for such a large plant room (or a second sub-station) that generates a blank wall on the southern street elevation. * A safe, clearly defined pedestrian path from the retail visitor parking to the retail unit should be available via the street. * Pedestrian entry through the basement carpark is not clear or straight-forward, and is even more problematic for wheelchairs, prams, etc.   Private open space   * Concerns regarding the quality of the POS on Lower Ground Level 2 below the lightwells * Privacy issues arising from balconies overlooking the sunken POS in the lightwells need to be addressed. * Odd shaped balconies on southern elevation can be problematic in terms of quality and maintenance. * Proposed commercial space intrudes into COS1 * A communal room with facilities should be linked to level 8 COS | The building wall has been setback from the boundary with wrap around balconies now introduced at this on this elevation. Whilst this is a good attempt to improve the treatment of this elevation, it has also introduced further non-compliances with regard to building separation.  The applicant argues that due there being no requirement to retain soil on 373 Crown Street, this wall is required.  The large plant room has been reduced and does not dominate the streetscape.  Pedestrian entry through the car park is provided through the lobby area. Movement for wheelchairs and prams remains problematic due to the location of stairs and a narrow opening near the boom gate.  The lightwells have been removed from the proposal.  Odd shaped balconies are still proposed with the placement of furniture and movement off people around the furniture due to the irregular shaped balconies.  Commercial space to the rear of the site has been removed.  A communal room has been provided to the communal open space located on level 3. |
| **Amenity** | |
| Commercial suite on ground level podium not suitable as commercial space.  Balconies appear to be narrow, Unit 109 appears to be inaccessible.  Furniture layout to be shown and balconies/room sizes shown.  Lightwell- poor solar access  Residential entry off Parkinson Street: the corridor/lobby should be more generous. | Balconies continue to be irregular in shape and in some parts not usable due to the narrowness. Furniture layout on these balconies for eating and entertaining will be problematic due to the irregular shape of the balconies.  The lightwells have been removed from the proposal.  Improvements have been made |
| **Aesthetics** | |
| Servicing the building to be considered and may change the design. | Improvements have been made to remove services from the street such as the large plant room which was originally proposed.  Materials, colours and finishes for the building are acceptable. |

Environmental Planning and Assessment Act 1979

Section 4.15(1)(A)(1) any environmental planning instrument

State Environmental Planning Policy No. 55 – Remediation of Land

The application has been reviewed by Council including Council’s Environmental Officer in this regard. A desktop audit of previous land uses does not indicate any historic use that would contribute to the contamination of the site.

Excavation is to occur on the site to facilitate basement parking and footings. A Detailed Site Investigation Stage 2 report (Aargus Pty Ltd, 10 March 2020) has been prepared.

The following recommendations were made:

* + Based on the results of this investigation it is considered that the risks to human health and the environment associated with soil contamination at the site are negligible within the context of the proposed use of the site for commercial and residential development. The site is therefore considered to be suitable for the proposed use.
  + Any soils requiring removal from the site, as part of future site works, should be classified in accordance with the “Waste Classification Guidelines, Part 1: Classifying Waste” NSW EPA (2014).

Council’s Environment Officer considers that the report is satisfactory, and the conclusions made are valid and concurred with.

State Environmental Planning Policy (Infrastructure) 2007

The original application was referred to the Roads and Maritime Authority (Now Transport for NSW) under Clause 104. Clause 104 is relevant as the proposal triggers Schedule 3 (commercial premises with GFA over 10,000m2).

The requirements of Clause 104 of *State Environmental Planning Policy (Infrastructure) 2007* (SEPP 2007) which previously required the DA to be referred to TfNSW are no longer applicable given the developments reduced scale.

Notwithstanding this, an assessment of the impacts was undertaken with the revised design and a number of issues originally raised were still required to be addressed. In particular, additional information was sought in relation to the size of trucks servicing the site and whether upgrades to the Crown Street/Osborne Street intersection would be required. Further information was provided in response to waste vehicles servicing the site and it was concluded that intersection works are not required.

The proposal was also referred to Endeavour Energy in accordance with Clause 45. Endeavour Energy raised no concerns with the proposal.

STATE ENVIRONMENTAL PLANNING POLICY (STATE AND REGIONAL DEVELOPMENT) 2011

**Part 4 Regionally significant development**

The Southern Sydney Regional Planning Panel is the determining authority for the development pursuant to Part 4 of the SEPP as the original development had a capital investment value of more than $30 million. A revised cost estimate report has been submitted with the amended proposal with a reduced value of the development of $22,537,995.00. This is due to the removal of the Crown Street Tower from this application. This application now comprises of one tower being proposed (Parkinson Street tower, 4-8 Parkinson Street).

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

SEPP 65 aims to deliver a better living environment for the residents within residential apartment developments and enhance the streetscapes and neighbourhoods in which these buildings are located.

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

A Design Statement has been prepared by a Registered Architect addressing the requirements of SEPP 65.

Schedule 1 of SEPP 65 sets out the design quality principles for residential apartment development.

These must be considered in the assessment of the proposal pursuant to clause 30(2)(a) of the Policy and are discussed below.

*Principle 1: Context and neighbourhood character*

The built environment in the locality is characterised by a mixture of building types undergoing transition towards higher density development consistent with current height restrictions. This is shown by the building adjacent to the site currently under construction.

The site is able to accommodate a mixed-use development of this nature reflective of the current height and floor space controls. It is considered that redevelopment of adjacent lots to a higher density will occur over time. However, consideration should be given to the commercial nature of the site and compliance with SEPP 65 and building separation matters.

Also, there is a transition in zoning as across Parkinson Street is a R1 Zone with a height limit of 16m. Whilst the street frontage height is permissible in this zone, there will be an obvious impact upon the transition in heights of North and South Parkinson Street.

The DRP also raised concern with the relationship between the 2 buildings (adjacent building under construction) and considered a greater setback for this building will assist in providing uniformity between the two buildings.

*Principle 2: Built form and scale*

The built form is not consistent with some of the key elements of setbacks and building separation. The floor plate is considered excessive and results in non-complying elements of the ADG resulting in poor amenity. The DRP advised that consideration to a reduced floor plate to provide more amenity for the units should be considered.

Whilst solar access diagrams show compliance at this stage, future redevelopment of towers to the north on Crown Street will result in non-compliances in the future. To some extent this is unavoidable given height restrictions and the site’s topography. As noted by the DRP, compliance with ADG setbacks and building separation requirements will allow for the retention of some solar penetration into the units to cater for future overshadowing from nearby development sites.

*Principle 3: Density*

The density of the development complies with the maximum FSR permitted for the land. However, the gross floor area comprises of residential floor area which is contrary to the commercial zoning of the site.

*Principle 4: Sustainability*

A BASIX Certificate has been provided indicating minimum requirements are met. However, concerns are raised with regard to cross ventilation as the minimum requirements under the ADG have not been met.

Principle 5: Landscape

The proposal provides suitable landscaped areas and communal open space that will provide for appropriate amenity to the occupants.

*Principle 6: Amenity*

The proposal meets the minimum requirements for solar access, private and communal open space, storage, acoustic privacy, access and the like. Concern is raised over the use of outdoor balconies due to the irregular shapes. Also, cross ventilation for some units have not been achieved.

*Principle 7: Safety*

The proposal is satisfactory with regard to safety and security. A clear entry is proposed to each dwelling. A clear definition between public and private space has been provided for within the design. The design provides for minimal areas of concealment and entrapment with natural surveillance of common spaces.

*Principle 8: Housing diversity and social interaction*

A total of 64 units are proposed comprising 9x1b/r units, 45 x 2b/r units, 9x3b/r and 1 x4b/r units. There does appear to be a large provision of 2-bedroom units. More research into demographics and market demand would be necessary to consider an increase in supply of 3-bedroom units.

*Principle 9: Aesthetics*

The proposal is considered to be of a high quality with regard to its appearance. A mixture of materials and finishes is provided, and the bulk of the development is suitably articulated. Natural materials and colours have been selected.

An assessment of the application against the Apartment Design Guide (ADG) was undertaken and a compliance table provided at Attachment 5.

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

In accordance with Schedule 1 of the Regulations and SEPP 2004 a BASIX Certificate has been submitted in support of the application demonstrating that the proposed scheme achieves the BASIX targets.

Wollongong Local Environmental Plan 2009

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned B3 Commercial Core.

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

* *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 strengthen the role of the Wollongong city centre as the regional business, retail and cultural centre of the Illawarra region.*
* *To provide for high density residential development within a mixed-use development if it—*

*(a) is in a location that is accessible to public transport, employment, retail, commercial and service facilities, and*

*(b) contributes to the vitality of the Wollongong city centre.*

The proposal is not considered to meet the objectives of the B3 commercial zone in that there is insufficient retail or business uses. There is also limited employment opportunities. The DRP raised concern regarding the lack of commercial floor area within this building. In the additional information letter sent to the applicant on 30 July 2020, Council also raised concern that the amount of commercial floor area on the ground floor (as originally proposed) is considered insufficient to meet the objectives of this commercial zone. Amended plans removed the ground floor commercial/retail area and replaced it with Soho units with a live/work arrangement. Whilst this arrangement provides a good opportunity to provide flexibility in land uses, the lack of commercial/retail floor area remains a concern as there has been no attempts to increase the commercial floor area as originally requested.

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

*Advertising structures; Amusement centres; Boarding houses; Car parks; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Exhibition homes; Function centres; Helipads; Hostels; Hotel or motel accommodation; Information and education facilities; Medical centres; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Self-storage units; Seniors housing; Service stations; Sex services premises;* ***Shop top housing****; Tank-based aquaculture; Tourist and visitor accommodation; Veterinary hospitals; Wholesale supplies*

The proposal as submitted is categorised as **Shop top housing** and is permissible in the zone with development consent. The application originally comprised of ground floor retail or commercial uses. This has since been removed and replaced with Soho units proposed for live and work type of uses. It appears that this is not consistent with the definition of shop top housing as there is no ground floor retail or business premises. The definition of shop top housing is provided below:

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

Under the LEP, the definition of business premises does not allow for the provision of home business or home occupation. Therefore, the development is prohibited.

Clause 2.7 Demolition requires development consent

The demolition of a building or work may be carried out only with development consent. The development entails the demolition of three dwellings. A demolition plan has been submitted with the application.

Part 4 Principal development standards

Clause 4.3 Height of buildings

The proposed building height of 32m (RL69.811AHD) which does not exceed the maximum of 32m permitted for the site.

Clause 4.4A Floor space ratio – Wollongong city centre

Total site area of 1928.5m2

Gross floor area (commercial): 0m2 (0%)

Gross floor area (residential): 6158m2 (100%)

Gross floor area total: 6158m²

Maximum floor space ratio: 3.41:1

Floor space ratio proposed: 3.19**:**1

Calculation of maximum FSR permitted:

(3)  For land within Zone B3 Commercial Core with a site area equal to or greater than 800 square metres and less than 2,000 square metres and a street frontage equal to or greater than 20 metres, the maximum floor space ratio for any building on that site is—

(a)   —if the building is used only for residential purposes, or

(b)   —if the building is used only for purposes other than residential purposes,

where—

***X*** is  .

X = 1,928.5 – 800 / 1,200 = 0.94

(a) = (2 + 1.5 x 0.94) = 3.41:1

The proposal complies with this Clause.

Clause 4.6 Exceptions to development standards

Clause 4.6 provides that development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument, where certain matters are met. In this instance, a departure is sought in respect of Clause 8.6 Building Separation (addressed below).

|  |  |
| --- | --- |
| **WLEP 2009 clause 4.6 proposed development departure assessment** | |
| Development departure | Clause 8.6 Building separation.  *Clause 8.6(3) requires that if a building contains a dwelling, all habitable parts of the dwelling including any balcony must not be less than—*  *(a)  20 metres from any habitable part of a dwelling contained in any other building, and*  *(b)  16 metres from any other part of any other building*. |
| Is the planning control in question a development standard | Yes |
| 4.6 (3) Written request submitted by applicant contains a justification: | |
| that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and | Yes, the applicant has submitted a Clause 4.6 submission upon lodgement.  The applicant’s written request seeks to justify that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case based on the following rationale:   * Objectives Clause 8.6 are satisfied. * The objectives of the B3 Commercial Core zone are satisfied. * That compliance with the building separation standard is unnecessary in the circumstances of the case as the objectives of the standard and zone objectives are met and strict compliance with the 16m building separation would result in a part of the site excluded from any built form. * The Applicant further states that the site is located within a commercial zone and the design is a direct repose to allow for housing within this zone. |
| that there are sufficient environmental planning grounds to justify contravening the development standard. | Yes, the applicant’s request contains this justification. |
| 4.6 (4) (a) Consent authority is satisfied that: | |
| the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and | The applicant’s request does not adequately address the matters required to be demonstrated by subclause (3).  ***Compliance with the development standard is unreasonable or unnecessary.***  It is not considered that there are sufficient environmental planning grounds to justify contravening the standard.  There are impacts associated with the non-compliance regarding building separation and setbacks. The non-complying part of the building will be distinguishable in the streetscape and adjoining development.  ***There are sufficient environmental planning grounds***  No, it is not considered that there are sufficient environmental planning grounds to justify contravening the standard. In particular the following is noted:   * *The extent of the variation is not accurate*   The proposed building separation on level 5 shows an 18m building separation from the adjoining property to the east and this measurement is taken from the eastern wall of Unit 506. The 4.6 submission claims that to the east, an 8.7m setback is proposed on this level.  However, a review of the plans show that this measurement should be taken from the edge of the proposed balcony on this level (unit 507) located on the south east corner of the site which encroaches further into the side setback.  The proposed building separation on this level is estimated to be approximately 14m.   * *Comments from DRP*   The applicant claims that insisting on compliance would result in an unnecessary portion of the subject site being excluded from any built form.  However, the DRP initially raised concern with building separation and stated that perhaps the proposal is an overdevelopment of the site and consideration should be given to a smaller floor plate with six units per level which will assist in providing compliance with ADG solar access, cross ventilation and setback requirements.  Given that compliance still cannot be achieved, Council is of the view that the proposal remains an overdevelopment of the site and a reduced floor plate is required to achieve compliance. |
| the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and | There is a public benefit in maintaining the standard in this instance.   * *Clause 8.6 Building separation objective:*   *(1) The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.*  The applicant has introduced wrap around balconies to address the visual concerns raised by the DRP in relation to how the building presents to the street with the adjacent building under construction at 373 Crown Street. As the adjacent building has a large landscaped setback fronting Parkinson Street, the DRP raised concerns that a solid blank wall was too obtrusive to this landscape setting. However, the inclusion of balconies along the eastern elevation presents non-compliance with building separation along this elevation non-compliant setbacks and associated privacy issues between the two buildings.   * *Objectives of the zone*   The objectives for development within the B3 Commercial Core zone are:   * *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 strengthen the role of the Wollongong city centre as the regional business, retail and cultural centre of the Illawarra region.* * *To provide for high density residential development within a mixed use development if it—*   *(a)  is in a location that is accessible to public transport, employment, retail, commercial and service facilities, and*  *(b)  contributes to the vitality of the Wollongong city centre.*  The proposed building provides commercial uses on ground level which is consistent with the above objectives.  The only commercial components within the building are the lower floor Soho units which are designed for live/work purposes. However, this use is not defined in the LEP as commercial, retail or business use. The applicant was requested to increase the commercial floor area of the original submission which included ground floor commercial. This has not been carried out. The proposed building constitutes 100% residential floor area. Given the lack of any commercial components within the building, the proposal is not consistent with the zone objectives and is not in the public interest. |
| the concurrence of the Secretary has been obtained. | The SRPP can exercise assumed concurrence in this instance |

Part 5 Miscellaneous provisions

Clause 5.10 Heritage conservation

The proposed development has been considered with regard to potential heritage impacts as required under Clause 5.10(3) of the Wollongong LEP 2009 and Chapter E11: Heritage Conservation of the Wollongong DCP 2009.

In response to Council’s request for further investigation, the applicant has provided a Heritage Assessment of 4-8 Parkinson Street, Wollongong (prepared by Gasparini Luk Architects dated 11 November 2020). The Report details the potential construction dates of the three houses to the 1920’s and notes they do not meet the criteria for a local listing.

The report has been reviewed by Council’s Heritage Officer and conditions recommended in regard to Unexpected Archaeological Finds and Unanticipated finds of Aboriginal cultural heritage.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

This clause seeks to ensure that sufficient infrastructure is available to service development and requires that consent not be granted for development unless the consent authority is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.

The site is already serviced by electricity, water and sewerage services. It is expected that the existing utility services can be augmented to support the proposed development. Consultation has been carried out with Endeavour Energy who raise no objection to the development.

Clause 7.3 Flood Planning Area

This Clause has been considered with Stormwater Plans reviewed by Council’s Stormwater Engineer. There are no concerns raised in relation to this Clause.

Clause 7.6 Earthworks

The proposal involves excavation to facilitate the provision of the building’s basement car parking. The earthworks have been considered in relation to the matters for consideration outlined in Clause 7.6 and are not expected to have a detrimental impact on environmental functions and processes, neighbouring uses. Council’s Geotechnical Engineer has considered the application and has provided a satisfactory referral subject to conditions.

Clause 7.13 Certain land within business zones

This Clause applies to the site as it is located within a Commercial Zone. The objective of Clause 7.13 is to ensure active uses are provided at the street level to encourage the presence and movement of people. The clause prevents development consent from being granted unless the consent authority is satisfied that the ground floor of the building:

*(a) will not be used for the purpose of residential accommodation, and*

*(b) will have at least one entrance and at least one other door or window on the front of the building facing the street other than a service lane.*

It is considered that the proposal does not provide for street activation as retail or commercial uses are not proposed at ground level. Whilst retail/commercial was originally proposed at street level, this has been replaced with Soho units allowing for home business units. It is recommended that the street frontage contain commercial uses such as office space and Soho units be located above to allow for flexibility in the land uses.

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

The site is located within the Wollongong city centre and is subject to this clause, the objective of which is to deliver the high standards of architecture and urban design.

Under this clause, the proposed development has been considered by the Design Review Panel (DRP). The Panel concluded that extra work is required for the Parkinson Street interface with 373 Crown Street and that compliance with ADG tower setbacks, solar access and natural cross ventilation requirements be met.

Whilst a few of these matters have been addressed by the applicant by way of amended plans, the proposal has a number of outstanding matters including that ADG setbacks have not been addressed, building separation and cross ventilation requirements. Design excellence in this regard has not been achieved.

Part 8 Local provisions—Wollongong city centre

The site is located within the area defined as the Wollongong city centre by WLEP2009 and accordingly the provisions within this part of the LEP are of relevance to the proposal.

Clause 8.4 Minimum building street frontage

The land exceeds the minimum 20m frontage requirements on Parkinson Street.

Clause 8.6 Building separation within Zone B3 Commercial Core or Zone B4 Mixed Use

An exception to the building separation requirements under Clause 4.6 is sought. This has been discussed above. The Clause 4.6 submission is found in Attachment 3.

Section 4.15(1)(a)(ii) any proposed instrument

Not applicable.

Section 4.15(1)(a)(iii) any development control plan

Wollongong Development Control Plan 2009

The development has been assessed against the relevant chapters of WDCP 2009. The full table of compliance can be found at Attachment 6 to this report.

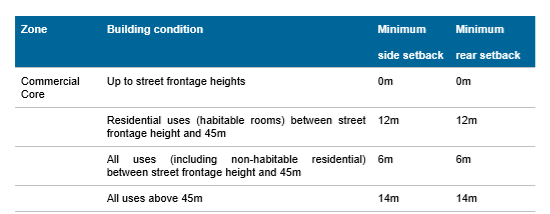
Chapter A1, Clause 8 Variations to development controls in the DCP

The application seeks variations in respect of the following matters: -

* Side and rear building setbacks and building separation (Clause 2.5 of Chapter D13)

3. Clause 2.5 Side and Rear Building Setbacks and Building Separation

The requirements in this clause reflect the separation distances outlined in Clause 8.6 of Wollongong LEP 2009.



Applicant’s justification for variation:

A justification statement under Chapter A1 has not been provided from the applicant.

Wollongong City Wide Development Contributions Plan 2019

A levy of 2% is applicable under this plan as the threshold value is $250,000 and the site is located within the city centre.

Section 4.15(1)(a) (iiia) Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under Section 7.4

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

Section 4.15(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

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

This could be subject to conditions.

93 Fire safety and other considerations

Not applicable.

94 Consent authority may require buildings to be upgraded

1. Not applicable.

Section 4.15(1)(b) the likely impacts of development

|  |
| --- |
| Context and Setting:  The site is situated in a transition zone between commercial land uses to the north which will be high rise towers, to smaller scale residential zoned land directly to the south across the street.  Whilst full commercial at ground level does not seem viable, it is required given the commercial nature of the zone.  The full impact of the future redevelopment of the Crown Street tower on this building is not known as this tower has been removed from the application. |
| Access, Transport and Traffic:  A number of concerns have been raised by the objectors in relation to traffic and parking issues due to the narrowness of the street and the location of the site in relation to the cul-de-sac.  The development provides for the required number of car parking spaces and manoeuvring of waste vehicles on site. Council’s Traffic officer has considered the development with regard to impacts on the wider traffic network and raised no objections to this proposal.  The adjoining towers under construction is gaining access from Parkinson Street. It is envisaged that the future redevelopment of Crown Street allotments will also gain access via Parkinson Street. There will be an overall increase in traffic for Parkinson Street as outlined in the submissions, given that access to high rise towers fronting Crown Street are using Parkinson Street for access to these sites. |
| Public Domain:  Upgrade of the footpath and provision of street trees is required to improve the public domain. Concerns are raised with the exposed walls on the side boundaries and how this will be treated with the future re- development of Osbornes Street. |
| Utilities:  The proposal would not be envisaged to place an unreasonable demand on utilities supply. |
| Heritage:  A Heritage Report has been submitted has been submitted and found to be satisfactory from Council’s Heritage Officer. |
| Other land resources:  The proposal would not be envisaged to impact upon valuable land resources. |
| Water:  The site is presently serviced by Sydney Water, which could be readily extended to meet the requirements of the proposed development.  The proposal would not be envisaged to have unreasonable water consumption. |
| Soils:  No concerns are raised with impact on soils. |
| Air and Microclimate:  The proposal would not be expected to result in negative impact on air or microclimate. |
| Flora and Fauna:  There are no anticipated impacts on flora and fauna. |
| Waste:  This could be subject to condition that an appropriate receptacle be in place for any waste generated during construction. |
| Energy:  The proposal would not be expected to have unreasonable energy consumption. A BASIX Certificate has been provided. |
| Noise and vibration:  This could be subject to condition that nuisance be minimised during any construction, demolition, or works. |
| Natural hazards:  There are no natural hazards identified on site that would preclude the proposed development. |
| Technological hazards:  There are no technological hazards identified on site that would preclude the proposed development. |
| Safety, Security and Crime Prevention:  There are no concerns with regard to safety and security. |
| Social Impact:  The proposal would not be envisaged to result in negative social impacts. |
| Economic Impact:  The proposal is not expected to create negative economic impact. |
| Site Design and Internal Design:  The application does not comply with DCP setbacks and building separation requirements. |
| Construction:  To be managed via conditions if the development is approved. |
| Cumulative Impacts:  The variations proposed are considered to result in an adverse cumulative impact. |

Section 4.15(1)(c) the suitability of the site for the development

Does the proposal fit in the locality?

As discussed earlier within the report proposal is not considered appropriate with regard to the zoning of the site and meeting the objectives of the zone.

Are the site attributes conducive to development?

The site can accommodate a new development however more consideration is to be given to the built form and site context.

Section 4.15(1)(d) any submissions made in accordance with this Act or the regulations

The submissions made have been addressed in this report.

Section 4.15(1)(e) the public interest

It is considered inappropriate with consideration to the zoning and the character of the area and is therefore not considered to be in the public interest.

Conclusion

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

The proposal includes non-compliant ADG setbacks a Clause 4.6 report for building separation and prohibited development which are not supported. The proposal is also inconsistent with the permissibility and objectives for the B3 Commercial Zone.

The application was referred to the Design Review Panel and the revised plans do no satisfactorily address all matters raised by the DRP. Internal and external referrals along with submissions have been considered.

It is considered that the proposed development will result in unacceptable impacts and is not in the public interest.

RECOMMENDATION

It is recommended that the development application be refused for the reasons outlined in Attachment 7.

ATTACHMENTS

Attachment 1 Plans

Attachment 2 Aerial photograph, WLEP 2009 zoning map

Attachment 3 Clause 4.6 Exception Request – Building Separation

Attachment 4 Design Review Panel Comments of 30 June 2020

Attachment 5 Apartment Design Guide Assessment

Attachment 6 Wollongong Development Control Plan 2009 Assessment

Attachment 7 Draft Reasons for refusal