

1 Introduction

This report comprises a Clause 4.6 Variation Statement for the proposed nine (9) storey commercial building to be located at 72-76 Crown Street Wollongong on two allotments which are formally described as Lot 1 in DP127333 and Lot B in DP153923. In particular it considers non-compliance of the proposal with 'Clause 8.6 – Building Separation within Zone B3 Commercial Core or Zone B4 Mixed Use' of Wollongong Local Environmental Plan 2009 (WLEP).

The building design has been revised following assessment and this report amends the previously submitted Clause 4.6 Variation Statement to reflect the changed building setbacks and associated building separation.

This report contains the following section:

Section 2 – Description of Clause 4.6 of WLEP as relevant to the proposal.

Section 3 – Description of Clause 8.6 of WLEP as relevant to the proposal.

Section 4 – Detailed discussion of compliance of the proposal with Clause 8.6.

Section 5 – An Exception to Development Standard Report, compiled according to legislative and common law requirements, and including justification for the variation.

Section 6 - Conclusions

2 Clause 4.6 of WLEP 2009

Clause 4.6 'Exceptions to Development Standards' of Wollongong Local Environmental Plan 2009 provides the opportunity to contravene a development standard with approval of the consent authority and concurrence by the Director-General.

A development standard is defined by the Environmental Planning and Assessment Act, 1979 as:

"Provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development".

The objectives of Clause 4.6 are as follows:

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

This statement is provided in order to justify a variation to Clause 8.6 'Building separation within Zone B3 Commercial Core or Zone B4 Mixed Use' under the following provisions of WLEP 2009, in accordance with Clause 4.6 of that Plan, as the application of these requirements is considered unreasonable or unnecessary for this particular development:

3 Clause 8.6 Building Separation within Zone B3 Commercial Core or Zone B4 Mixed Use

The objective of Clause 8.6 of WLEP 2009 is to "ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access". Subclauses (2) to (5) state:

(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.*

This clause applies to the proposed commercial development as it is located in the B3 Commercial Core zone of WLEP 2009.

There is no residential use of the proposed building, hence subclause (2) is applicable. Subclause (2) requires that there be no separation between neighbouring buildings up to the street frontage height or up to 24m above ground level (whichever is lesser), with a 12m separation distance required above this level.

4 Discussion of Compliance with Clause 8.6 of WLEP 2009

4.1 Summary of Separation Distances (Required and Sought)

The existing heritage building on the eastern lot is 9.55m to the lower rectangular section of the parapet and 11.02m to the apex of the parapet's centrepiece. The two storey commercial shop (Crown Street frontage) to the immediate west of the heritage building is proposed to be approximately 8m high with a zero western setback.

The new office tower component of the proposed development is set back behind these buildings (minimum 10m) from Crown Street. At this point of the building, the following separation distances apply:

The proposed building has a height of 32.05m and is therefore required to have:

- > A zero separation to the neighbouring building (3 storey State Office Block) to the west, north and east (across Moore Lane) up to street frontage height (ie Ground Level to Level 2); and
- > 12m separation to other buildings above street frontage height (ie. Levels 3-8 and Plant Room).

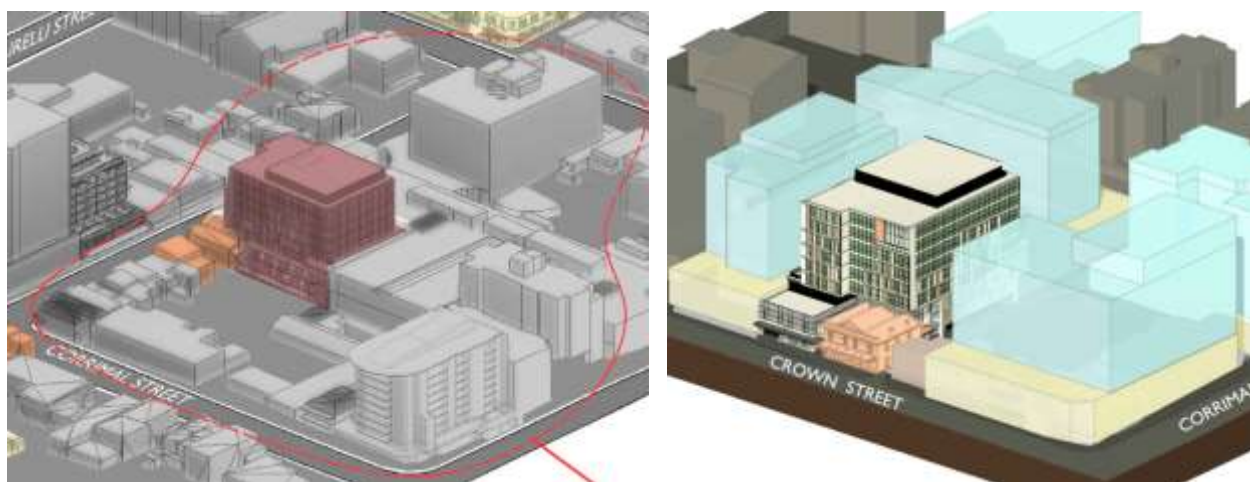
The building to the east, on the opposite side of Moore Lane, is two storeys in height. The adjoining State Office block to the west and north of the subject site is three storeys in height. Table 4-1 summarises the western, northern and eastern setbacks and separations distances. The rows highlighted in orange are the components of the building for which a variation to Clause 8.6(2) is sought:

Table 4-1 Summary of Required and Proposed separation distances to the building. Orange highlighted components are the subject of this variation statement with respect to Clause 8.6 of WLEP 2009.

	Level	Required Setback to Provide 12m Separation	Proposed	Compliance
West	Ground to Level 2 (Below Street Frontage Height)	0m	0m <i>(with exception of lightwell at L2)</i>	Yes
	Level 3 (Above Street Frontage Height)	6m	Level 3: part 0m (northern/rear portion only) <i>(nil setback for part of L3 terrace)</i>	Variation of 6m <i>Partly abuts existing adjacent building to west</i>
	Level 4 - 8 (Above Street Frontage Height)	6m	Level 4-8: 6m <i>(nil setback for part of L4 terrace)</i>	Yes
	Rooftop	6m	6 – 6.035m	Yes
East (Moore Lane)	Ground to Level 2	0m	0m	Yes
	Level 3 - 8	3.65m <i>(taking into account 4.7m width of Moore Lane)</i>	900mm	Variation of 2.75m
	Rooftop	3.65m	3m	Variation of 1.5m
North (Rear)	Ground to Level 2	0m	0m <i>(with exception of sewer diversion area at Ground)</i>	Yes <i>(with exception of sewer diversion)</i>
	Level 3	6m	0m	Variation of 6m
	Level 4 - 8	6m	3.0 to 3.455m (with exception of L4 terrace)	Variation of 3m
	Rooftop	6m	5.0 to 5.435m	Variation of 0.565m to 1.0m

An extract of the Contextual Analysis prepared by ADM Architects which demonstrates the building separation in the context of surrounding buildings: existing, at left; and proposed allowable envelopes (at right) is provided in **Figure 4-1** below.

Figure 4-1 Extracts of Contextual Analysis (ADM Architects, DWG A-003)



5 Clause 4.6 - Exceptions to Development Standards Report

Clause 8.6 of WLEP 2009 contains development standards in the form of minimum separation distances adjoining buildings. A written justification for the proposed variation to the required building separation is therefore required in accordance with Clause 4.6. **Table 5-2** below outlines how the proposal relates to the provisions of Clause 4.6 as it applies to the contravened development standards in Clause 8.6 of the WLEP.

As indicated above, this Statement seeks variation to the separation distances for the new building works, noting that the existing heritage building provides compliant nil separation to the east.

Table 5-1 Summary separation distances to the building sought for this variation to Clause 8.6 of WLEP 2009

	Level	Required Setback to Provide 12m Separation	Proposed	Compliance
West	Level 3 (Above Street Frontage Height)	6m	Level 3: part 0m (northern/rear portion only) (nil setback for part of L3 terrace)	Variation of 6m <i>Partly abuts existing adjacent building to west</i>
East (Moore Lane)	Level 3 - 8	3.65m (taking into account 4.7m width of Moore Lane)	900mm	Variation of 2.75m
	Rooftop	3.65m	3m	Variation of 1.5m
North (Rear)	Level 3	6m	0m	Variation of 6m
	Level 4 - 8	6m	3.0 to 3.455m (with exception of L4 terrace)	Variation of 3m
	Rooftop	6m	5.0 to 5.435m	Variation of 0.565m to 1.0m

In preparing this statement, consideration has been given to Land and Environment Court Judgements *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (and appeal at NSWLEC 90)* and *Wehbe v Pittwater Council [2007] NSWLEC 827*, namely that the objection is well founded, that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

Table 5-2 Compliance with WLEP 2009 - Contravention of Clause 8.6 Building Separation in the B3 Commercial Core Zone

Clause 4.6 - Exceptions to Development Standards	Response/Justification	Consistent/Complies
<p>(1) Objectives</p> <p>a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and</p> <p>b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p>	<p>Flexibility is sought for the application of the building separation requirements as they apply to the proposed building so that a better outcome is achieved for the site. The particular unique circumstances for this are as follows:</p> <p>North:</p> <p><i>Overshadowing and solar access:</i> being on the southern side, the non-compliant separation will have no likely adverse overshadowing impacts to the adjoining buildings.</p> <p>The site is bounded by an irregular shaped allotment to the north and west, which creates a unique site context. This will allow for an acceptable level of solar access into the proposed development at 72-76 Crown Street, particularly if a development on the adjacent site to the north and west occurs as 3 separate buildings, as shown in the <i>Built Form Study</i> (Drawing A004a prepared by ADM Architects). This would allow for increased separation distances and a greater level of</p>	Justified


Clause 4.6 - Exceptions to Development Standards	Response/Justification	Consistent/Complies
	<p>solar access, which would be further assisted in the event that a future laneway is provided from Coombe Street to Corrimal Street.</p> <p>As a commercial use, solar access is a less essential requirement for the proposed building (i.e. unlike residential use) and impacts from redevelopment of the site to the north are therefore not significant.</p> <p><i>Visual Impacts:</i> Similarly, the site's unique context bounded by a laneway to the east and 'wrapped' by a single allotment to the west and north warrants individual consideration of separation distances and resultant visual impacts. It is considered that privacy impacts can be mitigated for any future building to the north through design/mitigation measures (including if a residential building). There will be limited improvements to this aspect if the building was set back a further 3m than compared to what is proposed. This variation will not be visible from Moore Lane, with the view from this public place being of a continuous frontage to the boundary</p> <p>Privacy to any future building to the north will continue to be achieved as any future building to the north is likely to have a western orientation (to Coombe Street), a northern orientation (to optimise daylight access) or an eastern orientation to Moore Lane.</p> <p><i>Existing Building Placement:</i> Variation is also sought to the Level 3 setback on the northern and part of the western setback, which is provided with a nil setback to the boundary, consistent with Ground Level to L2 setback below the street frontage height). This variation is justified due to the placement of the existing State Office Block on the boundary to the north and west. The nil setback at the rear section of the proposed building reflects the need to provide a consistent wall height on the boundary as shown in Figures 5-1 and 5-2 below.</p> <p>Figure 5-1: Extract of Northern Elevation (A-203) showing extent of adjoining wall on boundary</p> 	

Figure 5-2: Extract of West Elevation (A-204) showing approximate extent of adjoining wall on boundary and Level 3 encroachments. *NB. The State Office Block already partly abuts this façade*



West: The revised design now meets this setback/separation distance for all levels, except for a part of Level 3, which encroaches for part of the building (northern portion and terrace) which are a zero setback. The State Office Block already partly abuts this façade.


Similar to the above, the shadow diagrams provided illustrate that no unreasonable adverse *overshadowing impacts* to existing properties and the public domain will occur than if the setbacks were met.

Visual impacts and Sky Views: Furthermore, upon redevelopment of the subject site, and the adjacent sites to the west (State Office Block site, if redeveloped), and north will provide sufficient spatial separation between the buildings and a viewing corridor towards the sky. When considering the significance of such sky views Council's attention is also drawn to the fact that any redevelopment of the adjacent site to the west is also likely to be accompanied by redevelopment of the land to the north, given the irregular shape of this adjacent landholding.

Visual impacts from Crown St: The proposed tower now provides a 10m front setback to Crown Street, well above the 4m setback which would ordinarily be required if the site was not located in the East End heritage precinct of Crown Street. As demonstrated in the *Contextual Streetscape Analysis* prepared by ADM Architects this increased setback will allow emphasis to be placed on the existing two storey streetscape and will remove the visual dominance of upper level towers, when viewed from Crown Street.

Summary: Flexibility is sought in the particular circumstances of the case due to the unique site context in which the development is positioned. To the west and north the building is sited adjacent to the State Government Office Block which is 3 storeys in height and which has a zero setback to the adjoining boundary with the development site. The revised design provides a compliant separation, **with the exception of a minor portion of Level 3 of the western boundary and the northern boundary.** However, this portion of the proposed building will abut existing vacant walls of the adjacent building, thereby negating the need for increased setback at this point. The single ownership of the large State Government Office block building site abutting both the western and northern boundaries provides ample opportunity to respond to building separation for any future development of that site at these minor points.

Clause 4.6 - Exceptions to Development Standards	Response/Justification	Consistent/Complies
	<p>East (Levels 3 to 8):</p> <p>The distance between the eastern boundary to centreline of Moore Lane of 2.35m. To meet the required 6m setback from the centreline, a setback of 3.65m is required. The eastern façade of Levels 3-8 is set back 900mm, and hence is deficient by 2.75m.</p> <p>It is assumed that a future building to the east will provide 4.75m to 6m to the centre of the road. In this case, a separation distance of 8m to 9.25m will be provided between the proposed building at 72-76 Crown Street and a future building to the east.</p> <p>The Design Review Panel (DRP) at its meeting of 16 May 2022 recommended the proposed setback as follows:</p> <p><i>“Alignment of tower: Council’s controls require a minimum setback of 4m from the laneway above street wall height. The upper levels of the commercial tower provide a setback of 2.4m. Given the scale of the base of the building addressing the lane (11m) it appears that the spatial quality of the lane would not be impacted by further reducing the set back of the tower above level 3, to 1m. This would allow the commercial tower to be set back 6m from the western boundary. It is also noted that this configuration could accommodate building separation in excess of 12m from future towers to the east. In broad terms, by relocating the tower (above level 3) 1.5m further east a better spatial relationship can be achieved between future tower forms.”</i></p> <p>Additionally, it is considered that the reduced separation from an adjacent building on the eastern side of the lane will be sufficient for the following reasons:</p> <ul style="list-style-type: none"> > The provision of a 13.23m setback from Crown Street to any new building work behind the heritage building will ensure that the entrance area to Moore Lane contains a more ‘open’ appearance, with no building sited above the two storey heritage street wall. > Moore Lane is a minor street which carries a low volume of traffic and pedestrian activity. The existing buildings in Moore Lane, particularly the 3 storey State Office Block at its northern extent, already create the appearance of a narrow service/access laneway and reduced setbacks for the tower element of the proposed building is unlikely to significantly exacerbate this issue. > In acknowledgement of this ‘lower level’ status of Moore Lane, it is noted that clause 3.2.3 of <i>Chapter D13 (Wollongong City Centre)</i> of WDCP 2009 does <u>not</u> identify Moore Lane (in Figure 3.1 of this chapter) as a key pedestrian link (either existing or proposed). <p>The following extract (Photomontage ADM Architects Dwg A-005) illustrates that the proposed building (at right, and a potential building envelope to the east (at left) will provide a suitable outcome for a city centre laneway context.</p>	

Clause 4.6 - Exceptions to Development Standards	Response/Justification	Consistent/Complies
	<p>Figure 5-3: Extract of West Contextual Streetscape Montage (A-005) looking south towards subject site along Moore Lane</p>  <p>Conclusion: Hence, it is considered that the objective of this clause is addressed and flexibility is sought for the above-mentioned variations to north, west and eastern separation distances having regard to the particular circumstances of the case.</p>	
<p><i>(2) Consent may, subject to this clause, be granted for development even though the development may 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.</i></p>	<p>This subclause is not relevant to the subject proposal.</p>	<p>N/A</p>
<p><i>(3) 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:</i></p>	<p>This table comprises the written request seeking to justify the contravention of the building separation development standard.</p>	<p>Provided</p>
<p><i>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</i></p>	<p><i>In Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009, para 61, Commissioner Person summarises the considerations from Wehbe v Pittwater Council [2007] NSWLEC 827 at [42] per Preston CJ, and notes in para 62 that clause 4.6 can be considered in a similar way to that of SEPP 1. In Wehbe at [44]-[48] Preston CJ identified other ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary, namely that the underlying objective or purpose is not</i></p>	<p>Justified</p>

Clause 4.6 - Exceptions to Development Standards	Response/Justification	Consistent/Complies
	<p>relevant to the development; that the objective would be defeated or thwarted if compliance was required; that the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard; or that the zoning of the land is unreasonable or inappropriate.</p> <p>A response to each of these approaches is therefore provided as it relates to the current proposal:</p> <p><i>The underlying objective or purpose is not relevant to the development</i></p> <p>This is not applicable as the objective of the Development Standard is relevant to the development (and has been satisfied – see below in this table). It is the numerical standard itself that is not relevant to the development having regard to the particular site circumstances.</p> <p><i>That the objective would be defeated or thwarted if compliance was required</i></p> <p>While compliance with the standard would not be strictly contrary to its objective, neither would it contribute meaningfully to this objective – “ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access” (for reasoning, see below). For this reason, the numerical standard does present an unreasonable and unnecessary burden. However, it is argued that the ‘purpose’ of the separation standard is not relevant to the development given the absence of an interface of the proposed tower with existing surrounding buildings and the specific context of the site.</p> <p><i>That the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard</i></p> <p>The standard has not been abandoned or destroyed but has been varied on numerous occasions by Council having regard to site context issues.</p> <p><i>The zoning of the land is unreasonable or inappropriate.</i></p> <p>The zoning of the land is appropriate, however as mentioned above, the numerical development standard applicable in the zone by Clause 8.6 for building separation is not.</p> <p><u>Overall:</u></p> <p>The objective of the standard, which is to uphold good visual appearance, solar access, and privacy in multi storey development, is relevant to the proposal and satisfied by it (see below in this table). The meeting of these objectives is not impacted by the variation of the proposal to the standard, and in this context, therefore, the numerical standard itself comprises an overly onerous requirement which limits the good design of the building (see below).</p> <p>As mentioned above, the tower element of the building does not have an interface with other high level buildings to the east (an existing heritage item), or to the west and north due to the positioning and 3 storey height of the State Government Office block. This unique positioning warrants individual consideration of appropriate building separation. Similarly, the Built Form Study (Drawing A-004a) prepared by ADM Architects demonstrates that adequate separation to future buildings can be achieved due to the unusual configuration of allotments and the positioning of existing and possible future pedestrian spaces.</p> <p>It is therefore justified that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.</p>	

Clause 4.6 - Exceptions to Development Standards	Response/Justification	Consistent/Complies
<p><i>that there are sufficient environmental planning grounds to justify contravening the development standard.</i></p>	<p><i>In Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009, Commissioner Person determined that it is necessary for applicants to show sufficient grounds <u>particular to the development</u> in the Clause 4.6 objection.</i></p> <p>The variation applies to the upper levels of the building only (<u>Levels 3 to Rooftop of north and eastern façade, and part Level 3 of western façade</u>) [subclause (2)(b)], which does not meet the required 12m separation. This is justified due to:</p> <ul style="list-style-type: none"> > The existence of the three storey State Office Block to the north and west which was constructed in the 1970s, is well maintained and does not appear to be in short/medium term need of replacement. This building is sited on a significant irregular shaped parcel of land which widens centrally in the middle of the site and which extends through to Market Street at the rear, providing various options for placement of a future tower in the event that this site is developed in the longer term. > The tower element also does not have a direct interface with any building to the east however, for the avoidance of doubt this Clause 4.6 submission also considers whether the required separation distances would be provided to any building on 124-128 Corrimal Street (to the east), in the event of redevelopment of this site. The DRP supports the reduced separation in this instance. > The Contextual Modelling (prepared by ADM Architects) demonstrates that the a reasonable separation could be achieved to the east due to the separation provided by Moore Lane, together with increased setbacks to a proposed commercial building to the east, due to the need to maintain the existing heritage item on the eastern corner of Moore Lane and Crown Street. <p>Furthermore, the variation to the development standard (building separation) will enable the feasible and appropriate development of the site, for the reasons provided in (1) above in this table. Specifically, the key environmental planning grounds are met, being:</p> <p><i>Overshadowing and Solar Access:</i> the proposed setbacks and building separation is unlikely to adversely impact other properties and the public domain, and adequate solar access is anticipated to the proposed commercial building and any future adjacent building given the site's orientation.</p> <p><i>Visual Impacts:</i> the resultant separation will provide adequate openness for public domain areas (including Moore Lane and Crown Street, assisted by the generous southern setback to the tower), and to existing and future adjacent buildings.</p> <p><i>Heritage:</i> while not specifically commenting on the setbacks and building separation, the amended Heritage Assessment accompanying the revised design confirms that the proposal will compliments the existing area, including the Crown Street East Precinct (p38): "<i>The original juxtaposition in relation to surrounding buildings, including adjacent heritage items, will be maintained and the curtilage will be sufficient to maintain an interpretation of the significance of the item. The higher building will be constructed behind and incorporate the heritage item into part of its fabric</i>"..."<i>Additionally, the proposal will incorporate the heritage listed building and make it a focal point of both the proposed development and the East Crown Street precinct. The heritage of the area will be respected and incorporated into the regeneration of the precinct.</i>"</p>	<p>Justified</p>

Clause 4.6 - Exceptions to Development Standards	Response/Justification	Consistent/Complies
<p>(4) Consent must not be granted for development that contravenes a development standard unless:</p> <p>(a) the consent authority is satisfied that:</p>		
<p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p>	<p>This Variation statement provides a discussion in support of the justification for varying the development standards as indicated in (3) above. In our opinion, there is sufficient justification provided to support a variation to the building separation requirements.</p>	Satisfied
<p>(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</p> <p><u>Wollongong LEP 2009:</u></p> <p><u>Objectives of the Standard (Clause 8.6)</u></p> <p>"to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access".</p> <p><u>Objectives of the Zones</u></p> <ul style="list-style-type: none"> ▪ To provide a mixture of compatible land uses. ▪ To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling. ▪ To support nearby or adjacent commercial centres without adversely impacting on the 	<p>Despite the variation to the required separation distances, the proposed development will be in the public interest as it still meets the objectives of the clause 8.6 as:</p> <ul style="list-style-type: none"> > Visual appearance: The non-compliances to the required building separation do not adversely affect the appearance of the building. As detailed in this statement, there are no likely adverse impacts resulting from public domain areas (including Moore Lane and Crown Street, assisted by the generous southern setback to the tower), and to existing and future adjacent buildings. The reduced setbacks/separation allow for a wider tower which allows for redistribution of building mass from the lower and Crown Street elevation of the building, and which provides an innovative design solution, reinforcing the city centre's role as the dominant centre in the region for 'A' grade office accommodation. > Solar Access and Privacy: At the upper levels privacy will not be impacted as the development does not have an interface with other buildings and significant separation is provided to the nearest residential buildings on Market and Corrimal Streets and on the southern side of Crown Street. The reduced building separation is unlikely to adversely impact other properties and the public domain, and adequate solar access is anticipated to the proposed commercial building and any future adjacent building given the site's orientation. <p>Hence the proposed development achieves the objective of the building separation development standard.</p> <p>The proposed development is also consistent with the objectives of the B3 Commercial Core as it will:</p> <ul style="list-style-type: none"> > Provide a purpose built commercial building, meeting the key objectives of providing suitable commercial, office and retail accommodation in this zone. > Do so in central Wollongong, with close access to the full range of retail and commercial spaces within the CBD, as well as access to reliable public transport options and the walking and cycling links associated with the coastal zone; <p>Overall, the development of the site as proposed will clearly facilitate the ongoing viability and economic development of the Wollongong City Centre and hence is in the public interest.</p> <p>Furthermore, it is considered that the proposed development meets the majority of the Aims of WLEP 2009 [Clause 1.2(2)] as follows:</p> <p>(b) encourage economic and business development to increase employment opportunities,</p>	Justified

Clause 4.6 - Exceptions to Development Standards	Response/Justification	Consistent/Complies
<i>viability of those centres.</i>	<p>(c) encourage a range of housing choices consistent with the capacity of the land,</p> <p>(f) conserve and enhance heritage,</p> <p>(g) ensure that development is consistent with the constraints of the land and can be appropriately serviced by infrastructure.</p>	
<i>the concurrence of the Director-General has been obtained.</i>	Council will need to consult with the Department of Planning and Infrastructure as to whether the concurrence of the DG can be assumed in accordance with Planning Circular PS 08-003-Variations to Development Standards (Department of Planning, May 2008).	Addressed
<i>(5) In deciding whether to grant concurrence, the Director-General must consider:</i>		
<i>whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</i>	The contravention of this development standard does not raise any matter of significance for state or regional environmental planning. Refer to further discussion below in this table.	Addressed
<i>the public benefit of maintaining the development standard, and</i>	<p>The development is located in on a site, and is of a design, whereby compliance with the numerical standards of Clause 8.6 do not align with its objectives.</p> <p>There will be no measurable public benefit by adhering to the separation distance requirements of Clause 8.6, particularly as they would result in a less feasible and less desirable built form outcome.</p>	Satisfied
<i>(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.</i>	It is considered that there are no environmental planning considerations that would hinder the Director-General from providing concurrence.	Addressed

6 Conclusion

This Statement has addressed the provisions of Clause 4.6 of Wollongong LEP 2009 relating to the Building Separation standard of the WLEP.

The non-compliant building separation is limited to Levels 3-8 of the proposed commercial tower and ranges from a shortfall of 2.75m (east to Moore Lane), 6m to west (Level 3 only) and 3m at north. The 6m variation at Level 3 to north and part of the western boundary reflects the boundary wall positioning of the adjacent building. There is also a minor non-compliance to the Level 9 building plant (representing a minor 0.5-1m non-compliance which will largely not be visible).

This statement demonstrates that the proposed building setbacks and resultant building separation is justifiable as the tower element of the building does not currently have an interface with other high level buildings to the east (an existing heritage item), or to the west and north due to the positioning and 3 storey height of the State Government Office block. This unique positioning warrants individual consideration of appropriate building separation as proposed.

The proposed separation distances of at least 9m to future buildings (and likely greater than this as demonstrated the ADM *Built Form Study*) will provide satisfactory spatial separation and will have an insignificant impact on views, visual privacy, and overshadowing. Whilst the proposed setbacks may result in less than the 12m separation which would ordinarily be provided, the reduced setbacks will allow for repositioning of building floor area from the lower levels of the building to allow for the full retention of the heritage item. Such design response provides positive community and streetscape benefits.

Furthermore, these variations bear no unreasonable impact upon the proposal's ability to satisfy the objective of that clause, namely "*to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access*". The non-compliant building separation to the existing buildings does not create any unreasonable impacts on adjoining sites in terms of visual impact, disruption of views nor loss of privacy having regard to design outcomes in an inner city context. On this basis, strict compliance with the building separation controls of WLEP 2009 is considered unnecessary. Council's support for the variation is therefore sought.