



Modification Report

Shop Top housing Development with Infill Affordable Housing
106 and 120-122 Smith Street and 3A Charlotte Street, Wollongong

SSD-67895459 - MOD 4

Submitted to Department of Planning, Housing and Infrastructure
on behalf of The Smith Street Development Partnership Pty Ltd

Prepared by Colliers Urban Planning

29 May 2026 | 2210899



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.



'Gadalung Djarri'

Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

Colliers Urban Planning acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We pay our respects to their Elders past and present.

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

This document has been approved by

SG

29 May 2026

Version No.	Date of issue	Prepared by	Approved by
A (DRAFT)	02/12/2025		SG
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Contents

1.0	Introduction	6
1.1	Overview of the Proposal	7
1.2	The Applicant	8
1.3	Overview of the approved development.....	8
1.4	Prior modifications to the consent.....	9
1.5	Background	10
2.0	Strategic context.....	12
2.1	Draft Flinders Street Urban Design Framework	12
3.0	Description of the Modifications.....	18
3.1	Modification Overview.....	18
3.2	Additional Levels and Building Height	18
3.3	Gross Floor Area.....	21
3.4	Total Unit Numbers and Mix.....	21
3.5	Affordable Housing Provision and Mix	22
3.6	Amendments to Car and Bicycle Parking	22
3.7	Level 8 and 9 Internal Amendments	24
3.8	Amendment to Waste Room Layout.....	24
3.9	Modification to conditions	26
3.10	Substantially the same development	30
3.11	Modification Category	32
4.0	Statutory context	33
4.1	Power to Grant Consent.....	33
4.2	Permissibility.....	33
4.3	Compliance with relevant Environmental Planning Instruments.....	33
4.4	Housing SEPP – Infill Affordable Housing.....	34
5.0	Community Engagement	35
6.0	Assessment of impacts	36
6.1	Building Height	36
6.2	Gross Floor Area and Floor Space Ratio	39
6.3	Affordable Housing	39
6.4	Residential Amenity	40

6.5	Solar Access and Overshadowing	41
6.6	Car Parking.....	43
6.7	Design Excellence.....	44
6.8	Waste Management.....	45
6.9	Visual Impacts.....	46
6.10	Wind Impacts.....	54
7.0	Justification of the modification project	55
8.0	Conclusion.....	56

Figures

Figure 1	Approved and Proposed view of the proposal from Smith Street.....	7
Figure 2	View from Smith Street of the approved development.....	8
Figure 3	Location of site within the Wollongong City Centre Map	10
Figure 4	Location of site relative to the Metro Wollongong Precinct Strategy	11
Figure 5	Flinders Street UDF Structure Plan (site shown bounded white).....	13
Figure 6	Indicative model of development enabled by the draft UDF.....	14
Figure 7	Flinders Street South sub-precinct – Proposed Building heights	15
Figure 8	Flinders Street South sub-precinct - Indicative built form.....	16
Figure 9	Existing (Mod 2) and Proposed northern elevation	19
Figure 10	Location of additional building height.....	20
Figure 11	Maximum Building Height (Charlotte Street).....	20
Figure 12	Existing and Proposed Ground Floor Parking Amendments	23
Figure 13	Existing and Proposed Ground Floor Waste areas	24
Figure 14	Existing and Proposed Ground Floor – Amendments to Bicycle Parking.....	25
Figure 15	Western Elevation – building height	36
Figure 16	Location of additional building height.....	36
Figure 17	Proposal – as viewed from Smith Street (N/E).....	36
Figure 18	Views from the sun – 9am-12pm-3pm	42
Figure 19	Proposed Flinders Street precinct layout.....	48
Figure 20	Draft UDF View Line with Future Massing of Development at Smith and Flinders Street	48
Figure 21	Location of the viewpoint located in the adjoining public space (referred to as Viewpoint C).....	49
Figure 22	Intersection of Princes Highway and Smith Street.....	50
Figure 23	Aerial photograph of the new public space at the north-east corner of the Princes Highway, Smith Street and Keira Street	50

Figure 24	Comparison of view corridors	51
Figure 25	The proposed as seen from Viewpoint C	52

Tables

Table 1	Applicant Details.....	8
Table 2	Approved and proposed GFA and FSR	21
Table 3	Total unit numbers and mix.....	21
Table 4	Affordable housing provision and mix	22
Table 5	Summary of compliance with relevant environmental planning instruments.....	33
Table 6	Statutory Compliance Table – Housing SEPP (Infill Affordable Housing)	34

Appendices

Appendix		Author
A	Architectural Plans	<i>Team2 Architects</i>
B	Architectural Design Statement	<i>Team2 Architects</i>
C	Apartment Compliance Table	<i>Team2 Architects</i>
D	BASIX Compliance Letter	<i>ELAB</i>
E	Visual Analysis	<i>Colliers Urban Planning</i>
F	Traffic Statement	<i>Colliers Engineering and Design</i>
G	Revised Operational Waste Management Plan	<i>Elephants Foot</i>
H	Waste Management Cover Letter	<i>Elephants Foot</i>
I	Wind Environment Addendum Letter	<i>Windtech</i>

1.0 Introduction

This Modification Report has been prepared by Colliers Urban Planning on behalf of The Smith Street Development Partnership (the Applicant) to accompany a Modification Application pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks to modify State Significant Development (SSD) Application (SSD-67895459) for Infill Affordable Housing at 106 & 120-122 Smith St And 3a Charlotte St, Wollongong

Section 4.55(2) states that a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the *Environmental Planning & Assessment Regulation 2021* (EP&A Regulations), modify the consent if it is satisfied that the proposed development to which the consent as modified relates is of minor environmental impact, and is substantially the same development as the development for which was originally granted.

This modification application proposes a minor increase in height on the northern portion of the site only (Building 2), increasing the approved 10 storey northern building by 3 storeys, accommodating adding an additional 26 dwellings above the current dwellings approved in Modification 2. The modifications are sought in response to release for public exhibition of the draft 'Flinders Street Precinct Urban Design Framework' (UDF) by Wollongong City Council which proposes significant development uplift through the precinct north of Wollongong CBD.

This report has been prepared in accordance with Part 5 of the EP&A Regulations and the Department of Planning and Environment's (now known as the Department of Planning, Housing and Infrastructure) State Significance Development Guidelines – Preparing a Modification Report. It identifies the consent to be modified, describes the proposed modifications and provides a planning assessment of the relevant matters for consideration.

1.1 Overview of the Proposal

The proposal seeks to modify the development to include 26 additional apartments over 3 floors to the northern building (Block 2) only, accommodated above (and as a simple extension of) the approved northern building. The proposed amendment would take the total number of apartments from 150 (as approved in Mod 2) to 176 in total, with the total height of the northern building being predominantly 40 metres (31.2m being the current height limit when factoring in applying the SEPP 30% height bonus).

The proposal to provide for much needed additional housing follows the release of Wollongong Council's *Draft Flinders Street Precinct Urban Design Framework* and *Wollongong City Centre Planning Review* which was endorsed by full Council on 27 October 2025 and which is currently on exhibition. This plan identifies opportunities for additional height and density within the Flinders Street precinct corridor beyond the existing planning controls, including an increase in the base height limit on the site to 40 metres (excl. application of the potential +30% infill affordable housing under the Housing SEPP, which would otherwise be 52m).

Council has identified this additional capacity on the basis of promoting additional housing and identifies the site as capable of accommodating the additional density given it is predominant located outside of a key view corridor from the intersection of Smith St and Flinders St towards Mt Keira, which have been carefully considered in the accompanying Visual Analysis (**Appendix E**).

The proposed amendments, in the context of the local strategic outlook, also aligns with the broader federal and state government priorities for housing delivery under the National Housing Accord. The proposal will assist towards the NSW governments' target of delivery of 377,000 new well located home across the state by 2029.

The proposed amendments are suitable for the following key reasons:

- The proposal remains compliant with the maximum FSR control for the land, remaining well below the maximum permissible FSR.
- The additional building height has been limited to the northern portion of the site only and will result in no additional overshadowing to properties on the southern side of Smith Street (see **Figure 1**). The additional floors will be scarcely visible from Smith Street and have been designed with consideration of the existing and future context of the precinct.
- The resulting height of the proposal, with the north-western portion being 13 storeys and remainder at 10 storeys, is appropriate in both the existing and future context of the precinct, including consideration of the development approved/under construction to the south and the proposed HDA immediately to the west of the site (to a height of approximately 30 storeys).
- As demonstrated in analysis undertaken by the project architects (**Appendix C**) the proposal will continue to exceed ADG solar access compliance (84%) despite the additional height proposed.
- The proposal remains substantially the same as the development approved maintain consistency with the objective of the height control, as address within this report.

The proposal represents an excellent opportunity for much needed additional housing, on a well-located, accessible site close to public transport, with minimal environmental impact (and no adverse impacts to existing land-owners). The proposal aligns with the clear strategic intent for the precinct, as part of the continued growth within Wollongong.



Figure 1 Approved and Proposed view of the proposal from Smith Street

Source: Cox/Team2

1.2 The Applicant

The Applicant’s details are presented in Table 1 below.

Table 1 *Applicant Details*

Applicant:	The Smith Street Development Partnership
Address:	Suite 110, Level 1, 180-186 Burwood Road, Burwood NSW 2134
ABN:	88 792 718 697

1.3 Overview of the approved development

Development consent SSD-67895459 was granted by the Minister of Planning and Public Spaces on 4 April 2025 for a shop top housing development with infill affordable housing at 106 & 120-122 Smith St And 3a Charlotte St, Wollongong. Specifically, the approved development consists of the following:

Construction of a shop top housing development with infill affordable housing comprising:

- *two 7 to 10-storey residential buildings with ground level retail/commercial uses;*
- *145 apartments (including 25 affordable housing apartments);*
- *communal open space at podium and roof top level;*
- *two levels of above ground car parking with 183 car spaces;*
- *vehicular access from Smith Street and Charlotte Street with associated road upgrade works; and*
- *publicly accessible through-site link and landscaping works.*

A montage of the approved development is provided below in **Figure 2**.



Figure 2 *View from Smith Street of the approved development*

Source: Cox

1.4 Prior modifications to the consent

1.4.1 Modification No 1 (SSDA-67895459-Mod-2)

SSD-67895459 has been subject to one modification (SSDA-67895459-Mod-1) for the minor modification relating to loading dock modifications and other minor internal and external modifications. This modification was approved on 31 July 2025.

1.4.2 Modification No 2 (SSDA-67895459-Mod-2)

A second Modification submitted in September 2025 (SSDA-67895459-Mod-2) was determined on 12 December 2025. The modification was for the inclusions of an additional floor where existing communal open space is located on Level 7 resulting in an additional five (5) units ('Level 7 modifications') and relocation of communal open space to Level 8 ('Level 8 modifications').

The modification approved an additional 5 units added on level 7 towards north-east tower of Building 2 taking the total development to 150 units (from 145 approved).

1.4.3 Modification No 3 (SSDA-67895459-Mod-3)

Development application SSD-67895459-Mod-3 is currently under assessment by the Department. This modification involves 'minor internal and external alterations and additions, including amendments to facade materiality'. This modification was approved in late 2025.

1.4.4 Modification No 4 (SSDA-67895459-Mod-4)

This application represents the fourth modification to SSD-67895459.

1.5 Background

1.5.1 Site Overview

The site is situated at 106 & 120-122 Smith St And 3a Charlotte St, Wollongong, within the Wollongong City Council Local Government Area (LGA). It is near existing services, being approximately 500m north-west of Wollongong Central Shopping Centre and approximately 800m north of the Wollongong Railway Station. The site also has ample access to public open space being approximately 200m southeast of Beaton Park and approximately 1.1km from the beachfront.

The site forms part of the Wollongong City Centre Precinct, as identified in the Wollongong Local Environmental Plan 2009 (WLEP). The objectives for development in the Wollongong City Centre Precinct are as follows:

- Promote economic revitalisation, strengthen the regional position of the Wollongong city centre as a multifunctional and innovative centre that encourages employment and economic growth.
- Protect and enhance the vitality, identity and diversity of the Wollongong City Centre.
- To promote employment, residential, recreational and tourism opportunities within the Wollongong City Centre.
- Promote housing choice and housing affordability while facilitating the development of building design excellence appropriate to a regional city.

The site is located in the Metro Wollongong Precinct and is subject to the *Metro Wollongong Precinct Strategy*, a strategy that sets out in the Illawarra Shoalhaven Regional Plan 2041 which is envisioned to play a key role as a connected and innovative powerhouse of the Illawarra Shoalhaven region.

The site's location context within the Wollongong City Centre Precinct and its context to the Metro Wollongong Precinct Strategy is illustrated in **Figure 3** and **Figure 4** respectively.

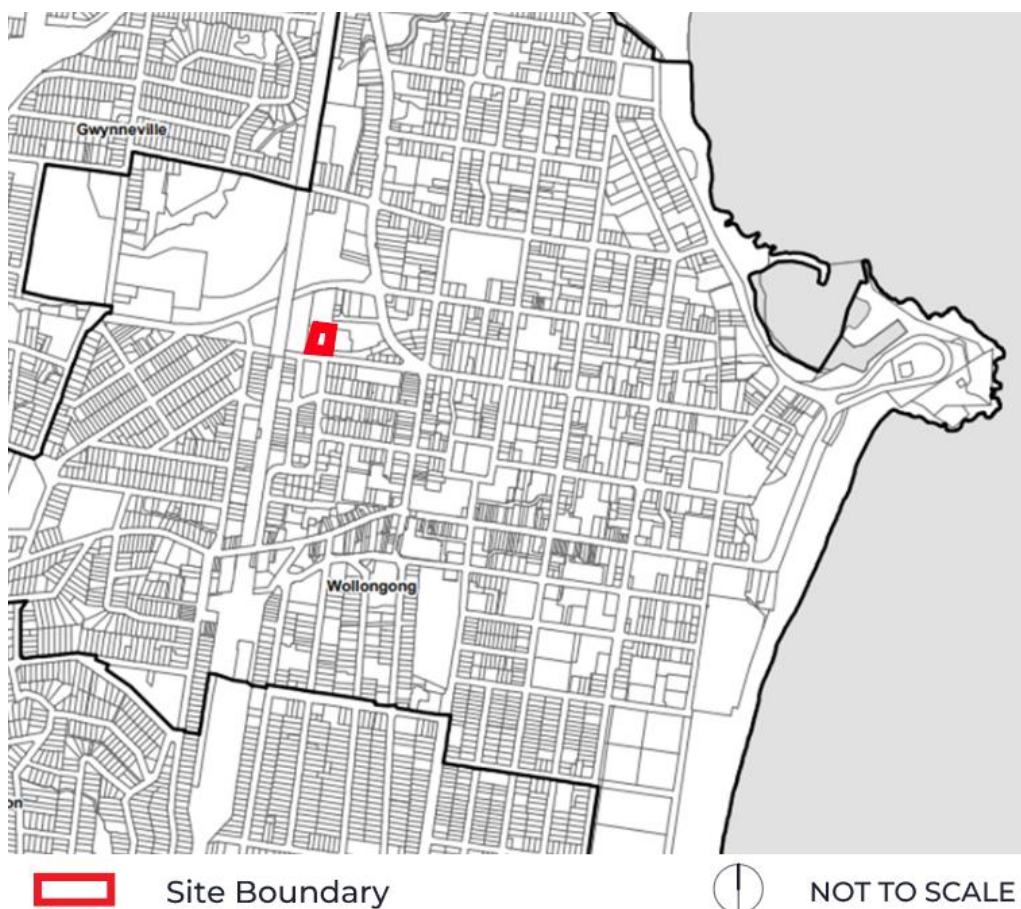


Figure 3 Location of site within the Wollongong City Centre Map

Source: WLEP 2009

Wollongong City Centre
Map - Sheet CCN_025

Wollongong City Centre

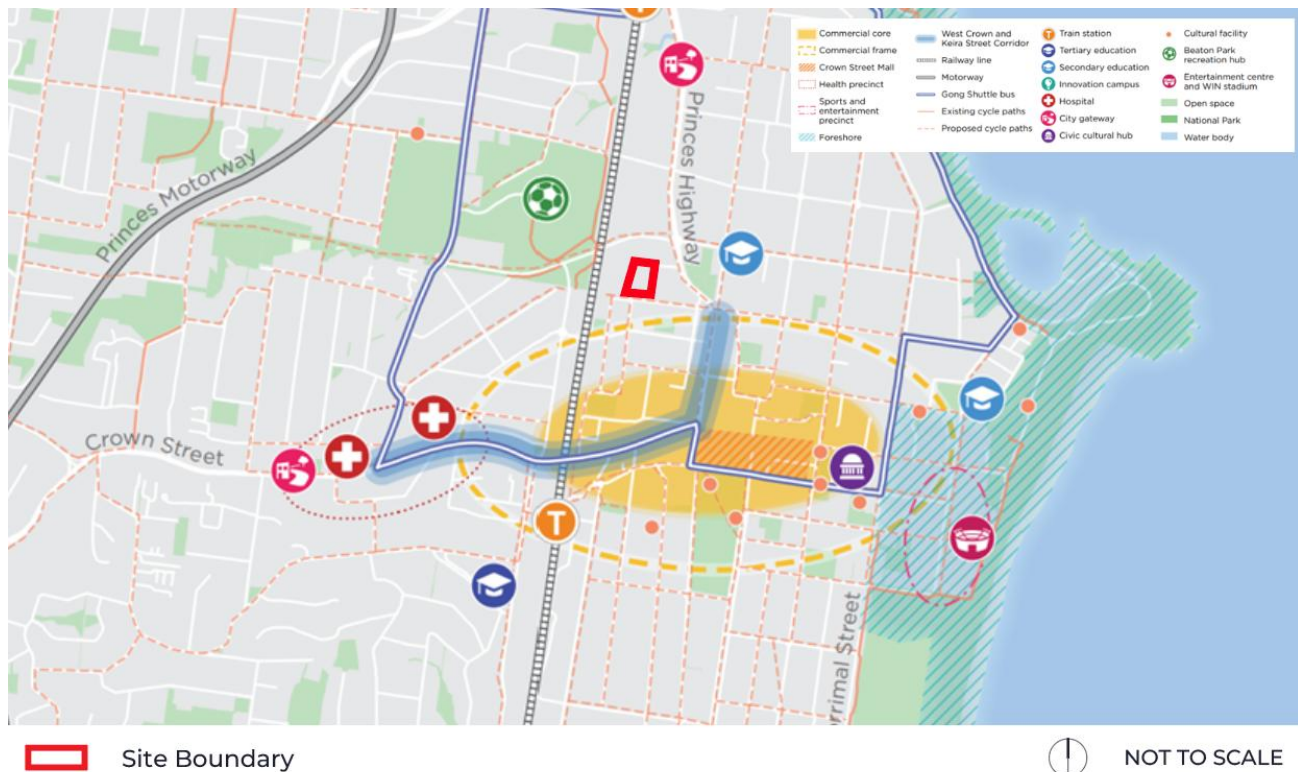


Figure 4 Location of site relative to the Metro Wollongong Precinct Strategy

Source: Illawarra Shoalhaven Regional Plan 2041

1.5.2 Analysis of Alternatives

During detailed design development, two alternatives were considered:

1.5.2.1 Option 1 – Do nothing

Under the ‘do-nothing’ alternative, the development will be constructed under the originally approved design, and does not consider the refinements to the design as well the opportunity for increased housing supply on a well located site, in alignment with the federal, state and local council priorities.

1.5.2.2 Option 2 – The Proposal

The proposal has been carefully considered to realise opportunities to maximise housing provision, including affordable housing, within the built form anticipated under both the existing statutory and strategic planning aims of Council whilst ensuring no offsite adverse impacts and high levels of internal amenity for future residents are provided.

Accordingly, Option 2 is the preferred option.

2.0 Strategic context

The modification has been prepared to align with the strategic context that was established in the approved development and recently endorsed by Council for the immediate precinct. The proposed modifications will continue to champion and deliver on numerous government initiatives relating to the delivery of additional housing supply and contributing to the growth and development of Wollongong as a centre:

- Deliver market and affordable housing consistent as aligned with the National Housing Accord 2022
- Delivering on key State and Premier's priorities, principally, through the delivery of additional housing within a strategic location. Additionally, the proposal will deliver on the priority of 'well connected communities with quality local environments'
- Aligns with key objectives under the Illawarra Shoalhaven Regional Plan 2041. Specifically, the proposal seeks to provide much need supply of housing compared to a compliant scheme, including potentially diverse and affordable types. This supply is optimally located within walking distance to public transport including the Wollongong and North Wollongong Train Stations, in addition to services, amenities and recreation facilities located within the surrounds.
- Consistency with the Our Wollongong Our Future 2032 Community Strategic Plan creating an Integrated communities close to public transport and local services and facilities focused around existing train stations and town and village centres and delivering greater housing choice
- Deliver on the Flinders Street Precinct Urban Development endorsed by Wollongong City Council in 2025 for public exhibition.

2.1 Draft Flinders Street Urban Design Framework

2.1.1 Overview

Wollongong Council's *Draft Flinders Street Precinct Urban Design Framework* (UDF) and supporting *Wollongong City Centre Planning Review* were endorsed by Council in October 2025

The UDF identifies opportunities for additional height and density within the Flinders Street precinct corridor beyond the existing planning controls, up to 40m on the site (prior to any bonus high provision under the Housing SEPP). This additional built form and height capacity has been identified by Council to deliver on a greater housing supply on well-located sites. The UDF is scheduled to conclude on 15 December 2025.

The proposal, which incorporates amendments to the approved development to align with this strategy, is suitable and timely, given the imminent commencement of construction and delivery.

2.1.2 Intent of the UDF

Due to a range of factors, including its strategic location near North Wollongong Station and the Wollongong CBD, the precinct is considered to have potential to help deliver a greater number of jobs and homes. The purpose of the draft UDF is to guide future growth in the precinct to unlock this potential. As shown in the following figure (**Figure 5**), the draft UDF seeks considerable growth for the precinct.

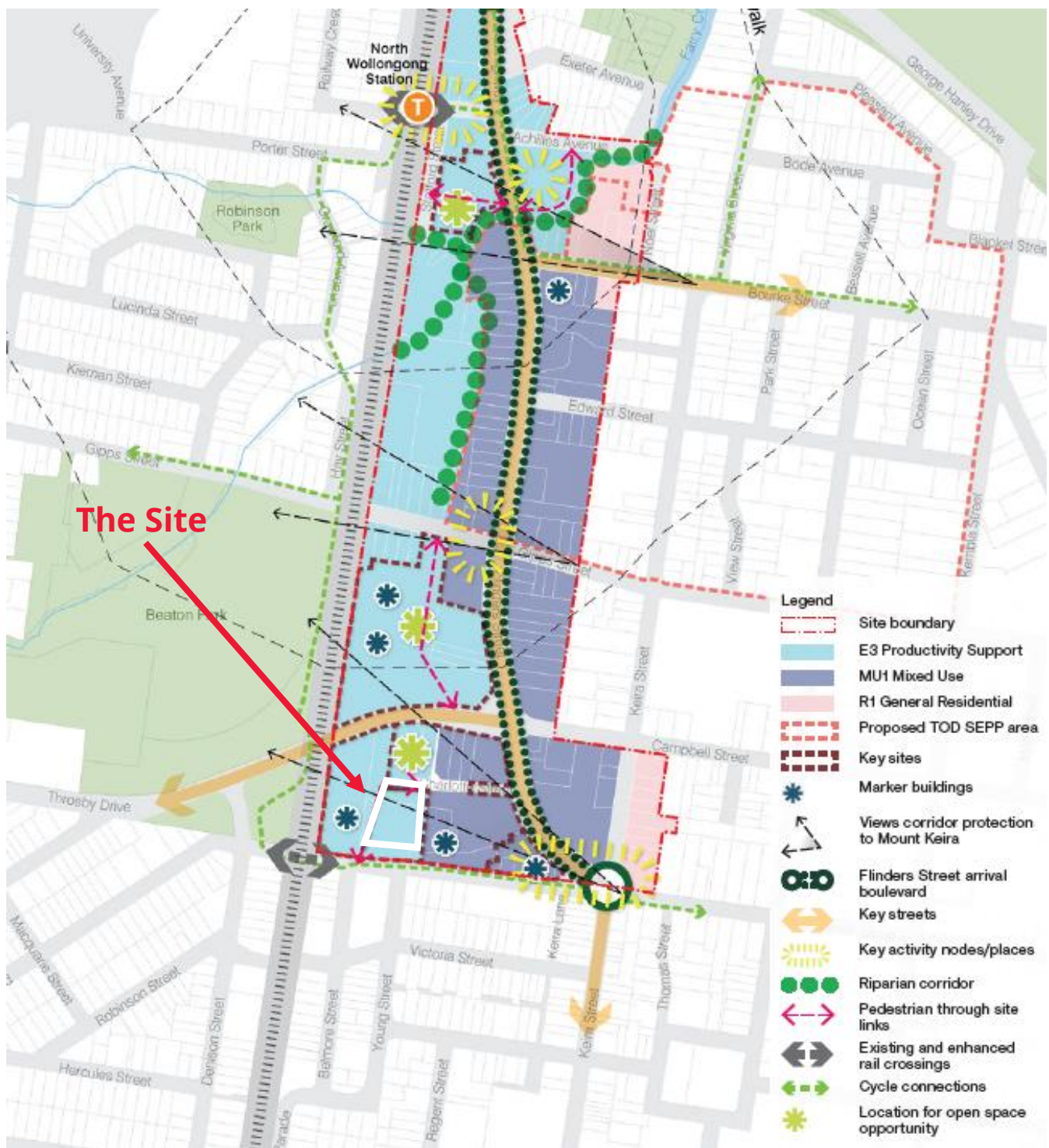


Figure 5 Flinders Street UDF Structure Plan (site shown bounded white)

Source: Architectus (UDF)



Figure 6 *Indicative model of development enabled by the draft UDF*

Source: Architectus (UDF)

2.1.3 Structure and Vision

The draft UDF guides this future growth in accordance with a range of parts, including a vision, design principles, position statements, structure plan (See **Figure 6**), and sub-precincts.

The vision seeks to position the precinct as a key arrival boulevard that contains a mix of uses is as follows:

- 'The Flinders Street Precinct is the key arrival boulevard into the Wollongong City Centre. It is a place where a mix of businesses can thrive, while also supporting other uses such as apartment living, within a walk and cycle of North Wollongong Station, the city centre and the beach'.

It also establishes an intent for a greater scale of development:

- 'A mixed-use corridor of mid to high rise development will define Flinders Street, with active commercial uses fronting the street, tree lined setbacks, and apartments above. Gateway development at the southern end of Flinders Street creates a mixed use attractor and provides a transition to the city centre character further south'.

2.1.4 Building, Height and Scale

As show in **Figure 7**, Section 3.2 of the UDF anticipates increased building height on the site and surrounds of up to 40m, with increased height along Smith Street of up to 15 storeys, and marker towers across the precinct, ranging between 12-15 storeys to act as key buildings that help to anchor and distinguish the precinct.

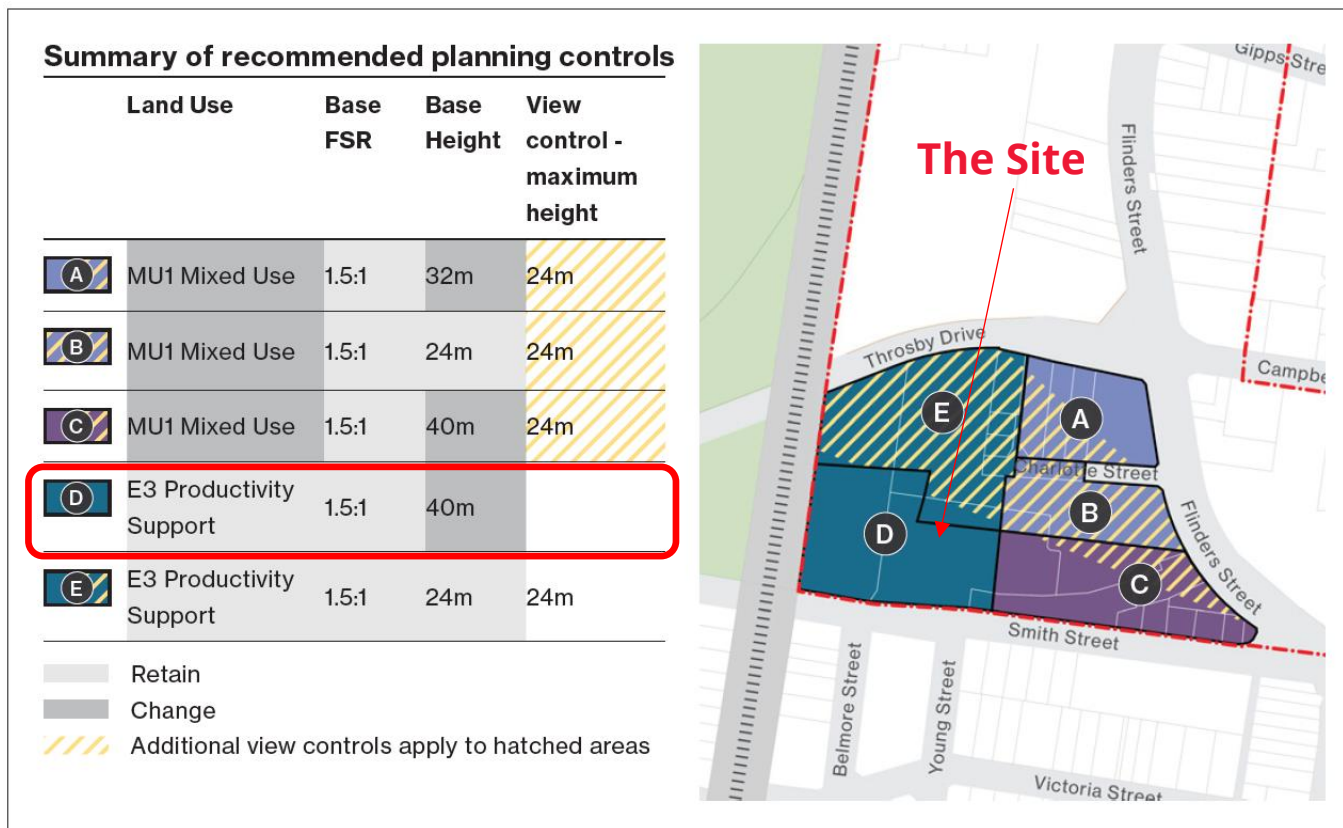


Figure 37. Flinders Street South sub-precinct - Recommended controls

Figure 7 *Flinders Street South sub-precinct – Proposed Building heights*

Source: Arhitectus (UDF)

2.1.5 Flinders Street South Sub-Precinct

The site is included in the Flinders Street South sub-precinct.

‘Rezone the eastern portion of the sub-precinct to MU1 Mixed Use reinforcing the mixed use character of the Flinders Street corridor

- ‘Rezone the eastern portion of the sub-precinct to MU1 Mixed Use reinforcing the mixed use character of the Flinders Street corridor (including the site)
- Create a height corridor along Smith Street with a **40m base height**, integrating with adjacent controls to the south and reinforcing the transition to a city centre character
- Enable additional height at the corner of Flinders Street and Throsby Drive with a base height of 32m
- Support a slender marker tower at the corner of Flinders and Smith Streets, signifying the southern entry point into the Flinders Street Precinct and transition to the city centre.
- Reinforce the mixed use node at the intersection of Flinders, Smith and Keira Streets and support a mix of retail activation that attracts people to the precinct.
- Nominate the sub-precinct as a key site that can deliver high quality development including activation opportunities, through site links and open space’.

The following figure shows indicative built form enabled by the draft UDF for the sub-precinct. In addition to greater scale of development, including height, the following elements can clearly be seen:

- The approved scheme (in light yellow)
- Slender marker tower at the corner of Flinders and Smith Streets
- ‘Location for open space’ at the end of Charlotte Street and a corresponding absence of built form at the referenced north-west corner of the sub-precinct intended to provide for views to Mt Keira.

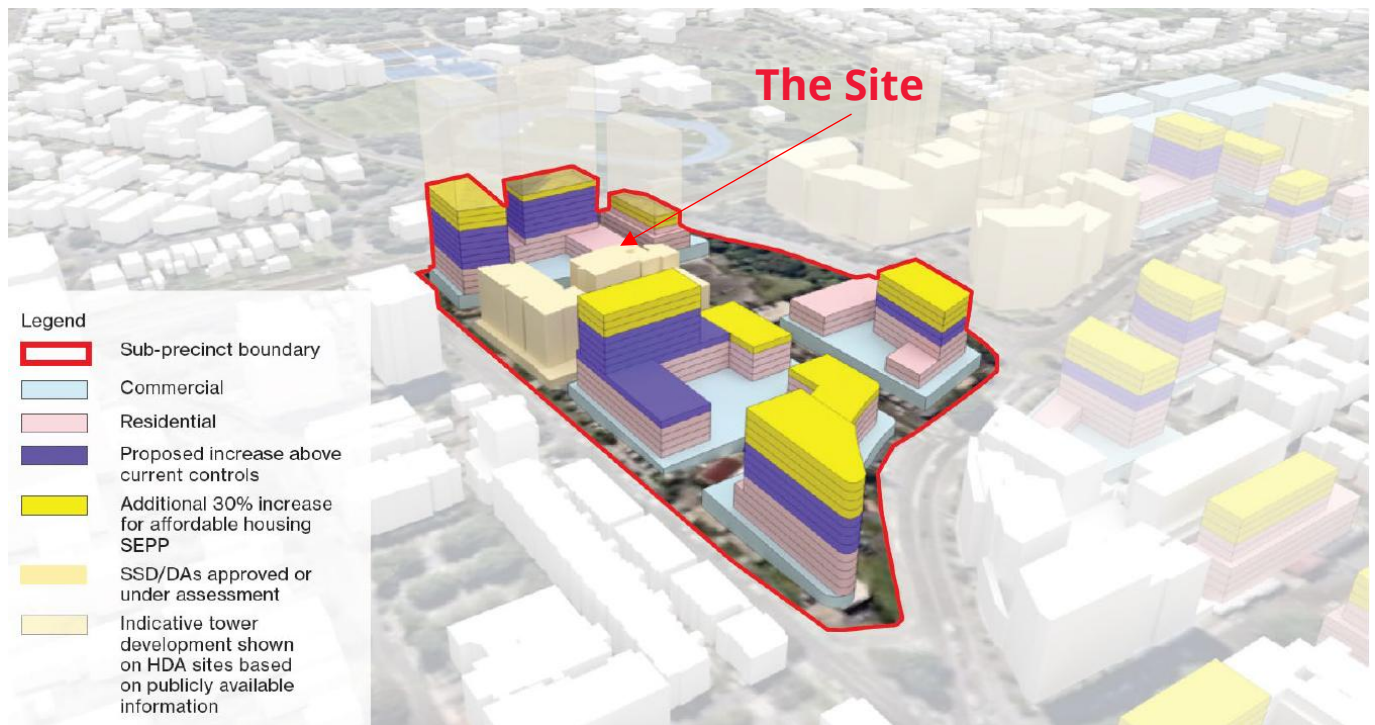


Figure 8 *Flinders Street South sub-precinct - Indicative built form*

Source: Architectus (UDF)

2.1.6 Engagement with Council

Urban Property Group have been working within the Wollongong LGA for several years, including on the Smith Street site. Given this long-standing involvement engagement with Council was sought as part of the formulation of the draft UDF and in response to its exhibition. As set out below, this includes an early submission (June 2025), in person meeting and submission to the public exhibition period (late 2025). A summary of these is provided below, including the discussion regarding the approach to the view catchments and corridors, which is also referenced in **Section 6.7** of this report.

Submission - 3 June 2025:

A submission was made to Council on 3 June 2025, prior to the public exhibition of the Urban Design Framework (UDF), to facilitate early consultation and constructive engagement on the future planning of the Smith Street (along with another site within the draft UDF on Flinders Street). The submission followed a stakeholder workshop held with Council and was provided to capture and reinforce the specific matters discussed.

The submission indicated the intention to continue to work collaboratively through the early stages of Council repairing the frameworks. The key intent of the submission was to encourage Council to consider the site-specific characteristics and opportunities of Urban Property Group's significant landholdings when finalising the UDF, including 120-122 Smith Street. It also flagged the scarcity of less constrained sites and the unique opportunities available on large singularly controlled land holdings such as 120-122 Smith Street.

The submission also outlined the importance of Council to take into account the existing proposals (Housing Delivery Authority Pathway SSDs) in determining the future built form, land use mix and urban design outcomes to ensure a cohesive, well-designed Precinct that appropriately responds to its strategic context and surrounding development. The submission commended Council on their progress made to date in preparing and progressing the draft UDF and expressed support for continued collaboration as the framework was refined.

In Person Meeting - 4 September 2025

A meeting was held in person with Council, including the Coordinator Strategic Planning, Land Use Planning Manager and Strategic and Development Project Officers on 4 September 2025. The meeting was to discuss the direction of the draft UDF in relation to the proposed Stage 2 Development of 120-122 Smith Street (the SSD under the HDA Process). The meeting was important to ensure that applicants views were clearly articulated and considered by Council prior to the public exhibition of the UDF, and to demonstrate ongoing, proactive engagement with Council throughout the strategic planning process for the Stage 2 development.

During the meeting, Council outlined that the UDF was being prepared as an outcome of LGA-strategic planning initiatives, intended to respond to emerging land use conflicts, identify land for employment, mixed use and residential development and guide areas for uplift. As set out in the initial submission (June) the importance of recognising the site-specific characteristics, scale and existing development proposals associated when applying the UDF to the Precinct was reiterated, to ensure a coordinated and well-planned urban design outcome could be achieved.

The meeting provided a valuable forum for early engagement information/knowledge sharing of the proposals and reiterating the proponent's commitment to meaningful engagement in the formation of the draft framework in light of the current proposals.

Submission and Recommendations Letter - 15 December 2025

A Submission and Recommendation letter was made to Council on 15 December 2025 during the formal public exhibition of the draft UDF. In the submission, Urban Property Group indicated its broad support for the foundational principles of the draft UDF whilst identifying several matters for reconsideration that would pose a direct impact to achieving the principles of the Flinders Street Precinct Review.

The submission also restated the expressed willingness for Urban Property Group to continue to be involved with the preparation of the draft UDF (from the submission mid-2025) but that no further consultation had taken place from Council, and the draft UDF lacked consideration of the key issues raised in June 2025. The recommendations included in the submission were provided with a view to build on the preliminary work completed by Council and provide additional rigour to the draft UDF, to strengthen the framework and support a more coordinated, responsive and higher quality urban outcome.

As summary of the key issues and recommendations is provided below.

Treatment of Flood Prone Land

- Implementing a more appropriate approach to consideration of flood prone land, and providing for flexibility which will allow design solutions to be provided that unlock land and deliver density.

Introduciton of view Protections

- The location and rigour of the selected Smith Street/Kiera Street viewpoint to which the public views (and their preservation) are categorised is not appropriate
- Carrying out a proper assessment of significant views traversing the Precinct so that the framework can lay the foundation for more appropriate building controls that deliver density, in particular adopting viewpoints that are grounded in commonly held principles and provide the greatest benefit to users of the space to appreciate the view.

Application of Building Contorls

- Removing prescriptive built form controls, including setbacks and street wall provisions.

Better consideration of identified sites for redevelopment

- Better considering existing proposals within the Precinct to give effect to the vision and design principles of the draft UDF.

3.0 Description of the Modifications

This Section describes the proposed modifications to the approved project. It also outlines why the development, as proposed to be modified, is substantially the same development as that originally approved.

3.1 Modification Overview

The following amendments are proposed in this modification application, as indicated as clouded and annotated on the revised Architectural Plans (**Appendix A**). The modifications are annotated on the architectural plans and detailed in the supporting Design Statement (**Appendix B**), outlining the amendments by level.

The proposal involves internal and external alteration and additions, to deliver an additional 26 apartments through the addition of 3 (part 4) floors to the northern building (Building 2). The proposal will result in an increase of units from 150 (as per Mod 2) to a total of 176 units. The other amendments involve associated internal unit layouts and ground level amendments relating to waste storage.

Specifically, the application involves the following modifications:

- **Ground** - Waste area revisions (bin room, commercial bin room, and bulky waste) to cater for additional units and minor amendments to car and bicycle parking layout
- **Level 1** - Minor amendment to parking numbering (no physical amendments)
- **Level 2-7** - No modification to these levels
- **Level 8** - Internal unit layout updates and privacy screen added address Condition B1(c)
- **Level 9** - Internal unit layout updates
- **Level 10-12** - New storeys with typical unit layouts from below.
- **Roof** - Amended skylight locations to suit revised internal unit layout and additional lift and service risers.

3.2 Additional Levels and Building Height

The proposal seeks to increase the height of Building 2 by 3 x storeys, as shown in the comparison between existing (Mod 2) and proposed.

The building parapet has been designed to be consistent with the UDF at 40m, noting minor variance based on the ground level existing below. As shown on the Architectural Plans (**Appendix A**), any additional height above this parapet is limited to localised pop ups (include lift over runs that are set back from the parapet) and for design.

The building height is sought to increase from 31.2m up to a maximum of 42.74 m to the lift overrun (as the highest point) as shown in **Figure 9**. As shown in **Figure 10**, the proposed increased to building height is contained to the northwestern portion of the site.



PROPOSAL

Parapet height at approximately 40m (allowing for minor variation in ground level existing below) with lift overruns set back from the parapet.

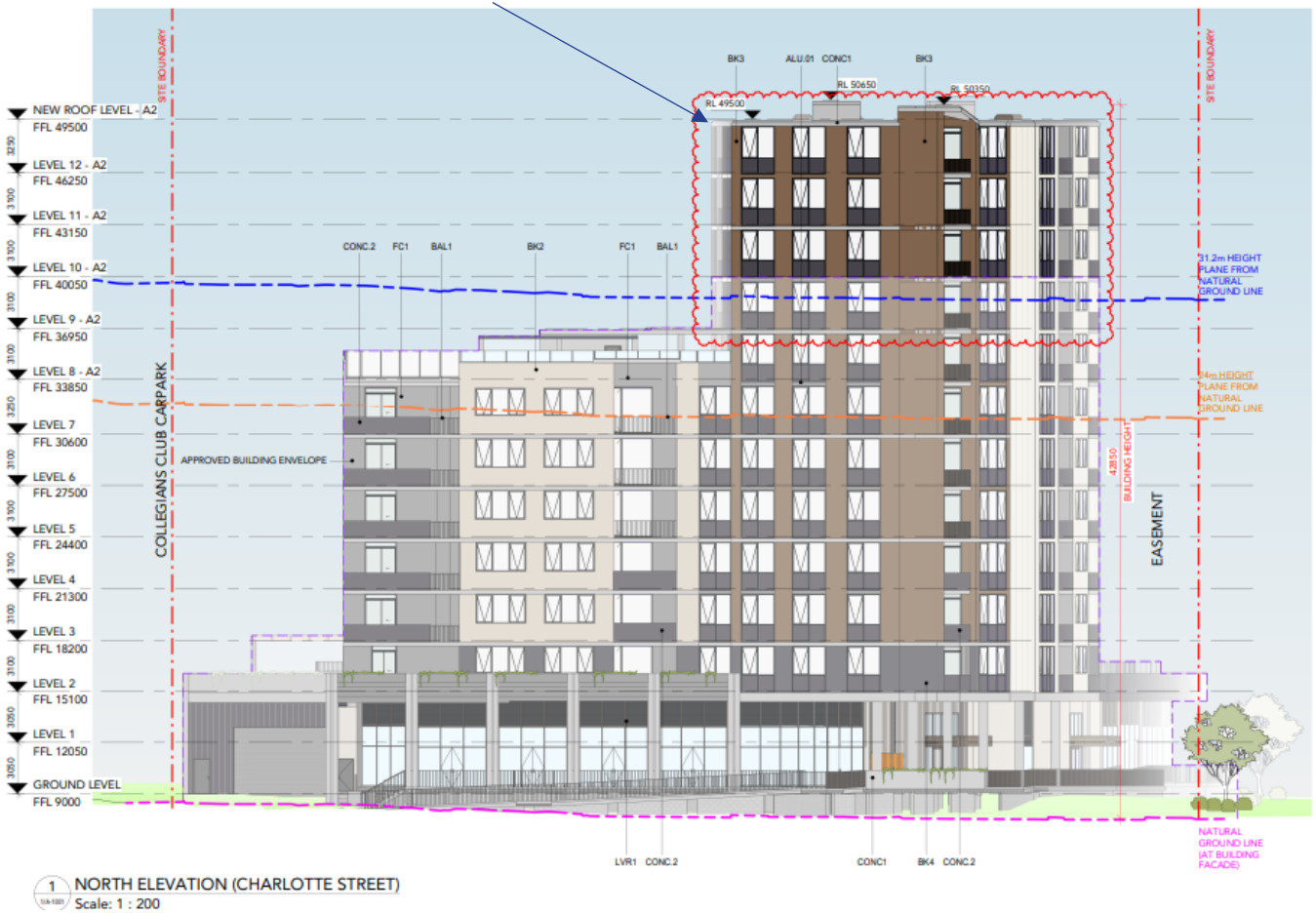


Figure 9 Existing (Mod 2) and Proposed northern elevation
Source: Team2

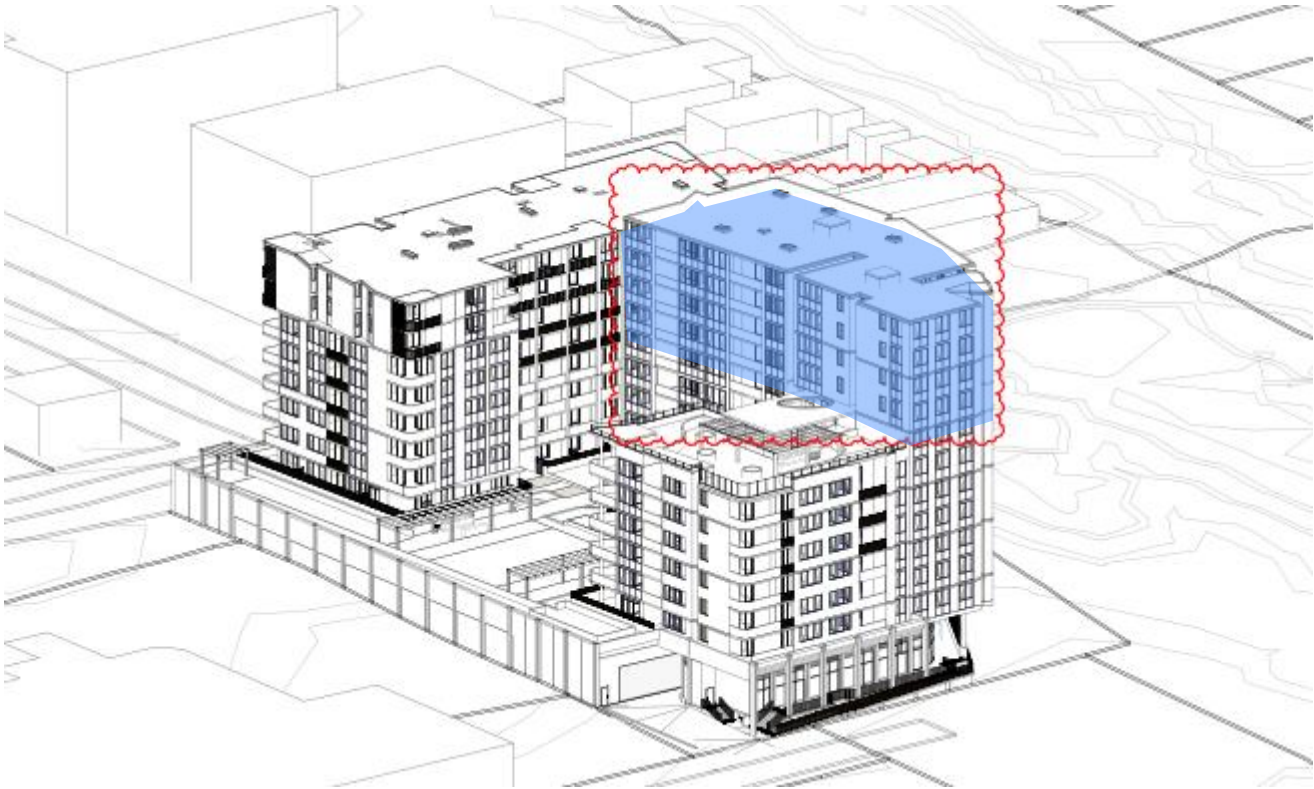


Figure 10 Location of additional building height.

Source: Team2

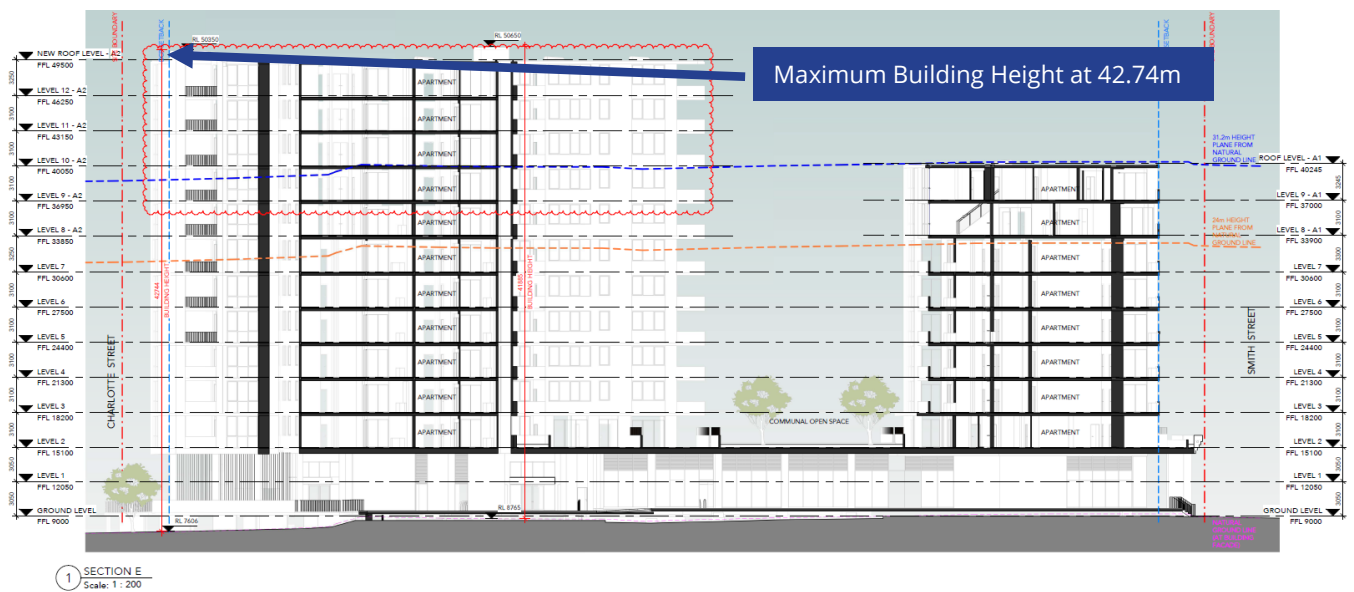


Figure 11 Maximum Building Height (Charlotte Street)

Source: Team2

3.3 Gross Floor Area

The proposal increases the development of the Gross Floor Area (GFA)/Floor Space Ratio (FSR). Overall, the revised proposal involves an increase of 2,272.2m² from that approved. The changes primarily relate to increase residential apartment provisions, with minor amendments to the non-residential floor space as a result of internal configuration of services areas (including waste storage) on the ground floor.

The approved and proposed GFA and FSR are set out below in **Table 2** and indicated on the revised Architectural Plans at **Appendix A**.

Table 2 *Approved and proposed GFA and FSR*

	As Approved	Proposal	Change
Gross Floor Area			
Residential	15,379.9sqm	17,652.1sqm	+2,272.2sqm
Non-Residential	623.4sqm	623.4sqm	-
Total	16,003.3sqm	18,275.5sqm	+2,272.2sqm
Floor Space Ratio			
Residential	2.354:1	2.7:1	+0.346
Non-Residential	0.095:1	0.095:1	-
Total	2.449:1	2.795:1	+0.346

3.4 Total Unit Numbers and Mix

The proposed modification seeks to increase the unit numbers within the development by 26, taking the total to 176 from 150 approved. The existing approved and proposed unit mix is set out in **Table 3** below.

Table 3 *Total unit numbers and mix*

	As Approved	Proposal	Change
1 bedroom	24	33	+9
2 bedroom	84	102	+18
3 bedroom	42	41	-1
Total	150	176	+26

3.5 Affordable Housing Provision and Mix

The modifications proposed increase the affordable housing provision from that approved, providing a total of 31 affordable housing units. The proposed affordable housing unit mix is 11 x 1-bedroom units, 15 x 2-bedroom units and 5 x 3-bedroom units. A comparison table of approved to proposed is provided in **Table 4**. An assessment of the overall development, including the affordable housing when considered independently is including in **Section 6**.

Table 4 *Affordable housing provision and mix*

	As Approved	Proposal	Change
1 bedroom	8	11	+3
2 bedroom	13 (26)	15 (30)	+2 (4)
3 bedroom	6 (18)	5 (15)	-1 (3)
Total	27	31	+4
<i>Total Beds</i>	52	56	+4

3.6 Amendments to Car and Bicycle Parking

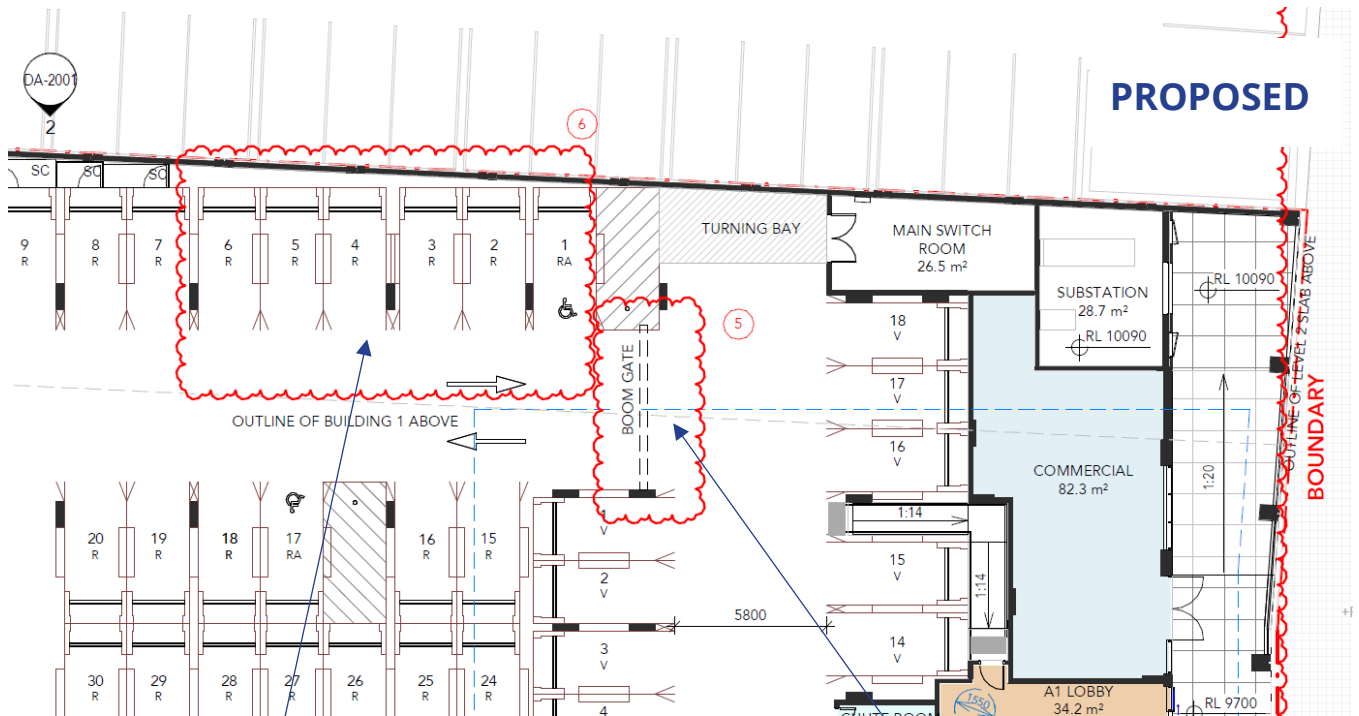
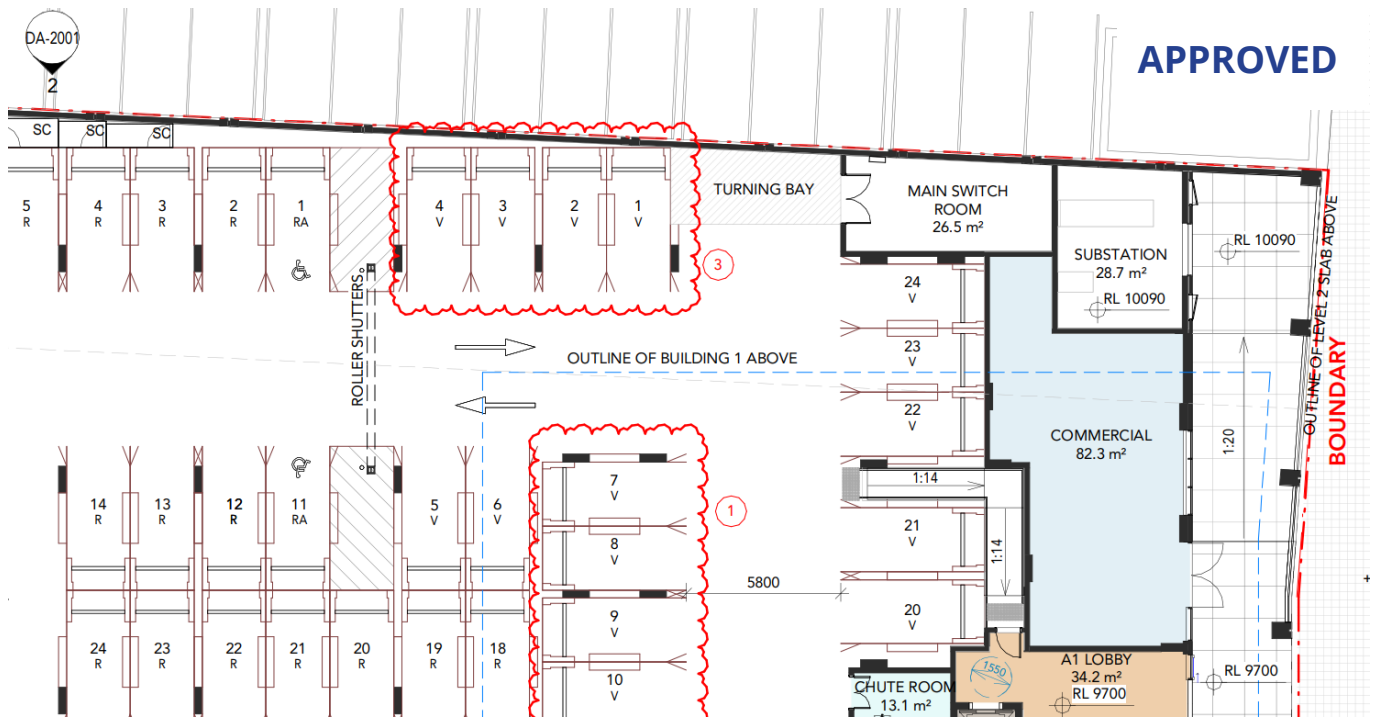
The proposal seeks amendments to car and bicycle parking allocation and quantum. The proposed amendments include the following

- Reduction in visitor car parking spaces from 24 to 18 (reduction of 6 spaces)
- Increase in visitor bicycle parking spaces (+20 bicycle parking spaces) from the conversion of the building management office to bicycle parking
- Increase in residential parking spaces from 144 as approved to 150 (+ 6 spaces)
- Total of 183 car parking spaces retained and + 20 bicycle parking spaces added (total of 94).

The revision to the distribution and quantum of car parking is proposed to support the overall parking strategy for the development and provides a more efficient spread of parking across residential, visitor and commercial uses. The modification includes updates to the bicycle parking provision to support the revised visitor car parking strategy and promote sustainable travel demand.

The proposed amendments are shown in **Figure 12** and **13** and addressed in further detail in the assessment of this planning report and in the Traffic and Parking Statement provided at **Appendix F**.

Ground Floor Plan



Amendment to allocation of car parking and amendments to layout

Relocation of boom gate to align with the amendments to the layout of residential and visitor parking

Figure 12 Existing and Proposed Ground Floor Parking Amendments

Source: Team2 and Colliers Urban Planning

3.7 Level 8 and 9 Internal Amendments

The proposal involved minor internal layout amendments to levels 8 and 9, which relate primarily to unit layouts across the floorplates.

Currently, levels 8 and 9 of Building 2 contain 9 units. The proposal involves the conversion of 7 x two storey duplex units on these levels to single floor apartments. This increases number of units across levels 8 and 9 from 9 units to 14 units in total (net increase of 5).

Other minor internal reconfiguration of joinery and room layouts are proposed on these two levels as a result.

3.8 Amendment to Waste Room Layout

As shown clouded on the Architectural Plan (**Appendix A**) the location of the risers and adjoining bin room layout on each typical levels are sought to be amended in this modification. These changes are negligible and do not alter the spatial allowances for the configuration of the corridors. There are associated minor modifications that result to the adjoining units in some scenarios, which are also shown clouded on the plans.

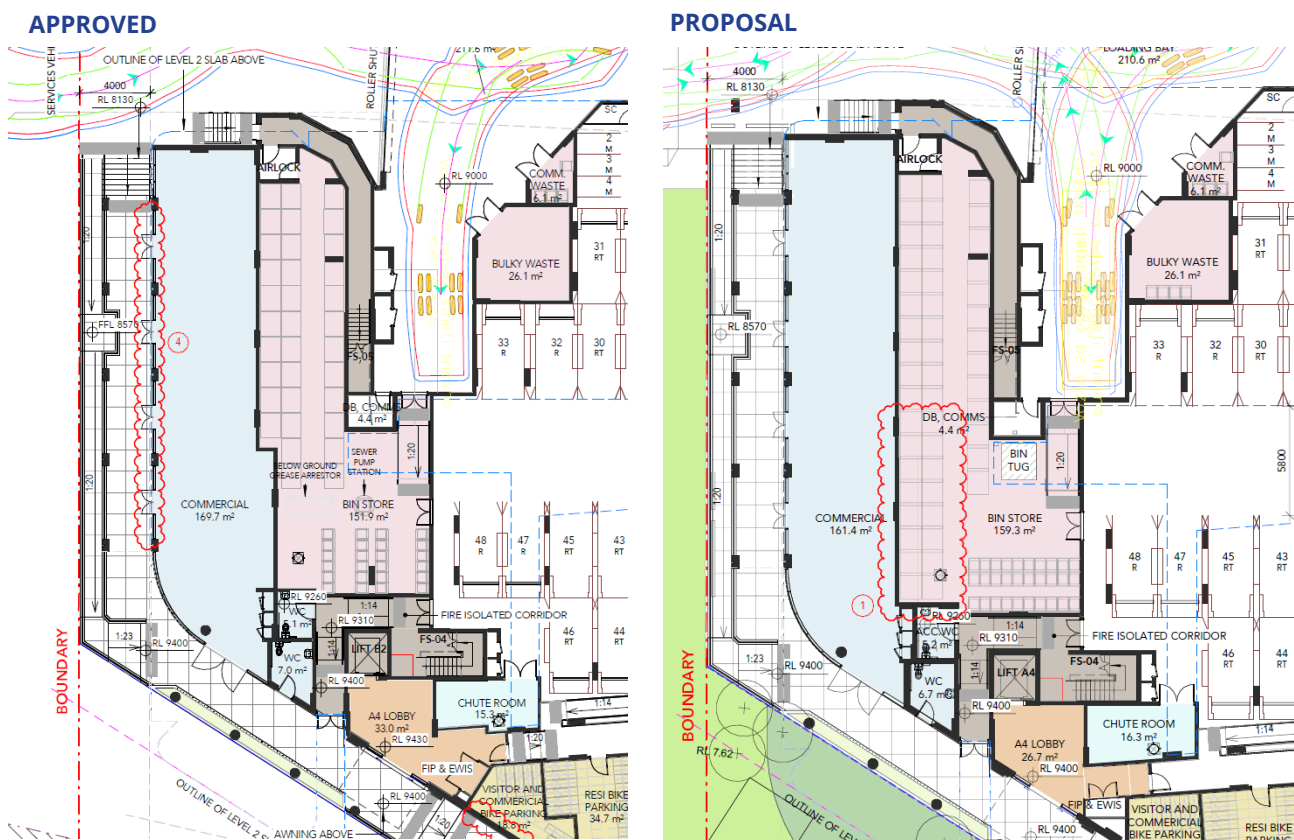
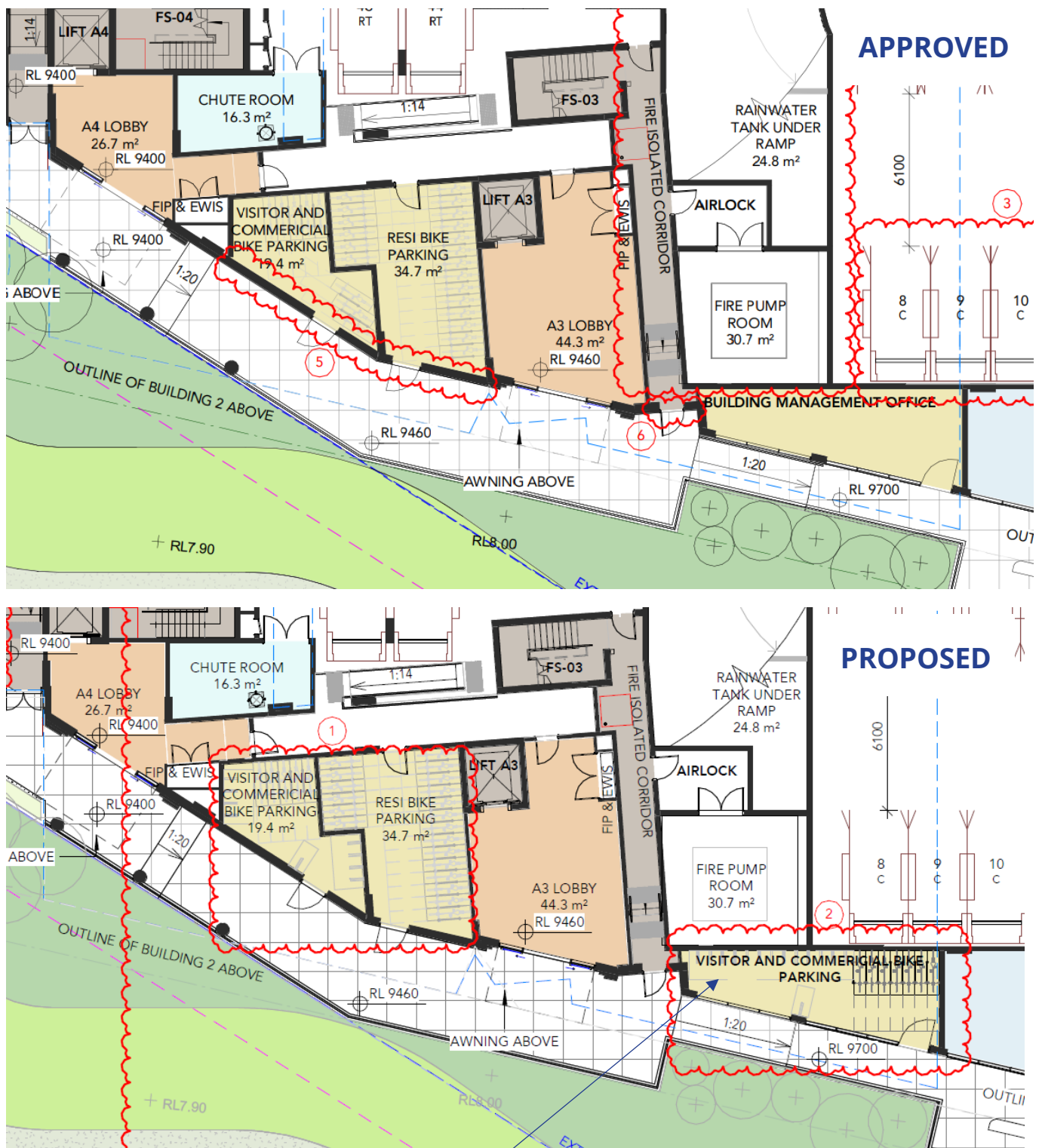


Figure 13 Existing and Proposed Ground Floor Waste areas

Source: Team2

Ground Floor Plan



Conversion of Building Management Office to additional Visitor and Commercial bicycle parking

Figure 14 Existing and Proposed Ground Floor – Amendments to Bicycle Parking

Source: Team2 and Colliers Urban Planning

3.9 Modification to conditions

The proposed modifications described above necessitate amendments to the consent conditions which are identified below. Words proposed to be deleted are shown in ~~**bold strike through**~~ and words to be inserted are shown in **bold italics**. Due to the nature of the proposed amendments, amendments are only required to a small number of conditions.

SCHEDULE 1

DESCRIPTION OF DEVELOPMENT

Construction of a shop top housing development with infill affordable housing comprising:

- *two x 8 to ~~10~~ **12**-storey residential buildings with ground level retail/commercial uses;*
- *~~150~~ **176** apartments (including ~~27~~ **31** affordable housing apartments);*
- *communal open space at podium and roof top level;*
- *two levels of above ground car parking with 183 car spaces;*
- *vehicular access from Smith Street and Charlotte Street with associated road upgrade works; and*
- *publicly accessible through-site link and landscaping works*

SCHEDULE 2

PART A GENERAL CONDITIONS

TERMS OF CONSENT

A1. *The development may only be carried out:*

(a) in compliance with the conditions of this consent;

(b) in accordance with the EIS and Amendment Report, the Applicant's response to submissions, and the Applicant's response to requests for further information;

(c) as amended by the section 4.55 (1A) Modification Application Report for SSD 67895459-MOD 1 prepared by Ethos Urban; and

(d) as amended by the section 4.55 (2) Modification Application Report for SSD 67895459-MOD 2 prepared by Ethos Urban; and

(e) as amended by the section 4.55 (1A) Modification Application Report for SSD 67895459-MOD 3 prepared by Ethos Urban; and

(f) as amended by the section 4.55 (2) Modification Application Report for SSD 67895459-MOD 4 prepared by Colliers Urban Planning; and

*~~(f)~~**(g)** in accordance with the approved plans in the table below, as modified by the conditions of this consent:*

Drawing Number	Rev	Name of Plan	Date
Architectural Drawings prepared <i>Team2 Architecture</i>			
DA-0001	10 12	Cover Page	28/11/25 13/02/26
DA-0200	2 3	Site Plan - Masterplan	22/08/25 5/12/25
DA-0300	6 8	Ground level floor plan	28/11/25 20/01/26
DA-0301	6 7	Level 1 floor plan	28/11/25 20/01/26
DA-0302	4	Level 2 floor plan	28/11/25
DA-0303	4	Level 3 floor plan	28/11/25
DA-0304	4	Level 4 floor plan	28/11/25
DA-0305	4	Level 5 floor plan	28/11/25
DA-0306	4	Level 6 floor plan	28/11/25
DA-0307	4	Level 7 floor plan	28/11/25
DA-0308	2 4	Level 8 floor plan	30/09/25 13/02/26
DA-0309	2 3	Level 9 floor plan	30/09/25 5/12/25
DA-0310	2 3	Roof plan	30/09/25 5/12/25
DA-0311	1	Level 10 floor plan	5/12/25
DA-0312	1	Level 11 floor plan	5/12/25
DA-0313	1	Level 11 floor plan	5/12/25
DA-2001	4 6	Elevations – Sheet 1	30/09/25 13/02/26
DA-2002	4 6	Elevations – Sheet 2	30/09/25 13/02/26
DA-2003	4 5	Elevations – Sheet 3	30/09/25 5/12/25
DA-4001	2 3	Sections – Sheet 1	22/08/25 5/12/25
DA-4002	2 3	Sections – Sheet 2	22/08/25 5/12/25
DA-4003	2 3	Sections – Sheet 3	22/08/25 5/12/25

Drawing Number	Rev	Name of Plan	Date
DA-5001	2	Deep soil planting and communal open space	22/08/25
DA-8101	2 3	Development calculations – Sheet 1 Artists Impressions	22/08/25 5/12/25
DA-8102	1	Development calculations – Sheet 2	24/06/25
DA-8300	5	GFA Calculations – Sheet 1	5/12/25
DA-8301	5	GFA Calculations – Sheet 1	5/12/25
DA-8302	2 5	ADG compliance – solar and cross ventilation – Sheet 2 1	22/08/25 5/12/25
DA-8303	5	ADG compliance – solar and cross ventilation – Sheet 2	5/12/25
DA-8400	6	Affordable Housing Calc. – Sheet 1	13/02/26
DA-8501	2 3	Shadow diagram	22/08/25
DA-8502	2 3	Solar analysis – neighbouring property	22/08/25 5/12/25
DA-8601	2 3	View from the sun – Sheet 1	22/08/25 5/12/25
DA-8602	2 3	View from the sun – Sheet 2	22/08/25 5/12/25
DA-8603	2 3	View from the sun – Sheet 2	22/08/25 5/12/25
DA-8604	2 3	View from the sun – Sheet 2	22/08/25 5/12/25

HOUSING AND PRODUCTIVITY CONTRIBUTIONS

A9. Before the issue of the first amended Construction Certificate associated with the modification application (SSD67895459-MOD-2), the Housing and Productivity Contribution (HPC) of \$19,279.19 is required to be made for the three additional dwellings approved under SSD-67895459-MOD-2, as per applicable HPC Ministerial planning order. Written evidence must be given to the Certifier before the issue of the first amended Construction Certificate associated with the modification application (SSD-67895459-MOD-2). At the time of payment, the amount of the HPC is to be adjusted in accordance with the Environmental Planning and Assessment (Housing and Productivity Contributions) Order 2024 (HPC Order).

Before the issue of the first amended Construction Certificate associated with the modification application (SSD67895459-MOD-4), the Housing and Productivity Contribution (HPC) of \$179,939.11 (pertaining to a further increase of 28 units from that conditioned for contributions associated with SSD-67895459-MOD-2) is required to be made for the three additional dwellings approved under SSD-67895459-MOD-4, as per applicable HPC Ministerial planning order. Written evidence must be given to the Certifier before the issue of the first amended Construction Certificate associated with the modification application (SSD-67895459-MOD-4). At the time of payment, the amount of the HPC is to be adjusted in accordance with the Environmental Planning and Assessment (Housing and Productivity Contributions) Order 2024 (HPC Order).

DESIGN AMENDMENTS

~~B1. Prior to the issue of any Construction Certificate, the Applicant must provide evidence to the Certifier that revised plans detailing the following revisions have been submitted to and approved by the Planning Secretary:~~

- ~~a) —provision of privacy screens (minimum height of 1.6 m above finished floor level) to the eastern end of balconies serving apartments A1-8.04 and A1-8.05 on levels 8 and 9 within Building 1; and~~**

- ~~b) provision of sliding privacy screens (minimum height of 1.6 m above finished floor level) to the balconies serving apartments A3-3.02 and A4-3.06 on level 3 and corresponding apartments on levels 4 to 6 above within Building 2.~~
- ~~c) provision of privacy screens (minimum height of 1.8m above finished floor level) to the trafficable portion of the eastern elevation of the rooftop communal open space of Level 8 within Building 2.~~

Reason: The requirements of this condition have been satisfied.

BASIX CERTIFICATION

B15. Prior to the issue of any Construction Certificate for above ground works, BASIX Certificate No. ~~1730728M_06-1730728M_11~~ must be submitted to the Certifier with all commitments clearly shown on the Construction Certificate plans.

CAR AND BICYCLE PARKING

B10. Prior to the issue of the any Construction Certificate for above ground works, the Applicant must submit to the Certifier, a Report demonstrating that the Development will provide for the following traffic flow and car parking requirements:

...

(g) submit to the Certifier a Report demonstrating compliance with the following:

- (i) provision of ~~144~~ **150** residential car parking spaces comprising ~~130-136~~ spaces for market apartments and 14 spaces for affordable housing apartments, including 16 adaptable car parking spaces;
- (ii) provision of ~~24~~ **18** visitor car parking spaces, including 1 adaptable car space;
- (iii) provision of 15 car spaces dedicated for commercial/retail use, including 1 adaptable car space;
- (iv) provision of ~~9~~ **10** motorcycle spaces;
- (v) compliance with Australian Standards for the layout, design and security of car parking spaces and bicycle facilities;
- (vi) provision of electric vehicle charging infrastructure in accordance with the NCC;
- (vii) provision of a minimum of 58 residential bicycle parking spaces, and a minimum of ~~13-33~~ visitor spaces; and
- (viii) provision of a minimum of 3 bicycle parking spaces for commercial/retail worker use

AFFORDABLE HOUSING

E2. An Occupation Certificate for the ~~27-31~~ affordable housing units must be issued concurrently or before an Occupation Certificate for the remainder of the development.

AFFORDABLE HOUSING

E36. Prior to the issue of any Occupation Certificate for the residential component of the development, the Applicant must provide to the Certifier evidence that:

- a) the affordable housing component is complete and ready for occupation;
- b) a restriction has been registered against the title of the site on which Development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, requiring:
 - (i) a minimum of ~~27~~ **31** dwellings within the Development to be used for the purposes of affordable housing for a minimum of 15 years from the date of issue of the occupation certificate, as defined by the EP&A Act and the State Environmental Planning Policy (Housing) 2021;

BASIX CERTIFICATION

F11. The Development must be implemented, and all BASIX commitments thereafter maintained in accordance with BASIX Certificate No. ~~1730728M_06-1730728M_11~~ and any updated certificate issued if amendments are made.

INFILL AFFORDABLE HOUSING

F13. A minimum of ~~27~~ **31** dwellings within the Development must be used for the purpose of affordable housing as defined by the EP&A Act and State Environmental Planning Policy (Housing) 2021.

3.10 Substantially the same development

Section 4.55(2)(b) of the EP&A Act states that a consent authority may modify a development consent if “it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified.

The development, as proposed to be modified, is substantially the same development as that originally approved in that it:

- Does not interfere with the proposal’s ability to be delivered as shop top housing with activate ground for non-residential uses
- Does not change the intent or use of the site as shop top housing and delivery of infill affordable housing.
- Will maintain a high level of internal and external amenity for occupants, while also minimising impact to surrounding residential receivers.
- Will not alter the key environmental impacts to those identified and assessed in the approved development (SSD- SSD-67895459).

Section 4.55(2)(a) of the EP&A Act requires the consent authority to be satisfied that “the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted”.

Whilst there is a plethora of case law on how decision makers in the Land and Environment Court have made determinations with respect to “substantially the same development”, those cases have been decided on their own set of facts and principles or practices. Those relevant for this modification application include *Canterbury-Bankstown Council v Realize Architecture Pty Ltd* [2024] NSWLEC 31 on 4 April 2024. In that case, the Chief Justice noted how previous judges of the Court have interpreted the word “substantially” by considering such matters as whether the development is “essentially or materially or having the same essence”. However, his Honour noted at [41] and [42]:

“This interpretation of the statutory test, now in s 4.55(2)(a), can support an inquiry to identify the material and essential features of the originally approved and modified developments in order to undertake the comparative exercise required, but it does not demand such an inquiry.

The fact that Talbot J chose to undertake this inquiry in The Satellite Group (Ultimo) Pty Ltd v Sydney City Council and that Bignold J did likewise in Moto Projects (No 2) Pty Ltd v North Sydney City Council does not make such inquiry a legal requirement under s 4.55(2)(a).”

This case determined a three step test to guide consent authorities in forming the requisite legislative opinion in section 4.55(2) of the EP&A Act. This process is summarised as:

- **Finding the primary facts:** This involves drawing inferences of fact from the evidence of the respects in which the originally approved development would be modified. These respects include the components or features of the development that would be modified, such as height, bulk, scale, floor space, open space and use, and the impacts of the modification of those components or features of the development.
- **Interpreting the law:** This involves interpreting the words and phrases of the precondition in s 4.55(2) as to their meaning.
- **Categorising the facts found:** This involves determining whether the facts found regarding the respects in which the development would be modified fall within or without the words and phrases of the precondition in s 4.55(2).

In *Realize* the Chief Justice endorsed the Commissioner’s approach of considering both the quantitative and qualitative features of the development as modified and that although looking at the development features on a quantitative basis alone there were differences, when looked at as a whole both quantitatively and qualitatively the development as modified, was concluded to be substantially the same. As his Honour said at [26]:

The test in s 4.55(2)(a) requires a simple comparison of the two developments, the development as modified and the development as originally approved: But the comparison required by s 4.55(2)(a) remains a holistic one of the two developments being compared – the modified development and the originally approved development. The opinion of satisfaction that s 4.55(2)(a) requires is that the two developments being compared are substantially the same development, not that either the quantitative features or the qualitative features of the two developments are substantially the same.

In summary, although there were quantitative differences between the Subject Modification and the Original Consent, that may have appeared in isolation to be significant, the focus of the test in Section 4.55 is on the whole and on an overall balancing of the two schemes.

Adopting the 'balanced approach' it is important to establish the 'critical elements' of the development to determining whether a development is 'substantially the same.'. We note the following in relation to this 4.55 modification:

- The development as modified generally retains the same building footprint, geometry and configuration approved including locations of private open space, vehicle and pedestrian entries. The modification is limited to increased height on one of the four building elements on the site.
- Does not interfere with the proposal's ability to be delivered as shop top housing with activate ground for non-residential uses
- Does not change the intent or use of the site as shop top housing and delivery of infill affordable housing.
- Will maintain a high level of internal and external amenity for occupants, while also minimising impact to surrounding residential receivers.
- The development remains as a shop-top housing development, constituting ground-level commercial premises and residential apartments above, with car parking located at ground and Level 1.
- The development as modified will retain a similar appearance and streetscape when viewed from the key areas of public domain, particularly Smith Street.

The EP&A Act requires consideration of whether the development as a whole, as modified, is "substantially the same" as that originally approved. This can involve consideration of (but need not) the critical or material or essential elements of the Approved DA.

The proposed modifications fall within the statutory meaning of "substantially the same" because the development as modified will have the same uses, components, envelope, design components and expression, with the only variation being an extension of 3 x stories to a portion of Building 2.

The additional height will not have any material impacts to overshadowing, privacy, urban design or bulk and scale impacts nor create a greater intensity of use with respect to such matters as open space, communal areas, parking and traffic generation.

Summary

The guidance in Realize directed that both the quantitative and qualitative features of the development are to be considered and although when looking at development features on a quantitative basis alone there may be differences, the assessment should be looked at both quantitatively and qualitatively when considered with an amended development is substantially the same.

Whilst there are undoubtedly differences between the original consent and the proposal, the proposal, when considered in holistic terms applying Realize, as set out in the Modification Report and above, is "substantially the same".

When compared to the original consent, the proposal

- Does not change the proposal as a top housing development with activated ground floor non-residential uses,
- Maintains a consistent percentage of affordable housing in the development (at 15%)
- Does not result in any additional adverse environmental impacts, particularly those that were considered critical to the formation, design and assessment of the original consent.
- Does not change the perception of the development as a whole as a shop top housing buildings nor change the crucial elements of the building architecture and design features.
- Does not radically transform the geometry of building forms on the site, including as it relates to the key street frontage of Smith Street.
- Does not reduce the proposals compliance with key metrics of ADG and amenity (such as solar access, cross flow ventilation and unit mix) for the site and does not cause any significant impacts to surrounding properties and existing dwellings, from those of the original consent (including overshadowing).

As such, the development as proposed to be modified retains the same critical elements and form of the approved development and is entirely consistent with the decision established in Realize Architecture.

Council and DPHI can therefore be satisfied that the proposed modifications, despite the quantitative differences and increase to building height, satisfy the test of constituting 'substantially the same development' and can be accepted under the Section 4.55(2) pathway.

3.11 Modification Category

This modification application is made under Section 4.55(2) of the EP&A Act. The application is consistent with the criteria of 4.55(2) of the EP&A Act as the modification is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) for the reasons discussed in **Section 3.9**. The environmental impacts arising from the modification are minor and are discussed in further detail at **Section 6.0**.

4.0 Statutory context

4.1 Power to Grant Consent

The project was declared State Significant Development under Schedule 1 of *State Environmental Planning Policy (Planning Systems) 2021* as the development is for the purposes of as infill affordable housing

As demonstrated in **Section 3.3**, the development, as proposed to be modified, is substantially the same development as that originally approved. Therefore, the consent authority has the power to grant consent to the modification application.

4.2 Permissibility

The site is zoned E3 Productivity Support under the *Wollongong Local Environmental Plan 2009*. Whilst the proposed land use is not permitted in the land use table for the E3 zone, shop top housing is permissible pursuant to Schedule 1 of the Wollongong LEP as an additional permitted use in the following terms:

- (1) *This clause applies to certain land in Zone E3 Productivity Support identified as “34” on the Additional Permitted Uses Map.*
- (2) *Development for the purposes of shop top housing is permitted with development consent.*

4.3 Compliance with relevant Environmental Planning Instruments

The proposed modifications have been assessed against the relevant provisions of the applicable State Environmental Planning Policies (SEPPs) and the *Wollongong Local Environmental Plan 2009 (WLEP 2009)*. Given that the proposed modifications to the development are minor in nature and will not have any perceivable impacts on the development, the original proposal's compliance with the applicable controls within the SEPPs and LEP remains unchanged.

Table 5 below summarises the modification's compliance with the relevant environmental planning instruments (EPIs).

Table 5 Summary of compliance with relevant environmental planning instruments

Legislation	Matters for Consideration
<i>Environmental Planning & Assessment Act 1979 (EP&A Act)</i>	The development as proposed to be modified remains consistent with the objects of the EP&A Act for the following reasons: • It will enable the delivery of housing (including affordable housing) for the growing population of the Wollongong LGA and more broadly the Illawarra Shoalhaven area and will positively contribute to housing supply and affordability. • It allows for additional employment opportunities throughout both the construction and operational phases. • It will facilitate the principles of ESD through a range of design and operation initiatives. • It is a development for public purposes and will facilitate the delivery of retail/commercial premises and accessible open space. • It will facilitate high quality design outcomes that will benefit future residents and users.
<i>Environmental Planning and Assessment Regulation 2021 (EP&A Regs)</i>	Appendix B includes a design statement in accordance with the EP&A Regs (clause 102).
<i>Biodiversity Conservation Act 2016</i>	Determination has been provided under Clause 7.9(2) of the Biodiversity Conservation Act 2016, that the proposed development is not likely to have any significant impact on biodiversity values and therefore a Biodiversity Development Assessment Report (BDAR) is not required. The proposed amendments do not impact the building footprint and do not alter the findings of this report.
<i>State Environmental Planning Policy (Housing) 2021</i>	The proposed development is for the purpose of in-fill affordable housing and remains consistent with the assessment of the provisions in Chapter 2 of the Housing SEPP. The proposed modification does not alter compliance with Chapter 4 or Schedule 9 of the SEPP (see Appendix B). No changes

Legislation	Matters for Consideration
	are proposed to the existing development (Mod 3) in terms of quantum and unit mix of the affordable housing.
<i>State Environmental Planning Policy (Industry and Employment) 2021</i>	No changes are proposed to the approved signage and therefore, the development remains compliant with the aims and provisions of Schedule 5 of the Industry and Employment SEPP.
<i>State Environmental Planning Policy (Resilience and Hazard) 2021</i>	The site remains suitable for the proposed development as shop top housing. As such, no further assessment is required.
<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	The proposed modification does not necessitate any variation to the assessment and recommendations of the acoustic impact assessment accompanying this SSDA provided an assessment of potential noise and vibration impacts from the rail corridor, which concludes any potential impacts can be appropriately mitigated through the implementation of recommendations (noting the consideration of Section 2.100, 2.120 and 2.122 of the SEPP.
<i>State Environmental Planning Policy (Sustainable Buildings) 2022</i>	A revised BASIX Certificate will be prepared to accompany this modification application. A Compliance Statement has been prepared by ELAB is provided at Appendix D . A Review of the proposal confirms that the amendment are capable of complying BASIX and NatHERS requirements and a new BASIX and NatHERS assessment will be undertaken to reflect the proposed changes, prior to determination.
<i>Wollongong Local Environmental Plan 2009</i>	The proposals compliance with the key provisions of FSR and building height are discussed further in Section 6 below. The modification does not alter the approved use as shop top housing, permitted within the zone.
<i>Wollongong Development Control Plan 2009</i>	It is noted that development control plans are not a matter of consideration in the assessment of SSDAs by virtue of Clause 2.10(1) of the Planning Systems SEPP 2021, which states that “Development Control Plans... do not apply... to State Significant Development”. Notwithstanding , the proposal remains consistent with the Wollongong DCP 2009 as per the assessment undertaken within the initial application.

4.4 Housing SEPP – Infill Affordable Housing

The proposed modifications in this application result in an increase of the overall building GFA by 2,272.2m².

The compliance of the amended development, as proposed, against this provision is set out in **Table 6**, confirming that more than 15% of the total GFA will be provided for affordable housing as per the Housing SEPP. Importantly, the proposed amendments increase the total number of affordable apartments from 27 to 31 (+4).

Table 6 Statutory Compliance Table – Housing SEPP (Infill Affordable Housing)

	Approved Development	Proposed Amendments	Change
Total Gross Floor Area	16,003.3sqm	18,275.5sqm	+2,272.2
Affordable Housing Requirement (15% of total)	2,400.45sqm	2,743.3sqm	-
Proposed Affordable Housing	2,400.7sqm (15%)	2,751.5sqm (15.05%)	+0.05%
Affordable Housing Units	27	31	+4 apartments
<i>Total Bedrooms (considering mix)</i>	52	56	+4 bedrooms

5.0 Community Engagement

Due to the nature of the modification and lack of adverse environmental impacts arising on the surrounding community, further authority and community engagement is not considered to be required and has not been undertaken.

Community engagement was undertaken with key stakeholders, authorities, and the community as part of SSD-67895459. The proposed modification does not change the type of development or impacts in a manner that would require additional engagement beyond that already undertaken.

6.0 Assessment of impacts

Under section 4.55(3) the consent Authority must also take into consideration the relevant matters to the application referred to in section 4.15(1) of the EP&A Act and the reasons given by the consent authority for the grant of the original consent.

The following assessment considers the relevant matters under section 4.15(1) and demonstrates that the development, as proposed to be modified, does not result in any unreasonable or adviser impacts.

6.1 Building Height

The development has a maximum building height control of up to 31.2m under the Housing SEPP (being +30% of the LEP control of 24m under clause 16). The proposal seeks approval for part of the development (Building 2) to a maximum height of 42.74, which is +37% of the 31.2m provision. The remainder of the existing development will continue to comply with the 32m building height control (or less), as per the approved plans.

An extract of the western elevation is provided in **Figure 15**, along with a diagram illustrating the location and extent of proposed additional height/massing in **Figure 16** and a perspective from Smith Street (looking north east) of proposed amendment (**Figure 17**).

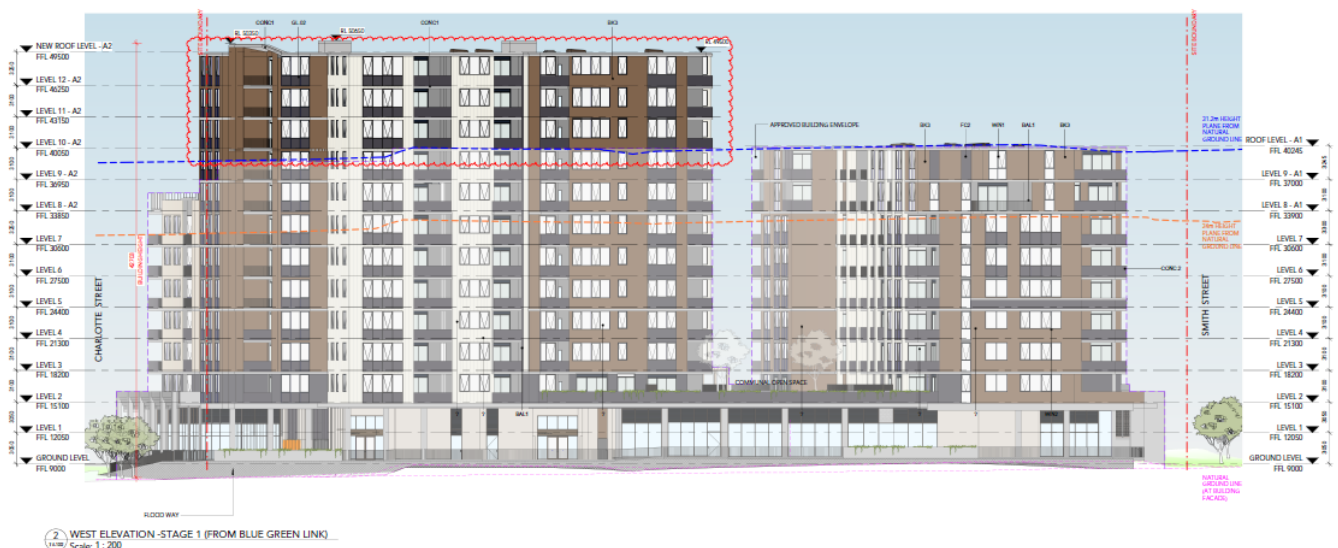


Figure 15 Western Elevation – building height

Source: Team2

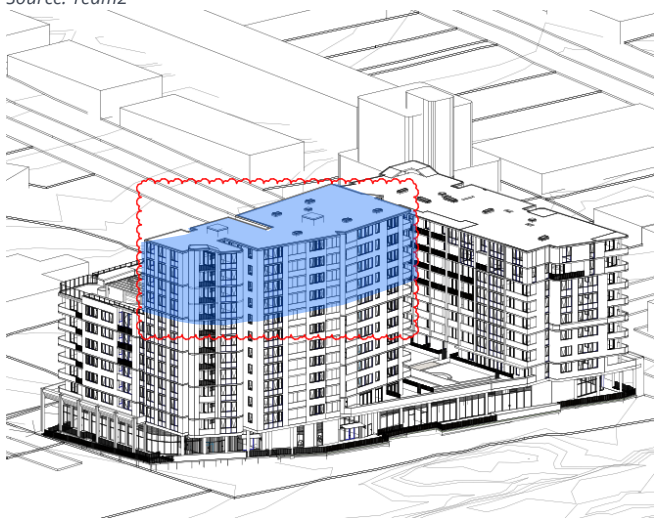


Figure 16 Location of additional building height

Source: Team 2



Figure 17

Source: Team2

Proposal – as viewed from Smith Street (N/E)

Notwithstanding the non-compliance to the numeric standards of the building height control, the following section demonstrates that

- Compliance with the development standard is unreasonable and unnecessary; and
- There are sufficient environmental planning grounds to justify the contravention.

6.1.1.1 Compliance is unreasonable and unnecessary

In Wehbe, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary.

The development is consistent with the objectives of the height of building development standard in Clause 4.3 of the Wollongong LEP 2009 for the following reasons:

- *to establish the maximum height limit in which buildings can be designed and floor space can be achieved*
 - The FSR of the proposed development complies with the maximum permitted FSR (as per the Housing SEPP).
- *to permit building heights that encourage high quality urban form,*
 - The revised proposal, particularly in the context of the draft UDF, provides a height that is consistent with the desired built form, and consistent with the surrounding context to the south (Wollongong CBD and surrounds) and current HDA Application to the west (Stage 2).
- *to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.*
 - The proposed additions are confined to the north western corner of the site. As demonstrated in the Visual Analysis (**Appendix E**), the proposal will not generate any visual impacts as a result of the height increase.
 - As demonstrated in the architectural plans and within this document, when viewed from Smith Street, the proposed additional height is scarcely perceivable. The increased height to Charlotte Street does not result in an unreasonable impact to the views to the sky (being limited to the western portion of the site) and have no impact on exposure to sunlight.
 - The proposed does not seek any extension of the building envelope laterally, relating to only a minor portion of the development footprint of the site as a whole.

6.1.1.2 Environmental planning grounds to justify the contravention

The following section outlines the environmental planning grounds used to justify the contravention of the building height control. Specifically, this includes:

- The proposal aligns with the Council endorsed intention for increased building height within the Flinders Street Precinct UDF corridor beyond the existing planning controls,
- The proposal remains compliant with the maximum FSR control for the land, remain well below the maximum permissible FSR
- The additional building height has been limited to the northern portion of the site only and will result in no additional overshadowing to properties on the southern side of Smith Street (see **Figure 1**). The additional floors will be scarcely visible from Smith Street and have been designed with consideration of the existing and future context of the precinct.
- The resulting height of the proposal, with the north-western portion being 13storeys and remainder at 9 storeys, is appropriate in both the existing and future context of the precinct, including consideration of the development approved/under construction to the south and the proposed HDA immediately to the west of the site (to a height of approximately 30 storeys)
- As demonstrated in analysis undertaken by the project architects (**Appendix C**) the proposal will continue to exceed ADG solar access compliance (84%) despite the additional height to the proposal.
- The proposal remains substantially the same as the development approved maintain consistency with the objective of the height control, as address within this report.
- Contextually, the development is consistent with similar development approved, under construction and proposed to the north and south of the site (along with to the west under the HDA application for Stage 2 of the Smith Street Site).
- The additional floor levels, resulting in the breach in height, support the provision of additional housing supply which is supported by the strategic context set by policy such as the National Housing Accord.

Summary

The Modification Report prepared does not purport that the proposal complies with the draft UDF, rather, as set out above, the Modification Report specifically addresses the non-compliance to the current height of building control.

Regarding consideration of the proposal against the draft UDF:

- Given its status as a draft design framework (which will inform a future Planning Proposal), there is no requirement for strict compliance with the draft UDF. The draft framework has some sound principles, including recognition of the suitability increased height within Flinders Street Precinct. The draft UDF is not a finalised document and is not yet a draft Planning Instrument.
- The Modification Report and accompanying View Analysis provides clear justification and rationale that on the assumption and methodology of the view corridors in the Draft UDF, which are tied to the proposed building height.
- The analysis demonstrates that he
 - proposed modification would be visually blocked in its entirety by potential future development of the corner site when viewed from the corner of Smith and Flinders Streets.
 - The proposed (including the additional floors) will not be visible from the UDF viewpoint in the future Flinders Street Precinct context or the existing controls which permit up to 24m buildings. This remains the case even if future buildings do not receive a 30% AH bonus and stay below the 24m view cone height, which aligns with the existing height limit.
 - The future context buildings are positioned behind an existing cluster of mature trees, which fully obscures the proposal from the UDF view corridor.
- The proposed alternate viewpoint and view corridor:
 - Better enables pedestrians to recognise and appreciate Mt Keira, being from a publicly accessible and safe location (rather than the centre of the road corridor)
 - Provides the opportunity for council to establish a space that enables a high quality, longer duration view of Mt Keira that is supported by artwork or similar reference to the importance to the view north-west to Mt Keira
 - Retain a high-quality line of sight to Mt Keira from the key activity node / place as denoted in the draft UDF Structure Plan, supporting the core intent and objectives of height distribution in the draft UDF
 - Better enables the site, and by association the corridor, to contribute to the key aims of the UDF, being delivery of a greater number of new homes and jobs.

6.2 Gross Floor Area and Floor Space Ratio

The minor modification to FSR/GFA remains compliant with the provisions of *Wollongong LEP 2009* and the Infill Affordable Housing provisions of the Housing SEPP combined.. The provisions regarding additional building floor space in clause 16 of the Housing SEPP are utilised.

Clause 4.4A(4) of WLEP states as follows:

(4) The maximum floor space ratio for a building on land within Zone E1 Local Centre, Zone E2 Commercial Centre, Zone E3 Productivity Support or Zone MU1 Mixed Use, that is to be used for a mixture of residential purposes and other purposes, is—

$(NRFSR \times NR/100) + (RFSR \times R/100)$ where—

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

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

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

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

When applied to the proposed development, the above formula translates as follows:

Totals

- **Non-Residential GFA:** 623.4 sqm (3.4%)
- **Residential GFA:** 17,652.1sqm (96.6%)
- **Total GFA:** 18,275.5 (100%)

Calculation

- $(3 \times 0.034) + (2.5 \times 0.966)$
- $= 0.117 + 2.4175$
- $= 2.517:1$

Therefore, the maximum permissible FSR under the LEP (i.e. without any affordable housing bonus under Cl. 16 of the Housing SEPP) is 2.517:1. The development, as proposed to be amended, will have a maximum FSR of 2.8:1.

However, with the adoption of the 30% FSR bonus under Part 2, Clause 16 of the Housing SEPP, the total maximum allowable FSR on the site is 3.272:1. As such, the proposed FSR remains compliant with the maximum FSR provisions for the site.

6.3 Affordable Housing

Clause 16 of the Housing SEPP allows for the FSR and height of a development including shop top housing to exceed maximum permissible control for the development on the land plus an additional floor space ratio of up to 30% where affordable housing is provided.

An extract of clause 16 is provided below.

16 Affordable housing requirements for additional floor space ratio

(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the development on the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).

(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows—

(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the development on the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).

Subclause (1) states that the amount of ‘additional floor space ratio’ by which the FSR limit is increased, up to 30%, is to be determined based on the amount of affordable housing provided, which is to be calculated in accordance with subclause (2).

A straightforward reading of Clause 16 is that the maximum FSR is the maximum (actual number) FSR as per the LEP + additional floor space ratio (capped at 30%) which is double the affordable housing component (which is required to be equivalent to at least 10% of the total GFA of the proposal).

The following considerations are provided in an assessment of this section of the SEPP:

- The proposal has a maximum permissible FSR of 2.52:1 (or 16,441sqm of GFA) and height of 24m under WLEP 2009.
- The proposed modification, which has a total GFA of 18,275sqm and FSR of 2.8:1 is 11.1% over the permitted base WLEP FSR control of 2.52:1.
- The proposal seeks to provide for 2,751.5sqm of affordable GFA (remaining unchanged from the approved MOD 3) which is 15% of the total proposed GFA.
- Because 15% of AH is provided, under the Housing SEPP, the permitted FSR control is increased by 30%– (3.272:1) the “additional floor space ratio”.
- As the total proposed FSR is below 3.272:1, the proposal is therefore compliant with the affordable housing provision required by the SEPP and additional affordable housing is not required.

Clause 16(3) clarifies that “...the maximum building height...is the maximum permissible building height for the development on the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1)”. The height limit is therefore lifted by for 30% more height above the LEP standard, to 31.2m.

Whilst compliant with the maximum permissible FSR control, the proposal exceeds the building height control in line with the draft UDF. Building height is addressed in **Section 6.1** of this report.

6.4 Residential Amenity

A revised ADG assessment has been prepared by to consider the amenity of the overall development resulting from the proposed amendments. This has been prepared by Team2 Architects and provided at **Appendix B**. A schedule has also been provided (**Appendix C**) to confirm the overall compliance of each unit, including the additional units sought to be included.

The changes would result in:

- 84.1% (148/176 apartments) of all apartments receiving a minimum of two hours of solar access during winter solstice
- 60.2% (106/176 apartments) of all apartments being naturally cross-ventilated

6.4.1 Affordable Housing Amenity

As per the assessment in the original modification, an assessment of the 31 affordable housing apartments within the overall development has been undertaken. The affordable apartment mix is proposed to be amended, along with the distribution across the development revised. The units are proposed to be spread across the buildings from level 2 to 6.

	Approved	Proposed	Change
Affordable Housing Units	27	31	
Solar Access (2 hours)	81.5%	80.6%	-0.9%
Cross Ventilation	63%	67.7%	+4.7%

The affordable housing apartments remain indistinguishable from market apartments in terms of other ADG design criteria such as apartment size, privacy, private open space, and storage. In line with the initial assessment and consideration by DPHI, the amenity of the affordable housing apartments will meet and exceed the criteria

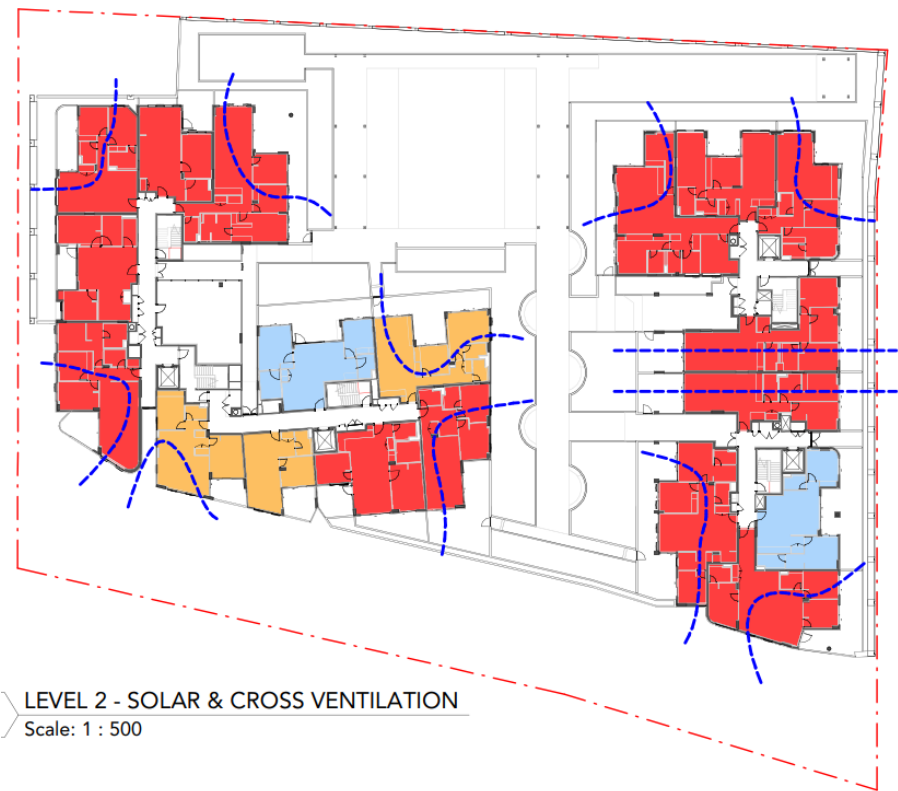
6.5 Solar Access and Overshadowing

As shown on the attached Architectural Plans (**Appendix A**), the proposed built form amendments do not result in any additional adverse impacts to surrounding dwellings or open space.

Locating additional height to the northwestern corner of the site provides a unique opportunity to maintain and maximise on site residential amenity and housing provision in the region, whilst not generating any additional overshadowing to surrounding dwellings, including the existing resident building to the south of Smith Street. Similarly, the proposal does not impact the podium open space beyond the existing approval (as measured in mid-winter) due to the orientation of the site (and path of the sun), as seen through the analysis of the original proposal and proposed development view from the sun diagrams.

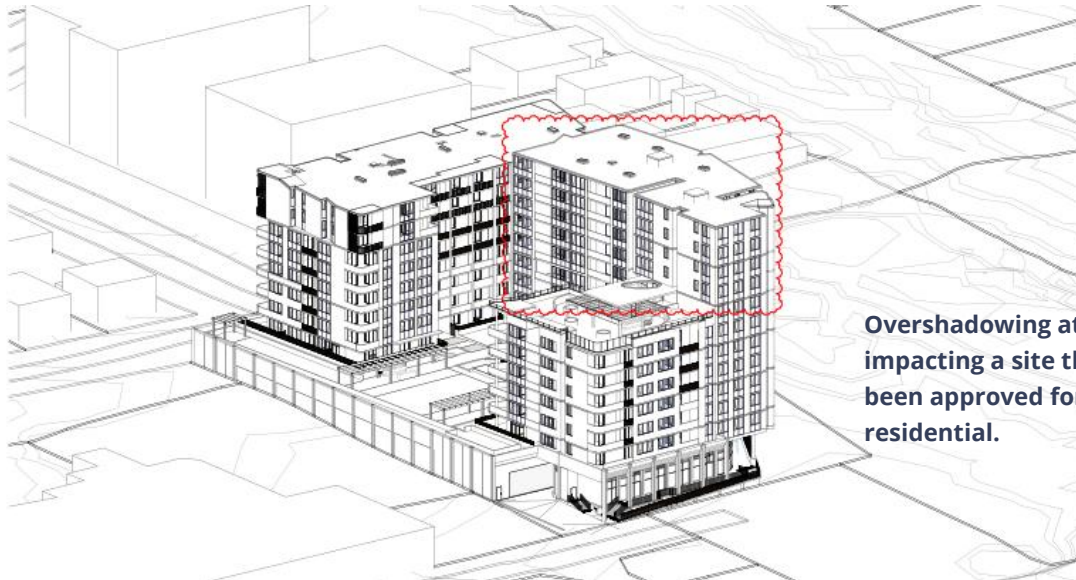
Annotated extracts of the view from the sun diagrams (**Appendix A**), are provided below that demonstrates the lack of any external amenity impacts.

Furthermore, the shadow diagrams provided at **Appendix A** confirms that the development, as proposed to be amended, maintains more than 70% solar access to apartments in mid-winter. More specifically, Building 1 achieves 87.1% as set out at **Appendix C** and shown on Sheets DA-8302 and DA-8304 of **Appendix A** (extract example of Level 2 Solar Access and Cross Ventilation Diagram provided below.



CALCULATIONS FOR JUNE 21, 9am - 3pm

	TOTAL	A1+A2	A3+A4
MIN 2 HOURS OF DIRECT SOLAR ACCESS	14	7	7
BETWEEN 0 AND 2 HOURS OF DIRECT SOLAR ACCESS	3	0	3
NO DIRECT LIGHT	2	1	1
TOTAL NO. UNITS	19	8	11



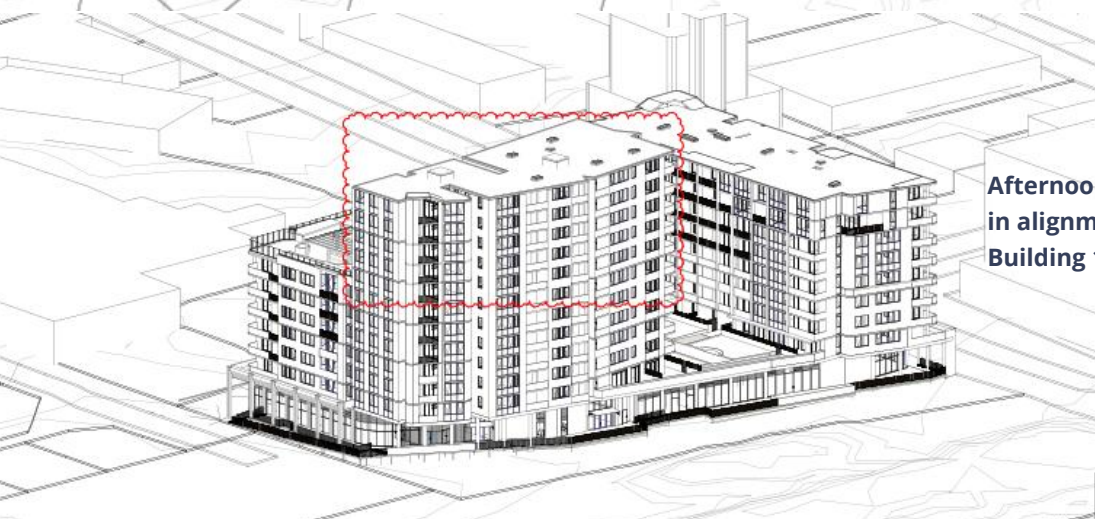
Overshadowing at 9am is limited – impacting a site that has recently been approved for high rise residential.

21 June – 9am



The overshadowing that occurs to the northern face of Building 1 is limited. Where these apartments otherwise achieve solar access throughout the day of more than 2 hours. No additional overshadowing to Smith Street occurs due to the height and distance from these properties.

21 June – 12pm



Afternoon shadow remains in alignment of the existing Building 1 parapet

21 June – 3pm

Figure 18 Views from the sun – 9am-12pm-3pm

Source: Team2 + Colliers Urban Planning

6.6 Car Parking

A Traffic Statement has been prepared by Colliers Engineering and Design and is provided at **Appendix F**. The report considers the traffic and parking impacts of the proposed amendments, along with the car parking provisions for the site in accordance with the Housing SEPP, local Council provisions, the Apartment Design Guide (ADG) and the TfNSW Guide to Traffic Generating Developments.

The provision of 183 car parking spaces for the revised proposal, whilst being below the provisions, is assessed as being suitable and highly appropriate for the mixed-use residential and commercial components of the shop top housing development, taking into account various factors, including:

- the site's highly accessible location,
- Affordable housing component (including car ownership), and
- Active transport facilities
- Demand management measures
 - Shared use agreement
 - Green Travel initiatives
 - Encouragement of Active Transport
 - Technology and Management Measures
 - Monitoring and Review

6.6.1 Car and Bicycle Parking Modification

As set out in **Section 3.6**, the proposal seeks to reduce the visitor parking rate to 0.1 per unit – resulting in a total of 18 visitor parks (from 24 approved), which has the impact increasing residential parking (from 144 to 150) and the provision of a further 20 bicycle visitor bicycle parking spaces. A Total of 183 spaces is retained.

The revision to the distribution and quantum of car parking is proposed to support the overall parking strategy for the development and provides a more efficient spread of parking across residential, visitor and commercial uses. The modification includes updates to the bicycle parking provision to support the revised visitor car parking strategy and promote sustainable travel demand.

Overall, the revised car and bicycle parking arrangement, including the additional 20 visitor bicycle spaces, ensures compliance with Council requirements, supports the development's active transport objectives, and provides a robust alternative to private vehicle use for visitors and residents.

Visitor Car Parking Amendments

The minor reduction to residential visitor parking spaces and increase in bicycle parking space is considered in the Traffic Statement (Appendix F). The proposal reasonable and supportable based on the site's context, the characteristics of the development, and established planning principles as set out in the Traffic Statement.

- *High transport accessibility*
 - The site is located within a highly accessible transport corridor, including proximity to Wollongong Railway Station (~800 m), bus services (~300 m), and the Wollongong CBD (~400 m). Developments in such locations typically exhibit lower private car use by both residents and visitors. Clause 7.4 of the Wollongong DCP explicitly allows reduced parking rates for developments located near public transport and public parking facilities. The ADG also supports merit-based reductions where high accessibility is demonstrated.
- *Lower visitor demand associated with affordable housing*
 - A portion of the development comprises affordable housing, which is consistently associated with lower car ownership and lower visitor parking demand. This aligns with demand profiles observed in comparable mixed-tenure and key-worker housing projects across metropolitan areas.
- *Provision of additional visitor bicycle parking*
 - To support sustainable travel and accommodate short-stay trips without reliance on private vehicles, the proposal includes 20 additional visitor bicycle spaces. This substantially enhances active-transport capacity and aligns with Council's broader strategic emphasis on cycling and mode shift.

- *No reduction in the total parking supply*
 - The overall provision of 183 parking spaces remains unchanged. The modification represents a reallocation of the parking supply rather than a reduction. Residential parking increases to better reflect on-site demand, while visitor parking remains sufficient given the site's accessibility and mobility context.

Visitor Bicycle parking Increases

The development will now provide an additional 20 visitor bicycle parking spaces, increasing the overall visitor bicycle parking supply and enhancing active transport accessibility to the site.

Including these additional spaces, the total bicycle parking provision exceeds the minimum requirements of the Wollongong DCP for the modified scheme (80 spaces). The expanded visitor bicycle parking allocation also directly supports the reduced visitor car parking rate and provides a practical alternative for short-stay trips to and from the site.

This increase will promote active and sustainable transport and will support the mode share and environmental/transport objectives of Wollongong by reducing reliance on private vehicles (particularly for visitors). Further, the increased bicycle usage generated by the development will facilitate greater utilisation of the recently installed bicycle infrastructure to the Smith Street frontage of the site and the surrounding area.

There remains flexibility within the Ground Floor and Level 1 layouts to accommodate additional bicycle parking if required. Options include converting or supplementing floor-mounted rails with vertical bicycle parking devices (BPDs) such as hoops or racks, as set out in the Traffic Statement. As shown on the plans the bicycle parking distribution includes 43 storage cage units across Ground Floor and Level 1, many of which can support a vertical BPD fixed to a wall, further improving bicycle storage capacity.

6.6.2 Tandem Parking Spaces

The parking layout includes a mix of regular, accessible and tandem spaces. The allocation and operation of tandem spaces will be managed through an Operational Management Plan (OMP), administered by Building Management and/or Traffic / Parking Management, to ensure clear responsibilities and efficient operation. It is important to note that tandem spaces will only be allocated to residential apartments on a single title.

The provision of tandem spaces does not alter the total parking supply and will not result in any adverse impacts on car parking availability. Management of these spaces can be appropriately secured via a condition of consent imposed by DPHI.

6.7 Design Excellence

In preparing the proposed modifications the project architects considered the commentary from previous Wollongong Design Review Panel, which has informed the design refinements. An assessment of the proposal's continued compliance with the Design Excellence provisions have been provided by Team2 Architects at **Appendix B**.

The proposed amendments, as a 4.55(2) modification, do not necessitate consideration of the Design Review Panel under the provision of WLEP. Notwithstanding that a design review is not required, an assessment of the proposal's consistency with design excellence provisions (at Clause 7.18 of WLEP) and against the DRP comments for the approved development have been undertaken by the project Architects. These have informed the methodology and design approach pertaining to the location, and extent of amendments. The assessment of the proposal's continued compliance with the Design Excellence provisions have been provided by Team2 Architects at **Appendix B**.

The development, as proposed to be modified has been designed with consideration of the key design excellence provisions as set out in Clause 7.18 of WLEP 2009 including.

- the suitability of the land for development,
- existing and proposed uses and use mix,
- heritage issues and streetscape constraints,
- 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,
- bulk, massing and modulation of buildings,
- street frontage heights,

- environmental impacts such as sustainable design, overshadowing, wind and reflectivity,
- the achievement of the principles of ecologically sustainable development,
- pedestrian, cycle, vehicular and service access, circulation and requirements,
- impact on, and any proposed improvements to, the public domain,
- achieving appropriate interfaces at ground level between buildings and the public domain,
- excellence and integration of landscape design.

The proposal retains inherent design excellence, consistent with the original development. The proposal demonstrates design excellence as it:

- maintains a high standard of presentation in its architectural design, materials and detailing that appropriately responds to the site, constraints and the local area whilst providing much needed housing supply on well-located site
- incorporates a form and external appearance that improved the quality and amenity of the public domain (with the proposed amendments no detracting from these)
- will not detrimentally impact view corridors, including views to Mount Kiera (refer to **Appendix E**)
- does not overshadow areas shown on the WLEP Sun Plane Protection Map or the Overshadowing Map
- is a shop top housing development which is suitable for the land
- maintains ground floor retail/commercial uses and residential uses above which will contribute to the existing and proposed uses and use mix of the area
- will not result in any heritage impacts
- maintains a contextually appropriate and suitable responses sleeving the above ground car park (provided instead of basement car parking for contamination reasons) with commercial tenancies and residential lobbies
- respects the spatial relationship between the approved buildings and form on the site and to existing and likely future neighbouring towers through the provision of appropriate setbacks, including a minimum 12 m setback to the western boundary, separated by the Council drainage easement (to be landscaped)
- maintains a massing and modulation of buildings, retaining established street frontage heights to Smith Street to positively contribute to the character of the area
- minimises environmental impacts such as overshadowing, wind, reflectivity and includes sustainable design – with the modification not generating any adverse additional impacts
- provides locationally appropriate transport arrangements, including bicycle parking, visitor parking and spaces for residents and visitors.
- Retains a positive public domain outcome, including the approved integrated, high-quality landscaping, a through-site link and an appropriate ground level interface between buildings and the public domain

6.8 Waste Management

A Revised Operational Waste Management Plan (**Appendix G**) has been prepared by Elephants Foot Consulting, along with a covering letter (**Appendix H**) relating to the specific modification pertaining to the increase in housing supply on the site.

This plan incorporates the amendments to the ground floor plan, including the enlarged the waste bin holding area on the Ground Floor to store the additional bins required.

The increased housing supply as part of this modification will otherwise not necessitate any amendments to the vehicle access points or loading/waste servicing areas at lower levels and at each building core.

6.9 Visual Impacts

A Visual Analysis has been prepared by Colliers (**Appendix E**). The report considers the potential visual impact of the proposal and addresses the requirements of the SEARs.

The Visual Analysis is prepared with consideration of the draft UDF, recently endorsed by Wollongong City Council as well as the comments from Wollongong City Council as part of the exhibition period.

6.9.1 Background

The draft UDF guides this future growth in accordance with a range of parts, including a vision, design principles, position statements, structure plan, and sub-precincts. The vision seeks to position the precinct as a key arrival boulevard that contains a mix of uses and also establishes an intent for a greater scale of development including ...*'A mixed-use corridor of mid to high rise development will define Flinders Street, with active commercial uses fronting the street, tree lined setbacks, and apartments above. Gateway development at the southern end of Flinders Street creates a mixed use attractor and provides a transition to the city centre character further south'*.

The structure plan for the Flinders Street South Sub Precinct introduces the concept of view corridor originating from the centre of Smith Street slightly east of its intersection with Princes Highway and Keira Street traversing, and therefore impacting, the block bound by Throsby Drive to the north, Princes Highway to the east, Smith Street to the south, and the railway to the west as shown in **Figure 5**.

The desired future character for the Flinders Street South Sub Precinct seeks to reinforce the southern mixed-use node within the broader precinct north of the site. The sub-precinct is to provide significant commercial and housing opportunities close to Wollongong City Centre with variation in building height have to protect views towards Mount Keira. The sub precinct is intended to be a marker for existing the Wollongong City Centre, underpinning the justification for increase height on the site and surrounds.

Further guidance that supports development of scale includes:

- 'Rezone the eastern portion of the sub-precinct to MU1 Mixed Use reinforcing the mixed use character of the Flinders Street corridor
- Create a height corridor along Smith Street with a 40m base height, integrating with adjacent controls to the south and reinforcing the transition to a city centre character
- Enable additional height at the corner of Flinders Street and Throsby Drive with a base height of 32m
- Support a slender marker tower at the corner of Flinders and Smith Streets, signifying the southern entry point into the Flinders Street Precinct and transition to the city centre.
- Reinforce the mixed-use node at the intersection of Flinders, Smith and Keira Streets and support a mix of retail activation that attracts people to the precinct.
- Nominate the sub-precinct as a key site that can deliver high quality development including activation opportunities, through site links and open space'.

6.9.2 View Protection Provision and Location

Section 3.4 'View protection' of the UDF includes the intent to preserve key views as the precinct involves. This introduces the concept of 'building height and upper-level setback requirements' 'to ensure that key view corridors are retained' in certain mapped areas.

Section A.8 'Topography and views' of the UDF identifies that the Smith Street view corridor is 'important to retain and celebrate'. It provides further detail as follows:

- 'The intersection at Flinders, Smith and Keira Streets is a key junction signalling the transition into the Wollongong City Centre. Smith Street is also a key east-west connection for vehicles, pedestrians and cyclists.
- Mount Keira can be seen when travelling north along Flinders Street and is a key visual marker exiting Wollongong. Currently a wide view towards Mount Keira can be appreciated from this junction, however recent proposals on sites along the railway corridor partially blocks the escarpment. Significantly, future development on sites along Flinders Street between Throsby Drive and Smith Street may have a considerable impact on this view'.

The Draft UDF identifies a key view corridor towards Mount Keira from Smith Street at the intersection with Keira and Flinders Streets. The following observations are made:

- This identified view corridor is not well positioned to provide a pleasant and consistently experienced vantage point to view Mt Keira.
- The viewpoint is located within the middle of the road at the intersection of Smith and Flinders Streets which is used as a major north-south connection for vehicle movement. This chosen spot would not be considered an adequate location to experience the views of Mt Keira as this is not a realisation or safe location, particularly given the need for pedestrians to remain focused on crossing movements, traffic signals, and vehicle interactions rather than engaging with distant visual landmarks.
- Consistent with established Visual Impact Assessment (VIA) principles, the visual sensitivity of viewers in this context is low, as attention is predominantly directed toward driving tasks rather than appreciation of visual amenity.

From a practical perspective, the corridor also has limited relevance for motorists.

- This section of Smith Street operates as an eastbound-only carriageway, meaning drivers are not oriented toward the view in a way that enables proper viewing of Mt Keira.
- Established plantings of street trees within the public domain already obstructs views toward Mount Keira from this location. While the tree is deciduous, it provides substantial screening of views during leaf-on periods and continues to partially filter views outside of these periods.
This existing vegetation materially reduces the extent and clarity of views toward the subject site, further limiting potential visual impact.

6.9.3 Analysis of Council Viewpoint

Analysis has been undertaken by Rock Hunter to assess the visual impact of the proposed modification from the identified viewpoint in Wollongong Councils Draft UDF. A review of Councils preferred view further south along Flinders Street has been conducted in the Visual Analysis (**Appendix E**). The findings of this viewpoint shows that the site will be screened by future developments in the Flinders Street South Sub-Precinct.

Consideration of built form controls in the Flinders Street South Sub-Precinct identifies:

- A 24m building height at the corner of Smith and Flinders Streets
- A 4m setback along Smith Street and Flinders Street

With reference to the above considerations and noting:

- The scale and location of the modification 4 built form
- The north-western view direction; and
- The distance between the viewpoint location and the proposed modification

The following photomontage shows:

- The MOD 4 envelope (in pink outline).
- UDF view cone lines (in light blue outline).
- Indicative built form enabled by the draft UDF (in blue outline), however for assessment purposes limited to no greater than 24m in building height.
- Mt Keira ridgeline (in orange).

The proposed Flinders Street precinct Layout is provided in **Figure 19** and Draft UDF view line with future massing of this development to Smith Street and Flinders Street is shown in **Figure 20**.



Figure 19 Proposed Flinders Street precinct layout

Source: Team2

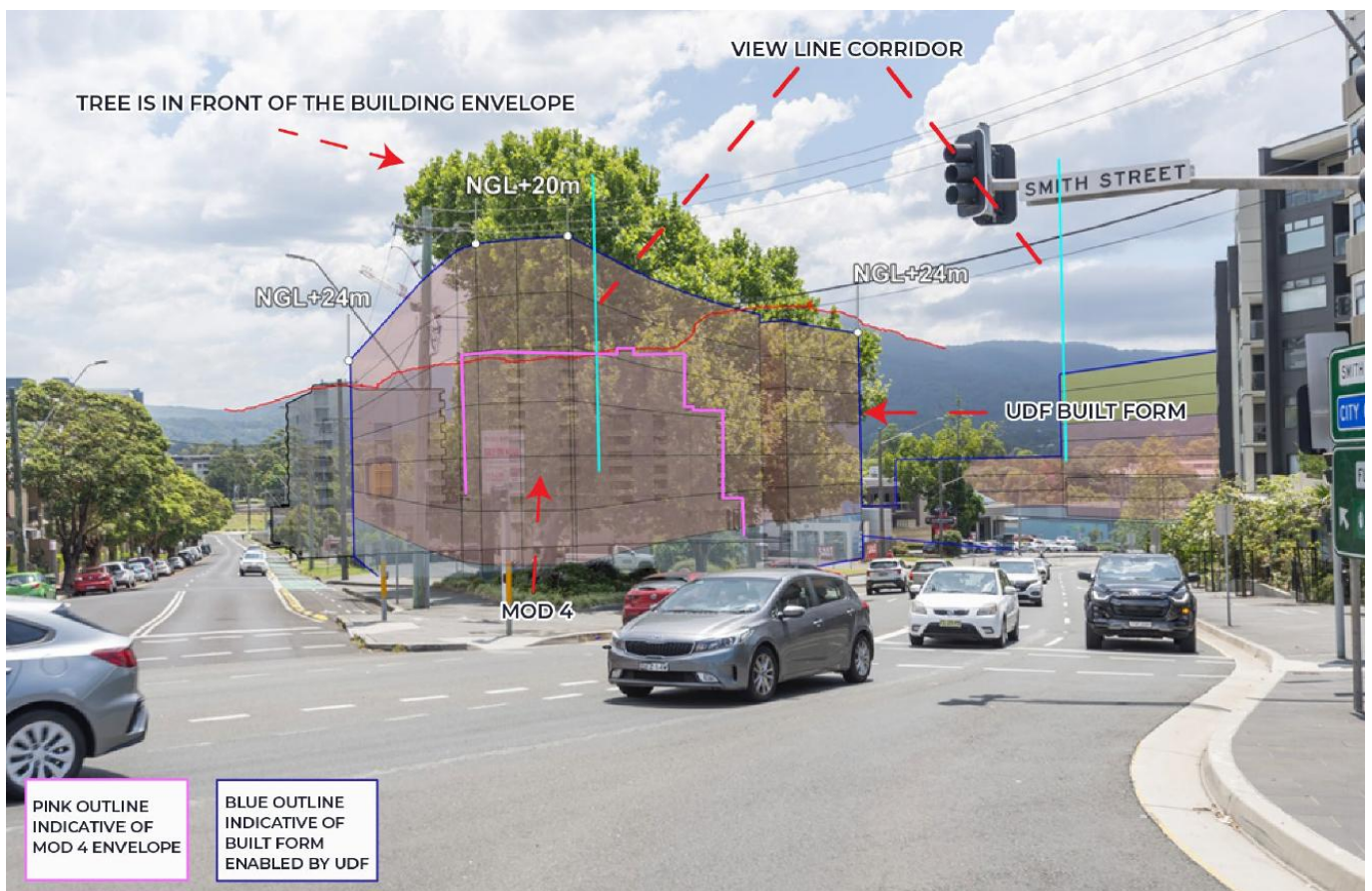


Figure 20 Draft UDF View Line with Future Massing of Development at Smith and Flinders Street

Source: Roch Hunter

The Visual Analysis (**Appendix E**) considers the following in its analysis of this view:

- The proposed modification would be visually blocked in its entirety by potential future development of the corner site when viewed from the corner of Smith and Flinders Streets as demonstrated in the below photomontage.
- The additional floors proposed in the modification application will not be visible from the UDF viewpoint in the future Flinders Street Precinct context or the existing controls which permit up to 24m buildings. This remains the case even if future buildings do not receive a 30% AH bonus and stay below the 24m view cone height, which aligns with the existing height limit.
- Future context buildings are positioned behind an existing cluster of mature trees, which fully obscures the proposal from the UDF view corridor.
- As surrounding sites are developed in the future, views through the subject site toward Mount Keira from this location will already become increasingly limited.

Therefore, the proposed modification will not create any additional or unreasonable visual impacts beyond those already anticipated as part of the broader evolving precinct.

6.9.4 Alternative Viewpoint

Based on the above, a proximate, but more appropriate location in which to observe the high value views has been identified. As shown in **Figure 21-23**, this is located on the north-east corner of the Princes Highway, Smith Street and Keira Street, where recent development has created a generous sized and high-quality public space that is aligned with a signalised crossing of the Princes Highway, and a marked pedestrian crossing of Keira Street.

In terms of VIA practice, it is not only the nature and extent of views that is a key consideration, but also the characteristics of the viewing location. Viewing location that are in the public domain, well used, and are accessible by pedestrians typically have greater weight than those obtained from roads.

As such, this location is considered to have greater weighting in a VIA context than the current viewpoint (for the reasons set out above). It is also considered sufficiently proximate to the current viewpoint to reasonably represent the general location.



Figure 21 Location of the viewpoint located in the adjoining public space (referred to as Viewpoint C)

Source: Rock Hunter

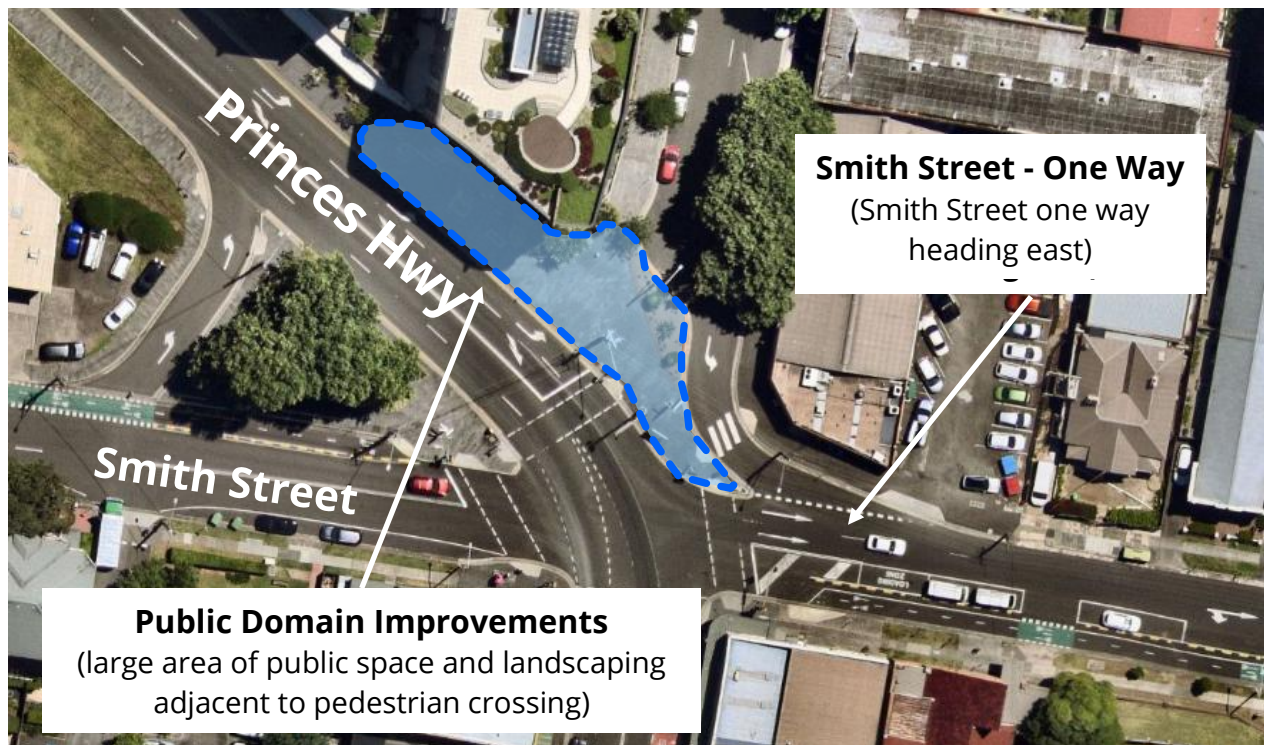


Figure 22 *Intersection of Princes Highway and Smith Street*
Source: Nearmap



Figure 23 *Aerial photograph of the new public space at the north-east corner of the Princes Highway, Smith Street and Keira Street*

Figure 25 provides a comparison of the UDF and alternate view location. **Figure 26** prepared by Rock Hunter shows:

- The approved consent in outline
- The proposed modification in colour
- The draft UDF view corridor in solid grey
- The southern extent of the view of Mt Keira from this location as a green line
- An alternative view corridor as a pink line.

As can be seen, the southern extent of the view of Mt Keira from this location denoted as a green line does not impact the proposed modification. Furthermore, while there is minimal difference in the area between the draft UDF view corridor in solid grey and the alternative view corridor as a pink line, the alternative view corridor is less impactful on the proposed modification.



Figure 24 Comparison of view corridors
Source: Rock Hunter



Figure 25 *The proposed as seen from Viewpoint C*

Source: Rock Hunter

This view corridor enables retention of a high-quality line of sight to Mt Keira from the key activity node as denoted in the draft UDF Structure Plan. Importantly, the southern boundary intersects with the location where the more gently sloping lower slopes of Mt Keira intersect with its more steeply sided upper slopes. This enables:

- Mt Keira to be recognised and appreciated as a distinct, individual landscape feature
- Full visibility of the upper slopes (including its cliff faces) of Mt Keira that contribute strongly to its natural landmark status.

Other key aspects of the draft UDF Structure Plan view corridor, including viewing direction to the north-west, and width (19.3m approx.) are maintained.

6.9.5 Conclusion

The following grounds support the proposed modification having minimal visual impact:

- It is located to the rear of the site in relation to Smith Street
- It is limited in physical extent, including height and overall scale compared to the development for which consent was originally granted
- It will be in large part screened from view from other parts of the public domain by existing context and future development enabled by the LEP and the draft UDF.

These support the findings of the original SSDA when determining acceptability of visual impact:

- 'Relative to what may be expected in the city centre with reference to permitted site height and FSR the proposal will not unduly obstruct significant views or views from the Flagstaff Hill lighthouse to the escarpment
- It will maintain existing linear views to the west along Smith Street
- Being for a high density residential, higher rise development, it is consistent with the key character intent of the surrounding precinct
- It will enhance the amenity of the site and surrounds

- It will not introduce new, non-characteristic or discordant or intrusive elements into the views available in the visual catchment’.

The Visual Analysis (**Appendix E**) concludes that the proposal will not result in any adverse visual impact when considered against both the existing context and future context of the Flinders Street Precinct.

When considered from the Wollongong Councils Draft UDF identified viewpoint, the proposed modification is positioned behind an existing cluster of mature trees, which fully visually obscures the modification when view from this this view corridor.

Future development within the Flinders Street South Sub-Precinct, will introduce intervening buildings that will result in visually blocking the proposed modification from the UDF identified viewpoint. This remains the case irrespective of whether additional height incentives, such as affordable housing bonuses are proposed. As Flinders Street Precinct develops into its future desired character, views of Mt Keira through the precinct will be reduced due to this added built form. Therefore, the proposed modification will not result in any additional visual impacts beyond those already expected within the planned future context.

Furthermore, visual analysis from the identified alternative viewpoint further south along Flinders Street also demonstrates that the proposed modification will not impact the crown of Mt Keira and will maintain the visual interest of the of the ridgeline of the Escarpment that is so unique to the Illawarra region.

6.10 Wind Impacts

A Wind Impact Assessment (addendum letter) has been prepared by Windtech (**Appendix I**) to consider the proposed amendments to the approved development.

The assessment confirms that the overall building form remains similar to the original proposal, with the exception of the increase in building heights. Given the design consistency. Applying the established mitigation measures previously considered, it is expected that wind conditions for the various trafficable outdoor areas within and around the development will be suitable for their intended uses, and that the wind speeds will satisfy the applicable criteria for pedestrian comfort and safety. It is proposed for the addendum statement to be included as part of the development consent.

7.0 Justification of the modification project

The Minister for Planning and Public Spaces notice of decision sets out the following reasons for granting consent for the approval of SSD-67895459.

- *the project would provide a range of benefits for the region and the State as a whole, including direct investment of \$69 million and creating 305 construction jobs and 30 operational jobs;*
- *the project is permissible on the site with development consent, and would support the State government priorities to deliver well-located housing as it will deliver 145 residential apartments (including 25 affordable housing apartments) in a highly accessible location;*
- *the impacts on the community and the environment can be appropriately minimised, managed or offset to an acceptable level, in accordance with applicable NSW Government policies and standards;*
- *the issues raised by the community during consultation and in submissions have been considered and adequately addressed through changes to the project and the conditions of consent. Engagement on the project is considered to be in line with Undertaking Engagement Guidelines for State Significant Projects, including the community participation objectives outlined in these guidelines; and*
- *weighing all relevant considerations, the project is in the public interest.*

For all the matters assessed in **Section 6.0**, the impact of the proposed modification will remain consistent with those approved under the original development consent. Specifically:

- The modified development will continue to facilitate much needed housing supply, including affordable housing.
- The modified development remains consistent with the strategic framework presented in **Section 2.0**, including the draft UDF.
- The modified development will continue to meet the relevant objectives of the EP&A Act.
- The modified development meets all relevant statutory requirements outlined in **Section 4.0**.

The proposal seeks to enable the provision of high-quality housing and associated ground floor non-retail uses and is in the public interest.

There will be no new environmental impacts beyond those previously considered and addressed in the original application and addressed in this modification. The proposed modification remains consistent with the original reasons for the granting consent to SSD-67895459 and the justification provided within the original EIS.

8.0 Conclusion

In accordance with Section 4.55(2) of the EP&A Act, the Department of Planning, Housing and Infrastructure may modify the consent as it is substantially the same development as the development for which the consent was granted.

The proposal aligns with the clear strategic intent for the precinct, as part of the continued growth within Wollongong and represents an excellent opportunity for much needed additional housing, on a well-located, accessible site close to public transport, with minimal environmental impact.

We trust that this information provided in this report and accompanying is sufficient to enable a prompt assessment of the proposed modification request.