

## SOUTHERN REGIONAL PLANNING PANEL

Panel Reference	PPSSTH-5
DA Number	DA-2019/748
Local Government Area	Wollongong City Council
Proposed Development	Demolition of existing structures and construction of a shop top housing development containing 109 residential apartments with ground floor commercial/retail premises and three levels of basement parking
Street Address	264 Keira Street Wollongong - Lot 101 DP 709651 266 Keira Street Wollongong - Lot 1 DP 800021 268 Keira Street Wollongong - Lot 100 DP 1130021 23 Kenny Street Wollongong - Lot 4 DP 522288
Applicant/Owner	Brewster Murray Pty Ltd (applicant) FR Wollongong Pty Ltd (owner)
Total number of Submissions	Twelve (12)
Number of Unique Objections	Twelve (12)
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Proposed development has a Capital Investment Value exceeding \$30 million.
List of all relevant s4.15(1)(a) matters	<p>List all of the relevant environmental planning instruments</p> <p><u>State Environmental Planning Policies (SEPPs):</u></p> <ul style="list-style-type: none"> <li>SEPP No. 55 (Remediation of Land)</li> <li>SEPP No. 65 Design Quality of Residential Development</li> <li>SEPP (Building Sustainability Index: BASIX) 2004</li> <li>SEPP (State and Regional Development) 2011</li> </ul> <p><u>Local Environmental Plans</u></p> <ul style="list-style-type: none"> <li>Wollongong Local Environmental Plan 2009 (WLEP 2009)</li> </ul> <p><u>Other policies –</u></p> <ul style="list-style-type: none"> <li>NSW Apartment Design Guide</li> <li>Wollongong City-Wide Development Contributions Plan 2019</li> <li>Wollongong Community Participation Plan 2019</li> </ul> <p>List 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: s4.15(1)(a)(ii)</p> <ul style="list-style-type: none"> <li>Nil</li> </ul> <p>Relevant development control plan: s4.15(1)(a)(iii)</p> <ul style="list-style-type: none"> <li>Wollongong Development Control Plan 2009 (WDCP 2009)</li> </ul> <p>Relevant 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</p> <ul style="list-style-type: none"> <li>Nil</li> </ul> <p>List any relevant regulations: s4.15(1)(a)(iv) e.g. 92, 93, 94, 94A</p>

	<ul style="list-style-type: none"> <li>Clause 92 (1) (a) demolition</li> </ul> <p>List any coastal zone management plan: s4.15(1)(a)(v)</p> <ul style="list-style-type: none"> <li>There is no Coastal Zone Management Plan currently applicable to the land.</li> </ul>
List all documents submitted with this report for the Panel's consideration	<p>Attachment 1 -- Architectural plans by Brewster Murray</p> <p>Attachment 2 -- Statement of Environmental Effects by MMJ Wollongong</p> <p>Attachment 3 -- Clause 4.6 request statement by MMJ Wollongong</p> <p>Attachments 4,6 -- Design Review Panel meeting notes</p> <p>Attachment 5, 7 -- Applicant's response to Design Review Panel comments</p> <p>Attachment 10 -- Draft reasons for refusal</p>
Clause 4.6 requests	Yes, in relation to Clause 8.6 Building Separation
Summary of key submissions	<ul style="list-style-type: none"> <li>Overdevelopment and non-compliances</li> <li>Impact on and from future development on adjoining land</li> <li>Impacts during construction</li> </ul>
Report prepared by	Anne Starr, Senior Development Project Officer
Report date	12 August 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**

Development context

#### 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**

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### **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 project is \$35,289,073.

### **Proposal**

The proposal involves demolition of existing buildings and construction of a fifteen storey (15) shop top housing development containing fourteen levels of residential apartments, one level of retail and office tenancies and three basement parking levels.

### **Permissibility**

The site is zoned B3 Commercial Core pursuant to Wollongong Local Environmental Plan (LEP) 2009. The proposal is categorised 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. In response, there were twelve (12) submissions in objection to the proposal.

### **Main Issues**

The main issues arising from Council's assessment and analysis by the Design Review Panel are:

- Variation under Clause 4.6 in relation to building separation
- Non-compliances with SEPP 65 Apartment Design Guide
- Suitability for local neighbourhood context
- Pedestrian link through the site
- Burdening easement and right of way

### **RECOMMENDATION**

It is recommended that DA-2019/748 be refused for the reasons outlined in **Attachment 10**

# 1 APPLICATION OVERVIEW

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## 1.1 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 No. 65 (Design Quality of Residential Development)
- State Environmental Planning Policy (State and Regional Development) 2011
- 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

- NSW Apartment Design Guide
- Wollongong Community Participation Plan 2019
- Wollongong City Wide Development Contributions Plan 2019

## 1.2 DETAILED DESCRIPTION OF PROPOSAL

The application seeks consent for demolition of existing structures and construction of a shop top housing development containing 109 residential apartments with ground floor office and retail premises and three levels of basement parking.

The development consists of two towers (each facing Keira or Kenny Street) above a six-level podium. The tower facing Keira Street is 22.5m high and occupies ground to Level 5. The Kenny Street tower (47.25m height) rises from ground to Level 14. The rooftop of the Keira Street tower contains the primary outdoor communal open space for the development.

Amended plans were submitted 31 March 2020 following the Design Review Panel meeting of 20 January 2020. Further revised basement and ground floor plans were lodged on 23 July 2020 which reduced the footprint of the two basement levels and added a third basement level. This was in response to the objections made on behalf of the owner of 21 Kenny Street to the north. It is noted the elevations and sections have not been updated to show the third basement level.

### Built Form

- Max height: 47.25m (Kenny Street tower) and 22.50m (Keira Street tower)
- Gross floor area: 9450m<sup>2</sup> (9230m<sup>2</sup> building plus additional 220m<sup>2</sup> surplus parking spaces)
- Landscaped areas: ground floor in drainage easement and on podium Levels 1 and 6
- Setbacks:
  - Basements: nil to south, east and west boundaries; variable (minimum 6m) to north
  - Ground Floor: nil southern side; minimum 6m northern side
  - Levels 1-5: nil southern side; minimum 8m northern side
  - Level 6: minimum 1m southern side; minimum 9.2m northern side
  - Levels 7-14: minimum 6m southern side; minimum 11m northern side

### Building Composition by Level

- Basement level 3:
  - 17 residential car parking spaces (including 2 disabled spaces)
- Basement level 2:
  - 64 residential car parking spaces (including 6 disabled spaces);
  - 3 motorcycle spaces;
  - 36 bicycle spaces;
  - residential storage over bonnet

- Basement level 1:
  - 29 residential car parking spaces (including 1 disabled space);
  - 22 visitor car parking spaces (including 3 disabled spaces);
  - 8 commercial car parking spaces (including 1 disabled space);
  - 6 motorcycle spaces;
  - 12 bicycle spaces;
  - residential storage over bonnet;
  - 2 storage rooms
- Ground floor:
  - 2 residential lobbies
  - 2 retail tenancies (70m<sup>2</sup> and 79m<sup>2</sup>)
  - 1 café (111m<sup>2</sup>)
  - 1 office (238m<sup>2</sup>)
  - Loading dock
  - 2 residential waste rooms (combined waste and recycling)
  - 1 commercial recycling room and 1 commercial waste room
  - Vehicular access to ground level loading bay and basement parking via Keira Street.
  - Substation facing Kenny Street
  - Rainwater tank and pump room
  - Landscaped areas
- Level 1:
  - 13 apartments inc. 2 x liveable housing silver level (4 x 1 bedroom; 8 x 2 bedroom & 1 x 3 bedroom)
  - 2 x communal open space areas
  - 2 lift lobbies
- Level 2:
  - 13 apartments inc. 2 x liveable housing silver level (4 x 1 bedroom; 8 x 2 bedroom & 1 x 3 bedroom)
  - 2 lift lobbies
- Level 3-5:
  - 14 apartments inc. 2 x liveable housing silver level (5 x 1 bedroom; 8 x 2 bedroom & 1 x 3 bedroom)
  - 2 lift lobbies
- Level 6
  - 4 apartments (2 x 1 bedroom; 1 x 2 bedroom & 1 x 3 bedroom)
  - Communal open space - communal roof garden
  - Communal space – common room
- Levels 7-13
  - Kenny Street tower
  - 5 apartments (2 x 1 bedroom; 2 x 2 bedroom & 1 x 3 bedroom)
  - 1 lift lobby
- Level 14
  - Kenny Street tower
  - 2 apartments (2 x 4 bedroom)

The development is not integrated or designated development.

## 1.1 BACKGROUND

The land currently contains three buildings, used for retail and light industrial activities. Numerous consents have been granted for industrial, light industrial and commercial activities dating from 1951.

The site is currently in multiple ownership. Proponent FR Wollongong has approached Council with the following applications:

### Pre-lodgement meeting PL-2018/54

On 9 April 2018 Council staff considered a pre-lodgement application for a shop top housing development containing 83 residential apartments. The proponent was F & R Development and plans were prepared by architect Michael Kitmiridis. Council noted a number of non-compliances with WLEP

2009, most significantly clause 8.3 which cannot be varied and therefore rendered the proposal prohibited. Additionally, Council advised the applicant that flooding requirements of WLEP 2009 and WDCP 2009 had not been adequately addressed.

#### Design Review Panel meeting DE-2018/83 (pre-lodgement)

On 19 June 2018 the Design Review Panel considered a shop top housing development containing 87 apartments. The proponent was FR Project Two and plans were by architect Michael Kitmiridis. The DRP made recommendations regarding further contextual analysis and redesign.

#### Design Review Panel meeting DE-2018/166 (pre-lodgement)

On 9 October 2018 the DRP considered a shop top housing development containing 89 apartments. The proponent was FR Project Two and plans were by architect Michael Kitmiridis. The DRP made recommendations regarding further contextual analysis and redesign.

The proposal under the subject application was designed by a different architect.

#### Customer service actions

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

## **1.2 SITE DESCRIPTION**

The 2582.9m<sup>2</sup> (by DP) site comprises four allotments and is located at 264-268 Keira Street and 23 Kenny Street Wollongong. The title reference is Lot 101 DP 709651 (264 Keira), Lot 1 DP 800021 (266 Keira), Lot 100 DP 1130021 (268 Keira) and Lot 4 DP 522288 (23 Kenny Street). The lots are proposed to be consolidated as part of the development.

The site has frontage to both Keira and Kenny Streets and contains three single storey light industrial and retail buildings. At date of lodgement, the buildings were occupied by an electronics shop, motorcycle sales and repairs, and appliance shop. All structures are proposed to be demolished.

The land is generally flat and contains drainage infrastructure associated with a drainage easement and reserve in the northern part of the site.

The Keira Street boundary is located opposite MacCabe Park, which is listed in Wollongong Local Environmental Plan 2009 as containing items of local heritage significance. WLEP 2009 also sets out specific solar access controls for MacCabe Park.

Adjoining development is as follows:

- North: single storey motorcycle sales and repairs (262 Keira Street) and single storey light industrial (21 Kenny Street)
- East: MacCabe Park and 2 storey shop top housing (267 Keira Street)
- South: single storey air-conditioning and refrigeration warehouse/retail (270 Keira Street) and kitchen shop (27 Kenny Street)
- West: single storey Illawarra Aboriginal Corporation Cultural Centre and at-grade bitumen car park (22 Kenny Street)

The locality is characterised by light industrial and commercial (mix of business, office and retail) development, and varying allotment size. Heights in the block Burelli Street to Ellen Street are primarily 1-3 storeys, with the exception of the commercial car park at 258 Keira Street, 6 storey office building at 280 Keira Street and recent 14 storey shop top housing development at 35 Kenny Street. Generally, the subdivision pattern of properties facing either Keira or Kenny Streets has been maintained. The proposed consolidation of lots from Kenny through to Keira Streets would result in an atypical subdivision arrangement.

#### Property constraints

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

- Drainage easement 3.93m wide on 264 Keira Street (by dealing X765616) – benefits Council.
- Drainage reserve on 264 Keira Street (on DP 709651) – created 1984 as ‘Plan of land resumed for drainage purposes Government Gazette No. 152 of 28 October 1927’.
- Easement for parking burdening 264 Keira Street (by dealing Y761500) – benefits 21 Kenny Street

- Right of way on 264 Keira Street burdening 264 Keira Street (by dealing Y761500) – benefits 21 Kenny Street
- Acid sulfate soils
- Flooding: The site is identified as being located within a medium and high flood risk precinct. Council's stormwater engineer has reviewed the application and advised they have no objection, subject to recommended conditions.

### 1.3 SUBMISSIONS

The application was notified between 2-21 August 2019 in accordance with Council's Community Participation Plan 2019. This included a notice in the Advertiser. Twelve submissions (objections) have been received and the issues are summarised and discussed below.

Concern	Comment
1. Design excellence not achieved	Refer to Design Review Panel comments and WLEP 2009 discussion.
2. Insufficient commercial floor space	Of the total proposed floor space, 93.59% is residential and 6.41% is commercial. This percentage is permitted and is typical of recent developments in the vicinity.  Council's current floor space ratio controls incentivise commercial floor space in the B3 Commercial Core Zone without setting a minimum percentage for commercial activities.
3. Poorly designed communal open space	Refer to SEPP 65, ADG (Attachment 8) and WDCP 2009 (Attachment 9) discussion.
4. Impacts during construction including demolition (e.g. noise, work hours, and air pollution and general disruption).  No consultation with affected business owners has been undertaken.	A construction environmental management plan has been submitted (sheet A702H).  A demolition plan has been submitted (sheet A701H).  More detailed CEMP would ordinarily be required prior to Construction Certificate.  Noise and work hours are required to comply with EPA guidelines. Erosion and sediment control measures, including dust suppression, would ordinarily be clarified as conditions of consent and regulated by the certifying authority
5. Potential impacts on the proposed development by currently approved and operating neighbouring activities.  · The acoustic report doesn't address operation of shopping centre car park at 91 Burelli Street;  · Infringements of legal right of way and easement for parking benefiting 21 Kenny Street Wollongong;  · Introduction of proposed residential population who may be sensitive to noise associated with light industrial use conducted at 21 Kenny Street;	The revised acoustic report dated 26 September 2019 identified existing commercial, residential and recreation land uses in the vicinity, which included the car park station. Noise monitoring was carried out to determine existing background noise levels. The noise monitors were located closer to the site than the parking station and it is not expected use of the parking station will create noise impacts beyond the measured background noise.  Several submissions have been made by and on behalf of the owners of 21 Kenny Street, which immediately adjoins the site to the north and is currently being used for light industrial purposes. Concerns were raised as to impacts upon a legal right of way and easement for parking both during construction and ongoing. These concerns were communicated to the applicant, and revised plans setting back the northern edge of the basement have been lodged as a result. The authors of the 21 Kenny submissions were advised of the new plans of 23 July 2020, although it is not known whether the new plans alleviate their concerns.  The 21 Kenny Street submissions also refer to development consent DA-2017/1644 issued by Council on 6 March 2018,

Concern	Comment
	<p>which is the consent supporting the current light industrial tenant Actrol. The owners contend that DA-2017/1644 authorised use of medium rigid (8.8m) vehicles, and that those vehicles would enter the existing driveway at 264 Keira Street as permitted by the right of way, unload in the 21 Kenny building, then proceed in an easterly direction through 264 Keira Street ultimately exiting onto Keira Street. The use of the easement for customer car parking was also mentioned. The submissions note the following main concerns regarding impacts on the current activity approved under DA-2017/1644:</p> <ul style="list-style-type: none"> <li>• 8.8m delivery vehicles are essential to operations;</li> <li>• the proposed new driveway location on Kenny Street is further north than the existing driveway and would require relocation of a stormwater pit. It is of insufficient width (minimum 6.1m required to comply with Australian Standards). It would prevent access to Actrol's 5 customer car parking spaces;</li> <li>• the fire exit door on the building's south east corner 'cannot be blocked off'; and the redevelopment would prevent vehicular passage through to Keira Street.</li> </ul> <p>The DA-2017/1644 assessment and consent has been reviewed in response to the submission. The following is noted:</p> <ul style="list-style-type: none"> <li>• Whilst DA-2017/1644 included a traffic plan showing 8.8m and 6.6m vehicles, the turning circle manoeuvring path for 8.8m vehicles extended beyond the legal limits of the right of way (i.e. a smaller vehicle would be required). Council's consent did not specify that an 8.8m vehicle could be used.</li> <li>• Sheet A119C shows the location of the new Kenny Street driveway.</li> <li>• The 'fire exit door' was not approved as part of DA-2017/1644, instead plans lodged with DA-2017/1644 describe the door as existing. It currently exits directly onto adjoining land, being 264 Keira Street. The door is not located in the right of way benefiting 21 Kenny Street and Council has not been made aware of any legal arrangement to allow egress onto 264 Keira Street.</li> <li>• DA-2017/1644 did not authorise vehicles to travel from Kenny Street through to Keira Street via 264 Keira Street. Council has not been made aware of any right of way or easement allowing this movement.</li> </ul> <p>Adequacy of acoustic amelioration measures in the proposed residential apartments was also raised on behalf of 21 Kenny Street. The submission raised concern that if apartments were not appropriately constructed, noise from current light industrial operations at 21 Kenny Street may become an amenity problem for future residents. The revised acoustic report dated 26 September 2019 used noise monitoring devices to determine existing background noise levels. The report recommends mechanical services treatments and</p>



Concern	Comment
	glazing specifications to achieve internal noise level compliance with AS2107:2016.
6. Constraints on redevelopment of neighbouring sites as a result of north facing apartments and proposed building setbacks	Equitable sharing of development potential was raised by the Design Review Panel (DRP) meeting 27 August 2019 and 20 January 2020 and more detailed context analysis was requested. The DRP noted the proposal needed to consider potential impacts upon the apartments should the site to the north be developed. The context analysis plans are included in Attachment 1.
7. Pedestrian through site link	Two submissions recommend a laneway management plan is prepared with stakeholders including those properties which open onto the space.  Further details of the intent and operation of this space have been provided since public exhibition, and it appears that a proper publicly accessible link between Kenny and Keira Streets is no longer proposed. The applicant has advised Council it does not intend to enter into a voluntary planning agreement to create a public link.
8. Inaccurate land use in acoustic report	The acoustic report has been amended to accurately reflect the upper level of 267 Keira as containing residential dwellings.
9. FSR close to maximum	Refer to clause 4.4A in WLEP 2009 discussion.
10. Insufficient time in which to comment	Council's Community Participation Plan 2019 sets out notification timeframes, which reflect the requirements of the EP & A Regulation 2000.
11. Fails to justify proposed variation to minimum building separation and resulting solar impacts	Refer discussion WLEP 2009 and ADG.
12. Dilapidation reports required before and after construction	This requirement would ordinarily be imposed as a condition of consent.
13. Wollongong CBD in a climate and environmental emergency and all high rises should be refused	Noted.
14. Numerous non-compliances (building separation, setbacks, floorplate size, building depth, deep soil zone) and out of scale with character of the street.	Refer discussion SEPP 65, ADG, WLEP 2009 and WDCP 2009.
15. Wollongong already overdeveloped with resulting environmental impacts	Noted.

## 1.4 CONSULTATION

### 1.4.1 INTERNAL CONSULTATION

#### Environment Officer

Council's Environment Officer has considered water sensitive urban design measures, potential for contamination, acoustic performance, wind impacts, acid sulfate soils and construction matters. They indicate they have no objection, subject to specific conditions.

#### Geotechnical Engineer

Council's Geotechnical engineer has no objection, subject to recommended conditions. They note that Council's infrastructure in the drainage easement would need protecting during excavation.

#### Heritage Officer

Council's Heritage Officer has noted concerns about overshadowing impacts on MacCabe Park.

#### Landscape Architect

Council's Landscape Officer has reviewed the application and noted concerns that the height difference between the building entry level on Keira Street and the public footpath and proposed laneway adversely affects streetscape activation. They also note that the communal open space on Level 1 is located on the southern side of the building and will predominantly be in shadow.

A further concern is the detailing of the through site link, which has been designed appropriately for a drainage easement. However, as an area of communal open space (or public thoroughfare), it contains limited grass area and trees are only located on the northern boundary. This area has the potential to be hot, hard and uncomfortable. The 1.85m height differential between this area and the elevated café and retail spaces may discourage use.

#### Property Officer

Council's Property Officer has reviewed the application provided comment on the proposal as it affects the drainage easement and Council's drainage reserve on 264 Keira Street, and in relation to the proposed through site link.

They indicate they have no objection to structures being proposed within the drainage reserve, but do not support structures within the 3.93m wide drainage easement. No works other than garden furniture are proposed within the drainage easement.

#### Recreation Officer

Council's recreation officer commented on proposed overshadowing of MacCabe Park and noted the applicant has misconstrued the sun access plane controls as applying only from the rear of Keira Street buildings.

#### Safer Community Action Team (SCAT) Officer

Council's community safety officer has no objection, subject to recommended conditions.

#### Stormwater Engineer

Council's Stormwater engineer has no objection, subject to recommended conditions. They note the site is flood affected and are satisfied there would be no loss of flood storage as a result of the development.

#### Strategic Planning Officer

Council's Strategic Planning officer has reviewed the application and notes that the through-site link is proposed along the northern boundary. WDCP2009 identifies a different part of the site for a through site link, however the proposed location is supported in principle, subject to provision of a quality space. As detailed in this report, the form and function of the through site link has not been clarified sufficient to confirm that public access will be provided in perpetuity and in so doing achieve Council's strategic objective of providing access to MacCabe Park.

They raise concerns with activation of Kenny and Keira Street frontages, with flooding requirements raising floor levels well above the street level. Whilst Keira Street has been somewhat resolved by the amended ramp location leading directly to Keira Street, Kenny Street, however, is less satisfactorily resolved. Abrupt steps from the boundary project straight into the office tenancy, and a more appropriate threshold between the street and building would result if more space was provided. The 1.5m wide terrace adjoining the 1:20 ramp may feel cramped. The Kenny Street elevation also is dominated by service doors and facilities.

Overshadowing of MacCabe Park is also noted as a concern. Whilst Council's strategic planning officer accepts that the proposed building complies with the formula set out in clause 8.3 of WLEP 2009, the shadow diagrams provided indicate that parts of the Park will be in shadow at 3pm. The applicant's documentation suggests they consider the Park as starting from the rear of buildings on the eastern side of Keira Street (e.g. 267 Keira Street), however the WLEP 2009 sun plane protection map shows the control area starting at the boundary of Keira Street.

Also questioned was the appropriateness of the 6 storey street frontage height, suggesting a 4 storey/15m height would provide more of a transition to the 9m height limit south of Ellen Street and create a distinction between the emerging office core around Burelli Street where street walls are typically higher.

#### Traffic Engineer

Council's Traffic Officer has reviewed the revised basement plans provided on 23 July 2020. They requested the following be provided:

- swept path details
- ramp grades and transitions
- design for 10.24m waste vehicle
- turning bay to allow visitors and commercial cars to turn around if visitor spaces are occupied

At date of this report, Council had not received a response to these matters.

## 1.4.2 EXTERNAL CONSULTATION

#### Design Review Panel

The application was referred to the Design Review Panel on two occasions (27 August 2019 and 20 January 2020). The DRP notes are contained in Attachments 4 and 6. The applicant's response to the DRP comments forms Attachments 5 and 7.

The revised plans lodged 31 March 2020 and 23 July 2020 were not referred to the DRP.

Matters raised by the DRP at their most recent meeting on 20 January 2020 and considered unresolved are as follows:

- Context and Neighbourhood Character
  - Potential building forms on neighbouring sites do not establish a pattern of ADG compliant buildings (refer A015A).
  - Solar access to building forms proposed on other sites has not been quantified (refer sheet A016C).
  - ADG compliance for solar access of proposed apartments should land to the north be redeveloped has not been demonstrated. Sheets A406A and A407A suggest that 67% of apartments would receive minimum solar access, where 70% is required.
  - The design of the through site link does not adequately prioritise quality of the public domain experience over engineered solutions. Interaction of resident, public and the 21 Kenny Street occupants in the right of way and parking easement area has not been resolved.
- Built Form and Scale
  - The proposed building has not demonstrated equitable and cohesive development on neighbouring sites, with sheet A015A showing non-compliant ADG setbacks.
  - The potential building forms have a maximum height of 8 storeys, which is substantially lower than the proposed 15 storey development.
- Sustainability
  - ADG compliant solar access to the proposed apartments has not been demonstrated (refer sheets A406A and A407A).
- Landscape
  - Trees in the through site link area are now provided but these are on the northern boundary only and therefore shading of the link area is minimal. A green wall is also proposed on the northern boundary, although it is unclear how this is constructed in relation to the adjoining industrial building which is built on the boundary.
  - It is noted that the applicant states that the engineering/flooding treatment dictates design of this space as required by Council, but in fact WDCP 2009 does not identify

this part of the site as the location of the through site link (which is instead further south on 23 Kenny and 268 Keira). If the proposal is wrestling with dual demands of flooding and an attractive public domain, a resolution could be found in locating the through site link in the location specified in WDCP 2009.

These deficits prevent Council from concluding that the building, in its current form, achieves design excellence as required by WLEP 2009.

#### SRPP Briefing

Council briefed the SRPP on two occasions (27 November 2019 and 4 June 2020). The key issues discussed were:

- Potential conflict with easements and right of way burdening 264 Keira Street
- Overshadowing of MacCabe Park
- Public through site link – Council should pursue a voluntary planning agreement

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

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

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

#### NSW Biodiversity Conservation Act 2016

The land clearing threshold set by clause 7.2 of the Biodiversity Conservation Regulation 2017 has not been triggered. The site is not identified as being of high biodiversity value on the Biodiversity Values Map. The development is not considered to result in adverse impacts on biodiversity and is consistent with the provisions of the Biodiversity Conservation Act 2016.

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

### **2.1.1 STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND**

A Stage 1 Preliminary Site Investigation Report by Clearsafe Environmental Solutions dated 15 February 2018 and Detailed Site Investigation report by Douglas Partners dated 18 July 2019 have been submitted. The reports identified potential contaminants in the soil and presence of acid sulfate soils.

The reports conclude that the site is suitable for the proposed mixed-use development, subject to recommendations including:

- Pre-demolition hazardous buildings survey being undertaken
- Waste classification assessment including acid sulfate soils assessment is undertaken following demolition and prior to removal of any material from the site
- An unexpected finds protocol be implemented

Matters for consideration under clause 7 are satisfactory.

### **2.1.2 STATE ENVIRONMENTAL PLANNING POLICY NO. 65 – DESIGN QUALITY OF RESIDENTIAL DEVELOPMENT**

The development is of a building type subject to SEPP 65 and the accompanying Apartment Design Guide (ADG). The application is accompanied by a statement by a qualified designer in accordance with Clauses 50(1A) & 50(1AB) of the Environmental Planning and Environment Regulation 2000.

Clause 28 of the Regulation provides that the application must be referred to the relevant design review panel (if any) for advice concerning the design quality of the development while clause 28(2) provides that 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.

#### Design review panel

The proposal has been reviewed by a Design Review Panel in accordance with clause 28. The scheme has not been amended in response to the recommendations from the Panel.

#### Design quality principles

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

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

A context analysis was undertaken by the applicant and refined over successive Design Review Panel (DRP) meetings. It models likely development on adjoining sites and tests the proposed building form for compatibility in the neighbourhood.

The DRP noted it is unreasonable for a development to not comply with building controls if it would compromise development opportunities on neighbouring land.

The context plans address only those immediately adjoining allotments whereas a wider extent would have provided a more thorough basis with which to assess the non-complying setbacks and test susceptibility to future neighbouring development. The DRP specifically requested modelling occur to test potential overshadowing of the northern apartments should land to the north be redeveloped. Sheets A406 A and A407A show a potential 67% solar access rate, where the ADG requires 70%.

Potential future shadow elevations (sheets A406 A and A 407 A) indicate overshadowing impacts if land to the north and south was redeveloped. These hypothetical buildings correlate with the context analysis on sheet A015A, however appear only to include the applicant's residential scenario. The building footprint and heights for non-residential shown on sheet A015A are different to residential and would result in different overshadowing impacts.

The future buildings scenarios assume land to the north and south is not consolidated in the same way as the proposed development (i.e. Keira through to Kenny Streets), and therefore anticipate a break in the centre which may not eventuate.

Land to the north and south has the same height and FSR controls as the subject site, and it could be expected that consolidation of more lots than those shown on the context analysis might occur. In that event, buildings of a larger scale and height than depicted on the context analysis could be proposed.

Further, the setbacks indicated on residential scenario Figure 2 (sheet A015 A) would not comply with the ADG. It appears that north and south elevations on these lots are treated entirely as non-habitable, which is unrealistic.

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

Council's strategic planner has questioned the appropriateness of the street frontage height, particularly in relation to Keira Street where the building height limit is 24m and the proposed street frontage height is approximately 19.5m. The application does not comply with ADG setbacks, and the DRP has advised the applicant that a context analysis was required to demonstrate that the reduced setbacks were supportable. Shadow diagrams have been provided illustrating potential overshadowing of proposed north facing building (refer Principle 1), however resulting hypothetical shadowing would not comply with the ADG.

#### **Principle 3: Density**

The proposed density as expressed in floor space ratio does not exceed the maximum permitted by Wollongong Local Environmental Plan 2009.

#### **Principle 4: Sustainability**

The development achieves ventilation and solar access as required by SEPP 65 and the Apartment Design Guide.

### **Principle 5: Landscape**

Landscape plans have been provided, which indicate vegetation type and provide planting details. The majority of proposed landscaping occurs on the podium at Levels 1 and 6. No deep soil zone is provided, and while the ADG provides exemptions for CBD sites, the application does not comply with required setbacks. It is likely that with complying setbacks, there would be sufficient space available to provide a deep soil zone. The through site link open space area is enhanced by only limited landscaping and is likely to become a hot and uncomfortable space. Outdoor café seating is not provided with shade.

### **Principle 6: Amenity**

The development relies on the undeveloped land to the north in order to comply with SEPP 65 in relation to solar access. Ventilation, storage, ceiling height, apartment size, communal open space, lobbies and adaptable housing will remain compliant. Non-compliances with balcony dimensions, common circulation spaces, building depth, setbacks, vehicle manoeuvring, waste vehicle size, commercial parking, and acoustic privacy are discussed in Attachment 8.

### **Principle 7: Safety**

The management of the right of way and easement for parking by residents and tenants of the proposed development is unclear. Further detail is needed as to how the legal rights of the benefiting land will be maintained once the building is constructed. It is possible that residents and tenants of the building will want to park in the parking easement, and a strategy is needed to manage this conflict. There also appears a potential safety risk for pedestrians as they may interact with vehicles in this area. The building incorporates separation between residential and commercial areas, including waste rooms and car parking areas.

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

The development incorporates a mix of 1, 2, 3 and 3+ bedroom apartments. Eleven silver level housing apartments are proposed. Opportunities for interaction between residents, the general public and commercial tenants could most easily occur on the ground level.

### **Principle 9: Aesthetics**

Council's Design Review Panel has considered the application on two occasions, plus two additional pre-lodgement versions. Clause 30(2) requires the consent authority to be satisfied that the development has adequate regard to the design quality principles and the objectives specified in the Apartment Design Guide for the relevant design criteria. These matters are discussed at Attachment 8 and are not considered satisfactory.

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

A satisfactory BASIX certificate has been provided.

## **2.1.4 STATE ENVIRONMENTAL PLANNING POLICY (STATE AND REGIONAL DEVELOPMENT) 2011**

### **Part 4 Regionally significant development**

The is classified as general development with a value exceeding \$30 million. The Southern Regional Planning Panel is the determining authority.

## **2.1.5 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009**

### **Clause 1.4 Definitions**

The development is defined as 'shop top housing' and 'office premises':

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

*Note.*

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

The ground floor plan indicates two retail tenancies, one café and one office. Office uses are not included in the shop top housing definition and are separately defined:

**office premises** means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

Note.

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

#### Clause 1.8A Savings provision relating to pending development approvals

Not applicable.

### **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:

#### **Zone B3 Commercial Core**

##### **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 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 satisfactory with regard to the above objectives in so far as it provides a high density mixed use development in an accessible location, however the number of non-compliances with Council's WDCP 2009, LEP 2009 and SEPP 65 suggests it does not adequately contribute to the vitality of the Wollongong City Centre in its current form.

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

##### **2 Permitted without consent**

*Building identification signs; Business identification signs*

##### **3 Permitted with consent**

*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*

#### 4 Prohibited

*Pond-based aquaculture; Any other development not specified in item 2 or 3*

The proposal is categorised as a 'shop top housing' and 'office premises' development as defined above and both uses are permissible in the zone with development consent.

#### Part 4 Principal development standards

##### Clause 4.3 Height of buildings

The site contains two height limits; 24m for properties on the western side of Keira Street and 48m for those on the eastern side of Kenny Street. The intent of the split heights is to have lower heights opposite MacCabe Park consistent with solar access controls.

For the site, numbers 266 and 268 Keira have a 24m height limit and 23 Kenny has a 48m height limit. Due to the irregular subdivision pattern of 264 Keira extending from Kenny to Keira Streets, the eastern side of the lot is subject to a 24m height control and the western side has a 48m limit.

Consolidation does not affect the maximum permitted heights.

The proposed development complies with the dual heights, with the Keira Street tower having a height of 22.50m where 24 is permitted and the Kenny Street tower 47.25m where 48m is permitted.

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

The proposed floor space ratio (FSR) is 3.658:1, which does not exceed the maximum permitted FSR of 3.66:1.

Drawing A002/I by Brewster Murray provides the following data:

- Building 9230m<sup>2</sup>
  - residential 8624m<sup>2</sup>
  - non-residential 606m<sup>2</sup>
- Surplus residential car parking 16 spaces @ 2.5m x 5.5m (13.75m<sup>2</sup>) = 220m<sup>2</sup>
- Total GFA 9230 + 220 = 9450m<sup>2</sup>

Based on the above, proposed residential floor area is 8624m<sup>2</sup> + 220m<sup>2</sup> = 8844m<sup>2</sup>, which is 93.59% of the total floor space and non-residential is 606m<sup>2</sup> or 6.41% of the total floor space.

Subclause 4 sets out the calculations required to determine the maximum permitted FSR for the development, which is based on a percentage of residential to non-residential floor area:

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

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

*where—*

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

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

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

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

Using the subclause 4 formulae, the maximum permitted FSR is 3.66:1.

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

$$(6 \times 6.41/100) + (3.5 \times 93.59/100):1$$

$$= 0.3846 + 3.2756$$

$$= 3.6602:1 [3.66:1]$$

This equates to a maximum gross floor area of 9453.41m<sup>2</sup> (3.6602 x site area 2582.9m<sup>2</sup>). The proposed 9450m<sup>2</sup> does not exceed this maximum.



#### Clause 4.6 Exceptions to development standards

The development does not comply with building separation requirements of clause 8.6. The applicant has provided a development departure request, which forms Attachment 3.

The development departure is discussed below:

<b>WLEP 2009 clause 4.6 proposed development departure assessment</b>	
Development departure	Clause 8.6 Building Separation
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	<p>Yes, the applicant's request contains this justification.</p> <p>In summary, the justification asserts that adherence to the building separation standard in this case is unnecessary as there are no unreasonable impacts arising from the non-compliance and the development is consistent with the objectives of the standard despite the non-compliance.</p>
that there are sufficient environmental planning grounds to justify contravening the development standard.	<p>Yes, the applicant's request contains this justification.</p>
4.6 (4) (a) Consent authority is satisfied that:	
the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	<p>The applicant's written request has not adequately addressed the matters required to be demonstrated by subclause (3).</p> <p>It appears the statement considers the 24m height control facing Keira Street to be the 'specific circumstances' of the site which:</p> <ul style="list-style-type: none"><li>• prevent attainment of the required setbacks, and</li><li>• warrant the proposed setbacks.</li></ul> <p>A height limit set by an LEP is considered to be a known constraint rather than a particularity of the site.</p> <p>As detailed in the discussion of clause 8.6, the non-complying setbacks are:</p> <ul style="list-style-type: none"><li>• North: Level 14: minimum 11m balcony to apartments 1401 &amp; 1402 (where 14m required).</li><li>• South:<ul style="list-style-type: none"><li>○ Level 6: 2m to COS (where 6m required); minimum 1m to balcony apartment 601 (where 8m required)</li><li>○ Level 7-13: minimum 6m balcony apartment 901 &amp; 905 (where 8m required)</li><li>○ Level 14: minimum 6m balcony to apartment 1401 (where 14m required); 6m to non-habitable (where 14m required)</li></ul></li></ul> <p>The applicant's statement contends that <i>'...compliance with each standard is unreasonable or unnecessary because the objectives of the standard are achieved irrespective of the non-compliance with the building separation controls, and accordingly justifies the variation to the building separation control...'</i></p> <p>The applicant's assessment regarding the objectives is not entirely shared. In particular:</p> <ul style="list-style-type: none"><li>• The applicant does not consider a broader sense of 'visual appearance' as including a general sense of size, bulk</li></ul>

	<p>and scale. The non-complying setbacks contribute to the building width when viewed from Keira and Kenny Streets or obliquely.</p> <ul style="list-style-type: none"> <li>The development has elements of poor privacy design, which are exacerbated by the non-complying setbacks. For example, the communal open space area on Level 6 has a 2.1m high glass windbreak some 2m from the southern boundary. This external edge offers no protection from future adjoining development. Apartment 601 on Level 6 has private open space 1m from the southern boundary, which also provides little privacy protection.</li> <li>Solar access is arguably the most problematic aspect of the non-complying setbacks. A residential dwelling shown on sheet A005H would not receive minimum 2hrs of sunlight in midwinter; shadowing reaches MacCabe Park and future development as indicated on sheets A406A and A407A would render the proposed apartments not complying with ADG solar access.</li> </ul>
the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and	<p>There is a public benefit in maintaining the standard in this instance.</p> <p>The block Burelli to Ellen streets is largely undeveloped, and approving the setbacks requested in this application would establish a pattern of development for the block that necessitates a shuffle north or south on each lot to avoid the impacts of a non-complying setback next door. This was foreshadowed by the Design Review Panel. The departures relate to both north and south setbacks, and therefore the resulting building is wider than anticipated by the controls. This combined with the street frontage height and consolidated lot depth Keira through to Kenny, the building's bulk and scale is significant in a streetscape of more modest lots.</p> <p>If strict compliance was achieved, overshadowing impacts on land to the south would not be as acute. Similarly, the proposed north facing apartments are particularly susceptible to overshadowing should the land to the north be redeveloped.</p> <p>The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access. As discussed in relation to the Apartment Design Guide, the non-compliances have quantifiable and definite adverse implications for the proposed building and future adjoining development.</p> <p>Having regard to the above, it is not considered that there are sufficient environmental planning grounds specific to the site to justify contravening the development standard.</p>
the concurrence of the Secretary has been obtained.	Yes, the SRPP can exercise assumed concurrence in this instance.

## Part 5 Miscellaneous provisions

### Clause 5.10 Heritage conservation

The Keira Street boundary is located opposite MacCabe Park, which contains several items of local heritage significance:

- Item 6587 – Canary Island date palms
- Item 6324 – Memorial arch and monument

The Canary Island date palms are visible on the aerial plan in Attachment 2 and as shown below:



The memorial arch and monument are located on the eastern side of the park.

An 'Historical Heritage Assessment and Statement of Heritage Impact' report prepared by Austral Archaeology dated November 2019 has been submitted. The report describes the heritage items located in MacCabe Park and potential for archaeological disturbance on the development site.

Council's heritage officer has noted concerns about overshadowing impacts on MacCabe Park.

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

##### Clause 7.1 Public utility infrastructure

An internal substation is proposed on the Kenny Street frontage at ground level. Approval is required from the relevant authorities for the connection of electricity, water and sewage to service the site.

##### Clause 7.3 Flood planning area

The land is identified as being in a medium and high flood risk precinct. A flood study was provided for the development. The ground floor plan shows a treatment tank, designed to collect rainfall from the roof and balconies of the building. An undercroft flood conveyance area is located on the northern side of the ground level designed to allow stormwater flows to pass through the site. This area is grated to prevent infiltration by foreign objects. Council's stormwater engineer has reviewed the stormwater plans and is satisfied that there would be no net loss of flood storage in the 100 year and PMF events as a result of the development.

##### Clause 7.5 Acid Sulfate Soils

The proposal is identified as being affected by class 5 acid sulfate soils. The Douglas Partners and Clearsafes contamination reports recommend an acid sulfate soil assessment be undertaken following demolition.

##### Clause 7.6 Earthworks

The proposal comprises excavation of three basement levels. The third basement level was added in revised plans submitted 23 July 2020 and is not shown on elevations or sections. Council's geotechnical engineer has no objection to the addition of the third basement level. The earthworks are not expected to have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features surrounding land.

##### Clause 7.13 Certain land within business zones

The objective of this clause is 'to ensure active uses are provided at street level, to encourage the presence and movement of people'. Arguably, the raised floor level of the ground floor on both Keira and Kenny Streets provides an active use at ground, rather than street level.

Notwithstanding, consent may be granted where the consent authority is satisfied the ground floor of the building will not be used for the purpose of residential accommodation and will have at least one entrance and door or window on the front of the building. The proposed development complies with both these requirements.

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

The proposal is not consistent with the provisions for design excellence as follows:

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

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

Matters of concern have been discussed in relation to SEPP 65 Design Quality Principles, the ADG and comments by the Design Review Panel and Council staff.

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

The bulk and scale of the development is exacerbated by the non-complying side setbacks.

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

A view analysis has not been provided; however, the site is not identified in DWCP 2009 as containing significant views. Notwithstanding, reduced side setbacks limit view available through the site.

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

Council's strategic planner has confirmed the development meets the technical requirements of the control, notwithstanding some overshadowing of MacCabe Park.

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

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

Shop top housing is permissible in the B3 Commercial Core. Design constraints such as drainage easement, parking easement, flooding and right of way have not fully been resolved.

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

The proposed housing mix is suitable. A greater proportion of commercial floor space would more readily achieve objectives for economic activity and employment in the zone.

(iii) *heritage issues and streetscape constraints,*

The site is in close proximity to heritage listed MacCabe Park.

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

The Design Review Panel has raised concerns about the proposed tower form and setbacks.

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

The non-complying side setbacks contribute to building bulk.

(vi) *street frontage heights,*

Council's strategic planner has recommended that a lesser street frontage height would be more appropriate.

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

As discussed in relation to SEPP 65 and ADG, the overshadowing of residential properties resulting from the development would not comply with minimum requirements. Furthermore, the north facing apartments would likely be overshadowed by a building or buildings to the north.

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

A BASIX certificate has been provided. Photovoltaics are shown on the roof plan, however further details as to who would receive the electricity generated have not yet been provided.

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

Council's traffic engineer has requested further details of the proposed basement design and waste loading vehicle. This information has not yet been provided.

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

The through site link land is not proposed to be dedicated to Council and therefore access arrangements may change in the future. Additionally, the link is not in the location specified in WDCP 2009. The proposed location on the northern boundary attempts to make good an otherwise undevelopable drainage easement without losing space elsewhere in the site for the through site link.

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

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

The development is inconsistent with objectives (c), (e) and (h) below.

- (a) to promote the economic revitalisation of the Wollongong city centre,*
- (b) to strengthen the regional position of the Wollongong city centre as a multifunctional and innovative centre that encourages employment and economic growth,*
- (c) to protect and enhance the vitality, identity and diversity of the Wollongong city centre,*
- (d) to promote employment, residential, recreational and tourism opportunities within the Wollongong city centre,*
- (e) to facilitate the development of building design excellence appropriate to a regional city,*
- (f) to promote housing choice and housing affordability,*
- (g) to encourage responsible management, development and conservation of natural and man-made resources and to ensure that the Wollongong city centre achieves sustainable social, economic and environmental outcomes,*
- (h) to protect and enhance the environmentally sensitive areas and natural and cultural heritage of the Wollongong city centre for the benefit of present and future generations.*

### Clause 8.2 Wollongong city centre – land to which this Part applies

The land is located within the Wollongong City Centre.

### Clause 8.3 Sun plane protection

The land is affected by sun access controls for MacCabe Park, as detailed in subclause 5. Council's strategic planner is satisfied the development complies with the relevant formula, however, notes that shadow diagrams indicate parts of the Park will be in shadow in late afternoon. Notwithstanding, the requirements of clause 8.3 are technically met.

### Clause 8.4 Minimum building street frontage

The land exceeds the minimum 20m frontage requirements on both Keira and Kenny Streets.

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

Building separation is required as follows:

*(2) Buildings on land within Zone B3 Commercial Core or B4 Mixed Use must be erected so that—*

- (a) there is no separation between neighbouring buildings up to the street frontage height of the relevant building or up to 24 metres above ground level whichever is the lesser, and*
- (b) there is a distance of at least 12 metres from any other building above the street frontage height and less than 45 metres above ground level, and*
- (c) there is a distance of at least 28 metres from any other building at 45 metres or higher above ground level.*

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

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

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

Adjoining buildings have a height of 1-2 storeys and are operating for non-residential purposes.

Street frontage heights occur at levels Ground-Level 5.

Typically, Council applies this clause as a setback control and requires half the separation distance to be provided as the setback.

The development does not comply as follows:

- North:
  - Level 6: 9.5m to COS (where 6m required); minimum 9m to balcony apartment 602 (where 8m required)
  - Level 7-13: minimum 11m balcony apartment 901 (where 8m required);
  - Level 14: minimum 11m balcony to apartments 1401 & 1402 (where 14m required) - does not comply.
- South:
  - Level 6: 2m to COS (where 6m required) - does not comply; minimum 1m to balcony apartment 601 (where 8m required) - does not comply.
  - Level 7-13: minimum 6m balcony apartment 901 & 905 (where 8m required) - does not comply; minimum 6m to non-habitable (where 6m required).
  - Level 14: minimum 6m balcony to apartment 1401 (where 14m required) - does not comply.; 6m to non-habitable (where 14m required) - does not comply.

A development departure statement as required by clause 4.6 has been lodged and has been discussed in clause 4.6.

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

None relevant.

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

### **2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009**

The development has been assessed against the relevant chapters of WDCP 2009 and found to be unsatisfactory. The full table of compliance can be found at attachment 9 to this report. The development proposes the following variations to controls:

- Reduced building setbacks
- Building depth exceeds 18m
- Shortfall of non-residential car parking spaces
- Waste vehicle not based on 10.24m size
- Roller door restricting manoeuvring in basement, turning bay required
- Insufficient deep soil zone
- Lack of active frontage Kenny Street elevation
- Failure to provide through site public pedestrian link
- Awning not provided on Keira Street

- Street frontage height particularly on Keira Street is too high having regard to the height limit at that part of the site.
- Non-compliance with SEPP 65 Apartment Design Guide
- Some balconies are less than 12m<sup>2</sup> required
- Insufficient solar access to one residential property directly south

The Statement of Environmental Effects (Attachment 2) discusses non-compliances.

### 2.3.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN 2019

Contributions are payable for development exceeding \$100,000, with an additional levy for sites in the B3 Commercial Core zone. The estimated cost of works is \$35, 289, 073 and the applicable contribution rate for the development is 2%.

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

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

Council asked the applicant whether a planning agreement was intended to support the through site link, as it had been described by the applicant in lodgement documents as a public thoroughfare. Council was advised on 29 April 2019 that a planning agreement would not be entered into. The through site link therefore remains in private ownership and could potentially be restricted or managed to exclude the public.

### **2.5 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?

Demolition.

93 Fire safety and other considerations

Not applicable.

94 Consent authority may require buildings to be upgraded

Not applicable.

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

There are expected to be adverse environmental and neighbourhood impacts as follows:

- Submissions (objections) raise concerns regarding matters of non-compliance with Council or state planning policies.
- Poor amenity and pedestrian safety in the through site link, right of way and easement for parking
- Compromised development opportunities on adjoining land as a result of non-complying side setbacks
- Overshadowing of proposed apartments below ADG requirements as a result of non-complying northern side setbacks
- Vehicle manoeuvring compromised by location of roller door and lack of turning bay
- Undersupply of commercial car parking spaces
- Failure to provide a deep soil zone
- Adverse visual privacy outcomes as a result non-complying side setbacks and injudicious placement of communal open space and apartments

- Reduced amenity to Level 1 communal open space due to location on southern elevation
- Failure to provide publicly accessible through site link in perpetuity as required by WDCP 2009
- Additional waste management cost burden on Council as a result of not designing for 10.24m waste vehicle.
- The Kenny Street lift corridor exceeds recommended 12m length and is not relieved by seating or articulation.
- Building bulk exceeds recommended maximum building depth above street frontage height
- No awning provided on Keira Street
- Street frontage height excessive

#### Access, Transport and Traffic:

A surplus of 16 residential car parking spaces is provided and contributes to residential gross floor area. A deficit of 3 commercial car parking spaces is proposed and is not supported.

#### Public Domain:

Footpath paving and street tree planting is proposed. The detailed treatment of the through site link remains unresolved in terms of public access, management of the right of way and parking easement.

#### Utilities:

An internal substation is proposed on Kenny Street.

#### Heritage:

The Keira Street frontage is located opposite MacCabe Park, which contains items of local heritage significance. Restrictive sun access plane controls apply to the development site.

#### Other land resources:

The development is not envisaged to adversely impact upon any valuable land resources.

#### Water:

The site is presently serviced by Sydney Water, and supply is expected to be readily extended to meet the requirements of the proposed development. Water sensitive urban design controls are proposed and are expected to achieve Councils' stormwater objectives.

#### Soils:

The land contains acid sulfate soils. Contamination reports have been submitted which conclude the land is suitable for the proposed use.

#### Air and Microclimate:

The proposal is not expected to have any negative impact on air or microclimate.

#### Flora and Fauna:

There is no vegetation removal proposed.

#### Waste:

A waste management plan has been provided. Waste storage rooms are located on the ground floor, and separate residential and commercial waste rooms are provided. Bin collection would occur via the loading bay on the ground floor. Council's traffic engineer has requested the proposal accommodates a 10.24m waste collection vehicle, however this has not been demonstrated.

#### Energy:

The proposal is not envisaged to have unreasonable energy consumption. A BASIX certificate has been provided.



Noise and vibration:

An acoustic assessment report did not identify any significant sources of external noise. The report nominates construction materials and techniques considered essential to meet required internal noise levels.

Natural hazards:

The site is identified as being affected by medium and high flood risk. Engineering details have been provided demonstrating no loss of flood storage as a result of the development. An undercroft flood conveyance area is designed to allow passage of flood water off site.

Technological hazards:

The site is identified as containing acid sulfate soils. The contamination report suggests an acid soil treatment plan is provided prior to issue of a construction certificate.

Safety, Security and Crime Prevention:

This application is not expected to create opportunities for criminal or antisocial behaviour. The building separates residential and commercial services, parking, entries and waste areas.

There is potential safety risk due to the co-location of pedestrian and vehicle movements within the parking easement and right of way.

Social Impact:

The extent of non-compliances is likely to adversely and unreasonably compromise current amenity and future development opportunities of adjoining land.

Economic Impact:

The proposed proportion of commercial development reduces opportunities for employment generating activities within the B3 Commercial Core.

Site Design and Internal Design:

The application proposes numerous departures from development standards or Council's development control plans as outlined in this report. The Design Review Panel has reviewed the application and their notes are contained in Attachments 4 and 6.

Construction:

Several submissions raised concerns regarding impacts during construction. These matters included noise, traffic management, hours of work, dust suppression and pollution control. A construction environmental management plan has been provided but does not provide detail sufficient to resolve these concerns.

Cumulative Impacts:

Adverse cumulative impacts upon street scape and neighbourhood character are anticipated if the non-compliances are supported.

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

Does the proposal fit in the locality?

In its current form, the proposal is not considered appropriate for the site and more broadly for the block Burelli to Ellen Street. Refer Design Review Panel comments in Attachments 4 and 6.

Are the site attributes conducive to development?

Known site constraints have not been fully resolved. These include management of the through site link, flooding and required infrastructure, the right of way and parking easement.

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

Submissions have been discussed in section 1.3.

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

Approval of the application would create unreasonable impacts on the environment or the amenity of the locality. It is considered inappropriate having regard to the streetscape and the character of the area and refusal is consistent with the public interest.

## **3 CONCLUSION**

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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 DCPs, Codes and Policies.

The proposal seeks consent for setbacks on both north and side boundaries which do not comply with the ADG and WLEP 2009. A clause 4.6 development standard departure statement has been considered; however, the proposed departure is not supported.

The application was referred to the Design Review Panel on two occasions, and their comments are contained in Attachments 4 and 6. The revised plans do not satisfactorily address all matters raised by the DRP.

A number of internal referrals are unsatisfactory, and submissions have been considered in the assessment.

It is considered that the proposed development has not been designed appropriately given the nature and characteristics of the site and is likely to result in significant adverse impacts on the character and amenity of the surrounding area.

## **4 RECOMMENDATION**

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It is recommended that the development application be refused for the reasons outlined in Attachment 10.

### Attachments

Attachment 1 -- Architectural plans by Brewster Murray

Attachment 2 -- Statement of Environmental Effects by MMJ Wollongong

Attachment 3 -- Clause 4.6 request statement by MMJ Wollongong

Attachments 4,6 -- Design Review Panel meeting notes

Attachment 5, 7 -- Applicant's response to Design Review Panel comments

Attachment 8 – SEPP 65, ADG compliance tables

Attachment 9 – WDCP 2009 compliance tables

Attachment 10 – Draft reasons for refusal