

<b>DATE OF DETERMINATION</b>	12 December 2022
<b>DATE OF PANEL DECISION</b>	12 December 2022
<b>DATE OF PANEL MEETING</b>	23 November 2022
<b>PANEL MEMBERS</b>	Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, Michael Mantei, David Brown
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

Public meeting held at Wollongong City Council and by videoconference on 23 November 2022, opened at 12:15pm and closed at 2:45pm.

Papers circulated electronically on 11 November 2022.

#### **MATTER DETERMINED**

PPSSTH-99 – Wollongong – DA-2021/957 at 216-222, 226-238 Keira Street, WOLLONGONG, 86 Burelli Street, WOLLONGONG, Lot B Burelli Street, WOLLONGONG, Lot 1 and Lot 2 Burelli Street, WOLLONGONG, 221-261, 269-291 Crown Street, WOLLONGONG NSW 2500 – WIN Grand (as described in Schedule 1).

#### **PANEL CONSIDERATION AND DECISION**

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

The development involves the construction of a mixed-use development involving the whole block bound by Crown, Keira, Burelli, and Atchison Streets, Wollongong. The development involves the construction of three residential towers, one commercial building, retail shops, entertainment facilities including a cinema, and a wellness centre. The development also includes the heritage retention of both the Marcus Clark building's façade and clock tower and the Grand Hotel's façade.

It is understood that the development was presented to Wollongong Council's Design Review Panel (DRP) on 3 separate occasions. As a result, the development proposal has been amended to address a range of issues with a particular focus on:

- The redistribution of bulk and scale to improve internal and external amenity outcomes, and to improve the development's transition to McCabe Park; and
- Amendments to ensure improved integration and interaction with the public domain.

The Panel had the benefit of several detailed briefings including a public briefing on 23 November 2022 where concerned residents and the applicant had the opportunity to present to the Panel. The Panel also viewed the site with a key focus on the presentation of the development to adjoining residential and commercial development, and its implications for public open space.

During the public meeting, several key issues were raised by the community relating to view loss, particularly from the Avante Apartments, the impact on views from Flagstaff Hill to the ridgeline of Mt Kembla, and the commercial impacts of the development at street level.

The Applicant also raised concerns relating to several of the recommended draft conditions of consent. A key concern was Council's recommended condition on parking requirements.

Following the public briefing meeting, the Panel requested the Council provide additional information relating to view loss and stormwater detention. It also requested the Council comment on the Applicant's suggested changes to the draft recommended conditions including those relating to parking provision. In response, the Council provided an addendum assessment report which has been considered by the Panel.

#### **Application to vary a development standard**

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

- a) compliance with cl. 4.3 (height of building) is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard.

The Panel is satisfied that:

- a) the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 (height of building) of the LEP and the objectives for development in the B3 Commercial Core zone; and
- c) the concurrence of the Secretary has been assumed.

#### **Development application**

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

The decision was unanimous.

#### **REASONS FOR THE DECISION**

The Panel acknowledged the strategic and statutory planning framework applying to the site which enables a substantial redevelopment with a range of residential, commercial, retail, and ancillary uses.

In approving the application, the Panel determined to uphold the Clause 4.6 variation for height. The Panel was satisfied that the variation to height and other non-compliances were minor and enabled a development outcome that demonstrated both design excellence, and also an appropriate transition between the CBD and McCabe Park.

The Panel was of the view that the eventual design outcome would be superior to a fully compliant design, taking into consideration the applicable controls, the size of the site and its relationship with the CBD and adjoining public open space, and the minor nature and extent of the non-compliances.

The Panel also acknowledged the benefits of the proposal which include the renewal and revitalisation of an entire city block through a broad range of land uses, the delivery of much-needed housing, and upgrades to the public domain including a publicly accessible plaza with through-site links to all street frontages.

The Panel was disappointed that the Applicant had not taken the opportunity to provide some level of affordable housing noting the region's current and well-documented housing crisis. However, it is accepted that there is no current policy or statutory provisions requiring the delivery of affordable housing.

In relation to the loss of views from the Avante Apartment Building, the Panel acknowledged that there would be a significant impact on the views from certain apartments, particularly at the lower levels of the apartment building. However, the Panel considered these impacts acceptable having regard to:

- The view loss modelling undertaken by the Council;

- The Council's assessment of view loss impacts against the 'Tenacity Principles' established by the Land and Environment Court;
- The controls applicable to the site and the expectation of view loss associated with those controls; and
- The Panels view that on balance, the variations from the controls would not result in an increase of the overall view loss outcomes.

In relation to the impact of views from Wagstaff Hill to Mt Kembla, the Panel noted the tension between the LEP site controls which allow for building forms of up 120 metres, and the objectives of WDCP 2009 which aim to maximise continuous views of the escarpment ridgeline from Flagstaff Hill'. The Panel noted the LEP height control has primacy over the DCP control, and that the ridgeline as viewed from Flagstaff Hill has been breached by three recent approvals. It also accepted the Council's view that the positioning of the tallest tower in the southern portion of the site minimises, as far as practicable, the view impacts towards the summit.

In summary, the Panel was satisfied that:

- The Council has undertaken a thorough assessment of the proposal in accordance with Section 4.15 of the *Environmental Planning and Assessment Act, 1979*;
- The proposed development is generally consistent with the objectives of WLEP and applicable State Environmental Planning Policies;
- All statutory pre-conditions to the granting of consent have been satisfied. including the necessary approvals and concurrences required from state agencies;
- The proposed development would be beneficial resulting in a major revitalisation of a key precinct (Crown Street Precinct) within the Wollongong CBD which is close to local and regional transport links noting that it:
  - is of an appropriate scale and form for the site and is consistent with the desired future character of the locality;
  - would result in a good quality and well-integrated urban outcome with an appropriate transition of bulk and scale;
  - is architecturally sound involving a high level of articulation, reasonable levels of landscaping both internally, and around the perimeter, and accessible and functional community open space;
  - is generally consistent with the guidance provided within the Apartment Design Guideline (ADG);
  - Has the support of the Council's Design Review Panel; and
  - Demonstrates design excellence.
- The provision of car parking consistent with the Council's DCP is appropriate noting the applicant has not provided sufficient justification to counter the Council's consistent application of these provisions in the Wollongong CBD; and
- Subject to several minor amendments to the recommended draft conditions of consent, the Panel concludes the development will not result in any unacceptable adverse impacts upon the natural or built environments.

Accordingly, the Panel was satisfied that subject to the conditions of consent (as amended), the development represents the orderly development of land resulting in economic and social benefits to the broader community. The Panel is therefore satisfied that the development is in the public interest.

## CONDITIONS

The Development Application was approved subject to the amended conditions attached to Council's addendum assessment report received on 6 December 2022. The Panel directed that Council make several minor additional changes to those conditions prior to notification of the determination. These were as follows:

- **Condition 165(A) Hours of Operation**

Amend the condition to exclude The Grand Hotel from the restrictions on hours of operation future use of the Grand Hotel from as follows:

*The approved hours of operation for the non-residential uses as part of this consent is 6.00 am to 10.00 pm Monday to Saturday and 7.00 am to 10.00 pm on a Sunday or a public holiday, **excluding the use of the Grand Hotel which requires separate approval for its use and operation.** In addition, the cinema is permitted to operate up until 12 midnight 7 days a week. Any operation outside these hours will require separate development consent.*

- **Condition 23 (j) Design Amendments**

Amend to clarify intention of condition by including additional text at the end of the condition as follows:

*Alternative window design and/or treatments must be provided to the bedrooms for Unit Types 2B, 2C-1 and 2C-2 that do not include screens. The window design and treatment must limit direct lines of sight to neighbouring residential buildings given the reduced building separation **and must improve amenity and outlook to the room compared to use of screens.***

*Reason: To clarify the intent of the condition to improve amenity and outlook from these rooms.*

- **New Condition 79 (A)**

To enable consistency with GTAs issued by WaterNSW, include the following new condition;

*The development consent holder must apply to WaterNSW for the relevant approval after development consent has been issued by **Council** and before the commencement of any work or activity*

- **Condition 22A Public Art Plan**

To create certainty regarding the requirement of the condition, delete **"generally"**.

- **New Condition 164A Public Art Plan**

To ensure works required in the Public Art Plan are completed prior to the issue of an Occupation Certificate, include a new condition "164A Public Art Plan" which states:






*The applicant is to undertake and complete all works as detailed in the Public Art Plan prepared by Art Pharmacy.*

## **CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the Panel considered written submissions made during the public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Height, bulk and scale of buildings
- Impact on views from nearby residential towers
- Shortfall in car parking
- Traffic generation
- Consistency with the character of the area
- Wind impacts
- Overshadowing
- Acoustic impacts from late trading and live music components
- Aesthetics
- Impacts on the viability of existing retail in the city centre
- Lack of affordable housing
- Privacy Impacts
- Impacts on heritage items
- Accessibility

The Panel considers the concerns raised by the community to be adequately addressed in the Council’s Assessment and Addendum Assessment Reports and through the amended conditions as imposed.

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

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSTH-99 – Wollongong – DA-2021/957
2	PROPOSED DEVELOPMENT	Demolition of existing structures, retention of heritage facades, tree removal, excavation for basement car parking and construction of a mixed-use development at the street block bound by Crown, Keira, Burelli and Atchison Streets, comprising three (3) residential towers (shop top housing), one (1) commercial building, retail shops, entertainment facilities (cinema, exhibition/performance space) and a wellness centre (pool, gym, and health services)
3	STREET ADDRESS	216-222, 226-238 Keira Street, WOLLONGONG, 86 Burelli Street, WOLLONGONG, Lot B Burelli Street, WOLLONGONG, Lot 1 and Lot 2 Burelli Street, WOLLONGONG, 221-261, 269-291 Crown Street, WOLLONGONG NSW 2500
4	APPLICANT/OWNER	Applicant - Chris Halios-Lewis (Birketu Pty Ltd) Owner - Crown Street Wollongong Holdings Pty Ltd ATF Crown Street Holdings Unit Trust
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ Integrated development – Water Management Act 2000</li> <li>○ State Environmental Planning Policy (Industry and Employment) 2021</li> <li>○ State Environmental Planning Policy No 65-Design Quality of Residential Apartment Development</li> <li>○ State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>○ State Environmental Planning Policy (Planning Systems) 2021</li> <li>○ State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>○ Wollongong Local Environmental Plan (WLEP) 2009</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Wollongong Development Control Plan (WDCP) 2009</li> </ul> </li> <li>• Wollongong City-Wide Development Contributions Plan</li> <li>• Planning agreements: Nil</li> <li>• Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2000</i></li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Council Assessment Report: 11 November 2022</li> <li>• Clause 4.6 variation request (Height of Building)</li> <li>• Addendum Assessment Report: 6 December 2022</li> <li>• Written submissions during public exhibition: 67 Unique Submissions</li> </ul>

		<ul style="list-style-type: none"> <li>• First round of notification between 1 September and 1 October 2021 – 66 submissions (14 in support).</li> <li>• Second round of notification between 4 July to 5 August 2022 and received 17 Submissions (2 in support)</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ Speakers - Ingrid Wohl, Ronald Knowles, Stephen Roth, Peter Dix, Cath Blakey, Milton Obrien, Christina Garcia</li> <li>○ Council assessment officer – Rebecca Welsh</li> <li>○ On behalf of the applicant – Andrew Harvey (Urbis), Jane Maze-Riley (Urbis), Steven Turner (ColonySix), Andrew Lancaster (Birketu), Ninotschka Titchkosky, Omaira Kola.</li> <li>○ Total number of unique submissions received by way of objection: 67</li> </ul> </li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Briefing: 19 October 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Gordon Kirkby [Chair], Renata Brooks, Tim Fletcher, Michael Mantei, David Brown</li> <li>○ <u>Council assessment staff</u>: Pier Panozzo, Nigel Lamb, Rebecca Welsh, Alexandra McRobert, Andrew Heaven</li> <li>○ <u>DPE</u>: Sung Pak</li> </ul> </li> <li>• Site inspection: 22 February 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, Michael Mantei, David Brown</li> <li>○ <u>Council assessment staff</u>: Rebecca Welsh, Nigel Lamb, Mark Adamson, Pier Panozzo</li> <li>○ <u>DPE</u>: Amanda Moylan</li> </ul> </li> <li>• Briefing: 23 February 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, Michael Mantei, David Brown</li> <li>○ <u>Council assessment staff</u>: Rebecca Welsh, Nigel Lamb, Mark Adamson, Pier Panozzo</li> <li>○ <u>DPE</u>: Amanda Moylan</li> </ul> </li> <li>• Applicant Briefing: 10 May 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, Michael Mantei, David Brown</li> <li>○ <u>Council assessment staff</u>: Nigel Lamb, Pier Panozzo, Mark Adamson, Rebecca Welsh</li> <li>○ <u>Applicant representatives</u>: Chris Halios-Lewis (Applicant - Birketu) ColonySix - Steven Turner, Shaun Doyle, Omaira Kola BVN - Ninotschka Titchkosky, Phillip Rossington, Leny Lembo, Chris Bickerton, Ciaran Durney Roger Jasprizza (Oculus), Andrew Harvey (Urbis), Edward Green (Urbis).</li> <li>○ <u>DPE</u>: Amanda Moylan</li> </ul> </li> <li>• Briefing: 26 October 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, Michael Mantei, David Brown</li> <li>○ <u>Council assessment staff</u>: Rebecca Welsh, Nigel Lamb, Nadir Mian, Linda Davis, Pier Panozzo, Mark Adamson</li> <li>○ <u>DPE</u>: Amanda Moylan</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>• Final briefing to discuss council's recommendation: 23 November 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Chris Wilson (Acting Chair), Renata Brooks, Tim Fletcher, Michael Mantei, David Brown</li> <li>○ <u>Council assessment staff</u>: Rebecca Welsh, Nigel Lamb, Pier Panozzo, Mark Adamson</li> <li>○ <u>DPE</u>: Amanda Moylan</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Addendum Assessment Report