

DETERMINATION AND STATEMENT OF REASONS

SOUTHERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	Monday, 4 April 2022
DATE OF PANEL DECISION	Monday, 4 April 2022
DATE OF PANEL MEETING	Tuesday, 16 March 2022
PANEL MEMBERS	Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, Michael Mantei, and David Brown
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 16 March 2022.

MATTER DETERMINED

PPSSTH-51 – Wollongong – DA-2020/677 at 30 Ellen Street, Wollongong Lot 1 DP 1256499 – Mixed Use Development (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered: the request by the Applicant for the Panel to delay its determination of the Application, the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Applicant's request for the Panel to delay its determination of the Application

At the Panel Briefing on 16 March 2022, the Applicant requested that the Panel defer its determination of the Application noting that the Applicant:

- had lodged deemed refusal proceedings in the Land & Environment Court and as part of the Section 34 mediation process was responding to many of the key issues raised in Council's assessment report and recommendations currently before the Panel;
- was of the view that should the Panel refuse the Application as recommended by Council it would prejudice its position in the Court proceedings; and
- considered it prudent that should the s34 process not result in an appropriate outcome only then should the Application be then determined by the Panel.

Panel's consideration of Applicant's request to defer its determination of the Application

The Panel decided not to defer determination given that:

- The Court proceedings are a separate process and have little bearing on the Panel's consideration of the development application currently before it for determination;
- Amended plans have not been submitted for the Panel's consideration under Clause 55 of the Environmental Planning and Assessment Regulation;
- Contrary to the views of the Applicant the Panel does not agree that its determination would prejudice the Applicant's proceedings in the L&E Court; and
- the Panel is of the view that the Applicant has had ample opportunity to respond to Council's concerns noting that the DA has been advertised on 4 separate occasions since it was originally lodged in 14/07/2020.

The decision to determine the application was unanimous.

Application to vary a development standard

Following consideration of written requests from the applicant, made under cl 4.6 (3) of the Wollongong Local Environmental Plan 2009 (LEP), the Panel has determined that:

- a) compliance with cl. 4.3 'Building Height' is unreasonable or unnecessary in the circumstances;
- b) compliance with cl. 4.4 'Floor Space Ratio' is reasonable and necessary in the circumstances;
- c) compliance with cl. 4.4A 'Floor Space Ratio' is reasonable and necessary in the circumstances; and
- d) compliance with cl. 8.6 'Building Separation' is reasonable and necessary in the circumstances.

In relation to b) - d) above, the Panel is not satisfied that:

- a) the applicant's written requests adequately address the matters required to be addressed under cl 4.6 (3) of the LEP;
- b) the development is not in the public interest because it is inconsistent with the objectives of cl. 4.4 'Floor Space Ratio', cl 4.4A 'Floor Space Ratio' and cl. 8.6 'Building Separation' of the LEP and consequently the objectives for development in the B3 Commercial Core zone; and
- c) subsequently the concurrence of the Secretary has not been provided.

The decision to withhold the concurrence of the Secretary was unanimous.

Development application

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

The decision to refuse the development application was unanimous.

REASONS FOR THE DECISION

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979 the proposed development:

1. is unacceptable 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. does not satisfy the relevant design criteria objectives of the Apartment Design Guide, particularly regarding 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. is unsatisfactory regarding 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. is unsatisfactory regarding *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 Panel cannot be satisfied that the energy efficiency and thermal comfort targets of the SEPP can be achieved;
5. is unsatisfactory regarding *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 childcare 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. is unsatisfactory regarding *State Environmental Planning Policy 55 Remediation of Land*, as the preliminary site investigation indicates that the likelihood of onsite contamination. However, sufficient information has not been provided to enable the Panel to be satisfied that the land can be made suitable for the proposed use;

7. 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);
8. in the opinion of the Panel the development proposal does not exhibit design excellence and therefore consent cannot be granted pursuant to Clause 7.18 of Wollongong Local Environmental Plan 2009;
9. does not comply with the provisions of Wollongong Development Control Plan 2009 as follows:

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);
- b. Clause 7.4.5 as the sleeping rooms do not have capacity for enough 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 area for the 0–2-year age group is less than that specified (note that the indoor space areas cited on the plans are inaccurate);
- 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;
- 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 childcare centre; and
- g. Clause 7.13 – Visual and Acoustic Privacy – in that there has been no acoustic report provided to demonstrate that noise from the childcare 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 of the 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) – [2.6.3(d)] 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 and [2.6.3(g)] relating to concerns regarding the safety and amenity of users within the walkway/ loggia, again which is screened from view from the public domain;
- d. Clause 2.8 of Chapter D13 (Landscape design) - in relation to the feasibility of the 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 potential places of concealment and entrapment 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: -
 - the towers are excessively bulky;
 - the undulating covered walkway, including entries and retail, are characterised 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 the ground and first floor levels. The columns along the walkways require rationalisation, reduction in number and relocation;
 - the curved steps at the south-west corner of the site incorporate a planter with a 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 and the resultant performance glazing is liable to be very dark;
 - new vertical blades are only added to tower ends. It would 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 balustrades at the top of the towers, which are very large, appear very weak. Either the balustrades should be setback so as not to be visible or replaced with a solid spandrel to match lower levels; and
 - 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 the provision for rainwater harvesting or reuse is not proposed;
- 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; and

9.5 Chapter E7: Waste Management in that the development does not propose suitable arrangements for on-site waste collection for the western residential tower.

Pursuant to Section 4.15(1)(a)(i) and where relevant Section 4.15(1)(b) of the Environmental Planning & Assessment Act 1979 the proposed development:

- 10. is likely to have an adverse impact on existing trees notwithstanding their proposed retention. 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. is excessive in terms of depth and the bulk of the towers having regard to the non-compliances with Clause 2.4 of Chapter D13 of WDCP 2009 and the Apartment Design Guideline. Many units have an excessive depth, poor internal layout, and poor environmental performance, indicating that the proposed massing of the development is unsatisfactory. On this basis, the development variations sought in respect of floor space ratio (Clauses 4.4 and 4.4A of Wollongong LEP 2009) cannot be supported;
- 12. Given the development variations cannot be supported, the Panel is unable to grant consent pursuant to Clause 4.6(4)(a)(ii) of Wollongong Local Environmental Plan 2009 as the Panel cannot be satisfied that the proposed development would be in the public interest because it is inconsistent with the objectives of the standards and the objectives for development within the zone in which the development is proposed to be carried out; and
- 13. represents an over-development of the site having regard to the above matters, particularly the concerns raised in relation to poor apartment amenity and layout, and excessive tower depth, lack of demonstrated design excellence, and is therefore considered by the Panel not to be in the public interest.






CONDITIONS

Not applicable

CONSIDERATION OF COMMUNITY VIEWS

The Panel noted that the development proposal was advertised on 4 separate occasions and that submissions were made to the first 3 advertising periods. In coming to its decision, the Panel noted and

considered the content of those submissions and is satisfied that community views have been appropriately addressed.

PANEL MEMBERS	
 Chris Wilson (Acting Chair)	 Renata Brooks
 Tim Fletcher	 Michael Mantei
 David Brown	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-51 – Wollongong – DA-2020/677
2	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.
3	STREET ADDRESS	30 Ellen Street WOLLONGONG Lot 1 DP 1256499
4	APPLICANT/OWNER	Applicant – George O'Donovan; Owner – Southern Lighthouse Developments Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ 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; ○ Wollongong Local Environmental Plan 2009 ○ NSW Apartment Design Guide ○ Child Care Planning Guideline ○ Wollongong City Wide Development Contributions Plan 2019 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Wollongong Development Control Plan 2009 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Clause 92 matters for consideration being AS 2601-1991 in respect of any demolition works and the NSW Coastal Policy. • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council Assessment Report: 25 January 2022 • Cl 4.6 Variation Requests <ul style="list-style-type: none"> ○ cl. 4.3 'Building Height' ○ cl. 4.4 'Floor Space Ratio' ○ cl. 4.4A 'Floor Space Ratio' ○ cl. 8.6 'Building Separation' • Written submissions during public exhibition: 7
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: Wednesday, 14 October 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Gordon Kirkby (Chair), Renata Brooks, Tim Fletcher, David Brown and Michael Mantei ○ <u>Council assessment staff</u>: Theresa Whittaker, Mark Riordan John Wood and Linda Davis

		<ul style="list-style-type: none"> • Site inspection: Tuesday, 22 February 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher and Michael Mantei <ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Theresa Whittaker, Alexandra McRobert, Mark Adamson, Pier Panozzo • Final briefing to discuss council's recommendation: 16 March 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Chris Wilson (Chair), Renata Brooks, Tim Fletcher, David Brown, Michael Mantei ○ <u>Council assessment staff</u>: Theresa Whittaker, Pier Panozzo, Alexandra McRobert <ul style="list-style-type: none"> ○ <u>Applicant representatives</u>: Ben Salon, Eddy Haddad, George Donovan, Alan Cadogan, Jeff Mead, George O'Donovan
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Attached to the Council Assessment Report