

Clause 4.6 Variation Request

43-45 Atchison Street
and 40-46 Kenny Street,
Wollongong

82016070-02

Prepared for
Southern Lighthouse Developments

27 September 2016



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1 Background

1.1 Overview

This Clause 4.6 Variation Request has been prepared in support of the proposed mixed use development at 43-45 Atchison Street and 40-46 Kenny Street, Wollongong. The proposed development involves the demolition of existing buildings and the erection of a mixed use building containing 205 apartments, two levels of commercial/retail floor space, four basement parking and servicing levels and associated landscaping and services.

The assessment of the proposal includes development standards identified in *Wollongong Local Environmental Plan (LEP) 2009*. Clause 4.6 of LEP 2009 provides an appropriate degree of flexibility in the application of development standards.

The proposal does not comply with the height and floor space ratio (FSR) controls included within Clause 4.3 and 4.4 respectively of LEP 2009. The development standards requiring consideration are not excluded by Clause 4.6(8). Consequently, a written request is required to vary the development standards subject to Clause 4.6(3). This report constitutes the applicant's written request to justify the non-compliance with these development standards.

The report includes:

- > General overview of Clause 4.6
- > Detailed consideration of the maximum height control
- > Detailed consideration of the maximum FSR control
- > Detailed consideration of the building separation control
- > Summary/conclusion.

1.2 Site Analysis

The subject site for the purposes of this application is a collection of five landholdings and a 10m strip of the Ellen Street Road Reserve, with the site totalling an area of 6,421m². The landholdings are legally described as follows:

- > > Lot 82 DP 842265
- > > Lots 25 and 26 DP 745523
- > > Lots 26 and 27 Sec 2 DP 979376

The site is generally L shaped, has flat topography and has three direct road frontages to Atchison Street to the west, Ellen Street to the south and Kenny Street to the east.

There are a range of existing buildings on the site, including a supermarket with associated warehouse, a former fabrication business and a detached dwelling.

Existing access to the site is available from each frontage, with a number of driveway crossovers located on each frontage. Kenny Street and Atchison Street provide a north/south connection to the Wollongong City Centre and the regional road network to the north, and also provide a connection to Springhill Road and the regional road network to the south.

1.3 Impact of Non-compliance

The proposal includes non-compliance with the FSR control, height of building control and the minimum setback. These non-compliances are a consequence of two unique aspects of this proposal.

Firstly, the development site includes an area of road reserve that has subordinate zoning, height and FSR controls. The proposal applies the height and FSR control that applies to the bulk of the development site to the road reserve, resulting in a non-compliance on this portion of land only.

This non-compliance is mitigated primarily by the overall size of the development site and the proposal. The site has three street frontages, a site area in excess of 6,400m² and a 60 metre height limit. This provides significant scope for accommodating additional height within the Ellen Street road reserve and FSR across the site without any significant impacts on the local environment. The non-compliances do not result in excess bulk or scale issues, with the Design Review Panel supporting the proposed scheme.

Notwithstanding, compliance with the height and FSR control within the Ellen Street road reserve would result in a negative impact on the development scheme and streetscape, with a disjointed scheme. Furthermore, the development would set an undesirable precedent for future development.

Secondly, the DRP requested a specific design change to reduce the perceived bulk of the building which resulted in a technical non-compliance with the building separation control. The podium has effectively been split into two elements, one for commercial uses on ground and first floor and one for residential levels above. The secondary podium acts as a buffer between the two major elements of the towers and commercial podium, with a strong horizontal and sculptural facade to create interest and reduce the perceived scale of the overall development. Given this second podium element has a zero side setback, there is no impact on future development associated with the non-compliance.

2 Clause 4.6 Variation Statement

A variation to *Clause 4.3 – Height of Buildings*, *Clause 4.4 – Floor Space Ratio* and *Clause 8.6 Building Separation* within LEP 2009 is sought for the proposed mixed use development at 43-45 Atchison Street and 40-46 Kenny Street, Wollongong.

The development is permissible under the *B3 – Commercial Core* and *B6 – Enterprise Corridor* zones that apply to the land. However, elements of the proposal do not align with the LEP 2009 building height, FSR or building separation controls. Consequently, the proposal is seeking a variation to these numerical standards pursuant to the LEP Clause 4.6.

Clause 4.6 provides a mechanism to seek variations to the development standards included in the LEP. Clause 4.6(3) states the following criteria:

“(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

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.”

Clause 4.6(4) then states that the consent authority needs to be satisfied that:

“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.”

The departure from this development standard also requires the concurrence from the Secretary of the Department of Planning and Environment (DP&E).

This document provides the formal written request to vary the following development controls within the LEP:

- > *Clause 4.3 – Height of Buildings*
- > *Clause 4.4 – Floor Space Ratio*
- > *Clause 8.6 – Building separation within Zone B3 Commercial Core or Zone B4 Mixed Use*

Supporting justifications and responses are provided below, which demonstrate that the proposed variation meets the objectives of the control, are in the public interest and that the enforcement of this control is both unreasonable and unnecessary in this instance.

This submission will demonstrate that the variation request is well founded by addressing the requirements of Clause 4.6 (3) and (4). It is also noted that the extent of variation afforded by Clause 4.6(2) is not numerically limited.

Accordingly, the following sections of this report detail the control and the extent of the departure and specifically address the following requirements of Clause 4.6:

- > That the proposal is in the public interest by demonstrating consistency with the development standard objectives and the zone objections (Clause 4.6 (4) (a) (ii)).
- > Identification of sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6 (3) (b)).
- > That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case (Clause 4.6 (3) (a)).

3 Clause 4.3 – Height of Buildings

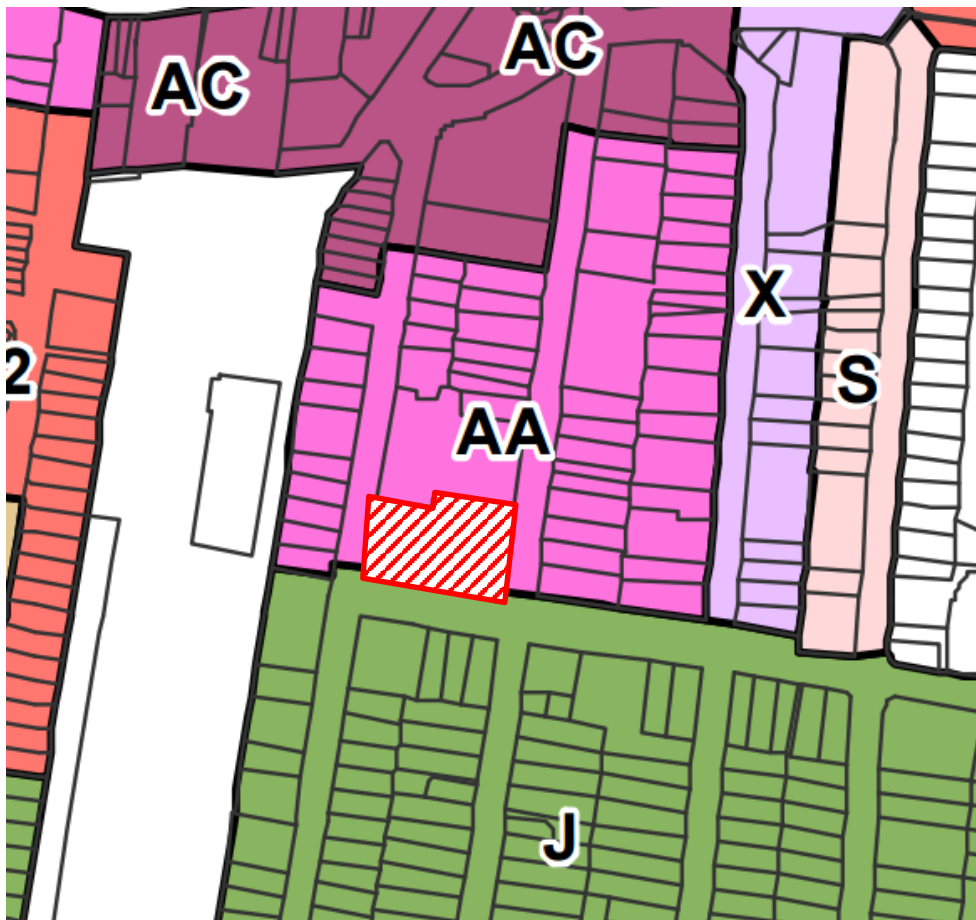
3.1 Overview

Clause 4.3 of LEP 2009 provides numerical building height controls for all developments within the Wollongong LGA. This is achieved through the following control:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map

There are two building heights that apply to the site, 60m height limit for the majority of the site and 9m within the Ellen Street road reserve as shown in **Figure 3-1**.

Figure 3-1 Extract from LEP 2009 Height of Building Map (J = 9metres, AA = 60 metres)

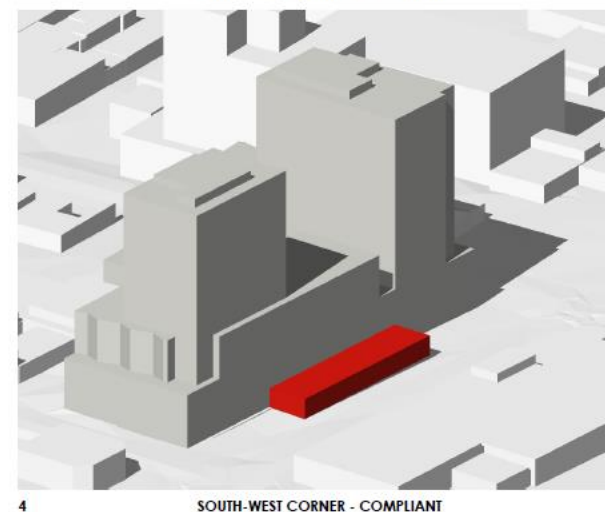


Source: NSW Legislation Website, 2016

The building complies fully with the primary 60m building height limit, applicable to the main portion of the site. The inclusion of the existing Ellen Street road reserve presents a design challenge for the proposal.

The 1,100m², portion of the site (17% of the site area) included within the Ellen Street road reserve extends past the 9 metre height limit. The extent of this non-compliance ensures an enhanced built form provided to the all road frontages, particularly to Ellen Street.

Figure 3-2 Built form comparison



NOTES:
1. Subject Proposed and existing buildings comply with all applicable and relevant laws.
2. Proposed buildings are subject to Council approval and consent.
3. Proposed buildings are subject to Council approval and consent.
4. All proposed buildings are subject to Council approval and consent.
5. All proposed buildings are subject to Council approval and consent.
6. All proposed buildings are subject to Council approval and consent.
7. All proposed buildings are subject to Council approval and consent.
8. All proposed buildings are subject to Council approval and consent.
9. All proposed buildings are subject to Council approval and consent.
10. All proposed buildings are subject to Council approval and consent.

NO.	DATE	AMENDMENT
1	20/05/2016	DESIGN QUALITY IMPROVE
2	24/05/2016	FINAL AMENDMENT

PROJECT:
MAYO RES DEVELOPMENT
SITE:
40-46 ATCHISON STREET AND 40-46 KENNY STREET
WOLLONGONG NSW 2500
CLIENT:
MAYO CONSTRUCTIONS



BHI ARCHITECTS PTY LTD
OWNER:
MAYO CONSTRUCTIONS AND
MAYO RES DEVELOPMENT
10/05/2016
DRAWN:
JAMES HALL
CHECKED:
JAMES HALL
DATE:
24/05/2016
SCALE/REVISION:
1:284.44



Height Zone Comparison				PRE-DA
ZONE	HEIGHT	DATE	SCALE/REVISION	REVISION
AM	N/A	24/05/2016	1:284.44	8
B467	A.02.1			

Source: BHI, 2016

Objectives of the Standard

Clause 4.3 of LEP 2009 has the following objectives:

- A. *To establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- B. *To permit building heights that encourage high quality urban form,*
- C. *To ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.*

The proposal is consistent with the overarching objective of the control in the following ways:

- > The building has been designed by accredited architects BHI. The proposal exhibits a high quality urban form through the use of materials, articulation and a responsive scale and density of development, summarised below:
 - The commercial and retail functions are expressed in a podium style which addresses the height change from one side of Ellen Street to the lower industrial and residential developments across the road.
 - The two towers emphasize the strong corner presence of the development and frame the view corridors to the South along Atchison and Kenny Street, as illustrated by **Figure 3-2**. The secondary podium acts as a buffer between the two major elements of the towers and commercial podium, with a strong horizontal and sculptural facade to create interest and reduce the perceived scale of the overall development.
 - A number of different iterations of the building form and scale were considered with thought given to overshadowing, context and aesthetics. Additionally, two smaller towers rather than one large tower helps to reduce overshadowing to the southern residential area, allowing sun to penetrate between the buildings in a “sun-dial” manner (refer to Shadow Diagrams at Appendix A of the Statement of Environmental Effects [Cardno, 2016]). The stepping of the podiums responds to the neighbouring developments and doesn't overshadow properties as a large perimeter block may have. Maximising the height within the building height controls also allowed for more slender towers, which creates less bulk than a lower, denser development may have resulted in.
- > The use of contrasting material palettes for the major building components (brick and glazed commercial podium, white and timber sculptural residential podium and glazed residential towers) break up the perceived scale of the building into smaller parts while giving each component its own unique formal and material character.
- > The pursuit of high quality urban form is reinforced by the Design Review Panel. The proposal was submitted to the DRP twice during the initial design phase. In the first meeting on the 7 February 2016, the DRP recommended the following:

“If the street wall was to be lengthened, it may instead be possible to achieve slender tower forms to each street corner (16 storeys) ... with longer and appropriately scaled street wall buildings (say 8 storeys) and a less pronounced podium of three stories, all integrated with well considered setbacks and edges.”

This advice was taken incorporated into the design by BHI, with revised massing of the building to introduce two slender towers to the street corners, which necessarily intruded into the area where lower built form controls are applicable. If these slender towers were required to be set back from the street corners in contravention of the DRP's recommendation, the quality of the urban form would be significantly diminished.

In the second meeting on the 10 May 2016, the DRP made no further comment on the scale and placement of the building, stating:

“The panel indicated that the towers were looking much better than previously proposed.”

- > Careful consideration was given to impacts of actual and perceived bulk and overshadowing. This has resulted in a design response that incorporates slight increases in setback for parts of the podium and the use of 2 residential towers that ensure the provision of developable floor area with minimal impact on overshadowing or sky access from the street and adjoining buildings.
- > The area of non-compliance relates to a small section of the site within the Ellen Street Road Reserve.

3.2 Town Planning Grounds

The non-compliance of the proposal should be considered in accordance with the following town planning comments:

- > The proposal is within the commercial core area of the Wollongong City Centre, subject to a specific set of development controls that seek to revitalise the City Centre to achieve Council's desired future character. These development controls allow development that is considerably higher than for the remainder of the City and seek design excellence, while balancing impacts on the local area. The proposal provides a significant anchor to the southern extent of the commercial core and an exciting precedent for future development within the area. The inclusion of a significant building form within the 9m height limit area is an important element of the design.
- > During the preparation of the LEP, it was anticipated that the road reserve would be used for a future road. Hence, the lower order zoning, height and FSR control applied to it. Now that the proposal forms part of a contiguous site that has higher order zone, height and FSR controls, it is appropriate that these controls apply to the road reserve area.
- > Strict compliance with the height and FSR controls within the Ellen Street road reserve would result in a small protrusion from the main portion of the building. The resultant built form, as shown in **Figure 3-2**, would have significant negative impact on the streetscape
- > Ellen Street is the logical point at which the height should transition between the Wollongong City Centre and the adjoining residential precinct to the south, rather than within the development site, as it provides a clear east west break between the commercial and apartment living areas to the north and low density residential development to the south.
- > The proposal is an urban brownfield redevelopment of an underutilised site that will provide for additional commercial and retail opportunities, as well as housing choice and variety within the Wollongong locality in support of zone objectives and the *Wollongong Development Control Plan (DCP) 2009* desired future character for the area.
- > The proposal complies fully with the 60m height limit that applies to the majority of the site.
- > The proposal retains view corridors to the sea and Escarpment and solar access to adjoining private and public areas.

The non-compliance with the maximum height control is considered appropriate for this proposal on town planning grounds.

3.3 Public Interest

The non-compliance of the proposal should be considered in concert with the following public benefits:

- > The site represents an important southern gateway to the Wollongong City Centre, deserving of a signature building.
- > The proposal provides the opportunity for residents within the area to downsize without leaving their existing community.
- > The proposal will include significant streetscape upgrades in line with Council's Public Domain Plan.
- > The provision of additional residential and commercial floor space within the Wollongong City Centre.
- > The proposal ensures the development of an underutilised lot that will improve the amenity and activate the area, with resulting safety benefits.

- > The construction will generate significant short term employment opportunities within the Illawarra and many ongoing opportunities through the commercial floor space.

The non-compliance with the maximum height control is considered appropriate for this proposal based on the public interest.

3.4 Unreasonable and Unnecessary

It is unreasonable and unnecessary for the proposal to comply with the maximum height standard:

- > When the proposal is in accordance with the objectives of the control, by way of design excellence, with minimal impacts on the amenity of the streetscape and surrounds, while maintaining sky views and limiting shadow.
- > When Ellen Street is the logical point at which building heights would transition from the City Centre down to the lower density mixed use residential precinct.
- > As the proposal complies with the 60m building height control that applies to the main portion of site.
- > As compliance with the standard would result in an inferior built form outcome and reduced streetscape amenity.
- > As the site is large, with three street frontages and can incorporate additional building height in the road reserve area without impacting on bulk and scale.

Compliance with the maximum height control is considered unreasonable and unnecessary for this proposal.

4 Clause 4.4A – Floor Space Ratio

4.1 Overview

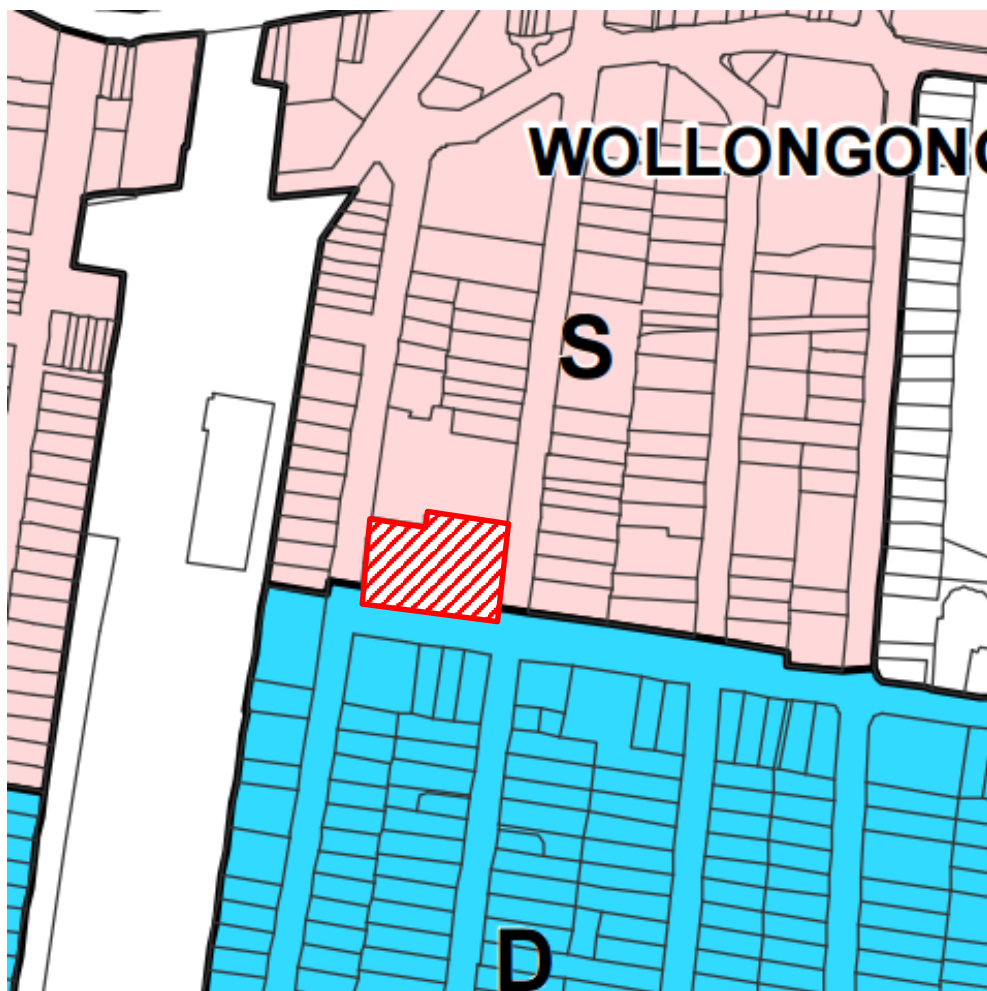
Clause 4.4 of LEP 2009 provides numerical floor space ratio controls for all developments within the Wollongong LGA. This is achieved through the following control:

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The main portion of the site has an FSR of 1.5:1 and the Ellen Street road reserve has an FSR 0.5:1 as shown in **Figure 4-1**.

Clause 4.4A of LEP 2009 provides additional FSR controls to those identified in Clause 4.4. The proposal utilises the FSR provided by Clause 4.4A(4). The specific FSR is derived by a formula based on the proportion of residential and non-residential floor space within the proposal. Using a 3.5:1 for residential development and 6:1 for non-residential development, the formula provides an overall FSR of 4.19:1.

Figure 4-1 Extract from LEP 2009 Floor Space Ratio Map (D = 0.5:1, S = 1.5:1)



Source: NSW Legislation Website, 2016

4.2 Objectives of the Standard

Clause 4.4 of LEP 2009 has the following objectives:

- A. *To provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- B. *To establish the maximum development density and intensity of land use, taking into account the availability of infrastructure to service that site and the vehicle and pedestrian traffic the development will generate,*
- C. *To ensure buildings are compatible with the bulk and scale of the locality.*

The proposal is consistent with the overarching objective of the control in the following ways:

- > The proposal is in accordance with the future vision of the Wollongong City Centre as identified in Wollongong DCP 2009.
- > The relatively large lot size within an urban infill setting ensures the ability to accommodate FSR on the site with minimal external impact.
- > The proposal is compatible with the surrounding traffic network, as identified by the traffic assessment.
- > The proposal will utilise existing capacity within the local infrastructure network. Any deficit will be funded by the developer.

4.3 Town Planning Grounds

The non-compliance of the proposal should be considered in accordance with the following town planning comments:

- > The proposal is within the commercial core area of the Wollongong City Centre. This area is subject to a specific set of development controls that seek to revitalise the City Centre to achieve Council's desired future character. These development controls allow development that is considerably higher than for the remainder of the City and seek design excellence while balancing impacts on the local area. The proposal provides a southern gateway to the City Centre and an exciting precedent for future development within the area. The inclusion of a significant building form within the Ellen Street road reserve is an important element of the design.
- > During the preparation of the LEP, it was anticipated that the road reserve would be used for a future road. Hence, the lower order zoning, height and FSR control applied to it. Now that the proposal forms part of a contiguous site that has high order zone, height and FSR controls, it is appropriate that these controls apply to the road reserve area.
- > Strict compliance with the height and FSR controls within the Ellen Street road reserve would result in a small protrusion from the main portion of the building. The resultant built form, as shown in **Figure 3-2**, would have significant negative impact on the streetscape.
- > The proposal generally complies with the relevant provisions of LEP 2009 and DCP 2009 while overcoming the challenging task of incorporating three street frontages.
- > Ellen Street is the logical point at which the floor space control should transition between the Wollongong City Centre and the adjoining mixed use residential precinct to the south, rather than within the development site, as it provides a clear east west break between the commercial and apartment living areas to the north and low density residential development to the south.
- > The proposal is an urban brownfield redevelopment of an underutilised site that will provide for additional commercial and retail opportunities and housing choice and variety with the Wollongong locality in support of zone objectives and *Wollongong Development Control Plan 2009* desired future character for the area.
- > The proposal complies fully with the FSR applied to the whole site.

- > The proposal retains view corridors to the sea and Escarpment and solar access to adjoining private and public areas.

The non-compliance with the FSR control is considered appropriate for this proposal on town planning grounds.

4.4 Public Interest

The non-compliance of the proposal should be considered in accordance with the following public benefits:

- > The provision of additional commercial and residential floor space within a desirable, City Centre location.
- > The opportunity for residents within the area to downsize without leaving their existing community.
- > The retention and expansion of commercial uses on the site.
- > The construction will generate significant short term employment opportunities within the Illawarra and many ongoing opportunities through the commercial floor space.
- > The site represents an important southern gateway to the Wollongong City Centre, deserving of a signature building.
- > The proposal will include significant streetscape upgrades in line with Council's Public Domain Plan.
- > The proposal ensures the development of an underutilised lot that will improve the amenity and activate the area, with resulting safety benefits.

The non-compliance with the FSR control is considered appropriate for this proposal based on the public interest.

4.5 Unreasonable and Unnecessary

It is unreasonable and unnecessary to comply with this standard:

- > When the proposal is in accordance with the objectives of the control, by way of demand for services and infrastructure and character of the area.
- > When Ellen Street is the logical point at which building heights would transition from the City Centre down to the lower density mixed use precinct to the south.
- > As the proposal complies with the 4.19:1 FSR control provided by the formula in Clause 4.4A(4) that applies to the main portion of site.
- > As compliance with the standard would result in an inferior built form outcome and reduced streetscape amenity.
- > As the site is large, with three street frontages and can incorporate additional floor space in the road reserve area without impacting on bulk and scale.

Compliance with the FSR control is considered unreasonable and unnecessary for this proposal.

5 Clause 8.6 – Building Separation

5.1 Overview

The subject site shares a northern boundary with properties on Atchison and Kenny Streets. The proposal includes a zero side setback from this boundary on the lower levels.

Clause 8.6 of LEP 2009 provides numerical controls for the separation of buildings within the B3 and B4 zones.

(2) Buildings on land within Zone B3 Commercial Core or B4 Mixed Use must be erected so that:

- (a) there is no separation between neighbouring buildings up to the street frontage height of the relevant building or up to 24 metres above ground level whichever is the lesser, and*
- (b) there is a distance of at least 12 metres from any other building above the street frontage height and less than 45 metres above ground level, and*
- (c) there is a distance of at least 28 metres from any other building at 45 metres or higher above ground level.*

The proposal is the first building within the immediate area that will set the context for the street frontage height, with a height ranging from 10-12 metres (depending on natural ground level). As the street frontage height is less than 24 metres, the proposal complies with Clause 2(a).

The residential towers that extend upwards of 45 metres are setback 14 metres from the northern boundaries. This will ensure that a building setback from future development of at least 28 metres is achieved. The proposal is consistent with Clause 2(c).

The non-compliance relates to the part of the podium between levels 3 and 5 that have a small setback from the street frontage. Given the definition of street frontage heights is measured at the street alignment, this slight change in setback means the upper part of the podium is not technically part of the street frontage height. From a design perspective, this upper portion of the podium is treated as a part of the street frontage height, with a zero side setback provided to the northern properties as required by the Clause.

The original design of the proposal included a podium height of approximately 24 metres, ensuring compliance with the Clause. However, the Design Review Panel raised concern about the apparent bulk of the podium and recommended additional articulation between the commercial levels and the residential floors above.

5.2 Objectives of the Standard

Clause 8.6 of LEP 2009 has the following objective:

to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access

The proposal is consistent with the overarching objective of the control in the following ways:

- > The proposal includes sufficient setback of the residential towers to ensure minimal impact on overshadowing and enhance the visual appearance of the building.
- > There are no north facing openings included to residential units along the northern boundary, minimising impact on privacy of future adjoining residents.

5.3 Town Planning Grounds

The non-compliance of the proposal should be considered in accordance with the following town planning comments:

- > The podium for the proposal is 24 metres high on the Atchison Street frontage and 25 metres high on the Kenny Street frontage. This provides a consistent podium level across the site. This podium is

provided with zero side setback at the northern boundary in accordance with the Clause. The inconsistency is generated by the definition of street frontage height.

- > The size of the development site required a different design response than envisioned by the control. This design response was recommended by the DRP.
- > The proposal will not prejudice future development on adjoining lands due to the non-compliance as the podium height is generally consistent with the Clause, with nil setbacks provided to the northern boundary.
- > The proposal is an urban infill development that will provide for additional housing choice and variety, as well as commercial floor space in the Wollongong City Centre in support of the zone objectives and the DCP 2009 desired future character for the area.

The non-compliance with the building separation control is considered appropriate for this proposal on town planning grounds.

5.4 Public Interest

The non-compliance of the proposal should be considered in accordance with the following public benefits:

- > The proposal provides additional commercial and residential floor space in a high quality mixed use building within the Wollongong City Centre.
- > The proposal provides the opportunity for residents within the area to downsize without leaving their existing community.
- > The proposal sets a high architectural standard for the southern entry to the City Centre.
- > The proposal will ensure activation of the street and enhanced surveillance due to the provision of over 200 dwellings and a wide range of commercial and retail floor space.
- > The construction will generate short term employment opportunities within the Illawarra.

The non-compliance with the building separation control is considered appropriate for this proposal based on the public interest.

5.5 Unreasonable and Unnecessary

It is unreasonable and unnecessary to comply with this standard:

- > When the proposal generally complies with the intent of the Clause through the provision of a 24-25 metre high podium
- > When the proposal has minimal privacy and overshadowing impacts.
- > When the non-compliance results in negligible offsite impacts.
- > As the site is relatively large and required a specific design response, as recommended by the DRP.

Compliance with the building separation control is considered unreasonable and unnecessary for this proposal.

6 Conclusion

The mixed use development proposed for Atchison and Kenny Streets in Wollongong includes non-compliances with the height, FSR and building separation controls identified in LEP 2009.

Clause 4.6 of LEP 2009 provides the opportunity for Council (as delegate) to consider and approve a development application that seeks to vary development standards.

The maximum height for the majority of the site is 60 metres. The entire development is within this height limit. However, a small section of the site (1,100m² or 17%), currently included within the Ellen Street road reserve, has a 9 metre height limit. The proposal does not comply with height control for this portion of the site.

Despite the FSR map providing a 1.5:1 FSR for the site, Clause 4.4A provides additional FSR controls that supersede those shown in the map. The maximum floor space ratio for the site is 4.19:1, as calculated using the specific formula included in clause 4.4A(4). The proposal complies with this control. However, a section of the site, currently included within the Ellen Street road reserve, has a maximum 0.5:1 floor space ratio. The proposal does not comply with floor space control in this portion of the site.

For the purposes of this proposal, the height and floor space controls that apply to the bulk of the site have been applied across the Ellen Street road reserve. There are a number of benefits associated with this approach, including enhanced built form treatment to the southern entrance to the City Centre and a building with a high level of architectural merit setting the benchmark for this area.

The road reserve has lower order development controls, which is common where there is a change in zoning and land use across a road. Given that the road reserve is being developed as a part of a contiguous site, it is appropriate that the control that applies to the bulk of the site also extends across the reserve area.

The site has an area in excess of 4,000m² and has three street frontages. This is a unique combination of features that enables the proposal to respond to the height and floor space controls in a manner that has minimal impact on the surrounding area.

The proposal does not technically comply with the minimum building separation Clause due to the definition of street frontage height. The podium, the effective street frontage height, is provided with a zero side setback to the northern boundaries. A recommendation of the DRP resulted in the inclusion of a setback from the street for residential levels 3-6. This resulted in a non-compliance with the definition of street frontage height. The non-compliance is driven by the pursuit of design excellence. There will be minimal impact on privacy, sky access or views as a result of this non-compliance.

The proposal will provide a signature building for the southern gateway to the City Centre. It will provide a range of accommodation for new residents and those looking to downsize and take advantage of the City Centre locale. Additionally, there will be numerous employment opportunities created, both in construction and on-going use of the commercial premises.

This report provides a detailed assessment of the impacts associated with the non-compliances. It demonstrates that the impact of the non-compliances is minor and the proposal will have significant benefit to both the local area and the City Centre.

It is quite uncommon to have this combination of attributes in an urban infill setting. It is therefore considered that the variation of these development standards would not set a general precedent for land with similar development controls.

This variation request adequately justifies the appropriateness of non-compliance with specific development standards in LEP 2009. In addition, this report also provides Council with the necessary information to discharge their responsibilities in accordance with Clause 4.6 of LEP 2009.

We trust that the information provided in this variation statement is appropriate to facilitate Council's concurrence and support for the Clause 4.6 variations and subsequent approval of the development application.

Our Ref: 8201607002_L01:MS
Contact: Michael St Clair

3 November 2017

The General Manager
Wollongong City Council
Locked Bag 8821
Wollongong NSW 2500

Attention: Theresa Whittaker

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Dear Theresa,

**CLAUSE 4.6 VARIATION: BUILDING SEPARATION WITHIN ZONE B3
COMMERCIAL CORE OR ZONE B4 MIXED USE**

**DA-2016/1354 MIXED USE DEVELOPMENT KENNY, ELLEN AND ATCHISON STREET,
WOLLONGONG**

This Clause 4.6 Variation Request has been prepared to replace Section 5 of the 'Clause 4.6 Variation Request' submitted to support the Statement of Environmental Effects for the proposed mixed use development at 43-45 Atchison Street and 40-46 Kenny Street, Wollongong.

This Clause 4.6 Variation Request relates to the application of Clause 8.6 of the *Wollongong Local Environmental Plan 2009* (WLEP). The two Clause 4.6 variations relating to Height and Floor Space Ratio discussed in the initial report remain as previously submitted.

Clause 8.6 – Building separation within Zone B3 Commercial Core or Zone B4 Mixed use details the separation requirements within the specified business zones. The proposed development is located within the B3 – Commercial core zone and applies to the site. The provisions of Clause 8.6 are detailed below:

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

1. *The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.*
2. *Buildings on land within Zone B3 Commercial Core or B4 Mixed Use must be erected so that:*
 - a. *there is no separation between neighbouring buildings up to the street frontage height of the relevant building or up to 24 metres above ground level whichever is the lesser, and*
 - b. *there is a distance of at least 12 metres from any other building above the street frontage height and less than 45 metres above ground level, and*
 - c. *there is a distance of at least 28 metres from any other building at 45 metres or higher above ground level.*
3. *Despite subclause (2), if a building contains a dwelling, all habitable parts of the dwelling including any balcony must not be less than:*
 - a. *20 metres from any habitable part of a dwelling contained in any other building, and*
 - b. *16 metres from any other part of any other building.*
4. *For the purposes of this clause, a separate tower or other raised part of the same building is taken to be a separate building.*
5. *In this clause:*

street frontage height means the height of that part of a building that is built to the street alignment.

To address the non-conformances with this clause, an assessment of the impacts of the development has been conducted against the provisions contained within Clause 4.6 of the WLEP.

Details of non-conformance

Clause 8.6 (2) details the separation requirements between buildings at different heights. A key component of the application of this clause is the identification of the Street Frontage Height. This proposal has undergone a number of reviews by the Design Review Panel as part of the Design Excellence provisions of the WLEP. The outcomes of this process has seen a reduction in the buildings podium heights and the residential components of the building setback from the street alignment. This creates a Street Frontage Height ranging from 10-12 metres depending on the ground level. As such, the following non-conformances with the clause occur;

- a) *there is no separation between neighbouring buildings up to the street frontage height of the relevant building or up to 24 metres above ground level whichever is the lesser*

Nil non-compliances.

- b) *there is a distance of at least 12 metres from any other building above the street frontage height and less than 45 metres above ground level*

- Levels 2-5 of both towers have a small setback from the street alignment. Given the definition of street frontage heights is measured at the street alignment, this slight change in setback means the upper part of the podium is not technically part of the street frontage height. From a design perspective, this upper portion of the podium is treated as a part of the street frontage height, with a zero side setback provided to the northern properties as required by the Clause.

This non-compliance is referred to as NC1 throughout the remainder of the letter.

- Similarly, a separation of 10m is provided between towers A and B at levels 2-4. As indicated in the point above, this portion of the building is not included within the Street Frontage height and results in a non-compliance.

This non-compliance is referred to as NC2 throughout the remainder of the letter.

Both of these non-conformances occur below the 24m above ground level referred to in a) above. The DRP raised concern about the apparent bulk of the podium and recommended additional articulation between the commercial levels and the residential floors above. Without the requirement imposed by the DRP these points would not be classified as non-compliances in accordance with the WLEP.

- c) *there is a distance of at least 28 metres from any other building at 45 metres or higher above ground level.*

Nil non-compliances.

Clause 8.6 (3) details the separation requirements buildings that contain dwellings, with the habitable components of a dwelling to achieve the specified separation. There are two non-conformances with these provisions which are detailed below;

- a) *20 metres from any habitable part of a dwelling contained in any other building*

Nil non-compliances

- b) *16 metres from any other part of any other building.*

- The proposed development is located adjacent to an existing residential dwelling located at 41 Atchison Street to the north of the development site. The adjacent property is a single storey dwelling constructed in the early 20th century. The site also houses a commercial premises to the rear of the lot. The dwelling house is located approximately 7metres from the proposed developments northern wall on the Atchison Street Frontage. This dwelling is wholly located below the Street Frontage Height of the proposed development and as such it is expected that as further redevelopment occurs within the area that this building will be redeveloped in conjunction with other adjacent sites to the north.

This non-compliance is referred to as NC3 throughout the remainder of the letter.

- Towers A and B are classified as separate buildings in accordance with clause 8.6 (4). Due to the requirement to reduce the podium height and set the street building line back for the residential component of the site as part of the DRP process a number of apartments within Tower A and located within 16 metres of another part of another building. This specifically relates to a solid wall on the eastern end of tower B. This specifically relates to apartments A2.10-12, A3.10-12 and A4.10-12.

This non-compliance is referred to as NC4 throughout the remainder of the letter.

Each of these four non-conformances will be assessed in respect of the provisions contained within Clause 4.6. This letter will address each component of the clause in turn to demonstrate that the objectives of the clause have been achieved and that the strict compliance with these provisions is unreasonable and unnecessary.

Assessment of development against Clause 4.6

Clause 4.6 was included within the *Standard Instrument – Principle Local Environmental Plan* to replace the provisions that were contained within the State Environmental Planning Policy no. 1 which has now been repealed. The clause provides consent authorities with an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The clause contains 8 sub clauses, with each addressed in turn.

Objectives of Clause 4.6

Clause 4.6 (1) details the objectives of the clause as detailed below;

1. *The objectives of this clause are as follows:*
 - 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.*

The objectives of will be achieved within this variation request. The subsequent sections will demonstrate the applicability of the variations that are sought. It will be shown that the strict compliance of the controls are both unreasonable and unnecessary in this instance, with sufficient environmental planning grounds provided to justify the small contraventions of Clause 8.6 of the WLEP.

The use of the first objective by the consent authority is required to afford the proposed development some degree of flexibility in order to respond to the specific requirements of the site. Specifically, the requirement for some flexibility to the treatment of the northern site boundary treatments as the area undergoes a transition from its historic low scale residential and commercial past to its future desired use as a mixed use commercial and residential area located in close proximity to the Wollongong City Centre.

The second objective is satisfied as the flexibility afforded to this development standard will create a better outcome for not only the proposed development but the integration that building will be able to achieve should the four small non-conformance detailed above are approved for variance.

Development consent

Clause 4.6 (2) enables development consent to be granted for a proposal when a development standard is contravened as detailed below;

2. *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

This variation request seeks concurrence that this development standard can be varied to allow approval to be granted for the proposed development. Clause 4.6 (8) details the development standards within the WLEP that have been excluded from the operation of this Clause. As detailed below, this application satisfies that requirement.

It is requested that variation to clause 8.6 of the WLEP be granted in this instance based on the following grounds.

Unreasonable or unnecessary and sufficient environmental planning grounds

Clause 4.6 (3) establishes the requirements that must be demonstrated when a consent authority considers a variation to a development standard. These requirements are detailed below;

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*
 - b. *that there are sufficient environmental planning grounds to justify contravening the development standard.*

There are four minor non-compliances across the site that relate to Clause 8.6 of the WLEP. These non-compliances are a result of the DRP process undertaken for this proposal in accordance with the requirements of Clause 7.18 of the WLEP. Specifically, the DRP requested a specific design change to reduce the perceived bulk of the building which resulted in a technical non-compliance with the building separation control. The podium has effectively been split into two elements, one for commercial uses on ground and first floor and one for residential levels above. The secondary podium acts as a buffer between the two major elements of the towers and commercial podium, with a strong horizontal and sculptural facade to create interest and reduce the perceived scale of the overall development. Given this second podium element has a zero side setback, there is no impact on future development associated with the non-compliance.

Each of the four non-compliances are addressed separately below to demonstrate that the strict application of the development standard is unreasonable or unnecessary and that sufficient environmental planning grounds exists to support the variation of the control.

NC1

Text NC1 relates to a non-compliance with the separation control between buildings above the Street Frontage Height and below 45 metres above ground level. This control requires a separation of at least 12 metres, with the proposal providing nil setback to the property boundaries to the north of the site. This non-compliance relates to levels 2-5, with all building works contained under 24 metres above the existing ground level.

- a. **Unreasonable or unnecessary** – The strict compliance with this development standard is deemed to be unnecessary in this case. This non-compliance has resulted from a requirement of the DRP that the residential components of the site be set back from the street alignment to provide a clear separation of the commercial and residential components. In making these adjustments to the design the requirements of Street Frontage Heights are no longer met, moving this section of the building from requiring nil side setbacks to a requirement for 12 metres. The design still complies with the intent of this clause by providing nil setbacks below 24 metres above ground level or to the predominate street frontage height of the surrounding development.

The existing development surrounding the site comprises historic land uses and not the desired built form for the area. As such, the site has been deemed to have no predominate street frontage height, with this development setting the precedent for the surrounding area.

The application of this development standard in this case is deemed to be unnecessary in this case as the development has been designed to achieve the intent of the standard, whilst providing a greater street setback to achieve improved design outcomes.

- b. **Sufficient Environmental Planning Grounds** – The objective of Clause 8.6 state that '*this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access*'. As such, the assessment against the requirement to demonstrate sufficient planning ground exists to support this variation has been conducted against these three factors. Each factor is addressed individually below;
 - i. **Visual Appearance** – The non-compliance in this regard is a direct consequence of designing the building to achieve design excellence. These changes have been requested

and subsequently approved by the DRP. As such, the outcome is deemed to be visually appropriate.

- ii. *Privacy* – The orientation of dwellings within this portion of the development are east-west with appropriate separation of buildings achieved. The non-compliance relates to the north of the site. The proposal has been designed to present a blank wall to the north of the site up to a height of 24m above ground level so that future development to the north can also utilise the nil setback allowances contained within development standards stipulated within Clause 8.6. This design and orientation of the building will ensure that there are no unreasonable privacy impacts within the proposed apartments adjacent to the northern boundaries of the site and within any dwellings located within the surrounding area.
- iii. *Solar Access* – The non-compliance occurs along the northern boundary of the site and will not impact on the solar access of any adjacent buildings to the north. This non-compliance has been a direct result of requiring further setbacks from the street alignment that have resulted in greater solar access to buildings to the east and west of the site than what would have resulted should the full building envelope have been developed.

NC2

Text NC2 relates to the separation of the podium associated with Tower B from Tower A. The design includes a 10m separation between these two elements. The clause details that these two elements be classified as separate buildings and are subsequently required to achieve the specified development standards. This portion of the building is located above the street frontage height as a consequence of the design changes required by the DRP described above. This has introduced a requirement for a 12m separation rather than the nil setback that would be applicable as this portion of the site is under the 24m above ground level requirement.

- a. **Unreasonable or unnecessary** – The strict compliance with this development standard is deemed to be unnecessary in this case. This non-compliance has resulted from a requirement of the DRP that the residential components of the site be set back from the street alignment to provide a clear separation of the commercial and residential components. In addition, the DRP required that more definition be provided between Towers A and B at the podium level, requiring the inclusion of the break in the podium at the 2 and 3 floor levels. In making these adjustments to the design the requirements of Street Frontage Heights are no longer met, moving this section of the building from requiring nil side setbacks to a requirement for 12 metres.

The application of this development standard in this case is deemed to be unnecessary in this case as the development has been designed to achieve the intent of the standard, whilst providing a greater street setback to achieve improved design outcomes.

- b. **Sufficient Environmental Planning Grounds** – The objective of Clause 8.6 state that '*this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access*'. As such, the assessment against the requirement to demonstrate sufficient planning ground exists to support this variation has been conducted against these three factors. Each factor is addressed individually below;

Visual Appearance – The non-compliance in this regard is a direct consequence of designing the building to achieve design excellence. These changes have been requested and subsequently approved by the DRP. As such, the outcome is deemed to be visually appropriate.

- i. *Privacy* – The privacy implications of this aspect of the development have been a significant concern of the DRP throughout the process. As such, a number of design measures have been implemented to ensure that the privacy of residents within Tower A are protected from overlooking from Tower B. The eastern wall of Tower B has been designed as a blank wall with no opening that would provide opportunities for overlooking into the adjacent apartments. Further design measures have been included to ensure that no overlooking can occur from the Communal Open Space (COS) on top of the Tower B podium, with a row of medium height plantings included to obscure views from the COS to the east towards the

apartments within Tower A. The DRP ensured that there was no direct view lines that would adversely impact the privacy of the residents within the apartments within Tower A.

- ii. **Solar Access** – In addition to the privacy concerns detailed above, the DRP was focused on ensuring that adequate solar access was achieved for the west facing apartments that are located within Tower A. The proposal was required to demonstrate that appropriate Solar Access could be achieved within the 10m separation of the two towers. This requirement was achieved due to the two storey height of the Tower B podium.

NC3

Text NC3 relates to the impacts associated with the existing dwelling located at 41 Atchison Street directly north of the site. Clause 8.6 requires that a building containing a dwelling needs to be setback 16m from any other building. The existing dwelling is located 7m from the northern boundary of the site on the Atchison Street Frontage

- a. **Unreasonable or unnecessary** – This development Standard is unreasonable in this case due to the transitioning nature of area. The site is zoned as B3 – Commercial Core with a number of buildings constructed under this zoning located further to the north. The buildings directly to the north at this stage have not been redeveloped under these controls with this expected to occur at some point in the future. When future development occurs it is expected that these sites will utilise the provisions of Clause 8.6 with nil side setback from the northern boundary of the site.

As such, it is unreasonable to impose this development standard on the site as it will adversely impact the future development intention for the area.

- b. **Sufficient Environmental Planning Grounds** – The objective of Clause 8.6 state that *'this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access'*. As such, the assessment against the requirement to demonstrate sufficient planning ground exists to support this variation has been conducted against these three factors. Each factor is addressed individually below;
 - i. **Visual Appearance** – The visual impact of the proposal on the adjacent dwelling will be moderate in the short term until this site is developed in the future. The proposed building will present as a blank wall from this location. However, it is expected that when future development occurs on this site that any future development will be constructed to this wall creating a consistent building line along Atchison Street removing any visual impact that will exist in the short term.
 - ii. **Privacy** – There will be only minimal privacy impacts on the dwelling located to the north of the site. The dwelling will be presented with a blank wall that contains no openings, with no opportunities for overlooking to occur. The podium on level 6 of the proposal includes planting along the northern boundary to ensure that no overlooking of the site can occur from the COS.
 - iii. **Solar Access** – The non-compliance occurs along the northern boundary of the site and will not impact on the solar access of any adjacent buildings to the north. Shadow diagrams prepared to accompany the SEE demonstrate that there are no direct impacts on this dwelling.

NC4

Text NC4 relates to the separation of the podium associated with Tower B from Tower A. The design includes a 10m separation between these two elements. The clause details that these two elements be classified as separate buildings and are subsequently required to achieve the specified development standards. The clause requires that a building containing a dwelling should be 16m from any other building.

- a. **Unreasonable or unnecessary** – The strict compliance with this development standard is deemed to be unnecessary in this case. The objectives of the clause require that visual appearance, privacy and solar access are to be achieved. This portion of the building has undergone extensive assessment and design reiteration as part of the DRP review of the proposal to ensure design excellence. This process has ensured that the visual appearance of the overall development, including this component of the design, meet the building design requirements specified within the

Wollongong City Centre. Further to this, privacy and solar access impacts have been assessed and found to be compliant.

As demonstrated above, the objectives of the clause have been met and it is deemed unnecessary to impose strict compliance with the development standards contained within this clause for this element of the non-compliance.

- b. **Sufficient Environmental Planning Grounds** – The objective of Clause 8.6 state that *'this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access'*. As such, the assessment against the requirement to demonstrate sufficient planning ground exists to support this variation has been conducted against these three factors. Each factor is addressed individually below;

Visual Appearance – The non-compliance in this regard is a direct consequence of designing the building to achieve design excellence. These changes have been requested and subsequently approved by the DRP. As such, the outcome is deemed to be visually appropriate.

- iii. *Privacy* – The privacy implications of this aspect of the development have been a significant concern of the DRP throughout the process. As such, a number of design measures have been implemented to ensure that the privacy of residents within Tower A are protected from overlooking from Tower B. The eastern wall of Tower B has been designed as a blank wall with no opening that would provide opportunities for overlooking into the adjacent apartments. Further design measures have been included to ensure that no overlooking can occur from the Communal Open Space (COS) on top of the Tower B podium, with a row of medium height plantings included to obscure views from the COS to the east towards the apartments within Tower A. The DRP ensured that there was no direct view lines that would adversely impact the privacy of the residents within the apartments within Tower A.
- iv. *Solar Access* – In addition to the privacy concerns detailed above, the DRP was focused on ensuring that adequate solar access was achieved for the west facing apartments that are located within Tower A. The proposal was required to demonstrate that appropriate Solar Access could be achieved within the 10m separation of the two towers. This requirement was achieved due to the two storey height of the Tower B podium.

The public interest

Clause 4.6 (4) outlines the requirements that must be satisfied for the consent authority to grant a variation to a development standard, with these detailed below;

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 Secretary has been obtained.*

This written variation request has addressed each of the requirements of Clause 4.6 in turn to ensure that a comprehensive assessment of the variations to the development standard has been undertaken. Specifically, the section above discusses the matters that are required to be demonstrated in detail. This has included discussion on why the development standard is considered to be either unreasonable or unnecessary and that there is sufficient planning grounds for the standard to be varied in this case.

The variations requested here are minor in nature and are in the public interest. The need for this variation request stems wholly from the requirements imposed by the DRP when reviewing the design of the building. The intent of the separation requirements have been achieved by the proposed development. If this variation request is not concurred with, it is expected that it will set a negative precedent for other future developments and not achieve the public outcomes determine in previous strategic direction laid out in the

current WLEP. The development is in line with the desired future character of the area and is determined to be in the public interest.

Concurrence for the Secretary is not expected to be required for this Clause 4.6 variation request, with Council having delegation to consider this matter.

Considerations of the secretary when granting concurrence

Clause 4.6 (5) requires the Secretary to consider a number of requirements prior to granting concurrence, with these detailed below;

5. *In deciding whether to grant concurrence, the Secretary must consider:*
 - a. *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - b. *the public benefit of maintaining the development standard, and*
 - c. *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

As discussed above, the requirement for concurrence to be sought from the Secretary for this variation request has been delegated to Council. As such, Council is required to consider these aspects as part of their assessment of the variation request. Each point has been addressed individually below;

- a) The proposal does not raise any matters of significance for state or regional planning. The contravention of this development control is the result of a design change required of the DRP and does not contravene the overall intent of the clause. There are not impacts outside of that intended when preparing the controls for the site within the current version of the WLEP.
- b) There is no public benefit in maintaining the development standard. The non-conformance is a result of a design change, with the intent of the control still achieved.
- c) All matters that are required to be considered have been included within this variation request.

Clause 4.6 Variations for subdivision in certain zones

Clause 4.6 (6) specifically addresses the impacts imposed by subdivision in certain zones as detailed below;

6. *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - a. *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - b. *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

This proposal does not seek to vary any development control that relates to subdivision and the site is not located within any of the prescribed zones. As such, this sub clause is not applicable to this variation request and has been satisfied.

Records to be maintained by consent authority

Clause 4.6 (7) specifies the record keeping requirements of the consent authority as detailed below;

7. *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

This clause requires that Wollongong City Council as the consent authority to record this variation request and its outcome as required within the applicable legislation. This sub-clause does not relate to the preparation of the variation request and as such is not applicable to this submission. It is recommended that the consent authority review this requirement as part of their consideration.

Variation to specific Development Controls

Clause 4.6 (8) details the specific development controls that cannot be varied under this clause as detailed below;

8. *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- a. *a development standard for complying development,*
 - b. *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - c. *clause 5.4,*
 - d. *clause 4.2A, 6.1 or 8.3.*

This variation request relates specifically to the operation of Clause 8.6 of the WLEP, with the clause 4.6 variations relating to Height and FSR contained in a separate document informing the proposed developments SEE. The following details the impact of this variation against each of the four requirements stipulated above;

- a. The proposed development is not being undertaken as a complying development and as such no complying development standards have been relied upon. This variation request satisfies this requirement.
- b. The proposed development is required to comply with the development standards conferred by that *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*. The SEE submitted to detail the proposal included BASIX Certificates for each of the proposed dwellings throughout the site. These certificates show that all BASIX requirements have been met. As such, there is no contravention of any BASIX requirements as a consequence of this variation request, satisfying this requirement.
- c. Clause 5.4 of the WLEP relates to the controls for miscellaneous permissible uses. This clause lists nine specific land uses with a range of development controls that apply to each. None of the listed land uses within this clause are included within this proposed development and as such no contravention of any controls occurs. This variation request satisfies this requirement.
- d. Clauses 4.2A, 6.1 and 8.3 of the WLEP relate to specific controls unique to the Wollongong Local Government Area (LGA). These controls relate to specific requirements are addressed individually below;
 - i. Clause 4.2A – This relates to the erection of a dwelling house in certain rural and environmental protection zones. The proposed development is located within the B3 – Commercial Core zone which is not included as a listed zone within this Clause. As such, this clause does not apply to this proposal with the variation request satisfying this requirement.
 - ii. Clause 6.1 – This clause relates to the provision of designated State public infrastructure within an Urban Release Area. The site is not located within a prescribed Urban Release Area and as such this clause does not apply. This variation request satisfies this requirement.
 - iii. Clause 8.3 – This relates to the sun protection plane surrounding a number of key sites within the Wollongong LGA. The mapping included for this clause details two areas surrounding MacCabe Park to the east of the site. These areas do not impact upon the proposed development site and as such are not applicable to this variation request.

As detailed above, the development standards detailed within this sub clause are all not applicable to the proposed development. This variation request does not propose to vary a development control that cannot be varied under clause 4.6.

Summary

This variation request has been lodged to support a variation to the development standards contained within clause 8.6 of the WLEP. This clause specifically relates to building separation within the B3 and B4 zones. This letter has assessed the variations present within the proposed development of the site against each of the provisions contained within Clause 4.6 of the WLEP.

This review has shown that strict compliance with the development standard is unreasonable or unnecessary for each of the four non-conformances present. Sufficient environmental planning grounds have been discussed to justify the contravention to the development standards. In addition to these key assessment requirements, it has been shown that the variation request satisfies all other requirements specified within the clause.

It is deemed that the requested variations discussed in this letter should be supported by council. The intent of clause 8.6 has been met, the character and future built form of the area achieved and the impacts of the variations minimal.

Should you require further information please do not hesitate to contact me at the details below.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M St Clair'.

Michael St Clair
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