

Item No: 4.2

Title: DA/61540/2021 - Section 8.2A Review - 1 and 3 Alfred Street and 315 West Street, Umina Beach - Demolition and Construction of Commercial Premises and Shop Top Housing

Central Coast
Local Planning Panel

Department: Environment and Planning

24 November 2022 Local Planning Panel Meeting

Reference: DA/61540/2021 - D15345746
Author: Erin Murphy, Senior Development Planner, Development Assessment South
Approver: Ailsa Prendergast, Section Manager, Development Assessment South
Andrew Roach, Unit Manager, Development Assessment
Executive: Alice Howe, Director Environment and Planning

Summary

An application has been received for a review of determination for demolition of part existing structures and erection of commercial premises with shop top housing at 1 and 3 Alfred Street and 315 West Street, Umina Beach. The application has been examined having regard to the matters for consideration detailed in Section 4.15 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

The matter was previously considered by the Local Planning Panel at its meeting of 9 December 2021, where the application was determined by refusal. This application for review of the determination is made in accordance with Section 8.2 of the *Environmental Planning and Assessment Act 1979*. The applicant has amended the plans for the proposed development and has provided updated additional information

The application is required to be referred to the Local Planning Panel for the following reasons:

- The previous application was determined by the Panel; and
- The application is subject to *State Environmental Planning Policy No 65 (Design Quality of Residential Flat Buildings)* (SEPP 65) and is over 3 storeys in height

The proposal, as amended, fails to provide adequate justification or additional information to address the reasons for refusal. The application is recommended for refusal.

Applicant	PM Anderson Consulting Pty Ltd
Owner	The M & G Cunico Family Trust & Chemico Superannuation Fund
Application No	DA/61540/2021
Description of Land	Lots 32, 33, 35 Sec A DP 8872 Nos 1 and 3 Alfred Street and 315 West Street Umina Beach

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Proposed Development	Demolition and construction of commercial premises and shop top housing.
Site Area	1,416.5m ²
Zoning	B2 Local Centre
Existing Use	Chemist shop, parking, dwelling house and pathology collection centre.
Employment Generation	No
Estimated Value	\$5,200,000.00

Recommendation

- 1** *That the Local Planning Panel refuse the Section 8.2A review of determination of development application DA/61540/2021 at Nos 1 and 3 Alfred Street and 315 West Street Umina Beach for the demolition and construction of commercial premises and shop top housing adhere to the previous decision to refuse the application subject to the reasons for refusal detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Sections 8.2 and 4.15 of the Environmental Planning and Assessment Act 1979.*
- 3** *That Council advise those who made written submissions of the Panel's decision.*

Relevant Background

The Local Planning Panel (the Panel) considered the proposed development at its meeting on 9 December 2021. The Panel resolved to refuse the application. The decision of the Panel was unanimous.

This current Application has been lodged under Section 8.2 of the *Environmental Planning and Assessment Act 1979* for review of the determination. The Applicant has amended the proposal and provided the following information:

- Revised architectural plans;
- Updated Statement of Environmental Effects, including a written response to reasons for refusal and clause 4.6 request to vary the building height development standard; and
- Revised reports addressing the changes to the design of the proposal including BCA Report, Traffic and Parking Report, SEPP 65 Statement, BASIX / Assessor Certificates, Waste Management Plan.

Key Issues

- Height variation
- Amalgamation of lots and built form outcomes
- Setbacks
- Impact on future development potential of adjoining sites / lot isolation
- Public Submissions and matters raised therein

Precis:

Proposed Development	Demolition and construction of commercial premises and shop top housing.
Permissibility and Zoning	<p>The subject site is zoned <i>B2 Local Centre Zone</i> under the provisions of <i>Gosford Local Environmental Plan 2014</i>. The proposed development is defined as commercial premises and shop top housing which are permissible in the zone with consent of Council.</p> <p>(Note: <i>Central Coast Local Environmental Plan 2022</i> (CCLEP 2022) came into effect on 1 August 2022. This application, for review of the determination under Section 8.2 of the <i>Environmental Planning and Assessment Act 1979</i>, is subject to saving provisions under clause 1.8A of CCLEP 2022 and as such must be determined as if this plan had not commenced. The assessment and determination of this application has been made under <i>Gosford Local Environmental Plan 2014</i> (GLEP 2014). It is noted that the site is subject to the same zoning , height and floor space ratio (FSR) controls under the CCLEP 2022 as those under GLEP 2014.</p>
Relevant Legislation	<p>The following planning policies and control documents are relevant to the development and were considered as part of the assessment.</p> <ul style="list-style-type: none"> • <i>Environmental Planning and Assessment Act 1979 – Section 4.15</i> • <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> • <i>State Environmental Planning Policy (Coastal Management) 2018</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> • <i>State Environmental Planning Policy (SEPP) No 65 - Design Quality of Residential Flat Development</i> • <i>Gosford Local Environmental Plan 2014</i> • <i>Gosford Development Control Plan 2013</i> (GDCP 2013) • <i>Central Coast Local Environmental Plan 2022</i> (CCLEP 2022)
Current Use	Chemist shop, parking, dwelling house and pathology collection centre
Integrated Development	No
Submissions	One

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Variations to Policies - Gosford Local Environmental Plan 2014

Clause	Clause 4.3
Standard	Maximum building height - 14.25m
Departure basis	1.4m or 9.9%

Variations to Policies – Gosford Development Control Plan 2013 and the Apartment Design Guide

Clause	GDCP 2013 Clause 4.2.5 Building Setbacks.
Standard	3m -6m
Departure basis	Nil-50%

The Site and Surrounding Development

The site is located on the northern side of West Street, Umina, between Oscar Street and Alfred Street. Adjoining development comprises single and two storey commercial and residential development. The topography is relatively flat with levels between RL5.7m and 6.1m.

The site is a 'T' shaped lot and consists of three lots. One lot faces West Street, and 2 lots face Alfred Street.

The site contains a chemist shop on West Street, and a prefabricated building used as a pathology collection centre and a single storey brick dwelling-house and car parking on the lots fronting Alfred Street.

The site is not identified as being "bushfire prone land" on Council's bushfire maps. The site contains Class 4 Acid Sulfate Soils.



Figure 1 - Locality Plan



Figure 2 - Aerial Photograph



Figure 3 - View from Alfred Street



Figure 4 - View from West Street

The Proposed Development

The proposal comprises:

- Demolition of existing structures except the chemist shop on 315 West Street.
- Commercial premises with shop top housing.
- 39 Basement car parking spaces, motorcycle spaces and bicycle spaces. Car parking will consist of parking stackers as well as some tandem parking.
- Access to site from Alfred Street.
- 573m² of new commercial floor area
- 321m² existing chemist shop floorspace retained
- 14 residential units (2 x 1 bedroom, 4 x 2 bedroom, 8 x 3 bedroom).
- Landscaping.

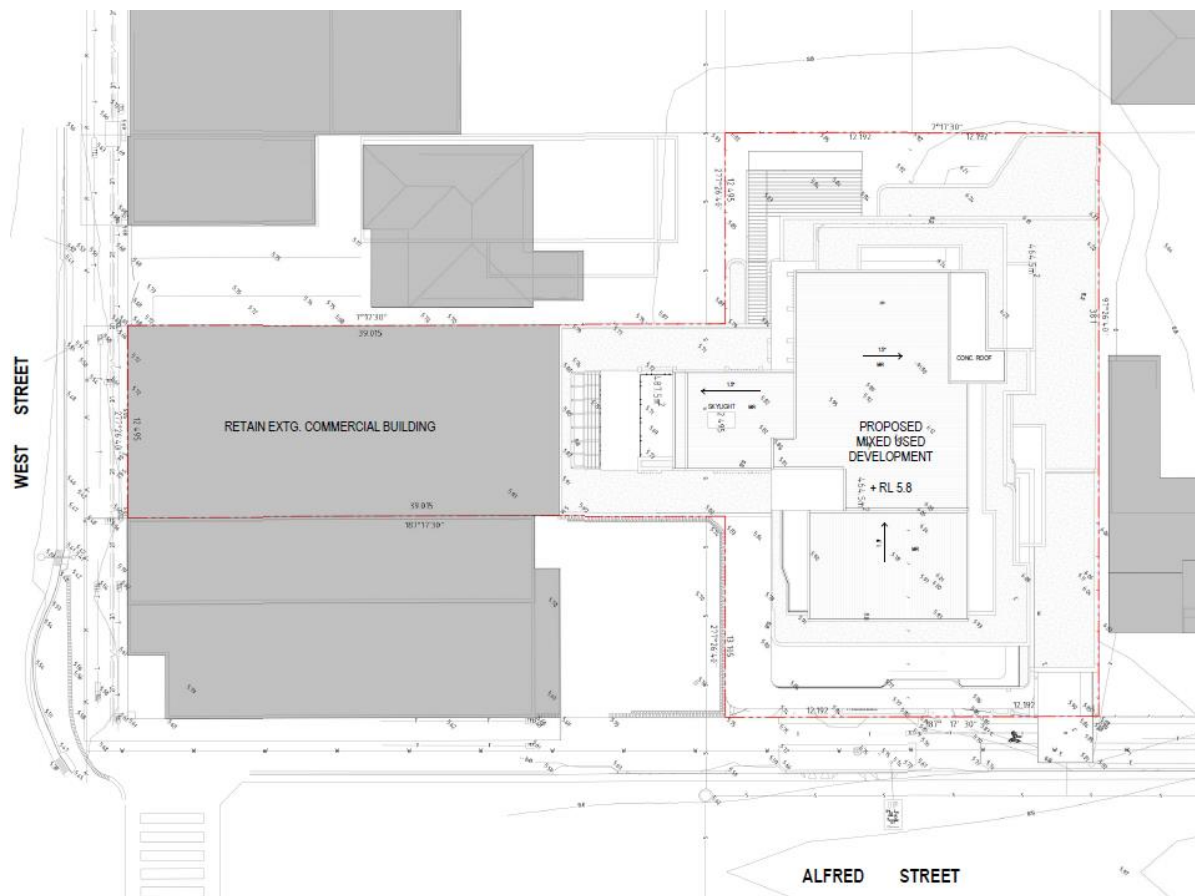


Figure 5 - Proposed Site Plan



Figure 6 – Proposed Alfred Street elevation



Figure 7 - Alfred Street elevation – as refused



Figure 8 – Photomontage of amended design – Alfred Street

Application Background

The Panel considered the proposed development at its meeting on 9 December 2021. The Panel resolved to refuse the application. The decision of the Panel was unanimous, stating:

- 1 *The Panel is not satisfied that the applicant's clause 4.6 written request demonstrates that compliance with the development standard is unnecessary in the circumstances of the case because sufficient environmental planning grounds were not put forward to justify contravening the Height of Buildings development standard, and not satisfied that compliance would be unreasonable in the circumstances of the case. Non-compliance with the Height of Buildings standard could potentially threaten the achievement of the objectives of the development standard and the objectives of the zone, and serve as a precedent for other future development in the B2 Local Centre zone that is inconsistent with these objectives.*

The Panel considers that the proposed development will not be in the public interest because it is inconsistent with the relevant objectives of the Height of Buildings development standard and the relevant objectives for development within the B2 Local Centre zone in which the development is proposed to be carried out.

- 2 *That the Local Planning Panel refuse development consent to DA61540/2021 for demolition and construction of commercial premises and shop top housing on lots 32, 33, and 35 Sec A DP 8872 No 1 and 3 Alfred Street and 315 West Street Umina Beach*

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having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979 on the following grounds:

- 1 The proposed development does not meet the Height of Buildings development standard. The height of the proposed development exceeds the height of buildings development standard cl 4.3 of the Gosford Local Environmental Plan 2014 (GLEP2014).*
- 2 The proposed height of five storeys exceeds the four storey limit for the site set out in the Gosford Development Control Plan 2013 (GDCP2013).*
- 3 No compelling reason has been put forward to justify exceedance of these height limits.*
- 4 Proposed building setbacks/building separation do not comply with the State Environmental Planning Policy No. 65 (SEPP65) Apartment Design Guide (ADG) Building Separation requirements or GDCP2013 setback requirements.*
- 5 The proposed amount of communal open space appears to be inadequate having regard to the requirements of SEPP65 ADG.*
- 6 The proposed building footprint may have a potentially negative impact on the future development potential of adjoining sites.*
- 7 The proposed development pattern does not promote efficient use of land, as per DCP Objective 1 – Umina Beach Village Centre.*
- 8 The proposed non-compliance with the Gosford LEP 2014, SEPP65 and Gosford DCP 2013 would constitute an undesirable precedent for future development and threaten the future achievement of the strategic planning objectives for the desired future character of the area.*
- 9 Granting consent does not promote the orderly and economic use and development of the land in accordance with S1.3(c) of the Environmental and Assessment Act, 1979.*

Applicant's Response to Reasons for Refusal

Reason for Refusal 1

- 1 The proposed development does not meet the Height of Buildings development standard. The height of the proposed development exceeds the height of buildings development standard cl 4.3 of the Gosford Local Environmental Plan 2014 (GLEP2014).*

Applicant's Submission

The amended proposal has been considered with respect to the height of buildings development standard contained in clause 4.3 of the GLEP 2014. A request to vary the development standard under the provisions of clause 4.6 of the GLEP 2014 has been included in the application and this request provides a justification as to why the standard is unwarranted or unjustified in this circumstance and why the request should be granted. The amended design has reduced the bulk and scale of the proposed building so that it has the appearance of a less tall building.

Planner's Comment

The maximum building height control applicable to the site is 14.25m. The variation of the original refused DA was 1.4m or 9.9%. While the amended plans do have an increased top floor setback to Alfred Street, the proposed maximum height and variation remain the same.

Reason for Refusal 2

- 2 *The proposed height of five storeys exceeds the four storey limit for the site set out in the Gosford Development Control Plan 2013 (GDGP2013).*

Applicant's Submission

The site is located within the Village Centre of the Umina Beach CBD and is in close proximity to service, facilities and recreational areas. The proposal provides for much needed commercial space on the ground floor and 14 shop top houses above. There are no adverse impacts associated with the additional floor of apartment space proposed and the proposal is generally compliant with other controls affecting the site and meets the objectives of the Draft Central Coast Regional Strategy of creating 15-minute communities where residents are able to walk or cycle to services and facilities within a 15-minute journey from their home.

Planner's Comment

While the amended plans do have an increased setback to Alfred Street the building remains 5 storeys in height.

Reason for Refusal 3

- 3 *No compelling reason has been put forward to justify exceedance of these height limits.*

Applicant's Submission

This proposal is accompanied by a detailed request to vary the development standard of the height of buildings in accordance with the provisions of clause 4.6 of GLEP 2014.

Planner's Comment

The Applicant has submitted a written clause 4.6 request to vary the height development standard. The applicant submission contends that the development standards should be varied in summary for the following reasons:

- The variation is minor at 9.9% and represents less than one storey.
- The balance of the site fronting West Street remains single storey and is well below the height limit.
- The proposal consolidates three lots into one lot.
- The upper floor is setback and has an open balcony which reduces the view impact from the surrounding streets.
- The additional height does not significantly increase shadow or privacy impacts on adjoining sites or reduce view impacts.
- The proposal is consistent with the objectives of the development standard and the zone objectives.

The clause 4.6 request appears to be the same as the clause 4.6 request submitted with the refused application. No new arguments or justification for the height exceedance have been put forward. This is discussed further under the clause 4.6 Heading below.

Reason for Refusal 4

- 4 *Proposed building setbacks/building separation do not comply with the State Environmental Planning Policy No. 65 (SEPP65) Apartment Design Guide (ADG) Building Separation requirements or GDCP2013 setback requirements.*

Applicant's Submission

The amended building design changes have taken in to account the setback and building separation matters under SEPP 65 Apartment Design Guide. Whilst the building is not fully compliant, areas of non-compliance have been added with additional on building and planter box screening and physical screens on the building to afford increased privacy and separation of private open spaces. Blank walls have been used to facilitate the separation where possible. The site is an irregular shape and consolidation of 3 lots which if full compliance is sought would render this site undevelopable to the height and configuration as supported by the GLEP 2014, GDCP 2013 and the former *Central Coast Regional Plan 2036* and the current *Central Coast Regional Plan 2041*.

Planner's Comment

It is the use and consolidation of these particular three lots that creates the irregular T shape site and the 'pinch points' where there remain significant non-compliances with the setback

controls. The retention of the older style single storey commercial building on 315 West Street and the shifting or 'borrowing' of the FSR onto the rear of the site results in a built form of a bulk and scale larger than what the controls envision for the rear of the site. Rather than creating a larger more rational lot suitable for a larger redevelopment, the consolidation creates an awkward T-shaped site, the impacts of which are exacerbated as the development concentrates the bulk and scale on only two out of the three lots.

Reason for Refusal 5

5. *The proposed amount of communal open space appears to be inadequate having regard to the requirements of SEPP65 ADG.*

Applicant's Submission

As the development is small and has generous private open spaces for each unit, there is no communal open space provided for residents. Part of the reason for this is that the development is mixed use, located within the Umina Beach Village Centre and within walking distance to recreational facilities and assets including the Umina Beach.

The *Apartment Design Guide* recognises that where developments are unable to provide communal open space in accordance with the criteria, such as on sites within business zones, there are alternatives, such as providing larger balconies and increased private open space for apartments. These circumstances apply to the subject land and proposal, which is on business zoned land in a defined centre, and where DCP controls require ground floor commercial use and encourage development to fully build to side and rear boundaries at the lower levels. The proposal provides balcony/ courtyard sizes in excess of the minimum areas required under the *Apartment Design Guide*, and in an area where there is good proximity to public open space and facilities, both of which apply to the subject proposal, which has good access to regular bus services, and is within walking distance of Umina Beach and recreational facilities.

Planner's Comment

A 143m² communal open space area was provided along the western boundary of the site, this equated to 10% of the site area. Under the Section 8.2A review amended plans, this has been increased to 165m² or 12% of the site. While this does not meet the ADG requirement of 25% of the site area, the ADG does allow for smaller sites not to have communal open space in certain circumstances. The balconies meet or exceed the minimum size requirements by varying amounts (2m² to 10m²). In addition, the site is within 500m of the beach and does has good access to public open space in this regard.

It is noted that updated landscape plans have not been provided with the Section 8.2A review.

Reason for Refusal 6

6. *The proposed building footprint may have a potentially negative impact on the future development potential of adjoining sites.*

Applicant's Submission

The proposed building has been designed to comply with the provisions of GLEP 2014 and GDCP 2013 with the ground floor commercial space. The sites adjoining are commercially zoned as per this site and it is fair to assume that future development will also satisfy these provisions. The building separation at higher levels has been screened and protected to ensure protection of privacy and amenity to the occupants of the buildings. The block planning exercise for the adjoining building on the corner of West and Alfred Streets illustrate that the development potential of the site is not impacted adversely by this proposal.

Planner's Comment

The setbacks do not comply with the ADG and GDCP requirements and do create 'pinch points' at the interface with the neighbouring properties on West Street. This will, to a degree, impact the development potential and/or amenity outcomes of 323-333 and 311-313 (corner block) West Street.

The 'block planning exercise' does not seem to have been submitted or detailed as part of the Section 8.2A review application; however it is noted in the original assessment report (Attachment 7).

The block diagram provided in the original assessment report show a building achieving 1.9:1 FSR on the corner block- being 311-313 West Street. However, this does not consider the isolation of the lot and its inability to amalgamate with any other lots. By isolating the corner lot, with a site area of approximately 500m², the sites height and FSR is reduced, or rather, a 'base' applies, of 11.5m and 1:1, rather than the 14.25m and 1.8:1 FSR available to sites over 1000m². It is unreasonable to argue that the isolation of this corner site does not have any impacts on its redevelopment potential.

Reason for Refusal 7

7. *The proposed development pattern does not promote efficient use of land, as per DCP Objective 1 – Umina Beach Village Centre*

Applicant's Submission

The proposed development consolidates three smaller lots and creates a lot of sufficient area and space to facilitate commercial and residential developments. The efficient use of building

design and requirements to provide commercial space on the ground floor where development is encouraged to build to side and rear boundaries has meant that the site is a good reuse of land adjoining and adjacent to a commercially zoned Village Centre where economic stimulus by the future building occupants and commercial tenant will see a positive economic benefit to the locality and broader region. The redevelopment of the site(s) to cater for this development prevents the broader urban sprawl phenomenon by providing housing choice and style in close proximity to existing services, facilities, recreational areas and transport routes.

Planner's Comment

As discussed above, the amalgamation results in the creation of an irregular T shape lot. The concentration of the available FSR to the rear of the site, and resultant non compliances with both height and setbacks, are considered to be a less than ideal or efficient redevelopment option. A further issue outside of design, is that by allocating all of the sites available FSR, and placing this to the rear of the site, little incentive is left for redevelopment of the front portion of the site. With no possible floorspace increase benefit, it is less likely the ageing single storey building stock on West Street will see a similar sort of revitalisation or redevelopment.

A more rational redevelopment site would be just 1-3 Alfred Street, leaving 325 West Street to potentially amalgamate with other properties along West Street, or alternatively all three current lots plus the corner lot being 311-131 West Street.

Reason for Refusal 8

8. *The proposed non-compliance with the Gosford LEP 2014, SEPP65 and Gosford DCP 2013 would constitute an undesirable precedent for future development and threaten the future achievement of the strategic planning objectives for the desired future character of the area.*

Applicant's Submission

The amended design has taken into consideration the reasons used by the LPP to refuse the previous application and have addressed the concerns raised by reducing the building bulk and scale and floor space ratio, increasing the building separation and side boundary setbacks, providing greater planter box plantings and screening to habitable rooms and addressing the building articulation and use of materials to reflect the desired character of the locality and the sites role in the Umina Beach Village Centre.

The amended building design provides for the much-needed commercial space in the Umina CBD and the additional population to help support and enhance the areas economic performance by placing residents and the community in close proximity to existing retail,

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recreational, medical facilities and services and encouraging the use of public transport by affording residential opportunities close to existing public transport nodes and services.

Planner's Comment

While there has been an increase to some setbacks, both height and setback variations remain. The Section 8.2A review Statement of Environmental Effects (SEE) states that the FSR has been reduced from 1.87:1 to 1.66:1.

However, the plans subject of the refusal proposed a FSR of 1.57:1 not 1.87:1. An FSR of 1.87:1 was included in originally lodged plans which were not supported due to setback variations.

So, in fact, the FSR appears to have increased from 1.57:1 to 1.66:1. It is noted that gross floor area (GFA) diagrams have not been provided.

Reason for Refusal 9

9. *Granting consent does not promote the orderly and economic use and development of the land in accordance with S1.3(c) of the Environmental and Assessment Act, 1979.*

Applicant's Submission

The site has been zoned under the Gosford LEP 2014 as B2 Local Centre and under these provision commercial buildings and shop top housing are permissible uses with the consent of Council. The site is located in such a position that it enjoys frontages to 2 streets and is on the immediate fringe of the Umina CBD. The proposed development utilises a mixed-use proposal to provide for much needed commercial space and additional residential space in the CBD in a vertical environment to save the need for additional residential space to be located in positions away from services and facilities or infrastructure required to support such developments. It is considered that given the constraints of the site in height and FSR that the development is in fact a beneficial economic reuse (redevelopment) of the site and promotes the orderly redevelopment of the Umina centre by maintaining the pedestrian friendly single storey feature of West Street and consolidating the higher development to the rear of the site facing Alfred Street where it adjoins other commercial owned lands and faces the Council's public carpark on land owned by the Council.

Planner's Comment

As discussed above, while amalgamation for redevelopment is encouraged in general, in this case the creation of a T shape site results in an irregular site and an awkward junction that negatively effects design potential and relationships with its neighbours. It also results in the isolation of a corner site, being 311-131 West Street. In addition, the retention of the ageing

single storey building on West Street, and the shifting of the density to the rear of the site, will limit any future incentive for the revitalisation of 315 West Street.

ASSESSMENT:

The following assessment has regard for the matters for consideration detailed in Section 4.15 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements:

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The application is supported by a BASIX certificate which confirms the proposal will meet the NSW government's requirements for sustainability, if built in accordance with the commitments in the certificate. The proposal is considered to be consistent with the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021 commenced on 1 March 2022 incorporates and repeals the provisions of 3 SEPPs including *State Environmental Planning Policy (Coastal Management) 2018* and *State Environmental Planning Policy 55 – Remediation of Land*.

It is noted no policy changes have been made and the SEPP consolidation does not change the legal effect of the existing SEPPs, with Section 30A of the *Interpretation Act 1987* applying to the transferred provisions.

The relevant provisions of the SEPP are addressed as follows:

Chapter 2 Coastal Management

The aims of Chapter 2 are to be considered when determining an application within the Coastal Management Areas. The Coastal Management Areas are areas defined on maps issued by the NSW Department of Planning and Environment and the subject property falls within the mapped coastal management areas.

The relevant matters of clause 2.10 for development within the coastal environment area and clause 2.11 for development within the coastal use area have been considered in the assessment of this application. The application is considered consistent with the stated aims and objectives.

Chapter 4 Remediation of Land

Clause 4.6 requires that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. The current use of the site is for commercial and domestic residential purposes, and there are no known previous uses that would lead to the site being contaminated or unsuitable for the proposed use.

State Environmental Planning Policy No 65 (Design Quality of Residential Flat Developments).

The development is subject to the requirements of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* (SEPP 65). SEPP 65 prescribes nine design quality principles to guide the design of residential apartment development and to assist in assessing such developments. The principles relate to key design issues including context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction, and aesthetics.

A statement from a qualified Architect was submitted with the application verifying that they designed, or directed the design of, the development which is included in Attachment 3. The statement also provides an explanation that verifies how the design quality principles are achieved within the development and demonstrates, in terms of the ADG, how the objectives in Parts 3 and 4 of the guide have been achieved.

An independent review was requested under Council's Urban Design Panel Process and comments were provided by the independent urban designer / architect on 30 September 2022 and is included at Attachment 5. This review concluded that:

- The consolidation of the site has created a peculiar "T" shape and the decision to retain the existing commercial premises appears to be constraining the development potential of the site. So, this in turn appears to have been the main driver for the development to exceed the allowable height limits and building envelope to produce a more viable development solution.
- The proposed development (and lack of consolidation of the corner lot) will have a negative effect on the development potential of the corner lot and the overall pattern of development not consistent with the objectives of the Umina Village Centre. In particular the corner lot will have a height limit of 11.5m so any increase in height limits of the proposed development will be accentuated and very noticeable from the corner of West St and Alfred St.
- The proposal is requesting variation to the height and storey limit suggesting this is a minor variation, but this is a large variation equating to 10% variation to the numerical height value and a 25% increase to the storey limits.

- Significant intrusion in required setbacks. Quality of outlook and amenity is significantly compromised. Compliance not achieved.
- Solar Access Design Criteria has not been complied with in the design.
- General non-compliance with the façade design in particular, the proposed bulk and lack of articulation and lack of design quality of the “street address” from the corner of West St and Alfred St is not in accordance with the objectives

The ADG contains objectives, design criteria and design guidelines for residential apartment development. In accordance with Clause 6A of the SEPP, certain requirements contained within Gosford DCP 2013 do not apply. In this regard the objectives, design criteria and design guidelines set out in Parts 3 and 4 of the ADG prevail.

A detailed assessment of the proposal of against the ADG is provided below:

Design Criteria	Required	Proposed	Compliance
3D-1 Communal Open Space	<p>Minimum communal open space area 25% of the site – 2 hours if sunlight to 50% of space</p> <p>Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</p> <ul style="list-style-type: none"> • provide communal spaces elsewhere such as a landscaped roof top terrace or a common room • provide larger balconies or increased private open space for apartments • demonstrate good proximity to public open space and facilities and/or provide contributions to public open space 	<p>165sqm or 12% of the site</p> <p>Balconies exceed the minimum size requirements by varying amounts (2sqm to 10sqm).</p> <p>In addition, the site is within 500m of the beach and would have good access to public open space in this regard.</p>	No – but generally acceptable
3E-1 Deep Soil Zone	Minimum 7% of the site, with minimum dimension 3m for a sites 650 – 1500m ²	107m ² / 7.6 % with a 3m dimension	Yes

Design Criteria	Required	Proposed	Compliance
3F-1 Visual Privacy	<p>Separation from boundaries and buildings</p> <p>up to 12m / 4 storeys – 6m to habitable 3m to non-habitable</p>	<p>Variable 3 - 6m on from levels 1-3</p> <p>Variable 3-6m on Level</p> <p>Noted that various screen and planter boxes/landscaping used to improve privacy.</p>	No
3J-1 Bicycle and Car Parking	<p>Car parking as per the GDCP 2013</p> <p>Shops Top housing – 1 space per unit (no visitor spaces required)</p> <p>Shops – 1 space per 30sqm</p>	<ul style="list-style-type: none"> • 14 Units = 14 resident spaces • 894sqm / 30 = 30 retail shop spaces <p>It is noted that the existing chemist has 4 spaces - an existing shortfall of 7 spaces. Allowing for this shortfall 23 retail shop spaces are required.</p> <p>16 resident and 23 retail car parking spaces proposed</p> <p>2 motorbike spaces are provided</p>	Yes – however rely heavily on car stackers and tandem parking
	Secure undercover bicycle parking should be provided that is easily accessible from both the public domain and common areas	4 cycle parking spaces are provided within the basement	Yes
4A-1 Solar and Daylight Access	Living rooms and private open space of at least 70% of apartments receive a minimum of 3hrs sun between 9am and 3pm mid-winter	The applicant states that 71% of apartments achieve 3 hours – however the external Urban Design Review Panel architect is not satisfied that the quality and amount of solar access is not confirmed.	Insufficient information
	Maximum of 15% of apartments receive no direct sun between 9am and 3pm mid-winter	<p>4 units (28%) have no solar access</p> <p>A comment is made that the non-compliant units take advantage of the ocean views. This would not be possible for level 1&2 and marginal for level 3, level 4 is a non-compliant level.</p>	No

Design Criteria	Required	Proposed	Compliance
4B-3 Natural Ventilation	Min 60% of apartments cross ventilated in the first 9 storeys of the building	11/14 - 78% of apartments achieve natural cross ventilation	Yes
4C-1 Ceiling Heights	Minimum 2.7m 3.3m for ground and first floor (if in mixed use area) to promote flexibility of use	3.6 floor to floor provided at ground floor, 3m floor to floor heights provided at levels 1-3, 2.7m provided on the level 4. 3.1m floor to floor is generally the minimum required to achieved 2.7m ceiling heights Approximately another 700mm of height would be required to reasonably with this control – or 1.2m if the first floor also achieved 3.3m as required. This would result in an increase in the height exceedance to over 18%	No
4D-1 Apartment Size	Studio: 35sqm 1 bedroom: 50sm ² 2 bedroom: 70m ² 3 bedroom: 90m ² (5sqm per additional bathroom)	Complies	Yes
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room.	All habitable rooms have a window within the external wall.	Yes
4D-2 Room depths	Habitable room depths and maximum 8m depth for open plan layouts.	Complies	Yes
4D – 3 Layout	Bedroom and living room sizes – 9 & 10sqm bedrooms with min 3m width, 3.6m-4m width living rooms	Complies	Yes
4E-1 Balconies	1 bedroom: 8m ² , min 2m depth 2 bedroom: 10sm ² , min 2m depth 3 bedroom: 12m ² , min 2.4m depth	Complies	Yes
	Podium/ground level private open space	Complies	Yes

4.2

DA/61540/2021 - Section 8.2A Review - 1 and 3 Alfred Street and 315 West Street, Umina Beach - Demolition and Construction of Commercial Premises and Shop Top Housing (contd)

Design Criteria	Required	Proposed	Compliance
	minimum 15sqm, minimum depth 3m		
4F-1 Common Circulation	Maximum of 8 apartments off a circulation core (although design guidance allows up to 12 apartments)	Maximum 4 apartments off one core	Yes
4G-1 Storage	1 bedroom: 6m ³ 2 bedroom: 8m ³ 3 bedroom: 10m ³ Note: Minimum 50% within unit	The applicant has indicated compliance with this requirement.	Yes
4H Acoustic Privacy	Noise transfer is limited through the siting of the buildings and building layout	The design of the development has been sited to avoid noise transfer.	Yes
4J Noise and Pollution	The impact of external noise transfer and pollution are minimised through the siting and layout of the building.	Design generally complaint	Yes
4K Apartment Mix	A range of apartment types are provided to cater for different household types, and distributed throughout the building.	An acceptable mix of 1, 2 and 3 bedroom units are provided	Yes
4L Ground Floor Apartments	Maximise street frontage activation and amenity. Design of ground floor apartments delivers amenity and safety	N/A	N/A
4M Facades	Provide visual interest whilst respecting the character of the area.	The external appearance, bulk and lack of articulation do not respect the character of the area.	No
4N Roof Design	Roof features are incorporated in the roof design, respond to the street and provide sustainability features.	The roof design is acceptable however no sustainability features are included	Yes
4O Landscape Design	Landscape design is viable, sustainable, contributes to the streetscape and amenity.	An updated Landscape Plan has not been provided.	No
4P Planting on Structures	Appropriate soil depths are provided	An updated Landscape Plan has not been provided.	No
4V Water	Water Management and Conservation is achieved.	A BASIX certificate has been provided to demonstrate this.	Yes

4.2 DA/61540/2021 - Section 8.2A Review - 1 and 3 Alfred Street and 315 West Street, Umina Beach - Demolition and Construction of Commercial Premises and Shop Top Housing (contd)

Design Criteria	Required	Proposed	Compliance
4W Waste	Waste storage facilities are provided to minimise impacts on the streetscape, building entry an amenity of residents.	Residential waste to be presented to the street, commercial waste truck to serve retail	Yes

Central Coast Local Environmental Plan 2022

CCLEP 2022 was exhibited from 6 December 2018 to 28 February 2019 and adopted by Council on 14 December 2020. The CCLEP 2022 has been finalised, notified on 24 June 2022, and came into effect on 1 August 2022.

This application, for review of the determination of the Panel under Section 8.2 of the *Environmental Planning and Assessment Act 1979*, is subject to saving provisions under clause 1.8A of CCLEP 2022 and as such must be determined as if this plan had not commenced.

The assessment and determination of this application has been made under GLEP 2014.

It is noted that, under the provisions of CCLEP 2022, the site is subject to the same zoning , height and FSR controls as those set out under the GLEP 2014.

Gosford Local Environmental Plan 2014 – Zoning & Permissibility

The subject site is zoned B2 Local Centre under *Gosford Local Environmental Plan 2014*.

The proposed development is defined as *commercial premises* and *shop top housing* which is permissible in the zone with development consent

Commercial Premises is defined in the LEP as:

commercial premises means any of the following—

- (a) *business premises*,
- (b) *office premises*,
- (c) *retail premises*.

Shop Top Housing is defined in the LEP as:

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

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

4.2 DA/61540/2021 - Section 8.2A Review - 1 and 3 Alfred Street and 315 West Street, Umina Beach - Demolition and Construction of Commercial Premises and Shop Top Housing (contd)

The objectives of the B2 Local Centre are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide for residential uses, but only as part of a mixed use development.*
- *To ensure that development is compatible with the desired future character of the zone.*
- *To promote ecologically, socially and economically sustainable development.*
- *To ensure that the town centres of Erina and Woy Woy are recognised as providing a higher level, and greater diversity, of services and facilities to serve a wide population catchment from numerous localities and as key public transport nodes, secondary to Gosford City Centre.*
- *To ensure that village centres such as Avoca, East Gosford, Ettalong Beach, Kincumber, Lisarow, Niagara Park, Terrigal, Umina Beach, West Gosford and Wyoming are recognised as providing a broad range of services and facilities to serve the population of the locality.*
- *To ensure that villages are recognised as providing local level services and facilities and are developed at a scale that reflects their population catchment and as a focus for public transport routes.*
- *To ensure that the different roles of villages are recognised with some villages being key tourist destinations with boutique activities in addition to serving the needs of local residents, while other villages are purpose-built centres to serve the needs of the local population.*
- *To encourage the residential population of villages and town centres to contribute to the vitality of those locations.*

As discussed throughout this report, the proposal is not considered to be compatible with the desired future character of the zone.



Figure 9-Zoning Map

Gosford Local Environmental Plan 2014 – Development Standards

The following height and floor space ratio standards apply:

Development Standard	Required	Proposed	Compliance with Controls	Variation %	Compliance with Objectives
Clause 4.3 Maximum Building Height	14.25m	15.66m	No - see comments below	9.9%	No - see comments below
Clause 4.4 Maximum FSR	1.8:1	1.66:1	Yes	Nil	Yes

Gosford Local Environmental Plan 2014 Clause 4.3 - Height of buildings

Clause 4.3(2) of GLEP 2014 provides that the height of a building on any land will not to exceed the maximum height shown for the land on the Height of Buildings Map. The maximum height shown on the relevant map is 14.25m.

It is important to note Clause 4.3(2A) of the GLEP 2014 provides that:

(2A) Despite subclause (2), the maximum height of a building on land identified as "Woy Woy Town Centre", "Umina Village Centre" or "Ettalong Village Centre" on the Development Incentives Application Map is 11.5 metres if:

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- (a) the building is located on a site area of less than 1,000 square metres, or*
- (b) the building has a street frontage of less than 20 metres*

Any two out of the three lots in the subject application would not achieve the 1000m² site minimum, which would reduce the sites height control to 11.5m.

The objectives of Clause 4.3 are:

- (a) to establish maximum height limits for buildings,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to ensure that buildings and public areas continue to receive satisfactory exposure to sky and sunlight,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity,*
- (e) to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area,*
- (f) to protect public open space from excessive overshadowing and to allow views to identify natural topographical features.*

This proposal is not consistent with the objectives as it fails to provide an appropriate transition in built form, with a 5-storey building abutting single storey built forms.

Gosford Local Environmental Plan 2014 – 4.4 Floor Space Ratio

Clause 4.4(2) Floor Space Ratio (FSR) of GLEP 2014 provides the maximum floor space ratio for a building on any land. The site is identified on the GLEP 2014 FSR map as being 1.8:1.

An FSR of 1.66:1 is proposed and complies with this development standard.

Clause 4.4(A)(1) includes exceptions to the mapped FSR for site within the Umina Village Centre, stating that for sites under 1000sqm the FSR is reduced to 1:1. While the site area of all 3 lots to be consolidated is 1,416.5sqm, the FSR is concentrated on the rear 2 lots, which do not exceed 1000sqm site area by themselves.

The objectives of clause 4.4 are:

- (a) to establish standards for the maximum development density and intensity of land use,*

(b) to control building density and bulk in relation to site area in order to achieve the desired future character for different locations,

(c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,

(d) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,

(e) to provide an appropriate correlation between the size of a site and the extent of any development on that site,

(f) to facilitate design excellence by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design,

(g) to ensure that the floor space ratio of buildings on land in Zone R1 General Residential reflects Council's desired building envelope,

(h) to encourage lot amalgamation and new development forms in Zone R1 General Residential with car parking below ground level.

The concentration of the floorspace towards the rear of the site, results in a built form that does not reflect the desired future character of the area. The five-storey building adjacent to single storey building does not create an appropriate visual relationship between the old and new development. Design excellence is not achieved as the site shape created is awkward and creates multiple pinch points where appropriate building setbacks are not achieved.

Clause 4.6 Exceptions to Development Standards

Clause 4.6 of GLEP 2014 provides the ability to grant consent to a development application where the variation to a development standard can be adequately justified and where the objectives of clause 4.6 are satisfied, being:

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

Clause 4.6(3) requires that:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from

the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard*

Clause 4.6(4) requires that:

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and (b) the concurrence of the Director-General has been obtained*

In accordance with clause 4.6(3) the Applicant has submitted a written request seeking variation the maximum height of building development standards of 14.25m in clause 4.3 of GLEP 2014. A building height of 15.66m is proposed. This is a variation of 1.41m or 9.9%. A copy of the Clause 4.6 variation is included in the SEE at Attachment 4.

The applicant's written request refers to the first of the five tests established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the numerical standard is unreasonable or unnecessary. The test seeks to demonstrate that the objectives of the standard are achieved notwithstanding non-compliance with the numerical standard, Clause 4.3 Height of Buildings of the GLEP 2014.

The Applicant's written request (summarised) to vary the building height development standard states that:

- The variation is minor at 9.9% and represents less than one storey.
- The balance of the site fronting West Street remains single storey and is well below the height limit and maintains the existing pedestrian-friendly scale and relationship with adjoining and adjacent commercial developments in West Street.
- The proposal consolidates three lots into one lot.

- The upper floor has an open balcony which reduces the view impact from the surrounding streets.
- The additional height does not significantly increase shadow or privacy impacts on adjoining sites or reduce view impacts.
- The proposal is consistent with the objectives of the development standard and the zone objectives.

Planner's Comment

The Applicant's written request has not adequately justified that compliance with the development standard is unreasonable and unnecessary in this instance or that there are sufficient environmental planning grounds to justify contravening the development standard.

In addition, the building does not achieve complaint floor to ceiling heights and another 700mm to 1.2m of height would be required to reasonably comply with the ADG controls. This would result in an increase in the height exceedance of up to 2.6m / 18.2%.

As detailed above the proposal is not consistent with the B2 Local Centre zone or the Building Height objectives as it does not reflect the desired future character of the area and is not considered to be in the public interest.

Planning Circular PS 20-002 issued 5 May 2020 states that the consent authority may assume the concurrence of the Secretary of the NSW Department of Planning and Environment when considering exceptions to development standards under clause 4.6. The Central Coast Local Planning Panel is therefore empowered to determine the application.

The clause 4.6 request does not offer any additional justification or environmental planning grounds for the variation to the building height development standard and does not address reason for refusal No. 3 that *No compelling reason has been put forward to justify exceedance of these height limits.*

The Applicant's clause 4.6 written request does not demonstrate that compliance with the development standard is unnecessary in the circumstances of the case. Sufficient environmental planning grounds were not put forward and it has not been demonstrated that compliance would be unreasonable in the circumstances of the case.

The clause 4.6 request is not supported as the proposed development will not be in the public interest because it is inconsistent with the relevant objectives of the Height of Buildings development standard and the relevant objectives for development within the B2 Local Centre zone.

Gosford Local Environmental Plan 2014 – 7.1 Acid Sulfate Soils

This land has been identified as being affected by the Acid Sulfate Soils Map and the matters contained in clause 7.1 of *Gosford Local Environmental Plan 2014* have been considered. The site contains Class 4 Acid Sulfate Soils which are likely to occur where:

- Works more than 2 metres below the natural ground surface.
- Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface

The basement would require works more than 2m below the natural ground surface.

Clause 7.1(3) states that:

(3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

Clause 7.1(4) states that

- (4) Despite subclause (2), development consent is not required under this clause for the carrying out of works if—*
- (a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and*
 - (b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.*

The SEE states that:

The Geotechnical assessment report provided as part of the application addresses acid sulfate soils and concludes that the proposal (including basement excavation) does not require management for acid sulfate soil conditions and that excavation could be carried out without reference to an acid sulfate soil management plan.

However, no Geotechnical report has been provided with either the original application or the Section 8.2a review of determination.

The proposal has not addressed Clause 7.1 of the GLEP 2014, and this forms a new reason for refusal (reason for refusal 4).

Gosford Development Control Plan (DCP) 2013

DCP Chapter 2.1 Character

The site is located within Umina Mainstreet Centre where the desired character is:

This should remain a mixed-use centre that provides a range of services and accommodation for local residents as well as visitors, where the scenic potential of a prominent backdrop to Brisbane Water and the Hawkesbury is enhanced by new development that encourages high levels of street activity as well as achieving improved standards of amenity plus urban-and-civic design quality.

Protect and enhance existing levels of “main-street” activity with building forms that maintain both the pedestrian-friendly scale of existing one and two storey shop-front developments, and also the current level of midday sunlight along footpaths and laneways. Promote high levels of on-street activity by maximising the number of retailers or businesses and the continuity of shop-windows along all street frontages and surrounding the outdoor public carparks. Avoid indoor arcades that would draw people away from the street. Incorporate awnings, colonnades or balconies in all buildings to provide sheltered pedestrian settings that encourage pavement dining. Contribute to high levels of visible activity along all streets by surrounding upper storeys with balconies that encourage restaurant dining or residents’ outdoor recreation.

Ensure that new developments (including alterations to existing buildings) do not dominate their predominantly low-rise surroundings or disrupt the main-street development patterns in this established coastal shopping village. Along all public streets and outdoor carparks, shop-front facades should have a zero setback and a maximum height of two storeys, with taller storeys set back behind terraces to maintain a pedestrian-friendly scale as well as midday sunlight along footpaths and pedestrian areas. Vary the overall height of buildings within permissible height limit and ensure that siting and form preserve levels of privacy, sunlight and visual amenity that are enjoyed by existing dwellings and their private open spaces.

Reflect the form of development that is typical of traditional coastal centres where a wide variety of retailers are accommodated by separate buildings upon narrow-fronted allotments. Along any street or outdoor carpark, avoid the appearance of a continuous wall of development or uniform building heights. Vary the shape and height of all visible facades. Top-most storeys should be setback behind wide roof terraces, and roofs plus parapet heights should step from one building to the next. Street corners should be emphasised by taller forms. In general, neighbouring buildings should be separated by landscaped courtyards and alleyways that provide view corridors, access to apartment lobbies, and daylight plus an outlook for above-ground dwellings.

Disguise the scale and bulk of new buildings. All visible facades should employ extensive

windows that are shaded by lightly-framed balconies, verandahs or exterior sunshades, plus painted finishes and some board or sheet cladding rather than expanses of plain masonry. Roofs should be gently-pitched to minimise the height of ridges, flanked by wide eaves that shade terraces and also disguise the scale of exterior walls. Side and rear facades should match the design quality of the street frontage.

Conceal off-street parking behind shops or apartments and provide unobtrusive vehicle entrances from laneways or secondary streets to minimise the disruption of shopfronts and associated pedestrian activity. Contribute to co-ordinated street improvements that include dedicated pedestrian crossings, footpath paving, landscaping and lighting to provide safe and secure settings for informal social interaction. Building colour schemes and commercial signs should be co-ordinated and limited in size and number to promote the identity of this coastal centre, rather than emphasising corporate sponsorship.

Lack of compliance with both the height in meters, height in stories and setback controls results in a bulk and scale not in keeping with the desired character of the area.

While the single storey form on the main street (West Street) is maintained this does not “Protect and enhance existing levels of “main-street” activity with building forms that maintain both the pedestrian-friendly scale of existing one and two storey shop-front”. Rather, the retention of the existing single storey commercial building limits any reasonable renewal or revitalization of this older building stock. The lot fronting West Street appears to be being use only for its FSR benefits, with no improved built form outcome to West Street.

This also results in a poor outcome on the Alfred Street lots, where the bulk and scale is concentrated. The proposed 5 storey building, which exceed both the height in meters and 4 storey control, abuts single storey development with non-compliant setback worsening the relationship with neighbouring properties.

DCP Chapter 4.2 Peninsula Centres

The site is located within the Umina Beach Village Centre.

DCP Chapter 4.2.3 Objectives

The aims of this chapter of the DCP are to:

- 1 Promote efficient use of land by encouraging mixed use redevelopment that benefits local residents as well as visitors to Gosford City.
- 2 Encourage the amalgamation of small properties for redevelopment.
- 3 Ensure that future buildings allow for view sharing within the centres.
- 4 Promote the highest standards of urban and architectural design quality.
- 5 Ensure high levels of amenity along streets and laneways.
- 6 Encourage intensive pedestrian activity along all streets and laneways.

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- 7 Address the desired character of residential areas that surround the Woy Woy Town Centre and Ettalong Beach and Umina Beach Village Centres.
- 8 Provide for high levels of residential amenity in surrounding residential areas as well as within the Woy Woy Town Centre and Ettalong Beach and Umina Beach Village Centres.
- 9 Maximise energy-efficient planning, design and construction for new buildings.
- 10 Prevent the discharge of contaminated stormwater into Brisbane Water and Broken Bay.
- 11 Ensure that new development does not exceed the capacity of existing public infrastructure.

The proposal is not consistent with the vision for the Umina Beach Village Centre as it does not represent an orderly or efficient use of land. The amalgamation of lots creates an awkward T shape lot, rather than a lot that allows for a more rational larger re- development. The proposal does not achieve a high standard of urban and architectural design quality.

DCP Chapter 4.2.5 Building Form, (DCP Chapter 4.2.5.1 Street Frontage, 4.2.5.2 Building Height and 4.2.5.3 Building Setbacks and Building Envelopes)

The proposal seeks to meet the aim to *“Encourage consolidation of existing properties that have narrow street frontages in order to facilitate efficient use of land”*. However as discussed throughout the report the consolidation of lots and resultant T shape lot is not an effective use of the land.

A detailed assessment of the proposal of against the key GDCP built form controls is included below:

Clause	Description	Required	Proposed	Compliance
4.2.5.2- Building Height	Max height in storeys	4	5	No
	Max building height	14.25m	15.6m	No
	Max street wall height/storeys	2	1 to west 5 to Alfred	No
	Max street wall height	8.75m	4.45m	Yes
4.2.5.3 Building setbacks and envelope	Building envelope/street setback.	Nil to West St	Nil to West St	Yes
	Building envelope/street setback.	3m to Alfred St	3m to Alfred St	No

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Clause	Description	Required	Proposed	Compliance
	Building envelope/street setback	45 degree angle for any part of a building that is above 7m or 2 storeys in height		No
	Min side/rear setbacks	Nil for commercial and 6m for residential	Nil for commercial and 3m-6m for residential	No
4.2.5.4 Building separation	Separation from adjoining site/boundary.	6m up to 4 storeys 9m above 4 storeys	3m-9m	No
4.2.5.5 Building depth	Max Building depth commercial	24m	11.5m-24m	Yes

DCP Chapter 4.2.8 Heritage

The site is not identified as a heritage item.

DCP Chapter 4.2.11 Vehicle access and parking

Car parking driveway access has been provided from Alfred Street and 37 car spaces provided in the basement car parking level. Councils Senior Development Engineer has noted that the driveway and ramps do NOT comply with AS2890.1. See further discussion under Internal Referrals heading below.

DCP Chapter 7.1 Car Parking

Item	Required	Proposed	Compliance
Shop top housing	14	16	Yes
Shop	19	<u>18</u>	No
Accessible	1	1	Yes
Relocation of existing spaces from chemist	4	4	
Total	39	39	Yes

The proposal generally complies with car parking requirements, however, heavily relies on stacked and tandem spaces.

DCP Chapter 7.2 Waste Management

A Waste Management Plan has been submitted.

Likely Impacts of the Development:

Section 4.15 (1)(b) of the *Environmental Planning and Assessment Act 1979* requires consideration of the likely impacts of the development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality. The likely impacts of the development are addressed below:

Built Environment, Context and Setting

As discussed throughout this report the built form, design, scale, height and setbacks do not result in an appropriate built form. The amended proposal does not respond appropriately to the existing or desired future character of the area and will adversely impact on the character and amenity of the locality and streetscape

Lot Amalgamation impact on design / lot isolation

As discussed above, while amalgamation for redevelopment is encouraged in general, in this case the creation of a T shape site results in an irregular site and an awkward junction that negatively effects the design and relationships with its neighbours. In addition, the retention of the aging single storey building on West Street, and the shifting of the density to the rear of the site, will limit any future incentive for the revitalisation of 315 West Street.

The proposal also results in the isolation of the corner site, being 311-131 West Street. By removing this corner site's ability to amalgamate it does not allow for a greater height and FSR to be achieved, a benefit the subject development seeks to exercise.

The proposed development this will have a negative effect on the corner sites development potential and the overall pattern of development is not consistent with the objectives of the Umina Village Centre.

In accordance with the Planning principles of *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251:

- While there is not a minimum lot size for development, the adjoining site will not have the same development potential for height and FSR as the land the subject of the current application, because it will have no opportunity to amalgamate and benefit from the height and FSR 'bonuses'.
- The applicant has provided a copy of a letter to the adjoining owner and stated that no reply was received. However, a submission made on behalf of the owners of 311-

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313 West Street have made a submission and stated that *"We also make it clear again that the owner's representative has never attempted contact with the owner of 311-313 West Street, in neither letters or calls, to "discuss options for the redevelopment of the site collectively and options for development as a stand alone site".*

Access and Transport

Insufficient information has been provided to demonstrate that the driveways and basement ramps provide appropriate access and comply with Australian Standards.

Natural Environment

The subject site does not contain any threatened species or habitat. Erosion and Sediment Control could be appropriately conditioned. It is noted that the stormwater plans lodged do not correspond to the amended architectural plans.

Apart from the need for stormwater to be appropriately addressed the proposal is not likely to have any significant impact upon the natural environment.

Economic and Social Impacts

No unreasonable economic or social impacts are expected.

Suitability of the Site for the Development:

The site is considered suitable for a form of mixed-use development, subject to the appropriate consideration of the site constraints and an appropriate design response. However, the proposal has not demonstrated that it has appropriately considered the site constraints or that the site is suitable for the proposed development.

Any Submission made in Accordance with this Act or Regulations

Section 4.15 (1)(d) of the *Environmental Planning and Assessment Act 1979* requires consideration of any submissions received during notification of the proposal.

The original application was notified between 28 May 2021 to 28 June 2021 and two objections were received.

The Section 8.2 review application was advertised between 24 June 2022 and 15 July 2022 and one objection was received.

Those issues associated with the key issues have been addressed in the above report. The remaining issues pertaining to various concerns were addressed in the assessment of the application pursuant to Section 4.15 of the *Environmental Planning and Assessment Act, 1979*.

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A summary of the submissions objecting to the proposal is detailed below.

1. The proposal still exceeds the maximum height control in meters and storeys, and does not comply with setback controls and is an overdevelopment of the site. This will impact amenity of surrounding properties and set a precedent for other future development.

Comment – Noted and discussed throughout this report.

2. The variation to height/non-compliance should not be used as a reason to justify the economic viability of the development.

Comment – Noted.

3. The Development does not comply with the ADG

Comment – Noted and discussed throughout this report.

4. The proposal will result in isolation of the adjoining 311-313 West Street and no attempt has been made to contact/negotiate with the adjoining owner. No massing diagram has been provided.

Comment – Noted and discussed throughout this report.

Internal Consultation

Internal Referral Body	Comments
Development Engineer	Insufficient Information provided. See comments below.
Waste Management Officer	Previous design supported, subject to conditions. No further comments made on amended proposal.
Traffic Engineer	Previous design supported without conditions. No further comments made on amended proposal.
Water & Sewer	Supported, subject to conditions.

Development Engineer Comments

Access & Parking

The initial plans lodged with the original application (DA/61540/2021) indicated a vehicular access crossing and access ramp within the northern side of the Alfred Street frontage. This access arrangement was fully dimensioned to indicate a minimum width of 6.1m wide that provided a two-way concurrent movement and that complied with AS/NZS 2890.1:2004 for a two-way ramp. The proposed 6.1m two-way ramp was also reflected in the SEE and the Parking Assessment Report prepared by BJ Bradley & Associates dated 4 March 2021 that states in part:

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The proposed development will provide one combined entry / exit driveway onto Alfred Street to service the thirty-five (35) basement car spaces.

AS/NZS 2890.1 – 2004 suggests that for a Class 1 parking facility, serving between 25 and 100 car spaces and frontage to a local road, a Category 2 driveway is appropriate. That is, a combined driveway 6.0 metres to 9.0 metres wide, is suitable.

The proposed access driveway to the basement parking area will be approximately 6.1 metres wide at the boundary with 300mm clearances each side on the entry / exit ramp - satisfying the recommended criteria in AS/NZS 2890.1 – 2004.

This Parking Assessment Report was lodged with the original DA and with the current Section 8.2.A review. A review of the SEE lodged with the Section 8.2.A also indicates the access to the basement level being via the provision of a 6.1m wide driveway to Alfred Street.

It is noted that latter plans lodged with the original application and also now reflected in the Section 8.2.A review plans are un-dimensioned and that the access provisions are now proposed as a ramp approximately 3.3m wide that would only facilitate a single entry or exit movement at a time. The use of a single width vehicle ramp facilitating only a single vehicular movement into or out of the basement at a time is not supported for the following reasons:

- The use of a single width ramp and vehicle access crossing does not comply with AS/NZS 2890.1:2004, that for this type of development requires a two-way width ramp.
- The design has the potential to cause conflict with vehicles entering and exiting the development, with vehicles entering the site potentially having to reverse over the footway and back onto Alfred Street to allow vehicles already on the ramp to exit the development.
- The peak traffic movements are in excess of 30 movements which in accordance with AS/NZS 2890.1:2004 warrants the requirement for a ramp facilitating concurrent two-way movements.
- The use of a convex mirror is deemed to be inadequate in relation to improvement of sight distance constraints on the ramp with particular reference the change in elevation from the basement level to the footway level, and inadequate sight distance to see vehicles potentially entering the development from the road pavement in Alfred Street.
- The site is located in a commercial area that has high pedestrian movements in the footway. The development needs to be designed in a manner that complies with Australian Standards to ensure pedestrian safety.

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The SEE and Parking Assessment Report both indicate that the access to the basement is via a 6.1m wide driveway; however, this is not reflected on the architectural plans.

Sight distance splay

It is noted that as part of this Section 8.2.A review, as per the original DA (DA/61540/2021) as a solution to providing clear sight distance splays compliant with Section 3.2.4 and Figure 3.3 of AS/NZS 2890.1:2004, the Applicant has submitted permission in writing from the adjoining owner (5 Alfred Street i.e. Lot 31 Sec A DP 8872) dated 9/06/2021 granting their concurrence to the creation of an easement within their property and adjoining the front side boundary for clear sight distance to pedestrians as per Section 3.2.4 and Figure 3.3 of AS/NZS 2890.1:2004.

However, a check of Council's records has now indicated that the ownership of No 5 Alfred Street has changed since that permission from the (now previous) neighbouring owner was obtained. Therefore, permission in writing would be required this time from the new owner/s of 5 Alfred Street, once again granting the concurrence to the creation of an easement within their property (5 Alfred Street) and adjoining the front side boundary for clear sight distance to pedestrians as per Section 3.2.4 and Figure 3.3 of AS/NZS 2890.1:2004.

If the required permission of the creation cannot be obtained from the new owner of 5 Alfred Street, then as per the assessment of the original DA, the development proposal would need to be amended to translocate the access driveway 2m to the south to provide the whole sight distance splay within their site between the northern edge of the access driveway and the northern boundary of the site to comply with the requirements of Section 3.2.4 and Figure 3.3 of AS/NZS 2890.1:2004.

Stormwater / Drainage

It is noted that the Stormwater Management Plan prepared by ACOR Consultants (Project No CC180408, Drawing No's C1-C9, all Rev B dated 26.03.21) that was initially submitted with the original application for DA/61540/2021 to address the requirements of Chapter 6.7 of Council's GDCP 2013 has been again lodged with the Section 8.2.A review application. On the basis that the architectural plans are now different to the building design indicated in the Stormwater Management Plan, a revised Stormwater Management Plan would need to reflect the amended development proposal.

Ecologically Sustainable Development Principles

The proposal has been assessed having regard to ecologically sustainable development principles and is considered to be consistent with the principles.

The proposed development does not include satisfactory stormwater and drainage details. Apart from this issue the proposal is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

Climate Change

The potential impacts of climate change on the proposed development have been considered by Council as part of the assessment of the application.

This assessment has included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope, combat, withstand these potential impacts. The proposed development is considered satisfactory in relation to climate change.

The Public Interest

For the reasons identified in the assessment and contained within Council's recommended reasons for refusal, and as set out in this report, the proposal is not considered to be in the public interest.

Political Donations

During assessment of the application there were no political donations were declared by the Applicant, Applicant's consultant, owner, objectors and/or residents.

Planning Agreements

The proposed development is not subject to a planning agreement / draft planning agreement.

Other Matters for Consideration:

Development Contribution Plan

The subject site is located within *Development Contribution Plan CP 31 PENINSULA* where shop top housing/residential developments are subject to Section 7.11 development contributions. Contributions would be applicable if the proposal was supported.

Water and Sewer Contributions

Water and sewer contributions are applicable to the development and Section 306 requirements would be issued under the *Water Management Act 2000* if the proposal was supported.

Conclusion:

This application has been assessed having regard for the matters for consideration under Sections 8.3 and 4.15 of the *Environmental Planning and Assessment Act 1979* and all relevant instruments, plans and policies.

The Applicant's clause 4.6 written request does not adequately demonstrate that compliance with the height of buildings development standard is unnecessary in the circumstances of the case. Sufficient environmental planning grounds were not put forward to justify contravening the Height of Buildings development standard.

The proposal is not consistent with the objectives of the height of buildings development standard cl 4.3 or the *B2 Local Centre* zoning of the site under the *Gosford Local Environmental Plan 2014*. The proposed building is not sufficiently compatible with the character of the surrounding locality and fails to relate to its context.

The proposal has not addressed clause 7.1 Acid Sulfate Soils of the *Gosford Local Environmental Plan 2014*

The proposal fails to meet fundamental design quality that is required by *State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development)*.

The amended application has not provided the information and detail to enable a thorough assessment of the likely impacts of the proposed development.

The proposal is not in the public interest.

Accordingly, it is recommended the previous decision of the Panel be reaffirmed and the application be refused pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*.

Reasons for Refusal

- 1 The proposed development does not meet the Height of Buildings development standard. The height of the proposed development exceeds the height of buildings development standard clause 4.3 of the *Gosford Local Environmental Plan 2014*.
- 2 The proposed height of five storeys exceeds the four storey limit for the site set out in the *Gosford Development Control Plan 2013*.
- 3 No compelling reason has been put forward to justify exceedance of these height limits.
- 4 The proposal has not addressed clause 7.1 Acid Sulfate Soils of the *Gosford Local Environmental Plan 2014*.
- 5 Proposed building setbacks/building separation do not comply with the *State Environmental Planning Policy No. 65 Apartment Design Guide (ADG) Building Separation* requirements or *Gosford Development Control Plan 2013* setback requirements.
- 6 The proposed building footprint may have a potentially negative impact on the future development potential of adjoining sites.
- 7 The proposed development pattern does not promote efficient use of land, as per DCP Objective 1 – Umina Beach Village Centre.
- 8 The proposed non-compliance with the *Gosford Local Environmental Plan 2014*, *State Environmental Planning Policy No. 65* and *Gosford Development Control Plan 2013* would constitute an undesirable precedent for future development and threaten the future achievement of the strategic planning objectives for the desired future character of the area.
- 9 The amended application has not provided the information and detail to enable a thorough assessment of the likely impacts of the proposed development with particular regards to access and parking, sight distances and stormwater
- 10 Granting consent does not promote the orderly and economic use and development of the land in accordance with Section 1.3(c) of the *Environmental and Assessment Act, 1979*.

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Attachments

1	Reasons for Refusal		D15383459
2	S8.2A Architectural Plans prepared by ADG Architects	Provided Under Separate Cover	D15128264
3	S8.2A SEPP 65 Statement prepared by ADG Architects		D15128256
4	S8.2A Statement of Environmental Effects including Clause 4.6 Request Prepared by PM Anderson Consulting		D15128250
5	Urban Design Panel Report		D15128262
6	Original Development Application Refusal		D14981746
7	Original Development Application Assessment Report		D14935565