

SOUTHERN REGIONAL PLANNING PANEL

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| SRPP No | PPSSTH-51 |
| DA Number | DA-2020/677 |
| Local Government Area | Wollongong City |
| Proposed Development | Mixed Use Development - demolition of existing structures, construction of 272 apartments across two residential towers incorporating commercial/retail spaces over three (3) levels of basement parking and level 1 parking, and a 100 place childcare centre |
| Street Address | 30 Ellen Street WOLLONGONG Lot 1 DP 1256499 |
| Applicant/Owner | Applicant – George O’Donovan; Owner – Southern Lighthouse Developments Pty Ltd |
| Number of Submissions | Initial notification period - two (2) submissions in objection to the proposal and (1) one submission in support of the proposal from Neighbourhood Forum 5. Second notification period – two (2) submissions in objection to the proposal Third notification period - two (2) submissions in objection to the proposal Fourth notification period – no submissions received. |
| Regional Development Criteria (Schedule 4A of the Act) | Clause 2 Schedule 7, State Environmental Planning Policy (State and Regional Development) 2011 - being general development over \$30 million. The applicant’s cost estimate for the project is \$70,407,662. |
| List of All Relevant s79C(1)(a) Matters | <ul style="list-style-type: none"> ▪ List all of the relevant environmental planning instruments: s4.15(1)(a)(i) – <p><u>State Environmental Planning Policies (SEPPs):</u></p> <ul style="list-style-type: none"> ▪ SEPP (State and Regional Development) 2011; ▪ SEPP No. 65—Design Quality of Residential Apartment Development; ▪ SEPP (Infrastructure) 2007; ▪ SEPP (Building Sustainability Index: BASIX) 2004; ▪ State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 ▪ SEPP No. 55 – Remediation of Land; <p><u>Local Environmental Planning Policies:</u></p> <ul style="list-style-type: none"> ▪ Wollongong Local Environmental Plan 2009 |

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| | <p><u>Other policies</u></p> <ul style="list-style-type: none"> ▪ NSW Apartment Design Guide ▪ Child Care Planning Guideline ▪ Wollongong City Wide Development Contributions Plan 2019 ▪ 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>Nil of relevance to the proposal- refer to discussion below</p> <ul style="list-style-type: none"> ▪ List any relevant development control plan: s4.15(1)(a)(iii) <p>Wollongong Development Control Plan 2009</p> <ul style="list-style-type: none"> ▪ List any 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: s4.15(1)(a)(iiia) <p>Nil</p> <ul style="list-style-type: none"> ▪ List any relevant regulations: s4.15(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288 <p>Clause 92 matters for consideration being AS 2601-1991 in respect of any demolition works and the NSW Coastal Policy.</p> |
| List all documents submitted with this report for the panel's consideration | <p>Architectural plans by Level 33</p> <p>Landscaping plans by Canvas Landscape Architects</p> <p>Stormwater Plans by ANAcivil</p> <p>Access Report by Ergon Consulting</p> <p>Traffic Report by TTPA</p> <p>Arborist Report by Treehaven Environmentscapes</p> <p>Geotechnical report Coffee Geotechnics</p> <p>Contamination Assessment by Coffee Geotechnics</p> <p>Statement of Environmental Effects by Planning Ingenuity</p> <p>Clause 4.6 submissions by Planning Ingenuity</p> |
| Recommendation | It is recommended that DA-2020/677 be determined by way of refusal for the reasons outlined in Section 4 of this report. |
| Report by | Theresa Whittaker, Senior Development Project Officer |

Summary of s4.15 matters

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

Yes

Legislative clauses requiring consent authority satisfaction

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

Yes

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

Clause 4.6 Exceptions to development standards

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

Yes

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions?

**Not
Applicable**

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

Conditions

Have draft conditions been provided to the applicant for comment?

**Not
applicable**

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

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 pursuant to Clause 2 of Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011 as it involves general development with a capital investment value of more than \$30 million.

The applicant's cost estimate for the project is \$70,407,662 (excluding GST).

Proposal

The proposal comprises the demolition of existing structures and construction of a *shop top housing development* containing 272 apartments across two towers; ground floor commercial/retail spaces; three (3) levels of basement parking and Level 1 parking, and a 100 place childcare centre also on Level 1.

Permissibility

The majority of the site is zoned B3 Commercial Core pursuant to Wollongong Local Environmental Plan (LEP) 2009, whilst the southern portion of the site (which was formerly part of the Ellen Street road reserve) is zoned B6 Enterprise Corridor. The proposal is categorised as a *shoptop housing development* and is permissible in both zones with development consent.

Consultation

The proposal was notified in accordance with Council's Community Participation Plan 2019 on four occasions. There were 3 submissions received following the initial notification period (two objections and one letter of support), two objections received following the second and third notification periods (amended plans) and no submissions following the fourth notification period (amended plans). The concerns raised in objections are discussed in Section 2.9 of this report.

Main Issues

It is noted that the subject application is currently under Appeal (deemed refusal) with the NSW Land and Environment Court pending Section 34 conference.

The main issues arising from the assessment pertain to:-

- Flooding and stormwater management matters. The site is located within a medium flood risk precinct and without appropriate management will potentially impact on neighbouring and nearby land. The proposal as amended is satisfactory with regard to flooding and stormwater management issues;
- Development departures are sought in respect of building height (Clause 4.3 of WLEP 2009) and floor space ratio (Clause 4.4 of WLEP 2009) in respect of the B6 zoned portion of the site; in relation to FSR for that part of the site zoned B3 (Clause 4.4A) and building separation (Clause 8.6 of WLEP 2009) in relation to the northern boundary of the site for that part of the site abutting 41 Atchison Street;
- Split land use zoning;
- Inaccurate and misleading NatHERS certificate and questionable BASIX compliance;
- Design quality. The proposal has been considered by the Design Review Panel on three (3) occasions and was found to be unsatisfactory. Despite the applicant revising the plans, the proposal remains unsatisfactory to the DRP and Council and cannot be supported in its current form. Further re-design is required in order to address the concerns raised by the DRP and by Council in its assessment. The main concerns relate to:

- poor internal apartment layout including deficiencies in internal dimensions in many apartments;
 - unacceptable adaptable apartment layouts;
 - non-compliant and poor private open space areas for many apartments;
 - poor public domain interface;
 - lack of activation of the street edge/ retail spaces;
 - CPTED/ safety concerns;
 - excessive scale / bulk of towers;
 - poorly identifiable residential lobbies;
 - impact of wind baffles and mitigation on design quality generally;
 - shortcomings in the design of the communal open space area and quality of treatment;
 - no shading or glare control to the vast areas of western facing glazing and likely impact thermal comfort and energy efficiency;
 - unsatisfactory solar access;
 - poor design quality generally with regard to architectural details and finishes.
- ADG departures in relation to a range of matters;
 - DCP non-compliances relating to boundary and street setbacks; building depth/ bulk; provision of street awnings; unit mix; crime prevention through environmental design issues; deficiencies in indoor and outdoor play areas for the child care centre; inadequate loading and waste management arrangements;
 - Concerns with regard to the matters for consideration prescribed by SEPP (Educational Establishments and Child Care Facilities) 2017 including non-compliances with the *Child Care Planning Guideline*;
 - Unresolved traffic matters relating to loading dock shortcomings in relation to available vertical clearance;
 - Unacceptable waste management arrangements for the western tower which houses 138 apartments;
 - Concerns raised in objections pertaining to: -
 - Impacts on adjoining church and childcare operations
 - oversupply of child care centres within the city centre and impact on quality of care/ services provided
 - Overshadowing
 - Traffic/parking including problems with the traffic impact assessment
 - Bulk and scale
 - FSR and height non-compliance
 - Shortcomings in contamination assessment and insufficient investigations with regard to the requirements of SEPP 55
 - Flooding impacts on nearby properties
 - Construction impacts

RECOMMENDATION

It is recommended that DA-2020/677 be determined by way of refusal for the reasons outlined in Section 4 of this report.

1. APPLICATION OVERVIEW

1.1 PLANNING CONTROLS

The following planning controls apply to the development:

State Environmental Planning Policies:

- 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 (Infrastructure) 2007
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017
- State Environmental Planning Policy No. 55 – Remediation of Land

Local Environmental Planning Policies:

- Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans:

- Wollongong Development Control Plan 2009

Other policies

- Wollongong City Wide Development Contributions Plan 2021

1.2 PROPOSAL

The proposal comprises the following:

1. Demolition of existing structures;
2. Construction of a mixed use development involving 2 towers over a 2 storey podium and three levels of basement car parking:-
 - Three (3) basement levels accommodating car parking, servicing, waste storage, plant rooms, bicycle and residential storage rooms. Access for all domestic vehicles to the residential and commercial car parking areas will be obtained from the Atchison Street frontage of the site.
 - The ground floor of the building will be occupied by seven (7) retail spaces, along with the loading zone accessed from the Kenny Street frontage of the site. Also on this level are lobby areas, garbage rooms, large plant and tank rooms, delivery and service access and end-of-trip facilities for cyclists/ workers.
 - The building will be setback from the street edges with a pedestrian walkway to be provided around the frontages of the building. The walkway will be elevated above the flood levels and will be ramped to follow the site levels, with stairs and ramps providing access to the walkway from footpath level at various points. Wider curvilinear landscape beds are proposed inside the Ellen Street frontage of the site which will provide for the retention of existing trees and other planting. The landscape plan supplied with the application provides for formal street tree planting to the three street frontages in addition to the planting within the setback area.
 - The first floor of the building will be occupied by car parking servicing the child care centre, retail spaces and residential visitors. This car parking level is accessed via a ramp located on the Atchison Street frontage of the site.

- The child care centre will occupy Level 2 within the western tower and will have an overall gross floor area of 890sqm in addition to outdoor play spaces also on Level 2 – occupying the northern section of the podium rooftop. The child care centre will accommodate 100 children and will be accessed from the Atchison Street frontage of the site via a separate lobby and lift.
- Two towers housing a total of 272 residential units. The western-most tower (18 storeys overall, of which 15 storeys are occupied by residential units) has frontage to both Ellen and Atchison Streets and is generally orientated towards the south, while the second tower (17 storeys overall, of which 15 storeys are occupied by residential units) is orientated towards the east, fronting Kenny and Ellen Streets.
- A large landscaped communal open space area will occupy part of the podium rooftop. This space is adjacent to the child care centre outdoor play area which occupies the western part of the podium rooftop. The COS will include a covered gym area; decked, turfed and paved areas; a BBQ, outdoor dining areas, garden beds, and a children's play area.
- Public domain works inclusive of street tree planting will be required to the street frontages of the site in accordance with the requirements of the Wollongong City Centre Public Domain Technical Manual. There are nine (9) existing street trees on the Atchison, Kenny and Ellen Street frontages of the site which are to be retained by the proposal and integrated into the landscaping/ development works. Three trees within the neighbouring site to the immediate north (41 Atchison Street) are proposed to be removed. The consent of the property owner has been obtained for the tree removal.
- An existing substation located adjacent to the Kenny Street frontage of the site is to be removed and replaced with an substation to be concealed within the façade of the building. Fire hydrant boosters are proposed to be located on the Atchison Street frontage of the site forward of the building.
- The site is situated within a medium flood risk precinct which has necessitated raising the ground floor level of the building for flood mitigation reasons. The level changes required to lift the floor levels for flood proofing reasons have been accommodated within the site, with an elevated pedestrian walkway providing access around the base of the building along the length of the three street frontages of the site. Level thresholds will be available to each of the ground floor retail spaces, commercial and residential lobbies, with lift access available throughout each of the towers.
- The podium extends over the ground floor towards the street edges creating an undercroft over the pedestrian walkway.
- Each of the residential units will be provided with private open space in the form of balconies and terraces. There is one single large communal open space area on the podium rooftop.
- The development will accommodate 272 residential units, with a mixture of unit types proposed including adaptable and liveable dwellings. The unit mix is as follows:.

| Unit type | Number | Proportion (%) |
|-----------|--------|----------------|
| 1 BR | 45 | 16.5% |
| 2 BR | 222 | 81.6% |
| 3BR | 5 | 1.8% |
| Adaptable | 28 | 10.3% |
| Liveable | 28 | 10.3% |

- No stratum or strata subdivision is proposed at this time.

- Materials proposed comprise a mixture of rendered masonry walls, black gloss tiles to columns, rendered/ painted concrete awning structure; combination of clear glazed balustrades with aluminium framing and white rendered concrete uprisers; aluminium framed windows; ground floor tinted glazing to retail spaces; feature cladding to lower level balconies and level 1 car parking level. Photomontages depicting the form and finish of the proposal are attached to this report.

1.3 BACKGROUND

The subject application is currently under Appeal (deemed refusal) with the NSW Land & Environment Court pending Section 34 conference.

Development History

There is a large volume of development and building consents over the historic parcels.

A large scale shop top housing development was approved on the site in recent years. DA-2016/1354 was granted a deferred commencement consent by the then Joint Regional Planning Panel on 16 November 2017 and was subsequently granted an activated consent after the satisfaction of the deferred commencement conditions on 26 September 2019. The approved development comprised the demolition of existing structures on site and construction of a shop top housing development containing 203 residential apartments, two (2) levels of commercial/retail floor space, four (4) basement parking and servicing levels and associated landscaping and services. This consent remains valid.

The site has been used for a variety of principally retail and commercial purposes inclusive of a large fruit shop/ deli/ supermarket, warehouse, metal workshop, existing single dwelling and existing hardstand car parking areas. A preliminary site investigation submitted with the Development application identifies the range of land uses occupied on the site since approximately 1935-1940s. The potentially contaminating activities which were known to have or may have occurred on the site are discussed in greater detail below in relation to SEPP 55.

Pre-lodgement meetings

There were no pre-lodgement meetings held for the proposal.

Design Review Panel

Three (3) design review panel meetings were held post lodgement on 24 August 2020, 25 February 2021 and 25 November 2021.

Customer service actions

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

1.4 SITE DESCRIPTION

The subject site comprises a single allotment. The site is generally L shaped, is generally flat and has three direct road frontages, being Atchison Street to the west, Ellen Street to the south and Kenny Street to the east.

The site is legally described as Lot 1 DP 1256499 and has an area of 6469sqm (as per the deposited plan and survey plan).

The site is currently occupied by a range of mixed residential, commercial and industrial uses including a fruit market / supermarket and warehouse on 40-46 Kenny Street; a residential dwelling on 43 Atchison Street and a metal workshop on 45 Atchison Street. All existing buildings are proposed to be demolished to facilitate construction of the proposed development. There are also a number of trees within the site and adjacent road reserves, three (3) of which are proposed to be removed adjacent to the northern boundary of the site near Atchison Street. Nine (9) existing street trees on the Ellen

and Kenny Street frontages of the site are to be retained and integrated into the landscaping scheme for the site.

The site is located within the southern part of the city centre, with a large proportion of the site being located within the area identified in WLEP 2009 as the Wollongong City Centre. The northern (largest portion of the site) is zoned B3 Commercial Core as is land to the north, west and east. The southern portion of the site previously formed part of the Ellen Street road reserve which was closed and consolidated into the site on 9 September 2019; this part of the site and land to the south is zoned B6 Enterprise Corridor and is located outside of the identified Wollongong City Centre.

To the immediate north of the site exists a child care centre, a residential house and commercial/institutional properties being a chicken store and the Greek Orthodox Church. To the south there are commercial and industrial developments including the Salvation Army and a metal Workshop, while the east and west there are a variety of commercial and light industrial activities.

Aerial photographs of the site and locality, zoning extract and a copy of the deposited plan are provided at **Attachment 3** to this report.

Property constraints

- Council records identify the land as being located within a medium flood risk precinct.

1.5 CONSULTATION

1.5.1 NOTIFICATION

The application was notified to adjacent and adjoining property owners in accordance with WDCP 2009 Appendix 1: Public Notification and Advertising Procedures on four (4) occasions. The initial notification period took place from 15 July - 29 July 2020. At the conclusion of the initial notification period there was one submission in support of the project received from Neighbourhood Forum 5 and two (2) submissions of objection. The concerns raised in the two objections relate to:-

- Impacts of the development on a nearby industrial premises at 27 Ellen Street including overshadowing impacts - loss of heat energy (additional cost will be incurred due to need for heating and lighting) and impact on wellbeing of workers;
- Traffic and parking impacts arising from the development; road network insufficient to accommodate additional vehicle movements associated with the development;
- Impacts of traffic generation on the safety of pedestrians;
- Scale of the development is inappropriate in the context;
- Additional shops are not warranted when there are many empty retail spaces in the city centre
- Impacts of the development on the child care centre to the immediate north of the site at 38 Kenny Street;
- Construction-related impacts (access, traffic management, noise, vibration, dust, rubbish, safety of children will be compromised, impacts on services); demolition works should only be undertaken when children are not playing outside; cranes safety – cranes should not be allowed to be used over the property; overshadowing impacts; impacts on the viability of the business;
- Concerns that there is an oversupply of child care centres within the city centre; the quality of care is reduced;
- Concerns regarding lack of communication with the neighbouring child care centre operators and concerns that Council does not support long term established businesses in the locality.

The second notification period took place 4 February - 19 February 2021 following the receipt of amended plans and additional information. At the conclusion of this notification period, there were 2 objections received from representatives of the Salvation Army who own land on the southern side of Ellen Street opposite the site and Grandma Rosie's child care centre located to the immediate north at 38 Kenny Street. The submissions raised concerns in relation to:-

- The impacts of the development on the adjacent child care centre to the north including construction-related impacts (access, traffic management, noise, vibration, dust, rubbish, safety of children will be compromised, impacts on services); demolition works should only be undertaken when children are not playing outside; cranes safety – cranes should not be allowed to be used over the property; overshadowing impacts; impacts on the viability of the business;
- Concerns that there is an oversupply of child care centres within the city centre; the quality of care is reduced;
- Social impacts in the locality;
- Development non compliances including building separation variation shouldn't be supported;
- Impacts of the development on the southern side of Ellen Street in the ownership of the Salvation Army – overshadowing. The shadow impacts indicate considerable overshadowing of the property which may limit the development potential of the land and its value.
- FSR variation in relation to the B3 zoned portion of the site is evident; not supported by proper Clause 4.6 variation statement;
- Concerns regarding contamination and the sensitive land uses proposed. There is insufficient information to satisfy SEPP 55;
- The height variation sought should be considered with regard to the substantial overshadowing impact of the proposed development. The objectives of the standard are not met and therefore the height variation proposed should not be supported;
- Concerns regarding flooding impacts of the development on nearby properties;
- The traffic report appears misleading and suggests that the traffic impacts of the development will not be as significant as expected.

The third notification period took place 17 August 2021 – 2 September 2021, again following the receipt of amended plans and additional information. At the conclusion of this notification period, there were two (2) submissions of objection received from representatives of the Salvation Army and Grandma Rosie's child care centre. The objections raised the same concerns as those outlined above.

The fourth notification period took place 21 October 2021 – 4 November 2021, again following the receipt of amended plans and additional information. At the conclusion of this notification period, there were no submissions received.

1.5.2 INTERNAL CONSULTATION

Geotechnical Engineer

Council's Geotechnical Officer has reviewed the application and supporting documentation inclusive of a geotechnical report prepared by Coffey Geotechnics and has provided a satisfactory referral including recommended consent conditions.

Stormwater Engineer

Council's Stormwater Officer has reviewed the application with regard to relevant provisions of Wollongong LEP and DCP 2009 and has provided a satisfactory referral including recommended consent conditions.

Landscape Architect

Council's Landscape Officer has reviewed the application and provided a satisfactory referral including recommended conditions of consent.

Community Safety Officer

Council's Community Safety Officer commented:

- All basement car parks are to have the relevant CPTED requirements implemented.

- Level 2 – noted varied uses of this space - residential communal open space, residential apartments, childcare centre. Queried how this will be managed in a safe manner given the different user groups with different needs. Safety of children in this area, secured indoor and outdoor and the management strategies that will be implemented.
- Ground floor – noted that long corridors leading to stairs from Kenny Street and Ellen Street entrances can be areas of entrapment, needs to be looked into possible installation of two way mirrors to see person coming from the opposite end. How will the allocated car parking be managed and controlled, eg will they be secured?
- Residential storage area hopefully is a cage that can be seen through for safety and not a closed room, possible area of entrapment. Bike storage in a closed room was also identified as not being safe – there should be clear vision of these spaces as they appear to be possible areas of entrapment.
- Inadequate public toilets on ground floor;
- Landscaping and lighting to follow CPTED requirements.
- Management of graffiti on the building this area is often targeted by graffiti vandals will need to be considered.

Traffic Engineer

Council's Traffic Officer has reviewed the application and provided an unsatisfactory referral; noting the following outstanding unresolved matters:-

- The TIA states that the loading area is designed to accommodate deliveries by trucks up to Heavy Rigid Vehicle (HRV) which is 12.5 metres long. The proposed loading dock does not appear to achieve a clear headroom/ vertical clearance of 4.5 metres required to accommodate HRV vehicles.
- The development does not comply with Clause 5.4.2 (1) of Chapter E7 of the WDCP as the western waste storage room (servicing the western tower's 138 residential units) is not directly accessible from the loading dock. Instead there is a significantly convoluted path of travel from the western waste storage room to the waste pick up point/loading dock. The transfer of waste would require the use of the residential lifts, the fire isolated passage, and delivery and service access areas which would be relied upon for the retail premises. This is an extremely undesirable arrangement which would result in passageway conflict/congestion and significant amenity impacts internal to the building.

Heritage Officer

The subject site does not contain a heritage item nor is it located within a heritage conservation area. The development is however located within the vicinity of a row of heritage listed homes at 48-56 Atchison Street. Council's Heritage Officer has reviewed the application in accordance with Clause 5.10 of the Wollongong LEP 2009 and with respect to Chapters E10 and E11 of Wollongong DCP 2009.

Whilst the proposal is a very large development, due to the distance between the sites the proposal is not considered to have any significant heritage impact.

The proposal also involves the excavation of basement car parking across the site. A review of Council's files has not indicated a likelihood of the site containing significant archaeological evidence relating to either the European or Aboriginal history of the area. There are therefore no additional archaeological requirements relevant to the proposed development.

The proposed development is therefore considered to be satisfactory from a heritage perspective. No specific conditions were recommended for imposition.

Health Officer

Council's Health Officer has reviewed the application and provided a satisfactory referral. A number of consent conditions were recommended for imposition in relation to the design and construction of food premises within the development.

Environment Officer

Council's Environment Officer has reviewed the application and given a satisfactory referral subject to conditions of consent including a deferred commencement condition in relation to site contamination.

The following specific comments were provided in this regard:-

"Site contamination"

The Interim Advice Letter 01 issued by Rod Harwood, EPA accredited site auditor dated 16 December 2020 has recommended the following conditions:

"Prior to the execution of works associated with the built form (excluding demolition), the following deferred commencement conditions must be complied with to the satisfaction of Council;

1. A Detailed Environmental Site Investigation (DESI) must be undertaken by an appropriately qualified environmental consultant in order to assess potential contamination associated with past land use activities;
2. Where the DESI concludes the site is suitable for the proposed use it is to be peer reviewed by a NSW EPA Accredited Site Auditor and a Section A Site Audit Statement submitted to Council certifying that the site is suitable for the proposed use;
3. Where the DESI states the site requires remediation, a Remediation Action Plan (RAP) must be prepared by an appropriately qualified environmental consultant;
4. The DESI and RAP must be peer reviewed by a NSW EPA Accredited Site Auditor and include a Section B Site Audit Statement or a letter of interim advice from the Site Auditor to Council certifying that the RAP is practical and the site can be made suitable for the proposed use;
5. At completion of remediation an appropriately qualified environmental consultant is to prepare a Remediation Validation Report (RVP). The RVP is to be peer reviewed by a NSW EPA Accredited Site Auditor and a Section A Site Audit Statement submitted to Council confirming the site has been made suitable for the proposed use."

Further discussion on this issue is contained below with regard to SEPP 55.

A number of environmental conditions were recommended for imposition. These included conditions in relation to the following to site remediation and validation, stormwater quality, construction management including management of hazardous materials and waste; implementation of wind mitigation and acoustic report recommendations.

1.5.3 EXTERNAL CONSULTATION

Design Review Panel (DRP)

The proposal has been reviewed by the Wollongong Design Review Panel (DRP) as well as Council Architect on three occasions firstly on 24 August 2020, again on 25 February 2021 and 25 November 2021 following the receipt of amended plans and further information. The November 2021 design review is attached in full at **Attachment 5** to this report.

In summary, the DRP and Council's Architect expressed the view that the proposal cannot be supported in its current form and requires redesign to resolve the issues of concern raised. It was noted that the proposal has been amended, largely in response to previous Panel comments. While

discrete issues have been solved by the new proposal, new issues have emerged within the amended proposal.

The following main concerns identified relating to the SEPP 65 design quality principles are:

Context and neighbourhood character

- Further rationalisation of ramps and steps to improve pedestrian movement and use of the spaces along the edge of the building is required (see Landscape below);
- Clarification of planters so that they do not block key entrances and retail tenancies
- How this proposal and its adjacent open spaces aligns with adjoining public domain requires explanation.

Built Form and Scale

- Street frontages generally still require attention to achieve acceptable urban design standards.
- The south facing landscaped area and undulating covered walkway, including entries and retail (both which require clear visual access), are still plagued by physical and visual barriers. Ramps and stairs appear not to be coordinated with specific entries or other important nodes. Structural columns are randomly located inside and outside glazing. It is noted that the required 2 – 3m high windscreens are not shown on drawings, nor are plants in planters (also required for wind), which greatly constrains a thorough assessment of the ground floor plane.
- Considering the complexity of this interface, additional perspectives along the length of the walkway should be provided to demonstrate the physical and visual amenity of this vital publicly accessible space.
- Required amendments to ground level built form include:
 - the framed elevational elements currently proposed to identify residential entries will not be read at pedestrian level. Entries must be provided with clear markers that can be read from each end of the walkway, such as well integrated blades or other planar architectural devices
 - columns along walkways should be rationalized, reduced in number and repositioned behind glazing
 - the curved steps to the south west corner incorporate a planter with large tree. As the perspective provided indicates, this is very awkward and should be removed.
- While the separation of cores is supported, it has resulted in some poor built form outcomes, such as a very small retail tenancy between the western residential lobbies and highly constrained access to the north eastern lobby. It may be better to combine entry lobbies and allow the size and form of adjacent retail tenancies to be increased and further rationalized.
- The tower bulk has been increased, with widths of up to 23.5m now proposed.
- Many of the apartments are highly constrained by the relationship of internal spaces to the undulating façade; in fact, many units do not appear to have sufficient space for living arrangements to function as proposed. This may result in further amendments to increase unit depths, leading to even greater building width and additional visual bulk, which would be untenable.
- Amenity issues currently identified throughout the tower layouts include the following:
 - many of the proposed units appear unable to comfortably accommodate furniture as proposed. These units include U2.2 Level 2), U4.8 (living has no outlook), U4.9, U4.15 (dining has no outlook), and U4.16 (levels 2 – 5).

- many units throughout the towers, at all levels, have furniture placed against glazing, necessitated by lack of internal dimensions (depth and/or width). Apart from constraining outlook, this measure appears to prevent access to balconies in a number of cases.
- the curved corners of the towers impact on many units, greatly constraining furniture layouts and compliance with minimal ADG spatial requirements. Eg. units U2.1, U2.6, and U2.9 on level 2, U4.5, U4.6, U4.9, U4.11, U4.17 and U4.20 on levels 3 – 5 and U9.5, U9.6, U9.9, U9.10, U9.15 and U9.18 (levels 6 – 15), and many units above.
- many units feature oddly shaped balconies, greatly constraining their use and compliance with ADG private open space requirements. These units include U4.2, U4.4, U4.7, U4.12, U4.16 and U4.19 (levels 3 – 5), U9.4 and U9.7 (levels 6 – 15) U16.4 and U16.7 (level 16) and U17.4 and U17.7 (level 17).
- due to structure, configuration, and width, it is not clear how access from living areas and across balconies is provided in units U4.2, U4.4, U4.14 and U4.19 (levels 3 – 5), U9.4, U9.8, U9.14 and U9.17 (levels 6 – 15), U16.4 and U16.8 (level 16) and U17.4 and U17.8 (level 17).
- many units incorporate snorkel portions of bedrooms, which do not comply with the ADG. These units include U2.8 (level 2), U4.4, U4.6, U4.11 and U4.19 (levels 3 -5), U9.4, U9.6, U9.8, U9.10, U9.14 and U9.17 (levels 6 – 15) U16.4, U16.6 and U16.8 (level 16) and U17.4, U17.6 and U17.8 (level 17).
- The liveable unit plan provided appears not to comply with standard accessibility requirements.
- The adaptable units need further clarification so that adaption can be achieved without major alterations to plumbing and waterproofing of bathrooms.
- The Panel remains concerned that large expanses of glazing are still not screened or shaded.
- There are concerns that the floor to- floor height provided in the loading area is insufficient to allow for the DCP's required clearances.
- The roof plan provided is incomplete and does not include sufficient detail, such as services, plant and access, to meaningfully assess.

Density

The proposal still has a number of significant amenity issues evident in proposed units and at ground level. The capacity of the proposal to house the density proposed is therefore still to be demonstrated.

Sustainability

- Large expanses of unscreened glazing remain.
- The NatHERS rating provided is not complete and does not correspond with the current proposal. This will impact on BASIX compliance.
- It is not clear what sustainability initiatives over and beyond those required by BASIX have been proposed. No typical expected measures are proposed such as solar energy generation, rainwater harvesting, etc. Significant sustainability measures should be incorporated into the building.

Landscape

Public Domain -

- Several small street trees on Kenny Street are shown to be retained but, being small bottlebrushes, are of lesser value and detract from the quality of the future streetscape; these should be removed and replaced with a coordinated series of new street trees.

- There remains a distinct disconnect between the streetscape and retail façade. This, together with the height of planting (generally not indicated in drawings), and wind baffles, creates a visual disconnect that results in poor retail activation and raises a high CPTED risk.
- A further rationalisation of the public domain interface is needed. This should include:
 - an improved physical connection between the streetscape and the development that does not appear utilitarian in nature but rather is welcoming and attractive
 - an improved visual connection from the street to the retail spaces – how this is done given the wind requirements must be clearly indicated on all drawings
 - better circulation is still required along and between retail levels
 - significant space should be made available outside the retail spaces for outdoor dining / activation.

Issues that have been identified in this iteration that need to be resolved specifically include:

- The levels indicated on the survey and design drawings do not match for the ramp to Ellen Street. The 1:14 ramp is already poorly conceived in its current arrangement and will likely need to be extended further, only exacerbating this poor interface.
- The ramp to the northern part of Kenny Street residential results in the lobby door being squeezed to the top of the landing, and a retail space only accessible via the residential lobby.
- Further to this, all ramps and walkways appear in excess of their maximum allowable length which will further impact the previous 2 two issues.
- Wind shields are proposed along substantial sections of the development's frontage, creating visual clutter, and adding to its poor spatial quality.

An arborist should provide an updated report outlining how the current development impacts all existing trees, including street trees and those on neighbouring sites.

Communal Open Space (COS)

Spatially the COS struggles to cater for the large number of residents. It does not define space very well and struggles to provide a suitable variety of spaces usable by individuals and groups. The design appears to be overly complicated in its conception (i.e. it appears focused on the pattern as opposed to the quality of the spaces) and when the spaces are reviewed in detail they lack clarity and function.

Issues include:

- The edge pergolas appear to be an aesthetic feature unrelated to the use of the COS under.
- The free-standing pergola between the kids play area and lawn will provide little shade to the various seats surrounding it. Perhaps the gathering area it services could take advantage of the edge pergolas by moving that space to the east?
- Posts for the two free-standing pergolas will likely constrain movement and inhibit universal access. Further detail is required.
- There are several natural lawn spaces which are all mounded with large trees in their respective centres. The trees have variously-sized planter beds around them, making the lawns just edge strips in several places. This arrangement makes the lawns conducive only to some passive uses such as sitting. How lawns could be used for informal active use should be resolved.
- Several potentially usable spaces, e.g. the space beside the water feature, become obstructed by a central planter, resulting in these spaces forming circulation spaces as opposed to destinations.
- The playground in plan appears to be very small while in the section it appears to be much more substantial. The intended design must be shown and specified so it can be approved as part of the DA.
- Universal access does not appear to have been considered with several pathways inaccessible due to surface materials.

- It is still unclear if wind has been taken into consideration or how it has been resolved in the landscape design. Further detail is required.

Amenity

- Numerous instances of poor ground level amenity and potential CPTED issues:-
 - visual and physical obstructions between the public domain and south facing loggia;
 - the 2 – 3 m high wind screens and plantings;
 - the landscape plan, architectural plans and public domain plan are inconsistent with each other;
 - residential lobbies are poorly marked;
 - some retail tenancies appear too small and inflexible for future uses;
 - steps and ramps are not sufficiently resolved and aligned;
 - an excessive number of large columns obstruct retail frontages and unnecessarily impede on publicly accessible covered space;
 - incapacity of floor-to-floor allowances in loading area to facilitate required clearances;
- The childcare internal and open spaces shown on the drawings are inaccurate; areas seem undersized.
- The proposed towers have been improved through the separation of lobbies, integration of through units and resultant compliance with cross ventilation.
- There are numerous amenity and compliance issues throughout the scheme:-
 - visual bulk of towers appears excessive;
 - unresolved impacts of curved tower corners on amenity and spatial compliance of internal spaces;
 - apparent incapacity of many units to comfortably house furniture as proposed due to internal spatial limitations – this issue may lead to the requirement to further increase the width of existing bulky towers;
 - some living and dining spaces are completely internal and do not have access to outlook, light and air;
 - many balconies do not appear capable of achieving the minimum width and private open space requirements required by the ADG;
 - due to structure and layout, many balconies appear unable to be accessed from adjacent living spaces or to allow access across their width;
 - liveable units require further design refinement to achieve requirements of the model;
 - adaptable units require further demonstration that bathrooms can be adapted without excessive change to plumbing;
 - the roof plans of towers are incomplete and therefore cannot be assessed;
 - Nathers ratings and therefore Basix are incomplete.

Safety

- See comments above regarding stepping, ramping and planter beds along the public domain interface, all elements which reduce clear lines of sight and pedestrian safety.
- The Panel understands that flooding requirements have now been met. However required amendments to landscape may require further adjustments to flood measures to ensure compliance and performance.
- Overlooking of childcare open space is of concern; it is not clear what measures to address this issue have been provided.

Housing Diversity and Social Interaction

- Concerns regarding internal unit amenity and compliance.
- Concerns regarding liveable and adaptable units' compliance.

Aesthetics

- The Panel noted that the elevations have improved in the latest iteration, with more attention to podium quality and solidity of the lower levels of the building. However:
 - the towers are very bulky; this may increase in width to address internal amenity and compliance requirements; this would be a very poor outcome;
 - although spandrels and some screening has been added, there is still excessive unscreened glazing to the towers;
 - the resultant performance glazing is liable to be very dark - new vertical blades are only added to tower ends; it may be better to integrate more vertical elements to enhance language and better recognize the residential – rather than commercial - nature of the proposal;
 - the columns are poorly integrated at ground and first floor levels;
 - the building appears to be very dark at podium and upper levels. It is not clear if this is intended but it would appear excessive;
 - the glazed faceted balustrade at the top of the very large residential towers appears very weak; either the balustrade should be setback so as not to be visible or replaced with a solid spandrel to match lower levels.

The DRP concluded that the design is unsatisfactory and does not demonstrate design excellence as required by the LEP.

Transport for NSW (TfNSW)

The proposal was referred to TfNSW for comment as required by Clause 104 of State Environmental Planning Policy (Infrastructure) 2007. TfNSW responded on 28 July 2020 and advised that it has no objection to the development in principle. TfNSW noted that all access is directly via the local road network and the development is not considered to greatly impact on the classified road network.

TfNSW suggested that Council consider seeking a reduction in the number of parking spaces for the development as a way to reduce/ manage traffic congestion by reducing the demand for vehicular trips. “A key component to minimising trip demand is to minimise the supply of car parking and TfNSW believes it is appropriate to consider reductions in supply where a development, like this one, is well serviced by public transport options. This is supported by Section 7.4 of Wollongong Council DCP.”

A discussion on car parking provision and compliance with applicable controls is provided in relation to Chapter E3 of the DCP. It is noted that the car parking reductions available in Clause 7.4 of Chapter E3 do not apply to the Wollongong city centre as the parking rates applicable to the city centre already factor in a significant discount.

Endeavour Energy

The proposal was referred to Endeavour Energy for comment. Endeavour Energy raised no objection to the proposed development subject to conditions relating to the design and construction of the new substation and impacts of the construction works on the existing padmount substation until it is decommissioned and replaced.

2. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

SECTION 4.15 ASSESSMENT

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.

It is noted that the Fisheries Management Act 1994 is not relevant to the proposal.

NSW BIODIVERSITY CONSERVATION ACT 2016

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

The proposal does not trigger the requirement for a biodiversity offset scheme. The site is not identified as being of high biodiversity value on the Biodiversity Values Map and the site is unlikely to provide suitable habitat for any threatened species. On this basis, the development would not be considered to result in adverse impacts on biodiversity and is consistent with the provisions of the Biodiversity Conservation Act 2016.

2.1 SECTION 4.15 (1)(A)(I) ANY ENVIRONMENTAL PLANNING INSTRUMENT

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

Clause 7 Contamination and remediation to be considered in determining development application

The proposal involves a change of use and accordingly the provisions of Clause 7 of the SEPP are triggered. In accordance with Clause 7(2), Council has considered a preliminary site investigation (PSI) of the land carried out in accordance with the requirements of the Contaminated Land Planning Guidelines. The applicant provided a Phase 1 contamination assessment (PSI) in relation to the site, prepared by Coffey Geotechnics Pty Ltd as required by Clause 7(3) of the SEPP. The application was also accompanied by interim advice from an EPA Accredited Contaminated Sites Auditor. The findings of the PSI and conclusions of the site auditor are discussed below.

The PSI identified the following relevant (summarised) site history:-

Site history information indicated that prior to 1948 a sheet metal workshop operated in the south-western corner of the site, a residential house in the north-western corner and several smaller structures (likely residential use) were present in other parts of the site. Since 1948, the metal workshop and residential house remained relatively unchanged until the present time, with the exception of some extensions and demolitions noted to the east. In the 1960s, commercial redevelopment commenced within eastern portion of the site, starting with a fruit and vegetable market (prior to 1963) and then a vehicle mechanic, tyre repairer and auto electrician (post 1963). Several previous environmental assessments occurred at the site between 1994 and 2007. Three former underground storage tanks and associated bowsers were noted to be on the site, one was removed and validated within No. 44-46 Kenny Street in 2007. Bonded ACM was observed on the eastern side of 43 Atchison Street in a previous investigation. Based on the observations made during the site walkover and site history information, potential contaminating activities were identified across the site associated with the following:

- Leakages from former fuel storage and mechanical workshop infrastructure;
- Fill materials of unknown origin and quality;
- Weathering of hazardous building materials from former and existing buildings on site; Suspected bonded ACM potentially present on the ground surface at Atchison Street;

Use and storage of chemicals/lubricants within the workshop; and storage of various unknown materials outside of existing and former structures, depending on the exact activities carried out. The PSI concludes that it is unlikely that these potential soil contamination sources would not be able to be adequately managed / removed through the proposed development as it includes excavation of a multi-level basement car park, subject to further assessment. Further soil and groundwater assessment is required to assess the contamination status of the site prior to and during the development.

The Interim Advice from the site auditor concludes that,

“Whilst a Detailed Environmental Site Investigation is necessary to define the requirement for remediation and validation it is the Auditors opinion the site can be made suitable for the proposed land use given the following:

- The development will see the entire site excavated to a depth of approximately 7m below surface;
- The lower four floors are parking basements that will require engineered ventilation;

- The ground floor and first floor are proposed for non-sensitive uses (Commercial); and a car park at Level One.

Other than potential exposure to chemical vapours that may intrude into the basement, there will be no other route of contaminant exposure for site users. There are many methods to manage vapour intrusion that can be considered should the condition exist.

It is considered reasonable to the Auditor that deferred commencement environmental consent conditions can be applied in this instance to enable Council to continue with their assessment of the application. The Auditor considers the following conditions appropriate to ensure contamination, if present, is remediated and managed in a manner consistent with guidelines approved by NSW EPA under s105 of the Contaminated Land Management Act (1997)."

The findings of the PSI have been considered by Council's Environmental Officer who considers, pursuant to Clause 7(3), that a detailed site investigation is not required to be provided in support of the application, however a number of conditions have been recommended for imposition requiring a detailed investigation and remediation work following that if required.

However, as the preliminary site investigation indicates that there is potential for contamination to exist, before determining the application, Council and the SRPP will need to be informed of the outcome of DSI investigations prior to granting consent. This is outlined in the following court cases: Moorebank Recyclers Pty Ltd v Benedict Industries Pty Ltd [2015] NSWLEC 40, Lippmann Partnership Pty Ltd v Canterbury – Bankstown Council [2017] NSWLEC 1601.

2.1.2 STATE ENVIRONMENTAL PLANNING POLICY NO. 64 – ADVERTISING AND SIGNAGE

There are no specific signs proposed in this application. Any signage will require separate development consent in the event such signage is not exempt development.

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

The provisions of the SEPP apply as the development includes a 'residential flat building', is more than 3 storeys in height and comprises more than 4 dwellings.

The application was 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 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.

The proposal has been reviewed by a Design Review Panel (DRP) convened for the purposes of the SEPP as outlined above in Section 1.5.3 of this report. Numerous concerns were raised by the DRP in relation to the design quality principles and the requirements of the ADG and it was concluded that a further redesign of the development will be required in order to resolve the concerns raised.

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 28(2)(a) of the Policy and are discussed below.

Principle 1: Context and neighbourhood character

The neighbourhood is one in transition, with a character changing as some nearby sites are redeveloped. The existing character of development in the locality is highly variable, with a combination of development types, scale and character evident. The site is positioned on the southern periphery of the Wollongong city centre and crosses the B3/ B6 zone boundary at the edge of the city centre area which is also the boundary at which there is a significant change in allowable building heights and densities. The development is significantly taller and larger than most others in the vicinity, in part due to the large site area available, though there are a number of developments under construction or approved for nearby sites which will alter the landscape significantly in line with the desired future character of the city centre.

The proposal does not respond to numerous controls which reflect the desired future character of the commercial core of the Wollongong City Centre identified through the development standards and controls applicable to the land. The DRP raised numerous concerns in relation to many aspects of the proposal and has concluded that it requires redesign.

Principle 2: Built form and scale

The bulk and scale of the development is inconsistent with the applicable planning controls for the area. There are variations sought in relation to height and floor space ratio in relation to the B6 zoned portion of the site which are not opposed, however the variations sought or evident in relation to building bulk/ depth are not supported. The layout of the ground floor and its interface with the streetscape will give rise to adverse impacts which is also not supported.

The design of the development will not positively contribute to the public domain or provide a high level of amenity for the occupants. While the scheme provides for the retention of a number of existing street trees and incorporates these into further planting within the site and adjacent public domain, the landscaping works to the street frontages in part will conceal the pedestrian walkway and retail frontages which will reduce the amenity and viability of the retail spaces. This, along with the variable alignment of the retail frontages, many required wind baffles, high planting for wind mitigation, ramps, retaining walls and stairs, will compromise the amenity of the space and create potential entrapment and concealment opportunities which is unsafe.

The DRP advised that the built form and scale is unacceptable and the internal amenity of many units will be poor.

Principle 3: Density

The DRP noted that, in terms of ADG compliances, the proposal still has a number of significant amenity issues evident in proposed units and at ground level. The poor internal unit layout, lack of compliance with minimum internal dimensions and undersized, non-functional balconies suggests that the proposal is an overdevelopment of the site.

The depth of the towers is more than that sought by the DCP and ADG and this contributes to excessive visual bulk and some offsite impacts.

The development is not of a scale that is expected to place unreasonable strain on local infrastructure subject to augmentation. Contributions applicable to the development will go towards local infrastructure and facilities. The site is well situated with regard to existing public open space and services and residents will enjoy good amenity.

Principle 4: Sustainability

Solar access is not compliant. The BASIX Certificates indicate that minimum requirements with regard to energy and water efficiency and thermal comfort are met. However it is noted that the NatHERs rating is inaccurate and misleading and this will potentially have affected BASIX compliance. There is no full class 2 Certificate showing that all apartments were rated, just the one certificate with inaccurate modelling. The QR code stamped on the plans links to a single apartment certificate only

and this apartment is not one which features in this proposal. The BASIX certificate is likely to be inaccurate and cannot therefore be relied upon.

The DRP note that while some screening has been provided, no shading or glare control has been provided to the large amounts of western facing glazing and single Low-E glazing does not meet environmental requirements. This will lead to untenable heat gain during the hotter months which will diminish thermal comfort and increase energy usage. Further, no bathrooms or laundries have external windows for natural ventilation, relying heavily on mechanical ventilation.

No detail was provided within the BASIX certificate of rainwater collection.

There are no other sustainability measures proposed, which, for a project of this scale is inappropriate.

The proposal will not have an unreasonable impact on any heritage items or environmentally sensitive areas.

A Site Waste Management and Minimisation Plan has been provided indicating appropriate management and disposal of demolition and excavated materials.

Principle 5: Landscape

The proposal provides landscaped areas on structure on the podium rooftop in and around the communal open space and CCF outdoor play areas. Some specific landscaping concerns were identified by the DRP, in relation to the public domain interface and the communal open space. The retention of a number of existing street trees is proposed which is commendable, however there are works within the tree protection zones of most of these trees and this has not been reviewed by an arborist to ensure that tree retention is feasible with the current scheme.

Street tree planting and footpath paving works will be required in accordance with the requirements of the Wollongong City Centre Public Domain Technical Manual.

Principle 6: Amenity

The proposal satisfies the requirements for cross ventilation, communal open space (though some improvements have been suggested by the DRP in relation to layout the finish/ landscaping), storage, and access. Solar access compliance is questioned. Future occupants of the development will enjoy views of the ocean and coast to the east and escarpment views to the west however there are some concerns raised in relation to safety and security (see below), internal amenity to units and many balcony areas which appear to be undersized. Additionally, residential lobbies are poorly marked, there are unresolved impacts of the curved tower corners on amenity and spatial compliance of internal spaces within apartments; apparent incapacity of many units to comfortably house furniture as proposed due to internal spatial limitations – this issue may lead to the requirement to further increase the width of existing excessively bulky towers; some living and dining spaces are completely internal and do not have access to outlook, light and air; many balconies are incapable of achieving the minimum width and private open space requirements required by the ADG; many balconies appear unable to be accessed from adjacent living spaces or to allow access across their width; and the layouts of the liveable and adaptable units are poor.

In terms of off-site impacts, no nearby existing residences are expected to be affected by the proposed development in terms of privacy or view loss. The development provides for generally compliant building setbacks to boundaries (with the exception of a variation to in relation to the setback to the communal open space) as required by the ADG in order to provide for equitable sharing of building separation distances with neighbouring sites when subject to future redevelopment - refer to the ADG assessment at **Attachment 4** in this regard.

In terms of solar access and overshadowing impacts, the shadow diagrams submitted with the application (which form part of **Attachment 1**) indicate lengthy shadows to the south, south-west and south-east. Given the allowable building heights and densities within the B3 Commercial Core, the extent of overshadowing impact is not considered to be unreasonable though it is noted that the

overshadowing impacts of this scheme are greater than that of the previously approved development for the site (DA-2016/1354). It is noted in this regard that the overshadowing impacts of the development in terms of the length of shadow cast appears to not be exacerbated by the variation to the height standard in respect of the B6 zoned portion of the site.

Principle 7: Safety

The proposal is unsatisfactory with regard to safety and security and concerns are raised that the ground floor layout, along with associated landscaping/ public domain interface, in particular is inconsistent with the principles of crime prevention through environmental design. Refer to comments provided above by the DRP and further discussion in relation to Chapter E2 of WDCP 2009 in **Attachment 7**.

Principle 8: Housing diversity and social interaction

The development incorporates only a small number of 3 bedroom units, less than that required by Chapter B1 of Wollongong DCP 2009.

Otherwise generally, apartments throughout the building do not provide much flexibility with an abundance of 2 bed 2 bath styles, which are generally suitable for young professionals and couples. Additionally, apartment designs do not generally provide for flexible living and working arrangements. Further, no dual key arrangements are proposed.

Concerns are also raised in relation to the adaptability and amenity of the units labelled 'adaptable' and 'liveable'. The proposed liveable apartments do not meet the silver standard as hallways and doorways appear to be too narrow, space required for accessing bedroom doorways conflicts with required bed placement, and plumbing is not adequately located for adaptation. The proposed adaptable apartments are single bedroom units only; the floor plans of adaptable apartments are standardised across levels and generally do not cater to a wide range of household typologies.

Further, the adaptable apartments are not designed to be readily adaptable when required. Most will require an entire rearrangement of plumbing in the bathroom which will be very difficult to achieve in a concrete apartment building without significant cost and inconvenience to both the resident and their neighbours in the apartment below.

There are some opportunities for informal social interaction between residents within common areas including the communal open space and circulation areas.

Principle 9: Aesthetics

Concerns have been raised by the DRP in relation to the built form and aesthetics of the development:-

- the towers are excessively bulky; this is likely to be exacerbated by changes required to achieve minimum internal apartment and balcony dimensions;
- the south facing landscaped area and undulating covered walkway, including entries and retail (both which require clear visual access), are plagued by many physical and visual barriers which will compromise the design quality of the development, its functionality and amenity, the viability of the retail spaces and safety for users;
- the residential entries are not readily identifiable and in places are hidden from view of the street by planting, retaining walls and wind screens;
- the columns are poorly integrated at ground and first floor levels. The columns along walkways require rationalisation, reduction in number and relocation;
- the curved steps at the south-west corner of the site incorporate a planter with large tree which is awkward;
- the retail space between the western residential lobbies creates a very small retail tenancy and highly constrained access to the north eastern lobby;

- there is excessive unscreened glazing to the towers; the resultant performance glazing is liable to be very dark;
- new vertical blades are only added to tower ends; it may be better to integrate more vertical elements to enhance language and better recognize the residential – rather than commercial - nature of the proposal;
- the limited perspective views provided with the development application indicate that the building will be very dark at podium and upper levels which appears excessive;
- the glazed faceted balustrade at the top of the towers, which are very large, appears very weak; either the balustrade should be setback so as not to be visible or replaced with a solid spandrel to match lower levels;
- insufficient detail has been provided in relation to the roofs of the two towers. The roof plan for the eastern tower indicates that the roof is used for services and appears to have the lift overrun missing which would suggest that the height of the building may not comply with the maximum building height pursuant to Clause 4.3 of Wollongong LEP 2009. No roof plan has been provided for the western tower.
- the feasibility of the proposed retention of the nine existing trees has not been confirmed by an arborist. This brings into doubt the likelihood of such retention given the proposed construction works occurring within such close proximity of the trees. This includes the significant wind screens and other wind mitigation measures required to be implemented as per the recommendations of the Pedestrian Wind Environment Study prepared by Windtech.

Council's Senior Planner, Architect and the DRP share the view that the proposal does not demonstrate design excellence and requires further redesign.

An assessment of the application against the Apartment Design Guide (ADG) is contained within **Attachment 5** to this report. There are many areas of non-conformity with the design criteria of the ADG, summarised as follows:

1. **Public Domain Interface** - concerns relate to safety and security; compromised street activation; poor relationship with the public domain; and poor accessibility;
2. **Pedestrian access and entries** - fundamental issues of access and entry have not been resolved; the residential lobbies have been split into four split cores for the two towers, resulting in small retail tenancies which might be unviable; multiple residential lobbies are not visible from the street - hidden behind planting, retaining walls and wind baffles, making them hard to identify;
3. **Solar and daylight access** - minimal protection has been provided for the large amounts of western facing glazing. The proposed single Low-E glazing does not meet environmental requirements. Heat gain through the warmer months is likely to be untenable and compromise thermal comfort and energy usage. Solar access compliance is also questionable;
4. **Apartment size and layout** - many of the apartments are highly constrained by the relationship of internal spaces to the undulating façade of the building; many units do not achieve the minimum room areas required by 4D-3 and are poorly laid out and are difficult to furnish; have difficulties in accessing balconies and exceed depth requirements. As noted above, the layout of the adaptable and universal apartments is poor and do not appear to be capable of being readily adaptable.
5. **Private Open Space and Balconies** - many units feature oddly shaped balconies, greatly constraining their use and compliance with ADG private open space requirements; many balconies do not meet minimum requirements and feature poor layout and relationship with internal spaces;
6. **Apartment Mix** - there are only 5 larger (3 bedroom) apartments proposed which represents less than 2% of the overall number of units. Further, there is little flexibility in the design, with no dual

key arrangements proposed. Additionally, the 28 apartments identified as being 'adaptable' are all 1 bedroom apartments only and as such the potential for the development to cater for a range of different household typologies is limited;

7. **Facades**- the form and finish of the development is considered to be unacceptable for several reasons;
8. **Roof Design** - the roof plan for the eastern tower is lacking in detail with regard to how services and the lift overruns are to be accommodated. No roof plan has been provided for the western tower;
9. **Landscape design** - the feasibility of the proposed retention of the nine existing trees has not been confirmed by an arborist; this brings into doubt the likelihood of such tree retention given the proposed construction works occurring within such close proximity of the trees. Further, the landscape plan does not illustrate in full the extent of wind mitigation measures required; these may impact on existing trees and future planting. There are also queries around the feasibility of proposed planting on structure;
10. **Universal design** – the adaptable units are 1 bedroom units only so there is not a variety of adaptable apartments provided; there are significant shortcomings in the layout of the adaptable and liveable apartments – the liveable apartments do not meet the silver standard as hallways and doorways appear to be too narrow, space required for accessing bedroom doorways conflicts with required bed placement, and plumbing is not adequately located for adaptation;
11. **Mixed Use** – concerns are raised regarding access arrangements;
12. **Energy Efficiency** - passive environmental design has been given insufficient consideration in the design of the development; minimal sustainability measures are proposed;
13. **Water management and conservation** - no provision made for rainwater harvesting or reuse;
14. **Waste Management** - waste storage room servicing the western tower (housing 138 apartments) is sited on B1 which is not directly accessible from the loading dock; unclear how this space will be serviced. No details regarding ventilation of waste rooms.
15. **Communal and Public Open Space** - spatially the communal open space struggles to cater for the large number of residents to occupy the building; it does not define space well and struggles to provide a suitable variety of spaces usable by individuals and groups. There are several shortcomings in the landscape design for the space which are outlined in the relevant section in **Attachment 4**.

2.1.4 STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

Clause 45, Division 5 Electricity transmission or distribution

The development application was referred to Endeavour Energy for comment in accordance with Clause 45 as it may involve works within proximity of electricity infrastructure. The response provided by Endeavour Energy is outlined above in Section 1.5.3.

If the application were to be supported, standard conditions of consent could be imposed in regards to matters including the requirement to obtain approval from the relevant authorities for the connection of electricity and confirmation of the suitability of the substation design. Conditions have been proposed in line with the "Cumberland Protocol".

Division 17 Roads and Traffic

Clause 104

The proposed development is 'traffic generating development' for the purposes of the SEPP. As per Clause 104(3), Council advised Transport for NSW (TfNSW) [being the former the NSW Roads &

Maritime Service (RMS)] of the application and received a response advising that it had no objection to the development in principle.

Additionally, Council must take into account the accessibility of the site concerned, including (a) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and (b) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail. Council must also consider any potential traffic safety, road congestion or parking implications of the development. These matters have been considered in detail by Council's Traffic Section and some concerns have been raised in relation to the adequacy of the loading dock to accommodate the required headroom of the design vehicle (being a large rigid vehicle) and the apparent difficulties in managing waste from the western tower which accommodates 138 residential apartments.

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

SEPP BASIX applies to the development.

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. It is noted that an inaccurate NatHERS certificate has been provided with the application; the calculations of the NatHERS certificate may have affected the reported energy efficiency performance of the building with regard to the BASIX targets.

2.1.6 STATE ENVIRONMENTAL PLANNING POLICY (KOALA HABITAT PROTECTION) 2020

This SEPP does not apply to the site as it does not have an area of more than 1 hectare, as per Clause 7.

2.1.7 STATE ENVIRONMENTAL PLANNING POLICY (STATE AND REGIONAL DEVELOPMENT) 2011

The development has a capital investment value of more than \$30 million and accordingly the application is required to be determined by the Southern Regional Planning Panel pursuant to Clause 2 of Schedule 7 of the SEPP.

2.1.8 2.1.6 STATE ENVIRONMENTAL PLANNING POLICY (EDUCATIONAL ESTABLISHMENTS AND CHILD CARE FACILITIES) 2017

Part 3 Early education and care facilities—specific development controls

22 Centre-based childcare facility—concurrence of Regulatory Authority required for certain development

(1) This clause applies to development for the purpose of a centre-based child care facility if:

- (a) the floor area of the building or place does not comply with regulation 107 (indoor unencumbered space requirements) of the Education and Care Services National Regulations, or
- (b) the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.

Indoor Area- Regulation 107

The development complies with Regulation 107 – indoor unencumbered space requirements.

The development will accommodate 100 children and the required indoor space is 3.25sqm per child. The proposed child care centre must provide for a minimum indoor space of 325sqm; the plans indicate the provision of 371sqm however the areas cited are inaccurate. Calculations indicate that the proposed area is 329sqm, which appears to be compliant overall. The indoor space areas cited on the plans are inaccurate. The measured areas for the 0-2 year old and 3-5 year old cohorts are less than that specified in Regulation 107. The indoor space requirements of

the Regulations are non-discretionary development standards for the purposes of section 4.15(2) and (3) of the Act, as per Clause 25(2) of the SEPP.

Outdoor Area- Regulation 108

The development complies with Regulation 108 – outdoor space requirements

Outdoor area is calculated at rate of 1 space per 7sqm per child. This amounts to 700sqm required. The plans indicate the provision of 765sqm however the areas cited are inaccurate. Calculations indicate that the proposed overall area is 713sqm, which is compliant overall. The measured area for the 0-2 year age group is less than that specified in Regulation 108. The outdoor space requirements of the Regulations are non-discretionary development standards for the purposes of section 4.15(2) and (3) of the Act, as per Clause 25(2) of the SEPP.

23 Centre-based childcare facility—matters for consideration by consent authorities

The applicable provisions of the Child Care Planning Guidelines have been considered as outlined in **Attachment 6**.

25 Centre-based childcare facility—non-discretionary development standards

(2) The following are non-discretionary development standards for the purposes of section 54.15 (2) and (3) of the Act in relation to the carrying out of development for the purposes of a centre-based child care facility:

(a) location—the development may be located at any distance from an existing or proposed early education and care facility,

Note; there are nearby child care facilities including on the land to the immediate north of the site (38 Kenny Street).

(b) indoor or outdoor space

Refer to discussion above.

(c) site area and site dimensions—the development may be located on a site of any size and have any length of street frontage or any allotment depth,

Noted.

(d) colour of building materials or shade structures—the development may be of any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.

Noted. The site is not a State or local heritage item nor is it located within a heritage conservation area.

26 Centre-based childcare facility—development control plans

(1) A provision of a development control plan that specifies a requirement, standard or control in relation to any of the following matters (including by reference to ages, age ratios, groupings, numbers or the like, of children) does not apply to development for the purpose of a centre-based child care facility:

(a) operational or management plans or arrangements (including hours of operation),

(b) demonstrated need or demand for child care services,

(c) proximity of facility to other early childhood education and care facilities,

(d) any matter relating to development for the purpose of a centre-based child care facility contained in:

(i) the design principles set out in Part 2 of the Child Care Planning Guideline, or

(ii) the matters for consideration set out in Part 3 or the regulatory requirements set out in Part 4 of that Guideline (other than those concerning building height, side and rear setbacks or car parking rates).

(2) *This clause applies regardless of when the development control plan was made.*

An assessment of the proposal against the Child Care Planning Guideline forms **Attachment 6**. An assessment of the proposal under Chapter C5 Child Care Centres Wollongong DCP 2009 forms part of **Attachment 7** and excludes the provisions that do not apply under this clause.

Issues relating to childcare facility

1. *Building Code of Australia (BCA) / National Construction Code (NCC)*

Recent changes to the BCA mean that the deemed to satisfy (DTS) provisions relating to egress from a childcare facility do not apply if the facility is located above ground level. The applicant was asked to address this issue and provide a report identifying that the proposed development could achieve the performance requirements of the BCA. A fire engineering report prepared by Innova Services dated 23 October has been provided which concludes that a Performance Solution can be achieved to meet the requirements of the BCA. The report identifies the solution to comprise various measures, including the number of exits, the exit travel distances and the provision of a 'safe haven' within the childcare centre that opens onto the fire-isolated exit, the preparation of an emergency Evacuation Plan and other fire safety systems. The report notes that the proposed Performance Solution will be subject to a referral to Fire and Rescue NSW for their endorsement.

2. *Emergency and Evaluation Plan*

The DA was not accompanied by an emergency and evaluation plan as required by Clause 4.8 of the Child Care Planning Guideline, Regulations 97 and 168 of the Education and Care Services National Regulations. This is particularly crucial given the location of the child care facility on Level 2 of the mixed use building, noting in particular the above-described performance solution in respect of the deemed to satisfy provision departure in relation to BCA Clause 1.18.

2.1.9 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map (see **Attachment 3**) identifies the land as being zoned largely **B3 Commercial Core**. The southern portion of the site (which previously formed part of the Ellen Street road reserve which has been closed and consolidated to form part of the development site) is zoned **B6 Enterprise Corridor**.

Clause 2.3 – Zone objectives and land use table

The objectives of the B3 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 satisfactory with regard to each of the above objectives.

The land use table permits the following uses in the **B3** 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 is categorised as *shop top housing*, *centre-based child care facility* and *commercial premises* [as defined below]. Each of these uses are permissible in the zone with development consent.

The objectives of the B6 zone are as follows:-

- To promote businesses along main roads and to encourage a mix of compatible uses.
- To provide a range of employment uses (including business, office, retail and light industrial uses).
- To maintain the economic strength of centres by limiting retailing activity.
- To encourage activities which will contribute to the economic and employment growth of Wollongong.
- To allow some diversity of activities that will not:
 - (a) significantly detract from the operation of existing or proposed development, or
 - (b) significantly detract from the amenity of nearby residents, or
 - (c) have an adverse impact upon the efficient operation of the surrounding road system.

The proposal is generally satisfactory with regard to the above objectives.

The land use table permits the following uses in the **B6** zone:

Advertising structures; Bulky goods premises; Business premises; Car parks; Centre-based child care facilities; Community facilities; Depots; Entertainment facilities; Environmental facilities; Garden centres; Hardware and building supplies; Heavy industrial storage establishments; Hotel or motel accommodation; Industrial retail outlets; Landscaping material supplies; Light industries; Office premises; Passenger transport facilities; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (indoor); Recreational facilities (outdoor); Registered clubs; Respite day care centres; Roads; Service stations; Serviced apartments; Sex services premises; **Shop top housing**; Storage premises; Take away food and drink premises; Timber yards; Transport depots; Truck depots; Vehicle sales or hire premises; Veterinary hospitals; Warehouse or distribution centres

The proposal is categorised as a **shop top housing development** and is permissible in the B6 zone with development consent.

Clause 1.4 Definitions

The following definitions are relevant to the proposed development:-

business premises means a building or place at or on which:

- (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or
- (b) a service is provided directly to members of the public on a regular basis,

and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

centre-based child care facility means—

- (a) a building or place used for the education and care of children that provides any one or more of the following—

- (i) long day care,
 - (ii) occasional child care,
 - (iii) out-of-school-hours care (including vacation care),
 - (iv) preschool care, or
 - (b) an approved family day care venue (within the meaning of the *Children (Education and Care Services) National Law (NSW)*),
- but does not include—
- (c) a building or place used for home-based child care or school-based child care, or
 - (d) an office of a family day care service (within the meanings of the *Children (Education and Care Services) National Law (NSW)*), or
 - (e) a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or
 - (f) a child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium) to care for children while the children’s parents are using the facility, or
 - (g) a service that is concerned primarily with providing lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or providing private tutoring, or
 - (h) a child-minding service that is provided by or in a health services facility, but only if the service is established, registered or licensed as part of the institution operating in the facility.

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.

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

- (a) bulky goods premises,
 - (b) cellar door premises,
 - (c) food and drink premises,
 - (d) garden centres,
 - (e) hardware and building supplies,
 - (f) kiosks,
 - (g) landscaping material supplies,
 - (h) markets,
 - (i) plant nurseries,
 - (j) roadside stalls,
 - (k) rural supplies,
 - (l) shops,
 - (m) timber yards,
 - (n) vehicle sales or hire premises,
- but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

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

Clause 2.7 Demolition requires development consent

There are a number of buildings on the site to be demolished to facilitate the construction of the proposed development. Consent is sought for this work pursuant to Clause 2.7.

Part 4 Principal development standards

Clause 4.3 Height of buildings

This clause prescribes a maximum height of 60 metres for the B3 zoned portion of the Site and a 9m height limit for the B6 zoned portion of the site, as shown on the Height of Buildings Map, an extract of which is provided Attachment 3.

The plans indicate that the proposal has a maximum overall height of 60m which is compliant for that part of the building located within the B3 zoned portion of the site.

A development departure is sought in respect of the height of the building on the B6 zoned portion of the site. The height of the building 60m. The departure is dealt with below with respect to Clause 4.6.

Clause 4.4 Floor space ratio

Clause 4.4 provides for a maximum floor space ratio of 0.5:1 in respect of the B6 zoned portion of the site. The applicant has provided gross floor area (GFA) plans in relation to that part of the development which occupies the B6 zoned portion of the site (former road closure allotment). Based on those plans, the GFA is 582.7sqm (comprising 43.4sqm of commercial GFA (being part of the child care facility) and 539.3 sqm residential GFA). The area of the road closure allotment is 1125.9 sqm, resulting in a FSR of 0.52:1.

The applicant has sought a departure in relation to Clause 4.4 FSR. This is dealt with below in regard to Clause 4.6. Similar departures were considered with respect to DA-2016/1354.

Clause 4.4A applies to the B3 zoned portion of the site as it is located within the B3 Commercial Core Zone within the Wollongong City Centre. Clause 4.4A is considered below.

Clause 4.4A Floor space ratio – Wollongong city centre

Clause 4.4A of Wollongong LEP “Floor space ratio—Wollongong city centre” applies to land within the Wollongong city centre and provides formulae for determining the allowable maximum floor space ratio for sites depending on the site area, site frontage width, zoning and proportion of non-residential and residential gross floor area. This clause applies only to that part of the site zoned B3.

In the case of the Site and the proposal, based on the proportions of gross floor area dedicated to residential and non-residential uses in that part of the site zoned B3, the resulting maximum permissible floor space ratio is 3.695:1. The GFA and site area of that part of the site zoned B6 has been excluded from this calculation. The proposed FSR for the development occurring within the B3 zone is 4.36022:1. The applicant has sought an exception to this standard in accordance with Cause 4.6, which is dealt with below.

Clause 4.6 Exceptions to development standards

Clause 4.6 of the Wollongong LEP “Exceptions to development standards” 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.

The objectives of Clause 4.6 are to:-

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

This clause allows for some flexibility in the application of certain development standards in circumstances where the applicant has provided sufficient justification satisfying the provisions of Clause 4.6 and where the consent authority is satisfied of certain prescribed matters.

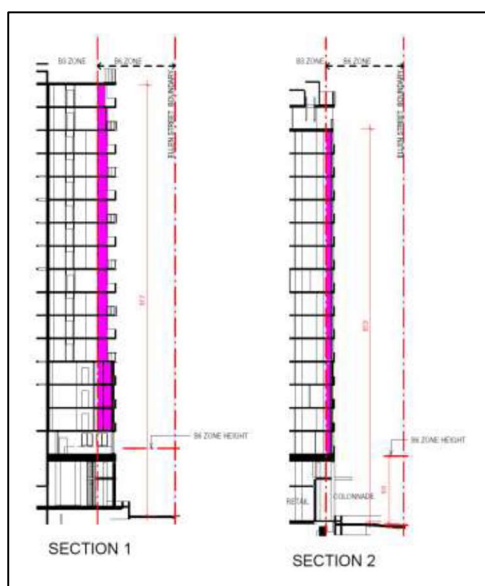
In this instance, departures are sought in respect of:-

1. Clause 4.3 Building Height in relation to that part of the site zoned B6 which is subject to a 9m height limit. The remainder of the site is subject to a 60m height limit and the development complies with this height limit;
2. Clause 4.4 floor space ratio in relation to that part of the site zoned B6 which is subject to a 0.5:1 FSR. The proposed FSR over this part of the site is 0.52:1;
3. Clause 4.4A floor space ratio in relation to that part of the site zoned B3 which is subject to a 3.695:1 FSR. The proposed FSR over this part of the site is 4.36022:1;
4. Clause 8.6 Building Separation.

The applicant has provided a statement prepared with reference to Clause 4.6 in relation to each of the above development departures. In relation to the departures to Clauses 4.3 and 4.4 with respect to the B6 zoned land, it is anticipated that now the road is closed and has become operational land, it will eventually be re-zoned to B3 and the same height and FSR controls applied to that which currently apply to the B3 zoned portion. In this scenario the development would be fully compliant with these clauses. If the FSR provided by Clause 4.4A applied across the whole site, the FSR would be compliant.

1. Building height:

In this instance, the applicant has sought a development departure in respect of Clause 4.3 Building Height of WLEP 2009 in relation to the height of the building located within the B6 zoned portion of the site which is subject to a height limit of 9m. The height of the building is a maximum of 60m. The extent of the variation sought is depicted in the below section:



The applicant has provided a request for an exception to the standard prepared in accordance with the requirements of Clause 4.6. This is attached in full at **Attachment 2** to this report.

The contravention of the development standard at Clause 4.3 is examined in terms of the prescribed matters at Clause 4.6 in the following table:-

Table 2: Clause 4.6, WLEP 2009 development departure assessment – Building Height

| | |
|-----------------------|---|
| Development departure | Clause 4.3 Building Height – maximum height limit 9m as per the Height of Buildings map |
|-----------------------|---|

| | |
|--|--|
| Is the planning control in question a development standard | Yes |
| 4.6 (3) Written request submitted by applicant contains a justification: | |
| (a) 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 relies on compliance with the height limit in this instance being both unreasonable and unnecessary in that compliance would bring about an inferior design response for the site; the variation to the height will not give rise to additional adverse impacts in the locality and the variation is for a very narrow portion of the building and the non-compliant element of the development would be indistinguishable to the passing eye in comparison to a fully compliant development.</p> <p>The applicant's submission also notes that during the preparation of the LEP, it was anticipated that the road reserve would be used for a future road. Hence, the lower order zoning, height and FSR control applied to it. Now that the proposal forms part of a contiguous site that has higher order zone, height and FSR controls, it is appropriate that these controls apply to the road reserve area. Insistence on a compliant building form within the B6 zoned portion of the site would result in an inferior built form outcome, reduced streetscape amenity and have a significant adverse impact on the streetscape, potentially establishing an undesirable precedent which would not be in the public interest.</p> <p>The applicant's exception request asserts that 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> |
| (b) 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: | |
| (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and | The applicant's request has adequately addressed the matters required to be addressed by subclause (3). |
| (ii) 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>The consent authority can be satisfied that the proposed development will be in the public interest because (a) it is consistent with the objectives of the particular standard and (b) the objectives for development within the zone in which the development is proposed to be carried out will be achieved.</p> <p>The development, despite the non-compliance with the height limit, will be consistent with the objectives of the building height standard. As mentioned above, the departure will not give rise to any adverse impacts on the amenity of nearby developments, the streetscape or public domain. Insistence on strict compliance</p> |

| | |
|---|---|
| | <p>with the standard would produce an inferior built form outcome which would compromise the amenity of the streetscape and set an undesirable tone for similar development along Ellen Street.</p> <p>There is not considered to be a public benefit served in this instance by insisting on strict compliance with the standard.</p> <p>The zoning of road reservation is reflective of the anticipated future use as a road; this will no longer occur as the road has been closed, acquired and consolidated into the broader holding. In the particular unique circumstances of this case, application of the development standard is unreasonable and unnecessary.</p> <p>The development will be consistent with the objectives of the B6 zone despite the non-compliance with Clause 4.3.</p> <p>In conclusion, it is considered that the consent authority can be satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, there are sufficient environmental planning grounds to justify contravention of the standard, the objectives of the standard and the B6 zone will be achieved despite the non-compliance and the public interest will be served despite the non-compliance with Clause 4.3.</p> |
| (b) the concurrence of the Secretary has been obtained. | Yes; the SRPP can exercise its assumed concurrence in this instance. |

2.and 3. *Floor Space Ratio (FSR)*

In this instance, the applicant has sought a development departure in respect of Clause 4.4 Floor Space Ratio (FSR) in relation to that part of the site zoned B6 which is subject to a maximum permissible FSR of 0.5:1. The applicant has advised that the GFA of the development occupying the road reserve allotment in isolation is 582.78 sqm which results in a FSR of 0.52:1 (GFA 582.7sqm: 1121sqm area)-

The applicant has also sought a development departure in respect of Clause 4.4A floor space ratio in relation to that part of the site zoned B3 which is subject to a 3.695:1 FSR. The proposed FSR over this part of the site is 4.36022:1;

The applicant has provided a request for an exception to the standards prepared in accordance with the requirements of Clause 4.6. This is attached in full at **Attachment 2** to this report.

The contravention of the development standard at Clause 4.4 and 4.4A is examined in terms of the prescribed matters at Clause 4.6 in the following table:-

Table 3: Clause 4.6 WLEP 2009 development departure assessment - FSR

| WLEP 2009 Clause 4.6 proposed development departure assessment | |
|---|---|
| Development departure | <p>Clause 4.4 Floor Space Ratio– maximum FSR 0.5:1</p> <p>Clause 4.4A Floor Space Ratio – maximum 3.695:1</p> |
| Is the planning control in question a development standard | Yes |
| 4.6 (3) Written request submitted by applicant contains a justification: | |

| | |
|--|--|
| <p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p> | <p>Yes. The applicant's request contains this justification.</p> <p>In summary the justification relies on compliance with the FSR limit in this instance being unnecessary as there are no unreasonable impacts arising from the non-compliance and the objectives of the standard are achieved despite the non-compliance. There will be no additional impacts arising in terms of privacy or overshadowing impacts, or loss of views when compared to a fully compliant FSR.</p> <p>The exception statement advises that the FSR over the whole site, if calculated using Clause 4.4A across the whole site, would be compliant.</p> <p>The breach of the 0.5:1 FSR in the B6 zone provides additional articulation and enhances the building expression of the development; on this basis the applicant contends that the non-compliance provides a superior design outcome to a scheme with a compliant FSR.</p> <p>Further, the applicant contends that compliance with the standard is unreasonable in this instance. The applicant's submission notes that during the preparation of the LEP, it was anticipated that the road reserve would be used for a future road. Hence, the lower order zoning, height and FSR control applied to it. Now that the proposal forms part of a contiguous site that has higher order zone, height and FSR controls, it is appropriate that these controls apply to the road reserve area. Insistence on a compliant building form within the B6 zoned portion of the site would result in an inferior built form outcome, reduced streetscape amenity and have a significant adverse impact on the streetscape, potentially establishing an undesirable precedent which would not be in the public interest.</p> |
| <p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p> | <p>Yes, the applicant's request contains this justification.</p> <p>In addition to the above assertions, the applicant notes that the proposed development is entirely compliant with the maximum FSR prescribed across the entire site pursuant to Clause 4.4A of WLEP 2009. The non-compliance with Clause 4.4 and 4.4A only applies when looking at the B3 and B6 zoned parts of the site in isolation and is solely a technical non-compliance. Given that the proposal complies with the prescribed FSR across the whole site, the development provides a density that is anticipated by the planning controls that apply to the site and the development is of a scale and density that is commensurate with the size of the whole site.</p> |
| <p>4.6 (4) (a) Consent authority is satisfied that:</p> | |
| <p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p> | <p>The applicant's request has adequately addressed the matters required to be addressed by subclause (3).</p> |

| | |
|---|--|
| <p>(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</p> | <p>The consent authority can be satisfied that the proposed development will be in the public interest because (a) it is consistent with the objectives of the particular standard and (b) the objectives for development within the zone in which the development is proposed to be carried out will be achieved.</p> <p>The development, despite the non-compliance with the FSR limit, will be consistent with the objectives of the FSR standard. The additional building bulk in the B6 zone (brought about by the increased GFA), which is relatively minor in the context of the broader site development, will not compromise the amenity of the streetscape or of nearby development, nor will it give rise to adverse impacts on the public domain or local road network.</p> <p>The public benefit would not be served in this instance by insisting on strict compliance with the B6 FSR standard as it would result in an unusual and inferior built form outcome.</p> <p>The zoning of the previous road reservation is reflective of the anticipated future use as a road; this will no longer occur as the road has been closed, acquired, and consolidated into the broader holding. In the particular unique circumstances of this case, application of the development standard is unreasonable and unnecessary.</p> <p>The development will be consistent with the objectives of the B6 zone despite the non-compliance with Clause 4.4. The development will be generally consistent with the objectives of the B3 zone despite the non-compliance with Clause 4.4A bearing in mind the above discussion with regard to the FSR over the broader site being compliant if Clause 4.4A applied to the whole site.</p> <p>In conclusion, it is considered that Council as the consent authority can be satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, there are sufficient environmental planning grounds to justify contravention of the standard, the objectives of the standard and the B3 and B6 zones will be achieved despite the non-compliance and the public interest will be served despite the non-compliance with Clause 4.4 and 4.4A.</p> |
| <p>(b) the concurrence of the Secretary has been obtained.</p> | <p>Yes; the SRPP can exercise its assumed concurrence in this instance.</p> |

4. *Clause 8.6 Building Separation*

In this instance, the applicant has sought a development departure in respect of Clause 8.6 Building Separation of WLEP 2009 discussed in detail below in relation to Clause 8.6.

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. If approved, conditions should be imposed upon the development consent requiring approval from the relevant authorities for the connection of electricity, water and sewerage to service the site.

A new substation is proposed adjacent to the Kenny Street frontage of the site to support the development. The proposal was satisfactory to Endeavour Energy.

Clause 7.3 Flood planning area

This clause seeks to maintain the existing flood regime and flow conveyance capacity; to enable evacuation from flood prone land; to avoid significant adverse impacts on flood behaviour; to avoid significant effects on the environment that would cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses; and to limit uses to those compatible with flow conveyance function and flood hazard.

The Site is flood affected and accordingly is subject to the objectives and provisions contained within this clause.

Clause 7.3(3) states that development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied in relation to all the following matters:

- (a) all habitable floor levels of the development will be above the flood planning level,

Comment: - all habitable floor levels of the development will be above the flood planning level

- (b) the development will not adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties,

Comment: Council's Stormwater Engineer has advised that the proposal will not adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties.

- (c) the development will not significantly alter flow distributions and velocities to the detriment of other properties or the environment of the floodplain,

Comment: Council's Stormwater Engineer has advised that Council can be satisfied that the development will not significantly alter flow distributions and velocities to the detriment of other properties or the environment of the floodplain.

- (d) the development will not affect evacuation from the land,

Comment: the applicant's detailed flood modelling demonstrates that the development will not affect evacuation from the land.

- (e) the development will not significantly detrimentally affect the floodplain environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses,

Comment: the consent authority can be satisfied of these matters.

- (f) the development will not result in unsustainable social and economic costs to the community as a consequence of flooding,

Comment: Council's Stormwater Engineer has advised that Council can be satisfied that the development will not result in unsustainable social and economic costs to the community as a consequence of flooding.

- (g) if located in a floodway area—the development will not be incompatible with the flow conveyance function of, or increase a flood hazard in, the floodway area.

Comment: Council's Stormwater Engineer has advised that the development as proposed is generally outside any floodway areas as identified in the Wollongong City Flood Risk Management Study and Plan dated 2013, therefore the development will not be incompatible with the flow conveyance function of, or increase a flood hazard in, the floodway area.

The proposal has been assessed by Council's Stormwater Section with regard to Clause 7.3 and the applicable provisions of WDCP 2009 and is unsatisfactory.

Clause 7.5 Acid Sulfate Soils

The proposal is not identified as being affected by acid sulphate soils.

Clause 7.6 Earthworks

The proposal involves excavation to facilitate the provision of the building's two levels of 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 or heritage items and features of surrounding land. Council's Geotechnical Engineer has considered the application and has provided a satisfactory referral subject to conditions.

Clause 7.13 Ground floor development on land within business zones

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 requires that development consent must not be granted for development for the purpose of a building on land to which this clause applies 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.

The proposal provides active uses at ground floor level to each of the three street frontages in accordance with this control.

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

As the site is positioned within the Wollongong city centre, it is subject to this clause, the objective of which is to deliver the highest standard of architectural and urban design.

Development consent must not be granted to development to which this clause applies unless, in the opinion of the consent authority, the proposed development exhibits design excellence. In considering whether development to which this clause applies exhibits design excellence, the consent authority must have regard to the following matters:-

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

The DRP and Council's Architect have expressed the view that this is not achieved.

The presentation of the building and the manner in which it fails to satisfy numerous provisions of relevant planning instruments indicates that the building is an inappropriate design response for the site. The excessive bulk of the towers and the shortcomings in internal apartment layouts and balconies, inclusive of undersized rooms and balconies, indicates that the development is an over-development of the Site and is not well designed with regard to resolving, amongst other things, resident and pedestrian amenity and streetscape interface.

The following specific concerns have been raised with regard to design and detailing:-

- The south facing landscaped area and undulating covered walkway, including entries and retail (both which require clear visual access), are plagued by many physical and

visual barriers which will compromise the design quality of the development, its functionality and amenity, the viability of the retail spaces and safety for users;

- The residential entries are not readily identifiable and in places are hidden from view of the street by planting, retaining walls and wind screens;
- The columns are poorly integrated at ground and first floor levels. The columns along walkways require rationalisation, reduction in number and relocation;
- The curved steps at the south-west corner of the site incorporate a planter with large tree which is awkward;
- The retail space between the western residential lobbies creates a very small retail tenancy and highly constrained access to the north eastern lobby;
- There is excessive unscreened glazing to the towers; the resultant performance glazing is liable to be very dark;
- the limited perspective views provided with the development application indicate that the building will be very dark at podium and upper levels which appears excessive;
- New vertical blades are only added to tower ends; it may be better to integrate more vertical elements to enhance language and better recognize the residential – rather than commercial - nature of the proposal;
- the glazed faceted balustrade at the top of the towers, which are very large, appears very weak; either the balustrade should be setback so as not to be visible or replaced with a solid spandrel to match lower levels;
- insufficient detail has been provided in relation to the roofs of the two towers; this is necessary to determine whether services and lift overruns are appropriately integrated into the form of the building.

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

The form and external appearance of the development will not improve the quality and amenity of the public domain firstly as a result of the dominance of the streetscape interfaces and loggia by structural columns, retaining walls, ramps, stairs and wind mitigation measures inclusive of baffles and dense planting.

This results in reduced potential activation of the street frontage, compromised amenity for users and a poor design outcome. The residential lobbies and most of the loggia will be hidden from view of the public domain and thus may be liable to safety concerns and increased opportunities for antisocial and criminal behaviour. Further, the viability of the retail spaces may be diminished.

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

No significant view corridors are impacted. The site is located outside of the nominated distant panoramic view corridor identified in Figure 3.12 (Clause 3.10) of Chapter D13 of WDCP 2009. The DRP has however commented that the large tower forms are excessively bulky and seen from a great distance.

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

The proposal will not overshadow an area identified on the Sun Place Protection Map.

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

(i) the suitability of the land for development,

The land is zoned for the type of development proposed. There are no site constraints that would prevent the proposal and flooding is managed.

(ii) existing and proposed uses and use mix,

The proposed mix of uses within the development is consistent with the B3 and B6 zone objectives.

(iii) heritage issues and streetscape constraints,

The development will not have an adverse impact on the heritage significance of any nearby heritage items. There are significant streetscape issues that need to be resolved, as identified by the DRP.

(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 location of the towers is not unreasonable however they are excessively bulky.

(v) bulk, massing and modulation of buildings,

The bulk and scale of the development is considered to be unacceptable. The towers exceed the maximum building depth controls which seeks to arrive at built form appropriate for a city centre location. In this regard the depth of the towers is excessive; the resulting form, bulk and massing is not consistent with that sought for the city centre.

The Design Review Panel advised that the development is unacceptable with regard to bulk, massing and modulation of buildings; see **Attachment 5**.

(vi) street frontage heights,

The street frontage height of the proposed building is considered to be appropriate.

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

Passive environmental design has been given insufficient consideration in the design of the development. Firstly, the NatHERs certificate is inaccurate and misleading, which brings into doubt the achievement of the energy efficiency targets indicated on the BASIX certificate.

Secondly, no bathrooms or laundries have external windows for natural ventilation, relying heavily on mechanical ventilation strategies.

Thirdly, solar impacts on large expanses of west-facing glazing remain unresolved, contributing to heat gain and affecting internal thermal comfort, thereby reducing energy efficiency.

On such a large proposal, the lack of incorporation of basic energy efficiency measures is a poor response and shows a lack of commitment to sustainable design.

The proposal will have overshadowing impacts in the locality. While there are generous allowable building heights and densities permitted within the city centre, the configuration and placement of the two towers will increase the overshadowing impact on land to the south, south-west and south-east of the site. The earlier approved development for the site (DA-2016/1354) provided for slimmer tower forms than that proposed in the current application. This provided for a more desirable outcome in terms of overshadowing impacts. The width of the western tower is approximately 48m measured west to east while the eastern most tower has a width of approximately 24m.

The approved towers had widths of approx. 32.75m and 24m respectively which reduced the overshadowing impact of the proposal somewhat.

A Pedestrian Wind Environment Study has been provided in support of the development which states that wind conditions for some of trafficable outdoor locations within and around the development will be suitable for their intended uses however other areas will experience strong winds which will exceed the relevant criteria for comfort and/or safety. A range of wind mitigation measures are proposed including a range of landscaping and varying height screens and wind baffles which will have an impact on the form and finish of the development. The required wind screens may have a detrimental effect on the root zones of existing trees; will impact on pedestrian movement and separation; will reduce natural surveillance in many spaces, potentially creating 'unsafe' areas; have the potential to create entrapment spots and blind corners within pedestrian activity zones and will reduce natural surveillance and create access control issues which may increase the potential for criminal and antisocial behaviour.

Material reflectivity can be addressed by consent conditions if the development is approved.

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

As above, the design could be more efficient and has not been well designed with regard to the objectives and principles of ESD.

The site is well placed with regard to access to key transport nodes, and is within ready walking distance of the CBD, employment opportunities and recreation facilities. The development will provide additional employment opportunities and services within the commercial core of the city centre which is a positive social outcome.

A water sensitive urban design scheme has been incorporated into the development.

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

The proposal provides the necessary car parking, motorcycle and bicycle parking and suitable manoeuvring areas however it is unclear whether the loading dock is capable of accommodating the required servicing vehicles (in terms of height clearance and manoeuvring).

Satisfactory waste servicing arrangements have been provided for the eastern tower but not for the western tower, housing 138 apartments. The waste storage room servicing the western tower (housing 138 apartments) is sited on B1 which is not directly accessible from the loading dock, nor does it have sufficient dimensions to accommodate a suitably sized waste collection vehicle. The path of travel from the waste storage room to the waste pick up point/loading dock is very convoluted, extremely undesirable and will give rise to significant amenity impacts internal to the building.

Pedestrian accessibility and amenity around the building is poor and ramps do not comply with accessibility standards.

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

Impacts on the public domain are discussed above with regard to 7.18(b). Street trees and footpath upgrades are to be provided to the street frontages of the site in compliance with the requirements of the Public Domain Technical Manual.

As discussed in Section 2.1.3 above, a review of the design of the proposed development has been undertaken by the Design Review Panel in accordance with the requirements of SEPP 65 and Clause 7.18(5)(a). The proposed development as amended remains unsatisfactory to the DRP. The DRP meeting notes and recommendations form **Attachment 5**.

Part 8 Local provisions—Wollongong city centre

The B3 zoned portion of the site is located within the area defined as the Wollongong city centre by the LEP and accordingly the provisions within this part of the LEP are of relevance to that portion of the site.

Clause 8.4 Minimum building street frontage

This clause requires that consent must not be granted to the erection of a building that does not have at least one street frontage of 20 metres or more on land within Zone B3 Commercial Core. This site satisfies this standard, with a street frontage widths of greater than 20m on each street frontage.

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

The proposed development does not comply in full with Clause 8.6 and a variation statement has been provided by the applicant addressing Clause 4.6 of the LEP. The submission is attached in full at **Attachment 2**.

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

- (2) Buildings on land within Zone 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.
- (4) For the purposes of this clause, a separate tower or other raised part of the same building is taken to be a separate building.
- (5) In this clause:
street frontage height means the height of that part of a building that is built to the street alignment.

The applicant has indicated that the development departs from the development standard in the following way:-

“The proposed development provides compliant setbacks to the northern boundary for the street wall height (Ground and Level 1) and up to 45m in height (Levels 3 to 13). However, the development only provides a minimum separation of 12m (west tower) to the northern boundary on Levels 14 to 17.

Pursuant to Clause 8.6(2)(c), 28m building separation is required above 45m in height. As such, the separation to the northern boundary is non-compliant by 2m (where 14m to the boundary is required). This equates to a maximum numerical variation of 2m and a maximum percentage variation of 14.3%.”

Comment: Council has consistently held the view that building separation is measured from a proposed building to *an existing building at the equivalent height of the proposed building*. In this case, the applicant has identified that the setback to the northern boundary from Levels 14-17 of the

western tower is less than that required, however, there is no building occurring at the same height as Levels 14-17 on neighbouring sites. While it is practical and proper planning to consider whether development will provide for a reasonable sharing of building separation distances across boundaries to ensure that re-development of neighbouring sites will not be compromised, the setback variation sought in this case (ie. 12m instead of 14m) is not a technical departure from Clause 8.6.

The departure that is however apparent is the variation in respect of the setback from the podium from the northern boundary / to the dwelling located to the north of the site within Lot 25 Sec 2 DP 979376 (No.41 Atchison Street, Wollongong). In this case, Clause 8.6(2)(a) requires no separation between neighbouring buildings up to the street frontage height of the relevant building.

The applicant's variation statement does not address this specifically, however the SEE acknowledges the non-compliance:-

"As set out above, a nil setback is proposed to the northern boundary for the street frontage height (ground level to Level 5). Whilst a nil setback is provided to the northern boundary, the proposed development does not technically provide no separation to neighbouring buildings to the north as No. 41 Atchison Street is setback some 7m from the shared boundary. Nonetheless, as concluded under the previous approval on the subject site [DA-2016/1354]:

"The proposed building will be built to the northern boundary which is consistent with other controls pertaining to the city centre which seek to achieve a continuous street edge. This dwelling is wholly located below the Street Frontage Height of the proposed development and as such it is expected that as further redevelopment occurs, that this building will be redeveloped in conjunction with other adjacent sites to the north.

There is no potential to provide for a zero building separation to this adjacent building due to its setback from the common boundary between the two sites. However with any future redevelopment of that site, it is anticipated that a future building can be designed to achieve a continuous street wall to the commercial component of the development as required by the LEP and Chapter D13 of WCP 2009."

Response:

In terms of the northern boundary, Clause 8.6(2)(a) requires 'no separation' between buildings. However, to the north of the site (No. 41 Atchison Street) is an older single storey dwelling positioned towards the street frontage and a commercial building to the rear (Mavrikis Chickens). The neighbouring dwelling is setback approximately 7m from its southern boundary (ie. the common boundary with the subject site). The proposed building will be built to the northern boundary which is consistent with other controls pertaining to the city centre which seek to achieve a continuous street edge. The location of the dwelling at 41 Atchison Street precludes the ability to achieve a zero separation distance. It is expected that, at some stage in the future, this site/ dwelling will be redeveloped in conjunction with other adjacent sites to the north. It is anticipated that a future building on 41 Atchison Street can be designed to achieve a continuous street wall to the commercial component of this proposed development as required by the LEP and Chapter D13 of WCP 2009.

It is noted that the earlier DA in respect of this site involved a similar variation which was supported.

The applicant has not provided a Clause 4.6 request for an exception to the standard in Clause 8.6(2)(a) despite this being required. As such, consent cannot be granted.

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

Nil of relevance to the proposal.

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. Compliance tables can be found at **Attachment 7** to this report. It is noted that the development departs from some of the design controls in the DCP, summarised as follows: -

1. The development fails to achieve compliance with numerous provisions within Chapter D13 Wollongong City Centre, specifically in relation to:-

- Clause 2.4 of Chapter D13 - in relation to building depth and bulk to that part of the tower above 12m high. The maximum building depth measured across the shortest axis of the tower is in the order of 23.95m (measured at the broadest element of the towers). Many of the units have depths exceeding the maximum depth guide in 4D-2 of the ADG and several open plan units feature habitable room depths more than 8m from a window. The environmental performance apartments is reduced as a consequence.

Further, the visual bulk of the towers is excessive.

- Clause 2.5 of Chapter D13 - in relation to side building setbacks to that part of the western tower above 45m in height where a 14m setback is required.
- Clause 2.6 of Chapter D13 (Mixed used buildings) – in relation to ceiling heights within the loading dock [2.6.3(d)]; due to the lack of clearly demarcated residential entries – as discussed elsewhere within these contentions, residential lobbies are screened from view by built elements and landscaping which will reduce visibility and reduce safety for users [2.6.3(d)]; and concerns regarding the safety and amenity of users within the walkway/ loggia, again which is screened from view from the public domain [2.6.3(g)];
- Clause 2.8 of Chapter D13 (Landscape design) - in relation to the feasibility of planned retention of existing trees given the proximity of construction works including the installation of wind mitigation measures;
- Clause 2.9 of Chapter D13 (Green roofs, green walls and planting on structures) with regard to soil depths on the podium level communal open space. While the plans suggest sufficient soil volumes can be achieved on the podium, as noted elsewhere in these contentions, the insufficient loading zone heights may have knock-on effects, resulting in the loss or reduction of soil depth from proposed planted areas on the podium;
- Clauses 3.1, 3.3 and 3.4 of Chapter D13 (Pedestrian Amenity) – in relation to the likely poor amenity of the walkway/ loggia and compromised accessibility. The configuration of the ground floor level is problematic in that street activation will be compromised by the elevated nature of the retail spaces, the configuration and width of the ramps and pedestrian colonnade, the wind amelioration measures required along the frontage of the building (at ground level) and the landscaping treatment of the frontages. Access is highly constrained and the frontage of the development to all street edges is dominated by stairs, pedestrian ramps, densely planted landscape beds and wind baffles. This will result in the pedestrian walkway/ loggia, residential lobbies and retail facades being physically and visually disconnected from the public domain which gives rise to concerns that the space may be unsafe. The viability of

the retail spaces may also be compromised. It is noted that the ramps do not comply with accessibility standards.

- Clause 3.4 of Chapter D13 (Safety and security) – as the frontage features a number of places of concealment and potential entrapment places which increases safety and security concerns. Further, multiple residential lobbies are hidden behind planting, retaining walls and wind screens making them hard to identify.
- Clause 3.8 of Chapter D13 (Building exteriors) – due to the issues identified by the DRP with regard to Principle 9 (Aesthetics) of SEPP 65 outlined above in Section 2.1.3 and also with regard to Clause 7.18 of Wollongong LEP 2009.
- Clause 4.2 (Pedestrian access and mobility) in that the main building entry points are not clearly visible from the street frontages. Multiple residential lobbies are hidden from view behind retaining walls, planting, columns and wind baffles, making them hard to identify from the street frontages. The ramps do not comply with accessibility standards.
- Clause 4.5 of Chapter D13 (Site facilities and services) - in relation to lack of appropriate access or collection arrangements for the western residential tower.
- Clause 4.5 of Chapter D13 (Site facilities and services) - in relation to concerns regarding insufficient vertical clearance within the loading dock to accommodate large rigid vehicles. Having regard to the nature of the uses within the proposal and the scale of the development, it is necessary to ensure that a larger vehicle can be accommodated for the movement of goods to and from the development and for waste collection.
- Clause 5.2 of Chapter D13 (Energy efficiency and conservation) – in relation to the lack of sustainability measures incorporated in the design and lack of shading/ glare control to the large expanses of west-facing glazing are shortcomings of the proposal. Further, the development does not appear to comply with the solar access requirements of the ADG. While the BASIX certificates provided demonstrate compliance with the energy efficiency and thermal comfort targets of the BASIX SEPP, the inaccurate and misleading NatHERS certificate may have affected the accuracy of the BASIX certificates.
- Clause 5.3 of Chapter D13 (Water conservation) – in that the development does not make provision for rainwater harvesting or reuse.
- Clause 5.6 of Chapter D13 (Waste and recycling) – due to concerns regarding waste collection from the western tower.
- Clause 6.2 of Chapter D13 (Housing choice and mix) due to the concerns outlined above in relation to Section 2.1.3 with regard to Principle 8 of SEPP 65 - Housing diversity and social interaction.

2. The development fails to comply with the provisions within Chapter C5 Child Care Centres in the following respects:-

- a. Clause 7.4.3 as the indoor play areas for the 0-2 year old and 3-5 year old cohorts are less than that specified (noting that the indoor space areas cited on the plans are inaccurate; this assessment is based on measurements).
- b. Clause 7.4.5 as the sleeping rooms do not have capacity for a sufficient number of cots to accommodate the proposed number of 0-2 year old children. The sleeping rooms illustrated on the plans do not comply with the requirements of Clause 7.4.5 which specifies separate cot room(s) with a maximum number of 6 cots per room.

- c. Clause 7.5 Outdoor Areas in that the outdoor space areas for the 0-2 year age group is less than that specified (note that the indoor space areas cited on the plans are inaccurate; this assessment is based on measurements).
 - d. Clause 7.5 as the landscape plan indicates the provision of sandpits only for the 0-2 and combined 3-6 year age groups. As per Clause 7.5.2(4)(n), where a service offers more than 49 places, the playground should be separated into three age groups – 0-2 years, 2-3 years and 3-5 years. The landscape plan provides separate play areas only for the 0-2 and combined 3-6 year age groups which is non-compliant with this clause, and Clause 7.5.3 requires that outdoor
 - e. Clause 7.5 as the plans provide insufficient impermeable roof structure to the outdoor areas to allow its use during inclement weather.
 - f. Clause 7.6 – Car Parking, Access and Pedestrian Safety – in that an inadequate number of pram parking spaces has been provided to service the child care centre;
 - g. Clause 7.13 – Visual and Acoustic Privacy – in that there has been no acoustic report provided to demonstrate that noise from the child care centre’s operations will not adversely impact on residents.
3. The development fails to comply with the provisions within of Chapter E3 Car Parking, Access, Servicing/Loading Facilities and Traffic Management with regard to servicing and waste collection.
 4. The development fails to comply with the provisions within Chapter E7: Waste Management in that the development does not propose suitable arrangements for on-site waste collection for the western residential tower which will accommodate 138 apartments. The arrangement proposed does not comply with Clause 5.4.2 (1) of Chapter E7 as the western waste storage room is not directly accessible from the loading dock. Instead there is a significantly convoluted path of travel from the western waste storage room to the waste pick up point/loading dock. The transfer of waste would require the use of the residential lifts, the fire isolated passage, and delivery and service access areas which would be relied upon for the retail premises. This is an extremely undesirable arrangement which would result in passageway conflict/congestion and significant amenity impacts internal to the building.

2.3.2 WOLLONGONG CITY-WIDE DEVELOPMENT CONTRIBUTIONS PLAN 2020

The estimated cost of works is \$70,407,662 and a development levy of 2% is applicable. This includes the standard 1% development contribution plus an additional 1% levy which applies to development in the B3 Commercial Core. This latter contribution provides funding towards the Special City projects nominated in the Civic Improvements Plan for the Wollongong City Centre.

2.4 SECTION 4.15(1)(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 93F, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 93F

There are no planning agreements entered into or any draft agreement offered to enter into under S93F which affect the development.

2.5 SECTION 4.15(1)(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

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

(1) For the purposes of section 4.15(1)(a)(iv) of the Act, the following matters are prescribed as matters to be taken into consideration by a consent authority in determining a development application:

(a) in the case of a development application for the carrying out of development:

(i) in a local government area referred to in the Table to this clause, and

(ii) on land to which the Government Coastal Policy applies,
the provisions of that Policy,

(b) in the case of a development application for the demolition of a building, the provisions of AS 2601.

As the proposal involves the demolition of existing buildings, AS2601 - 2001: *The Demolition of Structures* is a prescribed matter for consideration under Clause 92. Demolition practices and procedures will be required to be undertaken in accordance with AS2601 – 2001. If approved, conditions of consent should be imposed in this regard.

The site is located within the Coastal Zone however this policy only applies in the Illawarra to the offshore component of the coastal zone, extending three nautical miles seaward from the open coast high water mark.

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

Context and Setting:

Context and setting has been addressed in detail above in Section 2.1.3 in relation to the SEPP 65 design principles and also with reference to the design excellence matters prescribed by Clause 7.18 of Wollongong LEP 2009 (see Section 2.1.7).

Vehicular Access, Transport and Traffic:

The proposal is generally satisfactory with regard to carparking, vehicular access, manoeuvring and servicing however concerns are raised in relation to available headroom to the loading dock and waste servicing for the western tower. Further discussion is provided in Attachment 7 with regard to Chapter E3 of WDCP 2009.

Traffic generation from the development can be readily absorbed into the existing street network. Concerns are raised in relation to the design quality and safety of pedestrian areas within and adjacent to the site.

Public Domain:

Street tree planting will be required along with construction of footpath paving in accordance with the Wollongong City Centre Public Domain Technical Manual. Conditions of consent could be imposed in regards to these matters if the proposal is approved.

Utilities:

The proposal is not expected to place an unreasonable demand on utilities supply. Existing utilities are likely to be capable of augmentation to service the proposal. If approved, conditions could be imposed on the consent requiring the developer to make appropriate arrangements with the relevant servicing authorities prior to construction.

The plans make provision for a substation within the building in an appropriate location.

Heritage:

No nearby heritage items are expected to be affected by the proposed development.

Other land resources:

The proposal is not expected to impact upon any valuable land resources.

Water:

Supply & infrastructure - the site is presently serviced by Sydney Water's reticulated water and sewerage services. It is expected that these services can be extended/ augmented to meet the requirements of the proposed development.

Consumption - The BASIX certificates provided in relation to the residential units demonstrate compliance with the water efficiency targets contained within the BASIX SEPP. It is noted that the development does not make provision for rainwater harvesting or reuse which is a shortcoming.

Water quality – the application was accompanied by a Water Sensitive Urban Design Strategy which demonstrates that the compliance with the water quality objectives outlined in Chapter E15 of WDCP 2009 – Water Sensitive Urban Design can be achieved.

Groundwater management – if approved, conditions of consent should be imposed in regards to groundwater management.

Soils:

It is expected that, with the use of appropriate erosion and sedimentation controls during construction, soil impacts will not be unreasonably adverse. Conditions should be imposed in this regard if the proposal were approved.

Air and Microclimate:

The proposal is not expected to have any negative impact on air quality. The proposal will however create uncomfortable conditions for pedestrians in some locations around the site via wind effects.

A Pedestrian Wind Environment Study was provided with the DA as required by Chapter D13 of WDCP 2009. The results of the study indicate that some ameliorative treatments are required in certain locations to achieve the desired criteria for pedestrian comfort and safety. With the inclusion of these treatments in the final design, the Study indicates that wind conditions for trafficable areas around the proposed development are expected to be suitable for their intended uses. The employment of these measures however will significantly reduce the design quality of the development, will compromise sight lines and create concealment opportunities around the base of the building which is not a desired outcome.

Vegetation, Flora and Fauna:

Most existing trees will be retained within the site however an arborist should review the most recent plans inclusive of the Pedestrian Wind Environment Study recommendations to verify that the proposed tree retention is feasible with regard to the close proximity of construction works to the trees (inclusive of the installation of wind baffles and the like).

Council's Landscape Officer is satisfied with the submitted landscape plans.

Waste:

Refer to WDCP compliance table at **Attachment 7**.

Waste management during construction can be managed through proper arrangements. A condition should be imposed if consent is granted requiring the use of an appropriate receptacle for any waste generated during the construction and compliance with the Site Waste Management and Minimisation Plan provided with the DA.

On-going waste management arrangements for the eastern tower and retail components appear to be satisfactory and comply with the relevant provisions of Wollongong DCP 2009 as detailed within this report, however arrangements for the western tower are not detailed or clear and appear ill-conceived and problematic.

Energy:

The lack of sustainability measures incorporated in the design and lack of shading/ glare control to the large expanses of west-facing glazing are shortcomings of the proposal. Further, the development does not appear to comply with the solar access requirements of the ADG. While the BASIX certificates provided demonstrate compliance with the energy efficiency and thermal comfort targets of the BASIX SEPP, the inaccurate and misleading NatHERS certificate may have affected the accuracy of the BASIX certificates.

Noise and vibration:

Noise and vibration impacts during demolition, excavation and construction are unavoidable. If the development is approved, a suite of conditions should be imposed to minimise nuisance during demolition and construction.

The only source of nuisance noise within the locality is the South Coast Railway line which is situated approximately 220m to the west of the site. It is recommended that conditions be imposed in relation to glazing treatment and the like to ensure that an appropriate level of internal amenity will be available within the proposed units as required by SEPP (Infrastructure) 2007.

Council's Environmental Officer has recommended conditions in relation to noise emissions from the child care centre.

Natural hazards:

As discussed elsewhere within this report, the site is positioned within a medium flood risk precinct. Council's Stormwater Engineer has advised that the building has been appropriately designed with regard to flooding and stormwater management and also that there will be no adverse impacts on neighbouring properties or on land elsewhere within the locality.

As discussed above in Section 2.1.1 with regard to SEPP 55, the site is potentially contaminated as a result of existing and historical land uses.

Geotechnical matters have been considered as part of the assessment and if approved, a number of conditions should be imposed; this would include conditions in regard to groundwater management recommended.

Technological hazards:

There are no technological hazards affecting the site that would prevent the proposal.

Safety, Security and Crime Prevention:

Refer to WDCP compliance table at **Attachment 7**. The proposal is not well designed with regard to CPTED principles and as such may provide increased opportunities for criminal or antisocial behaviour in some areas.

Social Impact:

No adverse social impacts are expected to arise from approval of the proposed development.

Economic impact:

There are not expected to be unreasonably adverse economic impacts arising from approval of the proposed development. The uses proposed in the development are permitted with consent in the B3 and B6 zones and are considered to be consistent with the zone objectives.

Construction:

Noise and vibration impacts during demolition, excavation and construction are unavoidable and have the potential to impact on the amenity of the neighbourhood. If the development is approved, a suite of conditions should be imposed to minimise nuisance during demolition and construction including those which relate to hours of work, erosion and sedimentation controls, dust mitigation, works in the road reserve, excavation, protection of neighbouring buildings, dilapidation requirements, demolition, hazardous materials management, waste management, and use of any crane, hoist, plant or scaffolding.

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

Does the proposal fit in the locality?

The proposal is permissible with consent however there are concerns raised that the development is inconsistent with numerous provisions of the ADG and WDCP 2009. The Design Review Panel consider the bulk, form and finish of the proposed development to be unsuitable.

Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal. The development has been designed with due regard to known site constraints.

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

See Section 1.5 for discussion.

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

It is considered that approval of the proposed development will not serve the public interest due to the shortcomings in the design of the building and the numerous non-compliances with the ADG and DCP identified in this report.

3. CONCLUSION

The proposed development has been assessed with regard to the relevant prescribed matters for consideration outlined in Section 4.15 of the Environmental Planning & Assessment Act 1979. The proposed development is permissible with consent in the B3 Commercial Core and the B6 Enterprise Corridor zones. The development has been assessed with regard to all relevant SEPPs and supporting guidelines including the ADG and Child Care Planning Guidelines. The proposal features numerous departures from the controls and design objectives of the ADG and the controls in the Child Care Planning Guidelines. The proposal is poorly designed with regard to the design quality principles of SEPP 65 and features variations in respect of numerous LEP and DCP controls.

In relation to Wollongong LEP 2009, there are four (4) development departures sought as discussed. Satisfactory exception requests have been provided in support of the proposed departures to building height and floor space ratio for that part of the site zoned B6 as required by Clause 4.6 and it is considered that these are worthy of support in this instance due to the unique circumstances of the site arising from its split zoning. The variation in relation to Clause 4.4A Floor Space Ratio – Wollongong City Centre is similarly considered to be appropriately justified by the applicant as required by Clause 4.6 however the variation sought in relation to Clause 8.6 building separation has not been appropriately justified as required by Clause 4.6 of the LEP and this therefore cannot be supported. The proposal does not demonstrate design excellence as required by Clause 7.18.

In relation to site contamination and SEPP 55 matters, Council and the SRPP will need to be informed of the outcome of DSI investigations prior to granting consent.

The proposal is inconsistent with the relevant chapters of Wollongong DCP 2009 in many areas. Internal and external referrals were satisfactory however the DRP and Council's Architect concluded that the proposal is not supportable in its current form and requires further redesign. The concerns raised in submissions have been considered and there are unresolved matters arising which support the position that the proposed development is unsatisfactory in its current form and should not be supported.

The applicant has filed an appeal with the NSW Land & Environment Court in respect of the deemed refusal of the DA. It is appropriate that this application now be determined.

4. RECOMMENDATION

It is recommended that the Southern Regional Planning Panel determine DA-2020/677 pursuant to Section 4.16(1) of the Environmental Planning & Assessment Act 1979 by way of **refusal** for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the development is not acceptable when evaluated having regard to the design quality principles outlined in Schedule 1 of State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposal does not satisfy the relevant design criteria objectives of the Apartment Design Guide, particularly in regards to public domain interface; communal and public open space; pedestrian access and entries; solar and daylight access; ceiling heights; apartment size and layout; private open space and balconies; apartment mix; facades; roof design; landscape design; universal design; mixed use; energy efficiency; water management and conservation and waste management.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development is unsatisfactory with regard to the matters for consideration in Clause 104 of *State Environmental Planning Policy (Infrastructure) 2007*, specifically in that the accessibility of the site for service and delivery vehicles is unsatisfactory.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development is unsatisfactory with regard to *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* in that the achievement of the BASIX energy efficiency targets is questioned due to the inaccurate and misleading NatHERS certificate submitted with the application. As such, the consent authority cannot be satisfied that the energy efficiency and thermal comfort targets of the SEPP have been achieved.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development is unsatisfactory with regard to *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*. In accordance with the requirements of Clause 23 of the SEPP, the proposed centre-based child care facility does not comply in full with the provisions of the *Child Care Planning Guideline* including the indoor and outdoor space requirements specified in Regulations 107 and 108 of the Education and Care Services National Regulations. Further, the development application was not accompanied by an emergency and evaluation plan as required by Clause 4.8 of the *Child Care Planning Guideline*, Regulations 97 and 168 of the *Education and Care Services National Regulations*.
6. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development is unsatisfactory with regard to *State Environmental Planning Policy 55 Remediation of Land*, as the preliminary site investigation indicates that there is potential for contamination to exist. Council and the SRPP cannot be satisfied that the land can be made suitable for the proposed use.

7. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development does not satisfy the building separation requirements of Clause 8.6 of Wollongong Local Environmental Plan 2009. The applicant has not provided a written request adequately addressing the matters required to be demonstrated by Clause 4.6(3), and consent cannot be granted.
8. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, in the opinion of Council, the proposed development does not exhibit design excellence and therefore consent cannot be granted pursuant to Clause 7.18 of Wollongong Local Environmental Plan 2009.
9. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development does not comply with the provisions of Wollongong Development Control Plan 2009 in a number of areas:-

9.1 Chapter C5 Child Care Centres

- a. Clause 7.4.3 as the indoor play areas for the 0-2 year old and 3-5 year old cohorts are less than that specified (noting that the indoor space areas cited on the plans are inaccurate; this assessment is based on measurements).
- b. Clause 7.4.5 as the sleeping rooms do not have capacity for a sufficient number of cots to accommodate the proposed number of 0-2 year old children. The sleeping rooms illustrated on the plans do not comply with the requirements of Clause 7.4.5 which specifies separate cot room(s) with a maximum number of 6 cots per room.
- c. Clause 7.5 Outdoor Areas in that the outdoor space areas for the 0-2 year age group is less than that specified (note that the indoor space areas cited on the plans are inaccurate; this assessment is based on measurements).
- d. Clause 7.5 as the landscape plan indicates the provision of sandpits only for the 0-2 and combined 3-6 year age groups. As per Clause 7.5.2(4)(n), where a service offers more than 49 places, the playground should be separated into three age groups – 0-2 years, 2-3 years and 3-5 years. The landscape plan provides separate play areas only for the 0-2 and combined 3-6 year age groups which is non-compliant with this clause, and Clause 7.5.3 requires that outdoor
- e. Clause 7.5 as the plans provide insufficient impermeable roof structure to the outdoor areas to allow its use during inclement weather.
- f. Clause 7.6 – Car Parking, Access and Pedestrian Safety – in that an inadequate number of pram parking spaces has been provided to service the child care centre;
- g. Clause 7.13 – Visual and Acoustic Privacy – in that there has been no acoustic report provided to demonstrate that noise from the child care centre's operations will not adversely impact on residents.

9.2 Chapter D13 Wollongong City Centre

- a. Clause 2.4 of Chapter D13 - in relation to building depth and bulk to that part of the tower above 12m high. The maximum building depth measured across the shortest axis of the tower is in the order of 23.95m (measured at the broadest element of the towers). Many of the units have depths exceeding the maximum depth guide in 4D-2 of the ADG and several open plan units feature habitable room depths more than 8m from a window. The environmental performance apartments is reduced as a consequence. Further, the visual bulk of the towers is excessive.
- b. Clause 2.5 of Chapter D13 - in relation to side building setbacks to that part of the western tower above 45m in height where a 14m setback is required.

- c. Clause 2.6 of Chapter D13 (Mixed used buildings) – in relation to ceiling heights within the loading dock [2.6.3(d)]; due to the lack of clearly demarcated residential entries which are hidden from view by built elements and landscaping which will reduce visibility and reduce safety for users [2.6.3(d)]; and concerns regarding the safety and amenity of users within the walkway/ loggia, again which is screened from view from the public domain [2.6.3(g)];
- d. Clause 2.8 of Chapter D13 (Landscape design) - in relation to the feasibility of planned retention of existing trees given the proximity of construction works including the installation of wind mitigation measures;
- e. Clause 2.9 of Chapter D13 (Green roofs, green walls and planting on structures) with regard to soil depths on the podium level communal open space. While the plans suggest sufficient soil volumes can be achieved on the podium, the insufficient structural slab depth over the loading zone / loading zone heights may have knock-on effects, resulting in the loss or reduction of soil depth from proposed planted areas on the podium;
- f. Clauses 3.1, 3.3 and 3.4 of Chapter D13 (Pedestrian Amenity) – in relation to the likely poor amenity of the walkway/ loggia. The configuration of the ground floor level is problematic in that street activation will be compromised by the elevated nature of the retail spaces, the configuration and width of the ramps and pedestrian colonnade, the wind amelioration measures required along the frontage of the building (at ground level) and the landscaping treatment of the frontages. Access is highly constrained and non-compliant with access standards and the frontage of the development to all street edges is dominated by stairs, pedestrian ramps, densely planted landscape beds and wind baffles. This will result in the pedestrian walkway/ loggia, residential lobbies and retail facades being physically and visually disconnected from the public domain which gives rise to concerns that the space may be unsafe. The viability of the retail spaces may also be compromised.
- g. Clause 3.4 of Chapter D13 (Safety and security) – as the frontage features a number of places of concealment and potential entrapment places which increases safety and security concerns. Further, multiple residential lobbies are hidden behind planting, retaining walls and wind screens making them hard to identify.
- h. Clause 3.8 of Chapter D13 (Building exteriors) – for the following reasons:-
 - as the towers are excessively bulky;
 - the undulating covered walkway, including entries and retail, are plagued by many physical and visual barriers which will compromise the design quality of the development, its functionality and amenity, the viability of the retail spaces and safety for users;
 - the residential entries are not readily identifiable and in places are hidden from view of the street by planting, retaining walls and wind screens;
 - the columns are poorly integrated at ground and first floor levels. The columns along walkways require rationalisation, reduction in number and relocation;
 - the curved steps at the south-west corner of the site incorporate a planter with large tree which is awkward;
 - the retail space between the western residential lobbies creates a very small retail tenancy and highly constrained access to the north eastern lobby;
 - there is excessive unscreened glazing to the towers; the resultant performance glazing is liable to be very dark;

- new vertical blades are only added to tower ends; it may be better to integrate more vertical elements to enhance language and better recognize the residential – rather than commercial - nature of the proposal;
 - the limited perspective views provided with the development application indicate that the building will be very dark at podium and upper levels which appears excessive;
 - the glazed faceted balustrade at the top of the towers, which are very large, appears very weak; either the balustrade should be setback so as not to be visible or replaced with a solid spandrel to match lower levels;
 - insufficient detail has been provided in relation to the roofs of the two towers. The roof plan for the eastern tower indicates that the roof is used for services and appears to have the lift overrun missing which would suggest that the height of the building may not comply with the maximum building height pursuant to Clause 4.3 of Wollongong LEP 2009. No roof plan has been provided for the western tower.
- i. Clause 4.2 (Pedestrian access and mobility) in that the main building entry points are not clearly visible from the street frontages and ramps do not comply with access standards.
 - j. Clause 4.5 of Chapter D13 (Site facilities and services) - in relation to lack of appropriate access or waste collection arrangements for the western residential tower.
 - k. Clause 4.5 of Chapter D13 (Site facilities and services) - in relation to concerns regarding insufficient vertical clearance within the loading dock to accommodate large rigid vehicles. Having regard to the nature of the uses within the proposal and the scale of the development, it is necessary to ensure that a larger vehicle can be accommodated for the movement of goods to and from the development and for waste collection.
 - l. Clause 5.2 of Chapter D13 (Energy efficiency and conservation) – in that the development incorporates few passive environmental design features and solar access to the apartment appears to be non-compliant.
 - m. Clause 5.3 of Chapter D13 (Water conservation) – in that development has not made provision for rainwater harvesting or reuse.
 - n. Clause 5.6 of Chapter D13 (Waste and recycling) – in relation to the unsuitable arrangements made for waste servicing of the western tower and the lack of detail in relation to the method of ventilating the waste rooms.
 - o. Clause 6.2 of Chapter D13 (Housing choice and mix) – due to the small number of larger apartments, the lack of flexibility in the design of the apartments and shortcomings in the design of the adaptable apartments.
- 9.3 The development fails to comply with the provisions within Chapter E2: Crime Prevention Through Environmental Design in some areas.
 - 9.4 The development fails to comply with the provisions within Chapter E3 - Car Parking, Access, Servicing/Loading Facilities and Traffic Management with regard to servicing and waste collection.
 - 9.5 Chapter E3 Car Parking, Access, Servicing/Loading Facilities and Traffic Management with regard to servicing and waste collection.
 - 9.6 Chapter E7: Waste Management in that the development does not propose suitable arrangements for on-site waste collection for the western residential tower.
10. Pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, whilst the proposed development proposes the retention of numerous trees, the proposed development may have an adverse impact on those existing trees. An updated arborist report

has not been provided to verify that the proposed tree retention is feasible with regard to the current plans inclusive of the recommendations of the Pedestrian Wind Environment Study.

11. Pursuant to Section 4.15(1)(b) and (e) of the Environmental Planning & Assessment Act 1979), having regard to the above matters, particularly the concerns raised in relation to poor apartment amenity and layout, and excessive tower depth, the development represents an over-development of the site and approval of the application would not be in the public interest.
12. Pursuant to the provisions of Section 4.15 (1)(e) of the Environmental Planning and Assessment Act, 1979, it is considered in the circumstances of the case and the above reasons for refusal, approval of the development would not be in the public interest.

5. ATTACHMENTS

- 1 Plans
- 2 Applicant's Clause 4.6 exception statements
- 3 Aerial photograph and WLEP 2009 zoning map
- 4 Apartment Design Guide Assessment
- 5 Most recent design review
- 6 Child Care Planning Guidelines assessment
- 7 Wollongong DCP 2009 Assessment